IN THE COMPETITION APPEAL TRIBUNAL

Case Nos. 1249/5/7/16

Victoria House,
Bloomsbury Place,
London WC1A 2EB

8 November 2016

Before:

THE HONOURABLE JUSTICE ROTH
(The President)
WILLIAM ALLAN
PROFESSOR STEPHEN WILKS

(Sitting as a Tribunal in England and Wales)

BETWEEN:

SOCRATES TRAINING LIMITED Claimant

- and -

THE LAW SOCIETY OF ENGLAND AND WALES Defendant

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DAY 1

A P P E A R AN C E S

Mr Philip Woolfe (instructed by Socrates Training Limited) appeared on behalf of the Claimant.

Ms Kassie Smith QC with Ms Imogen Proud (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Defendant.

MR. WOOLFE: Good morning, sir. I appear for Socrates Training Limited and my learned friends Kassie Smith QC and Imogen Proud appear for the Law Society. We may also be joined by disembodied voices from time to time.

THE PRESIDENT: I hope not.

Housekeeping

MR. WOOLFE: Briefly a matter of housekeeping. You should have, or should have received, quite a large number of bundles. There should be bundle A, which is pleadings and orders; bundle B which is experts' reports and which contains the factual analysis calculations; bundle C, which is the claimant's witness statements; C1, which are the exhibits to that; D, which is the defendant's witness statement and then D1 to D11, which should be all of the exhibits to the defendant's witness statements. To reassure you, some of the documents in that are simply very large and that is why there are so many of them.

You should also have received two volumes of further documents, E1, documents disclosed by the claimant, and E2, documents disclosed by the defendant.

You will be delighted to hear there is no bundle F of correspondence.

THE PRESIDENT: Bundle F, at least ours, is labelled "authorities".

MR. WOOLFE: I was coming on to authorities. We should have three volumes of authorities, or rather two significant lever arch files of authorities and a slimmer third volume.

THE PRESIDENT: Yes, we have those. If we are getting -- are we getting daily transcripts?

MR. WOOLFE: I believe that is right.

THE PRESIDENT: Perhaps we can be supplied overnight with just a file in which to put them, for transcripts.

MR. WOOLFE: So leading with the openings this morning, given that I have to open the case on market definition, dominance and abuse I may be slightly longer than Ms. Smith who will be dealing with an opening on justification. We will be having the evidence from Mr. George this afternoon.

As regards my submissions this morning --

THE PRESIDENT: Just before that, Mr. Woolfe, I think we have had an application from your client to increase the cost cap, which I think we should deal with now

MS. SMITH: Sir, I am completely unaware of that application I am afraid.

THE PRESIDENT: There are emails from your solicitor.

MS. SMITH: Apparently it has been canvassed in correspondence but I have not seen an application I am afraid.

THE PRESIDENT: I think it is not opposed because it is for both sides and it is simply that it cannot be done by agreement without an order of the Tribunal. So I do not think you are being prejudiced, Ms. Smith. I expect your solicitors thought you have enough to be getting on with and did not want to trouble you with it.

MR. WOOLFE: It is for both sides to be increased by 15 per cent I believe.

THE PRESIDENT: That is right, and that as I understand it is not opposed and I shall make that order.

MR. WOOLFE: Before I go further perhaps I should check that all the members of the Tribunal had had a chance to read our skeleton arguments?

THE PRESIDENT: Yes, we have. We are very grateful. They were very clear.

MR. WOOLFE: I am grateful.

Opening submissions by MR. WOOLFE

MR. WOOLFE: In that case, in my submissions this morning I will begin first by focusing on what we say the nub of the case is and then I will turn to deal with each of the elements of the chapter 2 case under four headings, the first being upstream market definition and dominance; secondly, downstream market definition; thirdly, abuse; and fourthly, objective justification.

I am very conscious you have had a skeleton argument on all these issues, so really what I will be seeking to do is highlight those points which are most relevant to how you will hear the evidence which you are going to be hearing over the next two or three days. Then finally I will deal very briefly with the chapter 1 case. I will not be very long with that at all.

So beginning first with the nub of the case, I think it is important we are very clear about what it is we are challenging. What we are challenging is the timing of training to CQS membership. That is the requirement that solicitors have to purchase specific training from The Law Society. We are not challenging the CQS itself, nor are we challenging the inclusion in the CQS of some requirement that law firms ensure that their staff undertake training on certain issues. What we are challenging is the requirement to purchase training from The Law Society.

When that is appreciated, we say that it casts the spotlight on what is perhaps the most important issue in the case and that is the issue of whether, as the defendant claims, the inclusion of the training requirement is essential to achieving the aims of the CQS and we say that is the most important issue in three ways.

THE PRESIDENT: Just to clarify, given what you have just said, when you say whether the inclusion of the training requirement, is it the inclusion of the training requirement, or the obligation to take that training requirement from The Law Society as opposed to from a third party?

MR. WOOLFE: The obligation to take specified training from The Law Society.

THE PRESIDENT: So it is not the obligation to take specified training so that the Law Society could, as part of the CQS, say "You must go through training modules in A, B, C, D", but what you are complaining about is that they say further "You must take them from us", is that right?

MR. WOOLFE: That is really the nub of it. However, when you come on to thinking about what else The Law Society could do, a great deal of their case is saying "Well, we could not say you have to take these specific modules but not take them from us because that would require them to audit those specific modules, so there is some connection between the specificity with which the training is specified and who you have to take it from, on the defendant's case. Now, we would take issue with that, but beyond that we also say that in fact there are other ways you could structure training requirements that do not in fact specify modules at all.

THE PRESIDENT: Yes.

MR. WOOLFE: So our case is focused on --

THE PRESIDENT: At some point you will need to explain that a little bit.

MR. WOOLFE: Yes, I will, sir.

We say when it is appreciated what it is precisely we are challenging, there are really three ways in which this issue is important. The first is objective justification and exemption. Much of The Law Society's evidence is about the purported benefits of CQS as a whole, that is where they say the pro competitive benefits arise, and unless the requirement to purchase training from The Law Society is essential to that, all that evidence is simply irrelevant to the question of objective justification or necessity.

Secondly, however, we say that the paucity of the reasons for including that requirement to purchase training from The Law Society and in particular the absence of anything that is distinctive about the training needs of CQS firms, also goes to the issue of anti-competitive intent and to effect and I will develop my submissions on that in due course, in particular in relation to the *Ordem dos Técnicos* case which I will be taking you to later this morning.

Thirdly, we also say this point about whether the requirement to purchase training is necessary or not points out the weakness in The Law Society's argument on dominance, that the lenders are relevant to the assessment The Law Society's market power in this case. As you will see from the evidence in due course, there is no contemporaneous evidence that the lenders are interested to any significant extent in whether the Law Society includes a requirement to purchase training from it.

On this key issue of the necessity of the training, the Tribunal will hear oral evidence. There is the evidence of Mr. George in his second statement as to the needs for AML training for lawyers generally, property lawyers in particular. It also deals with how those requirements are the same for CQS firms and the similarity in the scope between The Law Society's training on this subject and Socrates' training, and he gives evidence on that in both his second and third statement. He gives evidence also as to the approach adopted by the Solicitor's Regulation Authority in imposing training requirements and indeed the approach adopted by The Law Society in imposing training requirements under its Lexcel accreditation scheme. You were asking me a moment ago, sir, how it is The Law Society could otherwise deal with it and we say the approach adopted by the SRA in the Solicitors' Code of Conduct, or by The Law Society under Lexcel offer alternative ways of imposing training requirements.

Briefly, the Solicitors' Regulation Authority imposes outcomes focused training requirement and The Law Society in Lexcel imposes what you might call a process focus training requirement, to have policies and procedures in place that staff undertake training.

MR. ALLAN: Could you clarify for me what you mean by outcome focused approach?

MR. WOOLFE: Yes, there is the obligation in the Solicitors' Code of Conduct, I think it is outcome 7.6, to ensure that staff are sufficiently trained on matters -- it is dealt with in the evidence of Mr. George. Now, there may be an issue of how one assesses how the outcomes are left, but the profession, both sides of the legal profession -- I know there are more sides, but both solicitors and barristers are moving towards an outcome focused training requirement rather than the old style input focused where we used to have 16 hours of CPD every year, and the very fact that the professions are moving to that shows that that is an alternative approach that can be adopted. Or indeed some combination of the two, one could have an outcomes focused approach and also audit the policies and procedures that the firms have for their training.

In addition you will hear evidence from Mr. Murphy tendered by The Law Society who gives evidence as to the place of training within the CQS in his first statement and the evolution of those requirements over time and he also in his second statement deals with this point about the analogy between the CQS and Lexcel.

Mr. Smithers' evidence goes more to the history of the requirements, though Mr. Murphy's evidence is also partly relevant to that, and just for your note, I think it is convenient to consider the history in four separate periods in this respect.

The first period runs from the initial proposal for the CQS in around December 2009, through to early 2011 when the scheme was launched, and the relevant issues for you to consider in hearing that evidence are twofold. The first is what were The Law Society's overall aims in launching the CQS and the second relevant issue for this period is how the CQS came to include this requirement to purchase training from The Law Society for all relevant staff and what were the reasons for that.

The second relevant period is the period when The Law Society decided to include a mandatory module on mortgage fraud within the training requirement and that is late 2011 through to early 2012 when that decision appears to have been taken.

The third period is similarly when The Law Society decided to include mandatory training on AML, anti-money laundering, law, which is from late 2012 to early 2013.

Then fourthly and finally there is the period when the Law Society considered some restructuring of the CQS at various points from 2014 into 2015.

The first three of those are covered to some extent both Mr. Smithers and Mr. Murphy.

THE PRESIDENT: That is the restructuring that led to the financial crime module?

MR. WOOLFE: That is that restructuring, but as you will see in the documents, a slightly broader restructuring was considered as to how the CQS related to other The Law Society initiatives and in particular other projects to provide information to lenders, or to provide a new conveyancing portal and there was some talk about how the CQS was going to be repositioned in relation to those, but in the event it turned into some restructuring of the programme.

THE PRESIDENT: Can I interrupt you for a moment. When you say there are other approaches that can be adopted in looking at the SRA and so on, are you seeking to impugn all the inclusion of mandatory training in the CQS, because of course there are aspects of it and modules thing, courses, whichever word one uses, which are nothing to do with anti-money laundering and I do not think when the scheme was launched and it did not have even a

mortgage fraud element, the impression I got from Mr. George's evidence was he was not concerned about that. It is really when it has gone into a compulsory course on anti-money laundering, that is the burden of his complaint, but are you saying it should not have any compulsory courses from The Law Society?

MR. WOOLFE: Obviously my client's commercial concern is anti-money laundering and mortgage fraud and that is what it brought the claim in respect of and that is the scope of the claim. It does, it is fair to say, have a wider concern about the ability of the Law Society simply to specify at any point in the future that some element is considered to be important for practitioners at CQS firms to have training on and therefore by specifying it may arrogate that market to itself, so he does have a wider concern as well, and the logic of the argument may go wider. Of course it may be that, depending on the specific subject matter, the arguments would turn out slightly differently, and the evidence before you relates to anti-money laundering and mortgage fraud.

THE PRESIDENT: Yes.

MR. WOOLFE: I therefore would like to turn to the first of the four headings under chapter 2, which is the definition of the relevant upstream market and dominance.

As pleaded the claimant's case is there is a discrete market for the provision of quality certification/accreditation services for law firms who provide residential conveyancing services in England and Wales and that The Law Society is dominant in that market. The defendants deny that and say that the market is the market for the provision of quality assurance to mortgage lenders. That is their pleaded case in paragraph 29 of -- and the quality assurance is of law firms who provide residential conveyancing services in it the UK.

Simply one note on the point about the word "accreditation", I would submit that the Tribunal should not get too hung up on the specific word used. As the defendant points out we are not talking about statutory accreditation of certification bodies, which is a whole separate regime. We use the term "accreditation" because that is the one the defendant itself uses in much of its material. What really matters is what the product consists of and who it is supplied to and you will hear evidence on that in due course:

Turning to our submissions on the relevant law, we have four submissions in respect of market definition which I will expand on in a moment. The first is that the Tribunal should remember the point of the exercise, which I will expand on in a moment.

The second is that market definition is an exercise that focuses on products, it takes products as its starting point.

The third is that the most important factor is demand substitution, which means the behaviour of purchasers and in this case we would say that means solicitors.

Our fourth submission is that for the purposes of assessing dominance, a two-sided market analysis is only relevant in very specific circumstances, which we say do not apply in this case.

So on this first point about remembering the point of the exercise, if I can ask you just to look at my skeleton at paragraph 15 you will see the classic formulation of the test of dominance from the *Michelin* case.

THE PRESIDENT: Yes.

MR. WOOLFE: Which is "a position of economic strength which enables the undertaking to hinder the maintenance of effective competition on the relevant market", and this is the important point, "by allowing it to behave to an appreciable extent independently of its competitors, customers and ultimately consumers". So dominance consists precisely in freedom from competitive constraint or countervailing buyer power. We say that means that the relevant market is the sphere within which an undertaking can hold a dominant position and you can see that in the classic test of what a dominant position is. We say this is very important when you come to look at what one is doing in a market definition exercise and why much of the two-sided market analysis is not really relevant in the present case.

In that regard can I take you to the Commission's notice on market definition which is in the slim bundle of authorities at tab 27.

If I begin at paragraphs 2 and 3, we say the point you can take from those paragraphs -- I will not read them out because you have them in front of you -- is that the objective is to identify those actual competitors who are capable of constraining the undertaking in question and that is what gives you meaningful information to dominance. I would stress the point at paragraph 3. It says:

> "The concept of a relevant market is different from other definitions of market used in other contexts."

Specifically it highlights as an example the way that companies may think about markets but we would say the same thing applies to the way economists may think about markets,

we would say the same thing applies to the way economists think about markets, they may think about them differently for differently purposes.

So our first submission is that one needs to remember what one is doing and tailor the market definition process to that end.

The second submission is that the market definition process focuses on products, which one would think is a fairly uncontroversial proposition. I deal with this at paragraph 14 of the skeleton and pick it up at paragraphs 15 and 16 of the notice.

THE PRESIDENT: Yes.

MR. WOOLFE: You see:

> "The assessment of demand substitution entails a determination of a range of products to be viewed as substitutes to those products that are in issue."

Also:

> " ... look at a hypothetical small change of relative prices for those products."

Then 16:

> "Conceptually this approach means that starting from the type of products that the undertaking is involved to sell ..."

So you are looking at the specific type of products in question, the area in which they sell them:

> "Additional products and areas would be included in or excluded from the market definition depending on whether competition has constrained the pricing."

We would say the focus on products and purchasing behaviour is the foundation of market definition, not some consideration of the factors that may lie behind demand for products or the interests that other people may have in certain products being provided. You can see at paragraph 17 it expands upon the SSNIP test.

THE PRESIDENT: Yes.

MR. WOOLFE: So far, so uncontroversial.

Our fourth submission is that for the purposes of assessing dominance a two-sided market analysis is only relevant in very specific circumstances and we say those circumstances are these.

If you have a two-sided market with side A and side B, and are interested in examining whether conduct on side A is an abuse, the two-sided nature of the market is relevant only if the competitive constraints on side B are effective to constrain the specific behaviour on

side A that you are looking at. The authorities which I will rely on -- I will come back to in closing in more detail on for this proposition -- are set out at paragraph 16 of the skeleton. I will briefly outline what they are, I do not think you need to turn them up at that stage. The first is Aberdeen Journals and the point there was it was simply a matter of looking at a newspaper, which is often used as a classic example of a two-sided market, and yet the Director General of Fair Trading defined the market as being a market for advertising in newspapers, not some two-sided market for newspapers, and that was upheld, or not specifically disputed but the CAT did not dissent from that analysis.

We also rely upon the MasterCard decision, which for your note is at tab 25 of the authorities bundle, so it is just in the slim file, paragraphs 257 to 267.

The Commission's statement in that case that two-sided demand does not imply the existence of one single joint product. One needs to look at what the product of service actually consists in and you can see in these paragraphs the Commission focusing in quite specifically on what has been provided by banks on each side of the relevant market.

Finally, as an example of when it is appropriate to look at a platform as a whole as being a single product we refer to the *NCCN 500* decision which you have an excerpt of at tab 26 of the authorities bundle and perhaps I will briefly explain -- give you a way into that case, as to what it was about.

The issue was whether British Telecom, BT, had committed an abuse by raising charges for what are called number translation services. That is a service when you dial a non-geographical number such as an 08 number. All telephone lines ultimately connect to some real geographical number that lies behind that and the number translation is the matter of translating the 08 number into whatever number lies behind it and connecting the call. BT also supplied hosting services though. So it supplied the number translation services to people who were broadly speaking making the phone call, or connecting, and then it was supplying hosting services to the recipient of the call and there was an evident connection between those two. OFCOM decided in that case that it was appropriate to view it as a single joint product, but in doing so it specifically acknowledged that in most two-sided markets it is likely to be appropriate to examine the two sides separately, as in effect this is distinct but interrelated markets. That is paragraph 4.71. We say that is important because if you treat them as distinct markets, one does not forget about other surrounding facts, but they are nonetheless distinct markets for the purposes of assessing dominance.

Then you can see at paragraphs 475 to 477 why in the very specific circumstances of that case they thought that it was appropriate to analyse it as a joint product, but my point is simply this: that you need to look at why it is relevant to look at it as a joint product on the facts of the particular case and not simply say: there are some two-sided aspects here therefore you drag it all in, because that is not the approach that has been taken by the competition authorities or the competition courts when they looked at the matter.

THE PRESIDENT: Yes.

MR. WOOLFE: So turning to our submissions on the facts of market definitions and dominance.

As regards the focal product first, our submission is that the focal product is a form of accreditation supplied to solicitors, not a quality assurance service provided to lenders and The Law Society's case confuses the nature of the product with the factors that may lie behind the existence of demand for that product. In support of this submission there are three facts that we are going to try to establish by reference to the evidence.

The first fact we are going to try and establish is that -- precisely this, that the product is an accreditation mark for solicitors, and in fact you can see that from paragraph 8 of Mr. Murphy's first statement. It is also dealt with by Mr. George as well.

The second fact is that the scheme was set up for solicitors' purposes and specifically to enhance solicitors' reputation and not for the purpose of assisting lenders and that will appear from the chronology, from the history as it comes out in evidence in due course.

THE PRESIDENT: Yes.

MR. WOOLFE: The third fact that we will seek to establish is that insofar as the lenders are interested in the CQS, it is about probity and it is about checking the identity, honesty and bona fides of the solicitors who they are doing business with and not about other aspects of the scheme and I will take you to the documents on that in closing and during the evidence.

That is our case on the focal products. The next part of the case on market definition and dominance is demand substitution and our case is that demand substitution by solicitors is not an effective constraint on the defendant in this case. Solicitors would not substitute away from CQS accreditation in response to a small but significant rise in price above the competitive level, or in response to a decline in quality.

In that respect we rely firstly upon the expert evidence of Mr. Williams and just to outline that for you, there are really three stages to Mr. Williams' evidence.

The first is this point that a SSNIP, or reduction in quality would not directly lead to a reduction in demand from solicitors so as to render it unprofitable and that is paragraphs 29 to 51 of his report.

The second stage of his analysis is to say that a SSNIP or reduction in quality is unlikely to indirectly lead to solicitors substituting away because the value of conveyancing work is such that if even one major lender requires CQS accreditation it would be worthwhile solicitors obtaining membership, even if others substitute away.

The third stage in his analysis is that it is unlikely that all lenders would abandon the CQS in response to a SSNIP and that is paragraphs 52 to 81 --

THE PRESIDENT: They do not have to go together, the downgrading of quality or increase in price. It may be that the lenders, whether they are a two-sided market, or just an external factor, that may be just a matter of conception, but in reality they clearly have great influence and they might -- the point being made -- be effective in constraining a reduction in quality, but they might be wholly uninterested in an increase in price to solicitors.

MR. WOOLFE: Indeed. Exactly that, sir. We do not say that what lenders want is wholly irrelevant and indeed Mr. Williams deals with the lenders at some length in his statement. The question is whether they are a relative, competitive constraint for the abuse in question. That is precisely the point: why do lenders care about what hoops solicitors have to jump through? They only care insofar as they get a benefit. We say because they are interested specifically in probity they do have quite a close interest perhaps in what checks solicitors have to have made on them to be members of the CQS, because that goes to whether they want to mandate it. They appear to be much less interested in training, on the basis of the evidence in the documents, but of course even if they are interested in training to some extent they want it to be provided in a certain way and they will not care about the costs it imposes on solicitors to comply with whatever requirements --

THE PRESIDENT: Yes and you say that would be enough for the SSNIP test.

MR. WOOLFE: Yes. Imagine The Law Society requires that all solicitors would have to send ten pots of jam to The Law Society every year, the lenders would not care, but it would be a cost. That is an absurd example but it makes the point.

MR. ALLAN: We probably should not prolong this too much at this stage, but are the lenders wholly indifferent to cost, if the costs arose to such an extent that an accreditation scheme that they might find useful from their panel assessment process fails to win acceptance for solicitors and was too costly, are they indifferent at that point?

MR. WOOLFE: At that point they may well not be indifferent, but that is a question of how far one would have to move above the competitive price.

MR. ALLAN: So it is a question of degree rather than absolutely black or white.

MR. WOOLFE: Absolutely. It is like the telephone analogy in that sense, that if it cost 100 times the amount, solicitors would refuse to do it, that would have an effect, but would a small but significant rise in price have that effect? There is no evidence that the lenders would care.

MR. ALLAN: I just wanted to clarify.

MR. WOOLFE: So in addition to the expert evidence on demand substitution there is also some factual evidence about the alternative quality assurance products to whom the defendant says that lenders might switch. That is Lender Exchange and Legal Management Services. There is some factual evidence that they are different in nature and are not substitutes -- this from the point of view of solicitors -- and that is dealt with in Mr. George's second statement in bundle C at tab 3, paragraphs 86 to 88. Essentially Lender Exchange is a portal for information exchange. I will turn it up.

THE PRESIDENT: Yes.

MR. WOOLFE: 86 to 89, sorry. Lender Exchange is a portal for information exchange. It is not a quality market, it is a matter of solicitors entering in information about themselves into it that then gets shared round all lenders and lenders can take their own decisions on the basis of the format of the information, not a simple stamp.

Legal Management Services appears to supply panel management services which is obviously quite a wide-ranging set of services that it may provide to lenders. It may well be there is some quality assurance as a component of the panel management offered, but panel management is a different bundle of services to the quality market.

We say they are complements rather than substitutes.

I should just mention one document in particular -- the reason for mentioning it in opening is it is not exhibited to any of the statements -- which is The Council of Mortgage Lenders' invitation effectively to The Law Society to tender for the provision of what became Lender Exchange and that is a letter of 13 December 2011, that is in bundle E2 at tab 13. I will not take it to you now, but as I say, we do rely on that as evidence of what lenders are ultimately interested in.

Finally as a concluding point on demand substitution we say that the economic analysis conducted by Mr. Williams is consistent with the anecdotal evidence in the evidence of market participants, that includes Mr. Smithers, paragraph 27 of his statement, Mr.

Hamilton, at paragraph 6 of his statement, the article written by Dame Janet Paraskeva, who pointed out the CQS has in effect become mandatory, and --

THE PRESIDENT: Sorry, the reference for the article?

MR. WOOLFE: The reference for that, that is I think bundle C1, tab 3. It is exhibited to Mr. George's statement.

We also highlight the fact that The Law Society itself has sought to promote the scheme to lenders specifically in order to drive up CQS membership amongst solicitors and there is another document that is not exhibited to the witness statements, which is perhaps the best example of this, which are the minutes of the Conveyancing and Land Law Committee of 3 April 2012 at bundle E2, tab 17, welcoming that certain banks had mandated it as it would promote the CQS.

We say there is evidence that the defendant understood and desired that lenders requiring CQS accreditation would drive CQS uptake to a very large extent because solicitors effectively would not have a choice but to become members at that point.

Our case on supply substitution as set out in Mr. Williams' evidence is simply that it is not a relevant constraint across the time period we are looking at, because what The Law Society proposes in its defence is that lenders could set up their own accreditation scheme, or that somebody else could enter the market with an accreditation scheme and we say that yes, that might be the case, but that is simply not -- that degree of future supply substitution that would take time to launch is not normally treated as a relevant constraint for the purpose of market definition.

THE PRESIDENT: On market definition, I think that is agreed between the experts, that supply side substitution is not here a feature. That is in their agreed statement. They say it has some relevance to dominance but not market definition.

MR. WOOLFE: Okay, I had understood The Law Society --

THE PRESIDENT: Not on the agreed paragraph 8, or point 8 of the agreed statement, so you do not have to worry about that.

MR. WOOLFE: The second heading is the issue of the relevant downstream market and this I can deal with --

THE PRESIDENT: Sorry, just to make clear, I think they still rely on it for dominance but not on market definition. I think you are dealing with the two together.

