IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1701/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 23rd February

Before:

Charles Morrison

(Sitting as a Tribunal in England and Wales)

BETWEEN:

NST WORLDWIDE LIMITED

Claimant

v

(1) WORLD SNOOKER LIMITED
(2) WORLD SNOOKER HOLDING LIMITED
(3) WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION

Defendants

A P P E A R AN C E S

Ben Quiney KC, Adam Taylor and Hamish Fraser (Instructed by London Litigation Partnership) on behalf of NST Worldwide Limited
Jacob Rabinowitz (Instructed by Livida Legal) on behalf of World Snooker Limited and World Snooker Holding
Tom Mountford (Instructed by Bird & Bird) on behalf of World Professional Billiards and Snooker Association

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Monday, 23 February 2026

(10.30 am)

Housekeeping

THE CHAIR: Some of you are joining us live stream 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 these proceedings, and breach of that provision is punishable as contempt of court.

Yes. Mr Quiney.

MR QUINEY: Sir, I'm grateful for that.

As you will see from the skeleton arguments, there remain some issues of disclosure still to be resolved by the Tribunal. There are obviously two other issues that you will see from the skeletons. First, the list of issues; and secondly, the directions for the future of the expert evidence. You will hopefully also see that there's a measure of agreement on both of those issues, and we would ask the court to approve both the list of issues and also the draft directions and my learned friend's draft directions that he put in.

THE CHAIR: Yes.

MR QUINEY: I'm grateful.

THE CHAIR: Yes.

Mr Quiney, just before you get going. I'm grateful for that measure of agreement that you have signalled there and for the work that's been done between the parties to reach that position. The Tribunal is grateful.

If I can just mention two points. The first is: you will appreciate, as you mentioned in your skeleton, that it was some way over the size, the number of pages prescribed by the CAT rules. I'm not going to take any position on it today, but it's not just a question

of whether it assists the Tribunal, which in this case I'm sure it did. It's a question of fairness to the other parties, who did restrict their skeleton within the prescribed requirements. If we are going to look at something on the basis of written submissions, then we will agree that, and you will have the opportunity to make those submissions. So if I can give you that rather firm observation, I am quite sure that you will take that on board, and I think you have the indulgence of your colleagues at the bar as well as the Tribunal on this occasion.

The second point I was going to just make an observation on was: the likely outcome here is costs in the cause, and I see that in the draft order, sensibly, I think; but I do see three counsel in your party, and I'm just not sure that that is right for this hearing. Again, I'm not going to take any position on it today other than to pass that observation. I'm sure you will reflect on the size of your team for future hearings, because someone is going to have to bear the cost of that at some stage, and if there is something said about it on future occasions, then I doubt it would just be an observation such as I'm making today.

If I can leave that with you, that's all I wanted to say. Yes.

MR QUINEY: Sir, I'm grateful for those indications. We take that on board, and with respect to the counsel team, actually, this is something that was canvassed in the security for costs application at the last hearing. But of course, the way that we've structured our teams as to distribution between counsel and solicitor is slightly different from the way that it's been structured on my learned friends' side. However, we still take into account all the points you make, sir. I'm grateful.

With respect to the issues that are live between the parties, what I propose -- if, sir, you're happy to deal with it -- is just outline some of the matters that are pertinent to the issues before you, and then I'll look at the question of the rules and the case law, and then a couple of general observations before we get into the meat of the matters.

With respect to what are the matters before you, you will no doubt have observed, sir, that the main issues are between my client and my learned friends regarding our request of their disclosure, as opposed to the other way around. That's not to say there are no issues between -- the other way around. There are a couple of minor issues regarding keywords, but given that the centre of gravity of the dispute is very much on the first rather than the second point, I propose to perhaps deal with those requests raised by my client against the defendants if, sir, you're happy to deal with it in that way.

THE CHAIR: Yes.

MR QUINEY: I'm grateful.

THE CHAIR: Yes. It might help you if I go a little bit further, Mr Quiney. What I had in mind is: I'm sure you will want to mention to me the other provisions in the draft order, but I have to say I'm content with what you have put forward. There's nothing, it seems to me, offensive insofar as the Tribunal is concerned. What you have put forward all seems to make perfect sense, to me. So I'm giving you that indication now, which only leaves, therefore, the Redfern schedule. Without prejudice to anything I said earlier about your skeleton and its length, I do have the benefit of the skeletons from all the parties which make the controversy or the battleground very clear.

I propose to hear you in oral argument today, but otherwise, to make the order as you have sought and to deliver back the Redfern schedule completed by next Monday.

MR QUINEY: Yes.

THE CHAIR: I say that because it seems to me that that will not prejudice the other dates that you had in mind, but I just wanted to give you and your colleagues at the bar the opportunity to hear that. But it seems to me that if I commit to having the Redfern schedule fully completed and back to you by Monday, so that you then have a comprehensive order from the CMC, that you will then be able to get on with the

disclosure and other matters within the timetable that you and your colleagues had in mind.

Does that sound sensible to you, Mr Quiney?

MR QUINEY: Absolutely, sir.

THE CHAIR: On that basis, I'll hear submissions from you and your colleagues today, but it will be for the purposes of assisting me, amplifying anything that you wanted to go to from your skeletons and of course the helpful Redfern which I have.

Submissions by MR QUINEY

MR QUINEY: That's what we had in mind in this sense, first of all hopefully to give you, sir, a sense of our perspective on the framework, ie how to approach the issues between the parties, and then have some more granular detail on why there are matters still remaining.

THE CHAIR: Thank you.

MR QUINEY: With that in mind, if I may, sir, you'll be well familiar -- not least because of the previous hearing and not least because of the skeletons -- with the shape of this case and the allegations made by my client, arising from, first of all, the dominant position; and then second of all, the alleged concerted practices and agreement between all three defendants.

With respect to that, there are certain themes that come out of the position adopted by the defendants, and we say that this is inconsistent with the need to fairly and justly deal with the case. That is, perhaps unsurprisingly, to narrow the scope of disclosure as far as possible; and that's either to do it on a keyword basis, framing the issue, or indeed framing the time period in which the disclosures are to be made.

You will remember that the genesis from our perspective of what has become the dominant position, we say, of the first and second defendants, is the share purchase

agreement, which is a document that came out by virtue of the initial disclosure, as opposed to some earlier pre-action disclosure. Obviously -- and this is the point that is taken against us -- the SPA was agreed in or around June 2010. My client was incorporated in September 2002, and incidents such as, you'll be familiar with the Hearn call, where various matters were said to us, turning us down, effectively preventing us from competing, in 2023.

So looking at the share purchase agreement, if I could just take you very briefly to that. It's in the bundle at page 558 of the hearing bundle.

The main issue to take away here is an understanding of why we say this is very much the beginning of the story, and that is the separation of responsibilities at page 563, clause 6. At 6.1, it says:

"Subject to clause 11.1, the WPBSA hereby irrevocably (subject to the other terms of this Agreement) grants WSL the exclusive and autonomous right to carry on, and be solely responsible for, the commercial exploitation of the Sport."

Then there are various further points taken as to the role of the association, which would include, for example, still having a role in protecting the rights of the players and suchlike. But it probably comes as no surprise to you, sir, rather than getting into granularity, we put a lot of pressure on the phrases in 6.1.

Indeed, we say that this beginning of the story plays out further when one looks at the first iteration of the contract, which is established post the SPA in 2011, which we say, two things, when I take you to it in a minute. First --

MR MOUNTFORD: My learned friend is talking about the tour player contract.

MR QUINEY: Yes, we're talking about the tour player contract, which is at 692. This demonstrates two things. First of all, it is the articulation of that exclusive exploitation; and secondly, it starts and features a number of the restrictions which are the subject matter of this dispute.

One can see, if one goes down into the contract at clause 4 --

THE CHAIR: Did you say 6? Where do I find that in the bundle?

MR QUINEY: So this original version of the contract, iteration 1, is at 962. Right at the end of that.

THE CHAIR: Yes.

MR QUINEY: Here we have the preamble, and then we have the terms and the grant of rights. Essentially, this is the contract that regulates the relationship between individuated players and WSL. Within that, there are certain obligations owed by the player at clause 4, at page 964.

THE CHAIR: Yes.

MR QUINEY: These essentially deal with various rules and regulations at (a). Then at (b), we deal with the "Commercial, Promotional and Media Obligations". Then we see at (iv), (v), the following:

"[The player is obliged not to] enter nor participate without prior written approval with WSL in any snooker event (other than the WSL Events) which incorporate the word 'world' in their title during the Term."

And (v):

"Neither enter nor participate during the Term in any Televised snooker event which is not sanctioned by WSL. For the avoidance of doubt WSL will not withhold its sanction of televised events unreasonably."

This is, we say, the genesis and beginning and articulation of this exclusive and dominant position, and the -- we would say -- vice-like grip over the players, because this is a feature of all the playing contracts at that time between WSL and the top players.

This is then a continuing feature when we get into the 2020s and earlier, and we see a version of what's called the original contract at page 97, which was appended to my

clients' claim form. (Pause)

Here we have a contract which is undated but from 2021, and we see at the background setting out, and then the agreed terms and grants of rights, and then we get to the obligations of the player now at clause 3. But we would say substantially in the same terms.

At 3.1, you have the general obligations that deal with the rules and regulations and such like. Then at 3.2, we have the commercial and promotional performance obligations. Then if we go down to 3.2.6, we see it says:

"Not without the prior written consent of WSL (such consent not to be unreasonably withheld or delayed) enter or participate in any snooker event that incorporates the word "World" in its title during the Term (other than the WSL Events)".

3.2.7:

"Not without WSL's prior written consent (such consent not to be unreasonably withheld or delayed) participate in any snooker event which is not sanctioned by WSL that is broadcast in any Media."

If we were to go on, we would see that the definition of media is wider than the original, just simply television.

So by that point we see that there is a continuum from the SPA, we say, to the first iteration from 2011 of the contract to what's described as the original contract, building on each other and demonstrating the dominant position. When my client comes into the picture, so to speak, it's incorporated in September 2022 but tries to enter the market. At that point we have, for example, an exchange of formal correspondence between WSL but then we also had the Hearn call. We know that the Hearn call, we say, is very clear and clearly articulates at least Barry Hearn's -- and we would say, in fact, the defendants' understanding -- of both the effect of the dominant position of D1 and D2, but also the concerted practice between all three defendants. That is, for

example, at page 87 in the same bundle, so just a few pages backwards. And that was a conversation on 5 September 2023 between Mr Hearn and Mr Francis at the point where Mr Francis and NST are seeking to enter into the market.

Now, this is relevant for a number of reasons. First of all, as will become apparent, (inaudible) exhibit A of our case, it's a useful starting point.

Secondly, there is a firm issue of dispute between the parties about the nature and extent of Mr Hearn's role at the material times. The short point is that my learned friends and the defendants seek to minimise Mr Hearn's role and say that his role has been minimised throughout.

But we can see, at page 88 for example -- as one of many (inaudible) points in this conversation -- where Mr Hearn says:

"... I don't want any competition, you know that. Fucking hell mate I spent 45 years of my life [trying to make] sure I don't have competition. I'm not gonna [sic] start now am I you know."

This is also relevant for the fact that an objective justification has been presented as a defence to the allegations in this case. That's both the section 9 defence under part 1 of the Competition Act, but also an objective justification for the (inaudible) and thereby not being (inaudible).

Now, that's been put into issue in the pleadings. We can see this if we go to the defence of D1 and D2. That's at page 460, paragraph 162, where the WSL parties, as they style themselves, put forward a, "Justification as a proportionate means of achieving a legitimate aim". So for many paragraphs, starting with defining the legitimate aim at 163, going to "Necessity and proportionality" at 166 onwards, then further defining "Necessity" at 169 and "Proportionality" at 172. Then seeking, at 175, to discuss "The Superleague criteria".

But what this amounts to is saying in the alternative, of course, if we're wrong, say D1

and D2, and in fact there is an abuse of dominant position then, nonetheless, the nature of that abuse or the structuring of the market can be justified.

Now, our point on this is that that justification doesn't spring out of nowhere. That justification doesn't spring up as soon as Mr Hearn and Mr Francis have a conversation on the phone in 2023. That justification must have sprung up in or about 2010 when the SPA grants the exclusive rights to D1 and D2. Or when the tour contract is drawn up and agreed to in 2011 and continues in its various iterations. So to say that, for example, this is essentially a structure that's for the good of the sport, one has to understand is that right? Is that genuine? Is that true?

A similar defence is put forward with respect to the association, but they go a bit further even. If I could take you to page 527. 527, in the summary of the defence at paragraph 5 onwards, the association digs deep into the broad history of the association and then comes at paragraph 6 to explain how the SPA occurred. The gist of this is that this was a good thing for the sport. Then at paragraph 7:

"Subsequently [so after the SPA], the Tour has developed considerably in terms of its reach, viewership, the commercial opportunities it affords, [et cetera, et cetera] ..."

So this is part and parcel, we say, of their section 9 defence under part 1 of the act and continues, as we see, at paragraph 26 at page 534 where, again, they rely and repeat their justification there. Then at 63 at page 545, we see when meeting the allegations that were made at the claim form at 192 -- which deals with the chapter 1 prohibitions -- we see again that when responding to the allegation made by my client, that the defendants are inextricably tied together, they appeal again to the nature and genesis of the SPA and the continuing good to the sport.

So those particular background points -- that I bring out before I turn to the rules and the law -- I say amount to a number of points. The first is the essence and starting point of both strands of my client's case begin in 2010 and continue onwards. What

we haven't sought to do is a wide-ranging omnibus set of requests for all things, everywhere at all times, and we have sought to try and identify narrow boundaries where we can. But we can't get away from the fact that this is a continuing on the position that didn't just spring up at the point my client was in (inaudible).

The second is, by putting forward the legitimate objective justification in the fashion that it has been put forward, it doesn't lie in the defendants' mouth to say, "Well, hang on a second, we're allowed to say this is all legitimately justified but we're not going to allow you to understand how it's been run, how it's been set up, or how it's been justified". Those points are pertinent when looking at the scope of the debate between the parties.

THE CHAIR: Yes. Am I right, Mr Quiney, seeing your case in this way: that when it's said in response to you, "Your client was only set up in 2022 and only seeking to do business in 2023, what on earth are you doing asking for documents back to 2010 and indeed before?" Am I right in understanding it to be your case that, how you arrive at the dominant position or the other breach at a time that it had the effect on your client, it's important or it's relevant for you to see how the parties behaved in the way the market, if you like, was constructed -- I used that lower case "m" -- the way the arrangement was developed between the defendants. So it's not enough simply to look at it at 2021, 2022, 2023, because this all developed from 2010 onwards and to see how they constructed what, eventually, your clients were faced with in 2023 is your case for the disclosure of those documents. Is that your case?

MR QUINEY: Essentially, but I have three glosses on that as well. The first is, when it comes to identifying what's relevant and what isn't, it has been accepted on a number of points -- for example, our request regarding the formation of the SPA or indeed the formation of the revised contract -- that there are some prior documents, if I can put it that way, that are relevant. So the door is already halfway open (overspeaking).

THE CHAIR: Yes (inaudible). Yes.

MR QUINEY: The second point is yes, sir, we are saying that, in order to properly be able to scrutinise fairly the dominant position or indeed the concerted practices between the defendants, one has to see the route of it. Because if, for example, my client is trying to enter a market in 2023 and the complaint is that there are barriers to entry, the barriers are there before I enter or indeed before I'm incorporated. The distortion created by those barriers isn't something that happens overnight. So yes, we say it is relevant to understand those barriers.

The third point -- which I have already made but I'll just emphasise -- is the objective justification point, or legitimate justification or however you want to put it. Which is, if that is the defence, which is, "I, as the defendant, set these structures up -- say, in 2010, say, prior to 2022 -- for these reasons, for these purposes", it would be unfair and artificial to shut the door at 2022 or 2023.

THE CHAIR: Yes, that's the point I was trying to articulate but not as well as you just have, so thank you.

MR QUINEY: I'm grateful, sir.

So that is the gist of the points I've been making before I turn to the rules which, obviously, are familiar territory.

THE CHAIR: Yes. I know you're going to make submissions about the Hearn call. It might help you if I just give you a preliminary indication that I'm not awfully impressed by the relevance of the Hearn call. You put it in your skeleton that it was firm evidence of the anti-competitive behaviour, unless I misremembering it. I'm not sure it goes that far. If he had said he was, on that call, a criminal mastermind bent on world domination, I don't think that would have made him so. I think one has to look at the evidence and the Tribunal was going to look at that objective. What is the evidence of that anti-competitive behaviour? What is the object? What's the effect? The usual

test that this Tribunal will apply. The fact that he might, on that call, have expressed himself in that way will have some probative value and evidential effect. But I just wonder quite how far you can push that, Mr Quiney. That's my initial observation.

MR QUINEY: So, if I could approach that question on two levels. The first is the case generally and then questioned as before (inaudible) which is what's relevant, what should be (several inaudible words).

The first is, I described it as exhibit A, but that's exhibit A of A, B, C, et cetera, up to Z. It is part of our case but it is not the sole foundation upon which (inaudible). So we wouldn't come and venture into this Tribunal with just that and, we would say, nor have we. That's why, for example, we've considered the terms of the tour contract.

However, when one's looking at, for example, the question of object. For example, the question of expectations and legitimate justification, we would say it is quite helpful evidence for the court to assess that objective question if, and we say, he is one of the controlling minds if not the controlling mind of D1 and D2, his view is that this structure is designed to eliminate competition.

Now, there's also a further strand which is the questions of credibility when they call his testimony about these issues. But what I'm not suggesting is that the expert economists, for example, look at matters simply through the lens of what Mr Hearn says or doesn't say, but nonetheless.

The reason I split this issue into two issues -- I'm focusing now on the matter before the Tribunal today -- is, if one's asking the question: are these issues relevant but also are there likely to be relevant documents out there and, indeed, considering the plea of disproportionality raised by the defendants, I say this is relevant.

THE CHAIR: Yes, yes. I see, I see.

MR QUINEY: I'll expand on that shortly when we get to the questions of evidence by inference, which are in the authorities. I'm grateful.

I won't take you, sir, to them, but obviously rule 4 set out the parameters for exercise of discretion generally in this Tribunal and the needs for fairness, proportionality, et cetera; and rules 60 to 65 deal with the questions of disclosure.

What I would like, however, just to focus on is, the cases starting with Ryder. As an aside, we obviously put some stress on the case of Hendry. That is not for a matter of the particular rules in the CAT, but just is part of the context that, again, this isn't something that's a new surprise to the association or indeed any of the defendants. That's why, when one looks at the approach adopted, whether in the SPA or the first iteration of the contract in 2011, that is against the background of there already being findings of anti-competitive behaviour in this market and in this sport.

But moving to the cases regarding the proper discretion on issues of disclosure. Again, you'll be well familiar with the question in the case of Ryder and the helpful principles set out. But if I could just take you to a couple of points within that judgment, which I hope is in the bundle, you might have it electronically or hard copy, at page 74. As we can see, this is part of the Trucks litigation. Then the helpful principles start to be set out at page 81, paragraph 23.

From that paragraph, the Tribunal sets out the various matters of guidance and the rules and such like. But the key part for present purposes is when one gets to paragraphs 34 and 35, in particular, where the rule principles are set out. At page 86, paragraph 35, it says:

"Even in cases where broad [discretion] is required, it is possible to lay down some broad principles ..."

Then the learned judge does that. Of course, we see that:

"(1) Orders for standard disclosure will not generally be made.

"(2) Disclosure is confined to relevant documents. [That] relevance is determined by the issues in the case, derived in general by reference to the pleadings ..."

So of course, one needs to take the pleadings at face value, albeit critically, but nonetheless see the party (inaudible) issues between them. (Inaudible) see the list of issues shortly.

The point that I wanted to bring the court's attention to is at number 3:

"A strong justification would be required to make any order along the lines of the 'train of enquiry' test in the classic formulation of the test for disclosure enunciated [in Peruvian Guano]. An example where train of enquiry disclosure may be justified is a case alleging a cartel infringement where the underlying facts are unknown to the claimants but are in the hands of the defendants."

So what I'm not seeking to do immediately is to go into that test, but it is articulating the difficulty that my client faces.

THE CHAIR: Yes.

MR QUINEY: Then we have at (7) the various helpful principles articulating the reasonableness, necessity and proportionality questions, and at 36, we see the factors relevant to deciding reasonableness of a search. That includes, for example, the number of documents; the nature and complexity of the proceedings; the cost of retrieval; significance of the documents; location of the material; type, nature of database and storage involved; and resources available to the disclosing party.

Now, I raise that point because essentially, what we have are the defendants saying this is going to be too hard. We don't have an understanding of why they say it's too hard (inaudible) what this will involve.

That immediately, I would suggest, puts the Tribunal in a difficult position to assess these issues because there is no understanding of what this insurmountable task is said to be. The reality is that this isn't the most complex or difficult or expensive case in this Tribunal.

THE CHAIR: Yes.

MR QUINEY: What we're talking about is, for example, a company that runs snooker over a period of years and has agreed a number of contracts with particular players. There is no suggestion and no evidence that there are gigabytes of information to be searched, or that we're looking at hundreds of thousands of documents, or indeed is too expensive.

So if the Tribunal is satisfied that there is a case made for the relevance of the issue, then when one's looking at trying to determine the parameters, then the defendants have, we would say, created difficulty for themselves to articulate that there should be artificial cut off points because we're talking about something that was a number of years ago.

THE CHAIR: Yes, I have that. I think some of the authorities and the points that have been relied upon, the High Court in the past, as one of the factors weighing in the scales, has been the cost of that exercise. I think in one of the decisions, it was £200,000 was seen to be the cost and was going further justified in the context of that case, the value of the case, the issues in it, the complexity and so on. So the cost in pounds, shillings and pence was a factor, is a factor, and I'm sure would weigh in the scales in this Tribunal. So I hear the submission you're making.

MR QUINEY: I'm not saying that one can't make general submissions for example, as you will hear from me. With respect to the keywords that have been suggested, the use of the word "legends" in the emails of my clients' searches. Well, unfortunately, that word appears in every email because it's in the footer. So we will be saying, as a matter of common sense, that is going to be disproportionate; we need to have something a bit more clever.

THE CHAIR: That's got to be the test. I will be disappointed if I have to be the one imposing or introducing common sense to this as to what the keyword should be. I'll do it if I'm compelled to, because that's the job of this Tribunal, but it would be

a disappointment.

MR QUINEY: But I'd say -- I use that as an example, which is an issue that is capable of being resolved by common sense, but as of a different order from the appeal to disproportionality and saying it's going to cost X or Y without actually putting it. This is different.

We see that this issue, as she appears in the case of PSA, if I could take you, sir, to that at page 103 of the bundle.

THE CHAIR: Yes. Let me just get there, Mr Quiney. 103. Yes.

