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

1517/11/7/22

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 18<sup>th</sup> November- Friday 20<sup>th</sup> December 2024

Before:

The Honourable Justice Michael Green  
Ben Tidswell  
Professor Michael Waterson

**Merchant Interchange Fee Umbrella Proceedings**

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

Sonia Tolaney KC, Matthew Cook KC, Owain Draper & Daniel Benedyk on behalf of Mastercard  
(Instructed by Jones Day and Freshfields Bruckhaus Deringer LLP)

Daniel Jowell KC, Jessica Boyd KC, Isabel Buchanan, Ava Mayer & Aislinn Kelly-Lyth on behalf of  
Visa (Instructed by Linklaters LLP and Milbank LLP)

Kieron Beal KC, Philip Woolfe KC, Oscar Schonfeld, & Reuben Andrews on behalf of the SSH  
Claimants (Instructed by Scott + Scott UK LLP and Stephenson Harwood LLP)

Mark Simpson KC, Jack Williams & Alastair Holder Ross on behalf of Walter Merricks CBE  
(Instructed by Willkie Farr & Gallagher (UK) LLP)

Wednesday, 11 December 2024

(10.30 am)

In Private

MS RACHEL WEBSTER (continued)

Cross-examination by MR WOOLFE (continued)

In Open Court

MR WOOLFE: Ms Webster, the last topic is -- I have been cross-examining you about the basis on which you have allocated specific document producing claimants to these particular categories, but what I want to turn to now is how you have done the process of extrapolation, I suppose might be the better way of putting it, to the broader merchant claimants class. It is related to what you do for Merricks as well, but I am focusing on the claimant class.

If we go to your reply report, so Webster 2, volume 1 {RC-G/12/120}, paragraph 6.26. So in the previous paragraph you dealt with the factual evidence in relation to a particular merchant, but you go on to make a broader point, that on the basis of, in section 4, which we will go back to in a moment:

"... I consider there to be reason to believe that similar merchants may well treat MSCs in a similar manner in their pricings decision, and therefore that the factual evidence for one merchant provides relevant

1       insights for at least some other merchants with similar  
2       businesses. On this basis, I conclude that resellers of  
3       products and services in general, as well as the  
4       restaurants and bars subcategory of producers of  
5       products and services, are more likely than not to treat  
6       MSCs in their pricing decisions in the manner that  
7       economic theory would imply for variable costs."

8               Now, your reasons for doing this, I think, if we go  
9       back to pages 58 and 59 of this document  
10       {RC-G/12/58-59}, paragraph 4.40, you say at the bottom  
11       of paragraph 4.40:

12              "Nevertheless ... reasons to believe that similar  
13       merchants should be expected to treat MSCs in a similar  
14       manner ..."

15              At 4.41, you say:

16              "I recognise ..."

17              Sorry, the end of 4.40:

18              "I therefore consider it reasonable to apply my  
19       conclusions for the document producing claimants that  
20       I have categorised as resellers ... to merchants that  
21       fall within this category more generally."

22              You say:

23              "I recognise that this assessment is necessarily  
24       based on predictions from economic theory combined with  
25       relatively limited factual evidence and ... subject to

1 greater uncertainty than [you] would wish [but]  
2 reasonable ... in circumstances ..."

3 You say, over the page, that you consider your  
4 approach to be preferable to those adopted by other  
5 economic experts who involve making strong assumptions.  
6 So that is what we are talking about, is your  
7 extrapolation from the pool of resellers you have looked  
8 at to the wider pool of resellers.

9 So I put to you that your basis for extrapolating to  
10 the wider pool of merchants is based, in effect, solely  
11 on economic theory, is it not?

12 A. It is based on theory and my review of Mr Harman's  
13 assessment of the evidence for the document producing  
14 claimants.

15 Q. It is an extremely broad-brush approach based solely  
16 upon your producer/reseller distinction, is it not?

17 A. It is a broad-brush approach, yes.

18 Q. It is much, much more -- I did not mean to -- it is  
19 a much more broad-brush approach than Dr Trento and  
20 Mr Economides who at least tried to match the other  
21 merchant claimants to one of their nine analysed  
22 sectors, is it not?

23 A. I do not know that it is much more broad-brush than  
24 their approach.

25 Q. Can we go to paragraph -- page 52, paragraph 4.24

1 {RC-G/12/52}. These, again, were the reasons you put  
2 forward as to why merchants might be more likely to take  
3 MSCs into account. We see the three reasons again over  
4 the page, we looked at this before, subparagraphs (a),  
5 (b), (c). I think, from looking at these in your  
6 evidence today, the only one you are really advancing as  
7 a reason for distinguishing producers and resellers is  
8 that you think resellers are likely to have a higher  
9 proportion of variable overheads than producers, is that  
10 correct?

11 A. No. So when I produced this second report, I had  
12 evidence that -- my interpretation of the evidence was  
13 that two resellers, Sony and Travix, reported that they  
14 categorise MSCs as COGS and, in doing so, signalled to  
15 me that they understand the variable nature of MSCs, and  
16 so I think more likely than not that they treat it as  
17 a variable cost.

18 Then I had a set of other resellers and they  
19 included Primark, Marks & Spencer, Holland & Barrett,  
20 all of whom, on the basis of the factual evidence that  
21 I reviewed, based on Mr Harman's assessment, indicated  
22 that it is more likely than not that they were treating  
23 the MSC as a variable cost, based on this combination of  
24 three reasons, (a), (b) and (c) here on the screen.

25 So that led me to a view that actually there was

1 a relative consistency in types of business that  
2 I labelled as resellers and gave me some comfort that as  
3 a group of resellers, category of -- sorry, as a group  
4 of merchants operating this type of business model, that  
5 it may be reasonable to conclude that other businesses  
6 operating that type of model may also treat MSCs as  
7 a variable cost for price setting.

8 That is quite different from the position that I had  
9 in relation to the producer category, where I had two  
10 merchants, LV and Wagamama, who appeared -- the factual  
11 evidence would suggest they treated it as a variable  
12 cost for price setting purposes, but then I had Three,  
13 where it appeared more likely that it was fixed, and  
14 then I had another, which was Hilton, where it was  
15 unclear.

16 So I think the balance of evidence in relation to  
17 that producer category was much more mixed, and it is on  
18 that basis that I did not reach a view in relation to  
19 the producer category.

20 Q. But I put to you that your specific reasons that you are  
21 giving here for why it may be reasonable to conclude  
22 that a merchant in general would treat MSCs as  
23 a variable cost in the sense that you mean is because  
24 a material proportion of their overhead costs are  
25 variable, and you do not have any reason in general to

1 conclude that resellers are more likely to have a higher  
2 proportion of variable overheads than producers, do you?

3 A. No. Another factor which may be relevant is when we  
4 look at the producer category, my expectation is that  
5 that would include businesses that may have a higher  
6 degree of fixed costs and a higher variable margin.  
7 That may matter because the lower the proportion of  
8 variable costs in general for those businesses may have  
9 an impact on how closely they try to fine-tune their  
10 pricing in response to changes in those variable costs,  
11 so that may also be a relevant consideration.

12 Q. Now, you have criticised Dr Trento and Mr Economides for  
13 relying upon whether MSCs are categorised as COGS or  
14 overheads, COGS being direct costs and overheads being  
15 indirect.

16 Can I take you to {RC-K/19/25}}? This was a joint  
17 expert statement that was produced about a year ago when  
18 experts were commenting on methodological issues. You  
19 will see the factor being considered, at the top of that  
20 page:

21 "Whether the cost is treated as a direct input into  
22 pricing (or the gross margin) such as COGS or treated as  
23 an overhead cost."

24 On page 27 {RC-K/19/27}}, we see what Dr Niels, your  
25 predecessor in relation to the merchant claimants

1           anyway, said. He considered this factor was relevant  
2           and he says, second paragraph:

3           "The question of whether a cost is treated as  
4           a 'direct input cost' into the pricing of one or more  
5           products of as an 'overhead' is closely related to  
6           Factor B.1."

7           B.1 was variable versus fixed costs, and he goes on  
8           to explain his view.

9           Dr Niels is recognising, is he not, that the  
10          accounting categorisation used by businesses in practice  
11          is relevant?

12         A. He is saying that, I think. In particular drawing  
13          attention to COGS, where one might be able to reach the  
14          conclusion very quickly that the business treats the MSC  
15          as a variable cost, versus overheads, where it is  
16          unclear, because some costs are variable and some costs  
17          are fixed.

18         Q. So the conclusion: overall, stepping back from -- we  
19          need not look at this document now -- stepping back from  
20          all the various stages of your methodology, I suggest  
21          you have adopted an unorthodox methodology for assessing  
22          pass-on that is not set out in the Commission  
23          Guidelines, is that correct?

24         A. I would not agree with that. I think the assumptions  
25          that I have made in relation to economic theory are



1           consistent with those set out in the Commission  
2           Guidelines.

3       Q. I suggest you have adopted a highly theoretical approach  
4       based on assuming a high level of pass-on if MSCs are  
5       treated as marginal costs. That is correct, is it not?

6       A. I have been informed by the empirical evidence in  
7       relation to pass-on, and the predictions of economic  
8       theory, to reach conclusions if the factual evidence  
9       suggests it is more likely than not that the MSCs were  
10      treated as a variable cost.

11      Q. Together with Mr Harman, you have ultimately undertaken  
12      a factual enquiry which does not match the original  
13      question you set for yourself. That is right, is it  
14      not?

15      A. No, I disagree with that as well. I think I have  
16      maintained the same question, and what I have done  
17      between my first report and my second report is  
18      challenged myself to reach my view on the basis of the  
19      evidence that is in front of me, acknowledging that the  
20      evidence is not as detailed as I would wish.

21      Q. In effect, where there is anything that Mr Harman has  
22      categorised as an implicit mechanism, you have equated  
23      that with consideration of the MSCs as a variable cost,  
24      have you not?

25      A. No, I disagree with that as well, because there are

1 instances where Mr Harman, I think, points to the  
2 potential existence of an implicit mechanism, and I have  
3 considered using my framework that we just looked at,  
4 that that would not give me comfort that the merchant  
5 did treat or was more likely than not to treat the MSC  
6 as a variable cost.

7 Q. For all those claimants where Mr Harman finds only  
8 implicit links, which is EBITDA monitoring, it is said  
9 there is no direct evidence of any change in MSCs  
10 leading to a change in prices?

11 A. I do accept that.

12 Q. The final question: you have extrapolated your results  
13 out to the wider merchant class based solely on the  
14 assumption that resellers have a high proportion of --  
15 a material proportion of variable overhead costs and are  
16 therefore more likely to treat MSCs as a marginal cost.  
17 That is correct, is it not?

18 A. No, I disagree with that. I have looked at the balance  
19 of the evidence in relation to -- the factual evidence  
20 in relation to merchants that I consider likely to fall  
21 within the reseller category.

22 MR WOOLFE: Thank you, Ms Webster. Those are all the  
23 questions I have.

24 Simply for Professor Waterson's note, the lag  
25 between the one-month versus the year lag is in

1           {RC-F/17/113} at the top. The equation there shows the  
2           one-month lag. There is a definition of T a month and  
3           the lag as in there.

4           Thank you, sir.

5       THE CHAIRMAN: Thank you, Mr Woolfe.

6           Mr Simpson.

7                       Cross-examination by MR SIMPSON

8       MR SIMPSON: I think we can go to open now. I believe we  
9           are in closed?

10      THE CHAIRMAN: Right, okay.

11      MR SIMPSON: There will be one passage of closed in my  
12           cross-examination but that will be it.

13      THE CHAIRMAN: At the end?

14      MR SIMPSON: In the middle, I am afraid, but I will flag it.

15      MR WOOLFE: I should say, I think everything after the break  
16           that I put was in relation to general matters that  
17           I think are -- can, on the transcript, be treated as  
18           open, so I should make that clear, sir.

19      THE CHAIRMAN: Okay, thank you.

20      MR SIMPSON: Good morning, Ms Webster.

21      A. Morning.

22      Q. I feel as though we know each other even though we have  
23           never met.

24           I want to start with just a preliminary point of  
25           principle as to precision of results and how to qualify

1           them as an economist.

2           Now, as an economist, you have to be, I hope you  
3           would accept, as precise as you can in the use of  
4           numbers and statistics and percentages?

5       A. Is that a question?

6       Q. That is a question.

7       A. So I have seen it as my role in these proceedings, and  
8           I would generally, to give a fair sense of the level of  
9           uncertainty associated with any estimates that I am  
10          putting forward.

11      Q. Whilst being as precise as you can with what you have?

12      A. Yes, I think that is consistent.

13      Q. For instance, there is a fundamental difference, just  
14          using hypothetical examples, between saying a large  
15          number of people drive Ford cars and a large percentage  
16          of people drive Ford cars. Would you accept that that  
17          is a fundamental difference?

18      A. Yes.

19      Q. Because depending on how you define large number, you  
20          can have a large number of people driving but a small  
21          percentage.

22          Likewise, if you were talking about an increase in  
23          consumer spending on Ford cars over time, it would be  
24          important to adjust for inflation or say you had not  
25          done so?

- 1       A. Sorry, are we talking about ...
- 2       Q. These are hypothetical examples. I will put it again,  
3       if you did not hear it.
- 4       A. Yes.
- 5       Q. If you are talking about an increase in consumer  
6       spending on Ford cars over time, it is important either  
7       to adjust for inflation or to say that you have not done  
8       so?
- 9       A. So I think it depends on the use to which the statistic  
10      is being put. So if it is relevant to the conclusion  
11      that one draws, then, yes, that would be important to  
12      flag so that --
- 13      Q. To say that you had adjusted or that you had not?
- 14      A. As appropriate.
- 15      Q. Yes. Otherwise, the figures that you use could be  
16      rather confusing to the person relying on them, could  
17      they not?
- 18      A. That may or may not be the case. I think it depends on  
19      the question that the figures are being used to answer.  
20      It may be material or it may not be material.
- 21      Q. I think that is a distinction you were drawing just now,  
22      though, was it not: where it is material or potentially  
23      material, you need to draw attention to it, and where it  
24      is not, you do not?
- 25      A. Yes. Well, sorry --

1 Q. If it is material and you do not draw attention to it,  
2 then that could be rather confusing for the reader?

3 A. Possibly.

4 Q. I assume for the purposes of this cross-examination, but  
5 tell me if I am wrong, that you -- before they were  
6 served -- were sent a copy of Mastercard's positive  
7 case, responsive case and opening to comment, so far as  
8 it was within your expertise or your team's expertise?

9 A. I think, from memory, that we were sent those documents.  
10 I personally did not review them.

11 Q. Okay. Did members of your team review them?

12 A. I think that is right, yes.

13 Q. I assume that in the served versions, there was nothing  
14 that your team disagreed with in them?

15 A. I assume that is right.

16 Q. I want to look at the exercise you have performed or  
17 been asked to perform and have performed. You have been  
18 asked to attempt to ascertain, so far as you can, and  
19 I see you writing down -- I am going to try to make my  
20 questions not too long and, if they are too long, I will  
21 be told to break them up, I am sure, and I will go back.

22 Your report attempts to ascertain merchant pass-on  
23 for the period 1992 to 2024, so far as you can, so far  
24 as you are able to do so?

25 A. Yes -- erm, yes.

1 Q. The claim period, the relevant claim period, starts when  
2 the Merricks claim starts in May 1992 and it ends  
3 in 2024, when the merchant claim period ends?

4 A. Yes.

5 Q. The Merricks claim period ends in 2010?

6 A. Yes.

7 Q. Now, if we can go to {RC-M/263.1/5}. This is your  
8 instruction letter, jointly from Freshfields and  
9 Jones Day. It asks you to consider a pass-on of  
10 a change in MIF levels from the first day of the claim  
11 period.

12 THE CHAIRMAN: Which paragraph are you on?

13 MR SIMPSON: 10, I am sorry.

14 A. Yes.

15 Q. So the period for which you were asked to consider  
16 pass-on was May 1992 to date?

17 A. Yes.

18 Q. So you were asked to produce a report which looked at  
19 that 32-year period and sought to ascertain pass-on in  
20 that period, so far as possible. I think we have done  
21 that bit; yes?

22 A. Yes.

23 Q. Including taking into account how that might have  
24 changed over time and in different sectors?

25 A. Yes.

1 Q. Is that fair?

2 A. Yes.

3 Q. So whether or not a claim had been made by Mastercard --  
4 against Mastercard, sorry, by merchants or consumers for  
5 any particular years within that 32-year period is, from  
6 an economic perspective irrelevant, is it not?

7 A. If your question is I should be looking objectively to  
8 understand the likely degree of MSC pass-on over that  
9 period, irrespective of the different claims, then, yes,  
10 I agree, that is what I sought to do.

11 Q. That was the point, yes. Because whether or not a claim  
12 has been made is an -- the word "exogenous", not only  
13 can I not say it, but I am not quite sure I know what it  
14 means, but let us say extrinsic factors. As for  
15 "heteroskedasticity", I said to my junior the other day  
16 that I was going to challenge the family to say that ten  
17 times after Christmas lunch.

