

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

IN THE COMPETITION

Case No. : 1433/7/7/22

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 6th March

Before:

Hodge Malek KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Liza Lovdahl Gormsen

Class Representative

v

Meta Platforms, Inc. and Others

Defendant

A P P E A R A N C E S

Sarah O'Keeffe on behalf of Dr Liza Lovdahl Gormsen (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

Tony Singla KC on behalf of Meta Platforms (Instructed by Herbert Smith Freehills Kramer LLP)

Friday, 6 March 2026

(10.30 am)

(Proceedings delayed)

(10.37 am)

THE CHAIRMAN: Some of you are joining us livestream on our website so I must start therefore with the customary warning. An official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings and any breach of that provision is punishable as a contempt of court. There will be a transcript which will be on the website of the Tribunal. In addition, there will probably be a written ruling which will also be available.

MR SINGLA: Sir, good morning. Can I just check that you can hear me?

THE CHAIRMAN: I can hear you. The first thing we need to do, Mr Singla, is just update me about the other three applications, if you could that, Mr Singla.

MR SINGLA: I can do that, but could I perhaps do that at the end, just so I can get the latest. I think there has been some correspondence which I --

THE CHAIRMAN: I do want, at the end, to talk about your clients' disclosure exercise and, in particular, the

1 witness statement filed by Mr Corrie and I will want to
2 hear the Class Representative on that, because what I do
3 not want to happen, Mr Singla, is you to go down a route
4 that either the Tribunal or the other side says is not
5 quite right and you need to do something else. So I do
6 want, at least today, to finish today knowing where we
7 are on the disclosure exercise.

8 Of course I have read Mr Corrie's witness
9 statement -- but we will go through that at the very
10 end. I am happy to --

11 MR SINGLA: I am grateful. Obviously, I am very happy to
12 address any issues you want to raise, but in case it is
13 of some reassurance, Mr Corrie has served his witness
14 statement and there has been subsequent correspondence
15 and, so far as I am aware, there is no issue, as it
16 were, in respect of disclosure. The long-stop date, as
17 you know, has been the subject of correspondence, it is
18 now agreed, subject to the Tribunal, but there is no
19 live issue on the agenda, as far as I am aware, in case
20 that is of some assurance.

21 THE CHAIRMAN: It is, but what you have to remember on this
22 is that I am keeping a close eye on disclosure and so at
23 the end of the day, whatever you may agree, I will need
24 to independently satisfy myself on that.

25 MR SINGLA: Of course.

1 THE CHAIRMAN: There may be some issues that arise from it.
2 All I want to do is ensure that everything is done
3 orderly and done properly, and the direction of travel
4 is that, by and large, I am happy with what Mr Corrie
5 suggests in his witness statement, but we will come back
6 to that a bit later.

7 MR SINGLA: I am grateful.

8 THE CHAIRMAN: So there is only one action, which is your
9 RFI.

10 Submissions by MR SINGLA re the RFI

11 MR SINGLA: Yes, and as you will have gathered, there are
12 issues in respect of Requests 1 and 2, so that is
13 Request 1 in relation to Off-Facebook Data; Request 2,
14 GDPR. The issue in respect of GDPR is narrower, so
15 I intend to spend most of my time addressing you on
16 Request 1, and Off-Facebook Data.

17 I am sure you have picked this up, but the order we
18 are seeking is that the Class Representative should
19 respond to Request 1, and request 1 requires the Class
20 Representative to identify the types of data that fall
21 within the Off-Facebook Data side of the case and also
22 to identify how any types of data that she identifies in
23 response to that Request fits with her theory of harm.
24 That is the broad lie of the land.

25 What we are saying -- again, you will have picked

1 this up. We are saying they should provide their best
2 particulars now, but they should have liberty to confirm
3 or clarify their response post disclosure and that is
4 what we say the Class Representative should be ordered
5 to do.

6 I would like to just start with three propositions
7 that ought to be uncontroversial and I will pick up some
8 of the points from your book, which you helpfully
9 referred us to as well.

10 The first is that we are, in my respectful
11 submission, plainly entitled to ask for further
12 information arising out of a statement of case, to the
13 extent it is necessary for us to understand the Class
14 Representative's case and/or to prepare our own case in
15 response. That is obviously just a usual CPR Part
16 18-type position, and we do say that this information is
17 necessary. This is not about disclosure, this is
18 an issue in respect of the statements of case.

19 Now, the Class Representative, amongst the various
20 objections that she makes, she points out that we did
21 not ask a question about this at the pleading stage, and
22 if I could just knock that point on the head
23 immediately, first of all --

24 THE CHAIRMAN: I have read all the submissions, okay I know
25 the authorities. I just want to break it down as to

1 what the scenarios are, okay? One scenario is that
2 I make the order that you seek now and that is it. We
3 are talking about the first two requests.

4 The second is I make the order that they give the
5 best particulars they can now but then they can come
6 back later at the end of the disclosure exercise,
7 similar to what we did last time around, or the other
8 possibility is I say that you do not get them at all and
9 that is the end of it or I say that you get them, but I
10 am going to defer it until a later date.

11 Those are the sort of possibilities that I need to
12 do.

13 MR SINGLA: Yes.

14 THE CHAIRMAN: To save time, I want to hear from the Class
15 Representative whether they accept, firstly, that your
16 request is relevant and falls within the terms of the
17 pleadings and that it should at some stage be answered.
18 Because if that is accepted, then I do not need to deal
19 with step 1. If it is not accepted, then obviously I am
20 going to have to deal with that issue as part of the
21 ruling.

22 So for me if we can have clarity before you carry on
23 as to whether or not it is common ground that this
24 request is an appropriate request, and all we are
25 talking about is timing. So if I --

1 MR SINGLA: But before Ms O'Keefe responds, can I just say
2 this. They have made it absolutely plain in writing
3 that they are not committing to providing an answer at
4 any stage and, in my submission, that is actually a very
5 important point, because we say it is completely
6 unacceptable for them not to commit to answering post
7 disclosure, and the only real point that should be on
8 the agenda today, as it were, is whether they should
9 provide their best particulars now.

10 So Ms O'Keefe can obviously answer the question
11 that you have posed, but they have actually said in
12 terms, in writing, that they are not committing to
13 providing a response at any stage.

14 THE CHAIRMAN: Okay. Ms O'Keefe, can you just clarify for
15 me, is it your case that this is -- let us put it in
16 fair terms -- an impermissible request and so it is
17 never going to be answered? Or do you accept that the
18 request is properly formulated and that it should be
19 answered at some stage?

20 Normally what will happen if you have a premature
21 request, the court just dismisses it and that is the end
22 of it, and then it is for the other side to then make
23 an application further down the proceedings.

24 I am not keen on that approach, because I think that
25 these hearings are already expensive and I really do not

1 want to have an argument in one year down the line, or
2 whenever it is going to be, whether or not an answer is
3 necessary or whatever. I would rather bite the bullet
4 today and make the decision whether or not this is
5 an appropriate request. If it is an appropriate
6 request, then the only issue is timing and, at the
7 moment, I am not inclined to do what has been done in
8 some cases, which is simply to reject the application as
9 being premature. Given that I am managing disclosure in
10 this case, it is easier for me to have as few hearings
11 as possible, and of course we could do it the
12 conventional way, but I would rather not.

13 MS O'KEEFFE: Sir, that is a very helpful indication. I am
14 afraid our objection is slightly more fundamental than
15 just one of timing in that for the purposes of our case.
16 what we say is the relevant category of data is
17 Off-Facebook Data. We do not have any reason to believe
18 that any of the subcategories that Meta are asking us to
19 particularise are of relevance to the claim. It may be
20 that in light of disclosure it turns out that some
21 distinctions are relevant and need to be dealt with
22 differently, but at present we are not aware of any
23 reason to think that these sort of subcategories or
24 types of data that they are asking for are relevant at
25 all.

