IN THE COMPETITION APPEAL TRIBUNAL

CaseNo: 1640/7/7/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 22nd June 2026

Before:

The Honourable Mr Justice Thompsell
John Davies
Paul Lomas

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Vicki Shotbolt Class Representative

Class Representative

And

Valve Corporation

Defendant

A P P E A R AN C E S

Julian Gregory and Will Perry on behalf of Vicki Shotbolt Class Representative (Instructed by Milberg London LLP)

Brian Kennelly KC, Tom Coates and Sean Butler on behalf of Valve Corporation (Instructed by RPC)

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Monday, 22 June 2026

(10.32 am)

Housekeeping

THE CHAIR: Good morning. I need to start with an announcement. Some of you are joining us on livestream on our website, so I must start with the customary warning. An official recording is made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings. Breach of that provision is punishable as a contempt of court. You have been warned.

MR GREGORY: Good morning. Sir, members of the Tribunal. I am representing the Class Representative in these proceedings, along with Mr Perry. To my right, the defendant, Valve, is represented by Mr Kennelly, Mr Coates and Mr Butler.

Housekeeping: You should have got a set of bundles which comprise a core bundle, which includes the agenda and draft orders and other key documents, a short supplementary bundle, a correspondence bundle and an authorities bundle.

THE CHAIR: Yes.

MR GREGORY: On Friday, my solicitors wrote to the Tribunal setting out some information on the Class Representative's budget and providing an update on the position. You've also received certain information regarding communications with the class. I was proposing to come back to those materials later on, once I've addressed you on some of the other agenda items.

The agenda is in the core bundle, tab 1 at page 3. I'd be grateful if you could turn that up.

THE CHAIR: Yes.

MR GREGORY: Several of the agenda items are agreed or substantially agreed between the parties, and it should be possible to deal with most of them fairly swiftly. In several instances, agreement was only reached over the first half of last week, and we're grateful that the Tribunal allowed us to submit our skeleton arguments on Thursday rather than Tuesday, which allowed them to reflect the current up-to-date position, but I'm sorry if that made preparations for this hearing more difficult for you.

Before I make submissions on the individual agenda items, I thought I'd start with a high-level overview in terms of where we've got to, starting with disclosure.

We've agreed the overall structure for the disclosure process, including a timetable for the further disclosure process, which is agenda item 1(c). The plan is to have initial disclosure at the end of July, comprised of Valve's disclosure from the *In re Valve* proceedings in the United States. At the same time, Valve will provide a disclosure report and EDQ that will provide the basis for a Redfern schedule process between November and February, to determine the extent to which it should provide further disclosure. And we propose that a CMC should be listed for probably April, May, next year for you to determine any outstanding disclosure issues.

However, as you'll have noticed in our skeleton, the Class Representative considers that issues relating to disclosure of third-party materials, which are in Valve's possession, need to be progressed separately in order to avoid a significant delay to the timetable, and I'll come back to that.

Valve's US disclosure comprised around 2.6 million documents. That is obviously a lot of documents. It was not provided in a form that would generally be accepted by English courts. The documents were withheld on the basis of US law principles of legal privilege, which are not necessarily the same as under English law, although there are some similarities. Entire categories of document were classified as confidential without any justificatory reasons being provided, and the documents were

generally disclosed as TIFF image files, whereas the English courts generally require documents to disclose the native file format. Valve has maintained that it should be entitled to reproduce all of the US disclosure in exactly the same form as it was produced in the US, without having to re-review those materials. That was said to be based on considerations of cost proportionality.

The Class Representative has agreed that Valve should be able to do that in the first instance, but wanted there to be some sort of mechanism under which you could challenge that approach in respect of documents or categories of documents; for example, whether it was really right to redact certain information on the basis of US law principles of privilege. That has now been agreed, and is reflected in the draft order, subject to some fairly minor points on the precise wording, which I hope will only take a few minutes to address.

There is one further point concerning the initial disclosure, which is that the Class Representative has asked that Valve provides an organogram or some similar material, that identifies the individuals within Valve that were involved in the relevant activities and their roles within the company - just because that makes it a lot easier and faster to understand what's going on when you're reviewing the documents. That's resisted by Valve, but I will come back to it.

Agenda item 2 concerns how issues of confidentiality should be addressed in the context of further disclosure. There is relevant provision in the confidentiality ring order, the draft order, which is in the bundle. Again, that draft order is almost entirely agreed, subject to some minor points on the precise wording.

Agenda item 3(b), directions in the draft order. They largely fall out of the timetable that we've agreed for disclosure between the parties, although we're obviously aware that the Tribunal in correspondence has raised the question of whether there could be a split trial and how long it's likely to take to bring the proceedings to trial, and I can

address you on that. At a high level, the parties agree that a split trial is probably not viable, because issues of liability and quantum are closely connected, and also issues of dominance and market definition are closely connected to issues of abuse.

We're also more or less at one in terms of when it's likely to bring on a trial, which is early 2029. We say it might be possible to bring it on slightly faster, but that would only be the case if the issues of disclosure can be progressed very efficiently.