MR. WOOLFE: Yes, that is right. On that we say it does not appear to be something that is realistically being proposed.

THE PRESIDENT: Yes.

MR. WOOLFE: So the second heading is the matter of the relevant downstream market. On this I can be rather briefer on. Our case is that there is a distinct downstream market which includes the providing of AML training and financial crime training to residential conveyancing law firms. That is paragraphs 12 and 21 of the claim form.

The defendant's case is that the relevant downstream market is wider for the supply of AML training to relevant persons as defined in the Money Laundering Regulations 2007. That is a much wider category of persons including estate agents, some accountants and so forth. So it is obviously common ground there is a relevant downstream market for training and our submission is essentially that it is not necessary to define the precise scope of the market. The scope of the market is only relevant to the extent that it is an issue as to whether or not The Law Society's tie-in is capable of having an anti-competitive effect on that market and we say that is clear, however the downstream market is defined. I will deal with that more in due course when we come to abuse.

But insofar as it is relevant, our case is that demand from other segments of the market is distinct from accountants, international law firms and estate agents and the relevant evidence is set out at paragraphs 3, 4 and 16 of Mr. George's second statement.

THE PRESIDENT: Can I just be quite clear, although you say it may not matter, what you say the downstream product is, as finally defined. Is it -- I am looking at the claim form where -- this is bundle A. At paragraph 12 it is said that:

> "A highly competitive market has developed in which Socrates and many other organisations provide AML training for law firms."

Then at paragraph 29 the downstream market is defined as "The provision of AML mortgage fraud and financial crime training to law firms which provides for residential conveyancing or alternatively to all law firms in England and Wales". It may not matter much, but are you taking AML mortgage fraud and financial crime together?

MR. WOOLFE: Perhaps if I just explain. Obviously there is a distinct demand for AML training because of the requirement in the money laundering regulations, regulation 21, to have training on AML. I understand that on the facts any general AML training for law firms who might do everything would have to include mortgage fraud to some extent because mortgage fraud is -- once you commit mortgage fraud the money becomes proceeds of crime and hence money laundering applies, so there is a connection at that level, so maybe in practice, depending on what the type of business you are selling to is, that the two

become to many some extent inseparable, or intertwined, but there is a distinct demand for AML training. It may be that there are separate markets for AML and mortgage fraud and that the financial crime training module supplies both those sources of demand.

Does that answer the question?

THE PRESIDENT: Yes.

MR. WOOLFE: But we say you do not need to get into -- for the purposes of considering whether or not this is an abuse, or an anti-competitive effect, actually the precise boundaries of those markets do not really matter.

THE PRESIDENT: Yes.

MR. ALLAN: But just to follow that up, you are making the market exclusive to lawyers?

MR. WOOLFE: We are making the market exclusive -- well, we say that the market is probably residential conveyancing solicitors, but it may be wider and be lawyers, but we do say that is distinct from accountants or estate agents because the nature of the training that those people require is very different.

That is paragraphs 3 and 4 of Mr. George's statement.

THE PRESIDENT: Indeed Socrates has different courses for accountants and estate agents.

MR. WOOLFE: Indeed. So at bundle C1, tabs 5 and 7, are Socrates training for law firms generally and property lawyers in particular and at bundle E1, tab 1 and 2, where it has AML for accountants and AML for estate agents.

THE PRESIDENT: Yes, we do not have to look at them now.

MR. WOOLFE: So the third heading under chapter 2 is abuse, tying and bundling, and the claimant's case on that is that accreditation on the one hand and the training on the other hand, both AML and mortgage fraud, and under financial crime which combines the two, are distinct products by their nature which are being tied together by contractual means.

Secondly, we say that that tie-in tends to have an anti-competitive effect. This is paragraphs 32 and 33 of the claim form.

The defendant's case is to deny that the CQS and training modules are distinct and it is said that the training is essential and inseparable from the CQS -- that is paragraphs 35 to 36 of the defence -- and anti-competitive effect is denied.

Now, the general principles relevant to abuse are set out at paragraphs 18 to 21 of the skeleton. I will not repeat them here. One point however I would like to stress is the requirement of likely effect, or tending to have an effect on competition and what is required and to that end I would like to take you to the *Google* case which I know you will

be obviously very familiar with, sir, but to develop my submissions by reference to it and that is in volume 2 of the authorities at tab 23.

The facts I will just briefly outline for the other members of the Tribunal. Clearly the Google search engine, the claimant was the supplier of a mapping product and the abuse allegation seems to have shifted over the course of --

THE PRESIDENT: The other members have both read it, so you can take it shortly.

MR. WOOLFE: In that case we can skip forwards. If we move to paragraphs 86 to 91, which is where the Court considered what is necessary to show an actual effect on competition, and whether it is necessary to show it, and the effect required. The Court began with *British Airways v The Commission* and the quote that:

> "It is not necessary to demonstrate that the abuse in question had a concrete effect on the markets concerned. It is sufficient in that respect to demonstrate that the abusive conduct of the undertaking in a dominant position tends to restrict competition, or in other words that the conduct is capable of having or likely to have such an effect."

At paragraph 88 the Court accepted on the basis of the *Microsoft* case, which itself is a bundling case and therefore very close to tie-in, that the conduct must be reasonably likely to harm the competitive structure of the market. So it is a question of the tendency of the conduct in question, whether or not it is likely to have the effect.

At paragraph 90 it is stated that it would be a relevant factor if it were found as a fact that the impugned conduct had no anti-competitive effect, and, with respect, I would submit that is not entirely right. But that reasoning we would say applies in a case where it is shown on the evidence that there is no anti-competitive effect at all, it is a positive finding of no effect, and it would be bizarre in those circumstances to say it is likely to have an effect but there is no effect.

What we submit is that you should not turn that into a requirement that unless anti-competitive effect is positively demonstrated on the balance of probabilities that there is no abuse because that would be to turn a requirement for likely effect with a finding of no effect being relevant into a requirement to show actual effect in each case, which would be contrary to the Court's own reasoning on the authorities cited. That is, we say, what the defendant is trying to do.

Secondly, as regards the degree of effect required -- that is at paragraphs 92 to 98, and this I do not need to go through in any depth --

THE PRESIDENT: It is obviously relevant how long it has been going on. In that case it had been going on for very many years, the conduct, so you would look to see some effect if it is reasonably likely to have an effect, but I think in this case, especially with the one year renewals, it is fairly short.

MR. WOOLFE: Sir, we absolutely would say that is right and beyond that we do say it is relevant to look at what evidence of effect there is.

THE PRESIDENT: Yes, it must be.

MR. WOOLFE: But it becomes relevant because if -- it might be relevant in considering the defendant's factual analysis in particular. If that particular analysis fails to show effect, that does not equate to it showing that there is no effect, if I can put it that way; and beyond that merely that there is some evidence which does not show an effect does not mean that the conduct itself is not likely to have the effect, if I can put it that way.

THE PRESIDENT: We might be interested to know why it is not having an effect.

MR. WOOLFE: We have our points as to the deficiencies in that evidence and we will deal with that in due course, but simply as a matter of law it is important to see what it is the defendant has to show. It is not sufficient simply for the defendant to sit back and take potshots at our evidence on effect, they need to lead evidence to show there is no effect if they want to rely upon this.

THE PRESIDENT: Well, you have to show that it is -- I mean taking the test from paragraph 88, which is the *Microsoft* formulation, that it is reasonably likely to have an effect. That is your burden.

MR. WOOLFE: That is right, sir, I fully accept that.

THE PRESIDENT: In answering that question one can look and see "Well, in the several years that it has been going on, has it had any actual effect?", and that is going to be relevant in answering that question, and in looking at that we just have to assess how reliable the evidence is and how robust it is that we have got.

MR. WOOLFE: Absolutely. That is precisely it. I just wanted to urge you not to, as I think the defendant are trying to do, elevate this point about evidence of no effect being relevant into somehow importing a requirement that actual effect is shown, because that is not right.

THE PRESIDENT: Yes.

MR. WOOLFE: Then finishing up on *Google* paragraphs 92 to 98, the degree of effect is it must be more than de minimis in the case of a related market cases, or *Google* says, where it is shown that the conduct is pro competitive in respect of the dominated market.

THE PRESIDENT: Can you accept that? I only say that because there is an application for permission to appeal, so far not granted, but it is pending, and I think this is one of the points.

MR. WOOLFE: Sir, we say the effect is more than de minimis in any event.

THE PRESIDENT: Yes.

MR. WOOLFE: That is our case. I would say *Google* is a slightly different case in this respect, in that it was a case where the conduct had been shown to be pro competitive in respect of the dominated market, rather than simply being a case where there were two markets in issue.

THE PRESIDENT: Yes. But are you inviting us therefore -- I think it is -- you are quite right to say that was a case where it was found to be pro competitive and so it was not necessary to go, if you like, that bit further, but are you saying it is only in that situation de minimis does not apply? I appreciate your point saying it is more than de minimis anyway, but if we were not satisfied with that, do you say that *Google* is then to be distinguished?

MR. WOOLFE: If it came to that point I would say it is to be distinguished, yes, on that basis. But I do not think we are going to get to it.

MR. ALLAN: But just to clarify that, you said right at the start of your submissions you were not seeking to challenge the CQS in itself, so are you trying to say that whilst it may not be harmful, it is not particularly beneficial, there is no pro competitive case to be made?

MR. WOOLFE: What we say is there is no competitive case to be made for the requirement to purchase training from The Law Society as regards the upstream market.

The CQS in providing a quality stamp for solicitors gives lenders assurance about bona fides, or indeed the requirement to follow the CQS protocol which standardises conveyancing transactions. One can easily see how those things can be good and pro competitive, that kind of standardisation is a classic pro competitive element, but we say the specific restriction in this case does not have those pro competitive effects.

On the elements of tying, dealing with this at paragraphs 22 to 25 of the skeleton, it is necessary to show that the tying and tied products are distinct, tying is likely to lead to anti-competitive (inaudible).

In terms of looking at whether products are distinct, and this is -- I will not take you to the authority but it is worth stressing -- is that one assesses it by reference to consumer demand for the tied product. So applying it to this case the question is is there a separate demand from solicitors for mortgage fraud and anti-money laundering training which is distinct

from demand for accreditation, and for this reason we say that The Law Society's claim that the training is an inseparable part of the CQS rather misses -- we disagree with that anyway, but even if it were right it actually would not be relevant to this part of the analysis. The question is not is this an essential part of the Service you are providing, the question is whether there is a distinct demand for it. The question of whether or not it is inseparable is really a matter for objective justification.

If I could just correct one point in my skeleton, it is a minor point, paragraph 25. We say that:

> "Even where tied sales of two products are in accordance with commercial usage ..."

It should say "of" rather than "or":

> " ... or there is a natural link between the products there may still be an abuse by reason of tying if the tying or bundle is not objectively justified."

So it is the same point. The reference to the *Microsoft* case is wrong, it should be to paragraph 942 of *Microsoft*.

PROFESSOR WILKS: If I could comment a second here and perhaps we will pick this up with Mr. George this afternoon. Have you an argument about to whether CQS training as provided by The Law Society is specific to the CQR, or whether it is generic training?

MR. WOOLFE: Our case is that it is generic. I suppose I should be clear, it is focused on the needs of residential conveyancing solicitors, but it is not focusing on anything specific to people who are members of the CQS as opposed to not being members of the CQS.

Then turning to what is required in terms of the degree of anti-competitive effect or foreclosure required, we also rely on the *Ordem dos Técnicos* case and this is the last of the authorities I will be taking you to in opening and that is at tab 22 of the authorities bundles, it is in the second bundle.

This was an Article 101 case and it is highly relevant because of its similar subject matter. It related to a professional association which introduced a requirement that its members purchase certain training from it. Before we actually go through it perhaps it might help you if I set out the propositions that I want to take from it.

PROFESSOR WILKS: Sorry, which tab number?

MR. WOOLFE: Tab 22 of the second authorities bundle, sir. Once I have done this I will not be that much longer.

The first proposition which I will take directly from it is this, which is:

"Where an agreement segments a market and reserves a segment of the market for one undertaking, that is a sufficient foreclosure effect for the purposes of Article 101."

It does not matter how much of the market is left over for other people, if you segment a bit of it and take it out for yourself that is sufficient.

Although the case dealt with 101 I would submit is that by extension the same principle applies to foreclosure under Article 102 in chapter 2.

The second proposition I want to take from it is that the court can, by looking at a rule which in terms reserves the provision of certain training to a professional body, conclude that there is a restriction of competition. You can just look at the rule and conclude it from that.

The third proposition is that if a professional body takes on a role of approving training given by third parties, it must ensure equality of opportunity.

The fourth element -- perhaps this is not so much a proposition, but we would say that in respect of an objective justification case under Article 101, or the same under 102 -- and I say "objective justification" advisedly, not "exemption -- it is necessary to examine closely whether the specific restriction in question is necessary to guarantee the objectives sought; do you need the restrictive effect in order to guarantee the objective. That proposition I think is uncontroversial, but the reason I am taking you to it in this case is you can see how the Court applies it on the similar facts of this case and I submit it is helpful for those reasons.

You get the basic facts from paragraph 2 of the case. The Ordem dos Técnicos' OTOC is the order of chartered accountants. It had powers under statutes -- there are a whole series of issues in the judgment we do not need to go into as to whether or not it was an agreement or decision falling within Article 101.

The contested regulation is at paragraph 10 of the judgment, so that begins on page 657 and it is helpful to read that. This is a regulation of the OTOC. Two types of training: (a) institutional training and (b) professional training:

"2, institutional training shall consist of events organised by the OTOC for its members."

Maximum duration and certain objectives specified. Then:

"Professional training shall consist of studying consolidation sessions on topics central to the profession of a minimum duration of more than 16 hours."

As you will see in the judgment, there is no requirement you take professional training from OTOC, but you do have to take your institutional training from OTOC and you will see the court considers whether or not these are really different types of training or not.

It was held originally by the competition authority to be an infringement of both 101 and 102. On one appeal, this is paragraphs 25 to 27 of the judgment, it was felt there was a distortion of competition but held not to be an abuse. It is not clear why from this report and it was an issue that was referred. There was a further appeal and a reference to the ECJ. The questions referred are at paragraphs 29. Questions 1 to 3 really relate to the separate issues about the interrelationship with statute, whether or not it falls within the scope of 101 and to some extent the Wouters principle. We are not really concerned with those.

Question 4, however, is different in nature, which is this:

> "In light of European Union competition law (in the training market) may a professional association impose the requirement for the practice of the profession of particular training provided only by it."

So you can see why this is highly relevant to the present case.

THE PRESIDENT: Yes.

MR. WOOLFE: The court's reasoning on this question -- you can skip forward over a lot of the judgment to paragraph 60 to where it picks up the fourth question. It is worth just pausing at paragraph 62. It is considering separately two forms of anti-competitive effect. So halfway down:

> "By virtue of which the market for compulsory training for chartered accountants has in essence been artificially segmented ..."

A third of it being reserved to the OTOC itself. So that is one anti-competitive effect, reserving a segment of the market. On the other segment of the market, so the unreserved segment, discriminatory conditions being imposed to the detriment of OTOC's competitors and those were effectively conditions about the authorisation of those competitors. The Court considered those two separately.

We can skip over 64 to 67, they deal with effect on trade, we do not need to cover those.

Paragraph 68 I should just note, which is:

> "The Court found that the regulation seeks to guarantee the quality of the services offered by chartered accountants."

So it does recognise it is pursuing a legitimate objective and on that basis it says it is not an object case and turns to consider effect, so it is effect that we are dealing with.

THE PRESIDENT: That might be relevant to your --

MR. WOOLFE: Hence why I bring it to your attention, sir, although we would say there are --

THE PRESIDENT: Well, you are coming on to 101.

MR. WOOLFE: Intent also becomes relevant, sir, so we will look at that.

THE PRESIDENT: Yes.

MR. WOOLFE: Paragraphs 70 to 71 set out that you need to consider potential effect as well as actual effects and I would submit that that requirement under 101 is in a sense equivalent to the case law we have looked at in *Microsoft* and *British Airways*.

Down at paragraph 72 and 75, what the court is really saying here is that you need to look at whether there is a real difference between the actual two types of training being provided, in this case the professional institutional training, in our case we would say the training which the Law Society reserves to itself and the training being provided elsewhere on the market.

What you can see effectively is the Court expressing some scepticism at paragraph 76, albeit leaving it to the referring court -- the issue is left over for the referring court -- as to whether or not the types of training are genuinely different. It said:

> "Those factors are liable to show those two types of training could be regarded at least in part as being interchangeable, which is a matter for the referring court to establish."

That leaves that point open. But then it goes on to talk about what are the implications if it is found that the training is interchangeable. Paragraph 77:

> "Should that be the case the distinction drawn in the contested regulation between institutional and professional training is not justified."

It refers to the market definition.

Then I would stress paragraph 78 and 79 to you, which is this point about reserving a segment of the market:

> "The division of the market ...(Reading to the words)... institutional training can be provided only by the OTOC. Moreover the average ..."

There is a certain number of credits that must be obtained each year from institutional training.

> "It follows that the regulation reserves to the OTOC a significant part of the market of compulsory training for chartered accountants."

The Court goes on to consider at 80 to 83 certain factors in that case about the relative duration of the two types of training and additional anti-competitive effects.

I am going to skip forward because I am going to come back to paragraph 84 in a moment. At paragraph 84 the Court turns to considering the second case on anti-competitive effect which is discriminatory conditions on the non-reserved side of the market, but all I want to do is take you to how, at the conclusion of the judgment, the Court sums up what it said at paragraphs 76 to 83 and we would say 78 and 79 in particular.

At paragraph 108 at the end of the judgment, on page 669, it says:

> "Having regard to all the foregoing considerations, the answer to the fourth question is that a regulation which puts into place a system of compulsory training for chartered accountants in order to guarantee the quality of services offered by them ... constitutes a restriction prohibited by Article 101 TFEU to the extent which it is for the referring court to ascertain that it eliminates competition in a substantial part of the relevant market to the benefit of the professional association."

We would say that if you look back, the only factors which -- if you look back at paragraph 76 to 83 -- that it is saying are for the referring court to determine are really whether or not the training is interchangeable and you can see that the whole thrust of the reasoning in paragraph 76 to 79 is that if you insist that some training, even though interchangeable with other training, is purchased from you, that that constitutes reserving a segment of the market for yourself and a restriction of competition.

Now, simply as regards the rest of the case -- and this may be more relevant in fact to dealing with the issue of relief when we get there, which is what conditions the OTOC imposed on the other part of the market, so the market for professional training, and essentially at paragraphs 84 to 86 you can see that it was requiring bodies to come to it for approval, both of them and of the training, and at paragraph 88 it held that:

> "A system of undistorted competition can be guaranteed only if equality of opportunity is secured between various economic operators."

It found that that system did not secure equality of opportunity because it gave the OTOC unilateral power not to approve competitors. You see it establishes the third proposition which I put to you before the case.

Then it is worth briefly considering the case on objective justification. This gets picked up at paragraph 93. At 94 it again finds that this is a legitimate aim effectively because it contributes to the quality of services, and at paragraph 95 it even says that it does contribute to that aim, it does have some ... but what the Court focuses on, paragraph 96:

"Next it is necessary to examine whether the restrictive effects which follow from the contested regulation can reasonably be regarded as necessary to guarantee the quality of the services offered by chartered accountants and whether those effects do not go beyond what is necessary."

That is really what the Court focuses on.

At paragraph 98 it states very clearly that:

"The elimination of competition cannot in any event be regarded as necessary to guarantee the quality of services offered by chartered accountants."

At paragraph 99 it points out what would be a less restrictive system. This goes to our case that Lexcel or the Solicitors' Code of Conduct approach might be preferable, or sufficient in any event.

"Similarly, the objective of guaranteeing the quality of the services offered by them [the accountants] could be achieved by putting in into place a monitoring system organised on the basis of clearly defined transparent non-discriminatory and reviewable criteria likely to ensure training bodies equal access to the market in question."

THE PRESIDENT: Although this is all in the context of a Wouters type argument, which is not raised here, you say, as I understand it, the same must apply, or perhaps a fortiori apply to either the conditions for exemption as regards chapter 1, or objective justification as regards chapter 2.

MR. WOOLFE: That is right, sir, because there is no -- I would submit no real difference between the type of argument that is being run here on objective justification in chapter 2 and a Wouters type argument under chapter 1. In any event, between the Wouters principle, objective justification under chapter 2, or under exemption, they all have this requirement of necessity and proportionality, which is essentially the same in all cases, so if the defendant's case fails at that hurdle, it fails on all. They differ as regards the types of aims that may be taken into account.

Sir, I will not be very much longer. I was going to briefly cover off our case on the facts as regards distinct (inaudible) anti-competitive effect and then I will be very brief on chapter 1.

On the fact of whether or not they are distinct products we say there are three relevant facts we would ask you to find. The first is that there is demand for anti-money laundering training and mortgage fraud training which is independent of demand for the CQS, and in

support of that we have the evidence of Mr. George in his second statement -- I will give you some paragraph references: 8, 37(b), 42(a), paragraphs 100 to 102.

THE PRESIDENT: I do not think that is in dispute, is it, that a lot of people are not in the CQS. They need money laundering training because of the regulations --

MR. WOOLFE: The point goes a bit beyond that, which is it not that there is some demand for other mortgage fraud training, it is there is effectively the same -- solicitors have a requirement to purchase anti-money laundering training at least by regulation 21 and they would have that if the CQS was there or if it was not, and if they are in the CQS or outside the CQS they have the same demand; that is the point.

THE PRESIDENT: Yes, but I do not think that is in dispute. Yes.

MR. WOOLFE: The second fact is that there are independent companies which specialise in the selling of the tied product ... the presence of Socrates itself but there is evidence of others at paragraph 17 of Mr. George's second statement. Again that may not sound controversial but it may be that the defendant is going to try to say the product is different in some way and that is why I am saying I want you to find this as a fact.

The third fact we would ask you to find is there is nothing inherent in the CQS which requires the training in respect of mortgage fraud and the AML to be different from that provided to other conveyancing firms.

THE PRESIDENT: Say that again, sorry?

MR. WOOLFE: There is nothing inherent in the CQS which requires the training in respect of mortgage fraud and AML for CQS members to be different from the training provided to other conveyancing firms. Mr. George addresses that at paragraph 67 to 79 of his statement where he looks at the courses of his second statement -- where he looks at the courses provided by The Law Society.

Then turning to our case on the facts, likely anti-competitive effect, our case is that it is reasonably likely that the requirement to purchase AML training will distort competition in the training market. The Law Society is essentially hoovering up a segment of the training market, not by competing on the merits, or providing high quality or cheaper training, but by leveraging its dominant position in the market for accreditation. We have six points under this heading which I will take relatively briefly.

The first point is that the very nature of the requirement to purchase training from the defendant is that a proportion of the training requirement cannot be met by other firms and the training is similar in nature to that provided by other providers, and the Tribunal can

infer anti-competitive effect from those facts alone, and that is essentially the OTOC point that I have just taken you to. That must simply follow from the facts that I have just asked you to find.

The defendant takes exception to the word "inference" in their skeleton. They say that the Tribunal should not draw inferences and that inferences as to what the effect of the conduct might be can establish no more than a possibility of foreclosure. We say that drawing inferences is what courts do, that is the very nature of assessing evidence, and the defendant, by saying an inference as to what the effect of conduct might be can establish only a possibility, is effectively circular. We are not asking the Court to infer that tying might have an anti-competitive effect, we are asking it to infer that by its very nature it is likely to have an anti-competitive effect, and, as I say, we rely on the OTOC case as well. But in support of this submission that you can simply look at the requirement, we will be referring to the evidence of The Law Society's intent and thinking in including a requirement to purchase training from it. I am going to explore that with the witnesses and we will expand upon it in closing, but the key relevant documents are in bundle E2, tabs 2 and 3, which are what we sometimes call the "Whatmore paper", so the paper written by Katie Watmore setting out a commercial opportunity.

THE PRESIDENT: Yes, we have seen that.

MR. WOOLFE: That is at tab 4 and tab 3 is the minutes of the meeting where that was considered and we said that The Law Society was anticipating precisely this kind of effect.

The second submission under the heading of likely anti-competitive effect is that firms are likely to reduce purchase of training from elsewhere because of the CQS and there is evidence of a reduction both in the number of new firms subscribing to Socrates as a result of the CQS and of Socrates subscribers who have cancelled, and under this you have the factual analyses, and we say the factual analysis provided by the claimant shows a very clear effect -- that is at bundle B, tab 4. If you compare the population of Socrates subscribers who were ever members of the CQS to those who were never members of the CQS, you can see a clear rise in the propensity of those CQS firms to cancel following the introduction of the requirement to purchase AML training in mid-2013. We rely in particular on figure 2 of that factual analysis. I will address you on why that is the appropriate comparison in closing in due course.

