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**IN THE COMPETITION**

Case No. : 1433/7/7/22

**APPEAL**  
**TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Wednesday 16<sup>th</sup> July 2025

Before:  
Hodge Malek KC  
Derek Ridyard  
Greg Olsen  
(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Dr Liza Lovdahl Gormsen

**Class Representative**

v

Meta Platforms, Inc. and Others

**Defendants**

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

SARAH FORD KC, SARAH O'KEEFFE & IAN SIMESTER On behalf of Dr Liza Lovdahl Gormsen (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

TONY SINGLA K.C. & JAMES WHITE On behalf of Meta Platforms, Inc. & Ors (Instructed by Herbert Smith Freehills Kramer LLP)

Wednesday, 16 July 2025

(10.32 am)

THE CHAIR: I had better do the live stream warning first.

Some of you are joining us live stream on our website, so I must start therefore with a 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. A breach of that provision is punishable as a contempt of court.

In due course the transcript of this hearing will be available on the CAT website and there will be a ruling at the end of the day which will also be on the website fairly soon.

MR SINGLA: Sorry, I apologise. At the end of yesterday, I was addressing you on overarching issue 3.

THE CHAIR: Yes.

MR SINGLA: As you recall the Class Representatives attempt to extend a number of issues of disclosure to go beyond

THE CHAIR: And you say it is not on the pleadings.

MR SINGLA: Correct.

THE CHAIR: Presumably you will take us to Scott Morton and say that was done by reference to Facebook alone. If that is

1 a proposition you want to take me to, let us quickly  
2 look at it, but we have looked at that before. I do  
3 accept that looking at, and that is the basis of  
4 the certification, there is no reference to the use of  
5 Off-Facebook Data on other platforms such as Instagram.

6 MR SINGLA: That is a very helpful indication. The reason  
7 I wish to take this perhaps not too quickly is because  
8 if you are not persuaded as to the scope of the case,  
9 this actually is important, not merely for disclosure  
10 purposes, but for the case going forward, for example,  
11 expert evidence and so on, because if the Class  
12 Representative now wants to change the way in which this  
13 unfair bargain, as they describe it, is put, the  
14 parameters of what they say is the relevant bargain,  
15 that is actually going to have quite far reaching  
16 implications because, as you have just observed, the  
17 case was certified on a particular basis

18 THE CHAIR: I know, but I think I made it pretty clear  
19 yesterday that relevance for the purposes of disclosure  
20 is by reference to the parties' statements of case. As  
21 I said, there may be a couple of exceptions to that, but  
22 neither exception is being relied upon. So the key  
23 question is whether or not it is something on the  
24 pleadings, and at the moment I am not satisfied it is on  
25 the pleadings, and I am also satisfied, having read the

1           report again, that it is not on the face of that report.

2       MR SINGLA:   That is very helpful.

3       THE CHAIR:   If there is going to be a plea that has such  
4           a fundamental change on the economics of the case, and,  
5           as you say, it will feed into the expert evidence, it is  
6           going to have to be pleaded.

7           Now, I am not saying if an application is going to  
8           be made, it has any merit or no merit. I think we just  
9           have to deal with it as and when it comes, but in  
10          principle, we are not prepared to have as an issue for  
11          disclosure something so fundamental as this, unless it  
12          is clearly on the pleadings, and for our part, having  
13          heard you yesterday, you were sort of quite clear as to  
14          your submission. Let us look at this report.

15       MR SINGLA:   Yes.

16       THE CHAIR:   Let us not spend too much time on it, because,  
17           as you know, we are going to leave today with  
18           a finalised list of issues and that may take time.

19       MR SINGLA:   Well, can I just quickly say something about the  
20           conduct of today?

21       THE CHAIR:   Yes.

22       MR SINGLA:   What we would respectfully suggest is that in  
23           order to make as much progress today as possible, we  
24           would respectfully suggest that we deal with the  
25           overarching issues. We then have a discussion about next

1 steps, because that is very important, to make sure that  
2 the September hearing

3 THE CHAIR: We will deal with that, but I made it clear  
4 yesterday, we will finalise the list of issues today  
5 before we leave.

6 MR SINGLA: All I am saying, sir, is that in order to meet  
7 that objective, which I completely understand, it may be  
8 helpful for us to deal with matters in the following  
9 order: overarching issues, a discussion about next  
10 steps, and then we would like, as it were, an  
11 opportunity, perhaps either an early lunch or perhaps it  
12 will be lunchtime, for us to take stock of what are the  
13 other points and what the consequences may be of what  
14 you have decided on the overarching issues, because we  
15 do not want to be having an inefficient debate about the  
16 outstanding points. We might just need an opportunity  
17 to take stock of where we are.

18 THE CHAIR: It is not going to take very long. The fact is  
19 we are spending far too long on a list of issues. It is  
20 not a proportionate use of everyone's time -- look at  
21 the number of people here -- to spend much more time on  
22 the list of issues. I would much rather, as you say,  
23 discuss where we go from here and all of that, but I do  
24 want the list of issues to be finalised today. I think,

1           be under no doubt that we will finalise it today, and,  
2           if necessary, the partners involved in working on this  
3           list of issues, they can stand up and say what they want  
4           to say, but we will go through each one, tick it off,  
5           and then we will make orders as to what is going to  
6           happen at the end of September.

7           MR SINGLA: I have put those behind me on notice that you  
8           may call on them.

9           THE CHAIR: Yes, but that is quite standard. In the  
10          commercial court, when you have issues like this, quite  
11          often the persons who are having the day to day conduct  
12          and drafting these things are in a better position than  
13          leading counsel, who may not be involved in the minutiae  
14          and the significance of any changes of wording.

15          MR SINGLA: All right, can I just try to put this to bed,  
16          the overarching issue three?

17          THE CHAIR: Let us do that, that is fine.

18          MR SINGLA: This is not really, as I say, a list of issues  
19          point and that is why it is quite fundamental to the  
20          case going forward. If you turn up Scott Morton 1,  
21          which is C1, tab 1 {C1/1/1}, and I am conscious of what  
22          you have said about having had an opportunity to read it  
23          again, but let me just quickly --

24          THE CHAIR: Look, we have time now. I think as long as  
25          everyone knows that what we are going to be dealing with

1           today -- let me just give you my agenda, so we all know  
2           where we are going today.

3           So we are going to go through the list of issues at  
4           the end of issue four. We need to discuss what is going to  
5           happen with your Disclosure Report. We are going to  
6           need to discuss the possibility of RFIs from the Class  
7           Representative in respect of certain discrete matters so  
8           that they will have the fact information to know about  
9           the scope of disclosure requests. We will talk about  
10          what is going to happen at the next CMC, what do we  
11          actually need and, if we have time, we will look at the  
12          Confidentiality Ring Order, because it should not be  
13          something that is too difficult. We are used to dealing  
14          with them. If there is any issue we can work that out  
15          today, but these things should not take too much time,  
16          and we are all pretty familiar with what they should  
17          look like, so I do hope that we will finalise that.

18          I think there is an agreement that issues as to  
19          expert evidence and stuff is going to be dealt with on  
20          a separate occasion, but let us see how much time we  
21          have at the end of the day. If there are any issues  
22          that both parties feel we can usefully deal with today,  
23          assuming we finish this bit by lunchtime, then we will  
24          deal with it.

25          MR SINGLA: Okay. Can I just explain, I am sure you have

1           this, but when you say the list of issues, I think  
2           I have four categories of points --

3       THE CHAIR:   Yes.

4       MR SINGLA:  -- that arise.  So there is the overarching  
5           issues, which we need to finish.  There is a bucket of  
6           issues which are entirely disputed, and then there are  
7           some confirmations that have been sought and we say we  
8           have given them multiple times, then, fourthly, there  
9           are some very fine points of drafting back and forth on  
10          the issues.  So we will just need to go through those  
11          four categories.

12      THE CHAIR:  Yes, we will -- yes.

13      MR SINGLA:  If it helps, just in terms of time, your  
14          proposal when we get to overarching issue four, for our  
15          part we are content with the suggestion that you made  
16          yesterday in relation to GDPR and so on, you gave an  
17          indication as to a way forward and we are content with  
18          that.  Just in terms of allocation of my time, the  
19          reason I do want to spend a little bit of time on this  
20          point is because I say it is pretty fundamental to where  
21          the whole case goes, but we are not seeking to delay the  
22          progress of today's hearing but you will understand why  
23          we feel so strongly about this point.

24      THE CHAIR:  I do not feel that anyone has not been  
25          cooperating with each other on this and I do not think



1           that anyone is trying to game the system or anything.

2           If I did, I would say it, but it is fine.

3       MR SINGLA:   Thank you.   Let me just take you through Scott  
4           Morton 1.   The first paragraph I wanted to show you was  
5           paragraph 14 {C1/1/11}.   Just to say this: the reason  
6           this report has particular relevance as you know in this  
7           collective proceedings, the Claim Form and the first  
8           expert report go together, and you will have seen  
9           cross-references to the expert report in the Claim Form,  
10          so this is actually a very useful way of seeing what the  
11          case is.   At 14 she describes the economic concern,  
12          being the so-called "unfair bargain", halfway down,  
13          "which has allowed Facebook to take a disproportionate  
14          share of the increased advertising revenue generated by  
15          Off-Facebook Tracking ... as profits."

16                Then when you turn over the page to 17 and 18  
17          {C1/1/12}, if you pick up 17, you will see "an unfair  
18          and abusive bargain".

19       THE CHAIR:   Just tell me what paragraph?

20       MR SINGLA:   Sorry, 17 and 18.   So it is an unfair bargain  
21           because Facebook is generating substantial revenues and  
22           profits, and you will see at 18a it is the excessive  
23           profits driven by the Off-Facebook tracking "Given the  
24           two-sidedness of Facebook and the zero monetary price to  
25           users", and you will see the complaint is said to be

1           about Facebook's profitability and they are trying to  
2           work out the overall profits on the Facebook platform  
3           and then the extent to which the Off-Facebook Data  
4           tracking, as they call it, has contributed to those  
5           profits, but absolutely fundamental to their case, and  
6           this is why we are actually so surprised by the  
7           submissions we heard yesterday, this is all about the  
8           Facebook platform; no other platform. This whole expert  
9           report goes on to explore the two-sidedness of the  
10          Facebook platform. On the one hand, the users getting  
11          the service and giving their data, is what they say; on  
12          the other side, Facebook -- not Meta, not Instagram and  
13          so on -- Facebook making profits as a result of that  
14          Off-Facebook Data. It is just completely remarkable  
15          what we heard yesterday as to the scope of the case,  
16          because the whole expert report, which sits alongside  
17          the Claim Form, proceeds on that basis.

18                It sounds like you have that point. If you look,  
19          for example, at 34, {C1/1/19} whole section, Mr Ridyard  
20          I think certainly has seen this report a number of  
21          times. It is all about the so-called economics of  
22          two-sided markets and platforms. So there is one  
23          platform, Facebook, and there are two sides to that  
24          platform, and that is the unfair bargain. It just goes  
25          on. Paragraph 40 it is all about two-sidedness

1 {C1/1/20}. 109, {C1/1/39} it is all about  
2 two-sidedness. 123, {C1/1/44} so her entire section on  
3 market definition and dominance is exploring the user  
4 side and the advertiser side on a single platform, and  
5 so when Ms Ford tries to say, well, we have this wrong  
6 and we are taking an extremely narrow approach because  
7 we have excluded other platforms, it is just quite  
8 difficult to see how that sits with her own expert  
9 report. 194 {C1/1/59} --

10 THE CHAIR: Look, I accept that it would be an expansion of  
11 the case that was certified because of the points you  
12 are making, and if we are going to have such  
13 an expansion, then it has to be dealt with in the normal  
14 way, you know, through an application notice. It is helpful  
15 to look at this, but let us not spend too much time on it.

16 MR SINGLA: Okay, can I give you a couple more references,  
17 I obviously take the hint, but just 194, you will see,  
18 again, a reference to the "bargain". So when one sees  
19 references to the bargain in the pleading, this is what  
20 they are talking about. It is Facebook monetising  
21 attention and data, halfway down in 194, Facebook  
22 monetising and data and the advertiser customers.

23 Then just let me show you the back end of the report  
24 is actually quite interesting, because this is where, as  
25 I say, there is an overlap or a direct consequence in

1 relation to the expert evidence. So if the submission  
2 yesterday was right, then this whole expert process that  
3 has been on going has been proceeding on a false basis,  
4 because if you look at 200 {C1/1/61}, paragraph 200, as  
5 part of their so-called unfair price case, you will see  
6 200 is a good example:

7 "... Facebook is achieving an excessive profits  
8 overall ... across both sides of the platform; and ...  
9 whether the Off-Facebook Data it is extracting ...  
10 significant commercial value."

11 You will see 203, the same points, so this is all  
12 about profits on the Facebook platform. The reason that  
13 I stress these points, sir, is because when one gets to  
14 the joint list of issues for accounting, I am not  
15 getting into the debate about that list, but we have had  
16 at a number of hearings and discussions about what issues  
17 should be the subject of expert evidence.

18 THE CHAIR: Yes.

19 MR SINGLA: And let me just show you what Professor Scott  
20 Morton is intending to do at the back end of her report.  
21 So for example at 328 {C1/1/90}, it is quite a good  
22 example, actually. We do not need to get into the  
23 bargaining model in detail but you will have picked up  
24 that what they are saying by way of their damages claim  
25 and the counterfactual, as Ms Ford described it

1           yesterday, they are saying this Off-Facebook Data is  
2           worth so much to you in terms of your advertising  
3           profits on the Facebook platform that in the  
4           counterfactual, you would have paid users.

5           Now, we say that is flawed on a number of levels,  
6           but the crucial point for this purpose is you will see  
7           the table, "Impact of Off-Facebook tracking on  
8           Facebook's profits". At 333 {C1/1/91}, just to point  
9           that out, the cost of users for giving up their data.  
10          What they are trying to say is the counterfactual is you  
11          have this bargain where users are giving up their data  
12          and Facebook is making profits on the advertising side,  
13          and that is why we also said the Off-Facebook Data  
14          definition could not have been correct, because it is  
15          about giving up their own data. It is nothing to do with  
16          purchased data and so on.

17          Just to take this quickly, I will just show you the  
18          list of issues for accounting, which is {E2/217.1/1}.  
19          It may come up on the screen. There is a dispute about  
20          whether a particular issue should lie with the  
21          accountants or the expert economists. We do not need to  
22          get into that because the important point for present  
23          purposes is if you just cast an eye over 1, 2 and 3,  
24          this is all about profits on the Facebook platform.

25          THE CHAIR: (Pause) Yes, okay.

1 MR SINGLA: So when the CR says you have to look at the  
2 whole value across all platforms, that is just simply  
3 not the way in which the expert process has been set up.

4 THE CHAIR: No, I understand that. It is not how it has  
5 been pleaded. I can see how, at the end of the day,  
6 they may want to have a case that expands in that way,  
7 but it would be quite an expansion --

8 MR SINGLA: Yes.

9 THE CHAIR: -- and it would have disclosure implications,  
10 probably quite costly implications.

11 MR SINGLA: Exactly. Just on that, sir, it is a very  
12 perceptive point, actually, with respect, because it  
13 would open up all sorts of new disclosure issues,  
14 because suddenly they would have to give disclosure  
15 about the value any users are getting from other  
16 platforms. The bargain has to be commensurate on both  
17 sides. You cannot say, well, you are getting value on  
18 other platforms but then exclude that from account on  
19 the user side. That would actually create some problems  
20 because the Class at the moment is only Facebook users.  
21 So it is more than a tweak to the pleading, as it were;  
22 it is quite a significant change.

23 Ms Ford also sought to suggest this arises out of  
24 the transparency obligations. I do not know whether you  
25 want me to address you on that but that is again

1 a completely false point. What the complaint is  
2 about first of all transparency is not in and of  
3 itself one of the alleged abuses. To the extent it  
4 comes in, it is a complaint about the transparency  
5 Facebook terms and services.

6 THE CHAIR: If they want to introduce something as  
7 fundamental as this, it has to be clearly pleaded, and  
8 it is not enough to say it might be relevant if you sort  
9 of try and stretch what is on the pieces of paper. I am  
10 quite mechanical about this. If it is on the pleadings,  
11 then it will go in. If it is not -- you are saying it  
12 is not, and you are saying it was certified on  
13 a completely different basis, and you cannot expand  
14 a case without getting permission.

15 MR SINGLA: Yes.

16 THE CHAIR: I have all of that.

17 MR SINGLA: On that basis, I will pause there.

18 THE CHAIR: Pause there.

19 MR SINGLA: But can I just make one last point, which is  
20 this: I actually do not accept that a mere reference in  
21 a pleading is sufficient. I mean, the reason I make  
22 this point now is because it feeds into what we are  
23 going to be talking about later on some of the disputed  
24 individual issues. So we will come back to that point,  
25 but certainly we say this point completely falls outside

1           the scope of the pleadings, but it is quite important to  
2           put down that marker also, which is that it is not  
3           sufficient, in my respectful submission, simply to point  
4           to a single line or word in a 150-page pleading.

5       THE CHAIR: We will have to look at it one by one.

6       MR SINGLA: Exactly. We will come on later to discuss, for  
7           example, privacy issues. We say it is not good enough  
8           on their own pleading, just because there happens to be  
9           a reference. One has to understand what is this case  
10          about and what are the central issues. Unless Ms Ford  
11          is going to come up with something completely new, in  
12          which case I will have to respond --

13       THE CHAIR: If she comes up with something new --

14       MR SINGLA: I will pause there.

15       THE CHAIR: -- you can pop up again. Let us leave it that  
16          way.

17       MR SINGLA: I am grateful.

18       THE CHAIR: Ms Ford, I think the easiest thing -- I can see  
19          why you may want to have an allegation like this and why  
20          it could be relevant, but the real question is: is this  
21          something that has been pleaded? If it has not been  
22          pleaded you will have to apply to amend, and then once  
23          you have permission to amend, it will all come in then, but  
24          unless it is clear on the pleadings, I think this  
25          is -- unless I have missed something, then this is



1           probably something whereby we are unlikely to open the  
2           box until you have applied to amend. I am not saying  
3           you are not going to get an amendment, because I can see  
4           how it fits in, but you need to be able to show us  
5           something clear that persuades us that it is on the  
6           pleadings.

7       MS FORD: We agree, it is all about the pleadings.

8       THE CHAIR: It is all about the pleadings.

9       MS FORD: There is a missing piece of the jigsaw. It is at  
10           {B/3/14}.

11       THE CHAIR: Let us have a look at it. You have a complete  
12           answer. Let us have a look. {B/3/14}. Okay, I have  
13           marked that quite heavily already.

14       MS FORD: It is paragraph 6.

15       THE CHAIR: Okay.

16       MS FORD: Paragraph 6 is explaining what is meant by the  
17           word "Facebook". It says:

18           "The three Proposed Defendants are members of the  
19           Meta corporate group, previously known as Facebook.  
20           Unless otherwise indicated, the term 'Facebook' is used  
21           herein to refer to that corporate group."

22           When Mr Singla takes you through all the paragraphs  
23           of the Amended Claim Form which talk about Off-Facebook  
24           Data being monetised by Facebook and permitting  
25           advertisers to target users on Facebook, what is meant

1 by "Facebook" in that context is the corporate group.

2 It is not narrowed to mean Facebook the platform. So if  
3 we go through all the paragraphs that Mr Singla relied  
4 on yesterday to say that this is a narrow case, it is  
5 not anywhere near as narrow as Meta would like it to be.

6 He started with paragraph 7, {B/3/14}.

7 MR SINGLA: Sir, if Ms Ford now has developed submissions on  
8 this, (a) it is remarkable this is the first we are  
9 hearing about it, but I should have the opportunity to  
10 take you through in a more leisurely way, because, as I  
11 say --

12 THE CHAIR: Look, what I have said is we are going to hear  
13 Ms Ford now.

14 MR SINGLA: Yes.

15 THE CHAIR: If she has come up with a case that we might  
16 consider shows that it falls within the pleadings, you  
17 are going to have a second bite.

18 MR SINGLA: Okay.

19 THE CHAIR: (Unclear - simultaneous speakers). You do not  
20 need to have a bite now. Let us see what she has to  
21 say.

22 MR SINGLA: All right, but she needs to engage with the  
23 two-sided nature of the single platform point. It is  
24 just hopeless to raise it now.

25 THE CHAIR: Let us hear what he has to say.

1 MS FORD: Sir, it is interesting that Mr Singla thinks this  
2 is a new point, because he was keen to tell the Tribunal  
3 yesterday that one should not look at the summary  
4 paragraphs. One should be looking at the claim as it was  
5 pleaded pre-certification. He started at paragraph 7.  
6 I am starting at paragraph 6. This tells us that when  
7 there are references to Facebook in the remainder of the  
8 pleading, the references are not narrowed down to the  
9 Facebook platform, they are referring to the group.

10 So we can then look at all the paragraphs that  
11 Mr Singla drew the Tribunal's attention to, to say that  
12 this is a narrow case. He started with paragraph 7  
13 (sic) and he drew attention to the fact that it says  
14 "Off-Facebook Data from users generates tremendous value  
15 for Facebook through monetisation via advertisers".  
16 There the monetisation is being done by Facebook as  
17 defined, the corporate group.

18 Then he drew your attention to 8b on the following  
19 page {B/3/15}. He drew attention to:

20 "Off-Facebook Data from users generates tremendous  
21 value for Facebook through monetisation via  
22 advertisers ..."

23 Again, that is not a plea that has been narrowed  
24 down to monetisation via the Facebook platform. It is  
25 a plea that the corporate group monetises Off-Facebook

1 Data from users. He then drew your attention to  
2 paragraph 39 on page 24 {B/3/24}. There he drew  
3 attention to the fact it says:

4 "... Facebook charged advertisers to show highly  
5 targeted adverts to Users based on their personal  
6 data ..."

7 Again, as has been indicated, the reference to  
8 "Facebook" there is not narrowed down to Facebook the  
9 platform. It is Facebook the group.

10 He then drew your attention to paragraph 40, and:

11 "Throughout the Claim Period, Facebook made very  
12 significant profits from this monetisation of Users'  
13 personal data and time/attention."

14 Again, that is not narrowed down to Facebook the  
15 platform, and we can see that specifically in  
16 paragraph 40a where it pleads:

17 "Facebook's 2021 Annual Report states that  
18 'substantially all of our revenue is currently generated  
19 from third parties advertising on Facebook and  
20 Instagram'."

21 He also drew your attention to paragraph 41 where it  
22 talks about advertising revenue being "at all material  
23 times at the core of Facebook's business model", and  
24 referred to what Mr Zuckerberg said in respect of that.  
25 Again, "Facebook" there in that context, as defined,

1 Facebook the group. He drew your attention to  
2 paragraph 42 {B/3/25} and the allegation that "Facebook  
3 was incentivised to maximise" its data collection  
4 practices. Again, that makes no distinction. It is not  
5 confined to Facebook the platform. It refers to Facebook  
6 the group.

7 Paragraph 43, he referred to the fact that we have  
8 pleaded that Facebook were "embarking on an  
9 advertising-based revenue model that generated 'real  
10 money' for Facebook". Again, an allegation in respect  
11 of the conduct of the group.

12 He referred to paragraph 95 on page {B/3/54}. This  
13 is the allegation "Facebook has incrementally increased  
14 the amount of Off-Facebook Data that it has collected  
15 from its Users over time, with the exploitation of  
16 Off-Facebook Data for the purposes of advertising having  
17 commenced in or before June 2014". That is not a plea  
18 which is narrowed down to Facebook the platform. I t is  
19 defined by Facebook the group.

20 He referred to paragraph 95h on page {B/3/57} and he  
21 drew attention I think to the passage at the end of 95h  
22 where the fact that Facebook was exploiting "User data  
23 it collected from third-party websites and apps for ad  
24 targeting purposes, thereby enabling it to generate  
25 substantially greater advertising revenues".

1           Similarly, he drew attention to 153a on  
2           page {B/3/114}, and the explanation that:

3           "In its basic and essential form, User data is  
4           monetised by Facebook through the provision of  
5           advertising services to advertisers on the other side of  
6           the market."

7           None of those pleas have been narrowed down to be  
8           exclusively concerned with Facebook the platform, and,  
9           indeed, if we look at the terminology that is used in  
10          the Defence, the Defence also understands that what is  
11          being talked about in the context of advertising  
12          revenues is Meta's advertising revenues.

13          If we look, for example, at {B/4/85},  
14          paragraph 137(a)(ii), saying:

15          "... insofar as ... 'substantial' ... 'excessive' in  
16          a competition law context ... that is denied ...

17          "Meta may combine and use the information it  
18          received from different sources (including On-Meta Data  
19          and Third Party Activity ... Information) to provide its  
20          services and to improve and optimise the experience of  
21          users and advertisers. In this context, while the use  
22          of Third Party Activity Data and/or On-Meta Data from  
23          other Meta products) is instrumental for Meta to provide  
24          efficient advertising options for businesses, which may  
25          result in increased advertising revenues, it is denied

1           that there is a direct link between Meta's use of Third  
2           Party Activity Data ... and any developments in  
3           advertising 'revenues' or 'profits', [and] ... whether  
4           such revenues or 'profits' were 'substantial'."

5           This is a particularly striking paragraph because  
6           this is an example of Meta engaging with the allegations  
7           about monetisation of advertising revenues at the Meta  
8           level. What you do not see is Meta saying, well, hang  
9           on a minute, this is only about the Facebook platform.

10          That terminology is then repeated and reflected in  
11          the Class Representative's Reply. She pleads -- this is  
12          {B/6/58}, paragraph 78(a)(ii)(3). She responds:

13          "... Meta's allegation that 'the use of Third Party  
14          Activity Data (and/or On-Meta Data from other Meta  
15          Products) is instrumental for Meta to provide efficient  
16          advertising options for businesses, which may result in  
17          increased advertising revenues' is noted; but ... Meta's  
18          bare denial that there is a 'direct' link between its  
19          use of Off-Facebook Data and developments in its  
20          advertising revenues and/or profits is unexplained. The  
21          link between Meta's collection and use of Off-Facebook  
22          Data and its revenues and/or profits will be an  
23          important matter for disclosure, evidence and submission  
24          in due course."

25          So the parties have joined issue on the question of

1 the link between advertising revenues and profits at the  
2 level of Meta, not at the level of monetising on the  
3 Facebook platform.

4 In our submission, none of those pleadings that we  
5 have just looked at is narrowly limited to monetisation  
6 solely by means of targeted advertising purely on the  
7 Facebook platform itself.

8 Now, it is right that the concept of a user is  
9 defined as a Facebook user, but once the Facebook  
10 user's consent is obtained, that user's data can then be  
11 used to target advertising to them not only on Facebook,  
12 but on other platforms too, such as Instagram, and,  
13 indeed, on third-party websites. The Tribunal would  
14 have appreciated that a substantial proportion of  
15 Facebook users are what the economists have been  
16 referring to as multi-homing users, so they have  
17 accounts on Facebook, but they might also have  
18 an account on, for example, Instagram, and Meta uses  
19 their data to target them on both.

20 There are various references to that in the Amended  
21 Collective Proceedings Claim Form. Just to give three  
22 examples, we saw as we went past paragraph 40a, which  
23 was the pleading about Facebook's revenues which refers  
24 to both third parties advertising on Facebook and on  
25 Instagram. If we could then look at {B/3/48}, and



1 paragraph 84. This is a paragraph we looked at  
2 yesterday, but not for this specific purpose. It is  
3 pleading the merging of data across Meta products and  
4 services, and it is quoting what is provided for in  
5 Meta's previous data policy. What they explain there  
6 is:

7 "We use the information that we have to deliver our  
8 products, including to personalise features and content  
9 (including your ads, Facebook News Feed, Instagram feed  
10 and Instagram Stories) ... To create personalised  
11 products that are unique and relevant to you ..."

12 What we see is that the data policy is not drawing  
13 any distinction between monetising this data on the  
14 Facebook platform and personalising on other platforms.  
15 It is saying: we use it to essentially personalise to  
16 you on all of them.