18 But looking at extrinsic, it is an extrinsic factor,  
19 is it not, whether there has been a claim brought or  
20 not?

21 A. Yes. My role has been to give my best view, as best as  
22 I am able, of pass-on over the period.

23 Q. But your report considers and comes to conclusions on  
24 pass-on for the Merricks claim period separately from  
25 the merchant claim period; yes?



1       A.   Yes.

2       Q.   What was the economic rationale for doing that?

3       A.   So where I began, in terms of the methodology that  
4            I have had, is I have set up an economic framework in  
5            theory, and I suppose, in my mind, I am thinking about  
6            that being the relevant theory that applies now, and  
7            I am thinking particularly about the benchmark case in  
8            theory that we talked about yesterday. The reason that  
9            I say that sort of applies now, really, is because  
10           I am -- one of the core assumptions that I make in that  
11           benchmark case is in relation to the commonality of the  
12           MSC costs faced by merchants. So my benchmark case, in  
13           theory, is sort of relevant towards the end of the  
14           merchant period.

15           I then have a series of empirical exercises which  
16           I conduct. The public data spans a long period, and the  
17           conclusions that I draw from that are not specific to  
18           any point during that period. They are saying: taking  
19           that data as a whole, I can draw a broad conclusion that  
20           pass-on of variable costs is likely to be high. So it  
21           is sort of time-agnostic, if you like, although working  
22           with data from that period. Then I have data from the  
23           merchants -- sorry, and the existing studies is very  
24           similar to the public data. I take only broad  
25           inferences of high levels of variable cost pass-on.

1           Then what I have is I have data from the merchants,  
2           and for those that I analyse, and I also take into  
3           account in my second report the analyses of other  
4           experts where I consider them to be reliable, those  
5           estimates tend to relate to the pass-on of variable  
6           costs in the most recent period, so I think, you know,  
7           during the merchant period certainly, and for some  
8           merchants in the latter part of that period.

9           So to the extent that I bring together my  
10          predictions of theory with my empirical estimates,  
11          I have a base case which I would say applies, in  
12          practice, to the latter half of the merchant period.  
13          Now, it is quite a broad range, because it is from 70 to  
14          100. What I separately then do is I look at whether  
15          there will be differences over time that would cause me,  
16          either in that base case scenario or in relation to my  
17          other pass-on scenarios: is there reason to believe that  
18          that 70 to 100% pass-on would not be the right estimate  
19          to use, going back in time? In my second report, I am  
20          very clear that there could be differences that relate  
21          between the two claim periods, the Merricks and the  
22          merchant claim periods, but also within periods, so  
23          within the Merricks period and within the merchant  
24          period, and I have stated that quite clearly in my  
25          report.

1           What I have then done is to say: well, look, I need  
2           to judge, on the basis of the evidence that is  
3           available, whether there are factors that would be, in  
4           my view, sufficiently material that they could change  
5           the appropriate pass-on rate, and I do that with  
6           illustration by comparing the early -- comparing the  
7           Merricks period with the merchant period, but I do not  
8           consider that that means one would only need to apply  
9           any adjustments to the pass-on rate only for the  
10          merchant period. What I am really -- where I get to is  
11          actually the evidence that is available on changes in  
12          factors that affect pass-on over time, that evidence is  
13          not sufficiently detailed or informative that I could  
14          say: in this year, it would not have been 70 to 100, it  
15          would have been 50 to 70. I cannot do that with the  
16          evidence that is available.

17          So really what I am signalling is there are factors  
18          which suggest that pass-on could have been lower in the  
19          past. I think that could apply to the Merricks period,  
20          I think it could equally apply to the beginning of the  
21          merchant period, in which case one might want to take  
22          the lower end of my 70 to 100 at the start of the  
23          merchant period if one -- if the Tribunal wished to make  
24          an allowance for lower rates of pass-on going back in  
25          time.

1 Q. So I understand, of course, that there are lots of  
2 different factors that go to your assessment of the rate  
3 of pass-on or the range of pass-on for any given year or  
4 period for which you can come to a conclusion,  
5 I understand that, and I think, summarising, that was  
6 what you were saying. There are many different factors,  
7 they are all set out at length in your report, and we  
8 will go through them.

9 But what I still am not clear on is why you felt it  
10 necessary, from an economic perspective, to divide this  
11 into the merchant and the Merricks claim period, rather  
12 than -- that seems a bit top-down, rather than going  
13 from bottom-up and saying: this is a year or it is  
14 a five-year period or it is a ten-year period and I have  
15 to assess, over each of the years for the 32-year  
16 period, what pass-on is or was in my best assessment.

17 So in your answer, I did not hear a rationale for  
18 dividing the two periods. I heard a rationale for  
19 considering a lot of factors for each year or period.

20 A. So, to be clear, I think I have not really separated  
21 necessarily the Merricks period from the merchant  
22 period. What I have done is to identify, through my  
23 card usage -- my analysis of card usage data, and  
24 through the analysis of card acceptance data, actually  
25 the changes in every year between, well, the start of

1           the data, which is slightly after the start of the  
2           Merricks period, and the end of the merchant period.

3           So I do not necessarily think that I am drawing,  
4           from an economic perspective, a distinction between what  
5           is happening in the merchant claim period versus the  
6           Merricks time period. I am trying to say: this is how  
7           card usage has changed over time; let us see it on  
8           a chart for every year and, equally, card acceptance.

9       PROFESSOR WATERSON: Can I ... Sorry to break in so early,  
10       but it struck me, if you think of the public data, which  
11       goes back a long way, and you think of the years, so  
12       a very broad approach might have been to estimate  
13       a relationship for the early period, estimate  
14       a relationship for the later period, and test -- and  
15       then estimate a relationship for the whole period and do  
16       a standard sort of Chow-type test to see whether there  
17       are observable differences at that very broad level  
18       between the two periods, and the question is: did you do  
19       that?

20       A. Not --

21       PROFESSOR WATERSON: It is rather a "yes" or "no" question.

22       A. Well, it is a "not exactly" answer, I am afraid.

23       THE CHAIRMAN: I think if you could try to keep your answers  
24       little shorter, because ...

25       A. Yes, of course. So I decided, in doing my first report,

1           that the data would not be of sufficient quality. Given  
2           all the matching issues and the measurement errors  
3           associated with that, I considered it would not give me  
4           a reliable result. I did, however, test that when  
5           I looked at Mr Coombs' analysis, and I included an  
6           analysis of pass-on rates, taking different samples for  
7           the public data. So there is an analysis in my reply  
8           report which shows that actually you get quite different  
9           pass-on rates, depending on the period of the public  
10          data that you work with.

11                 I also consider that, when I think about changes  
12          over time, the biggest change we have talked about is  
13          the one potentially -- or the one that will have most  
14          effect, I think, is the one relating to commonality of  
15          changes in MSC costs across competitors. Now, the  
16          public data generally relates to, and I think this is  
17          agreed amongst the experts, it is likely that it is  
18          picking up the pass-on of costs that are incurred  
19          industry-wide.

20                 Now, if the impact of going back in time is that MSC  
21          costs were not as commonly incurred as they are in the  
22          later period, then that suggests actually that the  
23          public data estimates are not estimates of a good proxy  
24          cost going back in time. So actually the analysis that  
25          you have described, Professor Waterson, I think, would

1           be -- would not necessarily be informative, because  
2           there is a view -- there is a possibility that the  
3           relevant cost proxy has changed to one which is more  
4           firm-specific. It is not firm-specific, that is going  
5           too far, but less commonality.

6       PROFESSOR WATERSON: Right. But, nevertheless, you could  
7           potentially have done that and then carried on to look  
8           at the periods, or the various changes that you have  
9           talked about, you know. Because if it is said that the  
10          relationship is common across the whole period, in other  
11          words, you could not reject the hypothesis that the two  
12          samples were the same, then that would have provided  
13          some information?

14       A. For those proxy costs?

15       PROFESSOR WATERSON: Yes.

16       A. If one made an assumption that there is no change in  
17          commonality, then that would -- for the MSCs costs, then  
18          that would apply.

19       PROFESSOR WATERSON: That would be evidence in favour of no  
20          change in commonality?

21       A. No, I do not think it would, on the basis that what is  
22          being measured in the public data is not the pass-on of  
23          MSC costs, it is the pass-on of other costs which are  
24          likely to be a best approximation to COGS.

25               Now, if one thought that COGS was the common cost

1 across the whole of the public data period, then you  
2 will get a pass-on rate for the whole of that period  
3 that relates to pass-on of the common cost, and my  
4 question in what I have set out in my first report and  
5 reply report is: that is the assumption that may not  
6 apply going back in time for MSCs.

7 PROFESSOR WATERSON: Right, okay. I think I am clearer  
8 about what you have done. Thank you.

9 A. Thank you.

10 MR SIMPSON: Just going back to before the professor asked  
11 his questions, you said:

12 "So, to be clear, I think I have not really  
13 separated necessarily the Merricks period from the  
14 merchant period. What I have done is to identify,  
15 through my card usage -- my analysis of card usage data,  
16 and through the analysis of card acceptance data,  
17 actually the changes in every year between, well, the  
18 start of the data, which is slightly after the start of  
19 the Merricks period, and the end of the merchant  
20 period."

21 Now, if that is right, if that is right, Ms Webster,  
22 why have you separated your report into two different  
23 sections? What you do is you consider broad principles,  
24 economic principles, the public data, the public  
25 studies, and where they lead you, and then in section 5



1 of your first report you consider the merchant claim  
2 period, and in section 6 you consider the Merricks claim  
3 period. My question is: why the divide?

4 A. So what I also say in my first or second report is to  
5 the extent that there are differences over time,  
6 I consider them to be greater -- greatest between the  
7 two periods, in the sense that there is simply more time  
8 for things to have changed, and so that is the focus,  
9 but I do not rule out that there can be changes within  
10 either of those periods.

11 So apologies if I have left that impression, but  
12 I think I have been clear that I do think there could be  
13 changes within periods.

14 Q. But what I am getting at is why the distinction, from an  
15 economic perspective, between the two periods at all?  
16 Why not just look at the changes over time?

17 A. I thought it would be useful to be clear that ... my  
18 approach to providing an estimate in each of the claims.

19 Q. But, as I understand it, you accept the exercise you  
20 were asked to carry out was to look at pass-on in  
21 essence in each year for the 32-year period. You accept  
22 that?

23 A. Yes.

24 Q. So it just seems a bit top-down to be dividing it at the  
25 outset into Merricks and merchant and asking yourself

1           for the differences between the two periods, rather than  
2           what I would suggest is the correct approach, which is  
3           bottom-up: these are my conclusions for each year?

4       A. So, in practice, the evidence that is available in this  
5       case does not allow me to say that pass-on is different  
6       in 2020 to -- 2019 to 2018. I cannot do that year on  
7       year. I am able to reach broad-brush conclusions. So  
8       consistent with that, I am asking myself a question  
9       about whether, going back in time, there is reason to  
10      think that those broad-brush conclusions would not be  
11      very applicable, and, again, that could apply to the  
12      difference between the Merricks claim period and the  
13      merchant claim period or within periods.

14     Q. Do you think it might have been a better approach not to  
15     take this approach to dividing them into two periods  
16     dictated by the claims being brought against Mastercard,  
17     but to take the bottom-up approach of just looking at  
18     each year: what evidence do I have, what evidence -- how  
19     satisfactory is that, what conclusion can I come to for  
20     that year, and is that different from the last year?

21     A. So, again, I think the evidence does not really allow me  
22     to do something that is as fine-tuned as that. One  
23     alternative would have been to relabel my -- I think it  
24     is chapter 6 in my first report as extrapolation over  
25     time, without describing it as specific to the merchant

1           or the Merricks claim, because in effect, the analysis  
2           that I set out shows changes not in discrete steps  
3           between merchant and Merricks but over time for each  
4           year.

5       Q.   Okay.  So, having divided your reports into two separate  
6           parts, one for the merchant claim period and one for the  
7           Merricks claim period, you then place a lot of weight on  
8           the differences -- in particular, as you have just  
9           mentioned, in card usage, in card acceptance -- between  
10          the two periods?

11       A.  I draw attention particularly to the changes over time.

12       Q.  Well, you do more than that, do you not?  You draw  
13          a distinction, quite a bright-line -- I will come to it  
14          later -- between card acceptance and card usage in the  
15          Merricks claim period and in the merchant claim period?

16       A.  You may need to take me to that part of my report.

17       Q.  I will.

18       A.  But certainly my intention, in showing the charts which  
19          show the evolution over time, is not to specifically say  
20          there is a bright-line difference.

21       Q.  Okay.  As I understood -- and we will go through it.  So  
22          if you do not accept it now, we will just go through the  
23          granular detail.  As I understood it, your central theme  
24          is that both card usage and card acceptance were  
25          significantly lower in the Merricks period, which is the

1 explanation for why you find that -- you cannot say that  
2 your base case for the merchant period applies in the  
3 Merricks period?

4 A. Yes, I think that is broadly correct.

5 Q. I just want to be clear that your evidence is that, on  
6 that basis, it is likely there was lower pass-on, lower  
7 pass-on in the Merricks period, rather than no pass-on?

8 A. Yes.

9 Q. You do not suggest anywhere in your report there would  
10 be no pass-on --

11 A. No.

12 Q. -- and you do not think there would be no pass-on?

13 A. No, that is right.

14 Q. Now, given the way you have approached it in relation to  
15 the two separate sets of conclusions in section 5 and  
16 section 6 of your first report, which are then carried  
17 through and expanded in your second, if you are going to  
18 treat Merricks and the merchant periods as separate  
19 periods, then you clearly need to define each of them  
20 very precisely?

21 A. Had I taken that approach, then defining them would be  
22 appropriate, but, as I said, I think what I have tried  
23 to do is to look at changes each period -- sorry, each  
24 year for the two factors that matter most to me, which  
25 is card usage and card acceptance.

1 Q. Well, I am sorry, Ms Webster, but am I misreading your  
2 report, in the sense that throughout your report you  
3 draw a distinction between the two periods? You refer  
4 to them and a word search shows hit after hit for  
5 "Merricks claim period/merchant claim period", but you  
6 are saying you are not drawing that distinction?

7 A. I think -- well, what I am trying to be clear about is  
8 what matters to pass-on as applied to the merchant  
9 claims and the Merricks claims and, I suppose,  
10 recognising that they are two distinct claims.

11 Now, my evidence that I can draw on I consider to be  
12 both empirical and theory. My starting point is that  
13 that is relevant in the merchant claim period and I say  
14 very clearly that there may be differences in relation  
15 to going back in time in the merchant period and then  
16 when it comes to the Merricks period, I specifically --  
17 I take as my base case -- sorry, I should not use  
18 that -- I take as my central case everything that I have  
19 set out in relation to the merchant period and then  
20 I ask myself the question: do I think that  
21 anything would have been materially different in  
22 relation to the period covered by the Merricks claim,  
23 such that central conclusions that I draw in relation to  
24 the merchant period would not apply? I identify three  
25 reasons why they may not, but I am really using the same

1           analysis -- the analysis that I do for the merchant  
2           claim period and not necessarily -- sorry, for the  
3           recent part, because that is what it applies to, the  
4           recent part of the merchant claim period, that is my  
5           starting point for everything.

6       Q.   Yes.  You said a moment ago that you did this,  
7           "... I suppose, recognising they are two distinct  
8           claims", but there is no economic reason for recognising  
9           that, is there?

10      A.   I thought it would be of assistance to those people  
11          reading my report to understand the basis of my evidence  
12          relates to the latter part of the merchant claims and  
13          then the question is: when one goes back in time,  
14          recognising that the totality of the claim period is  
15          a long one, 1992 to 2024, is there any reason to think  
16          that that needs to be adjusted?

17      Q.   You thought it would be of assistance to those people  
18          reading your report to divide them into the merchant  
19          period and the Merricks period; yes?

20      A.   Possibly.

21      Q.   Yes?

22      A.   Yes.

23      Q.   So you did?

24      A.   Yes.

25      Q.   So, in the context in which you are doing that, you do

1           have to define each period, do you not?

2           A.   Yes, possibly.

3           Q.   You define the relevant Merricks period at {RC-F/14/6}.

4           That is at Webster 1, paragraph 1.9(d).

5           A.   Yes.

6           Q.   That is from 22 May 1992 to 21 June 2010.

7           A.   Yes.

8           Q.   But you do not define the relevant merchant period or

9           the merchant claim period anywhere in your report, do

10          you?

11          A.   I think that is possibly correct. From my recollection,

12          the different merchant claims relate to slightly -- they

13          start at slightly different times and therefore it is

14          a more complex picture than it is in relation to the

15          Merricks claim.

16          Q.   But if the basis of your report is the distinction

17          between the Merricks claim period and the merchant claim

18          period, it is crucial, is it not, to define the merchant

19          claim period?