MR QUINEY: I'm grateful. This was a case involving an alleged concerted practices regarding seat belts, airbags and steering wheels. There is a recognition -- and this is building on the point that I made earlier -- that the need for inferences is a completely legitimate way of building a case on the question of whether there's been a cartel or not; we would say that's analogous here. That's recognised at paragraph 18 on page 111, where the Tribunal observes:

"We keep in mind that is challenging for the Claimants, particularly in a cartel case to understand what took place, and obtaining documents by disclosure is particularly necessary for proving a case in these circumstances. As a general matter, we do not understand this to be disputed."

But then the flip side of that, because that isn't disputed by the respondents to the application in this particular case of PSA, but nonetheless, there is a complaint that the disclosure requests go too far. In order to resolve that, the Tribunal found itself in difficulties -- and I say this is an example of the limitations in this case -- and observes this at paragraph 24 at page 112:

"We then need to turn to what is proportionate. It is in our view unsatisfactory that we have been provided with no substantive evidence on proportionality. We agree that on its face searching 45,000 or 50,000 documents may involve considerable

resources, but it is difficult to contextualise that without any evidence. It depends on how documents are organised and stored and so forth. It would have been helpful to know the costs involved and the time involved in searching 45,000 or 50,000 documents."

You see, that is the difficulty we are facing here if there is going to be a plea of disproportionality on the basis.

THE CHAIR: Yes, thank you, I have that.

MR QUINEY: One final point on the authorities: case of Lenzing starting at page 121. I'll just bring to your attention, and I won't read, paragraphs 12 through 16 which deals with the question of inferences and what is acceptable for a claimant, we say, in the same position as my client in this case.

THE CHAIR: Is there a particular point that you want to draw from what Mr Malek said in that?

MR QUINEY: Essentially, the point would be, first of all, at paragraph 12, the fact that it's entirely acceptable, both in this Tribunal and in the civil courts generally, to work on the basis of inferences. This is connected to the observations regarding the Hearn call (several inaudible words).

Then over the page at paragraph 16 at page 126:

"In a case like the present, disclosure is clearly going to be very important, because it may reveal direct evidence of collusion to fix or influence prices. Therefore, an inferential case may, after disclosure, become a mixture of an inferential and direct evidence case."

That is, we say, likely in this case. Not that we say our case is purely an inferential case, but it will obviously prove (inaudible) we see the disclosed evidence.

So those are the points that I make on authorities and the guidance they present to us.

If I may now have a look at the details on this. I'm going to turn first --

MR MOUNTFORD: My Lord, I'm sorry to interrupt. I just wonder if it's more convenient to the Tribunal to hear from all of us on general points and then to hear from us request-by-request or to hear everything from Mr Quiney first, or to hear -- I think there are three different ways to do it. One would be to hear everything from Mr Quiney and then everything from us. The alternative second would be to hear from each of us on general points, and then to hear everything from my learned friend on all of the requests and continuing. The third would be to do that, but then to go request by request.

THE CHAIR: Yes. I think just the traditional way of hearing everything and moving on in series is probably, what I would prefer. I think I'm sufficiently alive to what the points are from your skeletons that I know what's coming. I don't think there's a great deal of -- there's certainly little controversy on the principles. There might be on some of these points on inference and so on. It's more about how far you can go and the disproportionate nature of the requests. But to the extent I'm wrong in that, I'm sure you will disabuse me when you come to it. Yes, Mr Rabinowitz, do you want to add something?

MR RABINOWITZ: Sir, just one point, which is just to flag that, at least on our part, we don't accept that this case is properly characterised as a cartel case or similar to a cartel case. Of course, I can make submissions on that in due course but I wanted to lay down a marker that that is not accepted.

THE CHAIR: Yes. Yes, and I do have your skeleton in my mind on this point, Mr Rabinowitz. Yes, let's pick that up when you come to it, but thank you for that reminder.

MR RABINOWITZ: Thank you, sir.

MR QUINEY: I'm grateful.

What I've been working on, with respect to the WSL parties, is the Redfern which has updated the current position and served with the skeletons on 19 February 2006.

THE CHAIR: Yes.

MR QUINEY: What you can see there, hopefully, sir, is that we have a number of columns: the original request, the original response, and then the current position. We can see that there are relatively straightforward issues on the first request.

So this is a request dealing with the run up to the SPA, if I can put it that way. It is agreed that there will be disclosure of memorandum strategy papers presentations, reports and/or WSL board minutes relating to the vote, et cetera; documents relating to the formulation, negotiation and agreement of the SPA. The date range will be December 2009 to June 2010. We've agreed two custodians and a number of the keywords.

The keywords that are in dispute are identified there in the last column: sale and shares, Matchroom and shares; WSL and shares, World Snooker and shares; board vote, sale or acquisition.

Now, we would invite, sir, for you to make an order that all of those particular search terms are included. There is some dispute raised by my learned friends on this and I'm just (inaudible) simply said, at request 1, page 9 of the skeleton (inaudible).

To this point, we do not understand why there is a reasoned objection to this, and we simply say that, within the absence of the objection, this should be keywords that are sustained and more importantly, they are justified because (a) we're dealing with two custodians with respect to the D1/D2; (b) the date range is relatively narrow, ie December 2009 to June 2010; (b) we're talking about the sale under a share purchase agreement. So the word "sale and shares", say, in an email in, let's say, January 2010 would probably relate to this as opposed to something else. We're not talking about a disproportionate search here, and no suggestion has been made for

this. So once we're through the door on the relevance, keywords relating to sale and shares, Matchroom and shares; WSL and shares, et cetera, et cetera are, we would say, pertinent.

THE CHAIR: Yes.

MR QUINEY: I'm grateful.

THE CHAIR: I think, Mr Quiney, we can now clearly see the good sense of Mr Mountford's second alternative as to the way to conduct this. Why don't I hear from him now as to why he does not agree with you on what you say makes eminent sense, sir.

Yes, Mr Mountford. Why don't you pick this point up now.

MR MOUNTFORD: My Lord, what I would propose is that because this is a response of my learned friend Mr Rabinowitz's clients, D1 and D2, what may be helpful is for my learned friend Mr Rabinowitz and I to just briefly respond to the general points that are made and then we go on. For this request, my learned friend will respond, and so on. Some of the requests obviously overlap, so a similar request -- where a request is made of D1, D2, which overlaps with the D3 request, my learned friend Mr Quiney addresses it, then my learned friend Mr Rabinowitz, and then I do. So we do it that way.

THE CHAIR: I agree.

MR MOUNTFORD: (Overspeaking)

THE CHAIR: You can't make your points on the individual unless you have first addressed me on the general --

MR MOUNTFORD: Exactly, my Lord.

THE CHAIR: -- so I understand where you're coming from. So I need to --

MR MOUNTFORD: Perhaps if I --

THE CHAIR: Go ahead, Mr Mountford.

MR MOUNTFORD: -- if I sit down and ask Mr Rabinowitz to start, I'll follow.

Submissions by MR RABINOWITZ

MR RABINOWITZ: Thank you, sir.

You will have read section D of my learned friend's skeleton argument. You have listened to the introductory comments that my learned friend had.

I've already had two overarching responsive comments to the submissions that we've heard from my learned friend on the overarching points. The first overarching point, which was made principally in my learned friend's skeleton -- slightly less so orally -- is that the claimants, in our submission, substantially understate the extent of the disclosure that WSL and indeed the defendants have agreed to give. That's really, particularly, there is this refrain throughout the claimant's submissions, in writing and orally, that WSL are resisting giving disclosure of internal documents, and in particular internal documents that go to core issues in the case.

I don't need to take you through the claimant's skeleton, but just to illustrate the point, it kicks off at paragraph 16 where they make the point in relation to Mr Hearn, and they finish the paragraph, "It is only by adequate disclosure of Mr Hearn's documents that the true position can be determined". [as read]

Then paragraph 17 of the skeleton, they make a similar point in relation to the October 2023 event, which the Tribunal may recall is the event for which the claimant asks permission of WSL. WSL refused the event. It's the event to which the Hearn call relates. They make the same point there. They say there is a disparity between what was said on the Hearn call and what was said in the letter, and this is why we really need disclosure of internal documents. Indeed, they say exactly that. They say at 18:

"This is a particular example which underscores the need for disclosure of internal

communications as opposed to formal, external or polished documents, which may belie what actually happened and/or the actual reasons for the party's conduct. As is noted below, the defendants routinely seek to limit their disclosure obligations to the latter". [as read]

That refrain is picked up again and again in the claimant's submissions. But in my submission, that just does not reflect the reality of what has been agreed, and I appreciate that this hearing will perhaps be more focused on what is not agreed, but it's important not to lose sight of what has been agreed.

THE CHAIR: Yes.

MR RABINOWITZ: It's striking that in relation to both --

THE CHAIR: The impact on proportionality and (inaudible).

MR RABINOWITZ: Absolutely. It's striking in relation to both of those points -- Mr Hearn's documents and the October 2023 event -- WSL has agreed to wide-ranging internal disclosure already. Just on the Barry Hearn issue -- I won't take you to the individual request because we'll get there; there's a slight dispute as to the formulation -- but just to flag what WSL has actually agreed to, WSL has agreed to give disclosure of any communications and their attachments received from Barry Hearn since April 2021, and any communications or documents created by Mr Hearn on behalf of the WSL parties and/or relating to the WSL parties' affairs after April 2021 that relate to the provisional refusal of sanctions for non-WSL snooker events.

So it's not that we're refusing to give disclosure of internal documents. We are agreeing to give very wide-ranging disclosure of, really, any documents received from Barry Hearn that relate to provisional refusal of permission in relation to WSL snooker events.

In relation to the October 2023 event, which is the other example given in my learned friends' skeleton, the position is even more stark, because there we have agreed to

give disclosure of any internal documents and any communications related to the October 2023 event, and/or the broadcasting agreement between NST and Channel 5. It's not just the Barry Hearn point and the October 2023 point. I picked those points up because they are the points that were focused on in my learned friend's skeleton. It's also a point that was picked up by my learned friend in oral submissions on the SPA.

We are having a brief debate about keywords, but the formulation of request 1 on the SPA is documents relevant to the formulation, negotiation and agreement of the SPA, including documents relating to the WPBSA board vote for sale of WSL to the Matchroom group. Obviously, there will be documents withheld for privilege, but subject to that, that is a very wide-ranging request as to the origins, the rationale underlying the SPA. Same point for the formulation of -- sir?

THE CHAIR: Mr Rabinowitz, forgive me for speaking across you, but he says that's relevant. He says that's relevant to how this market in this sport has developed, and how it has had the impact it has had, he says, on his client. He says that's very much relevant.

MR RABINOWITZ: Absolutely. That is why we have agreed to give disclosure in respect of it. The formulation of request 1 is agreed. The formulation of request 1 that I just read out is what we have agreed to do.

THE CHAIR: Yes.

MR RABINOWITZ: We accept that it's relevant, and indeed, I'll come on to this in my second overarching point, but just to preempt that point, these issues on which we have agreed to give wide-ranging disclosure of internal documents are the issues on which our conduct is alleged to have been unlawful. Where we are resisting is the peripheral background market-building issues.

THE CHAIR: Yes, and that's very much the battleground. Yes.

MR RABINOWITZ: That is the first point I'd like to make, just the extent of the disclosure that we have already agreed to give. It relates to the SPA. It relates also to both contracts which are alleged to be unlawful, both of the tour player contracts which are alleged to be unlawful, the original contract and the revised contract, as the parties refer to them. The original contract is in fact the 2018 contract. Also the decision-making of WSL in relation to the only other events, from the claimant, that it was asked to give permission with respect to.

THE CHAIR: Is there any other general point you want to make, Mr Rabinowitz?

MR RABINOWITZ: The other general point I wanted to make is in relation to the characterisation of the claims advanced by the claimant, because the submission which we heard just now and also in the claimant's skeleton was that this is in essence a secret cartel case and therefore that the approach to disclosure should mirror that which applies, in a secret cartel claim. But in my submission, that just does not reflect the nature of the claims that are actually pleaded against us. Indeed, the one document that my learned friend I don't think took you to was his own claim form, which sets out what he says is unlawful in my clients' conduct. If I may just take you briefly to that, it's behind tab 1 of the CMC bundle. (Pause)

MR RABINOWITZ: I can give the page number. It's 54. (Pause)

I'm just going to look at the headings, in the interests of time, because they give a sense of the allegation as to what is actually unlawful:

"Grounds of Claim

"(I) Breach of the Chapter II Prohibition"

If we flip through "Market definition", and then we turn the page to 57, "Abuses".

The first abuse under subheading (i), if you just turn the page to 58. (Pause)

Page 58, paragraph 150.

THE CHAIR: It's "(i) The Contracts", or is that --

MR RABINOWITZ: Exactly, sir. That's the subheading.

THE CHAIR: Yes.

MR RABINOWITZ: Then just over the page, the first paragraph under that subheading:

"By adopting the provisions of the Contract and/or the Revised Contract, and requiring materially all professional snooker players to adopt them, WSL has abused its dominant position."

That is squarely aimed at the two contracts, so maybe we ought to see where this is going. Then, turning the page, that's not a cartel allegation. These are the terms of the contracts that we agree with snooker players. They're not secret. The claimant has them.

Flicking on to page 2, subheading 2, which is on page 67. That's (ii). (Pause)

THE CHAIR: 67. I have 167.1 -- oh, I see, "(ii) The application of WSL's sanctioning power".

MR RABINOWITZ: Yes, sir. That's the application of the power under the original contract and the revised contract.

THE CHAIR: Yes.

MR RABINOWITZ: Again, that's not a cartel allegation.

Please, sir, just flicking on to page 69, (iii). This is the third head of abuse alleged against my claimant --

THE CHAIR: Yes.

MR RABINOWITZ: -- or against my client, apologies, "Exclusive agreements with venues, broadcasters and sponsors".

What that is saying is that WSL has agreements with venues, broadcasters and sponsors; pursuant to which, the allegation goes, they are precluded from dealing with third parties. That is not a cartel allegation either, sir, in my submission.

Next subheading, "(iv) Threatening potential broadcasters of competitor events". In my submission, not a cartel allegation.

Then moving on to the second head of the claim, which is "Breach of the Chapter I Prohibition" on page 71 of the claim form. First subheading, "(1) The Contracts". By that, my learned friend means the 2018 original contract and the 2024 revised contract, and those are alleged to be anti-competitive agreements.

Then heading (2), "WSL and the WPBSA". This, we may need to go a little bit more slowly, because if there were a cartel allegation, one might expect to find it here.

Flicking the page to page 74, paragraph 192:

"WSL and the WPBSA are inextricably tied together in the following ways ..."

Then there's a particularisation of the ways in which WSL and WPBSA are tied together, or alleged to be tied together.

Turning the page, then, to page 76, paragraph 193. Again, if there were an allegation of a cartel, one would expect to find it under the heading "Agreements decisions, concerted practices". But, in my submission, paragraph 193 just says WPBSA and WSL are contracted together in terms of that contract, will require disclosure. Then the next paragraph I'd invite the Tribunal to read because, if there is an allegation of concerted practices, it's in this paragraph.

THE CHAIR: Which one?

MR RABINOWITZ: 194. (Pause)

THE CHAIR: Yes.

MR RABINOWITZ: In my submission, there is no clear allegation of the concerted factors there and certainly not an allegation of anything approaching a cartel.

Then continuing on -- I'm sorry for doing this, but it's important because my learned friend --

THE CHAIR: Yes. Although, isn't this to some extent short circuited, Mr Rabinowitz,

by the list of issues that you have agreed to as part of the order that I'm invited to make today?

MR RABINOWITZ: In my submission it's not. That is because, the list of issues we agreed to -- and there was an exchange between the parties in relation to the list of issues -- we agreed to it expressly without prejudice to our position -- and, indeed, there's a footnote on this point -- that certain aspects of the claim are inadequately pleaded and that we intended to resist disclosure requests in relation to those aspects.

THE CHAIR: Yes, yes. But I think there is -- there's a difficulty here isn't there, Mr Rabinowitz. This Tribunal can hardly agree to determine these issues with one hand and then prevent one of the parties from arguing that these issues are relevant and arguing the relevance of these issues for the purposes of disclosure on the other. That's the difficulty that immediately presents itself to me.

MR RABINOWITZ: In that case, sir, there may need to be a dispute in relation to the list of issues because, the way that we had envisaged it -- it's footnote 28, for your reference, sir, in the list of issues and it relates, in particular, to paragraph 8.4 of the list of issues. It's page 941 of the bundle.

THE CHAIR: Yes.

MR RABINOWITZ: We say:

"The position of the Defendants is that the allegations canvassed in the subparagraphs to this paragraph are inadequately pleaded."

THE CHAIR: Yes.

MR RABINOWITZ: So it may be that we need to have a debate as to whether they are included at all.

THE CHAIR: Yes. Forgive me, Mr Rabinowitz, but I don't think a footnote of that nature can have the effect that I suspect, now listening to you, you intended for it. Because of, I think, the correctness of the principle that I just set out a moment ago, if

these are issues that this Tribunal is expected to determine, they must, perforce, give rise to irrelevance for the purposes of disclosure. I'll hear Mr Mountford on that, of course. But, I think when Mr Quiney gets to his feet on that point he's pushing at an open door.

So, if that makes you think again on what are issues in this case. Because that's a much bigger debate. If there is not that chapter 1 issue before the Tribunal, that's a much bigger debate. Not one confined only to disclosure and what's relevant to disclosure.

MR RABINOWITZ: Sir, so we accept -- and perhaps it's worth doing this by reference to the list of issues. We absolutely accept that there is a pleaded chapter 1 claim in three respects.

Firstly, in relation to the 2018 contract. Secondly, in relation to the revised contract, and thirdly, in relation to the SPA. Where we don't accept that there's an adequately pleaded claim -- and I do submit that it's important that this was made clear to the claimant throughout the process of agreeing the list of issues -- is in relation to the wider penumbra of alleged concerted practices which, in our submission, has never been properly particularised. So I absolutely take the point that that means that there may need to be a debate on the list of issues and perhaps today is the time for that debate. It relates particularly to paragraph 8.4 on the list of issues.

THE CHAIR: Yes. The consequence, if we take your submission or your footnote to its logical conclusion, is that Mr Quiney would seek to amend his claim to ensure that the issues that are now in the list of issues are properly pleaded and therefore properly before the Tribunal and, therefore, giving rise to the relevance which is the platform he needs for his disclosure. I had thought that we were beyond that because of the agreed list of issues, but you're pointing out to me that perhaps I had not paid sufficient attention to footnote 28 which reserved your position on that adequacy.

MR RABINOWITZ: Sir, this was also a point which was flagged immediately in the context of the disclosure requests. The Tribunal may have seen in response to request 13, which is the request that principally goes to the wide-ranging alleged concerted practice. The response of the WSL parties to that was, as we have said previously, our position is that these allegations are not adequately pleaded. I could take you to that, sir --

THE CHAIR: Yes.

MR RABINOWITZ: -- in the disclosure request document because that was back in December.

THE CHAIR: Yes.

MR RABINOWITZ: Our response said, these allegations are not adequately pleaded. If you intend to continue to pursue these requests, you need to, (a), properly particularise the allegation and (b), explain the rationale for the request.

THE CHAIR: Yes. All the points are not before the Tribunal to be determined.

MR RABINOWITZ: Yes, sir.

THE CHAIR: So I'm currently in the midst of hearing a disclosure application. The format for that is the completion of a Redfern schedule. I don't feel in a position to do that in relation to the chapter 1 issues, that have a bearing on paragraph 8 and doubtless others of the agreed list of issues, unless there is clarity on where we are in terms of the pleadings and the issues that are properly before the Tribunal. So I think we need to just give some thought to that. I don't think that we can just merge into this hearing now, submissions on the adequacy of the pleadings.

Do you mind if I just hear Mr Quiney for a minute on this point and then I'll come back to you and, of course, Mr Mountford.

MR RABINOWITZ: Absolutely, sir. If I may just give you the page reference for the point I just made, which is that this was flagged in our response to the disclosure

request.

THE CHAIR: Yes.

MR RABINOWITZ: That's page 854 and 855 in the bundle. There's a long response from us to disclosure request 13 (overspeaking) precisely the point which I've just articulated.

THE CHAIR: Yes. I'll bring that up and then I'll --

MR RABINOWITZ: Thank you, sir.

THE CHAIR: Thank you very much, Mr Rabinowitz.

Mr Quiney, you can see the difficulty that I'm in. I'm not holding anything against you but there is a clear issue raised as to whether you have properly pleaded that chapter 1 case to the extent you want to make of it for the purposes of the disclosure. I don't want to limit your disclosure and the ability to make your case improperly. But I suppose I'm more concerned with ensuring that we have a properly formulated case before this Tribunal before we move very much further. I'm beginning to think that I need to hear submissions from the parties on the pleadings. That may provoke you to think about an application, or as you see fit, as a precursor to completion of the process on the Redfern schedule. I wonder if you see any merit in that or you think I'm going in the wrong direction.

MR QUINEY: The short point is that I suggest that that might be the wrong direction. So, first of all, we all understood today that we had an agreed list of issues, say for a reservation of a position on (inaudible) the pleading.

Secondly, we have a series of submissions here which are focused on questions of (inaudible), relevance and proportionality. That's what the skeletons focus on. What I'm hearing is essentially a backdoor submission attempt to strike out. That's the effect of it.

Now, that is not an appropriate or fair way of conducting a disclosure hearing. If my

learned friend is serious to say that there are defects in the present pleaded case, then he should make an application to seek strike-out of that.

Two further points, if I may. The first is it is accepted that this has been a general complaint that's raised in correspondence but that is very different from making the formal allegation as it's being put today and, indeed, the submissions made by my learned friend do not appear in the skeleton argument in the way that he has articulated them today.

The second is, when it comes to those complaints, my understanding of the submissions was that there was a lack of particularity and granularity, not that the issues themselves weren't articulated. So if we go, for example, to the list of issues. Just bear with me one minute. (Pause)

THE CHAIR: Yes. No, I don't think I need to take you any further, Mr Quiney. I see the force of that point and I want to take that up with Mr Rabinowitz now. I'm grateful, thank you very much.

Mr Rabinowitz, that must be right, mustn't it? You can't come into court with an agreed list of issues but with merely a reservation in a footnote to say that you're a bit unhappy with the adequacy of the pleading. If we are at the stage where there is no complaint raised about the pleading, no application to strike, no application to say, "This case must be limited to these issues and I'm not going to deal with this because it's not properly pleaded", you have to make that application. You can't just deal with it by way of a footnote to an agreed list of issues. I think, by that stage, it's gone too far for me.

So I can't see, for the purposes of today, why it should derail the completion of the process in relation to the Redfern schedule. I think we have to proceed on the basis of the agreed list of issues that you have put before me, noting your footnote, noting the reservation that you have made. But I'm afraid if you want to do something about

that reservation, you have to do it. Otherwise, this Tribunal will proceed on the basis of the pleadings that are currently before it. It can't take any other course.