So the analysis served by the defendant purports to show no effect and that is based upon looking at in flows and outflows of particular populations. We have a number of criticisms

of this. The first is that what the defendant is effectively doing is a time -- in time comparison, trying to look at inflows and outflows from one year to the next and trying to draw inferences about the cause and effect, and clearly what that assumes is that other factors did stay the same from year to year.

THE PRESIDENT: I am slightly worried about time. It may be that the detailed comments on that can wait for closing. It is also much easier to follow them if we have the figures in front of us and that will take time.

MR. WOOLFE: Yes. In which case --

THE PRESIDENT: We have got your point. You rely on your analysis and you have certain criticisms of the defendant's --

MR. WOOLFE: There is also anecdotal evidence at paragraphs --

THE PRESIDENT: Yes.

MR. WOOLFE: Similarly in respect of firms being likely to purchase training from the Law Society they would not have purchased otherwise, that is Mr. Hamilton's unchallenged evidence at paragraph 29.

The fourth submission is that a requirement to purchase training from The Law Society --

THE PRESIDENT: Sorry, I have got the second submission, firms are likely to reduce their purchasing elsewhere.

MR. WOOLFE: The third submission is the firm is likely to purchase training, the flip side, from The Law Society, they would not have purchased but for the mandatory training requirement.

THE PRESIDENT: I see, so it is the converse really -- they go together, yes.

MR. WOOLFE: So then submission 4 is that a requirement to purchase training from the Law Society prevents competition on the merits and leads to consumer detriment because solicitors are prevented from buying training they may perceive as better meeting their specific needs.

In that regard it is Mr. Hamilton's evidence at paragraph 29 and Mr. George's evidence in particular at paragraph 75 through to 77 where he goes through features that Socrates' training has that The Law Society's training does not and says that The Law Society's approach is one size fits all. We say The Law Society is forcing that approach on other people.

Our fifth submission is that it is not enough for the defendant to point out -- this is what it does at paragraph 63(b) to (f) of the defendant's skeleton -- it is not enough for them to point

out that there are still other firms for whose business we can compete. If they reserve a segment of the market to themselves, we say that is, for the reason given in OTOC, the fact that other parts of the market is not an answer.

The sixth submission -- because the defendant does still seem to rely upon this analysis of the profitability of the CQS as a whole. That is in the defendant's skeleton at paragraph 66. That analysis is at bundle E2, tab 54. If it becomes relevant, and I will see what is said about it, we say it is both meaningless and irrelevant.

THE PRESIDENT: Yes.

MR. WOOLFE: Chapter 1 -- and I will be literally a minute on this. It is common ground that there is an agreement. Effect on trade in the pleadings we say is not admitted but we say can be assumed.

Object and effect, we rely essentially on the same case. In respect of both the law and the facts on chapter 1, I am content to rely on what I have said in my skeleton and what I have just been addressing you about, *Ordem dos Técnicos*. Clearly those principles from the *Ordem* case -- we say they apply by analogy under chapter 2, but they apply directly under chapter 1.

THE PRESIDENT: Yes.

MR. WOOLFE: Sir, unless I can assist you further, that is how I --

THE PRESIDENT: Yes. I think we should have a short break for the benefit of our transcribers. What I think it is fair to do, Ms. Smith -- if we were to sit until 1.30 would that give you enough time?

MS. SMITH: I hope so. The agreement had been that we would have equal time for submission this morning and obviously we are now getting squeezed before lunch.

THE PRESIDENT: Normally the first one is a bit longer because of things like the OTOC case we have been taken through and so on.

MS. SMITH: Yes, I had anticipated that, but I will not be finished by lunch.

THE PRESIDENT: If we sit until 1.30 does it enable you to finish or not?

MS. SMITH: I will do my very best.

THE PRESIDENT: Because if not there is no benefit of doing that.

MS. SMITH: Perhaps if we have five minute break --

THE PRESIDENT: Well, think about it, or see where -- I do not want to box you in. See as we get to 1 o'clock whether you think half an hour will suffice. If not then we might as well

rise at 1 and come back at 2 and if necessary sit a bit later. We cannot really sit much beyond 4.30 though today.

So we will just take five minutes.

(12.02 pm) (A short break)

(12.10 pm)

THE PRESIDENT: Yes, Ms. Smith. Opening submissons by MS. SMITH

MS. SMITH: Mr. President, members of the Tribunal, in opening I am not going to go through the case step by step. I have in it mind that you have read our skeleton arguments, you have yet to hear the evidence, so what I am proposing to do is make a small number of points on the relevant law and then to make a number of factual propositions which I say are borne out by the evidence and which underpin our case.

So on the legal submissions you have heard that Socrates pursues its case under both the chapter 2 and the chapter 1 prohibition, alleging not just anti-competitive effect, but also anti-competitive object.

The legal tests to be applied by the Tribunal I hope are relatively uncontroversial. The Tribunal is fully familiar with the basic concepts, so I am not going to go through those, and our submissions are set out in detail in the skeleton, but I would like to draw the Tribunal's attention to three points and perhaps just to revisit some of the points made by Mr. Woolfe in opening.

The first point is the market definition of dominance and paragraph 21 of our skeleton, if I could draw your attention to paragraph 21, and onwards -- in fact it starts at paragraph 23. We refer to the *Aberdeen Journals* case in paragraph 24. I am not going to take you to that, you will be familiar with it, but we make the point that when defining the relevant market a tribunal must take all the facts into account -- I think that is uncontroversial -- and the whole economic case, and every case of course will turn on its own facts. The key idea is that of competitive constraint and although -- and this is important -- the hypothetical monopolyist or SSNIP test is one way in which to determine a relevant market, it is not the exclusive or mandatory test for market definition. It is not the only way. One needs to look at all the factors set out there in paragraph 24, taken from the *Aberdeen Journals'* judgment. In defining the relevant market, the nature of the product may be particularly relevant and we do say that the CQS is in effect a two-sided product, whether one wants to use that particular label or not, but what the CQS is -- and this comes out very clearly in the evidence -- is in effect a type of platform which effectively intermediates between solicitors

and lenders and we say that will impact on the approach that one should take to market definition.

I think it would be useful in that regard just to take you to one authority which you have not been to, which is in bundle F3, the third authorities bundle, tab 31, and that is --

MR. ALLAN: Mine is empty.

MS. SMITH: Oh, dear.

THE PRESIDENT: It is the merger assessment --

MS. SMITH: At least some of you have got one.

THE PRESIDENT: Is this what you have quoted at paragraph 26?

MS. SMITH: That is right, yes.

Just to show you, it is on page 29 of this document. Page 29 is where -- this is the old OFTCC guidance that has been adopted by the CMA, page 29 the CMA sets out its approach to market definition in section 5.2 and at the end of that, after it goes through the idea of the hypothetical monopolist or SSNIP test, we get on page 34 to other market characteristics which the CMA says one should take into account and those include, under the second bullet point, two-sided products. I am not going to read that paragraph out. You can read it to yourself and, as the President said, it is reproduced at paragraph 26 of our skeleton argument, but the point is that two-sided products, you will see in the second sentence of that paragraph, are:

> " ... platforms that intermediate between distinct and unrelated groups of customers and the numbers of customers in each group affects the profitability of the product because the value one group of customers realises from using the intermediary depends on the volume from the other group and prices take account of that."

In that case the important point is made that in that case the implementation of a straight hypothetical monopolist test may be more difficult. One needs to take that into account when approaching market definition. So we say it may not be so simple as to simply say "Well, you have to go with the standard approach of taking a focal product and working from that", you have to take into account the nature of the product. We say that on the evidence the CQS clearly does fulfil this type of role. It acts as a platform between lenders and solicitors and the value to each side depends upon the take-up by lenders and solicitors respectively, so the value to lenders, depends on the volume of solicitors and vice versa; the value of solicitors depends on the volume of lenders.

There are two markets, Dr. Majumdar will explain, he analyses two markets distinctly on which the market power of The Law Society and the competitive constraints need to be assessed, but you will see and hear his evidence on that in due course.

THE PRESIDENT: Yes.

MS. SMITH: The second point I want to make about the law goes to the concept of abuse in a related market case such as the present, that is where it is said that The Law Society is dominant on the upstream market and that it is leveraging its dominance on that market so as to engage abuse on a related downstream market, and we do agree that guidance on the approach to be taken to abuse in such a case may be obtained from the recent judgment in *Streetmap v Google*, particularly as to how to approach the question of establishing foreclosure on the related downstream market.

I would like to take you back, if I may, to that judgment. I am not going to go through points that have already been made, or paragraphs that have already been drawn to your attention by Mr. Woolfe, but if I can just take you back and show you the things we take from that authority. It is in F2, the second authorities bundle, tab 23.

THE PRESIDENT: Yes.

MS. SMITH: If I could take you first to paragraph 59, just a little by way of background -- sorry, there are not any page numbers, but paragraph 59 the point is made that:

> "It is also well-established that a dominant undertaking may commit an abuse where the anti-competitive effect is not on the market where it is dominant but on a separate, associated market ..."

That I think is absolutely what the case is here and that is not in dispute.

The point then, if I could take you to paragraph 62, and there is set out:

> "The essence of Streetmap's claim is that Google's conduct had the potential or actual effect of foreclosing competitors of Google Maps in the market for online maps."

That is the downstream market:

> "A dominant firm is of course able, and indeed should be encouraged, to compete, and successful competition on its part is likely to harm and may ultimately exclude competitors. Accordingly, for there to be an abuse, what has to be established is that there is anti-competitive foreclosure."

I just stress that point.

The court dealt with the question of intention in paragraph 66 onwards. I do not need to take you through that at all and then the question of effect from paragraphs 84 onwards.

Paragraph 86, the heading is "Actual or potential effect", and then if you turn over the page to paragraph 88 onwards, where you have been with Mr. Woolfe, I want to draw attention to three points taken from paragraph 88 and following.

First of all, we say that paragraph 88 sets out the applicable test for establishing anti-competitive foreclosure and that is that the impugned conduct must be reasonably likely to harm the competitive structure of the market. As is said in paragraph 88, that is the applicable test.

The second point is what evidence is relevant in applying that test and we say that is then dealt with in paragraphs 89 through to 90 and we draw the Court's attention to paragraph 90, the sentence towards the bottom of the page:

> "In a case such as the present, I would find it difficult in practical terms to reconcile a finding that conduct had no anti-competitive effect at all with a conclusion that it was nonetheless reasonably likely to have such an effect."

That was obviously on the facts of that case where a submission was made and I think a finding was made that the conduct had no anti-competitive effect at all as a matter of fact, but then what is important is what is said at the top of the following page and this we say is equally applicable in our case:

> "The appropriate approach it seems to me is that it is for Streetmap to establish that the conduct was reasonably likely to harm competition."

So the burden is on the complainant to establish that the test is met.

This is the sentence we would underline:

> "In determining that question, the Court will take into account as a very relevant consideration evidence as to what the actual effect of the conduct has been."

It was tentatively suggested by Mr. Woolfe that -- and I am not sure if he actually went as far as saying this, but if he does we say it is wrong -- it was suggested that evidence of actual effect might only be relevant, or is only relevant, if no actual effect is shown. So it is only if you can establish no actual effect that you look at what the effect has actually been, and we say that is absolutely unreal. In a case where there is evidence of what the actual effect of impugned conduct has been, in determining what the effect might be, whether that conduct is reasonably likely to harm competition, it would be unreal and we say impermissible not to look at actual effect. It is obviously extremely relevant material and evidence, as the court says at the end of paragraph 90, "it is a very relevant consideration", evidence as to what actual effect of the conduct has been.

Then the third point is paragraph 92 and onwards: what degree of effect is required. We would draw the Tribunal's attention to paragraph 96, over the page, the point made there by the Court that:

> "... it does not follow that conduct will constitute an abuse where the effect is on a separate market where the undertaking is not dominant, if that effect is not serious or appreciable."

We say that the statements made by the Court there, on the basis of the *Bronner* case and in paragraph 97 on learned books, that this test is equally applicable in the present case. It is not just a case where the conduct on the market where the entity is dominant is pro competitive, it is of general application, but in any event, we would say, the market on which The Law Society is alleged to be dominant in the present case, that is the market upon which it supplies the CQS product, we say the CQS in itself does have pro competitive effects and I will develop that point a little later.

So those are the three points we make on the *Streetmap* case as regards abuse in a related market case such as the present. Socrates has to establish -- the burden is on it to establish that the CQS requirement for members to purchase CQS training modules, particular modules on mortgage fraud and AML, from the The Law Society is reasonably likely to have a serious or appreciable foreclosure effect on the related downstream market.

The *Streetmap v Google* case also has things to say, or useful guidance to give on objective justification. Just for your note that is at paragraphs 143 and then following. I am not going to take you in any detail to that. I think the test that was applied by the Court there -- the two aspects to the objective justification test are pretty much agreed between the parties.

That is all I want to show you at the moment on the chapter 2 prohibition, I have set out obviously our arguments in more detail in the skeleton, but I do think the first legal point, before I put that away, I want to draw your attention to is the OTOC case.

THE PRESIDENT: That is in this bundle as well?

MS. SMITH: Which is in the following -- yes, sorry, I put the bundle away, but it is tab 22, at the previous tab.

Now, this is a case in which Mr. Woolfe fairly said the European Court did not consider Article 102 because that case had already been lost in the national court.

It only considered Article 101. He seeks to apply it by analogy to Article 102, but we say even on 101 it does not establish what he would like you to think it establishes.

I am not going to take you through everything in this case. He has taken you to some of the relevant paragraphs, but the national law at issue he has shown you was set out in paragraphs 9 through to 16.

Essentially in summary all accountants in Portugal were required by the law, by regulation, to take a certain amount of professional training every year. OTOC, which was the statutory body for the profession in Portugal -- it was required by regulation, or it was provided by regulation that one-third of that training was to be provided exclusively by OTOC, one-third of the compulsory training. The rest was to be provided by bodies approved by OTOC. So they had to be registered in order to provide the two-thirds of the rest of the compulsory training.

Now, the questions referred you have seen are in paragraph 29 and it is the fourth question that we are concerned with here. The fourth question is considered in paragraphs 60 onwards and the Court summarises the point at paragraph 62, towards the end of that paragraph:

> "The infringement of Article 101 of which the OTOC is accused consists of the adoption of the contested regulation by virtue of which the market of compulsory training for chartered accountants has in essence been artificially segmented, a third of it being reserved to the OTOC itself and on the other segment of that market discriminatory conditions being imposed to the detriment of OTOC's competitors."

So there were two allegations: you have reserved a third of this compulsory training to yourself, which has to be carried out by all members of the profession; as regards to the two-thirds which you regulate, you have to register other providers, you have in fact imposed discriminatory, vague, unfair conditions to those other providers as well and they have found it difficult or impossible to get the registration for the other two-thirds -- for provision of the other two-thirds of training.

So I think both an object and effect abuse was argued under Article 101. In paragraph 68 in effect the CJU found that there was no object of abuse because it was an acceptable objective that the regulation seeks to guarantee the quality of the services offered by chartered accountants by putting in place a system of compulsory training. Then it went on to consider nevertheless the effects on competition of what was going on, the reservation of one-third and the application of discriminatory conditions to the rest of the two-thirds of the training to be provided.

Now, in paragraph 70 and onwards the Court essentially considers the effect on the facts of that particular case. You will see, for example, at paragraph 79 the Court makes the point that:

> "The reservation reserves for the OTOC a significant part of the market for compulsory training for chartered accountants."

Then it goes on to consider the effect of that on the provision of the other training that can be provided by third parties and makes the point that because effectively they have reserved a certain amount of training to themselves. In paragraph 81:

> "That situation can have the result, which it is for the referring court to ascertain, that training bodies other than OTOC which wish to offer short training programmes may be prevented from so doing."

So it is for the referring court to ascertain the effect of the reservation of one-third on the provision of the other two-thirds, it is not just whether the training was interchangeable as Mr. Woolfe suggested.

The Court then goes on to look at other aspects of the facts and looks at the fact that because chartered accountants can choose to earn credits from professional training or from institutional training, paragraph 83, that fact is also liable to confer a competitive advantage on the sessions of institutional training provided by OTOC.

Then in 84:

> "The referring court must examine the conditions of access to the market in question for bodies other than OTOC."

So another question of fact that is to be considered and determined by the national court. They go on to consider various other points, but I think the point I want to make can be made by taking you to the holding at paragraph 108. The holding and the answer to the fourth question.

THE PRESIDENT: Well, the answer is actually, it is not, in the ruling at paragraph 2 of the ruling?

MS. SMITH: Yes, paragraph 2 of the ruling, which I think is in the same terms --

THE PRESIDENT: Yes.

MS. SMITH: -- as paragraph 106, as it usually is.

> "A regulation which puts in place a system of compulsory training constitutes a restriction on competition to the extent which it is for the referring court to ascertain that it eliminates competition ..."

Etc. So it only constitutes that restriction to the extent that it eliminates competition on a substantial part of the market to the benefit of that professional association, that it imposes on the other part of the market discriminatory conditions, and those questions are up to the national court to determine.

Now, I make the following submissions on this case. First of all, the Court of Justice essentially considers the factual situation and decides that rule and the way in which they are enforced by OTOC, the regulations may foreclose the market. It is up for the national court to determine the actual effect. We say that the case does not set down any general prohibition on a body providing training for its members, even members of a particular profession, it depends on the foreclosure effect.

We say really in this case the Court of Justice took a relatively orthodox approach to questions of abuse and foreclosure, and of questions of objective justification and the question was whether the restrictions at issue in the particular market, operating as they did in that particular market, had the actual or potential effect of foreclosing competition and we say although this case may have superficial factual similarities to this case -- and I will come back to the superficial similarity in a moment -- in that it relates to training, we say that it does not set down any general prohibition, nor does it require this Tribunal to take any different approach to questions of anti-competitive effect and foreclosure. It certainly does not determine the question that this Tribunal has to determine on the facts of this case and we say that is the question that was set down in the *Streetmap v Google* case: has Socrates proved that the impugned conduct is reasonably likely to have a serious or appreciable effect in the downstream market.

THE PRESIDENT: But you probably do say, do you not, that it is helpful on object?

MS. SMITH: Well it is, in that that type of objective can be a relevant, acceptable objective for training to pursue. But we also say that on its facts -- final point on this case -- this case can be clearly distinguished from the present case. OTOC is a statutory body equivalent to the Solicitors' Regulation Authority, not The Law Society. It is a statutory body that required, as a matter of law, the regulations put in place by OTOC, all members of a particular profession in Portugal to take a certain proportion of compulsory training from it. So a more appropriate analogy might be if the SRA, for example, put in place a regulatory requirement, or got the Government to put in place a regulatory requirement that all solicitors in England and Wales should take one-third of the 16 hours which used to be the compulsory CPD training requirement, if it put in place a regulatory requirement that all

solicitors in England and Wales took a third of that 16 hours from the SRA, or from The Law Society. That is very different, we say, from the situation in the present case. CQS is a product which is offered to members, who may take that product or not and part of that product is certain training modules.

THE PRESIDENT: I can see that is a formal difference and perhaps a stronger case. The fact they are a statutory body I do not think features particularly in the reasoning and the form of the body it is well established does not matter, but if in practice residential conveyancing solicitors feel -- or the great majority of them feel that they need to get the CQS for commercial reasons, I do not quite see that distinction as so important. I take your other points. One has to look and see whether there is a foreclosure effect and so on, but this distinction you are making, I do not quite see that if on the evidence the greater majority of residential conveyancing solicitors feel -- and that indeed seems to be the reason, on your evidence, that the CQS was set up -- that they need to get that accreditation so they remain on lenders' panels, then it seems to me the substantive position is much the same.

MS. SMITH: Well, I think important to distinguish this on the facts. It is not a formal requirement to take training, or to take a certain proportion of training from a particular body. It is true that the purpose of the CQS was to provide benefits to its members, which include the benefit of being able to access lenders' panels on an objective basis rather than lenders cutting their panels back on the arbitrary basis which was happening back in 2009 and 2010, and that members clearly see there are benefits from becoming CQS members and those benefits predominantly are access to panels, so we do accept that.

I think our primary point is that in this case the CJU did not take a particularly different approach, or set down any different test that should be applied. It considered whether, on the facts of that particular case, anti-competitive foreclosure effect was or was not likely --

THE PRESIDENT: I understand that point.

MS. SMITH: -- likely to be established.

I am reminded that in the OTOC case one of the important points was it was about a substantial part of the market, here we will say that it is a relatively -- very limited part, that CQS has a limited effect, but that goes really to the point I was making: the test is the same, one has to look at effects in their particular context.

Our case is summarised in our skeleton argument at paragraphs 6 to 8. I just ask you to look at that. As I said, I am not going to go through step by step each of these points. We have a number of days in which to explore the evidence and then we have closing

submissions, but what I would like to do is make five propositions which I say underpin our case and which will, I hope -- should be established on the evidence. We say they are established on the evidence.

Those five propositions are as follows. First, the CQS as a product was developed and launched in 2010 to meet a specific market need. The situation then was that trust and confidence generally in conveyancers was low in light of instances of financial fraud and perception of fraud.

Moreover, lenders were taking steps to reduce their panels, often on an arbitrary basis, and often by material numbers. For example, HSBC initially reduced its panel to 43 firms. Furthermore, insurers were increasing premiums and small conveyancing firms in particular were finding it difficult to get insurance.

The CQS was designed to address this market need. It was designed and introduced to increase confidence on the part of consumers in the quality offered by residential conveyancing solicitors, and the related and important point: it was introduced to ensure that conveyancing firms were able to satisfy lenders that they were of sufficient quality to qualify for panel membership, so that there was an objective standard that could be used by lenders in deciding who should be appointed to their panel, rather than the arbitrary steps they were taking to reduce numbers.

Sir, I would like to take you to a very small number of contemporaneous documents to make that point good. Obviously we will no doubt revisit some or all of these documents and other documents, but I think just to set the stage because Mr. Woolfe made the submission that it is not borne out by the documents; we say it clearly is when you look at what was going on at the time. If I can take you first --

THE PRESIDENT: This comes out a lot in Mr. Smithers' evidence, does it not?

MS. SMITH: Absolutely.

THE PRESIDENT: He refers to documents in detail in his witness statement which we have read. We have not looked at all of the exhibits he refers to and I appreciate you want to show one or two. I would not want to take up too much time now looking at stuff that he covers, but if you want to show us one or two documents ...

MS. SMITH: Yes, if I could just take you to say two or three documents.

THE PRESIDENT: Yes.

MS. SMITH: If I could take you first to bundle D1, tab 8. Tab 8 is a letter from The Council of Mortgage Lenders to the chief exec of The Law Society, Des Hudson.

THE PRESIDENT: Yes.

MS. SMITH: As you can see from the first paragraph, he expresses the point that:

"As you are aware ..."

I think at this stage they had already had discussions:

" ... the CML and our members are extremely concerned about the growth of complicit solicitor involvement in mortgage fraud."

Then he goes on to basically say "We need you to do something about it". So at the very beginning the lenders were saying "We need you to do something about this problem". They say in the sixth paragraph just below the bullet points:

"There is an urgent need for regulatory and supervisory action by your organisation, supported by the CML, to control this unacceptable risk to the lending industry."

Then he goes on to set out various points that he thinks needs to be addressed, but the point is there was a direct request from the CML, from the lenders to The Law Society: you have to deal with this issue.

MR. ALLAN: Just so we understand it properly, it says "by your organisations", so presumably that is addressed to both The Law Society and the CML?

MS. SMITH: Yes, if you see at the very end of the letter on page 271 it is copied to Anthony Townsend, the chief executive of the Solicitors' Regulation Authority.

MR. ALLAN: So in a way we should treat it as if it is being written to both of them.

MS. SMITH: Yes, it looks as if he is doing it like that.

PROFESSOR WILKS: If I may, just following up on this, there are a set of bullet points on the second page about "What we believe will be necessary to achieve this outcome", it does not mention training.

MS. SMITH: Certain of them are particularly regulatory, others are better systems and controls requirements for individual firms. No, I accept at this stage it does not say "training". The ball is put into the SRA and The Law Society's court, "here are some of the things we think you should do", and he focuses on more formal regulatory type issues, that is true.

PROFESSOR WILKS: It would be interesting to know if at any stage the lenders did require mandatory training, but perhaps we can pick that up in later evidence.

MS. SMITH: What they certainly did do was say "We want the issues of mortgage fraud in particular and AML to be addressed by you". The Law Society went to the CML and said "We have been developing this product, the CQS, and we think it will do very well what you want it to do, it will also address the parallel problem that you are taking our members

off your panels and that has a very detrimental effect, particularly on the small high street firms. This is what we are offering, this is what the CQS does, it has these elements to it, including training", and the content of that training, what that training will then cover, is then informed by the input from the lenders. Specifically the mortgage fraud module that was introduced in 2012 is written, or co-authored in effect, by one of the lenders, so the lenders have input into the training.

THE PRESIDENT: You say it is co-authored by one of the lenders, that module?

