

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1381/7/7/21

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 29th January – Friday 22nd March 2024

Before:
The Honourable Mr Justice Waksman

Eamonn Doran

Derek Ridyard

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Justin Le Patourel

Class Representative

v

(1) BT Group PLC
(2) British Telecommunications plc
(Together, "BT")

Respondent

A P P E A R A N C E S

Ronit Kreisberger KC, Derek Spitz, Michael Armitage, Jack Williams and Matthew Barry (On behalf of Justin Le Patourel)

Daniel Beard KC, Sarah Love, Daisy Mackersie, Natalie Nguyen and Ali Al-Karim
(On behalf of BT)

Jennifer MacLeod (On behalf of the Competition & Markets Authority)

Thursday, 29 February 2024

(10.00 am)

THE CHAIRMAN: Good morning. Some of you are joining us live stream on our website, so I start with the customary warning: an official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court.

Yes, Mr Beard.

PROFESSOR GRAHAM LOOMES (continued)

Cross-examination by MR BEARD (continued)

MR BEARD: Thank you, sir.

Professor Loomes, I do not have many questions for you. I have a couple of things I wanted to check where, given the terms of your report and what you said yesterday, I do not think you have looked at them, but I just wanted to double check that. Then I had a couple of questions on VOC, and then I think I have one on bundles, so that is the way I am going to work through things.

I do not think you have looked at this, but I just wanted to check. Could we go to {IR-E/17/266}. This is in Dr Jenkins' report, her first report. You do not --

1 I do not think you have referred to this table or any
2 material -- no. Would you mind just saying no for the
3 transcript?

4 A. No.

5 Q. Thank you.

6 Then if we could go to {IR-C/2/20}. I do not think
7 you have looked at that material, have you? This is in
8 the Annexes to Ofcom's Provisional Conclusions.

9 A. I do not recollect having looked at it, no.

10 Q. Thank you.

11 You mentioned in passing yesterday, although you did
12 not specifically refer to it in your reports, the
13 feature called Call Protect. So you are familiar with
14 the notion of Call Protect as a nuisance call protection
15 service?

16 A. Yes, in general terms.

17 Q. Are you aware that this was a feature that customers had
18 to opt into, you are aware of that?

19 A. Yes, I think so.

20 Q. Thank you. I think this is uncontentious, but you know
21 that actually around 2.2 million customers by July 2017,
22 BT customers, had opted into Call Protect, are you aware
23 of those figures?

24 A. No, but was it a free service to opt into?

25 Q. Sorry?

1 A. Was it free to opt into?

2 Q. I believe that -- yes, I think you could opt into it for
3 free, absolutely.

4 A. Well, I will accept your word on how many there were.

5 Q. Right. I will not take you to some documents. You have
6 not looked at statistics on Call Protect?

7 A. No.

8 Q. Yesterday a couple of times you talked about the
9 differences between VOCs and SPCs. You remember that?

10 A. Yes.

11 Q. I can take you back. But at one point you talked about
12 the distinction being -- you said:

13 "... there appears to be a distinction between VOCs
14 and SPCs, SPCs being more likely to switch, and quite
15 possibly, because they have ready access to broadband,
16 likely to be more knowledgeable about other options."

17 So you were seeing these two groups as slightly
18 different for these purposes?

19 A. Certainly in that respect, yes.

20 Q. Thank you.

21 If we could just go to {Day19/70:1}. There was
22 a discussion going on, and you said:

23 "... I am perfectly happy ..."

24 This is you speaking. I can go back, but I just
25 want to pick this bit up.

1 "... I am perfectly happy to agree that there has
2 been, over the years, a substantial migration away from
3 SFV products and towards bundled products, that is
4 certainly true. I think it is highly likely to be for
5 historical, technological, social reasons, qualitative
6 features. The improvement in what having broadband
7 offers to people, they see it is more important, they
8 see its benefits. They are also pushed to some extent
9 by the difficulties of operating in a world which is
10 increasingly referring people to go online, rather than
11 dealing with them face-to-face or on the telephone."

12 A. Yes.

13 Q. So there you are specifically talking about VOCs
14 discovering broadband and moving over to it, because
15 broadband brings that internet connectivity that you are
16 talking about, correct?

17 A. Yes, that is part of it, yes. I think that SPCs may
18 also move in that direction too.

19 Q. Sorry, just on "that direction", I mean, SPCs already
20 have the broadband, do they not?

21 A. They do, but they do not have television or the other
22 things that might be bundled.

23 Q. No, so they do not have television. But in terms of the
24 points about moving to get broadband and the internet
25 that you specifically refer to there, you are not

1 talking about SPCs, presumably, because they have
2 already got broadband?

3 A. Yes, unless they can get a better version of it, but,
4 yes.

5 Q. Just on VOCs, you mentioned the evidence of Ms Blight on
6 a couple of occasions. Have you read her statement as
7 well as listening to her testimony?

8 A. A long time ago, but I read it.

9 Q. It is all right, I will not test you on particular
10 paragraphs at this stage. What about Mr Bunt, did you
11 read his witness statement?

12 A. Again, quite a long time ago, but I tried to follow as
13 far as I could by watching online.

14 Q. Thank you, okay. So you know both of them talked about
15 the importance of considering competitors and the risk
16 of losing customers to competitors in both their fact
17 witness statements and their testimony, yes?

18 A. Certainly, yes.

19 Q. I am not going to -- I can take you to references, but
20 I do not think that is necessary in light of what you
21 said.

22 Could we then just go to document {F/229/1}.

23 A. Could I just say that I think it was Ms Blight who was
24 the person who was talking about, in these terms, about
25 considering the risk of losing customers by putting up

1 prices, and I think that in your skeleton you have
2 a paragraph 43, is it, where you reproduce a quote along
3 those lines?

4 Q. You may well be right. You are ahead of me on the
5 paragraphs in the skeleton, Professor Loomes.

6 A. Okay. The point I was going to make is there were
7 concerns about the possibility that putting up prices
8 might encourage people to switch away, but when they
9 actually looked at the data, or at least the data that
10 is referred to in the year that is in your skeleton, you
11 actually find that although there is a little bit of
12 movement away in response to the price rise, total
13 revenues, as a response to the price rise, go up
14 enormously, I think by 47%.

15 Q. I am not sure that data is necessarily right,
16 Professor Loomes. When you are talking about people
17 switching away, are you talking about what was referred
18 to as direct or indirect churn there?

19 A. Well, I think they were talking about a difference from
20 the previous year of about 8,000 that they called
21 incremental change.

22 Q. Yes. So if you heard the evidence of Mr Bunt and indeed
23 Ms Blight, you will understand that there were two
24 sources of statistics in relation to churn. One was
25 when specifically people called up to BT and indicated

1 that they were going to churn, and the other was longer
2 term churn effects. You are aware of that,
3 Professor Loomes?

4 A. Yes, yes.

5 Q. You do not question any of that evidence?

6 A. No. I am just saying that although there was concern
7 expressed about the possibility of people moving away,
8 the reality was, when they looked at it, it seemed that
9 they were pleasantly surprised that so few had moved
10 away, and the result was that the price increase being
11 paid by all those who had not moved away had
12 substantially increased total revenue.

13 Q. Are you talking about revenue for SFV or for all
14 customers?

15 A. I can give you the reference to it if you want to see
16 the full slide. Is that something --

17 Q. You have done your homework, Professor Loomes. I am
18 very happy to see it.

19 A. It is {OR-F/829/5}. So this is what they are referring
20 to, and I think that there is a quote in your skeleton
21 which is the sentence that says:

22 "In 1718 we need to be wary of repeating a high %
23 price increase and driving greater incremental churn."

24 You will know what kind of churn that is, I guess,
25 and they give a figure for churn from 15/16 to 16/17,

1 going up from 23,000 to 31,000, so a year-on-year
2 variation of 8,000 or 13%. But underneath they show
3 the price change revenue and you will see that has gone
4 up by 47%.

5 Q. Right. Just to be clear, are you saying this is for SFV
6 customers, Professor Loomes?

7 A. Well, I think it was what Ms Blight referred to.

8 Q. Right, perhaps we will go back to Ms Blight's evidence
9 then, shall we, Professor Loomes --

10 THE CHAIRMAN: Can I just see which expert issue on
11 behavioural evidence is this actually going to?

12 I appreciate you have observed this, but how does that
13 have an impact on the assessment you have been giving
14 about customers and their characteristics in relation
15 to --

16 A. It is to do with the difference between what was
17 anticipated might be the reaction and the actual
18 reaction that came about for real, and this, I think,
19 the point of it is that it encouraged the people making
20 the decisions at BT to push on and to take -- make
21 higher prices with less constraint.

22 THE CHAIRMAN: I appreciate that. That is undoubtedly an
23 issue in the case. But as far as you are concerned,
24 what we are interested in is your views about the
25 characteristics of the customers.

1 A. What I am trying, I guess, to say is that the reactions,
2 the responses to these price increases, were quite low,
3 relative to the price increases, so that there was
4 a dampened down response, even compared with the
5 expectations of BT.

6 THE CHAIRMAN: Okay, thank you.

7 MR BEARD: As the chairman indicated, we have evidence from
8 BT witnesses and we have extensive evidence from the
9 experts, but thank you, Professor Loomes.

10 Could we go -- just in this context, if we could go
11 back to Figure 10 of Dr Hunt's report which is
12 {E/21/48}. This is the non-confidential version. But
13 we confirmed yesterday, you do not contest any of these
14 figures?

15 A. No, I do not have any basis for contesting them.

16 Q. Just to be clear, in 2014 we are talking about 20% of
17 the base switching away in a year. That is a very
18 significant amount, is it not?

19 A. Yes, it is. It is a reasonable amount.

20 Q. Cumulatively, when we know across the period of the
21 claim that we lose over 75%, I mean, that is a huge
22 switch away, is it not?

23 A. Yes, I mean, it is old technology giving way to people
24 recognising the advantages of the internet and other
25 things in bundles, like television and sport.

1 Q. I see. Right, could we go to {F/229/1}, please. So
2 this is one of a series of documents that has been shown
3 to various witnesses. It is about 2014/2015 pricing
4 update. If we could go through -- have you looked at
5 this? Do you recall it?

6 A. If you show me the slides, I might have a better
7 recollection than just showing me the title.

8 Q. Fair enough. Let us go to slide {F/229/28} which is the
9 one I wanted to take you to. Have you seen this before?

10 A. There is something familiar about it. I do not
11 recollect it in detail, but I am happy for you to take
12 me through it, or through the bits which are of most
13 interest to you.

14 Q. Thank you. This says "Flows data on 'true' solus", and
15 "true solus" is the alternative term for VOCs, you
16 understand that?

17 A. Yes.

18 Q. If we go down to the bottom part of the page, because
19 I want to look at the -- it is this sort of purple
20 diagram and then the point across. You can see there
21 that -- sorry, could we just move slightly, so we can
22 see the wording on the left, is that possible?

23 Thank you. That is brilliant.

24 "... we know that there is a problem as 23% of solus
25 churn is 'true solus' churners."

1 So you understand that what is being said here on
2 this slide is that of all the solus churn, in other
3 words, all the churn of Standalone Fixed Voice
4 customers, 23% of it is actually VOC churn. You
5 understand that?

6 A. Yes.

7 Q. 77% of it is what we call SPCs churning away, you see
8 that?

9 A. Yes.

10 Q. 23% is the non-broadband holding people. What it is
11 looking at there is the destination of voice churners,
12 and it is a snapshot across a series of months, it looks
13 like in 2012, do you see February to April?

14 A. Yes.

15 Q. You see the red bit there?

16 A. Yes.

17 Q. This has been put to witnesses. What that is showing is
18 that across that period, 59% of that churn by true solus
19 customers was to the Post Office. You see that on the
20 right-hand side?

21 A. Sure.

22 Q. Yes?

23 A. Yes.

24 Q. So you see what is said here about BT -- by BT about the
25 Post Office, that is a:

1 "Trusted brand [that] resonates with older 'true
2 solus' customers."

3 I think that was one of the things that was picked
4 up in the hot tub.

5 It is:

6 "Targeting customers in-branch and taking control of
7 switching process."

8 Which again we discussed in the hot tub.

9 Then it says:

10 "Price-led deals attractive to cost-conscious voice
11 base."

12 So you understand here that BT at least thought that
13 this "true solus" group of customers were
14 cost-conscious. You understand that?

15 A. They thought that at least some of them were, yes.

16 Q. At least some of them were. But just going back to what
17 we talked about earlier when you talked about
18 technological shift, and so on, I think that was in
19 contrast to them shifting in reaction to pricing, but
20 this is evidence that they are shifting in quite
21 significant numbers in relation to pricing, is it not?

22 A. This is February-April 2012, is it?

23 Q. Yes, absolutely.

24 A. Okay, yes. No, I am not surprised, and I think it is
25 compatible with what I said about people switching for

1 technological reasons as well, which tended perhaps to
2 become a little bit more attractive later than 2012.

3 Q. Just to be clear, you are saying those technological
4 reasons might be part of what a VOC customer would think
5 about, but they would also be thinking about pricing?

6 A. It looks like this group, on the basis of this evidence,
7 and if this opinion is correct, if it is on the basis of
8 a survey of these folk, then I am not surprised that
9 this category of users might very well be attracted by
10 the Post Office for all sorts of reasons, including
11 price.

12 Q. Could we just go to your second report, {E/19/18}.
13 Actually, it might need to be {IR-E/19}, I am sorry, if
14 there is an IR version {IR-E/19/18}.

15 Sorry, my notes are wrong, Professor Loomes. It is
16 {E/9/18}. I am just going to take you to
17 paragraph 4.19.

18 A. Okay. Okay, I can see it on the screen.

19 Q. This is part of a discussion -- an exchange. You are
20 responding to some of the points that Dr Hunt was
21 making. You say:

22 "Dr Hunt also refers to marketing communications
23 from BT and from other providers, including
24 direct-to-consumer marketing from BT, in-branch
25 marketing by the Post Office, personal recommendations

1 from friends and family, telemarketing, and online
2 marketing, as potential triggers. I consider that, for
3 the most part, these are unlikely to have served as
4 effective triggers for more than a few Class Members."

5 A. Yes.

6 Q. When we see statistics like we have just seen in that
7 slide, that suggests that at least the Post Office alone
8 is operating as a significant trigger for more than
9 a few Class Members, does it not?

10 A. For the time that the Post Office were operating before
11 they pulled out of the market, yes.

12 Q. Do you know -- well, let us go to it, let us see if you
13 have looked at this. {IR-C/2/61}, if we could. This is
14 about Voice Only access and the tables are "Shares of
15 Voice-Only lines by CPs (in ranges)" and "Shares of
16 Voice-Only lines by CPs".

17 Have you seen these statistics before,
18 Professor Loomes? Do you remember them?

19 A. I may have done but I do not immediately recall them.
20 Can you give me a moment just to glance through them?

21 Q. Yes, of course, please. (Pause)

22 A. Okay, I think I have got the general gist of it here.

23 Q. The question was: had you considered this material
24 before? It sounds like not.

25 A. I am likely to have read it, but it is a while ago since

1 I read it so I do not recollect it in detail.

2 Q. What we are seeing there is that the Post Office was
3 operating, as you say, they had actually taken
4 a substantial share of Voice Only lines. You can see
5 that from those statistics, correct?

6 A. Yes, so 15% in --

7 Q. I am sorry, if you would not mind not referring to --

8 A. I am sorry, I am terribly sorry. I did not see that the
9 15% was highlighted.

10 Q. Oh, you may be right, I apologise. You may be
11 absolutely right, and my conscience was pricking me
12 unnecessarily, Professor Loomes.

13 A. But, yes, I see that figure.

14 Q. Yes. But that is actually quite -- again, it is not
15 a few, this is a substantial number?

16 A. Yes, I think that for the time that they were operating,
17 in the way that they were operating, they were getting
18 around the fact that perhaps many people did not want
19 direct marketing, did not want letters from providers
20 that they did not have any particular knowledge or
21 attraction to, and were encouraged by the knowledge and
22 the friendliness, perhaps, of the staff in the
23 Post Office who would probably help them out. So
24 I think it was quite a good strategy for the
25 Post Office, but it seemed that it was impossible to get

1 enough people to come across to sustain it.

2 Q. I think there is separate evidence on that because of
3 the way in which the Post Office exited once there were
4 commitments, but we will leave that for another time.

5 Can I just take you back to yesterday, {Day19/58:1}
6 in the transcript, please. This was where there was
7 a discussion about benchmarks with Mr Doran. If we ...

8 I am sorry, that reference is not correct. Could we
9 go over the page. I am sorry, it may be because the
10 reference was taken from ... Yes, sorry, it is the next
11 page, it is 59. {Day19/59:23}

12 You see at the bottom you said:

13 "I do not see what value the idea of benchmarks
14 which I take to be rates of switching in the Dual Play
15 bundles ..."

16 Do you remember giving that answer? It is down at
17 the bottom of the page, line 23.

18 A. I can see the answer. So I took the benchmarks to be
19 the rates of switching in Dual Play bundles, yes.

20 Q. If we go over the page, so this is your exchanges
21 continuing, so you were explaining your position there.
22 You say Mr Doran intervenes at one point. Just under
23 Mr Doran's intervention you say:

24 "But you see the firms have identified that is where
25 the future lies, and they are competing quite vigorously

1 with each other, and I think price competition features
2 much more prominently there. So you are observing
3 people, the customer, who have already switched maybe
4 several times, but certainly at least once from their
5 past history, unless they are coming into the bundles
6 market from not having been in the market at all, but
7 generally speaking they will have switched from
8 something else.

9 "They have a different mental attitude to
10 switching."

11 So I think, to summarise broadly, what you are
12 saying here is it is dangerous to use the benchmark of
13 broadband switching, because the people in the broadband
14 world are, in a way, more switchy, is that fair?
15 Because they have switched previously, and therefore, in
16 your view, they have a mental openness to switching; is
17 that right?

18 A. When we are talking about broadband, are we talking
19 about bundles?

20 Q. Yes.

21 A. Yes. So people in the bundles market I think may very
22 well have a more open attitude to switching, having had
23 some experience of switching.

24 Q. Understood.

25 A. Unless they have come into the market for the first

1 time.

2 Q. Understood. I see your qualification there, thank you.

3 If we could just go to Dr Hunt's report,
4 {IR-E/21/51}. You will see at the top of the page
5 there, there is a table, "Proportion of consumers
6 switching supplier in the past 12 months", and you have
7 got electricity, gas, car insurance switch, which
8 I think you said was very high, and bank accounts, fixed
9 line, mobile, broadband and digital TV.

10 If we go down to the bottom of the page to paragraph
11 212(d). So that data was taken from the switching
12 tracker analysis, and you see at (d):

13 "While the Switching Tracker analysis is likely to
14 under-state the true rates of switching [which is what
15 Dr Hunt said], the rates of supplier switching for BT
16 SPCs under the re-stated analysis is 13.0% in 2016 and
17 11.4% in 2017. This is (in regard too the benchmarks in
18 Figure 13) greater than the rates of switching for
19 mobile and broadband and similar to the rates of
20 switching observed in the electricity and gas
21 markets ... Furthermore, it is comparable to the
22 switching rates I estimate using Switching Tracker data
23 for Dual Play ..."

24 So I do not think you dispute any of these figures,
25 if we go back to the previous page; is that correct?

- 1 A. No, I do not dispute that.
- 2 Q. So actually even though, in your view, the broadband
3 bundle customers are more switchy, actually what we are
4 seeing is a similar level of switching at least in
5 relation to fixed line customers, particularly SPCs,
6 correct?
- 7 A. Just to be sure, is this switching from one SFV supplier
8 to another SFV supplier, or does it include people who
9 switch from SFV into bundles?
- 10 Q. This will include people that switch into bundles but
11 not within BT, I believe.
- 12 A. So they will switch to bundles but with another
13 provider.
- 14 Q. Yes.
- 15 A. So it is not switchiness within SFV, all of it. Some of
16 it is, and some of it is switching out of SFV into
17 bundles.
- 18 Q. Yes.
- 19 A. So the switchiness amongst those who are remaining
20 within SFV could be quite a bit lower.
- 21 Q. Undoubtedly if you remain within SFV at BT, by
22 definition you will not have switched, yes, so ...
- 23 A. Or switched to another provider of SFV but not a bundle.
- 24 Q. I think that would be picked up in these figures.
- 25 A. So that would mean that those figures, the fixed line

1 switching, includes those people.

2 Q. Yes.

3 A. But also includes people who have moved out of SFV into
4 bundles.

5 Q. Yes.

6 A. So those figures, if that is the correct interpretation,
7 and Dr Hunt can correct us, I guess, if that is the
8 correct interpretation it means the within SFV
9 switchiness, like between BT and the Post Office, is
10 lower than these figures would suggest.

11 Q. It may well be. I am not disputing that. I am talking
12 about the overall switching, and you are not disputing
13 any of these numbers --

14 A. No, I am not.

15 Q. -- and I am comparing them.

16 A. I am just saying my expectation would be that people who
17 have switched at least once, possibly twice, out of SFV
18 into bundles from one bundle to another may be people
19 who are more disposed and more adept and more confident
20 about switching than some of the people, especially from
21 the VOC group.

22 Q. But here you are talking about people who are fixed line
23 customers, who, on your basis, you are assuming had not
24 engaged in switching, and what is being said is that
25 they switch away at rates very similar to mobile and

1 broadband. You understand that?

2 A. I do, but the question is why they are switching away.
3 Are they switching away for what they perceive to be
4 a better product, such as might be provided with bigger
5 bundles, or are they switching away within Voice Only,
6 so they are getting the same product?

7 Q. Could we go back to {F/229/1} again on this. Could we
8 go to slide {F/229/29}. Have you looked at this slide
9 or versions of it?

10 A. I do not recollect it, but ...

11 Q. You do not recollect it?

12 A. No, but ...

13 Q. I think there is a limit to what I can do in relation to
14 it, because what it has, you will see on the left-hand
15 side, are the actual churn rates that BT has for
16 bundles, on the left-hand side of the page.

17 A. So that is ...

18 Q. Second row, so you see that?

19 A. Yes.

20 Q. So you see the columns "Infinity + Sport", "Broadband +
21 Sport", "Infinity + TV", "Infinity"?

22 A. Yes, I can see those, just about.

23 Q. Sorry, they are quite small, but those are BT bundles.
24 Then on the right-hand side you have "Copper + YouView
25 Essential", "Naked Broadband", "PSTN Solus", so that is

1 Standalone Fixed Voice and then copper and TV. You see
2 in the row across, "Churn Rate", under "PSTN Solus", the
3 churn rates for in contract and out of contract, which
4 is what "IC" and "OOC" mean, are around, I am just going
5 to do it broadly, 20%. Do you see that?

6 A. Where are they going to?

7 Q. Leave that for a moment. But you see the churn rates in
8 relation to the bundles are much lower?

9 A. I see. So is the interpretation that the switching out
10 of what we might call the simpler or more primitive
11 products into bundles is greater than the switching
12 within bundles?

13 MR BEARD: That is what it is looking like from these
14 figures, Professor Loomes, and I do not think you
15 considered those.

16 I do not have any further questions for
17 Professor Loomes. There will be matters in relation to
18 evidence from the BT witnesses in relation to a number
19 of matters he has raised, but I am not going to put them
20 to ...

21 THE CHAIRMAN: No. Just one minute, please. (Pause).

22 We have no further questions. Thank you very much
23 indeed, Professor Loomes. Your evidence is now
24 complete.

25 A. Thank you.

1 (The witness withdrew)

2 THE CHAIRMAN: So we move to cross-examination of Dr Hunt.

3 If he can come forward and be resworn or reaffirmed.

4 DR STEFAN HUNT (reaffirmed)

5 Examination-in-chief by MR BEARD

6 MR BEARD: Dr Hunt, obviously you have given evidence in the

7 course of the hot tub. You know that Mr Spitz for the

8 Class Representative has questions for you, he

9 indicated. The Tribunal may also have questions.

10 I do not know whether that file in front of you is

11 something that relates to you or related to

12 Professor Loomes?

13 A. This is just Professor Loomes' reports, my report and

14 our Joint Experts' Statements.

15 Q. I am grateful. I do not know whether or not there are

16 any other materials you will be provided with. If there

17 are, do feel free to look through and see what is in

18 there. Equally, if you need, when taken to a document

19 on the screen, to have it moved up or down to see

20 context, please do ask the EPE operator.

21 A. Yes, I will.

22 THE CHAIRMAN: Yes, Mr Spitz.

23 Cross-examination by MR SPITZ

24 MR SPITZ: Thank you very much.

25 Good morning, Dr Hunt.

- 1 A. Good morning.
- 2 Q. I want to begin by asking you some questions about the
3 Net Promoter Score or NPS. NPS is a measure of how
4 likely a customer is to recommend their service provider
5 to a friend or family member; is that correct?
- 6 A. I believe that is correct. I know it is in
7 a section 7.4 of my report, but I believe that is
8 correct.
- 9 Q. Customers give a score between 0 and 10?
- 10 A. Yes.
- 11 Q. Positive responses, 9-10, are netted off against
12 negative responses, 0-6, to give an overall score. That
13 is correct, is it not?
- 14 A. It can be correct. I am aware that the definitions can
15 vary at other times as well. So, for example, sometimes
16 promoters can be counted as those from 8-10, for
17 example.
- 18 Q. The overall score is between minus 100 if all the
19 responses are negative, and plus 100 if all the
20 responses are positive, yes?
- 21 A. That is my understanding.
- 22 Q. I think you would agree that BT's NPS scores provide
23 insight into customers' perceptions of value for money?
- 24 A. NPS scores?
- 25 Q. NPS scores provide insight into customers' perceptions

- 1 of value for money?
- 2 A. So my understanding is NPS, that might be a factor
3 influencing it. I believe, from looking at the
4 documents -- I am not massively au fait with NPS but
5 I have used it somewhat, obviously; as you will notice,
6 I refer it to in my report -- I believe there were some
7 specific NPS scores with respect to value for money that
8 are used by BT.
- 9 Q. Let us have a quick look at Ms Blight's witness
10 statement. That is at {D/4/11}, paragraph 45.
- 11 A. So can we make it bigger. Thank you.
- 12 Q. You will see, if you have a look at the last sentence of
13 her witness statement, that that is precisely what she
14 says --
- 15 A. I am just going to read the whole paragraph, if that is
16 okay?
- 17 Q. Of course. (Pause).
- 18 A. Okay.
- 19 Q. So you accept then that BT's NPS scores provide insight
20 into customers' perceptions of value for money?
- 21 A. Yes. But, as I said, I believe there is a number of
22 different scores you have.
- 23 Q. It also provides insight into their experience of BT's
24 services, yes?
- 25 A. It can do.

1 Q. These NPS documents were used by BT as a key metric to
2 analyse the impact of gives, were they not?

3 A. I believe they were, yes.

4 Q. I can show you a reference to Ms Blight's evidence in
5 the transcript where she confirmed that, if you would
6 like to see it?

7 A. Yes, please.

8 Q. Okay, let us go there. It is {Day8/23:24}. If you
9 start there. Then if you go on to {Day8/24:3}, and
10 underneath that you will see Ms Blight's answer
11 accepting what I just put to you.

12 A. I do appreciate that, but at least when I have looked at
13 the documents with respect to NPS and to gives, my
14 understanding is that is -- at least, the analysis
15 I believe that I have seen is for the whole of the voice
16 base, and in particular would not include those who are
17 not online.

18 Q. That is a fair observation, that the NPS surveys are
19 typically conducted online. But you would accept that
20 SPCs are encompassed in those NPS surveys?

21 A. A qualified yes, the qualification being I do not know
22 what the participation rates for SPCs might be like
23 compared to the rest of the voice base.

24 Q. The VOCs who were able to access the internet can also
25 be encompassed in those surveys?

1 A. Some of them could be. I would expect them -- I would
2 definitely expect the VOCs who are -- have internet
3 access to be encompassed at a much lower rate than
4 others. So, for example, if we go to -- if we consider
5 the "Enriching Understanding of Standalone Voice
6 Customers" study that was done for Ofcom in 2017 for the
7 purposes of understanding the Standalone Fixed Voice
8 market, they specifically had an anecdote of a couple
9 who were going weekly to the library.

10 So when I say that 41% of VOCs used the internet,
11 that includes those people who would be going to the
12 library, which I think -- so I think it would be quite
13 unlikely for people who were going once or twice a week
14 to the library to be included in these panels.

15 Q. All right, let us go to your report. That is at
16 {IR-E/21/95}, paragraph 430. Here you discuss BT's NPS
17 scores and you say there:

18 "Furthermore ..."

19 You have that on screen.

20 A. If you bear with me a second.

21 Q. Of course, have a look at it in hard copy too.

22 A. I forgot to bring my reading glasses, I am just
23 wondering if one of my team could go and ...

24 Q. Absolutely. Feel free. I shall perhaps read
25 paragraph 430 aloud in the meantime --

1 A. Sure.

2 Q. -- while we wait for the reading glasses.

3 So paragraph 430:

4 "Furthermore, internal BT documents suggest that
5 customer service improvements have had a direct impact
6 on uplifting its Net Promoter Score (NPS), which is
7 a measure of how likely customers are to recommend their
8 provider to a friend or family member."

9 A. Yes.

10 Q. Then if you have a look at footnote 292, if we can have
11 that enlarged, please. There you cite three documents.

12 A. Yes.

13 Q. I am going to take you to the first of those which is at
14 {F/579/1}. You will see the document is headed
15 "Consumer Brand NPS Heartbeat report", and it is dated
16 September 2017.