1 I have submissions to that effect that are a bit
2 more detailed, as well as the point that you, sir, will
3 have picked up from our skeleton argument that actually
4 we think there is a risk that if we are ordered to
5 particularise these kinds of subcategories at this
6 stage, that will shift the debate away from what we
7 currently have, which is a clear and workable definition
8 of Off-Facebook Data to one where we are arguing about
9 the niceties of what exactly falls within any of the
10 other types of data that may be identified, whether that
11 is device data or purchased data, which are the two
12 categories that Meta have already alighted on, which we
13 have already seen some of the controversies around what
14 exactly falls within them or not, and we are not in
15 a position to address that until after disclosure, if at
16 all.

17 So we say until there is some reason to advance
18 a case from the Class Representative's perspective that
19 distinguishes between different types of Off-Facebook
20 Data, then this is not a relevant request.

21 THE CHAIRMAN: Mr Singla, we are going to have to go back to
22 basics because --

23 MR SINGLA: We are, and actually this is quite fundamental,
24 sir.

25 THE CHAIRMAN: Yes. I have got sympathy for both sides.

1 I know what both of you are trying to do. The Claimants
2 are trying to have flexibility and do not want to be
3 pinned down at least until they have had disclosure.
4 You are saying, no, we need to pin them down because it
5 is all -- Off-Facebook Data itself, whilst there is
6 a workable definition in my view and I think it is
7 workable to see what has in the edges and what is not in
8 the edges and there are certain things which even at one
9 level may be Off-Facebook Data, they do not feed into
10 the theory of harm. So that is one --

11 MR SINGLA: Yes.

12 THE CHAIRMAN: At the moment, I am not persuaded that the
13 wording of the Request is impermissible. I have looked
14 at it, Mr Singla, and I am with you on the wording of
15 the Request. If I change my view, having heard
16 Sarah O'Keefe, obviously I will ask you to come back to
17 it, but when you make the submission, just go light on
18 it because there is a limit of maybe an hour for this
19 hearing. I am not going to spend more than an hour on
20 a hearing on an RFI, as you can imagine.

21 MR SINGLA: Yes.

22 THE CHAIRMAN: But I am with you on the wording of the
23 Request. I looked at it, I thought the wording was
24 pretty clear, it is fairly concise. I am not that keen
25 on having the explanation within the RFI as to why you

1 are making it, but I know why, on the facts of this
2 particular case, you have done it in what is a fairly
3 unconventional way of doing it, at least so far as my
4 experience is concerned.

5 I do think -- for the reasons we all know, I think
6 it was a good idea on this case -- and I am not
7 encouraging for any other case -- for you to do it the
8 way you have done it.

9 MR SINGLA: Sir, I am grateful, and I do not intend to spend
10 a long time making my submissions but this is actually
11 really quite important for the conduct of these
12 proceedings going forward, so these are very significant
13 proceedings, and it is of great concern to us that the
14 Class Representative is not willing to provide either
15 their best particulars now or an answer post disclosure.

16 Let me just develop the submissions.

17 The three basic propositions which I was going to
18 start with is, one, we are entitled to clarity as to
19 their statements of case. Two, like any claimant, the
20 Class Representative ought to be required to plead her
21 case to the best of her ability at this stage, otherwise
22 there is obvious prejudice to the Defendant if
23 a claimant is not putting their cards on the table.
24 Third, in this particular case, we need two things. We
25 need clarity as to the types of data that are said to

1 fall within the scope of the claim, but we also need
2 clarity as regards the theory of harm, because if she
3 identifies data which she says are the subject of the
4 claim but the theory of harm either cannot be
5 articulated or cannot be articulated in a coherent way,
6 then there are efficiencies in Meta and the Tribunal
7 knowing that now.

8 So those are the introductory points.

9 I do actually just need to take you back to the
10 pleading, because what is being said is that we are
11 relitigating some points that we argued about last year
12 and all of that is actually just completely wrong, so
13 I will do it quickly, but I do need to take you back to
14 the beginning.

15 If you turn up the RFI, which actually contains
16 a summary of the paragraphs, you have got page 3 of the
17 RFI, you will see paragraph 7 of the Claim Form.

18 It is important to see that their definition of
19 "Off-Facebook Data" is:

20 "Use of data from activity on (ii) third-party
21 websites and apps."

22 That is what they are saying and one also sees that
23 in 61 of the Claim Form at the bottom of the page, which
24 is the other place where they use this defined term
25 "Off-Facebook Data", and, again, I would ask you to

1 focus on the words "user data concerning the activities
2 off Facebook's media site".

3 Now, as you know, when we filed our Defence, we said
4 this is not a term that is ever used within Meta. Let
5 me just show you this. It is bundle {B/4/4}. I am
6 going over this to show you that this is not
7 relitigating the point.

8 If you look at the Defence, paragraph --

9 THE CHAIRMAN: Wait a second. Could someone make it bigger
10 for me?

11 MR SINGLA: Sorry, sir, there is a slight delay on the
12 line so I apologise if I am interrupting.

13 THE CHAIRMAN: I want it on the screen of a size that I can
14 actually read it.

15 MR SINGLA: Yes, I am all in favour of that. So
16 paragraph 10 of our Defence. If you look at what we
17 say --

18 THE CHAIRMAN: Wait a second. Yes, okay, I have got it now.

19 MR SINGLA: 10 starts by saying:

20 "... fails to reflect the way that Meta operates."

21 Just to take this quickly, if you look at (b) over
22 the page, what we understood by the references to "user
23 activity data on websites or apps of third parties", the
24 Class Representative's own language, we understood that
25 as meaning the Third Party Activity Data, so that is

1 what we -- that is the basis on which we proceeded.

2 Then we had the Reply, {B/13/7}.

3 THE CHAIRMAN: Just give me the paragraph number.

4 MR SINGLA: The Reply is paragraph 6, if you are in hard
5 copy.

6 THE CHAIRMAN: Yes, yes.

7 MR SINGLA: What is really important to emphasise is what
8 the Class Representative was saying in the Reply as to
9 paragraph 10 of the Defence. This will be:

10 "The categories of data collected ... will be
11 a matter for disclosure and evidence ... The Class
12 Representative maintains that her claim concerns
13 Off-Facebook Data as defined in the Claim Form
14 (which includes, but is wider than, what Meta refers to
15 as 'Third Party Activity Data')."

16 The reason this is important is because in the
17 pleadings she has not advanced a positive definition,
18 she simply said in the Reply that her definition is
19 wider than "third party activity data". So the debate
20 that we had back in July last year, really important to
21 focus on what was actually being debated.

22 What we were debating was whether the pleaded
23 definition of "Off-Facebook Data" went wider than "third
24 party activity data", and you can understand, given what
25 she was saying in the Reply, why those were the

1 parameters of the debate.

2 What we are asking now is not relitigating what was
3 debated at CMC3, it actually arises out of what the
4 Class Representative was saying in the context of that
5 debate. The Class Representative did not advance
6 a positive case in the course of that argument. Let me
7 just show you their skeleton, which is at {F8/1} --

8 THE CHAIRMAN: I am going to decide this RFI on the terms of
9 the RFI. I know what happened last time around and
10 I know the reason why I gave the ruling on the issues
11 for disclosure at the time, okay? I understand these
12 points.

13 What we really need to focus on are not jury points
14 by the other side or by you as to what happened at
15 previous hearings. We are looking on a pragmatic basis
16 at this RFI, which at the moment I have said in my view
17 is an appropriate RFI. That is where you are already.
18 So going back to what happened before -- obviously, if
19 Ms O'Keefe comes up and makes some headway on some of
20 these points, of course I would be very happy to go
21 through them with you, but at the moment you do not need
22 to push the door on something where I have already
23 indicated I am on your side.

24 MR SINGLA: I am grateful. The reason I want to show you
25 this is -- let me just show you a reference to the types

1 of data, because the critical point that is going to be
2 made, and she has already made it this morning, is
3 subcategories of data are not material to the Class
4 Representative's case.