MR RABINOWITZ: I understand that, sir. I think, in relation to disclosure in particular, there is an onus, in my submission, on the claimant to properly articulate the justification for its request -- particularly in relation to request 13 for which this issue arises -- in circumstances where our response to that request in December was, if you wish to advance this request, you need to explain it and also you need to explain the underlying case.

THE CHAIR: Yes.

MR RABINOWITZ: The response to that was simply --

THE CHAIR: I'm going to take that -- forgive me for speaking across you, Mr Rabinowitz -- but I'm going to take that submission within the four corners of a disclosure argument and no more. So I'm going to confine it to that, unless you want to push me otherwise but I think that's -- and I do want to hear from Mr Mountford just to give him an opportunity, if he wants to add anything. But that's my view, I think, that I'm going to hear you on that relevance point but in the context of disclosure only for the moment. If you have anything to say about the pleadings, you will have to do it in the normal way.

MR RABINOWITZ: Thank you, sir.

THE CHAIR: Thank you, Mr Rabinowitz.

Mr Mountford, if there's anything you want to add just before we carry on. I want to get back now to hear if Mr Rabinowitz has finished his general comments, any from you and then if we can press on with the --

MR MOUNTFORD: Yes.

THE CHAIR: Yes. Anything you wanted to add to that debate, Mr Mountford, that's going to influence my --

MR MOUNTFORD: Yes. I think first of all, just on the point that we've just been discussing, my Lord, it's not a position of the sequence of how we deal with things that you set out at the start is out the window. Absolutely, you can go on, you can determine the Redfern schedule issues as they are. But the pleadings in this case, issues were raised in relation to the pleadings from the outset by both defendants and by the Tribunal of its own motion. I'll take you, in a moment, to what the chair said --

THE CHAIR: Yes, yes.

MR MOUNTFORD: -- on the previous occasion about how he thought this was an inappropriate way for the case to have been pleaded and, effectively, he was tempted -- the Tribunal as a whole when it sat as a full Tribunal last time -- was tempted to throw it out and say start again. But it wanted to go down the route of not wasting further costs so it said go down the route of a list of issues. So, of course, there are a lot of --

THE CHAIR: Which are agreed.

MR MOUNTFORD: Yes. Well, my Lord, they are agreed, but they're agreed in the sense that we have tried to distil the essence of the case but we have made that reservation in relation to some parts which, from the outset, we said were not properly particularised.

We say it's the wrong end of the telescope to say that there was an onus on us to seek to strike out some part of the pleadings. That's not the way this Tribunal approaches pleading exercises. But when the Tribunal comes to look at what should disclosure be given against, it has to sort the wheat from the chaff. If there was, for example, a part of the pleading for my learned friend on the claimant's side, which said, "Oh, you've been in each other's pockets for 25 years", that doesn't mean that there's a quarter-century disclosure issue that responds to that. So when we look at

paragraph 8 --

THE CHAIR: It's an inadequate pleading from the perspective of the relevance debate in disclosure only. That's all.

MR MOUNTFORD: Exactly.

THE CHAIR: That's all we're dealing with and that's what we're going to deal with and I don't hear you saying anything different today.

MR MOUNTFORD: Yes, my Lord.

THE CHAIR: That reservation at footnote 28 does no more than that, and that's where we are. I think we can move on.

MR MOUNTFORD: Can I just then deal with four points in general overview submissions in response to what had been said by my learned friend.

THE CHAIR: Yes. Yes.

MR MOUNTFORD: I don't promise to be as diverting as either my learned friend's recitation of the extract from the Hearn call which, seeing as we are treated to a performance of it at every hearing, I would just note it's a call that doesn't concern my client; or indeed the window cleaners who've been providing us some Mission Impossible theatrics, but let me try to be somewhat diverting and somewhat brief.

I want to deal with four points. First is the starting point: which end of the telescope do we look at these issues through; the second is the question of pleadings and what is the pleaded case; third is the question of this cartel analogy; and fourth are issues of proportionality and the approach of the claimant. Let me just deal with those briefly.

First of all, it's agreed as a matter of the principles, and this is set out at paragraph 21 of the claimant's skeleton argument which sets out an extract from the Ryder case, that ordinarily disclosure will be by reference to specific pleaded issues and specific categories of documents. So the Tribunal's starting point is that it expects to see requests for specific categories of documents closely confined to specific issues, not

general standard disclosure type of requests. We say that, unfortunately, when we go through the requests that have been made by the claimant, they are often in the nature of those type of standard disclosure, indeed, standard disclosure plus type requests.

My learned friend said the pleading has to be taken at face value. First of all, we say, when one looks at the pleading, we have to distil from the pleading the issues. As against my client, a very much narrower claim is pleaded than the claim pleaded against the first and second defendant. So one doesn't take a one size fits all approach and say that the disclosure approach that is appropriate issue-by-issue is necessarily the same defendant-by-defendant. One has to look at what is the allegation made against each defendant and the disclosure flows from that.

Then in relation to the pleading, I do say that because of the very baggy and unstructured nature of the claim pleaded in this case, one can't start by saying that just because something arises on the pleading, therefore, disclosure should flow. There has to be the sorting of the wheat from the chaff. If I just take you back to what

THE CHAIR: Yes. You don't disagree, Mr Mountford, with the approach that I was taking a moment ago to look at relevance in relation to the list of issues. If I concede relevance to an issue that's before us, that has to be determined. That's ...

MR MOUNTFORD: Yes. But some of those are there because there is a kernel of something distinct, which is -- so if one looks, for example, at issue 8.4, there is this allegation at 8.4.1 that there was a ceding of power from the WPBSA to the WSL by the provisions that are identified there of the SPA.

So that's a clearly identified plea that arises from the pleadings to say those provisions of the contract effected something which the claimant characterises as a ceding of power.

THE CHAIR: Yes.

MR MOUNTFORD: Fine. That's clear; that's an issue that flows from it. Contrast that

with --

THE CHAIR: The documents probative one way or the other are potentially relevant.

MR MOUNTFORD: Yes. Contrast that with 8.4.2, which is the alleged close co-operation and ties between the defendant. That is a sort of general formulation that arises from this pleading which is then said to found a requirement for a quarter-century's disclosure, often from 2000 to 2025 or 15 years from 2010 to 2025. We say in those circumstances, yes, it's there in the list of issues; it reflects -- with the reservation, but one can't approach what is a proportionate disclosure to be given --

THE CHAIR: That's the point, Mr Mountford. It's one thing, relevance; it's another thing whether it's proportionate.

MR MOUNTFORD: Exactly.

THE CHAIR: This Tribunal is aware of that.

MR MOUNTFORD: I don't necessarily need to turn it up now, but just for your note, in authorities bundle page 162, there was the passage of what the chair said on the previous occasion, which was that the pleading seemed to be a very difficult set of documents for the Tribunal: there are something like 400 pages; they contain an awful lot of factual material; they contain what appears to be advocacy; they go a long way beyond what we would expect in this Tribunal. There was a moment of temptation where we thought, go away and replead the case so it looks sensible.

So, that is the starting point and if there are certain things that are there, it does reflect that we have had a difficulty on our side. We've identified it from the defendants, from the moment we filed our defence, that this is an inappropriately expansive pleading which tries to plead the kitchen sink.

But I think we agreed where we are on the principles.

THE CHAIR: Well, whether that is the case, I now have the benefit of an agreed list of issues.

MR MOUNTFORD: Yes.

THE CHAIR: So things have moved forward happily.

MR MOUNTFORD: On the third point, the cartel analogy, we say this is absolutely an inapt analogy in this case. What we have here on my client's part is a governing body of a sport which ran a legacy tour for the benefit of its members to provide them with sporting and earning opportunities. At a certain point, those members, the members of my client, the third defendant, wished somebody to come in and do that who was actually specialised in that area, not a governing body, a commercial operator. So the SPA was entered into for them to take a minority stake and to pass that commercial legacy operation over to a commercial operator.

Everything is perfectly understood within the sport what happened. That was a transparent restructuring; everybody understood that those operations were moving to that commercial operator and that my client remained as a minority shareholder in that so that monies that were generated from that commercial exploitation would go back into the grassroots of the sport and to the development of lower levels of the pyramid, not just those people who were participating in the tour.

So it's totally inapt to compare this to a cartel situation. When the disclosure authorities talk about cartel cases being ones which might justify particularly broad-ranging disclosure departing from the usual targeted focus not-standard disclosure approach in this Tribunal, they are talking about that because often there is secret behaviour, co-ordinating behaviour between market participants which is unknown to other market participants or the extent of which is unknown and there is a claim to loss going back to the initiation of the cartel.

That is not what we have in this case, on either of those two lenses. What happened was transparent in the market and the losses claimed are referable to the attempts by the claimant, allegedly, to seek to enter the market in 2022, 2023. So we say that

analogy just simply doesn't work.

If one looks at -- my learned friend Mr Rabinowitz took you through the chapter 1 pleading as against my client, and I tried to distil this in my skeleton argument. It may just assist to have a look at that briefly. It's my skeleton argument paragraph 4.

Obviously, first of all, noting at 4.1.1, the chapter 2 prohibition claim is not brought against my client. Then at 4.1.2, the chapter 1 prohibition at 4.2, setting out what it is that's actually pleaded against a third defendant. And at paragraph 4.2.2, if you have that, it's a very narrow claim pleaded against WPBSA and I set out there with references what it is effectively that's pleaded.

So, first, the provision in its articles of association of an obligation that members abide by any contract they enter into, as well as abide by the rules, regulations and articles of WPBSA. Secondly, a mechanism of support for the contractual bargain by providing a disciplinary and dispute resolution service as envisaged by the counterparties to the player contract, so the players on the one hand and the WSL on the other hand. Then this sort of vague alleged promotion of D1 activities to the exclusion of any third parties, but without particularisation. Then 4.2.2.4, the allegation about the share purchase agreement. My learned friend took you to the provision of that and he said that that gives rise to an exclusive right.

We pleaded -- and you perhaps don't need to turn this up, but for your note, in the main bundle at 7.14 -- in our rejoinder to that. The defendants say that's simply a misreading of the SPA. What the SPA, where it refers to exclusivity, is doing is saying, "I, the legacy operator, am going to transfer this to you for nominal consideration and maintaining a minority shareholding and I, the legacy operator, will not undertake those activities". So it's exclusivity between D3 and D1 and D2. D3 did not have any rights to exclusivity in the market, and so it wasn't able to contractually afford those to D1 and D2.

So that's the issue in relation to that. That's really the sum total of what's pleaded against D3 for the chapter 1 claim.

So we say, when one steps back for the purposes of the exercise that the Tribunal is dealing with now, disclosure, and ask what is the critical disclosure which is going to enable my learned friend to make his case, we say that he could make his case now. This isn't a case on his part that's going to turn on disclosure. What he is seeking to do is to effectively go on a fishing expedition across a quarter of a century and see if he can just find anything to somehow backfill a case which isn't pleaded and which isn't there.

So we have, for example -- we see that they've introduced this allegation as to the SPA. We dispute that, but that's in issue. We have therefore, for issue 2 as against my client, agreed the request for documents relevant to the formulation, negotiation and agreement of the SPA, including documents relating --

THE CHAIR: Sorry, just a bit slower please.

MR MOUNTFORD: I'm sorry.

THE CHAIR: I know you have this very well prepared, but if you just --

MR MOUNTFORD: So --

THE CHAIR: So issue 2 from the issues list, yes?

MR MOUNTFORD: No, sorry, issue 2 from the disclosure requests.

THE CHAIR: Ah, from disclosure requests.

MR MOUNTFORD: I'm sorry, this is the disclosure request against D3.

THE CHAIR: Yes. So this is the share purchase agreement, SPA, and --

MR MOUNTFORD: Exactly.

THE CHAIR: -- share sale words and the date range 2009 effectively to 2010.

MR MOUNTFORD: 2009, yes. And documents relevant to the formation, the negotiation and the agreement on it.

So we've agreed that request. We've said we will, if we have documents in that time period relating to how the SPA was negotiated and formulated, we'll give you those. But what we do resist is a much broader attempt to say, "Oh, well, things that are much more tangentially" --

THE CHAIR: Yes, but it's in a later request; that's not this one?

MR MOUNTFORD: That's what, sorry?

THE CHAIR: That is not this one, that broader request.

MR MOUNTFORD: No, I'm giving that as an example of something that we've agreed.

THE CHAIR: Yes.

MR MOUNTFORD: What I've said is that where we have a pleaded issue -- it's a very narrow case pleaded against my client -- where there is something disclosure sought which clearly responds to something which is pleaded within that narrow case --

THE CHAIR: Yes, I see.

MR MOUNTFORD: -- we have agreed that disclosure.

THE CHAIR: I see.

MR MOUNTFORD: But what we're not doing is agreeing this bucket and spade approach to everything beyond.

THE CHAIR: Yes. And what do you say -- because Mr Quiney cites authority as to, or certainly has made reference to an approach taken by previous Tribunals and I think also mentioned in Peruvian Guano this approach that can be taken to discoveries that then was in relation to cartel cases. What do you say to that?

MR MOUNTFORD: It's just inapt because when one looks at the case, one has to judge relevance and proportionality by what is the case. So if one has a cartel case and you say, "I believe that these suppliers have been secretly getting together to fix prices within the market", well, by nature, a customer who is subject to what they say are inflated prices which reflect cartelist behaviour does not have access to the internal

communications between and has to identify and prove that the pricing doesn't just reflect independent commercial factors, market factors which go into each of those competitors but reflects a co-ordinating behaviour. So in that case, of course, a claimant will struggle to prove a cartel allegation without having disclosure of all of the internal communications between those market participants alleged to have operated a cartel. In those cases, one may see justifiably more extensive disclosure. But that is not this case. If one looks at the case that's pleaded, it's that when this legacy operation was transferred and the terms of the SPA which provided for that transfer, certain things of that amount to an ongoing practice. So my learned friend doesn't need disclosure over that broad period to make his case. He is able to make his case effectively now, even without --

THE CHAIR: What the parties agreed to do together in the --

MR MOUNTFORD: Exactly. Exactly, my Lord.

So the fourth point, not to trouble the Tribunal too much longer, is in relation to proportionality and costs et cetera. We say that the claimant has not identified what it is required to do, which is narrowly focus requests on particular documents or particular classes of documents.

THE CHAIR: Yes.

MR MOUNTFORD: It's done these sort of broad "relevant to". There are cases, obviously, where the document sets are extremely large and it is proportionate to incur the additional costs of having a solicitor run all of the preliminary searches and then say, "We have, you know, 2TB of data; if you do this, it will be a disclosure exercise that costs £1 million; if we do this, it will be £2 million".

We're obviously not in that case so we don't say that it's a case where it would have been proportionate to have adduced specific evidence running all different permutations to say, "This would have this quantified pence and pounds impact".

But we don't say that, from that, you therefore say, "Oh, well, there's no evidence in relation to that; therefore, we should proceed upon the basis that it's all proportionate".

THE CHAIR: Well, it's one of the ways you could have run your resistance, to point to the cost and bring evidence of the cost and make your disproportionate case in that way. You have chosen not to. You have chosen to fight it in other ways, in the ways that you have been submitting to me in the last ten minutes.

MR MOUNTFORD: Yes. Exactly. And I have to obviously accept the limitations of what I can do in response to that. But what I say is it doesn't go as far as my learned friend would push it.

THE CHAIR: Yes.

MR MOUNTFORD: The other point, of course, is that it's --

THE CHAIR: Yes, absent such evidence, you cannot resist. (Overspeaking) can just on different grounds.

MR MOUNTFORD: Exactly. Of course, what the Tribunal is doing here is not just setting out --

THE CHAIR: It can still be disproportionate even if I'm not showing you what the cost of it would be.

MR MOUNTFORD: Exactly. And for my client, as a governing body, even small amounts of different incremental costs, which for a large commercial operator might not be so significant, are significant because they are funds which can't be invested into the grassroots of the sport, can't be used for the development of the sport. So there are those issues.

The other point --

THE CHAIR: Mr Mountford, I just want to note one or two of those points, if I may.

MR MOUNTFORD: Of course.

THE CHAIR: Because ... (Pause)

Yes.

MR MOUNTFORD: I was trying to ascertain whether there would be a transcript of today. I'm not sure if there will be, but maybe the claimant can assist.

The final point I was going to make is that what the Tribunal is doing here is not obviously just setting the parameters for the exercises that we must do in terms of our disclosure exercise, but it's also the parameters for any disputes down the line: when the disclosure is produced, whether that disclosure is adequate. So, by sanctioning what we say is disproportionate disclosure over an extensive 25-year period, there is a higher likelihood that will lead to satellite disclosure disputes. So we say it's not just the question of proportionality of what we must do in the first instance, but also what then happens down the line when that's produced. So we say that that that's another important reason why one has to take a focused grip on what is actually needed to fairly determine these disputes.

Unless I can assist, that was all I was going to say on general matters.

THE CHAIR: Yes. No, thank you.

Thank you. So those are the overarching points. So I think, Mr Rabinowitz, were you going to respond to the first item that Mr Quiney had taken me to in the Redfern schedule?

MR RABINOWITZ: Yes, sir. So I think we've covered this --

THE CHAIR: Forgive me, Mr Rabinowitz. I'm helpfully reminded, Mr Rabinowitz, that I really ought to call a break for the benefit of our transcribers. So, shall I rise now and come back at 12.20?

MR RABINOWITZ: Thank you, sir.

(12.06 pm)

(A short break)

(12.23 pm)

Request 1

THE CHAIR: Yes, Mr Rabinowitz.

MR RABINOWITZ: Thank you, sir. So, request 1.

THE CHAIR: Yes.

MR RABINOWITZ: I don't think I need to reread the formulation of the request, which is agreed. The custodians are agreed. The date range is agreed. The only point in dispute in request 1 is in relation to keywords. Those are set out in the Redfern schedule. The keywords which are in dispute are on the far right of the Redfern schedule. This is the Redfern schedule filed on the 19 February, just to check we're working through the same from the same one. This is the Redfern schedule filed on Thursday with the skeletons? (Pause)

Yes, sir. The list of agreed keywords is on the second column from the right: share purchase agreement, SPA, et cetera; and then the keywords which are in dispute are in the column on the far right. Happily, two of those, my client on a pragmatic basis is now willing to accept which is "sale and shares", and the bottom one: "board vote and sale or acqui". So the top and the bottom of those keywords in dispute are now accepted.

We continue to resist "Matchroom and shares", "WSL and shares" or "World Snooker and shares" simply on the basis that any document from my client will invariably include World Snooker or Matchroom or WSL, those being the names of the company and the holding company. So these in fact amount to a proposal for a keyword of just "shares", which we submit is likely to bring about a disproportionate number of documents for review, very short submission. That is particularly in circumstances where, of course, it has to be read in the context of the keywords that we have agreed to, sir. Thank you.

MR MOUNTFORD: Sir, this corresponds to the second request of D3, which has been

agreed in substance.

THE CHAIR: Yes, Mr Quiney.

MR QUINEY: I'm grateful. Just a couple of preliminary points before I respond directly to that, if I may. The first is just to explain the mechanics of how the next half an hour or so will go, just so we're sure about it.

My learned friends and myself had a quick chat before the very short adjournment. Essentially, you will have seen that there is a high degree of commonality between the requests between my client and D1 and D2, but not entirely.

THE CHAIR: Yes.

MR QUINEY: For example, the first request, D3, will probably have to be (inaudible) complete this process because it's unique. (Inaudible) if that is ...

THE CHAIR: I'm sorry, I didn't hear.

MR QUINEY: So the first request made to D3 is not made to D1 or D2. But the first request to D1 and D2, as you've just seen, is also made to D3. So there will be a short selection of issues simply between myself and Mr Mountford which I propose to deal with at the end of this first tranche, if that's okay.

THE CHAIR: It is.

MR QUINEY: Which means that the way I'm going to proceed in dealing with it is utilising the Redfern schedule which we have and my skeleton and the other skeletons. So I suggest that the Tribunal might find it useful to have those available.

THE CHAIR: Yes, I do.

MR QUINEY: On the substantive matters which were raised, which I didn't have an opportunity to reply on, there are just three short points, if I may. They are short.

The first is the point that was made about the analogy to cartel cases. It is an analogy that's apt here. We're dealing with a similar situation, albeit not a cartel of, say, ten PVC manufacturers or ten truck manufacturers. We are dealing with essentially

a black box between our case, between D1 and D2 and D3, which my client has no visibility into. Indeed, we only had visibility to the SPA because that was unilaterally disclosed by D3. So the points that I referred the Tribunal to regarding inferences and the difficulties facing a claimant when raising a case such as my client's are apt. That's my first point.

The second point is allied to that, my learned friend Mr Mountford says, "Well, you've got the SPA; you've got the tour contracts; you don't need anything else". We do, for the reasons I said earlier regarding an understanding of the establishment and maintenance of the dominant position and the raising of the barriers to entry before my client seeks to enter.

The third and final point, allied to that, again --

THE CHAIR: I'm sorry; of the dominant position. Yes, of the cartel, of the concerted practice. That's Mr Mountford's point, isn't it?

MR QUINEY: Yes. The next point I was going to make was going to focus on that --

THE CHAIR: I see.

MR QUINEY: But the second point is equally applicable to the chapter 1 as well. I just chose to focus on chapter 2 to try and make it a short point.

But with respect to, for example, chapter 1, the section 9 justification or indeed objective justification under chapter 2, the SPA isn't enough for us to understand the case and defence being raised against my client (inaudible). That's why I say (inaudible) don't have enough (inaudible) in those discussions and requests that we made.

This is my short three-point response to the submissions of my learned friend. In addition to, of course, I addressed you upon the pleadings and I'm dealing with the issues in a bit more detail as I anticipate there will be (inaudible) granular questions as to (inaudible).

Dealing with that short issue regarding request 1: as I understand it, now looking at page 1 of the Redfern schedule as revised, the basis is very, very narrow. Do we have "Matchroom and shares", "WSL and shares", "World Snooker and shares". The point taken against us is, well, if you're asking regarding D1 and D2, you may find that Matchroom, WSL and World Snooker are present in a number of emails. We say that insofar as there might be a prejudice, that is militated by the date range being relatively narrow and the custodians also being relatively narrow 2 custodians. That balance should be struck in favour of my client. Indeed, it's not a matter of dispute with myself and Mr Mountford.

Request 2

MR QUINEY: If I may turn now to request 2. Request 2 is in the context of the SPA. I will also have and do in fact have the list of issues in front of me, and I'll be referring to that. The starting point, I would submit, sir, is we look at clause or paragraph 8 of the list of issues, which if you are working off the bundle is at 941. The issue is put as follows:

"At any material time, has there been an agreement or concerted practice between the undertakings in relation to ...

"8.3. The SPA [and] 8.4.2 ... close co-operation and ties between the Defendants; [and]

"8.4.3. The ... promotion of the commercial interests and operation of the WSL parties ..."

Then at clause 9, "the meaning, purpose and effect of clause 6.1 of the SPA". If you remember, that's the clause I mentioned at the beginning of my submissions.