17 A. Okay.

18 Q. If you go to page {F/579/5} ... I will just pause for
19 a moment. (Pause)

20 Right. So if you go to page 5, you will see it is
21 headed "Fixed Market Overview"?

22 A. Yes.

23 Q. The chart on the left-hand side sets out the NPS scores
24 of BT, Plusnet, Virgin Media, Sky and TalkTalk?

25 A. Yes.

- 1 Q. The scores are presented as "3mra". You see that in the
2 top left-hand corner?
- 3 A. Okay.
- 4 Q. I take it that is a three-month rolling average, yes?
- 5 A. Yes, that would seem to be the most natural
6 interpretation.
- 7 Q. Yes. We can see that BT's NPS score sits somewhere
8 below Plusnet, Virgin Media and Sky, yes?
- 9 A. Yes.
- 10 Q. Its score is negative, it is minus 6?
- 11 A. Yes.
- 12 Q. It is just above TalkTalk's which is minus 7?
- 13 A. Sure.
- 14 Q. Let us then go to page {F/579/14} of the document. Here
15 we see the heading "At -6, it has been BT's better
16 performing products driving the improvement". Do you
17 see that?
- 18 A. Sure.
- 19 Q. If we look on the left-hand side we see a chart. The
20 first row of purple columns shows the NPS for each of
21 BT's products?
- 22 A. Yes.
- 23 Q. "Line Only", "Dual Copper", "Dual Fibre", "Triple" and
24 "Sport"?
- 25 A. Yes.

1 Q. "Line Only" is a reference to BT's SFV services, yes?

2 A. Yes.

3 Q. The second row of red and green columns shows the change
4 in NPS for each of those products since, and I am
5 quoting, "Q4 out-turn".

6 A. Sure.

7 Q. "Q4" in this context I think means January-March 2017.

8 A. Okay.

9 Q. Look at the "Line Only" column. The purple column
10 indicates that the NPS score for BT's SFV services is
11 minus 13?

12 A. Yes.

13 Q. The red column indicates that this score has declined by
14 one point since Q4?

15 A. Yes.

16 Q. So the NPS score for BT's SFV services was negative
17 in September 2017?

18 A. For -- but as we have just clarified, for SFV services
19 that is principally going to be SPCs, right?

20 Q. I understand the qualification you have made --

21 A. So it is almost entirely going to be, or a very large
22 percentage will be SPCs.

23 Q. Let us just have a look at your expert report briefly at
24 paragraph 172. It is {IR-E/21/42}. If we can enlarge
25 that.

- 1 A. Yes.
- 2 Q. Paragraph 172. So here you say:
- 3 "... evidence from Ofcom's 2016 Residential Consumer
- 4 Survey indicates that 35% of VOCs accessed the internet
- 5 'Frequently - Roughly every day', and a further 6% used
- 6 it 'at least once a week'."
- 7 Yes?
- 8 A. Yes, absolutely.
- 9 Q. Let us go back then to the document that we were looking
- 10 at. That is {F/579/14}. At the bottom of the page, BT
- 11 says:
- 12 "Change in scores show improvement is more likely
- 13 among the better products."
- 14 Do you see that?
- 15 A. Okay, I do see that, yes.
- 16 Q. So BT did not consider that its Landline Only services
- 17 were among its "better products"?
- 18 A. So first of all, to interpret something like this,
- 19 I would be incredibly hesitant to use something like
- 20 this. We have got no standard errors or any sense of
- 21 whether this is going to be -- whether this is a
- 22 statistically significant change or anything like this.
- 23 I would be incredibly cautious about using anything like
- 24 this.
- 25 Q. These are BT's internal --

- 1 A. I understand that completely. But how do I interpret
2 a change if I am not given a standard error?
- 3 Q. Okay. The question I am putting to you, and then you
4 can explain, is that BT did not consider its
5 Landline Only services were among its better products.
6 That is what the document says, is it not?
- 7 A. Yes, it does.
- 8 Q. Let us go back to page {F/579/8}. Here we see the
9 heading "Key drivers of Brand NPS". Then we see a chart
10 listing each of those drivers down the left-hand side?
- 11 A. Sure.
- 12 Q. We see percentages on the left-hand side which
13 correspond to each driver. Do you see those?
- 14 A. I do.
- 15 Q. They represent BT's assessment of the importance of that
16 driver to BT's NPS scores.
- 17 A. I mean, I am presuming this is the whole of BT brand
18 amongst those who have -- who are part of the online
19 panel. Is that correct? Or shall we clarify that?
- 20 Q. It may be, but what I am putting to you is that they
21 represent BT's assessment of the importance of
22 a particular driver to BT's NPS scores?
- 23 A. Such as pay TV.
- 24 Q. The left-hand column is headed "VFM", that is value for
25 money?

1 A. Yes.

2 Q. Sorry, I beg your pardon. Can we move then to page
3 {F/579/19} of the same document. Here the left column
4 is headed "VFM [hyphen] 25%".

5 A. Okay.

6 Q. "VFM" means value for money, correct?

7 A. Okay.

8 Q. The chart on the left-hand side sets out the VFM net
9 scores for each of BT, Sky, Virgin, TalkTalk, Plusnet
10 and EE. Do you see that?

11 A. I do.

12 Q. We can see that BT's VFM, value for money, net score is
13 the lowest among all the providers?

14 A. Yes.

15 Q. By some distance?

16 A. Yes.

17 Q. Although we do see that it has increased slightly
18 between June and September 2017?

19 A. Possibly.

20 Q. At the bottom we see "Net VFM by product holding". That
21 is the little chart on the left-hand side at the bottom
22 of that column?

23 A. Okay.

24 Q. There is a chart showing net VFM scores for each product
25 category --

1 A. Yes.

2 Q. -- between Q1 17-18, which I think is May 2017
3 and September 2017.

4 A. Okay.

5 Q. One of the product categories is "Line only", and you
6 will see that if you just look across along the bottom,
7 you will see the line only product icon.

8 A. Okay.

9 Q. We can see that "Line only" has a net VFM of slightly
10 below 20.

11 A. Okay.

12 Q. There has been minimal change in the net VFM score for
13 line only services in the period under consideration in
14 this document, yes?

15 A. Sorry, can you repeat that statement?

16 Q. Yes, there has been minimal change in the net VFM score
17 for line only services in the period under study. You
18 see that because the two columns are of similar height?

19 A. Yes.

20 Q. That is in contrast to the other products in the chart,
21 all of which have seen some material improvement. You
22 see that by comparing those, the two columns for each of
23 those products?

24 A. I do not know whether that is material. I cannot tell
25 from that.

1 Q. You do not know whether it is material?

2 A. I would definitely say that the darker blue bars were
3 higher than the lighter blue bars for the four on the
4 right. I would agree to that.

5 Q. Okay. Now, that was the first document that you cited
6 in the footnote to the paragraph of your report that we
7 looked at.

8 A. Yes.

9 Q. The other two documents you cite in footnote 292 do not
10 contain information about NPS scores for line only
11 customers, so I am not going to take you to that.

12 A. That is right, they do not, yes.

13 Q. Instead, let us turn up {OR-F/904/1}. This is "Consumer
14 Brand NPS Report" of March 2019. Have you seen this
15 document before?

16 A. I would have to go through the charts to see whether
17 I have seen this particular one or not.

18 Q. Let us work through it and you will stop me if you have
19 not and cannot respond.

20 Let us go to page 2. Have a look at the chart on
21 the left {OR-F/904/2}. It is headed "Brand NPS" and it
22 sets out the NPS scores for various providers listed in
23 the key on the left-hand side.

24 A. Yes.

25 Q. It is between March 2018 and March 2019, and you can see

1 that from the months that run across the bottom of the
2 graph.

3 A. Okay.

4 Q. BT is the purple line?

5 A. Okay.

6 Q. We can see that BT has the second lowest brand NPS of
7 all the providers listed there?

8 A. Okay.

9 Q. Again, it is just above TalkTalk's.

10 A. Now, so this is -- just to make sure I understand this,
11 this is for all of BT, is this correct?

12 Q. Yes, that is correct.

13 A. So all of BT, all products.

14 Q. Correct.

15 A. Fine.

16 Q. The table notes that BT's brand NPS is minus 5. Do you
17 see the table just next to the lines on the graph?

18 A. Yes.

19 Q. That has fallen by four points over the previous
20 six months. Do you see that?

21 A. Yes.

22 Q. Then under "BT", we see the following two bullet points.

23 The first one is:

24 "BT has seen a slight drop by 2 points. We continue
25 towards the bottom of the market, scoring only higher

1 than TalkTalk.

2 "We need to remain focussed on differentiating BT
3 from other competitors by improving upon perceptions of
4 value, and clearly defining what BT stands for."

5 Do you see that?

6 A. Yes, I can see that is written with respect to all of BT
7 and all products for BT, yes.

8 Q. If we go to page --

9 A. Only for those who are online.

10 Q. Yes, that is the point that you made earlier.

11 A. Yes.

12 Q. Let us go to page {OR-F/904/4}. This chart sets out the
13 brand NPS score by customer cohort or by product
14 holding. You will see one of the cohorts is "Single
15 Landline"?

16 A. Yes.

17 Q. That denotes customers who have a standalone landline
18 product with their provider, correct?

19 A. Yes.

20 Q. In other words, SFV customers?

21 A. Yes. I mean, with all of the caveats about this being
22 primarily SPCs.

23 Q. Yes, with the qualification you made. You can take that
24 qualification as read.

25 A. Okay. I might come back to it each time because I think

1 it is important not to refer to it as SFV.

2 Q. Of course. I am not going to preclude you from doing

3 that.

4 A. Thank you.

5 Q. On page 4, we see that the brand NPS score for "Single

6 Landline" is minus 25?

7 A. Yes.

8 Q. That is by some distance BT's worst performing product

9 in terms of NPS, yes?

10 A. Yes.

11 Q. It is circled in red.

12 A. Is it a different colour than the other colours? I am

13 red-green colour-blind so I would not be able to tell.

14 Q. You can take it from me it is circled in red.

15 A. None of the others are circled in red?

16 Q. In the bottom half of this table all of those circles

17 are red, and the top half are all in green. So at the

18 top half, 22, 13, 19, 40, 23, 47 and 22 are all green.

19 A. Okay.

20 Q. The bottom half, 8, minus 25, minus 11, minus 16, 1, 13

21 and 1, those are all circled in red.

22 A. Okay.

23 Q. If we go back to page {OR-F/904/3}, we see on the

24 right-hand side at the bottom what the red circle

25 indicates, and there you see it is the bottom performing

- 1 brand. That is what the red circle indicates.
- 2 A. Is this the minus 24?
- 3 Q. Yes. Minus 25.
- 4 A. On the page I can see, there is a minus 24.
- 5 Q. Yes, yes, that is correct.
- 6 So if we go back then to page {OR-F/904/4}, what BT
- 7 is recognising there is that it is the worst performing
- 8 brand with respect to standalone landline products, is
- 9 it not?
- 10 A. With the obvious caveat that we mutually understand,
- 11 yes, I mean, it is -- it is a slightly odd thing to look
- 12 at landline, I suppose, when you are looking at online,
- 13 but, yes, I would take that.
- 14 Q. If we go to page {OR-F/904/5}, this is looking at BT's
- 15 relationship NPS score by product, and the top left
- 16 chart is headed "Landline Relationship NPS".
- 17 A. Yes.
- 18 Q. What this is showing is how likely each provider's
- 19 customers are to recommend that provider's landline
- 20 service to a family member or friend. I think we have
- 21 already established that?
- 22 A. Yes.
- 23 Q. We see here that BT has the lowest landline relationship
- 24 NPS of all the brands listed there?
- 25 A. Yes, although the one thing that occurs to me is when we

1 are looking at BT, and we are looking at those who are
2 online ... Actually, is this going to be for the whole
3 base, or is this just for -- is this going to include
4 all -- does this include the top left chart? Does it
5 include the whole of BT's base who have a voice product?

6 Q. Yes.

7 A. Okay. Fine, thank you.

8 Q. The score here is for BT is minus 5.

9 A. Okay.

10 Q. Let us then turn to {OR-F/906/1}, one more document on
11 this topic. This is the "Consumer Brand NPS Report" of
12 November 2019.

13 A. Yes, I definitely recall this one. In fact, I had seen
14 all the others as well, it was just less ...

15 Q. Sorry, you had seen the previous one?

16 A. I think I had seen all of them, yes.

17 Q. Right. Let us go to {OR-F/906/5} of this document. It
18 is a slide in the same format as the one I showed you
19 earlier. It is updated for November 2019.

20 A. Okay.

21 Q. It sets out BT's NPS scores for each customer cohort or
22 product, yes?

23 A. That appears to be right.

24 Q. If we read the heading:

25 "EE remains the market leader in providing quad play

1 products, significantly above Sky. Plusnet continues to
2 perform well amongst single mobile customers while BT
3 struggles with Landline Only customers."

4 A. Which would be the SPCs, primarily.

5 Q. Also those VOCs using the internet.

6 A. Yes, or some of those VOCs who are using the internet.

7 Q. I think if we are making the qualification, we should
8 make a complete qualification --

9 A. Yes, absolutely, I agree.

10 Q. -- on that. We see the brand NPS score for single
11 landline is now minus 31?

12 A. Yes.

13 Q. That is six points lower than in March 2009 in the
14 document I showed you a moment ago -- 2019.

15 A. So -- can I get this -- so the date of this document
16 I remember is 2019. Which -- when was it in 2019?

17 Q. This is November 2019. The previous one was March 2019.

18 A. Okay.

19 Q. This one, the minus 31 is also circled in red. You can
20 take that from me.

21 A. Sure.

22 Q. Again, that means that BT is the worst performing brand
23 with respect to standalone landline products?

24 A. So in 2019, post-commitments, if we are going to look at
25 the SPCs plus a segment of the VOCs, that appears to be

1 right, yes.

2 Q. Now, the last two documents I have shown you, Dr Hunt,
3 which you say you have seen, you do not cite either of
4 them in your report?

5 A. Yes, that is right.

6 Q. But what they show is that BT's NPS scores for its
7 line only, its SFV customers, were negative and
8 declining during the claim period?

9 A. So this -- the six months from March 2019 to -- so just
10 so I understand, so there is the minus 25 versus the
11 minus 21. You are pointing out that the minus 31 is
12 six months after the minus 25. Then the other one would
13 be the top left chart that we saw elsewhere, is that
14 correct, where there were many different ...

15 Can we go back to the other one? It is just
16 helpful. If we are going to move forward, I like to
17 make sure I understand what we are talking about.

18 Q. That is {OR-F/904/4}, I think is the one you would like
19 to look at.

20 A. Right, thank you.

21 Q. Yes, you see there BT's score for single landline is
22 minus 25.

23 A. I appreciate that, but there are two different pieces of
24 evidence that you are saying about NPS going down. This
25 is -- this is a pair of documents that show that things

1 are going down, and I believe you were referring to
2 another piece of evidence that NPS was going down, so
3 I would just like to make sure I understand that before
4 we move forward. Does that make sense?

5 Q. That is {F/904/2}, the document we have been looking at
6 a moment ago.

7 A. So I think this one I believe is all products. This is
8 all products, all BT.

9 Q. Page {OR-F/904/5}.

10 A. Yes, now I think this is the one. But I think this is
11 all of -- again, all of voice minus the VOCs who were
12 not participating on the online panel.

13 THE CHAIRMAN: Dr Hunt, I wonder if you can help us. You
14 have gone through these documents now and their contents
15 have been put to you. I wonder if you could answer the
16 question whether you agree that these documents show
17 that BT's performance on the SFV has been negative and
18 declining?

19 A. So I do not think this document -- what we are seeing at
20 the moment, I do not think that that does show that,
21 actually.

22 THE CHAIRMAN: It does not.

23 A. The other pair of documents that we have looked at
24 I agree does show it for March 2019 to November 2019,
25 with respect to the sub-segment of SFV who would be

1 online, yes, I agree.

2 MR SPITZ: By you say this document does not show that?

3 A. My understanding, as far as I understand, for the top
4 left document is this would be all of voice minus the --
5 minus the VOCs who are not participating in the panel,
6 I believe. So this is across the whole of BT, is it
7 not? No? Which is fine, so I do agree that ... I just
8 want to make sure.

9 THE CHAIRMAN: Where it says "Landline".

10 A. Yes, so I would imagine it is going to be all of --
11 everyone who is a BT customer who has a landline, which
12 would be -- that is going to be --

13 THE CHAIRMAN: Including bundle customers.

14 A. Yes, absolutely. So there will be about 9 million
15 people. But there will be -- you take out all the VOCs
16 who are not online, so that is about 1 million. So it
17 is about 8 million people. So it will be approximately,
18 I do not know, 1.3, 1.5 million SPCs plus VOCs out of
19 approximately 8 million in this figure.

20 MR SPITZ: The evidence that we have been looking at, it is
21 inconsistent with the view expressed in your report that
22 SFV customers were very satisfied with their landline
23 and with BT, is it not?

24 A. So can we go back to my report?

25 Q. Yes, of course, let us go there. It is {IR-E/21/6},

- 1 paragraph 17.
- 2 A. So what I am doing in paragraph 17 is referring to
3 section 7 of my report which is the -- or section 6.3.3
4 and section 7 where I look at satisfaction, but also the
5 evidence on value and to understand that. The primary
6 focus -- so the primary focus of that, as I think makes
7 clear in the report, is VOCs, so this -- so perhaps
8 I could have added some additional qualification here,
9 but I think this is -- I thought, you know, I feel quite
10 confident that section 6.3.3 and section 7 are
11 consistent with what you have just shown me.
- 12 Q. It is not only, Dr Hunt, that you could have added some
13 qualification, it is that you do not refer to these
14 documents at all in your report.
- 15 A. Well, I do refer to some NPS documents.
- 16 Q. We have canvassed the documents that I have put to you.
17 Those, you agreed with me, you did not refer to them in
18 your report?
- 19 A. Yes, I did not refer to those documents; that is
20 correct.
- 21 Q. Let us then look at a related but distinct topic. Let
22 us go to paragraph 385 of your report. That is
23 {IR-E/21/85}.
- 24 A. Okay.
- 25 Q. Paragraph 385. You consider various drivers, and if we

1 go on to the next page, {IR-E/21/86}.

2 A. Okay.

3 Q. You describe BT as "a trusted service provider"?

4 A. Yes.

5 Q. You say this was something which was seen as

6 particularly distinctive to BT?

7 A. Yes, certainly the evidence that I was primarily using.

8 Q. Indeed, you say that the perception of BT as a trusted

9 service provider may have been a reason why Class

10 Members stayed with BT?

11 A. Yes, in another part of my document.

12 Q. Let us have a look, then, at paragraph 352(e) of your

13 report, which is {IR-E/271/78-79}. On page 78, you say:

14 "I set out below a previous summary of my findings,

15 which are that ..."

16 Then subparagraph (e), it is about Class Members:

17 "Place a greater emphasis ... on the importance of

18 the trustworthiness of their landline service provider.

19 Evidence suggests that BT is seen as the most

20 trustworthy landline provider in distinction to its

21 rivals."

22 That is what you say?

23 A. Yes, that is what it says here.

24 Q. Then let us look at one last piece of your report. That

25 is paragraph 470 on page {IR-E/21/104}.

1 A. Okay.

2 Q. There you say:

3 "... evidence shows that Class Members placed

4 a greater emphasis on trustworthiness of their landline

5 service provider and perceived BT to be the most

6 trustworthy provider ..."

7 A. Er ...

8 Q. The last sentence.

9 A. Yes.

10 Q. Let us have a look at what some of the documents say

11 about this --

12 A. I am just reading that sentence here.

13 Q. Of course. (Pause)

14 We are going to look at {F/900/1}, so if we could

15 call that up in the meantime.

16 A. Yes, though ... Yes, okay.

17 Q. That is the "NPS Dashboard" of June 2016. Have you seen

18 this document before?

19 A. If we flick through the charts I will have a much better

20 sense. Many of the documents use exactly the same

21 background picture so it is very hard to tell.

22 Q. Yes, absolutely. It might not be self-evident

23 immediately.

24 Let us go to page {F/900/3} of the document. We see

25 the heading there, "June 2016: Key Drivers of NPS".

1 Then we see a chart setting out those key drivers,
2 and one of the drivers you will see halfway down the
3 page is "Brand Warmth", yes?

4 A. Yes.

5 Q. Let us go to page {F/900/9}, and we see the heading
6 there "Brand Warmth [hyphen] 12%", and underneath that
7 we see two bullet points. First it says:

8 "Brand Warmth ratings for BT are better in Q1
9 compared to the previous period with Sport and TV
10 customers giving the better scores.

11 "Gaps to competition remain particularly evident for
12 BT (and TT) on "values" customers."

13 If we then look at the chart at the bottom
14 right-hand side of the slide, there you see the heading
15 "Sub Driver Comparison". Do you see that? What BT is
16 doing there is comparing its NPS scores with other
17 providers on two metrics?

18 A. Yes.

19 Q. The first is "values customers", you see that labelled
20 under the left-hand chart?

21 A. Yes.

22 Q. Then "a brand I can trust"?

23 A. Yes.

24 Q. We can see that in the first chart BT has a score of 10
25 for "values customers", yes?

1 A. Yes.

2 Q. The second lowest, just ahead of TalkTalk?

3 A. Yes. Can we zoom out again? I just want to understand
4 what the base is for this. Is it -- I am guessing this
5 is all BT, all products again; is that correct?

6 THE CHAIRMAN: You have just been shown some graphs which --

7 A. I am pretty certain this looks like this is all BT, all
8 products. It is just really helpful when looking at
9 numbers. I need to understand what we are talking
10 about.

11 MR SPITZ: If you have a look at the top of this page, brand
12 warmth by product, you will see the scores for line only
13 for BT, and you will see the scores for the other BT
14 products.

15 A. Oh, yes, this is the top line chart. Okay, so, yes,
16 with all the caveats, understood, yes.

17 Q. Here we can see that BT's line only customers give the
18 second lowest brand warmth scores?

19 A. But is that all products or -- so when you say BT is --
20 can you take me to which of these four charts that is?

21 Q. We are dealing with line only at this point.

22 A. Okay, so this is the top right chart?

23 Q. Exactly.

24 A. Top right chart.

25 Q. It is headed "Brand Warmth by BT Product".

1 A. Yes, okay.

2 Q. It appears that BT's line only customers did not have an
3 especially positive view of the BT brand?

4 A. The particular line only customers covered here were,
5 yes, 18.

6 Q. Let us look at {F/878/1}.

7 I am sorry, Mr Barry points out there is one aspect
8 of this document that I did not point you to, and that
9 is in the second chart -- let us go back to {F/900/9} --
10 the "Sub Driver Comparison" chart on the right-hand
11 side, under "A brand I can trust", you see there that BT
12 is again the second lowest ahead of TalkTalk?

13 A. For this particular cohort and across many products,
14 yes.

15 Q. With the qualifications you have made this suggests,
16 Dr Hunt, that BT was not perceived by customers as
17 distinctively trusted service provider?

18 A. With -- for that cohort for that set of products.

19 Q. Let us look at {F/878/1}. This is a slide deck entitled
20 "The Drivers of Value for Money". It is
21 23 November 2017. Let us go to page {F/878/5} of the
22 document. We see the heading:

23 "Context: performance at H1 2017/18 -- making
24 progress towards target, but not closing the gap fast
25 enough on rest of the market."

1 Yes?

2 A. Okay.

3 Q. The chart on the left-hand side shows BT's brand NPS

4 over time?

5 A. Yes.

6 Q. Again, we see a tussle between BT and TalkTalk for the

7 title of the brand with the lowest NPS, correct?

8 A. Again, for this, the particular online cohort, I am

9 guessing across all products, as far as I can tell from

10 what I have been shown.

11 Q. Let us go to page {F/878/16}. Here we see the key

12 drivers of VFM and then the subheading:

13 "Importance of pillars of VFM, with drivers within

14 each pillar."

15 BT identifies the pillars as "price", "brand",

16 "product" and "relationship"?

17 A. Okay.

18 Q. Under each of those BT sets out various drivers. For

19 example, for "brand" we see a reference to the drivers.

20 The first is "feel good", the second is "trust" and then

21 "brand desirability", yes?

22 A. Yes.

23 Q. Let us go to page {F/878/25}. There we see the heading:

24 "Each main competitor leads in a number of VFM

25 drivers. BT does not 'own' any driver, with significant

1 gaps in many cases."

2 Do you see that?

3 A. Yes.

4 Q. Then we see a chart and it is headed: "BT performance by
5 driver, vs competition". So this sets out how BT
6 compares to other providers for each driver for value
7 for money?

8 A. Okay.

9 Q. If you look at that what we see is that BT leads on none
10 of these drivers?

11 A. For the particular online cohort across all products,
12 sure.

13 Q. It is significantly behind the competition on every
14 driver?

15 A. Is that right? Yes, this is the third column. Compared
16 to the leading competitor, yes, it appears to -- yes.

17 Q. For example, on good price it is 27 points behind the
18 leading provider, TalkTalk?

19 A. Yes, I mean, that it might be behind the leading
20 competitor of lots of different drivers for the people
21 who are online across all products.

22 Q. Yes. For minimum price rises it is 39 points behind the
23 leading provider, TalkTalk?

24 A. Yes.

25 Q. Let us go down to trust and there you see that BT is 13

- 1 points behind the leading providers, Virgin and Sky?
- 2 A. Yes, but it is -- honestly, I have almost no idea what
3 I would take away from that to be honest.
- 4 Q. It is not something you looked at in the course of
5 preparing your report?
- 6 A. Honestly, I would need to look through each of the
7 different slides. I would probably start at number 1,
8 go through the first few slides and that would help me
9 remember whether I have specifically seen this.
10 Honestly I look at this data and think I do not know how
11 I would use that.
- 12 Q. But is it something that you looked at for the purposes
13 of your report?
- 14 A. As I said, if you go back to slide 1 and you let me look
15 at the first few slides I will probably be able to tell
16 you whether I have looked or not.
- 17 Q. Okay, so you are not certain whether you looked at this
18 or not?
- 19 A. Well, I mean on this particular chart I am afraid --
20 I have probably seen 10,000 plus pages of material.
21 I cannot recall if I have seen this particular chart
22 without at least a little bit more context.
- 23 Q. Let us go to page {F/878/38}. There you see the
24 heading:
25 "As we are weak in each pillar, customers won't be

1 clear on how they're getting VFM from BT."

2 Here we see a comparison between BT, Virgin,
3 TalkTalk and Sky across each of the four pillars for
4 value for money. Do you see that?

5 A. I do, but this is all products, online -- yes, it is
6 fine, but almost, like I do not know how I would use or
7 consider this information or put it anywhere within the
8 report that I have written.

9 Q. I understand that and it will be a question of
10 submissions as to the weight and relevance of these
11 documents, but I am taking you through them --

12 A. Okay, fine.

13 Q. -- and what we can see is that BT has the lowest score
14 on each of these pillars?

15 A. Okay, fine.

16 Q. Including on brand which we saw earlier encompasses the
17 driver of trust?

18 A. For all products for the whole online consumer base,
19 sure.

20 Q. You do not refer to this document in your report,
21 Dr Hunt?

22 A. I do not, yes. I am happy to take that as read. I know
23 I only referred to three documents and I am pretty
24 certain this is not one of them.

25 Q. It does suggest that BT was not viewed as a distinctly

1 trustworthy service provider, does it not?

2 A. Across all products across for the whole online consumer
3 base I would accept that I guess. Honestly I have not
4 had time to take in this material to -- but, yes,
5 probably.

6 Q. It does worse on that metric than other providers, the
7 metric of trustworthiness?

8 A. I mean, so what is -- I mean, I see a metric for brand.
9 I do not see a metric for trustworthiness on this page.

10 THE CHAIRMAN: You have put the point to him, Mr Spitz.

11 MR SPITZ: Indeed.

12 Turning to a different aspect of --

13 THE CHAIRMAN: If you are going to turn to something else,
14 we will take our morning break. Thank you very much.

15 (11.26 am)

16 (A short break)

17 (11.42 am)

18 MR SPITZ: Dr Hunt, in order to try and move things as
19 efficiently as possible I am not going to call up each
20 paragraph of your expert report, I am going to read the
21 relevant portion to you. But of course if you would
22 like to see a particular paragraph, if you would like to
23 go there, then just let me know and we will go there.

24 A. Okay, fine.

25 Q. The next point I want to make is this. In your report

1 at paragraph 470, the concluding section, you say:

2 "I find that Class Members, especially VOCs, were
3 very satisfied with their SFV service and more so than
4 Dual Play customers. They especially valued the
5 reliability of landlines and this differentiating factor
6 of BT SFV services was particularly important for VOCs."

7 At paragraph 471 in the next paragraph you say:

8 "I consider that this evidence together provides
9 a compelling picture that the reason for lower switching
10 rates among VOCs was that this sub-class particularly
11 valued and enjoyed their SFV service and placed material
12 importance on BT being a reliable and trusted provider."

13 You recognise those extracts of your report?

14 A. Yes.

15 Q. So you are suggesting that VOCs particularly valued
16 their SFV service, yes?

17 A. Yes.

18 Q. That they enjoyed their BT SFV service?

19 A. Yes, yes, I used the word "enjoyed".

20 Q. They were very satisfied with it?

21 A. Yes.

22 Q. I have shown you some documents on NPS which seem to
23 tell a different story, but I would like to show you
24 another document which relates specifically to VOCs. If
25 we could turn up {F/632/1}. This document is headed

1 "Solus - Landline only - customers. NPS and customer
2 experience insight. March 2019".

3 A. Yes.

4 Q. That is during the claim period but it is after the BT
5 Commitments have come into force, correct?

6 A. Yes.

7 Q. Let us go to page {F/632/4}, under the heading
8 "Methodology". This document records the results of
9 a study of BT's VOCs.