MS. SMITH: I am not sure "co-authored" is quite correct, because the The Law Society wanted to write it in the format that it thought was best for your members, but I will show you a document in a moment, I think I am coming on to it, where there is internal email where the member of The Law Society who was responsible for the development of the training says "I have had a meeting with the CML and with specific lenders, these are the points they want it to cover", he sets out the various points in this email that "The lenders have said we need this mortgage fraud training to cover these particular points", and then the training is developed on the basis of that. So when I said "co-authored" I hesitated slightly, but the lenders had input on what the content should be.

THE PRESIDENT: Yes.

MS. SMITH: If I can ask you just then to turn to tab 13 in the same bundle. Actually I think we can probably, given the time, move on to -- I do not think we need to do that, but just for your note tab 13 might be something you might want to have a look at. Tab 13 simply says "We have to deal with this problem".

If I can then take you to D2, tab 23. This is a council meeting, September 2010, you see on page 522 under the heading "Lenders' panels":

> "Lenders had traditionally maintained wide conveyancing panel membership. From 2009 many lenders began to [I think that should be 'reduce'] their panels, arguing they had come under pressure from the FSA to implement fraud protection and detection procedures."

So there is the line. The FSA is putting pressure on the lenders to reduce fraud, the lenders are putting pressure on their panels and the solicitors.

Then it is explained:

> "The lenders have removed firms, using various criteria such as claims history or requirement of minimum number of partners, recently Santander and Lloyds had removed firms with a low volume of conveyancing transactions. The majority of

these had been small firms and the reduced volume had almost invariably been due to the downturn in the housing market. In response the Society had taken a three-pronged approach of maintaining good communications with lenders, tackling concerns ... and by developing a residential conveyancing membership accreditation scheme, the CQS."

Then:

"The Chair of the Regulatory Affairs Board informs the Council that six lenders controlled over 90 per cent of the conveyancing market. It is hoped these lenders were not working in concert ..."

Otherwise we might have had a different case:

" ... and the members make the following points ..."

The first bullet point I want to draw to your attention, and this is where I think Mr. Smithers quotes this document in his witness statement:

"The situation was potentially catastrophic for the profession and particularly for smaller firms who could go out of business. The Society should be measuring the impact on small BME firms in particular."

Then the seventh bullet point:

"The new conveyancing quality scheme should be effective, especially if the CML supported it."

So that is what is going on internally at The Law Society. If I could just take you to one final document on this, which is in bundle E2. This is not a document that has been referred to in Mr. Smithers' witness statement, it is not an exhibit to his witness statement, but I think it is relevant. E2, tab 5 is a membership board paper of 25 November 2010 and it is a paper on Conveyancing Quality Scheme itself -- sorry, the paper was produced on 8 November for the membership board meeting of 25 November. You will see that at the bottom of page 1.

THE PRESIDENT: Yes.

MS. SMITH: If I can just draw your attention to paragraph 1:

"The CQS was launched by the President at the Property Section conference on 20 October. The CEO of the Council of Mortgage Lenders, Michael Coogan ..."

We saw he was the author of the letter we have seen. So on its introduction on 20 October 2010 the CEO of the CML Michael Coogan supported the concept of the scheme in his

address to the conference. So he was there, the scheme was introduced, he supports the scheme, so it is there from the very beginning.

THE PRESIDENT: Of course at that point the scheme did not have --

MS. SMITH: Not yet.

THE PRESIDENT: -- an AML training element.

MS. SMITH: No. The very first year the training was on the protocol itself. I will come back to this, but there were three elements to the CQS --

THE PRESIDENT: Yes, we saw that.

MS. SMITH: -- and the protocol, so the first year's training was getting the members to understand how the protocol worked, so the standard form products, the standard process. The second year, where we got onto the more substantive training, as it were, included mortgage fraud, one of the two modules.

PROFESSOR WILKS: Here we see mandatory training being introduced, but only for the SRO. That is the top of page 3.

MS. SMITH: That is right, because the mandatory training on the protocol I think was in the first instance for the SRO. I think that is right ... because it is the SRO who was effectively the policeman for the firm to make sure they followed these procedures and made sure they followed the standard form.

THE PRESIDENT: I think there was a training module which the SRO and the firm had to ensure was completed, but, as I recall, Mr. Smithers' evidence --

MS. SMITH: I will go back to check; sorry, I could be wrong on this.

THE PRESIDENT: Yes, this all establishes why it was started, the scheme, and the urgent need for it and that it had the active support of the CML.

MS. SMITH: Yes.

THE PRESIDENT: I do not think any of that is impugned in this case.

MS. SMITH: Well, I think, in fact, my Lord, it is because the point is made not just on the object case, but generally on the effects case as well, that the incentive for The Law Society to introduce the CQS with its mandatory training element was in effect a profiteering motive, and that point is made by Mr. George in his evidence and as regards to intent arguments by reference to the Whatmore paper and other papers --

THE PRESIDENT: If I may interrupt you, as I understood it, I will be corrected if I am wrong, it is not suggested that the introduction of the scheme itself was to boost revenue, what I think is said is when the scheme came to be developed and amended, the requirement that the

training in AML and financial crime can only be taken from The Law Society by purchasing at an additional price, which you paid in addition to your accreditation fee, its training, that that was done for profit motives. That is the way I understood it. Is that right?

MR. WOOLFE: That is our case, yes.

THE PRESIDENT: Yes, that is right. Now, I appreciate that may be relevant to look at that.

MS. SMITH: Yes, but what we are saying is that it is not so easy just to pull out that element and just say "Well, we are not really saying that they had a bad motive overall, we are just saying the tying of the training", but we are saying no, you have to understand what the motivation for the whole product was, which feeds into how the product was developed, how the CQS was developed, what elements it contained, including the training element, because the training element, the mandatory training included on mortgage fraud and AML, which were of particular concern to the lenders, the lenders needed not just -- and this is another point Mr. Woolfe said that we disagree with strongly: the members did not just want a guarantee of probity. They could get that by going to Lender Exchange or more likely the -- I cannot remember its name, it has just gone out of my head -- who provide a panel management scheme and part of that panel management they do criminal records checks and probity checks on the members of the firm, but that is not the only element of the CQS, the CQS is much more than that: it is probity checks and checks on the members of the firm, it is the use of standardised procedures and documents so that the lenders can be guaranteed that there is a consistent approach and a consistent quality approach to the conveyancing transaction across the board by CQS members, that is the second element, and the third element is the training, training in matters that are of particular concern to the lenders, particularly mortgage fraud, so that the lenders can be satisfied that CQS members have a minimum understanding of mortgage fraud and anti-money laundering requirements. That is what the CQS modules are about, ensuring that all members have that minimum level of understanding, that it is consistent across the members and that The Law Society has control over monitoring that it is actually done and what is actually done and how it is done, and that is what is important to the lenders from the CQS, and they all fit together: it is not just about probity, it is about ensuring consistent, uniform, minimum quality approach.

That is, we say -- while you are still on that document at tab 5, it is relevant, if I can, to draw your attention to what is on page 3, paragraphs 11 through to 13, which sets out the benefit of the membership and it says:

"Membership will provide credibility with stakeholders, including regulators, lenders, insurers and clients, many of whom have been involved in developing the scheme and it is absolutely to be a prerequisite for acceptance on member panels."

That is what The Law Society wanted.

"The unique conveyancing quality kitemark will do the following things ..."

The fourth bullet point:

"Reassure clients, lenders, insurers, your practice is financially sound and well managed."

But also the previous bullet points: increase consumer awareness, develop high standards of professionalism and competence.

Then there is a fee structure set out.

THE PRESIDENT: Yes. Just before you get to that, the last bullet, we have not had any evidence as to whether it has reduced PII rates for members, have we? There is no evidence of that?

MS. SMITH: I am not sure that we have, no. We have evidence from it Mr. Smithers on the concern about the difficulty for small firms and residential conveyancing firms to get insurance.

THE PRESIDENT: Yes, but there is no evidence that as a conveyancer your premium is lower if you are CQS accredited? I do not --

MS. SMITH: That may be a point that can explored in evidence with Mr. Smithers because he certainly gives evidence on the problems conveyancers had on --

THE PRESIDENT: There is nothing there at the moment, no.

MS. SMITH: -- obtaining insurance.

Can we just look at the final document I would like to have a look at and if we may, I think if we can go through to half past, I think I can finish. I am not going to be taking you to any documents, I hope, I think that is right, but if I just take you to the document at tab 3 of this bundle please. Tab 3 is a document membership board minutes of 16 September 2010. If I can ask you to turn to page 7 you will see there an update on the Conveyancing Quality Scheme and then towards the very last line on page 7:

"Linda Lee indicated that the scheme was available to solicitors only and for firms of solicitors regulated by the SRA. A licensed conveyancer or notary in a law firm was also an acceptable member. A pricing structure ..."

This goes to the thinking as to how the CQS was priced:

"A pricing structure and entry price to encourage members to join at the inception was being looked at."

Next paragraph:

"A paper would be submitted to the November Council meeting in more detail. It was anticipated that total costs of the project would amount to £3 million. Payback was based on a training assumption of 31 months."

So in assessing this cost we are looking at the whole of the product, including the training:

"There was sufficient significant investment in this but the benefits to the profession were significant. It was not expected that the Society would make a profit on this project."

So that is the product as a whole and it was not expected that the Society would make a profit on it, but the benefits were such that the Law Society felt this was an important product for it to develop for its members. So payback assumes the training assumption of 31 months, so training will give you a payback, or will give The Law Society some payback, some coverage of its costs, but it is not expected to make a profit.

MR. ALLAN: But it is expected that residential conveyancing firms would make more profit.

MS. SMITH: Well, it was expected that they hopefully would not go out of business, that was the point.

MR. ALLAN: In the extreme.

MS. SMITH: Yes. Well, we are talking here I think -- we will see some of the people who are CQS members who are referred to in Mr. George's evidence. There are one or two members -- one or two solicitor firms for whom obviously residential conveyancing is an important part of their income and it cross-subsidises -- I think there is evidence on this in some of the papers -- the Legal Aid work they do, for example, so it is an important -- The Law Society thought that it was important and that it was incumbent on it as a member association to do this and to produce this product for its members, it did not, and you will see this from the internal documents, expect to make a profit on that.

So that is the first proposition, what the motive was and the intention of The Law Society in developing this product. The second proposition, which is interlinked, which I have already made some points on, is that the CQS is made up of a combination of complementary, interlinked components of which training is just one and I have made the point that there are three elements to the CQS. They were all described in it detail in Mr. Murphy's first statement. The first element are the administrative and probity checks that The Law Society

carries out before a firm can be accredited, the second element is the CQS protocol and the pro forma documents which provide for standardised documentation and process to be used by firms when carrying out a conveyancing transaction and the third element is the mandatory training modules.

As regards the training element, as Mr. Smithers explains, and he will no doubt give further evidence on this when he gives his evidence, the training was designed in conjunction with and to satisfy lenders who had and continue to have input into the content of the training. In his second witness statement Mr. Murphy explains the involvement of the lenders in the 2015 reorganisation of the CQS and their involvement in the development of the training modules in the 2015 process.

The training, as I have said, is concerned with ensuring minimum standards of quality and relevance, but also consistency across all the firms. It is important that the firms take the same training. Also it ensures that they have -- the way in which it is delivered ensures that it can be certain they have completed that training. The Law Society is able to monitor that it has been completed.

My third proposition is that the CQS has been pretty successful in meeting that market need, the market need that it was designed to address. Lenders are no longer cutting back the numbers in their panels as they were on an arbitrary basis. In it 2012, HSBC, who had initially cut their panel to 42 firms, in 2012 HSBC adopted the CQS as one of the requirements for inclusion on its panel. It is important in this regard as well to be aware of the fact that lenders put in place their own requirements for inclusion on the panel, certain of them -- and they are listed in Dr. Majumdar's report -- have included the CQS as one of those requirements, but they also impose their own independent criteria that they want firms to fulfil in order to become members of their panel.

So from the lenders' point of view the CQS is serving a useful purpose. Conveyancers have signed up to the CQS. They see the benefits to them of the CQS and the access it provides to lender panels. They have signed up to it in increasing numbers and we make the point, and we will make this point good, that that is wholly rational because -- and I use "rational" in a sort of economic type way, but it is wholly rational for the conveyancers to sign up because the benefits they get, the CQS provides them substantial benefits at a very good price.

We would go as far as to say that the CQS as a whole does serve a pro competitive purpose. Against the background I have outlined it ensures that there are a wider choice of

conveyancing firms available to lenders and therefore to house buyers, than there might have been had the lenders pursued their original policy of cutting panels. So we do say that the effects are ultimately pro competitive and this will go particularly to the question of objective justification if we get there.

The fourth proposition I make is that on the evidence Socrates is clearly unable to establish that the mandatory training requirement of the CQS, that is the requirement to take the mortgage fraud and AML modules of the CQS from the Law Society -- Socrates is unable to establish that that is reasonably likely to have a serious or appreciable foreclosure effect on the downstream market.

The evidence in my submission is that it has not had such an effect and it is not reasonably likely to have such an effect.

I have addressed Socrates' case in this regard in detail in paragraphs 56 to 64 of my skeleton, but just to pull out a couple of points from that.

Now, Socrates invites the Tribunal, in paragraph 46 of its skeleton, and again invited it orally through the submissions of Mr. Woolfe this morning, to draw an inference on the basis that this is what courts do, they draw inferences. You are invited to draw the inference that the CQS training requirement, that given that requirement, given the CQS training requirement, member firms would not purchase general training on AML and mortgage fraud from other providers in the same volumes that they would otherwise have done.

I make two submissions on that. First, you do not need to draw an inference, or at the very least you do not need to draw an inference in isolation from the facts, because you have evidence before you as to actual effect, both qualitative and quantitative -- that is the witness evidence you will get here and the analysis of the subscriber data -- and, as the court made clear in the *Streetmap v Google* judgment, evidence as to what the actual effect of the allegedly abusive conduct has been is a very relevant consideration.

But my second submission is that it is not at all clear, in fact quite the contrary, it is not the case that the nature of the CQS training requirement allows you to draw that inference. It does not allow you to draw the inference that member firms would not purchase training on AML and mortgage fraud from other providers. One has to focus in on what the training requirement actually was. The relevant CQS training modules on mortgage fraud and AML were introduced in 2012 and 2013. They are to be carried out by relevant members of staff once and once only. They are not repeated. By contrast, there is a statutory requirement

that all relevant persons involved in financial transactions, which include residential conveyancing solicitors, but extends much more broadly, there is a statutory requirement that all relevant persons have to have AML training. The statutory requirement is that that AML training has to be carried out regularly. The Law Society's formal guidance on AML training is that it should be carried out at least every two years. Socrates' own guidance, contained in its pro forma AML policy manual, says that firms should carry out such training annually.

THE PRESIDENT: Can you just -- we have not actually been taken to these regulations, they are somewhere. It might be useful -- I do not want to slow you down because I know you are trying to finish, but just quickly to find them.

MS. SMITH: Authorities bundle 1, tab 2, and it is regulation 21. We have just got paragraph -- I think you have like me got a single page. On the back of that page is regulation 21:

"A relevant person must take appropriate measures ..."

The relevant person being the firm -- I think that is right. Yes. So A relevant person:

" ... must take appropriate measures so that all relevant employees [which is also a defined term] of his are (a) made aware of the law related to money laundering and (b) [this is the important one] regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist finance."

So the regularity aspect is a statutory requirement, then there is guidance from The Law Society, which we will take you to in due course, that regulation should be at least every two years. Mr. George himself says it should be done annually. There is evidence as well from Mr. Smithers, among others, who is not just a past president of The Law Society but also a member of CooperBurnett solicitors, who is a CQS firm, in fact the number 1 -- first firm to become a CQS member, that his firm carries out general AML training every year for all of their members of staff in any event.

PROFESSOR WILKS: Just to clarify, the training offered by The Law Society on AML is sufficient to meet the requirements --

MS. SMITH: The CQS training module?

PROFESSOR WILKS: Yes.

MS. SMITH: It is important because in this regard The Law Society offers general training on AML as well in its commercial -- more commercial, but offers more general training as

well. The CQS training module, Mr. Smithers' evidence is that in his view as a partner of a solicitors firm, he wants his employees to take general training as well as the CQS module.

PROFESSOR WILKS: But my question was does it fill the mandatory requirements?

MS. SMITH: The judgment is a matter for the relevant officer at every firm. The Law Society does not -- I think this is right -- sell the CQS AML module on the basis that it will fulfil your statutory requirement. It is a question for the firms.

PROFESSOR WILKS: Okay, thank you.

MR. ALLAN: Just to go back to your point about the contrast between the once only training within CQS and the repeated AML training, what is the position under the current structure of the CQS with respect to the update training? Is that to be regularly done?

MS. SMITH: It depends -- so if you were a firm who joined the CQS way back at the beginning, you took your AML training module in 2013, or six months after you became reaccredited, because you get reaccredited every year, in 2015/2016 you do not need to take the CQS core module on financial crime because you are a pre-existing member, you need to take the update module and one of the update modules in 2015 was a financial crime module. It will depend on circumstances as to whether or not there was an element of AML in that financial crime module. The 2016 update modules -- and Mr. Murphy's second witness statement gives evidence on this -- do not contain any AML element and it is a question as to what future developments there are, whether there are new cases, whether there are new regulations coming into force, as to what the update training might be in the future.

MR. ALLAN: Thank you.

MS. SMITH: But the purpose of the update training -- and Mr. Murphy gives more evidence on this in his second witness statement -- is that it deals with recent developments that may be of relevance to the CQS members.

We make the point about the one-off nature of the CQS, AML and mortgage fraud training modules, particularly the AML training module because the claimant's case has moved a little backwards and forwards over the course of this case about what it is about. As originally pleaded it was really focused in on AML. We also get in mortgage fraud in the skeleton. I think now standing up Mr. Woolfe says it is about mortgage fraud and AML. But the subscriber data that was ordered by the Tribunal to be disclosed and that was analysed focused on AML training only.

So we say the statutory requirement for regular training is not fulfilled by the one-off CQS AML training module. The general AML training required to fulfil that ongoing

requirement can be and is provided by companies other than The Law Society, such as Socrates, and we do make the point that as regards the downstream market it is relevant to take into account the fact that the CQS training requirement does not affect competition to provide AML training to lawyers who are engaged in financial and property transactions, but who are not residential conveyancers, so business lawyers, commercial property lawyers. In fact we will see Mr. George recommends it should go even further than that, to litigators, to private client lawyers, and we will see that when I cross-examine him this afternoon.

Furthermore, we say that the CQS training requirement does not affect competition to provide AML training to other firms that are subject to the money laundering regulations requirements such as accountants and estate agents.

So we say that the inference that Socrates invites you to draw cannot be drawn.

THE PRESIDENT: Even if one has to show appreciable effect, then there has to be complete foreclosure. I mean if it did, contrary to your argument, mean that the residential conveyancing sector of solicitors was closed off, I mean that would be an appreciable effect even if it there remained estate agents and litigators and others.

MS. SMITH: Well, as a matter of fact we say even as a matter of inference --

THE PRESIDENT: I appreciate you say it does not, for reasons you have just given, such as it has to be regular and it is not sufficient, so they still have their AML requirement and so on, and I fully see those points, I am just saying if that is not right and in fact suppose there was clear evidence, which you say there clearly is not, that on the introduction of at least the AML module in 2012, or whenever it was, all residential conveyancing solicitors then took their AML training as part of the CQS from The Law Society and did not take it anywhere else, that would be a lot of solicitors. I would have thought that would be an appreciable effect, even if there are a large number of other solicitors who are not in the CQS. That is why I wonder how much it matters --

MS. SMITH: There are two issues I think when it goes to appreciability. First of all, the size of the pie, as it were, that is affected, but then you also need to know what the size of the pie is as a whole when you are assessing appreciability. We say that the size of the pie as a whole includes not just residential conveyancing solicitors, it includes all solicitors, it includes estate agents and accountants as well, all those who are subject to the money laundering regulations. So one establishes what the size of the pie is, then you look at the size of the slice of the pie that is affected by the alleged anti-competitive conduct and we say that

becomes, even as a matter of inference, vanishingly small because it is not just only residential conveyancers, only residential conveyancers who are members of the CQS, but only residential conveyancers for the one year, for the one year that they took the AML training, even assuming that their firm thinks the CQS AML training fulfilled their requirements for that one particular year and there is evidence before you that even then, for that one particular year, solicitors have taken more general AML training as well as the CQS AML training.

THE PRESIDENT: Yes, thank you.

MS. SMITH: That then takes me to -- I think given the time, I was going to take you to one more bit of evidence, but it can wait -- foreclosing.

The fifth proposition is this: that the CQS in our submission cannot be disaggregated and still retain its value to members and lenders. Now, Socrates' case is that the training element of the CQS should not be provided by The Law Society. In my submission it is still not entirely clear as to what they say positively -- how they say the training element should be delivered. What they have pleaded, put in their skeleton and then the submissions made orally are slightly different, but it appears to be something about outcome focused training or such-like, but no doubt that will be clarified, but what is clear is that their case is the training element of the CQS should not be provided by The Law Society.

THE PRESIDENT: I am not sure they are saying it should not be provided by The Law Society, I think they are saying that it should not be mandatory that you take it from The Law Society.

MS. SMITH: I think Mr. George's evidence goes one step further than that. He says there is this fundamental conflict of interest, that the Law Society because of its brand power, etc, should not even be out there providing the training. I think he is saying it should not be giving accreditation because we cannot be sure that The Law Society would do this fairly because of the fundamental conflict of interest which he sees as existing.

THE PRESIDENT: Yes.

MS. SMITH: So yes, this is something that is not entirely clear at the moment but that is what my reading of Mr. George's evidence is.

THE PRESIDENT: I think it is important, Mr. Woolfe, to be clear on what the case is.

MR. WOOLFE: Our case is what you put to Ms. Smith, that a requirement that the training be purchased from The Law Society is anti-competitive and therefore a breach of chapter 2 and chapter 1.

THE PRESIDENT: But for the purpose of this case you are not saying that The Law Society -- Mr. George no doubt has his views, but for the purpose of the legal case are you or are you not saying that The Law Society should not be doing accreditation at all?

MR. WOOLFE: Put it this way, if The Law Society does not make it mandatory to purchase training from it one could make various points about conflict of interest but one would not have a anti-competition challenge.

THE PRESIDENT: That is not this case.

MR. WOOLFE: That is not this case.

THE PRESIDENT: Are you accepting that The Law Society can offer a training course itself so that people would have a choice of saying: you can get it from The Law Society, or you can get it from someone else?

MR. WOOLFE: It is no part of my case that they cannot.

THE PRESIDENT: Thank you.

Yes, thank you, Ms. Smith. It is important to know what case you are meeting I think.

MS. SMITH: Yes, absolutely. So I have taken that, and perhaps on the record, that the claimant is not saying that training -- first, the claimant is saying there should not be a mandatory training element; the claimant is not saying that The Law Society could not provide training, other third party providers can as well, and the claimant is not saying that The Law Society cannot accredit those third party providers.

MR. WOOLFE: The last point is not accepted.

MS. SMITH: Well, that is why we need to clarify this.

MR. WOOLFE: That is the second part of the OTOC case, the part where it is talking about the way OTOC controlled the market -- the part of the market that was not reserved to itself and what it said in that case was -- I cannot remember the exact -- it stated having non-discriminatory transparent conditions of access and that did not necessarily involve accrediting the providers.

THE PRESIDENT: So you are saying that although The Law Society could require that anyone who is being accredited goes through training in these subjects, it can offer that training itself, but the member wishing to be accredited would have a choice to take the training The Law Society or an external -- a third party provider.

MR. WOOLFE: That is right.

THE PRESIDENT: But you are saying The Law Society could not, as part of its scheme, accredit those third party providers, monitor --

MR. WOOLFE: To be clear, what I am -- I do not think this case concerns whether or not accreditation would itself be a breach of chapter 1 or chapter 2 or not. That would be a different case if they chose to try and go down that route. What we are saying is that there is a perfectly acceptable approach available which would comply with competition law and which would meet The Law Society's aims, which would be not to accredit providers, but to impose requirements as to the outcomes in terms of training that solicitors are required to have, or policies and processes regarding training, either of those being an acceptable approach that would not require accreditation and they are the least restrictive.

THE PRESIDENT: So you say the less restrictive alternatives are looking at outcomes --

MR. WOOLFE: Yes, that is the Solicitors' Regulatory Authority, my Lord, effectively, if I can call it that. That is one approach. Or what one might call the Lexcel model, which is a requirement to have documented policies and procedures to ensure that your staff are properly trained. Also, effectively The Law Society can audit firms under Lexcel to check what policies and procedures they may have and they do spot checks, etc, and are they actually being followed and so on and so forth.

MS. SMITH: But not the content.

THE PRESIDENT: But not check the trainers?

MR. WOOLFE: Not check the training providers, no.