Then issue number 10:

"May any relevant agreement and/or concerted practice established under Issue 8 affect trade within the [UK]?"

Then goes on to deal with the particular object and effect questions.

We can see the SPA is central here. The request is put in these terms:

"Documents including strategy documents, agendas, minutes presentations related to the WSL Parties' strategy for WSL's business, the promotion of WSL events, and the sanctioning of non-WSL events upon completion of the SPA."

(Several inaudible words) date range (inaudible) January 2000 (inaudible) and after (inaudible). This is said to be too wide and also disproportionate and the request remains (inaudible) priority. This is a request which corresponds to request 3 of D3.

Dealing with our justification for this request, the short point is -- as you might have got the flavour and without me making the submissions all over again -- the SPA is central to my clients' case or the beginning of my clients' case and I've explained to you, sir, the genesis of the issue. Equally, when one looks at the issues before the Tribunal amongst the clauses I read to you, I emphasise clause 9, which is the meaning, purpose and effect. So that's not just the documents itself, the meaning, but also why it's arisen, what is its point and how it's being actually applied in practice, which is why a range of (inaudible). Not entirely. There might have been negotiations before 2009. Undoubtedly it was operated after 2012, but we have (several inaudible words).

When one looks at the allegation made, starting with D3 on this, the assertion is the same assertion that one generally sees, which is this is just too far back, this is too wide. But it doesn't tell us why this is disproportionate. The reason I make that point is -- and this will be a theme throughout my submissions -- the important distinction between relevance and proportionality. My submission is, I've got over the hurdle of relevance because it is past issues, and one can see as a (several inaudible words). I've explained why, as matter of proportionality, there is a discrete area of inquiry and that is reasonable. While, of course, my learned friend is right to say, he doesn't have to come equipped with an all singing, all dancing set of statements to say, "Well, I've

done these searches, I know this data", all that. But Mr Mountford has to go a little bit further than he does in his skeleton argument, which is at paragraphs 12 and 13, simply to say it's unclear and should be refused. We'll see throughout that the scale of the task or the alleged prejudice is just simply not there.

With respect to D1 and D2 -- this is paragraph 32 of their skeleton at page 9 -- we don't get much better. At 33 we have the opposition. First sentence, "The relevance is not understood". I've hopefully explained that. They then say, D1 and D2, that the proposed end date of the request predates the incorporation in the first in scope events. So we have, again, this idea that it's only at the point that my client interfaces with the barrier to entry that it becomes a relevant period of time. What we have here, however, is an important key document, the relevance established by the list of issues. Then the complaint is at the end, and the last sentence:

"It would, for example, require the parties to trawl through, disclose all documents in a four-year period 13 to 16 years ago."

Well, yes, it would, but that's not an unusual feature in a number of cases. What we're not being told is why that is a difficulty. If the position is "Well, we don't think the documents are there", well, then they're not there. It doesn't mean you don't have to search for them. If they mean they have to go to a storage facility somewhere and get the documents, well, they just have to do that. Again, it's not an unusual point.

THE CHAIR: Yes. I'm not going to say it's the principal thrust, but certainly one of the main points made is that it's unclear and uncertain, this request. What's a strategy document?

MR QUINEY: So --

THE CHAIR: Is that a document that's headed "Strategy document" or a document which says, "We're going to have a meeting to discuss strategy", or how do you determine.

MR QUINEY: A strategy document, I would submit, is a document that discusses strategy. You wouldn't need it to be headed up "strategy", but what you would seek to do is identify a document that refers to strategy. But it --

THE CHAIR: It refers to strategy. It said, "In line with our strategy this week, we are going to be doing this". Is that a strategy document?

MR QUINEY: Yes, that would be a strategy document. So (inaudible).

THE CHAIR: Is there anything that refers to strategy as necessarily --

MR QUINEY: Well, not all possible strategies, but strategies referable to the WSL parties' strategy for the WSL business, the promotion of their events and the sanctioning of non-events. So what we have here is an identification of categories of documents. As someone seeking a request, obviously we don't know what documents there are in fact there, and indeed we still don't know. What we don't have to do, which is simply saying emails that are headed X or emails that are sent to Y, we are identifying a clear category, because we know that those documents might be a Word document, a PDF, a note, a minute, an email.

THE CHAIR: Yes, but they need to know what to look for, don't they?

MR QUINEY: They do need to know what to look for, I agree, but I suggest that that categorisation that we presented is enough for them to know. If, for example, there is a search within the body of documentation, and there is a document that is identified clearly as the strategy document for WSL events, that's very straightforward. It is inevitable that there might be documents that are not immediately clear and would have to be considered by a qualified lawyer. Then that qualified lawyer goes, "No, this is a strategy for our dinner. This is our strategy for what we do for Christmas. Oh, no, this is a strategy about events. I can see that's relevant and that then should be in there".

THE CHAIR: Yes, I see.

MR QUINEY: But one last point. If the complaint is it's too broad and might throw up too many results -- ie proportionality as opposed to being a focused request -- that's where my point regarding, well, we need a bit more to understand what the scale of the task is, if that's going to be the tipping point (inaudible) relevant.

Sir, those are my points on this issue.

THE CHAIR: Let me just please make a -- thank you.

Yes. Mr Rabinowitz.

MR RABINOWITZ: Thank you, sir.

I may just start with the claimant's plea or pleading on the SPA. We absolutely accept that there is a chapter 1 claim in relation to the SPA. That is reflected in the list of issues, but it may assist us to understand the nature of the chapter 1 claim that is alleged in relation to the SPA. That's at paragraph 140 of the claim form, page 665.

(Pause)

My submission, just while the Tribunal reads that is that this allegation of an anti-competitive agreement in the SPA is targeted at clause 6 and the alleged purpose of clause 6. The claimant says clause 6 is intended to confer a monopoly. We say that clause 6 is intended to reflect just a division of responsibilities. (Pause)

THE CHAIR: This is the reply, presumably.

MR RABINOWITZ: Yes, sir. Because this claim only (inaudible).

THE CHAIR: Yes. (Pause)

MR RABINOWITZ: We say, sir, that the claim in relation to the SPA is focused on what does clause 6 of the SPA mean. It's not focused on what did WSL do in the first few years of the post-SPA period. It's focused on what was the meaning and purpose of clause 6 of the SPA. We submit that in relation to that, we already do have the wide-ranging request 1 which the Tribunal will recall will require disclosure essentially of any documents going to the formulation of the SPA. We say that that will be

sufficient for the purposes of assessing whether the claim, as pleaded in relation to the SPA, is in fact made out.

That's my submission on relevance. We don't see the relevance of documents postdating the SPA to the claim of an anti-competitive agreement as it's actually pleaded in relation to the SPA.

Briefly, in relation to proportionality, I think my learned friend slightly undersold his request, in that the request --

THE CHAIR: Forgive me, Mr Rabinowitz. I just want to note -- yes. Thank you.

MR RABINOWITZ: The request, as formulated, reads:

"Documents including strategy documents, agendas, minutes presentations related to the WSL Parties' strategy for WSL's business, the promotion of WSL events, and the sanctioning of non-WSL events upon completion of the SPA."

Just two observations on that, sir. First, the word "including" seems to be intended to be non-exhaustive, which means if you read this request literally, it means documents related to the WSL parties' strategy for WSL's business, promotion of WSL events, and the sanctioning of non-WSL events upon completion of the SPA, which cannot be, in my submission, a proportionate request. The request to require a party to disclose anything that relates to its business is not a proportionate request.

Now, that's the first point on the formulation of request, "including". The second point on the formulation of the request is, even if the request were to be limited so as to cut out documents including, and only to include the specific categories of documents, we don't understand the relevance of a general strategy for WSL's business in the context of the allegations that are brought in this claim. We also don't understand the relevance of documents relating to the promotion of WSL events, which relates to WSL events rather than non-WSL events. At most -- and we submit that this isn't relevant for the point I've already made in relation to the nature of the claim that's advanced in

respect of the SPA -- this would be a request for a limited category of documents in relation to WSL's strategy for the sanctioning of non-WSL events. (Pause)

Those are my submissions, sir.

THE CHAIR: Thank you very much.

MR MOUNTFORD: Sir, I'm just going to attempt, in this section of the hearing, to not repeat things that have been said both in writing: I've adopted submissions of the first and second defendant where we are aligned with them. I won't repeat, but I do adopt what Mr Rabinowitz has said in relation to common submissions.

Can I just make a couple of points which are more WPBSA specific? Do you have the Redfern schedule for D3 in front of you?

THE CHAIR: Which issues are those, Mr Mountford?

MR MOUNTFORD: It's issue 3 in the Redfern schedule and I just wanted to --

THE CHAIR: Yes, I have that. Yes.

MR MOUNTFORD: Yes. So we do say that the relevant point of reference here is to look at this in connection with request 2. So if one looks at the row in relation to request 2 of the WPBSA, we have agreed to provide documents relevant to the formulation, negotiation and agreement of the SPA, including documents relating to WPBSA board vote and for the sale of WSL to Matchroom Group. We've agreed to provide those within the requested period of January 2009 to 22 June 2010.

One has to look, then, at request 3 in that context and see not only is it for a broader set of documents where we say anything which ought reasonably to be disclosed to fairly determine these proceedings will already be captured by this, but it's also a period significantly greater than that period. So that period is confined from 1 January 2009 to 22nd June 2010, whereas the proposed period of this runs to 31 December 2012 without any proper explanation as to why such a broader temporal scope would be justified.

Additionally, if one looks at the wording, the wording of this request as against D1, D2 and D3 is almost identical but not exactly identical. Because, in the request made of D1 and D2, it is for documents et cetera related to the WSL parties' strategy for WSL business. Whereas, in the request made of us, it's for documents related to the WPBSA and/or WSL parties' business plan and strategy for WSL's business.

So it's any document relating to my client's business plan, any documents related to Mr Rabinowitz's clients' business plan and any documents relating to Mr Rabinowitz's clients' strategy for their own business. We say this is just an example of a sort of copy and paste approach. Instead of saying in a focused manner what is needed of each defendant, it is to say, well, we're asking of that of D1, D2, we may as well ask of it of D3 as well. We say there is no explanation of a justification why it would be proportionate to ask for my client to search for a four-year period for documents relating to everything concerning its business, everything concerning D1, D2's business and everything in relation to their strategy in relation to their businesses.

In relation to the SPA, it's been said a couple of times now by my learned friend Mr Quiney that, "Well, we only learned about this SPA for the first time when it was referenced in the third defendant's defence and was disclosed with that". That's set up as if that's somehow a surprising thing which ought to then lead the Tribunal to say there ought to be more intrusive disclosure awarded. But, sir, we say that's simply a bad point.

Of course, when D3 transferred its legacy commercial operations to D1 and took a minority shareholding in that operation, there would have been an SPA to regulate that transfer of those operations and constitute my client as a minority shareholder. Anyone would have understood there was an SPA. There was no surprise to find out that there was a SPA. How else would that transaction have been affected? There's also no reason why that document, a commercial contract, would have been somehow

floating around in the public domain. So the suggestion that, "Oh, well, we only learned about the SPA because of you referenced it in your defence and you disclosed it". Well, that's the obvious point when you would find out about it, because they say they advance these claims and we say what happened in 2009 is that we transferred our legacy operations and constituted ourselves a minority shareholder, and that was all affected by an SPA.

So the SPA allegation is there. It's totally unsurprising the way that's come about. We've agreed to give disclosure of the documents in request 2 around how that document came to be. What this request 3 goes further to do, we say there's no justification for.

THE CHAIR: Thank you.

Yes, Mr Quiney.

MR QUINEY: Sir, (inaudible) three points to my learned friends.

The first regarding the point my learned friend just made regarding the SPA. The short point is it's not the fact of the SPA, it's what it says which is of moment to my client. One can see the way this is dealt with in the pleadings. If I could take you into the bundle briefly. So if I could take you to page 76 where you see paragraph 193 of the points of claim.

THE CHAIR: 76 of the bundle?

MR QUINEY: Yes, page 76 of the main bundle.

THE CHAIR: Yes.

MR QUINEY: So here we have at 193:

"As set out above, the WPBSA and WSL are contracted together."

Now, we got that from, effectively, various publicly-available documents, including the website of the parties and the shareholdings in the accounts. Then we go on to say, at 193:

"The terms of the contract [which is the key point] are not in the public domain and will require disclosure. Subject to that disclosure, it is to be inferred that there are relevant agreements between the two entities."

Now, we have at least one of those agreements, which is indeed the SPA. The way that was responded to, for example, by WSL -- D1, D2 -- is at page 496, paragraph 231. The response to that paragraph is there's an admission that there's a contract.

"The second sentence is admitted, save that the scope of disclosure in these proceedings will be a matter for determination in due course."

Yes. And third:

"As the third sentence, the reference to 'relevant agreements' is embarrassing for want of particularity and accordingly no admissions are made."

And indeed no SPA or document is produced as by way of disclosure with this (inaudible).

The WPBSA, however, responded in slightly more constructive fashion by giving us the SPA, but at paragraph 64 at page 548. First of all, it refers to 63.2, which we'll come back to in a second.

"As to the second sentence, it is admitted the contractual arrangements between WPBSA and WSA are not (inaudible). No admissions are made as to the proper scope of disclosure in these proceedings. This will be a matter to address after the close of proceedings." [as read]

Third sentence is not understood and is embarrassing for want of particularity.

"The WPBSA admits it has a contractual relationship with WSL as (reading to the words) sentence. Further reference to relevant agreement (reading to the words) understood." [as read]

63.2 pleads out, as to paragraph 192.2, which is the quote from the website

I mentioned earlier, that's admitted. The state of the claimant's knowledge is not admitted. The contractual agreements between WPBSA WSHL, WSL, WST are contained in the share purchase agreement to 2010 structure.

Now, the list of issues, of course, tells us that it's a relevant issue regarding the SPA itself but also, at 8.4, the close co-operation and ties between the defendants and the promotion of commercial interests and operation of the WSL parties, along with the association, add to the exclusion of third parties to entry.

So we can see there that the SPA is a helpful document from my client's perspective but it's not the answer to the question and it certainly came as a surprise as to the contents.

The second point is, when looking at the issues, they are -- as I mentioned earlier as to the meaning, purpose and effect of clause 6.1. If the effect, as is alleged by my client, is that 6.1 -- and this is where we differ in interpretation, myself and my learned friend -- (inaudible) effect is to promote the commercial interests and operations of the WSL parties' exclusion of third party, then one needs to know how it operates. It's not enough that there is an agreement there.

The third and final point is that the issues are different. So it's said by my learned friends, issue 1 and issue 2 effectively map, but they do different things. This ties into, sir, your question about well, what are we talking about. What's the scope here? Issue 1 is about the formulation, negotiation and agreement of the SPA, and that's the period running up to the SPA. But issue 2 is a broader inquiry -- and, yes, it is broader -- which is to the strategy. What is the purpose? What is trying to be achieved here? Is it, we would say, to create barriers to entry to third parties to enter the market. That's the strategy.

I know Mr Mountford doesn't like it but this is where Mr Hearn's call comes back in. If he genuinely believed that he spent 45 years trying to stop competition in the market

(inaudible) sort of (inaudible). Certainly, the strategy, we would say, has been to (inaudible). So those are the reasons why we say request 3 is different and we request (inaudible) and is valid.

I'm now going to move on to three, if I may.

THE CHAIR: Thank you. So, yes, I see. No, it makes sense to break now. So we'll start with three at 2.00.

MR QUINEY: I'm grateful.

(12.58 pm)

(The short adjournment)

(2.02 pm)

THE CHAIR: Mr Quiney, we have a slight administrative difficulty in the sense that we don't have the D3 Redfern. So we have been able to follow the argument very easily because of the skeletons and also the summary document. But, unlike the main Redfern, we don't have the Redfern. So I don't know if that can be made good and provided to us.

MR QUINEY: My recollection is there was an Excel spreadsheet which isn't part of the bundle. I don't know if you have a spreadsheet.

THE CHAIR: Yes, we have the Excel, which I've been working from as well, but not the separate D3 Redfern with the columns completed for -- well, I do see on the WPBSA comments here, yes, on those.

MR MOUNTFORD: I think what happened is that we submitted ours in an Excel format and D1, D2 submitted theirs in a PDF format.

THE CHAIR: Yes.

MR MOUNTFORD: So their Redfern schedule is the Excel spreadsheet. It might just run across a couple of pages if it's been printed out.

THE CHAIR: Yes.

MR MOUNTFORD: So the D3 Redfern is the Excel. So the final --

THE CHAIR: I do have -- yes.

MR MOUNTFORD: So the final column should say Tribunal decision.

THE CHAIR: It does.

MR MOUNTFORD: So that's the D3 --

THE CHAIR: Yes, and that's what I've been working from this morning on the -- yes.

MR MOUNTFORD: Yes. So that's the D3 Redfern schedule. I think --

THE CHAIR: I see.

MR MOUNTFORD: -- D1, D2, I don't think it's an Excel. I think it's just --

THE CHAIR: Yes, and I have that too.

MR MOUNTFORD: It's the colour-coded --

THE CHAIR: I have exactly that, yes. I think, therefore, we have everything.

MR QUINEY: Just to clarify, obviously I've been primarily working off the PDF because there are a lot of joint positions adopted by the (inaudible).

THE CHAIR: Yes.

MR QUINEY: But we'll come back to the spreadsheet agreement on the (inaudible) as needed. I even have a spare copy of it.

So with that in mind, sir, what I'm going to propose is to keep going through all the requests. My learned friend Mr Rabinowitz has reminded me that, of course, we have a couple of points on the claimant's disclosure as opposed to the defendants'. They are essentially twofold: one, there are questions about keywords, which is currently being a matter of discussion, but I think there's a more general query.

THE CHAIR: Let's hope that discussion bears fruit.

MR QUINEY: Yes. There might be a more general query. So what I'm going to aim to try and do -- and this isn't just me, I'm speaking for everyone -- is try and wrap up all the defendants' disclosure by about 3.30-odd or 3.45, and that should leave

sufficient time to deal with the claimant's issues if we need, and see how we go.

THE CHAIR: Yes. I think we know the issues.

MR QUINEY: The parameters.

THE CHAIR: I think we ought to be able to skip through this now reasonably quickly, given that we have so much in written submission and you have made the general points effectively, if I can put it that way.

MR QUINEY: (Inaudible) so. We'll see. But I mean, request 3, which is the next request, might be a good example of this.

Request 3

MR QUINEY: So request 3, working off the WSL PDF document --

THE CHAIR: Yes.

MR QUINEY: There's a lot of ink on this document but really what it boils down to, as far as I understand it, is whether there should be disclosure for all three versions of the contract -- we'll refer to those -- or just two. Because you'll see that the issue is relating to the formulation negotiation agreement of the tour player contract.

THE CHAIR: Yes.

MR QUINEY: There were four iterations in issue; now there's just three. Iteration 1, the original contract, which is one which obviously features in the pleadings prominently, and then the revised contract. There is an agreement on the second and third of those as to the issue, the custodians and the keywords and the date range. The issue between us is whether or not -- and I've used the word continuum -- the continuum needs to be considered, so we look at the first iteration post SPA. That's the point of dispute.

THE CHAIR: That's the ten to 12 version.

MR QUINEY: Exactly. So when one looks in the last column, it's simply that, as an issue on the request, that an issue on the date ranges, because the custodians are

essentially agreed for that, as are the keywords.

I've already addressed you, my Lord, as to the importance to us of iteration 1. We say it is part of a continuum. You've seen that there's common clauses throughout the two versions: iteration 1 and the original contract. Plainly, that's a mainstay of our case on both chapter 1 and chapter 2. That's why we say it's relevant; and if it's relevant, then the discrete date range is the appropriate way and reflects the general scheme of how we approach matters.

THE CHAIR: Yes.

MR QUINEY: Those are my submissions.

THE CHAIR: Yes. Thank you. Yes, Mr Rabinowitz.

MR RABINOWITZ: Thank you, sir. As Mr Quiney submits, we have agreed to give this disclosure in respect of the two contracts which are alleged to be unlawful: the original contract and the revised contract. We understand my learned friend's submission that those contracts exist as amendments to prior contracts. But in our submission, the issue that arises in this case is what is the purpose and effect of the clauses in the original contract and the revised contract.

We submit that, at least in the first instance, disclosure should be in relation to the formulation of those contracts. If and insofar as when that disclosure is given and the claimant has considered it, they take the view that there's nothing in relation to the formulation of this clause, let's see if we can look at the -- you know, there's nothing in the disclosure in relation to a particular clause or the purpose of a particular clause in the original and the revised contract; perhaps we can look at the formulation of that clause in an earlier contract and thereby infer what the purpose of it is in the later contract.

That debate, we say, should come, if at all, after we've given our disclosure in relation to the original and the revised contracts. Those are my submissions. Sir, sorry.

THE CHAIR: So there is no burden argument? You're not arguing it's -- well, no, I'm not going to try and paraphrase it. You've made the submission and I understand it perfectly well. Thank you.

MR RABINOWITZ: Sir, sorry, may I?

THE CHAIR: Please.

MR RABINOWITZ: On burden, we do, of course, submit that there is an additional burden if we are giving disclosure in respect of this wide-ranging request.

THE CHAIR: Yes. It is necessarily a burden. Yes, I see that.

Yes, Mr Mountford.

MR MOUNTFORD: Sir, just to get very clear in your mind as to the terminology, could I just ask you to turn to page 415 of the bundle.

THE CHAIR: Yes.

MR MOUNTFORD: This is the defence of the first and second defendant (inaudible) Tribunal to paragraph 53. What that there explains is that the contract refers to the tour player contract generally at the time. The original contract refers to the version of the tour player contract in operation at all material times up to November 2024, and the revised contract refers to the version of the tour player contract in operation from November 2024 onwards.

So the reason that both the parties have agreed to give disclosure in relation to those is that they are the operative tour player contracts that were in force in the period in which the claimant says it was seeking to do various things within the market.

That flows through, then, to agreeing to give disclosure in the relatively tightly constrained period around when those were being negotiated, and so that's what one sees in relation to original contract.

THE CHAIR: Yes.

MR MOUNTFORD: Of course, this is a contract which is entered into between the

WSL on the one part and the players who are on the tour. So my client is not a contractual counterparty to that agreement. Nevertheless, in order to try to move things along, we have agreed to give disclosure in relation to anything that we might hold relevant to the negotiation of those contracts, even though we are not a party to those relevant contracts.

What we say wouldn't be justified would be to go back and say some original version of this contract existed back in the early 2010s and take a sort of two-year slice of that and say, "My client ought to give disclosure in relation to anything it might have in relation to a contract to which it's not a party over a two-year period". The burden of that may -- I don't know whether the documents will or won't exist in that period, but if they do, then it may result in an effectively two-year period coming into account, depending on your decision on other disclosure requests, which would otherwise have to be looked at. So for those reasons, we say that for my client, perforce, it's sufficient to have given (overspeaking).

THE CHAIR: I see. Thank you.