10 I ask you to read to yourself the paragraphs
11 underneath the heading "Methodology".

12 A. Okay. (Pause).

13 Q. So it records the results of a study of BT's VOCs --

14 A. Yes.

15 Q. -- and it sought to find out from VOCs how they felt
16 about their BT landline service?

17 A. Yes.

18 Q. The study was conducted by way of telephone interviews?

19 A. Yes.

20 Q. The researchers are noting that this methodology may
21 bias the results to more positive ratings?

22 A. Yes, but ... They suggest that.

23 Q. They do suggest that.

24 If you look at the heading "Sample", and underneath
25 that:

1 "We conducted 1000 interview, so we have
2 large-scale, statistically robust base to analyse."

3 A. Yes.

4 Q. You would agree with the author of this document that it
5 is a statistically robust sample?

6 A. Not necessarily, actually. So for -- we covered this
7 a bit yesterday in the concurrent evidence. So what we
8 discussed yesterday was the observable demographics of
9 a thousand people who participated and how that compares
10 to what we know about the VOCs' observable demographics,
11 and there seems to be some selection bias. In
12 particular, there seems to be -- this seems to be
13 particularly made up of more retired individuals,
14 I believe this is 83% retired individuals. I would have
15 to look into my report to remember the percentage of
16 retired individuals that I estimated for the VOCs. That
17 was considerably lower. So that is one thing.

18 Another thing we do not know about is we have no
19 idea about the participation rate, we do not know what
20 percentage of people said yes or not, and those things
21 can be quite important for evaluating evidence. It
22 really makes a difference whether it is 2% of people who
23 say yes or 20% of people who say yes.

24 So I -- so, no, I -- it is a thousand people so we
25 will be able to do a number of things, but we do not

1 know much about the selection biases in this survey at
2 all.

3 Q. Of course, if there are a large number of retired people
4 in the sample, that would be consistent with what we
5 know about the characteristics of the VOC class, would
6 it not?

7 A. Yes. But my point was I believe this is 83% retired,
8 and if you wait for a second, I will find the
9 percentage, which I believe is in the 50s, in my report.
10 So there is a selection bias in the sense that the
11 thousand people is not representative of the whole -- or
12 there are some differences in representativeness
13 compared to the whole base.

14 Q. Let us go to page {F/632/16} of this document. We see
15 there the heading "In solus customers' own words"?

16 A. Yes.

17 Q. This section of the study sets out what BT's VOCs had to
18 say about their landline service. Let us have a look at
19 page {F/632/17}. The headline finding, "For most solus
20 customers, their Landline does the job", yes?

21 A. Yes.

22 Q. The subheading, "A typical verbatim from a Promoter ..."
23 you see that? The verbatim is:

24 "Because I've got no complaints about the service.
25 The service has been ok, BT has been alright."

1 We see under that, this person gave BT
2 a recommendation score of 9 out of 10, do you see that?

3 A. Yes.

4 Q. Even though this customer thought that BT's landline
5 service was just "ok" and BT had been "alright"?

6 A. I think there is a whole variety of ways one can
7 interpret those two sentences.

8 Q. If you have a look at page {F/632/18}, you will see the
9 heading, "The majority of customers are relatively
10 passive in their positive comments: very few go over the
11 top about how great their landline is, even if scoring
12 a 10."

13 Then in the subheading we see:

14 "A general 'it's ok/never had any problems'
15 sentiment is apparent in lots of comments, although
16 these customers then give very high ratings, usually
17 being Promoters."

18 Do you see that?

19 A. I do.

20 THE CHAIRMAN: What is a promoter here?

21 A. A promoter is -- it can vary precisely, but what is
22 probably the case in this one, in the -- is whether --
23 they are asked: 1-10, would you recommend this company
24 to a friend, and it is people who say 9 or 10.

25 THE CHAIRMAN: I see, it is a high recommendation rate.

1 A. Yes, it is really -- generally really quite high, you
2 know. It is 9 or 10.

3 THE CHAIRMAN: Thank you.

4 MR SPITZ: If we go to page 19 --

5 A. Although actually in this survey it might be 8-10,
6 because I can see there is a score of 8.

7 THE CHAIRMAN: I have got the point anyway. Thank you.

8 MR SPITZ: On page 19, the headline findings, "So for the
9 vast majority, this 'never had any problems' sentiment
10 is common"?

11 A. Yes, I can see that is written on the page.

12 Q. In the subheading we see:
13 "Overwhelming sentiment is that it's ok, nothing
14 more."
15 Yes?

16 A. That is what is written.

17 Q. That is BT's assessment of what these --

18 A. I would imagine it is not BT's assessment. Can we go
19 back to the front page? {F/632/1} Yes, so my --
20 I would imagine this is GMB Insight's, their
21 interpretation.

22 Q. What I mean is it is a survey conducted on behalf of BT?

23 A. Yes.

24 Q. Then going back to page {F/632/19}, we see a chart which
25 sets out a list of sentiments and the proportion of

- 1 customers who expressed that sentiment?
- 2 A. Yes.
- 3 Q. They are categorised as either "Overtly positive",
4 "Neutral/passive positive" or "Negative". At the top of
5 the chart you see 59%, "Ok/never had any problems".
6 That is the most commonly expressed sentiment, yes?
- 7 A. Yes.
- 8 Q. That is followed by 15% who say "Always been with BT/BT
9 is default".
- 10 A. Yes. So, I mean, I think it is worth describing how
11 they have probably gone about this, from what I can
12 read. So from my understanding of this document, these
13 were verbatims that they had from individuals, and then
14 there has been a whole variety of kind of subjective
15 categorisation of those verbatims.
- 16 Q. You do not mention this document in your report, do you?
- 17 A. I will take your word for it that I do not.
- 18 Q. Let us move on to some of the gives now. Let us look at
19 BT Call Protect. In section 7.5 of your report you
20 identify a number of service features which you say were
21 likely to have been valued by Class Members?
- 22 A. So we are talking about Call Protect, yes. Okay, yes.
23 Which paragraph are you on?
- 24 Q. It is your report, section 7.5.1. If you want to see
25 it, it is {IR-E/21/95}. There, as I say, you identify

1 a number of service features which you say were likely
2 to have been valued by Class Members?

3 A. Which paragraph are we on?

4 Q. 7.5.1.

5 A. Yes, which part of that section?

6 Q. It is the three bullet points, and the first one is
7 "BT Call Protect".

8 A. Okay.

9 Q. This was a service which blocked nuisance calls and was
10 introduced in 2016, was it not?

11 A. Yes, November 2016.

12 Q. It was available to all voice customers, not just SFV
13 customers?

14 A. That is my understanding.

15 Q. In order to benefit from the service, customers had to
16 sign up. That is right, is it not?

17 A. Yes.

18 Q. If we go back to the June 2016 NPS dashboard at
19 {F/900/5}, that is the one headed "Value for Money"?

20 A. Yes.

21 Q. The bullet points underneath the heading, read those to
22 yourself, please.

23 A. Okay. (Pause)

24 Q. So BT is there saying that it has the lowest value for
25 money among all the major brands?

- 1 A. For all products, for ... yes.
- 2 Q. If we look on the right-hand side, we see the heading
3 "Net VFM by Product Holding"?
- 4 A. Yes, okay, yes.
- 5 Q. We see a chart that shows the net VFM scores for each of
6 BT's products, yes?
- 7 A. So -- okay.
- 8 When this says "Line Only", though, I suspect this
9 actually is probably all of voice, but I -- because all
10 of the other products are focusing on -- or maybe that
11 is not right.
- 12 Q. We see the chart that shows the net VFM scores for each
13 of BT's products, and the comment above the chart:
14 "All products show weakening VFM ..."
- 15 The net VFM scores for line only appear to be among
16 the lowest shown?
- 17 A. Yes. But looking at this chart and looking at how it is
18 constructed, it occurs to me, and we might need
19 additional information here, but when it says
20 "Line Only", it is not clear to me it is only referring
21 to these sort of SPC plus the VOCs that were online.
22 Because all of the others refer to a specific product,
23 and when BT talk about products they tend to think of
24 landline as being the whole ...
- 25 So that may be right. I am a little uncertain how

- 1 to interpret that left ...
- 2 Q. Let us look at the bottom chart. That one is headed
- 3 "69% of BT Customers aware of any, 'Give' +3 points
- 4 on May 2016".
- 5 A. Yes.
- 6 Q. If you look at that chart, there is a reference to the
- 7 "Nuisance Call Product"?
- 8 A. Yes.
- 9 Q. It has noted that 26% of BT's customers are aware of
- 10 BT Call Protect at this time?
- 11 A. Yes.
- 12 Q. Now, paragraph 446 of your report, we need to go there,
- 13 that is {IR-E/21/97}.
- 14 A. Okay.
- 15 Q. Paragraph 446, the first sentence:
- 16 "Evidence from internal BT documents indicate BT's
- 17 Call Protect was diverting around 2m nuisance calls per
- 18 week for all BT landline customers."
- 19 You cite this document in footnote 309. That is
- 20 {F/561/1}, let us call this up briefly.
- 21 This is the "Consumer Business Unit Review
- 22 Q1 2017/18", and it is dated 20 July 2017.
- 23 Let us go to page {F/561/51}.
- 24 A. Okay.
- 25 Q. On the right-hand side of that slide, under the chart,

1 we see the heading "BT Call Protect"?

2 A. Okay.

3 Q. The first bullet point:

4 "BT Call Protect base is now 2.2m (700k new adds and

5 1.5m migrations) and diverting [approximately] 2m

6 nuisance calls [per week]."

7 Do you see that?

8 A. Yes.

9 Q. If we could now turn up {F/878/1}, headed "The Drivers

10 of Value for Money", November 2017. We have looked at

11 this document, it is four months after the document

12 I have shown you.

13 A. Okay.

14 Q. Let us look at page {F/878/62}. We see the box there,

15 "Awareness and Take-Up of Sky VIP, TalkTalk Fixed Prices

16 and Call Protect". If we look at the bar on the

17 right-hand side, that shows the proportion of BT

18 customers who were aware of BT Call Protect and had

19 signed up, those who are aware but have not signed up,

20 and those who are unaware, yes?

21 A. Sorry, so we are looking on the far right?

22 Q. Yes, indeed.

23 A. Sorry, I was reading the bottom right. So the ... okay.

24 Q. You will see there that 69% are unaware of

25 BT Call Protect?

- 1 A. Yes.
- 2 Q. 23% are aware and have not signed up?
- 3 A. Yes.
- 4 Q. Only 8% are aware and have signed up?
- 5 A. Yes.
- 6 Q. You do not cite this document in your report, do you?
- 7 A. I will take your word for it.
- 8 Q. It suggests, though, that 92% of BT's landline customer
9 base were not signed up to BT Call Protect at this time,
10 that is November 2017?
- 11 A. Yes.
- 12 Q. If we look at the bottom of the page, BT there says:
13 "BT Call Protect has a positive influence on VFM,
14 but not to the same extent as competitor offers either
15 on impact or reach."
- 16 A. Okay, so I can see the reach, obviously, but I do not
17 see the -- anything about impact.
- 18 Q. If it is blown up, it says "either on impact or reach".
- 19 A. Yes, I can see it says that, but I do not see the
20 evidence that backs the statement.
- 21 Q. Okay. So BT is identifying two issues here with
22 BT Call Protect. First, there is a problem of reach,
23 because the document says only 8% of the base are using
24 BT Call Protect, correct?
- 25 A. That is -- yes, 8% -- oh, now, I wonder what base this

1 will be. Would this be of -- this may be of the online
2 base as well, just to -- I do not know, I would have to
3 look more into the document, but, yes.

4 Q. The second point that is identified is that there is
5 a problem of impact, because BT Call Protect is not
6 having the desired impact on VFM, value for money,
7 perceptions compared to what other providers are doing?

8 A. I can see there is a qualitative comment. If we could
9 go to the quantitative evidence then perhaps we can
10 discuss what ...

11 Q. Let us turn up {F/632/1}. This is the qualitative study
12 of thousand BT VOCs I took you to a moment ago. The
13 reason I am going back to it, rather than dealing with
14 it all the same time, is for the purpose of the
15 coherence of the questions, so that they are in topics
16 which make it easier to understand what we are
17 discussing at a particular time.

18 A. Okay. Yes.

19 Q. If we go to page {F/632/26} of this document, we see the
20 heading, "However, there may be further opportunity to
21 give more customers Call Protect".

22 Underneath that, we see:

23 "A significant proportion of customers cite
24 experiencing nuisance calls as the reason behind their
25 recommendation score."

- 1 We see some verbatim customer responses there.
- 2 A. Yes.
- 3 Q. Just have a quick look at those.
- 4 A. Okay. (Pause)
- 5 Q. What this shows is that as of March 2019, a significant
- 6 number of VOCs were still receiving nuisance calls?
- 7 A. Is it March? Okay, yes. So I can see in the bottom
- 8 left it says "BT Group 2018", but you are right, it is
- 9 a March 2019 document, yes.
- 10 Q. Let us then turn up {OR-F/886/1}. This is dated
- 11 10 March 2021. It is 886. Yes, thank you.
- 12 It is a "Consumer Exec All IP update", March 10th
- 13 2021. Let us go to page {OR-F/886/22}. This one is
- 14 headed "Profile of our 800k Landline Only customers."
- 15 That is a reference to BT's SFV customers?
- 16 A. Yes.
- 17 Q. We see there are various bar charts, and the one at the
- 18 bottom states that 45% of these customers have
- 19 BT Call Protect?
- 20 A. Yes.
- 21 Q. So still less than half of BT's SFV customers had
- 22 BT Call Protect in March 2021. That is what this says?
- 23 A. That is what this document appears to show, yes.
- 24 Q. Five years after it was introduced?
- 25 A. Yes.

1 Q. Staying on Call Protect for another few minutes, if we
2 can now turn up {E/45/30} briefly. Sorry, {E/45.30/1}.
3 Apologies. This is a consumer guide published by Ofcom
4 on "Nuisance Calls and Messages". The date of the
5 document, according to its title on Opus, is 2015.

6 A. Okay.

7 Q. This you do cite in your report. If we turn to page
8 {E/45.30/3}.

9 A. Can you tell me where I do cite it actually?

10 Q. Page 96 of your report. Footnote 296.

11 A. Page 96, 296. (Pause)

12 Okay, great, good.

13 Q. This is a consumer guide published by Ofcom on "Nuisance
14 Calls and Messages".

15 A. Yes.

16 Q. Turn to page 3, we see the heading "Protecting yourself
17 from nuisance calls and messages". Then a heading below
18 the photograph of the person on the phone says "How to
19 reduce nuisance calls".

20 A. Okay.

21 Q. If you turn to page {E/45.30/5}, there the heading is
22 "2. Register with the Telephone Preference Service for
23 free". Right?

24 A. Mm-hm.

25 Q. If we look at the first paragraph, if you read that to

1 yourself.

2 A. Yes. (Pause)

3 Q. What this shows is that as of 2015, consumers could sign
4 up to the Telephone Preference Service?

5 A. Yes.

6 Q. That was a service which would enable them to opt out of
7 receiving any unsolicited telesales calls?

8 A. Yes.

9 Q. This service was for free?

10 A. Yes.

11 Q. Ofcom was recommending that consumers sign up to this
12 service to protect themselves from nuisance calls and
13 messages?

14 A. By dint of this being the second thing, yes.

15 Q. Let us go on to Caller Display now. I want to turn
16 briefly to that. You refer --

17 THE CHAIRMAN: Sorry, you have taken him to this document.
18 Is there a particular point that you are putting to him
19 about it?

20 MR SPITZ: I will make the point in submission. There is no
21 crystallised point that I want to put to him now on the
22 basis of it.

23 A. I believe that is coming.

24 MR SPITZ: Let me put it this way: you would agree that
25 consumers could partially protect themselves by taking

- 1 out this service, would you not?
- 2 A. Based upon the information that is in front of me right
3 now, that appears to be the case.
- 4 Q. Caller Display is a service which shows the number of
5 the person calling?
- 6 A. Yes.
- 7 Q. You say in your report that Caller Display materially
8 improved the quality of service and customer experience
9 for Class Members. You can take it from me, but if you
10 want to turn to it we can do that.
- 11 A. I mean, I am in the right section, so I can probably
12 find it. Could you point it to me?
- 13 Q. It is 449(b), {IR-E/21/98}, and 450, page {IR-E/21/99}.
- 14 A. What was the particular phrase?
- 15 Q. You say that Caller Display materially improved the
16 quality of service and customer experience for Class
17 Members.
- 18 A. Yes:
19 "... material improvements to the quality of service
20 and experience of SFV Services for Class Members ..."
- 21 Yes.
- 22 Q. In paragraph 449(b), you acknowledge that Caller Display
23 was introduced by BT in 2008?
- 24 A. Yes, though I think I have seen -- I think I have seen
25 information since that actually I think it was

1 introduced in 2005.

2 Q. 2005. But on either basis, it is not introduced during
3 the claim period, is it?

4 A. No.

5 Q. Many years before?

6 A. Yes.

7 Q. So Caller Display cannot be described as a material
8 improvement of BT's SFV services during the claim
9 period?

10 A. Let me just read this to see ... That might be right,
11 let us just look and see. (Pause).

12 Yes, I mean, just looking at that, this particular
13 point, 449(b), I agree that it was from 2005, I agree
14 the other providers had it, so ... I think what I am
15 saying here is that it was something that was a material
16 feature. Perhaps the word, perhaps the noun
17 "improvements" could have been changed.

18 Q. But not during the claim period, it was not introduced
19 during the claim period?

20 A. Yes, I think the point was this was a material
21 enhancement, or maybe not enhancement; this was
22 something that people materially benefited from during
23 the claim period.

24 Q. I think you said, but perhaps you can confirm, that
25 Caller Display was available to all BT voice customers,

- 1 not just SFV customers?
- 2 A. Yes, I am sure that is correct.
- 3 Q. I think you acknowledge that BT is not the only
4 provider?
- 5 A. No, I think everyone offered it.
- 6 Q. Pardon?
- 7 A. I think everyone offered Caller Display.
- 8 Q. Yes, exactly, everyone offered it, or at least the
9 majority of landline providers offer it?
- 10 A. Yes, all the ones that I am aware of.
- 11 Q. So it is not a distinctive feature of BT's SFV services?
- 12 A. I agree that Caller Display is not a distinctive
13 feature.
- 14 Q. You also note in the same paragraph, 449(b), that before
15 January 2014, BT offered Caller Display free of charge?
- 16 A. Yes.
- 17 Q. But from January 2014 BT started charging £1.75 for
18 Caller Display?
- 19 A. Yes.
- 20 Q. It continued to do so until September 2018?
- 21 A. Yes.
- 22 Q. At that point you say it was -- your words are "made
23 free".
- 24 A. Yes.
- 25 Q. That is the phrase you use?

- 1 A. Yes.
- 2 Q. You would accept that Caller Display cannot be
3 considered a feature of BT's SFV services in
4 circumstances where the customer has to pay a separate
5 charge to obtain Caller Display?
- 6 A. (Pause). It is only an option that is available to SFV
7 customers.
- 8 Q. If they pay for it?
- 9 A. If they pay for it.
- 10 Q. I will come back to the observation that Caller Display
11 was, in your words, "made free". But before I do, can
12 we first turn up {F/352/1}. It is a slide deck from
13 25 November 2015, so it is from the beginning of the
14 claim period.
- 15 If you look at page {F/352/10}, you see the heading
16 "Calling Features"?
- 17 A. Yes.
- 18 Q. Under the subheading "Context", the penultimate bullet
19 point there, the one that starts "Virgin offer free ..."
20 you see:
- 21 "Virgin offer free voicemail, Sky offer free caller
22 display, TT both, whilst mobile operators set
23 expectation all features are free."
- 24 A. Yes, so -- yes.
- 25 Q. So at the beginning of the claim period, Sky and

- 1 TalkTalk also offered Caller Display, yes?
- 2 A. Yes.
- 3 Q. Not only did they offer it, but they offered it for
4 free?
- 5 A. Yes, so in November 2015 Sky and TalkTalk were offering
6 Caller Display for free. That is what it does say, yes.
- 7 Q. In your report you say Caller Display was "made free"
8 in September 2018. I think it is worth having a quick
9 look at that. It is {IR-E/21/99}.
- 10 A. Sure, yes.
- 11 THE CHAIRMAN: Can we have that widened, please? Thank you.
- 12 MR SPITZ: It is the penultimate sentence of 449:
13 "... Caller Display was made free for line rental
14 customers."
- 15 A. Yes, which I had taken originally from Mr Bunt's witness
16 statement, I believe.
- 17 Q. Because you use the passive voice there?
- 18 A. Yes.
- 19 Q. But it is the case, is it not, that Ofcom made BT
20 provide Caller Display for free, did it not?
- 21 A. Yes, so I am now aware that was the case. I originally
22 took it from Mr Bunt's witness statement.
- 23 Q. You were not aware of that at the time of writing your
24 report?
- 25 A. I was not aware of that at the time of writing this.

1 Q. Let us turn to {C/369.1/1}. This is Ofcom's "Review of
2 the General Conditions of Entitlement", dated
3 19 September 2017.

4 If we could turn up page {C/369.1/205}, headed
5 "Calling line identification", and we see at
6 paragraph 13.1 that Ofcom says ... and I will ask you to
7 read that to yourself.

8 A. Okay. (Pause).

9 Q. So Ofcom is talking about Caller Display services here?

10 A. Okay.

11 Q. If we go to 13.10 on page {C/369.1/207}, we see the
12 subheading "Charges for the provision of CLI
13 facilities", and I will ask you to read 13.10 to
14 yourself, please.

15 A. Yes. (Pause).

16 Okay.

17 Q. I need not take you to it, but Ofcom went on to consider
18 consultation responses on this point and confirmed that
19 it would implement this proposal, and the proposal came
20 into effect on 1 October 2018.

21 A. Yes. When was this document dated, by the way?

22 Q. I think September 2017.

23 A. September 2017.

24 Q. Yes.

25 A. Okay, fine.

1 Q. Just to take stock then, Caller Display was introduced
2 many years before the claim period, as we have
3 established?

4 A. Yes.

5 Q. It was offered by other providers, including Sky and
6 TalkTalk?

7 A. In November -- it was offered by a wide range of other
8 providers, yes.

9 Q. It was offered by at least Sky and TalkTalk for free
10 throughout the claim period?

11 A. I -- so I have become more aware of this since. I know
12 that is true of Sky. I guess I would need to show --
13 I was not aware that was necessarily true of TalkTalk.

14 Q. It was made available for free, unlike BT who charged
15 for it?

16 A. Yes.

17 Q. BT only stopped charging for it when Ofcom prohibited it
18 from doing so?

19 A. So I believe what happened was that BT introduced it
20 a month earlier than it had to in advance of Ofcom
21 forcing it, yes.

22 Q. I think you explained that you were not aware at the
23 time that you wrote your report that Ofcom had
24 prohibited BT from charging for Caller Display?

25 A. Well, prohibited the whole market from ... Because many

1 other providers did charge for Caller Display as well,
2 so, for example, Virgin was -- so you mentioned that BT
3 was £1.75 a month, Virgin was £2.25 a month, for
4 example, and Virgin I think only introduced it
5 in October 2018.

6 Q. Let us turn now to the onshoring of BT's call centres.
7 I want to show you something you said in the hot tub.
8 It is {Day17/89:10}.

9 You said:

10 "The second thing is what it was doing on customer
11 service. I believe that in 2016 BT said they were going
12 to start onshoring its call centres and then in late
13 January 2020 had onshored all of the call centres and BT
14 was the first to actually have done all of that
15 onshoring. That was again something that was
16 specifically valued by the Class, so older people and
17 those who had problems with hearing particularly valued
18 having a local accent, in terms of the calls."

19 What you are suggesting there is that BT was the
20 first provider to onshore its call centres?

21 A. Yes.

22 Q. If you could then turn up this document, {F/907/1}.

23 A. I believe, just to be clear, I believe my claim was that
24 BT was the first -- because I think this comes from a BT
25 press release on 29 January 2020 -- is that BT at least

1 claimed, and I have taken that as prima facie correct,
2 that they were the first provider to have 100% onshore
3 calls, so that is the claim.

4 Q. Let us have a look at {F/907/1}. This is a BT Consumer
5 "Weekly Market and Competitor Insight Update". It is
6 dated 10 July 2015.

7 A. Okay.

8 Q. That is before BT started onshoring its call centres.

9 A. Yes.

10 Q. Let us turn to page {F/907/3}. There you see the
11 heading, "Sky Boosts UK Customer Service Team ..." Let
12 us just enlarge it. That is helpful, thank you. "Sky
13 Boosts UK Customer Service Team with 400 Extra Jobs."

14 Have a look at the first bullet point underneath
15 that heading.

16 A. Yes.

17 Q. That says:

18 "Sky has announced plans to create 400 new customer
19 service jobs across the United Kingdom, with around 200
20 going to their contract centres in Scotland (100 at
21 Uddingston, 50 in Livingston and 50 more at Dunfermline)
22 and the rest to their bases in Newcastle and Stockport
23 (England)."

24 Do you see that?

25 A. Yes, sure.

1 Q. That is a document from July 2015.

2 A. Yes.

3 Q. What it shows is that Sky had five customer service
4 centres throughout the UK.

5 A. Okay.

6 Q. Three in Scotland, two in England?

7 A. Yes.

8 Q. It was looking to expand those customer service centres
9 at this time --

10 A. Yes.

11 Q. -- by employing 200 more people at its Scotland
12 centres --

13 A. Yes.

14 Q. -- and 200 more people at its England centres.

15 So it is not the case that BT was the first provider
16 to onshore its call centres.

17 A. Well, I do not think my -- perhaps we could go back to
18 the transcript and double check, so perhaps I slightly
19 misspoke. But my understanding was that BT was the
20 first to 100% onshore its calls on 29 January 2020.

21 Q. Because Sky had onshore call centres throughout the UK
22 in 2015 --

23 A. Okay.

24 Q. -- and was looking to expand them.

25 A. So I still -- my understanding is around 2016, BT had

1 plenty of call centres in the UK, and took about 60% of
2 their calls in the UK in 2016, and their strategy was to
3 increase that to 100%.

4 Q. I just want to confirm with you that the evidence as you
5 framed it in the hot tub was incorrect?

6 A. Possibly -- I mean possibly there is a slight -- I would
7 have to go back to the transcript and see. It is
8 possible it is slightly incorrect.

9 MR BEARD: Can we go back to the transcript?

10 MR SPITZ: It is {Day17/89:14}. You say there BT was the
11 first to actually have done all of that onshoring.

12 (Pause)

13 A. Yes. So what that means, it is specifically referring
14 to this late January 2020, when BT hit 100% of the
15 calls, sort of being onshore, which I think is
16 moderately clear. At least that is what I would read if
17 I read that statement.

18 Q. Let us move on to BT's Fault Fix Guarantee. This is
19 discussed from the beginning of page 91 of your report.
20 We will not go there unless you particularly feel you
21 need to, but at paragraph 421 you refer to the Fault Fix
22 Guarantee service that BT introduced in 2017?

23 A. Yes.

24 Q. This service was available to all voice customers, not
25 just SFV customers?

1 A. Yes.

2 Q. You say:

3 "This provided compensation to customers if BT was
4 unable to fix the fault within a certain time frame, and
5 BT considered that this offered better value for money
6 to [customers]."

7 A. Yes.

8 Q. I am sorry, to "consumers".

9 A. Yes, thank you.

10 Q. What you do not say is that the Fault Fix Guarantee was
11 not an automatic compensation scheme, in the sense that
12 customers first had to make a claim to BT to get
13 compensation if their fault was not fixed on time?

14 A. Okay.

15 Q. It was an opt-in service?

16 A. Fine. So what are the details of what people needed to
17 do in order to opt in?

18 Q. That is dealt with in Ms Blight's evidence at
19 {Day8/7:12}. I do not think we need to go there. The
20 simple point that she makes is that it was an opt-in
21 scheme. You would not disagree with that?

22 A. If -- I will take what you say.

23 Q. Let us go to {C/360.1} --

24 A. Do we have any sense of -- because it really makes
25 a difference, like how that information is presented to

1 people, is it -- and what is the kind of rough opt-in
2 rate? Like if it is made super easy to people after
3 there is a fault and there is an 80 to 90% opt-in rate,
4 that is a very different to where there is --

5 THE CHAIRMAN: Do you mind if I just ask a question here, if
6 you do not mind, just picking up on that.

7 You have questioned what are the details of the
8 underlying scheme. When you were writing your report
9 and referring to this guarantee, what materials did you
10 look at to get a full picture of what it was?

11 A. Yes, that is -- thank you. I think I mostly relied
12 on ... At the point I wrote the report, I think it was
13 mostly the witness statements.

14 THE CHAIRMAN: The witness statements.

15 A. The witness statements.

16 THE CHAIRMAN: Thank you.

17 A. So, I mean, what I have done in the whole of section 7
18 is I have used witness statements, and then, when
19 necessary -- it was one of the main sections where
20 I have dropped into BT's documents as I could to try to
21 understand more what was going on, as necessary.

22 THE CHAIRMAN: Thank you.

23 A. When I received everything.

24 THE CHAIRMAN: Thank you very much.

25 MR SPITZ: Let us turn up {C/360.1/29}, please. You will

1 see the heading "Only a minority of consumers
2 experiencing harm receive compensation". Do you see
3 that?

4 A. This is ...

5 Q. This is an Ofcom document.

6 A. Okay, and this is after the introduction of the Fault
7 Fix Guarantee or before?

8 Q. It is March 2017.

9 A. Okay, so ... So this is March 2017. When did Fault Fix
10 Guarantee come in? I cannot remember the precise month.
11 I could go into my report and check, but ...

12 Q. 2017.

13 A. So after this document?

14 Q. We understand that it is before this document.

15 A. So in January, February or early March. Okay, fine.

16 Q. You see Ofcom says at paragraph 4.6 -- again, read that
17 to yourself, please. In the interests of time I will
18 not read it out.