THE PRESIDENT: I mean it is important to know, on objective justification, what you say could be done, because you saw there is some evidence from The Law Society saying "Well, if we had to audit all the independent providers it would be expensive, time consuming, burdensome" and so on, but is that -- one has to think about an alternative model.

MR. WOOLFE: Indeed, sir, it goes to relief if nothing else.

THE PRESIDENT: No, not just for relief; for objective justification.

MR. WOOLFE: Yes, I accept that.

THE PRESIDENT: So we would not mandate an alternative, but one needs to think about what it could be.

MR. WOOLFE: Exactly, sir.

THE PRESIDENT: There may be a choice, but is that a choice one should consider, namely that if third party trainers then they could ensure quality, are you saying they could ensure quality by auditing the trainers, you are saying no they could not because that in itself would create a conflict.

MR. WOOLFE: What I am actually saying is there is another model available that does not involve them auditing the trainers. That is my actual case. That is my case on the facts. Secondly I have a case on the law which is if The Law Society wanted to go down the road of auditing trainers, it would have to make sure it complies with the second part of OTOC and it may be that that is very difficult. But that is a matter for what The Law Society might choose to do.

THE PRESIDENT: Well, not quite, because if it is accepted there should be training and as part of the CQS there can be a requirement that the solicitors have training, then if one is examining their case on objective justification for doing it this way, one has to look at alternative ways.

MR. WOOLFE: Yes.

THE PRESIDENT: It is no good saying "Well, if they chose that alternative we might then challenge it on other grounds".

MR. WOOLFE: The Law Society is talking about one possible alternatives which is auditing the trainers, we say there are other possible alternatives as well and that is the key --

THE PRESIDENT: Those are the ones you are putting forward?

MR. WOOLFE: Yes.

THE PRESIDENT: Yes. Well I think we must take that as meaning that the auditing the trainers, if it was operating training itself as well, is not something that would be regarded as acceptable.

MS. SMITH: I am grateful for that clarification because, as you say, sir, it is crucial to the question of objective justification as to what is said to be acceptable from the point of view of competition law and what is not and it is also crucial to the arguments that we will make on objective justification. If the claimant's case is, as it now appears, that the only alternatives open to The Law Society would be to have an outcome focused training regime as per the SRA, or to take the Lexcel approach -- and you will see the evidence on what the Lexcel approach is. We say it is a fundamentally different scheme about ensuring that policies and processes are in place. It is about management of the firm rather than about ensuring quality of the substantive offer.

We say, and we will no doubt develop this point in it closing, training is a key part of the CQS and without it, and in particular without The Law Society's control over the content of that training, and the way in which it is delivered, and without The Law Society's ability to

monitor the carrying out of that training by members of staff at the member firms, we say that without that, lenders are likely to lose confidence in the scheme.

The alternative ways of providing the training that Mr. Woolfe has now clarified we say are materially less effective and less efficient. It appears that the claimant's case is no longer that -- again we would have to get this clarified, but the claimant's case does not appear to be that The Law Society can audit or accredit third party training providers, that would not be acceptable. If that is the case we say it would be extremely costly and we have given the evidence on that.

But in any event we also say that not only would the loss of the training element to the CQS undermine the confidence of lenders in the scheme because it is a key part of that product, the inability of The Law Society to offer the training itself could fundamentally impact or seriously undermine the commercial model for the CQS, because you will see from the figures that the CQS is already loss-making and that without the training element it may be that The Law Society cannot offer the other elements of the CQS on their own, or only at a price that would not be attractive to the solicitor members.

We say the CQS provides substantial benefits to its members. Ultimately it provides substantial benefit to consumers and such benefits to the market could be lost if the training element is removed from the CQS.

Sir, apologies I have gone slightly over 1.30 --

THE PRESIDENT: No, we took you out of your course.

I have one short question, while we are clarifying, on your side. If we look at The Law Society's defence in bundle A, paragraph 42 on page 17:

> "It is admitted the agreements are agreements between undertakings. It is not admitted they may affect trade in the UK for the purposes of the chapter 1 prohibition."

I do not think you have developed that in your skeleton --

MS. SMITH: No.

THE PRESIDENT: -- and I do not think you have addressed it for the chapter 2 prohibition. Is it really an issue in this case that if, contrary to everything you say, this does affect competition to the relevant extent it does not affect trade in the UK?

MS. SMITH: I think it is proper I take instructions on that.

THE PRESIDENT: Yes, why do you not take instructions because, as you appreciate, everything that is not accepted we have to address in the judgment and then we have submissions on it and Mr. Woolfe has to address it and so on.

MS. SMITH: Yes.

THE PRESIDENT: Very well. Can we say, so we do not lose time, that we will be back at 2.30? It it slightly cuts into your lunches.

(1.40 pm) (The short adjournment)

(2.30 pm)

MR. WOOLFE: Sirs, before we begin with the evidence, two points. First of all, I understand from Ms. Smith ...

MS. SMITH: Yes, having taken instructions over lunch I can confirm that we are prepared to admit effect on trade in the UK, so we do not need to cover that in evidence.

THE PRESIDENT: I am sure that is right, thank you.

MR. WOOLFE: Secondly, I should just clarify, for the avoidance of any doubt, what our case is on the approval of training providers, objective justification.

We accept that you have to look under objective justification at whether there is a less restrictive alternative; that is an inherent part of that exercise. So far there have been three potentially less restrictive alternatives identified, one of which is that The Law Society could approve and audit or monitor training providers, the second is what we will call outcome focused regulations such as the SRA uses; and the third being process regulation under Lexcel, and the last two may not be complete alternatives, you could take some combination of the two.

Our case in the evidence now focuses on the second and third and that is primarily how we put our case. We say that is the least restrictive means and that could be sufficient.

The first one, so approval of training providers, would be less restrictive than the current situation, so to that extent is relevant to objective justification. The Law Society has certain practical objections about the feasibility of it and there is evidence about those and we will test the evidence on that.

For the avoidance of doubt we are not saying that any system whereby The Law Society approves training providers would necessarily restrict competition and therefore is not viable, all we are saying is that if they did go down that route they would have to comply with the principle in OTOC that they would have to comply with principles of equal treatment and transparency and if you look at what they are actually doing in OTOC it was

imposing unfair criteria, you have to warn what courses you are doing far in advance, etc, etc.

THE PRESIDENT: They were then I think delaying approval and keeping people waiting for months.

MR. WOOLFE: Exactly.

THE PRESIDENT: So you are saying that an approval or audit of training providers could be done in a way that did not offend against competition law, you just have to be careful that it is done transparently and in a non-discriminatory fashion.

MR. WOOLFE: Exactly, but we do say that the second and third because they do not lead to the same types of risks and problems are preferable, but we are not saying that the first is necessarily unlawful.

THE PRESIDENT: Yes, and therefore the first can also be considered --

MR. WOOLFE: That is right.

THE PRESIDENT: -- and should be considered, and has indeed been addressed by The Law Society in its evidence.

MR. WOOLFE: I will have to test that.

With that I would like to call Mr. George to give evidence. MR. BERNARD George (affirmed)

Examination-in-chief by MR. WOOLFE

MR. WOOLFE: First of all can you just confirm your name and professional address for the Court?

A. Bernard George and my address is 3 Meadowbank, London NW3.

Q. You should have on a table in front of you a bundle marked C.

A. Yes.

Q. Could you just turn to the first tab in that bundle. Is that your statement?

A. Yes, it is.

Q. Can you turn to the last page in the tab?

A. Yes.

Q. Is that your signature?

A. Yes, it is.

Q. Is there anything you would like to clarify or amend in that statement in any way?

A. No.

Q. Do you adopt that statement as your evidence?

A. Yes, I do.
Q. Can you turn to tab 3, a more substantial document. Again is that your statement?
A. Yes, it is.
Q. Can you turn to the last page. Is that your signature?
A. Yes.
Q. Is there anything in this statement you would like to clarify or amend?
A. No.
Q. Again, do you adopt that statement as your evidence?
A. Yes, I do.
Q. Finally tab 4, getting the pattern now, is that your statement?
A. Yes, it is.
Q. Can you turn to the last page in that tab. Is that your signature?
A. Yes, it is.
Q. Is there anything in this statement that you would like to clarify or amend in any way?
A. No.
Q. Again do you adopt that statement as your evidence?
A. Yes, I do.
Q. Thank you.
THE PRESIDENT: Can I just ask, Mr. George may be taken to documents in the bundles. Is there anyone -- because of course you do not have a large firm behind you -- who can assist in passing the files?
Yes, I think from the Tribunal staff someone will do that.
MR. WOOLFE: Thank you.
THE PRESIDENT: Yes, Ms. Smith. Cross-examination by MS. SMITH
MS. SMITH: Good afternoon, Mr. George.
A. Hello.
Q. Can I ask you to turn to tab 3, your second statement, I want to ask you some questions about that. If you can turn to the second page, paragraph 4, you are describing there the products offered by Socrates, is that correct?
A. Yes.
Q. You set out from (a) through to (n) on page 3 the various training products that you offer, that is correct?
A. Yes.

Q. We see at (a), product AML for law firms, which has 441 subscribers. I assume that is as of the date of this witness statement?

A. Yes, or thereabouts.

THE PRESIDENT: I think it is put at the bottom of page 2, it is as at 13 July 2016.

MS. SMITH: 13 July, thank you.

So your AML for law firms product, that is your product for general practices as opposed to corporate and commercial practices, is that right?

A. Yes, because if you look at (d), that is a different product because clearly the needs of firms like Ashurst and Reed Smith -- regrettably your instructing solicitors are not subscribers, but firms like that have very different needs from the typical firms which are the subject of this action.

Q. So that is the AML for international law firms?

A. Yes. 35 -- only 35 subscribers, though of course they tend to be rather larger and greater in value.

Q. Just focusing on AML for law firms, the general practice product at (a), that is for all fee-earners in a general practice firm, not just conveyancers, that is right, is it not?

A. Yes. When you say "all fee-earners", all fee-earners which are covered by the money laundering regulations, which is by definition certainly not all fee-earners.

Q. We will come back to that because you offer various other products and I want to clarify whether they are -- other products. In fact you offer something which you call "AML for litigators", is that a separate product or part of the AML for law firms?

A. No, that is a separate module within our training. If I can just go back historically, when we set up at the start of 2000 ... sorry, 2004, yes, we only had the single module for everybody, but people made the not unreasonable point that the needs of different specialists are different, a wills and probate lawyer wants different scenarios and different content, so the way we addressed that is we have a basic module for all fee-earners in law firms and then you go on and you take the further module or possibly modules which are relevant to your specialisation. So a property lawyer will do the AML for all fee-earners and then they will go on to do the further training and quiz which is for property lawyers and that is where the stuff on mortgage fraud, for example, comes in, which would be of no interest to a business lawyer, for example.

Q. Can I ask you to get out bundle E1.

THE PRESIDENT: While that is being passed up to you, can I just follow up your last answer. In your statement at paragraph 59, just clarifying what you have just said, this is the AML for law firms that we have been talking about.

MS. SMITH: Yes, I am going to come to this if I may.

THE PRESIDENT: When you talked about the modules, is that what we have under (c)?

A. Yes, that is right. So the service which the firm subscribes to would include all this and they ask their staff to undertake the modules which are relevant to them, so, as I say, a property lawyer would do the all fee-earners module and the additional module for property lawyers, a probate lawyer would do the same basic training and then the additional module for private client lawyers. It may be anomalous but there is a module for litigators who of course fall outside the money laundering regulations but we did get firms saying "Our litigators would like to know about anti-money laundering as it affects them", so albeit they are not legally required to have such training, we provide that.

MS. SMITH: So on that very point can I ask you to look in E1, tab 3. This is the module for litigators that you were talking about.

A. Yes.

Q. You will see, just flick through it, the points that you make about tax advice, etc.

A. Yes.

Q. Sham litigation, fabricated claims, handling property; points where you say these sort of money laundering issues might arise for litigators, correct?

A. Yes, they are not covered by the money laundering regulations, but they are worth knowing about, depending on which area of litigation you are in, yes.

Q. Can you shut that -- we will be coming back to E1 so you might want to keep it to hand, but shut that for the moment and just go back to your statement. In paragraph 4 of your statement you have identified -- we have talked about (a), which is AML for law firms and (b), AML for international law firms. At (b) you provide a product called AML for accountancy firms with 86 subscribers.

A. Sorry, we are back on which page? Page 3?

Q. Page 3, paragraph 4. You have the list?

A. Yes.

Q. So we have looked at (a), AML for law firms, we have talked about (d), AML for international law firms, at (b) you have AML for accountancy firms, with 86 subscribers and that is a completely separate product, is that right?

A. Yes.
Q. Then you have at (m), AML for estate agents, 66 subscribers.
A. Yes.
Q. You say with the AML for estate agents:

"This is a very different product from those provided to law firms or accountancy firms."

A. That is right.
Q. So can I go back to E1 because we have the products for estate agents and accountants. If you look at tab 1, we have your AML training for accountants. If you just flick through and see the way that is done. Effectively it is a slide presentation, part 1 --
THE PRESIDENT: Sorry to interrupt, but just so I get this absolutely clear, the law firms, as explained at paragraph 59, that is a course with various elements including these different modules, one for litigators, one for probate, private client lawyers and so on.
A. Yes.
THE PRESIDENT: What we saw therefore a minute ago was a module within a course, as I understand it, money laundering --
A. Exactly, yes, a course may be made up of any number of modules.
THE PRESIDENT: So what we are looking at now at (a)(i), a guide for accountants, would this be the whole of AML for accountants, or is it a module within --
A. Well, again it is a module within the course in that the course comprises the training and a separate quiz and I think -- in the heat of the moment I cannot be absolutely sure, I think there is also a separate refresher module for accountants, but in the excitement of the moment I cannot be 100 per cent sure of that.

So there are many many more modules in the service that we provide to law firms than there is in the service we provide for accountants. As you can see, the accountancy market is a considerably smaller market, for a variety of reasons which are not material to explain.

THE PRESIDENT: Thank you.
MS. SMITH: If I may, it might assist the President, we are going to go through each type of training, so we will come to the training for lawyers. Let us start with the guide for accountants, which is at tab 1. We have a part 1 introduction, some slide presentations, part 2 "The law in outline", part 3 on page 9 "Customer due diligence". Just flicking through, page -- mainly customer due diligence until we get to part 4 on page 30 which is about

reporting suspicions, then part 5 on page 35 "After a report" and then at the very last page "Now take a quiz". So you see the structure of the product.

If we can then look at the product at tab 2, "Money laundering guide for estate agents", we have part 1, intro, part 2 "The law in outline", part 3 "Due diligence", "Reporting suspicions", "After a report" and then you take the quiz.

A. Yes.

Q. So would you agree that the design of these courses is very similar?

A. Yes it is, the basic structure is similar, and of course the law is identical; it is the context which is very different.

Q. So let us also have a look at -- perhaps we can look at what is in tab 1 and then compare with what is in tab 2. It is not just the design and the structure, but also obviously some of the examples that you give are very similar. At tab 1 we have an example on page 12, "Checking the identity", under "Customer due diligence" and "Know your client" we have Ms. O'Reilly on page 12. We have the same example in tab 2 on page 14.

A. Yes. Can I just make the observation that you are only seeing the visuals here. The audio is not of course here and that will have a certain amount of variation. But you are certainly right, the same law applies to everybody, whether they are in a bank, a casino, an insolvency practitioner, a law firm, etc, it is exactly the same law, it is when you come on to the scenarios and the practical effect that the difference comes in.

Q. Yes. I am looking at the creation of the product and at the moment you have agreed with me that the design is pretty much the same, the format is the same, the law is the same, some of the examples that you give in the training are the same, not just Ms. O'Reilly, but we have Monsieur Grandfromage on page 15 of tab 1, he appears again on page 17 of tab 2, "How do you carry on due diligence on a French public official?".

A. Exactly, it is exactly the same law and who is a politically exposed person, whether you are an estate agent, a banker in a casino or whatever, so there is simply no point --

Q. Or a lawyer?

A. Or a lawyer. So there is simply no point us reinventing perfectly good training on that point, which explains it to a lawyer.

I should say we are not actually looking at the most up-to-date version of our training because we launched a few weeks ago a completely rewritten training product for accountants which is significantly different and we did -- we are just about to launch a very substantially rewritten product for estate agents. One of the big things we are doing in the

redesign for estate agents is make it a lot less legalistic. Whereas lawyers and accountants both are quite ready to engage with a description of the legal context before they look at the practical issues, with estate agents -- perhaps this is unfair to estate agents, but they may be less patient with those technicalities, so our new version for estate agents cuts to the practical chase a great deal more rapidly.

Q. Okay. Can we just keep that file open and have a look -- unfortunately it is in a different file and it is also printed out in a different format, so it is a bit more difficult to compare, but your AML for law firms is in bundle C1, which are the exhibits to your witness statement, tab 5.

A. This does have the script on the right-hand side, so you can see the wording.

Q. This is the common module, is it, in the AML for law firms?

A. Let me just check. I think so. Yes, it is.

Q. So let us look at page 17 on that document. This is part 3, "Customer due diligence".

A. Yes.

Q. If you turn to page 20 --

A. Of what, sorry?

Q. Of the document at tab 5 of C1, the AML for law firms.

A. Yes.

Q. Page 20, slide 31, we have the scenario "Client out of the country".

A. Yes.

Q. This is about how to carry out due diligence on a client who is out of the country and this is the woman in fact who appears again in the accountancy and estate agents, a Ms. O'Reilly.

A. That is one of a great many issues which will be common to any business which deals with clients on an ongoing basis who are covered by the money laundering regulations. So we could be making something for banks and we would put in exactly the same thing, we could do it for insolvency practitioners -- we do not, we do not have products for those markets but if we did, that scenario would work precisely for that different market.

Q. Just to make the point, I think you have accepted the overlaps, but just on page 26 of C1, your AML for law firms, on page 26, slide 41, you have the scenario -- he is here a Russian official, but it is effectively the same as Monsieur Grandfromage, a politically exposed person, how do you go about --

A. Again, it is the same law -- I do not know if your point is that an accountancy firm could buy our solicitors' training, they could not, it would not work for them, but you are

absolutely right it is the same law and therefore many of the scenarios, many of the explanations will be common between the two products.

Q. No, I mean my point, and let us see if you agree -- I think from what you have been saying it is likely that you do -- is that a firm that is offering AML training for law firms could relatively easily, because of the overlap in the law and the content and the design, etc, such a firm could relatively easily offer AML training for accountants and estate agents?

A. You would be surprised how difficult the process was. We offered anti-money laundering training for law firms very successfully for four years before we made our first product for estate agents and then it was a great many years -- I think it was only last year that we launched -- sorry, accountants came in 2007 and then estate agents were I think last year and you would be amazed how difficult it is. There are a great many similarities between estate agents and solicitors in that they are dealing with property transactions, but when you come to the scenarios -- and I think the scenarios here generally are not -- they are dealt with in quiz form and so forth, so I think they are not visible from this print-out, but the scenarios are totally different depending on whether, for example, you have a client account. Estate agents do not have that issue.

Estate agents you have to cover issues like is lettings work regulated or not and given that lettings work is not regulated, actually what does that mean you do if you have concerns about the propriety of individuals involved in a letting transaction.

I could enumerate: accountants again generally do not have a client account, they are generally not doing transactional work, they are very often doing tax return issues or audit issues, the practical -- the law is exactly the same, but the scenarios in which you have to apply that law are so different and therefore although we would love to have a product for investment fund managers, for bankers, for high value dealers, for casinos, etc, for all the other areas which are covered by the money laundering regulations, we do not because we found the time of getting together with people in that industry, developing the expertise and making training specific to those particular markets is very very considerable. Very considerable.

When we made our accountants product we got together with a firm called MacIntyre Hudson and we did a joint venture and they gave us enormous -- that is a firm of accountants -- and they gave us enormous help in developing an anti-money laundering course for accountants.

Q. Can I ask you to go back -- you can close up C1 and E1 and let us go back to your statement. If you can turn to paragraph 8 of your statement on page 4.

A. Yes.

Q. You there explain that there is a legal obligation on law firms to provide AML training to their staff, that is correct?

A. Yes.

Q. In paragraph 12, on the opposite page, you are talking about your renewal rate for AML training and you say about halfway down that paragraph that your renewal rate had generally been at least 75 per cent.

A. Yes.

Q. Then you say:

> "AML training tends to have a high renewal rate. The high renewal rate for AML training is what one would expect: first because the law requires training to be carried out more than once and second because of the penalties for failing to train staff mentioned above."

A. Yes.

Q. So you would agree, and I can take you to it if we need to, that The Law Society's guidance says that AML training should be carried out at least every two years?

A. Yes, we are asked that question all the time by law firms and we always tell them that, but we also say the reality of life in a law firm is if you organise a money laundering training session, or even at a push getting the people to do the training online on their own, getting 100 per cent compliance is very difficult and therefore if you do it annually you have a very good chance that nobody will miss the two year guidance.

I should mention another factor: our service includes a refresher module for fee-earners in law firms, so because people do not want to do the same full monty training every year, so they can, perhaps every other year, do the refresher module, which is shorter but at a more demanding level, it assumes an existing base level of knowledge. But yes, certainly you are right in your point: firms do need anti-money laundering training more than once.

Q. In paragraph 10 of your statement on page 4 you make that point you have just made, that most Socrates services also include an updating service?

A. Yes.

Q. You also explain that:

"For most services, including AML, we also provide manual or precedent policy to help firms put internal procedures and policies in place, to help ensure they are fully compliant."

A. Yes.

Q. Can I ask you to take out again E1 and now turn to the one document we have not looked at yet in this bundle, which is at tab 4. This is the manual that you are talking about --

A. Yes.

Q. -- in paragraph 10 of your statement?

A. It is.

Q. If we can look at page 2, on the top of page 2 part 1 is a "Compliance guidance for nominated officers". This is Socrates' guidance to nominated officers, is that right?

A. Yes, it is.

Q. A checklist is there set out. On page 3 in that part 1 we have section 5, which is about "Training your staff", do you see that?

A. Yes.

Q. You say there what the law is, regulation 21 and you have to regularly give training.

A. Yes.

Q. Then the action that you recommend, 5.1 "Issue your policies and procedures", 5.2 "Decide whom to train." Let us just pause there, if we can. You say in sub-paragraph 1:

"Fee-earners. In principle you do not need to train lawyers who do not do any relevant work, such as litigators, nor do they need to receive a copy of your compliance manual. However, they might take on some work that is regulated, or they might need to cover for a colleague in another practice area. In that case you would be committing a criminal offence ..."

That encourages them?

A. We try and get their attention, yes.

Q. " ... hence most firms train all fee-earners."

So that is your experience, is it, most firms train all fee-earners?

A. It depends how you define most firms. If you say most criminal, family, personal injury firms, most of them train no fee-earners. If you are talking about a mixed general practice, I think of the sort -- CooperBurnett was referred to earlier, then yes, a general practice like that would typically train all fee-earners. Not necessarily, but they typically would.

Q. In sub-paragraph 2 you talk about support staff and you say effectively they should also be trained:

"It is good practice to provide ..."

A. Well, no.

Q. "It is good practice to provide accounting staff and staff who have client contact with training and recognising suspicious transactions."

Is what you say.

"Training for support staff need not go into the same level of detail as for fee-earners. See the Socrates Training module prepared for that purpose."

A. We are, I am virtually certain, the only training provider which offers anti-money laundering training for support staff -- it is possible I am wrong, but I do not know of anybody else who does that -- and in general the obligation to train fee-earners is the important one. We added a module for support staff for two reasons. One was because a number of firms said -- it was a common question we would get "Do we need to train support staff?" and some firms said "We would like to train our secretaries", for example, "because they get involved in doing the identification checks", so we produced this module. It is not very heavily used but it is there for the firms that want it. Inevitably it was very easy to produce because that one really is just pretty much a cut down version of the training for fee-earners.

Q. Okay, let us have a look at part 2 on page 8. This, as I understand it, is a pro forma manual that you have prepared for firms saying "This is the pro forma, you should have a manual, a money laundering compliance manual in this form"?

A. Not necessarily in this form. Can I just explain the history here? When the money laundering regulations 2003 were passed and therefore in April 2004 for the first time solicitors were brought under the scope of the money laundering regulations, one of the things that marked out our product, the product we launched at that time, was that we did not just provide training, we also provided precedent paperwork, for which there was a phenomenal demand at that time because nobody else was producing it. That is not quite true, the publishers were producing books which would have precedents and training companies were producing training, but nobody was providing the complete service, so we had an enormous market advantage in that we provided the training you need to meet your new obligations and a precedent manual that would enable you to have fairly robust procedures that would meet the requirements of your regulators. In 2004 that was a big

deal. It is not a big deal any more, everybody -- the world is awash with anti-money laundering procedures. I dare say you can get some off Google pretty quickly.

Q. But this one is still provided to the firms who subscribe as part of your guide?

A. Yes, absolutely. There are some firms who do base their manual very closely upon this and they love it when the law changes and we update it and they do not have to worry about that because we have worked out for them what they should say about PSE registers, or whatever the change might be.