20          A.   I think I have probably answered that in my last

21          response, in the sense that I have a set of evidence

22          which is broadly relevant now in the later part of the

23          merchant claim period and the question is whether any

24          adjustment needs to be made to that going back in time

25          and that question about the adjustment that needs to be

1           made is larger in relation to the Merricks claim because  
2           the Merricks claim goes further back in time.

3       Q.   Sorry, I may be being obtuse, but are you saying that it  
4           is not important to define the merchant claim period or  
5           that it is?

6       A.   I think it is -- so when I set out my view about the  
7           changes over time, what is relevant is to think about  
8           how relevant are those changes to the claims that are  
9           before the Tribunal. I consider that they are likely to  
10          be most relevant to the Merricks claim period because  
11          that goes so much further back in time and relates to  
12          these dates as set out in this paragraph here.

13                The same is true to a lesser degree in relation to  
14           the merchant claim period which goes back to --  
15           depending on the claimant, there is very little overlap  
16           with the Merricks claim period. I also consider that  
17           there is a lack of precision in what I am able to  
18           conclude in relation to the pass-on rates that the  
19           precise dates actually for when the merchant claims  
20           started are unlikely to be a key determining factor of  
21           the relevant pass-on rates.

22       Q.   Well -- sorry, have you finished?

23       A.   Yes.

24       Q.   So you started by saying:

25                "... when I set out my view about changes over time,



1           what is relevant is to think about how relevant are  
2           those changes to the claims that are before the  
3           Tribunal."

4                     But I thought you accepted from me that what claims  
5           were being made were irrelevant; what you needed to do  
6           was look at pass-on in each year?

7       A.   So I consider that as an expert economist, bringing my  
8           conclusions to the Tribunal, to help the Tribunal,  
9           I feel that it is useful for me to set out how factors  
10          that influence pass-on have changed over time,  
11          irrespective of the claims, and then what I am drawing  
12          out now is I -- and in my reports is that those changes  
13          are more substantial when it comes to the Merricks claim  
14          because that goes back further in time.

15       Q.   Can I turn you to your final conclusion in your second  
16           report at {RC-G/12/157}. That is with all the new  
17           evidence in -- sorry, you are not there yet. You say:

18                     "In the light of the above, I see no reason to  
19           change the conclusions from my first report that the  
20           available evidence suggests that (all else equal) MSCs  
21           were more likely to have been treated by merchants in  
22           their pricing in the manner that economic theory would  
23           imply for fixed costs during the Merricks claim period  
24           compared to the merchant claim period, and that the MSC  
25           pass-on rate by merchants that treated MSCs in this way

1 in the Merricks claim period would have been even lower  
2 than in the merchant claim period."

3 That is your final final conclusion?

4 A. Yes.

5 Q. Now, if there were an overlap between the two periods,  
6 that conclusion could not hold, could it?

7 A. I think it could, on the basis -- sorry, if the overlap  
8 were complete, then --

9 Q. Not complete, an overlap of some years, sorry.

10 A. So, in reality, I think the overlap is small. So let us  
11 say it is two or three years. We are then talking about  
12 a period in the Merricks claim which extends back, say,  
13 15 years prior to that overlap and, given the trend that  
14 I have observed in both card usage and card acceptance,  
15 I would not -- I would consider that this conclusion  
16 still holds.

17 Q. But if there were an overlap, you would surely have to  
18 qualify it, would you not, and say "except for the years  
19 of the overlap"?

20 A. Not if I were considering pass-on in aggregate across  
21 that claim period.

22 Q. Sorry, could you unpack that.

23 A. If I were talking about the pass-on rates in general  
24 over the period of the Merricks claim period --

25 Q. Yes.

1       A. -- then that would potentially be a function of lower  
2       pass-on in the earlier part of the Merricks period,  
3       somewhat higher pass-on in the later period of the  
4       Merricks claim period and then I would be comparing that  
5       with an even higher rate of pass-on in the later period  
6       of the merchant claims.

7               So I think if I were to look at average pass-on  
8       rates in the Merricks claim period versus the merchant  
9       claim period, then this conclusion would hold.

10      Q. But would you not have to say that for the overlap  
11      period that you accept that the merchants did treat them  
12      in the way that they treat variable costs and your base  
13      case would apply for the overlap period?

14      A. Yes, and for the overlap period I would not draw  
15      a distinction between the rate of pass-on implied by the  
16      base case. So whether that is 70 to 100 or whether it  
17      is somewhat lower, the same would apply in either the --  
18      the pass-on rate would be associated with the year, not  
19      with the claim. That is perhaps a --

20      Q. I just want to explore a bit more the issue of the  
21      length of these two periods. You do not define the  
22      merchant claim period anywhere in your report, but what  
23      you do say, at Webster 2, paragraph 1.3 {RC-G/12/5}, the  
24      final sentence:

25               "I understand that the merchant claims generally

1 cover the period after 2011."

2 A. Right.

3 Q. What was that understanding based on?

4 A. I assume that that has come from the legal teams.

5 Q. I would just like to go back to your instruction letter  
6 at {RC-M/263.1/1}, paragraph 4.1. If you just skim that  
7 and then we will go through to the next page. (Pause)

8 The important bit is over the page.

9 A. Yes, ready.

10 Q. Over the page {RC-M/263.1/2}. Can we pull up the whole  
11 page.

12 "... during the period of their claim ..."

13 Then we go down to footnote 1, if we could blow it  
14 up. This is from Freshfields and Jones Day:

15 "The precise claim period varies per claimant, but  
16 typically [this is in relation to the merchants] starts  
17 six years prior to the date on which the claim was  
18 issued and ends on the date of any judgment. The  
19 earliest claim period starts in December 2007."

20 Now, those are your instructions so I am just --  
21 I am puzzled by the understanding at 1.3, the final  
22 sentence?

23 A. So my understanding is that, while the earliest claim  
24 period starts in December 2007, there were not many  
25 other claimants that -- whose claim period started that

1           early, which is, hence, my understanding that the  
2           majority started at a later date.

3           Q. But what does that matter? If you are assessing pass-on  
4           for all the claimant merchants, you have to assess  
5           pass-on for all of them, do you not, regardless of the  
6           date of their claim, including those going back to 2007?

7           A. Yes. Sorry, I would want -- so, again, I just come to  
8           the broad-brush nature of my conclusions, which is, on  
9           the basis of the evidence that I have, I think it  
10          applies most appropriately to the latter part of the  
11          merchant claim period and that is because that is the  
12          period when MSC costs would, in my view, have been -- it  
13          would be safe to assume a sort of relatively high degree  
14          of commonality in merchants incurring those costs and  
15          a lot of my evidence also relates to that period.

16                 The question then is how one seeks to adjust those  
17          broad-brush estimates going back in time and I think the  
18          nature of my conclusions are not sufficiently  
19          fine-grained that the precise start date would make  
20          a material difference in the case of the merchant claims  
21          to the likely level of pass-on, but I am clear that the  
22          pass-on rate -- there are differences within the  
23          merchant claim period in relation to card acceptance and  
24          card usage and therefore, you know, I do not say this,  
25          but if the Tribunal wished to -- if the Tribunal takes

1           the view that the changes over time in card acceptance  
2           and card usage do have a material bearing on likely  
3           pass-on rates, then I suppose what I am signaling in my  
4           second report is, you know, the Tribunal may want to  
5           make an adjustment within the merchant claim period.

6           I am simply, in my second -- first and second  
7           reports, setting out that I do consider that there are  
8           changes over time that may be relevant.

9       Q.   You said just now:

10           "... I just come to the broad-brush nature of my  
11           conclusions, which is, on the basis of the evidence that  
12           I have, I think it applies most appropriately to the  
13           latter part of the merchant claim period ..."

14           Where do you say that in your report?

15       A.   I do not think I have said that in my report.

16       Q.   It is pretty fundamental, is it not?

17       A.   I am not sure how fundamental it is, in the sense  
18           that ... (Pause)

19           How best to express it? They are high-level  
20           broad-brush conclusions.

21       THE CHAIRMAN: Can I just ask you in relation to that: so  
22           assuming we have a claimant whose period starts  
23           in December 2007, your estimate is 70 to 100%?

24       A.   So --

25       THE CHAIRMAN: What do we -- how do we apply that to that

1 claimant going back to 2007?

2 A. Yes. So I think there are two stages. The first one is  
3 to consider whether the evidence that I have set out in  
4 changes over time -- in relation to the changes over  
5 time are sufficiently material that you think that the  
6 70 to 100% may be too high an estimate for claims that  
7 go back in time from the recent period. If your view is  
8 that these changes over time where I show, for example,  
9 if we are talking -- in relation to the 70 to 100%, the  
10 main effect when we go back in time is less commonality  
11 in the merchants incurring the MSC costs. That is the  
12 key -- that is the only factor that I identify which  
13 could affect the 70 to 100%.

14 THE CHAIRMAN: Well, never mind what we might think about  
15 it, what are you putting forward as your estimate  
16 for 2007?

17 A. Yes, I am specifically not putting forward an estimate  
18 for 2007 and I am not putting forward an estimate either  
19 for what that 70 to 100% would be at any point during  
20 the Merricks period either because I have taken the view  
21 that the nature of the evidence is insufficient for me  
22 to be specific in that regard. It is too uncertain.

23 What I point to is there are clearly changes in this  
24 card acceptance rate which may have the effect of  
25 implying less commonality and that may matter and I have

1 not -- I do not feel that I have the evidence to advise  
2 the Tribunal on specifically how that matters and the  
3 change to the number, but I want to draw your attention  
4 to it because it is a potentially relevant factor.

5 THE CHAIRMAN: But it could be below 70% is what you are  
6 saying?

7 A. Yes. Yes, it could be that --

8 THE CHAIRMAN: Did you make that clear in your report?

9 A. Whether it could be below 70% in --

10 THE CHAIRMAN: Yes, for some of the claimants.

11 A. No, I did not make it clear at all in relation to  
12 merchant claimants or the Merricks claim because I felt  
13 that I was unable to reach a view on the specific  
14 impact.

15 THE CHAIRMAN: Sorry to interrupt.

16 MR SIMPSON: Just one further question on this point.

17 THE CHAIRMAN: Yes, of course.

18 MR SIMPSON: I thought you accepted from me earlier that  
19 your base case applied for the merchant claim period  
20 from December 2007 to 2024?

21 A. Yes, I did say that.

22 Q. Does it, or not?

23 A. So I suspect that the 70 to 100% is sufficiently broad  
24 that it would be feasible to incorporate a change over  
25 time for the merchant period for variable cost pass-on



1           within that range. I do not explicitly say that in my  
2           report but I consider that it is sufficiently broad that  
3           that could apply, but, as I have just said, I do not  
4           feel that I can put a number on the extent to which  
5           variable costs pass-on would have been lower going back  
6           in time at any specific point in time.

7       Q. You do not suggest anywhere in your report, do you, that  
8           the base case might not apply for the full merchant  
9           period?

10      A. So I do say in my report that, to the extent that there  
11          are changes over time, they apply both between  
12          periods -- claim periods and within claim periods. So  
13          I do say that.

14      MR SIMPSON: That is a convenient moment, if it is for you,  
15          sir?

16      THE CHAIRMAN: Yes, thank you. We will resume at 2 o'clock.  
17          (1.05 pm)

18                               (The luncheon adjournment)

19          (2.00 pm)

20      THE CHAIRMAN: Good afternoon.

21      MR SIMPSON: Ms Webster --

22      A. Apologies --

23      Q. -- just before lunch you referred to --

24      A. Sorry, excuse me. Before we start, may I make two  
25          corrections to what I shared earlier?

1 Q. Of course.

2 A. The first one was in relation to why I had a distinct  
3 chapter in my first and second reports that related to  
4 the Merricks claim as opposed to the merchant claim.  
5 What I failed to draw attention to is the fact that  
6 the -- it is not only the time period that differs  
7 between the two claims but also the claimants. Whereas  
8 the Merricks claim applies to all merchant sectors in  
9 the economy, retail sectors, that is not true of the  
10 merchant claims, and the merchant claims against  
11 Mastercard is a small number remaining, if one includes  
12 both the active claims and the stayed claims.

13 So the first thing that I needed to do in the  
14 section of my report that deals with the Merricks claims  
15 is to apply the findings that -- sorry, the conclusions  
16 that I reach in relation to the merchant claimants and  
17 extrapolate that out to reach conclusions in relation to  
18 the broader sectors of the economy that relate to the  
19 Merricks claim.

20 So that was a further necessary step for thinking  
21 about the application of the theoretical framework that  
22 I developed and the -- my use of empirical evidence. I  
23 needed to do that step as well as thinking about changes  
24 over time. So that was the first point that I wanted to  
25 make.

1           The second point is just to be clear about the  
2           nature of the evidence that I have brought together and  
3           the conclusions I reach for the merchant period. In my  
4           first report, I am clear that the conclusions that I set  
5           out in, I think it is section 6, are relevant to the  
6           merchant period as a whole, and I think that is the  
7           appropriate way to think about my evidence.

8           At the -- when I talk about changes over time in the  
9           following section, I talk about the fact that changes  
10          over time --

11       THE CHAIRMAN: I think section 6 was your Merricks --

12       A. That is right, yes. So where I speak about that, I say  
13          it is clear that there are changes that occur over time  
14          that may affect pass-on both within the claim period and  
15          between the claim periods.

16          So, to the extent that the Tribunal reaches the view  
17          that these changes over time are sufficiently material  
18          to take into account, they would then apply to the  
19          earlier part of the merchant claim period. So  
20          I think -- and they would imply that pass-on would be  
21          lower in the earlier part of the merchant claim period.

22          So I have expressed that view in section 6 of my  
23          report where I discuss the changes that have occurred  
24          over time and what they may imply for pass-on rates.

25       MR SIMPSON: Could you show us where in section 6?

1 A. Yes. So if you --

2 Q. Are you thinking of 6.24?

3 A. Yes, I think it may be 6.24.

4 Q. But I do not see in 6.24 anything that says that pass-on  
5 was --

6 THE CHAIRMAN: Sorry, is this 6.24 or --

7 MR SIMPSON: Yes, 6.24 {RC-F/14/116}. Sorry, I realise it  
8 is helpful for the Tribunal to have the document.

9 THE CHAIRMAN: Also the Opus operator.

10 MR SIMPSON: Sorry.

11 Can I go back to two things here, Ms Webster, before  
12 we move on.

13 You said that -- in relation to your first point  
14 was, as to why you had a distinct chapter on Merricks,  
15 is:

16 "... it is not only the time period that differs  
17 between the two claims but also to the claimants.  
18 Whereas the Merricks claim applies to all merchant  
19 sectors in the economy, [all] retail sectors, that is  
20 not true of the merchant claims ..."

21 That is what you said?

22 A. Yes.

23 Q. But your instructions just ask you to consider pass-on  
24 from the first day of the claim period. They do not ask  
25 you to look at whether claims have or have not been

1 brought by particular claimants, do they?

2 A. They do not specify that. I have made an assumption  
3 that it would be relevant to reach a view on pass-on in  
4 relation to the merchant claims that are most relevant  
5 to those merchant claimants.

6 Q. What was the basis of that assumption?

7 A. That pass-on rates that were relevant -- sorry, when  
8 I was developing my framework, I considered that there  
9 may be reasons why pass-on rates would be different  
10 across individual merchants or across merchant sectors  
11 and, on the basis that pass-on rates may be different,  
12 it would -- I made an assumption that it would be most  
13 appropriate to identify pass-on rates that were most  
14 relevant to the remaining claimants in the merchant  
15 claims.

16 Q. But I am puzzled by the basis of that, because all you  
17 were asked to do is arrive at the -- as best you could,  
18 at the pass-on rates across the 32 years. Why this new  
19 assumption?

20 A. So Mastercard is facing two claims. In relation to the  
21 merchant claim period, it is only facing claims from  
22 I think it is 46 merchants across a small number of  
23 sectors. So in order to make my analysis most relevant,  
24 I focused on that as my starting point for the merchant  
25 claim period, also reflecting that that is where I have

1           the merchant data, so I have a greater richness of  
2           evidence, potentially, relating to those sectors, and  
3           then I have sought to extrapolate to the merchant claim  
4           period.

5       Q.   Sorry, to extrapolate to the merchant claim period  
6           or ...

7       A.   Sorry, to the merchants in the Merricks claim.

8       Q.   Sorry, the merchants in the Merricks claim?

9       A.   The merchant sectors covered by the Merricks claim.

10      Q.   I see.

11      A.   So I have started with my analysis for the merchant  
12           claim based on all of the evidence that I have got, and  
13           then I have considered the relevance of that evidence  
14           for the Merricks claim.