5 Let me just -- before I make submissions about that,
6 let me just give you the clearest example of why this is
7 all so concerning. If you just bear with me for
8 a moment, the skeleton for the July CMC is {F8/1/6}, and
9 we actually refer to this within the RFI so it is
10 important for you to see the examples of types of data
11 that she identified.

12 If you look at -- I will take this quickly. Just
13 look at paragraph 14. They were saying that Third Party
14 Activity Data was likely to be materially under
15 inclusive, so again the debate was not what is her
16 positive case but whether their case goes wider than
17 Third Party Activity Data.

18 Just very quickly, look at footnote 11, if I can ask
19 you to look over the page at footnote 11, an example,
20 according to the Class Representative, of something that
21 was within her definition but went wider than Third
22 Party Activity Data was this aggregated and anonymised
23 data purchased by Meta from third-party data vendors.
24 See that in footnote 11?

25 We are trying through this RFI to understand what is

1 the positive case, so what types of data fall within
2 Off-Facebook Data. We understand the Tribunal has ruled
3 it goes wider than Third Party Activity Data, but that
4 obviously still begs the question: what is within the
5 definition on her case?

6 So we say a few things. I will just make my
7 submissions as quickly as I can, but the points I am
8 about to make go to not only why we need an answer at
9 some stage, but also why we need an answer now, so that
10 is why I will try and deal with them compendiously.

11 First, we say on any view the pleaded definition in
12 the Claim Form does not represent the best particulars
13 she is able to provide at this stage, so the example of
14 aggregated and anonymised data purchased from
15 third-party vendors, that is not pleaded anywhere as
16 being within the scope of the definition, and we say if
17 you are going to come along to the Tribunal with
18 a skeleton argument and give examples, then if you
19 seriously want to pursue a case in respect of those
20 types of data, you should plead it.

21 So that is point 1. We say it is not cards on the
22 table to mention examples but not to plead by reference
23 to a statement of truth and so on.

24 That is the point first, and they keep saying, "We
25 have pleaded the best particulars that we can at this

1 stage". We do not except that. Either these examples
2 are within or outside the scope of the claim and they
3 should tell us that now.

4 The next point is why do we need to know what types
5 of data fall within this definition? Well, on the Class
6 Representative's own case, they accept that Off-Facebook
7 Data is not all types of data generated off the
8 platform, and that is why I emphasised those words
9 earlier, that it is all qualified by reference to users
10 and activities. So anything that they say falls within
11 the scope of the definition, they have to square those
12 types of data with the pleaded definition.

13 Again, if one focuses on the definition of
14 aggregated purchased data, we would ask the question how
15 does that fit with the definition that this is all about
16 the user data and activities, and no attempt has been
17 made by the Class Representative to explain how such
18 data could be reconciled with the pleaded definition
19 that has those qualifiers.

20 So we are being told it is not everything
21 off-platform, but we are not being told what these types
22 of data are, and that is why subcategories are important
23 on the Class Representative's own case.

24 It does not lie in Ms O'Keeffe's mouth to say they
25 are not interested in subcategories. They have already,

1 as it were, accepted that it is not everything
2 Off-Facebook Data, so they need to tell us why they say
3 this is all user and activity data.

4 Then the next point -- so there are a couple of
5 substantive reasons why we need this further
6 information. One, how does it fit within the users and
7 activities? Two, how does it fit with the theory of
8 harm?

9 Again, this was never addressed in the July hearing
10 so it cannot be said that we are relitigating anything.

11 I will spare you the references, but if I need to I
12 will come back in reply, but the point of all of the
13 references in the request for further information, so
14 both the Claim Form and Professor Scott Morton's report,
15 the absolutely crucial point for you to understand is
16 that their theory of harm is all based on a so-called
17 unfair bargain, and to use their words, it is based on
18 the notion of users giving up their data on third-party
19 apps and websites in return for the Facebook service.
20 They say: you, Meta, imposed a requirement, again their
21 word, on users to give up their data.

22 Now, if that is fair theory of harm, we do not
23 accept that it could possibly apply to all types of data
24 generated off the platform. Again, if one uses the
25 example of purchased data from third-party vendors, that

1 is not given up by users by reference to their
2 activities on third-party apps and websites, so how does
3 this so-called -- this theory of harm around the unfair
4 bargain, how does that work?

5 So we do need to understand both the types of data
6 and also how they fit with the theory of harm.

7 Let me just take you to Ms O'Keefe's skeleton,
8 paragraph 5(d), which we actually say highlight very
9 neatly why this is completely unsatisfactory. They say:

10 "Insofar as the request is concerned with purchased
11 data and device data ..."

12 Because we have said specifically in relation to the
13 examples that they gave at the CMCs last year what is
14 the case. They say:

15 "The Class Representative remains in no position to
16 provide further particulars."

17 Let us just take that as an example. Our objection
18 is two-fold. One, they say they are not able to provide
19 further particulars but, point one, they have not even
20 pleaded in the Claim Form that purchased data is part of
21 Off-Facebook Data. It is not actually a question of
22 further particulars, it is particulars in the first
23 instance.

24 Then the second point is if she is prepared to
25 commit to a case with a statement of truth and say there

1 is a case based on purchased data, they need to
2 articulate a theory of harm, and for them to say at this
3 stage of the proceedings, two years since certification,
4 that they are not able to provide further particulars,
5 we say actually puts Meta in an extremely difficult
6 position.

7 So that is why we say we need an answer now in
8 respect of any types of data that they have already
9 alighted upon, and to the extent we are going to hear
10 submissions about information asymmetry and so on, we
11 have already catered for that by saying that they have
12 liberty to supplement or confirm their response down the
13 line.

14 So, sir, we really do appreciate you grappling with
15 the issues in this case, but we are concerned that there
16 is going to be significant prejudice to Meta if we are
17 not getting a cards on the table approach by the Class
18 Representative, and their points really do not withstand
19 scrutiny. All we are simply asking is for them to
20 provide their best particulars now, and then, post
21 disclosure, they really do need to commit to a position
22 because how is this case going to proceed to trial with
23 witness evidence and expert evidence and so on, without
24 clarity as to what types of data this case is actually
25 concerned with?

1 What they have said, and Ms O'Keefe confirmed this
2 earlier, they say, well, we may or may not update
3 through amended pleadings -- that is paragraph 6(a) of
4 her skeleton -- should relevant distinctions emerge from
5 the disclosure, they may reflect any updates.

6 We say no, for the reasons I have just given, there
7 are distinctions to be drawn between different types of
8 Off-Facebook Data, and that is why we need clarity and
9 we need clarity both now and in due course.

10 Sir, unless I can make any further submissions now
11 that would assist, that is really the nub of what we are
12 saying.

13 THE CHAIRMAN: Yes, okay. Then let us hear from
14 Ms O'Keefe.

15 Ms O'Keefe, can you just tell me, when was the
16 Claim Form served?

17 MS O'KEEFFE: That is a good question, sir.

18 THE CHAIRMAN: Okay, yes. Mr Singla, if you know the
19 answer, tell me, if you have got a --

20 MR SINGLA: Well, the original claim was I think four years
21 ago and I think the certification hearing was two years
22 ago, if that helps.

23 THE CHAIRMAN: Yes. So when was it actually certified, so
24 something that you had something concrete?

25 MR SINGLA: I think the January 2024 was the certification

1 hearing, from memory and, from memory, after they were
2 refused certification, we received the amended claim in
3 about October 2023. I will be corrected if I am wildly
4 off the mark.

5 MS O'KEEFFE: I am told that is correct, sir.

6 THE CHAIRMAN: The Amended Claim Form, October 2023, yes?

7 MR SINGLA: Sorry, that is amended post the first

8 certification refusal decision, because you understand

9 this is the second iteration of their case. So the

10 definitions that I took you to were in the October 2023

11 draft second go at the claim, as it were.