Q. Let us see what you recommend should be included in a firm's compliance manual. If we can look at page 9, paragraph 2, under "Regulated work":

> "Money laundering obligations only apply if you are doing certain types of work. Litigation work and some other work which does not involve any financial or real property transaction is not regulated. Nonetheless ..."

Then in bold:

> " ... it is the policy of this firm that the procedures set out in this manual should be applied to all clients in all matters."

Then you have a bit that they I assume can delete:

> "Except clients that instruct us only to do litigation work."

A. Yes.

Q. So the procedures should be applied, your recommended manual, recommended policy, to all clients in all matters, and we have seen that you have a module for litigation lawyers, that is right?

A. Yes.

Q. Actually at page 47 of this document I think we have now got the additional quiz questions for litigation lawyers, if you want to have a quick look and confirm that is what they are, page 47.

A. Page 47, yes, that is not the same as the online quiz. I could explain the history to this if you are interested.

Q. But just looking at the broad compass of the training, if you like --

A. I think these quiz questions are very little used these days, there is a historical issue there, but we thought it worth leaving them in.

Q. You also have on page 50 additional quiz questions for private client lawyers.

A. Yes.

Q. So you would recommend, best practice, they should be trained as well even though they may strictly fall outside the regulations?

A. Private client lawyers generally are regulated because if you are setting up trusts or you are giving tax advice, then you are regulated. If you are merely drafting wills, you are not regulated. You can see why some firms get impatient with this and just say "We will just train everybody", because it is quite a subtle issue sometimes. However, again it is quite a common problem we have with firms that are large enough to have a substantial distinct litigation department and they very often say "We are not going to train them". If you are doing criminal litigation, for example, it would be absurd. Almost by definition the typical criminal litigation client is suspected of a whole bunch of offences of which money laundering is typically one.

Q. Can we just go back to where we were, page 9 on this document. We are looking at page 9.

A. Yes, yes.

Q. Do you have that?

A. Yes, I have.

Q. Under section 4 is "Training".

A. Yes.

Q. In your pro forma manual, 4.2, says:

> "The firm's policy is that all fee-earners should receive online training annually and relevant support staff including members of the finance team should also receive online training annually."

Then there is a footnote 5:

> "Annual training is generally considered best practice. The Socrates refresher module provides an efficient way to meet that need for fee-earners."

Then there is also a reference there to Lexcel V6. So in your view best practice is that all fee-earners should be trained annually?

A. Well, it is not really for us to lead the market on this, however it is certainly true amongst the largest firms. In my experience they almost always have some form of annual training, mainly motivated by the goal that people should not drop through the net, or they should reduce the chance of somebody dropping through the net and being more than two years away from their last training. Clearly here we are adopting a cautious approach. The last thing that anybody in our position would ever want to do would be to appear to encourage people to cut corners. You might be cynical enough to say that we have a commercial

interest to hype up the need for anti-money laundering training, but we try to be fair though appropriately cautious.

Q. Right. Thank you, we can shut that document and I think we can now put away E1 for good I think but I am not going to make any promises, at least for the moment anyway.

I would like to move from the AML training offered by Socrates to the CQS and the evidence you give on that and I would like to ask you some questions about the CQS and the training requirements.

THE PRESIDENT: Just before you do that can I just ask you, Mr. George, again to help to educate me a bit. The module in your AML for law firms, you say there is a module for property lawyers.

A. Yes.

THE PRESIDENT: That is one module for all property lawyers?

A. Yes.

THE PRESIDENT: Is there a distinction between residential and commercial property?

A. That does focus primarily or overwhelmingly on residential property because we have our separate international -- what we call international AML products which is for the larger commercial firms and in that we do not make this distinction between different practice areas, for reasons I will not bore you with, but it is just the nature of business law, that people tend to move much more between say property and finance and contentious advice than they do in a smaller practice. Just assume we were looking, if I may say, at the high street, or smaller town sort of conveyancing practice, the idea is what you have for your fee-earners is everybody do the AML training for all fee-earners which explains your general obligations, everybody do the AML quiz for all fee-earners and then go on and do one or more of the specialist modules. If, for example, you were a property lawyer who also did a bit of property litigation, you might go on and do the property law extra module and the litigation extra module. If, however, you were for example a wills and probate lawyer you would go on and do the private client extra module, and the idea is otherwise we would be putting into our basic training lots of stuff on mortgage fraud and probate and corporate issues and so on, which for many of the audience would be irrelevant.

So, if you like, this is --

THE PRESIDENT: Yes, I understand that. I was asking a rather narrower question, which is whether -- after all a high street firm might do some commercial conveyancing.

A. Absolutely.

THE PRESIDENT: It will not be on the scale of your City of London clients, but it might be local shops or other business premises, so both that and the purely residential conveyancing, that is all in it the one module for property lawyers? That was the point.

A. There is actually precious little difference between what you -- you can get mortgage fraud in a commercial property context just as you can get it in a private client context. You can get cybercrime problems in either context. There is precious little difference in what you would explain to a commercial property lawyer as to what you would explain to a residential property lawyer; it is basically the same. I think there is one distinction we make and that is we make the point that if you are dealing with the assignment of a business lease at a full market rent, that is low risk for money laundering typically because little or no money changes hands in such a transaction. So that is the one point we make about commercial property I think because a property transaction is a property transaction really, whether it is a shop in Oxford Street or a semi-detached in the home counties.

THE PRESIDENT: That point is made in this one module?

A. I do not think we make that specific point. We just talk about property transactions. We talk about buyers and sellers and lenders and so on.

THE PRESIDENT: Thank you.

MR. ALLAN: Could I also just ask a quick clarification question. When firms buy AML for law firms, do they buy all the specialist modules as well as part of one product?

A. Yes, they do. We sell it as a package. They not infrequently tell us they do not want certain bits and they do not want to pay the full price, but it makes no difference to us so we sell it as a package.

THE PRESIDENT: The price for each course is --

A. We have a calculation based upon the size of the firm in terms of the number of fee-earners and we have a whole definition of fee-earners, and they can get reductions in the price by taking a subscription for two or three years and they get a reduction in the price further if they take more than one service.

MS. SMITH: That is paragraph 13 of your statement I think where you explain that.

A. It is a bit of a work of art working out what the exact price is for any one firm.

THE PRESIDENT: Yes, but it is the firm that buys it --

A. Exactly, yes.

THE PRESIDENT: -- and pays per firm, not per number of people actually being trained.

A. No, again people say "We only want to train six people" and we say "We do not care, you have 20 lawyers, we will charge you as a 20 lawyer firm."

THE PRESIDENT: Then you have the passport service for a higher fee, which presumably you can get all the -- how does that work then?

A. Yes. Well, the logic behind the passport service is the law of diminishing returns sets in for firms. They tend to have one course they want very much, like anti-money laundering, and a bunch of other courses that would be nice to have, but for which they may have less demand, so we make it easy for them to buy more -- I do not want to say too much about the commercial nature of the arrangements, but basically for a surprisingly low and reasonable fee you can take our entire range of compliance training, conflicts of interest, SRA code of conduct, anti-bribery, equality and diversity, unconscious buyer, data protection, information security relevantly, and so on, and it is a very small multiple, a very small multiple of what you would pay just for anti-money laundering.

THE PRESIDENT: Yes, thank you.

MR. ALLAN: I do not know -- sorry to pursue this, but I do not know if you cover it in your statement, but roughly what proportion of your AML for law firms is supplied as part of a passport service?

A. The way the passport tends to work is that people -- I mean very very often firms come to us for anti-money laundering training. That has this wonderful selling point: "Do not buy this and you can go to prison", so very often firms come to us, particularly conveyancing firms, for anti-money laundering training and then once we have a relationship and they like the training and they see how it works and they have their login, we can so easily add other services to it that again we apply discounts that make it very easy for them to add other services. So it is relatively rare that somebody gets anti-money laundering because they have taken the passport. That would apply that they have taken other services and then only just taken anti-money laundering as a makeweight. That is relatively rare. That might happen, however, with a litigation firm.

Our second most popular service is the code of conduct service where we have almost 300 firms subscribing. Now, a personal injury, criminal, family employment firm that does not have to have anti-money laundering training, many of them would have come to us for that -- and by the way that service was launched in 2011 when the code of conduct was completely rewritten and everyone was in a furore about it. So they might have that and

then they might decide to add other things to it, such as anti-money laundering, but that is a relatively small number of -- not nil but --

MR. ALLAN: Understanding that background, what roughly is the proportion in terms of AML?

A. I would struggle to put a number on it. It is pretty unusual that we have a firm taking more than one service that is not taking anti-money laundering. Very occasionally it happens but it is very unusual. Anti-money laundering is our core product. Along with code of conduct.

MR. ALLAN: I was just trying to get a picture of what proportion of AML for law firms is supplied as part of a passport. I understand the qualifications in relation to that but just --

A. I think we are told that we have 119 passport subscribers, so that figure of 441 -- I think I say this somewhere -- anyway, I know that is true --

THE PRESIDENT: 119 health and safety.

A. Yes, and the reason for that, health and safety was the last course --

THE PRESIDENT: Never mind the reason for it, just concentrate on the question.

A. No, it is relevant. We launched that very recently. It has not been a big seller and I think virtually every firm that has health and safety has it as a result of having the passport. So the number who have health and safety is I think very close to the number who have the passport. It might be 116, 117 over the passport. So, if you like, of the 441 who have anti-money laundering for law firms --

MR. ALLAN: What order of magnitude --

A. About a quarter of those, sorry, yes. Sorry if I have taken a long time to get to the answer to your question.

THE PRESIDENT: May I ask a similar question. I think you say although the basis of subscription is one year, some people can get a two or three year subscription -- presumably it is an adjusted fee?

A. Yes.

THE PRESIDENT: Are you able to say, if not precisely then approximately, of the 441 how many are more than one year subscription?

A. I think I have given the figure somewhere and I cannot remember where.

THE PRESIDENT: If you have given it somewhere somebody will find it.

A. I think it is over 100. I may have given it in the anti-competitive data analysis or something. I am pretty sure it is over 100. But they would not inevitably be firms that would have the anti-money laundering, they probably would be.

THE PRESIDENT: So I think again it is about, what, about a quarter?

A. I can find out but I cannot remember off the top of my head.
THE PRESIDENT: If the figure is somewhere, someone can produce it for us.
A. 107 is the number that sticks in my mind, but it may not be right.
THE PRESIDENT: That can be checked.
Sorry, Ms. Smith, we have interrupted you.
MS. SMITH: No, that is fine.
Can we move on from the products that you offer, Mr. George, to the CQS, which you address from page 9 of your statement. You are aware that the CQS -- are you aware it launched in October 2010?
A. Yes.
Q. You are also aware that mandatory training was introduced in 2011? Are you aware of that?
A. I appear to have got it wrong because I said here The Law Society has since 2011 operated the CQS, but if you --
Q. I am not going to make a big issue on that. You make it clear later in your statement --
A. The Law Society is saying "since its inception in 2011".
Q. Right. Are you aware that in -- I think this is the basis of your case -- in 2012 two training modules were introduced, one on CQS practice and procedures and one on mortgage fraud? That is correct, is it not?
A. Yes, I think so.
Q. Just to put this into context, can I ask you to have open -- it is the easiest way of finding this material and these numbers -- bundle B, if you could have that open at the same time as your witness statement, tab 2, there is a Dr. Majumdar's report, I am simply going to use it for some facts and figures. Because they are reproduced here it is easy to find them here. If I could ask you to look at page 15 of his report first.
A. Sorry, page which?
Q. 15. So you see there table 1, "Lenders and timeline of when CQS accreditation is understood to have been made a pre-condition", and you see there were two lenders, HSBC and Clydesdale Bank, who made the CQS a pre-condition of their access to their lender panel in 2012. Were you aware of that?
A. I see that there, yes.
Q. Just over the page at page 18 -- I am just trying to get the picture in the various years in the light of what you say in your witness statement, which we will come back to, but on page

18, paragraph 59, if we could look at Dr. Majumdar's statement on that. At paragraph 59, he sets out the numbers of subscribers to the CQS firm for each year and you will see in the third line of paragraph 59 there are 1,787 firms that are members of the CQS in 2012, do you see that?

A. Yes.

Q. So that was the position in 2012. In 2013 you are aware, because I think you plead this in your claim form, two new training modules were included, including a module on AML?

A. Yes.

Q. That is correct, is it not, it was introduced in 2013?

A. Yes.

Q. Just to see what was going on in 2013, back on page 15 of Dr. Majumdar's report, you see that Santander made the CQS accreditation a pre-condition of its panel membership in March 2013. So by the end of 2013 there were three lenders: HSBC, Clydesdale and Santander who had made the CQS a pre-condition, do you see that?

A. Yes.

Q. On page 18 of Dr. Majumdar's statement, paragraph 59, line 3 of paragraph 59, you see by the end of 2013 there were 2,607 members of the CQS, do you see that?

A. Yes.

Q. Now, you say in your -- I think we have seen those figures, you do not need to have that open any more. If you want to have it open, obviously do. But just going back to try and put your evidence in context, if you go back to your witness statement, paragraph 45, on page 17, paragraph 45, page 17, you say:

"Until the second half of 2015 I knew little about the CQS."

A. Yes.

Q. "From some time in the second half of 2015 I and others who worked for Socrates started to get occasional calls from subscribers."

We will come back to those calls and what was said, but it is correct, is it not, that it was not until the second half of 2015 that you noticed any impact at all on your business from the CQS?

A. I am not sure that is accurate. It was certainly the second half of 2015 that it seemed to become really quite a significant issue and a number of people were mentioning it. I cannot remember the first time that my colleague Aine, who normally deals with renewals, mentioned it. I do have this memory of her ringing me up and saying -- we work out of

different offices -- her ringing me up and saying "What is the CQS?" and I knew enough to give her some sort of answer, but very very little, and then it seemed to become a bigger and bigger issue. But you are right, rather surprisingly it seemed to be middle and second half of 2015 where we seemed to get a lot of people commenting on it.

Q. All the examples you then go on to give in paragraphs 48 through to 55 are all examples of calls, or emails that came in the later part of 2015 and early 2016.

A. Middle or late, yes. Which interestingly was the year when The Law Society's training revenue absolutely took off.

Q. Let us not make submissions, Mr. George, if we may.

A. No, but I think it is a relevant observation.

Q. I am going to ask you about questions of fact and the Tribunal can draw links and draw conclusions from the facts. Let us just look at what you say in your factual witness statement.

A. Well, can I explain why that is relevant to the question that you asked me?

Q. The question that I asked you was that all the emails that you refer to in paragraphs 48 to 55 and the calls took place in late 2015 and early 2016 --

A. That is right.

Q. -- that is the question I asked you and I think your answer to that was "yes", is that right?

A. That is correct.

You do not want to know. Okay.

THE PRESIDENT: It does indicate though, what you say -- you say it is rather surprising that you knew little about it until the second half of 2015 -- that if the changes made in 2012 and 2013 to the modules that Ms. Smith has just referred you to had had a big impact to your business then, then you would have known about it, would you not?

A. We would have known if it was having a big impact on renewals, but of course there is an inevitable lag of a year before a firm comes up for renewal, so there is a natural delay built in. There is also a natural delay in that firms did not have to take The Law Society anti-money laundering training until the earliest until the end of 2013.

But if I can explain why I think the impact was so big in 2015 and it had been smaller before, it appears from the various minutes which I have read that The Law Society was not actually monitoring or enforcing with any vigour the obligation on firms to take its training. It was telling them that they should, but it was not actually policing it.

THE PRESIDENT: Well, that might be the reason, but all I was asking about is if it had had a big impact before, you would have been aware of it.

A. We had noticed one impact before, particularly in the first half of 2015, in that for some reason mail shots stopped being effective. We had always relied quite heavily on sending out mail shots to firms, basically a letter asking them "Is your anti-money laundering training up-to-date", and we found that those mail shots had become much less effective. Of course you do not know why a mail shot has become ineffective. If somebody puts the letter in the bin, you have no idea why. Yet in 2015 in particular we found it did not seem to be working and rather weirdly we responded to that by increasing the number of mail shots, desperately trying to get some new firms in the door, so we spent more on mail shots in 2015 than we had ever spent before, and then by the end of 2015 we were giving up and saying "It is just hopeless now".

That is consistent with those firms having received from The Law Society instructions to buy their training.

MS. SMITH: Well, that is a link that it is not for you to draw, I suggest, Mr. George really --

A. In running my business it is exactly the type of link I have to draw.

MS. SMITH: -- you are giving evidence of fact, it is a link that the Tribunal is going to have to draw -- can decide whether or not to draw.

Can I just, before I continue asking you about the evidence of fact that you give and the examples that you have given, rather than starting to speculate, ask you a little bit about the direct mail marketing that you just mentioned. You give evidence on that at pages 15 to 16 of your witness statement. You say:

> "We have noticed a dramatic reduction in effectiveness of direct mail marketing."

So you have cut back on such marketing. You say there:

> "Given the disappointing returns we were getting in 2015 we have now cut it right back."

A. Yes. For some months we did not do any.

Q. You have moved your marketing spend instead, at least in part, to advertising in The Law Society Gazette, you explain in paragraph 81.

A. Yes, perversely.

Q. At page 25 you say you have spent thousands of pounds advertising in The Law Society Gazette?

A. No. It is very hard to know whether advertising in The Gazette is effective or not. You do not get the directly attributable sales that you get from direct mail. It is more of a brand building thing, to advertise in The Gazette. We do advertise in The Gazette, it is hard to know how effective that is.

Q. Can we go back to the actual examples that you have given, because obviously this is what I assume you said was the best evidence of impact on your business and let us just look at that.

Page 17 of your witness statement, let us start with paragraph 48, and can we also have open the emails that you have exhibited to your statement which are in C1. So if we can have both those documents open, your witness statement, page 17, bundle C1, tab 4. Let us look at the first example that you give, paragraph 48 of your statement, Richard Herne & Co. You say here:

> "Richard Herne & Co told us they would agree to keep their subscription with Socrates going at half the previous price. The dialogue on this subject was mainly or exclusively with ...."

I am sorry, I get the pronunciation --

A. It is an Irish name, Aine.

Q. " ... Aine Shaughnessy rather than with me."

So let us look at the emails between Aine and Richard Herne, starting on page 4 of tab 4, because obviously in these ways we are working backwards through time, but to get the chronology if we start on page 4, we see the email of 4 December 2015 from inquiries@richardhernesolicitors to info@socratestraining:

> "Dear sirs, can you advise on the cost of your anti-money laundering courses."

Then we see Aine giving a response, starting on page 3, do you have that? 4 December, 12.34, she says:

> "Hi Richard, you did of course subscribe to our AML training until November ..."

Then she then sets out details. We actually see that text in other emails, so it looks like it is pretty much standard form text on explaining how the services are priced, is that correct?

A. Yes.

Q. So Richard Herne are given the information and then we see, bottom of page 2, top of page 3, four days later on 8 December at 11.09, Richard Herne write back saying:

"Dear Aine, we are only looking to have AMP training for our support staff, two secretaries and an account clerk, as we have to do AML training direct with CQS for the fee-earners. Could you advise on the cost for three support staff AML training."

She says in her email on 8 December, 12.25, "You can have half price". Then Richard Herne & Co say:

"Can we take you up on your offer please."

So they have got their half price discount after engaging in some negotiation. I would like to ask you a few questions about that firm. As part of the disclosure in this case The Law Society disclosed to you an Excel spreadsheet and perhaps I can hand that up because it is not in the bundles, we have had to print it out. We have, I hope, three copies for the Tribunal, one for the witness and one for Mr. Woolfe. (Handed).

You see at tab 1 on the index page it explains what it is. I am sure you will be very familiar with this because you used -- it is the Excel spreadsheet, list of all CQS firms disclosed by the defendant to the claimant on 22 July. So that is the list of all CQS member firms and I assume you are familiar with this, it was used in your subscriber analysis, was it not, Mr. George?

A. Yes, yes.

Q. So that is the Excel document that we have printed out at tab 1.

Let us have a look at Richard Herne. If you go -- I think there are stickers -- there are probably stickers in there, or tabs in there. If you go to the second green tab, page 47 of tab 1, just by the sticky tab about two-thirds of the way down there is an entry:

"CQS 02750, which is Richard Herne & Co, do you see that?

A. Yes, I do.

Q. The fifth column is the date on which they were accredited as a member of the CQS --

A. Yes.

Q. Not the date they applied, the date they were actually granted accreditation. You see they are numbered in order of which the firms were granted accreditation. So you see that Richard Herne & Co were granted accreditation on 25 March 2013, do you see that?

A. I do.

Q. So they were granted accreditation on 25 March 2013. Under the CQS rules they would have had to carry out their training modules within six months of being accredited, that is correct, is it not?

A. Not on anti-money laundering, no.

Q. The anti-money laundering module was introduced -- sorry, when you say "no", why do you say that?

A. At the date they were accredited The Law Society had not introduced its anti-money laundering module.

Q. The module was introduced in June 2013.

A. Exactly.

Q. Then within six months of accreditation --

A. Shall I talk you through it? I can talk you through the chronology. It might be a bit quicker. In March 2013 Richard Herne & Co joined the CQS. In June 2013 The Law Society launched its anti-money laundering training, which then had to be done by any firm acquiring accreditation for the first time, or being reaccredited. So therefore this did not become relevant to Richard Herne & Co until some time around March, or possibly April if there was some delay in their reaccreditation process, some time in the spring of 2014. They then had six months from then, if -- and I have to stress it is a big "if": if they complied with The Law Society's requirement to buy AML training within six months, they would have had to do that some time before the end of 2014.

It appears, however, from what your clients have put in their disclosure documents, that they were not enforcing that obligation with any rigour and therefore many firms, particularly firms like Richard Herne & Co who had training from ourselves, would just carry on with the training they had and would just let that obligation slide. At some point in 2015 it appears that The Law Society woke up to that and started checking and monitoring and forcing firms to buy their training, with the result that firms like Richard Herne & Co then cancelled their subscription with Socrates when it next fell due for renewal, which again could be several months if the future.

Q. All we have on the facts, rather than your speculation, Mr. George, is that in December 2015, a year and a half after the date by which Richard Herne were required under the CQS could carry out the AML training --

A. No, about a year after --

Q. If you could let me finish the question -- they send you an email saying "We want half price because we have to take our AML training direct with CQS". It is equally likely that this was just a negotiating tactic on their part to get half price from you, is it not?

A. Oh, are you suggesting -- well, I am astonished. No. I have to say that possibility never occurred to me.

THE PRESIDENT: Can I ask -- I have not seen this spreadsheet before. What is the sixth column?

MS. SMITH: If you look on the first page I think it is the number of years that they have been accredited as of the date it was printed off. Four years.

THE PRESIDENT: So -- yes, well, that is what I am trying to understand.

PROFESSOR WILKS: It is number of people.

MS. SMITH: No, number 6 is the number of years accredited, the very last column is the number of people.

THE PRESIDENT: So number of years accredited you say as of the date -- this is what I do not follow. It says they were first accredited in March 2013.

MS. SMITH: 2013.

THE PRESIDENT: Well, it cannot be until March 2017.

MR. WOOLFE: It may be a rounding issue because we are over two and a half years since March 2013 now, so if it is rounded -- if it is calculating it on automatic date calculation in Excel it will come up with three years --

MS. SMITH: I will clarify that, but that is what that is meant to be. I will clarify that.

MR. ALLAN: It could be the number of accreditations, so 13, 14, 15 and 16.

THE PRESIDENT: Yes, I see. So it means they are still going, essentially. I see.

MS. SMITH: Yes. Perhaps the more relevant figure -- I do not know what you were thinking about, sir -- at the very last column is the number of members of staff on the scorecard, number of relevant persons who are carrying out CQS training at that firm. So you will see actually, consistent with what I was saying, at the beginning there are an awful lot of small firms.

Can we move on then to the second example you give, Mr. George, Rutter & Rutter. This is paragraph 49 of your statement. You see there at paragraph 49:

> "The firm Rutter & Rutter cancelled its subscription in December 2015 because it duplicated training The Law Society forced them to buy. That cost us £360 for that subscription alone and lost us a subscriber which had been with us for at least five years, possibly longer. That firm also took other services from Socrates which they cancelled at the same time."

Now, let us just look at the emails if we can with Rutter & Rutter. These are a bit confusing, these emails, because there are two firms called Rutters and some of them -- but let us start on page 10 of exhibit-tab 4 to your witness statement, exhibit 4. Page 10 is

where it starts and there is an email there from a James Wood at Rutters Solicitors. That is not the Rutter & Rutter you are talking about in your witness statement, is it?

A. Sorry, just give me the reference again, I do apologise.

Q. Page 10.

A. Of?

Q. Of your exhibit, tab 4 of bundle C1. It starts on page 9 and finishes over the page on page 10. Page 9, towards the bottom of that page, there is an email 1 December 2015, 15.13, do you have that?