19 A. Sure. (Pause)

20 Q. Then if you also have a look at paragraph 4.9.

21 A. Okay. (Pause). Yes.

22 Q. So Ofcom is noting here that the majority of customers
23 who experienced delayed fault repair do not claim
24 compensation?

25 A. Yes.

1 Q. Even when customers do claim compensation, the amount of
2 compensation awarded is often, in the words of this
3 document, "derisory"?

4 A. Yes, that appears -- we are going at pace, which is
5 fine, but yes, that appears to be correct.

6 Q. If we move to page {C/360.1/35}, paragraph 4.32. Can
7 you blow that up, please.

8 Again, please read that to yourself. (Pause).

9 A. Yes.

10 Q. This observation applies to BT's Fault Fix Guarantee
11 scheme, given that it was an opt-in scheme?

12 A. I -- honestly, I would need to know more details to
13 check, which is why I was discussing the details of the
14 opt-in scheme earlier. We might be going into a greater
15 level of detail about the Fault Fix Guarantee than I am
16 afraid I am aware of.

17 Q. Let us go then to {C/359/1}.

18 I am coming to the end of this section of my
19 questions.

20 THE CHAIRMAN: Mr Spitz, just on that, you are going to have
21 to finish by lunchtime.

22 MR SPITZ: Yes, indeed, I understand. Thank you very much.

23 THE CHAIRMAN: Thank you.

24 MR BEARD: I think he may need to finish slightly before.

25 I have five minutes of re-examination.

1 THE CHAIRMAN: Sure, of course.

2 MR BEARD: Just in relation to Fault Fix Guarantee, just to
3 be clear, are the questions being put on the basis that
4 the Fault Fix Guarantee was in place before March 2017
5 or not?

6 THE CHAIRMAN: That is something that must be capable of
7 being established.

8 MR BEARD: I know what the answer is, I am asking --

9 THE CHAIRMAN: Well, what do you say the answer is? Let us
10 not waste time with this point.

11 MR BEARD: April.

12 THE CHAIRMAN: You say it was April.

13 MR BEARD: April, yes.

14 THE CHAIRMAN: Are you saying it was before April, Mr Spitz?

15 MR SPITZ: We will look into it, but I am advised it may
16 have in fact been April.

17 THE CHAIRMAN: You need to get someone to check it out now.
18 You can keep on asking your questions, but I do not want
19 the matter to hang over after lunch, and it might save
20 some re-examination if you agree it was April.

21 MR SPITZ: Yes.

22 Let us then go to another topic on standalone
23 landline services. This is at section 441 of your
24 report.

25 A. So I can see this automatic compensation document. Is

1 that what we are about to discuss?

2 THE CHAIRMAN: We have finished with that document. It is

3 still there, I know.

4 A. So standalone landline, right.

5 MR SPITZ: Let us go to 441 of your report, {IR-E/21/97}.

6 A. Yes.

7 Q. Here you describe BT in your report as:

8 "... and innovative service provider responsive to

9 customer desires through product differentiation."

10 Yes?

11 A. Yes.

12 Q. You are suggesting that BT's SFV customers benefited

13 from innovation?

14 A. Yes, though, I will just add that I do it on this basis;

15 I think I do make it clear that I am referring to this

16 specific improvement.

17 Q. So are you suggesting that BT's SFV customers benefited

18 from innovation?

19 A. Yes.

20 Q. Let us turn up {F/900/1}. I have shown you this

21 document before, it is the June 2016 document. If you

22 turn to page {F/900/10}, you will see the heading

23 "Innovation [minus] 11%".

24 A. Is it minus?

25 Q. I am sorry, it is not minus.

1 THE CHAIRMAN: It is a hyphen.

2 A. We had the issue before when we had the minus 12%.

3 MR SPITZ: My fault, it is 11%.

4 If we could read the bullet point underneath that
5 heading:

6 "BT TV and Sport customers are the only groups
7 seeing any increase in innovation over time and it's
8 among the Sport base where BT does make up some ground
9 but the gaps to Sky remain."

10 Then on the right-hand side there is the chart that
11 says "Innovation by BT Product"?

12 A. Yes.

13 Q. There you see the scores for "Line Only", "Dual Copper",
14 "Dual Fibre", "Triple", "Sport" and "Non Sport"?

15 A. Yes.

16 Q. The scores for "Line Only" are much lower than the other
17 product groups?

18 A. I think that is right. We have come across one --
19 a version of these charts earlier, and I put forward the
20 suggestion that "Line Only" probably includes all of the
21 voice base, and that by "Line Only" they are just trying
22 to differentiate that it is not covering everything
23 else. That may or may not be true, it is just
24 a speculation. I am just -- given how this is
25 constructed, that seems ... plausible.

- 1 Q. Landline only services are not an innovative product,
2 are they?
- 3 A. I mean, I think in section 7 of my report I try to
4 indicate what I thought were least quality improvements,
5 so let us consider whether any of those are innovations.
6 I think Call Protect could be considered an innovation.
7 The ... let us have a think about what others. The call
8 centres I would not necessarily say was ... The Fault
9 Fix Guarantee I would say was a form of innovation, they
10 really -- they thought very, very carefully about what
11 would resonate with the base and tried to find something
12 that would work well with the base whilst being cost
13 effective, so I probably would call that an innovation.
14 I would have to more systematically think about all
15 the elements of section 7, but ... So there is certainly
16 a number of innovations.
- 17 Q. You will be happy to hear that I am now moving on to
18 questions about switching, and I do not have nearly as
19 many as I had on these questions.
- 20 A. Okay, fine.
- 21 Q. Turning to the switching tracker data, this is your
22 report at paragraph 327. That is {IR-E/21/73}. You say
23 that the percentage of SFV customers who thought
24 switching would be difficult was broadly comparable to
25 Dual Play customers?

- 1 A. Yes.
- 2 Q. If we look at paragraph 328, you conclude there:
- 3 "... Class Members do not face material barriers to
- 4 switching and indeed do not perceive there to be
- 5 material barriers to switching."
- 6 A. Okay.
- 7 Q. Let us look at what the switching tracker data says.
- 8 That is at {C/369/163}. If we can enlarge the top for
- 9 the moment.
- 10 The survey question is:
- 11 "How easy or difficult was it/do you think it would
- 12 be to change the provider of your home landline
- 13 service?"
- 14 If we can blow up the left half of the table, we can
- 15 see there is a "Landline" column which is divided
- 16 between simple "Bundle" and "Standalone". That is the
- 17 column headed "Landline" at the top?
- 18 A. Okay.
- 19 Q. If we go down to the "Total Difficult" row, all in caps,
- 20 we see that 13% of bundle customers said that switching
- 21 would be difficult?
- 22 A. 13%, yes.
- 23 Q. That is compared to 18% of standalone customers?
- 24 A. Yes.
- 25 Q. That is the statistic you cite in Table 6 of your

1 report?

2 A. Yes.

3 Q. If we look at the "Don't know" column at the bottom, we
4 see 9% of bundle customers said they did not know if
5 switching would be easy or difficult?

6 A. This is the "Don't know" row, is that right?

7 Q. Exactly so.

8 A. Okay.

9 Q. 9% said they did not know if switching would be easy or
10 difficult, compared to 21% of the standalone landline
11 customers?

12 A. Yes.

13 Q. If we go to the "Total Easy" --

14 THE CHAIRMAN: Sorry, can we just expand the bit that you
15 are referring to there, if that is possible?

16 MR SPITZ: Yes. It is the bottom row, "Don't know".

17 THE CHAIRMAN: You have got ...

18 MR SPITZ: Under the "Landline" column, at the bottom there
19 is 9% of bundle customers said they did not know if
20 switching would be easy or difficult, compared to, and
21 that is the next entry, 21% of standalone landline
22 customers.

23 THE CHAIRMAN: Right.

24 MR SPITZ: So a significantly lower proportion of standalone
25 landline customers thought that switching would be easy

1 compared to bundle customers?

2 A. A significantly lower? As in the 61% versus the 79%, or
3 the ... Sorry, what is that? Are we talking about
4 difficult or easy?

5 THE CHAIRMAN: What is the -- yes.

6 MR SPITZ: Yes, that is quite right. First let us go to the
7 "Total Easy" row, and there you see that 79% of bundle
8 customers said that switching would be easy.

9 A. Yes.

10 Q. Compared to 61% of standalone customers?

11 A. Yes. Can I just double check? This is specific to the
12 landline service, is it not? I think I can half see the
13 question. Can we just see the question at the top, just
14 to make sure that we understand what we are talking
15 about?

16 Yes, okay, this is landline specific. Great, fine,
17 good.

18 Q. So over a fifth of standalone landline customers did not
19 know if switching would be easy or difficult?

20 A. Are you saying over a fifth of the people who answered
21 the question?

22 Q. Yes.

23 A. Yes.

24 Q. More than double the proportion of bundle customers did
25 not know if switching would be easy or difficult?

1 A. Yes, so the "Don't knows", the 21%, is bigger than the
2 9%, yes.

3 Q. If you do not know whether switching would be easy, by
4 definition you do not have a positive belief that
5 switching would be easy?

6 A. In the sense that a lot of people might be neutral ...
7 Yes, so you are not in the ... I mean -- yes.

8 Q. By definition, if you do not know whether switching
9 would be easy, you do not have a positive belief that it
10 would be easy?

11 A. Yes, you do not know, that is right.

12 Q. I think you would accept that the lack of a positive
13 belief could be a barrier to switching?

14 A. Possibly. I guess I would lean neutrally towards that
15 statement. Let me think about that for a second. So if
16 I did not know whether it was going to be easy or
17 difficult, I would probably ask someone, especially if
18 I was a VOC.

19 So I do not know. I do not have a strong opinion on
20 that.

21 Q. I think let us move on then.

22 Dr Hunt, are you aware that in April 2020, BT
23 changed its approach to price changes, moving to
24 a CPI plus pricing model?

25 A. Yes, I am aware of that.

1 Q. It moved away from its approach of increasing prices by
2 pounds or pence or by specifying a percentage --

3 A. So --

4 Q. Let me just finish the ...

5 A. Yes, okay.

6 Q. -- and instead it adopted an approach of increasing its
7 prices by reference to the rate of inflation?

8 A. That is how it decided what the price increases would
9 be. We can get into the communication of that
10 decision --

11 THE CHAIRMAN: Let us just deal with it one by one. So you
12 agree that they changed the pricing system --

13 A. Yes, absolutely.

14 THE CHAIRMAN: -- inflation?

15 A. Yes.

16 MR SPITZ: Let us have a quick look at the CR's skeleton
17 argument Table 2. It is {IR-A/12/10}. This sets out
18 BT's price rises on standard line rental. On the
19 left-hand side we see the prices charged to SPCs and the
20 increases to those are set out in absolute and
21 percentage terms. You see that?

22 A. I do.

23 Q. On the right-hand side we see the prices charged to
24 VOCs?

25 A. I do.

1 Q. Those are controlled by the commitments, so let us put
2 those aside, but let us look at what happened to BT's
3 prices to SPCs after the CPI pricing model was
4 introduced.

5 A. Okay.

6 Q. In March 2020 you will see the price went up by 1%?

7 A. Yes.

8 Q. In March 2021 you will see it went up by 4%?

9 A. Yes.

10 Q. In March 2022 by 9%, and in March 2023 by 14%, yes?

11 A. Yes.

12 Q. So moving to a CPI pricing model led to some very
13 significant annual price increases for SPCs?

14 A. Yes, but of course we have to think that the relevant
15 thing here is inflation, so we have to consider this
16 relative to what would be a -- relative to -- we would
17 have to inflation-adjusted prices, right, and of course
18 the issue going on here is that we have got very high
19 inflation.

20 Q. Let us look at BT's, one of the BT price change letters
21 {OR-F/712/1}. This is an example of a price change
22 notification sent by BT to a customer under the new CPI
23 pricing model. You cite this in the last row of Table 5
24 of your report. We do not need to go there, but you
25 refer to it in Table 5 of your report.

1 A. Okay.

2 Q. It is dated March 2021, and the second paragraph says:

3 "BT Landline services (including most rental and
4 call prices) will increase each year by CPI plus 3.9%.
5 For example, if you have one of our Pay As You Go or
6 500/700 Limited Minutes plans, the 20p per minute rate
7 will increase by CPI plus 3.9% to 20.90p per minute.
8 For details of all prices that are increasing visit
9 bt.com/tariffguide and head to page 2."

10 BT does not tell the customer in this communication
11 what CPI rate is being used to calculate the price
12 increases?

13 A. Yes, that appears to be correct. Though can we go to
14 page 2?

15 Q. Let us finish the questions first and then we can go to
16 page 2.

17 A. Okay.

18 Q. It does not tell the customer what their current prices
19 are?

20 A. It does not appear to, not on this page.

21 Q. No, and it does not tell the customer by how much their
22 prices are going to be increasing, either, does it?

23 A. So it says the CPI plus the 3.9%, but it does not say
24 otherwise, as far as I could tell very quickly looking
25 at this.

- 1 Q. Exactly. It just tells the customer their prices will
2 be increasing by CPI plus 3.9%?
- 3 A. Yes, that appears to be correct.
- 4 Q. It just gives the customer an example of how their
5 prices would increase if they had one of BT's pay as you
6 go or 500/700 limited minutes plans?
- 7 A. Yes.
- 8 Q. So it leaves the customer to work out what the relevant
9 rate of CPI is?
- 10 A. Well, I think we need to go to page 2 to ...
- 11 Q. There is not a page 2, Dr Hunt. This is the sum of the
12 document.
- 13 A. Okay.
- 14 Q. So it leaves the customer to work out what the relevant
15 rate of CPI is, yes?
- 16 A. My guess is there is a whole price table on page 2 based
17 on how they changed their prices.
- 18 Q. The customer is referred to the website, but this is the
19 only page of the document that we have. You will see
20 that the reference to page 2 is a reference to bt.com's
21 website?
- 22 A. Is that right?
- 23 Q. Have a look.
- 24 A. That may be correct.
- 25 Q. It also leaves the customer to do the maths to find out

1 the impact that this increase has on their monthly bill?

2 A. Yes, judging from this -- from what -- that may be
3 correct.

4 Q. So I would suggest that is not a very transparent
5 approach to pricing, is it?

6 A. If we accept all of the conditionals then, yes.

7 Q. Let us see what Ofcom made of this approach. That is at
8 {C/408/1}. This is an Ofcom document from
9 December 2023. It is headed "Prohibiting
10 inflation-linked price rises". It is a consultation
11 that was launched by Ofcom on 12 December 2023.

12 If you turn to page {C/408/3} of the document, if we
13 can enlarge the first two paragraphs. If you read those
14 two to yourself. (Pause).

15 A. Okay.

16 Q. Then go over to page {C/408/4} and read to yourself
17 paragraphs 1.9 to 1.12.

18 You will be happy to hear we are on the home
19 stretch.

20 A. Okay. (Pause)

21 Okay.

22 Q. If you go over to page {C/408/7}, paragraph 2.9.

23 A. Yes.

24 Q. You see the chart there at the bottom which shows that
25 BT was the first to introduce the CPI plus pricing model

1 in September 2020?

2 A. Yes.

3 Q. Then if you go to page {C/408/28}, there is the heading,
4 "As consumers struggle to engage with inflation-linked
5 price variation terms, this can lead to consumer harm."

6 Go over to {C/408/29}. Paragraph 3.53 {C/408/30}.

7 If you can enlarge that, thank you.

8 A. Yes.

9 Q. So, Dr Hunt, Ofcom's view is that inflation-linked
10 pricing makes it more difficult for consumers to figure
11 out what price they will pay for their services?

12 A. Yes, that is their view.

13 Q. It also makes it more difficult to compare prices
14 offered by different providers?

15 A. Did they ... I am sorry, I had to read a lot of
16 paragraphs quickly. Yes, I will take your word for it
17 that it was in one of those paragraphs.

18 Q. You will also have seen that Ofcom says that these
19 findings are supported by insights from the
20 behavioural --

21 A. Yes, but if you read their note, the three-page note on
22 behavioural economics concepts, it is incredibly high
23 level, and there is, I am sorry, but as far as I could
24 tell, precisely zero evidence to back their statements,
25 which may be correct, but that is ...

1 Q. Let me ask you as a behavioural economist: you would
2 agree, would you not, with Ofcom's assessment that
3 inflation-linked pricing inhibits consumer engagement?

4 A. Actually, I think it really depends how you communicate
5 to consumers. So the fact that prices are rising by
6 inflation, and then how you communicate that to
7 consumers, are two different things.

8 THE CHAIRMAN: Let us take, as an example, the document we
9 were looking at earlier on. What about that?

10 A. As in the one we just looked at before this?

11 THE CHAIRMAN: Yes, the one that was referring to inflation.

12 A. Yes, I agree. So for that particular document, I agree
13 that it was not clear to the consumer at all. You would
14 have to spell it out in pounds and pence to make sure
15 that they ...

16 MR SPITZ: Thank you very much, sir. Thank you very much,
17 Dr Hunt. I have no further questions.

18 THE CHAIRMAN: Yes, Mr Beard.

19 Re-examination by MR BEARD

20 MR BEARD: It was great that Mr Spitz was quick on the home
21 straight. He was on the wrong track, however.

22 Can we go to {F/720/1}, please. I do not know if
23 you have seen this? Maybe we could go to ...

24 A. Maybe page 2?

25 Q. Just to pause. The predicate of Mr Spitz's line of

1 cross-examination, when he went to that document with
2 inflation rates in, appeared to be that that was some
3 kind of BT letter or notification.

4 If we could just see the top of this. Can we go ...
5 So here we are, it is a letter from BT, it is dated
6 January 2020, and it says:

7 "We are changing your prices in line with CPI
8 inflation."

9 You kept referring, Dr Hunt, to page 2. You will
10 see on this -- there we are, page 2 {F/720/2}. Was this
11 what you were thinking about?

12 A. Yes.

13 Q. So are these pounds and pence, Dr Hunt?

14 A. Yes.

15 Q. So as far as you are aware, was BT actually
16 communicating CPI inflation by pounds and pence in 2020?

17 A. On this document, yes.

18 MR BEARD: I did not pick up every time Mr Spitz was
19 proceeding on a false basis, but that shows that there
20 was a significant degree to which a number of lines of
21 cross-examination that were pursued --

22 THE CHAIRMAN: Sorry, Mr Beard, are you making more
23 submissions?

24 MR BEARD: I am.

25 THE CHAIRMAN: Well, do not make submissions now.

1 MR BEARD: It is in frustration.

2 THE CHAIRMAN: You will have to curb it, I am afraid. I am
3 sure it will emerge in submissions in due course.

4 MR BEARD: Yes, I will keep it for then. It can ferment.

5 But we started the day with a whole series of
6 documents on NPS. You said you had seen those
7 documents. Had you seen those documents?

8 A. I am not saying I had seen every single one. I had seen
9 many of those documents.

10 Q. Had you seen them before you wrote your report?

11 A. Yes, I had seen some of them. Again, I probably had not
12 seen every single one before I wrote the report.

13 Q. Were any of those documents so far as you are aware
14 referred to by Professor Loomes in his report?

15 A. No, I do not think so.

16 Q. Did you look at Mr Parker's report?

17 A. I looked at Mr Parker's report. It is very long.

18 Q. I thought I would ask you whether you have seen them.
19 Can we just go to one of them. {OR-F/906/8}. We will
20 start with {OR-F/906}. It was one of Mr Spitz's
21 favourite documents.

22 So this was page 8 he did not take you to. In
23 responding to numerous of his questions you placed the
24 caveat about the data source, the data relating to
25 a cohort of people dealing with online. Had you seen

- 1 this?
- 2 A. Yes.
- 3 Q. In relation to Landline Only what is the constraint that
4 we are seeing in relation to any material in this
5 document?
- 6 A. So this document is the Landline Only document which is
7 basically -- this is a sort of SPCs plus some VOCs in
8 this document, yes.
- 9 Q. You placed this caveat -- sorry, if we go back so you
10 are reminded of the front page of this document. It is
11 the consumer brand NPS survey. You placed the caveat
12 about the data covering the whole of BT's base and only
13 in relation to online?
- 14 A. Yes.
- 15 Q. Why is that significant when we are thinking about brand
16 issues for VOCs and SPCs?
- 17 A. I think that BT for landline for this particular
18 customer base is likely to have a specific -- my --
19 I have tried to look at the evidence but my underlying
20 kind of hypothesis is that they would have -- that that
21 brand would particularly resonant for a landline for an
22 older base.
- 23 Q. For an older base. Sorry, do you mean within SPCs or
24 within VOCs?
- 25 A. Within VOCs -- well, actually generally, but also within

1 VOCs.

2 Q. In relation to SPCs should we think about brand impacts
3 differently or in the same way as in relation to VOCs?

4 A. I mean, SPCs differ considerably from VOCs. Obviously
5 the fact that they have got their broadband with another
6 company is something that I think is likely to be
7 important.

8 Q. At page 55 of the transcript from today, if we could
9 just go to that, it was suggested by Mr Spitz that the
10 NPS materials told a different story from those which
11 you set out in your report. Now, there is no specific
12 challenge so far as I can see being brought to what you
13 will have said in section 7 or 6.3.3 in your reports,
14 but just to effectively put Mr Spitz's point: do you
15 think that the material you have seen in relation to NPS
16 means that there is a different story from that which
17 you have set out in section 7 and if so how should we
18 qualify it?

19 A. I do not think it is -- it just seems to be two
20 different stories so I think there are things that are
21 broadly consistent across the two.

22 THE CHAIRMAN: Just a minute. (Pause). Thank you.

23 MR BEARD: Could we go very briefly to {F/632/1}.

24 A. It is worth pointing out, there are two very different
25 stories about two very different customer bases and very

1 different products and these kind of things, just to be
2 clear.

3 Q. Right. In relation to this document, this document is
4 just about VOCs?

5 A. Yes.

6 Q. In the course of being asked about it you referred to
7 VOCs actually only amounting to, I think you said around
8 55% retired?

9 A. I would have to go back and check. It was something
10 like that, yes.

11 Q. So I think it is -- can you have a look at paragraph 162
12 in your report. That is {E/21/39}.

13 A. Yes, so 57%, yes.

14 Q. That was the reference you had in mind?

15 A. Yes, I knew it was 50 something.

16 Q. Another reference, just to cross-check. You were
17 referred to a part of the transcript from {Day19/89:1}
18 in relation to onshoring?

19 A. Okay.

20 Q. Do you recall that?

21 A. I do not see onshore on this page.

22 Q. No, I am sorry. Do I have the wrong reference? Sorry,
23 I can probably cut through it. I actually wanted to
24 take you to -- it was where Mr Spitz asked you about
25 those issues. I just wanted to take you to page 140 of

1 Day 19 where you came back to these issues.
2 {Day19/140:10}. It is from line 10.
3 A. Okay.
4 Q. Do you want to just read that. (Pause).
5 A. Yes, I mean I was slightly -- I think it was originally
6 around 60% at the time of announcement. It quickly
7 became 80% and then went to 90% and then finally hit
8 100% in around January 2020.
9 Q. So you were not saying that BT had no call centres
10 before the onshoring process?
11 A. No, never was I saying that.
12 Q. If we could just go to -- you were taken to various
13 statistics in relation to Call Protect. I am not going
14 to go back to all of them. You were in particular taken
15 to {F/886/1} which said that 45% of Voice Only Customers
16 had Call Protect. Do you recall that?
17 A. Yes.
18 Q. Just can we go to {F/561/51}. You were taken to this
19 document. It says: BT Call Protect base is now
20 2.2 million. So that is across the whole of the
21 customer base?
22 A. Yes.
23 Q. At that time we are talking about 9 million customers;
24 is that right?
25 A. I do not know which year it is.

- 1 Q. Sorry, it is 2017 I think, July 2017.
- 2 A. Yes, okay, probably approximately.
- 3 Q. So it is around 25% of all customers were signed up to
4 it?
- 5 A. Okay, yes, so it is a higher percentage for the VOCs.
- 6 Q. A higher % age for the VOCs.
- 7 Then just one final point. If we go to {C/363/273}.
- 8 Here we have another page from a survey. You see:
- 9 "Ofcom narrowband market review -- residential
10 consumers.
- 11 "Why do you use (Broadband Supplier) for your
12 broadband service rather than using the (Landline
13 Supplier) for your broadband and your landline?"
- 14 So this is a question that is to do with SPCs?
- 15 A. Yes.
- 16 Q. What do we take from -- have you looked at this
17 material?
- 18 A. I have seen some of this previously, yes.
- 19 Q. What do we take from the material that refers to
20 summary -- under the summary here in relation to what
21 the SPC responses are indicating?
- 22 A. So basically people are choosing -- people are -- the
23 highest one is that people are going elsewhere -- not
24 going for broadband with BT because they can get
25 a better deal elsewhere.

1 Q. Better deal elsewhere?

2 A. Yes, that is the deal price.

3 Q. Then we have "service", "quality" and "trusted"?

4 A. As well.

5 Q. But it is secondary in relation to the SPCs?

6 A. Yes.

7 THE CHAIRMAN: Sorry, the secondary bit is the?

8 MR BEARD: "Service", "quality" and "trusted". In relation
9 to SPCs what this is indicating -- well, Dr Hunt has
10 indicated that it is focusing on deal and price.

11 THE CHAIRMAN: Yes.

12 MR BEARD: It is relevant for when one tries to interpret
13 the documents on NPS that were not actually put to any
14 witnesses.

15 THE CHAIRMAN: Yes.

16 MR BEARD: I do not have any further questions for you,
17 Dr Hunt.

18 THE CHAIRMAN: Thank you very much. That completes your
19 evidence. Thank you very much indeed, Dr Hunt.

20 A. Thank you.

21 (The witness withdrew)

22 MR BEARD: Thank you for the indulgence.

23 THE CHAIRMAN: Right, 2 o'clock, please.

24 (1.08 pm)

25 (Luncheon Adjournment)

1 (2.00 pm)

2 THE CHAIRMAN: Right, can we have Mr Punter and Mr Scott
3 sworn or affirmed, please.

4 MR JONATHAN PUNTER (sworn)

5 MR IAN ROBERT HUNTER SCOTT (sworn)

6 Questions by THE TRIBUNAL

7 THE CHAIRMAN: I am going to lead the questions today in our
8 hot tub exercise and first of all, can I express to both
9 of you the thanks from the Tribunal for an extremely
10 helpful joint expert report.

11 MR BEARD: I am so sorry, do we want to do the swearing of
12 the statements, the confirmation of statements.

13 THE CHAIRMAN: I am sorry, you are absolutely right. I had
14 forgotten about that.

15 MR BEARD: I do not want to interrupt but is it not perhaps
16 sensible.

17 THE CHAIRMAN: We had better do that.

18 Examination-in-chief of MR PUNTER by MR SPITZ

19 MR SPITZ: Good afternoon, Mr Punter. You should see in
20 front of you a bundle containing your expert reports.
21 I would like to introduce those.

22 The first one is at {E/10/1} of the electronic
23 bundle references. Is that the front page of your
24 report?

25 A. Yes.

1 Q. If you turn to page 55, that is {E/10/55}, you will see
2 that your report is dated 29 September 2023?

3 A. That is correct, yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Mr Punter, does the content of this report represent
7 your true and complete view at the time that you wrote
8 it?

9 A. Yes.

10 Q. Could I ask you then to turn to tab 11 in the same
11 bundle, that is {E/11/1} on the electronic referencing.
12 If you turn to page {E/11/10} of this document. This is
13 a supplemental note you prepared dated 6 October 2023,
14 is that correct?

15 A. That is correct.

16 Q. Is that your signature on the document?

17 A. That is my signature, yes.

18 Q. Are the contents of this supplemental note your true and
19 complete view at the time that you wrote the note?

20 A. Yes.

21 Q. Thank you.

22 Could I then ask you to turn to tab 12 in the same
23 bundle, that is {E/12/8}. That is the table of contents
24 of your reply report, is that correct?

25 A. That is correct, yes.

- 1 Q. Could I ask you to turn to page 67 {E/12/67}. Your
2 reply report is dated 10 November 2023. Is that your
3 signature on that page?
- 4 A. Yes, it is, yes.
- 5 Q. Are the contents of this reply report your true and
6 complete view at the time you wrote the report?
- 7 A. Yes.
- 8 Q. Next, Mr Punter, please turn to tab 12.1, and that is in
9 {OR-E/12.1/1}. Is that your supplemental reply report?
- 10 A. I have not found it. 12.1 -- yes, it is, yes.
- 11 Q. If you turn to page 45, please {OR-E/12.1/45}. The
12 supplemental reply report is dated 27 November 2023?
- 13 A. Yes.
- 14 Q. Is that your signature on that page?
- 15 A. It is, yes.
- 16 Q. Are the contents of this supplemental reply report your
17 true and complete view at the time you wrote that
18 report?
- 19 A. Yes.
- 20 Q. Lastly, Mr Punter, could I ask you to turn to the joint
21 statement. That is at {E/51/1}. This is the joint
22 statement of the actuarial experts, is it not?
- 23 A. It is, yes.
- 24 Q. If you turn to page {E/51/44} of that document, you will
25 see it is dated 15 December 2023. Is that your

1 signature at the foot of the page on the left-hand side?

2 Take your time.

3 A. I was looking at the wrong number. Yes, it is, yes.

4 Q. Does what is recorded under your name in the joint
5 statement represent your true and complete view at the
6 time that the joint statement was settled?

7 A. It does, yes.

8 MR SPITZ: Thank you very much. I am grateful.

9 THE CHAIRMAN: Ms Love.

10 Examination-in-chief of MR SCOTT by MS LOVE

11 MS LOVE: Mr Scott, good afternoon.

12 A. Good afternoon.

13 Q. Mr Scott, can I ask you to turn to {E/22/1} in your
14 bundle, please. Is this your first expert report in
15 these proceedings?