12 THE CHAIRMAN: Okay.

13 MS O'KEEFFE: I -- sorry, sir.

14 THE CHAIRMAN: When was it certified?

15 MS O'KEEFFE: In February 2024, sir.

16 THE CHAIRMAN: Oh okay. When was the original Defence?

17 MS O'KEEFFE: That was on 20 January 2025, I think, sir.

18 THE CHAIRMAN: Yes, okay.

19 Submissions by MS O'KEEFFE re the RFI

20 MS O'KEEFFE: Sir, what I propose to do is first to address

21 the question that you sent to the parties yesterday

22 around paragraph 20-26 of Disclosure and then to go on

23 to the main submissions around the Off-Facebook Data

24 request.

25 But just to deal with the headline points, what

1 should come out of those submissions is, first of all,
2 that we have already provided our best particulars in
3 respect of Off-Facebook Data generally, but also in
4 terms of device data and purchased data, which I will
5 show the Tribunal, and also that our theory of harm is
6 about the entirety of Off-Facebook Data. We say it is
7 all relevant. That is our pleaded case, that is our
8 expert's methodology, and to the extent that Meta want
9 to challenge at trial whether some of the potential
10 subcategories of Off-Facebook Data that they know about
11 are relevant, that is an argument to be had between the
12 experts and that is an argument to be had at trial.

13 On that basis, if we could, please, turn up
14 {G7/2/2}, which is the paragraph under the heading
15 "Timing" from disclosure.

16 THE CHAIRMAN: Just tell me what the document is.

17 MS O'KEEFFE: Sir, this is the extract that you asked the
18 parties to consider.

19 THE CHAIRMAN: Right. I know the extract, that is fine,
20 yes.

21 MS O'KEEFFE: It seems to us, sir, that there are three
22 relevant points. The first is that it must be necessary
23 for a question to be answered on which the Tribunal
24 already has some of my submissions and I will go through
25 in slightly more detail in due course.

1 The second is that the passage acknowledges that it
2 may be more appropriate to wait until after disclosure
3 of documents or exchange of witness statements, and we
4 see their footnote 64.

5 Now, if I could please ask us to turn to page 4
6 {G7/2/4} of this document, what we see is listed in
7 footnote 64 is a number of cases ending in Phones 4U,
8 and what the description of that case records is
9 a competition case where the claimant had pleaded a case
10 of collusion as to pricing by the defendants, a request
11 was made for it to particularise its case as to
12 anti-competitive commitments and disclosures. As the
13 claimants were not aware of precisely what was done, it
14 was held that it was appropriate for it to deal with the
15 request after disclosure and/or witness statements.

16 Sir, the Tribunal already has this point, but we are
17 in exactly the same position here as the Class
18 Representative in that we do not know what Meta has done
19 in terms of collecting Off-Facebook Data, how it
20 internally categorises that Off-Facebook Data, and
21 whether it uses or processes different categories of
22 Off-Facebook Data differently.

23 This is why, sir, the Tribunal has ordered Meta to
24 provide disclosure about the categories of Off-Facebook
25 Data that it adopts internally and how it treats

1 different categories differently, if at all.

2 From the Class Representative's perspective, we have
3 not seen anything yet to make us believe that there is
4 a difference of treatment between different types of
5 Off-Facebook Data, so we provided our best particulars
6 on that basis.

7 Turning back, please, to page 2 {G7/2/2} of this
8 document. The third point we think is relevant from this
9 passage is that it identifies that an application prior
10 to disclosure can be helpful, if it may narrow the
11 issues between the parties and for which disclosure or
12 witness statements are required.

13 Now, Meta have confirmed that they do not intend to
14 narrow the definition of "Off-Facebook Data" for
15 disclosure purposes by reference to this application,
16 but we say (a) that means it is not necessary to answer
17 this now, if at all, and (b), if anything, it would be
18 undesirable if undue focus on these subcategories were
19 to end up narrowing the disclosure that does ultimately
20 get provided because in practical terms what that would
21 mean is that it narrows the pool of Off-Facebook Data
22 available for the experts on both sides to consider in
23 terms of whether it goes into, ultimately, the valuation
24 exercise that has to be conducted.

25 Now, we anticipate and have pleaded that all

1 Off-Facebook Data will go into that calculation. That
2 is the basis on which we are approaching this RFI.

3 So unless I can assist the Tribunal any further on
4 that particular paragraph, I propose now to turn to my
5 main submissions.

6 THE CHAIRMAN: Okay.

7 MS O'KEEFFE: So on why the Class Representative should not
8 be required substantively to answer the Off-Facebook
9 Data request, I propose to take the Tribunal back to the
10 RFI and also to a few other documents, but the four main
11 points intended to come out of these submissions are,
12 first, that Meta has a clear and workable definition of
13 "Off-Facebook Data", which is enough to understand the
14 case it has to meet.

15 Second, the relevant distinction in the Class
16 Representative's case is between On-Facebook data and
17 Off-Facebook Data. The distinctions that Meta is asking
18 the Class Representative to draw are not part of her
19 case.

20 Third, and this links clearly back to the timing
21 point, Meta is asking the Class Representative to give
22 particulars about information she does not have. If
23 anyone has this information, it is Meta, and if there
24 are any relevant distinctions between subcategories of
25 Off-Facebook Data, the Class Representative will be in

1 no position to identify them until after disclosure.

2 Fourth, even the exercise of trying to particularise
3 subcategories of Off-Facebook Data and their relevance
4 at this stage is more likely to create confusion and
5 satellite disputes than it is to assist anyone's
6 understanding of anything to do with the claim.

7 So, sir, I am conscious the Tribunal has already
8 been shown parts of the RFI, but if we could, please,
9 turn it up, there are a few passages that are worth
10 looking at to really draw out what Meta is actually
11 asking for here.

12 It should be at tab 8 of the hard copy bundle,
13 {B/15/6}.

14 At paragraph 6 we see the complaint that:

15 "... the [Class Representative] has not clearly
16 pleaded, or otherwise explained through her methodology,
17 the totality of the data that are alleged to fall within
18 the scope of the term 'Off-Facebook Data', and the basis
19 on which all such types of data are alleged to fall
20 within the scope of the term 'Off-Facebook Data', and
21 the basis on which all such types of data are alleged to
22 be relevant to the Class Representative's ... theory of
23 harm ..."

24 Further down the paragraph, Meta again complains
25 that we have not explained "at all or on a reasoned

1 basis, the totality of the data within (ii) that are
2 alleged to fall within 'Off-Facebook Data' and how all
3 (or, as the case might be, some) of the data within (ii)
4 are relevant to the Class Representative's theory of
5 harm."

6 Over the page in the same paragraph:

7 "The parties and the Tribunal require clarity as to
8 the totality of data that are alleged to fall within
9 'Off-Facebook Data', and the alleged reasons for
10 this ..."

11 Pausing there, the Class Representative has already
12 provided clarity as to the totality of "Off-Facebook
13 Data" by providing a clear and workable definition of
14 "Off-Facebook Data", and this is the definition that has
15 been pleaded and repeated extensively, so it was
16 somewhat surprising to hear my learned friend suggest
17 that we have not advanced a positive definition of
18 "Off-Facebook Data". We have, and perhaps the clearest
19 place to see this is in the Tribunal's July ruling,
20 which is under the first tab of the hard copy bundle at
21 {A/31/14}.

22 THE CHAIRMAN: Yes.

23 MS O'KEEFFE: Paragraph 28:

24 ""Off-Facebook data" is data collected and/or
25 received and/or processed and/or used by Meta on Users'

1 activities that does not arise from activity "on" the
2 Facebook website or app."

3 Breaking that down, it is fairly straightforward.
4 There is a finite set of data collected, received,
5 processed or used by Meta on users' activities. Meta
6 will have a full picture of what that finite set looks
7 like. The Class Representative does not.