MR QUINEY: On those points first, Mr Rabinowitz suggesting that there should be some iterative quality to the disclosure process. We suggest that it's appropriate to get this dealt with now and dealt with all in one go, particularly when it hangs together logically under this request.

However, if that is the approach that's taken by the Tribunal (several inaudible words) but let's get on with it now.

The second, which is my learned friend seeking to disengage his client from the particular point. As I understand the essence of his point, which is, as put in his skeleton argument at paragraph 19.2, he says "D3 does not anticipate having any or any significant volume documents responsive to this request". That suggests that the proportionality argument is not a good one. That's against the background that, of

course, in some senses, the first iteration of this contract, the (inaudible) contract, is going to be of particular interest to the association at the time, given they were, amongst other things, representing the interests of the players after the SPA; in particular, how the players would or would not be protected when entering into what we would describe as a fairly swingeing contract.

So, oddly, out of all the categories of contracts iteration 1, original contract, revised contract, we would anticipate there would be more (inaudible) relevant documents when this is the first version being placed upon the shoulders of players. Those are my submissions.

THE CHAIR: Yes.

MR QUINEY: Sorry, I should not sit down quite yet; I've got to start with the next request.

Request 4

MR QUINEY: So moving on to request 4, taking the D1, D2 Redfern as the point of contact. This is an issue which is between myself and Mr Rabinowitz only. It says documents relevant to WSL parties, provision or refusal of sanctions for non-WSL snooker events. Just pausing there before we get into the detail.

What this is focusing on is the exercise of what's called the sanctioning process that you would have seen from the pleadings. There are essentially two forms of sanction under the tour contract, whatever version we're talking about. The first is a player comes to World Snooker and says, "I would like to play in this particular tournament; can I?" The second, which is the process which seems to be ad hoc and not formalised in the contract, is where a third party such as my client, a promoter, comes to WSL and says, "I would like to put on an event with players who are subject to your contract; can you get that?"

So we say that that is the prime example of the barrier to entry, because the oddity is

the idea that a competitor holds the whip hand, so to speak, as to whether someone can compete.

So that's what's focused on here. The response is that the request is too broad. I'm going to deal with perhaps the easy stuff first and non-controversial.

If the request is in play, and we'll see the counter-proposals in a minute, then we have at least the end date is accepted, 8 January -- there's a dispute as to the beginning date -- and there is a measure of agreement on the keywords, but there is a dispute on the custodians.

So looking at the competing requests we have here, we see that the proposal put forward by the claimant is in the green text in the second column, starting, "documents relevant to the WSL parties' provision or refusal of sanctions for non-WSL snooker events and/or sanctions for the participation of snooker players in non-WSL snooker events". And then you'll see that there are various additional points on the (i) onwards.

THE CHAIR: Yes.

MR QUINEY: Rather than read it all out, I'm just going to take you to the counter-proposal, which is in the second blue column:

"Communications between (a) the WSL parties and (b) non-WSL promoters and/or snooker players that relate to WSL parties' provision or refusal of sanctions for non-WSL snooker events and sanctions." [as read]

So the key difference in essence under what looks like a deceptively similar set of words is this. This is a theme that runs through a number of the disputes between the parties. What WSL wants to give my client is simply external communications between them and third parties. That's the communications between the WSL parties, non WSL promoter. My client wants that, plus internal communications within the WSL organisation relating to that decision-making.

Now, the reason why we say that that is both relevant and fair is for three reasons.

The first thing, and this is where we come back to the Hearn call, is we know that, on our case at least, there is a disparity between what WSL has said to our client, to the world, and what appears to be the internal decision-making or rationale for that decision to say no.

So we have, on the one hand, a formal letter from WSL in 2003 saying, "We declined because there'll be a clash", ie you can't have the sanction because we've already got a pre-existing event, then we've got Mr Hearn saying something materially different, although I won't read it out again. So if that's right then the internal correspondence will be a reflection of the likely true rationale for these decisions.

Second point, why is that important. Well, because one of the strands of our case is that the object of the restrictive practices between the parties is to restrict competition. While that object must be considered from an objective position, the internal correspondence and consideration of what the object is, or the purpose of the exercise of those powers, is probative and relevant.

Third point is that if there is -- as I mentioned and expanded upon earlier, but putting shortly -- an argument that there is an objective justification or legitimate justification for this, it doesn't lie in the mouth to say, well, here's just the decision. One has to understand the rationale. That's paired with the fact that the exercise of the sanctioning power, that you might have noticed from the clauses I took you to in both the original contract and the iteration 1 contract, is to be exercised reasonably. So if those points are in issue, which we say they are, then shutting the door at simply the external communication and saying no, it's not --

THE CHAIR: Yes, yes. I have, yes. Thank you.

MR QUINEY: So those are my submissions as to why we propose that the wider request is the right one.

THE CHAIR: Yes.

MR QUINEY: If that is right, then it follows neatly that the proposal for the date range of 1 January 2018, which we propose, as opposed to 1 January 2020, is the right date range. Because that is when (several inaudible words) the original contract.

Third and final point on custodians is that WSL doesn't consider a custodian search is necessary but that's premised on them being right regarding the narrowness of the request. If, however, we're right and the request should be in the wider terms that we've suggested, then there should be custodians and, therefore, the custodians we've proposed in the last column.

THE CHAIR: Those custodians, let me see, that goes over the page.

MR QUINEY: Yes, that's Steve Dawson, et cetera. Page 6 of the (inaudible).

THE CHAIR: Yes, I see. Thank you, thank you.

Yes, Mr Rabinowitz.

MR RABINOWITZ: Thank you, sir. In relation to this request, my learned friend made it clear that this request relates to non-WSL events other than claimant events. So this is events that are not organised by WSL and also not organised by the claimant, they're organised by third parties. In our submission, the key question in relation to WSL's decision making for these events is, what decision was made? What was the event in relation to which that decision was made, what were the details and what were the reasons given for that decision? We say that that will be apparent from the external communications.

Now, it may be that in relation to a particular event, my learned friend or the claimant takes the view or considers that there's something in the external communication which gives rise to some influence that the reason stated was not the actual reason and that there's some hidden reason for the decision. In relation to that we say, again, that that question of further disclosure as to whether there was some concealed reason should be done on the basis of disclosure of the reason given to the other side.

So we say, if the claimant wants to advance that kind of argument, that should be in a staged approach. So you get the disclosure of the decision and then you decide whether you want to allege that the reason given to the third party did not reflect the real basis for the decision. So that is my primary submission.

My fallback submission, if the Tribunal isn't with me on that, is that if the Tribunal does decide that there should be disclosure of internal communications, we would submit that (a), that should only apply where the decision is a refusal. So where WSL has decided not to grant permission or not to grant a sanction in relation to the event. This is purely on proportionality basis and on the basis that the claimant's case must be that there's no issue when permission is granted, that the issue arises if permission is refused.

The second element in my fallback submission is that, if WSL is required to give disclosure of internal communications, that should not be on the basis of wide ranging keyword and custodian searches. Rather, what should happen is the person at WSL who is responsible for making these decisions and communicating with the third party should essentially, for each decision, look back in his or her emails to find any internal documents relating to that decision. That, in my submission, is a much more targeted way of identifying these internal submissions than keyword searches for things like "sanction" or "third party and event" over, in my submission, a five-year period and, in my learned friend's submission, a seven-year period. So we say no disclosure of internal communications. If there is, it should not be keyword and custodian searches and it should only relate to refusal.

One further point, if the Tribunal is not with me on either of those points and finds that we should apply custodian and keyword searches, opposition to date has obviously been that there shouldn't have to be custodian keyword searches so we have not yet set out a position as to what the custodians and keywords should be in the event that

the Tribunal was to order the custodian keyword searches. So we would ask for an opportunity, if the Tribunal were to require keyword and custodian searches, to engage with the claimant as to what that should be. There's one particular custodian -- I can submit it now or I can leave that for liaising with the claimant -- that we do submit would be disproportionate to be included. I'm in the Tribunal's hands as to --

THE CHAIR: Mr Rabinowitz, I will invite you to engage with the claimants then on that point because I am not with you on this one. So please do take up that suggestion that you have sensibly made.

MR RABINOWITZ: Thank you, sir.

THE CHAIR: Mr Quiney, I don't need to trouble you further on this one.

MR QUINEY: I'm grateful.

Request 5

MR QUINEY: Moving to request 5. So this is, again, a matter between myself and Mr Rabinowitz rather than myself and Mr Mountford. You'll see that this relates to the reliance on consideration and enforcement of various clauses under both the original contract and the revised contracts. So you'll remember that they relate to, for example, the need to seek approval to do various things and to act in various ways which relate to the commercial operation of WSL. 7 and 11 deal with matters such as disciplinary issues.

So moving on to what's in agreement and what's in disagreement on this. First of all, there is an agreement on a secondary date range. That's secondary with respect to the second issue, which is the issue of the revised contract. Of course, that didn't come into play until very recently. There's disagreement as to the date range (inaudible) original contracts, which are (inaudible). There is agreement as to custodians for both issues and there is an agreement of a number of keywords for

both issues. So the matters of disagreement are the nature of the request, the first period of date range and additional keywords that have been proposed by my client. Dealing with the sort of key point, in essence, between the two issues. So there's no dispute that there needs to be consideration of both sets of clauses for both sets of contracts. You can see that in the first and the second blue column and the second green column.

There is a degree of disagreement regarding which clauses are in play, which I'll come back to at the end because that's not the main issue. The main issue is actually a reflection of the issue we've just talked about which is the nature of the scope of documents. Is it, as suggested by WSL, simply communications between the WSL parties -- this is the blue writing -- and non-WSL promoters? Or does it include documents relevant to those decisions and consideration and enforcement?

Again the conundrum is, is it externally facing decisions made (inaudible) communicated positions or is it also the internal consideration undertaken by D1 and D2 when looking at the enforcement and effect of these clauses. I'll just simply adopt the points I made earlier as to why that should be.

On the clauses, there's been an attempt by WSL, it seems like, to try and triangulate the clauses so that they don't have a repetitious effect with respect to those dealing with, for example, the disciplinary matters and such like. For our part, we think that doesn't add or take away anything and we would simply urge the --

THE CHAIR: I'm sorry, which is this point I was looking at?

MR QUINEY: I should be clearer. If we look at the blue language on the second column --

THE CHAIR: Yes.

MR QUINEY: -- where we see (i), clauses 3.2.5, et cetera.

THE CHAIR: Yes.

MR QUINEY: Compare it to (iii) and the green writing in the second column. It's 3.2.5, 3.2.6. So as I understand what WSL are seeking to do is they're saying there's a degree of repetition between the clauses cited in my client's suggestion and what has already been dealt with by request for. We disagree and we suggest that it's better to keep the form of language that we have suggested. If it really is a question of repetition then there's nothing gained or lost in that particular conundrum which is why we (inaudible).

Therefore, we now turn to the date ranges. The proposals are at page 8 of the PDF. So over the page in the last column. My client proposes 1 January 2018 to 31 November 2024. WSL, 1 January 2020 to 31 November 2024. So the start dates are the conundrum. We say the right date is the earlier date and I adopt my submissions regarding the nature of the establishment of the barriers to entry being the key point here, and that 1 January 2020 seems to be relatively arbitrary. So we would say (inaudible) probative and relevant to (inaudible) was from the beginning (inaudible) of the original.

As for the keywords, which is the final issue. So there have been some keywords suggested there and agreed. Again, a main difference between the keyword suggested is the clauses (inaudible) within the requested issue. If we go for the wording that had been adopted in the request put forward by my client, then it would follow that the keyword should be of the type that we see there. Further, it suggests that the player contract and breach -- breach being the operative word there -- is significant (inaudible). That's about (inaudible).

THE CHAIR: (Inaudible)

MR RABINOWITZ: Thank you, sir. I'll briefly try again on the internal external point, if I may, on this request. Unless --

THE CHAIR: Yes, yes.

MR RABINOWITZ: In our submission, the submission that internal documents are not relevant applies a fortiori in relation to punishments for breach because this is not a decision as to whether a third party can or cannot participate in a non-WSL event, which we understand to be the claimant's case. That's at the core and, therefore, they say internal deliberations as to whether a sanction should be granted or permission should be granted are central to the case. We don't see the relevance of internal communications in relation to what sanction should be applied for a breach of the contract. We think that's one stage even further removed from the core issues in dispute. That is, as I say, to some extent, parasitic upon the submission I made on request 4. But we do say it applies a fortiori in respect of request 5.

Briefly on date range. We appreciate that there's no magic to 2020 as opposed to 2018. It is just an attempt to try to constrain us within proportionate bounds. The claimant's case seems to be, in general, that there is actually no restriction on the date range that's relevant to this dispute, so now it says the restriction should be 2018, start of the original contract. We say, if you say there's no general restriction on date range, why not 2020 rather than 2018? We say that cutting it to five years rather than seven years would help from the proportionality perspective.

On custodians and keywords, custodians are agreed. The only dispute concerns keywords. As my learned friend mentioned, one of those disputes relates to whether this request should refer to clauses that in our submission are entirely covered by request 4. We say that is liable to give rise to confusion as to the scope of this request, as to what this request is intended to cover. We say it's cleaner for this request for the keywords to relate to those clauses which concern sanctions for breach. We don't understand why, for a request that concerns sanctions for breach, there is a need to refer to clauses that relate to permission to take part in a third-party event. We say the keywords should be defined by reference to the scope of the request.

In relation to the second dispute, which concerns the inclusion of a general keyword for player contract and breach; in our submission, our custodians will hold documents relating to any number of contracts which may also be called player contract, and also any number of breaches of that contract which do not relate to participation in third-party events, and that a keyword that picks up any document that relates to player contract and breach will pick up breaches of different contracts and breaches that have nothing to do with participation in third-party events. That's why we oppose player contract breach.

Those are my submissions on request 5.

THE CHAIR: Thank you very much. There's some force to that point, isn't there, Mr Quiney?

MR QUINEY: The last point, regarding trying to focus more on the questions of the breach of the particular clauses.

THE CHAIR: There is some force, isn't there, to the point about the breach, that keyword. There's certainly some force to that, isn't there? It's going to pick up any breach (inaudible) not entitled to that.

MR QUINEY: I do see the force in that, sir.

THE CHAIR: Yes. Yes, I thought you would.

I'm troubled by it, but, I think I'm with you on the internal/external, and I can see why that's relevant without explaining why now, necessarily. I'm with you on that point, and if you are prepared to let the breach go, I think I'm with you on this one.

MR QUINEY: Sir, we would be prepared to do that.

THE CHAIR: Yes. Thank you.

MR QUINEY: I'm grateful.

Request 6

MR QUINEY: If I can move on to request 6, which again is a matter between myself

and Mr Rabinowitz on this, and essentially it's a relatively narrow point. You will see, I hope, that there is only really one point of difference between us on the question of the issue request. One can see from the last two columns, the concern of this, so looking for documents or classes of documents relating to contracts between WSL parties and sponsors, then contracts between WSL parties, broadcasters and venues regarding prohibitions. Then there's a (iii), the annual summaries of monies paid. Then the difference in the last column is between (iv) as to either, as we ask, internal communications, minutes and presentations relating to the organisation of the WST calendar. (iv) (inaudible) my learned friend, final versions of the WST calendar (inaudible).

If you'll note, you might recall that there is an issue between the parties as to the practical effect of the clashing mechanism. We say, if you fill out your calendar, then there's inevitable clashes, and if that is the primary gateway or not to get into the market, then if you design your calendar to such a degree that it locks everyone out, because it's only when there isn't a clash that, certainly under the revised contract and even under the original contract, a sanction might be considered. That, for your note, is at paragraph 26.2 of claimant's reply to the first and second defendants at page 588. I won't take you to that, because that issue is not a matter of dispute. It's (several inaudible words). Again, this is essentially a similar point to the (inaudible). Mr Rabinowitz's client says you just need (inaudible) calendar. That will tell you everything you need to know. (Inaudible) we need to understand how the calendar is built, because it may be we're wrong about this. It may be there isn't any attempt to pack out the calendar and fill it as much as possible. There might be a completely legitimate reason for doing that, but until we see what's in the black box, we don't know.

On the point of the inferences that I made earlier, on the face of what we can see

outside the black box, it looks like it's being packed, and that's preventing our client and indeed did prevent our client from entering the market. That's why we say it's relevant. I think that is the major issue between us on the issue.

There is then a question as to the custodians, and if -- and this is purely on the question of (iv), as I understand it -- if you simply have to provide a calendar, you don't need custodians. But if you have to go behind the calendar, we say you do need custodians, and indeed, if you're with us on this point, we would have no difficulty liaising.

Equally, when one looks at the keywords, it's the same point again. If you're just producing a calendar, you don't need keywords. But we say you do need keywords, not just for the calendar, but also for all of the other matters too, and the same goes for custodians. Then finally -- that is the final point. Those are my points, sir.

THE CHAIR: Thank you.

Yes. Mr Rabinowitz.

MR RABINOWITZ: Sir, on the relevance of request 6.4, so that's the calendar point; if I may just turn up the paragraph of the reply on which my learned friend relies.

THE CHAIR: Yes.

MR RABINOWITZ: Thank you. That's page 588.

THE CHAIR: Yes.

MR RABINOWITZ: I'll leave the Tribunal to read it in a moment, but in my submission, the main allegation that's advanced in this paragraph --

THE CHAIR: 26.2?

MR RABINOWITZ: -- 26.2, yes -- is not that the calendar was deliberately packed with a view to forestalling claimant events, but rather that the calendar is in fact packed, point 1.

Point 2, that the timing with which the calendar is finalised makes it difficult for

non-WSL parties to organise events after the calendar has been finalised.

Point 3, that the power of WSL to restrict participation in events that clash with the WSL event is not legitimate. In my submission, none of those is an allegation that WSL deliberately packs the calendar so as to give rise to clashing events which it can then preclude.

In my submission, all three of those points -- is the calendar packed; what is the timing with which the calendar is released; and is it legitimate for WSL to have a power to restrict clashing events -- none of them require disclosure of internal communications in relation to the calendar, if I may just leave the Tribunal to read 26.2.

THE CHAIR: Yes, let me do that, and (inaudible).

MR QUINEY: Can I ask you to read 27 as well, please. (Pause)

THE CHAIR: Yes, but the case that's being made is this calendar is constructed in such a way to prevent competitive events taking place at a time that they would be susceptible to permission. That's it, isn't it?

MR RABINOWITZ: That is the allegation in the sense that they say the calendar is, as a matter of fact, packed in such a way that it makes it difficult.

THE CHAIR: It has been constructed to achieve that result.

MR RABINOWITZ: That may be where me and my learned friend differ as to the case that's been advanced, because --

THE CHAIR: We're not in the chancery division, but these points of claim are very important, and this Tribunal has to take cognizance of what's said or not said, and the meaning of it. I agree, but to my mind, for the purposes of today, is there not an inference there that that's the case that's being made and therefore documents that go to show how the calendar is being constructed and the purpose that lies behind it, what your clients are trying to achieve, are potentially probative of that point. If there are no such documents, because the calendar is just created and the events are

slotted in and that's an end to it, there will be nothing to see here.

MR RABINOWITZ: Sir, I won't try to give evidence from the bar, but my understanding is that there is a lot of communication within WSL as to how the calendar is set, that relates to nothing to do with non-WSL events. There is a lot, you know, in the sense that: how do we schedule this event in relation to our other event? How do we schedule this event in circumstances where there's a potential clash with the venue? In our submission, it's going down a rabbit hole, potentially very a large rabbit hole, to require disclosure at large in relation to how the WSL calendar is set. If the request were formulated in a different way, in a more targeted way --

THE CHAIR: Such as?

MR RABINOWITZ: -- without drafting, but something like the way in which the WSL calendar is set with a view to packing the calendar or reducing the scope for non-WSL events, that may be a different case.

THE CHAIR: Yes. The attempt at synchronising or scheduling with a view to having regard to other similar events which may or may not be taking place at the same time. Yes.

MR RABINOWITZ: Yes.

THE CHAIR: Yes, without trying to draft it. I can see where you're going. Yes.

MR RABINOWITZ: Thank you, sir.

THE CHAIR: No, I see that, Mr Rabinowitz. Yes.

MR RABINOWITZ: In that case, I'm not assuming the Tribunal's decision, but this is another request for which our position has been: if we're only disclosing the calendars, we don't need to propose keywords. Let's see what where we get to in terms of the scope of the request.

THE CHAIR: Yes.

MR RABINOWITZ: Then we will, if we have to, debate keywords and custodians.

THE CHAIR: Yes.

MR RABINOWITZ: I think that may be an (inaudible).

THE CHAIR: Can I just pick that up with Mr Quiney? Mr Quiney, that must be right again, mustn't it? Would you not be satisfied with formulating a request that goes to the point that I was just debating with Mr Rabinowitz?

MR QUINEY: Yes.

THE CHAIR: I thought you were. Thank you.

I'll leave you to agree with Mr Rabinowitz the custodian and keyword.

Does that satisfy you, Mr Rabinowitz? I think that point is dealt with, unless.

MR RABINOWITZ: On request 6.4, yes. Thank you, sir. It wasn't clear to me in relation to request 6.1 and 6.2. There's a dispute that's canvassed in the Redferns and in subsequent correspondence as to whether the references in request 6.1 and 6.2 to contracts is intended to refer to formal contracts or a more nebulous -- any form of agreement that might be ascertained between two parties. I don't think my learned friend addressed that, but our submission is that contracts in the context of this request quite clearly means formal written contracts, and that even if it did not, it would not be proportionate to require the WSL parties to trawl through all of their emails to see if they can find something approximating to a contract. Thank you, sir.

MR QUINEY: I'm very grateful for my friend raising that point. In a sense, the reason why it isn't raised is because we all agree that the issue should be phrased regarding contracts, but I think we disagree and it may be of assistance to receive guidance upon the Tribunal as to what a contract is in these circumstances. When we talk about contracts on our side, we use it in what I would say is the true legal sense, which is it doesn't have to be a formalised document, signed and sealed and delivered. You can have a contract by way of an email, exchange of letters, WhatsApp these days, as long as there's a formal offer and acceptance of that.

THE CHAIR: It can be contained within and made -- yes.

MR QUINEY: I think the difference between myself and the way my learned friends' client is approaching life is that what they mean is something like, for example, the SPA, which is a formal bind off, much like if that is the way they're going to interpret it, we would part company with that and go for the wider (inaudible). It might be useful if the Tribunal (inaudible) at that point.

THE CHAIR: Yes. Well, the difficulty is there are a number of ways in which a contract can be made: in writing, orally, can be inferred. So that does make it rather difficult, doesn't it, for the respondent to have to decide and form a view whether what results from this exchange amounts to what in law would be considered a contract.

MR QUINEY: I agree that there is a spectrum here. I agree that at one end of the spectrum there's the obvious contract, if I can put it that way, such as the (inaudible). I agree that at the other end of the spectrum, there might be an exchange of WhatsApps, of information saying, well, (inaudible) contracts at all (inaudible) to treat, et cetera.