16 A. Yes, it is.

17 Q. Could I ask you to go forward to {E/22/99}, please.

18 A. I am almost there.

19 Q. Is that your signature?

20 A. Yes, it is.

21 Q. Mr Scott, subject to the fact that you have changed your
22 approach in relation to the question of personal
23 representation in line with your second report and the
24 JES, is this report true to the best of your knowledge
25 and belief and does it represent your true and complete

1 professional opinion?

2 A. Yes, it does.

3 Q. Thank you, Mr Scott.

4 Can we now turn to {E/24/1}, please. Is that your
5 reply expert report?

6 A. Yes, it is.

7 Q. Could I ask you to turn forward to page {E/24/32}. Is
8 that your signature?

9 A. Yes, it is.

10 Q. Now, subject to some minor clarifications and
11 corrections, is this true to the best of your knowledge
12 and belief and does it represent your true and complete
13 professional opinion?

14 A. Yes, it does.

15 Q. In relation to those clarifications, I understand that
16 there is a correction you would like to make to
17 appendix 2 at {E/24/39}.

18 A. Yes, I would.

19 THE CHAIRMAN: Just one moment. Sorry, page 29, did you
20 say?

21 MS LOVE: Yes. No, 39.

22 THE CHAIRMAN: Just one moment. Yes.

23 A. This appendix lists 11 different surveys, and it should
24 have listed a further survey, Canada Life 2020.

25 MS LOVE: Mr Scott, I understand that in the light of that

1 you would also like to make a correction to
2 paragraph 5.9, which we find at page {E/24/21}.

3 A. Yes, that is correct. It says:

4 "I have obtained through online research eight
5 further surveys ..."

6 That should read "seven further surveys", and in
7 total the number of surveys is 12 at the bottom of that
8 paragraph.

9 Q. Finally, just following through this point about the
10 Canada Life surveys, can we turn to Table 5.1 and
11 internal page {E/24/23}, please.

12 A. In the top line of that table, the one that reads "55
13 and over", I have used the Canada Life 2023 survey
14 results to inform those figures, and in the final line,
15 the "All ages" line, I have used the Canada Life 2020
16 survey to inform those figures.

17 Q. Thank you, Mr Scott.

18 Finally, can I ask you to turn to {E/51/1}, please.

19 A. Yes.

20 Q. This is the actuarial joint experts' statement. Could
21 I ask you to turn now to page {E/51/44} where you should
22 see some signatures?

23 A. Yes.

24 Q. Now, is the signature to the right yours?

25 A. Yes, it is.

1 Q. Subject to a further point on row 48 of the JES, which
2 we will come to, arising out of these surveys, is this
3 true -- is what is entered under your name in this JES
4 true to the best of your knowledge and belief and does
5 it represent your true and complete professional
6 opinion?

7 A. Yes, it does.

8 Q. If we turn forward to page {E/51/34} and row 48,
9 I understand that, carrying through the Canada Life
10 point, there is a further amendment here?

11 A. There is. At the top of that page I refer to the
12 Canada Life 2023 survey as being new. It is not
13 actually new as it was -- as information from that
14 survey was used in my reply report.

15 THE CHAIRMAN: Thank you.

16 MS LOVE: Before the hot tub begins, I just wanted to check
17 that the Tribunal has received the translated tables?

18 THE CHAIRMAN: Thank you very much indeed. Most helpful.

19 MS LOVE: As you will have seen, they come with
20 a substantial health warning, but Mr Scott can say more
21 about it, more than I.

22 THE CHAIRMAN: Of course.

23 MR SPITZ: Just before we do kick off the hot tub, just to
24 mention for Ms Love, do you want to introduce the letter
25 that Mr Scott wrote on 21 November 2023 at all?

1 MS LOVE: I am happy to do that if that is going to be
2 subject to cross-examination.

3 THE CHAIRMAN: This is {E/24.1}, is it?

4 MR SPITZ: Yes, it is {E/24.1/1}.

5 THE CHAIRMAN: Yes, we probably should do that.

6 MS LOVE: Mr Scott, in that case can I ask you to turn to
7 {E/24.1/1}, please. Do you recognise this document?

8 A. Yes, I do.

9 Q. Is it a letter that you wrote in relation to the reply
10 expert report of Mr Punter?

11 A. Yes, it is.

12 Q. Can I ask you to turn over the page to internal page
13 {E/24.1/2}. Is that your signature?

14 A. Yes, it is.

15 Q. Does what is in this letter -- is what is in this letter
16 true to the best of your knowledge and belief and does
17 it represent your true and complete professional
18 opinion?

19 A. Yes, it does.

20 MS LOVE: Sorry, there is one further supplemental -- while
21 we are on this, there is one further supplemental
22 dataset that was provided. (inaudible)

23 THE CHAIRMAN: Thank you very much. Thank you both.

24 Questions by THE TRIBUNAL

25 THE CHAIRMAN: So as I indicated, I will lead on the

1 questions today. Let me just say what the purpose of
2 the hot tub is going to be today, which is two things,
3 essentially. First of all, for us to have crystallised
4 the really key issues that divide you, and, secondly,
5 where there are cases where you differ, but it is said
6 not materially, to see what can be done about narrowing
7 or eliminating those issues where there is no material
8 difference.

9 You have got the list of questions. I want to start
10 with A1, and we are very grateful for the new version of
11 the table which has been produced, and, as we indicated,
12 this is for presentational purposes only, so thank you
13 for that.

14 But what I want to do is to start with the
15 methodological dispute between you, and I will ask
16 Mr Scott first of all. The first question I want to ask
17 is actually question 2, which is that you have got
18 a different approach, and, Mr Scott, you have gone for
19 this decrement approach.

20 Leaving aside everything else that is in issue
21 between you, if you are just looking at the approach,
22 does the taking of one approach, Mr Punter's or yours,
23 actually make much difference in terms of the overall
24 output?

25 MR SCOTT: Yes, it does.

1 THE CHAIRMAN: Right.

2 MR SCOTT: I mean, I can illustrate that if I look at the
3 table of translated decrement rates that you just
4 referred to.

5 THE CHAIRMAN: Yes.

6 MR SCOTT: Looking at the right-hand column and number A,
7 the decrement rate representing the proportion of Class
8 Members in October 2015, who, I mean, in this case, will
9 not be alive, or deceased with a personal representative
10 on the final distribution date, and based on the
11 assumptions and method that I used, the decrement rate
12 for the SP Class was 6.8%. That is the top row.

13 So what that means is of those SPC people who were
14 alive in October 2015, 6.8% of them would, under my
15 assumptions, either not be alive, or be deceased with
16 a personal representative by the final distribution
17 date.

18 If I turn over the page and look at the line that
19 says "Adopting Mr Punter's overall age distribution of
20 the whole Class", so this is the second row on the next
21 page.

22 THE CHAIRMAN: Just a second, please. Oh, on your -- under
23 your columns.

24 MR SCOTT: This is all under my column. My column has been
25 re-stated. Mr Punter's is --

1 THE CHAIRMAN: That is the same, yes.

2 MR SCOTT: The decrement rate reduces to 5.3%. So there is
3 a difference there of 1.5% of those SP customers from
4 2015.

5 Now, 1.5% on the face of it does not sound like
6 much, but if it is applied to a large number then it is,
7 in my view, a material sum.

8 THE CHAIRMAN: So what that means is, on that basis, that we
9 will need to decide which is the more appropriate
10 methodology as a threshold question here.

11 MR SCOTT: I believe so, yes.

12 THE CHAIRMAN: Mr Punter, would you like to make any comment
13 on that?

14 MR PUNTER: Yes, first of all, I thought it might be useful
15 just to explain what the differences between the
16 methodologies are.

17 So what we do is we look at everyone who comes in,
18 the 3.8 million records, and once they come into
19 a Class, they are then subject to the decrement for
20 mortality, and we have the will overlay as well. So
21 I think the fundamental difference between us is the
22 methodology that I think Mr Scott is using, which is
23 applying decrements to numbers that are produced by
24 Dr Jenkins on a monthly basis, so there is a set of
25 decrements that go through each month, and Mr Scott will

1 correct me when I get this wrong. So our calculations
2 are not weighted by the amount of any potential loss
3 that would be granted to an individual, it just
4 calculates the number of people that would fall out of
5 that overall Class due to mortality, while what I think
6 Mr Scott has been trying to do is weight it by the
7 potential loss for a claimant in the group.

8 THE CHAIRMAN: Can you just expand on that. When you talk
9 about the potential loss -- weighting for the potential
10 loss for each claimant.

11 MR PUNTER: So to give an extreme example, you have someone
12 who has been around for a long time, and has got ... so
13 potentially their share of the loss would be
14 substantial, as against an individual who joins for
15 a short -- is only in there for a short period of time,
16 I would -- my calculations treat them equally, so each
17 of the weighting is 1 and 1. Where Mr Scott -- what
18 I think Mr Scott and Dr Jenkins are trying to achieve is
19 weight it by the amount of potential loss each of those
20 people would get.

21 So presumably the person who has been there the
22 longest will get a bigger loss factor than someone who
23 has been there for a shorter period of time.

24 We were asked to calculate what the impact on the
25 numbers was. We were not asked to calculate the -- in

1 the sense of weighting it by potential loss. We can do
2 that, we do not have the data for it. But our method
3 would be quite simple. We could go into those
4 3.8 million records. If someone told us the loss per
5 individual or by category of individuals then we would
6 follow the same process and we would come to a number.

7 The problem I see with Mr Scott's methodology is
8 for -- is more complicated. To me it is more
9 complicated. It relies on interaction between the two
10 experts, and, as I understand it, Mr Scott has to make
11 some assumptions on the aging of the Class profile over
12 the period, because he is applying -- the decrements are
13 being applied month by month. So someone who is 50 now
14 is obviously going to be 51 in a year's time. So as
15 that profile moves, it ages, and you have got people
16 coming and going at the same time.

17 THE CHAIRMAN: Yes, but on your approach did you not do
18 a month by month as well?

19 MR PUNTER: We just follow everyone all the way through, but
20 it is not weighted by the loss.

21 THE CHAIRMAN: That is the critical thing, is it?

22 MR PUNTER: That is the critical thing.

23 THE CHAIRMAN: What would you like to say about that,
24 Mr Scott?

25 MR SCOTT: I think in my opinion, in order to get an

1 accurate assessment of the impact of the reduction in
2 Class size on the quantum of any compensation, it is
3 necessary to do a detailed month by month comparison.

4 Perhaps I could illustrate with some of the work
5 that I and Dr Jenkins have done to show why that is the
6 case?

7 THE CHAIRMAN: Yes.

8 MR SCOTT: I mean, I suppose there are three different
9 things. Perhaps if I could ask to see {E/22/76}, which
10 is table 14.1 from my first report. What this shows is
11 from the data I had how the Class, the numbers in the
12 Class, had developed over time.

13 Can you -- sorry, I had better wait and let you get
14 there. It flashed up straight away on my screen.

15 THE CHAIRMAN: It is only because I am looking at hard copy.
16 It has flashed up on everybody else's screen.

17 Thank you, yes.

18 MR SCOTT: So back in 2016 there were nearly 2.5 million
19 Class Members. By the time it got to 2022, there were
20 250 -- less than 250,000. So it is very important that
21 any method actually looks at how those Class Members,
22 the numbers developed over time. That is the first
23 point I wanted to make.

24 The second point I wanted to make is that the VO
25 category and the SP category are very different, and if

1 I could ask you, please, to turn to {E/22/18} and
2 {E/22/19}, {E/22/18} first of all, from my first report.

3 THE CHAIRMAN: Yes.

4 MR SCOTT: These charts show the distribution of the ages of
5 Class Members at 1 October 2015. The chart on the left
6 shows the VOC members, the chart on the right shows the
7 SP members. What this shows me is that the VO people
8 are considerably older on average than the SP ones. The
9 majority of them are over 70. Whereas the SP, there is
10 a considerable number of people at younger ages,
11 although very few of them under the age of 45. So that
12 is the second characteristic.

13 The third characteristic I wanted to bring out, and
14 for this perhaps I could ask you to bring up {E/18/50}.
15 It is Dr Jenkins' second report; and Figure 3.4.

16 What this shows is another feature of the Class in
17 that there is a very considerable number of people that
18 join and leave the Class in relatively -- and they are
19 there only for a relatively short period of time. On
20 average about a month, and generally less than a year.

21 I mean, this chart shows, for example, of the people
22 who joined in 2016, there are only half of them still
23 there a year later, and, as you go through this, there
24 are fewer and fewer of them.

25 So in aggregate, out of the 3.8 million or so

1 people, there is about a 1 million who have come in and
2 out of the Class in a very short space of time, and it
3 is important that they are dealt with, in my opinion, in
4 a way that reflects their period of time in the Class.

5 I would like to show how I have dealt with that and
6 how the approach that Mr Punter was instructed to deal
7 with -- to do it deals with it differently. There is
8 a document which I hope has been there, it is {H/222/1}
9 I think. Yes. It is a spreadsheet, so it needs to be
10 clicked on.

11 If I go to the "Assumptions" tab. What I have done
12 here is to say let us look at a year in the life of the
13 Class, and let us look at -- to illustrate this movement
14 in and out of the Class of the people who are only there
15 a short period of time. I have got two hypothetical
16 people. Person L, who is a long-term member who is
17 there throughout the year, and people labelled T, who
18 are younger and who come in and out of the Class.

19 The person L is aged 75 and there is a 19% chance
20 that they will be deceased by the end of the period.
21 Person aged T is 45 and there is a 1% chance they will
22 be deceased.

23 Then if I move on to the "1 Year Illustration" tab
24 and scroll up, I think, because it is -- yes. What this
25 shows is how the Class develops over the year. On the

1 1 January we had the long-term member and a transient
2 member. During January that transient member leaves but
3 another one joins. That is T2. So during February
4 there is still one long-term and one transient member.
5 Similarly, in March, April, as we go through.

6 So in any month during the year we have the
7 longstanding member, who has been there for the whole
8 time, and we have a transient member, but a different
9 transient member each month.

10 So if I look at the alleged overcharging that
11 happens in each of those months, then there is a 10%
12 chance that the people who are overcharged would not be
13 there at the end of the period.

14 THE CHAIRMAN: Taking both of them together.

15 MR SCOTT: Taking both of them together. That is the
16 average, 10%, and that is how I would work it out.

17 So if I move on to the tab "Scott", then that just
18 shows that calculation, and I would show that as my
19 decrement rate being 90% or the reduction being 10%.

20 THE CHAIRMAN: That is an example of the sort of figures
21 that are in the original section 4 table on your
22 right-hand side?

23 MR SCOTT: Yes, that is right.

24 THE CHAIRMAN: For these purposes, you can indeed take the
25 percentage from 100 and that will give you the

1 reduction.

2 MR SCOTT: Yes.

3 THE CHAIRMAN: Right. Yes.

4 MR SCOTT: If I then move on to the tab that is labelled
5 "Punter", and this sets out, as I understand, how
6 Mr Punter's approach would work. Because he takes
7 account of each of the members, there were 12 members
8 that came in and out, one member that was there
9 throughout, and so of those 13 members the average
10 chance that they survived to the distribution date is
11 just 2.4%.

12 So my understanding of Mr Punter's method is that he
13 would conclude that there should be a 2.4% reduction to
14 the Class to allow for mortality and the likelihood of
15 having a will.

16 THE CHAIRMAN: That is a 2.4% reduction. But going back
17 to -- you had a 10% --

18 MR SCOTT: Yes.

19 THE CHAIRMAN: -- reduction. I see.

20 MR SCOTT: What this highlights is that by not looking month
21 by month, and therefore not picking up this in and out
22 movement of the transient members, and by, as Mr Punter
23 was instructed, taking account of everyone and the
24 chance that they survive through, you end up with a much
25 lower reduction, and therefore you overstate the

1 eventual Class size.

2 THE CHAIRMAN: Can I just introduce another point here
3 because it comes later on, but I think a point was made
4 that you might -- I think the suggestion was made
5 somewhere that if someone comes in and comes out within
6 a year, or something like that, they are disregarded.
7 Is that correct, on your analysis?

8 MR SCOTT: No, it is not correct. Could I perhaps take you
9 again to my report, and I would like to go to
10 section 12, and it is figures 12.2 and 12.3, and that is
11 {E/22/64-65}.

12 What these charts show is how the age distribution
13 of the Class has moved over time, split between the VO
14 population and the SP population.

15 I have taken snapshots at each 1 January of the age
16 distribution and, for my model, assumed that the age
17 distribution moves gradually from one to the other over
18 the year.

19 So if at the start of the year there were 2% of the
20 Class who were transient members, and each month the
21 transient members came in and went out, and at the end
22 of the year there were 2% of the Class who were
23 transient members, as has been the case from the data
24 I have analysed, then by assuming this smooth
25 progression I am actually picking up the age

1 distribution as it is month by month.

2 I am not taking account of those extra transient
3 members in the sense that they are not in the initial
4 data, but I have no reason to believe that the transient
5 members concentrate in a particular month. But there
6 are so many of them, over a million, that they are
7 coming in and out all the time, and, therefore, the
8 distribution -- the number of them in January will be
9 similar to the number of them in February, March and so
10 forth, across the year.

11 THE CHAIRMAN: But I thought you were saying that you are
12 doing this on a monthly basis.

13 MR SCOTT: Yes.

14 THE CHAIRMAN: So in any given month you will be taking
15 account of whoever is there in that month?

16 MR SCOTT: I will be taking account of the age distribution
17 of whoever is there that month, yes.

18 THE CHAIRMAN: The age -- yes.

19 MR SCOTT: That is --

20 THE CHAIRMAN: Therefore you would be taking account of any
21 transient people in that month.

22 MR SCOTT: I would be taking account of the fact that there
23 will be transient people in that month. I will not be
24 adding them into the Class and making 13 members as
25 there were on the spreadsheet, I will just be taking

1 account of the distribution during the month.

2 THE CHAIRMAN: Is that -- if you were doing it on that
3 basis, is there then some time-related point about not
4 adding them in?

5 MR SCOTT: No, there is not, because in any month -- could
6 I perhaps go back to {H/222/1} and I will show you what
7 I mean.

8 THE CHAIRMAN: Yes.

9 MR SCOTT: If I look at the "1 Year Illustration" tab. Then
10 what we have here, on 1 January I will have taken
11 account of L1 and T1, so those two people. Then on the
12 following 1 January there will have been L1 and T12.

13 As we go through, there will be a different
14 transient member coming through each month. Now, I have
15 not included them and added them in, but what I have
16 said is that each month the distribution will be one
17 longstanding member and one transient member. So there
18 will be two lines --

19 THE CHAIRMAN: There will be two people still for any given
20 month.

21 MR SCOTT: For any given month. They will be different
22 people, but the ones that come and go I assume have the
23 same characteristics, and the analysis that I have done
24 confirms that.

25 So each month I will go through there will be two

1 lines. The distribution will be appropriate and
2 consistent with that. In the sense that it does not
3 specifically say, well, in June it was T6, that person
4 is not specifically taken account of, but I have taken
5 account of the characteristics of the person that is
6 there because they are known and taken account of.

7 THE CHAIRMAN: Do you define "transient" here in any way, or
8 is it simply -- is a transient customer someone who
9 comes in and comes out within a defined period of time
10 or not?

11 MR SCOTT: I have defined a transient customer as one who
12 comes in and out within a year.

13 THE CHAIRMAN: That is what I wanted to get at.

14 Then one final question before I revert to
15 Mr Punter. Therefore, it is said by Mr Punter, well,
16 you are taking into account the loss that they have been
17 entitled to. That is how you have weighted it. What do
18 you say about that?

19 MR SCOTT: Exactly right, and the amount that Dr Jenkins
20 calculates for the loss in the month of June, I will
21 apply my decrement based on there being one long-term
22 member and one transient member, and that will be a 10%
23 decrement, which is the appropriate decrement for that
24 month.

25 THE CHAIRMAN: The critical reason -- you said there were

1 three, but the critical reason why you said this is
2 a more appropriate approach is to do with the age
3 distribution?

4 MR SCOTT: It is to do with this issue and the transient
5 members to make sure that they are dealt with
6 appropriately. It is to deal with the fact that the
7 size of the Class diminishes so considerably over the
8 claim period, and therefore the people at the start of
9 the period have greater weight, and it is more important
10 that they -- that whatever alleged overcharging happened
11 in the early years is going to be worth a lot more than
12 any in the later years because of just so many more
13 people. So it is important that that is weighted in
14 that way.

15 THE CHAIRMAN: Why is that point not -- why does that have
16 to had concerned you dealing with this question of
17 a reduction for those who die without a personal
18 representative?

19 MR SCOTT: It concerns me -- if I take a step back and say
20 why am I doing this calculation? It is so it can be
21 applied to a model of damages and inform the Tribunal as
22 to an appropriate amount.

23 THE CHAIRMAN: Right.

24 Mr Punter, would you like to come back on that?

25 MR PUNTER: I would, certainly.

1 I think we agree, I think Mr Scott and I agree that
2 in effect the difference is the weighting of the loss
3 that has arisen for the period.

4 I just find the approach very convoluted.
5 I struggled to follow completely and I am trained to do
6 so.

7 Our approach is we take every single member. Once
8 they -- even if they are in there for a day, they are in
9 the Class, and then the mortality -- once they are in
10 the Class they are subject to the mortality over that
11 period.

12 If it was deemed appropriate that the calculation
13 should be weighted by the expected loss for each
14 individual, all we would do is, instead of having
15 a weighting of 1 person for an older, longer serving
16 person, and a weighting of 1 for a younger, shorter
17 serving person, which I think is the issue which
18 Mr Scott is trying to highlight, we would weight it by
19 the expected -- the loss calculation for each
20 individual.

21 So you would end up with, in my view, a correct
22 answer, because an individual who has been only in there
23 for a day would have a loss of close to nothing, and
24 someone who had been in there for 10 years would have
25 a figure, I do not know what the figure would be, but

1 £1,000.

2 So you would end up, you should, all else being
3 equal, if we were asked to do that calculation, we
4 should end up at the same number. The difference is
5 I am not making any assumptions about people coming in
6 and going out and what the age distribution is for month
7 to month. So I just think our calculation is simpler,
8 easier to understand, and cleaner.

9 THE CHAIRMAN: There might be an adjustment -- there would
10 be an adjustment later on, because you would have to
11 work out how much loss each person is entitled to.

12 MR PUNTER: Yes, because otherwise we are pre-judging the
13 Tribunal's decision on loss and who is entitled to loss
14 and how it is calculated. So it is very easy for us to
15 adjust our calculations to allow for the loss, I assume
16 it would not be per individual, but in theory you could
17 do it individual by individual, but there might be
18 a formula or a way of calculating it for a Class of
19 people.

20 That is me guessing. I do not know.

21 THE CHAIRMAN: Right. Did you want to say something,
22 Mr Scott?

23 MR SCOTT: Just to add that we have done that analysis,
24 I have done those calculations, so that the numbers are
25 there, ready. So there would be no need to adjust our

1 methodology.

2 THE CHAIRMAN: I follow that. Your methodology here has
3 been informed by the way in which the figures or the
4 population of the Class has been presented to you by
5 Dr Jenkins?

6 MR SCOTT: Yes, that is correct.

7 THE CHAIRMAN: Yes, thanks. That is very helpful.

8 MR PUNTER: Sorry, could I add one further point?

9 THE CHAIRMAN: Yes.

10 MR PUNTER: For me, the transient point is a bit of --
11 almost a non-issue in that they are included in our
12 numbers, but if you follow the whole process through it
13 would have less of an impact if you adjusted it for the
14 loss. I am not sure it makes very much difference to
15 Mr Scott's numbers whether they are in or out. I cannot
16 say for certain, but that is my best guess.

17 THE CHAIRMAN: Right. At the moment we are not certain
18 whether it is immaterial or not, and Mr Scott thinks it
19 would be material if his approach is not followed and it
20 is not taken into account.

21 MR PUNTER: It is just that I was talking about the
22 transient --

23 MR SCOTT: The transient -- yes, I think it is -- 1.5% in
24 the context of everything we are talking about is --

25 MR PUNTER: My point is a transient person would be in our

1 calculation, but they would not be getting very much
2 compensation if we --

3 THE CHAIRMAN: At the end of the day.

4 MR PUNTER: Yes. that much I follow.

5 THE CHAIRMAN: It is a question of where you put it in,
6 right.

7 MR PUNTER: So in theory we should get to a very close
8 answer if --

9 THE CHAIRMAN: Yes. Yes, I have got that. Thank you.

10 Can we go on to mortality rates then. This is an
11 area where in the joint statement you both said that the
12 differences between you are not significant. When we
13 look at the table on the question of mortality rates,
14 or, rather, the narrative in this joint expert reports,
15 that is what you said.

16 Now, is there a way for you to fix on some agreed
17 figure if the two of you are not materially distant, if
18 I can put it in that way, because we are not sure that
19 there is much utility in going through the mortality
20 rate exercise if the difference between you is not
21 material.

22 Yes, would you go first, please.

23 MR SCOTT: Yes. I will just make one comment before that.

24 I mean, as I referred to in my first report, I mean,
25 I can take you to the reference if it helps, but just to

1 paraphrase it, it says that there is new data published
2 continuously on mortality rates, and since -- even since
3 the joint statement there has been new data coming out
4 in January. Were I to re-run my figures, they would be
5 ever so slightly different. My decrement rates would be
6 ever so slightly higher, so the Class would be slightly
7 bigger. I have not done that, because, as I say, there
8 is new data coming out every month.

9 Mr Punter and I have confirmed in the Joint Experts'
10 Statement that although, if you look at it, there are
11 technical differences between the approaches that we
12 took, none of those had any material impact on our
13 figures, and, I mean, I do not want to put words in
14 Mr Punter's mouth, but I am sure if you asked us to, we
15 could agree on a set of mortality assumptions and there
16 would be nothing between us.

17 THE CHAIRMAN: Funnily enough, that is precisely what I am
18 going to ask you to do, but just let me hear from
19 Mr Punter.

20 MR PUNTER: Just my comment is, as far as I can say, it is
21 sort of second or third order in terms of ... It is not
22 worth spending any more time on. So I am very open to
23 agreeing these figures on mortality, and actually, it is
24 probably some years ago, but we have done that in the
25 past.

1 THE CHAIRMAN: Then you have a very useful precedent.

2 MR PUNTER: Yes, exactly.

3 THE CHAIRMAN: Good. Then I am assuming you will be able to
4 do that one way or the other. Either you adopt the
5 other's for one bit and vice versa, or you split the
6 difference, or whatever.

7 Let us assume, therefore, going forwards, there is
8 going to be an agreed mortality rate.

9 Question 4 we have actually dealt with already
10 I think under heading A. Does the fact that you can
11 agree the mortality rates mean that, so far as they are
12 concerned, we do not need to say anything about
13 socio-economic factors?

14 MR PUNTER: I think we are agreed on that, yes.

15 MR SCOTT: Yes.

16 THE CHAIRMAN: Good, thank you.

17 Question 7 was there just as a residual point.

18 Having agreed the mortality rates, is there any
19 difference between you as to how you apply them?

20 MR PUNTER: No.

21 MR SCOTT: No, I do not think so.

22 THE CHAIRMAN: Good, thank you.

23 Now, of course the personal representative existence
24 rate is the key issue that is between you here. If we
25 go to -- let me start with Mr Punter, perhaps.

1 We can see that on one analysis of the row,
2 certainly the effect of the difference between you on
3 personal representative rates is something like 10.4%,
4 so far as Mr Scott is concerned, as against 3.6%,
5 something like that on you, Mr Punter, but it is
6 something of that order anyway.

7 MR PUNTER: Yes.

8 THE CHAIRMAN: Right. Can you start, Mr Punter, and just
9 explain what you see are the key advantages of the way
10 you have approached the matter and the key disadvantages
11 of Mr Scott's approach.

12 MR PUNTER: Well, the biggest impact is this 20% reduction,
13 which I think merits a separate discussion. Otherwise,
14 as I understand it, the differences really are to do
15 with -- when we have looked at the age-related impact of
16 how people are in the Class or are not in the Class,
17 there is a difference between us up to the age of 75,
18 but I do not think it is material, the period up to
19 age 75. It is how we determine --

20 THE CHAIRMAN: What happens after that, yes.

21 MR PUNTER: It is what happens after age 75 when most of the
22 deaths are, and the difference there is, as I understand
23 it, Mr Scott's assumption flattens off at age 75, ie
24 effectively no more wills are written after that date,
25 and we say wills are being written after that date. You

1 have to make an assumption, and we made an assumption
2 that it starts tailing off at age 85 and flattens off at
3 age 90. That does make quite a significant difference
4 to the numbers.

5 I think it is shown -- I think it is on page
6 {E/51/5}. I am not sure which figure it is now.

7 THE CHAIRMAN: Can I just try and elicit the difference
8 here. If we go to the -- let us just go to the present
9 version of the table which we got today, but I am only
10 going to be looking at the left-hand side anyway. The
11 first -- the second row says, Mr Punter, if you were to
12 adopt Mr Scott's assumed rates then your reduction would
13 become 10.4%. That is what I was referring to a moment
14 ago.

15 MR PUNTER: That is right.

16 THE CHAIRMAN: Then there is a second line which says if you
17 make a 20% reduction, then you would be up to 9.8%.
18 Obviously these two are exclusive figures. You do not
19 add them together.

20 MR PUNTER: Yes, that is correct.

21 THE CHAIRMAN: So am I right to infer that that rather
22 demonstrates the importance of the 20% point?

23 MR PUNTER: Yes.

24 THE CHAIRMAN: Because if you apply that, you get almost the
25 entire difference between you.

1 MR PUNTER: Yes, it is almost the entire, but the remaining
2 difference is still reasonably significant.

3 THE CHAIRMAN: I was not suggesting it was not, just for the
4 purposes of analysis. We still have to consider the
5 other one.

