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

Case No: 1381/7/7/21

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 29<sup>th</sup> January – Friday 22<sup>nd</sup> 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

**Respondent**

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**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 Group PLC and British Telecommunications PLC)

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

Friday, 1 March 2024

(2.00 pm)

THE CHAIRMAN: Good afternoon. Some of you are joining us live stream on our website, so I must 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.

Now, Mr Spitz.

MS LOVE: Sir, I believe that Mr Scott needs to be re-sworn.

THE CHAIRMAN: He does. I keep forgetting this. Yes, thank you.

MR ROBERT SCOTT (resworn)

MS LOVE: Mr Scott, I have no questions for you now.

Mr Spitz has questions.

I believe you have in front of you hard copies of the reports, and if you want to look through any of the documents that come up on the screen, up or down, to orientate yourself within the documents, please do say.

A. Thank you.

Cross-examination by MR SPITZ

MR SPITZ: Good afternoon, Mr Scott.

A. Good afternoon.

1 Q. I am going to focus on asking you some questions about  
2 the number of deceased Class Members who will have  
3 a personal representative in place before distribution,  
4 and I am going to begin by looking at the 20% reduction  
5 that you would make to the rates of will-writing.

6 Your position, as I understand it, is that once you  
7 have determined the rates of will-writing drawn from the  
8 survey evidence you considered, you then need to make an  
9 adjustment to those rates to arrive at an appropriate  
10 assumption for the likelihood that a deceased Class  
11 Member has a personal representative; is that right?

12 A. Yes, that is partially correct. There are two  
13 adjustments. One is to adjust the rates at which the  
14 surveys report people say that they have made a will,  
15 and the second is to add on an allowance for intestate  
16 grants of administration through the Probate Service.

17 Q. Right, and you reduced the rates of will-writing drawn  
18 from the survey evidence by 20%?

19 A. That is correct, yes.

20 Q. But you say that you make this reduction of 20% from the  
21 survey results for three reasons. The first is to  
22 adjust for what you describe as survey bias?

23 A. Yes.

24 Q. The second is to account for invalid wills?

25 A. Yes.

1 Q. The third is because of what you describe as  
2 double-counting?

3 A. Yes, that is true. The double-counting means that it is  
4 necessary to make an adjustment, and the adjustment  
5 reflects -- the level of the adjustment reflects the  
6 other factors.

7 Q. Yes. Other than saying that you make a judgment in the  
8 round, you do not give a specific explanation of how you  
9 come up with the 20% overall figure, do you?

10 A. Well, I do. There are various benchmarks that I have  
11 considered when looking at the overall assumption that  
12 I come to, and those benchmarks tell me that, taken in  
13 the round, the assumption is reasonable. The benchmarks  
14 include, as we discussed yesterday, both the report from  
15 the Law Commission, that said roughly half of people who  
16 died were intestate, as well as the probate tracing that  
17 I did in relation to the Class Members, which showed  
18 that around 60% of them had either probate or a grant of  
19 administration.

20 THE CHAIRMAN: Sorry, had or had not?

21 A. Had.

22 THE CHAIRMAN: So 40% --

23 A. 40% did not, yes.

24 MR SPITZ: I think you said that you had taken a top-down  
25 view by comparing and trying to reduce towards the

1 overall levels in the Law Commission's grant of  
2 representation, this is in the 2007/2008 statistics, as  
3 part of your tracing analysis.

4 A. I wonder if counsel could repeat the question. I do not  
5 think it was part of my tracing analysis that led me to  
6 work down from the level of the will-writing reported in  
7 the surveys, I think it was -- perhaps you could clarify  
8 the question.

9 Q. For the purpose of your tracing exercise, you looked at  
10 those who have gone through probate, I believe?

11 A. Yes.

12 Q. The probate statistics themselves only look at those  
13 individuals who have gone through probate. They do not  
14 look at others?

15 A. Yes.

16 Q. So, there are people, executors, who are personal  
17 representatives, even though they are not part of  
18 a process of grant of probate or letters of  
19 administration, yes?

20 A. Yes.

21 Q. Your tracing exercise and the probate numbers do not  
22 take into account that group of people, do they?

23 A. No, they do not.

24 Q. When you come up with your 20% reduction, you do not  
25 explain why it might be a different figure, 5% or 10%,

1 do you?

2 A. No, I do not.

3 Q. I suggest that there is no real science behind the  
4 exercise that you did, is there?

5 A. I do not agree. I looked at the overall outcome of  
6 making that assumption and adding back the level of  
7 intestate grants to see what the implied percentage was  
8 of deceased Class Members who would have a personal  
9 representative, and that end number appeared to me to  
10 tally reasonably with the other benchmarks that I had,  
11 being the Law Commission report, and the result of the  
12 tracing exercise.

13 Q. But you do not set out anywhere in your reports what  
14 proportion of your 20% downward adjustment is because of  
15 each of the three factors that you enumerate, do you?

16 A. No, I do not.

17 Q. You are not able to explain what portion of the 20% is  
18 attributable to each of those factors, are you?

19 A. No, I am not, because I built the model from a top-down  
20 approach rather than a bottom-up approach.

21 Q. Are you able to give any rough indication of what  
22 portion of the 20% might be accounted for by each  
23 factor, or is that just not the model that you adopted?

24 A. That is not the model that I adopted.

25 Q. All right, let us explore each of the reasons that you

1 give for the reduction that you make then, the first  
2 being survey bias. If we can look at the Joint  
3 Actuarial Expert Report at {E/51/30} and at  
4 paragraph 45. If you read that, your response to  
5 paragraph 45, to yourself. (Pause).

6 Your point there is that people who claim in the  
7 survey response to have made a will may not in fact have  
8 done so, yes?

9 A. That is correct.

10 Q. What you are suggesting is that they might have lied?

11 A. I would not use a term as strong as lying. They may be  
12 unaware. They may think that they have made a will.  
13 They may have planned to do a will. They may have an  
14 appointment with their lawyer, and so they say, "Yes, of  
15 course I have made a will". So I would not say it is as  
16 strong as lying.

17 Q. You are quite tentative in what you say in your second  
18 report, Scott 2. That is {E/24/18}, paragraph 4.18.  
19 You say they may not have made a will despite saying  
20 that they had, yes?