17 One final example: paragraph 98c(iii) at {B/3/64}.  
18 This is quoting from Meta's privacy policy, but what it  
19 is quoting is specifically what is said about targeting  
20 ads. It says:

21 "When you use our products, you see ads and  
22 sponsored or commercial content, such as product  
23 listings in shops. You also see other ads shown through  
24 Meta Audience Network when you visit other apps. We  
25 want everything you see to be interesting and useful to

1           you."

2           Firstly, the reference to "products" there means all  
3           Meta products, not just Facebook. Nowhere in Meta's  
4           Defence is there a pleading where they distinguish in  
5           some relevant way between the way in which they target  
6           ads at Facebook users, and the way in which they target  
7           ads at Instagram users. It has not been pleaded that  
8           they draw that relevant distinction, but the other  
9           point we get out of this passage is that it is not even  
10          limited to targeting across Meta products. What we can  
11          see from this is a reference to the Meta audience  
12          network. What the Meta audience network allows you to  
13          do is to be targeted when you visit third party apps.  
14          That is obviously hugely valuable to Meta. There is  
15          a pleading as to exactly how valuable Meta considers  
16          that ability is.

17          If we go to {B/3/60}, please, the relevant paragraph  
18          is 95n. What this is, is a pleading about Apple  
19          introducing its App Tracking Transparency Framework. As  
20          the Tribunal may be aware, the Class Representative's  
21          expert has proposed looking at the App Tracking  
22          Transparency Framework and using it as a natural  
23          experiment, as a way of isolating the value that is  
24          conferred on Meta by the unfair bargain. What this  
25          paragraph is doing is pleading how concerned the ATT

1 framework made Meta because of its potential effects on  
2 audience network. Remember that audience network is  
3 targeting users not on Facebook, but on third-party  
4 apps.

5 If we look down to the bottom of this paragraph, it  
6 pleads {B/3/61}:

7 "Prior to the release of ATT, Facebook published two  
8 blog posts setting out its concerns with ATT, stating  
9 that it 'may render Audience Network so ineffective on  
10 iOS 14 that it may not make sense to offer it on iOS 14'  
11 and saying that advertisers will have 'a reduced ability  
12 to accurately target and measure their campaigns'."

13 Then there is a plea about the actual financial  
14 impact of that:

15 "Meta CFO Dave Wehner was also quoted on an analyst  
16 call in relation to its fourth quarter 2021 earnings  
17 report, in relation to the financial impact on Facebook,  
18 that '[i]t's on the order of \$10 billion, so it's  
19 a pretty significant headwind for our business.'"

20 This is a pleaded case about the impact of  
21 potentially greater choice and transparency on Meta's  
22 advertising profits, not just on Facebook, and not even  
23 just on other Meta products, but in relation to  
24 third-party apps. So we say again this is a case which  
25 is clearly not limited to targeting of users on

1 Facebook.

2 Now, it is absolutely right that when we turn to  
3 consider questions of profitability we talk about the  
4 profitability of Facebook. We say that is the correct  
5 approach because the Class Representative's case is that  
6 in return for access to the Facebook Service, the user  
7 gives permission for their data to be collected and used  
8 in this way, but we say that does not in any way cut  
9 down the various ways in which that data is actually  
10 monetised.

11 Now, Mr Singla has made various points about the  
12 scope of the exercise that Professor Scott Morton is  
13 planning to conduct in relation to that. If we look  
14 very briefly at the joint report that Mr Singla referred  
15 to, it is {F8/1.2/7}, please. I am looking at  
16 paragraph 25 (sic). This is in the context of a concern  
17 that Professor Scott Morton is expressing that Meta's  
18 draft issue 4.4 is overly narrow. She has set out at  
19 paragraph 34 what the proposed drafting is, and she  
20 draws attention to the fact that it is defined as "use  
21 of data subject to the Class Representative's claim for  
22 personal advertising". The concern she compresses at 35  
23 is, she says:

24 "... I intend to analyse whether the incremental  
25 data from Off-Facebook tracking is contributing

1 significantly to the overall financial performance of  
2 Meta. It would not allow me to carry out this work if  
3 there was a limited expert issue that only permitted the  
4 analysis of the profitability of the use of the relevant  
5 data in personal advertising. At this stage I do not  
6 know all the ways in which Meta utilises and/or  
7 generates profits from the use of Off-Facebook data, but  
8 I could envisage areas outside personalised advertising  
9 where it could create value such as the training of AI  
10 models. Accordingly, whilst personalised advertising is  
11 likely a key channel through which Meta gains value from  
12 the Off-Facebook Data, there may also be other channels  
13 relevant to my assessment. Failure to include these  
14 other channels risks under-estimating the incremental  
15 profitability to Meta of Off-Facebook Data. Therefore,  
16 in principle the issue should be broader than Meta  
17 allows for in the [list of issues] ..."

18 Two points about that. First of all, she is very  
19 clearly contemplating that one needs to look at the  
20 profitability of Meta. Secondly, she is saying she is  
21 not even clear that that enquiry stops at personalised  
22 advertising, whether it is personalised advertising on  
23 Facebook, Instagram or third party apps. She is saying  
24 there may be means by which Meta monetises its use of  
25 this data which even go wider. The simple point I make

1 is that it is clear that Professor Scott Morton is not  
2 proceeding on the basis that this is a very limited  
3 inquiry which is constrained solely to targeted  
4 advertising on the Facebook platform.

5 The final point I make on this is that the Tribunal  
6 was not, in my submission, under the impression that the  
7 case that was being certified was narrowly confined to  
8 targeted advertising on the Facebook platform, and we  
9 can see that from the certification decision {A/15/12}.  
10 It is paragraphs 20 to 21 under the heading "The 'price'  
11 paid by Users". The Tribunal says:

12 "We noted earlier that Facebook is provided to Users  
13 for no monetary consideration. In other words, money  
14 does not flow from Users to Meta, although it very much  
15 does flow from Advertisers to Meta, in part facilitated  
16 by the data provided by Users to Meta.

17 "It is the provision of data by Users that  
18 constitutes the manner in which Users pay for Facebook.  
19 The PCR contends that the provision of data is, in  
20 short, the 'price' agreed between Users and Meta  
21 pursuant to which Facebook is provided, by Meta, to  
22 Users. This point is implicit in, and underpins, the  
23 entirety of the Draft Claim Form."

24 The Tribunal is not here drawing any distinction  
25 between monetisation by Facebook and monetisation by

1           other means, by Instagram, by third parties. Indeed, it  
2           is referring very broadly to the flow of money from  
3           advertisers to Meta. So it is not under any delusions,  
4           in my submission, as to the basis on which the case was  
5           certified.

6           In our submission, this is another example where the  
7           scope of the Class Representative's pleaded case is not  
8           as narrow as Meta would prefer it to be.

9           THE CHAIR: We will rise for a minute and we will give  
10          a ruling.

11         (11.16 am)

12                                 (A short break)

13         (11.22 am)

14                 (Ruling on Issue 3 given - published separately)

15         THE CHAIR: That is our ruling on issue 3.

16                 On issue 4, we indicated yesterday where we are.

17                 I understand from Mr Singla that he is content for the  
18                 wording that we have indicated. Ms Ford?

19         MS FORD: Sir, we are happy to confirm we are also content  
20                 with the indication the Tribunal gave on that.

21                 (Ruling on Issue 4 given - published separately)

22         THE CHAIR: That is issue 4.

23                 What do we do next? What would you like us to cover  
24                 next? I think it is for Ms Ford to take us through.  
25                 Let us see where we have got in your skeleton argument.

1 MS FORD: In the order we have dealt with it in the skeleton  
2 argument, we come to a series of further issues of  
3 drafting, which we say can be dealt with compendiously,  
4 and then issues disputed in their entirety.

5 I think I have actually hopped over confirmations,  
6 what we have termed confirmations. Those matters are  
7 really quite short, and we have called them  
8 confirmations because we hope that they are matters when  
9 we clarify exactly what our concern is, the answer can  
10 be: yes, of course, no problem at all.

11 THE CHAIR: What we envisage is that you will be serving  
12 an RFI after this hearing --

13 MS FORD: Yes.

14 THE CHAIR: -- and we will have a timetable for answering  
15 it, and if there is any dispute as to the answers, well,  
16 we one probably deal with that either on paper or at the  
17 next hearing. Do the confirmations really fall within  
18 that type of category?

19 MS FORD: Not as such because they are not concerned with  
20 Meta's substantive case. They are essentially  
21 saying: can you just confirm our understanding that this  
22 is what falls under this issue for disclosure that we  
23 are debating.

24 THE CHAIR: Yes. Mr Singla says we have already given you  
25 the confirmation.



1 MS FORD: He does say that. We, having looked at -- I think  
2 there are three footnotes in his skeleton where he says,  
3 "this is what we have said". In relation to one of  
4 them, in relation to the corporate group, there was  
5 a letter which had said: we confirm that these  
6 particular issue for disclosure will cover the entirety  
7 of the Meta group, not just the Defendants. That has  
8 now dealt with our concern on that. There were a few  
9 others where we do still feel that what has been -- we  
10 may be speaking past each other in the sense that what  
11 has been confirmed is not quite addressing what we are  
12 asking and it may be that once we clarify it, they say:  
13 yes, fine, no problem.

14 THE CHAIR: So what do you want to do? Shall we just take  
15 them one by one and then see what Mr Singla says?

16 MS FORD: I can deal with them extremely quickly, yes.

17 THE CHAIR: Yes, okay.

18 MS FORD: The first concerns the fact that in various of the  
19 issues for disclosure there have been references  
20 inserted to "the UK" or "UK users". We fully accept  
21 that our claim is in respect of either the UK or UK  
22 users, so to that extent it is not a problem. What we  
23 are concerned to ensure is we do not lose out on the  
24 disclosure of documents which are potentially relevant  
25 to UK users in the sense of relevant by inference or

1           relevant by analogy, but we do not get told: you do not  
2           get those because they do not expressly or specifically  
3           refer to "UK users".

4       THE CHAIR:   Yes.   You can have a policy that relates to the  
5           issues in the action, and that can be a general policy,  
6           and that will feed into the whole world, including UK,  
7           or you may have some analysis that will feed into issues  
8           in the action, and you would expect that.

9       MS FORD:   Absolutely, a classic example.

10      THE CHAIR:   I can see why you would expect that.

11      MS FORD:   A classic example is issue for disclosure 37(1),  
12           which is asking whether Meta has ever made or considered  
13           making a value transfer in respect of UK users'  
14           Off-Facebook Data.   We say, well, self-evidently, if  
15           Meta had explored the possibility of a value transfer in  
16           the context of, for example, US users, then its analysis  
17           would be relevant by reference or relevant by analogy to  
18           the position of UK users.   So if it is considered  
19           a value transfer to users in another jurisdiction, we  
20           would say that is something which is relevant to  
21           disclose.

22           If we can just look at the confirmation that we have  
23           received in respect of this, it is footnote 16,  
24           {F8/2/9}, please.

25      THE CHAIR:   We are going to look at what?   What are we

1 looking at?

2 MS FORD: I am just trying to clarify exactly why we are  
3 hoping there is nothing between us, but there remains  
4 just an inkling of doubt. What Meta has helpfully done  
5 in their skeleton is to set out what it is that they  
6 have said to us about this in footnote 16.

7 THE CHAIR: Where am I --

8 MS FORD: This is their skeleton argument.

9 THE CHAIR: Just show me the document you were looking at  
10 a second ago.

11 MS FORD: It is {F8/2/9}. I do not know if the Tribunal has  
12 an EPE screen, it should be on the screen.

13 THE CHAIR: Let us look at it on the screen. (Pause)

14 Okay. What paragraph are you looking at?

15 MS FORD: It is footnote 16, this is where they explain what  
16 it is they have told us. We are four lines down. They  
17 say:

18 "Nevertheless, Meta has confirmed to the C[lass]  
19 R[epresentative] that the reference to 'UK Users' in the  
20 [List of Issues for Disclosure] ... does not mean that  
21 Meta will omit disclosure relating to Facebook users  
22 generally or a subset thereof ..."

23 So far, so good; that is all fine, but then it goes  
24 on to say:

25 "... insofar as that disclosure also relates ... to

1 UK users."

2 There we pause and say: hang on a minute, does that  
3 mean that, for example, the example we have given where  
4 it relates to consideration in the context of US users,  
5 would you say that that also relates to UK users? So we  
6 were happy with the first part of the confirmation and  
7 we were just slightly concerned that the remainder  
8 suddenly throws it in doubt. If the answer is, "No, we  
9 are perfectly happy to give documents in that  
10 circumstance when they are inferentially relevant or  
11 they are relevant by analogy," then we are happy, but  
12 that is the essence of the point.

13 THE CHAIR: Let us see what Mr Singla says about this.

14 MR SINGLA: We, as you know, say that we have already given  
15 confirmation which is sufficient and certainly  
16 sufficient at this stage. This is not a point, with  
17 respect, that one can really deal with in the abstract,  
18 so what we have said, I am looking at footnote 16 of our  
19 skeleton, but we also sent a letter on Monday which  
20 actually referred back to all of the things we have said  
21 in correspondence. So we will give disclosure insofar  
22 as it relates to UK users, but what it is, is very  
23 difficult to --

24 THE CHAIR: It is really a question of whether you mean  
25 "relates specifically to UK users", and if you mean

1           that, it is too narrow, or do you mean "it relates to UK  
2           users", in which case then i.e. it could be relevant for  
3           the consideration in relation to UK users, in which case  
4           it is satisfactory, but we do need to pin you down on  
5           this, because I do not want a misunderstanding, because  
6           if you mean it also specifically relates to UK users,  
7           then it is too narrow. If what you mean is it relates  
8           to UK users in the wider sense, then it is absolutely  
9           fine.

10          MR SINGLA: In a sense, we have said that we are not giving  
11           disclosure solely on documents that relate solely to UK  
12           users.

13          THE CHAIR: No, but their point is a simple one.

14          MR SINGLA: Yes.

15          THE CHAIR: They are saying that -- let us say you have  
16           a document that relates to the USA, okay? It makes no  
17           reference at all to the UK users, but, clearly, that  
18           can still be relevant to the issues in the action in  
19           relation to UK users because of the points that have  
20           just been made by Ms Ford. If what you are saying here  
21           is it has to specifically relate to UK users, amongst  
22           other users, then it is too narrow, simple as that.

23          MR SINGLA: We are not saying that.

24          THE CHAIR: No, okay.

25          MR SINGLA: But the difficulty with taking this argument any

1 further now is because we accept that the documents need  
2 to be relevant to UK users, and we accept that should  
3 not be so narrow as to cover only documents that relate  
4 solely to UK users, but one cannot have this debate in  
5 the abstract. Those conducting the disclosure exercise  
6 will need to consider, when they collate and review the  
7 material, does a document cover both US users and UK  
8 users? Is it a document that relates solely to US  
9 users, in which case that would be irrelevant.

10 THE CHAIR: That may not be irrelevant.

11 MR SINGLA: It may not be, no --

12 THE CHAIR: If you have done an analysis, let us say, in  
13 relation to US users and say we are not going what they  
14 are doing in the UK because of X, Y and Z, then it is  
15 clearly going to be relevant to the issues in the  
16 action.

17 MR SINGLA: But that is exactly the kind of consideration  
18 that needs to be given in concrete terms. That is the  
19 difficulty with having -- we are quite clear -- we have  
20 addressed this -- I think I am looking at four letters  
21 that Herbert Smith have sent on this issue. They have  
22 reassured the Class Representative that they are not  
23 going to get disclosure limited solely to UK users. We  
24 understand the point that is being made, but at this  
25 stage, one cannot just have this debate in the abstract.

1           Is a document that covers US users also relevant to UK  
2           users? That is going to depend and what they're  
3           trying --

4       THE CHAIR: Of course it is going to depend.

5       MR SINGLA: Exactly.

6       THE CHAIR: Mr Singla, it is fine.

7           Where we have got to, Ms Ford, is the answer given  
8           by Mr Singla, no doubt on instructions, is adequate for  
9           current purposes. It is on the transcript. It is clear  
10          that what he is saying is "We are not going to confine  
11          ourselves to something which directly -- only things  
12          which refer to English users or directly relates to  
13          English users but a more indirect way", in the way  
14          I have just explained and you have explained. It is on  
15          the transcript. You do not need any further  
16          correspondence with it. If there is a problem with it,  
17          we will deal with it at the next CMC. That deals with  
18          that one. Next one.

19       MS FORD: Yes. We would certainly say, given the emphasis  
20       that has been placed on context and assessment and the  
21       like, what will be necessary is in the disclosure  
22       statement that they give a clear explanation of what  
23       they actually have done, what they have looked at --

24       THE CHAIR: They will do that anyway. That is standard.

25       MS FORD: The next one is concerned with issues for

1 disclosure that relate to third parties such as Meta's  
2 competitors. In that context, Meta has proposed to  
3 limit scope of the disclosure.

4 THE CHAIR: Where are we in your skeleton? Then I can  
5 follow it.

6 MS FORD: 43, {F8/1/17} so under the heading "Meta's  
7 understanding, assessment, consideration and/or  
8 analysis".

9 THE CHAIR: We will have a break at quarter to 12 for the  
10 shorthand writer.

11 MS FORD: I am hoping we can get these out of the way by  
12 then.

13 THE CHAIR: Okay, let us get these out of the way first.

14 MS FORD: These are issues that concern third parties such  
15 as Meta's competitors. The reference is {F8/1/17} to  
16 our skeleton. Meta has proposed to limit the scope of  
17 the disclosure that it is obliged to give in relation to  
18 those sorts of issues by reference to its own  
19 understanding or assessment of the situation because it  
20 relates to third parties, for example; and again, we say  
21 that is unobjectionable in principle, subject to one  
22 point, and that is to the extent that Meta does hold  
23 contemporaneous documents that do bear directly on the  
24 issue for disclosure in question, not just Meta's  
25 assessment of it. So, for example, if they have



1           analyses by third parties that were in Meta's possession  
2           when they were forming their assessment, we say that  
3           those contemporaneous documents should self-evidently be  
4           disclosed. What we are trying to avoid is a situation  
5           where Meta does hold relevant third-party documents or  
6           source documents and it says, "I am not disclosing those  
7           because it does not go to my assessment in relation to  
8           that issue."

9           THE CHAIR: Yes, but the thing is, let us say they have  
10          a report that relates to someone else's business and  
11          that is relevant to the issues in the action, then  
12          clearly it has to be disclosed. It is a relevant  
13          document in their possession, irrespective of whether or  
14          not they even looked at it or assessed it. If they have  
15          one in their possession, that needs to be produced.  
16          That is fairly basic. Mr Singla.

17          MR SINGLA: This is a total non-point. We said on four  
18          occasions that we will give such material, and those  
19          four letters were summarised in the letter that went on  
20          Monday. I mean, plainly, if there is a third-party  
21          document in our possession that is relevant, that would  
22          be disclosable. We actually genuinely cannot understand  
23          here what the concern is.

24          THE CHAIR: Well, we have solved that one, then.

25                 Look, insofar as Meta is holding relevant documents

which relate to analysis by other people irrespective of whether or not they form part of Meta's assessment, they will need to be disclosed in the ordinary way.

Anything else for clarification or confirmation?

MS FORD: That covers the confirmations.

THE CHAIR: Okay, so we will take a break now until, let us say, five to 12. Then what is next?

MR SINGLA: Just before you rise, you mentioned RFIs.

THE CHAIR: That comes later, yes.

MR SINGLA: I would just like to say I have something to say about RFIs.

THE CHAIR: Of course. That is all up for grabs. We may decide we do not want them. It is all up for grabs.

MR SINGLA: That is fine. I just wanted to explain that we will address you on that.

THE CHAIR: That is absolutely fine.

(11.44 am)

(A short break)

(11.57 am)

THE CHAIR: Have we got to the stage where we can now go through the list of issues one by one, because some of the other issues in your skeleton will just come up naturally as we go through.

MS FORD: They will, although they are best dealt with in clumps so it may be it is not the most efficient to do

1           it in the order. I have to confess my speaking note is  
2           not in order and therefore there may be a degree of  
3           hopping around.

4       THE CHAIR: Do not worry about hopping around. That is  
5           fine. I do not mind.

6       MR SINGLA: Sorry to be confusing, but we do not necessarily  
7           accept the way in which they have been grouped together,  
8           so we think it might be more helpful to go through issue  
9           by issue.

10      THE CHAIR: That is what we are going to do. There may be  
11          a bit of hopping around, but that is fine.

12      MR SINGLA: I am sorry, I misunderstood.

13      THE CHAIR: Okay, there may be a bit of hopping around but  
14          that is fine. I say I do not mind.

15                So where is it in the bundle?

16      MS FORD: {D/9} is the list of issues we had been working  
17          from yesterday.

18      THE CHAIR: That is the one, yes. Okay. Just tick them off  
19          as we go. Mr Singla, what we will do, we will just go  
20          through them one by one, and if you have comments on it,  
21          we will just hear your comments.

22      MR SINGLA: Yes.

23      THE CHAIR: So let us go through just one by one.

24      MR SINGLA: I think just to explain, when we go through it  
25          one by one, there will be somewhere we say they should

1           be completely out, there will be somewhere we say  
2           a couple of words should be out --

3       THE CHAIR:   Yes, of course.

4       MR SINGLA:   -- and some points which affect a number of  
5           issues.   That is the structure of the --

6       THE CHAIR:   That is absolutely fine.   What you tend to find  
7           in these exercises, Mr Singla, once you have dealt with  
8           it under one issue, if it keeps repeating we get  
9           quicker.   I know it is fairly daunting.

10      MR SINGLA:   There is an element of that, but there is an  
11       element where one does just need to go --

12      THE CHAIR:   Yes, okay.   Issue 1(1)

13      MS FORD:    The first one where to our knowledge there is an  
14       issue --

15      THE CHAIR:   I want to go through them and tick them off one  
16       by one.

17      MR SINGLA:   I am sorry for rising again, but sir, so you are  
18       aware, the version you are looking at is already out of  
19       date because you will understand in the light of where  
20       we have got to on the issues we have addressed thus far,  
21       some of that of wording will need to change.   You  
22       understand that --

23      THE CHAIR:   They will change now.   Whatever the changes need  
24       to be done as a result of yesterday, the idea is we do  
25       that now.

1 MS FORD: I understand at 20 past 10 this morning we were  
2 provided with a version of a table that Meta have  
3 amended.

4 THE CHAIR: Oh that is good.

5 MS FORD: We have not had the opportunity to work through it  
6 and determine whether or not it accords with our  
7 understanding.

8 MR SINGLA: Well if we are going to go through it one by  
9 one, can I hand up what we have done overnight?

10 THE CHAIR: Yes, that would be brilliant. That would be  
11 helpful.

12 MR SINGLA: Because those behind me have worked very hard to  
13 update their side.

14 What we have done, to explain, this has CR's wording  
15 on the left, Meta's wording on the right, and overnight  
16 we have taken away our side of the document and updated  
17 it. I think it is what you asked us to do.

18 THE CHAIR: That is what I thought was going to happen  
19 overnight.

20 MR SINGLA: Exactly, so let us work off that. (Pause)

21 THE CHAIR: That is all right. So on issue 1(1), is there an  
22 issue at all?

23 MS FORD: Sir, I am sorry, we do not yet have copies of  
24 Meta's document that has just been handed up.

25 MR SINGLA: There is one. We will find some more.

1 THE CHAIR: Is there a copy for your junior?

2 MR SINGLA: It was sent across at 9 o'clock, I think.

3 MS FORD: 10:20. We do not have paper copies, I am afraid.

4 It has been sent.

5 THE CHAIR: Will it help if we make some copies for you,

6 then the whole team will have it?

7 MR SINGLA: Sir, the other issue is the Class Representative

8 has not updated the left-hand column, so this is why

9 I was tentatively suggesting we move to the discussion

10 about next steps to allow the parties a bit more time.

11 THE CHAIR: We can do this at 2 o'clock, by which time

12 everybody will have had time to digest --

13 MR SINGLA: Exactly.

14 THE CHAIR: -- and then you will be able to identify which

15 ones are agreed, so they can spend their lunchtime

16 sorting out which ones are agreed and which ones are not

17 agreed, so we can do it fairly quickly.

18 MR SINGLA: We at least can try to --

19 THE CHAIR: You can try, and I know primarily it is a matter

20 for the solicitors to work out this type of thing, but I

21 suggest --

22 MR SINGLA: It is because it is such a multi-layered

23 exercise.

24 THE CHAIR: I agree, we can do it that way. Look, we want

25 to talk about where we go from here, and that the first

1           issue is what is going to happen to the DR. The  
2           question is let us have a look at it first and then see  
3           what needs to happen to it from now on. Where am I to  
4           find the current version?

5       MR SINGLA: It is in bundle {D/3}.

6       THE CHAIR: Okay.

7       MR SINGLA: Can I just show you what work has already gone  
8           into this?

9       THE CHAIR: No, I know a lot of work has gone into it. This  
10          was ordered to be revised, was it, originally?

11      MR SINGLA: Yes, but --

12      THE CHAIR: You have revised it since then.

13      MR SINGLA: Yes. I think yesterday I showed you the  
14          references to the cost and the volume of documents.  
15          What I did not actually take you to are the annexes, and  
16          this is quite important in relation to the discussion  
17          about next steps. So if you could pick this up,  
18          please --

19      THE CHAIR: Your proposals are at the front.

20      MR SINGLA: Well, I will show you the annexes. There is  
21          a narrative explanation of what we intend to do.

22      THE CHAIR: Yes, that is the narrative.

23      MR SINGLA: And then the annexes are very important for you  
24          to look at.

25      THE CHAIR: Yes.

1 MR SINGLA: I am afraid I do not have a page number, but  
2 I think it is --

3 THE CHAIR: Well, I have Annex 1.

4 MR SINGLA: Exactly. Annex 1, I am grateful. So what we  
5 have done at Annex 1 {D/3/43} is to give detail in  
6 relation to the documents that were disclosed in the US  
7 proceedings, you will have seen reference to the Klein  
8 proceedings and that is what the CR originally asked for  
9 and then they changed their position, so Annex 1 is all  
10 about the half a million documents in the Klein  
11 proceedings.

12 THE CHAIR: But are they all relevant to the issues in the  
13 action? What happened about this last time round?

14 MR SINGLA: I do not want to take up time on this, because  
15 the history is contentious. I mean, if you want in  
16 a nutshell what happened --

17 THE CHAIR: In a nutshell.

18 MR SINGLA: Right. In a nutshell, Mr O'Donoghue for the  
19 Class Representative said at the certification hearing  
20 in January 2024 that they thought the best way to move  
21 this case forward was to start with disclosure from the  
22 Klein proceedings, the "low hanging fruit" as he  
23 described it, and then they would make targeted  
24 requests.

25 By the time we got to the December CMC in front of



1           Mrs Justice Joanna Smith, they said they did not want to  
2           be "dumped", I think was the word he used, with so much  
3           material. They wanted us to do a Disclosure Report  
4           first, and that was the argument we had. I really do  
5           not think it is productive to go over that history, but  
6           we have now gone through in Annex 1 to explain what that  
7           material consists of, but then if you look at Annex 2  
8           {D/3/46} --

9           THE CHAIR: Are you saying you intend to disclose that  
10          material or not bother?

11          MR SINGLA: It is within the material that will be reviewed.

12          THE CHAIR: You have reviewed it?

13          MR SINGLA: We are no longer intending to just hand it all  
14          over.

15          THE CHAIR: No, that is much better, because there will be  
16          stuff in there that is relevant, there will be stuff in  
17          there that is wholly irrelevant, and it can be  
18          oppressive for a party to be given vast amounts of  
19          irrelevant data, so that is sensible. That is good.

20          MR SINGLA: Although the issues are quite similar. Anyway,  
21          Annex 2 is Meta's proposed document custodians. So when  
22          you are thinking about how to move this process forward  
23          you will see that Meta has provided a list of 77  
24          proposals.