15      Q.   If there had not been two sets of claims, would you have  
16           done that just as an economist?

17      A.   So could you tell me what the claim would be that  
18           I would have faced?

19      Q.   Well, all -- you would not have faced a claim at all.  
20           What you would have been asked to do is what you were  
21           asked to do, which is arrive at pass-on for, in essence,  
22           the periods you can arrive at it for, but in the 32-year  
23           period. It might be one rate, it might be several, but  
24           you were asked to work from the bottom up and do that.

25           So what I am saying is if there had been, say, one

1 claim here across the 32-year period, would you have  
2 done the same thing or something different?

3 A. So had the claim been for a specific merchant, I would  
4 have tried to identify pass-on that would be as specific  
5 to that merchant and the environment in which it was  
6 operating as I could.

7 Q. What if it had been a Merricks claim which continued,  
8 say, from 1992 to 2024, would you have done the same?

9 A. Then I would have collected evidence and considered  
10 evidence that would enable me to inform pass-on across  
11 all sectors, all merchant sectors, which in effect  
12 I have done through my analysis of public data and in  
13 relation to the existing studies. I had a broad  
14 approach to collecting evidence across the piece.

15 I have just then sought to apply it to the specific  
16 merchants in the merchant claims and then sought to  
17 apply my evidence to the Merricks claim.

18 Q. Yes. So I just want to come back to the second point  
19 you made after lunch. You said:

20 "... just to be clear about the nature of the  
21 evidence that I have brought together and the  
22 conclusions I reach for the merchant period. In my  
23 first report, I am clear that the conclusions that I set  
24 out in, I think it is section 6, are relevant to the  
25 merchant period as a whole ..."

1           So they are relevant to the period from  
2           December 2007 to 2024; yes?

3           A. Yes.

4           Q. I am sorry, I was picking up, because my transcript had  
5           not caught up, I was actually picking up something you  
6           said just before lunch that I think I had already  
7           covered. I am sorry.

8           Because I am having trouble with my transcript, Ms  
9           Webster, can I ask you to repeat the second point you  
10          made after lunch. I have dealt with the first one, what  
11          was the second point you made, could you remind me?  
12          That is not a forensic can you remind me, it is a can  
13          you remind me?

14          A. Yes. So when I set out my conclusions in relation to  
15          the likely extent of pass-on in section 6, I believe, of  
16          my -- is that my reply report or my first report? When  
17          I set out my conclusions in relation to the merchant  
18          claims, I am setting out conclusions which I think are  
19          relevant to the merchant, to the whole of the merchant  
20          claims. These are my best estimates. Then what I am  
21          clear -- when I then write about the extent to which  
22          there have been changes over time, I am clear that  
23          I think these changes that occur in the factors that  
24          affect pass-on, to the extent that they -- that there  
25          are changes over time, these changes can affect both the



1 period within an individual claim and the difference  
2 between -- and they can exist and be different across  
3 the periods, so between Merricks and merchant claims.

4 To the extent that these factors mean that pass-on  
5 was lower in the earlier period, which could include the  
6 earlier period of the merchant claims, then that could  
7 have an impact and imply lower pass-on in the earlier  
8 period of the merchant claims.

9 So I think what I am responding to is that, as  
10 I described earlier, the evidence that I have set out  
11 I have said is potentially more relevant to the later  
12 period of the merchant claims. That is not really how  
13 I framed it in my first report. In my first report,  
14 I said this is my view on the likely extent of pass-on  
15 in the merchant periods, for the merchant claims, and  
16 then saying if one then takes into account changes over  
17 time, there may be reason to think that pass-on was  
18 somewhat lower in the earlier period of the merchant  
19 claim.

20 Q. But that is not at all how you have framed it in your  
21 first report.

22 A. So that is how -- sorry, what I am trying to clarify is  
23 that it is how -- what I have framed in my first report  
24 is: these are my conclusions on pass-on that I think  
25 apply in the merchant claims, and I also acknowledge

1           that there have been some changes over time, and these  
2           changes over time may affect the pass-on rates both  
3           within the merchant claim period and between the  
4           merchant and Merricks claim periods.

5       Q.   But you do not suggest that they were in fact lower,  
6           that they derogate from your 70 to 100 during the  
7           merchant period, do you?

8       A.   So the 70 to 100 is a broad estimate, so it would allow  
9           for some difference in pass-on within that. I do not  
10          know, because I cannot quantify the impact of the  
11          changes over time on the pass-on rate, so I cannot say,  
12          and I do not say with respect to the Merricks period or  
13          the merchant period, the impact, and I think my 70 to  
14          100 may be broad enough to encompass the change.

15      Q.   Well, is it?

16      A.   So this is the point that I cannot say, on the basis of  
17          the evidence available, whether it is likely that  
18          pass-on of a variable cost during the merchant period at  
19          any time fell below 70%. I do not feel that I have the  
20          evidence available to answer that question.

21      Q.   But you do not suggest that it in fact should change,  
22          anywhere in your report, do you, over that time?

23      A.   So I highlight that, to the extent that changes over  
24          time in the factors that affect pass-on, to the extent  
25          that they do affect the pass-on rate, they could affect

1           that within the individual claim periods and between  
2           Merricks and merchant claim periods.

3       Q.   But you conclude you do not have the information to say  
4           that, do you not?

5       A.   So I have the information to say that there are certain  
6           indicators, which are card acceptance rates and card  
7           usage rates, which may point to a lower degree of  
8           commonality in MSC costs, which is a key factor that  
9           I identify in my theoretical framework affecting the  
10          rate of pass-on.

11                So I identify that there is scope for a reduced rate  
12           of commonality and a reduced pass-on rate, and I comment  
13           on the fact that MSC costs would have been smaller going  
14           back in time as a result of lower card usage, both in  
15           absolute terms and as a percentage of transactions, that  
16           may have had an effect on the treatment of MSCs by  
17           merchants and that would affect the rate.

18      Q.   Yes, you --

19      A.   So I am pointing to indicators.

20      Q.   You say that for the Merricks period, but you do not say  
21           it for the merchant period, do you?

22      A.   So I cannot -- so let me take -- is it paragraph ...

23      Q.   2.81, {RC-F/14/30}.

24      A.   Sorry, this is 6.24 here.

25      Q.   Yes, I will come back to 6.24.  Would you like me to go

1 to that?

2 A. 6.24, yes, please.

3 Q. Okay, let us go to that. So at 6.24, I think we need to  
4 pick it up at 6.23 first, please {RC-F/14/116}, you  
5 say -- I just want to pick up one previous point you  
6 made, which was that you in some way ... Maybe pause  
7 there. I will have to go back to the transcript. Let  
8 us look at that first.

9 So at 6.23, you set out the key factors that are, in  
10 your view, necessary to consider in assessing the extent  
11 to which merchants are likely to have passed on  
12 a reduction. You set out these three factors here, and  
13 then at 6.25 -- we need not go to it now, I will come to  
14 it in a moment -- you go into card usage and card  
15 acceptance, do you not? But those are the two that are  
16 the heart of what you are saying; yes? We can go to  
17 6.25 if you would like?

18 A. I think it would be helpful to turn the page.

19 Q. Yes, of course. {RC-F/14/117}.

20 "As regards to the key factors in ... 6.23 ...

21 I conclude:

22 "(a) The available data on card usage and therefore  
23 magnitude of the MSC ... suggests [etc, etc]."

24 I say that only because you and I and the Tribunal  
25 all know what you say about card usage.

1       A. So the point that I really wanted to highlight -- sorry,  
2       it is the last part of 6.24 --

3       Q. No, I am going back to that. I am just looking at the  
4       framework in which we look at 6.24. Do not worry, I am  
5       going to go back to 6.24.

6       A. Okay.

7       Q. 6.23 sets up 6.24, and we know what you mean in 6.23  
8       by -- from 6.25.

9       THE CHAIRMAN: I am finding it a bit confusing you saying  
10      "six point two four" rather than "twenty four", but  
11      maybe that is just me.

12      PROFESSOR WATERSON: I think 6.24 is more correct, actually.

13      MR SIMPSON: I am grateful.

14      THE CHAIRMAN: Okay, carry on. Ignore me. I know where we  
15      are.

16      MR SIMPSON: It is for the majority of the Tribunal.

17      Mr Tidswell is keeping his head down!

18      Just going back to 6.24 -- I will, if you do not  
19      mind, stick with "six point two four".

20      So in 6.23 you talk about factors, and in 6.25 we  
21      learn what those are, and the two key ones are usage and  
22      acceptance.

23      A. Yes.

24      Q. Okay. So that is the framework for 6.24.

25      Now, when we go to 6.24, which was the paragraph you

1 mentioned just before lunch, you say:

2 "There is scope for these factors -- and therefore  
3 the rate of MSC pass-on -- to have changed over time  
4 both between and within the merchant and Merricks claim  
5 periods."

6 Now, just pausing there. You explain "between" at  
7 footnote 74 and "within" at footnote 75. Now,  
8 "between" -- yes, we now have it. Let us stick with  
9 that {RC-F/14/116}.

10 So "between", you say "between", and that implies  
11 that there is a temporal gap between them. Is that --  
12 do you accept that?

13 A. That was not my intention to imply a temporal gap, but  
14 if one compared -- I was implying that if one compared  
15 the Merricks period as a whole and the merchant period  
16 as a whole, they would be covering largely different  
17 periods.

18 Q. Well, when you say there is scope for it to have changed  
19 over time between the two periods, you are not thereby  
20 therefore suggesting some sort of gap between them?

21 A. No, no.

22 Q. Okay. You explain this at 74:

23 "Since they relate to largely non-overlapping time  
24 periods, with the former generally covering the period  
25 after 2011 and the latter covering the period between

1 May 1992 and June 2008 (or potentially June 2010, if the  
2 alleged run-off periods were to be accounted for)."

3 That is your explanation for "between"

4 Now, your point here is that the Merricks period  
5 generally covers 1992 to 2008 and the merchant period  
6 generally covers the period after 2011, so it looks as  
7 though you are attempting to put a temporal gap between  
8 them. It looks as though that was your -- that is what  
9 you are emphasising.

10 A. I think I am just trying to summarise my understanding  
11 of the time periods covered.

12 THE CHAIRMAN: But you are suggesting that there is a gap.

13 You put "between" in italics, and then referred to what  
14 you say in the footnote, which suggests there is a gap?

15 A. Yes, I think for me the key point that I wanted to  
16 emphasise with the italics is both the "between" point  
17 and the "within", so I wanted to emphasise my  
18 acknowledgement of the fact that both of them are --  
19 both of the claim periods are long, and that means that  
20 there can be scope for change in the factors that  
21 determine pass-on within each claim, as well as  
22 a difference that might exist if one looked at the  
23 Merricks claim period versus the merchant claim period.

24 I did not intend to draw attention specifically to  
25 the gap, but acknowledging, rather, that the two claim

1 periods are quite different, even if overlapping for  
2 some merchants.

3 MR SIMPSON: But it looks as though you are trying to draw  
4 attention to the gap, because you say:

5 "... they relate to largely non-overlapping time  
6 periods ... the former generally covering the period  
7 after 2011 and the latter covering the period [up to]  
8 June 2008 (... [and] June 2010] ...)."

9 It looks as though you are saying there is  
10 a temporal gap in substance?

11 A. If I put it this way: what I want to really highlight  
12 is, irrespective of whether they are overlapping in any  
13 degree or not, there is a large part of the claim which  
14 does not overlap. So if one looked at the period  
15 covered by the Merricks claim in totality, it is quite  
16 a different period to that covered by the merchant  
17 claims. Whether there is a gap or not I do not think  
18 changes that conclusion.

19 Q. How is any of this relevant to your --

20 A. So the key point that I wanted to draw attention to is  
21 we are talking about a long period covered by both  
22 claims and a long period between the start of the  
23 Merricks claim --

24 Q. Can I pause you there, because that is going to be about  
25 "within", I know. I want to carry on with "between".



1 A. No, it was not actually.

2 Q. Sorry. Okay.

3 A. So there is this long period and that creates scope for  
4 factors that affect the rate of pass-on to have changed,  
5 and the particular point I wanted to draw attention to  
6 is the last sentence, I think, in that paragraph -- the  
7 last two sentences.

8 So I am -- in this analysis that then follows, in  
9 which repeatedly I will refer to the Merricks claim  
10 period versus the merchant claim period, what I am  
11 really doing is I am trying to test the hypothesis of:  
12 to what extent are the factors that affect pass-on  
13 changing over the whole period from as early as I can  
14 get data, which is not quite the start of the Merricks  
15 claim period, to the most recent data that is now  
16 available?

17 So what I am then doing, in all the analysis that  
18 follows, is highlighting the differences really from the  
19 start of the period in the mid-'90s through to the  
20 early 2020s, but really not with a focus on Merricks and  
21 merchant being different, but with a view to being able  
22 to test the proposition that there are changes in the  
23 relevant factors.

24 Q. But you find that there are no -- "find" is a loose  
25 term, but you conclude that there are no changes that

1           would affect your base case in the merchant period?

2           A. So I do not make any conclusions about the extent to  
3           which -- the changes in the factors that affect pass-on  
4           that I identify, I cannot make any predictions of the  
5           extent to which it changes my base case pass-on rate for  
6           a variable cost, because the evidence is not there to  
7           enable me to put a number on that with any certainty.

8           What I can conclude is, as one goes further back in  
9           time, the degree of commonality of cost may be going --  
10          may be lower, and that may have an implication for the  
11          degree of -- sorry, the extent of pass-on, with pass-on  
12          being more limited the further one goes back in time and  
13          to the extent that that implies there is a lower degree  
14          of commonality.

15          Q. But you must have concluded those factors do not affect  
16          the merchant period or you could not have arrived at the  
17          conclusion of 70 to 100% for the whole period, could  
18          you?

19          A. So I think that is where it comes back to the  
20          broad-brush nature of the conclusions and the wide range  
21          that I reach for the pass-on rates in the merchant  
22          period.

23          Q. Where do you suggest anywhere that that wide range  
24          accommodates change in card acceptance or card usage?

25          A. Yes, I do not think I have said that.

1 Q. No, you have not.

2 Can we go back to 2.89. So your conclusion, as  
3 I had drawn it from your report, was that you were  
4 sufficiently sure that there were no changes due to card  
5 acceptance and card usage changes in the merchant period  
6 that you could arrive at your 70 to 100% base case?

7 A. So I think I have to come back to: I have not been able  
8 to quantify the effect of the changes over time. What  
9 I do in section 6 is to articulate the scale of those  
10 changes and to articulate that they are greatest  
11 between -- from the start of the period which I am able  
12 to observe with data to the end of the period in the  
13 merchant claims.

14 Q. But I come back to the fact that you must have concluded  
15 that none of those factors were material enough to  
16 affect your conclusion of 70 to 100 in the merchant  
17 period or you could not have come to that conclusion?

18 A. Yes, I suspect that is fair, that they would not be  
19 sufficiently material in relation to the pass-on of  
20 a variable cost to have changed my view that 70 to 100%  
21 was the right range.

22 Q. So your conclusion was: I am certain enough that these  
23 did not affect pass-on, on the merchant period, that  
24 I can come to the conclusion that my base case is 70 to  
25 100?

- 1       A. Yes, I think that is right.
- 2       Q. Could we look then at a point you made earlier, which
- 3             was that you suggested that your base case of 70 to 100%
- 4             was wide enough to accommodate, you put it, I think,
- 5             changes in card acceptance and changes in card usage.
- 6       A. So --
- 7       Q. I have not asked the question yet.
- 8       A. Well, just to say --
- 9       THE CHAIRMAN: If we could wait until the question is asked,
- 10            I think.
- 11       A. Okay.
- 12       MR SIMPSON: Now, of course, I have forgotten what it is!
- 13            So you said earlier that your range was wide enough
- 14            to accommodate changes in card acceptance and card
- 15            usage, but I think I take away from what you have just
- 16            said that it does not actually accommodate them, or am
- 17            I wrong on that?
- 18       A. So I should be clear. 70 to 100% relates to the pass-on
- 19            of a variable cost. The key factor which is relevant to
- 20            whether that range is correct or not is the degree of
- 21            commonality of the MSC costs. So it is only card
- 22            acceptance rates that would be relevant to considering
- 23            whether the 70 to 100% pass-on rate remains the relevant
- 24            rate for the base case.
- 25       Q. You must have concluded that it did, or you would not

1           have concluded that the base case remained true across  
2           the whole merchant period?

3       A.   Yes, I think I have said that follows.

4       Q.   So are you saying that within that base case you have  
5           somehow, without mentioning it, accommodated a card  
6           acceptance change -- commonality change?

7       A.   So what I am clear about in section 6 of my report is  
8           that I cannot reach a view on the extent to which the  
9           card acceptance data that I present reflects  
10          a sufficiently material change in commonality such that  
11          one would expect -- such that I can put a number on the  
12          impact that that would have on pass-on rates.

13      Q.   You are clear in section 6, but that is about the  
14          Merricks period.

15      A.   When I talk about changes over time in that section,  
16          I say that it could affect both changes within a claim  
17          period, so within the merchant claim period, as well as  
18          the Merricks claim period.