8 Of that finite set, if the data does not arise from
9 activity on Facebook, it is Off-Facebook Data.

10 Now, if the complaint is the one raised by my
11 learned friend that they do not understand what "users'
12 activities" means, then the solution, we say, is not to
13 split out various subcategories of Off-Facebook Data in
14 the manner that is being requested by this RFI.

15 If we could then please turn to page 20 {A/31/20} of
16 that judgment.

17 THE CHAIRMAN: Yes.

18 MS O'KEEFFE: Paragraph 35 of the July ruling, that is the
19 Tribunal's conclusion, that the Class Representative's
20 definition was clear and workable, and it continues:

21 "The definition sought by Meta, whilst it is clear
22 and workable as well, potentially excludes various
23 sources of data, which is clearly unsatisfactory at this
24 stage. There is an information asymmetry between the
25 parties and it is clear from the correspondence that the

1 Class Representative has been seeking clarity from Meta
2 as to what is included and what their sources are."

3 Pausing there, if anyone has approached this without
4 a cards-on-the-table approach, we would say it is Meta,
5 because if they had already told us what categories they
6 collect and hold data in and how they process different
7 categories, we may have more information and we may have
8 amended our case.

9 However, as it stands, our pleaded case is -- and
10 the best particulars we can give at this stage are --
11 that the entirety of Off-Facebook Data is relevant to
12 our theory of harm.

13 So that is the first point that it is hard to see
14 what more Meta needs beyond a clear and workable
15 definition of "Off-Facebook Data" to understand the case
16 against it.

17 We have also made the point at paragraph 6(b) of our
18 skeleton that Meta has clearly developed a sufficient
19 understanding of the term to be able to respond to our
20 RFI, although, in the interests of time, I will just
21 rely on my written submissions in respect of that point.

22 Now, onto the second point that this is not
23 a relevant exercise, at least on the basis of the
24 pleadings as they stand and the Class Representative's
25 current understanding, if we look again at the RFI and

1 what Meta is actually asking the Class Representative to
2 do, that is tab 8 of the hard copy bundle, {B/15/7}
3 electronically.

4 At subparagraph (1) of the request they ask the
5 Class Representative to particularise all of the types
6 of data that are alleged to fall within the scope of
7 Off-Facebook Data and the basis for those allegations
8 that those types fall within the definition and then, in
9 sub (2), to explain, for each type of Facebook data, why
10 that type is alleged to be relevant to the pleaded case.

11 But, from the Class Representative's perspective --
12 oh sorry, sir.

13 THE CHAIRMAN: Just one point. I know there is a gap. You
14 have got a wide definition of "Off-Facebook Data", which
15 is clearly workable for the purposes of disclosure and
16 that is what I have ruled in the past. But it is a wide
17 definition and there will be things within Off-Facebook
18 Data when you look at the current wording which may not
19 be relevant for your theory of harm.

20 MS O'KEEFFE: Sir, perhaps --

21 THE CHAIRMAN: Where I -- I am not criticising anyone for
22 the way the pleadings are because they are how they are
23 and it is clearly workable for the purposes of
24 disclosure. But surely at some stage we need to know,
25 insofar as there are things within that wide term, some

1 of those elements -- you can think of examples, and the
2 other side have given some examples in their
3 submissions, but where it can theoretically fall within
4 that definition but it cannot -- it is unlikely to form
5 part of your theory of harm.

6 MS O'KEEFFE: Sir, we are not aware of any type of
7 Off-Facebook Data that might be worth excluding.

8 If I could maybe show the Tribunal some of the
9 pleading references and why we say Off-Facebook Data is
10 relevant.

11 So from our perspective, the reason that all
12 Off-Facebook Data is relevant is because it is the
13 category of data that we say was collected abusively.
14 This comes across, for example, from paragraph S.13 of
15 the Amended Claim Form, hard copy bundle tab 4,
16 {B/11/5}:

17 "By making access to its platform contingent on
18 Users giving up access to their Off-Facebook Data
19 without a corresponding value transfer to Users,
20 Facebook infringed the Chapter II prohibition and ...
21 Article 102 ..."

22 So the point there is that it is the fact of giving
23 up access to the Off-Facebook Data that we say is
24 relevant to the theory of harm, and we have defined it
25 the way that we have because that is where we say the

1 collection of data crosses from being non-abusive to
2 being abusive.

3 So also, since we are here, it is probably worth
4 noting footnote 1, which records Off-Facebook Data as
5 a concept that was introduced by the German court in
6 their decision in 2020, and for the Tribunal's note, has
7 also been used by the CJEU and the pleading that refers
8 to that judgment is at paragraph 103(c)(ii), so Facebook
9 and Meta have been grappling with this concept for quite
10 some time.

11 Back to the present point that the relevant
12 distinction in the Class Representative's case is
13 between On- and Off-Facebook Data, this also comes
14 through from the references in Meta's own RFI, so
15 perhaps I could take the Tribunal to a few more of
16 those. For example, under tab 8 of the hard copy
17 bundle, {B/15/4}, paragraphs 95 and 96 of the Claim Form
18 describe the ramping up of the amount of Off-Facebook
19 Data, rather than any particular subcategory.

20 Over the page {B/15/5}, the paragraphs from 150 to
21 153(b) again describe the abuses alleged by reference to
22 Off-Facebook Data as a singular category without
23 distinction.

24 Then paragraph 173 at the bottom describes the loss
25 to be compensated, again by reference to Off-Facebook

1 Data, as a singular category.

2 We see the same in the RFI annex of extracts from
3 Professor Scott Morton's first report at page 12
4 {B/15/12} of that document, so to just pick up a couple
5 of examples, paragraph 17, Professor Scott Morton
6 describes the abuse as imposing off-Facebook tracking on
7 users and without a corresponding value transfer, and
8 over the page, {B/15/13} paragraph 281, Meta failed to:

9 "... share the 'productivity gains' that resulted
10 from the abuse of Off-Facebook Data Tracking for
11 advertising purposes."

12 So we say the particularisation exercise sought by
13 the RFI does not seem relevant to the Class
14 Representative's pleaded case or to Meta's ability to
15 understand the case that it has to meet, and that is the
16 second point.

17 The third point is that the Class Representative
18 does not have the information required to provide the
19 particulars sought.

20 Now, the Tribunal will recall from my earlier
21 submissions its observation in the July ruling that
22 there is information asymmetry. The Tribunal will also
23 recall that it has ordered Meta to give disclosure
24 relating to the categories of Off-Facebook Data that it
25 collects and how it uses them.

1 Now, those are set out at paragraphs 11 to 31 of our
2 RFI response, which for the Tribunal's note is under
3 tab 12 of the hard copy bundle, {C9/3/6-7}. If I could
4 just turn to a couple of examples, first at {D/22/14},
5 Request 40. If I could ask the Tribunal to read that
6 when it comes up on the screen, just because it shows
7 where we need to look to find this kind of information.
8 It is internal Meta documentation. (Pause)

9 THE CHAIRMAN: Yes.

10 MS O'KEEFFE: So Request 40 there is about collection.

11 At the bottom of the page in 42, that says that for
12 each type of Off-Facebook Data identified in Request 40,
13 Meta needs to give disclosures of how and why it
14 processed collected used, etc, that data.

15 THE CHAIRMAN: How long are you going to be now? Because we
16 are running out of time.

17 MS O'KEEFFE: Sir, it shouldn't be more than five,
18 ten minutes. I will try and speed up, though.

19 THE CHAIRMAN: Okay.

20 MS O'KEEFFE: Just to show the Claim Form where we expressly
21 plead that it contains the best particulars that the
22 Class Representative can give pending that disclosure,
23 I do think it is worth just reading these. So at
24 {B/1/40} under tab 4 of the hard copy bundle, if I could
25 just ask the Tribunal please to read paragraph 64.