But there is a middle ground where, for example, an exchange of correspondence is capable of forming a contract, even an exchange of emails. The concern on this side is that, knowing the snooker world as my client does -- not necessarily me, but my client -- it is not unusual for perhaps more ad hoc arrangement to be reached.

THE CHAIR: Are you not now straying into the very territory that Mr Rabinowitz sought to avoid and that's giving evidence from the bar? That's not a submission that I can accept.

But I think where you're headed, isn't is, an agreement which Mr Rabinowitz's clients accept they have entered into. If they have entered into an agreement and there is a contract, however it was formed, that's what you're shooting at?

MR QUINEY: Yes.

THE CHAIR: So that they do not have to themselves -- the inquiry is only, if you have entered into a contract, however it was formed, that's what you're shooting at.

MR QUINEY: Yes. So in that instance, it sounds like there probably is a position of common ground on the spectrum I've described, which is if there is a contract, it doesn't need to be signed, sealed and delivered.

THE CHAIR: They feel they've entered into one. Yes.

MR QUINEY: But it can be signed --

THE CHAIR: Documents relating to that, you want to see disclosed. That's your position. Now, I know you both want to make submissions.

Mr Mountford, I'm not sure this involves you, this particular --

MR MOUNTFORD: The reason --

THE CHAIR: So unless it's something particularly important and given the time --

MR MOUNTFORD: The reason is this is directly overlapping with request 8 of the WPBSA and 12, which is where the issue is between the parties as to what the meaning of contract is. So if the Tribunal is going to grapple with this now, I think we should grapple with both of those. Let me say what I say about that as well, because I'm --

THE CHAIR: Would you mind if we just deal with that when we come to it? Because we're making progress now, and I'd like to just keep the train moving. Yes, Mr Rabinowitz, you please do come back on that.

MR RABINOWITZ: Yes. Just picking up on the point of, it's for the WSL parties to identify documents that they have entered into that they consider to be contracts.

THE CHAIR: Yes.

MR RABINOWITZ: On that basis, I wonder if it might be possible to cut through the difficulties of identifying those by moving away from keywords, asking all of the relevant custodians, "Please identify any contracts that you have entered into with

these parties".

THE CHAIR: Yes.

MR RABINOWITZ: Thank you sir.

THE CHAIR: That's a very sensible suggestion to me, Mr Rabinowitz, and I'd be surprised if Mr Quiney wants to push this any further.

MR QUINEY: I'm not going to push my luck on that. But I would say that, of course, what I'm anticipating in that case is not a statement, but further information on some of the other cases. If there are various points raised on that, we reserve the position to respond.

THE CHAIR: Yes.

MR QUINEY: I'm grateful, sir.

Request 7

MR QUINEY: So, trying to keep the show on the road, as we say, we're now on to request 7. This is all about Mr Hearn. The short point is that the role, powers, functions, influence of Mr Hearn is a key issue here. As it happens, I'd be grateful if I could actually take you to Mr Rabinowitz's skeleton, where he usefully sets out the two proposals in two columns. His skeleton argument at page 15 and his paragraph 50.

THE CHAIR: Yes.

MR QUINEY: What we can see from the claimant's proposal here is that they accept that the role, powers, control and influence of Mr Hearn is a relevant consideration here. The difference between the parties is what sort of documents we would be looking for and indeed, we will see what sort of keywords, but not the custodians and not the date range; those are agreed.

So here we have, a number of different categories where my client, at (i) (ii) and (iii) have sought to further particularise the role and functions and documents of Mr Hearn.

Now, we know that Mr Hearn is central to this, so what is a relevant document? We would say, if you're having a communication or an attachment -- this is (i) -- for Mr Hearn since April 2021, that's the beginning of the date range, and any communication documents created by Mr Hearn on behalf of the WSL parties were relating to their affairs after April 2021 that relate to the provision or refusal of sanctions.

So these are a body of documents and communications generated by Mr Hearn with respect to the very powers --

THE CHAIR: Yes.

MR QUINEY: I'm grateful. Then you would expect to see at (ii) that minutes of board meetings would reflect that, because obviously, if we're wrong about Mr Hearn, he won't be there or involved or mentioned. And (iii), formal agreements and formal documents.

I'm grateful.

THE CHAIR: Yes, Mr Rabinowitz. What would you say to this?

MR RABINOWITZ: Thank you, sir.

THE CHAIR: Mr Hearn, they say, doesn't like competition, and so they want to see any documents that show his involvement in the decision-making over the granting of permission. That's the point, isn't it?

MR RABINOWITZ: Yes, sir. The disclosure that we've agreed to give is any communications and their attachments received from Barry Hearn since April 2021 that relate to the provision or refusal of sanctions for non-WSL events. That's what we've agreed, which we say is very wide-ranging indeed.

The dispute between the parties on this point is essentially whether to remove the only limiter on that, which is "that relate to the provision or refusal of sanctions, the non-WSL snooker events".

The claimant's position seems to be that because the WSL parties have pleaded the case to the effect that Barry Hearn did not have decision-making powers at the WSL parties after April 2021, it necessarily follows that any document relevant to the decision-making powers or influence of Barry Hearn over the WSL after 2021 must be disclosed.

We submit that that misunderstands the approach to disclosure in the CAT which must be proportionate and targeted at the actual issues in dispute and in this case, the actual issue in dispute in relation to Mr Hearn is: did he have decision-making power in relation to non-WSL events and the grant of permission in relation to non-WSL events? That is the issue at which we say disclosure should be targeted.

There are disputes in relation to -- sorry, the date range is agreed; custodians are agreed; keywords, there is a disagreement, I think, that probably follows the dispute that we're having in relation to the formulation of the request.

THE CHAIR: I see the point. Thank you.

Yes, Mr Quiney, how do you respond to that?

MR QUINEY: So with respect to the core dispute between the parties, sir, you summarise it very briefly and succinctly, which is of course that we say that Mr Hearn has structured the enterprise to prevent competition; however, it goes further than that. Because there is a matter raised by parties to say that Mr Hearn has effectively disengaged -- you can see why they're saying that in the reflection of the Hearn call -- we say that the inquiry goes wider and, in the fashion that we've described it in requests seven because if they're going to put an issue that Mr Hearn is no longer a relevant party or partner in the enterprise, then that's an issue between us and that's a matter of relevance.

THE CHAIR: Yes, but what you want to see is set out in, as Mr Rabinowitz put it, the limiter that relate to the provisional refusal of sanction for non-WSL snooker events

and sanctions for the participation. That's the meat of it, isn't it? That gets you what you need. This Tribunal looks at what's necessary when it approaches disclosure. What do you say to that?

MR QUINEY: (Several inaudible words). (Pause)

We would say that actually this is an instance where we don't think it gives us what we need. That's because -- just bear with me a moment here again -- when we're looking at the decision-making, it's a wider inquiry than simply dealing with the ...

Can I take instructions?

THE CHAIR: Yes. (Pause)

Yes. Thank you.

Request 8

MR QUINEY: Now moving on to issue 8, if we may. This one deals with Alexandra Palace. This is essentially a similar internal/external conundrum as we've touched on.

Looking at the request, the date range is agreed. The major issue between the parties is whether or not internal documentations and any communications relating to Mr Francis's plans to arrange the exhibition match in Ally Pally should be the issue. The proposal is: no, any communications with Alexandra Palace that related to exclusivity.

The key point here is that it's the position of my client that there was an exclusive arrangement; indeed, that was the reason given to them by Alexandra Palace for refusing to deal with them at that point. That's a barrier to entry. That isn't necessarily something that would appear within this date range, simply external, because it would be unusual for a letter saying, don't deal with Mr Francis, but there is a real likelihood that it might be an internal communication. That's our difference.

THE CHAIR: Yes, Mr Rabinowitz.

MR RABINOWITZ: I'm not sure I follow that point, sir, because the claimant's proposed date range is November 2022 to January 2023. In our submission -- and that is on the basis that they had this exchange with Alexandra Palace in that period. They say that Alexandra Palace came back to them and said, "We can't do this because there's an exclusivity arrangement with WSL".

Now, if our internal communications mentioned the claimant's event, that must necessarily be because we were contacted by Alexandra Palace in relation to the claimant's event, in which case, the communications with Alexandra Palace would disclose the type of exclusivity agreement that the claimant is getting at. So I'm not sure I follow the submission that they need to see internal communications that relate to this event. My submission is that, if there is some exclusivity agreement that WSL relied upon in order to preclude this event, that must necessarily come out of communications with Alexandra Palace. On any view --

THE CHAIR: Is that of itself a good reason why you should not disclose any internal communication?

MR RABINOWITZ: Perhaps it's worth dialling back and seeing the alleged relevance of the Alexandra Palace event. The Alexandra Palace event does not fall within the scope of this claim in the sense that it's not an event for which the claimant requested permission from WSL; WSL refused permission; the event didn't go ahead and therefore the claimant claims losses. It's not one of those events.

The only reference to it in the claim form, and the references are in my skeleton, but it's claim form 94.4 -- I can take you there if it would assist --

THE CHAIR: You can paraphrase the point.

MR RABINOWITZ: -- and defence 80 to 81. The reason it's referred to there is because it's used to build an influential case that the defendant has an exclusivity agreement with Alexandra Palace. It's not used as part of the claimant's claim that we

tried to organise this event and you scuppered it. It's simply an evidential point. They say, "We allege that you had exclusivity agreements; we had this exchange with Alexandra Palace, which we say gives rise to an inference that you did have these agreements and therefore the Alexandra Palace event is relevant".

So we say the Alexandra Palace event is relied upon for that narrow question: do you have exclusivity agreements with event venues? In those circumstances, we do not see the relevance of internal communications within WSL in relation to that event.

THE CHAIR: So you don't see that you need to give disclosure of such communications, if any exist, in circumstances where you are already agreeing to give the external documents. That's what you say, isn't it? It's not that you don't think you should give -- it's not necessary, given that you already have given the external, there is no need to go and carry out -- it would be an unnecessary burden for you to go further.

MR RABINOWITZ: That's what we say, sir. But I think the submission perhaps goes slightly further than that, in that the relevance of the Alexandra Palace incident on the claimant's case is that there was an inter partes agreement between WSL and Alexandra Palace. We say that the documents relevant to that will be between us and Alexandra Palace, if --

THE CHAIR: Yes, I follow, and in the context of the role that this allegation plays in the overall case, this is one of those instances where the claimant can be satisfied by receiving the external disclosure alone, is what you say.

MR RABINOWITZ: That's my submission, sir.

THE CHAIR: Yes, yes, I see. I'm grateful to you. Thank you very much, sir.

Yes, Mr Quiney, do you want to come back on that?

MR QUINEY: Certainly. So my learned friend is right to say that this is part of the inferential case, but that's an inferential case my client's entitled to make for the

reasons I explained earlier before lunch.

THE CHAIR: Yes. But you accept that I'm entitled to look at the extent of disclosure, taking into account the nature of the case that's made and its importance to the case and so on.

MR QUINEY: And it is also a point of dispute between the parties because WSL have asserted they do not have any agreement of that nature. It is a tight time frame. But the point that my learned friend suggests is that there would necessarily be documentary evidence of communications between themselves and Alexandra Palace. (Inaudible) simply be a phone call. There would be no evidence if we take the narrow external approach.

However, there may well be internal emails to the effect. Which is, "We've heard that ... Someone's got to ring Ally Pally and tell them they can't go ahead with this". So to say that the external documentation is going to be the complete picture is not the case. To say that it's not relevant is not the case either because it is a disputed issue and it goes through our inferential case. So that's why we invite the Tribunal --

THE CHAIR: Yes. I don't think it's an argument on relevance. It's an argument on necessity and whether it's proportionate to order that as well given the importance of this particular allegation, the function it performs in your overall case and the documents that you are necessarily going to receive. That's the argument; isn't it?

MR QUINEY: I would agree, sir, that it is being put in that way as a proportionality and necessity argument. The proportionality -- we can come back to the points that we made earlier, or I made earlier -- which is, proportionality must be contextualised. We're not being told that this is going to be a materially difficult process for any principled or evidential purpose. More importantly, if you're searching -- and this is a matter of common sense rather than evidence, I suggest -- for external documents or communications regarding Alexandra Palace, you're going to be searching those

custodians' outboxes and such like, or inboxes and such like, and just to add a further search to look for internal communications is that (a), they're probably going to be picked up on the search as a matter of practicality and (b), it wouldn't add much to the onus of what (several inaudible words).

THE CHAIR: Thank you.

Requests 9 and 10

MR QUINEY: So we now come to requests 9 and 10. There was only one issue between the parties, me and Mr Rabinowitz, which is the use of the keyword NST. We've agreed that it can be used. So that brings us to issue 11. Issue 9 and 10 I should say was an issue between myself and Mr Mountford as well, but I don't understand that that's an issue anymore. That's fallen away too so we can move on to 11.

THE CHAIR: So I have nothing before the Tribunal on 9 and 10.

MR QUINEY: No. Which is hopefully of assistance.

So, 11. Just bear with me a minute while I arrange my papers.

THE CHAIR: Mr Quiney, we will need to have a short break for the transcribers at some point in the near future. I'm just saying that in order that you can plan your -- if it's a short point, let's deal with it. If you feel it's something that's going to take a bit longer to deal with then maybe we break now. If we can get something dealt with now, let's deal with it.

MR QUINEY: I'll try and do it very quickly.

THE CHAIR: Thank you.

MR QUINEY: Relatively quickly.

Request 11

MR QUINEY: So, question 11 is put in these terms originally, in red text:

"Any documents relevant to the WSL Parties' competition law obligations,

commitments, potential breaches, or its understanding of its market position and/or market dominance."

This is fully disputed in the date range, June 2010 at the beginning of the SPA to December 2025. It is also disputed.

This goes to, of course, the issues that aren't subject to the same pleading points as are the chapter 1 abuses. This is all going primarily to chapter 2. This deals with whether or not there was an understanding of the dominant position that was occupied.

Now, what we're not talking about at all is any legal advice on that. That's clearly going to be covered by privilege. What we're more considering is, again, just to illustrate the point in the Hearn call, if there is a recognised, anti-competitive, dominant position here, and that is the entire purpose of the SPA, the tour contracts, the structuring of the sport, then it is likely there will be documents that at least avert that if not explain that when the decisions are being made.

Equally, that goes then to the chapter 1 point which is, is there an object here? What is the purpose of this? What is the purpose of the arrangement between the relevant defendants?

Then thirdly, you have the legitimate aim point as well. Which is --

THE CHAIR: Isn't any such document going to rely upon the legal advice received? How likely is it that there are such documents that are not going to be put in privilege somehow, because it recites the advice, is based on the advice, "Here is our position following the advice we have received".

MR QUINEY: So, to answer your question, sir, I agree. I'm going (several inaudible words) to the spectrum. At one end of the spectrum, you have (inaudible) telling you, or maybe (several inaudible words) that is (inaudible). On the other end of the spectrum, you've got discussions about how do we control the players, how do we have the major share, how do we make the most (several inaudible words). And that's

because the notion of competition has a particular (inaudible) it also has a commonplace meaning (inaudible). Say it's out there -- and I say we've got good reason to think it is -- you have people within the organisation patting themselves on the back and saying, "Yes, we control a 95 per cent share of this particular market". Let's say it's even on a PowerPoint presentation. "Yes, we control most of the competitions in Europe". Okay. That's a good start on (inaudible). What we're not talking about is competition or obligations. (Several inaudible words) legal sense (inaudible) how the understanding (inaudible). Those types of (several inaudible words). That's why we say (several inaudible words).

THE CHAIR: And this, of course, is not in relation to the chapter 1 -- it's not part of your case in relation to the concerted behaviour. This is just in relation to the WSL parties, as I understand it. Forgive me Mr -- (overspeaking). I'm sorry? You do go further than that.

MR QUINEY: We do go further than that, ie this is a point for (inaudible) defendants as much as it is for (inaudible).

THE CHAIR: Yes, I see. Yes. Anything else that you want to ...?

MR QUINEY: No, those are my main points.

THE CHAIR: Yes, Mr Rabinowitz. Sounds like fishing to me, but you make your submissions however you like.

MR RABINOWITZ: It sounds like fishing to me as well, sir. Firstly, on the point that this only goes to the chapter 1 prohibition, I don't read that on the face of this request. It says any documents relevant to the WSL parties --

THE CHAIR: That was what (inaudible) to me, yes.

MR RABINOWITZ: Yes, so we don't understand that as a limiter and we are wary of the request being ordered against us on the premise of something my learned friend says and then, when we're having to work out whether one document does or does

not fall within the scope of the request, we have to go by reference to the request as formulated. So our submissions in this request are as follows.

First, a very large proportion of these documents are likely to be privileged. It's all very well my learned friend saying, well, you can hold those back, but for each of those documents we have to review them, we have to consider whether they are in fact privileged. That requires a legally-qualified reviewer to take a view on privilege. It does add to the burden of having documents within the scope of the request that are privileged, even if we don't actually end up disclosing them. So having a broad request for privileged documents and then saying, "But you can withhold them for privilege" doesn't really assist in my submission.

Now, in relation to the remainder, if there are any, documents that are not privileged but relate to the:

"WSL Parties' competition law obligations, commitments, potential breaches, or its understanding of its market position and/or market dominance."

We say that these are objective questions. What is WSL's market position? Is it dominant, has it abused its position? These questions are not, at least principally, not questions of subjective intent. So we say these questions are to be asked objectively.

Finally, insofar as there is some subjective element to any of these issues, in relation to the specific allegations of anti-competitive conduct against us -- the SPA, the original contract, the revised contract and the decisions made in relation to the claimant events -- we're giving wide-ranging disclosure, internal disclosure, that will disclose the WSL parties' subjective views insofar as they are relevant.

So for those reasons: firstly, most of this will be privileged; secondly, to the extent that it's not, most of it will be irrelevant because it's subjective; thirdly, to the extent that it's subjective and relevant, the very large majority will be disclosed anyway. We submit that this request should be dismissed.

MR MOUNTFORD: Sir, this corresponds to request 10 that's made of the WPBSA in the Excel spreadsheet for my client. We say this is a wild fishing expedition over a 15 year period. Even if it identified a non-privileged needle in a haystack, it's not going to assist the Tribunal to determine these issues. If one looks at the formulation in request 10 of my client, the request is:

"Any documents relevant to the WPBSA's competition law obligations, commitments, potential breaches, or its understanding of the WSL Parties' market position and/or market dominance."

Well, you can test that, sir, by looking at the period just immediately after the formation of the SPA, 12 years before the claimant was on the scene. Well, if there's some reference to how the WSL is doing since these rights were transferred to it, that would be something which relates to their market position. So it's wild, it's unfocused, it's a fishing expedition which should be refused in its entirety.

MR QUINEY: Well, apparently my submissions are wild and fishing but, you know, I understand why that's being said. The short point is, if there is legal advice, it will be caught by privilege. The way that the search terms would work would pick that up relatively straightforwardly. We certainly haven't heard about the actual particular hardship. What we are perhaps most focused on in this request is the notion of market position or the market (inaudible) of this particular organisation. That is something that would be (inaudible) by all three defendants. So if you're not with us on the full terms of that, that's what we'd ask to focus on (inaudible) to issues within (inaudible). Those are my submissions.

THE CHAIR: Thank you. Yes, Mr Quiney, I think you're still on your feet. I have your submissions on that point.

MR QUINEY: I was going to --

THE CHAIR: Yes, you were right to sit down because we are going to have a break

now. Yes, we'll come back at half past or just after that should be adequate. Thank you.

(3.20 pm)

(A short break)

(3.32 pm)

MR RABINOWITZ: Sir, if I may.

THE CHAIR: Yes, Mr Rabinowitz.

MR RABINOWITZ: Just a brief point in relation to timing. My learned friend and I discussed over the lunch adjournment that I would need something like half an hour, maybe slightly less than that, but a short period at the end just to deal with the point of principle in relation to claimant disclosure. I understand from my learned friend that currently his view is that might not be possible. We do submit that in the context of a full-day hearing, having 20 minutes or half an hour on claimant disclosure is not an unreasonable ask of my learned friend.

THE CHAIR: To what extent is it still in dispute then?

MR RABINOWITZ: The only point on which I would like to make submissions is the point of principle set out in my skeleton argument, in relation to the need for the claimant to either supplement the keywords that are currently in issue to reflect the details of the events in respect of which it claims, or to confirm that it doesn't have any further keywords to add that would correspond -- this is the point for submissions -- to the details of those events. It is a short point but it is, in our submission, an important one.

THE CHAIR: So it's a point that requires a decision from me?

MR RABINOWITZ: The way we put it in our skeleton is just that it's a point on which we would ask for guidance from the Tribunal.

THE CHAIR: But -- and forgive me that I don't have it at the front of my mind -- you

have dealt with it in your skeleton?

MR RABINOWITZ: Yes, sir. It's --

THE CHAIR: I will do my best to ensure that you have sufficient time today to ventilate the point. But, to the extent that it's necessary, I can specifically deal with the point when I revert on the completed Redfern, and give the necessary guidance then.

MR RABINOWITZ: Thank you very much.

MR MOUNTFORD: It's rather a general time (inaudible) how many of the (several inaudible words). Obviously, it's helpful to be having submissions, reply, rejoinder. It's helped to narrow down but, I have said to my learned friends, I think we all have to be a little bit snappier to get through even the disclosure requests by the end of today. I do associate myself that it would be helpful to at least have five or ten minutes at the very minimum for Mr Rabinowitz to be able to --

THE CHAIR: Well, let's make sure we do.

Request 12

THE CHAIR: Yes, Mr Quiney.

MR QUINEY: With that in mind, sir, if I could take us to request 12. This is a point that Mr Mountford has already said he would like to address you on, but it's a point that I've already addressed you on, which is essentially this. The request here is for: "Any concluded contracts and/or heads of terms between WSL Parties and the WPBSA."

A date range of 2010 to 2025. There is a disagreement as to what "contract" means -- that's the point we touched on previously -- and thereby there is a disagreement as (several inaudible words) short point from (several inaudible words) adopting the spectrum I (inaudible) earlier. It isn't just SPA-type (inaudible).

THE CHAIR: Yes.

MR QUINEY: It might be correspondence (inaudible) but, of course, if there's

something more vague than that, there's an exercise of discretion --

THE CHAIR: Yes.

MR QUINEY: -- within the disclosure process.

THE CHAIR: I thought where we were trying to end up was if you think you have entered into an agreement, any documents that relate to that agreement should disclose.

MR QUINEY: To a degree we're going to have to trust whoever's making that decision to do it properly and justly, which I'm sure we can.

THE CHAIR: Thank you.

Yes, Mr Mountford, is this you picking up on this one?

MR MOUNTFORD: So this corresponds to request 8 to WPBSA.

THE CHAIR: Yes.

MR MOUNTFORD: If you can just have a look at that in the spreadsheet.

THE CHAIR: Yes.