We then come to what we consider to be the most significant issues for this CMC. First, how the Tribunal should deal with the third-party materials which are in Valve's possession from other proceedings. Issues in relation to that have come to the fore, in particular, in recent correspondence. That is item 1(b) on the agenda.

Second, and relatedly, whether the Tribunal should list a CMC for this autumn term, in particular in order to address those third-party materials issues, but also to address any other issues that arise in relation to the initial disclosure: for example, debates about whether US legal privilege applies, given that they were initially withheld on the basis of US principles.

The essence of the third-party materials issue is this: that Valve's conduct in relation to PC game distribution is now under scrutiny in a number of different proceedings around the world, which we summarised in one of the earlier sections to our skeleton. Valve therefore has in its possession a substantial volume of documents which have been disclosed by third parties in those proceedings, which are likely to be highly relevant to this claim. In competition proceedings, it is common for defendants to be ordered to disclose such third-party materials. It most commonly arises where a private damages claim is brought in relation to issues that have also been the subject of an investigation by the European commission, or the CMA within the UK, and disclosure is sought of materials from the investigation file which have been provided to the defendant. There is a reasonably standard process for dealing with that, in

which the defendant is ordered to provide those materials into a confidentiality ring, subject to the relevant third parties being notified of the disclosure order and given an opportunity to comment on it.

A similar process has in fact been put in place, you may have noticed, by the US courts in the *In re Valve* proceedings in clause 7 of the US Protective Order which is discussed in the skeletons. Indeed, just over a year ago, Valve told this Tribunal that it was necessary to put in place a confidentiality ring precisely so that it could disclose third-party materials in these proceedings, in line with the requirements of clause 7. But you will have seen that over the last few days, Valve has reversed its position on that. It now says that clause 7 does not apply, with the implication that it would be precluded by the US order from disclosing those materials in these proceedings. I'm not going to pre-empt my submissions on that in any detail, but in summary, the Class Representative's position is those third-party materials constitute a large tranche of highly relevant materials, which will be necessary to be disclosed in these proceedings if justice is to be done.

On its face, the US Order would appear to allow for that under the provisions in clause 7. But the concern is that Valve has chosen to make an application in the US that is urging the US court to adopt a particularly narrow construction of clause 7, which would effectively place an impediment in the way to disclosure of those materials in these proceedings. As I will come on to, it would not prevent a bar to disclosure, because disclosure is governed by English law principles, and the court should take into account the implications for foreign law orders, but they are not determinative. But even --

MR LOMAS: If I may, as I understood from the papers, the reason Valve had done that is because of an application made in separate arbitration proceedings in the United States, so they were responding to a separate application. Is that correct?

Secondly, do we know when that issue of interpretation is likely to be determined by the US courts?

MR GREGORY: Well, Mr Kennelly may be able to give you more precise information, but what they've said in correspondence is that it may take several months for that application to be resolved, and Valve's position is that all of these issues should therefore be parked until as and when the court has determined that application.

We say there runs a real risk of very significant delay if that happens, because once the issue has come back to the Tribunal, it will very likely have to make a determination on it. This is not a point that's likely to be agreed between the parties. Were the Tribunal to order Valve to disclose materials, which the US order is said to prevent Valve from doing, there's a real risk that such an order could be appealed.

If the Tribunal did take that approach, there would then be a likelihood that the Class Representative would have to bring numerous applications for third-party disclosure, which could take many months to resolve and would obviously involve considerable expense as well. Even if the Tribunal said, "Well, actually, we think we are going to order these materials, notwithstanding the terms of the US Order", very likely you would put in the sort of arrangements which are standard, both in English courts and as reflected in clause 7, under which third parties would be notified of a disclosure order and given an opportunity to comment, and then those comments would need to be taken into account by the parties and the Tribunal in due course. So again, even in that situation, there would be a process that's likely to take several months. That's why we are urging the Tribunal to try to progress these issues relating to the disclosure of third-party materials more quickly, and not simply leave them, as I think Valve suggests, that they be left to the CMC that takes place in April or May next year, ten or 11 months away.

I should note, for completeness, that a parallel set of issues regarding third-party

disclosure arise in relation to materials from the investigation that's been carried out by the Polish competition authority. Those third-party materials issues then feed into the question of whether there should be an autumn CMC.

The other items on the agenda are items 4 and 5, which relate to class communications and the updated Class Representative's budget. I was proposing to make my submissions on those agenda items in the order that I've just run through them, starting with the high-level approach to disclosure. I was also proposing to make all of my submissions in one go and then let Mr Kennelly respond, rather than try to do it issue by issue, and that's mainly because some of the issues are interrelated.

For example, the issue of the extent to which we may reasonably ask Valve to disclose documents in native file format is closely related to the position on the budget. In order to see the context of that, you need to understand what the Class Representative's budget is for the disclosure process in these proceedings and where we are with that. Similarly, whether you should order an autumn CMC is likely to be related to how likely it is you think issues are going to arise, for example, in relation to disputes about legal privilege and so on.

If I take that approach, I imagine I might be on my feet for around an hour and a half, at which point Mr Kennelly will be able to respond. In the light of that, I very much doubt we're going to go for the full day. It's customary to take a break for the transcribers mid-morning, so I'll try to stop at an appropriate moment, but if I don't then feel free to interrupt me.