21 A. Yes.

22 Q. I do not think that what you are saying is that they  
23 might inadvertently have said they have a will when they  
24 do not. I think, for the purposes of what you call  
25 social responsibility bias, it must be that they

1            knowingly answered the question to say that they did  
2            have a will when in fact they did not?

3            A. Yes.

4            Q. One of the reasons for this sort of bias to arise would  
5            be if the questions were leading in a way that  
6            encourages respondents to provide a specific answer by  
7            suggesting the questioner's views or preferences, is  
8            that right?

9            A. Yes, that is one way.

10          Q. But you do not set out an analysis of the questions that  
11          were asked in your report, do you?

12          A. No, I do not, and as we explored yesterday, many of the  
13          surveys did not disclose the questions that were asked.

14          Q. Yes, and you do not present any evidence that there was  
15          any particular slant one way or another to the questions  
16          in any of the 17 surveys that you and Mr Punter looked  
17          at, do you?

18          A. No, I do not.

19          Q. I think you will agree that all 17 were carried out by  
20          professional survey firms or professional academics?

21          A. I think that is correct, yes.

22          Q. None of the surveys that you considered actually made  
23          any specific adjustments to their results to cater for  
24          survey bias, did they?

25          A. No, they did not.



1 Q. You, Mr Scott, are not an expert in survey design, are  
2 you?

3 A. No, I am not.

4 Q. Or in survey implementation?

5 A. No, I am not.

6 Q. So you are not really qualified to say whether the  
7 surveys ought to have made adjustments for survey bias,  
8 are you?

9 A. No, I am not qualified to say what the survey should  
10 have said, no.

11 Q. Indeed.

12 Now, another situation where this sort of bias may  
13 arise is by asking a scale question about views such as,  
14 for example, how strongly a person agrees that everyone  
15 should have a will, or asking whether they strongly  
16 agree, agree or disagree with a proposition that having  
17 a will is a good thing; is that right?

18 A. Yes, it is.

19 Q. Those are the sorts of questions where this kind of bias  
20 might arise?

21 A. They are examples, yes.

22 Q. But we cannot tell whether any of the surveys we looked  
23 at ask that sort of scale or subjective question, can  
24 we?

25 A. I am going to say no. I think there was one or perhaps

1 two surveys where there were some details of questions,  
2 but in general I say no.

3 Q. Yes, there certainly are some examples of the questions  
4 posed and they appear to ask simply: do you have a will,  
5 yes or no?

6 A. Yes, these are the examples that I have seen.

7 Q. We have not looked at any examples which pose  
8 a different sort of qualitative question: how much do  
9 you agree or disagree? A question of that sort?

10 A. No, I have not seen any.

11 Q. In those sorts of situations, the studies that you cite  
12 suggest that someone might attenuate their viewpoint in  
13 the face of questioning. It is that category, those  
14 scaling questions where this sort of thing arises?

15 A. That is one example. It is not the only one.

16 Q. All right. In our circumstances, the bias would have to  
17 be so strong to change a 'yes' answer to a 'no' answer  
18 for survey bias to arise?

19 A. Yes, if -- that is right, if someone were asked: have  
20 you made a will? They think, well, of course I should  
21 have made a will, and they say yes. Or, well, I have  
22 made an appointment with my lawyer, or I was going to  
23 make an appointment with my lawyer to do a will, and so  
24 they answer yes.

25 Q. I think you will agree that you have not set out any

- 1 evidence for any proposition that the bias is that  
2 strong to flip a yes to a no?
- 3 A. There was the quote that you showed me in line --  
4 I think it was in the Joint Experts' Statement a short  
5 while ago, where one of the surveys acknowledged that  
6 people would overstate the likelihood of having a will.
- 7 Q. I think they said "may" or "might", but we will come to  
8 that shortly. I know which survey you are referring to  
9 and I will draw your attention to that.
- 10 A. Yes, thank you.
- 11 Q. You have not cited any evidence for the proposition that  
12 it is indeed more socially acceptable to have a will,  
13 have you?
- 14 A. No, I have not.
- 15 Q. Nor that there is some sort of stigma associated with  
16 not having one?
- 17 A. No, I have not.
- 18 Q. In fact, as we have discussed, it would be outside your  
19 expertise to comment on those matters, would it not?
- 20 A. Yes, it would.
- 21 Q. Now, the will-writing rates are taken from no fewer than  
22 17 studies?
- 23 A. Yes.
- 24 Q. Each from between around 1,000 to 2,000 people?
- 25 A. Yes.

- 1 Q. By different -- undertaken by different survey  
2 providers?
- 3 A. Yes, there is a range of survey providers, although  
4 I think the underlying organisation that conducted the  
5 surveys conducted more than one of them.
- 6 Q. They are dated over the course of almost two decades,  
7 are they not?
- 8 A. Yes, they are.
- 9 Q. So if one were to make a deduction for social  
10 desirability bias, what you would be saying is that the  
11 bias is sufficiently prevalent as to require  
12 a substantial reduction of the rates reported across all  
13 these surveys and academic studies?
- 14 A. Sorry, was that a question?
- 15 Q. Yes, it was.
- 16 A. Sorry, please could counsel repeat the question.
- 17 Q. Yes, of course. If one were to make a deduction for  
18 social desirability bias, what you would be saying is  
19 that the bias is sufficiently prevalent as to require  
20 a substantial reduction of the rates reported across all  
21 17 of these surveys and studies?
- 22 A. No, I do not think that is what I am saying. We are  
23 looking at the combination of those surveys, we are  
24 drawing conclusions from that combination, and having  
25 looked at the averages that come out of the combination

1           then, yes, I am saying that there is an argument that  
2           says that that should be reduced because the results  
3           could be overstated.

4       Q. This bias would have had to endure over a lengthy period  
5       of time?

6       A. I am not sure that it would have to endure over  
7       a lengthy period of time. I am looking at the future,  
8       to say when someone dies what is the likelihood that  
9       they will have a will. I have a collection of surveys  
10      that has historical data which I have analysed and  
11      looked at and said those surveys give me a data point.  
12      Looking to the future, I think the results of surveys  
13      may overstate the rate at which people who die will have  
14      a will and therefore it is appropriate that that rate be  
15      reduced.