MR MOUNTFORD: So the initial formulation, from the claimant side, was:

"Any contracts and/or agreements and/or heads of terms between the WSL Parties and WPBSA."

We proposed, this is in the fourth column:

"... any concluded contracts ... and/or heads of terms ..."

Then, if you look along to see what the NST response was --

THE CHAIR: Which is not a million miles away from what I said a moment ago (overspeaking).

MR MOUNTFORD: Exactly, "any concluded contracts and/or heads of terms".

THE CHAIR: Yes.

MR MOUNTFORD: So they agreed to remove the word "agreements".

THE CHAIR: Yes.

MR MOUNTFORD: But we don't want to do a 15-year search. We don't believe there are any other contracts in place other than the SPA. We're certainly happy to ask the personnel on our side again, "Do you believe there's any other contract that was entered into?" But what we aren't content to do is to go into --

THE CHAIR: Sorry, any other contract entered into ...?

MR MOUNTFORD: Between the WPBSA and the WSL.

THE CHAIR: Yes.

MR MOUNTFORD: But what we don't want to do is to do a 15-year search to try and find, is there some kind of email which gives rise to some kind of agreement that's not a sort of formalised agreement.

THE CHAIR: I don't think that's what's intended here. So I would be surprised if there's any disagreement. If your client believes that it has entered into an agreement, however that was done, whether by email or WhatsApp as was said earlier, then that's what should be disclosed. Documents going to that should be disclosed.

MR MOUNTFORD: Its contract, because the word "agreement" was struck by agreement.

THE CHAIR: I'm with you. Contract. Yes.

MR MOUNTFORD: So it's contract. Because there could be an agreement, for example, "Do you mind if we switch this from a Tuesday to a Wednesday?" Well there's all those kind of agreements but that's not what we're talking about. We're talking about -- know the term by reference to its neighbour, "any concluded contract or heads of terms", these are agreements with a degree of formality to them. If we think there was anything else along those lines we would obviously disclose them, but we can't do a 15-year trawl. Because, sir, of course --

THE CHAIR: The distinction between an agreement on the one hand and something that's legally enforceable as a contract on the other, is a fine one for these purposes,

isn't it? Yes, I agree, "I'll see you tomorrow for coffee at 3.00" is an agreement to meet at 3.00 tomorrow and I don't think it's such engagements that we are concerned with. But anything to which effect could be given as an agreement for commercial purposes is. Now, how to --

MR MOUNTFORD: I think this isn't a case, for example, you know, sometimes one sees in other courts, you know, an agreement that was done on the steps of The Dog and Duck and it was an oral agreement and monies were lent under it and it was documented --

MR QUINEY: Sir, if it may be of assistance, we're not asking for those agreements. We're asking for what we've described as a concluded contract or heads of terms. But what that means is what I've said, which is not just a contract that is signed, sealed and delivered. That could be by correspondence, by email or by WhatsApp or whatever if it is a legally prescribed contract.

MR MOUNTFORD: I think the point for us, sir, is we don't have an issue with asking -- our understanding is that there is no other concluded contract or heads of term than the SPA. We can certainly ask that question again. What we're not prepared to do is to search for 15 years' worth of records to try and find things which might be said to amount to that, if nobody understands that there's any other contract that was entered into. So I think that was what you were proposing before, sir. That seems sensible to us. We're happy with that. And we don't need to get into this question of where that line exactly is. But if it's being said "No, because it's going to capture something more. Then you have to do 15-year searches", then I'm afraid I have to press the point.

THE CHAIR: Well, I'm going to say two things. Number 1, it would be helpful to the Tribunal to receive a consolidated Redfern which takes into account both the D3 and the D1 and D2 issues because, at the moment, I'm working from two documents. So

a consolidated Redfern to be delivered in short order would be particularly helpful. And if, in that consolidated Redfern, between you counsel could tidy up the nature of the request on points like this, we can see the way it's going so that it's easy for the decision to be made or agreement to be reached. If a decision has to be made on it, a decision will be made but I would like to think that on points like this we can see where the proper outcome lies.

MR MOUNTFORD: Sir, in my skeleton argument, you will have seen that every time I deal with a request, for example, request 10 of D3, I note in brackets, "corresponding to request 11 of D1, D2". So if you work through my skeleton argument, you can see exactly how they marry up to ones that are common to D1 and D2.

THE CHAIR: Yes, and I'm sure we can, but a consolidated Redfern so that it deals with D1, D2 and D3 would be helpful.

MR MOUNTFORD: Well, can we ask the claimant to prepare that based on the --

THE CHAIR: I'm quite sure Mr Quiney will do that and you will get to see it before it comes to me.

The second point I was going to make is just on the nature of those documents. There's one document that hasn't been mentioned, because the Tribunal is being obviously relevant, and that is a shareholders agreement because we have here a continuing shareholder relationship.

Have I missed that, Mr Quiney? Has it been expressly requested and dealt with already so that's why I'm not seeing it? Or is it something that's ...?

MR QUINEY: That's a very good question if I may say so, sir. I haven't got a straight answer for you at the moment. I'm just going to take instructions.

THE CHAIR: Okay.

MR MOUNTFORD: Sir, my understanding is that there is no such document, that the SPA and the articles are --

MR QUINEY: It may well be that that's the answer. We've already asked for it and that's the response we've had.

THE CHAIR: So we have the minority continuing position, the SPA, but no SHA?

MR MOUNTFORD: Correct. That's my understanding, sir.

MR QUINEY: Yes.

THE CHAIR: Thank you.

MR RABINOWITZ: I may need to take instructions on that, sir.

THE CHAIR: Yes, of course. (Pause)

MR RABINOWITZ: Thank you, sir. I understand that there is a shareholders' agreement and we will disclose it.

MR QUINEY: Maybe we could just deal with this in correspondence.

THE CHAIR: Thank you very much, Mr Rabinowitz. I could be wrong, but that might be an important document.

Yes, please.

Request 13

MR QUINEY: Request 13 is dealing with a number of issues that we say go to the documents relevant to the agreements, joint decision-making arrangements, concerted practices between the defendants. So this is the chapter 1 point, if I can put it that way.

The issue in the list of issues, just to remind you, sir, is set out, amongst other places, but predominantly at clause 8. Clause 8, at 8.1, talks about the issue being an agreement or concerted practice between undertakings. 8.1 to 8.3 talks about the contract (inaudible) have. 8.4 talks about the effect of those contracts and issues generally, for example.

8.4.1 -- this is at 951 in the bundle -- any alleged ceding of powers from the association to WSL. 8.4.2, the alleged close co-operation and ties between the defendants. 8.4.3,

the alleged promotion of commercial interests and operation of the WSL parties by WPBSA to the exclusion of third parties. 8.4.4, any alleged failure of WPBSA to (inaudible) one of the SPA.

The meaning of clause 6.1 SPA and then the broad issues dealing with the agreements and concerted practices, whether they had particular effects and such like.

THE CHAIR: Yes.

MR QUINEY: That's the issue that's before you today, sir.

The reason I'm perhaps belabouring the point is because I'm anticipating a critique of various pleading issues going to relevance, not going to whether they exist. As a precursor to that, I would suggest that that is not an overweening point. The starting point is the list of issues, and those are the issues.

If one's talking about how to frame the request, then the pleading might assist in dealing with the parameters of the request, but not the full-scale attack on the request itself, which is what's going on here.

So if it's said, for example, there's a particular issue here at (iii) of request 13 about the ceding of the powers under the SPA to WSL. Is that a pleaded issue? If it is a pleaded issue, then no, it is a matter of relevancy and we're through the relevancy gate before we get to proportionality.

What we sought to do within request 13 is start with the general proposition, which is those documents that relate to effectively the concerted practices, and then seek to divide it into subissues to give guidance on the person who is seeking to do so. For example, division of responsibilities between the parties, the enforcement of the terms of the SPA, ceding of the powers, professional ranking list, payment of charges, functions performed by the (inaudible) annual management charge, and then the WSA (several inaudible words), disciplining the players, the promotion of the players,

appointment of Mr Ferguson and (inaudible), the role of Mr Ferguson and the role (inaudible).

Focusing on the question of the relevancy of the request, I would bring to the court's attention the way that these issues are dealt with in the pleadings.

Now, it may be that my learned friends don't like the way it's pleaded, but it doesn't mean it isn't pleaded properly or isn't there as an issue.

For example, on the role of Mr Ferguson, if I can take you to page 74 -- what I'm going to do here, sir, given the constraints of time, is just pick out a couple of points but obviously give you the references, if I may, to the relevant part. At page 74 of the bundle and looking at paragraph 192, we can see that there is reference to Mr Ferguson, the allegation that he is a known business associate. He is also a director of WSL and WSHL, so the other defendants, and it's contended that at all material times, he is someone who promoted supported the activities of WSL and Barry Hearn.

Then when we look at what we have in the relationship, we can see at paragraph 195, further particulars are given of the nature of the relationship between the parties. For example, in 195.1.1, pursuant to WPBSA's articles of association, all member snooker players are required to sign a declaration that they will abide by the terms of the contract. Now, that is the player contract and so all members shall signify their acceptance and membership of the association, D3, by signing written declaration that he will abide by, amongst other things, these articles -- so the articles of association, the rules, the rules and regulations of the association -- and also his player contract, ie the contract with D1 and D2.

So you can immediately see here how there's an interlinking between D1 and D2 and D3 on the other hand.

We plead that out and we then go further in the reply. Having seen the SPA -- and

this starts at page 675 of the bundle at paragraph 10 -- we set out the various provisions of the SPA, including the separation of responsibilities in 6.1 I referenced earlier, but also the business contracts -- and this is the key points -- at 7.1: where the WPBSA shall, with effect from completion, assign to the order of WSL all the business contracts are capable of assignments without third-party consent.

So on our case, that includes the predecessors to what became iteration 1 of the tour contract. Then we have administration fees and such like.

When we set out in detail, amongst other things, at paragraph 14, that, when one looks at what was promised under the SPA and look at what WSL actually does, it would appear that they'd ceded the disciplinary powers to WSL. They permitted them to administer and prepare the sports rankings contrary to the SPA, and also failed to act as a representative body for the players in this context and so on.

What we've sought to do is build on the list of issues that make it plain, we say, that it's an issue at the heart of the chapter, and what we're looking for are documents that relate to (i). So, for example, the division of responsibilities at (inaudible), that's what we (inaudible). The ceding of the powers at (iii) is another example of professional (inaudible) and the payment of charging fees and profits (inaudible) for the association charge.

So, in short, what we seek to do is clarify this, identify what documents we're looking for.

What we've received from the defendants is, for want of a better phrase, a flat no. Now, you've seen, sir, the shape of the flat no, primarily in a critique of our pleadings, which we say is neither the right place nor the right way to do that.

Secondly, what they haven't sought to do is to deny, for example, that there was this tying up between the parties or deny the relevance there, given the points that we made both in our skeleton and indeed in the pleading. Instead, what they sought to

do -- we can see this, for example, in D1 D2's response at page 19 of their skeleton -- is simply say in bold terms, "Well, this is a kitchen sink approach" and then go to raise the question of inadequate pleadings and then suggest that there hasn't been an explanation for these points.

But what we're not getting is an engagement with why these points aren't relevant, given the pleaded case -- they might say they don't like the way it's pleaded, but it's still there and in the list of issues -- and secondly, why this is a hardship and disproportionate for them. Those are my points on request 13, sir.

THE CHAIR: The difficulty is, Mr Quiney, it just has the appearance of being too wide a request. Documents relevant to the agreements, joint decision-making arrangements and concerted practices between the parties in relation to those. It's very difficult to relate that to specific documents or classes of documents that exist. That's the difficulty. You are not able to say, documents going to the negotiation of this agreement; the heads of terms. That's what I don't see in this request, and it's that wide entry point that I think gives rise to the difficulty, Mr Quiney.

I can see how documents relevant to those particular points and the pleading that you took me to could satisfy the relevance test. I can see that. Our difficulty is in getting there through the entry point of that first paragraph. If there was a way to narrow that down, I'm quite sure that the defendants might have given that more consideration than they have. But I apprehend that their difficulty is just that wide request.

MR QUINEY: In the spirit that I've hopefully adopted today, to submit that (inaudible) and drill down into my points, sir.

When it comes to the question of relevance, you would say that (inaudible) are relevant issues. And do you (inaudible).

THE CHAIR: Yes. I can see that Mr Rabinowitz might have a different view, but you have just taken me through that pleading and I'm satisfied that there is sufficient in it

for you to get over the relevance hurdle. Where I think you fall down is the way you have formulated the request.

MR QUINEY: I see.

THE CHAIR: I would find it hard to accede to a request framed as it is at the moment, notwithstanding the fact that you've satisfied me on the relevance point, subject to hearing Mr Rabinowitz.

MR QUINEY: Of course. I mean, the conundrum here, obviously, as a requesting client is, you on the one hand might want to say "documents generally" so it's an omnibus point -- which is, sir, I understand, your concern here -- or you start identifying emails relating to letters relating to and such like minutes of meetings.

Now, if we were to adopt the secondary approach, we sought to identify the types of documents and then we have little (inaudible) as the issues to which (inaudible) go to, would an identification of the categories or types of documents be a matter that (inaudible) less concerning to the Tribunal?

THE CHAIR: I think it would be a step in the right direction. I can't say whether it would be a complete solution, but it's certainly a step in the right direction. I haven't myself turned my mind to how I would formulate a request which goes to the points that you have listed there in (i) to (xii). But I can only say that, for the moment, I'm not satisfied that that wide request, as you have framed it, is susceptible to an order that I should make.

MR QUINEY: So, to take a category that (inaudible) (v), charges fees, one would expect there to be eight, (inaudible), such as an invoice being raised, payment and (inaudible) receipt.

THE CHAIR: Indeed.

MR QUINEY: So that's a good example, I think, sir, of your point: something that could be described further properly.

THE CHAIR: Yes. It's much more targeted for me. So it's that -- it just is in need of a more targeted approach. I think you've tried to sweep it all under that main heading and that's where it's fallen foul, certainly to my mind.

MR QUINEY: May I take instructions?

THE CHAIR: Yes, of course. (Pause)

MR QUINEY: So, I have taken instructions. I understand your concerns. However, we don't want to lose the point because we actually genuinely think that these are important issues and relevant issues.

Would it be appropriate if we said that in the next 14 days we seek to (inaudible) three, and then we could deal with it on perhaps (inaudible) Redfern process?

THE CHAIR: Yes. Yes, what I would ask is that you seek to reformulate those requests and reach agreement with your colleagues at the bar. And to the extent that you're not able to do that, put the reformulated version forward, but I think you're aware of my position on it. The difficulty is I need to give an opportunity to Mr Mountford and Mr Rabinowitz to make submissions on the reformulated version if they don't agree that with it, which I'm perfectly content for them to do.

Mr Mountford, you're uncomfortable with this course, I can see.

MR MOUNTFORD: I have to object. This process has been set in place carefully by the Tribunal at the last CMC, and it is incumbent upon the parties to come. Mr Quiney comes here together with two learned juniors. There are more than three counsel on the side of the room. He has put a smorgasbord request which doesn't start to engage with how it is said that documents relating to all of these things, which on my reading this formulation would effectively capture 15 years worth of everything that happened between these organisations. We said in terms in our disclosure response that should the claimant maintain this disclosure request, it must explain why the disclosure sought is necessary and proportionate in order to resolve the issues that arise in these

proceedings. My learned friend advisedly declined the opportunity to do that in his reply to this Redfern schedule. We've come today for a whole day before the Tribunal. We've been given an allocation of a whole day of Tribunal's time. Now my learned friend says, well, he wishes to go away and try again and then put all of the parties on this side to the expense of coming back and doing submissions in writing rather than being able to address you today, sir. We do say that's unsatisfactory, and it is incumbent upon him if he said that these were documents which need to be disclosed in order to fairly resolve these proceedings, to have prepared that by today. I understand the desire to find a pragmatic way forward, but I say that suggested course of taking this forward does prejudice the defendants.

THE CHAIR: Mr Rabinowitz?

MR RABINOWITZ: I do agree with that submission. We've made our position clear in relation to this request since December, and we've heard nothing until the skeleton argument on it. Thank you, sir.

THE CHAIR: Yes. Mr Quiney, this is the Competition Appeal Tribunal. I do want to give you an opportunity to reformulate that request. I'm not with you on it as it's currently set out. If in the reformulated Redfern, I see a different version of it, you may decide not to pursue that particular point, but if you do, it would have to be in a much more targeted form, and I would expect to see Mr Mountford and Mr Rabinowitz given an opportunity to provide short submissions, whether in the Redfern or alongside it, just on those targeted -- if you do decide to pursue them -- reformulations of 13, and I'm expecting that to be done in the next days rather than weeks. I think that is not a particularly onerous obligation. I don't think that that's something that's unreasonable for me to invite the defendants to do, and in the scheme of things, I think it's the just approach to the resolution of this case. I will take that course on this occasion, sir.

MR QUINEY: Sir, I'm very grateful for that approach. I must say, one of the reasons why I suggest that is because obviously we're up against time and that would be the best way.

THE CHAIR: Yes, I see that and I take that into account as well.

Are we on now to 14?

MR MOUNTFORD: Sir, does it assist, because obviously --

THE CHAIR: Mr Mountford, is something that you want to add?

MR MOUNTFORD: Yes, sir. In relation to the reformulation, it is relevant -- it is, in my submission, going to be necessary that it's not just a question of assuming that each of those enumerated subheadings are relevant, because the question of relevance is: is it a relevant point on which disclosure is going to be given? We would say that in relation to some of those, those are legal points. When one tracks them through in the pleadings, they are effectively legal points which do not require disclosure, still less disclosure over the period that's been sought. I think, if the reformulation is going to happen by the claimant, they need to address why it is said that it is relevant for there to be disclosure in relation to each of those issues, and why they say that is proportionate, including by reference to the time period, and then we can respond to that.

THE CHAIR: Yes. Mr Mountford, I'm sure Mr Quiney has heard you on your concerns regarding the nature of the request. As I'm making clear, you will have proper opportunity in writing to address the reformulated approach when it comes and put to me that argument, the arguments you have just recited and any others that occur to you.

MR MOUNTFORD: I'm very grateful.

THE CHAIR: Yes.

MR QUINEY: I'm very grateful, sir.

Request 14

MR QUINEY: Moving on to request number 14.

THE CHAIR: Yes.

MR QUINEY: This is essentially dealing with the matters of quantification, but from the perspective of the defendant in this sense. We've asked the defendant for the date range of January 2023 to December 2025, which is the date range of the period of loss that my client suffered, for financials and analysis relating to WSL events such as the yearly Masters at Alexandra Palace, the yearly world championship at (several inaudible words) limitation (inaudible) expenses.

Three points on this. The first is contextualising this, that obviously my client and my learned friends' clients effectively would be doing the same business. (Several inaudible words) we've been barred from this.

The second and most important point is that we believe that this will assist the experts in performing their function to assist the Tribunal when seeking to understand what the forensic loss is. Obviously, we haven't got to the point yet where we have forensic accountants. The Tribunal at the last hearing at least entertained the prospect. Rather than reinventing the wheel and saying, "Okay, the putative counterfactual, the putative championship at Alexandra Palace, how much would that cost to put on; how much would that make as a profit" they at least have a comparator (inaudible).

The third point is, when looking at these issues, it is a relatively narrow period of time, and we would anticipate something that would be at the fingertips of, certainly, WSL.

Those are the three reasons we ask for this particular set of documents.

THE CHAIR: Mr Quiney, I'm afraid I'm against you on this one. To my mind, that would be disproportionate. I don't believe it's necessary at this stage, certainly not at this stage to order such a disclosure exercise to be carried out. I'm looking at the list of issues, and I referred at the outset of today's proceedings to the creation of the

counterfactual and the way in which the issues have been determined. I see you didn't take me to the issues in the submissions that you have just made. I don't see that that's necessary for your case to be made out in the way that you have pleaded it, and I'm not going to order that disclosure at this stage.

MR QUINEY: Sir, I have the points. It may be that if we have permission, when the forensic accountants begin to talk, it may be that matters have become salient, and we'll revisit --

THE CHAIR: That may be.

MR QUINEY: Well, on our part we may revisit those points, but we have those points now.

That is the end of the big spreadsheet.

THE CHAIR: Yes.

MR QUINEY: But there are a couple of points for D3, I'm afraid I'll just take (inaudible) on this.

With respect to the third defendant -- if I can use Mr Mountford's helpful skeleton argument for, as he says, he's sought to identify common or uncommon issues -- at paragraph 9, page 5, we see that there is an issue of dispute there. I'm now going to use the Excel spreadsheet to identify what those issues are, if I may.

The first of those issues is documents pre-SPA, which are relevant to the WPBSA's provision or refusal of sanctions for non-WSL snooker events and/or sanctions (inaudible) participation of the snooker (several inaudible words) et cetera. This is for the period prior to the SPA. That's December 2000 (inaudible) 2010.

The rationale for suggesting that these are relevant documents, before we get to proportionality, is that as you know from our reliance on the Hendry case, there was a realisation within the sport that what they were doing in 2000 or around 2000 was anti-competitive. There was a change in the sport. We say that with the SPA and

then the new tour contract, that change was reversed.

The primary reason we say this is important is when one looks at the plea and reliance on section 9 by the WPBSA, we have effectively a legitimate aim. One of those questions is, well, can you perform or realise that legitimate aim in a different way for the benefit of the sport? Our position is: it is likely and thereby relevant that the position post-Hendry but pre-SPA would be good evidence of how you could conduct this sport in a different way, and thereby achieve, assuming we accept it, there is a legitimate aim. It doesn't have to be done in a fashion that's been (several inaudible words) my point.

THE CHAIR: I'm sorry, Mr Quiney. You can't go into this court and say, "We might be able to make a case based on how this permission was granted by another party prior to the unlawful activity that I'm alleging against you. I don't know if they did. They might. They might not. But at any rate, I'm going to ask for documents, just in case they did, to help me prove this case that I have come into court and said is unlawful behaviour on your part". To my mind, that's fishing.

MR QUINEY: Obviously I prefer to characterise it in a different (several inaudible words).

THE CHAIR: (Inaudible). I don't need to trouble you, Mr Rabinowitz. Thank you.

MR QUINEY: With respect to issue 4 in the spreadsheet -- so what I'm doing is skipping over the common issues, because I believe we've covered those -- documents relevant to the enforcement of the terms of the SPA. I would suggest that we're on perhaps stronger ground than the fishing expedition, as it has been characterised, on request 1. This goes to the questions of the ceding of power. I took you, for your reference to page 678 and paragraph 14, which is clearly a live issue.

THE CHAIR: If you take me to the skeleton again, to Mr Mountford's skeleton.

MR QUINEY: Mr Mountford's skeleton.

THE CHAIR: Yes.