1 (Pause)

2 Then on page 96 of that document, paragraph 127,
3 please, including over the page. {B/11/96}.

4 THE CHAIRMAN: Your simple definition is at S.5, is it not?

5 MS O'KEEFFE: At S.5 ...

6 THE CHAIRMAN: What you mean by "Off-Facebook Data", then it
7 is a bit more detailed later.

8 MS O'KEEFFE: Yes.

9 THE CHAIRMAN: You give examples.

10 MS O'KEEFFE: Yes, sir. We also repeat the definition at
11 S.7, for example, I think, from memory.

12 THE CHAIRMAN: Is the summary.

13 MS O'KEEFFE: Sorry, yes, I intended to refer to I think it
14 is paragraph 7.

15 THE CHAIRMAN: Yes, exactly.

16 MS O'KEEFFE: Where we repeat the definition, and it is
17 also, as you have seen, sir, in the Tribunal's judgment.

18 THE CHAIRMAN: Yes.

19 MS O'KEEFFE: But essentially what we have pleaded in those
20 paragraphs is that we have given the best particulars
21 that we are able and Meta's response that you have heard
22 today, sir, is that actually, no, we can give better
23 particulars, and they rely, to support that, on what we
24 have said about device data and purchased data.

25 If I could perhaps just address those, because I do

1 not think the characterisation has been quite right. If
2 we look at what Meta's actually asking for at {B/15-7}
3 in the RFI again, in relation to information concerning
4 the devices on which UK users access and use Facebook,
5 Meta asks on what basis it is alleged to constitute data
6 on users' activities off the platform, on what basis
7 users are alleged to give up that information and how
8 such data is said to be relevant to the alleged shifting
9 of a bargain from one that is fair to one that is
10 unfair. But the Class Representative resent is in no
11 position to answer that, at least until she receives
12 disclosure on what device data Meta actually have
13 collected, what basis Meta has actually collected device
14 data on, for example, under which terms and through
15 which tools, which are matters on which we are awaiting
16 disclosure, and how collection of device data has
17 changed over time, though the Class Representative at
18 present has no reason to believe that this is relevantly
19 different for device data compared to Off-Facebook Data
20 generally, and in fact her inability to be more specific
21 about device data is already clear from the pleadings
22 and correspondence. This is a clear example of the
23 broader point, so I do think it is just worth going
24 through what we have said about device data.

25 If we could please turn up {B/12/4}, which is Meta's

1 Defence paragraph 10, which we have already seen, Meta's
2 own proposed definition of "on-Meta data" identifies at
3 (ii) as "information that Meta generates from users'
4 activity on Facebook ... certain [but not all]
5 information about the devices they use".

6 Now, recent correspondence appears to confirm this,
7 so at {E3/7/2}, at paragraph 11, Meta say:

8 "As set out in their privacy policy ... Meta may
9 receive device information both when a user is using the
10 Facebook service, i.e., on Facebook, and when the user
11 is not, i.e., off Facebook."

12 Just as an aside, this seems to be an example of
13 Meta understanding and applying the definition of
14 "Off-Facebook Data". But the point is that device data
15 may be on Facebook, may be off Facebook, according to
16 what Meta is telling us.

17 So turning to the Class Representative's pleadings,
18 at {B/11/33}, paragraph 52, which is under tab 4 of the
19 hard copy bundle, we cite the CMA market study. The
20 third quoted paragraph there describes what device data
21 collected by Meta includes, according to the CMA.

22 I invite the Tribunal to just please read that paragraph
23 that starts, "Device data collected includes". It is
24 a non-exhaustive list. (Pause).

25 At 53 there we then plead that personal data

1 Facebook holds in respect of an individual user may
2 include without limitation, and then over the page at
3 (viii) we identify location history obtained from A's
4 devices.

5 On page 39 {B/11/39} at paragraph 63 we plead Meta's
6 privacy policy on the information they collect and
7 receive from partners, measurement vendors, marketing
8 vendors and other third parties. Meta's policy then
9 gives some examples, as you will see in quite vague
10 terms, which include your device information, at 66(b),
11 which is on page 41 {B/11/41}. We plead our
12 understanding that software development kits in
13 third-party apps automatically transmit metadata of the
14 user's device to Facebook.

15 On page 47 {B/11/47} at 82(a) we plead that Meta's
16 privacy policy about use of other Meta products states
17 that it collects, on that basis, information from the
18 phone, computer or tablet that you use our products on.

19 Page 54 {B/11/54} at paragraph 94 then contains our
20 pleading about why Off-Facebook Data as a whole is
21 valuable to Meta, and as one example, we identify that
22 advertisers being able to target users based on location
23 is the type of thing that makes Off-Facebook Data
24 valuable to Meta's advertising clients.

25 Then at page 63 {B/11/63} at 95(o) we also plead

1 that it has been reported that Facebook may be using
2 accelerometer data, together with its user network, to
3 identify users locations, even where they have opted out
4 of tracking.

5 So what is clear from the above is that some of the
6 Class Representative's pleadings do give device data as
7 an example as part of her broader case theory about
8 Off-Facebook Data. However, we do not know how much
9 device data or what types of device data come from
10 on-Facebook versus off-Facebook, in part because Meta's
11 privacy policies do not specify, and we also do not know
12 how Meta then uses device data and in particular whether
13 it uses device data differently to other Off-Facebook
14 Data in a way that is relevant to the Class
15 Representative's theory of harm. Our understanding is
16 that it is all relevant on the same basis, but, again,
17 this is not something that Meta has addressed in its
18 public-facing documents.

19 As for Meta's request that we particularise why
20 device data falls within Off-Facebook Data, clearly from
21 the above the position may turn out to be more
22 complicated than that. The disclosure may show, for
23 example, that some device data is off Facebook and other
24 device data is on Facebook. We are not in a position to
25 say.

1 This brings to the fore the problem with Meta's
2 approach to device data and purchased data in the first
3 place. They became relevant because the Class
4 Representative knew enough to identify that they would
5 potentially be excluded by Meta's proposed definition of
6 "Third Party Activity Data", but that is not the same as
7 having enough information to be able to say with any
8 great degree of confidence exactly what data Meta
9 collects from what source or how it then categorises and
10 monetises the data that it collects.

11 Just to also address the purchased data, now the
12 Class Representative has pleaded less about purchased
13 data because she does not have as much sight of that
14 category, but the Tribunal will recall from the passage
15 just seen from Meta's privacy policy that this refers to
16 data collected from measurement vendors, marketing
17 vendors, and other third parties. So the Class
18 Representative suspects that the disclosure will show
19 that some Off-Facebook Data is purchased from third
20 parties. However, again, she is not in a position to
21 speculate at this point on exactly how Meta collects
22 that or what it does with it.

23 So that is the third point.

24 Just to round off with a really short fourth point,
25 which is that this exercise, we say, would be far more

1 likely to add unnecessary confusion and satellite
2 disputes than to make things any clearer because, as we
3 have just seen, definitions like "device data" or
4 "purchased data" may be as liable to confusion, and we
5 would say more liable to confusion than what we have at
6 the moment in terms of "Off-Facebook Data", which is
7 a clearly defined binary definition that the parties
8 have already spent a long time getting to grips with.

9 Sir, unless I can be of any further assistance,
10 those are my submissions on the Off-Facebook Data
11 request.

12 THE CHAIRMAN: Thank you very much.

13 Reply submissions by MR SINGLA re the RFI

14 MR SINGLA: Sir, can I just briefly respond?

15 What we have heard, in my submission, is actually
16 the opposite of cards on the table, an approach which
17 the Tribunal has been at pains to emphasise in many
18 other cases, and this refrain of "information asymmetry"
19 can only be taken so far.

20 Just to respond with a few points.

21 The ruling that you gave last time was that the
22 definition was workable for disclosure purposes, but,
23 again, one has to be very precise about the parameters
24 of the debate we were having. All that you decided was
25 that the Class Representative's case on Off-Facebook

1 Data went wider than Third Party Activity Data. But the
2 Class Representative never identified, apart from those
3 footnotes, they did not positively say what was within
4 their definition, they simply said our definition was
5 too narrow.