6 MR PUNTER: Yes, correct.

7 THE CHAIRMAN: Why do we not do it in this way: there are
8 two key differences, as I -- there is the 20%, and then
9 there is the question of the prospect of will-writing
10 above the age of 75.

11 MR PUNTER: That is correct.

12 THE CHAIRMAN: Can we deal with that latter point first,
13 Mr Punter, and you just explain why you say we should go
14 beyond 75 on an increasing probability of will-writing,
15 up to when you stop before 100.

16 MR PUNTER: So there are a number of surveys. There is one
17 I think which is Will Writes(?). You can see that wills
18 are still being written after the age of 75, and the
19 data becomes less clear because not all the surveys
20 go -- do not have ages that go as high as that.

21 In my view, looking at it, wills are definitively
22 still being written after the age of 75. The question
23 is an assumption has to be made, in my view, about
24 when -- it is not going to go straight up in a straight
25 line, it has to start flattening off and, then it has to

1 flatten off completely. As I have said, we have gone
2 for 85 to start and 90 to flatten. But it is
3 significant, because two-thirds of deaths or
4 a significant number of deaths actually occur in that
5 age bracket after age 75.

6 THE CHAIRMAN: Yes, but after 75 the probability rate of
7 writing a will goes up.

8 MR PUNTER: It continues to increase.

9 THE CHAIRMAN: That is what I meant. It continues to
10 increase.

11 MR PUNTER: It is a cumulative effect.

12 THE CHAIRMAN: Up to 85?

13 MR PUNTER: That is what we are saying. We say it continues
14 but at a slower rate from 85 to 90.

15 THE CHAIRMAN: Then it stops altogether.

16 MR PUNTER: Yes. Those are assumptions. That is my
17 interpretation --

18 THE CHAIRMAN: What is it based on? Obviously, I mean,
19 Mr Scott agrees that people continue to write wills, he
20 just says the rate does not increase as it had been at
21 an earlier period. So what is your -- what is the basis
22 for you saying, well, you have still got to increase the
23 rate after 75?

24 MR PUNTER: If he look at Punter 3, and I am afraid I am not
25 going to be able to find the correct reference. So

1 I think it is 2.6.10, I think is where ... {E/12.1/26}.

2 There is a quote from Mr Scott here justifying his
3 age 75.

4 If you go to 2.6.12:

5 "When the surveys present a result for an age band
6 such as '75 and over', it is important to remember that
7 this result is based on the population-weighted average
8 across all the survey participants aged 75 and over. So
9 that is one item. So when it is "75 and over", it is
10 not 75, it is 82 or something like that.

11 There are a couple of other surveys where it does
12 show that wills are still being written in the older
13 ages, and though it is not directly comparable, in the
14 information from the Probate Service, you see probate
15 still continuing after age 75.

16 So it seems partly intuitive as well, but I believe
17 wills are still being written after age 75. I cannot
18 definitively say what the correct assumption is, but we
19 made a sort of educated guess at what it is, which is
20 85 -- starting to trail off at 85 and flatten off
21 completely at age 90.

22 THE CHAIRMAN: Right, thank you.

23 Mr Scott, do you want to come back on that issue?

24 MR SCOTT: A couple of things, if I may, sir. First, you
25 asked what the impact was of this assumption about the

1 age at which will-writing flattens off.

2 I think that the bottom line of the list of rates
3 from the joint statement will tell you that, where it
4 says:

5 "Adopting Mr Scott's assumption for will [writing]
6 likelihood by age as shown in Figure 12.1."

7 Perhaps I could ask that -- there is a chart from
8 the Joint Experts' Statement which I think will help,
9 and it is -- let me find the reference. It is figure
10 39.1, and it will be -- I had it a minute ago and then
11 I looked for something else. It is {E/51/26}. This
12 highlights the different assumptions that Mr Punter and
13 I have made for the likelihood of writing a will and,
14 I mean, the orange line -- yes, it is an orange line --
15 is my assumption and the red line is Mr Punter's
16 assumption. As Mr Punter has said, below age 75 there
17 is very little difference or very little effective
18 difference in our assumptions. But that final row on
19 the first page from the joint statement of the decrement
20 rates shows a difference between the orange line and the
21 red line, and that is, in my figures, 1.5% for VO and
22 0.2% for SP, and in Mr Punter's figures it is 1.3% for
23 the VOs and 0.3% for SP. So they are similar and
24 comparable figures.

25 So I think that was answering the question that you

1 posed as to what is the impact of the different
2 assumption at the age at which will-writing ceases.

3 THE CHAIRMAN: Yes, I can see that. However, if we looked
4 back at the second column, if we were to assume your
5 assumed rate of personal representation, that difference
6 would be built into that one, would it not, because it
7 would feed through into your ultimate personal
8 representative rate?

9 MR SCOTT: Yes. That is why there is a slight difference.
10 Where Mr Punter's figures are slightly different from
11 mine, it is because there are -- other assumptions
12 overlay them.

13 THE CHAIRMAN: Overlay them.

14 MR SCOTT: But it gives you an idea of the order of
15 magnitude.

16 THE CHAIRMAN: Right. Are you therefore saying it is
17 immaterial?

18 MR SCOTT: No, I am not. Again, 1.5% I think is a --

19 THE CHAIRMAN: So then perhaps you can give your take on --

20 MR SCOTT: As to how I derived it. I remained, as far as
21 possible, faithful to the survey evidence. Could
22 I perhaps ask for {E/24/25} to be shown and Figure 5.1.

23 This chart shows how I built up my assumption.

24 I looked at data points from the surveys which were
25 given in different ways, but for ages 75 and over the

1 average of four different surveys was that the rate of
2 will-writing was 83%.

3 I had nothing further to go on, and therefore
4 I built my assumption that the rate of will-writing over
5 75 was 83%.

6 THE CHAIRMAN: Sorry, just to check, so those were surveys
7 that were talking about not the rate just at the age of
8 75, but 75 and over?

9 MR SCOTT: There were three surveys that had a rate of 75
10 and over and one that had a rate, I think it was 80 and
11 over. But I took the average of those, and one was 78
12 and one was 84, and the average was 82 -- 83, sorry. So
13 I said, well, that is the assumption. I have no more
14 information. Anything else is speculation on my part.
15 I said, well, I will build in an assumption of 83% over
16 age 75.

17 Similarly, the average of the surveys said that for
18 ages 55 and over, 66% of people had made a will, and
19 therefore my assumption was entirely faithful to the
20 surveys that 55 and over at that point would be 66%.

21 THE CHAIRMAN: Is the real difference between you what
22 happens after 75?

23 MR SCOTT: It is a key difference. If I could go on and
24 explain the sort of full thought process I went
25 through --

1 THE CHAIRMAN: Yes.

2 MR SCOTT: -- it might be helpful, because there were
3 a couple of points of reference that I put in as well.

4 If I look at -- could take you to the following
5 page, page {E/24/26} of my report, and Figure 5.2, that
6 just translated those rates above a certain age into
7 point rates at each age. So that was the basis of my
8 chart.

9 I then looked at external evidence that talked about
10 rates of people obtaining grants of probate, which I did
11 tracing for the members, the Law Commission report which
12 suggested a certain rate. They were saying that the
13 number of people who die intestate was somewhere between
14 40 and 50%, so I had those as reference points.

15 On that basis I said to myself that an 83% chance of
16 having a will is -- and if you then add on intestate
17 grants as well, that gives a figure that is not
18 comparable with other benchmarks I had. Therefore, and
19 perhaps we will get on to that, but it was important
20 that I took these things in the round. I said overall,
21 my assumption needs to be moderated from this 83%. We
22 can come on to that, but I think it is important my
23 thought process was to look at a high level, rather than
24 to say I will build this up.

25 THE CHAIRMAN: Thank you.

1 Mr Punter, would you like to come back on that?

2 MR PUNTER: Can I just refer, I think it is in {E/12.1/27},
3 in 2.6.1.3 and 2.6.14. This is a survey that actually
4 Mr Scott found, WillSuite. If you go down to the
5 bottom, I think maybe this is the one he was talking
6 about, but you can see there is will-writing at 85-plus
7 down at the bottom.

8 So in my view, wills are being written after the age
9 of 75. We have to make an assumption, and I have told
10 you what the assumption is.

11 THE CHAIRMAN: I do not think it is disputed that wills
12 continue to be written after 75. As I understand it,
13 the key difference between you, at least so far as
14 75-plus, is whether the probability of wills being
15 written should increase at all or whether it should
16 effectively be more limited.

17 MR PUNTER: Because it is a cumulative figure. It is the
18 number of wills. So if 50% of people have a will at
19 age 50, and it is 80% at age 80 and 85% at age 85, you
20 have got wills being written.

21 THE CHAIRMAN: You mean more wills being written than ...

22 MR PUNTER: Yes, and more wills being written by older
23 people.

24 MR RIDYARD: Mr Scott, your approach is saying once you get
25 to your 83% level, I mean, the number cannot go down,

1 can it, after that? So your flatlining assumption at
2 the 83% level assumes that no one over the age of 75
3 writes a will, is that right?

4 MR SCOTT: That is not quite right, sir. It simply takes
5 the result from the survey that said over the age of 75,
6 there will be 83% of people say they have written
7 a will. There will be people that fall in and out of
8 the categories, some of them may die, some of them may
9 write a will, wills are changed, and so forth. But it
10 is simply being faithful to that survey figure and
11 nothing more.

12 MR RIDYARD: Just to understand, the cumulative -- the 83%
13 is a cumulative number. So if that number can go up if
14 more people write a will when they are old, when they
15 are over 75, then how can it go down from 83%?

16 MR SCOTT: It is a figure that relates to everyone who is
17 over 75, that 83% of them will have a will. It is
18 simply reporting what the -- simply following what the
19 survey said. I am not making assumptions or
20 considerations as to whether it goes up or down or how
21 it moves, I have simply said this is what the survey
22 told me, it is the only evidence that I have, and
23 therefore I have based my assumption on it.

24 THE CHAIRMAN: Thank you.

25 Now, let us go to the 20%, please. Mr Scott, why do

1 you not start, because this is your claimed reduction
2 here. I mean, I appreciate -- I have looked at the --
3 we have all looked at the joint statement, and you have
4 got five factors which you say go into this question of
5 the 20%, but would you like just to go through each of
6 them that feed into it and just explain why you think
7 they count or whether you think they are material?

8 MR SCOTT: Certainly. Perhaps it would help if I actually
9 went to -- I will take you to the pages in a minute.

10 The overall assumption for having a personal
11 representative is made up of two parts, and the first
12 one is people who have a valid will, and the second one
13 is people who die intestate and for whom there is an
14 intestate grant.

15 THE CHAIRMAN: Yes.

16 MR SCOTT: The assumptions about will-writing do not say
17 anything about the validity of the will, and so if you
18 simply add the number of people who have written a will
19 to the intestate grants, then you are going to be
20 double-counting any wills that turn out not to be valid.
21 Those two categories are not mutually exclusive.
22 Therefore, I concluded that it was necessary to adjust
23 one of them, one of the categories, in order to get an
24 appropriate assumption for the rate of personal
25 representation.

1 So that was -- simply adding the number of people
2 who say they have written a will to the number of
3 intestate grants will be an overstatement, and therefore
4 there needs to be an adjustment.

5 The factors that lead to an adjustment, the first
6 one I refer to is invalidity of wills, and there are
7 a number of reasons why a will may be invalid. I mean,
8 writing wills is a complex legal process. There are
9 very strict requirements as to what a will might have.

10 If I can take you perhaps to an assumption that
11 I had found. This was a survey that showed that --
12 a secret shopper survey that showed that 8% of a sample
13 of wills were invalid at the time they were written.
14 I have not got a crib sheet of all the different
15 references, but ...

16 MS LOVE: If it assists, I think that Mr Scott is about to
17 go to {E/16.41/1}.

18 MR SCOTT: Thank you. Yes, I think if you go towards the
19 end of this document, you will find a table that shows
20 the results of a survey, and 8% of these wills that have
21 been written were invalid.

22 I do not know how far we need to go through it.

23 MS LOVE: I am told page 24.

24 MR SCOTT: Page {E/16.41/24}, thank you. That is it, yes.

25 So out of the 101 wills, execution fail, there were

1 8%. Once you have written a will and you put it in
2 a drawer, there are reasons why it could become invalid.
3 My understanding is that a will becomes invalid on
4 marriage, you can revoke a will, you can destroy it, you
5 can burn it. There are all sorts of things you can do
6 to make a will become invalid.

7 So the fact that a will has been written does not
8 mean that it is a valid will, and therefore I concluded
9 that there should be an adjustment for that.

10 But both Mr Punter and I have relied on results of
11 surveys --

12 THE CHAIRMAN: Yes.

13 MR SCOTT: -- and we did that because that was the best we
14 could do. I am conscious that people answer surveys,
15 and the answer may be on certain occasions designed to
16 be what the researcher --

17 THE CHAIRMAN: This is your other point, where someone says
18 "I have made a will" when in fact they have not.

19 MR SCOTT: They think: oh gosh, yes, I must do it. I had
20 better say I have, otherwise they will think the worst
21 of me. There was a quote in one of the surveys to
22 acknowledge that very fact, that people do do that.

23 Both of those factors mean that the headline rate,
24 which is from the surveys of the people that said they
25 had written a will, will not translate into a valid will

1 when the person dies.

2 There were some other factors which are listed in
3 the joint statement, and I mean, if it ...

4 THE CHAIRMAN: Can I just deal with that, because, for
5 example, Covid. As I had read the joint statement,
6 Mr -- there was a potential argument, because of Covid,
7 that people might be more predisposed to writing wills
8 than otherwise, but Mr Punter I think said he is not
9 making that argument, he is not ...

10 MR PUNTER: My point was if you are going to look at one
11 side of -- the downwards side of adjustment, you have to
12 look at factors that potentially have an upside
13 adjustment. I was not commenting on whether Covid
14 was -- at the moment I probably would not make an
15 adjustment, but in five years' time, when we look
16 back --

17 THE CHAIRMAN: But you have not made an adjustment.

18 MR PUNTER: I have not made an adjustment.

19 THE CHAIRMAN: But Mr Scott, is it right that you still have
20 put Covid into your 20%?

21 MR SCOTT: I did not explicitly consider Covid when coming
22 up with my 20%.

23 THE CHAIRMAN: Because it is a factor that has been
24 mentioned in the joint report.

25 MR SCOTT: Yes, it was something that came out of

1 Mr Punter's second reply report and one which
2 I considered. My view on the Covid factor was that,
3 yes, there may be people who have a propensity to write
4 their will in Covid, concerned about possible mortality.
5 But first of all, they might also be more likely to do
6 it on their own, rather than consulting a solicitor.

7 THE CHAIRMAN: What I was getting to is in effect,
8 therefore, we can forget about Covid?

9 MR SCOTT: Yes.

10 THE CHAIRMAN: Right, then let us forget about it.

11 The other factor -- you have talked about survey
12 bias, that is the point about someone who says they have
13 made a will and they have not. You have talked about
14 invalid wills. You have talked about, I think,
15 double-counting, in the sense that -- what I understand
16 you to be talking about double-counting, which is
17 someone says they have made a will, therefore that is
18 one. That same person might in fact end up not having
19 made a will, but they have been assumed to make a will
20 because they have said so, but in fact they have died,
21 and they died intestate, but nonetheless they have got
22 letters of administration, and therefore there is the
23 potential of them counting twice.

24 Right, I have got that.

25 There is also another socio-economic factor that has

1 been brought in here. Is that something which feeds
2 into your 20% or not?

3 MR SCOTT: It is something to consider, and there were
4 a couple of points to be made there. One being that VO
5 customers do not have access to online surveys, and
6 therefore surveys that look at the rates of will-writing
7 amongst people may not pick up the full extent of the VO
8 customer base.

9 There is also the point that the Class is, on
10 average, less deprived than the population as a whole.
11 Therefore, might be thought to have greater assets and
12 more likely to make a will.

13 THE CHAIRMAN: That would not be something going to your 20%
14 reduction because that is a reduction.

15 MR SCOTT: Yes.

16 THE CHAIRMAN: So we will come back to the relevance of the
17 socio-economic factor. So it is basically those three
18 points which is the double-counting point which is
19 connected with the survey bias and then invalid wills.

20 MR SCOTT: Well, they are the factors. But again, if
21 I could explain my thought process, and it is important,
22 I think, that this was not a case of saying, well, here
23 is the small components. It was more a case of taking
24 a top-down view, and I said, well, I have a quote from
25 the Law Commission that 52% of people had a grant of

1 probate or a grant of administration and the likelihood
2 is that the rest of them died intestate. So I have
3 a quote from the Law Commission saying roughly half of
4 people would die intestate and would not have a personal
5 representative.

6 The tracing that I did --

7 MR PUNTER: That is not right.

8 THE CHAIRMAN: We will come back to that. We are going to
9 deal with this point before the break, and we will come
10 back to you in a minute, Mr Punter.

11 Yes, Mr Scott.

12 MR SCOTT: The probate tracing that I did of the Class
13 Members showed that around 60% of them had either
14 a grant of probate or a grant of administration. So in
15 terms of an assumption for the number or the rate of
16 representation or personal representation amongst Class
17 Members, those were figures that I took into account.

18 THE CHAIRMAN: As part of the 20%.

19 MR SCOTT: I took it into account in coming up with my 20%,
20 because if I look at the people over age 75 where 83% of
21 them I assumed had made a will, if I reduce that by 20%
22 that goes down to about 66% and I then add back the
23 intestate grants which I calculated at 7% I come to an
24 overall rate of about 73% which is higher than the
25 50%-odd the Law Commission had said. It is higher than

1 the probate tracing indicated, and which seemed to me
2 taken in the round an appropriate and good assumption
3 for the overall rate of personal representation for the
4 people over 75.

5 THE CHAIRMAN: So that is how you came up with -- obviously
6 it is not scientific, wholly scientific. That is how
7 you came up with an overall figure of 20% rather than
8 say, 5%.

9 MR SCOTT: Rather than a different figure.

10 THE CHAIRMAN: Or 10%.

11 MR SCOTT: Or indeed zero or 40%. Yes, I considered a range
12 of possibility and that at a high level, and taking
13 everything in the round, appeared to me to be
14 a reasonable and appropriate assumption.

15 THE CHAIRMAN: Right. Mr Punter, let us have your take on
16 the 20%.

17 MR PUNTER: So when this came up we went away, I went away
18 and had a look to try and consider these points and the
19 conclusion I came to, there is no credible evidence to
20 make any adjustment at all. So if I try and go back
21 into some of the detail.

22 Can I deal with the invalid wills first?

23 THE CHAIRMAN: Yes.

24 MR PUNTER: So {E/12.1/33}. I think it is 2.8.6. "The
25 Probate Service is a public office... It reports that

1 very few wills presented for probate are actually
2 invalid but does see a small but significant number of
3 poor quality wills." So I think there is a difference
4 between poor quality wills and invalid wills.

5 I think I am right in saying the Probate Service
6 sees 45-50% of deaths each year, it varies a bit. It is
7 a considerable number, it is 450,000 I think. It is
8 more than 100, which is the survey that Mr Scott was
9 relying on for his 8%. So that is on the invalid wills.
10 So I do not think invalid wills is a factor.

11 If we come back to -- I am going to have to try and
12 remember what Mr Scott said, but the sort of -- as
13 I understand it, if you have a will and there is named
14 executor and you get probate, you are in the Class. If
15 you have a will and for whatever reason the executor
16 does not want to act, you can get -- I am going to get
17 the terminology wrong because I am not a lawyer.

18 THE CHAIRMAN: Letters of administration.

19 MR PUNTER: Letters of administration, and then you can die
20 intestate and still get letters of administration. The
21 surveys show that is where the survey data goes in terms
22 of -- sorry, that is how you get to the sort of 7%
23 figure, if I use Mr Scott's figure.

24 So I do not see that -- I just think Mr Scott --
25 I cannot remember what he precisely said, but that is

1 the calculation, saying it could be more than 20%, it
2 could be 43% or whatever the figure was. I just think
3 it is completely flawed, on that analysis.

4 Then if I can come to double-counting. I cannot see
5 how double-counting works, because if you are an
6 individual who has said "I have got a will", but it is
7 not a will, then they are excluded anyway. It is sort
8 of -- I cannot ...

9 THE CHAIRMAN: I think the point that is being made is that
10 they might count for the purpose of the survey sample,
11 because as far as the survey is concerned they have said
12 they have got a will, and therefore that person is
13 making a contribution to the survey results.

14 MR PUNTER: But it is not a separate point from the --
15 I think they call it acquiescence bias. That is my
16 point, it is not double-counting. Because if you are
17 going to make a reduction, for the sake of argument, for
18 10% for people lying in will surveys, there is no
19 double-counting after that, because you have already
20 taken it into account.

21 THE CHAIRMAN: But have you taken it into account as an
22 independent factor for reduction?

23 MR PUNTER: I have not. I will be very clear, when I have
24 looked at it, I do not think any adjustment should be
25 made.

1 THE CHAIRMAN: For survey bias at all?

2 MR PUNTER: Can I come on -- yes, on survey bias the
3 issue -- so broadly speaking, at any one moment in time,
4 40-50% of people have a will and 40-50% do not. So
5 there does not seem to me to be any particular reason,
6 social reason, why people would want to lie. There are
7 types of surveys where we know people do lie.

8 But the next thing is we are looking at 17 different
9 surveys, all completed by reputable survey firms, who
10 are very aware of all the biases you can get in surveys,
11 and one of the ways you adjust for acquiescence bias, as
12 I understand it, and I have to say I am not an expert on
13 this, is the nature of the question, and to reduce that
14 kind of bias you apparently you are meant to have
15 neutral questions.

16 Now, that is a bit of an aside, because what I am
17 relying on is the 17 surveys, it is a lot of data, it
18 had all been done by reputable survey companies, so
19 I cannot see any reason why there should be an
20 adjustment.

21 THE CHAIRMAN: Right.

22 Finally on your side, Mr Punter, socio-economic
23 factors, a point about a tendency perhaps to write more
24 wills because they are less deprived. Have you taken
25 that into account?

1 MR PUNTER: I have considered it and said I would not --
2 I do not -- I would not make an adjustment. I think it
3 is possible --

4 THE CHAIRMAN: That is all right. If you have not made an
5 adjustment, and Mr Scott has not made an adjustment,
6 then it is out, as far as I can see.

7 Right. We are going to take a break there, then we
8 will resume. Thank you.

9 (3.24 pm)

10 (A short break)

11 (3.38 pm)

12 THE CHAIRMAN: Thank you. Can we move on to question 11
13 which has just raised one point in line 35 or row 35 of
14 the joint expert report. Sorry, I think we may have
15 covered that {E/51/23}. (Pause) You both agree there
16 is a strong positive correlation of age, you have been
17 through that already.

18 MR PUNTER: I think it is just for illustration purposes.
19 No calculations ...

20 THE CHAIRMAN: Okay, leave question 11. But question
21 14: how should the intestate letters of administration
22 be dealt with?

23 If we go to line 51, I think, of the joint expert
24 report {E/51/38}, which is at page 38. Mr Punter, you
25 said -- there is a difference of approach here, but you

1 have said, Mr Punter, line 51, page 38:

2 "Whilst I remain of the view that the Law Commission
3 data provides the best approach ... it transpires that
4 the flat assumption Mr Scott has adopted does not
5 produce materially different results ..."

6 You assess the difference to be less than 1%.

7 Mr Scott, do you agree with that assessment of the
8 extent of the difference between you on that?

9 MR SCOTT: The difference between us, and it is shown in the
10 table of decrement rates, so on the basis of my
11 assumptions, were I to use Mr Punter's age-related
12 scale, the 13.4 would become 14.0, and 6.8 would become
13 6.7. So it is less than 1% in that sense, yes.

14 THE CHAIRMAN: Is that something that is capable of
15 agreement between you?

16 MR PUNTER: It should be, yes.

17 THE CHAIRMAN: Mr Punter, what do you think, Mr Scott? Do
18 you think -- you might end up just having to divide the
19 difference in the absence of anything more scientific.

20 MR SCOTT: I think we would both be happy to take each
21 other's assumptions because they improve each other's
22 figures, but ...

23 THE CHAIRMAN: You mean, Mr Scott, you positively want to
24 take Mr Punter's ...

25 MR SCOTT: We have approached this quite differently, and my

1 overall sort of top-down approach, taking things in the
2 round, meant that I adopted a 7% assumption. Mr Punter
3 did detailed age-related analysis and came up with his
4 age-related scale. I am sure we could agree to split
5 the difference if that would help the Tribunal.

6 THE CHAIRMAN: It would help us enormously, I think. That
7 is your second piece of homework for tonight, then,
8 after agreeing the mortality rate. That is very
9 helpful, thank you.

10 That then takes us to the next range of questions
11 and I want to find out what is between you on this as
12 well. This is heading D. This is the allocation of the
13 reductions between the Voice Only and the SPC customers.
14 The first question is, as it were, the unallocated
15 members. We can see the effect of the difference in the
16 table in that, Mr Punter, your primary reduction figure
17 of 3.6% would go up to 4% and your 2.3% would go down to
18 2.1%. That is because of the weighting and the way in
19 which the unallocated people have been allocated.

20 MR PUNTER: Yes.

21 THE CHAIRMAN: Mr Scott, can I just start with you. What is
22 the significance here of the difference between you?

23 MR SCOTT: We both had similar data, but we drew slightly
24 different conclusions from it as to the number of people
25 who could be allocated definitively to the VOC or the

1 SPC. Mr Punter was then guided by his economic expert,
2 Frontier, in terms of the overall number of VOCs and
3 SPCs, and he allocated sufficient of the unallocated to
4 make the numbers up.

5 So that was Mr Punter's approach.

6 My approach, which I do not think I will take you
7 through, because it is quite detailed and statistical,
8 but we went through the age distributions of the
9 unallocated people in both those, with and without dates
10 of birth, and took account of the characteristics of the
11 different groups to reach our conclusions.

12 So the long and the short was that Mr Punter had
13 1.8 million VOCs and I had 1.55 million. When I used
14 Mr Punter's method of allocating, it meant that both the
15 VOCs and the SPs, after allocating by his method, had
16 a lower average age than under my method, which is why
17 the impact of adopting his method would have meant that
18 I had slightly lower reductions to the Class size. So
19 my 13.4 for the VO went to 12.6, and my 6.8 for the SP
20 went to 5.9, so a slight different there.

21 I think I am correct in saying that because
22 Mr Punter could not replicate my method with the data he
23 had, his calculation here is more approximate, and it
24 does not fully reflect -- you did not have the data that
25 I ...

1 MR PUNTER: I would not say it is approximate. I think the
2 basic problem is our datasets are similar but different,
3 and what we did was we fitted our data as best we could
4 to the economic experts' data, and Mr Scott used
5 a different method, it is as valid a method as any if he
6 did not have any other constraints, and there are other
7 sort of ... The nuanced part of it is if we had similar
8 data -- if we had the same datasets, subject to the
9 points that we discussed earlier, our analysis would be
10 similar.

11 THE CHAIRMAN: Am I right in thinking that the core
12 difference in the datasets is -- is it not the case,
13 Mr Punter, that you had 200,000 less --

14 MR PUNTER: To allocate, yes.

15 THE CHAIRMAN: -- to allocate, because on your dataset they
16 had already been allocated. Is that the key difference
17 between you?

18 MR PUNTER: But also, sorry, I think the other key
19 differences were fitting our data to the economic
20 experts' data, which I do not think Mr Scott is doing.

21 THE CHAIRMAN: Right. So does that mean -- does that mean
22 from your perspective, Mr Punter, that the difference
23 between you is entirely driven by the different datasets
24 you have got?

25 MR PUNTER: Yes.

1 THE CHAIRMAN: Mr Scott, do you agree with that?

2 MR SCOTT: It is driven by the data and the approach taken
3 as a result of that different data.

4 THE CHAIRMAN: So you say there is a difference of approach
5 here.

6 MR PUNTER: Subject to the differences we already have, do
7 you mean?

8 THE CHAIRMAN: What I am trying to do is isolate from
9 everything else the approach to the allocation of the
10 unallocated people to one or other of the sub-classes
11 and, as it were, ignore the other differences between
12 you. So what I am trying to work out is if that is the
13 case, is this entirely driven by the datasets you were
14 provided with, or is there some difference of approach
15 that is there anyway? That is what I am trying to get
16 at.

17 MR SCOTT: Apologies, sir.

18 THE CHAIRMAN: No, not at all.

19 MR SCOTT: The reason I mentioned approach was that we each
20 had data which was different, and Mr Punter concluded
21 different numbers for people with SP. But in terms of
22 approach, Mr Punter was guided by the economic expert to
23 allocate people in a certain way, and that is the
24 difference in approach that I am referring to.

25 THE CHAIRMAN: Is that right, Mr Punter?

1 MR PUNTER: Yes, I thought Mr Scott was referring to
2 a different approach. If we had the same datasets,
3 apart from the differences we have already been through,
4 we should get the same --

5 THE CHAIRMAN: Right. So there is no underlying -- subject
6 to if you strip out the different dataset points, there
7 is no underlying difference of approach between you,
8 because I would guess it is largely mathematical?

9 MR PUNTER: Mathematically it is different, but it is being
10 forced by the constraints that -- it is slightly odd to
11 me that we have got different datasets.

12 THE CHAIRMAN: I understand that.

13 MR PUNTER: Another way of potentially looking at it is we
14 could go away and actually agree a dataset, or with the
15 economic experts. That is another way of doing it.

16 THE CHAIRMAN: I think that might be productive, but I do
17 not want to spend any more time on it now because there
18 is nothing more we can do about it, it seems to me.