Submissions by MR GREGORY

MR GREGORY: The first topic to address you on, therefore, is that the parties have agreed a two-stage disclosure process. It's evident from the draft CMC order, which is in the core bundle -- I'd be grateful if you could turn that up. It's core bundle, tab 15,

page 391.

Just to note while you're going there, there is a further updated draft CMC order in the supplemental bundle that contains some additional language proposed by Valve in relation to the opt-out period, but the two orders are otherwise identical. So we can obviously refer to that when we get to the opt-out period issue, but otherwise I'm going to use the core bundle version.

Any wording that is not agreed is in colour. Wording proposed by the Class Representative that's not agreed is in purple, and Valve's preferred wording is in orange. You can see from paragraph 1.1 that Valve has there agreed to provide the US Valve disclosure at the end of July.

If you turn over to the next page, page 392, the next few paragraphs concern points of detail about that tranche of disclosure that I'll come back to: the legal privilege and the file format and so on.

If you turn to page 393, paragraph 8 sets out the agreed process for what the Class Representative refers to as "further disclosure", and Valve refers to as "supplemental UK disclosure". I'm going to come back to that difference in language, because it's not just a drafting point. But just for the time being, focused on the proposed structure and the timetable, Valve will serve a disclosure report and EDQ at the end of July. There'll then be the Redfern schedule process at the end of the year and the beginning of next year. In March, the parties should exchange expert evidence proposals. Then at 394:

We shall try to agree issues of further disclosure, but we propose that a CMC should be listed for the first available date after 12 April next year to determine outstanding disclosure issues." [as read]

As I've said, we are content for that process, save that we think the third-party materials issues need to be progressed separately.

So we're turning to the different language used by the parties at paragraph 8. You'll see the Class Representative's preferred wording is neutral. It simply describes the additional disclosure as further disclosure, and says that it should be determined according to the process that is set out in that paragraph.

That's not true of the language proposed by Valve. Valve is asking the Tribunal to make an order that limits the scope of the disclosure process and the Tribunal's powers to order disclosure, a form of self-denying ordinance, in two key respects.

First:

Valve proposes that the process should be exclusively concerned with additional documents, the disclosure of which is necessary ... a departure from the standard approach under which the Tribunal has broad discretion as to the scope of disclosure without being constrained by any necessity test.

Second:

Valve further proposes that the process should be limited to materials that concern 'UK-specific issues'.

The meaning of that phrase is unclear and could preclude the disclosure of documents relevant to Valve's activities in the UK, which are also relevant to its activities in other countries, such as the US and Poland.

The context is that the Class Representative's understanding is that Valve's activities are at the centre of this claim, including its commission rates and its approach to its contractual arrangements regarding the PPOs and its policies regarding unfair pricing, or not UK-specific. As we understand it, the same or similar policies and approach are in place across different countries, including in the US and the UK, and potentially also in Poland.

Valve's rationale for taking the approach that you see here is set out at paragraph 22 of its skeleton. I'd be grateful if you could turn that up. That is in the core bundle,

tab 3 at page 35. (Pause)

When you get there, I'd be grateful if you could please read paragraph 22, which starts right at the bottom of page 35. Valve says there that it should only have to disclose relevant documents, but that goes without saying; the Class Representative is obviously not seeking the disclosure of irrelevant documents. For the avoidance of doubt, the Class Representative would have no objection to the CMC order saying that a further disclosure of materials relevant to the issues in the claim shall be determined according to the specified process, even though such wording would be entirely redundant.

But what seems to underlie Valve's approach is the belief that the further disclosure process should not encompass materials from proceedings other than the *In re Valve* proceedings in the US. I'm going to spend a few minutes on this, because it's not simply a drafting point; this point will potentially govern how Valve goes about producing its disclosure report and EDQ, and if that process gets off on the wrong foot, then that's going to create problems for the timetable and work further down the line.

Given that, it's helpful just to understand how these issues have developed. I'm going to spend a couple of minutes showing you the correspondence, which highlights that Valve has consistently been extremely reluctant to countenance disclosing some of these other materials. I'd be grateful if you could go to the correspondence bundle at tab 27, page 73. (Pause)

So this letter sets out the Class Representative's initial disclosure proposals. You can see if you look at paragraph 4, we proposed a two-stage approach to disclosure. Over the page, we originally proposed that initial disclosure should encompass off-the-shelf materials from *In re Valve*, but also other sets of proceedings where there had been overlapping issues. Those other sets of proceedings, or the ones we're aware of, were listed in paragraph 6, and that includes paragraph 6(b), the investigation by the Polish

competition authority.

Publicly available information suggested that the other proceedings that are listed related to issues which overlapped with specific points in these proceedings. Though unlike the Polish investigation, they didn't seem to be generally relevant, but they concerned points about, for example, market definition or the extent to which Valve monitors the redemption of Steam keys.

Paragraph 7 in the letter, we noted that Valve --

MR LOMAS: Sorry to interrupt. I think one of the blinds is blowing here. It's creating this rattling noise, which certainly from here is immensely distracting. Is it possible to do anything about it or not? It may just be a matter of taking off the fire extinguishers or something, but ...