6 So you did not decide anything about types of data,
7 you did not decide anything about theory of harm, and
8 these points are going to be very important going
9 forward for the purposes of preparing factual and expert
10 evidence, and it is prejudicial to Meta not to have
11 a clear articulation of the Class Representative's case.

12 If you just look at -- if you just go to our Reply
13 to the Response, so it is the latest document we put in,
14 the reply to the Class Representative's Response, at
15 paragraph 7, you will see it is not very surprising, but
16 we have quoted what the Tribunal said in Forrest Fresh
17 Foods:

18 "A party's statement of case must allow the other
19 side to know the case it has to meet to ensure the
20 parties can properly prepare for trial and to ensure
21 that unnecessary costs are not expended on points that
22 are not in issue."

23 Now, the difficulty with so many of my learned
24 friend's submissions is this: we understand that there
25 is a universe of off-platform data, so there is data

1 generated off-platform. That is a concept that we
2 understand. The difficulty for my learned friend is
3 that on her own case that is not what they are pursuing.
4 They are pursuing a subset of that. It has to be user
5 data, it has to be activities based. That is stage 1.
6 For it to fall within the definition it needs to meet
7 those criteria and, stage two, it needs to fit within
8 the theory of harm.

9 So there is the wider universe of all of the data
10 that is generated off-platform, but it then needs to fit
11 within the pleaded definition and then it needs to fit
12 within the theory of harm.

13 Just to explain or perhaps demonstrate why we are in
14 such an unsatisfactory position, if one asks oneself
15 a very simple question arising out of the Class
16 Representative's own skeleton argument last July, they
17 give the example of aggregated purchased data from third
18 parties. Now, the question is: is that within the claim
19 or not? There is no articulation of that, either in the
20 Claim Form or in any of the submissions that we have had
21 since last July. It is a very simple question: are you
22 pursuing a claim in respect of that type of data or not?
23 Stage one. Stage two, if you are, how on earth does
24 that reconcile with your own expert evidence that this
25 is a case about the bargain between users and Meta and

1 it is all about data that is given up by users?

2 Now, that is a very simple two-stage question, to
3 which we have had no answer since last July, and that,
4 in my submission, is an encapsulation of the prejudice
5 that is being visited by this approach of the Class
6 Representative to keep their cards as close to their
7 chest as possible.

8 So we say, sir, there is no doubt, in my submission,
9 that they are going to have to answer this question post
10 disclosure. How, otherwise, can we fairly prepare for
11 trial with our factual evidence and our expert evidence?
12 On the logic of what the Class Representative's saying,
13 which involves not committing ever to providing
14 a response, we are not actually going to understand
15 their case until we receive their expert report. In my
16 submission that is far too late and the Tribunal
17 shouldn't condone that kind of conduct.

18 So the first point is they have got to answer this
19 post disclosure. The second point is they should be
20 ordered to provide their best particulars now, and, in
21 my submission, it is not good enough for Ms O'Keefe to
22 point to bits of the pleading where they say, well,
23 there is a loose reference to device data here and she
24 says there is not really a reference to purchased data
25 anywhere.

1 What they need to do is to the extent they have
2 already alighted upon examples, they need to put that in
3 a pleading within a definition of "Off-Facebook Data"
4 that Meta can then understand and meaningfully take away
5 to prepare for trial.

6 In my submission, you really should have no truck
7 with this conduct by the Class Representative of, as it
8 were, tactically relying on information asymmetry not to
9 provide any positive case and then waiting until expert
10 evidence to tell us what their case is for the very
11 first time, and it should be deeply concerning to the
12 Tribunal that they are not prepared to provide an answer
13 at any stage of these proceedings.

14 THE CHAIRMAN: Thank you very much, Mr Singla.

15 Ruling re the RFI (removed for approval by the Tribunal)

16 THE CHAIRMAN: Ms O'Keeffe, anything you want to be
17 clarified?

18 MS O'KEEFFE: Sorry, sir, if I may, I am being told that
19 six weeks is completely unfeasible by those behind me.
20 There is going to be a lot of disclosure to review and
21 we have been told that we are getting most of it towards
22 the end of the long-stop process.

23 THE CHAIRMAN: You were going to get a significant amount of
24 it well in advance of the long-stop date. But if you
25 are saying you are not -- is there a trial date that has

1 been fixed for this case?

2 MS O'KEEFFE: Sir, yes, I will be corrected, but I believe
3 it is currently listed for September 2027, although
4 I hear that Meta may be seeking to get that pushed back.
5 I do not know the full details of that, so I would ask
6 my learned friend.

7 THE CHAIRMAN: We will come back to that in a second,
8 because it seems to me that given what Mr Corrie says in
9 his helpful witness statement that the trial is going to
10 have to be pushed back, it is wholly unrealistic to
11 think that this case would be ready for trial
12 in September 2027 and that actually the parties should
13 be looking for a listing in 2028, and so unless anyone
14 is going to object, I propose that the trial date be
15 vacated and a new trial date be given in 2028.

16 MS O'KEEFFE: Sir, can I just take instructions on that?

17 THE CHAIRMAN: Take instructions on that. (Pause)

18 MS O'KEEFFE: Sir, the Tribunal will be aware that there is
19 also a CMC listed for 20 April to address directions
20 around factual and expert evidence and onwards to trial.
21 We would suggest that the parties be given time to
22 liaise up until that hearing to try and see what is
23 feasible and then, rather than vacating the current date
24 now, it be held for consideration at that hearing.

25 THE CHAIRMAN: Absolutely. That is perfectly fine, then

1 I do not need to deal with it. So we are not going to
2 say anything in the ruling about the trial date, save to
3 say that given the dates in which disclosure is now
4 anticipated to be concluded, consideration will need to
5 be given to the appropriate trial date at the next CMC.

6 MS O'KEEFFE: Sir, yes, thank you.

7 Then in terms of the deadline for us to respond to
8 the RFI after disclosure, would the Tribunal suggest
9 that that is also dealt with amongst the other
10 timetabling directions?

11 THE CHAIRMAN: Yes, I am happy for the actual timetable.

12 All I am going to direct is that this request should be
13 answered after disclosure at a date which can be set at
14 the next CMC or in writing between the parties. If it
15 is not set at the next CMC, then the parties can write
16 in and then I can fix the date.

17 MS O'KEEFFE: Thank you, sir.

18 THE CHAIRMAN: If can I just say something now.

19 Ruling re timing (removed for approval by the Tribunal)

20 THE CHAIRMAN: Mr Singla, can you now take me through what
21 is in issue on the next one?

22 Submissions by MR SINGLA re GDPR

23 MR SINGLA: Yes, it is very short. There are two points.

24 So to give you the context, you actually raised this
25 with Ms Ford at CMC3 and CMC4, because in the context of

1 disclosure, she said orally that they were alleging
2 a breach of GDPR and you made the point it is not
3 actually pleaded and it was not clear.

4 So we followed up to try and nail this point down
5 and they have eventually agreed to provide a response
6 and the first response would be are you actually
7 alleging a breach of GDPR or not, and there are two
8 points in dispute.

9 First, the timing of that response. They say they
10 need until 2 April, which we do actually think is
11 remarkable, given that Ms Ford has already said orally
12 to the Tribunal that they are alleging a breach, and
13 given that the RFI -- I believe they have had that now
14 for over ten weeks, so our position is it is
15 a straightforward question to which they have already
16 provided at least a partial answer orally, so we say
17 that the response should come within seven days of this
18 hearing, given that the RFI was served back in January.
19 So that is debate number one.

20 Then debate number two is that they say they should
21 also have a provision to the effect that whatever answer
22 they provide in March or April, they should have liberty
23 to confirm or clarify that response in due course.