19 That is allocation.

20 Finally, business customers. Let us just go
21 straight to the questions here. On the basis -- if it
22 is the case that it is correct to remove the business
23 customers, and looking at what we have got between you
24 on the second page of the table, where in fact we have
25 not got any figures on Mr Punter's side.

1 Mr Punter, is there any difference in principle
2 between you on, as it were, the method of removing
3 business customers, assuming you were asked to remove
4 them?

5 MR PUNTER: So Mr Scott and I are both starting from the
6 same place, which is the ONS data, as I understand it.

7 THE CHAIRMAN: Yes.

8 MR PUNTER: There is information there by age, and we have
9 used the wider age-related set, and Mr Scott I think has
10 taken a figure related to where the bulk of the
11 self-employed people are.

12 Then the other difference we have done is I think
13 Mr Scott has used a 50/50 split for males and females,
14 when the ONS data, the split is different. I cannot
15 remember precisely what it is.

16 When you put all that together, how much difference
17 is there? I do not think -- in the scale of the issue
18 of how many business customers should be excluded, I do
19 not think it is material.

20 I do not know whether you agree?

21 THE CHAIRMAN: Let us see what Mr Scott says.

22 MR SCOTT: I do agree with that. Because the issue with the
23 business customers is how many of them should be taken
24 out, and that is one not for Mr Punter or I to consider.
25 If there are 250,000 business customers taken out, then

1 the difference that we make in terms of a percentage
2 reduction in Class size is of second order.

3 So, yes, there are differences, and Mr Punter has
4 correctly described the difference in approach. But in
5 terms of the overall impact, it is not material.

6 THE CHAIRMAN: Then you know what I am going to ask: see
7 what you can do, because then -- so --

8 Now, question 18, this is a separate point. The
9 effect that the removal of business customers would have
10 on the other variables for the remainder of the Class,
11 and whether that affects the underlying mortality rates
12 or anything else, is that -- I mean, I saw that as
13 a question posed, and therefore I was wondering whether
14 it is an issue.

15 Mr Scott?

16 MR SCOTT: I do not believe it is an issue, sir.

17 MR PUNTER: I do not think there is an issue between us, but
18 I think we just assumed the business customers had
19 a similar profile to --

20 THE CHAIRMAN: Right. Thank you.

21 Now, just let me check. (Pause).

22 Can I just check with both of you that we have
23 covered all of the material disputes between you?
24 Perhaps we can do this by just very quickly going
25 through the table.

1 We have dealt with row 2, which is the summation of
2 the difference between you on the PR rates. We have
3 dealt with 20%. We have dealt with the intestates.
4 I think we have covered the will likelihood as well,
5 have we not? The allocation we have done. Then we have
6 dealt with the business customers, and there is other
7 stuff on mortality rates which we do not need to
8 consider.

9 Then going to the third page, the separate
10 adjustments for IMD. That is about being less deprived,
11 is it not? That is the socio-economic thing which we
12 have looked at.

13 MR PUNTER: Yes.

14 THE CHAIRMAN: Then you have got -- so far as the assumed
15 distribution dates are concerned, is there any dispute
16 of principle between you, or is that simply a function
17 of applying the maths?

18 MR PUNTER: It is just calculation.

19 THE CHAIRMAN: Right. That is extremely useful.

20 MR SCOTT: Just for completeness, we have also done the
21 overall age distribution, which is the second row on
22 page 2. That is the initial difference in
23 methodologies.

24 THE CHAIRMAN: Right. But there was not any material
25 difference between you on age distribution, was there?

1 MR SCOTT: No. This was the first point that we considered,
2 and it was whether you took account of everyone in the
3 Class and gave them equal weighting, or whether you
4 weighted them according to the amount of potential
5 damages.

6 THE CHAIRMAN: Right, which is what -- we covered that?

7 MR SCOTT: We covered it, the very first point, when you
8 asked me was it --

9 THE CHAIRMAN: Yes, exactly.

10 MR SCOTT: -- and I said 1.5% --

11 THE CHAIRMAN: Right.

12 MR SCOTT: -- so, yes, we have covered it.

13 THE CHAIRMAN: Right.

14 MR PUNTER: Can I just add a point?

15 THE CHAIRMAN: Yes.

16 MR PUNTER: Because I think the difference in the
17 methodology applies more to the SP rather than the VO,
18 because of the nature of the Classes, so Mr Scott and
19 I had a brief discussion in the break, so I just wanted
20 to make that clear.

21 THE CHAIRMAN: Right. Does that mean you can narrow
22 something, or is it just ...

23 MR PUNTER: It narrows something, yes.

24 THE CHAIRMAN: Great.

25 Now, Mr Spitz, are there any clarificatory questions

1 from you?

2 MR SPITZ: Just one.

3 Questions by MR SPITZ

4 MR SPITZ: If we can go to the transcript at page 155, you
5 will see there at line 25 the chairman asks a question
6 and Mr Scott then answers it, and he says halfway down
7 the answer:

8 "It was more a case of taking a top-down view, and
9 I said, well, I have a quote from the Law Commission
10 that 52% of people had a grant of probate or a grant of
11 administration and the likelihood is that the rest of
12 them died intestate. So I have a quote from the Law
13 Commission saying roughly half of people would die
14 intestate and would not have a personal representative.

15 The tracing that I did --"

16 And Mr Punter then says:

17 "That is not right."

18 But he did not have the opportunity to go back and
19 elaborate on that, so if he does want to elaborate
20 I would like to give him the opportunity.

21 MR PUNTER: I think I did cover it later when I was asked
22 the question, which is: you have got a will with an
23 executor, a will where executors do not want to act, and
24 you have the letters of administration for people who
25 die intestate, and then you have the people who do not,

1 so that is -- and I think Mr Scott was only referring to
2 two of those classes, so I think it is covered in the
3 transcript.

4 THE CHAIRMAN: Thank you very much.

5 Ms Love, do you have any clarificatory questions?

6 Questions by MS LOVE

7 MS LOVE: I have a handful of points. The first one arises
8 out of something that was said I believe at page 134 of
9 the transcript, line 14, a comment of Mr Punter's, I do
10 not think we need to turn it up, basically about not
11 wanting to pre-judge loss.

12 I just wanted to give the experts, including
13 Mr Scott, the opportunity to comment on whether the way
14 in which they modelled is lines based or loss based
15 first.

16 THE CHAIRMAN: Why do you not go first, Mr Scott?

17 MR SCOTT: My modelling is lines based. It is based on
18 Class Members in the period that they are in the Class.
19 So whoever is in the Class at a certain time, that is
20 how I have done it, and it is weighted by the number of
21 lines.

22 MS LOVE: The next point, and I think Mr Punter has
23 clarified this already, because I was going to ask, in
24 relation to the transient versus the non-transient Class
25 Members, if there was an indication of the relative

1 ages, and whether they were more likely to be found in
2 the Split Purchase or the Voice Only. I think the
3 latter point, Mr Punter has clarified, they are
4 predominantly to be found in the split --

5 MR PUNTER: I am not sure without checking. I sort of
6 intuitively assumed they would be younger but I do not
7 know that.

8 MS LOVE: I do not know if Mr Scott would like to comment on
9 that?

10 MR SCOTT: Yes, they are generally considerably younger than
11 average. Their average age is about 45 compared to 60
12 for the other SP people.

13 MR PUNTER: Can I ask a question, is that SPC or ...

14 MR SCOTT: That is compared to SPC, yes.

15 MR PUNTER: So you have to be careful about which category
16 we are talking about.

17 MS LOVE: The final point for clarification arises out of
18 the exchange in the transcript between about pages 141
19 and 149 and the question of whether it is the case that
20 having a flat line at 83% after the age of 75 means,
21 I think Mr Punter said, effectively no more wills.

22 Mr Scott, I wanted to give you the opportunity to
23 explain the point you were making about the cohort
24 changing, if you wanted to.

25 MR SCOTT: Thank you, yes. That is looking at everyone over

1 the age of 75, but at any one point in time there will
2 be different people in that cohort, and, therefore,
3 although there may be new wills written, there will also
4 be people coming in that do not have wills written.

5 Because the cohort changes and because we have no more
6 information that there are 83% over the age of 75, that
7 was the assumption that I used.

8 MS LOVE: Thank you.

9 THE CHAIRMAN: Thank you both very much indeed.

10 Now, Ms Love, do you have any idea how long you are
11 going to be in cross-examination?

12 MS LOVE: Sir, I will cut according to my cloth. In light
13 of the hot tub and in light of the clarification,
14 I think I am only really going to have the opportunity
15 to focus on the personal representation issue, and,
16 within that, just to be clear, there are three
17 components, there is the modelled relationship between
18 age and likelihood of having a will, there is the
19 question of the appropriate deduction, and then there is
20 how to take account of the intestate deaths, and the
21 third of those I am not going to be asking on.

22 I had anticipated between an hour and an hour and
23 a half. I will do what I can.

24 THE CHAIRMAN: Thank you for the moment.

25 Now, Mr Spitz, how long do you think you will be?

1 MR SPITZ: Yesterday, sir, I said to you about an hour and
2 15 minutes. I think I can probably shorten that a bit,
3 but I suspect it is still likely to be an hour.

4 Just so the Tribunal is aware, I intend to focus
5 only on the two issues where there is a material
6 difference: the flattening off at 75 or older and the
7 question of a 20% deduction.

8 THE CHAIRMAN: Right, just bear with me one moment, then.

9 (Pause). What we would like to do, since we are clearly
10 going to have to go into tomorrow, we will rise just for
11 a few moments so that the experts can sort themselves
12 out and come out of the hot tub, and then we would like
13 you to begin your cross-examination.

14 MS LOVE: I had understood that Mr Punter was not available
15 from tomorrow.

16 MR SPITZ: Yes, indeed, that is correct.

17 I think that this was discussed, sir, when we were
18 looking at adjustments that needed to be made to the
19 timetable. He had originally been available yesterday,
20 but things got pushed up because limb 2 was likely to
21 take an additional day, and he is not available, as
22 I understand it, tomorrow, so I suspect we may have to
23 aim for trying to finish him today, unless there is any
24 scope for ...

25 MR BEARD: The options are, depending on how late people can

1 sit, both sides have to essentially split the difference
2 and do shorter cross-examination now and we try and get
3 it all done today. Otherwise we are going to be back
4 tomorrow for a relatively short session with Mr Scott,
5 because obviously equality of arms will mean he is going
6 to be short anyway.

7 In those circumstances, depending on the flexibility
8 of the Tribunal, and I realise it constrains matters,
9 but it may be just the product of a hot tub process.

10 THE CHAIRMAN: Let me just consult. (Pause)

11 First of all, before I speak to the transcriber
12 about this, it does not seem to me that we could really
13 sit much -- we could not sit beyond 6pm, but that would
14 be an hour each.

15 Now, what we could do, of course, if that is not
16 going to work, is you could have Mr Punter being
17 cross-examined anyway, he would come first, and you
18 would have to get that done today, Ms Love. Then we
19 would have to reconvene for cross-examination of
20 Mr Scott tomorrow.

21 So I suppose the first question, even before I ask
22 the transcribers, is: are you both content to cut your
23 cloth to an hour each? And you do not have to. I mean,
24 we have the time to do it tomorrow.

25 MS LOVE: For my part, although I would appreciate a brief

1 interval in which to do some slash and burn, I think
2 that that ought to be possible, but obviously I cannot
3 speak to the question of re-examination.

4 I anticipate 6pm would be alright, but I would be
5 grateful for the opportunity, sir, to make enquiries on
6 the domestic front.

7 THE CHAIRMAN: Yes.

8 Mr Spitz?

9 MR SPITZ: Sir, I must say, from my point of view, it would
10 make more sense, since we did envisage having to come
11 back on the Friday, to be able to do that, to finish off
12 cross-examination of Mr Scott, if that is possible.

13 THE CHAIRMAN: I think there is no point in causing an
14 unnecessary difficulty, so I think what we will do is,
15 Ms Love, we will start your cross-examination now,
16 because we have to, because Mr Punter is not going to be
17 here tomorrow, but I think you need to -- I am going to
18 hope that we can have the indulgence of the transcriber,
19 and we will run on until 5.15pm, that is the time that
20 you will have for your cross-examination, and let us
21 hope that re-examination will be brief. Then we will
22 have the shorter period tomorrow.

23 MR SPITZ: I am grateful, thank you.

24 THE CHAIRMAN: Right, so we will stay here actually,
25 I think. We do not want to waste extra time. So,

1 Mr Scott, if you would like to leave the witness box
2 now, thank you. You are out of purdah and you will be
3 re-sworn tomorrow, thank you.

4 Cross-examination of MR PUNTER by MS LOVE

5 MS LOVE: Mr Punter, good afternoon.

6 A. Good afternoon.

7 Q. Now, let us start with the survey evidence, relatively
8 little of which we have seen so far. You and Mr Scott
9 have identified 17 surveys that provide some information
10 on the likelihood of having written a will and the
11 relationship with age, is that correct?

12 A. That is right.

13 Q. Just to put it in context, I believe that nine of them
14 pre-date Covid-19: the Bristol and Bath 2005, the
15 Cardiff University 2010, Will Age 2014, there are three
16 Unbiased surveys, two from the Kings Court Trust and the
17 MacMillan one?

18 A. I think you are right.

19 Q. You will have to take it from me. Then eight of them
20 are either contemporaneous or post-date the onset of the
21 Covid-19 pandemic.

22 Now, you have compiled a list of survey sizes, and
23 it is in Table 3.2 of your third report. That is at
24 {E/12.1/11}. I think it would be helpful just to
25 situate ourselves amongst the surveys.

1 If we could zoom in a bit on table 3.2, we see that
2 most of them are around the 2,000 people size, but some
3 are considerably lower. That is right, is it not?

4 A. Yes, that is correct.

5 Q. Now, I am going to come back in due course to the
6 question of survey bias and some of the issues with
7 them. For now, I just want to see if we can agree on
8 some facts about these surveys.

9 The first point is what is provided. Do you agree
10 that none of these provides you with the full set of
11 underlying survey data?

12 A. I am not quite sure what you mean by that.

13 Q. None of them provides you with a complete list of whom
14 they sampled or the responses that were given?

15 A. That is correct, yes.

16 Q. Likewise, we do not have complete information about how
17 the respondents were sampled, in the sense of whether it
18 was done online or by telephone, do we?

19 A. I think there is a mixture, from memory.

20 Q. We know that a significant proportion were conducted by
21 an online research agency called Opinium. If we go to
22 {E/16.40/1}, we can see a summary I believe you have
23 referred to on Opinium. They are an online research
24 agency, although I think in fairness to you, it is not
25 expressly stated whether each and every opinion survey

1 was done online, so that is the top half of the page.
2 The top paragraph.

3 A. Yes, okay, yes.

4 Q. We also -- this is by reference to your comment about
5 reputable survey firms. I am not sure that we know who
6 exactly conducted each of these, do we? So if I turn to
7 {E/16.15/1}, which is the JMW Solicitors one. Now, I am
8 sure that if I have missed this you will be taken to it
9 in re-examination, but it is not immediately clear to us
10 whether this is by the solicitors' firm themselves or
11 they used someone and, if so, whom they used?

12 A. I very much doubt it was the solicitors' firm
13 themselves.

14 Q. But we do not know?

15 A. We do not know for sure.

16 Q. Many, in fact I think most of them do not provide the
17 actual questions that were asked, whether it is yes, no,
18 or options, do they?

19 A. No.

20 Q. In fact, if we go to {E/16.12/1}, which is the 2016
21 Unbiased survey -- I am sorry, this is something of
22 a paper chase through the 17 of them. If we zoom in --
23 could I ask for the lower two-thirds of this, starting
24 with "Unsurprisingly, it's the younger generation ..."
25 we see an interesting feature here, which is that it is

1 said in the text of the second paragraph that only 17%
2 of those aged 18-34 have a will. But if we look down at
3 the table below, the figure without a will is reported
4 as 76%, so clearly 24% is the remainder.

5 A. Yes.

6 Q. We do not know what was asked: yes, no, I cannot
7 remember.

8 I say this not by way of criticism for using these,
9 because Mr Scott has done likewise, they are all that we
10 have, but just to try to elicit what we can and cannot
11 tell from these surveys.

12 The second point that I think we can agree on fairly
13 rapidly is that none of these surveys has sought to
14 verify whether those who said they made a will had
15 actually done so. So the assertion of what has been
16 done is being taken at face value instead of --

17 A. I think it is unlikely they will have contacted the
18 individual.

19 Q. I think that is yes?

20 A. Yes.

21 Q. The third point that I just want to draw out is the
22 extent to which there is variation between the results,
23 and I think this is illustrated in table 3.6 of your
24 third report which is at {E/12.1/20}. If we zoom in on
25 that table, we see an array from 58%, actually within

1 the same year, to 75%. That is just to orientate
2 ourselves before we turn to these.

3 We are now going to move on to the modelled
4 relationship. If I could take you to page {E/12.1/30}
5 in your third report and your Chart 3.14, you see what
6 you have basically done, taking what I think you
7 describe as the age-weighted average that you get from
8 each of these, is to draw a straight line, acknowledge
9 that that line cannot continue at that rate, and so you
10 tail off at 85 and you plateau at age 90, at which you
11 have a 90% probability that a Class Member has written
12 a will.

13 Now, not a single one of these 17 surveys actually
14 reports a result for those in the 90-plus bracket, does
15 it?

16 A. I think the highest is 85, I cannot remember precisely.

17 Q. I believe it is 80-plus, but we will come to that in due
18 course. But we agree that none of them reports
19 a 90-plus --

20 A. No.

21 Q. I hope we can agree just by eyeballing it that none of
22 them actually reports a result which is as high as 90%?

23 A. There is one just below 90, isn't there?

24 Q. I chose my words carefully.

25 A. Yes.

1 Q. Again, I think we are a yes.

2 In fact, only a minority of these surveys,
3 Mr Punter, actually break down the results into higher
4 age bands, if I can put it that way, and I think that
5 only a handful give any result for 75-plus, 70-plus?

6 A. I think that is correct. There are two or three, from
7 memory.

8 Q. One survey which you have talked about gives a statistic
9 for 80-plus, and that is the Joseph Rowntree Foundation
10 survey for Bristol and Bath Universities.

11 If we go to that, I think it starts at {E/16.35/1},
12 "Attitudes to inheritance in Britain". Now, I think we
13 need to scroll forward a few pages, but maybe you agree,
14 2005, so this is a decade out of date by the start of
15 the claim period.

16 If we actually go forward to page {E/16.35/85}, and
17 if we zoom in at the upper half of this page. If I just
18 read aloud that first paragraph:

19 "Almost half ... of the sample said they had made
20 wills. This is much higher than in previous research,
21 for a number of possible reasons. Owner-occupation has
22 increased and so more people have an asset worth
23 bequeathing. And increases in divorce and remarriage
24 also make it more important to make wills as people's
25 wishes in relation to bequests may not be as simple or

1 as clear as they once were. But our figures may
2 slightly overestimate reality here, as people may feel
3 that they ought to have a will and so say that they have
4 one in the survey even if they actually do not."

5 So there we have, from the one data point, if
6 I could put it that way, in 80-plus, a recognition by
7 the authors this may be on the high side. Do you accept
8 that?

9 A. It says "slightly", does it not?

10 The point I would make here is that it is
11 a difficult process, trying to come up with these
12 assumptions, which is why we looked at 17 -- as we got
13 to 17, looked at 17 surveys.

14 Q. Mr Punter, I will give you, and I am sure in
15 re-examination you will have, the opportunity to comment
16 on whether it has been a difficult process, as you have
17 done in the hot tub.

18 Can we agree that the one data point you have, there
19 is a recognition, and we can quibble about the amount,
20 but there may be an overestimate?

21 A. It says "slightly". It could be slightly.

22 Q. You have made an assumption for an age band that has not
23 been surveyed that results in a higher plateau than any
24 of these surveys?

25 A. Yes, so we have assumed age 90, yes.

- 1 Q. Mr Scott has taken a different approach and I think it
2 is helpful to go back to it. It is figure 39.1 in the
3 JES, so {E/51/26}. He has a gentle incline up to the
4 age of 55, and I think he has explained in the hot tub,
5 and you agree, that the idea that 66% of the over 55s
6 have a will is consistent with the survey evidence. And
7 there is a more pronounced rate of increase, so that he
8 has reached a point where they plateau at 83%, and
9 again, that is not inconsistent with the survey
10 evidence, is it, the 84% data point?
- 11 A. Mr Scott has a different interpretation of the survey
12 data, yes.
- 13 Q. His is not inconsistent?
- 14 A. I am not sure how to answer that. I clearly disagree,
15 because we have drawn a different line, but the impact
16 up to age 75 is immaterial.
- 17 Q. A plateau -- put it another way, a plateau at 83%, in
18 a situation where the data point for the oldest age
19 range is 84%, cannot really be described as an
20 inconsistency, can it?
- 21 A. Well, I think it is inconsistent because the evidence is
22 it is still growing. He has not taken that into account
23 in this assumption.
- 24 Q. We will come in due course to that and to the WillSuite
25 point. The point I am on is whether a plateau of 83%

1 sits outside surveys?

2 A. I think it does sit outside the surveys, yes.

3 Q. Notwithstanding that there is no number as high as 90

4 and most of them are lower than --

5 A. Is that not a different question, whether ...

6 Q. We will leave it at that. We disagree on this.

7 Now, your two criticisms of Mr Scott's line are,
8 firstly, that there is this brief interval, there is the
9 hump when the orange line crosses over the red, if I can
10 do a visual hand thing, around the age of 75 when it is
11 an overstatement of the rates of will-writing, and that
12 is a point that you had picked up I think in row 39 of
13 the JES, which is on page {E/51/24}, which is the
14 paragraph about:

15 "That approach overstates the level of will-writing
16 between ages 75 and the weighted average age of surveys
17 ..."

18 So that is the hump I am talking about.

19 If we go back to page {E/51/26}, I mean one can
20 equally say that your red line is above all of the
21 survey results between age 35 and age 60, could you not?
22 You have taken a different approach --

23 A. I do not think you can, and it is a different approach,
24 yes.

25 Q. But both of you have intervals when you are above?

- 1 A. Yes, that is why it equals out, mathematically.
- 2 Q. The second point, which we have discussed, is that you
3 say he has understated the rate of will-writing over the
4 age of 75.
- 5 A. Yes.
- 6 Q. Now, we have already discussed that there are very few
7 survey statistics for this age group and they yield
8 a high point at 84% for the 80-plus that is close to his
9 83% and none of them yield a line at 90%?
- 10 A. But the surveys are still growing.
- 11 Q. Well, this is the WillSuite point.
- 12 A. Yes.
- 13 Q. But Mr Scott has explained that that is a non sequitur.
14 It does not follow, does it, from the line flattening at
15 83 that there are no new wills being written? There
16 will be people joining the cohort, the 74-year olds
17 turning 75, and there will be people leaving the cohort?
- 18 A. What we are talking about there is there will be a few
19 wills being written to cover the people who presumably
20 die in that period. So at some point, you are right,
21 you can have some wills being written and that line is
22 flat.
- 23 Q. You can have some wills being written and that line is
24 flat.
- 25 A. But in my view, the assumption Mr Scott has made is not

1 correct at that age.

2 Q. But you do not know, and there can be some wills being
3 written with the line remaining flat?

4 A. I think we do know that there are some surveys which
5 show that wills are still being written at ages above
6 75.

7 Q. But as you have just accepted, that is not inconsistent
8 with the line flattening, taking that to the extreme?

9 A. I did not say that at all. We were talking about the
10 yellow and the red lines up to age 75 and they equalise
11 out. As it happens, they give roughly the same answer.
12 The issue is what happens at age 75 onwards.

13 Q. What I am putting to you is that there is no evidence
14 that goes to supports a plateau of 90%, and there is no
15 inconsistency between more wills being written after 75
16 and the line flattening off at that point?

17 A. I am just trying to unwrap the question.

18 In my view, and I think there is evidence, wills are
19 still being written after the age of 75 and -- so they
20 are continuing to be written, and therefore you do have
21 to make an assumption at what age it starts to flatten
22 off, and ultimately when it does effectively flatline.

23 I agree with that. What I am saying is it is above the
24 age of 75.

25 Q. What I am saying to you, Mr Punter, is that it could

1 flatten at 75 and there are still new wills being
2 written?

3 A. Yes, but it is a small number, so that is a minor
4 effect. But, yes, you are correct, in absolute terms
5 you are correct.

6 Q. Now, if we move on to the next part of this, which is
7 the question of adjustments, you have very fairly said
8 that you are not an expert in the art of writing or
9 interpreting opinion surveys, so this is an area where
10 we need to use judgment to make assumptions, yes?

11 A. The ultimate choice is a subjective decision, in my
12 view, yes. Because there is no evidence that would lead
13 you to any other solution, apart from a zero adjustment.

14 Q. We are coming to the evidence. Do not worry.

15 You have also very fairly acknowledged that there
16 can be sources of bias or inaccuracy, have you not? It
17 is a potential issue?

18 A. It is a potential issue, yes.

19 Q. Can we just break that down a bit more. There is going
20 to be some bias, some potential inaccuracy, that is
21 inherent in the fact that you are taking what people say
22 as evidence of what they have done?

23 A. There is always a possibility, yes.

24 Q. Yes. There is also the possibility of bias arising from
25 the selection of the participants, and we have seen that

1 in some of these surveys, I accept it is a mixture
2 conducted online ...

3 A. I am not an expert on surveys, and I do not suppose
4 anyone in the room is. But when you do a survey, there
5 are a number of potential biases which you have to allow
6 for, yes.

7 Q. You are aware one of the two sub-classes in this case is
8 Voice Only Customers?

9 A. I am aware.

10 Q. I think that you said there are no experts. I think
11 there has actually been discussion of this issue. I do
12 not know if you were watching the behavioural economists
13 on the Net Promoter Scores?

14 A. I may have been but ...

15 Q. Faded in memory. Understood.

16 So those are two potential issues. The next thing,
17 which is particularly important in this case, is bias
18 arising from people -- how people respond to the
19 questions, is it not? Mr Scott has noted that there can
20 be a bias by a respondent to give what is perceived as
21 the socially desirable right answer, social desirability
22 bias, yes?

23 A. So social desirability is an interesting point when
24 roughly 50% of the population have written a will.
25 Which way is socially desirable?

1 Q. Mr Punter, like you, I am not an expert in opinion
2 surveys, but I would suggest to you this is an
3 intuitively understandable thing. If my GP asks me how
4 many units of alcohol I have drunk a week, and on how
5 many days I have eaten five portions of fruit and veg;
6 even if I am seeking to answer him accurately, I may --
7 I had better get this the right way round -- find I have
8 shaded down the former and shaded up the latter.

9 A. So I think there is a big difference between asking
10 questions in what I call psychological surveys to this
11 kind of survey.

12 Q. Can we take it in stages? We understand this
13 phenomenon, we understand how it happens, just at an
14 abstract level now.

15 A. If you take the whole population surveys in the world,
16 you do get this acquiescence bias, yes.

17 Q. I think that is ... So can we agree, particularly if you
18 are surveyed by someone saying "I am doing this on
19 behalf of the National Wills Register, I am doing this
20 on behalf of MacMillan, I am doing this on behalf of the
21 Kings Court", that will-writing is likely to be seen as
22 being in the desirable category. It is the fruits and
23 veg or exercising?

24 A. I am not sure I do agree with that. Because the
25 population is -- as far as I can see there is no social

- 1 impact of saying you do not have a will because most
2 people in the country just do not have a will.
- 3 Q. But the Joseph Rowntree Foundation survey, as we have
4 seen, acknowledged the possibility that this is the
5 direction it goes in. Do you accept that?
- 6 A. I think when you do a survey you have to acknowledge
7 that there is potential for bias, yes.
- 8 Q. So there is a potential issue here, you agree?
- 9 A. Yes, as we discussed in the hot tub I think there is
10 a potential issue.
- 11 Q. There is also a potential acquiescence bias which is the
12 "just say yes" bias, is there not?
- 13 A. In this particular circumstances, yes.
- 14 Q. Sorry, I did not catch that.
- 15 A. What I mean was that it could be no, but in this case it
16 would be yes for writing a will.
- 17 Q. I think we have already discussed we do not actually
18 know what the questions were in these surveys and the
19 question if it is yes, no, do not know?
- 20 A. We do not know precisely and I have taken -- in my view
21 they have been conducted in a sensible and proper
22 fashion so these biases will have been looked at in
23 framing the questions.
- 24 Q. But we do not know?
- 25 A. We do not. I do not know for certain, no.

1 Q. Can we agree that to the extent that there is an issue
2 it will be an asymmetrical one because it will mean that
3 the percentages are overstated. This is not a situation
4 in which you say well, it could go higher and it could
5 go lower so let us leave it unchanged?

6 A. I am not sure I do accept that, no. I do not see why it
7 should be.

8 Q. If there is an acquiescence bias, that is more people
9 saying yes?

10 A. They could say no when they have a will.

11 Q. But the nature of the acquiescence bias is that you are
12 in favour of saying yes?

13 A. No, acquiescence bias could be either way. It is a bias
14 to the question.

15 Q. If the question is: do you have a will, yes or no, the
16 acquiescence bias will be in favour of yes, will it not?

17 A. The acquiescence refers to the type of response but the
18 response could be yes or no. I could have a will and
19 say no to a survey.

20 Q. Can we hypothesise that of the surveys that have
21 attempted to ascertain the percentages it is more likely
22 that they will have "do you have a will" than "do you
23 not have a will" as the yes question?

24 A. I think it is most likely it would be: do you have
25 a will, yes?

1 Q. Now, you have concluded that this has not materially
2 impacted the survey results and so you have not made any
3 deduction, so in effect you have reached the positive
4 view that the right answer is zero%, have you not?

5 A. Well, the view I have taken is that there is no credible
6 evidence to do anything other than that I have found.

7 Q. But you have found no positive basis for saying there
8 cannot be bias on this? You just do not have the
9 information?