UNIDENTIFIED SPEAKER: That's probably enough to --

MR LOMAS: Thank you. Yes, thank you.

MR GREGORY: There's a very hot sun outside, so we perhaps shouldn't put it up too much. Great, hopefully that solves the problem.

MR LOMAS: Perfect, thank you.

MR GREGORY: So our thinking was set out in paragraph 7: that these are pre-existing materials that Valve has in its possession, and we hope that these could be disclosed quickly and easily to help move the disclosure process along. But of course, we don't know the details about these proceedings because we're not involved in them, and Valve obviously does. So paragraph 8 asks Valve to provide certain summary information relating to them.

Just note in particular paragraph 8.4. We ask Valve to identify any constraints on its ability to disclose material from the other proceedings that were disclosed or produced by other parties. That's obviously the third-party material issue.

In relation to the In re Valve and Polish proceedings, Valve's position on that only

became clear last Monday evening, a few hours before the skeletons were originally due to be served. I'd be grateful if you could just read paragraph 11 on page 75. (Pause)

Once you've read that, I'd be grateful if you could turn forward in the same bundle to tab 33, page 147. (Pause)

THE CHAIR: Sorry, which tab was that?

MR GREGORY: It is tab 33 of the correspondence bundle. (Pause)

So this is Valve's response from a couple of weeks later. If we turn over the page to page 148, in paragraph 5, that's where Valve says it will provide its own disclosure from the In re Valve proceedings, but only in exactly the same form that they were disclosed in the US. So that's the genesis of the issues at agenda item 1(a).

Except, just note paragraph 5.2. At this point, Valve was suggesting that it would re-review some of the materials for the purpose of considering whether further redactions may be required to comply with UK data protection law. This letter is entirely silent as to the third-party materials issue and does not respond to the Class Representative's points about them.

Over the page to page 149. Paragraph 9 concerns these other proceedings. I'd be grateful if you could read paragraph 9.1. (Pause)

The other subparagraphs -- can I just ask if you could read paragraph 9.2 as well? (Pause)

So the other paragraphs here explain that Valve did not participate in some of the other proceedings, or that materials from those proceedings were included in the In re Valve disclosure, or asserted that some of the proceedings were not relevant to the present claim either.

Valve has largely relented on that latter point. It's been agreed that Valve will include in its disclosure report and EDQ materials from these other proceedings in relation to

issues which are relevant to specific points in this claim, such as market definition, the monitoring of Steam keys and so on. However, the investigation by the Polish competition authority appears to be generally relevant to the issues in the present claim, as the overlap is much more substantial. I'd be grateful if you could go to the supplementary bundle at tab 3 on page 25. (Pause)

This is the press release accompanying the launch of the Polish investigation. I'd be grateful if you could read the opening paragraph that starts "Warsaw, 13 May", and then the third paragraph starting, "The UOKiK inspection". (Pause)

So the investigation is looking into agreements or abusive practices of Valve in relation to game distribution, including in particular, abusive conduct that might result in higher prices for consumers, which presumably might include unfair pricing, and arrangements that might restrict the ability of publishers to sell games through competing channels, or which interfere with their pricing and discounting, such as the PPOs alleged by the Class Representative in these proceedings.

Those issues appear to directly overlap with all three of the alleged abuses in the present claim. We are obviously not involved in those proceedings, but based on the press release, it sounds very difficult to understand how the Polish investigation is simply irrelevant to the proceedings here.

As I said, the context of this is that Valve's relevant activities appear to be standard across different countries; so there's not one approach, for example, in relation to the US publishers and a completely different approach to commission charging and PPOs and so on, in relation to publishers in the UK and Poland. It all seems to be of a piece. In fact, that has been Valve's own approach to disclosure in the different proceedings. Here, Valve is saying that its own disclosure in America is highly relevant to the issues in this claim, even though this claim is obviously focused on UK publishers and UK consumers, presumably on the basis that it takes the same approach in the US, and

Valve has told us that in the Polish investigation, it has disclosed around 27,000 documents from the American disclosure exercise; again, presumably on the basis that the approach that it takes in America is relevant to the position that it takes in Poland. If that is right, then any materials gathered in the Polish investigation -- and they were including from inspections which were carried out at the offices of publishers -- are likely to be relevant to the issues in front of this Tribunal.

As well as not wanting to include materials from the Polish investigation in the further disclosure process, it appears that Valve also does not want to include any materials relating to the claim that has recently been filed in the US against Microsoft, alleging that Valve and Microsoft have entered into a price parity -- price fixing -- agreement relating to the price at which PC games are sold on their respective game stores. The claim was only filed at the end of May, and it is correct to note that Valve is not a defendant. The claim has been brought against Microsoft. But even if Valve is not brought in, which I presume it could be, it may have had or could have some involvement in relation to disclosure.