16     Q. Now, if you turn up Punter 3, that is Mr Punter's third  
17     statement, which is at {OR-E/12.1/18}, paragraph 2.5.2,  
18     you will see that he has set out a table and it lists  
19     the surveys in question on the left-hand side and the  
20     proportions of UK adults with a will in the  
21     middle column. Do you see that?

22     A. Yes, I do.

23     Q. What that shows is that, according to the surveys, the  
24     majority of UK adults say that they do not have a will.  
25     In fact, all but the Canada Life survey shows that, and

1 the Canada Life survey, which is the second from bottom,  
2 has a 50% split between those who have and those who do  
3 not have a will?

4 A. Yes.

5 Q. So what the surveys all show is that the majority of the  
6 whole UK population across all ages, especially younger  
7 people, respond with a no to the question whether they  
8 have a will or not?

9 A. Yes.

10 Q. That suggests, Mr Scott, that there is not much, if  
11 indeed any, stigma attached to not having a will?

12 A. I do not entirely agree, and I will explain to the  
13 Tribunal why I do not. At younger ages there may not be  
14 a stigma in not having a will. In the analysis that  
15 I have carried out, it is the older ages that are more  
16 relevant because most deaths occur at older ages, and  
17 therefore the average 'no' that is observed from these  
18 wills -- from these surveys -- is not necessarily  
19 directly relevant to the question that I am addressing  
20 in relation to deceased members of the Class.

21 Q. I think what we discussed earlier, and you accepted, was  
22 you do not have an evidentiary base for your conclusion  
23 that there is a stigma to not having a will at any age?

24 A. Yes.

25 Q. You mentioned earlier a document, and I said I would

1           come back to that, and I am going to come back to it  
2           now. You refer to it in the Joint Experts' Statement.  
3           It is a study from 2005 and that is at {E/16.35/85}.  
4           That is one you had in mind, is it not?

5           A. It is the JRF survey, it is the one I had in mind. It  
6           has not come up on the screen yet.

7           Q. Yes, we will just find the reference. {E/16.35/85}.  
8           Can we move it up a little.

9           I am looking at page 85, the last sentence of the  
10          first full paragraph where the authors say:

11          "But our figures may slightly overestimate reality  
12          here, as people may feel that they ought to have a will  
13          and so say that they have one in the survey even if they  
14          actually do not."

15          That is the passage that you had in mind?

16          A. Yes, it is.

17          Q. The language in that passage is significantly qualified,  
18          is it not?

19          A. Yes, it is.

20          Q. Because what the authors say is "our figures may"  
21          overstate, and they also say that the "figures may  
22          slightly" overstate, yes?

23          A. They say "slightly overestimate", but yes, I agree.

24          Q. Exactly, yes, and they say, "as people may feel that  
25          they ought to have a will"?

- 1 A. Yes.
- 2 Q. They did not adjust in this survey -- this is the  
3 Rowntree Foundation University of Bath survey -- they  
4 did not say, they did not make any adjustment of their  
5 will-writing results down in any way, did they?
- 6 A. No, they did not. They reported the results from their  
7 survey.
- 8 Q. What they did say on the same page is in the next  
9 paragraph:
- 10 "Will-making was certainly linked to increasing age  
11 in our survey, with three-quarters of those in their  
12 seventies having made a will, rising to 84% of those in  
13 their eighties or above ..."
- 14 A. Yes.
- 15 Q. So would you not agree with me that the qualified  
16 statement that we looked at, that figures may slightly  
17 overestimate reality, is a pretty slender reed to build  
18 a significant adjustment down for survey bias?
- 19 A. That statement on its own is evidence that there is  
20 bias. It is a qualitative judgment as to whether it is  
21 a pretty slender reed or a stronger reed, but it is  
22 evidence that there is overestimation.
- 23 Q. I am putting to you that in 17 surveys, this is the only  
24 evidence that we have, yes?
- 25 A. This is the only statement of overestimation, yes.



- 1 Q. It is a very qualified statement?
- 2 A. It is a qualified statement.
- 3 Q. So I will just ask you again whether you agree with me  
4 that it is a slender reed to hang a reduction,  
5 a significant reduction on, on the basis of survey bias?
- 6 A. Yes, were that the only indication, it would be slender.
- 7 Q. Let us turn then to the adjustment that you make for the  
8 invalidity of wills. This is the second reason for the  
9 downward adjustment. I think your position is that  
10 there will be a proportion of persons who responded yes  
11 they have a will, but it will turn out to be invalid, so  
12 it will not lead to the appointment of a personal  
13 representative as a consequence?
- 14 A. Yes.
- 15 Q. Let us look at the Joint Actuarial Expert Report for the  
16 reasons that you give for that, that is {E/51/26} at  
17 paragraph 42, and your response to the question. The  
18 question reads:
- 19 "Invalidity of wills is not a material issue for  
20 higher age groups."
- 21 Your response is on the right-hand side, if you look  
22 at that.
- 23 If we can move to the next page, {E/51/27}.
- 24 A. Yes.
- 25 Q. Your final sentence gives three examples of where a will

1 can be found to be invalid. You say:

2 "... the will may not have been properly executed in  
3 the first place; it may not have been updated following  
4 marriage or civil partnership; or it may have been  
5 revoked or destroyed."

6 Those are the three reasons you give?

7 A. They are the three examples, yes.

8 Q. I would like to go through each of those examples of  
9 invalidity, but before we do, as a general matter, you  
10 would agree, I think, that what matters is what happens  
11 at the higher age groups, because most of the deaths  
12 occur at older ages?

13 A. Yes, I agree.

14 Q. Our Class of course has more members in the older age  
15 groups, does it not?

16 A. Yes.

17 Q. What also matters is whether there is a valid will at  
18 the point of dying?

19 A. Yes.

20 Q. So let us deal first with invalidity because of lack of  
21 being properly executed in the first place.

22 The vast majority of people choose a solicitor or  
23 a professional will-writer to prepare their wills, do  
24 they not?

25 A. I do not know, off the top of my head, whether that is

1 the case.

2 Q. All right. Let me give you an illustration from the  
3 evidence that shows that. It is at {E/16.11/1}. If you  
4 look at this about two-thirds of the way down, it is  
5 actually the fourth bullet point from the bottom of the  
6 page. It begins "For the people in the survey ..."