A. Yes.

Q. Then you see over the page on page 10 it is an email from a James Wood of Rutters Solicitors.

A. Yes.

Q. Then if you flick back to page 9, just --

THE PRESIDENT: That is a quote, is it not, from -- I think this is an email, as I understand it --

MS. SMITH: From Bernard to --

THE PRESIDENT: From you, Mr. George, to Aine Shaughnessy.

MS. SMITH: Yes.

A. Yes.

THE PRESIDENT: On the subject -- and you have copied and pasted into it a bit of an email from James Wood, is that right?

A. Yes, yes.

MS. SMITH: Then on page 9, just by the second hole punch, the lower of the two hole punches, you say:

"Sorry, wrong Rutters."

A. Yes.

THE PRESIDENT: So we can forget about that bit.

MS. SMITH: Yes.

So whatever is said by Mr. James Wood is not the Rutters we are talking about. The Rutter & Rutter that we are talking about, there are in fact no emails or cut and pasted bits of emails from the Rutter & Rutter you are talking about in paragraph 49 of your statement, are you, there? There are just internal emails between you and Aine saying what you have discussed?

A. That is right. Yes, that is right.

Q. So there are just emails between you and Aine saying what you had discussed with the Rutter & Rutter that you are referring to at paragraph 49.

A. Yes.

Q. So let us try -- it is a bit complicated, but let us try to follow it through chronologically., the internal email exchange, following it through chronologically.

A. Yes.

Q. I am sorry, I have completely misled you. It is not that one. It is another one. There are emails from Rutter & Rutter. I am sorry, let us start again. Sorry, apologies, my mistake. Let us start again from the chronological account of the emails. At page 6 -- sorry, it is just the way these things have been printed out. Page 6, towards the bottom of the page there is an email from Aine dated 27 November 2015.

A. Yes.

Q. Do you see that?

A. Yes.

Q. That is from Aine to Laura at Rutter & Rutter and Charles at Rutter & Rutter:

"Dear Laura,

"Thank you for your time on the phone just now."

Basically she is introducing her to the passport and she says in the middle of page 7:

"Your two subscriptions are due for renewal at the end of next month and we do of course hope you will be renewing again. Your subscription includes these services ..."

A. Yes.

Q. She asks to call.

We do not have any response from Rutter & Rutter. We have a further email on page 6 from Aine of 1 December 2015, do you see towards the top of page 6, 14.35? Do you see that?

A. Yes.

Q. It says:

"Thanks for getting back to me Laura. Your subscriptions will expire on 1 January. Thank you for your business and of course do not hesitate to contact us should your compliance/training needs change in the future."

A. Yes.

Q. Again we do not actually have an email response from Rutter & Rutter to that. What we do have is an email from -- this is where we have to jump about a bit. On page 8, at the very bottom of page 8, there is an email from you, 1 December again but about an hour later.

A. May I read that email?

Q. Please do.

A. Thank you.

This was after Aine had alerted me that Rutter & Rutter did not want to renew and I rang up to see what the reason would be -- I do not normally do that, but I did on this occasion. I then emailed Aine saying:

> "Blimey, I spoke to Charles and it was very friendly but he is right, they do have to do mandatory stuff and it is much less good than ours apparently but not keen to pay twice."

So as a result of that we see subsequently Aine clearly emailing me in July to confirm what was on the database:

> "... and Laura called on 1 December and said that due to CQS duplication they would not be renewing. Charles did not take us up on our half price offer."

There we are.

Q. There we are. Let us take it step by step. There is your email of 1 December which you helpfully read out at 15.35 at the bottom of page 8. Then there is an email four days later, page 5, about halfway down the page from Aine on 8 December to Rutter & Rutter saying:

> "Hi Charles, we can offer you the training for support staff at half list price."

Then there are no more contemporaneous emails. As you say, there is an email from Aine to you in July 20th 2016, I assume when you were asking her to put together documents for these proceedings?

A. Yes. Rather belatedly I said to Aine "Can you find any records of discussions that we have had with firms about when they have cancelled due to the CQS" and she found this and sent it to me in July of this year.

Q. She also says "Charles did not take us up on our half price offer".

A. If I may explain. That clearly had just followed on with the dealings with Richard Herne & Co where, in your view, in order merely to obtain a discount they claimed that they only wanted to train their support staff, which is a service that we offer that The Law Society does not. So she had made an equivalent offer to Rutter & Rutter which they had not taken up.

Q. Yes.

Now, can I ask you to take up this spreadsheet, tab 1, page 14.

A. Yes, I have got it. I have found the reference.

Q. Rutter & Rutter is CQS 00792.
A. Can I talk you through the chronology? It might speed things up.
THE PRESIDENT: Just wait to hear the questions, Mr. George.
MS. SMITH: Thank you.
THE PRESIDENT: Sorry, it is on which page?
MS. SMITH: It is on page 14. I know you are very keen to get your points made, Mr. George, but let us take this step by step. Page 14.
THE PRESIDENT: Fifth one down, yes?
MS. SMITH: Yes. CQS 00792, Rutter & Rutter. You see that they became CQS members on 9 August 2011, so again they would have been reaccredited in 2013 and taken the CQS AML training in 2013 or 2014, is that correct?
A. Assuming, which I think is probably a safe assumption, that they were accredited around about the anniversary of them joining the CQS, then yes. In 2000 -- on 9 August 2013 they would have been caught for the first time by the obligation to do The Law Society's anti-money laundering training and they would therefore have had to have done -- to comply with The Law Society's requirements, they would have had to have bought that training by ... what is it ... February 2014.
Q. Within six months. They would have had to have done the training within six months.
A. That would have been what The Law Society asked them to do. Whether they did that, we do not know. I have asked The Law Society to give me the dates when firms actually bought training and they said they are unable to do so.
Q. Now, we are trying to look at the reasons why people cancelled their training and you have said in your witness statement you often do not know why and I am putting to you other reasons why they may have cancelled their training with you. Now, given that Rutter were obliged as members of the CQS to have taken the AML training at the very latest by February 2014, when they were getting in touch with you in December 2015 and saying they want half price, or nothing, it is again very possible that the CQS was just an excuse for their cancellation?
A. Do they say they want it half price?
Q. Or they were offered half price and they did not take you up on that offer, they cancelled the training.

A. They said they were cancelling due to the CQS duplication, and I would remind you that The Law Society was not including AML in the mandatory AML training it was forcing firms to buy, but also covering it in the compliance updates.

Q. Let us just stick to the case that you have made and the evidence you have given. This firm had to have carried out their CQS AML training at the very latest by February 2014, 18 months later they were getting in touch with you. When you phone them up and say "Why have you cancelled your subscription", or "Why do you want to cancel your subscription?" they say "Oh, well, there is the CQS", but they had to carry out their AML training under the CQS 18 months earlier at the very latest. It is equally possible, is it not, that they actually wanted to go and get training from another provider? You have told us the AML training market is highly competitive and there are lots of providers providing general AML training. It is equally likely this was just an excuse to get you off the phone and they preferred the training offered by one of your competitors, is that not the case?

A. No.

Would you like me to explain?

THE PRESIDENT: Yes, please, because it has been put to you that this may be a pretext basically.

MS. SMITH: Yes.

A. It is not always easy to get through to partners in law firms. It seems on this occasion Charles was happy to take my call and we had a friendly conversation, in which he said disparaging things about the quality of The Law Society's training. The Law Society will know when this firm actually did buy its anti-money laundering training. You have not so far disclosed any evidence on that subject, despite me asking you to do so. It would be interesting, I agree, to know when The Law Society compelled this firm to buy its anti-money laundering training, but it is not me but you, Ms. Smith, which is relying upon supposition as to the date upon which that firm did in fact buy the training which The Law Society compelled it to buy as a pre-condition of remaining in the CQS, and I --

THE PRESIDENT: What is being put, Mr. George, is it is clear that is what they told you, they said it is due to CQS duplication, and you have explained you had a friendly conversation with a partner, which does not often happen for this sort of -- with selling your product and that is what he told you and presumably you are saying there is no reason to disbelieve him. What Ms. Smith has sought to point out is: well, if that were the reason, it is surprising, is it

not, that they did not cancel a year before? I think that is the point. One would have expected them to cancel the year before. Do you want to comment on that point?

A. If they had in fact bought The Law Society's training at that point and it had all registered in their consciousness, you can see how they might easily have cancelled the year before, that is certainly right.

THE PRESIDENT: Yes, thank you. I think that is it.

MS. SMITH: There is just one other point I think it is fair to put to you on this, before we move on to your next example, Mr. George, which is that you say in paragraph 49 that Rutter & Rutter also took other services from Socrates which they cancelled at the same time, so they did not just cancel the AML training, they cancelled all their training services that you had provided for them and I say given that they took all their training away from you and presumably took it somewhere else, or decided they did not need it, it is equally possible that, as the President said, the CQS was just a pretext and in fact they had moved all their training requirements to another provider?

A. I have to say I think that is extremely unlikely. Anti-money laundering training is unusual in being the one area where firms have an ongoing obligation to provide training, maybe every two years, but possibly every one year. It is extremely common that firms will take something like equality and diversity training, train everybody in it that year and why would they renew it next year; everybody has been trained, they have no ongoing obligation. They may come back in five years time when there has been staff turnover. So it is extremely likely when someone cancels AML training that we will lose them for the other services as well.

Of course if we had not lost them for AML training then the other services would have been much cheaper, they would have got the discounts applicable to firms that buy more than one service and therefore it is a much easier financial decision to keep things on as a makeweight at a low price than when they are now being charged full price for say equality and diversity training as being their only service.

Q. If we can move on to the third and final example that you have given, which is Wainwright & Cummings. You do not address them in detail in your witness statement except to say in paragraph 55:

> "There is email correspondence between Socrates and three firms Richard Herne, Rutter & Rutter and Wainwright & Cummings, so the loss of the Wainwright & Cummings account has cost Socrates £600 a year."

Let us look at the emails between Socrates and Wainwright & Cummings. This is at the very end of the exhibit, tab 4, page 14. Do you have that?

A. Yes.

Q. At page 14 we have the email from Aine to Jonathan Cummings of Wainwright & Cummings:

> "Dear Jonathan, I just called the office but was unable to speak to you about your subscription renewal. First, I hope you have been using the taining and have found it useful. We are always keen to hear feedback."

Then she sets out the details of the compliance passport package, asks if he will be renewing again at the end of the month.

Then we see on page 13 there is no reply, so eight days later -- or appears to be no email reply anyway. Eight days later on page 13 Aine sends an email to Jonathan Cummings, 22 June, 11.38. Do you see that?

A. Yes.

Q. "Dear Jonathan, have you decided how to proceed regarding your subscription renewal as per email below? If you could let me know this week that would be great."

Then we get a very terse email from Jonathan Cummings at 11.58 on 22 June:

> "What is the renewal cost for AML only?"

Do you see that?

A. Yes.

Q. Then we have Aine's response, a few minutes later:

> "The renewal rate will be £600 plus VAT reduced by 10 per cent for two years, 15 per cent for three."

Then we see Jonathan Cummings' response, 22 June at 12.10, on page 12:

> "Thanks. We wish to cancel the subscription. Please do not renew it."

But Aine is nothing if not tenacious and on 22 June at 12.19 you see the email from her saying:

> "Thanks for getting back to me Jonathan. Just for our records could I ask you why you will not be renewing the service? Did you find you were not using it, or perhaps found an alternative provider? It is useful for us to know. I notice you are CQS accredited with The Law Society, do you find you are doubling up on training? Many thanks in advance for your comments."

Then we see Mr. Cummings' response:

"It is really a question of duplication."

Top of page 12. Aine asks him a further question the next day:

"Morning Jonathan, is that specifically the CQS accreditation that creates the duplication?"

You get a very terse response:

"Basically yes."

You have seen that email exchange.

A. Yes.

Q. So just for completeness if I could ask you to look at the spreadsheet, page 25. The Tribunal has that, wainwright & Cummings, CQS 01496, just towards the bottom:

"Wainwright & Cummings were accredited on 17 October 2012."

So again they would have been required to do their CQS AML training by at the very latest March/April of 2014.

A. April, yes.

Q. So again I suggest to you, particularly in this instance when it was actually Aine who in effect asked leading questions and said "Is it the CQS", he just went "Oh, yes, yes", it was just another convenient excuse and it is equally likely that there were other reasons for his cancellation such as he preferred another provider but he did not want to say because it was easier to blame the CQS. You would disagree with that?

A. It is not my experience that people are so shy about giving honest feedback to somebody on the phone, but who knows.

Q. Who knows, that is it.

A. It seems most unlikely to me. It also seems most likely to me that he was not happy in being caught in a situation where he had been paying for anti-money laundering training from Socrates and had then been forced to buy anti-money laundering --

Q. Now, Mr. George, you really are speculating.

A. No, I am not speculating, I am not speculating in the least.

Q. There is nothing in the documents that suggests anything of that type, and that, Mr. George, is the problem.

A. No, no, this is not speculation. Can I just explain? He had had an anti-money laundering subscription with Socrates during the relevant years and during those years while his subscription with Socrates was current he had, by your own figures, been compelled to buy equivalent training from The Law Society. He could not have been particularly entertained

by that and you can imagine him thinking at some point in the future that he would not want to renew Socrates.

THE PRESIDENT: I think we have covered this whole area now of these and one can draw various inferences or not.

Can we make this bundle -- we had better give it a number because -- we cannot put it in E2 because it is bursting and we have not got an E3.

MS. SMITH: What we can do is get files made up overnight.

THE PRESIDENT: Call it E3. Well, we have seen the evidence, we have seen what they said, how that arose and we have seen the extent of overlap in the years when they must be carrying both.

MS. SMITH: Yes and we have seen Mr. George's evidence and I have tested that evidence.

MR. ALLAN: Sorry, very very briefly, it would just be helpful to clarify what the figures in that sixth column mean, because I think my speculation was not necessarily right.

MS. SMITH: Yes, I will try to get instructions on that overnight and let you know, if somebody could make a note of that, in the morning.

I would like to move on from the qualitative evidence, as it were, to the quantitative evidence of effect.

A. I am awfully sorry, I do apologise, can I just interrupt because I just have come across at the bottom of page 16 the information:

"At present we have 171 firms with a two or three year commitment."

Now, I do not know whether Wainwright & Cummings, Rutter & Rutter or Richard Herne & Co had a two or thre year commitment, but clearly 171 firms who are obliged to carry on with us for two or three years in order --

THE PRESIDENT: Yes, I see, thank you. That is the bottom of page 16.

A. End of paragraph (b).

MS. SMITH: Can I move on then. Could you give me one minute please.

(Pause).

I am just having an eye on the time, sir, and there is --

THE PRESIDENT: Well, we can sit a little bit later because the arrangement I had at 4.45 has been cancelled, but we cannot go -- certainly cannot go beyond 5 and I think we need to have a short break for our transcribers. So would it be sensible to have a five minute break now?

MS. SMITH: I think it might. I am about to go on to a different topic. There is a risk, and perhaps just before we break I should highlight this -- I am about halfway through my cross-examination. Obviously there are questions the Tribunal want to ask and Mr. George needs to be given the opportunity to make the points he wants --

THE PRESIDENT: I think we have to take Mr. Smithers at 9 o'clock tomorrow, do we not?

MS. SMITH: I understand that he has indicated he can -- he thought he had a very early morning commitment on Thursday, so he wanted to be finished by midnight Australian time, which is 1 o'clock our time. However, he has indicated that that early commitment is not now going ahead, so he can continue for as long, he said, as needed. The question then is whether we can finish off Mr. George first thing tomorrow while -- and start Mr. Smithers a little later, say 9.30 --

THE PRESIDENT: You say he is ready to go to 1 o'clock our time tomorrow?

MS. SMITH: Originally Mr. Woolfe said he would do best endeavours to finish by 1 pm because that is midnight Australian time and Mr. Smithers was worried about having to get on a plane the next morning, but he has said he does not have to get on a plane quite so early next morning. He is still getting a plane the next morning, so we cannot go over to the next day, but he is willing to sit a bit later than 1 o'clock.

THE PRESIDENT: Yes. I am not terribly attracted by keeping a witness going beyond midnight. It seems quite oppressive.

MS. SMITH: The alternative is we interpose Mr. Smithers and then come back to Mr. George.

THE PRESIDENT: Well we will have a think about it when we get there -- I think we must stop at 5.

MS. SMITH: Absolutely, sir.

THE PRESIDENT: We will take a five minute break and think about where you are going.

(4.15 pm) (A short break)

(4.22 pm)

THE PRESIDENT: Yes.

MS. SMITH: Thank you.

Mr. George, if you still have bundle C1 open you can close that and put it away now. We have finished with that.

Can I ask you to get out bundle B.

A. Yes, I have it.

(Pause).

MS. SMITH: Sorry, I was about to move on to ask Mr. George about his subscriber analysis, which is at B, tab 4, but I do not quite understand -- Mr. Woolfe wanted to make a point.

MR. WOOLFE: Yes, sir, if you recall at the PTR I pointed out was what the claimant had done was serve a report from Dr. Majumdar, which was actually verified, referring to the section of the tribunal rules dealing with expert evidence. So tab 3 is the (inaudible) of Dr. Majumdar and you see at the end of it, before the annex. They did not have permission for expert evidence, as you recall.

MS. SMITH: No, that is wrong.

THE PRESIDENT: He was allowed to put in an analysis of the data.

MR. WOOLFE: That is right.

THE PRESIDENT: It does not matter who does it.

MR. WOOLFE: Yes, and the issue which I raised at the PTR was that if we are going to proceed by way of cross-examining on each of these -- and this was meant to be just the data and without -- that effectively -- if you get into asking witnesses, one of whom is an expert, questions about the data and how it is to be interpreted and so on, there is an inequality of arms because one side has an expert and one has not. I understood that you had decided that these were not -- ours is not given in the form of a witness statement, it is a letter.

THE PRESIDENT: Yes, but it is not because it is in the form of a witness statement or not, it is just that we have data which both of you ... whether you both wish to put in, but in any event you have both put in having looked at the number of firms and cancellations and so on and I think what as I understand it is going to be asked is what are the implications, or what could be the reasons and so on for that. I do not think that is really particularly a matter for expert evidence anyway, but it is a matter which you can ask Mr. George because they are leaving his -- they are his clients who are leaving, or not leaving as the case may be.

MR. WOOLFE: It is one thing to ask questions about how data is compiled and so on, it is another thing to ask someone to express an opinion which I understood they are not meant to have, in their case, expert opinion evidence being admitted as to the interpretation of it. I was not proposing to give Dr. Majumdar, in a sense, the opportunity to give expert opinion and we do not have an expert opinion on our side.

THE PRESIDENT: No, but I do not think it is expert opinion. It is the proprietor of the firm from which these clients are leaving as to what is the effect and what could be the explanation, as the man who runs the business.

MR. WOOLFE: In which case I am not objecting in a general, but perhaps just note a point of caution that if it strays into matters of opinion, that there might be a slight inequality --

THE PRESIDENT: It does not seem to me an economist's question at all. That may be a question as to how the data was compiled --

MR. WOOLFE: On that basis I am --

THE PRESIDENT: -- but then also it seems to me that it would be quite wrong to prevent Ms. Smith from asking questions on it.

MR. WOOLFE: In that case, I am content, sir.

THE PRESIDENT: So go ahead.

MS. SMITH: Thank you. Can I just make the point, so as to absolutely clarify the position, that in your reasoned order, sir, of 5 October, when you gave the parties permission to put in factual analysis, paragraph 4 of your reasons said that:

> "Insofar as the defendant wishes to present a purely factual analysis of the data, whether prepared by its own staff, its solicitors, or its expert, it may do so pursuant to paragraph 1 of this order."

So any complaint about the fact that this factual analysis was prepared by our expert cannot be sustained.

THE PRESIDENT: No, there can be no complaint about that.

MS. SMITH: No complaint about that.

THE PRESIDENT: I think Mr. George said he had some expert help as well, which is fine.

MS. SMITH: Yes. Insofar as Mr. George wants to rely on what is in the letter, or the document that he has put in tab 4 of bundle B, in my submission -- we will make the submission -- this does stray into opinion evidence, he strays into opinion evidence. It is not just a purely factual presentation of data, he speculates in this document what has happened and why and I will ask him questions --

THE PRESIDENT: You can ask him questions, I said you can ask him questions.

MS. SMITH: -- about what is in that document.

THE PRESIDENT: Yes, you can. I made that clear. Just go ahead.

MS. SMITH: Just in case there is any suggestion that what we are doing is in any way improper, or in any way should be discounted by the Tribunal when considering its decision in this matter.

THE PRESIDENT: No. We have looked at these figures and we would welcome some clarification actually.

MS. SMITH: Absolutely. So if I can ask you, Mr. George, to turn to tab 4 of bundle B, this is your subscription data analysis and on page 1 by way of background you describe the data that you have used. Do you see that in paragraph 1?

A. Yes, I do.

Q. First of all at (a) there are two lists of CQS accredited firms provided by The Law Society, do you see that?

A. Yes, I do.

Q. Then your data is described at (b) and (c). First of all, you have provided, as you explain in (b), lists of Socrates subscribers for each year from 2011 to 2015, do you see that at (b)?

A. Yes.

Q. You explain:

> "These lists contain the details of any firm that subscribed to Socrates AML training for law firms at any point in the year. Therefore the numbers will be greater than those which were subscribed on any specific day."

A. Yes.

Q. So that is that data. Then at (c) there is different data for 2016. As you explain in (c) you used an additional list of such firms subscribing as of 7 October 2016, do you see that at the top of page 2?

A. Yes.

Q. "The total number of subscribers in this list is naturally lower than those in the previous lists as it refers to subscribers on one day, not at any point in the year."

You have explained there.

A. Yes.

Q. In fact it only describes subscribers as of 7 October, so it may very well be that people subscribe during the course of the year, or after October, is that correct?

A. Yes.

Q. In paragraph 2 you explain that you did the great majority of the work on the analysis yourself, you did not seek the help of expert witness, however in the last few days you "had some assistance from a contact skilled in maths and Excel". What did they do exactly?

A. This is somebody who just happens to be a very -- although she is actually a theatre director she is an extraordinarily talented mathematician and extremely good with Excel and she had ways of processing the data which spotted anomalies and sorted the data more reliably than

I would have been able to do myself up until then. So she basically just did some data organisation stuff in a much better way than I was able to do.

Q. Right. We might come back to that and to the figures which you then present.

Just while we are here, looking at paragraph 3, you say:

> "The process of cleaning and analysing the data was considerably more lengthy and difficult than I anticipated."

Did you clean and analyse the data, or did your friend, the theatre director, do it?

A. No, I did.

Q. You did.

About halfway through that paragraph though you talk about Socrates' database consultant.

A. Yes.

Q. Who was that and what did they do?

A. He is a man called John Rawcliffe, Portcullis Consulting, and I -- databases are completely beyond me, but he is the person who has until recently actually looked after our database and done some redesign work on it. He -- I asked him "What can you get out of our database which will do this?" and he came up with this methodology which he assured me was the best method, which I have to say I think in retrospect was not the best method, I think actually we could get better data out of the database, but he had this methodology whereby he could do a report on every firm that had an anti-money laundering subscription with Socrates at any point in a particular year and he therefore would deduce from that that a firm had cancelled its subscription if in the following year it did not have an AML subscription. Well, that seems logical enough. As I explained in my report, that actually is a flawed methodology because a firm may cancel at one point in one year and then resubscribe at a later point in a later year and will therefore appear in both years as if there has been no break in their subscription. I have been -- so that is what he did and unfortunately -- I am sorry to -- do stop me if I am going on, but we have a real problem -- there were real problems with the data on both sides. The Law Society was unable to provide data about when firms actually bought the CQS training and therefore the key date that I wanted was not available. We have had to infer when they might have bought the CQS training from their mere accreditation date, which is not satisfactory, and I was only -- through John Rawcliffe, I was only able to produce this very crude analysis of firms that had an AML subscription with Socrates at some point in each year. Now, you can draw some inferences from that about renewals, but it is flawed.

Q. You explain the difficulties that each side had with the data in paragraph 3, I just want to explore a little bit what you do not say here.

What you have just explained, I think your database consultant produced the lists that you describe in paragraph 1(b), is that right? The list of subscribers for each year --

A. Yes, exactly.

Q. -- the details of any firm that subscribed at any point in the year.

A. Yes.

Q. So he produced those lists for you?

A. At considerable cost.

Q. The list at (c), you produced that yourself, did you, the 7 October 2016 list?

A. That is something -- you can do it in real time in a completely different way, so Nicky Oliver who works for me was able to produce that. She can do that in real time. As of today the database is set up to produce that report. You cannot do it for a hypothetical date in the past, which is such a frustrating factor.

Q. All right. I will perhaps come back to that, but let us look at the hypotheses that you set out in your report, page 4. The bottom of page 4 is your first hypothesis that you want to test, to do with the data.

A. Yes.

Q. Your first hypothesis is that:

> "CQS firms will become less likely to renew their subscription with Socrates when the requirement to purchase tied training is introduced."