I'd be grateful if you would turn again to the correspondence bundle at tab 40, page 192. On page 192, I'd be grateful if you could read paragraph 36. (Pause)

Valve's response to that is in the supplementary bundle, so I'd be grateful if you could go to that once more, at tab 12, page 69. I would be grateful if you could read paragraph 27. (Pause)

That's fine as far as it goes, but the key point concerns not the initial disclosure, but the process for further disclosure. Valve has been somewhat coy about its involvement in these proceedings, but if the Rockman complaint refers to any documents that were not included in the *In re Valve* disclosure, but are in Valve's possession, they are likely to be highly relevant to the issues in the present claim, and should be included in Valve's disclosure report and EDQ.

THE CHAIR: If they're in Valve's possession, why wouldn't Valve be disclosing them anyway?

MR GREGORY: Well, we think --

THE CHAIR: We're not talking about third-party disclosure here, because they're not a party to anything where they get the third-party disclosure.

MR GREGORY: Well, sir, I think that's right, and that is certainly our position. If Valve has documents that are relevant to these issues, they should be included in the disclosure report and EDQ. The only reason I'm raising it is Valve seems to be kicking back against that a bit and suggesting that documents from some of these other proceedings are somehow not relevant to the issues in this claim. In our submission, given the nature of the Rockman complaint, issues that arise in that claim will be highly relevant to the issues in these proceedings.

THE CHAIR: But if they're Valve's own documents and they're relevant, why aren't they disclosed anyway?

MR GREGORY: Yes. Well, if Mr Kennelly is content with that, then there's no point on it. But what we took from their correspondence and the skeleton was that they're somehow suggesting that they should not have to disclose documents which may be referred to in the complaint, if they were not included in the initial *In re Valve* disclosure. If Valve accepted all these issues obviously overlap with the issues in these claims, and they will include any relevant documents -- for example, relating to communications between Valve and Microsoft relating to pricing on their respective game platforms -- then that's fine. We say that's what should happen.

I'd be grateful if you could now turn to the draft order, which is back in the core bundle at tab 15, page 393. (Pause)

Just very briefly, we say our wording should be preferred, because you have a broad discretion as to the scope of disclosure. It's not appropriate to limit it by reference to

some higher necessity test, nor is it appropriate to limit the disclosure to material that is limited to UK-specific issues, i.e. issues which only relate to the UK and don't also relate to what may be going on in other countries. Obviously, Valve is free to make whatever submissions it wants to down the line, but we say the test is simply relevance. If the material is relevant, it should be included in the disclosure report and the EDQ. That's where my submissions --

THE CHAIR: I think you were suggesting you might, so you're going for the purple wording?

MR GREGORY: Yes. That's correct.

THE CHAIR: And you suggested you would be prepared to include within the purple wording something along the lines of "Relevant to issues in the claim".

MR GREGORY: Of course. We don't think that needs stating; it's obvious. But of course, if that gives Valve some comfort, then the relevance wording can be included.

THE CHAIR: Right.

MR GREGORY: I'm now going to turn to the issues at agenda item 1(a). This relates to the form in which Valve should disclose its own In re Valve disclosure on 31 July.

As I've shown you, Valve's position was originally it was just going to disclose it in the same form as in the US, and that was that. We wanted there to be some sort of challenge process in respect of specific documents or categories of documents: for example, querying whether it was appropriate to withhold documents on the ground of US legal privilege.

Our concerns about that were summarised at paragraph 23 of our skeleton. I would be grateful if we just turned to that. It's in the core bundle at tab 2, page 12. The sub-paragraph there, part of paragraph 23. You may have read this recently, but if you just refresh your memory of the points that we were concerned about. (Pause)

A process to address those concerns has now been agreed, subject to some minor

points on the drafting. The agenda item 1(a)(i), concerning the legal privilege redactions, is entirely agreed. I'd be grateful if you could just again refresh your memories of paragraphs 25 to 28 of the skeleton. (Pause)

THE CHAIR: To 28?

MR GREGORY: Yes, up to 28. That is all agreed, and we are content with it, subject to the point that's been made in paragraph 29, which is that Valve has withheld some documents entirely on the grounds of US legal privilege. We obviously need to know that those documents exist and have been withheld, in order potentially to be able to challenge their withholding. We are content for those documents to be provided in the form of a list by Valve. This hasn't been completely resolved. I'd be very grateful if, when he stands up, Mr Kennelly can confirm that they are willing to do that, just so we know if documents have been withheld in their entirety.

MR KENNELLY: Yes. They will be disclosed by list, but per category, in the ordinary way, as under the CPR and in this Tribunal. There will be a list, but by category; category level descriptions.

MR GREGORY: Will we know the number?

MR KENNELLY: The total number? Yes.

MR GREGORY: In each category?

MR KENNELLY: No. The total number of all documents withheld, which is more than the Tribunal normally orders and more than the CPR requires, but we will give the total number of documents entirely withheld on the grounds of US privilege.

MR GREGORY: Right. Well, I will obviously take instructions on that. It may be that's what we get in the first instance, and then we have to rely on the process which has been agreed if we want more details about it. That's legal privilege.

Agenda item 1(a)(ii), regarding confidentiality designations, is also broadly agreed, subject to some minor points on the wording. 350,000 of Valve's US disclosed

documents have been designated as confidential in their entirety.