MR QUINEY: Mr Mountford deals with this at page 7 at paragraph 14. He takes two points. The first is that there is a failure to identify a class of documents, and then secondly that it's disproportionate. Then he invites the claimant to make more specific or focused requests, but has been declined to do so and submits therefore refusal. Well, the short point on this, on proportionality, is dealing with a period. Just because it's a long period doesn't mean it's disproportionate. We've got no evidence of that, and indeed what we're dealing with is a focused issue, which is enforcement of the particular contract, not enforcement of contracts generally.

The second is: when it comes to the question of what categories of documents, well, it is unlikely that we'll be talking about a vast body of documents, and it is likely that you would be looking at, for example, a letter or an email which says -- or doesn't say, because there may be none -- "We have responsibility in the SPA for such and such (inaudible) rankings, but in fact, you're doing that now when you shouldn't be seeking to (inaudible)". It seems to me this is a narrow point which is relevant to the issues that are between the parties.

THE CHAIR: The date range you seek is 2010 to 2025, is it?

MR QUINEY: Yes. The beginning of the SPA to 2025, because that's the key area. However -- and that's the genesis, as we've said, of the anti-competitive conditions -- however, if there was a shorter position, then one would be interested from, for example, the original contract, which is 2018 to (inaudible). Our primary position is (inaudible).

THE CHAIR: Yes. And you say these documents are capable of identification, because they are documents which necessarily go to the enforcement of the terms of the SPA, so it's easy to identify whether that document does or does not concern the

enforcement of the SPA.

MR QUINEY: Yes, that is right. That's why we suggest and put it forward (inaudible) our submissions.

THE CHAIR: Thank you. Yes, Mr Mountford.

MR MOUNTFORD: Sir, this request is, we say, highly peripheral. It's not focused on the tour player contract, which is the subject of focus; it's the SPA that was entered into by which functions were transferred to D1; a certain role was retained by D3.

In an attempt to try and cut through this, what we offered on Friday was to say that we would search for documents from 1 January 2023 until 2025, documents enforcing the terms of the SPA. So we would have a look in the period in which my learned friend's client said that it was seeking to enter the market, was there anything in relation to enforcement of terms of the SPA. That hasn't been accepted and instead we get this sort of generally vaguely formulated wording, "anything relating to enforcement going back 15 years". We say it's speculative; it's not necessary.

If one looks through -- I don't have the time to go through all of these points in the pleadings, but often really the complaint is just, "Oh, well, we think you should be doing this, but in fact, D1 is doing this" and the response comes, "Well, actually, if you have a look at the SPA, it said WSL is going to do various things and that's one of the things they're going to do".

Now, my learned friend's client may think there should be some different allocation. Well, he can make those points; he doesn't need disclosure in relation to it. So we say it's a peripheral point. It's perfectly adequate for my learned friend to accept the offer we made to look from 1 January 2023 on documents enforcing the terms of the SPA, and there's no justification for going back --

THE CHAIR: So the basis of contract point; there's four years between you, 2018 to 2022.

MR MOUNTFORD: So in relation to this, he's seeking the documents from 2010 onwards.

THE CHAIR: Yes. But he has a fallback position to 2018.

MR MOUNTFORD: Well, I don't know what we could say in relation to that. I mean, I think that the main point is that, if there is something of peripheral relevance and it relates to a period in which he says that his client was seeking to enter the market, the Tribunal may say, on balance, I'm going to let that in. But something going years back, just to the point at which the original contract was first negotiated --

THE CHAIR: Yes, I don't think that's --

MR MOUNTFORD: No, but the original --

THE CHAIR: The question is whether it's from 2018 onwards.

MR MOUNTFORD: I think the original contract was negotiated 2017/2018. So that's why 2018 is his fallback position --

THE CHAIR: I see that.

MR MOUNTFORD: -- because it's in force from 2018 until 2024.

THE CHAIR: Yes.

MR MOUNTFORD: But we've said, for that contract, we're happy to look from 2023, ie from when you're trying to do anything in the market, but it's not proportionate to go back another five or six years to go back and look for a period preceding you seeking to enter the market.

THE CHAIR: Yes.

Yes, Mr Quiney, I think I would give you the 2018 onwards.

MR QUINEY: I'm very grateful, sir.

Request 6

MR QUINEY: If I can now move on, I think to, request 6, which is a unique request to D3. That is canvassed, for example, by Mr Mountford at page 8, paragraph 20.

THE CHAIR: Yes.

MR QUINEY: This is dealing with the player contract. If I could now take you to the Excel spreadsheet, which I think will hopefully properly set out what you need. So I'm looking at request 6. If one looks across to, I think, the second page or set of pages -- this is not so straightforward -- one sees a column, which is described as the NST counter-proposal, I believe --

THE CHAIR: Yes.

MR QUINEY: -- where it sets out first the request, then the date range. And the reason I'm looking at this is because --

THE CHAIR: That's 2010 to 2025.

MR QUINEY: Exactly. But the request is documents relating to the tour player contract and/or the revised contract, including communications regarding player participation in third-party events. We can see the key words here which are focused on this question, the player's contract.

The reason, we've already explained in the pleadings, that's important is because of this interlinkage between the operation of rules under the association and the player contract, and also, of course, you would have thought that the association has a concern or interest in the contractual relationships that their players -- and I say their players -- are entering into with third parties such as WSL.

So we would suggest that that is a relevant consideration. We don't believe that the relevance is materially disputed, looking at what Mr Mountford writes at paragraph 20 onwards. It's really a question about date ranges, is what I interpret him to be saying although I might be wrong.

He's cavilling again at the 2010 to 2025. We say that's important because that's of course when the SPA and the tour player contract comes in and the first iteration. But if we were to start at 2018, that's probably something that we could accept at this

stage.

THE CHAIR: So that leaves us with the argument on whether "relating to" is important.

MR MOUNTFORD: There's two points. There's the formulation and there's the timing. So what we've offered, as you see in the schedule, in the counter-proposal column, is "documents including communications regarding player participation in third-party events". The wording that my learned friend is contending for is "documents relating to player contract or the original or revised contract, including communications regarding player participation". We say there's no basis to broaden it out to anything about any of the contracts. It should be focused on player participation in third-party events.

Then the time frames that we've offered to search this for are around the formation of those contracts, so December 2017 to June 2018 for the original contract and March 2024 to 8 January 2025 in relation to the revised contract.

So we say if they want to have a look at, some sort of rather nebulous, you know, any documents that relate to third-party player participation, we'll agree proportionately to do that in that period when they're looking at how those contracts were drafted and formulated. There's no warrant to go back further, and there's no warrant to go continuously between the point at which that contract is negotiated and the end of the relevant period for reference, because we say that it's wholly speculative what that is sought to identify of any relevance. What they're looking at is it's effectively allied to the other requests of saying, can we look at how these contracts came to be in the form they came to be in. Those are contracts between WSL and players, not between my client. To the extent that they, although not contract counterparties, might have something relevant in relation to that third-party event participation that might touch upon why it is that those contracts are formulated in the way they were, that would be in the period around the renegotiation. Proportionately, one ought not to just run the

period continuously when the effect of that is to bring into account another four years for no good reason.

THE CHAIR: Well, no apparent good reason, if you're right that those documents exist only in that period around the contract discussion.

MR MOUNTFORD: Well, I think the point is that the formulation of the request is broad: it's "documents including communications regarding player participation in third-party events". So it may be all kinds of things about "X is going to be doing this event with a sponsor for Heineken". You know, it's something that just has nothing to do with anything that this Tribunal is going to be concerned about. Therefore, the proportionate response is to try and narrow that down to a period where it may be arguably relevant to something that the claimant is seeking to contend. If you run it continuously, the risk is that you get a lot of things which are not relevant, which is disproportionate, for no obvious relevance to the issues that the Tribunal is actually going to have to grapple with.

THE CHAIR: Yes. Thank you.

Yes, Mr Quiney. I'm troubled by this one, but ...

MR QUINEY: I understand that. I would suggest that the reason why there's some superficial difficulty here is because myself and my own friend are talking at cross-purposes to some degree. That's why, when we asked for the request, which is documents -- I'm just going to use the same wording for a moment, including word relating -- "documents relating to the tour contract and revised contract including communications regarding player participation in third-party events", that isn't something that's focused on the negotiation of the contract; that is focused on the operation of the contract. So to have the two discrete windows in time for the disclosure process doesn't fit with the purpose of the issue, which is to see this: over time, during the original contract and then a revised contract, how is the association

involved or aware or engaged with the operation of that contract, ie the sanctioning of players or not, and do they seek to participate for third parties elsewhere in the market. That's why those two windows are the wrong approach, and the best is one simple window, as we propose, either from 2010 or 2018, depending on your approach.

THE CHAIR: Yes. Yes.

MR MOUNTFORD: Just to be clear, I think it's understood, but my client has no formal -- a request isn't made to my client; it's made of the WSA.

THE CHAIR: Yes, of course. Yes. But your fallback position there is to the 2018, which is -- yes, thank you.

Does that deal with all of them or is there still one more?

MR QUINEY: I was about to say yes, I just wanted to double check. I think that's it, isn't it?

MR MOUNTFORD: Isn't there a request 7?

MR QUINEY: Request 7, there we go. Request 7.

THE CHAIR: Yes.

Request 7

MR QUINEY: So request 7 is, and again, I'm looking at the spreadsheet for the way that we've put it, which is documents relevant to the WPBSA disciplining and/or imposing sanctions on snooker players relating to the breaches of the WSL tour player contract and/or disciplinary process or related communication to players in regard of their participation (inaudible) events. (Inaudible) 2010 to 2025 period.

So the dispute here, as put forward by my learned friend, is essentially: first, that the disclosure period is too long and, akin to the other points, our fallback is 2018 if, sir, you're with my learned friend on that. But they've indicated they're prepared to agree a request as start date of the first of 2023. That suggests that there's an acceptance that the issue itself is a relevant issue. Indeed, we would say that it is a relevant issue

because, again, of the interlinking that I described earlier.

If you have a breach of the tour contract, if it's the original version, for example, within the rules and the pleadings I showed you, that would lead to a potential disciplinary action and we would say that's an example of the concerted relationship or practice between the defendants as a whole.

I don't understand that to be contended to be an irrelevant issue; it's just too long a period. So that's essentially the issue, I would suggest, before you. I would ask for 2010 or 2018, but again, 2020 (inaudible) too late about the operation (inaudible) the original contract.

MR MOUNTFORD: It's clear from the pleadings that, as at the point of the separation of functions, WPBSA as a sports governing body retained disciplinary functions and, in principle, references can be made and have been made. Say X or Y has breached the tour player contract, that should be considered as a disciplinary matter and for the WPBSA to administer a disciplinary process whereby an independent disciplinary panel considers those and reaches a decision. That could be on something related to participating in an event when they haven't had a sanction, or something completely unrelated, such as somebody being drunk and disorderly at an event, et cetera.

It's well understood that that function is carried out, but what's not clear and what hasn't been explained is why it would be necessary for there to be disclosure of all of the documents relating to any such disciplinary processes administered by the WSA before independent panels. What benefit is going to be derived from that?

My learned friend can make all the points he wants as to the structural interrelationship. So the fact that that disciplinary function is carried out by the sports governing body and can include an allegation of a breach of the tour player contract. But it seems to us that it is disproportionate to try to obtain all of those materials in relation to disciplinary processes. We've offered, in the spirit of consensus, to try to

provide that just in the period in which they're seeking to enter the market. We don't think it's proportionate to provide it going back, certainly not to 2010. My alternative submission would be certainly not earlier than 2017, 2018, (inaudible) the original contract.

THE CHAIR: I agree with that, Mr Mountford. But is there not a way of refining the first limb of your point? Because I do accept the force of your submission that it's too wide for it to bite on any disciplinary process. Is there not a way of restricting it in the way that you have suggested, if you have at paragraph 24 of your skeleton, so that it relates to its participation in proposed non-WSL events?

MR MOUNTFORD: Yes. I mean, because some of the formulations we see from the claimant side are these sort of very long bundled sentences, it's hard to know where to draw the punctuation. But if everything is limited to a disciplinary process which concerns participation in non-WSL events, and that obviously cuts it down and that's welcome --

THE CHAIR: Well, that's what we're concerned with here, isn't it.

MR MOUNTFORD: Yes.

THE CHAIR: We're not concerned with the drunk and disorderly events. That would make it rather more proportionate and less of a --

MR MOUNTFORD: It would do. But one still has to ask what exactly one needs in relation to that. Do you need all of the underlying documents -- that's one limitation. Another limitation is time. We --

THE CHAIR: Yes. But I think I'm with you on the time, 2018.

So, I think, Mr Quiney, you do you have that? Are you content with that: 2018 and just reformulate it so that it's referable to the disciplinary processes, warnings and related communications with regard to participation on proposed non-WSL events.

MR QUINEY: I'll just take instructions. Yes, we are.

THE CHAIR: I'm grateful. Thank you.

Thank you, Mr Mountford. That's most helpful.

MR QUINEY: That might be the end of it. Can you see the question of (inaudible) had in mind.

THE CHAIR: Yes. Well, I can tell you that we have the indulgence of the court staff to sit on so, please, Mr Rabinowitz, but have that in mind. I'm not so much concerned with myself but we have an administration here.

MR RABINOWITZ: Thank you very much to the court staff and to the Tribunal.

In relation to claimant disclosure, the formulation of the request is agreed. There's one issue on principle, as I mentioned, on which the defendants do seek guidance from the Tribunal, and that relates to the selection of appropriate keywords. It's not debating in relation to specific keywords, I appreciate that will have to be dealt with inter partes out of court. It's simply this point of principle.

This is dealt with at paragraphs 18 to 23 of my skeleton argument. Happily, it really is quite a short point. I won't go through the claim form, I will just give you the references. The claims brought by the claimant for losses in these proceedings relate to four categories of event. The first three of them are set out at paragraphs 99 and 100 of the claim form. The categories are: the October 2023 event, a single event; the December 2023 event, again a single event. Then, the third category is massive and accounts for about 90 per cent of the quantum of the claim. This is what we call the alleged events, which is a series of alleged events which the claimant says it planned for 2024 and 2025 but in relation to which no request was ever made for permission of WSL.

So, category 1: October 2023. Category 2: December 2023. Category 3: large group of alleged events, and then category 4 is another discrete category which we call the proposed 2025 events. They're addressed in the claim form at 132. So the two sets

of events are dealt with at 99, 100 and 132.

Now, in terms of the quantum of the claims brought for these, as I say, the bulk of the quantum relates to that third category, alleged events. There is next to nothing in the claim form about the details of these alleged events, who was going to participate, where they were going to be, who the sponsors were. There was essentially nothing. They had, however, brought a claim for about £10 million in respect of these events and that is on the basis of a preliminary schedule which is appended to their claim form. Again, I won't take you there but it's at pages 134 and 135 of the bundle. What that does is set out detailed estimates as to the, for example, revenue that they expect from tickets, from title sponsorship, from secondary partners, primary partners, TV rights. It's everything that's used to generate this alleged loss of profits claim of £10 million. If you could just turn up this one document, it's page 134 of the bundle.

Now, one of the critical issues at trial, and I appreciate we've been dealing with defendant disclosure, but one of the critical issues at trial, clearly we deny liability in the event that the defendants are found liable. The critical issue will be is the claimant's estimate as to the profits that it says it would have earned on these events accurate.

Now, in order to test that we obviously need disclosure and that is the purpose of the agreed claimant disclosure requests. The claimant disclosure requests essentially go to, "What steps did you take to organise these events and would they have earned the profits which you say they would have earned?"

Now, in order for those disclosure requests to be effective, particularly in relation to, "What profits would you have earned if these events had gone ahead", the disclosure requests obviously need to capture any relevant mention in the claimant's documents of the suppliers and partners who, on their case, would have paid for these events £350,000 for title sponsorship, £15,000 for secondary partner, £37,000 for TV. We

say the keywords must necessarily correspond to the people that they say they would have worked with in order to generate these profits, if they know in respect of any event. If they don't know because they didn't get to the stage of planning the event at which they'd identified the TV partner, et cetera, then that's fine. But we need to know that.

So, essentially, we've asked the claimant on several occasions to either supplement the keywords that we proposed on the basis -- sorry, I should just give a little bit of background very quickly. I'm trying to move quickly, but -- the claimant originally gave a bulk of keywords in its disclosure report. I think they were the same keywords, or materially the same keywords, for claimant disclosure and defendant disclosure, that preceded any disclosure requests. So it was not a kind of targeted keyword proposal.

What we then did is advance keyword proposals on the basis of (a), what we knew about the events and (b), what was in the claimant's disclosure report or EDQ.

But what we've been asking the claimant to do since 28 November is to either supplement those keyword proposals with keywords corresponding to the sponsor, television partner, et cetera, insofar as they know who that is, or to confirm to us that, to the extent that they know who these partners are, they are in the keywords.

I can just give you the references as to when we've asked for this. 28 November, we asked them to make keyword proposals. Then, in their response to that, in December they said, "We did offer keywords in the EDQ, please comment on those keywords". We then did that in our reply to that response, which was in January. This is where we make the point that I've been making. So this is on 16 January we make this point. For your reference, the page number is 905. In fact, this is the second document I will just ask the Tribunal to draw up very quickly. Page 905 of the bundle. If I could ask you to read paragraph 6. Paragraph 7 makes the point I've just (several inaudible words) in respect of these must know the details of those (several inaudible words).

THE CHAIR: Yes.

MR RABINOWITZ: We didn't get a response to that request for confirmation and we also didn't get additional supplementary keywords. So we asked them about it at several occasions. I'll just give you the references. 12 February --

THE CHAIR: I'm going to take it as read for the moment that you have asked on several occasions.

MR RABINOWITZ: So that is, essentially, what we're asking for. We are asking for what we ask for at paragraphs 9 and 10 of the document I just showed you. Those are my submissions on the point.

THE CHAIR: So, in other words, you have demonstrated to me the relevance of where this goes to on the damages claim. You want to ensure that there is a properly targeted disclosure exercise. You are seeking to engage with the claimants in a constructive manner in order to arrive at the appropriate keywords but, at the moment, you're not getting a response.

MR RABINOWITZ: That's correct, sir.

THE CHAIR: Does that fairly set out the position?

MR RABINOWITZ: That's correct, but in two specific requests. One is whatever the claimant knows in relation to the identity of the key partners for these events. The other is any nickname --

THE CHAIR: Because you can't know, so you want to make sure it's properly targeted in relation to those companies, individuals, whoever it is relevant to that part of the claim. How they would have made their money, how they would have put on these events. So there are, or might be, documents relating to them. You need some help in ensuring that the disclosure exercise is properly targeted.

MR RABINOWITZ: Precisely that. Thank you, sir.

THE CHAIR: Yes, thank you.

MR MOUNTFORD: Sir, we associate ourselves with those submissions. Obviously, at one end of the spectrum one has a projection, a business projection, that says, "I think I could go and organise 10, 20 events and I think I'll get a TV partner and, thumb in the air, it'll be 35,000". Then there may not be that many. It may just be some internal documents. The other end of the spectrum is there are --

THE CHAIR: We are talking to some people --

MR MOUNTFORD: -- well-developed plans --

THE CHAIR: -- we had these in mind, these were our usual partners or the ones we had identified.

MR MOUNTFORD: Exactly.

THE CHAIR: I follow.

Mr Quiney, that all seems to me to make sense and the easy answer is for your side to revert and to engage in that correspondence or, to the extent you have already, just to take that forward so that what we arrive at is a properly-targeted disclosure exercise. It helps everybody, prevents further arguments, is there any more to it than that?

MR QUINEY: I'll just take instructions.

THE CHAIR: Thank you.

MR QUINEY: The short answer is that's very helpful guidance. We'll seek to engage with the other side on those points.

THE CHAIR: Thank you, Mr Quiney.

Thank you, Mr Rabinowitz, very helpful, and you have now had an opportunity to say all you wanted to say.

MR RABINOWITZ: There are minor points in relation to specific claimant keywords. I don't propose to run through those with the Tribunal now. I suspect that they are capable of being narrowed at least over the next 24 hours or so.

THE CHAIR: Yes. Well, if there is a difficulty, don't hesitate to raise that and I will find

a practical way of responding and ensuring that you get an opportunity to address those concerns.

MR RABINOWITZ: Thank you, sir.

MR QUINEY: For our part, I believe that's everything. Thank you very much, sir, and for sitting late.

Housekeeping

THE CHAIR: So I think it's just timing then on when you can get a reformulated, comprehensive, composite Redfern schedule to the Tribunal, reaching agreement insofar as you can on that one item where I gave you some indulgence and ensuring that the defendants have an appropriate opportunity to make submissions within or accompanying the Redfern schedule in relation to that point. As I said, I was happy to commit to a next Monday delivery but I think it's going to just turn on when you get it to me. If I can say that you will have the Redfern schedule back with the order within 14 days of you delivering it to the Tribunal, are you satisfied with that?

MR QUINEY: For our part, yes.

THE CHAIR: Yes.

MR RABINOWITZ: Sir, I may just need to flag a timing point on that. I don't know what the position is but disclosure is due on 2 April.

THE CHAIR: That's what I was concerned about, yes.

MR RABINOWITZ: It may be that we need to cross that bridge when we come to it. There is quite a substantial gap between 2 April and the witness statement deadline, so it may be that there is some leeway in the disclosure deadline.

THE CHAIR: Yes. Well, we're at 23 February. Let's see how quickly you can pull this together. But if we need to adjust that time, we can, and I'm sure between counsel you will be able to address that.

MR MOUNTFORD: That's fine --

THE CHAIR: Yes, Mr Mountford.

MR MOUNTFORD: Yes, I think that's fine, sir, in terms of timings. The other point I would just ask is that because the points I made earlier, we had agreed in the draft agreed order that the costs of this should be costs in the case. To the extent there are incremental costs of an indulgence being granted to the claimant to attempt to reformulate, I do wish to reserve our position in relation to those incremental costs and so I would ask that any additional incremental costs from this process spilling over from this hearing, the question of the costs of those be reserved.

THE CHAIR: Thank you.

I don't see I can resist that, Mr Quiney, yes.

MR QUINEY: I may seek to resist it at the time.

THE CHAIR: Yes.

MR QUINEY: As present, without reservation, absolutely.

THE CHAIR: Yes, you have that, Mr Mountford.

Anything else that needs to be dealt with in the agreed order? Well, if there is, you can send in a revised agreed order but, on the basis of what I had seen already, I think we were agreed. So there was nothing to add to that. I don't think there is anything else that comes out of today that changes anything on the agreed list of issues and on the expert evidence. So it's just the timing. I've just given you a position on that which should deal with all eventualities. If there is anything else then -- I can't believe it would be necessary -- having in mind the position of Mr Rabinowitz, in particular, and the indulgence that I have granted, if it's necessary for the Tribunal to sit for a morning and dispose of anything else then the Tribunal would be available.

MR QUINEY: We're very grateful for that and we're also very grateful for sitting late as well, to the court staff in particular.

THE CHAIR: I think that's us for today, then.

MR QUINEY: I believe so.

(4.46 pm)

(The hearing concluded)

Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
…	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?