25          THE CHAIR: I saw that. It is quite a lot, yes.

1 MR SINGLA: It is a lot. Now, there is quite a lot of  
2 detail you will see, the names of the individuals and  
3 their positions and date ranges and so on. Then if you  
4 work through to Annex 3 {D/3/52} --

5 THE CHAIR: That is the key one because I do not think  
6 Annex 1 and 2 will change, will it?

7 MR SINGLA: It gets more detailed. Annex 3 then puts the  
8 custodians next to each issue, so it is quite  
9 a painstaking exercise. Through all of the list of  
10 issues, we have actually set out the proposed document  
11 custodians. You see that, we do not need to look at the  
12 detail but do you see --

13 THE CHAIR: I can see it, yes.

14 MR SINGLA: Then Annex 4 {D/3/111}. This is why I said,  
15 sir, yesterday that we have gone past the point, as it  
16 were, of completely fresh Redfern Schedule and a list of  
17 issues in the High Court, because we have already said  
18 essentially: these are the custodians we are going to  
19 search for each issue; and then when you get to  
20 Annex 4 --

21 THE CHAIR: I am still on Annex -- where does it start?

22 MR SINGLA: I think I am looking at an internal page number  
23 60. Do you have very small internal page referencing?

24 THE CHAIR: Yes.

25 MR SINGLA: It is {D3/1/11} (sic) if you have the bundle

1           referencing. I apologise, I do not have that.

2           THE CHAIR: Annex 4, so Annex 1 to 3 you say do not need to  
3           be revised; is that right?

4           MR SINGLA: I will come on to what we say.

5           THE CHAIR: Okay, you are just showing me what there is.

6           MR SINGLA: Yes, I will show you the state of play, as it  
7           were, now, but Annex 4 is the key for that purpose,  
8           because Annex 4, on an issue by issue basis, has the  
9           custodians and also our proposed search terms, and you  
10          will see it is not on the first page, but if you go  
11          through it you will actually see on the basis of the  
12          sampling process that has been carried out, and you will  
13          understand why it is inevitably had to be undertaken on  
14          a sampling basis at this stage, but you will see there  
15          is actually estimates of the total document hits  
16          applying those search terms, using those custodians, on  
17          an issue by issue basis. So do you see the numbers in  
18          the right-hand column?

19          THE CHAIR: Just show me what page you are on.

20          MR SINGLA: Well, just by way of example, if you look at  
21          {D/3/115}.

22          THE CHAIR: Yes.

23          MR SINGLA: Do you see the number in the right-hand column?  
24          116,000 documents, total sample custodian hits,  
25          therefore extrapolated out, estimated total custodian

1 hits, nearly 300,000 documents. Do you see that number?

2 THE CHAIR: A lot depends on how you are going to do the  
3 searches and how you are going to narrow them down and  
4 to the extent you are going to use AI and all that sort  
5 of stuff.

6 MR SINGLA: No, but --

7 THE CHAIR: This is the initial number of hits, is it not?

8 MR SINGLA: This is the package of proposals, as it were, so  
9 we have said on an issue by issue basis we will search  
10 the following custodians, we will apply the following  
11 search terms, and our estimate, necessarily an estimate  
12 at this stage, of the number of documents that that  
13 search will throw up is, in this example, 291,000.

14 THE CHAIR: I know, but are you going to go to the next  
15 level and be using AI for the purposes of actually  
16 helping you identify within that population what  
17 documents are likely to be relevant for the issues in  
18 the action, because if you are not going to do that, it  
19 is going to be a very expensive exercise, but there are  
20 so many ways of doing disclosure now. If you are using  
21 AI technology properly, that can save a huge amount of  
22 money. It is not like the old days where you  
23 necessarily had to have someone reading millions of  
24 documents. We are in a different world now.

25 MR SINGLA: Sir, we are trying to take this in stages. In

1 my respectful submission, the stages are: sort the  
2 issues out; get the custodians agreed, or directed; get  
3 the search terms agreed or directed; then there is  
4 a question of how one goes about doing the work, but what I  
5 am trying to convey to the Tribunal is that we have done over  
6 the last few months an enormous amount of work.

7 THE CHAIR: You have done background work, of course you  
8 have. I would expect you to do. The thing about these  
9 large disclosure exercises, if you do not plan it  
10 properly, you end up having to do it multiple times and  
11 it becomes really inefficient and very expensive, and if  
12 you are trying to look for the needle in the haystack,  
13 and that is the type of analysis you do, (a) you are  
14 unlikely to find it, and (b) you will spend far too much  
15 money on it.

16 MR SINGLA: Can I make just a few points. One, the purpose  
17 of showing you this document is when we come to discuss  
18 next steps, we do not accept that we should now start  
19 afresh with requests on the left-hand column of  
20 a Redfern Schedule, because we say what should happen is  
21 effectively they should tell us whether they agree or  
22 disagree on an issue by issue basis with the proposed  
23 custodians and the proposed search terms.

24 We are now so far down the track, as it were, one is  
25 not in the *Trucks* world of creating a new Redfern

1           Schedule saying: we would like this, we say that is not  
2           relevant, that is not proportionate. We have actually  
3           essentially put our cards on the table as to what we  
4           propose to do. The context of this, you will  
5           understand, this is again unlike a normal piece of  
6           litigation where the disclosure burden is going to fall  
7           entirely on our side.

8           We say what should happen between now and the next  
9           hearing, subject to a couple of points where we do  
10          accept some updates need to happen, we respectfully  
11          suggest that the Claimants should now say, "We do not  
12          agree with that list of custodians on that issue and we  
13          do not agree with those search terms," or perhaps they  
14          will agree; one never knows, but that is the next  
15          stage.

16          We, sir, like you, want to try to get all of this  
17          locked down in the September hearing that I think is  
18          being floated as a possibility, because you will  
19          understand we need many months to do the disclosure  
20          exercise. We then have to do witness statements and  
21          expert reports before the trial in 2027. So to get this  
22          locked down in a September hearing, we say, with  
23          a couple of caveats I will come back to, we say that  
24          that should be the next stage, not a fresh document  
25          saying we would like the following. They should say do

1           they have a problem with any particular aspects of -- it  
2           is very, very granular, sir. You will understand it is  
3           quite granular, search terms and custodians on every  
4           single issue is very granular.

5           Now, the two areas where I do accept we will have  
6           some further work to do, where this document, as it  
7           were, is not sufficient to move things forward in the  
8           way I have just explained, one, we do need to provide  
9           more information about our proposal as to regards  
10          non-custodial disclosure, in other words data, and we  
11          can do that, and the second aspect is that the document  
12          and all of this work has been undertaken on the basis of  
13          a temporal scope which is 2012.

14       THE CHAIR: Can I just raise one issue?

15       MR SINGLA: Yes, of course.

16       THE CHAIR: Quite often on the sole issue custodian there is  
17          an issue as to are you going to limit yourselves to  
18          individual custodians, or are you going to look at  
19          general service as well, because quite often what one  
20          does is say you have one company, it has a general  
21          server, but you have various officers that have their  
22          own individual log-ins and emails and stuff like that,  
23          and you are saying, "Yes, we will do the normal general  
24          check on the general servers, but in addition we will be  
25          looking at the individual custodians," but I need to

1           understand, on this one, are you  
2           proposing to look at your -- let us say your more  
3           general servers, or are you just going to confine it to  
4           custodians?

5       MR SINGLA: We are definitely not -- I think there is  
6           a couple of aspects to what you have just said. There  
7           is custodian and non-custodial and, as I have just  
8           explained, this doesn't deal with non-custodial.

9       THE CHAIR: I understand that.

10      MR SINGLA: I think the point you are driving at is within  
11           custodians, where are you looking?

12      THE CHAIR: Well, I do not know. You may be looking for  
13           general data, okay, the crunch type of stuff, and  
14           clearly all of that is not going to be simply custodian,  
15           but within the organisation, for example, there may be  
16           a report that is relevant or an assessment that is  
17           relevant that is not held or easily locatable within  
18           individual custodians, but will be on the system of  
19           Facebook in one way or another --

20      MR SINGLA: Yes.

21      THE CHAIR: -- and you do not want that to fall off the  
22           universe.

23      MR SINGLA: No, no, no. Sorry, sir, if I was not being  
24           clear. We absolutely agree with what you have just  
25           said, but that will be caught by what we have described



1           or I was describing as non-custodial data. So let us  
2           say financial information on profitability of the  
3           Facebook advertising. That may not be held -- I think  
4           the point you are making is that may not be held by  
5           a particular individual, it may just be --

6       THE CHAIR: Yes, that type is clear. That goes without  
7           saying. What I am saying is that there may be things  
8           like relevant reports or whatever that are not being  
9           held by any individual custodian, but will be within the  
10          general servers of the business. If you are saying they  
11          are going to be searched in the normal way --

12       MR SINGLA: Well, I mean the devil is in the detail of what  
13          documents you are talking about, but in broad terms,  
14          insofar as you are saying to me "Are you only looking at  
15          documents held by individuals?" I think I am saying no,  
16          we are not.

17       THE CHAIR: As long as there is going to be a search on the  
18          general servers --

19       MR SINGLA: Well, to appropriate material there will be, but  
20          that is, as it were, an aspect which this document, the  
21          300-page Disclosure Report that I have just taken you  
22          through, that does not deal with that.

23       THE CHAIR: Look, it is important we understand that you  
24          will be doing what is a fairly normal exercise in  
25          relation to your servers, and if you are doing that,

1           then that is absolutely fine. If you are not doing that  
2           then we need to obviously resolve that.

3       MR SINGLA: I know. That is just something that we need to  
4           explain to the Class Representative what we intend to  
5           do. Another example would be terms and conditions.  
6           They want the terms and conditions. Those I think would  
7           also fall within --

8       THE CHAIR: It would do. That is the type of things --

9       MR SINGLA: Exactly. Yes. There is no issue there, sir.

10      THE CHAIR: Okay, that is fine. So you are saying "We have  
11           already done a lot of work," and you say that the next  
12           stage, apart from you updating it to reflect the actual  
13           wording of the issues in the list of issues for  
14           disclosure, is for the Class Representative to come back  
15           and say whether they agree or disagree on things in  
16           here.

17      MR SINGLA: Yes.

18      THE CHAIR: But, you see, what that does not necessarily  
19           help us is that -- and I accept that they should come  
20           back on this at the moment, subject to whatever my  
21           colleagues may say and Ms Ford may say, but there will  
22           come a point where I want something, a table, whether  
23           you call it a Redfern Schedule or not, where I can see  
24           what is in issue between the parties that needs to be  
25           resolved by the Tribunal, and it may be that the best

1 way and the easiest way for someone as simple as me is  
2 to have what looks like a Redfern Schedule, but  
3 obviously takes the benefit of the exercise which you  
4 are saying that they need to respond to this, okay, but  
5 I do -- we are all used to different things, and I am  
6 far happier, when you have multiple potential issues,  
7 having a table where I can see what is being sought,  
8 what your position is, what their position is, and it is  
9 going to be far easier to do a Redfern Schedule. In  
10 this case, once they have been through this, they will  
11 know what is in issue, so they -- hopefully you will see  
12 what is agreed within this, and then there will be  
13 a universe where things are not agreed, and for that  
14 not-agreed universe, I will want something that looks  
15 like a Redfern Schedule, and we probably will not need  
16 a large number of columns in the normal way because you  
17 would have, let us say, crystallised your reasoning as  
18 a part of this process in going through this disclosure  
19 report.

20 MR SINGLA: Sir, we see it in exactly the same way. We can  
21 call it a Redfern Schedule. The terminology does not  
22 matter, but we see, for the purposes of the next  
23 hearing, where we want to get to is the first column  
24 should be -- I will come back to one point --  
25 essentially this is what we are intending to do, issue

1           by issue, these custodians, these search terms, so that  
2           is essentially what we have done. Next column, we agree  
3           or we have a problem with it, and then when we get to  
4           the hearing you can go through it and say you have to --

5       THE CHAIR: I do not think it is going to be as simple as  
6           that. I think I can see the advantage in finishing this  
7           process that you have done, but I do not think this is  
8           going to be particularly helpful when it comes to doing  
9           the exercise of running through what is in issue and  
10          what is not in issue and coming to a ruling.

11           Look, it may be you have to do it in two stages.  
12          The first stage is finalising this document, bearing in  
13          mind what they say, and you will see where the areas of  
14          dispute are. What I would prefer to have is once you  
15          have figured out amongst yourselves what your areas of  
16          dispute are, that we have a separate table which  
17          identifies the respective positions of the parties in  
18          the areas in dispute, and probably the best for that  
19          would be the first column not to be done by your side,  
20          but to be done by Ford's side, so Ford's side will say  
21          "We have the following issues that we want to be  
22          resolved at the next CMC. This is our position." You  
23          say what your position is, and by then you probably have  
24          a good idea of what you need to say. It may be that we  
25          will have a third column and a fourth column, but that

1           may or may not be necessary; it depends on how you get  
2           there, but by the time I have a hearing, I think that  
3           is what I am looking for.

4       MR SINGLA: Yes, we are content with that, but the  
5           principles that we are working under are, one, we do not  
6           want the work that has been done to be wasted, because  
7           we spent months doing this work.

8       THE CHAIR: I know. Look, if we were not taking that  
9           approach, we would have started again.

10      MR SINGLA: Yes. So we do not want to waste the work, and  
11           we also want to get this sorted in September, so --

12      THE CHAIR: I understand that, so we need to work out  
13           detailed timings.

14      MR SINGLA: Sir, we are content with what you have just  
15           suggested saying, but it is important -- I need to make  
16           a couple more points.

17      THE CHAIR: Yes, sure.

18      MR SINGLA: I think yesterday I mentioned they have not  
19           engaged with this document so far, and what I really  
20           mean by that is they need to deal with the detail in  
21           Annex 4. Where we have told them, custodian by  
22           custodian, search term by search term, if we are going  
23           to sort this out in September we now need to know --  
24           pretty quickly, actually -- whether those are acceptable  
25           custodians or not.

1           If Ms Ford is going to say as she said yesterday,  
2           "It is all too high level," this document is not an end  
3           in itself; it is a tool to try and allow the Tribunal to  
4           sort this out.

5       THE CHAIR: What tends to happen is you have the DR and, let  
6       us say, you propose custodians 1 to 73. You will start  
7       going through the disclosure exercise and my experience  
8       is that, quite often, going through the disclosure  
9       exercise on your part, you will identify other  
10      custodians by looking at the custodians you have; at  
11      which point, when you give disclosure, you will be  
12      giving disclosure of other custodians than the one that  
13      you have actually done. So if, for example, you look at  
14      custodian 10 and you can see that custodian 10 has been  
15      sent a document from someone who is not on the list, and  
16      that person has done a lot of research which is highly  
17      relevant, you are going to say, "Well, following the  
18      normal procedure that solicitors follow," you are not  
19      simply going to say, "Well, I will not make any  
20      inquiries of that other custodian, just forget about it,  
21      it is not on my list." Of course, you are going to look  
22      and see where it is.

23           So when the other said say, yes, this is a sensible  
24           starting point for custodians, it does not mean that  
25           when they get disclosure and they start looking at that

1 disclosure, it means they cannot say, well, you should  
2 have other custodians. That is what happens in the real  
3 world.

4 MR SINGLA: No, I understand. I mean --

5 THE CHAIR: So I want them to feel that when they say, yes,  
6 we think it is acceptable that you search these  
7 custodians, it is not them casting in stone, they are  
8 the only custodians, because it is not how it works in  
9 the real world.

10 MR SINGLA: No, specific disclosure applications can always  
11 be made but we need to get this process underway.

12 THE CHAIR: No, you have to start from somewhere.

13 MR SINGLA: Exactly.

14 THE CHAIR: But there will be, as in all these cases,  
15 an information deficit on their side at this stage, and  
16 so they will not be able to say conclusively that you  
17 have covered all the custodians and you cannot say that  
18 either because you have not done the search. There is  
19 going to have to be an element of flexibility.

20 MR SINGLA: Yes.

21 THE CHAIR: But the way you have proposed it at the moment  
22 seems sensible to me, that they need to respond to  
23 this --

24 MR SINGLA: Exactly, yes.

25 THE CHAIR: -- subject to the caveats I have already given,

1           and that way we move forward.

2           MR SINGLA: I am grateful. Can I just mention one final  
3           point which is important.

4           THE CHAIR: That is all subject to what my colleagues say --

5           MR SINGLA: Of course, but we are concerned we have spent  
6           months -- this has become satellites of a piece of  
7           litigation in itself so we are keen to draw a line under  
8           it.

9           THE CHAIR: In large scale litigation problems like this  
10          happen all the time. We are just going to do our best  
11          to get through this --

12          MR SINGLA: Yes, remembering proportionality is a key  
13          consideration in all of this.

14          THE CHAIR: Proportionality is always a key consideration.  
15          Proportionality, relevance, cost, all those come into  
16          the assessment.

17          MR SINGLA: Can I just -- so the other point, we say this  
18          document gives them enough now to start to engage with  
19          custodians and search terms. I have just explained to  
20          you that we need to convey our proposals on  
21          non-custodial. So we do understand there is an aspect of  
22          the disclosure process which we have not yet covered in  
23          this document. So we will, as it were, explain what we  
24          intend to do by way of non-custodial, but the other  
25          aspect --



1 THE CHAIR: Are you going to do that in a separate document  
2 or in this document?

3 MR SINGLA: Yes, I think in a separate document.

4 THE CHAIR: A separate document is probably easier, but we  
5 also need to have --

6 MR SINGLA: (Pause) Okay, for the non-custodial we will  
7 initially update Annex 4 but you will have a fresh  
8 document, sir, for the next hearing.

9 THE CHAIR: Let us look at the time. When is this document  
10 going to be finalised on your side?

11 MR SINGLA: Can I mention the other area where we suggest we  
12 will do some further work before I --

13 THE CHAIR: One of the advantages of having the  
14 non-custodial done in a separate document is it may take  
15 a bit longer than it requires to finalise this, because  
16 if they are going to respond to this and then we are  
17 going to have a proper schedule for the hearing at the  
18 end of September, everyone is going to have enough time  
19 to respond.

20 MR SINGLA: Can I just --I have said it a few times. I just  
21 need to mention the other piece of work that we intend  
22 to do. On the temporal scope debate that we had  
23 yesterday, where we ended up on the -- if I can call  
24 them the first considered issues, you will recall there  
25 are a number of issues where they did not have a date.

1           Where we ended up was that the date would be 2011,  
2           subject to an RFI.

3       THE CHAIR:   Correct.   Clarification or whatever.

4       MR SINGLA:   Exactly, and we have reflected on that  
5           suggestion.   To try and streamline things and to make  
6           sure this is all done, as it were, in September, we do  
7           not want the RFI process to become particularly  
8           involved.   There is, you will understand, a concern that  
9           in answering potentially a number of questions going  
10          back a long period of time, covering now a very broad  
11          range of data, that whole RFI process could actually  
12          take a lot of time, and we might incur a lot of cost.

13               So what our proposal is going to be on those issues,  
14          instead of having 2011 subject to an RFI, the document  
15          would actually have 2007 or 2005, an early date which  
16          suits what they were driving at for some of the other  
17          issues, and then we would have any arguments about  
18          proportionality at the second stage, which I think fits  
19          with what you said yesterday.

20       THE CHAIR:   You are saying instead of using the 2011 default  
21          date, we go back to a significantly earlier date.   Let  
22          us just see what Ms. Ford says.

23       MR SINGLA:   Let me explain, because as we understand it, that  
24          chimes with what you were saying yesterday as to how  
25          normally one would have proportionality arguments at the

1 next stage.

2 THE CHAIR: We would, yes, of course we would.

3 MR SINGLA: So on that aspect we want to, as it were, align  
4 those issues with the other ones insofar as they are  
5 going back in time, we would argue about that at the  
6 second stage on proportionality grounds.

7 THE CHAIR: Let us just see what Ms. Ford says about that, just  
8 that last bit.

9 MS FORD: Sir, as we understand the concern being expressed  
10 it is about timing in the concern about how long it  
11 might take for them to give an answer about that when  
12 they started collecting this data. So what we would  
13 propose is to do the two exercises in parallel.

14 So first of all we start with a proposal that puts  
15 in the earlier date so that we can liaise on  
16 proportionality, but, in parallel, Meta can answer our  
17 RFI to explain exactly what the position is, because we  
18 do think that it was a very helpful indication by the  
19 Tribunal yesterday that Meta should essentially tell us  
20 what is within their knowledge and not ours as to when  
21 they actually started engaging in this conduct, and it  
22 appears that this proposal is using convenience and  
23 timing as a means of avoiding actually answering that  
24 question. So we would propose: let us do it in  
25 parallel.

1 THE CHAIR: We will come back to that later, because that is  
2 clearly a contentious issue.

3 Is there anything else that you want to do by way of  
4 this document before -- all we are going to do now is to  
5 close down on what is going to happen to this individual  
6 document.

7 MR SINGLA: Yes, okay.

8 THE CHAIR: So let us hear what Ms. Ford has to say, and then  
9 you can come back, and then we will give a ruling if  
10 necessary.

11 MR SINGLA: I am grateful.

12 MS FORD: We welcome the Tribunal's indication that it would  
13 like this document to be completed. We also welcome  
14 Meta's acknowledgment that there is some updating to be  
15 done. We do think that it is necessary to be clear  
16 exactly what updating needs to be done. We would  
17 suggest it is necessary to update to reflect the two  
18 rulings that the Tribunal gave yesterday.

19 THE CHAIR: To reflect the final version of the list of  
20 issues and the rulings from today and yesterday.

21 MS FORD: Yes, so that would include what emerged yesterday,  
22 which is that there is a substantive difference between  
23 the parties as to essentially the data which is subject  
24 to the claim. As we understand it, the exercise has  
25 been done on the narrower basis and now needs to be done

1           on the wider basis. Also to reflect the ruling on  
2           temporal scope.

3       THE CHAIR: Exactly, yes.

4       MS FORD: We have also sent a letter where we have indicated  
5           the other respects in which we feel that further clarity  
6           needs to be provided in the context of this document.

7           That is at {E2/227/1}, please.

8       THE CHAIR: Just read out what you want me to --

9       MS FORD: There are quite a few headings. What I was hoping  
10          to do is to highlight the areas, and it is partly in  
11          response to the suggestion which was repeated again, that  
12          we have not engaged with the work that Meta has done.  
13          We have engaged with it, and we have set out a very  
14          detailed set of requests and the ways in which we say  
15          further information needs to be provided in the context  
16          of this document, and that will enable us to do the  
17          exercise we understand would assist the Tribunal, which  
18          is for us to have a column and populate the column  
19          with our proposals.

20       THE CHAIR: You are saying that you need this clarification.

21          What is the date of this letter?

22       MS FORD: This was 8 July. We have not received a reply to  
23          it.

24       THE CHAIR: I am not surprised. Okay.

25       MS FORD: But what it does do, in my submission, is to

1 highlight important areas where we say this document  
2 needs to be elaborated upon in order that we can make  
3 progress in September. So just to take the Tribunal  
4 through the order that they appear in the document,  
5 probably the first substantive one is narrative  
6 responses. The heading is at the top of page -- sorry,  
7 the bottom of page 2, but then at paragraph 7 we have  
8 made the point that this document does raise the  
9 possibility of a narrative response in relation to 11  
10 issues. We have been open to that possibility. We note  
11 that they have not set out further detail as to what  
12 that would entail, whether it will be verified by a  
13 statement of truth, who will provide it, what will be  
14 provided, to enable us to say yes we are happy with that  
15 or no we think that this is --

16 THE CHAIR: On something like this, a narrative response,  
17 all you need to do is to agree that you are happy with  
18 the concept of a narrative response. They do not need  
19 to sort of spell out now how that is going to be done.  
20 You know, you can correspond separately on this, how it  
21 is going to be done, but at the end of the day, the  
22 Tribunal, if you cannot agree, is likely to say: we want  
23 a statement from someone who has made due inquiries of  
24 the relevant people, and that statement will be to the  
25 best of their knowledge and belief having made

1 reasonable inquiries, and they may need to specify what  
2 they are, verified by a statement of truth. I do not  
3 think that type of thing needs to go into that sort of  
4 detail in this document.

5 What I am inclined to say on this, is that there is  
6 this letter. Mr Singla cannot be prepared to be in  
7 a position to answer that letter today, for obvious  
8 reasons, and everyone is sort of hopefully in  
9 a cooperative frame of mind. They can take into account  
10 this letter when they finalise the DR, and if there are  
11 issues that need further elaboration separately, that  
12 can be dealt with by correspondence or it can be dealt  
13 with at the next hearing, but what I do not want to  
14 happen is that there is going to be voluminous  
15 correspondence that actually slows down the process of  
16 getting the DR. The actual details of things like the  
17 form of the narrative response I think is not important  
18 for today. You know what I normally do on these  
19 narrative responses, so it is fairly easy to predict  
20 what I am likely to do. There is a whole bank of  
21 authorities where I have dealt with issues like this.  
22 We are all familiar with that, and you are unlikely to  
23 be able to sort of -- let us say it is far better for  
24 you to take into account what you predict we will end up  
25 doing when you decide what you are going to agree and

1           what you are not going to agree. So when it comes to  
2           responses, I will most probably require a statement the  
3           normal way, but I could be persuaded otherwise by  
4           Mr Singla, and he is free to argue that, on the  
5           appropriate things to -- what I am inclined to say is  
6           that they should respond to this letter, but the  
7           response should not -- it should be a constructive one,  
8           but I do not want something that is going to hold up the  
9           provision of the next draft of the DR. If you are going  
10          to have side issues and other correspondence, you can  
11          deal with that separately. I do not want the DR  
12          finalisation process to be delayed.

13       MS FORD: It is certainly very helpful to get that  
14               indication. Perhaps we can just deal with the other  
15               points that we raise and the Tribunal can indicate  
16               whether this is something that, as we say, should be  
17               reflected in the DR or not.

18       THE CHAIR: Okay.

19       MS FORD: Data repositories, which is a heading --

20       THE CHAIR: Number 7, you have what I would normally expect  
21               on number 7.

22       MS FORD: Yes. We are content with that indication. That  
23               is fine.

24       THE CHAIR: Let us see on the next one.

25       MS FORD: Scope of claim does not arise in this context.



1 THE CHAIR: It does not, no.

2 MS FORD: Data sources, the concern here is that what has  
3 been said in relation to data depositories or proposed  
4 repositories is that producing a catalogue of all  
5 document and data management systems and processes would  
6 be highly onerous. We have essentially said -- we have  
7 asked for clarification in essentially paragraph 10,  
8 where we request:

9 "... that your clients produce a catalogue of all  
10 the internal repositories used ... to which your clients  
11 indicate they have had regard.

12 "To the extent your clients are suggesting that it  
13 is reasonable and proportionate to limit their searches  
14 to those repositories, it is necessary for the Class  
15 Representative to be able to refer to a full list of  
16 them before accepting or opposing that position."

17 This is simply -- this document does not presently  
18 give us clarity as to exactly what repositories are  
19 proposed to be searched, and that is obviously going to  
20 be quite fundamental in terms of responding to their  
21 proposals.

22 THE CHAIR: Normally you should have that information. That  
23 is fairly standard.

24 MR SINGLA: It is in the DR already. It is in the DR.

25 THE CHAIR: It is fairly standard to have that.

1 MR SINGLA: We can cut this short, perhaps, by me saying: we  
2 will respond to these questions insofar as they are  
3 going to move things forward, but what this is, is  
4 a cross-examination of the 300-page DR. To move  
5 forward, for the Tribunal to be in a position  
6 in September to actually say this is the disclosure  
7 order, you do not need answers to questions such as --  
8 in the detail of mobile devices; why have you not  
9 included secretaries. It is not targeted at what you  
10 have in mind, sir, which is actually making disclosure  
11 orders. That is the problem with it. The reason I say  
12 it is not engaging, it is not engaging with the points  
13 that need to be dealt with for the disclosure orders to  
14 be made. So we will, of course, answer questions  
15 insofar as they actually will assist this process moving  
16 forward, but just asking a whole host of detailed  
17 granular questions is not actually going to allow the  
18 Tribunal in September -- September is not that far away.