Just stepping back, there are two different sets of implications here. There are practical implications for us, for the Class Representative, and then there are implications for the principle of open justice. Taking those in turn, it's obviously necessary to mark-up documents that are produced in these proceedings -- witness statement, expert reports, skeleton arguments, pleadings and so on -- to identify confidential information, to redact it for public versions and to highlight it for the purposes of court hearings. The default position is that each party would normally be responsible for marking up their own documents, and I'm told that what my solicitor would normally do is attempt to track the use of information which has been designated as confidential through to those documents, so that when they have to mark it up, they know which bits of information are and are not confidential.

That process will be impossible in practice here, because 350,000 documents have been designated as confidential in their entirety, without any indication of the specific pieces of information which are actually confidential. Some of the contracts, for example, contain standard terms which are available online, which are plainly not confidential, but there may be specific numbers in it; for example, relating to commission rates or something similar. In reality, it will be just those numbers which have triggered the confidentiality designation.

The practical solution to this may be that Valve takes responsibility for identifying the confidential material in the documents which the Class Representative produces, so that they can produce in redacted form, or the material can be highlighted, and that would address some of the practical concerns from the Class Representative side. It would be helpful if when he stands up, Mr Kennelly can give an indication of whether he may be willing to do that.

The other set of implications are for open justice. If vast swathes of information has

been designated as confidential, that will limit the extent to which interested parties and the public in whole can be provided with full or relatively full versions of the documents in these proceedings, and the context is that it is of some wider interest. In a way, that's more of an issue for the Tribunal than for us, but we've tried to be a good citizen and to push back a little bit on Valve's approach that just simply says, "350,000 documents have to be designated in their entirety without any sort of challenge mechanism".

MR LOMAS: I was slightly confused by this, actually, because if I've understood it correctly -- and correct me if I'm wrong -- within the confidentiality ring order are essentially all of the legal team and the Class Representatives. They will have complete visibility of the material that is deemed confidential, so in no way does it inhibit their preparation of case or arguments.

The issue on public justice and so forth: is that not one that can be addressed some considerable way down the line, when it's much clearer what's going to be argued and whether in reality we're left with a trial process that's almost unworkable, because 50 per cent of it is confidential? You know, on any view of the timetable, we're some way away from that. I was trying to understand what really the substance of this point was for today.

MR GREGORY: Well, sir, I think the extent to which you're concerned about open justice throughout the proceedings is as much an issue for the Tribunal as for us. It may not be exclusively about the materials that are available for the final trial, because it's possible people can have access to documents throughout the proceedings as you go along, pleadings and witness evidence and reports and so.

MR LOMAS: But more limited, traditionally.

MR GREGORY: Yes, but of course more limited. A practical solution to that is that obviously the relevant material is marked up and redacted as you go along, so that

you can get access to at least redacted versions of the documents throughout the proceedings. I said I think the practical solution, the practical reality, is that in this situation it is going to be have to be done by Valve, both for its own documents and for the documents that we produce, because it's not possible in practice for us to identify which specific pieces of information are, in fact, confidential. But as I said, I'm not --

THE CHAIR: But there is something to be said for dealing with this down the line, on the basis that you're not affected by it, as Mr Lomas has said, and the public won't be affected unless it is produced in court; but it's unlikely that all 350,000 documents are going to be produced in court, so we can just deal with it with the ones that are produced in court.

MR GREGORY: I think if the Tribunal's concerns are limited to what happens at the end -- I think that's probably right; we're not pushing the point. We do have a challenge mechanism in place that can be used at an earlier stage. Actually, what's left is a fairly minor disagreement about the precise wording, so I don't want to take up too much time on it now.

MR LOMAS: To take the Chair's point further, suppose at a CMC next spring in relation to expert evidence, you wanted to say, "This expert is required for the following reasons, and that's material; look at these documents", and Valve leap up and down and say, "That contains confidential material". It'll be quite straightforward to redact some prices or commissions or client details for the purpose of that expert or that hearing which is determining which experts and which topics. So it becomes a pretty manageable issue at that stage, I would have thought.

MR GREGORY: Yes, as I've said, subject to all that being done by Valve, even in respect of our documents.

MR LOMAS: Yes, or setting the parameters. You know, prices that are within the last

ten years, client identities. You know, things of that nature which I'm sure can be descriptively defined.

MR GREGORY: Yes, I agree with that.

MR KENNELLY: Just to reassure my friend, if they produce a document and they're not sure which bits are confidential, we will do that job and we will, in a collaborative way, indicate the parts that ought to be redacted for the purposes of further use.

MR GREGORY: That's a helpful indication.

I would just then show you the disputed wording. I'm not going to take up much time on it. In the order, it is core bundle, tab 15, page 392. If you look at paragraph 3. So you can see the orange sentence at the end: that generally, Valve can respond in relation to categories. We just included the word, "where appropriate", which we didn't think was going to be particularly contentious.

Then I'll just show you the draft confidentiality ring order. That's in tab 16 of the core bundle at page 397. If you turn forward to page 402.

THE CHAIR: Do you have a paragraph number?

MR GREGORY: Yes, I'd be grateful if you could read paragraph 5.3 to start off with.