19      Q.   Am I misrecalling or -- I cannot remember that you say  
20          anywhere in your report, "My 70 to 100% base case range  
21          for the merchant period includes an allowance for  
22          commonality changes"?

23      A.   I do not think I have said that in my report. I have  
24          said this is my best view, is 70 to 100 for the base  
25          case for the merchant period, and then I separately say:

1 to the extent that changes over time have a bearing on  
2 the pass-on rate, that could affect pass-on in the  
3 merchant period as well as ... What I have not done is  
4 put that together with the 70 to 100 and say: I think it  
5 is therefore likely that that still applies or that does  
6 not apply. I have not made that final step.

7 Q. But it is implicit in the fact that you have said 70 to  
8 100, as you have just accepted from me, I think, that  
9 changes in card acceptance in the merchant period do not  
10 materially affect that?

11 A. Yes, I think I did not reach a view on it because what  
12 I was raising in relation to the changes over time in  
13 card acceptance, I felt unable to reach a view on the  
14 materiality of the effect of that on the pass-on rates,  
15 and so I did not make the final step as to: and this  
16 would be the implication for pass-on in the earlier  
17 period of the merchant claim.

18 Q. But you must have reached a view, because you concluded  
19 your base case applied to the whole merchant period, and  
20 that is a view?

21 A. Yes.

22 Q. So you must have reached a view that card acceptance did  
23 not affect your base case across that period?

24 A. I was not sufficiently certain of the impact that the  
25 changes over time would have on pass-on during the

1 Merricks -- sorry, during the merchant period, so  
2 specifically referring to the earlier part of the  
3 merchant period. I was not sufficiently certain of that  
4 impact to consider the implications for the earlier part  
5 of the merchant period.

6 Q. But you must have considered the implications or you  
7 could not have arrived at your conclusion?

8 A. My conclusion applies to the merchant period as a whole.  
9 What I have then articulated in terms of these changes  
10 over time could affect a proportion of the merchant  
11 claim period. The extent --

12 THE CHAIRMAN: The question was whether you considered the  
13 implications at the time you did your report?

14 A. Yes, I considered them to be -- I think I considered  
15 that the conclusions that I was able to draw on changes  
16 over time were sufficiently uncertain that I ... but  
17 then I did not think that they were likely to perhaps be  
18 material enough to mention them, or to depart from my  
19 view that for the whole of the merchant period the base  
20 case of 70 to 100 would be relevant.

21 MR SIMPSON: Would apply?

22 A. Yes, on average to the merchant period.

23 Q. What do you mean, on average?

24 Sorry, sir, I am interrupting your ...

25 THE CHAIRMAN: No, go ahead.

1 MR SIMPSON: What do you mean, on average?

2 A. I suppose I was reaching a view on the likely rate of  
3 pass-on that would apply to the merchant claims, taking  
4 the whole of the merchant claim period. So my view that  
5 70 to 100 -- my view was that 70 -- if we are thinking  
6 about merchants that treated MSCs as a variable cost,  
7 then it would be right to -- sorry, in my view,  
8 a relevant range to think about would be 70 to 100%  
9 pass-on of a variable cost in relation to those claims  
10 in total -- in totality.

11 Now, it could be that for periods of that it was  
12 slightly lower and for periods of that it was slightly  
13 higher. I did not give a large -- going back to your  
14 question about the consideration that I gave to it,  
15 I did not give it a large amount of consideration as to  
16 whether 70 to 100% needed to be adjusted as a result of  
17 the changes that I saw within the merchant period.

18 Q. But you gave it sufficient consideration to arrive at  
19 your conclusion that 70 to 100 applied for the whole  
20 merchant period?

21 A. Yes.

22 Q. So earlier, I think, you suggested, having established  
23 that point, I think you suggested that these changes we  
24 are going to come and talk about might somehow have  
25 occurred within the 70 to 100?



1       A. So, yes, if I describe this now: it may be, as I have  
2       recognised in paragraph 6.24, that there were somewhat  
3       different pass-on rates that applied within the merchant  
4       period reflecting the changes in commonality that may  
5       have occurred during the merchant period.

6       Q. Well, it is not a very definite conclusion, Ms Webster.  
7       So you are saying you speculated to yourself that there  
8       might be commonality changes within the merchant period  
9       which might apply, but they do not affect your  
10      conclusion for the whole merchant period, but  
11      potentially they affect -- they are incorporated within  
12      your 70 to 100?

13     A. So the 70 to 100 is quite a broad range and I would --  
14     and I have taken that range to apply to -- to not say in  
15     any individual year: the rate is X. It is a rate which  
16     I think would be relevant for the period -- the merchant  
17     period as a whole, and it might be that there are  
18     periods -- years within that period where the rate is  
19     slightly higher and years when it is slightly lower, but  
20     on average I think the rate of 70 to 100% is relevant  
21     for the merchant period.

22     Q. But nowhere do you suggest, anywhere in your report,  
23     that commonality or usage affects the applicability of  
24     that rate?

25     A. No.

1 Q. Or the range?

2 A. No, that is right.

3 PROFESSOR WATERSON: Can I just raise a question here,

4 because there are two factors in play here, are there

5 not: one factor is the time period, and the second

6 factor is the different nature of the merchants within

7 this group. So some -- so are you saying that within

8 this group, 70 is the outer level -- outer limit at the

9 low end and 100 is the outer limit at the high end, or

10 are you saying that, on average, 70 is the low end and,

11 on average, 100 is the high end?

12 A. I am saying the second.

13 PROFESSOR WATERSON: Right.

14 MR SIMPSON: Can I just come back to -- I was going to say

15 economic logic, but I will probably be caught out on it.

16 Can I try this. The professor has perked up!

17 Just looking at the economic logic of this, your

18 point on card usage rates is that the lower MSC costs

19 are, the more likely merchants are to treat them as

20 fixed rather than variable?

21 A. Yes.

22 Q. But your range of 70 to 100 is only for costs which are

23 treated as variable?

24 A. Yes.

25 Q. So the range cannot, by definition, cover merchants

- 1 switching from treating them as variable to treating  
2 them as fixed?
- 3 A. Correct.
- 4 Q. That would take the merchant out of this category?
- 5 A. Yes.
- 6 Q. So card usage cannot possibly affect the 70 to 100, even  
7 within it?
- 8 A. That is correct.
- 9 Q. Let me try the same but different logic for card  
10 acceptance.
- 11 Your point on card acceptance rates is the higher  
12 the rate of acceptance, the higher the commonality of  
13 the cost and the more likely it is to be passed on?
- 14 A. Yes.
- 15 Q. That is because market-wide costs are more likely to be  
16 passed on?
- 17 A. Yes.
- 18 Q. Now, I suggest that also cannot be accommodated within  
19 your range, because what that would mean is that pass-on  
20 rates would rise over the merchant claim period as card  
21 acceptance rates went higher; yes?
- 22 A. I think that is the point that we have just been  
23 discussing.
- 24 Q. Yes, it might be skinning a cat a different way, but  
25 that is what I am getting at.

1           So just as a hypothetical example, if all things  
2           equal -- all other things equal, they started at 50 to  
3           80, they might rise to 70 to 100. That would be the way  
4           that card acceptance would affect things, would it not?

5       A. Yes.

6       Q. But you do not suggest that that has happened?

7       A. So I do not have sufficient evidence to be able to put  
8           any numbers on it.

9       Q. You have concluded that it did not happen, because you  
10       have concluded that 70 to 100 applied to the whole  
11       period?

12       A. Oh, I see what you mean. Yes, I am not seeing evidence  
13       that would tell me that I have a reason to move away  
14       from 70 to 100 for the -- being generally applicable to  
15       the merchant claim period --

16       Q. So for --

17       A. -- in the base case.

18       Q. I am so sorry, I did not mean to interrupt.

19           So for present purposes you have concluded it did  
20       not happen, because you have concluded 70 to 100 applied  
21       for the whole period?

22       A. So I am not saying that there may not have been changes  
23       in commonality, I am not saying that the pass-on rate  
24       may not have been lower in the earlier period than in  
25       the later period of the merchant claim, but I am saying

1           that overall, taking the merchant period as a whole,  
2           a base case of pass-on of somewhere between 70 to 100%  
3           would be appropriate, on average.

4       Q. I do not see anywhere in your report that the pass-on  
5       rate, as a result of card acceptance changes, may be  
6       lower in the earlier period than the later period. In  
7       fact, I do not see any distinction at all between the  
8       earlier and the later period for the merchant claim in  
9       your report.

10      A. I think I have been reaching a view on the likely  
11      pass-on rate for the whole period, and 6.24 is the  
12      paragraph where I recognise that there may be changes  
13      within the period, but not changes such that the 70 to  
14      100 would not apply on average for the period.

15      Q. I do not see anything in the report saying it applies on  
16      average.

17      A. I think I have not specified that it is on average, but  
18      that is what I mean in reaching my views on pass-on of  
19      variable costs for the merchant period.

20      Q. That is what you mean?

21      A. Yes.

22      Q. What does that mean?

23      A. It means that if one wanted to determine a pass-on rate  
24      for the merchant claimants for the period of their  
25      claim, if the Tribunal were to reach the view that they

1           set -- they treat the MSC as a variable cost, then  
2           a pass-on rate associated with that claim could be  
3           between 70 and 100%, and I would not distinguish --  
4           I would not, say, choose a different rate necessarily  
5           depending on the year, I probably would -- I am saying  
6           that as a general average applying to the whole claim,  
7           that would be appropriate.

8       Q.   But it is not, is it, for you, Ms Webster, to say, well,  
9           if you want to decide it this way, or if you decide it  
10          this way, then perhaps that? You are giving your view  
11          as to how they should decide it -- as an expert, but you  
12          are giving them evidence upon the basis of which they  
13          will decide it, yes?

14       A.   Yes, so I think I am saying that 70 to 100% is -- any  
15          pass-on rate that is within that range could be  
16          a reasonable assumption for the pass-on rate for those  
17          merchants that treat the MSC as a variable cost.

18       Q.   So I would like to turn, then, to the first of the two  
19          big topics, card usage. Now, you said in the hot-tub  
20          you have used card usage as a proxy for MSC costs.

21       A.   Yes.

22       Q.   Now, I would like to go to {RC-G/12/121}, paragraph 6.29  
23          of your first report.

24       THE CHAIRMAN: Is this the first report or second?

25       MR SIMPSON: First report, yes, sir, it is.

1 THE CHAIRMAN: I think RC-G is the second report.

2 MR SIMPSON: Is it? I am so sorry.

3 I can give it now, it is {RC-F/14/119}.

4 THE CHAIRMAN: F. Yes.

5 MR SIMPSON: RC-F/14/119. So 6.29:

6 "For the reasons set out in ... 3.3, whilst  
7 contemporaneous evidence from merchants would be  
8 required properly to assess the extent of any changes  
9 over time in how merchants treat MSCs in their pricing  
10 decisions, the size of a cost item may be relevant to  
11 whether a merchant is likely to treat it as akin to  
12 a variable or fixed cost. Data on card usage over time  
13 is available and is relevant to that assessment."

14 We then go on to the first sentence of 6.30:

15 "Figure 2 ..."

16 Just flick to figure 2, if you could, on the next  
17 page, and then back. We are familiar with this graph.

18 "... shows that the share of total transaction  
19 values (excluding direct debit and automated credit)  
20 that were accounted for by credit card payments amounted  
21 to only 2.1% in the first year for which data is  
22 available ..."

23 You refer to "the share of total transaction  
24 values", so the crucial part of your reasoning is what  
25 you mean by total transaction values.

- 1                   Sorry, for the transcript, I can see you nodding.
- 2       A.   Yes, sorry.
- 3       Q.   Because unless we know what you mean by total
- 4           transaction values, we cannot know what the percentages
- 5           that follow are a percentage of?
- 6       A.   Yes.
- 7       Q.   You use the term "total transaction values" in
- 8           paragraph 6.30, and you head the graph, "Total
- 9           transaction values", but you do not explain anywhere in
- 10          the text of your report exactly what you mean by total
- 11          transaction values; is that fair?
- 12       A.   I say at the beginning of 6.30 that it excludes direct
- 13          debit and automated credit.
- 14       Q.   I am making a bigger point. You do not say, "This is
- 15          the UK retail economy and I am going to examine what
- 16          constitutes the UK retail economy"?
- 17       A.   No.
- 18       Q.   If it is not all transactions, it must mean relevant
- 19          transactions?
- 20       A.   Yes.
- 21       Q.   Now, do you accept that it might have been better to
- 22          have a section explaining exactly what transactions you
- 23          had and had not included and why?
- 24       A.   I think it might have been helpful for clarity.
- 25       Q.   Because really all we get on this is a parenthesis in



1           6.30, "excluding direct debit and automated credit", and  
2           then a note below the graph saying what has been  
3           included.

4           Now, we know from previous evidence that there are  
5           in fact various categories, and I suggest to you that it  
6           would have been better to go through each category  
7           saying, "This is why I am putting them in the UK retail  
8           economy and this is why I am not". Would you accept  
9           that, with hindsight?

10          A. I can accept that that would be helpful.

11          Q. It would have been more helpful than the current  
12          approach?

13          A. I think it would have been helpful.

14          Q. More helpful than the current approach?

15          A. Possibly.

16          Q. So just stepping back for a minute. It is not going to  
17          be controversial that between -- well, we will never  
18          know in these cases, but between 1992 and 2024 UK GDP  
19          grew in absolute terms?

20          A. Yes.

21          Q. That is a product of two things: inflation, broadly,  
22          without getting too complicated and beyond my knowledge,  
23          and growth in the economy?

24          A. Yes.

25          Q. Very broadly, you would expect the UK retail economy to

1           have grown at something like a similar rate to UK GDP?

2       A. That seems like a fair assumption.

3       Q. Now, we, as you know, uploaded UK GDP figures from the  
4       ONS last week {RC-Q4/28/1}. This is UK GDP between 1992  
5       and 2022. Allowing for my maths, which I am sure will  
6       be corrected with alacrity if I get it wrong, they show  
7       UK GDP grew roughly 3.5 times between 1992 and 2022, and  
8       roughly three times between 1995 and 2022.

9           So I now want to go to {RC-Q4/16/1}. I would like  
10       to -- if you could scroll down, please, to "Intermediate  
11       output", it is actually down the page. So if you  
12       just -- that is great. Thank you. Just so we get the  
13       whole table. It should come through. Thank you.

14           Now, the denominator column here under  
15       "Intermediate" -- we are going to the workings in  
16       a moment -- is your UK retail economy?

17       A. Sorry, could you repeat that?

18       Q. Yes. If we look at "Total excluding direct debit and  
19       automated credit", these are the figures produced by the  
20       exercise that you have done in the graph?

21       A. This is total transaction.

22       Q. Yes.

23       A. Yes.

24       Q. I think Professor Waterson raised this in the hot-tub,  
25       it certainly came up, that the denominator column

1 represents, in figures, the UK retail economy as you saw  
2 it for the basis of this graph?

3 A. Yes, that is the denominator in my analysis.

4 Q. Yes. Just to look where that comes from, could you  
5 click on "1995", operator, please, and, on the left in  
6 the top, "2020". It is my fault, if you go right --  
7 there we are, yes. Click that, yes.

8 So we see in the formula bar at the top there, we  
9 see what that is the sum of; yes?

10 A. Yes.

11 Q. My Excel is very elementary, but that is the sum of C70,  
12 E70, G70 and I70. If we go down, then we see that what  
13 you have included are cash, cheques, debit cards and  
14 credit cards?

15 A. Yes.

16 Q. If we go to the right, operator, please, we will see  
17 that you have excluded direct debit and automated  
18 credit?

19 A. Yes.

20 Q. So if we could go back to that denominator figure in the  
21 table above, that is the sum of those?

22 A. Yes.

23 Q. That is the same right the way through.

24 So, on the basis of your selections, the UK retail  
25 economy in 1995 is approximately 2 trillion.

1           Yes, I am sorry, if you move off the thing, we can  
2           see. I am sorry, we have the formula bar showing at the  
3           moment. Great.

4       A. So in terms of what the number represents, that is the  
5           total number of transactions that were made --

6       Q. Sorry, could you start again, because I was  
7           concentrating on getting the spreadsheet right.

8       A. Sorry. So that number is the sum of the transactions  
9           made by those four payment types.

10      Q. Yes. So it starts at 2 trillion, and on the basis of  
11           the GDP figures we have just discussed, we would expect  
12           it to be around 6 trillion in 2022; yes?

13      A. If you applied the same growth rate.

14      Q. Yes, which is suggested to you was correct for the UK  
15           retail economy and you broadly accepted.

16      A. Yes, but what is clear in the 2 trillion number, which  
17           I think is perhaps where you are going, is that that  
18           does not just include transactions made in the retail  
19           economy, which I think is a point that came up during  
20           the hot-tub and with which I agree.