7 This example says:

8 "For the people in the survey who did have a will -  
9 68% chose a solicitor to write their will, 12% used  
10 a will writer, 6% used a DIY will kit and 6% a home-made  
11 will."

12 This, as you can see from the top of this page, this  
13 is a 2014 survey. If we can just go to the top. In the  
14 second full paragraph, a 2014 survey of 2,250 people  
15 aged 25 to 84 by an organisation called Lightspeed  
16 Research, a professional survey company.

17 A. Yes.

18 Q. So 80% used a professional to write their will, yes?

19 A. 68% chose a solicitor.

20 Q. 12% a will-writer.

21 A. 12% used a will-writer, yes.

22 Q. I think that professionals can generally be expected to  
23 know what they are doing and not to produce improperly  
24 executed wills. It is not obviously a universal rule,  
25 but in general terms?

1 A. In general terms, yes, you would expect a higher rate of  
2 quality service from a professional.

3 Q. We have not seen any evidence to support the idea that  
4 when it comes to do-it-yourself homemade wills, that all  
5 of these are invalid; we have not seen any of that kind  
6 of evidence, have we?

7 A. That all of those wills are invalid?

8 Q. Yes, yes.

9 A. Not that all of them are invalid, no.

10 Q. There may be some defects to wills that may not be  
11 fatal. For example, if a will is undated, that may not  
12 be fatal to the validity of the will?

13 A. I am not aware of the intricacies of the legal  
14 requirements. I know they are complex, and it is  
15 possible that that is true.

16 Q. Again, let me just show you one quick illustration of  
17 that. It is at {E/16.41/21}. It is section 4.3. The  
18 last sentence of that paragraph says:

19 "Some defects can cause problems when obtaining  
20 probate but may not be fatal, for example when the will  
21 has been amended or is undated."

22 A. Okay, I have read that, yes.

23 Q. I would suggest to you that there is no reason to  
24 believe there would be significant quantities of  
25 invalidly executed wills, is there?

- 1 A. I wonder if counsel could confirm what they mean by  
2 "significant".
- 3 Q. Well, there are not -- you have not seen high numbers of  
4 wills being determined to be invalid in the evidence  
5 base, have you?
- 6 A. The evidence that I considered, and which was displayed  
7 yesterday, I do not have the reference off the top of my  
8 head, but it was a table showing a survey of wills that  
9 had been written, it was a secret shopper survey, and  
10 that indicated that some 8% of those wills were in fact  
11 legally invalid. They failed at the execution stage.
- 12 Q. Yes, and we will have a look at that shopper survey too.  
13 But even on its face, that figure would not be  
14 sufficient to justify a full 20% reduction on the basis  
15 of will invalidity?
- 16 A. No, it would not.
- 17 Q. The reason that I put that to you is because, as we  
18 discussed earlier, you are not in a position to allocate  
19 proportions of the 20% reduction to the particular three  
20 factors that you have identified?
- 21 A. I agree with that statement. I think there are two  
22 qualifications which I would like to make. The first  
23 one is that the 8% is the number of wills that -- or the  
24 percentage of wills that are invalid at the point of  
25 execution. It is possible counsel is going to go on and

1 explore other reasons why a will may become invalid, but  
2 the 8% I see as more a lower bound than a maximum figure  
3 to the rate of wills that are invalid.

4 Secondly, I think -- well, I would re-emphasise that  
5 I looked on a top-down basis and compared my final  
6 answer to a number of benchmarks, rather than building  
7 it up as a series of adjustments that add up to 20%.

8 Q. Yes, let us have a look at what you say about the extent  
9 of this issue. If we go to your second report, that is  
10 at {E/24/27}, paragraph 5.32.

11 This is the paragraph where you are talking about  
12 the invalidity of wills reason. I think the gist of it,  
13 or the crux of it, rather, is four lines down in this  
14 paragraph where you say:

15 "An investigation carried out in July 2011 by the  
16 Legal Services Consumer Panel found that as many as 8%  
17 of wills in its survey were legally invalid at the point  
18 that they were written. I use this as a lower bound for  
19 the number of invalid wills at the point of death. More  
20 wills will become invalid over time, particularly among  
21 the 25% of wills found in the same investigation to be  
22 of poor quality."

23 A. Yes.

24 Q. So let us unpack that a little bit by going first to the  
25 Legal Services Consumer Panel report which is at

1 {E/16.41/22}. Look at paragraph 4.10. If we can  
2 enlarge that, please, thank you.

3 That is what this consumer panel report is looking  
4 at. It says:

5 "Below we report on evidence with respect to the  
6 elements of quality described above split into two  
7 parts: whether the will is valid and follows the  
8 client's instructions [that is the first part]; and the  
9 quality of advice."

10 So quality and validity are separated, yes?

11 A. Yes.

12 Q. Have a look at 4.11.

13 A. Yes, I think "indicative" is the last word of that  
14 paragraph.

15 Q. Yes, indeed.

16 Finally, before we look at the Table 2 results of  
17 this document, have a look and read to yourself  
18 paragraph 4.12, the second sentence:

19 "However, there were a few wills - just eight of the  
20 entire sample - assessed as not legally valid."

21 Let us turn and look at the table which is on  
22 page 24 {E/16.41/24}. What we are interested in here is  
23 the "Execution" column. You can see on the left-hand  
24 side in that column, under "Channel", the table  
25 identifies the person or institution preparing the will:

1 the solicitor, the specialist will-writer, the bank or  
2 affiliate group, and so on?

3 A. Yes.

4 Q. So that first column identifies who wrote the will. We  
5 can see from these bold headings that the vast majority  
6 were written by solicitors and specialist will-writers,  
7 yes?

8 A. 62 -- well, no. 65 of the 101, yes.

9 Q. Yes, that is correct. When you look at the proportions  
10 of pass against fail in the "Execution" column, for  
11 solicitors, specialist will-writers and banks the  
12 proportion of fails is lower than for the other  
13 categories, the other categories being paper  
14 self-completion and online self-completion?

15 A. I will just need to do some mental arithmetic. I think  
16 that is right.

17 Q. Yes, of course. (Pause)

18 A. Yes, I agree.

19 Q. What we can see is that of the -- well, your eight fails  
20 in the bottom, along the row -- along the row that reads  
21 "Total", you can see the fails, eight of them in that  
22 row, and you can see that that is out of a total of 101  
23 assessments. The 101 is in the "Total" column at the  
24 bottom right-hand corner?