19 THE CHAIR: Look, I do not want -- what I am going to do is  
20 to say that they will use their best endeavours to  
21 answer this letter, and they should answer any requests  
22 which are reasonable. There may be a dispute as to what  
23 is reasonable or not, but we can deal with that next  
24 time round, but the direction we are inclined to say is  
25 that they should give a substantive response to this

1 letter, and that there can be issues as to the adequacy  
2 of the response, but we can deal with that next time  
3 round, but all I can do is to say that there should be  
4 a response which is a substantive response to all the  
5 reasonable requests, and there will be an issue as to  
6 what is reasonable and not reasonable, okay.

7 MS FORD: We certainly welcome the indication that there  
8 should be a substantive response. Just to address the  
9 suggestion that this has already been dealt with: it has  
10 not; otherwise we would not be asking these questions.

11 THE CHAIR: They may say this has been dealt with, see  
12 paragraph or page whatever of the DR; they can do that.  
13 Mr Singla, how long do you think your team will need to  
14 answer this?

15 MR SINGLA: May I just take instructions?

16 THE CHAIR: Yes, of course you can.

17 MR SINGLA: The timeframe that we had considered for  
18 a number of things, so the updating on the --

19 THE CHAIR: Come back to that.

20 MR SINGLA: Yes, but essentially what we had in mind, is four  
21 weeks to do the non-custodial disclosure proposal, the  
22 updating of the DR to reflect any custodians that now  
23 need to go further back, and to answer any questions in  
24 this letter that are reasonable and go to that process.

25 THE CHAIR: It may be that you will take into account the

1           questions in the letter as you update the DR.

2           MR SINGLA:   Yes, maybe.

3           THE CHAIR:   Because you may say, "See updated DR that we  
4           have done it".

5           MR SINGLA:   Maybe, but these things do take time, sir.

6           MS FORD:   The concern with that is it takes us to the middle  
7           of August in circumstances where we were hoping to have  
8           a productive CMC in September.

9           THE CHAIR:   Yes, but the thing is, the way I envisage it is  
10          we are going to be in the best position to sort of deal  
11          with things at the end of September if this has been  
12          updated, you have responded to it, that is the first big  
13          job, and then we prepare this schedule of what is in  
14          issue for the next CMC, and you say what you are  
15          requesting, they say what their response is. That is  
16          all going to take time, and I think you are probably  
17          right that if we leave that process to -- because you  
18          are going to need time to respond to the DR. That does  
19          not mean you are not going to be looking at this  
20          document as you go along, so it does not mean that --  
21          most of this document is going to be unchanged, and so  
22          your team can start looking at it. I would be very  
23          disappointed if your team simply said, "Well, it is the  
24          middle of August now, and we are going to start looking  
25          at this". I think that will lead to too much delay.

1 MS FORD: Sir, we absolutely do intend to do this in  
2 parallel, but it rather begs the question: if this stuff  
3 is supposedly all done already, why does it take to the  
4 middle of August in order to produce an updated  
5 disclosure schedule?

6 THE CHAIR: But the problem we have is that everyone has  
7 other cases in their diary. Clearly, if the team had  
8 nothing else to do, then they could do it in two weeks,  
9 I could easily see that, but they probably have other  
10 files. We have to figure out what is practicable.  
11 I think that three weeks is probably practicable from  
12 today, and that is what I am likely to order, but then  
13 you need to have time to respond, and that -- I would  
14 have thought that you need two weeks probably to  
15 respond, because of the importance, and so you would  
16 have two weeks to respond, and then you are going to  
17 have to start preparing your schedule for agreements and  
18 disagreements setting out what your actual requests are  
19 in the light of what your response is. Then Mr. Singla's  
20 side is going to have to have an opportunity to fill out  
21 the next column.

22 MS FORD: Sir, we envisage that that is workable, provided  
23 we do get substantive responses to the questions about  
24 what are the repositories and the questions about the  
25 custodians, because if this document comes back and the

1           answer is we are still not going to tell you what  
2           repositories we have and we are still not going to tell  
3           you what custodians there are, and matters of that -- it  
4           really limits the ability we have to engage with them.

5       THE CHAIR: But for certain ones, it is a no-brainer. On  
6           the repositories, they are going to give it. I cannot  
7           see why they are not going to give it. It is clearly  
8           something you are entitled to. It is standard to do  
9           that. I cannot see why this case is any exception from  
10          all the other cases I have dealt with, but, you know,  
11          I know there is an element of sort of mistrust or  
12          whatever that makes everyone worried that someone else  
13          is going to try to pull a fast one. If we have any  
14          suspicion that that is going to be the case, then, you  
15          know, certain consequences will follow in September, but I  
16          cannot see, when we are dealing with the firms  
17          that we are dealing with, that anyone is going to try to  
18          play games. Life is too short. Life is too short.

19       MS FORD: Absolutely in that spirit, then --

20       THE CHAIR: So your response is two weeks after that, and  
21           then will you be serving at the same time the first  
22           draft of the -- what could be the Redfern Schedule, or  
23           do you think you need to have a further response from  
24           them to their response?

25       MS FORD: It rather depends on what we receive, I think.

1 I am in difficulty in being specific.

2 MR SINGLA: We are clear about what we are going to provide.

3 I mean, I think by that stage -- they have had this. As  
4 you said, most of that will remain unchanged. They will  
5 have had that for many weeks. They will have had our  
6 non-custodial proposal as well, and they will have had  
7 answers --

8 THE CHAIR: So the idea is they will say, "We do not agree  
9 with you on this, we want this". You set out your  
10 pitch, and then the next stage will be to go into the  
11 sort of Redfern Schedule stage, whereby they will  
12 crystallise what do they want, and you will then respond  
13 to that document.

14 MR SINGLA: Yes.

15 THE CHAIR: Look, the vast majority of these entries are  
16 probably going to be agreed. What you will be arguing  
17 about is having a table which crystallises what the  
18 issues are between the parties.

19 MR SINGLA: Yes. Can I -- I forgot to make one very  
20 important point. We are keen to understand whether you  
21 will be chairing the next hearing, because having set up  
22 this process, it would obviously make --

23 THE CHAIR: Look, I am available on those -- is it the 29th  
24 and the 30th?

25 MR SINGLA: I am not sure what precise dates have been

1           floated, but having had the parties in front of you for  
2           two days, it would certainly assist --

3       THE CHAIR:   Look, subject to what the President says, I will  
4           reserve this next hearing to myself --

5       MR SINGLA:   I am very grateful.

6       THE CHAIR:   -- with my colleagues here, and we will aim to  
7           have it at the end of September. The other alternative  
8           is to say we have it in October, but I do not know what  
9           people's diaries are like, in which case you will have  
10          more time to get this process done.

11      MR SINGLA:   Yes. There may be an issue with October. I can  
12          come back to you on precise hearing dates, but you  
13          understand the --

14      THE CHAIR:   Yes, so the response will be in two weeks, and  
15          then your column will be two weeks thereafter.

16      MS FORD:   Is that the Meta column, sir, just to be clear?

17      THE CHAIR:   Yes, the Meta column. So you will respond to  
18          this, and you will produce your disclosure request of  
19          issues -- of areas of disagreement on disclosure. They  
20          will put their position on that, and then if you want  
21          another column, you can have one week thereafter, and  
22          hopefully it will fit, but the rest we can deal with on  
23          the day. All right.

24      MS FORD:   I wonder if, just before we move off the question  
25          of repositories and custodians, the particular concern



1           we have is that we understand the current search has  
2           been run on WhatsApp and work chat messaging systems,  
3           and it is unclear what the proposal is in relation to  
4           what additionally will be searched. That obviously is  
5           quite fundamental in terms of us understanding the scope  
6           of the dispute.

7       THE CHAIR: When you look at a custodian, you look at their  
8           messaging in every form, do you not? You look at the  
9           phones, you look at the emails, and the various apps.

10      MS FORD: That would certainly be our expectation.

11      THE CHAIR: Yes, and that is what my expectation would be.  
12           Mr Singla, is that really going to be an issue between  
13           you, as to the types of things?

14      MR SINGLA: I do not know what the answer to that off the  
15           top of my head is, but it is obviously something that we  
16           will engage on that sort of point --

17      THE CHAIR: You are going to have to engage on it, yes.

18      MR SINGLA: Yes, but I am not sure -- I mean, we are not  
19           taking questions and answers right now on it.

20      THE CHAIR: The three examples that I have given that  
21           I would expect -- look, it will be on the transcript,  
22           what we expect, and then you can respond.

23      MR SINGLA: Okay. I mean, I am not sure it is a good use of  
24           time now to ...

25

1 (Ruling given - published separately)

2 THE CHAIR: That is where we are on the Disclosure Report.

3 The next issue is are we going to have any form of RFI,  
4 and, if so, on what topics? Ms Ford.

5 MS FORD: Sir, we understood that your ruling yesterday was  
6 expressly based on the anticipation that there would be  
7 an RFI. For our part, we think it is a good idea, and  
8 we are proposing to make an RFI. It does not seem  
9 particularly appropriate --

10 THE CHAIR: This is an RFI for the purposes of disclosure.

11 MS FORD: This is for the purposes of establishing the  
12 question of what is the actual date from which Meta  
13 first considered, and then -- I am trying to recall the  
14 exact formulation that we used in our issues for  
15 disclosure -- from which it first considered receiving,  
16 collecting, processing or using the data which is the  
17 subject of the Class Representative's claim, which the  
18 Tribunal has obviously now determined to be Off-Facebook  
19 Data as defined by the Class Representative.

20 THE CHAIR: Yes.

21 MS FORD: So we would essentially be asking Meta to clarify  
22 what is the relevant date for those purposes, and that  
23 will cover both, when it considered doing so -- in  
24 relation to each of those categories, when it considered  
25 doing so and when it actually did so.

1 THE CHAIR: You see, it is such a fundamental issue that  
2 I think that if that is going to be done, it will need  
3 to be answered with a statement of truth --

4 MS FORD: Absolutely.

5 THE CHAIR: -- after having made reasonable inquiry of the  
6 relevant people et cetera, but subject to what  
7 Mr Singla says, I am inclined to direct that you can  
8 serve an RFI. Mr Singla's clients will respond to it to  
9 the best they can, and if there is any dispute about the  
10 adequacy of the response, that can be dealt with at the  
11 next hearing.

12 Mr Singla.

13 MR SINGLA: No, I do want to say something about this.

14 I mean, one has to remember how this issue has arisen.

15 THE CHAIR: Yes. It is a fundamental issue.

16 MR SINGLA: No, but --

17 THE CHAIR: It is a fundamental issue we need to get to the  
18 bottom of for the purposes of disclosure.

19 MR SINGLA: Well, with respect, no.

20 THE CHAIR: Unless you are going to say you are going to  
21 cover it some other way.

22 MR SINGLA: I am; that is what I have just said. Can I just  
23 go back a step?

24 THE CHAIR: Yes.

25 MR SINGLA: Right. When we first received the list of

1 issues for disclosure from the Class Representative,  
2 their temporal scope I think essentially across all  
3 issues was 2004. That was actually just wrong; it  
4 should have been 2005, but this wording that crept into  
5 the draft, "when did you first -- "from the date when  
6 you first considered" and so on, that was -- the genesis  
7 of that, was it was said to be a some compromise wording  
8 from the Class Representative. So they were saying:  
9 okay, we maybe do not need to go back as far as 2005;  
10 let us pick some other date undefined. That is the  
11 genesis of the wording.

12 THE CHAIR: That is, yes.

13 MR SINGLA: Yes, and where we got to yesterday was the  
14 default would be 2011 subject to an RFI. What I said  
15 earlier was that they do not need the RFI because we are  
16 happy to use 2007 or 2005 as the default, and then have  
17 arguments about whether it is proportionate to go back  
18 that far. So one has to ask oneself: what is the RFI's  
19 purpose, given where we have got to? You say it is  
20 a fundamental issue.

21 THE CHAIR: Fairly fundamental, yes.

22 MR SINGLA: Well, it is not going to assist on the  
23 disclosure side because, as we say, we are content with  
24 this 2007 or 2005 date. They will therefore have to  
25 justify that on proportionality grounds. You say it is

1 a fundamental issue generally. It is not something that  
2 has ever been an RFI on the pleadings. You say it would  
3 be helpful to have a statement of truth. Our position  
4 with the statement of truth in the Defence is that the  
5 first time Meta used for a personalised advertising on  
6 Facebook purpose was 2012 or 2013.

7 THE CHAIR: They have that on the pleading. Their question  
8 is slightly different. You are saying you have given  
9 the rough dates for actual use. Their question is when  
10 did you first contemplate, because at that stage you  
11 would expect documents to be generated.

12 MR SINGLA: Yes, but one has to ask oneself: why do they  
13 need the answer to that question? There are two  
14 potential answers. One, because they do not understand  
15 the pleaded case. Well, that is not the position,  
16 because they have never asked us this question before,  
17 and our pleaded case is the only thing that matters is  
18 monetisation on their claim, and we have given you dates  
19 with a statement of truth. So it is not going to  
20 advance things so far as the issues in the case are  
21 concerned. Is it going to assist on disclosure, which  
22 is where this first came in? Well, in my respectful  
23 submission, it will not, given our proposal. It is not  
24 going -- we are content with these early dates subject  
25 to proportionality. So why are they fishing around for

1 more information, and why should we be put to the  
2 burden, the significant burden, of having to go away and  
3 make inquiries which will, in and of itself, become  
4 a process? All of this has to happen, on their view of  
5 the world, by the time of the September hearing.

6 We respectfully disagree that given where we have  
7 got to and the constructive proposal we have made, this  
8 RFI has any independent utility.

9 THE CHAIR: (Pause) We will come back to this at 2:00  
10 because it is clearly a contentious issue between you,  
11 and the question is: are you, Ms Ford, accepting the  
12 concession by Mr Singla, namely that where we have not  
13 got those dates, we are now going to put in earlier  
14 dates than the 2011?

15 Presumably you are going to take that anyway; that  
16 is worth taking, but the question is -- and we will  
17 deal with this at 2:00 -- is it has been put in issue as  
18 to why you need this additional information either for  
19 the purposes of disclosure or the substantive issues in  
20 the case. Do not answer now, because I want a proper  
21 answer at 2.00, and if you can persuade us that it can  
22 fulfil either function, we will then come back to  
23 Mr Singla to see what he has to say,

24 but I can see that sometimes these things look  
25 really simple and you would have thought there is

1           a clear answer and they should be able to do it, and  
2           then when you actually try and get it done, it takes  
3           more than you contemplate, but we will hear this again  
4           at 2.00 and we will come to a view shortly thereafter.

5           (1.03 pm)

6                               (The luncheon adjournment)

7           (2.08 pm)

8           THE CHAIR: Ms Ford, I sent a message saying I would like to  
9           know the wording of the draft RFI, in broad terms.

10          MS FORD: Sir, yes. We have very recently sent to  
11          the Registry a draft that we have produced over lunch.  
12          I am hoping it has happened. I am afraid I do not have  
13          it printed out.

14          MR SINGLA: Sir, I am not sure we have received it on this  
15          side, and we certainly have not had a chance to  
16          consider it.

17          THE CHAIR: Let us get that printed out.

18          MS FORD: I understand it has been copied to my learned  
19          friend, but it is extremely recently because obviously as  
20          the Tribunal will appreciate --

21          THE CHAIR: That is fine. Is it one document?

22          MS FORD: It is one document, yes. I think it is two pages.

23          THE CHAIR: I think we need to look at it. The Registry  
24          says they have not received it.

25          MS FORD: I understand that actually it is being sent as we

1 speak. I am sorry, I thought it had been sent.

2 THE CHAIR: We will come back to this a bit later. The two  
3 issues that I wanted you to address me on, maybe you can  
4 do it anyway now, and then we can look at the precise  
5 wording later if we are inclined to give it, is to what  
6 extent is the request that you have outlined going to  
7 relate to an issue in the proceedings, ie you have shown  
8 me the pleadings; does this relate to an issue between  
9 the parties on the pleadings? In which case, it will be  
10 something that will fall quite standard within what is  
11 currently CPR 18 in relation to High Court.

12 The second is that the Tribunal has wide case  
13 management powers. As part of that, as we have done in  
14 previous cases, we can require a party to provide  
15 information which may assist in the disclosure process,  
16 including narrowing down disclosure. So if you can  
17 address it on both of those levels. Meanwhile, if  
18 someone can print out, let us say, eight copies of this  
19 draft, that can be done, and I suggest that is done by  
20 the Registry, because that will speed up time, speed  
21 things up. If you know who to send it to, send it to  
22 that person. They can liaise with people at the front  
23 to agree how it is going to be done.

24 Let us look at the extent to which -- well, just say  
25 what the request is in broad terms and then we will look



1           at the pleadings and see to what extent does it relate  
2           to a matter, an issue in the proceedings.

3       MS FORD:   Yes.   So the request is of paragraph 138(c) of  
4           Meta's Defence, which says {B/4/88}:

5                "Meta has received Third Party Activity Data for use  
6           in personal advertising on Facebook since around January  
7           2013".

8       THE CHAIR:   Wait a second.   Defence, sorry?

9       MS FORD:   Paragraph 138(c), which is on page internal 88 of  
10           the Defence, which is where Meta pleads:

11                "Meta has received Third-Party Activity data for use  
12           in personal advertising on Facebook since around January  
13           2013."

14                It is also of paragraph 154(a) {B/4/100}.

15       THE CHAIR:   Can I just find out where we are.   (Pause)   Just  
16           say, how does it start?

17       MS FORD:   Having identified those two paragraphs and what is  
18           said in them.

19       THE CHAIR:   Just read out paragraph 138(c) so I know where  
20           I am in the right spot.

21       MS FORD:   Sorry, the entire paragraph.   The second sentence  
22           is denied:

23                "Before Meta was even founded, the online eco-system  
24           had evolved to adopt various types of technologies."

25                Internal page 88 {B/4/88}, I am told.

1 THE CHAIR: Okay.

2 MS FORD: So it is of a particular passage in that  
3 paragraph, final sentence:

4 "Meta has received Third Party Activity Data for use  
5 in personal advertising on Facebook since around January  
6 2013."

7 THE CHAIR: Yes, but that last bit does not quite address  
8 what you are looking for at the moment.

9 MS FORD: No, but it is a request of this paragraph.

10 THE CHAIR: Okay.

11 MS FORD: So I am just identifying the two paragraphs of --

12 THE CHAIR: What is the other paragraph?

13 MS FORD: Paragraph 154(a), that is page {B/4/100}. It  
14 begins:

15 "The first sentence is denied. Meta repeats 138 of  
16 this Defence."

17 THE CHAIR: 154(a)?

18 MS FORD: Yes, and the particular passage we have asked  
19 about is as explained in 138(c) of this Defence  
20 {B/4/88}:

21 "Meta has received Third Party Activity Data for use  
22 in [provision of ads service since early] ... 2013."

23 And we are also asking in respect of the definition  
24 of Off-Facebook Data as directed by the Tribunal on 16  
25 (sic) July 2025, being yesterday, so we are asking

1           essentially in the light of the fact that the Tribunal  
2           has endorsed a definition of Off-Facebook Data.

3       THE CHAIR:   In relation to that, presumably you are only  
4           asking in relation to things that you have not already  
5           specified in your pleadings, are you?

6       MS FORD:   We are asking about Meta's case, so yes.

7       THE CHAIR:   Okay, we will have a look at it when that comes  
8           back.

9       MS FORD:   Then the request is:

10           "Of the definition of Facebook Data as directed by  
11           the Tribunal on 16 July 2025, please specify when and  
12           for what purposes the Meta corporate group, of which  
13           Meta Platforms Inc is the parent company and of which  
14           the Defendants are members, defined as Meta ..."

15           And it says:

16           "... first -- please specify when and for what  
17           purposes Meta first ..."

18           Then there is (a), (b), (c), (d):

19           "(a) collected Off-Facebook Data, and/or (b)  
20           received Off-Facebook Data; and/or (c) processed  
21           Off-Facebook Data; and/or (d) used Off-Facebook Data."

22           Then the second request is:

23           "Please specify when Meta first considered doing  
24           each of the acts identified 1(a) to (d) above."

25       THE CHAIR:   Okay, and you say that relates to issues in the

1           proceedings.

2           MS FORD: Absolutely, at the core of the proceedings.

3           THE CHAIR: But it also goes to disclosure exercise, that  
4           you need to have that in order to basically know what is  
5           being disclosed and what time periods and stuff like  
6           that.

7           MS FORD: It goes to both those issues. In relation to the  
8           pleaded case, we say this would on any view be  
9           a legitimate request for information for us to make in  
10          the light of the submissions that were made yesterday,  
11          and in the light in particular of the three elements of  
12          the lack of clarity that arises from Meta's case. We do  
13          not know when they first did these activities. We do  
14          not know -- we are not told what their case is in  
15          relation to any purpose other than personalised  
16          advertising, so we are entitled to ask about any other  
17          purposes for which they collected this data. We heard  
18          yesterday from Meta that their definition of Third Party  
19          Activity Data is different from the Tribunal's  
20          definition of Off-Facebook Data so we are entitled to  
21          ask what their case is in relation to all these matters  
22          in relation to Off-Facebook Data.

23          THE CHAIR: What we will do is that we will deal with this  
24          after the next break, because that will give everyone  
25          time to digest what the actual wording is and Mr Singla

1 to respond to this. We are not going to waste any time  
2 because we will deal with finalising the list of issues  
3 for disclosure first, and then we will see how much time  
4 we have left at the end of the day to consider the RFI,

5 but I think it is only fair to Mr Singla that he has  
6 time to consider this and discuss it with his solicitors  
7 and clients and comes back with a properly formulated  
8 response to that, but we can consider this when he has  
9 had more time to look at it properly. I do not want it  
10 to interfere -- although he is a very experienced  
11 advocate and he can deal with things easily, he still  
12 needs to get instructions as to what his position is  
13 going to be on the actual wording that is produced.

14 Let us go back to the list of issues for disclosure  
15 and we will come back later on the RFI.

16 Am I right in thinking that this is the -- once we  
17 finalise the list of issues for disclosure and subject  
18 to the RFI, we are basically done, subject to just  
19 running through what the order is going to be?

20 MS FORD: I believe that is correct, yes. Yes, it is.

21 THE CHAIR: Your junior will have the job of sorting out the  
22 wording of the order with his opposite number, and that  
23 should be filed with the Tribunal by close of business  
24 tomorrow.

25 Hopefully, that will append the final -- it may not

1           need to append it, but together with that we will have  
2           the final version of the RFI -- not the RFI, the list of  
3           issues for disclosure, and what he should be doing in  
4           relation to that list of issues for disclosure is adding  
5           in, to the extent relevant, which of the relevant  
6           paragraphs of the statement of case that relate to each  
7           specific issue.

8           MS FORD: Yes, that exercise has to a certain extent been  
9           done. We have not troubled the Tribunal with  
10          an enormous table that had that in it --

11          THE CHAIR: I do not need that now. I do not need to see  
12          the words all quoted or anything, you just say the ACF  
13          para whatever, and whatever it is, just put that  
14          underneath the issue, and for Mr Singla's team, they are  
15          free to put in any other paragraph in any statement of  
16          case. We are not going to resolve who is right and who  
17          is wrong. We are just going to get the list of issues  
18          finalised.

19                 Okay, so shall we go through the list of issues?

20                 Which version am I working from now?

21          MS FORD: For my part, we have the version that Meta handed  
22          up this morning. We have been working on a version that  
23          inserts our wording, but given the various things that  
24          have been going on --

25          THE CHAIR: Yes, just how am I going to figure out which is

1                   which?

2           MR SINGLA:   Sir, you can identify --

3           THE CHAIR:   Is it neither of those?   Okay.   Can someone just

4                   give me a version.

5           MR SINGLA:   Sir, if you look at issue 2(2) --

6           THE CHAIR:   Yes, but I clearly do not have the right one, so

7                   give me another copy.

8           MR SINGLA:   I was trying to help you identify whether you

9                   have.

10          THE CHAIR:   I may have it; wait a second.   "Updated

11                   composite to reflect CMC3 Day 1 rulings", is that it?

12                   Okay, we now have it, thank you very much.

13          MR SINGLA:   Just to double-check, if you look at 2.2,

14                   {D/10/4} there should be a column saying "Meta Wording

15                   following Day 1".   Does it say "From TBD"?

16          THE CHAIR:   That is fine.   Thank you very much.   Okay.   Let

17                   us go through it, then.

18          MS FORD:   So the first issue in relation to which there is

19                   a residual dispute on the word is 1(4).

20          THE CHAIR:   Okay, what I am going to do is go through each

21                   one and tick it once it has been agreed.   Is 1(1)

22                   agreed?

23          MS FORD:   Yes.

24          THE CHAIR:   And I tick the box "Meta Wording following Day 1

25                   CMC3".   That is all I have to do, so I tick that one.

1           Okay. 1(2), do I do exactly the same?

2           MS FORD: Yes.

3           THE CHAIR: So there will be -- when it comes back, there  
4           will be issue 1(1), that wording, and then in brackets  
5           after that the references to the relevant pleadings in  
6           brackets, not setting out what the wording is, just the  
7           paragraph numbers of each of the pleadings. That is  
8           fine. 1(3), is there an issue on that?

9           MS FORD: No, the parties agreed to take it out.

10          THE CHAIR: So you agree that -- I just put a line through  
11          that. That is not going to be reflected in anything, it  
12          just disappears; yes?

13          MS FORD: Yes.

14          THE CHAIR: 1(4)?

15          MS FORD: 1(4) there is an issue on.

16          THE CHAIR: Okay, let us see what the issue is.

17          MS FORD: This is one of a number of IFDs where Meta has  
18          proposed to put in whether the IFD relates to the user  
19          -side of Facebook or the advertiser-side of Facebook. In  
20          relation to the vast majority of those, we have been  
21          able to agree, we say fine. There are a few where we  
22          think actually it is not correctly characterised as one  
23          or the other, and this is one of them. This is about  
24          which Meta entities:

25                 "How, and by which entities within Meta, have



1 decisions been made ... in respect to the use of  
2 Off-Facebook Data relating to UK users ..."

3 And we are suggesting that those decisions need to  
4 include both user- and advertiser-side of Facebook,  
5 because we would say, self-evidently, questions of  
6 business and monetisation strategy engage both sides of  
7 the Facebook platform.

8 Meta's wording in relation to this has suggested for  
9 advertising purposes on the user side of the Facebook  
10 platform only, and so that would exclude anything in  
11 relation to the advertising side. There is a further  
12 dispute which is that our wording includes "How, and by  
13 which entities within Meta" and their counter-wording is  
14 simply asking "which entities".

15 THE CHAIR: Let us hear from Mr Singla on this. I am not  
16 sure how far you are apart, really.

17 MR SINGLA: No. Essentially the background to this does  
18 affect a number of issues. We had originally used the  
19 words "the Facebook Service", but the Class  
20 Representative objected to the use of "the Facebook  
21 Service", so all we are seeking to do is to be specific.  
22 Throughout the list, we will come to later, there is  
23 a whole section on the advertiser side and the user side  
24 and so on, and all we are really seeking to do is to  
25 confine this to "advertising purposes on the user side

1 of Facebook". Their case is about advertising on the  
2 user-side. We are not at this stage of the list talking  
3 about the advertiser-side.

4 I mean, if we were to stop -- if you look at our  
5 wording and if we were to stop after "for advertising  
6 purposes", we would be content with that. It is just to  
7 make sure we are being precise about what this issue is  
8 covering: it is Meta entities responsible for  
9 decision-making on the use of the data relating to UK  
10 users for advertising purposes. Whereas in issue 1(4)  
11 they are asking about what was going on on the  
12 advertiser's side as well, and that is covered later in  
13 the advertiser's side section of this document.

14 THE CHAIR: As long as it is covered later on it is not  
15 a problem.

16 MS FORD: For our side, we are happy with "for advertising  
17 purposes", full stop. It was confining that to the user  
18 side of Facebook --

19 MR SINGLA: Sorry, to be clear, "advertising purposes on  
20 Facebook". It has to be narrowed to the platform. That  
21 is the debate we had this morning.

22 MS FORD: Yes. It is confining it to the user-side only  
23 that we had the concern with, given that advertiser  
24 services, by definition, involve the advertiser-side.

25 THE CHAIR: It looks as though you agree this. Just take

1 out on the last column "on the user-side of Facebook"  
2 and then I can tick it.