(Pause)

That's the paragraph that deals with the sort of challenge process for the *In re Valve* initial disclosure. Once you've read that, perhaps you can just jump back to paragraph 5.2. That's the equivalent paragraph that will apply to further disclosure, and you can see there's similar coloured wording at the end. (Pause)

THE CHAIR: So again, is that front loading it so that every document has to be done, whether or not there becomes a public disclosure issue in relation to that document?

MR GREGORY: Yes. Obviously the traditional approach to disclosure is if you're seeking confidentiality designation, you have to provide some sort of reasons for that at the time of disclosure. The history to this is that confidentiality rings were quite

unusual in English litigation until, say, around ten years ago. Over several years, they became increasingly common in competition proceedings to such an extent that just massive swathes of documents were being dropped into them almost by default.

You will be aware that the Tribunal has issued a practice direction on the treatment of confidential disclosure that is basically attempting to turn the tide on that a little bit. I think almost all of the confidentiality ring orders that have been put in place in new proceedings since then have included this sort of provision that requires some sort of reasons to be given at the time of disclosure, justifying the confidential treatment.

As I said, we're not pushing back against the idea that in general it's satisfactory for those reasons to be provided at a category level; it is simply that we may request an explanation, say, for an individual document or an individual bit of text, where obviously a category level explanation wouldn't be desperately responsive. It's not a major point, so I'm not going to take any more time on it.

The next agenda item I'll address you on is at item 1(a)(iii), which concerns the format in which Valve provides the documents, and whether the extent to which and basis on which we may ask Valve to provide documents in native format. I'd be grateful if you could turn to our skeleton argument, which is core bundle, tab 2, page 15. (Pause)

I'd be grateful if you could please read paragraphs 33 and 34. (Pause)

THE CHAIR: Does native format of its nature include the metadata for the document?

MR GREGORY: Yes, and that is one of the points.

So I think Valve has agreed to provide -- the primary documents have generally been provided in TIFF image format - I think it's agreed to provide metadata in certain instances, but I think, as I understand it from my conversations, that is sometimes in a separate document: a spreadsheet, for example.

So you can see the drafting dispute is really very minor. But perhaps I'll just take a moment just to talk about the broader context, because it does have some

significance, in particular the costs.

I'm going to take you through the updated budget in a few moments, but one of the points is that there's a real risk that there will be an overrun in the Class Representative's costs for the purpose of disclosure review. That's because the original cost estimates were put together at a time before the Class Representative knew that Valve was going to disclose 2.6 million documents.

The original estimates were broadly in line, I understand, with the costs incurred in a case where around 300,000 documents had been disclosed. So the disclosure here could be nine times larger than that. And yes, there will be some economies of scale that will be possible, but nonetheless, our disclosure review costs are likely to be substantially bigger than expected. It's therefore important that we should be able to review the disclosure as efficiently as possible.

One of the ways in which we're going to try and achieve efficiencies is through the use of an AI disclosure review platform. However, we will only know the extent to which that can work effectively with Valve's TIFF file documents once we've got our hands on them and once we've started using it. At this stage, it's quite difficult to know what issues will arise. It is possible that while an individual document may be reasonably usable when considered in isolation, actually, the time and costs that are incurred in dealing with a large category of TIFF file documents could be much greater than the time and costs required to work with documents in native format.

THE CHAIR: Is this just a simple matter of whether the TIFF documents are machine readable by the AI?

MR GREGORY: I think it's partly that, yes. Yes.

THE CHAIR: You know, I see this all the time in bundles: that some bundles, I can select the text and dump it into my judgment, and in other bundles you can't do that, so presumably that means it's because my machine can't read that as text --

MR GREGORY: Yes.

THE CHAIR: -- (overspeaking) as an image.

MR GREGORY: Given the volume of materials which have been disclosed and the fact that the disclosure review costs are going to run into the hundreds of thousands of pounds, you can see that the ability to use an AI disclosure review platform efficiently could actually produce very significant cost savings. So that's the context in which we might be asking Valve to disclose some of the documents in native --

THE CHAIR: Right, but are you just --

MR GREGORY: They have confirmed their costs.

THE CHAIR: Perhaps a point from Mr Kennelly to deal with in reply, but is that then just putting the same sort of exercise on the defendant on the basis that they can't just use their oven-ready documents; they've got to go back and find which computer those documents were on and find it in native format, and there is the question as to whether that is an even greater imposition on them than the ability not to use machine reading is for you.

MR GREGORY: Yes, well, the key words there I think are the "greater imposition".

THE CHAIR: Yes.

MR GREGORY: There's obviously a question of proportionality here. So you can see that, for example, we ask for a load of documents. Valve says: well, we're going to have to review them, say, for legal privilege, and it's going to cost us £50,000. But having those native file documents might allow us to make savings of £100,000 in terms of our disclosure review costs.

I suppose one issue just to flag is: considering the costs on both sides is obviously the right approach, but I can see that it may not be possible for the parties to agree all of these requests between themselves, and some of them may come back to the Tribunal for determination. Obviously, that is one category of issues which we say may require

resolution. It's one of the reasons why we think an autumn CMC may be helpful, just because it's a big disclosure exercise: a lot of disclosure issues may well come up, and it may well be necessary to have the Tribunal's timely determination of them.