25 A. Yes.



- 1 Q. So what I would suggest is that from this small sample  
2 you derive a broader proposition that 8% of all wills  
3 are invalid. Is that the method that you have followed?
- 4 A. Yes, that was the base point for my conclusions.
- 5 Q. That is your lower bound, is it?
- 6 A. Yes.
- 7 Q. Again, I put it to you that this is not a particularly  
8 robust basis on which to reach a conclusion that 8% of  
9 all wills are invalid?
- 10 A. The conclusion I reached was not that 8% of all wills  
11 were invalid, it was at least 8%, because as well as  
12 wills that are invalid at the time of execution, a will  
13 may become valid at a later stage.
- 14 Q. I think you meant a will may become "invalid"?
- 15 A. Yes. Thank you for correcting.
- 16 Q. But 8% is the lower bound, as you say. That is the  
17 minimum from your point of view, the minimum of invalid  
18 wills?
- 19 A. That was my lower point, yes.
- 20 Q. You say that more wills will become invalid over time,  
21 particularly among the 25% of wills found in the same  
22 investigation to be of poor quality. They are not the  
23 same thing, are they, poor quality and validity?
- 24 A. No, they are not.
- 25 Q. Let us have a look at {E/16.41/25}. Page 25 of this

1 document. You will see there that the document refers  
2 to information from the Probate Service. I am looking  
3 particularly at paragraph 4.15.

4 A. Was that 4.15 or 4.16, sorry?

5 Q. I am sorry, 4.15.

6 A. Thank you.

7 Q. You will see the reference to the Probate Service and  
8 the description:

9 "... [it] is a public office which check it is  
10 validity and execution of wills when assessing  
11 applications for grants of representation. It reports  
12 that very few wills presented for probate are actually  
13 invalid, but does see a small but significant number of  
14 poor quality wills ..."

15 A. Yes.

16 Q. So a will may be legally valid and pass probate even  
17 though it is of poor quality?

18 A. Yes.

19 Q. Even if it does not reflect the client's wishes?

20 A. Yes.

21 Q. I would also suggest that there is no basis for assuming  
22 that a poor quality will will become invalid over time,  
23 is there?

24 A. I mean, there are many reasons why a will may become  
25 invalid over time, and one that is of poor quality may

1 well have more reason to become invalid.

2 Q. It is not the passage of time, is it, that leads to the  
3 invalidity of a will, or at least not the passage of  
4 time on its own?

5 A. Events can happen over time which make a will invalid,  
6 and so to that extent the passage of time does increase  
7 the risk that a will will become invalid.

8 Q. But it is the events that happen, is it not, rather than  
9 the passage of time?

10 A. It is the events, yes, I agree.

11 Q. So your second reason for reducing the survey results to  
12 take account of invalidity of wills is that the will may  
13 have been revoked because of marriage or civil  
14 partnership?

15 A. Yes.

16 Q. A marriage typically occurs at lower ages when  
17 will-writing rates are lower, does it not?

18 A. Marriage does generally occur at younger ages, yes.

19 Q. Mr Punter records, we can go there if you need to, but  
20 otherwise if you are happy to take it from me, Mr Punter  
21 records in his third report that in 2019, for example,  
22 the median age for marriage of opposite sex couples was  
23 34 for men and 32 for women. He says that the  
24 proportion of the population getting married in 2019 was  
25 2%. That is his evidence.

- 1 A. I am not familiar with those statistics off the top of  
2 my head, but I will take them.
- 3 Q. You have no reason to dispute them?
- 4 A. I have no reason to dispute them.
- 5 Q. The surveys also indicate that the level of will-writing  
6 is very low at younger ages?
- 7 A. Yes, I agree.
- 8 Q. So at these ages, wills revoked by marriage are unlikely  
9 to be a common occurrence?
- 10 A. Yes, I agree.
- 11 Q. In fact, marriage is a key factor in prompting  
12 will-writing, is it not?
- 13 A. I will take that as a fact. I do not have it verified  
14 now.
- 15 Q. Understood. I do not believe that you produce any  
16 evidence to show that there would be a large amount of  
17 wills revoked by marriage, do you?
- 18 A. No, I do not.
- 19 Q. I think you will agree that when a will is revoked on  
20 marriage, the individual may put in place a new or  
21 revised will?
- 22 A. That is certainly possible, yes.
- 23 Q. The last reason that you put forward for believing that  
24 will invalidity is a significant issue is because wills  
25 may have been revoked or destroyed after people replied

- 1 to the survey saying that they did have a will?
- 2 A. Well, it was not so much after they replied to the  
3 survey, it was after they had made their will.
- 4 Q. All right. Again, with respect to this issue, we have  
5 not seen any evidence that the destruction of wills is  
6 a common occurrence?
- 7 A. I have not provided any evidence, no.
- 8 Q. Your third and final reason for making a downward  
9 adjustment to the evidence of will-writing levels is  
10 what you describe as double-counting?
- 11 A. I would just like to correct that, because that was the  
12 overriding reason for making an adjustment, and not  
13 simply adding together the rate at which people said  
14 they had a will from the surveys to the rate of  
15 intestate grants. It is because those two groups are  
16 not mutually exclusive, and therefore to add them  
17 together would constitute double-counting.
- 18 Q. All right, because what I would suggest is that if you  
19 have already made an adjustment under survey bias for  
20 the individual who responds yes to a survey when they  
21 have not made a will, those people cannot be taken into  
22 account again under this category of double-counting,  
23 can they?
- 24 A. It would be wrong to double-count them, yes.
- 25 Q. An individual who dies with an invalid will, you have

1           already excluded them through the adjustment that you  
2           made for invalidity?

3           A. I think counsel is taking these in an order different  
4           from the one that I took it in, in that, for me, the  
5           double-counting was the overriding reason for making an  
6           adjustment, and counsel has identified the two areas  
7           that would contribute to that double-counting. So,  
8           I mean, it is not the case that I am seeking then to  
9           overlay another adjustment for double-counting.