3 MR SINGLA: We are leaving in "Facebook". So it is going to  
4 say "for advertising purposes on Facebook". I think  
5 Ms Ford just said that is agreed.

6 MS FORD: Yes, that is fine.

7 THE CHAIR: That is agreed.

8 MS FORD: Yes.

9 THE CHAIR: Others are captured elsewhere. So that is fine.

10 So we have 1(4) done. I can tick that one.

11 MS FORD: Subject to the point about "how". We are asking  
12 "how, and by which entities" have these decisions been  
13 made, and I think Meta is suggesting just telling us  
14 which entities and not how they have been made.

15 MR SINGLA: I am not sure we understand why "how" is being  
16 introduced here. If we go back to the heading, this is  
17 section A of the list of issues, it is to do with Meta's  
18 corporate structure, so actually at this stage of the  
19 list trying to bottom out some very fundamental points  
20 about which entities were doing things. We are not  
21 quite sure at this stage why we are getting into "how"  
22 things were going on. It is just which entities. There  
23 is an issue about the Defendants and whether they were  
24 doing certain things or not. This is just about  
25 corporate identity.

1 THE CHAIR: I have ticked the third column, the words "on  
2 the user-side of Facebook", just putting "on Facebook".

3 MR SINGLA: Thank you, yes.

4 THE CHAIR: As you say, once you get into "how", you are  
5 confusing different points.

6 MR SINGLA: Yes.

7 THE CHAIR: Next one.

8 MS FORD: Issue 2(1) is another of these issues where there  
9 has been an insertion of wording. The Class Reps  
10 wording -- this is again a question about entities:

11 "... which Meta entity or entities have been  
12 responsible for providing advertising services to  
13 advertisers in relation to UK users?"

14 Then we are just slightly mystified by the proposed  
15 alternative wording, which ends up saying:

16 "... which Meta ... entities have been responsible  
17 for providing advertising services to advertisers in  
18 relation to UK users for advertising purposes on the  
19 advertiser-side of Facebook?"

20 It seems to us to be potentially duplicative and not  
21 clear what it is achieving.

22 THE CHAIR: Mr Singla, I think she is right about that.

23 MR SINGLA: It is actually the mirror image of the one we  
24 were looking at just a moment ago.

25 THE CHAIR: That's the other way of looking at it.

1 MR SINGLA: It is just for advertising purposes on Facebook.

2 It is two sides of the same coin. I hope that  
3 demystifies the position.

4 THE CHAIR: I think it does. (Pause)

5 Ms Ford?

6 MS FORD: Sorry, those behind me simply point out that this  
7 advertising services qualification is already in the  
8 wording. We are asking who has been responsible for  
9 providing advertising services to advertisers in  
10 relation to UK users.

11 THE CHAIR: Look, what we are going to do is, looking at  
12 column 3, and we are taking out "on the advertiser side  
13 of", so "for advertising purposes on Facebook". Does  
14 that work? Or are you saying that that does not work,  
15 in which case why, and then we can argue it.

16 MS FORD: No, that works.

17 THE CHAIR: I think it works. Okay. So we have done 2(1),  
18 okay. Next one.

19 MS FORD: 2(2). This was originally an issue where we had  
20 said "from the point when Meta first considered"  
21 et cetera, and I think the proposed Meta wording now  
22 says "to be determined".

23 THE CHAIR: What the proposal is, we are going to put 2005.

24 MR SINGLA: Or 7, and then --

25 THE CHAIR: Whatever --

1 MR SINGLA: Exactly.

2 THE CHAIR: -- whichever one you have agreed, and then we  
3 have the separate issue of the RFI.

4 MS FORD: Right.

5 THE CHAIR: So is this a 2005 or 2007 one?

6 MS FORD: (Pause) Yes, given this is in the context of the  
7 corporate structure, we would say this is a 2005  
8 question.

9 THE CHAIR: I think so, but then if we are going to have the  
10 RFI, we may have to -- we are not going to change the  
11 list of issues, but we may have to revisit some of these  
12 issues at the next CMC, if we are going to have the RFI,  
13 and see what the answer is on that, but I think for  
14 current purposes, I think the suggestion of Mr Singla is  
15 eminently sensible. So we are going to order column 3,  
16 put 2005 in there. Yes. 3(1).

17 MS FORD: 3(1), I think from our perspective we are happy  
18 with the wording that is in the Meta column.

19 THE CHAIR: All right, so third column, we tick that. 3(2)  
20 {D/10/5}.

21 MS FORD: First of all, this is a temporal scope question  
22 where there is a "to be determined" in brackets.  
23 I think given that this is asking about terms and  
24 policies we would say that this is probably a 2005  
25 issue.

1 THE CHAIR: 2005, is there anything else in that wording  
2 that you are not happy with?

3 MR SINGLA: Can I -- I can maybe assist. The main problem  
4 we have with the CR's wording here, which I think crops  
5 up elsewhere, is if you look at the left-hand column,  
6 bottom, two lines up, "including alternatives". Do you  
7 see that? Do you see in green "including alternatives"?

8 THE CHAIR: Well, that may be part of the testing, but,  
9 I mean, I can see that may well form part of the  
10 testing, "including alternatives". I think that would  
11 follow anyway.

12 MS FORD: We have actually -- it is one of the things we  
13 have asked Meta to confirm. If they are happy to treat  
14 testing as including potential alternatives then that is  
15 fine by us, but we understand that actually they are  
16 suggesting they are not content to include references to  
17 alternatives.

18 MR SINGLA: Can I explain why? Because, sir, the testing is  
19 the testing of things which Meta goes on to actually  
20 do --

21 THE CHAIR: But you quite often test against alternatives  
22 though, do you not?

23 MR SINGLA: Yes, but what is the relevance of the  
24 alternatives? Where does it stop? We are talking about  
25 the list of issues disclosure which the guidance, at

1           least in the CPR, says should be the key issues in the  
2           case.

3           Now why are we looking at all the things that were  
4           tested, but were never actually implemented, that did not  
5           see the light of day? That is the problem.

6       MS FORD: Perhaps I can assist on why we say this is  
7           relevant. This is an issue for disclosure which  
8           concerns the introduction of terms and conditions with  
9           users and how they were tested. What we mean by  
10          "alternatives", to be clear, is potential options which  
11          were considered or tested but ultimately not  
12          implemented, and we say particularly in the context of  
13          the parties joining issue on questions of transparency,  
14          and I took the Tribunal through in some detail yesterday  
15          the pleadings and how we put Meta on notice of their  
16          professed keenness on transparency, we say it is highly  
17          informative and relevant to understand whether there  
18          were potential options which potentially would have been  
19          more transparent which were considered and discarded,  
20          and that would also arise in relation to Meta's pleaded  
21          case that their approach is legitimate and  
22          proportionate. Because, again --

23       MR SINGLA: Sir --

24       THE CHAIR: We will make it your wording. It is pretty  
25          obvious you are right on that, we agree with that.



1           So what is the final wording we are going to have?  
2           Is it the last column, but with the additional  
3           "including alternatives" on it?

4       MS FORD: It would include "alternatives". There is also  
5           a granular drafting issue, which I am just trying to  
6           turn to my notes to remind myself what it is, that  
7           arises on this issue. It is the "how and why" wording.  
8           We have asked in relation to this issue "How and why the  
9           terms and conditions applicable to users were designed  
10          and implemented by Meta", and what Meta is proposing by  
11          virtue of its wording is simply to explain essentially  
12          how and why they were displayed to users.

13          This is the -- the wording in this 3(2)(ii), "design and  
14          implement those terms and policies", we say that again,  
15          in the context of this dispute about Meta's lack of  
16          transparency, including as regards the terms and  
17          conditions that Meta imposed on users, it is relevant to  
18          ask how and why particular terms and conditions were  
19          designed and implemented by Meta, not just how they were  
20          displayed.

21       THE CHAIR: Mr Singla, do you want to respond to that last  
22          point?

23       MR SINGLA: No, I will. So we have accepted in our wording  
24          the "design" after 3(2)(ii), but it is "and implement" which  
25          we submit is duplicative, because 3(2)(i) is "introduce".

1           So we are not sure why one needs 3(2)(i) "introduce", and  
2           then (ii) "implement".

3       THE CHAIR: Yes, I can see that.

4       MR SINGLA: That is the point.

5       THE CHAIR: Ms Ford, although it is potentially duplicative,  
6           I can see no --

7       MS FORD: Sorry, sir, I am just trying to see where that has  
8           been included in Meta's wording. I am not seeing  
9           a Roman --

10      THE CHAIR: I am inclined, subject to what my colleagues  
11           say, is to adopt your wording, subject to dealing with  
12           the date point, which is the 2005 point. There is  
13           potentially an element of duplication, I accept that,  
14           but it is fine. You have to amend 3(2) slightly to deal  
15           with the date point. So I will tick 3(2) and put "plus  
16           date". Yes, next one.

17      MS FORD: 3(3), there is a "to be determined temporal scope"  
18           box. So this is a --

19      THE CHAIR: Where you are going to put either 2005 or 2007.

20      MS FORD: Yes. (Pause) Those behind me, sir, say 2005.

21      THE CHAIR: Okay, Mr Singla, so on this one, it will be your  
22           wording, just putting in "2005".

23      MR SINGLA: Yes. Can I just make clear, I think this is  
24           sufficiently clear, but for the transcript, I think the  
25           point you made yesterday is the further back they go,

1           the less relevant it will be and the greater the burden  
2           will be on them to justify proportionality. I don't  
3           want this to become a free for all where they just say  
4           it's 2005 on everything. They do need to be sensible on  
5           this, because the onus will be on them to justify going  
6           further back in time.

7       THE CHAIR: The further back you go and the more costly the  
8           exercise is going to be, the greater the burden on the  
9           other side, given the concept of proportionality,  
10          reasonableness and necessity.

11       MR SINGLA: I am grateful for that.

12       THE CHAIR: That is clear.

13       MR SINGLA: That is clear.

14       THE CHAIR: Thank you. Next one.

15       MS FORD: The difference in the wording is -- there is  
16           a cross-reference in this issue. We say for the terms  
17           and/or policies referred to in issue for disclosure  
18           3(1). If the Tribunal turns back to issue for  
19           disclosure 3(1), there are three categories: it is  
20           "user-side of Facebook, "data generated as a result of  
21           their activity on the user-side of Facebook", and  
22           "Off-Facebook Data". The Meta wording is suggesting  
23           that it is confined to (a).

24       MR SINGLA: That is fine. We can take the (a) out.

25       THE CHAIR: Take out the reference to (a), that is right.

1           Thank you for being sensible, Mr Singla. That helps us.

2           Next one, 3(4).

3       MS FORD: 3(4), the --

4       THE CHAIR: You will have the same point there.

5       MS FORD: The same point, exactly. The same date range,  
6           presumably, and the same cross-referencing point arises.

7       THE CHAIR: Are you happy with column 3, just putting in  
8           2005 and deleting the (a)?

9       MS FORD: Yes.

10      THE CHAIR: Thank you. 3(5) {D/10/6}.

11      MS FORD: 3(5), there is a date to be confirmed.

12           Consistently that would be 2005 as well, and there is  
13           a difference in wording in relation to we ask "why did  
14           Meta communicate these terms ... or policies ... in the  
15           ways that they did", and Meta simply want to ask how did  
16           they communicate these terms or policies. This comes  
17           back to a similar point about --

18      THE CHAIR: I can see why you want it that way, but we have  
19           to have an argument on that, sorry, for Mr Singla --

20      MR SINGLA: Yes, sorry, I didn't mean to interrupt.

21      THE CHAIR: -- to see what the two angles of the argument  
22           is. You have three possibilities. You can put "how and  
23           why"; you can have "how"; and you can have "why".

24      MR SINGLA: Yes. It --

25      THE CHAIR: Let us just see which is the best one.

1 MR SINGLA: Yes, can I just explain? The "why" is the  
2 problem. The "why" is getting into the internal or the  
3 subjective rationale for doing things, which even on the  
4 difficult to follow Claim Form is not part of this case.

5 So it is not being suggested there is any subjective  
6 intention to mislead and so on, but insofar as there is  
7 a complaint about transparency, that has to be  
8 investigated on an objective basis. So actually, going  
9 back to the debate we had about what is their case, they  
10 are saying the terms of service for the Facebook  
11 platform were not clear. Well, we will then see that  
12 and be able to test that by reference to what those  
13 terms and policies were.

14 What one does not need is an internal investigation  
15 as to what Meta was considering internally, why were  
16 they doing certain things? That is not part of its  
17 case. That really would have to be pleaded if they are  
18 alleging some sort of subjective conduct here. Of  
19 course, just on this, actually, it is quite an important  
20 point: on this whole transparency issue, sir, there is  
21 a paragraph, I accept, where a criticism is made about  
22 transparency. One does have to be quite careful with  
23 that allegation because the first iteration of this case  
24 included allegations of misrepresentation, and this  
25 Tribunal in its first judgment pointed out there is no

1 jurisdiction here to try such cases. We are ultimately  
2 dealing with a competition case. The alleged abuse is  
3 not even a lack of transparency. So starting to fish  
4 around for internal "why" documents really does go  
5 beyond the four corners of even their case.

6 MS FORD: I have shown the Tribunal the passage where we say  
7 that transparency does go to the alleged abuse, but the  
8 question of subjective intention actually comes from  
9 Meta's case, because it is Meta that has pleaded that it  
10 ensures that Facebook users understand how their  
11 personal data is being used and that it had a desire to  
12 provide transparency and clarity to users. That is  
13 their Defence 68(d) {B/4/45} and 70 {B/4/47}, both of  
14 those, but very particularly expressing a desire to  
15 provide transparency and clarity, with which the Class  
16 Representative has joined issue in the reply, I think  
17 I showed the Tribunal that earlier. That does put in  
18 issue the question of why Meta chose to communicate  
19 terms and policies in the ways that it did.

20 MR SINGLA: It is quite interesting, that is based on our  
21 pleadings so she has accepting they have no pleaded case  
22 in this regard. We do keep coming back to this, sir.  
23 This may be a theme this afternoon. This is supposed to  
24 be a list of key issues for disclosure.

25 Again, just a single reference in a long pleading is

1 not a sufficient hook. A case about transparency or  
2 lack thereof, terms can be tested at trial by  
3 reference to those terms. One needs to be very careful  
4 with this pleading and the way the case is just really  
5 just casting around. It is quite revealing that she  
6 points to our Defence on this, which confirms that they  
7 have no case in this regard.

8 THE CHAIR: (Pause) The way it has been pleaded in the  
9 Defence does open up "why", because their case is they  
10 did not have the intention. So we will have "why", but  
11 there is a caveat here, which I said before. We are  
12 going down this particular route. This is not the right  
13 route for a list of issues, but we will explain that in  
14 the ruling, but I think that Singla has been very, let  
15 us say, flexible and accommodating in relation to the  
16 whole approach in relation to this document, because as  
17 I said before, I would have -- if it had come to me,  
18 I would have said we just start again, but given all  
19 the work that had been done in the DR by reference to  
20 this, it would be completely pointless to say: we start  
21 again at this stage. So it is going to be "why", and  
22 2005.

23 That is 3(5), okay.

24 MS FORD: 3(6), there are two points. The first is the time  
25 period to be confirmed, and consistently with the

1 previous ones, we would say that is another 2005 one.

2 THE CHAIR: You do not want "how"?

3 MS FORD: Sorry, "how" is Meta's proposed alternative to  
4 "why".

5 THE CHAIR: You only want "why"; you do not want "how" as  
6 well. That is fine. That is understandable.

7 MS FORD: Well, it actually refers back to the previous  
8 issues, I think. The "how" has been covered.

9 THE CHAIR: Yes, so it is just "why" in 3(5). We are now on  
10 3(6).

11 MS FORD: Yes, so 3(4) is by what means, so that is  
12 essentially how, and then 3(5) why.

13 THE CHAIR: Yes. 3(6).

14 MS FORD: 3(6) is the date, which we would say again 2005,  
15 and there is the same cross-reference issue to 3(1) and  
16 the three categories.

17 THE CHAIR: We take the (a) out.

18 MS FORD: Yes.

19 THE CHAIR: Okay. So that is 3(6) is agreed, 2005 and the  
20 (d) taken out. 3(7), that is agreed, is it?

21 MS FORD: 3(7) is agreed, yes.

22 THE CHAIR: So I tick third column, yes.

23 MS FORD: 3(8) is first of all a temporal scope question,  
24 and consistent with previous issue 3s, that presumably  
25 would be 2005.



1 THE CHAIR: Is that the only change you want to the third  
2 column at this stage?

3 MS FORD: No, so there is --

4 THE CHAIR: A bit further, there is a difference between --

5 MS FORD: There are differences.

6 MR SINGLA: Can I assist, sir? I do not want to interrupt,  
7 but can I assist?

8 THE CHAIR: Yes, of course you can.

9 MR SINGLA: The issue here is, leaving aside "why" and  
10 temporal scope, the issue here is they say: did Meta  
11 prompt UK users to accept the terms and policies. We  
12 are trying to add the words "and/or make UK users  
13 aware", because if what is being said is we were not  
14 transparent and so on, then it is not just acceptance of  
15 the terms; it is also making people aware of the terms.  
16 That is the point. I am sure Ms Ford will agree with  
17 that, given what she said about transparency.

18 THE CHAIR: At the moment I am inclined to accept the  
19 wording in column 3 --

20 MR SINGLA: I am grateful.

21 THE CHAIR: -- subject to anything Ms Ford is going to say.

22 MR SINGLA: I am grateful.

23 MS FORD: We have no concerns about adding in "make aware".

24 There is a "how" and a "why" point at the end of the  
25 3(8), Meta's formulation says "if so, how", and we ask

1 "if so, how and why", which is consistent --

2 THE CHAIR: That is consistent with the others, yes. How  
3 and why, yes.

4 MS FORD: Then there is a very small point about  
5 cross-referencing, and I am not even sure that it is  
6 substantive so much as tidiness. We proposed Meta --  
7 "did Meta prompt UK users to accept the terms and  
8 policies referred to in 3(1) above", and then Meta  
9 referring to 3(1) and (2) above. Yes, what we have put  
10 in is "did they accept the policies and/or any  
11 significant or material changes thereto relating to  
12 Meta's collection and/or receipt and/or processing"  
13 et cetera. What I think we have asked for confirmation  
14 of is the intention by inserting "and (2)" simply to  
15 incorporate, in neater form, a reference to changes to  
16 the policies, in which case, fine.

17 THE CHAIR: Well, it should include changes to the policies,  
18 but -- Mr Singla.

19 MR SINGLA: Yes, I agree.

20 THE CHAIR: It does include changes to the policy. Just put  
21 the words "including changes" in the last column.

22 MS FORD: Our wording, "and any significant material changes  
23 thereto".

24 THE CHAIR: Exactly, put "and why" and 2005.

25 MS FORD: Yes. 3(9), we have a suggested 2011 date that has

1           been put in here. We are not sure on what basis that is  
2           saying 2011 when this is one of those ones where we  
3           originally suggested, "from the point at which Meta  
4           first considered" et cetera.

5       MR SINGLA: I think this -- we are not pushing 2011 on the  
6           date point now.

7       THE CHAIR: Yes, so we are just saying from 2005 to date.

8           Is there any other changes that you are saying that you  
9           object to in relation to 3(9)?

10      MS FORD: There is a point of granular drafting in relation  
11           to this issue, which is -- yes, it was the  
12           cross-reference to 3(2) appears here again, so we  
13           presumably can substitute "significant material changes"  
14           for that. Yes.

15      THE CHAIR: We have that already.

16      MS FORD: Yes, so -- yes, this actually uses both. It says  
17           "significant material changes referred to in IFD3(2)",  
18           so belt and braces.

19      THE CHAIR: The only change at the moment I am going to make  
20           on this is, the date, 2005 instead of 2011.

21      MS FORD: There is a further issue, which is that Meta's  
22           wording excludes whether it monitored, tracked or  
23           recorded whether terms and conditions were in fact read  
24           by users. So it focuses -- it asks whether users were  
25           prompted to read or accepted or confirmed that they had

1 read terms and conditions, but what it is not offering  
2 disclosure on is whether or not it tracked or recorded,  
3 and the fact -- whether, and the extent to which, UK  
4 users in fact did read those terms and conditions.

5 MR SINGLA: That is covered by the first line. I do not  
6 follow this point at all. "Did Meta track monitor  
7 and/or record".

8 MS FORD: It is not covered by the first line, because what  
9 is covered is whether they accepted or confirmed that  
10 they had read. What we are asking about is whether or  
11 not they monitored whether they had in fact read.

12 MR SINGLA: We do not follow the relevance of that at all.  
13 I mean, sorry, but this is about users. Our wording is  
14 "Did Meta monitor, track and/or record whether UK users  
15 accepted and/or confirmed they had read and/or were  
16 prompted to read". I mean, what is the problem?  
17 I cannot understand.

18 MS FORD: The alternative language is at the end of --

19 THE CHAIR: What you are trying to capture is the reality,  
20 because you are saying people have this on their mobile,  
21 they just click it. They click, they confirmed and they  
22 have read it, when in fact the vast majority of people,  
23 they just do not have the strength and willingness to  
24 read all those conditions. So we will go back to your  
25 wording on that. Thank you.

1 All right. Next one.

2 MR SINGLA: Sorry, before we leave that issue, we have added  
3 in "prompted to read". That is not just "read", it is  
4 "prompted to read". This is very similar to the point  
5 we discussed earlier.

6 THE CHAIR: We have "confirmed that they have read", that is  
7 one, "and/or were prompted to read".

8 MR SINGLA: We say that should be in. It is not in the  
9 Class Representative's --

10 THE CHAIR: It should be in, I think that is right. What  
11 I have accepted is 3(9), last column, taking out 2005,  
12 and looking -- and adding the additional point that  
13 I have accepted Ms Ford can have in, which is "on actual  
14 reading".

15 MR SINGLA: I would like to understand --

16 MS FORD: It is the words at the bottom of the box "were  
17 read (in full or in part) by UK users". So it is  
18 actually asking were they read. To what extent did you  
19 track or monitor were they actually read. Those are the  
20 words.

21 THE CHAIR: I know. Move on. Next point. So 3(10) we can  
22 tick {D/10/7}.

23 MS FORD: 3(10) is fine, yes. Issue 4, there is a temporal  
24 scope date to be inserted.

25 THE CHAIR: Exactly, so that is for you to insert and see if

1           Mr Singla is happy with it.

2           MS FORD: It is also about terms and conditions. This is

3           the issue that relates to third party terms and

4           conditions, so we would say 2005 for the ...

5           THE CHAIR: Okay. Mr Singla?

6           MR SINGLA: No, I think there is something more fundamental

7           on --

8           THE CHAIR: We are looking at 4.

9           MR SINGLA: Yes, not 4, sorry, 4(1).

10          THE CHAIR: We have not got to 4(1) yet.

11          MR SINGLA: Sorry, 4 is temporal only, but I think we are

12          about to come to a group which we can address.

13          THE CHAIR: 4 is okay?

14          MR SINGLA: Yes, 4 is okay.

15          THE CHAIR: We can tick 4, we are putting in 2005. The next

16          one is 4(1).

17          MS FORD: The first point between us is that our wording

18          refers to "terms, policies and/or arrangements" and Meta

19          would prefer to simply refer to "terms or policies".

20          The basis on which we have referred to arrangements is

21          that we consider wording such as arrangements is

22          materially different than wording of terms or policies,

23          and it is wording which Meta itself has used. So, for

24          example, Defence paragraph 160(a) at {B/4/103} refers to

25          "arrangements with" Meta's partners.

1 THE CHAIR: Is that the only issue that is between you at  
2 the moment?

3 MS FORD: There is a further issue we need to come on to  
4 about the wording about commercial purposes, but that is  
5 a separate point from the wording about arrangements,  
6 which we say, given that Meta itself --

7 THE CHAIR: In 4(1)?

8 MS FORD: In 4(1), yes.

9 THE CHAIR: You put "for commercial purposes", and they are  
10 saying effectively "for personalised advertising on the  
11 user-side of Facebook".

12 MS FORD: Yes.

13 MR SINGLA: It goes back to the argument we were having this  
14 morning which is, the pleaded case only concerns  
15 advertising. It is actually very specific. We submit  
16 this is actually very similar to the ones we were  
17 talking about earlier this afternoon. We can delete "on  
18 the user-side", but it does need to be confined to  
19 "advertising on Facebook".

20 THE CHAIR: Where I am at the moment, is I agree with you  
21 about "arrangements", so you add that in in 4(1), but  
22 provisionally, subject to speaking to my colleagues if  
23 there is any dispute, I would take out the words "the  
24 user-side of" in the last line, and that is consistent  
25 with the rulings that we have given at this CMC and how

1           we are dealing with it above.

2       MS FORD: Those behind me indicate they are fine with --

3       THE CHAIR: Yes, it all follows. So 4(1), we use, column 3,

4           adding in "arrangements" in line 1, and taking out "the

5           user-side of" in the final line. Next one, 4(2).

6       MS FORD: 4(2).

7       THE CHAIR: Hopefully we will get through a few pages which

8           are quicker than this.

9       MS FORD: First of all a temporal scope point to be put in,

10           and again, because this is terms, we would say 2005.

11       THE CHAIR: Yes.

12       MS FORD: There is the same point about "design and/or

13           implement" which we had earlier discussed and I think

14           the Tribunal indicated should be included in relation to

15           terms.

16       THE CHAIR: Also "including alternatives". We have already

17           done that.

18       MS FORD: Of course, also including "arrangements", so there

19           is quite a few of the issues which have previously

20           arisen.

21       THE CHAIR: So "arrangements", "alternatives", 2005, and

22           also having "design and/or implemented".

23       MS FORD: Yes.

24       THE CHAIR: Okay. Mr Singla, on this one.

25       MR SINGLA: Yes. Just a second.



1 THE CHAIR: Just take a second, that is fine.

2 MR SINGLA: Sorry, just to be clear as to the difference  
3 between these issues. These all concern arrangements  
4 with third parties, not with users. So I am not sure it  
5 is actually as simple as saying what we did before  
6 necessarily carries across. If I could just have  
7 a moment, sorry.

8 THE CHAIR: Yes.

9 MR SINGLA: (Pause) Okay, so I think on this point, I am  
10 not going to try to re-argue a point that you have just  
11 dealt with, but "alternatives" is a concern here,  
12 because now we are, as I say, issue 4, all of these  
13 sub-issues are about terms with third parties. So  
14 whereas I did not accept that "alternatives" was  
15 relevant as far as users are concerned, but now we  
16 really are going into territory that is so peripheral,  
17 if relevant at all. I think we can live with the CR's  
18 wording on "design and/or implement", we can live with  
19 "the arrangements" even though that is quite vague, but  
20 I would have another go at saying here, when one is  
21 dealing with third parties, including "alternatives" is  
22 too far reaching.

23 THE CHAIR: So really the only issue now is "including  
24 alternatives".

25 MR SINGLA: Well, I am trying to cut through this.

1 THE CHAIR: No, I agree. You are being sensible.

2 MS FORD: I showed the Tribunal when we addressed the  
3 question of transparency that it applies not only in  
4 respect of Meta's terms with users, but also in respect  
5 of Meta's terms vis-a-vis third parties.

6 MR SINGLA: But that is a point I never dealt with.

7 THE CHAIR: That is not the same thing, that is the problem.

8 MR SINGLA: I never got round to dealing with that in my  
9 submissions because ...

10 THE CHAIR: We are going to include "including alternatives"  
11 so you do not need to come back on that.

12 MS FORD: I am grateful.

13 THE CHAIR: So that solves 4(2). 4(3)?

14 MS FORD: 4(3), so there is a distinction between "entities  
15 within Meta", plural, "were responsible for each of the  
16 design and/or implementation". So again we have the  
17 "design and/or implementation" wording, and for "each of  
18 the terms, policies and/or arrangements (referred to in  
19 IFD4(1)". Meta is referring to a single "entity".

20 THE CHAIR: I think you need to have it in the plural, and  
21 if it is only one entity, it is only one entity.

22 I think, Mr Singla, on that, I do not think whether --  
23 it is a live or die point, because if it is only one  
24 entity, it is only going to be one entity.