21      Q. Well, perhaps I can tell you where I am going.

22      A. Yes.

23      Q. Then we will go there.

24      A. Okay.

25      Q. Where I am going is that we would expect the figure

1 in 2022 to be around 6 trillion.

2 A. So that is if one took the view that the 2 trillion  
3 figure related only to the retail economy.

4 Q. What does it relate to then? I thought you agreed it  
5 did.

6 A. No, this is the discussion that we had in the hot-tub,  
7 where we agreed that some of the transaction types that  
8 were included, and perhaps specifically those associated  
9 with some payments by cheque, would have been payment  
10 either business-to-business or would have been the  
11 paying of employees, and so they are not specific to the  
12 retail sector, and I think I have accepted that point.

13 Q. I understand that, and I am going to come back to your  
14 calculations and any recalculations. But what I am  
15 saying is on the basis of the calculation you were doing  
16 when you wrote this report, your UK retail economy was  
17 2 trillion in 1995; yes?

18 A. I am not sure that I called it the retail economy.  
19 I have set out in the table what I -- the payment  
20 methods that I included, and I have set out the share of  
21 the payment methods that have been taken by credit cards  
22 and debit cards versus cheques and cash.

23 Q. Sorry, I thought I had established with you that this  
24 was what you were describing as the UK retail economy?

25 A. I have been seeking to approximate that, but that is not

- 1           what I have been able to measure.
- 2       Q. I am not going into any errors or changes at the moment,
- 3           I am just taking as a starting point what you have
- 4           actually done and what you were trying to do. What you
- 5           were trying to do was give figures for the UK retail
- 6           economy from 1995 to 2022; yes, in this graph? Leave
- 7           any changes later after, we will come to them.
- 8       A. Yes, I am not quite sure I agree with your
- 9           characterisation.
- 10      Q. How do you disagree?
- 11      A. So what I have tried to identify is, with the best data
- 12           that I had available, the extent of growth in card usage
- 13           relative to cash and cheques, and that is what I have
- 14           set out in figure 2. Then, separately, I have analysis
- 15           which shows for specific retail sectors the growth in
- 16           card usage, but that is different from this chart.
- 17      Q. Sorry, I am a bit confused here, Ms Webster. I thought
- 18           that I had established with you that you needed to
- 19           define the UK retail economy to come to the percentages
- 20           that you came to; yes?
- 21      A. Sorry?
- 22      Q. I thought I had established with you that in order to
- 23           arrive at your percentages, you needed to arrive at
- 24           a figure for the total UK retail economy?
- 25      A. So I think that is --

1 Q. Had I or not?

2 A. Yes. What I have done in this report, and this is what  
3 I have described in this report, is I have described the  
4 data that is available to me on card usage, and I have  
5 not said, I think, that this is only retail. I present  
6 the evidence that I have on card usage, and that is  
7 described in 6.30 and in figure 2, and then I have some  
8 figures that relate specifically to retail sectors,  
9 which is a different source.

10 Q. Just a few minutes ago, Ms Webster, I put to you, when  
11 you were -- we were talking about the retail economy,  
12 that it would have been better to go through saying,  
13 "This is what I put in my retail economy and this is  
14 what I do not", and I thought I had established with  
15 you, before we move on to anything as to whether it is  
16 right or wrong, I just want to establish where we are,  
17 that what you were seeking to do was give a number for  
18 the UK retail economy?

19 A. So in terms of what we should be basing an analysis on  
20 to understand card usage in the retail economy, I agree  
21 with what you have said. What I am seeking to say is  
22 that was not available to me when I was writing this  
23 report, and so what I have written in this report is  
24 a fair description of the data that was available to me.

25 Q. Hold on.

1 A. I have not -- and -- yes, I will stop there.

2 Q. Okay. So I will come back to that, if I may. But  
3 I just -- maybe I am not putting the question right.

4 In this denominator column, were you -- however you  
5 may think you have done it perfectly or imperfectly  
6 now -- were you seeking to give figures for the UK  
7 retail economy from 1995 to 2022? Whether you got it  
8 right or wrong, were you seeking to do that?

9 A. No, I do not think I was. I think I was trying to show  
10 the increase in card usage relative to other payment  
11 methods, and then in 6.31 and figure 3, I have some  
12 figures which are specific to retail sectors.

13 Q. Sorry, I am a bit confused by that, Ms Webster, I have  
14 to say, because ... I constantly go wrong in getting  
15 things back on the transcript, but I put to you --  
16 I have the questions I front of me, and I put to you  
17 that you head your graph, "Total transaction values" but  
18 you do not explain anywhere what you mean by them, and  
19 I said:

20 "If it is not all transactions, it must mean  
21 relevant transactions, and that must mean the total UK  
22 retail economy?"

23 You said "Yes".

24 A. Apologies, that was not quite right. I have not been  
25 able to get figures for the retail economy, so what



1 I have done in this report, and this is why I have not  
2 said that, what I have done in this report is looked at  
3 payment types, cheques, credit card, debit card and  
4 cash, and I have shown the growth in the usage of credit  
5 and debit cards.

6 Now, what I do agree is that for the question that  
7 is at hand, what we really want to know is what is the  
8 growth rate in the retail economy, but that was not data  
9 that I had, so that is why I did not describe it as  
10 such.

11 Q. Well, you described it as total transaction values, by  
12 definition total relevant transactions values, and you  
13 acknowledged with me just now that total relevant  
14 transactions values are total transaction values in the  
15 UK retail economy?

16 A. I agree that those are the most relevant, and that it  
17 would be relevant to the issue of -- this is card usage,  
18 is it not? -- MSC cost to retailers, so I agree with  
19 that. I am just trying to be clear about what I had  
20 when I wrote this report and how I have presented it.

21 Q. But you do not qualify your report in saying, "I am  
22 really not sure what I have got and what I have not for  
23 the UK retail economy", do you?

24 A. I cannot see anything here that qualifies it. What  
25 I have done is select what I think are the most relevant

1 payment types.

2 Q. But that qualification would be absolutely crucial,  
3 would it not? You are now qualifying it that way.

4 A. My view is that credit cards, debit cards, cash are very  
5 relevant to payments in shops.

6 Q. So are you qualifying it now?

7 A. So I am saying that I acknowledge that this chart  
8 includes some payment methods -- some payments, with  
9 certain payment methods, that would not necessarily be  
10 relevant to the UK economy -- sorry, retail economy. So  
11 they would be relevant to, as I described a moment ago,  
12 and, as I described in the hot-tub, that they would be  
13 relevant to business-to-business transactions or paying  
14 employees.

15 Q. Just going back a bit. Assuming that what you were  
16 seeking to do, albeit imperfectly, was define the UK  
17 economy, in 1995 you have 2 trillion, right? With GDP  
18 growth, you would expect that to be about 6 trillion by  
19 2022; yes?

20 A. Yes.

21 Q. But it is 1 trillion. Did that not give you any pause  
22 for thought as to your selection of numbers for the UK  
23 retail economy?

24 A. So what is clear, and you can see it also from the  
25 graph, is that there is -- that the cheques line, which

1 is missing from the graph, is really very material  
2 and ... (Pause)

3 I think -- well, let me start again.

4 It is true that -- sorry, in my view it is true that  
5 there are -- this chart is showing me about the  
6 substitution patterns between different payment types.  
7 What is clear is a very sharp increase in the share of  
8 transactions taken by direct -- sorry, by debit cards,  
9 and then a somewhat more -- lesser, but some increase in  
10 the share of transactions by credit cards, and, equally,  
11 a reduction in cash. Those were trends that, when  
12 I looked at the chart, they did not surprise me.

13 So, in that sense, I thought this is consistent with  
14 what I would expect to see, given my experience of  
15 transacting in retail environments.

16 The question then comes: what to do with cheques?

17 Q. Can I pause you there just a second and go back to my  
18 original question.

19 A. Yes, about the drop from --

20 Q. Can you wait and I will put the question again?

21 A. Yes.

22 Q. So you drew up this spreadsheet?

23 A. My team drew up the spreadsheet.

24 Q. Your team drew it up, and you reviewed it?

25 A. I reviewed the chart.

1 Q. But you did not review the numbers?

2 A. I reviewed the chart.

3 Q. But you did not review the numbers?

4 A. I did not look at the underlying spreadsheet produced  
5 for the chart. I asked my team about the numbers, I  
6 asked my team to understand what was driving the  
7 numbers, and I reached the conclusion that I was happy  
8 that it showed a change in transaction mix by some of  
9 the main payment types that are used in the retail  
10 sector -- retail economy.

11 Q. This graph is fundamental for Mastercard's case?

12 A. Yes.

13 Q. You did not review the numbers?

14 A. So I reviewed the chart and I spoke to my team about it.

15 Q. But you did not review the numbers?

16 A. No.

17 MR SIMPSON: Would that be a convenient moment for the  
18 break, sir?

19 THE CHAIRMAN: Yes. Ten minutes.

20 (3.15 pm)

21 (Short Break)

22 (3.25 pm)

23 THE CHAIRMAN: Yes.

24 MR SIMPSON: So, Ms Webster, could we pull up that

25 spreadsheet we had just before {RC-Q4/16/1}. When was

1           the first time you saw these figures?

2       A. I think they were circulated prior to the hot-tub.

3       Q. Sorry, could you speak up a bit?

4       A. I think they were circulated prior to the hot-tub.

5       Q. Did you watch or read the transcript of my opening?

6       A. No.

7       Q. They were circulated -- do you mean Opus circulated or

8           your team -- the legal team circulated them to you

9           or ...?

10      A. I am struggling to recall. I remember looking at them

11       prior to the hot-tub and sort of shortly before.

12      THE CHAIRMAN: Sorry, I am confused. These figures are --

13       whose figures are they?

14      MR SIMPSON: What these are, sir, is these are the figures

15       which underlie the graph, and these figures are figures

16       which were put together by Ms Webster's team --

17      THE CHAIRMAN: Yes.

18      MR SIMPSON: -- which underlie the graph.

19      THE CHAIRMAN: So you did not see the figures at all

20       before -- only just before the hot-tub?

21      A. Yes. So I looked at the chart and I spoke to my team

22       members about the interpretation of the chart. I looked

23       at the other evidence as well that we had in relation to

24       card usage, and was satisfied overall that there was

25       evidence that would show an increase in card usage for

1           merchants relative in the later periods, compared to the  
2           earlier periods.

3       THE CHAIRMAN: But this was your team's document?

4       A. That is right.

5       THE CHAIRMAN: Yes.

6       MR SIMPSON: When you saw your team's document for the first  
7           time, and you looked at the denominator column, and you  
8           saw that their UK retail economy, instead of growing by  
9           three times between 1995 and 2022, had shrunk by half,  
10          what did you think?

11      A. So we had spoken about this in the team already in  
12          relation to the role played by cheques. So what had  
13          struck me as odd, when I first looked at the chart, is  
14          that when you add the percentage of transactions  
15          fulfilled by cash with that fulfilled by cards in the  
16          early part of the period, it is clear that there is  
17          a very large number of transactions which are not  
18          accounted for by any of those three types of payment,  
19          so, therefore, that means that they are accounted for by  
20          cheque.

21                So the conversation that I had with my team is: is  
22          that really right, that if we were approximating the UK  
23          economy, that that would be -- cheques would be the  
24          balance? We discussed that it was likely, perhaps,  
25          that, on looking at the numbers at the time, that

1           cheques were made for some payments which were not part  
2           of the retail economy, which I think is the discussion  
3           that we also had in the hot-tub, so -- and my  
4           expectation is that some would be, some cheque payments  
5           would be relevant to the retail economy and some would  
6           not, but I had no basis to adjust the numbers to say:  
7           this is the proportion of cheque payments that would be  
8           relevant to the retail economy versus not.

9       MR SIMPSON: But, Ms Webster, leaving aside the individual  
10       components here, when you saw the denominator column for  
11       the first time, did you not think that, whatever it may  
12       be, there has been a catastrophic error here?

13      A. No, I associated that with cheques becoming less well  
14       used. So the decline here is likely to be driven by  
15       cheques not being used at all and replaced, to some  
16       extent, by direct debit or automated payments.

17      Q. But that is consistent with there being a catastrophic  
18       error in relation to cheques?

19      A. So I have explained that I think that a proportion of  
20       cheques would not have been relevant to retail payments,  
21       payments in retail stores, but I then also had the  
22       charts that are available alongside this total picture,  
23       so this is figure 3 in my report, which shows specific  
24       retail sectors, and it looks at the use of debit card  
25       and credit card in those sectors and shows the

1           increase -- these are annual rates of increase of  
2           transaction value for each of these different retail  
3           sectors. Putting that alongside figure 2 meant that  
4           I was not entirely reliant on figure 2 in reaching my  
5           view about the increased use of cards.

6       Q. Ms Webster, maybe I am not putting the question clearly  
7           enough. The whole basis of your graph is the size of  
8           the UK retail economy over these 27 years or whatever;  
9           yes?

10      A. So --

11      Q. "Yes" or "no"?

12      A. In the ideal, this chart would have shown just the  
13           retail sectors and I accept it does not do that. What  
14           I then also did at the time was to say: I cannot -- it  
15           is difficult to make a judgment as to quite what should  
16           be in or out. If I included all payments, so including  
17           automated credit, including direct debit, then it would  
18           still show an increase in the usage, the relative usage  
19           of debit cards and credit cards. If I take cheques out  
20           completely, that is an alternative, it still shows  
21           a sharp increase in the use of debit cards and credit  
22           cards.

23           So whatever actually I am choosing to include in  
24           this chart, I get the same increase in usage of debit  
25           cards and credit cards. So I did not conclude that it



1           was a catastrophic concern that there would be inclusion  
2           of cheques in this chart that do not reflect payments in  
3           the retail economy.

4       Q.   Ms Webster, I said initially that maybe I was not  
5           putting the question clearly enough, but reading the  
6           transcript I did put it clearly enough, and I will just  
7           repeat it.

8           The whole basis of your graph is the size of the UK  
9           retail economy from 1995 to 2022; "yes" or "no"?

10      A.   I am trying to understand the extent to which card usage  
11           has grown in the retail economy, and this is one  
12           indicator of the extent to which that has been the case.  
13           So it is not the purpose of the chart to focus on the  
14           retail economy and get that exactly right; it is  
15           intended to be informative of it, making the best  
16           assumptions I can about the use of different payment  
17           methods.

18           So I recognise that the chart does not represent  
19           exactly what I would want it to, but I still consider  
20           that it is informative.

21      Q.   I am going to ask the question one more time and then  
22           move on.

23           The whole basis of your graph is the size of the UK  
24           retail economy between 1995 and 2022; that is the  
25           denominator for the graph?

1 A. No.

2 Q. No?

3 A. No. In the ideal world it would have been. That was  
4 not the data that was available to me.

5 Q. Where do you explain that in your report?

6 A. I set out what I have included.

7 Q. You did not exhibit the spreadsheet to the report, did  
8 you?

9 A. I suspect that would have been included in our data  
10 packs, but I do not -- we would have to confirm that.

11 Q. Well, we know. It was not exhibited. It was in the  
12 inter-expert data pack which was exchanged in August.

13 A. Right.

14 Q. You did exhibit the UK payment statistics which are the  
15 basis of these numbers. We have that spreadsheet, and  
16 that was exhibited to this volume, but you did not  
17 exhibit this spreadsheet, did you?

18 A. Right. If you say that is the case, then I will take  
19 that on trust.

20 Q. Now, this spreadsheet, there are five so-called figures  
21 in volume 1 of your report. There are several tables  
22 but there are five figures, okay, and only five, and  
23 this spreadsheet is the basis for four of those five.

24 Now, can you give an explanation, perhaps it is  
25 merely an error, perhaps you delegated it to your team,

1           whatever the explanation may be, why was this  
2           fundamentally important spreadsheet not an exhibit when  
3           lots of other spreadsheets were?

4       A.   Yes, I cannot answer that question.  There was certainly  
5           no deliberate intent to withhold that --

6       Q.   I accept you have not seen the figures and I accept  
7           there was no deliberate intent to withhold this  
8           spreadsheet, but I just was seeking an explanation of  
9           why such an important spreadsheet was not exhibited?

10      A.   Yes, I think I have said I do not know the answer to  
11           that.

12      Q.   Because I think the reason you saw it so late, listening  
13           to what you have said -- I only saw it four days before  
14           trial, because I spotted in a footnote of Mr Coombs'  
15           report that it was referred to as being in a data pack  
16           which we had asked for and we got, and that is why it  
17           came to prominence.  But I want to explore your reaction  
18           when you did see it finally.

19               Now, however imperfectly it is trying to do this,  
20           this is trying, in its denominator column, to roughly  
21           say what the UK retail economy is; yes, between  
22           these years?

23      A.   It is using the best data that I have to understand the  
24           growth in payment -- well, the change in the use of  
25           different payment types that are relevant in a retail

1           setting.