10          Q. Yes. Those are the two reasons or the two instances of  
11          double-counting that you advance?

12          A. Yes.

13          Q. They are not reasons that I have advanced. I am basing  
14          it on what you have put forward, and I am saying that  
15          those are already taken into account in your two other  
16          categories. There is no room to take them into account  
17          in a residual double-counting category?

18          A. I agree, but I do not have a residual double-counting  
19          category. I have made an adjustment because not to make  
20          an adjustment would be double-counting.

21          THE CHAIRMAN: I think what is being asked is, you have made  
22          an adjustment partly because somebody might say they  
23          have got a will when they have not, and, secondly,  
24          because the will might be invalid.

25          A. Yes.

1 THE CHAIRMAN: Those two -- so those two things you have  
2 just taken -- you take into account in your reduction.

3 A. Yes.

4 THE CHAIRMAN: Right. But then you do not need a separate  
5 further reason being double-counting?

6 A. No. They are examples of double-counting.

7 THE CHAIRMAN: I think that what counsel is asking you, is:  
8 why are they examples of double-counting, and what do  
9 you actually mean by double-counting in this context?

10 Because what you seem to be identifying are two  
11 particular problems which, if they emerge, might create,  
12 as it were, false positives, a belief that the will has  
13 been made when in fact it never was, or it was but it  
14 was invalid. Why do you need to have a double-counting  
15 adjustment between them?

16 A. I think what I am referring to is that the overall  
17 adjustment is for double-counting, because simply to add  
18 together the proportion of people who say they have made  
19 a will to the proportion of people who have intestate  
20 grants, there would be some people who were in both  
21 groups, and they would effectively be counted twice.

22 THE CHAIRMAN: Yes, it is the intestate grants thing, is it  
23 not? Because that is one which might include someone  
24 who has made an invalid will, and therefore they are  
25 regarded as having died intestate?

1 A. Yes, with an intestate grant, so they would be counted  
2 twice.

3 THE CHAIRMAN: But counted twice, sorry, by whom, as it  
4 were? Because ...

5 A. If the survey said that 75% of people, and I am pulling  
6 this number out of the air, said that 75% of people had  
7 a will, and in addition there were 7% of people who had  
8 an intestate grant through probate, if in fact that 75%  
9 was not as high as 75% because some of the wills that  
10 were thought to be valid were invalid, and some of the  
11 people who said they had a will in fact did not have  
12 a will and perhaps that 75% was lower, then those people  
13 could be included -- when they died they would be  
14 intestate, and could be included in the group of people  
15 who have intestate grants through probate.

16 So the total number of Class Members who have  
17 a personal representative is not the sum of 75% and 7%,  
18 it is rather lower.

19 MR SPITZ: I think I have put the question.

20 I am going to turn to the second and final issue to  
21 canvas with you, and I am going to be doing that quite  
22 briefly, and that is your assumption that the likelihood  
23 of having a will stops increasing at age 75?

24 A. I understand what you are referring to. I would  
25 describe it differently. I would describe it that my



1           assumption is that the proportion of people over the age  
2           of 75 who have a will is 83%.

3           Q. So it remains at a constant rate after the age of 75, on  
4           your account, does it not?

5           A. My assumption is that 83% of people over the age of 75  
6           will have said they have a valid will, yes.

7           Q. You will remember, we do not necessarily have to go to  
8           it, but you will remember the graphical representation  
9           that is part of the Joint Experts' Statement which has  
10          your curve in orange, and that flatlines at age 75,  
11          which does not mean, as we have discussed, that it  
12          reduces to nothing, but it continues at a flat rate; and  
13          Mr Punter's which continues to slope upwards and then it  
14          flatlines from the age of 90. You will recall that?

15          A. Yes, and I have it in front of me.

16          Q. Excellent. What you can see from that is that there is  
17          a clear upward trend for the likelihood of having a will  
18          across all ages, is there not?

19          A. Yes, there is.

20          Q. Because that is what you have reflected in the upward  
21          trend in your orange line up to the age of 75?

22          A. Yes.

23          Q. Let us go to {E/24/16}, this is your second report, at  
24          paragraph 4.9. There you say, it is the last sentence.

25          (Pause)

- 1 A. Is that the one that says "none of the surveys ..."  
2 Sorry.
- 3 Q. "... whilst the surveys indicate that the likelihood of  
4 having a will increases with age, none of the surveys  
5 provide any evidence for an increasing likelihood of  
6 having a will beyond the age of 75."
- 7 A. Yes.
- 8 Q. Then if you look at paragraph 5.23, that is {E/24/24} of  
9 this document, there you say:  
10 "The highest age referenced in the surveys is 75  
11 ..."  
12 Do you see that?  
13 "The highest age referenced in the surveys is 75 and  
14 I have assumed that the likelihood of having a valid  
15 will is constant (i.e. not increasing) past the age of  
16 75."  
17 A. Yes.
- 18 Q. Let us look at one academic study. This is the Joseph  
19 Rowntree Foundation study and that is at {E/16.35/3}.  
20 Do you see that?
- 21 A. I see the front page. I would perhaps confirm that this  
22 was a survey which Mr Punter introduced in his third  
23 report, and so which was not available to me when  
24 I wrote my reply report.
- 25 Q. Yes, indeed. You had not referred to this in your first

- 1 or second reports?
- 2 A. No.
- 3 Q. So just to make sure that we are precise about things,  
4 when you said yesterday in the transcript at page 149,  
5 line 20 {Day20/149:20}, that you were simply following  
6 what the survey said, you were not taking this study  
7 into account?
- 8 A. In the Joint Experts' Statement I was aware of this  
9 survey, and the figures in it were fully consistent with  
10 the assumptions that I had made.
- 11 Q. Well, let us have a look at page 12 of this document  
12 first {E/16.35/12}. Halfway down the page, the first  
13 bullet point under the heading "Wills and knowledge of  
14 inheritance law/tax".
- 15 There it says:
- 16 "Just under half of the population (45%) say that  
17 they have a made a will. This rises to 84% of those  
18 aged 80 or more."
- 19 A. Yes.
- 20 Q. If we go to page {E/16.35/85}, at the bottom of the page  
21 we will see Figure 6.1, "Will-making by age".
- 22 A. Yes.
- 23 Q. We see the upward trajectory, we see the age cohort  
24 70-79, and then we see the cohort 80-plus?
- 25 A. Yes.