25 MR SINGLA: Sir, I would like to spend 20 minutes debating

1 grammar --

2 THE CHAIR: Yes, you would love to, but we are going to put  
3 "entities".

4 MS FORD: There is a design and implementation wording here  
5 that arises in the same way.

6 THE CHAIR: We have looked at that before, and  
7 "arrangements" and stuff.

8 MS FORD: Yes, and "arrangements", yes.

9 THE CHAIR: So it looks as though we are going back to your  
10 wording in the first column.

11 Mr Singla, do you want to argue against that? No,  
12 he does not, that is okay.

13 So we took the first column up for 4(3).

14 MS FORD: 4(4) {D/10/8} is one of the issues which are  
15 disputed in their entirety. This is going to come up in  
16 relation to 4(4), 4(5), 4(8) and 4(9). These are in the  
17 context of the terms or policies between Meta and third  
18 parties, and 4(4) is asking how such terms and policies  
19 were communicated to third parties and UK users; and  
20 then 4(5), so the one immediately following, is asking  
21 why were they communicated in that way.

22 I am in the Tribunal's hands as to whether you also  
23 want to take into account 4(8) and 4(9) because there is  
24 nothing in between and they are essentially on the same  
25 basis.

1 THE CHAIR: It is all one point. It is best to hear -- you  
2 say what you want to say first, and then it is probably  
3 quite predictable what Mr Singla will want to say, and  
4 so you can probably pre-empt some of what he wants to  
5 say on that.

6 MS FORD: So they are all about third party, in terms and  
7 policy, third parties. Meta's position, as we  
8 understand it, is they are not necessary to involve key  
9 issues in dispute on the pleadings. We say that this  
10 arises out of the way in which Meta has put its own case  
11 on transparency and how terms were communicated and  
12 understood.

13 In particular, and this is a slightly different  
14 point than the one that has been canvassed with the  
15 Tribunal before, we say that it is a repetitive thread  
16 that runs throughout Meta's Defence that it says third  
17 parties "choose" to share Third-Party Activity data with  
18 Meta. I have quite a few examples of them, but it may  
19 be that just a first few may give a flavour.

20 So Defence 10(b) at {B/4/5}, we can see for example:

21 "user activity data on websites or apps of third  
22 parties ... that those third parties choose to share  
23 with Meta."

24 Then paragraph 56(d)(ii), on page {B/4/30} of this  
25 document, this is taking issue with the use of the word

1 "collects" and they say:

2 "... Third Party Activity Data is user activity data  
3 on the websites or apps of third party advertisers that  
4 those advertisers choose to share with Meta ..."

5 And then they go on to explain how that happens.

6 Then, for example, Defence 61, {B/4/35}, 61(a)(i):

7 "... Meta does not 'gather' Third Party Activity  
8 Data on users' activity ... The owners of such  
9 websites/apps at their own election can choose to share  
10 certain Third Party Activity Data ..."

11 Just for the Tribunal's note, the similar  
12 formulation, this emphasis on "choose" appears in  
13 61(b)(ii), 62(b)(v)(2)(b), 79, 80, 81(b) and 104, so it  
14 really is, we would say, a consistent thread.

15 In response, we have put in issue whether third  
16 parties do indeed choose to share third-party activity  
17 data, and even whether they were actually aware that  
18 they were doing so. That is our Reply, paragraph 6b,  
19 {B/6/8}. We say:

20 "Meta is required to prove the allegation that third  
21 parties 'choose' to share Third Party Activity Data with  
22 Meta. The CR understands that ... certain Third Party  
23 Activity Data ... is transmitted automatically to Meta  
24 or without any 'choice' ... and/or ... in some cases,  
25 even the third parties themselves are unaware that they

1           are sharing Third Party Activity Data ... with Meta."

2           That is us very much joining issue on this reliance  
3           on the notion of choice. I have shown the court the  
4           reliance we place on the ruling of the Court of Appeal  
5           in *Gutmann* about the lack of transparency being relevant  
6           to whether conduct is abusive.

7       THE CHAIR: That is one of the issues in the action. You  
8           have pleaded it, so take that as an issue.

9       MS FORD: It is an issue and it applies to third parties  
10           too. It is straying into legal submissions but the  
11           *Michelin* case that Lord Justice Green cited in *Gutmann*  
12           was a case where the transparency issue, the lack of  
13           transparency was vis-a-vis a third party but it impacted  
14           the victim of the abuse. We say that is very much here:  
15           there is a transparency vis-a-vis as between Meta and  
16           third parties, and that potentially impacts the class in  
17           terms of how their data is dealt with.

18           So there is that tripartite transparency issue  
19           arises in very much the same way. In those  
20           circumstances, we say this group of three issues for  
21           disclosure, which go to how and why Meta communicated  
22           terms and policies to third parties, and whether they  
23           were prompted to accept them and whether they actually  
24           read them, are very much responsive to a key issue, and  
25           the way in which Meta puts its case, that it is all

1           a matter of informed choice.

2           MR SINGLA: Sir, can I just respond to that?

3           THE CHAIR: Of course you can.

4           MR SINGLA: It is so far removed from the core of the case  
5           that one has to actually keep reminding oneself what the  
6           alleged abuses are. The alleged abuses are, (a), that  
7           the users were presented with a take it or leave it  
8           choice; and (b), there was an unfair price.

9           Just pausing there, there is actually nothing even  
10          in the alleged abuses vis-a-vis users that concern  
11          transparency. One of the many sub-particulars is  
12          a complaint that the terms vis-a-vis users were opaque.

13          So we understand the point to that extent, but to  
14          submit to the Tribunal that there is also a key issue on  
15          the pleadings which -- that is the test for something to  
16          be an issue for disclosure -- vis-a-vis third party  
17          terms, we do respectfully take issue with this. I mean,  
18          the Defence refers to third parties choosing to provide  
19          the data. That is just how this works. Those are the  
20          business tools, Meta's business tools. No one is  
21          imposing or requiring these third parties to do this.  
22          They are doing it pursuant to commercial arrangements.  
23          There is no question as to the word "choose"; it is  
24          simply a reflection of what is going on in reality.

25          So what this sort of disclosure request is turning

1           into is a completely new avenue of exploring whether or  
2           not terms, between Meta and the users, but  
3           terms between Meta and completely unrelated third  
4           parties, are transparent or not.

5           It is okay to say some proportionality arguments  
6           should be stored up for a second stage, but there are  
7           some points, sir, that need to be actually headed off at  
8           the pass. I mean, we do pray in aid your own  
9           observations in the *Trucks* litigation. This is, in my  
10          submission, quintessentially some unpleaded, illogical  
11          avenue that really should not even be pursued at this  
12          stage. Of course they are going to get disclosure under  
13          4(1), 4(2) and 4(3), so it is not that they will have no  
14          documents with relation to the third parties, and the  
15          very helpful Annex 4 to the Disclosure Report already  
16          tells us, on the sampling exercise that has been done,  
17          they are going to get more than 20,000 documents through  
18          issue 4(1) alone.

19          So in trying to shoehorn all of these issues, it is  
20          4(4), 4(5), 4(8), 4(9), I do respectfully submit that  
21          the onus is to persuade the Tribunal that these are  
22          sufficiently relevant points that justify disclosure  
23          that would be proportionate. In my submission, again,  
24          there is just an expansion of the case that is going on  
25          through the prism of the list of issues.



1           Sorry, I should just clarify. The volume of  
2           material, the 20,000-plus documents, that is the  
3           documents that would be thrown up and then need to be  
4           reviewed; it is not necessarily the disclosure that they  
5           would get.

6           Subject to that, sir, we are actually in a slightly  
7           surreal situation where this list of issues is being  
8           used to expand the case. I mean, if they want to  
9           introduce a complaint that the terms vis-a-vis the third  
10          parties were not transparent, that is for them to plead.  
11          Simply alighting upon the word "choose" in the Defence,  
12          that does not make it an issue in the case. That is the  
13          sort of false premise of all of this.

14       MS FORD: Sir, I have shown the Tribunal how this does arise  
15          on the pleaded case. In my submission the objections  
16          that Mr Singla has just raised go to proportionality,  
17          and they are for another day. It is clearly an issue  
18          for disclosure and questions of proportionality are to  
19          be debated in due course.

20       THE CHAIR: (Pause) As regards 4(4), 4(5), 4(8) and 4(9),  
21          although these would not be regarded by the Tribunal as  
22          part of the key issues for disclosure, it does not mean  
23          that they are relevant for disclosure purposes. We  
24          accept that the point being made in relation to the  
25          pleading of the Defence, which at various parts refers

1 to the third parties "choosing" to share, in the light  
2 of that, we accept the wording in column 1 for 4(4),  
3 4(5), 4(8) and 4(9), which will no doubt be part of the  
4 same exercise in relation to the earlier subparagraphs.

5 Okay, we have done that. Then 4(11) we tick.

6 MS FORD: 4(11) is fine. 4(12) {D/10/9} raises a particular  
7 point concerning the words "and demonstrated". The  
8 basis for that is -- and it arises in the context of  
9 GDPR obligations. The Class Representative has pleaded  
10 that Meta is required under Article 30 of the GDPR and  
11 the UK GDPR to maintain a written record of processing  
12 activities under its responsibility, and that its reply  
13 paragraph 6, footnote 8 {B/6/7}.

14 Again, this is straying into legal submissions but  
15 Article 30 is an aspect of the principle of  
16 accountability and it essentially makes the controller  
17 responsible for compliance with specified data  
18 protection principles and puts an explicit duty on the  
19 controller to be able to demonstrate compliance with  
20 those principles.

21 In seeking to exclude the words "and demonstrated"  
22 from this section, we say it is essentially excluding  
23 from disclosure an aspect of compliance with the data  
24 protection obligations.

25 THE CHAIR: Their wording does not actually get to the

1 bottom of whether or not they did in fact comply,  
2 because their wording, which simply looks at have they  
3 "considered" it --

4 MS FORD: Yes, have they considered it, have they  
5 demonstrated it, exactly.

6 THE CHAIR: Yes, okay.

7 MR SINGLA: Sir, by way of context, it is interesting that  
8 this is now being pressed as something so obviously  
9 relevant, because this only appeared in the list of  
10 issues, the words "and demonstrated", last week,  
11 notwithstanding these discussions have been going on for  
12 a long, long time. So it is an afterthought and we  
13 submit it is plainly inappropriate, because what are  
14 they asking us to do here? They are asking us to  
15 demonstrate compliance.

16 THE CHAIR: Can you just show me the relevant paragraph of  
17 the pleadings?

18 MR SINGLA: No, I am in Ms Ford's hands because I do not  
19 accept any of this is material to the pleaded case.

20 THE CHAIR: No, I need to see where it is in the pleaded  
21 case.

22 MR SINGLA: I need to hand over to Ms Ford.

23 MS FORD: The paragraph I have just cited is our Reply  
24 paragraph 6, {B/6/7}.

25 THE CHAIR: That is your Reply.

1 MS FORD: This is our Reply, yes. Page 7. Sorry, I am  
2 told --

3 THE CHAIR: What paragraph number are you asking me to look  
4 at?

5 MS FORD: I should have gone to the Claim Form first.  
6 Sorry, 96b of the Reply.

7 THE CHAIR: I would rather see it in the Claim Form to see  
8 if it is an issue on the face of the pleading rather  
9 than something being introduced for the first time in  
10 a reply. Is there anything in the Claim Form that --

11 MS FORD: There is certainly a lot in the Claim Form about  
12 GDPR obligations generally.

13 THE CHAIR: Yes, about the obligations but --

14 MS FORD: About this particular point about demonstrating,  
15 and I should say it is not the case that this has  
16 appeared recently.

17 THE CHAIR: I do not worry about when it has come up, I just  
18 want to know where --

19 MR SINGLA: (Overspeaking) It is worse than that, because  
20 not only is this not in the Claim Form. If you have the  
21 Reply to hand, can I show you, go to page 66 {B/6/66}.

22 THE CHAIR: Sorry, page 66?

23 MR SINGLA: Yes, it is easier than giving you paragraph  
24 numbers. At page 66 at the very top:

25 "... the CR avers that her case on abuse does not

1           depend on establishing that the consent requirements of  
2           the GDPR were not met ..."

3           So quite rightly, they are accepting here that there  
4           cannot be a satellite case within a case where they are  
5           alleging failure to comply with GDPR. Such a case in  
6           fact would fall outside the jurisdiction.

7   THE CHAIR: Just let us look at this.

8   MR SINGLA: Yes, the top of page 66.

9   MS FORD: Perhaps the Tribunal could read the whole  
10          paragraph.

11   THE CHAIR: I will read the whole paragraph. Going back  
12          to a?

13   MS FORD: No, b is fine.

14   THE CHAIR: (Pause) But you are actually talking about  
15          breaches in real terms.

16   MR SINGLA: They cannot ask the Tribunal to -- that is the  
17          problem. There is a jurisdictional problem about  
18          alleging a breach of GDPR and that is why they rightly  
19          disavow such a case. It does not depend on that.

20   MS FORD: We are alleging an abuse --

21   THE CHAIR: You may still win without it. I think that is  
22          what they are saying.

23   MS FORD: 96b is also relevant.

24   THE CHAIR: Can we just go back to the relevant paragraph of  
25          the Claim Form and see how it fits in. Is there an

1           allegation in the Claim Form that these requirements  
2           were not met? That is what I want to know.

3       MS FORD: Yes, so I understand that the Tribunal  
4           specifically asked the Class Representative to make  
5           clear what her position was in relation to the GDPR on  
6           certification, so that position was made clear in the  
7           summary, which is then at the beginning of the amended  
8           Claim Form. So it is S.23, {B/3/9} starting at page 9.

9       THE CHAIR: Okay, let us just look at it. Because if it is  
10          there then you get it; if it is not there, you are not  
11          going to get it. Let us look at it.

12       MS FORD: B3, page 9. S.23. She reiterates -- well, she  
13          makes clear:

14               "The ... case on abuse is not reliant on  
15               establishing that the consent requirements of the GDPR  
16               were not met (albeit it does contends they were not) ...  
17               Rather, the Class Representative relies on the consent  
18               requirements under the GDPR and Facebook's 'choice  
19               architecture' as relevant facts and matters in  
20               demonstrating that the collection of Off-Facebook Data  
21               as a condition of providing social network services  
22               involves the imposition of unfair trading condition  
23               and/or an unfair price."

24               So we say it is a relevant fact or matter that goes  
25          to abuse, and:

1            "... as summarised as paragraph S.15 above, the  
2            Class Representative further relies on the fact that  
3            Users were deprived of an important choice in relation  
4            to their Off-Facebook Data and ..."

5            THE CHAIR: Okay, we cannot spend too much time on this.

6            I accept the wording in column 3. Breach is not  
7            actually pleaded. If it had been pleaded, of course,  
8            "demonstrated" is the right word; it has not been  
9            pleaded. I do not think you can get it in through the  
10           back door this way. It is an unnecessary diversion,  
11           because it is not actually a necessary part of your case  
12           to demonstrate a breach.

13           Next one.

14           MS FORD: The next one is -- I think 5 we are now agreed.

15           THE CHAIR: Yes.

16           MS FORD: Sorry, I am being told to wait.

17           THE CHAIR: We will finish 5 and then we will have a break.

18           MS FORD: 5(1) is also I think agreed, as is 5(2). No,  
19           sorry, there is a date in 5(2).

20           THE CHAIR: That is your wording.

21           MS FORD: Sorry, I am getting confused with the colours.

22           5(2) is fine. 5(3) there is a "to be determined" in  
23           terms of temporal scope. This is collection, receipt  
24           and processing data, so I think that is a 2005 issue.  
25           I am looking at those behind me.

1 THE CHAIR: So it is just a question of putting 2005 in  
2 column 3, is it?

3 MS FORD: 2005, yes.

4 THE CHAIR: Okay.

5 MS FORD: Issue 6 I think is now agreed, the headline of  
6 issue 6. 6(1) is agreed.

7 THE CHAIR: 6(1), 6(2).

8 MS FORD: 6(2) is agreed and we are coming up to 6(3) where  
9 there is an issue {D/10/10}.

10 THE CHAIR: We will deal with that at 3:30. Meanwhile, if  
11 Mr Singla could have a look at this RFI, and if we have  
12 time to deal with it today, we have time to deal with  
13 it. If we do not have time to deal with it, Mr Singla,  
14 what we will do is I will order that you provide  
15 an answer, such particulars as counsel considers they  
16 are entitled to, one of those ones, i.e. -- so if you are  
17 objecting to it, you put out your objection in your  
18 reply.

19 MR SINGLA: Okay.

20 THE CHAIR: Otherwise it is going to take probably  
21 15 minutes or 30 minutes to bottom out whether or not in  
22 fact you are required to answer.

23 MR SINGLA: I mean, we do object.

24 THE CHAIR: I know you object.

25 MR SINGLA: I can explain why.



1 THE CHAIR: There are two ways of doing it. I can either  
2 rule on the objection now, but we may not have time, and  
3 there is a limit of how long you can expect people to  
4 wait after normal court hours.

5 MR SINGLA: Well --

6 THE CHAIR: Let us just keep going through the schedule now.

7 MR SINGLA: Can I respectfully make this observation, which  
8 is, temporal scope was a so-called overarching issue. So  
9 it is actually more important -- the parties perceived  
10 temporal scope to be more important than the detail we  
11 are now running through. The RFI idea has never been  
12 raised --

13 THE CHAIR: No, it does not have to be. It is something  
14 I think could be helpful to crystallise, but let us not  
15 argue it now.

16 MR SINGLA: Can I take instructions because I think we may  
17 want you to dismiss it now as opposed to --

18 THE CHAIR: No, we may not have time, that is what I am  
19 saying. The priority is to deal with the list of  
20 issues. We have to achieve something in this --

21 MR SINGLA: No, I understand, but you have to understand we  
22 are trying to settle a list of issues and we have agreed  
23 to these earlier dates on a particular basis --

24 THE CHAIR: No, I 100 per cent understand what your  
25 objection is. The concern is do we have enough time to

1           resolve that today. We may not have enough time. I am  
2           saying we will get to a stage, we are going to finish  
3           the list of issues, and then we will see if we have  
4           enough time. If we do not have enough time, the simple  
5           way of doing it is to allow them to serve the RFI and  
6           you write out your objection in the response, and then  
7           we can deal with it another time.

8       MR SINGLA: I am conscious of the time constraint, but you  
9           understand the position we are in is that we made  
10          a pragmatic proposal to change the date from 2011 --

11       THE CHAIR: I understand, but then you can put that in your  
12          reply.

13       MR SINGLA: Okay.

14       THE CHAIR: But then at least they have served an RFI and it  
15          is on the table for the next time round.

16       MR SINGLA: But they have the benefit of the earlier date.

17       THE CHAIR: They may do, and you might say we do not need it  
18          by then.

19       MR SINGLA: I put down this marker that the earlier date was  
20          proposed on the basis there would be an RFI process. If  
21          you are going to say we do not have time to deal with  
22          the RFI question then I put down the marker and reserve  
23          the right to come back on the date point. As we saw  
24          them, the two --

25       THE CHAIR: You do not need to become a Luddite for the

1           purposes of making a point. Let us just deal with it at  
2           the end of the day.

3       MR SINGLA: Yes.

4       THE CHAIR: Right. We will come back at 25 to 4. Thank  
5           you.

6       (3.24 pm)

7                               (A short break)

8       (3.36 pm)

9       THE CHAIR: All right, carry on.

10      MR SINGLA: Sir, could I just ask for a moment. I think my  
11           team must be --

12      THE CHAIR: It is one minute past when we said we would  
13           start, and I do not think you need a cast of thousands  
14           to help you deal with a schedule like this.

15      MR SINGLA: You would be surprised.

16      THE CHAIR: I would be surprised? Come on!

17      MR SINGLA: That is very flattering, sir, but I do sometimes  
18           require assistance. Could I ask for a minute?

19      THE CHAIR: Can you go and look for them, and then we  
20           will ...

21      MR SINGLA: Yes.

22                               (Pause)

23      THE CHAIR: All right, we can start now. On 6(3), the issue  
24           is whether or not "addiction effects" is included.

25      MS FORD: Yes.

1 THE CHAIR: And what is your case on that, and we will hear  
2 what Mr Singla's case is.

3 MS FORD: Our understanding is that the objection taken to  
4 including "addiction effects" is that it is an expert  
5 issue. We say, and this is essentially the same answer  
6 that we make in relation to all the matters that Meta  
7 has said are expert issues, so it will come up again and  
8 again, we say that the fact that experts will be opining  
9 on these issues from an expert perspective does not mean  
10 that Meta's own contemporaneous assessment of these  
11 issues is not relevant to be disclosed.

12 THE CHAIR: The experts themselves may want to look at that  
13 relating their own --

14 MS FORD: Absolutely and that will be the way the experts'  
15 views can be tested.

16 THE CHAIR: Exactly, yes.

17 MS FORD: So that arises in relation to this and it arises  
18 in relation to various others as we come to them, but we  
19 do say they are not mutually exclusive.

20 MR SINGLA: Sir, could I just take you forward in the  
21 document to 21(3), which is an agreed issue {D/10/23}.

22 THE CHAIR: Yes.

23 MR SINGLA: Do you see the terms in which that issue has  
24 been agreed, so:

25 "How much time did and do UK Users [spend] ... on

1           ... the user-side of Facebook ..."

2           We say with the benefit of that disclosure, which we  
3           have agreed to provide, if they want to develop a case  
4           based on the so-called addiction effects, it will be  
5           a matter, if they have permission to do so, a matter for  
6           an expert to, with the benefit of that material, provide  
7           their opinions,

8           but one has to, again, put this point into its  
9           proper context. Addiction effects is, I think, the  
10          subject of a fleeting single reference in the Reply. It  
11          came in at that stage. I think Professor Scott Morton  
12          refers to one academic paper on this concept. So that  
13          is really the point. The point is it is tangential.  
14          They will get material through 21(3) that goes to this  
15          issue. If an expert wants to come along with the  
16          Tribunal's permission and overlay an opinion about what  
17          the time spent amounts to or some examination of  
18          so-called addiction, then that will be a matter for the  
19          expert with the benefit of the 21(3) material, but we do  
20          object to the inclusion of addiction effects in 6(3).

21       MS FORD: In our respectful submission, 21(4) is really not  
22       asking at all the same question as the question about  
23       Meta's assessment of addiction effects.

24       THE CHAIR: It is the assessment -- the question is if you  
25       have expert evidence on this, is that going to be

1 informed by any documents Meta may have on their own  
2 assessment at the time?

3 MS FORD: In our submission, the answer must be very much  
4 so. Were there to be contemporaneous documents where  
5 Meta is opining on the existence of addiction effects  
6 and the effects of addiction contemporaneously,  
7 that is very much going to inform whatever any expert  
8 may say about the effects of those.

9 THE CHAIR: We order 6(3), because that certainly can inform  
10 the expert evidence, but we do agree, Mr Singla, that  
11 this is a matter largely for expert evidence, but if  
12 there are relevant documents which would assist the  
13 expert on this, then they should be produced. So that  
14 is 6(3).

15 It is going to be going back to your wording.

16 MS FORD: Yes.

17 THE CHAIR: So we tick the first column. Next one.

18 MS FORD: 6(4) I think is agreed.

19 THE CHAIR: So we can tick that.

20 MS FORD: 6(5) there is just a temporal scope date to be  
21 inserted and this is asking about --

22 THE CHAIR: We are just -- do you agree the last column  
23 subject to putting in 2005?

24 MS FORD: I think we -- yes, we do.

25 THE CHAIR: All right. 7(1) is agreed. 7(2) {D/10/11}. Is

1           there any dispute on that?

2           MS FORD:   (Pause)   No, we do -- there is an issue on this.

3                       Sorry, there may be some confusion.

4           THE CHAIR:   I am quite happy at the moment with the third  
5                       column on this.

6           MS FORD:   Yes, I think we are.   I am afraid it is a case of  
7                       shuffling a few speaking notes that were in a different  
8                       order.

9           THE CHAIR:   Okay.   8(1).

10          MS FORD:   Right.   8(1), there is an issue on that.

11          THE CHAIR:   It is really about what categories are  
12                       (inaudible - audio dropout) Off-Facebook Data.

13          MS FORD:   This is actually the headline inquiry that we have  
14                       discussed with the Tribunal a couple of times.   We are  
15                       asking about all data that has been collected by Meta,  
16                       so from 2005 to date, what data has been collected.   It  
17                       is designed to encompass both On-Facebook Data and  
18                       Off-Facebook Data, and just to tell us, in the light of  
19                       the asymmetry of information, what exactly is it that  
20                       Meta collects?

21          MR SINGLA:   Yes.   I think this may be a non-point, because  
22                       all we are doing by the inclusion of "categories of" is  
23                       we do not understand them to be asking for the  
24                       underlying data.   If you look at their wording:

25                       "From 2005 to date, what data ... has been collected

1 and/or received ..."

2 Are they actually asking for every single piece of  
3 data that Meta has collected? We do not think that is  
4 what they are after. What they are after, as we  
5 understand it, is an explanation of what categories of  
6 data were collected. If I am mistaken about that,  
7 Ms Ford will say. If I am mistaken there is a serious  
8 question (a) as to relevance and (b) proportionality, of  
9 course.

10 MS FORD: Yes, we are not asking for every single item of  
11 data, but I had understood the point being taken by Meta  
12 to be a different one, which is that they put in "what  
13 categories of Off-Facebook Data", whereas we are asking  
14 for On-Facebook and Off-Facebook Data. We want to know  
15 what they collect.

16 Of course, the Tribunal will recall that the way in  
17 which it is defined is negatively. There is  
18 a relationship between what is on and what is off, and  
19 we simply want to understand the universe of data  
20 collection practices.

21 MR SINGLA: Okay, that is a different point, but the  
22 problem with that is the case concerns Off-Facebook  
23 Data. We had this whole debate yesterday. The case is  
24 all about the alleged unfair bargain, the users giving  
25 their Off-Facebook Data -- (Pause)



1           Sorry, the Class Representative's wording is "what  
2           data on UK users has been collected and/or received".

3           That, in my submission, is manifestly inappropriate as an  
4           issue for disclosure. We well understand they have  
5           brought a case based on the Off-Facebook Data --

6       THE CHAIR: That is amalgamated with the On-Facebook Data.

7       MS FORD: Absolutely, and then in the counterfactual, one  
8           asks what would you have left if you did not collect the  
9           Off-Facebook Data.

10      MR SINGLA: I understand the point, you are absolutely  
11           right, there is reference in the pleading to the  
12           amalgamation, but what does that go to, is my rhetorical  
13           question, because why do they need to understand the  
14           data that is not the Off-Facebook Data?

15      A MEMBER OF THE TRIBUNAL: It is to understand the  
16           enrichment, to understand the nature of the aggregation.

17      MS FORD: Yes, and what would be left absent the alleged  
18           abuse, because in the counterfactual they would have  
19           only the On-Facebook Data.

20      THE CHAIR: What we going to do is we are going to order  
21           this but with the word "categories of".

22      MS FORD: We have no objection to "categories".

23      THE CHAIR: Okay, so it is your one with "categories of".

24      MS FORD: 8(1) we have just done. Sorry, I am losing track.

25           8(2) is a temporal scope question, and I think, given

1           that 8(1) was 2005, we would say that would also be  
2           2005.

3       THE CHAIR: 8(2), just put in the date 2005 in the last  
4           column. 8(3).

5       MS FORD: 8(3) first of all has a temporal scope question.

6           Presumably again 2005, and there is a difference  
7           between us on this. We are asking for --

8       THE CHAIR: The thing is, we have changed 8(1) for the  
9           wording that they wanted, so I think that the wording  
10          they have proposed --

11      MS FORD: Probably results -- we are actually only asking  
12          for Off-Facebook Data in relation to this.

13      THE CHAIR: It may be easier to go back to 8(3) and your  
14          column, and put in the date.

15      MS FORD: Yes, in relation to this, "only seeking  
16          Off-Facebook Data", I think Meta were proposing  
17          a cross-reference on the presumption it was limited in  
18          the way they were hoping.