A. Yes.

Q. Then in paragraph 6 you say, on page 5:

> "In order to understand why my adopted methodology is appropriate it is worth first exploring why some other methodologies do not provide meaningful data."

You say:

> "If one simply measures the percentage of firms cancelling who are in the CQS as against firms cancelling who are not in the CQS one gets this ...."

That is figure 1. You say under that table figure 1 -- you basically say those figures are not helpful, you say:

> "Much of that growth in the proportion of leavers who are in the CQS, especially in 2013, is due to growth in the number of firms in the CQS."

A. Yes, clearly those figures look --

Q. "It is clear that this is not a good measure", so you reject those figures as a good measure?
A. Those figures clearly look fantastic from my point of view because they show as time goes by ever higher proportions of our cancellations being CQS accredited firms, but it is distorted by this constant growth in the CQS, so you have to find a way of taking that out of account. It is distorted by other factors as well, but that is the big one.
Q. Let us come back to the fact that it is good for your case to show an increasing number of firms leaving Socrates who have CQS accreditation -- I say that does not actually test the hypothesis that you set out that, that CQS firms will become less likely to renew their subscription when the requirement is introduced, but we will come back to that when we look at the figures you actually rely on. I just want to confirm you are not relying on the figures in figure 1?
A. No, they are just illustrative.
Q. You say in terms that is not a good measure?
A. I made my position clear in the statement.
Q. Yes, absolutely.
You then say at the bottom of page 5, (b):
> "Hence to obtain more meaningful figures I did the same analysis with two adjustments."

Then over the page you explain what those adjustments are:
> "Instead of measuring firms who were in the CQS at the relevant time, I looked at firms who were ever in the CQS, so if a firm joined the CQS in say 2012 they are still treated as a CQS firm for the purposes of all years of the calculation."

That is the first amendment you made.
A. Yes.
Q. The first adjustment you made, that is correct?
A. That is right.
Q. The second adjustment is you limited the data of the firms that still exist to that day in order to eliminate the effect of firms closing, that is the second --
A. That is right.
Q. So let us just look at the analysis that you carried out, if I can just set it out step by step to make sure I understand it and then I will ask you some questions about it.
The analysis that you carried out -- and I have taken this from the report generally. I am going to set out a number of stages and see if you agree with them because I am trying to

work out what was done. This is not now taken from your report. This is taken from my understanding of your report. So I say the first thing you did was you look at firms that still exist now and have at some stage taken AML training from Socrates. Is that correct?

A. Yes.

Q. Then you identify firms that have cancelled their subscriptions by reference to these tables, the data you have set out?

A. Yes, I mean it is not quite -- what we are looking at is firms who from the flawed data which I described, appeared to have cancelled their subscription with Socrates in a particular year.

Q. Right. This is perhaps figure 2, this is the total number of firms cancelling AML subscriptions in the first row of your figure 2.

A. Yes.

Q. Then you --

A. Can I just explain something, just to be absolutely clear about dates?

Q. Yes.

A. If you take for example a 2016 cancellation, that means it did not have -- no, sorry, that is the one exception. A 2015 cancellation, that means it did not have an anti-money laundering subscription with Socrates at any point in 2015, but it had at some point in 2014, so that is what it means.

Q. Right. I think I understood that to be the figures, but I am going to take it stage by stage and come back to that, if I may. So this is firms who are still in existence now.

A. Yes.

Q. You identify those firms who have cancelled, first row of figure 2, is that right?

A. Yes.

Q. You split that into two groups: the CQS firms cancelled, second row of figure 2, is that right?

A. Yes.

Q. Non-CQS firms who have cancelled?

A. Yes.

MR. ALLAN: Sorry to interrupt you in your process, but Mr. George did qualify his response to your question in relation to 2016 and I am not sure I understand why 2016 does not --

A. There is this oddity with 2016 that unlike the other years, that is a list of firms which had an AML subscription with Socrates at that date, not at any point in 2016.

MR. ALLAN: But when you say for 2016 total number of firms cancelling, what does that mean?

A. That means they had an AML subscription at any point in 2015 but they no longer had one in August 2016.

MR. ALLAN: On that date.

A. On that one date, yes. That is why you actually see the higher number of cancelling firms. It is just a less forgiving methodology.

MS. SMITH: Well I will come back to that. I want to take it step by step but I might come back to that as one of the points I want to clarify.

A. It does not actually I think matter particularly for this purpose because we are simply looking at the ratio between CQS and non-CQS and that should not be affected one way or the other. It is a distortion which applies to them both.

MS. SMITH: Let us take it step by step if we can because I find these figures quite difficult, because, as you say, they are worked out on a number of different bases and we need to find out what can be compared with what.

THE PRESIDENT: Can I interrupt you for a moment. I am struggling. I am sure it is my failing. As I understand it you count a firm as cancelling if it was ever in the CQS, even if it was not in the CQS the year before, is that right?

A. Yes. In terms of -- no. I count a firm as cancelled according to whether it continued to have an AML subscription with Socrates for a sequence of years. I count the firm as being in the CQS according to whether it was ever in the CQS because I wanted to take out of account the fact that the number of firms in the CQS went up like a space rocket, so I said let us just look at conveyancing firms cancelling, or CQS firms cancelling, against non-conveyancing firms cancelling and that should take out of account that great distortion as firms join the CQS.

MS. SMITH: This is one of the points I wanted to explore, if I can do it step by step.

A. I see this as a torturous way of doing it but unless one adopted that methodology one could only get very distorted data.

THE PRESIDENT: But what I do not at the moment understand is how in 2012 you say, in figure 2, 96 firms cancelled their AML subscription.

A. Yes.

THE PRESIDENT: But in figure 1, in 2012, 129 firms cancelled their AML subscription. I just do not understand that.

A. I have limited the figures. In figure 2 I have taken out of the account all figures which have closed between then and the present day and that is a substantial number. It is a common reason why a firm will terminate its subscription to Socrates, that it closes or is taken over, or merges into what is essentially a new firm. So there was a much larger -- and again unless you take out those firms you get a systematic distortion.

THE PRESIDENT: But in the following year, if you compare figure 1 it is 100 firms that have cancelled, or have left/not renewed; in figure 2 it is 96.

A. Yes.

THE PRESIDENT: Sorry, in 2013.

A. Which year? 2013.

THE PRESIDENT: Figure 2 it is 127. I do not understand why it is higher.

A. Now, hang on, I think that is --

THE PRESIDENT: You see what is puzzling me?

A. Yes, you have got me there. So 2012 is the anomalous figure.

THE PRESIDENT: 2012 you have explained, because you have taken out the firms that closed and so it goes down from 129 to 96, but 2013 it goes up significantly. The same is true of 21, also in 2015, and I do not -- whether your methodology is sound or not, I just do not see how that ...

A. No. I will have to go away and look at those figures again. I am just looking at my notes to see if I can explain it anywhere.

THE PRESIDENT: Well, we had hoped this is your evidence today. That does not really make sense, does it?

A. I see your point. I had not spotted that anomaly. That clearly is an anomaly. I passed on the spreadsheets and so on all to Dr. Majumdar. I cannot think how that has arisen. I will need to go back to my other -- the person who helped me with the data and see what has happened there.

THE PRESIDENT: Yes.

Sorry, Ms. Smith, if I have taken you out of course, but I was just trying to understand what these figures are.

MS. SMITH: Well, as we have for some time. There are a number of unanswered questions that we still have about this analysis. I just want to focus on two issues that trouble us about it and if I could ask Mr. George about those.

Just, first of all, what you say, Mr. George, figure 2 shows, because you are saying, as I understand it, when you compare the number of CQS firms that cancelled with the number of non-CQS firms that cancelled you get a ratio of about 1:1 for the years 2009 to 2013 --

A. Yes.

Q. -- that is what you take from this data, is that right?

A. Yes.

Q. You draw the Tribunal's attention, in fact you I think are going to rely on the fact, that in 2014 to 2016 on your figures the ratio is 2.28:1, a higher ratio of CQS to non-CQS --

A. Yes.

Q. -- and that is what you want to say about these figures to support your case; that is right, is it not?

A. Yes, that is right.

Q. I want to explore two issues with you about this. First of all, your definition of a CQS firm. So the definition of a CQS firm, the numbers you set out in your second row, you have explained, in sub-paragraph 1 at the top of page 6, that your definition of a CQS firm is 1, a firm that has at some stage between 2000 -- well, it has to be 11 --

A. At any time.

Q. -- to 2016 obtained CQS accreditation, that is correct?

A. Yes, at any time, yes.

Q. That is right?

A. Yes.

Q. So it is a firm that has at some point during that time had CQS accreditation?

A. At any time, yes.

Q. That could include firms that did not obtain CQS accreditation until say 2015 or 2016?

A. That is right.

Q. That is right.

Also you have identified firms as being CQS firms in 2009, even though the CQS did not exist in 2009?

A. That is exactly my point you see, because otherwise you get this big distortion.

Q. You have also identified firms as being CQS firms in 2010 when it was not introduced until October 2010/2011?

A. No, I explained that. Do you need me to explain that again?

Q. No, it is just what one can take from these ratios, because you have used those years to compare the numbers of CQS firms on your definition versus non-CQS firms and you have said "Look at the ratio".

A. That is right.

Q. But those CQS firms -- well, they certainly --

A. Call them conveyancing firms if you like because I see how the expression "CQS firms" is at first blush --

Q. Misleading.

A. Misleading, yes. So you could call them something else, you could call them "conveyancing firms" or "any time firms", whatever, but I have been very clear what I was seeking to measure there.

Q. Right, but the problem is that you have identified firms that you have called "CQS firms" as having cancelled a Socrates subscription in say 2013, or 2014 when at the time that they cancelled they may not have been CQS firms, they may have not taken -- become CQS firms until 2016.

A. This is exactly the point I am making. What I am trying to look at, I am trying to look at these two populations of firms and this is not -- if we had great data we could do great figures. We have got poor data unfortunately. But we are looking at the population of firms who have never been in the CQS, the CQS must be irrelevant to their cancellation rates by definition and we look at their cancellation rate year on year and you get, you know, a relatively -- you get a certain pattern. Then you look at firms which are conveyancing firms and so broadly around 2013 or so they were joining the CQS -- 2012, 2011 they were joining the CQS.

Now, let us just look at the behaviour of those non-conveyancing firms against the behaviour of those conveyancing firms, taking out of account again this distorting factor of firms that have closed, because they may have closed before the CQS ever got off the ground so that will distort the data. Let us just look at these two very crude populations to see if any big picture emerges and what we find is that these conveyancing firms seem to have had a much greater propensity to cancel their subscription with Socrates once the CQS training or sales of anti-money laundering training got going.

THE PRESIDENT: Just to be sure I have understood this, I think the expression "CQS firms" is confusing.

A. It is confusing, yes.

THE PRESIDENT: I think you recognise that. It confused me and I think it may have confused the people on the defence side. You are using it as a rather crude, as you put it, proxy for a conveyancing firm.

A. Yes.

THE PRESIDENT: What you are really trying to do is look at conveyancing firms and non-conveyancing firms and as a proxy for a conveyancing firm you have used a firm that has ever been in the CQS, would that be a fair way of putting it?

A. That is right. But to take a simple comparison, if you look at the figures for --

THE PRESIDENT: Never mind. That is what you are doing and that is why you have done it that way, is that right?

A. Yes.

THE PRESIDENT: Then just listen to the questions. I think I have now understood what you are trying to do, yes.

MS. SMITH: I am still slightly unclear about this, Mr. George, because --

A. Can I explain?

THE PRESIDENT: Wait for the question.

MS. SMITH: What you have done is you have identified -- you have defined, as you say, in sub-paragraph (b), CQS firms, that is the second row of figure 2, as being firms who have ever been in the CQS -- well, no, we start with the population of firms cancelling their subscriptions with you, so they were previously subscribers to your service.

A. Yes.

Q. They could have been conveyancing firms, they could have been any other type of general practice firm, the population that we start with who have cancelled their subscriptions with you, yes?

A. Yes.

Q. In row 2 you have identified what you call CQS firms which is firms that have at any time joined the CQS. So by definition they have to be conveyancing firms because they have at some point during the period become CQS members.

A. (Nods).

Q. But you have also then identified everyone else as non-CQS firms. They could equally well be conveyancing firms who are not members of the CQS, is that right?

A. There are relatively few firms who do conveyancing that are not in the CQS, very few in fact, who do significant conveyancing.

Q. But what you have used these figures for is to identify these two ratios --
A. Yes.
Q. -- ratios before the introduction of the AML training and ratios after the introduction of the AML training; that is right, is it not?
A. That is right.
Q. You have done that to test your hypothesis that CQS firms will become less likely to renew their subscription with Socrates when the requirement to purchase tied training is introduced.
A. Yes.
Q. Now, in your hypothesis what does "CQS firm" mean? Does it mean a firm that at any point in time during the period up to 2016 became a CQS firm?
A. Clearly the effect one is looking for is that a firm has both joined the CQS and been required to buy The Law Society's anti-money laundering training, and terminated its subscription with Socrates as a result. We are looking for that cohort of firms, which should be sufficient -- that should be sufficient in number to shift the totals. It will not -- we cannot find the -- we just do not have the data to work out the firms that meet all three of those conditions precisely. If --
Q. But your --
A. Could I --
Q. Sorry, go on, finish.
A. I think this would be helpful. If I could just very quickly explain, I think this is helpful. If you look at the figures for 2009/2010 we see that fewer than half of the firms that cancelled were firms that ever joined the CQS. Now, clearly those firms were not at that time in the CQS and had not at that time bought anti-money laundering training from The Law Society and we see that cohort of firms, firms that were going to join the CQS when it started had a relatively low propensity to cancel their subscription with Socrates, although they made up the majority of our subscribers, they made up considerably less than half of -- somewhat less than half of the firms cancelling. That has completely shifted around by 2015/2016. In the last two years this population of firms -- they have clearly all joined the CQS by now, virtually all have joined the CQS by now. They have pretty much all been required to buy The Law Society's anti-money laundering training by now and now look at the difference. Now somewhere around 70 per cent of our calculations is coming from this population of firms. That is such a dramatic difference that it seems to me to be significant.

Q. But there are a number of assumptions that you cannot make. You have included in 2014 53 CQS firms. They may, on your definition of CQS firms, not have joined the CQS until 2016.

A. It is possible. The great majority of course joined around about 2011, 2012, 2013. Since then the rate of growth has been around 2 per cent a year in the CQS. But it is possible.

Q. The problem is you are seeking to use these figures to establish a causal link between CQS AML training and cancelling a subscription to Socrates. That is the hypothesis you are testing, is it not?

A. I am working with poor quality data and I am doing my best.

Q. But it is dangerous to draw any causal link when you have defined CQS firms as firms that have at any period of time joined the CQS when they could have joined the CQS long after the date on which they cancelled.

THE PRESIDENT: I think, Ms. Smith, you are now making really submissions --

MS. SMITH: I am.

THE PRESIDENT: -- on why this data does not show, or does not help the claimant's case and I think that is something you can do to us and it is important you clarify, and very helpful you clarify, what actually is behind these figures and how it is done and why. What one draws out of it I think then can be left probably for submissions, otherwise you are debating with the witness.

MS. SMITH: Thank you, sir, yes, absolutely. There is one further point which I do not know whether you want me to address now or tomorrow morning, which is again a clarification about the use of the 2016 data and comparing that data with the previous year's data.

THE PRESIDENT: Well, it is done on a slightly different basis, so I think that might be useful of whether really it is comparable to 2016 with 2014 and 2015, because that is the number of firms that are -- when you say cancelling in 2016, that is just looking at how many firms you had on that date in whatever it was, is that right? No, it is not, is it?

MS. SMITH: As I read it perhaps Mr. George -- perhaps we can just clarify this point.

THE PRESIDENT: Yes, what is the 2016.

MS. SMITH: The figures -- if I can just take you step by step because I think you started to explain this. The spreadsheets that you have explained are described at paragraph 1(b), that your database consultant produced.

A. Yes.

Q. You produced a number of spreadsheets for each of the years 2009 through to 2015 --

A. Yes.
Q. -- that is right, is it not? Those were spreadsheets containing details of any firm that subscribed to Socrates at any point during that particular year?
A. Yes.
Q. So in your figure 1 in 2009 you have identified 125 firms cancelling, and putting to one side the discrepancy between figure 1 and figure 2, I am just trying to understand what that 125 firms means. As I understand it those are the 125 firms that you identified that were on the customer list in 2009, but not on the customer list for 2010.
A. I think that is right.
Q. Right, and so again, 2010, 93 who were on the customer list for 2010 but not 2011?
A. Or is it the other way round? Hang on a second. Let me just go back to what I said.
Q. Because we did have some correspondence about this with my solicitor.
A. I think in 2009 it is firms that had a subscription in 2008 but not in 2009. I think that is the way it works. Yes, I think that is the way it works. Yes, that must be the way it works, yes.
Q. That is not how you explained it in correspondence, Mr. George.
A. I think it is, but I ...
Q. It may take a little more time, I do not know whether we want to come back to this tomorrow morning, sir.
THE PRESIDENT: It might be sensible --
MR. ALLAN: Can I just ask a question. Am I right in thinking that the total population of firms considered in line 1 in each of those years is constant?
A. On figure 2?
MR. ALLAN: Sorry, I am in figure 2. The total population of firms in each of those years is constant because you are only looking at existing firms.
A. No. No, no, when I say I am looking at existing firms I am looking at firms that have not gone out of business.
MR. ALLAN: At any point in that period?
A. I am not looking at firms that are Socrates subscribers.
MR. ALLAN: No, no, I am looking at what is the totality of the number of firms who you are considering.
A. In the entire market you mean?
MR. ALLAN: But it is only those who have existed throughout the period 2009 to 2016.

A. Not in the case of 2016 that would not necessarily be the case. A firm could have come into existence in 2014 ...

MR. ALLAN: Okay, so my assumption is wrong. I will withdraw that then.

A. All we have done is just literally take out any firm that does not --

MR. ALLAN: But you have added firms in that had come into the market over that period?

A. Yes.

MR. WOOLFE: Sir, it is 5 o'clock. Ms. Smith said on a few occasions about coming back in the morning. I think you wanted to address what the best way forward is in terms of Mr. George and Mr. Smithers' evidence. I for my part do not really mind whether Mr. George gives his evidence first thing, or later in the day tomorrow, however I am conscious that you do not want Mr. Smithers being kept up ridiculously late, I can see the good sense of that, and I do not want my cross-examination of him being artificially cut short, so that is my only point that I want to make and therefore that may affect how you want to deal with Mr. George's evidence.

THE PRESIDENT: My only concern is this: Mr. George is not just a witness, he is your client, and it may be in the course of cross-examining Mr. Smithers, I do not know if you would need to take instructions.

MR. WOOLFE: I might do, yes.

THE PRESIDENT: That is undesirable when Mr. George is in the middle of his evidence. If he were simply a witness of fact and you had another client, I would not be concerned.

MS. SMITH: Sir, perhaps I can cut through this. We understand the dual role that Mr. George is playing, as an expert and also instructing solicitor, and we have every confidence that Mr. Woolfe will be very careful about what he will say to Mr. George. Obviously normally the witness would remain in purdah while another witness gives evidence, but we understand that Mr. George might want to give instructions while you are cross-examining Mr. Smithers, so we are happy for Mr. Smithers to be interposed, for Mr. George to be able to give instructions on cross-examination, but we are confident that Mr. Woolfe will not discuss with him the evidence that he is in the middle of giving and I think we are happy to proceed on that basis.

MR. WOOLFE: That would be totally manageable. I do not need to speak to Mr. George about his evidence.

THE PRESIDENT: Mr. George of course is a solicitor himself so understands that. I think I would rather we kicked off with Mr. Smithers and gave him a clear start and got him away

by 1 o'clock and -- or to bed -- and then return to Mr. George, and presumably Mr. Murphy has no problem coming on Thursday morning, is that right?

MS. SMITH: That is right. I think he is going to be here the whole time anyway, yes.

THE PRESIDENT: (Reluctantly nodding.)

MR. WOOLFE: I should say I will be a substantial time with Mr. Smithers, I do expect to be rather less time with Mr. Murphy.

THE PRESIDENT: Yes. You obviously have more questions on these figures.

MS. SMITH: Yes.

THE PRESIDENT: As regards any question of figures would I be right in thinking that any question on what figures show (a) may not be something you are going to question The Law Society's witnesses about anyway and if you do it would be Mr. Murphy not Mr. Smithers?

MR. WOOLFE: It will not be Mr. Smithers who I will be asking questions about that, no. In terms of The Law Society's figures I may now put certain questions to Dr. Majumdar to explain exactly what they mean, but in terms of meaning it will be a matter of submission.

THE PRESIDENT: But it certainly will not be Mr. Smithers, so any discussion about that is not a problem.

Then as regards questions from Mr. George, there will be more on the quantitative evidence and we might have a question or two, but apart from that --

MS. SMITH: Apart from that there are only two more short points on his witness evidence, his statements, that I need to cover with him. Obviously one can never anticipate exactly how long it is going to take to get to the bottom of things, particularly when we are not entirely clear how these figures were worked out, but I cannot see that I would be any less than an hour at least.

PROFESSOR WILKS: Any less than an hour?

MS. SMITH: Yes. I mean we may be able to get through it much more quickly than that, but I am seeing how long I am taking on each question.

THE PRESIDENT: Yes. Just give us a moment.

(Pause).

We want to ask -- we will interrupt your cross-examination, but we have a question which we think we ought to clarify now just in case it affects what might be asked of Mr. Smith, which we wanted to ask Mr. George, nothing to do with these figures you will be happy to know.

If you take the claim form, which is in bundle A, which is at tab 1. On page 4, at paragraph 4:

> "Socrates is a provider of online training. It was established in 2003 to provide AML training and support to law firms."

It is the next sentence we wanted to clarify:

> "Its products have received appropriate accreditation, both for the purposes of CPD and the professional skills course, formerly from The Law Society itself and latterly from the SRA."

Can you just clarify what is this accreditation of your product, what does it mean and is it still continuing and so on?

A. Until recently, when this whole concept was abolished, there was a requirement that solicitors had to take 16 hours CPD a year, of which a certain amount had to be from accredited training providers. So when The Law Society was the regulator, which it no longer is, and then when the SRA became the regulator, we, Socrates, applied to The Law Society for accreditation so that our materials would count towards a solicitor's annual 16 hours CPD requirement.

There is also something called the professional skills -- am I going too fast?

THE PRESIDENT: No. You got that accreditation?

A. Yes. Well, the concept has been abolished relatively recently. The SRA has gone over to an outcomes focused approach and they said it was a needless restriction on entry to the market, that people had to get prior accreditation before they were allowed to sell training to law firms, so that saved us £350 a year.

THE PRESIDENT: Yes, and the accreditation that you got, was that an annual accreditation?

A. It was. I think it was annual -- no, it may be that we were paying every two or three years. I honestly cannot remember. It may be that it was every two or three years we had to renew that application. Maybe we had an annual fee but then a tri-annual --

THE PRESIDENT: Was it an accreditation of Socrates as a training body, or for your particular training programmes?

A. It was the former. What would happen is you would submit an example of your training materials and they would judge them to be, or not to be of the required standard and therefore they could say "We can see that you are a competent and proficient organisation". You would have to give a certain amount of information about your updating and quality

control processes and the way in which firms could give you feedback, but if you ticked all those boxes they would give you CPD accreditation.

THE PRESIDENT: Then the detail of the programmes -- the courses you developed and so on, that is not something they would look at?

A. Funnily enough, no. They basically -- because there are some training providers which have literally hundreds and hundreds of courses and they are updating them and changing them all the time.

I should just mention the professional skills course accreditation, that really is only relevant to our "brush up your law" courses which is more competing with the substantive conveyancing training which the CQS involves. Those are courses aimed at people at a junior level, including trainees, trainee solicitors. Trainee solicitors have to do something like 24 hours of professional skills course elective study and we got our "brush up your law" courses accredited for that purpose. Again we did not -- they did not check every single one of those courses, they checked enough to be confident that they were of the required standard.

THE PRESIDENT: That would not be the AML courses we are talking about?

A. It is not entirely irrelevant to this litigation because those courses do compete -- The Law Society forces firms to buy training on things like conveyancing procedure, new build purchase and leasehold --

THE PRESIDENT: Yes, but we are not dealing with that, we are dealing with the AML.

A. It is not entirely irrelevant, it does have some --

THE PRESIDENT: Does that continue, the professional skills accreditation?

A. Yes, it does.

THE PRESIDENT: Who gives it, is it the SRA?

A. The SRA, yes. The Law Society has no responsibility in these areas and has not done for some years.

THE PRESIDENT: Thank you very much. We just wanted to clarify that.

Mr. George, you are not fully released, as it were, you are conditionally released so you can give instructions to your counsel, but we will adjourn now until 9 in the morning to take evidence from Mr. Smithers then.

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