- 1 Q. This of course suggests that will-making continues after  
2 the age of 75?
- 3 A. Yes.
- 4 Q. The upper trajectory continues?
- 5 A. On the basis of this, there is more -- a higher  
6 proportion of the 80-plus have a will than the 70-79,  
7 yes.
- 8 Q. I think you will also recall that several of the other  
9 surveys had an age band of 75-plus?
- 10 A. Yes.
- 11 Q. You can see that, for example, in {E/16.29/1} at page  
12 {E/16.29/27}. You will see Table 3.1 there. There is  
13 a separate 75-plus box for the 75-plus age band?
- 14 A. Yes.
- 15 Q. So obviously if the age cohort is 75-plus, that means it  
16 will include people who are older than 75?
- 17 A. Yes.
- 18 Q. If we go to page {E/16.29/101}, you will see the  
19 question, "Feelings about making a will", and you will  
20 see for the "75 or more" group that 34% of people intend  
21 to make a will?
- 22 A. Yes.
- 23 Q. We can, just to situate this, go back a page to page  
24 {E/16.29/100}, and there you can see the data, and in  
25 particular the question in the survey:

1           "Have you yourself, made a formal will, that is  
2 a will that has been signed and witnessed?"

3           You can see in the age cohort that there is a "75 or  
4 more" age cohort?

5       A. Yes, I can see that.

6       Q. There are other surveys that also have an age band of  
7 75-plus. You would accept that, I think?

8       A. Yes.

9       Q. So the simple question to put to you is really this: we  
10 have seen that your curve flatlines at age 75, even  
11 though the materials we have looked at use a different  
12 age band, in other words, an age band of 75-plus. So  
13 there are people older than 75 in that age band?

14      A. Yes.

15      Q. But in beginning your flatline at 75, you do not make an  
16 allowance for the fact that there are people above 75 in  
17 that age band?

18      A. Perhaps if I can just clarify what the assumption is  
19 that I am replicating, and why I am being faithful both  
20 to the surveys and to the possibility that people over  
21 the age of 75 will write a will.

22           None of these -- sorry, the average of these surveys  
23 shows that in the 75 or over age bracket there is 83% of  
24 people have made a will. Counsel has just shown me one  
25 with 82% and one with 84% and there were two others. So

1 my assumption is faithful to that.

2 Now, people over the age of 75, there will be people  
3 making wills, and if I look at the group of people at  
4 any time who are aged 75 or over, some of them will make  
5 wills. Some of them who had wills will die. That will  
6 reduce the number of people over 75 with a will. Some  
7 of them over the age of 75 may remarry and, hence, their  
8 will is revoked. Some of them may lose their will or  
9 destroy it. For some of them the will may turn out to  
10 be invalid.

11 So there are reasons why the wills that people have  
12 made at the age of 75 may go down. Some of the  
13 will-writing may be rewriting wills that have already  
14 been written.

15 THE CHAIRMAN: But why are those factors -- in your earlier  
16 stages of your graph, where it is rising, where the rate  
17 of will-writing is rising, why would those factors not  
18 affect those rising rates there as well?

19 A. They would affect them. The survey evidence which I am  
20 being faithful to showed the percentages at each age,  
21 and they are -- or the percentages at each age range,  
22 and they are the percentages that I mapped into.

23 THE CHAIRMAN: I think what the question is getting at is if  
24 there is a rising level, why would it not be the case,  
25 for example, that if you take a group of people who --

1 take a group of people who were 75, 100 people,  
2 obviously for the purpose of the survey so they are all  
3 alive. 83% of them will have made -- 83 will have made  
4 a will. Why would it not follow, if there has been  
5 a rising curve, that if you took a group of people who  
6 were 80, and 100 of them, for example, 85 of them would  
7 have written a will.

8 In other words, what is the reason why -- what is  
9 the reason why your graph flattens so that the rate is  
10 the same whether it is 75, 80, 85 or 90? I mean, it has  
11 to be something specific to that age group, because  
12 otherwise the graph would increase in the way that  
13 Mr Punter says it would, up to the level where it  
14 becomes illogical to do it any further.

15 Do you see the question?

16 A. I do see the question, and I have taken the age at which  
17 it would be illogical to -- if I use your terminology --  
18 illogical to project a higher rate at the highest age  
19 that I could see firm evidence in the surveys.

20 Mr Punter had made a judgment call or a speculation  
21 that 90 is the age. I had simply referred my upper age  
22 to the surveys.

23 THE CHAIRMAN: That is the point then, is it not? It is not  
24 about, well, some of them would have died or some of  
25 them would have been revoked. The point is that you say

1           the highest level of evidence -- the available evidence  
2           happens to stop at 75?

3           A. Yes.

4           THE CHAIRMAN: Although it says it is 75 or over, you say  
5           that the only evidence that there is which you can rely  
6           upon happens to stop at 75, and that happens to be 83%,  
7           and therefore there is no basis for increasing the rate  
8           of will-writing beyond. Is that right?

9           A. Yes. It is 75 or over, just to be clear.

10          THE CHAIRMAN: So that is what he is saying.

11          MR SPITZ: Yes. Thank you very much.

12                 The curve, though, does not gradually flatten, it  
13                 happens immediately at 75, does it not?

14          A. Yes, it does, and I explained yesterday that that is  
15                 because that was the data point that I had to model to  
16                 remain faithful to the evidence in coming up with the  
17                 chart.

18          MR SPITZ: All right, I do not have any further questions  
19                 for you. Thank you very much. There may be some  
20                 questions from Ms Love.

21          THE CHAIRMAN: Yes. Ms Love, we have a technical problem,  
22                 we need a break, but I just wanted to check whether  
23                 there was any re-examination.

24          MS LOVE: There is a small amount, sir.

25          THE CHAIRMAN: Right. We will just stay in court while we



1 wait for live stream to fix whatever needs to be fixed.

2 (Pause)

3 Re-examination by MS LOVE

4 MS LOVE: Mr Scott, only a few small points to cover.

5 Firstly, in relation to a proposition that Mr Spitz  
6 explored with you about there being no stigma attached  
7 to not having a will, I would like, if I may, to show  
8 you a small number of documents and then ask you to  
9 comment.