24 We resist the inclusion of any such provision, and
25 the reason we resist it is because ordinarily one would

1 not get that kind of provision in an RFI order; you
2 simply are ordered to answer the request. The genesis
3 of this type of provision was actually when you were
4 considering the RFI of Meta, you were saying it was the
5 other way around, and you were saying: the response you
6 provide now, Meta, shouldn't be cast in stone. It is
7 obviously fair that you do the disclosure exercise and
8 then provide a fully-informed answer at the end of
9 disclosure.

10 But in my respectful submission that was a rather
11 sui generis provision, which we were content to reflect
12 in relation to our Off-Facebook Data request of the
13 Class Representative, but I think we are now back in the
14 usual position. This is a straightforward question: are
15 you alleging a breach of the GDPR or not? If they want
16 to say anything different or further in due course, then
17 that will be a matter to be looked at in due course, but
18 we cannot have a situation where, as it were, you are
19 giving them blanket permission now to either amend their
20 case or provide further particulars.

21 So that is really the debate, the second debate.

22 THE CHAIRMAN: Yes.

23 Submissions by MS O'KEEFE re GDPR

24 MS O'KEEFE: Just on timing, the Class Representative is
25 not going to be in a position to produce a response to

1 the GDPR request by next Friday, as Meta are seeking.
2 We have considered what remains to be done and the
3 availability of counsel, because this is a more
4 complicated exercise than my learned friend is seeking
5 to suggest. They have also asked us to particularise
6 the details of any provisions that we say have been
7 infringed and the factual basis for those infringements.

8 So, given the substantive nature of the response
9 that Meta are presumably looking for here, there is no
10 good reason to order a rushed response. Providing
11 a response by 2 April will give Meta plenty of time to
12 take it into account.

13 Just on this issue of liberty, and in particular
14 whether the Class Representative should have liberty to
15 confirm or clarify her GDPR response after disclosure,
16 the Class Representative and Meta are both agreed that
17 if the Class Representative were to have been ordered to
18 answer the Off-Facebook Data request now, she should
19 have liberty to provide a further confirmation of this
20 sort.

21 The reason why Meta gave for this being reasonable
22 in their Reply to the RFI, which for the Tribunal's note
23 is at {B/15/2}, was because the Class Representative's
24 final position may not be capable of being confirmed
25 until after disclosure.

1 We say exactly the same reasoning applies -- and
2 apologies, sir, I have given you the wrong reference.
3 It should be {C9/6/3}, paragraph 8 of Meta's RFI Reply.

4 Now, Meta also have an equivalent liberty to file
5 a revised or supplemental RFI response to our RFI of
6 them, and the Class Representative considers that her
7 GDPR response should be treated in the same way,
8 because, as we explain in our skeleton argument, her
9 final position on the GDPR infringements will likely
10 depend on what the disclosure shows about how Meta
11 processed users' data and the terms that governed that
12 processing.

13 So in particular, we are thinking of, for example,
14 Requests 41 to 48 of the Redfern Schedule that concern
15 Meta's use and processing of user data, and Requests 7
16 to 26, which concern the terms under which that data was
17 processed.

18 So, we say, by parity of reasoning, we should have
19 the opportunity to confirm or clarify our final position
20 in light of that disclosure, which seems to us at this
21 stage likely to be pertinent.

22 THE CHAIRMAN: Thank you very much.

23 Ruling re GDPR (removed for approval by the Tribunal)

24 THE CHAIRMAN: Now, can we turn to the next issue, which is
25 where are we in relation to the disclosure exercise?

1 Mr Singla, I have seen Mr Corrie's very helpful
2 witness statement, and so far as I am concerned, but
3 subject to anything that may be said by the Class
4 Representative, I am content with the approach that he
5 is taking on the issues that he has explained in the
6 witness statement. But I do want to hear from
7 Ms O'Keefe as to whether or not they have any
8 observations to make on that witness statement and the
9 process that is being followed by Mr Corrie.

10 Submissions by MS O'KEEFFE re disclosure

11 MS O'KEEFFE: Sir, yes, we do have a few observations which
12 are the ones that we raised in our letter to the
13 Tribunal of 25 February 2026, which should be at tab 14
14 of the hard copy bundle {C9/5}.

15 Essentially, this boils down to two things. First
16 of all, we say Meta should provide concrete proposals as
17 to rolling disclosure, and secondly, that Meta should
18 provide concrete proposals as to what it is going to do
19 about updating the Tribunal and the Class Representative
20 in due course.

21 Now, these are matters on which we are liaising with
22 Meta, we have not raised this formally as an issues with
23 the Tribunal. We have explained in our letters to both
24 the Tribunal and to Meta that, should it become
25 necessary to do so, we will do so, but at the moment our

1 main concern is that we get good commitments to provide
2 rolling disclosure and early disclosure of discrete
3 categories in line with some of the indications that
4 have been given by the Tribunal.

5 The categories that we have identified in
6 correspondence with Meta essentially boil down to
7 disclosure from non-custodial sources, which do not need
8 to wait for Meta to complete its CAL processes;
9 secondly, Requests 3 to 5, which concern pre-existing
10 caches of documents from specified proceedings; and
11 third, Requests 19 to 27, where the Tribunal expressly
12 gave the Class Representative liberty to apply if the
13 first round of disclosure were to prove insufficient.
14 The reference for that is at {A/43/36} and {A/43/39},
15 paragraphs 104 and 108 of the December ruling.

16 On 27 February, Meta wrote to us indicating it was
17 considering what is possible in respect of Requests 3
18 to 5, and that it anticipates providing some rolling
19 disclosure responsive to Requests 19 to 26, but not to
20 Request 27. That is at {E3/99/3}, paragraph 14.

21 Their position on Request 27 and non-custodial
22 repositories generally was less clear. They said on
23 Request 27 that because that engaged non-custodial
24 repositories, it would be time intensive and very
25 difficult. However, in respect of non-custodial

1 repositories generally, they said they would consider
2 what could be done.

3 However, the Class Representative is essentially
4 just looking for more concrete proposals around these
5 matters so that we can essentially feel some degree of
6 security that we will get enough disclosure early enough
7 to be able to spot what the potential issues and gaps
8 are.

9 THE CHAIRMAN: Thank you very much.

10 Ruling re disclosure (removed for approval by the Tribunal)

11 THE CHAIRMAN: Is there anything else that any party wishes
12 to raise? It is been quite helpful having this hearing,
13 firstly, to get the update from Mr Corrie, which I think
14 is important and, secondly, to deal with this issue of
15 the RFI, and the parties have sensibly been agreeing
16 other matters which would otherwise have meant this CMC
17 would have lasted longer.

18 I am inclined to order costs in the case on this
19 application. Neither of you have succeeded fully and
20 this is just really a follow-on from the disclosure
21 process that I have been conducting. I do not think
22 either party has behaved unreasonably in relation to
23 this request.

24 MR SINGLA: Sir, we are content with that, and there is
25 nothing else that we wish to raise.

1 THE CHAIRMAN: Thank you very much, Mr Singla.

2 Ms O'Keeffe, is there anything else you would like
3 to raise?

4 MS O'KEEFFE: No, we are content as well, sir. Thank you.

5 THE CHAIRMAN: If there are specific issues that relate to
6 disclosure and that are not particularly complicated,
7 I am very happy to deal with it by letter in the normal
8 way.

9 MR SINGLA: We are very grateful for the time that you are
10 devoting to this case.

11 THE CHAIRMAN: Thank you very much.

12 (12.13 pm)

13 (The hearing concluded)

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Submissions by MR SINGLA re the RFI3

Submissions by MS O'KEEFFE re the RFI22

Reply submissions by MR SINGLA re the42

RFI

Ruling re the RFI (removed for approval46

by the Tribunal)

Ruling re timing (removed for approval48

by the Tribunal)

Submissions by MR SINGLA re GDPR48

Submissions by MS O'KEEFE re GDPR50

Ruling re GDPR (removed for approval by52

the Tribunal)

Submissions by MS O'KEEFFE re disclosure53

Ruling re disclosure (removed for55

approval by the Tribunal)