19      THE CHAIR: Okay, it may end up being narrower -- otherwise  
20          once we change 8(1) it becomes too broad.

21      MS FORD: Yes.

22      THE CHAIR: So it is going to be the first column, adding in  
23          2005, and not your wording because your wording actually  
24          would lead to much wider disclosure now that we have  
25          amended 8(1). Okay, so we tick that one. Next one.

1 MS FORD: 8(4) {D/10/12} has a date to be inserted, which  
2 presumably is 2005.

3 THE CHAIR: Yes, so 8(4), only change in the last column is  
4 put in the date.

5 MS FORD: Yes. 8(5) I think is fine. 8(6) has a date to be  
6 inserted, again, 2005, and then --

7 THE CHAIR: They have a qualification.

8 MS FORD: They have and this arises in relation to I think  
9 about three issues for disclosure at various points and  
10 different qualifications have been put in. We have  
11 a concern about the workability and the practicality as  
12 a matter of simply disclosure exercises of putting in  
13 materiality qualifiers of this nature. We simply ask  
14 how --

15 THE CHAIR: I think the only dispute at the moment on 8(6)  
16 is whether or not you have the word "seriously", which  
17 makes it quite difficult for people to do the disclosure  
18 exercise. So I am inclined to take out "seriously"  
19 unless Mr Singla wants to argue.

20 MR SINGLA: We are obviously happy to make life easier, but  
21 can I just make this point. We are not pressing hard  
22 for "seriously" to remain in, but we do want some  
23 reassurance, perhaps with the assistance of the  
24 Tribunal, that on this point and I think one or two  
25 other issues we will come to, there has been

1           correspondence about the need for some materiality,  
2           qualificatory wording. Essentially the concern is if  
3           you have an issue which is framed as broadly as "what,  
4           if any, alternatives were considered," you can see that  
5           is heading in a very disproportionate direction. So we  
6           are content, as it were, not to press the inclusion of  
7           these qualifiers. Both here and elsewhere we have tried  
8           to say that something should have been formally  
9           considered or considered at senior level, but what we  
10          cannot have is the situation where the expectation is  
11          that disclosure should encompass individuals who are  
12          very junior employees, for example, who have a fleeting  
13          discussion. Technically that might be said to be  
14          consideration by Meta.

15                 What we are trying to do, you may see it  
16          differently, you may say that is a second stage  
17          proportionality point, which is fine as long as you can  
18          help us and make clear --

19       THE CHAIR: I think you are right about the way you put it  
20          there, and that is going to be on the transcript. So we  
21          take out the qualifiers, but then when it comes to  
22          proportionality, we can argue, you know, how deep you  
23          need to go. I can see that if you are saying some  
24          junior employee on his own was making some rough notes  
25          and never got anywhere, that is not really going to

1           assist us, if at all.

2       MR SINGLA: Absolutely.

3       THE CHAIR: On the other hand, if it is something that has

4           been considered at a senior management level, sent to

5           him, then it is slightly different.

6       MR SINGLA: Yes, it is really just trying to pre-empt --

7       THE CHAIR: I agree with that.

8       MR SINGLA: I am grateful.

9       MS FORD: We have no objection to that. We envisage it can

10          be addressed by means of custodians, for example.

11       THE CHAIR: Yes, so we have done that. 8(6).

12       MS FORD: 8(7), there is a date to go in. We are otherwise

13          happy. Presumably 2005.

14       THE CHAIR: 2005, yes. 8(8) {D/10/13}.

15       MS FORD: 8(8) also needs a date of 2005. Here, there is

16          a question about user- or advertiser-side of Facebook,

17          which we have encountered before.

18       MR SINGLA: Yes. In my submission, this is similar to the

19          ones we looked at before the adjournment. So we could

20          take out the words "on the user-side".

21       THE CHAIR: No, I think that -- we have done that, yes. The

22          user-side, yes.

23       MR SINGLA: Also we can help, do you see the red wording

24          "referred to in", it should be "IFD8(1)". We can live

25          with "Off-Facebook Data" to try to clear this away.

1 MS FORD: That would be another one where it would be wider  
2 if one included the 8(1).

3 THE CHAIR: That one is done now, yes. 8(9), same with the  
4 date.

5 MS FORD: 8(9) is a date, and there is another  
6 cross-reference.

7 THE CHAIR: So take out the cross-reference to 8(1).

8 MS FORD: Yes, that should be "Off-Facebook Data".

9 MR SINGLA: Which just leaves the addition of "on Facebook"  
10 at the end. Do you see that in red? We say that flows  
11 from the ruling that you gave this morning.

12 MS FORD: Yes, I think we are happy with "on Facebook".

13 MR SINGLA: I am grateful.

14 THE CHAIR: Yes.

15 MS FORD: 8(10) is a temporal scope question, so another  
16 2005 to go in. Otherwise, I am not quite clear why  
17 "Off-Facebook Data" is in red there, but I think it is  
18 fine.

19 THE CHAIR: 8(10) ticked, 2005.

20 MS FORD: Yes. 8(11) we need a date, 2005.

21 THE CHAIR: Delete "referred to in ...8(1)", or do you want  
22 that?

23 MS FORD: Yes, delete "referred to in ... 8(1)", use Off  
24 Facebook Data.

25 THE CHAIR: Yes, so that is 8(11).

1 MS FORD: Then user- advertiser-side, I think probably the  
2 same reasoning will apply.

3 THE CHAIR: Next one.

4 MS FORD: Sorry, can I just check whether or not there is  
5 any particular point on user- advertiser-side in relation  
6 to that one.

7 THE CHAIR: What, 8(11)?

8 MS FORD: 8(11), yes. Just because --

9 THE CHAIR: Let someone check that before we move on.

10 MS FORD: I think the same principle will apply, unless  
11 somebody tells me otherwise. 8(12) {D/10/14} we need to  
12 add the date in, 2005.

13 THE CHAIR: Yes.

14 MS FORD: We are happy with "Off-Facebook Data". I am not  
15 sure why it is in red.

16 8(13) is a user advertiser-side point.

17 MR SINGLA: Yes, so just to be clear on that one, I would  
18 suggest that we say "in relation to UK users on  
19 Facebook", and then we delete everything else in red.

20 MS FORD: Yes, we are happy with that.

21 THE CHAIR: Yes. 10?

22 MS FORD: 9 comes out. 10, temporal scope question for  
23 a start.

24 THE CHAIR: 2005 for now. Anything else that you want to  
25 change?

1 MS FORD: Yes, there is a point on the drafting which arises  
2 in relation to 10 and also in relation to 10(2), and the  
3 effect of Meta's wording, as we understand it, is to  
4 exclude documents that are relevant to the economic or  
5 commercial value to Meta of users' permission to collect  
6 Off-Facebook Data. We say that the value of the  
7 permission to do what Meta is doing is absolutely at the  
8 heart of what it acquired by means of the abusive  
9 bargain, and so we say that that is very much front and  
10 centre of the Class Representative's case.

11 MR SINGLA: Sir, our objection here is just that you will  
12 see our wording is much more straightforward. It is  
13 just what is the value of the data, which (a) is more  
14 workable from a disclosure perspective, and (b) in fact  
15 subsumes or contains within it the additional sort of  
16 convoluted wording that the Class Representative is  
17 putting forward, because if they are trying to suggest  
18 there is some value not merely in the data but in some  
19 permission to collect the data, that would all be swept  
20 up anyway.

21 THE CHAIR: I agree, so your wording on 10, based on the  
22 assumption that your confirmation there, is fine.

23 MS FORD: We are content provided it is clear that  
24 permission is included, because of course permission to  
25 do something on an open-ended basis is a different thing



1           than the value of a defined --

2       THE CHAIR: It is a wide request -- (inaudible -  
3           simultaneous speakers) the platform is wider than that,  
4           so the permission is within that because of the wider  
5           definition that Mr Singla has put forward.

6       MS FORD: If permission falls within it, then I think we are  
7           fine.

8       THE CHAIR: It clearly does fall within it. 10(1), that is  
9           done.

10      MS FORD: 10(1), yes, appears to be fine.

11      THE CHAIR: 10(2).

12      MS FORD: 10(2) needs a date, and the same point arises in  
13           relation to permission in 10(2), so if it is encompassed  
14           within the wording again then I think we will be fine  
15           with it.

16      THE CHAIR: It is encompassed in the wording, yes, I think  
17           we all understand that. 11 {D/10/15}.

18      MS FORD: 11 requires a date. Again, I think it would be  
19           2005. 11(2) --

20      THE CHAIR: 11(1), you are agreeing the third column, just  
21           with the date?

22      MS FORD: Subject to -- actually --

23      THE CHAIR: There is a difference between you.

24      MS FORD: I am checking that. (Pause) Oh, I see. So the  
25           different wording -- right, so the difference in the

1           wording here, I am told, in attempts to try and condense  
2           some of these issues and reach an accommodation, what we  
3           have done is, we have tried to amalgamate 11(2) into  
4           11(1) and that explains the difference in wording. So  
5           11(1) was originally asking: to what extent have UK  
6           users preferences et cetera, and/or concerns been  
7           collected and/or considered. Then 11(2) was then asking  
8           to what extent are they being taken into account or  
9           addressed, so obviously the next stage in the process.  
10          What we have proposed is that 11(2) is then incorporated  
11          into 11(1).

12       THE CHAIR: You have condensed it all into 11(1).

13       MS FORD: We have condensed it into 11(1).

14       THE CHAIR: So we need to see what Mr Singla wants to say  
15                about the additional wording in 11(1) in your column  
16                that is not in his column, but what you have  
17                effectively done is amalgamate 11(1) and 11(2).

18       MR SINGLA: If I can just take a moment to take instructions  
19                but before I do, can I just understand: is the  
20                suggestion that 11(2) then falls away in the light of  
21                the wording at the end of 11(1)?

22       THE CHAIR: Correct, it does fall away, yes.

23       MR SINGLA: Can I take instructions on that basis? Yes,  
24                well that's fine, so 11(2) goes. Our point on 11(2) was  
25                that it was duplicative.

1 THE CHAIR: I agree. 12.

2 MS FORD: 12 requires a date. Presumably 2005 again.

3 THE CHAIR: It seems to me that the wording in 12 is fine on

4 the last column, unless I have missed something.

5 MS FORD: There is an issue about including "alternatives"

6 in our subparagraph (d) which does not appear in Meta's

7 version. The alternatives here --

8 THE CHAIR: Where -- we are looking at 12, yes?

9 MS FORD: Sorry, 12(1).

10 THE CHAIR: But 12 itself.

11 MS FORD: 12 itself.

12 THE CHAIR: Before you look at 12(1), your heading bit is

13 fine, is it not, in the third column?

14 MS FORD: Yes, 12 is fine subject to the insertion of the

15 date.

16 THE CHAIR: So we will now look at the individual ones, yes.

17 Again, the date in 12(1) {D/10/16} would be 2005, but

18 then where is the difference between you?

19 MS FORD: The difference is in subparagraph (d),

20 alternatives, so this entire issue is concerning the

21 "tools, controls, features and/or resources" introduced

22 for UK users, so what tools they have available to them.

23 THE CHAIR: But we have ruled on this alternatives argument

24 before.

25 MS FORD: Yes.

1 THE CHAIR: So I am inclined to have "including alternatives,"  
2 because that must be right. Mr Singla?

3 MR SINGLA: Yes, I think that does follow from what you said  
4 earlier, but can I just jump ahead as it were also to  
5 12(2).

6 THE CHAIR: 12(2), is that the end of 121?

7 MR SINGLA: Yes, but this alternatives point essentially  
8 arises in a different guise in 12(2) and I would like to  
9 really make this point. 12(2) is an issue for  
10 disclosure about tools that never saw the light of day.

11 THE CHAIR: You say that is caught within alternatives?

12 MS FORD: Yes, that is the first point. The second point is  
13 if this is going to be an issue we just again need  
14 reassurance from the Tribunal that this is going to be  
15 kept within proportionate bounds because I do not accept  
16 that it is of any real relevance. This is tools that  
17 users never in fact saw or used.

18 THE CHAIR: What we are going to do is on 12(1) we are going  
19 to use the wording in column 3, putting 2005 and adding  
20 in "including alternatives" under (d).

21 On 12(2), we will include that, but, as Mr Singla  
22 said, there will be an argument about proportionality  
23 when it comes to disclosure. So the mere fact it has  
24 been included now does not mean that it will be decided  
25 that it is proportionate at the end of the day to have

1           that disclosure.

2           Okay, next one, 12(3) {D/10/17}. Is that now  
3           agreed?

4       MS FORD: I think that is agreed.

5           13, there is a date that needs to go in. This  
6           concerns choices.

7       THE CHAIR: Yes. I think it should be 13, column 3, just  
8           adding in the date.

9       MS FORD: Yes, we have no objection to "UK Users" in that  
10          context.

11       THE CHAIR: Yes. 13(1) is agreed, 13(2) is agreed.

12       MS FORD: Is the date 2005 to go in 13?

13       THE CHAIR: Yes, I have put that in, yes. 13(3) is agreed,  
14          14(1) is agreed. 14(2) is agreed. 14(3) is out.  
15          15(1).

16       MS FORD: 15(1) {D/10/19} is one of the group of issues  
17          concerning GDPR which have been objected to in their  
18          entirety. Just to tell the Tribunal which issues those  
19          are, because they do rather all inter-relate. It is  
20          15(1), 31(1) and 31(3). In terms of where it fits in to  
21          the pleaded case, I have already shown the Tribunal  
22          paragraph S.15 {F4/2.3/5} in the summary, which was  
23          the -- maybe I have not. S.15(c) pleads:

24                "In the context of GDPR (which is relevant to the  
25          abuse but not necessary to prove it), the processing of

1 data from other websites and apps is not necessary for  
2 the provision of social network services or for  
3 Facebook's such as personalised advertising or network  
4 security. Furthermore, separate, and specific, consent  
5 is required for the processing of Off-Facebook Data  
6 under GDPR, which Facebook did not obtain."

7 That is {B/3/6}.

8 THE CHAIR: Mr Singla, on this one, I am inclined to keep  
9 the wording in the first five lines, but I think the "in  
10 addition" ones, that is just going into the minutiae.

11 MR SINGLA: Yes, I agree with that. Can I just make a point  
12 on the fifth line. Our concern is "in regard to its  
13 collection of data on UK users". You understand the  
14 nature of Meta's business.

15 THE CHAIR: I do, yes.

16 MR SINGLA: This is not tethered to the pleaded issues.

17 THE CHAIR: What is going to happen on this is you are going  
18 to have to give relevant documents within that category.  
19 It is a broad category, but what I am not inclined to do  
20 is to put, in effect, interrogatories and stuff like  
21 that here, because that does not seem to work.

22 MR SINGLA: I agree with you to that extent, but can we also  
23 agree the remaining wording, if "collection of data" is  
24 amended to "collection of Off-Facebook Data", otherwise  
25 this is covering essentially any consideration over

1           a 20-year period to issues of privacy, and you will  
2           understand in relation to Meta that is incredibly broad.

3       THE CHAIR:   Let us see what --

4       MR SINGLA:   Yes.

5       THE CHAIR:   That seems sensible to me, but we will see if it  
6           seems sensible to Ms Ford.

7       MS FORD:   Sir, yes.  As I understand it, if we change "data"  
8           to "Off-Facebook Data", then (a) to (d) then are  
9           accepted as I understand.

10      THE CHAIR:   Okay.  15(1), we take out "in addition", and we  
11       add in "in the collection of Off-Facebook Data", that is  
12       subject to the caveat that we will need to look at any  
13       application for disclosure on that, bearing in mind  
14       proportionality.

15      MR SINGLA:   Yes.

16      THE CHAIR:   15(2).

17      MS FORD:   Is just the date.

18      THE CHAIR:   So we will put 2005 there for 15(2).  15(3) is  
19       the date.

20      MS FORD:   Just the date.

21      THE CHAIR:   15(4) {D/10/20} --

22      MS FORD:   Just the date.

23      THE CHAIR:   -- is just the date.  Okay.  All of 16 is okay.

24      MS FORD:   Yes.  16 --

25      THE CHAIR:   16(4) has gone.  Sorry, 16(5), let me have

1           a look at that. I think their wording is sensible.

2           MS FORD: Yes, so this is concerned with the changes which  
3           were made to the --

4           THE CHAIR: Then that is covered in there -- or is there  
5           something else that I have missed?

6           MS FORD: Yes, we have asked for changes. They have  
7           narrowed it down to "What changes were made to the  
8           operation of the Beacon feature", and so --

9           MR SINGLA: Just to try and speed things up, the issues  
10          between us fundamentally here is the "when and [the]  
11          why", so the changes are in, but we do not accept that  
12          "why" should be in, and the reason for that is if you  
13          look at what they are getting under, for example, 16(1),  
14          so "When, why, and for what purposes was the Beacon  
15          feature first introduced?" 16(3), "Why did [it]...  
16          attract ... negative feedback?" That is actually  
17          a slightly tendentious language anyway, but essentially  
18          they are going to get, through 16(1), (2) and (3),  
19          disclosure about Beacon. So we confine 16(5) to  
20          "changes". It does not need to have "Why were changes  
21          made to the feature?" 16(6) is also -- yes, I am  
22          grateful.

23          THE CHAIR: There is "why" in 16(6).

24          MR SINGLA: Excactly, that is very helpful, actually. 16(1),  
25          "Why was it first introduced?" 16(6), "Why and in what



1           circumstances was it deprecated?" Why are we getting  
2           into why were changes made? Difficult to understand,  
3           because you have heard about the Beacon feature. They  
4           say this is something that went on and it was deprecated  
5           for a particular reason, because of user backlash, they  
6           describe, but that will all be covered by 16(6).

7       MS FORD: 16(1) is concerned with why it was first  
8           introduced. 16(6) is concerned "Why and in what  
9           circumstances Beacon was deprecated and discontinued?"  
10          In the middle you have a period where we are asking  
11          about changes which were made in between.

12       THE CHAIR: The question is whether or not there should be  
13          "why" in 16(5) and whys in some of the others.

14       MR SINGLA: There is no case about -- even the -- they do  
15          not make any allegation about changes to Beacon. They  
16          just say: you brought it in, there was user backlash,  
17          that is why you deprecated it. That helps their case.  
18          There is not actually an enquiry into what went on  
19          between '07 and '09 in relation to the technical  
20          operation of the Beacon functionality. That is going  
21          actually a step too far.

22       MS FORD: Sir, there is a pleaded case advanced by Meta on  
23          that point so we expressly pleaded Beacon at --

24       THE CHAIR: You pleaded Beacon at --

25       MS FORD: -- various places, but Meta deny the relevance of

1 Beacon to the Class Representative's claim and advanced  
2 a positive case about why it initially attracted  
3 negative feedback, which contradicts our case. So this  
4 is their Defence, 139, {B/4/88} to {B/4/89}.

5 MR SINGLA: Yes, that is --

6 MS FORD: Perhaps I can finish the submission.

7 MR SINGLA: It is already quarter past four.

8 THE CHAIR: (Unclear - simultaneous speakers) We have not  
9 got much longer for this hearing. We need to finish it.

10 MS FORD: The case that is advanced on behalf of Meta itself  
11 is not concerned with why it was introduced or why it  
12 was deprecated. It says:

13 "Meta updated Beacon within its first month to  
14 address that user feedback by adding an opt-in function  
15 to each Facebook post. The function ensured that, if a  
16 user failed to approve or decline an activity ... on a  
17 third party partner site, Beacon would assume the user  
18 did not want to display that activity [etc etc] ...  
19 time, Facebook also introduced a setting for users to  
20 turn off Beacon completely."

21 The point being there is a case about what happened  
22 in between.

23 THE CHAIR: Okay, I am happy to include "why" because it  
24 seems as though there have been changes in response to  
25 user feedback in that department. So add in "why".

1 MS FORD: That would be to the -- yes, the concern is that  
2 it is not constrained to the operation of the Beacon  
3 feature, because it is the feature itself which was  
4 changed.

5 THE CHAIR: So you are saying we just go back to 16(5) in  
6 the first column.

7 MS FORD: Yes.

8 THE CHAIR: Okay, you are happy with that, okay. Next one.  
9 So 16(6), done. 17(1) and 17(2), done. The rest of 17,  
10 done.

11 MS FORD: Yes.

12 THE CHAIR: 18 you have --

13 MS FORD: 17(12) {D/10/21} there is a tiny cross-reference  
14 issue I think which is a typo. It has been fixed, has  
15 it? Thank you.

16 THE CHAIR: Then we go up to 19 {D/10/22}.

17 MS FORD: 19, this is another one that Meta says is for  
18 expert evidence only. This is in the section of the  
19 list of issues on user-side market definition, and it is  
20 asking about Meta's assessment of the impact of its  
21 collection of "Off-Facebook Data on its ability to  
22 compete on both the user-side and advertiser-side ..."

23 THE CHAIR: That brings up the same issue that we dealt with  
24 last time --

25 MS FORD: It does.

1 THE CHAIR: -- and the mere fact you are going to have  
2 expert evidence is not conclusive because it can be  
3 material that the experts can feed into.

4 MS FORD: Sir, yes.

5 THE CHAIR: So subject to whatever Mr Singla says, I am  
6 inclined to order 19 --

7 MR SINGLA: No, that is not the only point, sir.

8 THE CHAIR: There is another point, okay. Let us hear it.

9 MR SINGLA: Yes. We also say this is duplicative of some  
10 other issues. If you give me a moment to locate,  
11 I think there is a number of them --

12 THE CHAIR: To the extent it is duplicative, it does not  
13 really matter, because the fact it is in more than one  
14 place, it is not perfect, but this document is never  
15 going to be perfect.

16 MR SINGLA: It does matter to those doing the work, because  
17 you saw for example we are trying to identify -- sorry,  
18 sir.

19 THE CHAIR: No, that is fine.

20 MR SINGLA: I mean, it is a very, very long list already and  
21 if you are with me that it is duplicative we would  
22 submit the way --

23 THE CHAIR: No, but the question is: Is it completely  
24 duplicative or not? There are elements that can be  
25 duplicative but I do not think it is completely

1 duplicative of the rest. That is the trouble. It is  
2 now -- well, you can see what the time is, and there is  
3 really a limited amount of time, so I am inclined to  
4 order 19 and 20. Obviously, we will look at  
5 proportionality when it comes to the actual exercise of  
6 what has to be produced.

7 MR SINGLA: I mean, I hope I get the benefit of the time  
8 constraints on some other issues because we cannot have  
9 a situation where everything now just comes in.

10 THE CHAIR: No, I am not saying it just comes in. I can see  
11 the relevance of this and I can see it could be useful  
12 information for the experts, but it is not as if this is  
13 the first time I am looking at this schedule. I have  
14 read all the pleadings more than once. It is not as if,  
15 you know, this is all being done in a vacuum, but I do  
16 understand the points you are making.

17 MR SINGLA: I am grateful.

18 THE CHAIR: Okay, that is 19 and 20.

19 MS FORD: 20(3) is actually linked to 20, in that 20 says  
20 "in relation to" colon, and then it is actually the  
21 switching cost of users, so it is the same point again.

22 THE CHAIR: I think it is the same point. Yes. Then all  
23 the next page is agreed.

24 MS FORD: Apparently, yes. Apparently there is one that has  
25 been marked as agreed but there is a residual issue.

1 MR SINGLA: Sorry, we are now going too quickly, I think.

2 The next one is 20(3).

3 THE CHAIR: Have I missed a page?

4 MS FORD: No, we just discussed it. We said it was the same  
5 issue.

6 MR SINGLA: No, it is not the same issue. We say this is  
7 actually duplicative of 18(4).

8 MS FORD: Well, 18(4) is asking --

9 THE CHAIR: The difference between 18(4) and 20(3) is that  
10 they are looking at the assessment. That is the thing.

11 It is not -- for example, 18(5) deals with assessment,

12 I understand that, but 18(4) is just the mere fact of

13 switching costs, and this is the assessment of that. So

14 I think they are not the same.

15 MR SINGLA: Well --

16 THE CHAIR: I am ordering 20(3).

17 MR SINGLA: Yes.

18 THE CHAIR: 21 up to -- the next page is done, I think.

19 Then --

20 MS FORD: 24(3), {D/10/24} although it is marked as green,

21 we think the inclusion of 2011 there might be a mistake,

22 because this was one of the ones where --

23 THE CHAIR: You want 2005.

24 MS FORD: Yes.

25 THE CHAIR: Yes.

1 MS FORD: Although actually I should correct that because  
2 I look at the headline and it is 2007, so this may be  
3 a 2007 one.

4 THE CHAIR: You are saying 2007?

5 MS FORD: 2007, yes.

6 THE CHAIR: Okay, that is fine. We are now up to 24(5), and  
7 you say you propose it should be dealt with in  
8 a narrative statement.

9 MS FORD: 24(5), (6) and (7) all arise together. These are  
10 all concerned with how Meta targets its advertisements  
11 and they are in the section of the list of issues which  
12 concerns Meta's relationship with third parties and  
13 advertisers and emphasise the market definition. They  
14 are asking how Meta determines what advertisements are  
15 shown to each UK user; "what machine learning and other  
16 software and tools Meta has used to try and predict user  
17 behaviour"; and "What role (if any) and/or use of  
18 Off-Facebook Data played in relation to [those issues]  
19 ..."

20 We understand Meta's contention to be that these are  
21 not necessarily to resolve key disputes on the pleading.  
22 We disagree with that because of Meta's contention that  
23 its receipt and use of Off-Facebook Data serves  
24 a legitimate purpose and is proportionate in terms of  
25 its contention that it used it for -- uses it for

1 advertising purposes on Facebook, and it says it enables  
2 it to compete for advertising and to generate ad revenue  
3 necessary to provide Facebook at no charge use to users,  
4 and that is something we have traversed at some length.

5 That means the way in which Meta goes about doing  
6 that, including its use of machine learning, which it  
7 has expressly pleaded and I can show the Tribunal the  
8 paragraph for that if it assists, and the extent to  
9 which Off-Facebook Data plays a role in doing that and  
10 what would happen if it was not there in the  
11 counterfactual, whether there are less intrusive  
12 alternatives, all those issues are matters that the  
13 Tribunal is going to need to understand if it is going  
14 to assess Meta's contention that its use of Off-Facebook  
15 Data is legitimate and proportionate.

16 So we say that this does go to a core issue and we  
17 spent quite some time debating the way in which Meta  
18 targets its advertising and how Off-Facebook Data links  
19 into that. In the course of this hearing, it is really  
20 quite a central matter.

21 MR SINGLA: Sir, the problem with this, I mean, if you just  
22 look at 24(6) by way of example, "what machine learning  
23 and other software and tools has Meta used to try to  
24 predict user behaviour?", in my respectful submission,  
25 that has nothing whatsoever to do with this case. This



1 case is about an alleged abuse on the user-side of the  
2 market. The advertiser-side is relevant because that is  
3 the side of the market where it is said that you make  
4 lots of profit which you should be sharing with users.  
5 What one really does not see -- again, Ms Ford says.  
6 I can show you a reference in the pleading. Again, one  
7 has to think about what is the substance of the case  
8 rather than a passing reference in the pleading. There  
9 is nothing in this case as a matter of substance which  
10 justifies disclosure or any investigation at trial into  
11 the nuts and bolts of what is going on on the  
12 advertising side. The only relevance of the advertising  
13 side are what is said to be the excessive profits, so  
14 this is going too far.

15 I have a separate point about 24(7), but just look  
16 at 24(5) and (6). One could easily understand from  
17 those issues that this case is all about the advertising  
18 side of the market. This is just simply irrelevant.  
19 What machine learning and tools is Meta using to predict  
20 user behaviour? Let us just again take a step back.  
21 What are the alleged abuses? The take it or leave it  
22 conditions and unfair price. Is the Tribunal at the  
23 trial going to be conducting an investigation into the  
24 machine learning and tools? It is actually very  
25 difficult to see how that falls within the four corners

1           of the case.

2           MS FORD: It falls within Meta's Defence, {B/4/81}.

3           MR SINGLA: With respect, Ms Ford has done this quite a few  
4           times over the last two days. It is quite concerning to  
5           think there is a sentence in a pleading which makes  
6           something a key issue for disclosure.