2       Q. I suggest to you that -- well, let me ask a more open  
3       question: when you saw this shrinkage in the numbers, as  
4       opposed to a massive growth, what did you think?

5       A. So I was able to identify that that reflected the  
6       decline in the use of cheques, which was accounting for  
7       the majority of the transaction values in the early part  
8       of the period, and I understood -- so that is what leapt  
9       to my mind, it was the decline in the use of cheques  
10      that explained that.

11           The fact that the total number goes down in that  
12      column C is reflective that it is not replaced by  
13      other -- it is not replaced by credit cards, it is not  
14      replaced by debit cards fully. It is replaced,  
15      therefore, by automated credit and direct debit, which  
16      are the payment types that I have excluded, and that  
17      signals to me that there is some degree of usage of  
18      cheques in the earlier part of the period that will have  
19      been associated with not -- with payment not in a retail  
20      setting.

21      Q. Now, the exclusion -- let us talk about direct debits.  
22      The exclusion of direct debits was a big decision, was  
23      it not, because there are a lot of direct debits; the  
24      figure is high?

25      A. I do not have the data --

1 Q. Okay, it is here in front of us, I think. If we can go  
2 down.

3 A. Yes.

4 Q. Have you seen these numbers before?

5 A. I have not looked at them in detail.

6 Q. You have not?

7 A. Not in detail.

8 Q. Okay. Can we go down and then across, please.

9 So direct debit numbers go from 312 million to  
10 1.33 trillion.

11 A. Yes.

12 Q. Now ... so their exclusion in whole or in part was  
13 a major decision?

14 A. Yes. So the basis of that decision was that  
15 I considered that direct debit -- payment by direct  
16 debit would be less relevant in a retail setting than  
17 cash, card or cheques, so that is why I excluded it.  
18 The same is also true with automated credit and, as  
19 I said, I did look at a version of the chart that  
20 included both direct debit and automated credit and saw  
21 that the upward trend in the share taken by both debit  
22 and credit cards is still apparent. I think we saw that  
23 in the charts that we shared in the hot-tub.

24 Q. Yes.

25 PROFESSOR WATERSON: Mr Economides' charts?

1       A. Yes, that is right.

2       MR SIMPSON: Just going back a bit. Would you agree, given

3       its materiality, potentially, that it was a very big

4       figure to omit without any explanation of why you were

5       omitting it in the report?

6       A. Yes, I accept that; it might have been helpful for me to

7       have set that out in more detail.

8       Q. Was the decision to omit it a decision that you took?

9       A. I did not take a conscious decision to omit -- sorry, so

10      I am trying to remember back in July. I think I had

11      a discussion around the chart and what was included, and

12      I was happy that it was not included on the basis that

13      it does not relate to -- sorry, less likely to relate to

14      payments in a retail setting.

15      Q. So it was your decision after discussion?

16      A. Yes.

17      THE CHAIRMAN: You took that decision without knowing the

18      figures, is that right?

19      A. So the decision that -- so the chart is intended to

20      reflect, as best as possible, payments in a retail

21      setting.

22      THE CHAIRMAN: Understood.

23      A. So direct --

24      THE CHAIRMAN: Can you just answer the question?

25      A. Yes.

1 THE CHAIRMAN: Right. Thank you.

2 MR SIMPSON: So you took the decision to exclude direct

3 debits without knowing the number you were excluding?

4 A. So I looked at the chart which included -- looked at the

5 chart which includes both automated credit and direct

6 debit, and what is clear is that --

7 Q. But it does not.

8 A. Sorry?

9 Q. It does not.

10 A. No, I have looked at a version of the chart that does

11 include them.

12 Q. Well, when did you look at that?

13 A. Sorry, I looked at that before the hot-tub.

14 Q. But not before your report, which was the Chairman's

15 question.

16 A. No, that is right.

17 Q. So let us say, for 2022, you took the decision to

18 exclude from the retail economy 1.3 trillion of

19 transactions without even knowing what that number was?

20 A. Yes.

21 Q. What research did you do before deciding to exclude it?

22 A. So the discussion is around payments that are relevant

23 in a retail setting, and I considered that it was

24 appropriate to exclude direct debit and automated credit

25 on that basis.

1 Q. On what basis?

2 A. On the basis that if I am shopping for purchases in  
3 a retail environment, that I am unlikely to be using  
4 direct debit to make those payments.

5 Q. So you made a decision to exclude 1.3 trillion of  
6 transactions on the basis of your own shopping  
7 experience?

8 A. On the basis of that is what I would expect of -- I do  
9 not observe for many merchants, if we are talking about  
10 high street merchants, that there would be direct debit  
11 facilities.

12 Q. Sorry, Ms Webster, but you are making a decision -- so  
13 this graph is at the heart of Mastercard's case. There  
14 are, I think -- I can count them up, but there are  
15 a very large number of paragraphs in their opening which  
16 depend on the numbers in this graph, 15 or 20 including  
17 the footnotes. It is the basis for all the numbers on  
18 multiples of MSC costs, all their submissions on the  
19 Trucks tiny point, all their numbers.

20 A. So when it comes to my report --

21 Q. Would you like the question?

22 Did you realise that?

23 A. So I did not review Mastercard's skeletons. So I have  
24 been focused on these numbers with a view to what they  
25 mean for my report and what I consider they mean for the



1       likely degree of pass-on, how that might have changed  
2       over time.

3               These are not a major -- these figures are not  
4       a major part of my conclusions. They relate to two of  
5       the mechanisms in which I think it may be possible that  
6       pass-on is lower earlier in the period, in the whole  
7       claims period, and they relate to the position that it  
8       may have been the case, further back in time, that  
9       merchants would have been more likely to treat MSCs as  
10      a fixed cost, or, to the degree that they already treat  
11      them as a fixed cost, then this is relevant to the  
12      extent of pass-on of those fixed costs.

13              Now, I said in the hot-tub, and I think I have said  
14      in my reports, that actually of the factors that may  
15      affect pass-on going back in time, the degree to which  
16      businesses were more likely to treat them as a fixed  
17      cost versus a variable cost, and the degree of fixed  
18      cost pass-on, are less important as potential drivers of  
19      difference over time than card acceptance and the degree  
20      of commonality of MSC costs.

21              So perhaps that may explain the lesser degree of  
22      focus that I have had on these numbers, which I used in  
23      conjunction with figure 3 in my report, and which is why  
24      I did not place as much weight on -- I was happy overall  
25      that they would be indicative -- they indicated to me

1 the increased use of cards, and, alongside figure 3,  
2 I was happy for that to form the basis of my first  
3 report.

4 Q. So it would help, because we have relatively little  
5 time, obviously I want to let an expert give a full  
6 answer, but if you could shorten your answers slightly,  
7 that will be really helpful.

8 I want to go back to what you said at the beginning  
9 of your answer, which is that these figures are not  
10 a major part of your conclusions.

11 Now, can we go to {RC-F/14/117}. 6.25(a), I hope  
12 that is:

13 "As regards the key factors in paragraph 6.23 above,  
14 and as explained in more detail ... I conclude that:

15 "(a) The available data on card usage and therefore  
16 the magnitude of the MSC costs that merchants faced ..."

17 Etc, etc. You describe it as a key factor?

18 A. Sorry, where are you reading?

19 Q. 6.25(a).

20 A. At the start of the paragraph?

21 Q. At the start of the paragraph, yes. (Pause)

22 You mentioned it several times, even before I came  
23 to this paragraph. (Pause)

24 A. What is your question?

25 Q. Well, are you really saying that you did not think it

1 was a major part of your report?

2 A. So I have given thought, in this part of my report, to  
3 the extent to which there are factors that may have  
4 differed when one goes back further in time and that  
5 therefore would be potentially relevant to considering  
6 the rate of pass-on, and I identified three factors of  
7 which card usage has a bearing on two of those factors,  
8 which is primarily associated with treatment of MSCs as  
9 a fixed cost.

10 Then what I am also clear on in this statement is,  
11 you know, determining this also would require other  
12 evidence which is not available to me. So I am  
13 suggesting that there is some evidence here that could  
14 point to lower pass-on as a result of merchants having  
15 been more likely to treat the MSC as a fixed cost  
16 further back in time, but I am not doing more than that.

17 Q. Well, let us just go back to direct debits for a second,  
18 shall we? You strip them out, and in the hot-tub you  
19 said, and the transcript reference is {Day5/68:18}, you  
20 said:

21 "What I have tried to do is strip out payment types  
22 that I think are less likely to be relevant in a retail  
23 setting."

24 Now, you do not explain that in your report or say  
25 how much you are stripping out for each year, do you?

1       A.   No.

2       Q.   Do you think you should have?

3       A.   I do say that I have focused on -- sorry, I do say that

4       I have excluded direct debit and automated credit.

5       Q.   You do say that, yes, you do. I accept that. You say

6       that in a parenthesis and you say it in a note. You do

7       not say it in the main text, do you? Sorry, you say it

8       in a parenthesis in the main text.

9       A.   Yes.

10      Q.   If you are stripping out 1.3 -- I am taking the latest

11      here as an example -- if you are stripping out 1.3

12      trillion of transactions, do you accept you should have

13      explained why in the report, rather than just in the

14      hot-tub?

15      A.   So I accept that it perhaps would have been more helpful

16      to have written a more fulsome description here of

17      exactly how I had treated the data. I accept that.

18      Q.   Your explanation would -- for direct debits would have

19      been your shopping experience?

20      A.   I would have explained the assumptions that I have made

21      in doing so.

22      Q.   The explanation would have been the explanation you have

23      just given?

24      A.   So I think there is also, from memory, and I do not have

25      it written in my report, the source of the statistics

1           comments on how the -- from memory, the nature of the  
2           payments. So I recall reading a note about automated  
3           credit and the situations in which automated credit is  
4           used to make payments, and I do not have that detail,  
5           but --

6       Q. I do --

7       A. -- it would have been relevant.

8       Q. -- so we are going to go to it in a moment.

9           Now, just let us look -- can we get the spreadsheet  
10          back up. Thank you. Now, this is slightly ambitious,  
11          because I have not asked an operator to do this before.  
12          I see a smile on the operator's face, a somewhat vulpine  
13          smile, I have to say. Can we go up a bit and across and  
14          up. Now, if you, operator, could click on 1995/2020, do  
15          you see the box on the bottom right, could you  
16          just -- 1996, could you -- do you have the capacity to  
17          tap in 2020 for that, for 1996?

18       EPE OPERATOR: Which box?

19       MR SIMPSON: Top left, the box that currently says 2141,  
20          next to 1996. Ignore that one. So tap into the next  
21          box 2020.

22       THE CHAIRMAN: You mean 2141; no?

23       MR SIMPSON: Undo that. 2020 in that box, please. Stop.

24          Okay. Now, take that right-hand box, the little box on  
25          the right, at the bottom right of the cell, the green

1        little square, and click on it and drag it down. Drag  
2        it right down and hold on to it. Hold on to the bottom  
3        and stop and release. Yes. Okay. Now go up to the  
4        graph. That is what happens to the percentages. Now,  
5        can you undo and then redo, please, operator, to the  
6        graph. Stay on the graph and do undo and then redo. Go  
7        up, please. Then do undo and then re-do. Yes, that is  
8        exactly it.

9                So, Ms Webster, it has an enormous effect on your  
10       graph, whether you include direct debits. Down from  
11       over 60% for credit cards to 36%.

12               If we could do redo or undo, whichever it is to take  
13       us back. Yes. Then for 18%, re-do, if you can.

14       A. So am I right to assume that you have added 1.3 trillion  
15       to --

16       Q. All I have done -- I am so sorry, I should not have  
17       mentioned the 1.3 trillion. I was ahead in my mind.  
18       What I have done -- I do not want to mislead you,  
19       obviously -- all I have done is I have taken a flat UK  
20       retail -- forget the direct debit bit for the moment.  
21       I have taken a flat UK retail economy right down the  
22       list. So I have taken it as if it did not grow at all  
23       but it did not shrink, okay?

24               Now, what I am trying to illustrate is merely that  
25       point has a massive effect, and you were quite right to

1 pick me up, I made a mistake in referring to direct  
2 debits. What I was seeking to illustrate is the  
3 enormous effect of just keeping a flat UK retail economy  
4 right through the period as opposed to a shrinking one.  
5 I did not do the illustration of what it would be to go  
6 from other numbers.

7 But let us go back to direct debits for a second  
8 then. Now, so you did not do any research, as I -- am  
9 I being unfair?

10 A. So I looked at the description of the -- descriptions of  
11 automated credit and direct debit, and that helped me to  
12 understand the basis for excluding those.

13 Q. Where did you look at those descriptions and what were  
14 they?

15 A. I cannot now recall. They were provided to me by my  
16 team.

17 Q. Okay.

18 A. I believe that they were references specifically  
19 accompanying the data source.

20 Q. Yes. Now, have you looked at those descriptions or that  
21 material since the hot-tub?

22 A. No.

23 Q. You have not?

24 A. Since the hot-tub?

25 Q. Yes.

1 A. No, I did not.

2 Q. Since this point emerged.

3 A. Sorry, I looked at it prior to the hot-tub. I have not

4 looked at it since the hot-tub.

5 Q. Okay. Let us go to {RC-J5.2/8/1}. Now, this document

6 is exhibited to volume 1 of your first report.

7 A. (The witness nodded)

8 Q. Have you read it?

9 A. No.

10 Q. Has any of your team read it?

11 A. So my team -- I understand my team have drawn from this,

12 because that is where the data comes from, I believe.

13 Q. Well, it is not where the data comes from. Where the

14 data comes from is the underlying spreadsheet which

15 accompanies this report. This is an explanatory report

16 which includes some of the data from the underlying

17 spreadsheet, and the underlying spreadsheet is the

18 document you refer to in the note below the graph for

19 2023, but these are the notes that accompany it.

20 A. Okay.

21 Q. Now, you did not read, before your report went in, the

22 notes that accompany the figures that you put into it?

23 A. No.

24 Q. You still have not read them?

25 A. So I have seen some notes that relate to automated



1 credit and direct debit which were accompanying the  
2 data. I do not know whether they come from this  
3 specific source but they accompanied the data.

4 Q. Okay. Well, let us read it together now, shall we?

5 I would like you to go first to internal page 12, bottom  
6 left. If you could pull up the direct debit at the  
7 bottom left bit, please, operator. Thank you.

8 {RC-J5.2/8/12}

9 Now, direct debit:

10 "In 2022 there were 4.7 billion payments made by  
11 direct debit, with an overall value of 1.331 billion."

12 That is the 1.331 billion we have been talking  
13 about, in other words, 1.3 trillion.

14 "Direct debit is a long familiar, long-established  
15 and widely trusted method for paying regular bills, and  
16 is used by consumers to make around 7 out of 10 of all  
17 regular bill payments."

18 Now, if we just zoom out the page for a second.  
19 This is almost identical to what is said in the 2022  
20 report, and up to the top right, please, which  
21 Mr Williams put to Mr Economides a couple of days ago.  
22 Did you watch that cross-examination?

23 A. No.

24 Q. Did you read it on the transcript afterwards?

25 A. No.

1 Q. So top right:

2 "Consumers are far more likely to use direct debit  
3 than businesses. Businesses tend to prefer to retain  
4 more direct control over the timing and amount of their  
5 outgoing payments, although may still use direct debits  
6 to pay for business-critical services. Direct debit  
7 payment volumes tend to be linked to some extent to the  
8 economic cycle and consumer confidence."

9 Now I would like to go to internal page 18, bottom  
10 right {RC-J5.2/8/18}:

11 "Direct debits are well established as the main  
12 consumer payment method for making regular payments."

13 Did you know that, Ms Webster?

14 A. No.

15 Q. "Key purposes for these payments include payment of  
16 utility bills and monthly mortgage repayments, where  
17 most consumer payments are made by direct debit.  
18 In 2022 direct debit was the third most frequently used  
19 payment method amongst consumers (by volume of  
20 payments), being used for 11% of consumer payments, with  
21 4.3 billion payments being made."

22 We get a breakdown of that point, 4.3 billion, a bit  
23 later in the report at page 41 {RCJ5.2/8/41}.

24 It is the top half we are interested in. This is  
25 about regular payments, this is not just direct debits,

1           it is about regular payments:

2           "As mentioned above, regular payments are defined as  
3           those payments which are made at consistent intervals  
4           such as yearly, monthly or weekly, and which consumers  
5           are committed in advance to pay. The value of payments  
6           may vary over time, but there remains a commitment to  
7           make these payments, often reinforced by an agreement  
8           with the payee. Examples of such regular payments would  
9           include rent, mortgage repayments, utility bills,  
10          subscription fees or other financial commitments (such  
11          as paying regular insurance premiums or making loan  
12          repayments).

13          "There were 6 billion regular payments made by  
14          consumers in 2022, worth a total of £755 billion.  
15          Whilst consumers may use a variety of different payment  
16          methods to make regular payments, the most frequently  
17          used by far is direct debit, accounting for 73% of all  
18          regular payments made by consumers in 2022. This  
19          reflects direct debit's position as a long-established  
20          and trusted payment method in the UK, which benefits  
21          payers by ensuring that their regular payments are made  
22          automatically each month, and benefits payees by  
23          increasing confidence that payments will be made in full  
24          and on time."