10 The first is at {E/16.37/1}, please. If we could  
11 have the headline blown up, "31 million UK adults at  
12 risk of dying without a will".

13 The next one is {E/16.39/1}. If we could go  
14 forward. So this is the Kings Court 2017 report.  
15 Within that, if we could go forward to page {E/16.39/3},  
16 please. Could we focus there on the paragraph in the  
17 middle that begins "61% of Brits ..."

18 "Or to put it another way only around 4 in 10 adults  
19 in the country have a document to state how they want  
20 their estate to be distributed when they pass away."

21 Finally on this, if we could, please, go forward to  
22 the SSRN survey which is at {E/16.29/1}, and if we could  
23 go to page {E/16.29/22} in that document.

24 Could I ask that you have a look at section 2.2 and  
25 in particular the first paragraph there, ending on:

1            "A final reason for passing on wealth was as an  
2            expression of love to show you cared for someone, or to  
3            'throw yourself in good light' ... so people think  
4            better of you."

5            Now that you have had a chance to look at those, is  
6            there anything further you would like to say in relation  
7            to the likelihood of will-writing being viewed as  
8            a positive, or, to put it in Mr Spitz's language,  
9            whether there is a stigma associated with not having  
10           one?

11          A. Yes, I think each of these documents indicates not only  
12          the benefit of writing a will but the disadvantages of  
13          not having written one in that your assets do not get  
14          distributed in the way that you would want them to. So,  
15          yes, that certainly is evidence of there being a stigma  
16          for not having a will.

17          Q. The next point, Mr Scott, is that a proposition was put  
18          to you about the proportion of wills that are written by  
19          professionals, which I understand to be a category that  
20          encompasses solicitor and also professional  
21          will-writers, in distinction to the DIY or to home  
22          efforts.

23          A. Yes.

24          Q. Could I ask that we turn to {E/51.4/1}, which is a  
25          "Farewill. The Year In Wills Report" document. Within

1           that, if we could go to page {E/51.4/5}. I wondered if  
2           you had any comment in the light of what is written  
3           there?

4           A. Yes, this shows a significant increase in the rate of  
5           do-it-yourself wills by people at home, particularly  
6           brought on by the pandemic, and so those wills would not  
7           be completed by professionals, solicitors or  
8           professional will-writers.

9           Q. Only a couple more. The next one, and I think it may  
10          have been around [draft] page 32 of the transcript, is  
11          there was a question that was put to you about there  
12          being an upward trend across all ages in the surveys.

13                 It was not clear to me whether that was being put on  
14          the premise that all surveys reported all ages, or  
15          indeed that all of the surveys covered all ages. But  
16          could I ask that we turn to the Will Aid 2014 survey  
17          which is at {E/16.11/1}, please, and could I ask that we  
18          zoom in on the second paragraph, "The survey, carried  
19          out in 2014 ..." which describes the ages of those who  
20          were surveyed.

21                 Is there anything you would like to say in relation  
22          to that?

23          A. So this is the paragraph that says:

24                 "The greatest increase in percentages of people  
25          writing a will in the younger age group ..."

1 Q. I apologise, it is the one beginning:

2 "The survey, carried out in 2014 by Lightspeed  
3 Research for the charity Will Aid, surveyed ..."

4 A. Sorry, I was looking at the second bullet point, not the  
5 second paragraph.

6 Yes, people aged 25 to 84. So the surveys being  
7 across the age range, it is up to the age limit of the  
8 surveys, of course.

9 Q. Mr Scott, one point that you have mentioned in the  
10 context of your top-down approach, that I do not think  
11 you have had the opportunity really to explain, is your  
12 tracing exercise. So I wondered if you wanted to  
13 comment on what it is and why you considered it to be  
14 a relevant cross-check in this instance?

15 A. Thank you. The tracing exercise that I carried out was  
16 to take a random sample of Class Members who were known  
17 to be deceased and to see whether there was an entry for  
18 them in the government probate tracing service, and the  
19 results of that showed, and I am going to give you  
20 a round figure, around 60% of Class Members who were  
21 deceased had an entry in the probate tracing service,  
22 and that can either have been via a grant of probate or  
23 letters of administration where there was intestate  
24 grants.

25 That figure of 60%, it compares to the figure from

1 the general population that comes from the Law  
2 Commission which suggested approximately 50%, it is  
3 either 48% or 52%, I cannot remember which side it falls  
4 on. If I then look at the implied assumption from my  
5 analysis, the top-down approach, if I take the oldest  
6 people where the deaths are most likely to occur, and  
7 I take 80% of the 83% who say they had a will, the 80%  
8 allowing for the 20% deduction, and then add back the  
9 intestate grants, I come up with 73%.

10 So from the Law Commission's approximately 50%, to  
11 the tracing which gives around 60%, to the overall  
12 allowance that I made which was around 73%, I thought  
13 were helpful and relevant benchmarks.

14 THE CHAIRMAN: We have seen you set that out in some detail  
15 in your report.

16 A. Yes.

17 MS LOVE: Mr Scott, in the light of what you just said, one  
18 final point. You have referred to where your numbers  
19 top out. Where do Mr Punter's numbers top out, as it  
20 were, on the total?

21 A. Mr Punter, I mean, at the age of 90, he would have 94.5%  
22 of people with a personal representative, so very  
23 significantly above both my assumptions and the other  
24 benchmarks.

25 MS LOVE: No further questions.

1 THE CHAIRMAN: Thank you. No, we do not have any questions.

2 Thank you very much indeed for your evidence,

3 Mr Scott. You can leave the witness box now.

4 (The witness withdrew)

5 THE CHAIRMAN: Is there any housekeeping that arises?

6 Otherwise we are starting the quantum hot tub at 10.30

7 on Monday, and then interposing Mr Duckworth at 2, is

8 that right?

9 MR SPITZ: Yes. That is the only point I wanted to confirm.

10 THE CHAIRMAN: Thank you.

11 Mr Beard?

12 MR BEARD: No, we are just reviewing the questions that were

13 sent through from the Tribunal, but we will deal with

14 that in due course.

15 THE CHAIRMAN: Yes, good. 10.30 on Monday then. Thank you.

16 (3.22 pm)

17 (The hearing adjourned until Monday, 4 March at 10.30 am)

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