7           THE CHAIR: The trouble is that on one level, this is not --  
8           these are not key issues that go to the heart of the  
9           case for the purpose of disclosure, and I would not  
10          expect this level of detail to be in a list of issues  
11          for disclosure. We have gone down this route that we  
12          are going to finalise this document, because no one has  
13          actually asked us to say, "Let us start from the  
14          beginning", when so much work has already been done. If  
15          we go back to BC then we will be no further and all that  
16          time has been wasted.

17          MR SINGLA: Sir, we --

18          THE CHAIR: I am reluctant to decide now whether these are  
19          issues that feed into -- what may end up feeding into an  
20          order at the end of the day for a narrative statement.  
21          So the question is: How do we deal with that? Do we  
22          leave it in as an issue with that flag there, or not?  
23          That is where I think we are.

24          MR SINGLA: Can I just address that, because I respectfully  
25          submit, I understand, as it were, the temptation to

1           leave things to another day --

2       THE CHAIR: But the problem is we are now at 4:25.

3       MR SINGLA: I know.

4       THE CHAIR: So I do not want to do anything that prejudices  
5           either side.

6       MR SINGLA: Okay. Can I suggest, on something like this,  
7           actually it should be out for now, and if they want to  
8           introduce it, they can justify that. We have a lot of  
9           work to do on all sides between now and September, so  
10          actually the shorter this list is, the better, and the  
11          more efficient this process is going to be.

12      MS FORD: Sir, we have indicated that we propose that this  
13          is a sub issue that could be addressed through  
14          a narrative statement --

15      THE CHAIR: I agree.

16      MS FORD: -- so we have sought to take a proportionate  
17          approach on this.

18      THE CHAIR: Our inclination at the moment is to say this is  
19          far too granular. We are going to leave it out for that  
20          purpose. That does not mean you cannot ask for it at  
21          the next hearing. It just means we do not think that we  
22          need to go into this granular detail. I am not  
23          satisfied, anyway, that this is what I would call a key  
24          issue for disclosure. I can see it is relevant in some  
25          way, but I am not prepared to make it an order that this

1 stays as a key issue for disclosure, so this will be  
2 a fight for another day. We are not stopping you  
3 arguing it next time round. It is a fight for another  
4 day, but for now it is not going to be in the list of  
5 issues, so it is completely neutral for both sides.

6 MR SINGLA: Can I just check, does that apply to sub 24(5) and  
7 24(6), because on 24(7) we make a slightly different point,  
8 an additional point, that that is in fact duplicative of  
9 other issues, in particular --

10 THE CHAIR: I am inclined to put 24(5), 24(6) and 24(7) in that  
11 basket for now.

12 MR SINGLA: Okay.

13 THE CHAIR: Yes.

14 MR SINGLA: Again, just conscious of the time, the basic  
15 point on 25, if we are now looking at 25 --

16 THE CHAIR: I just want to make sure we are finished with  
17 24(8).

18 MR SINGLA: Okay. That is just a date point, I think.

19 THE CHAIR: I just want to make sure.

20 MR SINGLA: Sorry. Yes, I think that is agreed.

21 MS FORD: 25(1), we are happy to agree the proposed wording.

22 MR SINGLA: I am grateful.

23 THE CHAIR: 25(1), tick the third column.

24 MR SINGLA: For 25(2), the submissions I made a moment ago  
25 on 24(5), 24(6) and 24(7), 25(2) in my submission falls into

1           the same bucket, indeed may even be a fortiori, because  
2           this is getting into what factors affect bidding  
3           behaviour, winning probability, on the auctions. Again,  
4           why is it relevant to this case what the bidding  
5           behaviour is on the advertising auctions and what the  
6           prospect of success -- the winning probability -- is?  
7           We understand the profits point.

8       THE CHAIR: I will put that in the same category.

9       MR SINGLA: I am grateful.

10      MS FORD: Sir, there is a slightly different point on that,  
11           which is that the experts think that this is relevant.  
12           When Mr Singla poses the rhetorical question "why is it  
13           relevant", in the joint expert statement grid of issues,  
14           the Class Representative's expert has identified that  
15           these are relevant and I can show the Tribunal that.

16      THE CHAIR: Let us have a look at that quickly, yes.

17      MS FORD: C7, tab 20, starting at page 34 {C/7/34}. We are  
18           in the section --

19      THE CHAIR: Wait, I have to have it on the screen.

20      MS FORD: Yes. This is their grid where they have  
21           identified what they consider to be the relevant  
22           evidence. We are in the section on profitability.  
23           Issue 4 is concerning profitability of the use on the  
24           Facebook Service of the data to which the class rep's  
25           claim relates. Then under 4.2, over the page, we can

1           see under the Class Rep's column, that is in the middle,  
2           "Relevant categories of evidence", and she identifies  
3           internal documents and data on Meta's auction mechanism  
4           as being relevant. I am not sure if that is quite the  
5           right point. We can try going over the page. Yes, so  
6           it is the first bullet {C7/20/36}:

7                 "Internal documents and internal data on how  
8           Facebook has monetised the data to which the CR's claim  
9           via Meta's auction mechanism and what role Facebook/Meta  
10          Ad Manager plays in this."

11                If we can go back out again. Other bullet  
12           (inaudible - audio dropout) privacy prompts/settings  
13           et cetera.

14                So that is the Class Representative's expert.  
15           Meta's expert has also identified internal documents.  
16           If we look at 4.3 for Meta's expert, can we zoom out and  
17           try page {C7/20/37}. Meta's expert is saying "for  
18           example its impact on ad auction outcomes" as a relevant  
19           category.

20   MR SINGLA: Yes, which is what I said.

21   MS FORD: So both experts are indicating that this is  
22           potentially relevant material.

23   MR SINGLA: No, with respect, that is actually not right.

24           Our expert refers to outcomes of the auctions, which  
25           I think is in line with what I said, but what this issue

1 is going to is bidding behaviour and winning  
2 probability, so that is during the lifetime of the  
3 auctions. It is quite different to the outcome.

4 I would say this does fall into the category that we  
5 discussed previously. They need to go away and justify  
6 this. Otherwise they cannot just --

7 THE CHAIR: We will allow that in, because I think they have  
8 justified it. Next one.

9 MS FORD: 26(5) is the next one, and we are content to agree  
10 the wording that has been proposed there. 28 has been  
11 marked green, but the 2011 date seems to have snuck in  
12 there.

13 THE CHAIR: So you go back to, what, 2007?

14 MS FORD: 2007, yes.

15 THE CHAIR: Okay, then 28(4), that is agreed, but then do  
16 you not need to put 2007 there as well?

17 MS FORD: Yes, that is another one where you need to change  
18 the date, yes.

19 THE CHAIR: Yes. 29 on that page is all agreed. I am  
20 looking at 30. That is contentious. Let us look at  
21 that.

22 MR SINGLA: Are you on 30, sir? Are you on 30(1)?

23 THE CHAIR: I am looking at 30(1). I am just looking at it  
24 now.

25 MR SINGLA: Yes, 30(1) and 30(2), if we can confine these to

1           the Off-Facebook Data, which is what we agreed, or at  
2           least where we ended up on issue 15, you will recall the  
3           discussion we had about consideration of privacy  
4           generally is far too broad, so if we can just confine  
5           this to Off-Facebook Data, that deals with 30(1) and  
6           30(2).

7       THE CHAIR: Yes, that sounds right.

8       MS FORD: Yes.

9       THE CHAIR: Thank you.

10      MR SINGLA: I think it is sub 30(3) as well, because I think  
11           these are all privacy. What material representations  
12           has Meta made. This is 30(3).

13      THE CHAIR: Okay, that is 30(3). We need to look at 31 now.

14      MR SINGLA: I am so sorry. There is another point on 30(3).

15      THE CHAIR: Yes.

16      MR SINGLA: I think the point on -- the additional point on  
17           30(3) is -- can you see four lines up on the CR's  
18           wording in green, they want representations to  
19           regulators, and we object to that, because it is quite  
20           hard to understand --

21      THE CHAIR: You are saying that -- the representations to  
22           users, and their wanting regulators as well --

23      MR SINGLA: Yes, I mean, insofar as there is an issue, we do  
24           question whether there is a genuine pleaded issue about  
25           privacy at all, but insofar as any issue does exist, it



1 is about whether Meta was transparent vis-a-vis users in  
2 relation to privacy-type points.

3 THE CHAIR: But what you may have said to regulators can be  
4 highly relevant.

5 MR SINGLA: To what, with respect?

6 THE CHAIR: Well, to the issues in the action, because that  
7 really could cut across the pleadings. 30(3) I am going  
8 to order as per the -- in column 1, but putting in the  
9 date.

10 MS FORD: The date I think for these is 2005 --

11 THE CHAIR: Yes, that is 2005. Yes, that is right.

12 MS FORD: Yes.

13 THE CHAIR: And again, on 30(4), that has been changed.  
14 That must be fine.

15 MS FORD: Yes, that is fine.

16 THE CHAIR: We are about to do 31 now.

17 MS FORD: This is one of the ones --

18 THE CHAIR: The assessments point.

19 MS FORD: I think it may be an expert evidence point. I am  
20 just trying to find my -- it is opposed in its entirety,  
21 apparently. 31(1) --

22 THE CHAIR: We are now looking at 31(1), 31(2) and 31(3).

23 MS FORD: Yes, so these are -- so the inquiries in relation  
24 to the data protection legislation, which the Tribunal  
25 has been to date prepared to put in, subject I think to

1           referring to Off-Facebook Data. I do not know if that  
2           is a qualification that is acceptable in relation to  
3           these as well.

4           MR SINGLA: No, I think it was a few points, really. One is  
5           that you have already seen there are quite a number of  
6           issues elsewhere concerning GDPR and so on, so we say in  
7           substance it is duplicative, because they are already  
8           going to get disclosure concerning the subject of GDPR  
9           insofar as it is relevant to the issues in the case.  
10          That is one point. The second point is if one looks at  
11          the wording, it is just far too broad, even with the  
12          qualification that has just been offered.

13                 "What was Meta's commercial, and/or strategic and/or  
14                 any other business assessment of, or strategy in  
15                 relation to ... "

16                 It just does not have any regard to the need to  
17                 tailor these things to the case. It is just  
18                 otherwise -- with a business like Meta, it is far too  
19                 broad.

20                 There is also an objection we take to the reference  
21                 to the Digital Markets Act, because that is not  
22                 something that actually has any relevance to this case.  
23                 At most, I think the Class Representative says it is  
24                 relevant to the counterfactual, but that -- this is all  
25                 a regime that operates in the EU and not in the UK, so

1           we do not actually understand why that should come in.

2           MS FORD: I can address immediately that point, if that  
3           assists. Both of the experts have, at different times,  
4           indicated that Meta's response to the DMA is, they  
5           consider, very relevant, because it gives an indication  
6           of what Meta would have done in the counterfactual had  
7           it not been able to impose what we say are unfair  
8           trading conditions or unfair prices. So to show the  
9           Tribunal where both of the experts have at various times  
10          touched on this, Professor Scott Morton in the joint  
11          expert statement, C7, tab 20, page 21 {C7/20/21} (sic):

12                 "Mr Parker agrees that Facebook's reaction to events  
13          that shed light on issues arising from the claim (e.g.  
14          ATT, GDPR) are relevant. However, he suggests that  
15          disclosure should be restricted only to aspects of  
16          Facebook's response that relates to the data to which  
17          the claim relates. It may be that there is not much  
18          substantive disagreement, but I wish to clarify that:  
19          (i) there are events besides ATT and the GDPR which are  
20          relevant to the claim including the DMA and Facebook's  
21          reaction to the introduction of other privacy controls  
22          and ad blockers and ... that the disclosure  
23          should ... to which the claim relates ..."

24          THE CHAIR: What we are going to do is we are going to allow  
25          31(1), (2) and (3). It clearly is something that is at

1           least being supported by your expert as an issue or  
2           a matter on which they need disclosure on, it would be  
3           quite helpful for them. So that is 31(1), (2) and (3).

4       MR SINGLA: Just to be clear, I think, are we confining  
5           these to Off-Facebook Data?

6       THE CHAIR: I think, yes, we are. Yes.

7       MR SINGLA: Can I just put down a marker on the  
8           proportionality on the Digital Markets Act, which, as  
9           I say, does not even apply in the UK. I understand  
10          where the Tribunal is going in terms of the time we have  
11          to argue these points, but we will have to deal with  
12          that in proportionality.

13      THE CHAIR: Yes, I agree about the proportionality.

14      MS FORD: So 32 is -- 32 itself, the headline question, is  
15          fine, but then 32(1), there is a small point of granular  
16          drafting, which is --

17      THE CHAIR: They have put "for advertising purposes" is the  
18          main --

19      MS FORD: Well, yes, there is a slightly separate point. It  
20          relates to the impact of Meta's ATT innovation, so our  
21          wording says:

22                "What was Meta's assessment specifically as regards  
23                the predicted and actual financial impact of ATT ... "

24                They say:

25                "What is Meta's assessment specifically ... "

1 THE CHAIR: Yes. It should be "was", I think.

2 MS FORD: The predicted impact versus actual impact arises,  
3 as well.

4 THE CHAIR: The only real substantive point is whether or  
5 not you add "for advertising purposes", 32(1).

6 MR SINGLA: No, I --

7 THE CHAIR: Is there something else?

8 MR SINGLA: If only life were that straightforward.

9 THE CHAIR: What is the other difference?

10 MR SINGLA: It is the "predicted and", do you see in the  
11 left-hand column. Again, it is difficult to deal with  
12 these issues at such speed, but essentially the Class  
13 Representative and her expert rely on ATT, which is  
14 something that Apple introduced, and they say this is  
15 a natural experiment, I think is the phrase that is  
16 used, but to the extent they want to rely on this, what  
17 matters is the actual impact of ATT, not Meta's  
18 assessment as regards the predicted impact.

19 THE CHAIR: No, I accept that. That is why I am saying --  
20 we are in column 3.

21 MR SINGLA: I am grateful. We are in the right place, then.

22 THE CHAIR: We are in the right column.

23 MS FORD: That is a contested point, whether it is only the  
24 actual impact rather than the predicted impact. We do  
25 consider and the expert considers, so far as we are

1           aware, that predicted impact is relevant because it  
2           reflects any workarounds developed by Meta in response  
3           to the anticipated impact, so it undermines the  
4           reliability of what we do term the natural experiment  
5           that is proposed by Professor Scott Morton, if one only  
6           looks at the actual impact after any steps have been  
7           taken to work around it.

8       MR SINGLA: But it just -- sir, can I just remind you of  
9           your comments in the Trucks case that it is not good  
10          enough for an expert to say "I would like X, Y and Z".  
11          This is not entirely driven by expert --

12       THE CHAIR: As you know, I am against expert-led disclosure  
13          anyway.

14       MR SINGLA: Yes. This is a classic example of an expert  
15          saying "I would like to investigate something".

16       THE CHAIR: Okay. Let me just think.

17       MR SINGLA: Yes.

18       THE CHAIR: On that one, I do think that the financial  
19          impact would include what is coming as well as what  
20          actually happens, so what I am inclined to do is to have  
21          column 3, "What was Meta's assessment specifically as  
22          regards the financial impact of ATT", so that will  
23          include them coming in, so that is what we are going to  
24          order now on 32(1). Then the only other point is do we  
25          add in "for advertising purposes".

1 MS FORD: I am sorry, sir, I may not have understood. Are  
2 you saying that the predicted impact will be included in  
3 that wording?

4 THE CHAIR: Yes, because if you are talking about the  
5 financial impact, you are looking at it in advance as  
6 well, are you not? This is what is going to come, it is  
7 around the corner.

8 MS FORD: That is fine, so long as it comes within --

9 THE CHAIR: My colleagues say it is probably safer to put  
10 "predicted". Okay, we will have "predicted". It is  
11 clearly something that is relevant that should be in  
12 there; it is a question of the wording. So it will be  
13 "predicted and actual financial impact", and what about  
14 "for advertising purposes"? I cannot see anything wrong  
15 with that.

16 MS FORD: No objection to that.

17 THE CHAIR: Okay. That is what we are going to have. Okay.  
18 32(2). That should be agreed.

19 MS FORD: That is fine, yes.

20 THE CHAIR: 32(3), that should be fine. 33 is fine. 35(2).

21 MS FORD: This is one of the ones that Meta says is an issue  
22 for expert evidence, and so the Tribunal's indication  
23 that that is not mutually exclusive would presumably  
24 apply to that.

25 THE CHAIR: Let me see what Mr Singla says about 35(2).

1 MR SINGLA: Yes, it is a short point, actually. Do you see  
2 the wording in green, their wording? Do you see the  
3 subparagraph (b)? I think we simply say in relation to  
4 this that that is covered by (a):

5 "Why did Meta make these changes and investments?"

6 Then I think, as you described it earlier, these are  
7 sort of getting into interrogatories:

8 "Were these changes or investments related to, or  
9 otherwise enabled by ... "

10 One has to really have --

11 THE CHAIR: That is really a subcategory of the earlier one.

12 MR SINGLA: That is how we see it, yes.

13 THE CHAIR: I am happy with that. So what are we going to  
14 do? Are we going to --

15 MS FORD: Sir, before you -- there is one other tweak in the  
16 wording. We do not quite follow why -- this is an issue  
17 which both sides accept has user-facing elements and  
18 advertiser-facing elements, and the Meta wording has  
19 limited the advertiser-facing elements to key features,  
20 and we do not understand this asymmetry. We think that  
21 really it ought to be referring to both user- and  
22 advertiser-side essentially without that key  
23 qualification.

24 THE CHAIR: Where I am at the moment is the first column,  
25 and then it should read:



1            "In particular, as regards both the user- and  
2 advertiser-side:

3            "(a) Why did Meta make these changes and  
4 investments?"

5            Leaving out (b). That is where I am at the moment.

6 MS FORD: Yes, we are happy with that.

7 THE CHAIR: That is what we are ordering.

8 MR SINGLA: I wonder whether it might be more accurate and  
9 specific to add, if you are using their wording,  
10 "developing the user- and advertiser-side features of  
11 Facebook". It might just be more specific.

12 MS FORD: I do not think we are sure quite what that is  
13 supposed to achieve.

14 THE CHAIR: Okay, we will just leave the wording we have at  
15 the moment if that is going to -- not sure what it  
16 means. Okay. 36(1) must be agreed, that one.

17 MS FORD: I think that is agreed on the basis that our  
18 wording seems to have been accepted.

19 THE CHAIR: Yes. 36(2) and(3).

20 MS FORD: These are, yes, further issues which we understand  
21 the objection is that they are supposedly expert issues,  
22 to which the same response comes from us, which is that  
23 Meta's analysis or assessment is relevant to those --

24 THE CHAIR: What does Mr Singla say about that?

25 MR SINGLA: I do not think we are saying there should be no

1 disclosure. I think we are saying there is going to be  
2 disclosure in relation to the same subject matter, so if  
3 you just look at 36(1):

4 " ... revenues, cost, asset values, capital  
5 expenditure ... "

6 So what we are saying is there will be disclosure  
7 covered by other issues, but what 36(2) and 36(3) are adding  
8 is something that the experts can opine on having  
9 investigated the raw materials which will be disclosed  
10 pursuant to other issues. I think it is a strawman to  
11 say we are saying if something is going to be addressed  
12 by experts, there should be no disclosure. That is not  
13 actually the position we are taking. 36(1) is very  
14 broad. You will see under 36(1) --

15 THE CHAIR: Yes, that is the point.

16 MS FORD: Sir, we do not accept that these are in any way  
17 duplicative. In 36(1), 36(1) is asking a factual issue.  
18 36(2) is asking what was Meta's analysis of and/or  
19 understanding in relation to, and then 36(3), what was  
20 Meta's assessment.

21 THE CHAIR: We will have 36(2) and 36(3). Then 37(1), is it  
22 just a question of the date and taking out  
23 "significantly"?

24 MS FORD: Yes, "significantly" is a qualifier that we have  
25 discussed previously.

1 THE CHAIR: Yes, and then the date is --

2 MS FORD: 2005 for this one.

3 THE CHAIR: Yes, and then we now take out "significant", so  
4 we go back to your wording, I think, in 37(3).

5 MS FORD: Yes.

6 THE CHAIR: Then that is that schedule. Okay. So  
7 a finalised schedule is going to be submitted with the  
8 cross-referencing. I think, being realistic, given the  
9 cross-referencing needs to be added and the checking,  
10 today is Wednesday, so if we can have it by 11 o'clock  
11 in the morning on Friday, then I will be able to look at  
12 it over the weekend. Well, I will look at it on Friday  
13 and get that determined if there are any issues, and if  
14 there is any argument about something, put it in square  
15 brackets and put the alternatives in there. I do not  
16 want any arguments. I do not want any point -- I will  
17 just look at it and tick it, whichever the two  
18 alternatives are.

19 As regards the RFI, we have run out of time, so what  
20 I can see from the RFI that you have drafted is that you  
21 are simply relying on it being in relation to an issue  
22 in the action as opposed to something that may assist  
23 the Tribunal on disclosure.

24 MS FORD: No, sir, that is not right.

25 THE CHAIR: But then you are going to have to amend it to

1 bring that in.

2 MS FORD: Well, we say that the inquiry that is being made  
3 is relevant to the issue for disclosure, because it has  
4 been very clear and many markers have been laid down  
5 that we are going to have a debate about proportionality  
6 in relation to all of these, and the core --

7 THE CHAIR: There are two separate things. One is, does  
8 this RFI relate to a matter in issue in the proceedings  
9 primarily by reference to the pleadings? That is the  
10 first point, and that will be a conventional Part 18  
11 RFI. The second thing is, will this information assist  
12 the court as part of the case management of the  
13 disclosure process? If that is right, the court does  
14 have jurisdiction under its broad case management powers  
15 to make an order that this information be disclosed.

16 This wording is simply a wording on the first basis  
17 and not the second basis. All you have to do is to  
18 think -- do not answer now. If you want to do it on the  
19 second basis as well, you are going to have to add in an  
20 extra paragraph, on the current wording of this RFI.

21 MS FORD: Sir, I am sure we will be content to do so.

22 I wonder if I can tell you in 10 seconds why we say that  
23 this is relevant to proportionality as well. We will be  
24 met with an argument that you cannot have documents  
25 going back to 2005 because, and the sorts of arguments

1           we have already heard, which are this is X number of  
2           years from the Claim Period, this is X number of years  
3           from the --

4       THE CHAIR: That goes to the second way of putting it.

5       MS FORD: It absolutely does, yes.

6       THE CHAIR: All I am saying is if you want to do it that  
7           way, you do it that way as well as this wording. What  
8           I am going to direct or what we are going to direct is  
9           that you have liberty to file an RFI, but it will go  
10          through the normal process, which means that the other  
11          side will respond by a certain date, and in that  
12          response, they are perfectly entitled to say, "We do not  
13          agree for the following reasons", and then it gets  
14          resolved by the court at the next hearing as to whether  
15          or not you are entitled to an order that they do in fact  
16          provide a substantive response. That is how one would  
17          normally expect a Part 18 request to go, so that is what  
18          we are inclined to do.

19       MS FORD: Sir --

20       THE CHAIR: It is totally neutral for both parties, but what  
21           it does do, it gives us jurisdiction at the next hearing  
22           to make an order if we think it is appropriate.

23       MS FORD: So in terms of what needs to be added, it will be  
24           an application for an order under the Tribunal's  
25           discretionary case management powers to be directed --

1 THE CHAIR: You just need to add in an extra paragraph  
2 saying in addition -- whatever you think is appropriate.  
3 That "this information will be of assistance to the  
4 Tribunal in exercising its case management powers at the  
5 next CMC", or something like that.

6 MS FORD: Yes.

7 THE CHAIR: But then Mr Singla has every right to object to  
8 the RFI and say either it is not relevant on the  
9 pleadings, or he may say that "I do not think it will  
10 assist the Tribunal as part of the case management", but  
11 everything is on the table. All this is doing is  
12 allowing us to have effectively the jurisdiction to  
13 consider this issue properly next time round, and it  
14 will give Mr Singla the opportunity, if his clients are  
15 going to object to it, to explain in some detail why it  
16 is objected to, so we have a focus for the argument next  
17 time around.

18 Is there anything else that anyone would like us to  
19 deal with?

20 MS FORD: Just before Mr Singla rises, just a point of  
21 housekeeping on the timing for the draft order.  
22 Obviously we will prepare it as soon as we can. We are  
23 mindful that various parts of what the Tribunal has  
24 directed will probably be deemed as judgments that will  
25 come to the Tribunal for approval before they come to

1           the parties, and in those circumstances, to avoid having  
2           a debate what the Tribunal said, it may make sense we  
3           can have until the Friday deadline to try to agree the  
4           order, and if the Tribunal could then --

5       THE CHAIR: I do not know how quick we can get the actual  
6           ruling done. I have seen today's transcript, and that  
7           is fine. I can deal with that. I have not seen the  
8           ruling bit of the transcript for yesterday, but I will  
9           see how far we can do it, but hopefully we will get you  
10          the draft ruling tomorrow, and the idea is any comments  
11          or changes or whatever by let us say 10 o'clock -- same  
12          time, 11 o'clock on Friday, and then we should be in  
13          a position to release the ruling either the same day or  
14          on Monday.

15       MS FORD: Might we then seek to agree the order once we have  
16          seen the ruling? It simply sidesteps debates about what  
17          the Tribunal did in fact say.

18       THE CHAIR: You should get the draft ruling tomorrow.

19       MS FORD: Okay. Normally, the ruling prior to approval does  
20          not come to the parties, I think it is fair to say.

21       THE CHAIR: No, but we will have done all the necessary work  
22          by fairly early tomorrow morning, because I would have  
23          got everything together, so you will get the draft  
24          ruling tomorrow, but it will not be issued on the  
25          website until after I have got your corrections of typos

1           and stuff like that.

2           MS FORD: I am sorry, that was my misunderstanding.

3           MR SINGLA: I was just going to -- sorry.

4           THE CHAIR: Yes, of course, Mr Singla.

5           MR SINGLA: Just really a plea on behalf of really those  
6           behind me. The Friday 11 o'clock deadline.

7           I understand you are keen to look at all this over the  
8           weekend, but there is a lot to do in terms of the  
9           cross-references to the pleadings, and also that needs  
10          to be done by both sides, it needs to be verified and so  
11          on. I just wonder whether we could push that into the  
12          start of next week.

13          THE CHAIR: No, if you feel you need more time, it is better  
14          that we do not rush the actual order if you think that,  
15          having spoken to your team, they think they need a bit  
16          more time. What we will try and do, then, is try and  
17          get the ruling done and get it out tomorrow along the  
18          time lines we have discussed, so at least when you  
19          provide the draft order and the finalised version of the  
20          documents, the list of issues, by -- I suppose let us  
21          say by 2 o'clock on Monday, because it does not mean  
22          people have to work all weekend, I think that is  
23          sensible.

24          MR SINGLA: I am grateful. I think any more time that we  
25          could have would obviously be helpful. 2 o'clock on



1           Monday is very helpful but --

2       THE CHAIR:   Is that hard for you?

3       MR SINGLA:   You will be amazed at how long these things

4           take.

5       THE CHAIR:   No, I agree.   Let us make it on Tuesday, then.

6           We will aim for 12 o'clock on Tuesday.

7       MR SINGLA:   I am very grateful.

8       THE CHAIR:   Then I can finalise it -- I am just trying to

9           think.   I am working this week on another case anyway,

10          so it is probably better for me if I do not get it on

11          Monday, because I will be doing something else on

12          Monday, but I know I am free to look at things properly

13          next Wednesday; that is my next proper gap to look at

14          anything.   So if we get everything by 12 o'clock on

15          Tuesday, then that will give me time to look at it on

16          Wednesday.

17       MR SINGLA:   I am very grateful.   That will help a lot.

18       THE CHAIR:   Right.   Thank you very much, everyone.   We will

19          rise.   I thank the transcribers for doing what they are

20          doing in quite long hours.   Thank you.

21       (5.01 pm)

22          (The hearing adjourned to a date to be confirmed)

23

24

25