25          So, as in the little headline bit, 73% of regular

1 consumer payments by volume were made by direct debit  
2 in 2022.

3 Now if we go over to the next page {RC-J5.2/8/42}.  
4 If we can pull up the top half to start with, please:

5 "Regular consumer payments can broadly be broken  
6 down into two groups according to the purpose of the  
7 payment: regular financial payments and regular  
8 non-financial payments.

9 "Regular consumer financial payments include  
10 mortgages, savings, insurance, pensions, loans, and  
11 regular payments for credit card bills. While the  
12 majority of these payments are made monthly, some may be  
13 made at different frequencies. For example, credit card  
14 bills are typically paid monthly, but water bills could  
15 be paid once every six months and consumers may choose  
16 to use a standing order to transfer funds between their  
17 accounts at whatever frequency they prefer. A variety  
18 of different payment methods are available to consumers  
19 for making these financial payments.

20 "Regular non-financial payments [which is the one  
21 I am interested in] are those arising from a commitment  
22 to buy a non-financial good or service. Examples of  
23 such payments include utility bill payments, television  
24 subscriptions, payments for mobile phone contracts and  
25 regular charity openings."

1           In my opening, I was unwise enough to mention wine  
2           subscriptions which was picked up by Professor Waterson  
3           and by Ms Tolaney. I did not mention subscriptions to  
4           the Garrick Club or any other similar subscriptions, but  
5           it was the kind of thing I had in mind.

6       PROFESSOR WATERSON: Were they left out deliberately!

7       MR SIMPSON: So non-financial payments are the ones we are  
8           interested in, and there were -- we see from the text  
9           there were 4.77 billion of those, that is 70-whatever %  
10          of the 6 billion.

11          We see below, if we go down the page, that these  
12          non-financial payments, of those 76% were made by direct  
13          debit. So I make that 3.63 billion non-financial direct  
14          debit payments made by consumers in 2023.

15       THE CHAIRMAN: I think 2022 actually, but ...

16       MR SIMPSON: It is the 2023 report for 2022, you are quite  
17          right, sir. I am sorry. For 2022, which of course, as  
18          you will be aware, and you were prompting me to, was the  
19          final figure in the spreadsheet of 1.33 trillion, the  
20          direct debits.

21          So there are 3.63 billion non-financial direct debit  
22          payments made by consumers in 2022, which is the last  
23          year you deal with in your card usage chart, and you  
24          miss all of those out?

25       A. They were excluded from that chart, yes.

1 Q. I suggest to you that is quite a big error.

2 A. Looking at this information now, I think it is clear  
3 that there are some direct debit payments that would be  
4 relevant in a retail setting, and I think I need to  
5 acknowledge that the effect of including them would be  
6 to reduce the growth rate, as I set out in that chart.

7 In the hot-tub, I acknowledged that the chart that  
8 I produced was one way to look at the evidence.  
9 I looked at Mr Economides' evidence, which was the  
10 British Retail Consortium survey, and looked at the  
11 evidence that he presented about different payment  
12 methods.

13 What is interesting to me in the material that  
14 Mr Economides presented, I think from the British Retail  
15 Consortium, did not, I think, suggest that many payments  
16 are made by direct debit. This may be ground that was  
17 covered with Mr Economides, and apologies for missing  
18 that, but I think that may call into question how many,  
19 or what proportion of these non-financial payments are  
20 relevant to retail, so I think that would be relevant  
21 factual points to follow up on.

22 I am sorry, I am looking at these figures for the  
23 first time and so cannot comment on the degree to which  
24 that is the case.

25 Q. Well, let us go back, shall we, and look at what these

1 non-financial payments are. Back one page, please, and  
2 top right.

3 So in fact it is -- yes -- no, over the page,  
4 please, sorry {RC-J5.2/8/42}.

5 So:

6 "Regular non-financial payments are those arising  
7 from a commitment to buy a non-financial good or  
8 service. Examples of such payments include utility bill  
9 payments ..."

10 They would be in the retail economy, would they not?

11 A. Yes.

12 Q. Television subscriptions?

13 A. Yes.

14 Q. Payments for mobile phone contracts?

15 A. Yes.

16 Q. Probably not regular charity donations?

17 A. No.

18 Q. Wine subscriptions?

19 A. Yes. These are --

20 Q. Club memberships?

21 A. So these are examples, as it sets out in the text

22 I think, I probably would want to investigate further to  
23 understand how many.

24 But what I would also say is the -- so I have  
25 presented one chart on the share of transactions

1           accounted for by card payments over time. Mr Economides  
2           has presented another. Mr Coombs presented another  
3           which we looked at briefly in the hot-tub. What I take  
4           from all of them is there has been an increase in card  
5           usage relative to other forms of payment.

6       Q. No one is disputing that, Ms Webster. The issue that  
7       you have put forward is the issue that it has been, as  
8       Mastercard say, "extremely significant". That is your  
9       point, based on the graph; yes?

10      A. Sorry, the point that I have said is that there has been  
11      a substantial growth in card usage, and I reached that  
12      conclusion based on that chart that we talked about and  
13      on figure 3.

14      Q. Let us not worry about Mr Economides for now, I am just  
15      interested in your chart.

16           Now, do you accept -- I mean, you have missed out at  
17      least -- well, if non-financial consumer payments are  
18      retail payments, then you have missed out 3.63 billion  
19      of them?

20      A. Yes, and that is why, when I looked at the chart which  
21      included both automated credit and direct debit, and  
22      still found there to be an increase in card usage,  
23      including all payment types, I was satisfied that the  
24      conclusion that there has been considerable growth in  
25      card usage relative to other payment methods holds.



1 Q. But that is not going to underpin all Mastercard's  
2 calculations in its opening, is it? It is the  
3 percentages that you have created -- not created, that  
4 you have generated through the spreadsheet that are  
5 Mastercard's case; yes?

6 A. Yes.

7 Q. What I am interested in is whether, in light of what you  
8 have now heard and seen, you think that your card usage  
9 chart is reliable for any purpose?

10 A. So I think it is reliable for understanding that there  
11 has been a growth in the usage -- the relative usage of  
12 cards to make payments. What I accept is that the  
13 actual numbers and the percentages are more uncertain.

14 Q. Well, they cannot be relied on, can they?

15 A. I think that they relate to the share as set out in my  
16 description of the chart, which is payments that do not  
17 include direct debit or automated credit. So that is  
18 what they refer to.

19 Q. So your figures cannot be relied on, can they?

20 A. So they are not figures for the retail economy. They  
21 cannot be relied on to be an accurate representation of  
22 card usage specific to the retail economy --

23 Q. Which is --

24 A. -- I agree with that.

25 Q. -- the economy you are looking at.

1       A. Yes, so I have said -- in effect, I am saying that they  
2       are one source of evidence which is informative of it,  
3       but they do not themselves represent numbers which are  
4       specific to the retail economy.

5       Q. So they cannot be relied upon for that purpose?

6       A. The broad increase in usage can, but not the specific  
7       numbers.

8       Q. What do you mean, the broad increase in usage?

9       A. So --

10      Q. Your figures in your graph cannot be relied on, can  
11      they, underpinning?

12      A. So having looked at what happens when you make different  
13      inclusions of automated credit, direct debit, etc, you  
14      still see a marked upward trend which I think can be  
15      relied on. The precise figures that are derived from  
16      that chart I would not use to represent the change in  
17      card usage in the retail economy.

18      Q. Well, I am puzzled as to how that trend can be relied on  
19      if you do not know what it is.

20      A. So it is the usage of cards relative to cheques and  
21      cash.

22      Q. I thought we were talking about the usage of cards as  
23      a percentage of the UK retail economy?

24      A. So ultimately that is what I want to inform. I have not  
25      had the data to be able to do that. I have looked at

1           the data that is available. I have set out an  
2           interpretation of that data in figure 2. I have set out  
3           further data in figure 3. Together, they tell me that  
4           there is an increase in card usage.

5       Q. Sorry, leaving aside figure 3 for a moment. Figure 2  
6       cannot be relied upon for any purpose, can it?

7       A. So I think it tells me about the substitution -- so,  
8       firstly, you can tell the substitution between cash and  
9       direct debit -- sorry, debit card use and credit card  
10      use, and I think it is most likely that those are  
11      specific to the merchant -- sorry, to retail economy.

12     Q. But we do not know, and you have not ascertained, what  
13     proportion of cheques in any given year were in the  
14     retail economy and what were not?

15     A. So --

16     Q. "Yes" or "no"?

17     A. -- I have one -- I do not have systematic evidence of  
18     that. One of the pieces of evidence that I rely on in  
19     relation to the introduction of card payments was an  
20     article related to the introduction of credit -- sorry,  
21     acceptance of debit and credit cards in either  
22     John Lewis or Marks & Spencer, I cannot now recall, it  
23     is a footnote in one of my reports. It does talk about  
24     C&A, who is one of the competitors, it was probably  
25     John Lewis, and they were reporting at that time, which

1           was 1994, that they had -- half of their payments by  
2           customers were by cheque and by credit card.

3           So cheques -- from that, I infer that cheques were  
4           a material -- materially used at that point in time.  
5           I accept it is very anecdotal, the evidence is not --  
6           I have not found evidence relating to cheque usage in  
7           the retail economy specifically.

8       Q.   Because you have not looked for it?

9       A.   I do not know whether my team has looked for it or not,  
10       but given what -- I would expect that we have, given the  
11       importance to this issue.

12      Q.   You have, and they found it?

13      A.   I do not think we have found any. I think we have  
14       looked and not found any.

15      Q.   So having looked and not found any evidence as to what  
16       proportion of cheques were retail or business, you  
17       included the lot?

18      A.   Yes.

19      Q.   Do you regard that as an appropriate way of proceeding?

20      A.   So, as I said, I have looked at this chart, reporting  
21       accurately what it measures, and I have looked at the  
22       data in figure 3, and on the basis of those two pieces  
23       of evidence I have reported that there is an increase in  
24       card usage, which would be relevant to -- might be  
25       relevant to MSC costs faced by retailers.

1 Q. Can I go back to the question I asked. I said:

2 "We do not know, and you have not ascertained, what  
3 proportion of cheques in any given year were in the  
4 retail economy and what were not?"

5 A. Yes, and I do not know.

6 Q. You have not ascertained it?

7 A. No.

8 Q. You have not ascertained what proportion of direct  
9 debits in any given year were in the retail economy and  
10 what were not?

11 A. No.

12 Q. So your graph is simply not reliable on for anything, is  
13 it?

14 A. So I acknowledge that there is uncertainty associated  
15 with the chart that results from that, but I have --  
16 when I include everything, I do find that there is  
17 nevertheless still an increase in card usage relative to  
18 the payments.

19 Q. I am interested in this chart. It is not reliable for  
20 anything, is it?

21 A. I can see that it has some drawbacks.

22 Q. It is not reliable for anything, is it?

23 A. I think it is reliable for showing the substitution that  
24 is taking place between debit cards and credit cards and  
25 cash.

1 Q. But it is not reliable for showing the percentage of  
2 transactions that were debit cards and credit cards in  
3 the UK retail economy, is it? "Yes" or "no"?

4 A. It is not as clear as I would wish it to be. So I am  
5 not sure that I go so far as saying it is not reliable,  
6 because I know that when one includes those other -- so  
7 I do think, in relation to automated credit, it is right  
8 to exclude it. I think when you include direct debit it  
9 does have an effect on the trend, but overall there is  
10 still an upward trend in the usage of cards. So  
11 I accept --

12 Q. But you do not know what it is.

13 A. Yes, that is right. The trend itself cannot be -- the  
14 trend that is reported in this chart is not the trend  
15 that would be observed necessarily, other than it being  
16 upward; the actual numbers would be different if one  
17 focused only on the retail economy.

18 Q. But as you are aware as an economist, it is the actual  
19 numbers that matter?

20 A. So the general point I am making is that there is an  
21 increase in card usage, and I also rely on figure 3 for  
22 that, and that is key point.

23 Q. I am going to go to figure 3, but the key point is that  
24 you cannot say what that upward trend is, can you?

25 A. I cannot say the specific numbers.

1 Q. So your graph is not reliable for showing the percentage  
2 of card transactions as a portion of the retail economy,  
3 is it?

4 A. Not for the specific numbers.

5 Q. What do you mean, "not for the specific numbers"?

6 A. So I think it shows the upward trend and the  
7 substitution between cash and cards, but I do not think  
8 you can read the figures off the chart to have precise  
9 numbers.

10 Q. Well, let me take you to another chart which shows an  
11 upward trend {RC-Q1/1/1}. This is Mr Economides' graph  
12 with a full dataset.

13 Now, there are upward trends and upward trends, are  
14 there not, Ms Webster?

15 A. Yes.

16 Q. If you have an upward trend like this, Ms Webster, it is  
17 very different from an upward trend like this, is it  
18 not? (Indicates)

19 A. I think it depends a bit how you draw the graph as to  
20 quite how shallow or steep the gradient would look, but  
21 if I look at this chart, and I look at the red line on  
22 the debit card, and then I compare the end point in 2022  
23 with the start point in 1995, and I compared those two  
24 numbers, that would be, I cannot quite read it off the  
25 graph, but something like a five or sixfold increase, if

1 not more.

2 Q. Ms Webster, you --

3 A. That is a very marked growth rate.

4 Q. Can I go back to the question I asked?

5 A. Yes.

6 Q. Because it was a simple one and it was a point of  
7 principle.

8 An upward trend like this is very different from an  
9 upward trend like that, is it not? (Indicates)

10 A. So what I would agree --

11 Q. "Yes" or "no", Ms Webster?

12 A. I think that depends on how you draw the graph. So  
13 I think what is relevant is to think about the  
14 percentage increase at the end of the period relative to  
15 the beginning of the period, and I think that is what is  
16 relevant.

17 Q. I just want to go back and try one more time.

18 On the graph it has an X and a Y axis, and it has  
19 numbers which underlie each of the X and Y axes. Would  
20 you accept that an upward trend like this is very  
21 different from an upward trend like this (indicates);  
22 "yes" or "no"?

23 A. No, on the basis of the way that you have framed the  
24 question. I think I have answered the question.

25 I think what really matters is the percentage growth in



1           the figure of interest from the start to the end.

2       Q. I am not talking about a specific graph. I am not

3       talking about this graph. I am not talking about

4       payment statistics. I am not talking about credit

5       cards. I am asking a general question of economics 101.

6       A. I think I am answering that question.

7       Q. Well, I never say what I think as an advocate, but

8       I would like to put the question again.

9       THE CHAIRMAN: I am just making the point that that cannot

10      be picked up on the transcript.

11      MR SIMPSON: We can put in a photograph!

12           Ms Webster, on a graph, if you have an upward trend

13      like this, the X and Y axes are constant, right? We are

14      taking them as constants, it is the same graph, all

15      right, with the same inputs. Do you accept that an

16      upward trend like this is very different to an upward

17      trend like this (indicates); "yes" or "no"?

18      A. So I think I can answer that yes, to the extent that

19      when -- what you are describing with the steeper slope

20      is a faster rate of growth and an overall bigger

21      percentage change. Yes, I agree.

22      Q. Such a change would be highly material to the

23      conclusions of a report like yours?

24      A. So my view is that the increase -- what matters is

25      twofold: the absolute increase in card usage and then

1           the relative increase in card usage, and the figures  
2           which underpin this chart show an increase in --  
3           absolute increase in card usage which is substantial,  
4           and then, depending on what else you include in terms of  
5           the other payment methods, you see an increase in the  
6           share of transactions accounted for by debit cards and  
7           credit cards, and then, depending on what you include,  
8           you get a shallower increase or a steeper increase.

9       MR SIMPSON: Thank you.

10           Sir, would that be a convenient moment?

11       THE CHAIRMAN: Yes. How are you doing?

12       MR SIMPSON: Well, slightly slower than anticipated, but

13           I will finish tomorrow, I assure you of that. In fact,  
14           I am sure I will not be given any choice but to finish  
15           tomorrow. Could we possibly start at 10.00 tomorrow?

16       THE CHAIRMAN: Yes.

17       MR SIMPSON: I am grateful.

18       THE CHAIRMAN: All right. It is not only you that needs to  
19           finish, it is everyone else.

20       MR SIMPSON: I realise that, as Mr Williams constantly  
21           reminds me. He is doing a bit at the end as well.

22       THE CHAIRMAN: I see, all right. A tag-team.

23       MR SIMPSON: Exactly.

24       THE CHAIRMAN: Okay. 10 o'clock tomorrow.

25       THE WITNESS: Thank you.

1           (4.30 pm)

2                       (The hearing adjourned until 10.00 am

3                       on Thursday, 12 December 2024)

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