10 A. Yes, so I think you are right but the way I am looking
11 at it I have not got any evidence to make an adjustment
12 and the way I as an actuary would look at it is you make
13 adjustments when you have evidence. So any adjustment
14 that is made will be a subjective one and I have not
15 made any subjective judgment.

16 Q. But I think you agree that you equally do not have any
17 evidence to suggest that this is a complete non-issue?

18 A. Well, in any survey these kind of biases are an issue
19 and they have to be looked at by the survey company and,
20 yes, I mean, whether they are material or not is another
21 matter.

22 Q. We will come back to the question of material in due
23 course, but I think we agree that this is a potential
24 issue.

25 Then we move on to invalidity. You agree with

- 1 Mr Scott that there are reasons why a will may not be
2 legally valid?
- 3 A. I think we can agree that there can be wills that are
4 not legally valid, yes.
- 5 Q. Some of those may be reasons that are present from the
6 outset, for example the will that simply has not been
7 executed properly, yes?
- 8 A. That is a possibility, yes.
- 9 Q. Some may be reasons that arise over time, for example,
10 if you become married or enter into a civil partnership
11 without your will being made in contemplation of that
12 event?
- 13 A. As I understand it, if you get married your previous
14 will lapses.
- 15 Q. Or a will could simply be lost or destroyed?
- 16 A. Yes.
- 17 Q. Now, this is another asymmetrical issue, is it not,
18 because if there is an invalidity problem, it means that
19 the percentages that you derive from the surveys are an
20 overstatement. This is not a could be higher, could be
21 lower situation?
- 22 A. So in terms of the materiality of this issue in terms of
23 the calculations, I think it is very important because
24 you are talking -- for instance, take marriage. Most
25 marriages occur at younger ages so the chances of them

1 making another will in the period before they die is
2 relatively high. In the older ages where most of the
3 deaths are people who have a will and still make, as we
4 discussed before, in my view are still making the wills.

5 Q. Mr Punter, I am on now just the question of whether this
6 is an asymmetrical issue or not. It is not going to
7 lead the surveys to understate if some of the wills that
8 are reported as a "yes, I have made" are invalid in
9 principle?

10 A. Sorry, if someone says they have made a will and one of
11 those is invalid, it cannot go the other way I think is
12 what you are asking me.

13 Q. Thank you, Mr Punter. Now, it is quite difficult to get
14 some statistics on the scale of this problem and that is
15 perhaps unsurprising. Can I ask you to have a look at
16 the document at {E/45/245}. I think we need to go --
17 let us just pause here. We will come in due course to
18 the Law Commission in 2017, but this is a summary of
19 their further supplementary consultation that began
20 in October I think 2023. If we turn over the page and
21 could we zoom in on the central paragraph in the
22 right-hand column:

23 "We consider that the wills context raises distinct
24 considerations. That is because wills are unique.
25 Wills are unilateral documents which can be and are

1 regularly made without the assistance of any
2 professionals, or any third party at all, other than the
3 two witnesses to the testator's signature. There is no
4 other party to a will, and no state involvement at the
5 time the will is made. They are not subject to any
6 requirement of registration. They are revocable until
7 the testator's death, and until that time they can be
8 kept entirely private by the testator. A will cannot be
9 proved as valid until after the testator dies. Wills
10 therefore operate in a way, and in a context, that is
11 very different to contractual or transactional documents
12 where electronic execution is increasingly commonplace."

13 So it is perhaps unsurprising that the statistics on
14 invalidity are thin on the ground?

15 A. Yes, but if we go back, in the hot tub I referred to the
16 Probate Service where they say there are very few wills
17 that have been found to be invalid.

18 Q. We are coming to that. Now, the one thing that we have
19 got which has the Probate Service comment is the 2011
20 investigation by the Legal Services Consumer Panel.
21 That was at {E/16.41/1}. If we go forward to page
22 {E/16.41/22}, please. Let us have a look at 4.12.
23 I want us to set aside the question of poor quality and
24 whether poor quality is invalid. Eight of the sample
25 are assessed as not legally valid.

1 If we go forward to page {E/16.41/24} we see that 8
2 in the left most pair of columns on execution, do we
3 not, so it is the eight which have failed and 93 that
4 have passed. So it would seem from this that invalid is
5 not being used in a subsequently revoked or other
6 quality issue. Valid is being used in a prima facie,
7 this is not compliant with the required formalities,
8 sense and so eight out of 101 in this survey are invalid
9 in that sense?

10 A. That is what that survey says, yes.

11 Q. So these are not wills that became invalid because of
12 marriage or time elapsing, these are wills that are
13 invalid at the time of outset?

14 A. But they are not necessarily wills at the date of death,
15 are they?

16 Q. Mr Punter, we are taking it in stages. We are starting
17 with the wills --

18 A. So it is a very small survey and it is 8%.

19 Q. Mr Punter, it is the survey that we have. Now, you have
20 made various observations on it in your third report and
21 if we could go to page {E/12.1/33}. Now, here we see
22 and I think we are going to have to zoom in slightly, in
23 2.8.5. Here is the point that you have just made to me
24 which is basically to say that some of these instances
25 might be fixed, yes, so this may be less of an issue

1 with an older cohort?

2 A. In my view.

3 Q. You do not have any basis to say some of them may be
4 fixed?

5 A. The Probate Service has the biggest dataset going.

6 Q. Can we go back then to {E/16.41/1} and look at what the
7 Probate Service have said, and that is on page
8 {E/16.41/25}. Now, we can see in paragraph 4.15 that
9 they have said very few. Can we agree that very few
10 does not mean none?

11 A. It cannot mean none.

12 Q. Can we also agree that we do not know whether there are
13 wills that are so obviously problematic, so, for
14 example, completely unsigned that they do not even get
15 to the Probate Service stage?

16 A. Well, yes, that is possible, but they could then fall
17 into other categories where letters of administration
18 are granted, could not they?

19 Q. We will come to the question of double counting and
20 categories but right now we are on invalidity and
21 whether this is a non-problem.

22 Can we also turn over the page to 4.18 in which we
23 see there in a STEP survey 60% of members had come
24 across will writers whose wills were invalid due to
25 basic mistakes. You accept that is what it says.

1 Mr Punter, what I want to suggest to you and we are
2 focusing only on the wills that were never valid from
3 the outset, what this goes to at most is whether 8% is
4 too high or too low for the Class but none of this
5 provides a basis, a positive basis for saying the
6 problem is 0%?

7 A. Well -- so I agree with you it will not be zero but in
8 terms of what we are trying to do, what Mr Scott and
9 I have been trying to do, is it material to the
10 calculations?

11 Q. We will come back to that but we agree it cannot be
12 zero?

13 A. It cannot be zero.

14 Q. Let us move on. So that was the first category of
15 validity issues, problematic from the outset. Let us
16 move on to validity issues that increase in likelihood
17 with time, so as the interval from the making of the
18 will elapses, the odds of marriage, revocation,
19 destruction, all else equal that the interval in which
20 those events can occur is increased, is it not? Again,
21 start at abstraction with regard to class?

22 A. I am trying to work out -- a revocation is not an
23 invalid will, is it, that is a will which no longer --

24 Q. We are talking here about the category of wills that may
25 have begun valid in the sense of being properly executed

1 but for some reason such as marriage or civil
2 partnership or revocation or destruction over the
3 passage of time become invalid.

4 A. But the key issue is whether someone has a will on death
5 not when it gets -- for whatever reason is revoked or
6 there is marriage.

7 Q. That is your point, Mr Punter, which is basically and we
8 see this in row 42 of the JES, on page {E/51/26}.

9 I will give you time to get there. Page 26. That
10 starts -- I will let you read what you said there about
11 the key question is whether this is material when it
12 matters. I think we need to go over the page to
13 {E/51/27}.

14 Now, in a nutshell your main point is that this just
15 is not going to be material because most will writing
16 occurs at older ages so when you look at the Class and
17 the relevant interval during which events could occur
18 that affect validity, this is not a problem?

19 A. So slightly different, it is that most deaths occur at
20 older ages by which time a higher percentage of the
21 people have written wills, yes.

22 Q. Or have rewritten on your --

23 A. Or rewritten.

24 Q. So you say that this is such a limited passage of time
25 problem that for the Class we can basically conclude it

1 is zero?

2 A. For practical purposes, yes.

3 Q. Let us set aside practical purposes. The effect is you
4 are concluding it is zero?

5 A. I am taking it to be zero, yes.

6 Q. If we look at these 17 surveys they actually paint
7 a rather varying picture of how long the period is. Can
8 I ask you to turn up the Will Aid one. It is
9 {E/16.11/1}. I am sorry, we are going to have to --
10 zoom in on this. If we could zoom in on the very bottom
11 bullet, and this is one of the surveys that you have
12 referred to and you have both taken into account, we see
13 that of people who had written a will, almost 60% of
14 those had not written a new will or updated an old one
15 for more than five years.

16 Now, whether or not that applies to the Class we do
17 not know but there is at least one snippet from one of
18 your surveys which suggests there are people who have
19 not updated their wills in rather a long time. Do you
20 agree?

21 A. That is undoubtedly true. I have not updated my will,
22 for example.

23 Q. If we move forward, in fairness to you, I will show you
24 the National Will Registers 2023 survey and that is at
25 {E/16.33/1}. If we turn forward to page {E/16.33/7}.

1 It is on the left-hand, the central block.

2 Now, this presents a somewhat more optimistic
3 picture in terms of the size of the interval because
4 about a third, just under a third are saying they have
5 updated it within a year. But even here post-Covid we
6 have a rump of some 22% of people who have not updated
7 their wills in more than half a decade. Do you agree?

8 A. That is what this data is saying.

9 Q. If we actually go forward in this survey to page
10 {E/16.33/10}, we can see that around half of wills are
11 being stored at home. One assumes, again without
12 wishing to descend into anecdote, but the risk of
13 something being lost or destroyed at home may be higher
14 than if it is safely stored with a solicitor,
15 potentially?

16 A. That is probably true but not always.

17 Q. Again, Mr Punter what I am saying to you is that we can
18 debate the magnitude of this issue but none of this is
19 a positive basis for thinking that it is zero, that
20 there is absolutely no invalidity problem?

21 A. I am sorry, but I do not understand how this has any
22 relevance to invalid wills.

23 Q. We are talking about wills that began validly made
24 and --

25 A. No, these are not wills that were invalidly made, are

- 1 they?
- 2 Q. This particular piechart is about wills that have been
3 stored in a place where they are more likely to be lost.
- 4 A. In my view they are most likely to be valid but what you
5 are saying is a high percentage, or a percentage of
6 those are going to be lost.
- 7 Q. That is the point, is it not, Mr Punter, because you
8 have concluded that this is not a material issue.
9 Invalidity from the outset and invalidity over time and
10 you have made no deduction for it, so again, you have
11 said the right adjustment is 0% and what I am saying to
12 you is that there is no positive support in any of this
13 material for zero?
- 14 A. Well, there is no -- you turn it round. There is not
15 anything that says it should not be zero. Apart from
16 the small -- there will be some invalid wills, I accept
17 that.
- 18 Q. You accept there will be some invalid wills?
- 19 A. It is a very small percentage if you look at the Probate
20 Services.
- 21 Q. But you do not know?
- 22 A. The Probate Services have the biggest dataset going.
23 How can you ignore that? I do not understand.
- 24 Q. They have said they have seen very few. They have not
25 put a number on it, have they?

- 1 A. No, but very few is very few.
- 2 Q. Mr Punter, we do not know, do we? That is the point, we
3 do not know?
- 4 A. Well ...
- 5 Q. That brings me to the double-counting issue because both
6 you and Mr Scott have reached your views on the total
7 proportion of Class Members who are likely to have
8 a personal representative by adding together the
9 proportion who have a will and the proportion who do not
10 but for whose estate there is a grant of administration.
11 You agree?
- 12 A. Yes.
- 13 Q. I think you also implicitly accept if we go forward to
14 row 46 of the joint experts' statement which is on
15 {E/51/31} that if it is the case, and let us deal in
16 hypotheticals here, if it is the case that people are
17 included among those who have a valid will on your
18 modeled relationship and they actually do not have
19 a valid will but they show up in the grant of
20 administration there is going to be double-counting?
- 21 A. So if you have someone -- can I just try and understand
22 what you are saying. If you have someone in the survey
23 who says they have a will and they do not have a will,
24 they could show up in the -- yes.
- 25 Q. Now, just to get a sense of the upper limits of this

1 issue, and we will set aside now the question whether
2 invalidity is material, Mr Scott has modeled a flat rate
3 of 7% for grants of administration, yes?

4 A. Yes.

5 Q. You have modelled a rate which I think starts at about
6 17% at age 55 and it falls thereafter. So if there is
7 an issue it is necessary, is it not, to make an
8 adjustment somewhere?

9 THE CHAIRMAN: If there is a double-counting issue do you
10 mean?

11 MS LOVE: If there is a double-counting issue.

12 A. Sorry, it is the word double-counting that ...

13 Q. If there is this risk we have been discussing from the
14 arithmetic nature of things?

15 A. This is coming back to a person who in the survey says
16 they have a will and turns out that they have not got
17 a will and then fall into the intestacy so that is like
18 half the amount, whatever --

19 Q. Just dealing with it conceptually. We will move on to
20 the question of magnitude, but this is an issue you have
21 to make sure there is an adjustment for, is it not?

22 A. If there is an issue and I had evidence for it I would
23 consider making an adjustment, yes.

24 Q. You do not disagree with that and what you have actually
25 proposed, and I do not think we need to turn it up in

1 2.9.6 in your third report, is that the way forward
2 would be to adjust the additions not to adjust the issue
3 of rates of will-writing; is that correct?

4 A. I am not quite sure, sorry.

5 Q. You say that insofar as it is an issue it should be
6 reflected in the adjustments to the addition, the
7 intestate grants. I can take you there if you want.

8 THE CHAIRMAN: It might be useful to take him to that.

9 MS LOVE: Paragraph 2.9.6 and this is {E/12.1/36}.

10 A. So this is the double-counting point, is it?

11 Q. Yes.

12 A. So I am just trying to work it through. If you have
13 somebody who has said they have a will and does not have
14 a will and then gets involved in grant of testate; is
15 that the point?

16 Q. It is the point we have just discussed of the absolute
17 nature and the way you have said it should be adjusted
18 for would be --

19 A. If there is double-counting you should adjust for it.
20 I think that is what you are asking, yes.

21 Q. But you have gone on to say that you do not think that
22 a deduction is necessary because this comes back to the
23 materiality of the invalidity issue.

24 Now, just above that, and it is 2.9.3 and 2.9.4, if
25 we scroll up a bit on this page, you have criticised

1 Mr Scott's 20%. Now, I am going to set aside some
2 linguistic quibbles about whether this is about false
3 claims, whether there is a fair characterisation of
4 acquiescence bias or whether there is also invalidity,
5 but your central point is that he has made a judgment in
6 the round, is it not?

7 A. Yes, we asked for evidence for the 20% when we had the
8 joint experts meeting.

9 Q. So your central criticism is that he has not decomposed,
10 it seems, adjusted for each of these --

11 A. I think the criticism is the level and the lack of
12 evidence and not being able to split it between the
13 different pieces, yes.

14 Q. But, Mr Punter, it is necessary to make a judgment in
15 the round, is it not?

16 A. Yes, but the point I am making is the judgment has to be
17 made on some form of data. You cannot just say it is
18 20%. I cannot see how that makes any sense at all.

19 Q. But you have gone through each of these, each individual
20 one, survey bias, invalidity and at each stage your
21 answer is not zero but I do not think material. But do
22 you accept that the sum total of individually small
23 issues can be material?

24 A. Well, I can envisage, for instance in accounting, that
25 is a possibility. I would say in this case it is

1 unlikely.

2 Q. Mr Punter, can we go very briefly to {E/45.244/1}. This
3 is I think what is known catchy as TAS 100. It is the
4 General Actuarial Standards. Can I take it that you are
5 familiar with this?

6 A. I am familiar, yes.

7 Q. And it is set by the Financial Reporting Council and it
8 something with which members of the Institute and
9 Faculty of Actuaries ought to comply?

10 A. That is correct, yes.

11 Q. Can we go, forward to the sixth page. {E/45/244.6}. We
12 are looking at P4.3.

13 "The practitioner must consider whether the set of
14 assumptions are appropriate when considered in
15 aggregate."

16 Yes? That is what it says?

17 A. Yes.

18 Q. Mr Scott has stepped back and looked at this in the
19 round and he has also looked at the Law Commission which
20 we will come to and he has said 20%. You have not
21 stepped back and looked at each of the individual
22 slight, in your view, but non-zero things and said why
23 no adjustment whatsoever is still the right answer, have
24 you?

25 A. Right, so can I just -- what I think has to happen is

1 you have to look at the individual items and then you
2 have to look at it in the round because sometimes you
3 can look at individual items, add them all up and you do
4 not get sensible answers, which I think is what this is
5 getting to here.

6 We have taken -- when Mr Scott raised these points
7 we went away and looked for as much evidence as we could
8 find and my judgment was there is no credible evidence
9 to make an adjustment for these three items.

10 Q. So you have decided the adjustment is zero?

11 A. I have said my adjustment is zero, yes.

12 Q. You accept that there is no positive basis for zero.

13 I think this may be a case --

14 THE CHAIRMAN: I think we have been round this question,
15 have we not?

16 MS LOVE: This maybe a case of what Professor Loomes would
17 describe as status quo bias: you will not move from zero
18 unless you see something?

19 A. No, I do not think that is correct. I am starting from
20 where we do have credible evidence and there is not any
21 credible evidence to move away from that. I think that
22 is miscategorisation.

23 Q. The effect is that you are dismissing these as all
24 non-issues, are you not?

25 A. I am not dismissing them as non-issues. I am applying a

1 zero adjustment for them.

2 Q. Which has the effect, well, it is functionally
3 indistinguishable from treating them as non-issues?

4 A. Because it is indistinguishable.

5 Q. Could we finally move on to this question of the final
6 checks that Mr Scott has applied from the Law
7 Commission. Can I ask if we can turn up row 44 --
8 sorry, can we start with Mr Scott's second report,
9 paragraph 5.19. Let me just get a reference for that.
10 I think we are in {E/24/23}. Can I ask you to go over
11 the page once you have had the chance to read those
12 first two lines?

13 A. What am I reading?

14 Q. Paragraph 5.19.

15 A. Can you go back, I have missed it.

16 Q. Paragraph 5.19:

17 "In my first report, in line with my instructions,
18 I calculated the probability of a deceased Class Member
19 having a personal representative on the assumption that
20 a personal representative would only be appointed
21 following a grant of probate or administration. My
22 conclusions were consistent with the 2017 consultation
23 paper issued by the Law Commission, in which they state
24 (paragraph 1.1)..."

25 I will leave you to read that but in particular the

1 last sentence:

2 "For the 256,098 deaths where there was no grant, it
3 is not possible to know whether or not there was a will,
4 but it is likely that most of these deaths were
5 intestate."

6 That is what it says?

7 A. Yes, but what we do know is from the Probate Service, is
8 it not, they see roughly half the deaths in the country
9 at any one moment in time.

10 Q. This is dealing with the other, I think it is 48%, where
11 there is no grant, whether it is a grant of letters of
12 administration or not?

13 A. Then we have got within that group you can die intestate
14 and still have letters of administration granted and
15 then you have got --

16 Q. But we are dealing with the question of the remaining
17 48% here and I am asking you to focus on the last
18 sentence about it being likely in the view of the Law
19 Commission that most of these deaths were intestate. We
20 can see if we go forward in the JES to {E/51/28} and row
21 44 is where Mr Scott sets out this further in the round
22 check. If we go over to page {E/51/29} we see that, in
23 the emphasised text: the view of the Law Commission that
24 it is likely that most of the remaining 48% of these
25 deaths are intestate. That is what he is relying upon?

1 A. But that --

2 Q. Can we just focus -- I am sorry, I am conscious of time.
3 That is what Mr Scott is relying on?

4 A. Right, okay.

5 Q. I think it might be helpful notwithstanding the time to
6 go to the Law Commission document itself because you
7 have made a criticism of it in the JES that I am afraid
8 I struggled with. So can we go to {E/51.2/1}. This is
9 the Law Commission consultation document. I think if we
10 go to page {E/51.2/5} we can see here that this is
11 a document from July 2017 with responses by November.

12 If we go forward -- I think we only need to go
13 forward -- it is going to be more than one page. Let us
14 try {E/51.2/13}. Can we keep skipping forward until we
15 get to the first paragraph. I think it is probably
16 going to be {E/51.2/17}. Yes.

17 So let us zoom in on paragraph 1.1. We see:

18 "Estimates vary but it has been suggested that 40%
19 of the adult population do not have a will."

20 If we can go down to footnote 2 and could we zoom in
21 on that footnote, please. We see it says:

22 "This was the Law Society's view in its response to
23 our 12th programme public consultation, which suggested
24 that we review the law of wills. Statistics support
25 that estimate. There were 273,557 grants of

1 representation for the 529,655 deaths registered in
2 England and Wales in 2015. 40,409 were grants of
3 letters of administration (that is, there was no will)."

4 Pausing there these are picked up in your addition:

5 "For the 256,098 deaths where there was no grant it
6 is not possible to know whether or not there was a will,
7 but it is likely that most of these deaths were
8 intestate."

9 Now, can we go back to {E/51/28} and see what you
10 have said about this. What you have said is that:

11 "It appears that [the Law Commission] were misled by
12 the Law Society's response to their consultation which
13 incorrectly set out a concern that 40% of people die
14 without a will."

15 Right, let us go to what the Law Society have to
16 say. That is at {E/51.3/1}. We can see on the face of
17 this that this is a November 2017 consultation response,
18 is it not?

19 A. Yes.

20 Q. So whereas what was referred to in footnote 2 was the
21 Law Society's view from a previous consultation, which
22 was the 12th programme public consultations.

23 If we go forward I think what you are referring to
24 here is, if we go over a page, to page {E/51.3/2},
25 I think what you are referring to is the very last

1 bullet on that page and the sentence:

2 "We find it concerning that 40% of people die
3 without making a will each year."

4 A. Well ...

5 Q. So firstly, I have to say that this does not work on
6 a timing front because the Law Commission cannot have
7 been misled by a consultation response that post-dated
8 it, can they?

9 A. No, but the whole thing -- sorry, we have got surveys
10 that show 83/84% of people at the older ages have wills.
11 That is where the deaths occur, so something is not
12 right.

13 Q. Mr Punter, I am focusing here on your criticism.

14 A. That is why I am criticising it.

15 Q. You are saying the Law Commission, which is the
16 consultation document from July that is relied on by
17 Mr Punter --

18 A. You are talking about the date.

19 Q. I am saying this, whether right or wrong, whether it is
20 a fair or unfair interpretation of the statistics they
21 cannot have been misled by a document that postdated
22 their consultation, can they? Can we agree on that?

23 A. I understand what you are saying.

24 Q. If we also go back to page {E/51.2/17} if we go back
25 down to the footnote, footnote 2, we can also see that

1 the Law Commission is not -- at the end of this
2 footnote -- saying that they rely on something the Law
3 Society said. They are saying that statistics support
4 it and they are expressing, it would appear, their own
5 view as a nondepartmental body that specialises in
6 consultations to improve the law on what the likely
7 position is for this 48% of deaths. Do you agree?

8 A. That is what is stated there, yes.

9 Q. So other than the question whether it sits with the
10 surveys, and we have already been through the surveys,
11 there is no basis in what you have said in row 44 of the
12 JES for saying that there is a problem with the Law
13 Commission comment?

14 A. Well, I think there is because there is something -- it
15 does not hang together. The Probate Service there deals
16 with most -- deals with deaths. It is about 45 to 50%
17 depending on the year on all deaths. We know the
18 surveys have deaths at the older ages up to 84% and
19 beyond percent. That is where most of the deaths occur.
20 So that is where I am -- why I am criticising it. I do
21 not understand how you can say -- I do not actually
22 understand what you are trying to get to.

23 Q. Mr Punter, that was interesting and that was
24 a repetition of a point we have previously canvassed but
25 that was not an answer to my question which is saying

1 that you have not given an explanation in row 44 of the
2 JES that undermines Mr Punter's reliance on the Law
3 Commission statistic?

4 A. So you are referring to the actual statement in row 44.

5 Q. Yes, let me get it back. I think it is {E/51/28}. Here
6 is your allegation that the Law Society has somehow
7 misled in a November response?

8 A. That is what I thought had happened.

9 Q. If we go over the page just so you have the opportunity
10 to look at your full response. {E/51/29}. So all of
11 this is on a mistaken premise about the timing?

12 A. In terms of timing, yes.

13 THE CHAIRMAN: Just pause there one moment. Just let me ask
14 Mr Spitz something at the moment. Mr Spitz, how long do
15 you intend -- do you think you need on re-examination?

16 MR SPITZ: I have four points that I would like to cover so
17 ten minutes.

18 THE CHAIRMAN: I think on that basis you need to be coming
19 to a close, Ms Love.

20 MS LOVE: I understand, sir.

21 Mr Punter, I do not want us to stay later than we
22 need to and I do not want to repeat matters that have
23 previously been canvassed but I have to suggest to you
24 not only that Mr Scott has properly looked at matters in
25 the round but that the further top-down checks he has

1 taken, the Law Commission is tracing, are valid checks
2 and there is nothing wrong with the way in which he has
3 approached this.

4 A. Well, I do not think I have ever suggested he has done
5 anything wrong in the way he has approached --

6 Q. Or his results?

7 A. I think the 20% is not justified. I make that clear.
8 I can see no credible evidence for a 20% adjustment.

9 Q. But, Mr Punter, you are not here saying 5 or 10 or 12.
10 The surreal point in the opening submissions was
11 Mr Spitz's comment about 20% being arbitrary relative to
12 some other figure and the reality is, Mr Punter, that
13 the effect of what you have done, which is this granular
14 not material, not material, not an issue, is that you do
15 not engage in the big picture really at all. You just
16 do not --

17 A. I disagree with that. If I thought the addition of all
18 these points was material I would have said so.

19 MS LOVE: I think we are not going to take any further.

20 THE CHAIRMAN: It has been well canvassed. Thank you very
21 much, Ms Love.

22 Mr Spitz.

23 Re-examination by MR SPITZ

24 MR SPITZ: Four brief points, Mr Punter. The first -- well,
25 the preamble is Ms Love suggested that there was no

1 evidence of the question that was put in these surveys
2 and that is at [draft] transcript page 187, line 13-14.
3 We do not need to go to it in the interests of time.
4 She suggested that there is no data in any of these
5 surveys and that is [draft] transcript page 174, lines
6 15-21.

7 MS LOVE: My intention was not to suggest that none of them
8 had it. It was to suggest it is not -- at most I think.

9 MR SPITZ: Understood. So let me just show you very
10 quickly.

11 MR BEARD: Hold on, this feels like we are in leading
12 territory. This is re-examination.

13 THE CHAIRMAN: No, if the point has been -- Mr Beard, both
14 sides in re-examination have taken their witnesses to
15 documents, so I think Mr Spitz is entitled to take him
16 to a document that relates to something he was
17 cross-examined on. Yes.

18 MR SPITZ: Thank you, sir. The first one is {E/16.29/100}.
19 You will see at the top of the page the question that
20 was posed is there set out:

21 "Have you yourself, made a formal will, that is
22 a will that has been signed and witnessed?"

23 Underneath that you will see the data, the detailed
24 data which was put together for the purposes of this
25 survey. Do you have any comments that you would like to

1 make on this document?

2 A. It is quite detailed and I am not quite sure what I can
3 add to what I said before.

4 Q. Let us then go to {E/16.35/85}. I also just want to
5 draw your attention to the second paragraph on that page
6 because Ms Love read part of the first paragraph to you
7 but she did not read the second paragraph, which says:

8 "Will making was certainly linked to increasing age
9 in our survey, with three quarters of those in their
10 seventies having made a will, rising to 84% of those in
11 their eighties or above (see figure 6.1) ..."

12 Then you see figure 6.1 below. Again, do not feel
13 obliged, you may wish to comment on that or not.

14 A. I thought Mr Scott and I had agreed that will-writing
15 increases by age and that it goes up to levels of 84% at
16 the older ages.

17 Q. Indeed. Finally then, {E/16.41/2}. I am sorry, that
18 may be an erroneous reference. It may be {E/14.45/2}.
19 I will get it on the third attempt. It is in fact
20 {E/16.41/24}. I think you made the point in relation to
21 this that it was a very small survey and I wanted to ask
22 you whether this survey of 101 people is a credible
23 reliable survey?

24 THE CHAIRMAN: Well, that really is leading. He said
25 already I think that this is just 100 people.

1 A. Yes, I think I have already said and the Probate Service
2 is the largest data service, so I think I said that at
3 least four times.

4 THE CHAIRMAN: Yes, I think we can infer whatever else from
5 the document.

6 MR SPITZ: I will not take it any further than that and I do
7 not have anything else in re-examination.

8 THE CHAIRMAN: We have no further questions. Thank you very
9 much indeed, Mr Punter. Just before you go, Mr Punter,
10 because I know you are not going to be here tomorrow, at
11 some appropriate time, hopefully in the very near future
12 you can liaise with Mr Scott about agreeing those
13 various things for which we are very grateful.

14 MR PUNTER: Yes.

15 MR BEARD: I was going to say just to confirm it will not be
16 before Mr Scott.

17 THE CHAIRMAN: I understand that. Good, we will complete
18 this stage of the evidence tomorrow starting at 2 pm.
19 Very grateful to the transcriber for enabling us to sit
20 so late. 2 o'clock tomorrow then, please.

21 (5.10 pm)

22 (The hearing adjourned until Friday, 1 March at 2.00 pm)

23

24

25