MR KENNELLY: Sorry, can I just maybe save my friend some time? Because this is the first -- we've actually not heard this point before about the need to use AI and the potential problems they expect with TIFF documents.

We will be disclosing with the TIFF documents a searchable text file. The TIFF document will be accompanied by a searchable text file in respect of the 2.6 million documents. That means they will be able to use standard AI technology on those searchable text files.

THE CHAIR: Well, it does seem relevant. Thank you.

MR GREGORY: What I'm hearing is that may work, it may not, and we will only find out when we actually start undertaking the review exercise.

THE CHAIR: Well, I'm struggling to see why an AI could read an email in native form and a Word document in native form, but can't read a -- well, presumably these text files are Word documents.

MR KENNELLY: It's a .note file.

THE CHAIR: A .note file, right. A .note file.

MR GREGORY: I think we've hit the limits of my technical expertise, so I think probably the best thing to do is for me to have another conversation with my instructing solicitors, perhaps when we take a break.

THE CHAIR: Yes.

MR GREGORY: The final issue regarding the *In re Valve* disclosure concerns the fact that we've requested that Valve produce an organogram or something similar, just identifying the key individuals within Valve who are involved in the relevant activities and their role within the company. This is just reflected in the draft CMC order. That's

in core bundle, tab 15, page 392. (Pause)

I'd be grateful if you could read subparagraph 1.2. It's the purple text at the top of the page.

So the practical reason for this is that when you're reviewing disclosure, the documents are a lot easier to understand if you know the identities of the individuals who had responsibility for the relevant activities, their roles within Valve, the teams in which they work, and so on. Obviously, you can start to piece that together over time as you're going throughout the disclosure process, but if you have that information at the outset, it can make things a lot quicker and therefore cheaper.

In its skeleton, Valve says that its understanding is that no organograms exist in the disclosure itself, and it strongly resists creating one on the basis that that would require it to review all 2.6 million documents and to do it. For the avoidance of doubt, that is not what we are asking Valve to do. There's no need for any organogram to be completely perfect and to cover everyone referred to in this massive tranche of disclosure. But Valve must know or be able to identify many of the key individuals who are involved in these activities without re-reviewing all the disclosure.

It's already reviewed the disclosure itself, so I presume it must have created notes on what happened that referred to the relevant individuals. It's already given factual evidence in the US, and will have had to identify individuals with the relevant responsibilities for the purpose of doing that, and those individuals will know what their roles were at the time and the more significant members of their teams that were involved.

So, yes, it might require some costs to be incurred by Valve. But again, we're back to the proportionality issue. We say this is a situation where at relatively little cost, Valve could provide some information which could produce really quite significant cost savings on our side in terms of the disclosure exercise.

MR LOMAS: Wouldn't the normal way of dealing with that problem, which is kind of inherent in most disclosure exercises, is to look at the disclosure you receive and then raise a part 18 request or the equivalent, saying, "Who is Mr Smith? What does he do? Who does Mr Jones report to?" or whatever, to which the answer may be an organogram as a way of doing it, or it may a written answer. Why would that process not apply here, as it usually would? (Pause)

MR GREGORY: The answer I've just been given is that the AI review platform is likely to be much more efficient if it can be given that information at the start of the exercise. I think the answer is we could go through that process, but it will just result in delay, because we'll have to make the request; Valve will then have to go away and spend some time producing the information, which it will then give us, and we can then plug it in. But it would be much more efficient if Valve can go and get that information now and give it to us on 31 July, and then we can get cracking in an efficient way. Again, the context is that this disclosure review exercise is going to be very big indeed. 2.6 million documents is a lot of documents.

THE CHAIR: Thank you. Is there any way you can identify up front the categories of individuals whose job descriptions are needed?

MR GREGORY: I think the answer to that is no. Not without having seen the disclosure. Valve, I think, itself has said that lots of their people don't have very detailed job descriptions.

THE CHAIR: I mean, your wording does seem rather -- "the individuals involved in relevant activities referred to in the US Valve documents". Why only the US Valve documents? Don't you want to know what people were doing in the UK?

MR GREGORY: Well, the initial disclosure comprises disclosure from the US, which we envisage will be focused on, what was being done in Valve's head office in the US and its relationships with publishers in the US. As I've said, our understanding is that

Valve's approach is not US-specific. It takes broadly the same approach in other countries as it does in the US. So the whole premise is that --

THE CHAIR: What are relevant activities?

MR GREGORY: Well, if the issue is that the request needs to be more precisely defined, we can do that. As I said, it doesn't have to be perfect. For the reasons we've given, having as much of this sort of information as can reasonably and proportionately be provided on 31 July would be very helpful, and could produce very significant cost savings. We're not saying it has to be perfect, and we're not saying they have to re-review all the disclosures to do it, but they must have some information that they could give us fairly quickly and easily.

THE CHAIR: And are relevant activities the persons who had involvement in setting the policy or terms (overspeaking)?

MR GREGORY: Yes. Things like the commission rates, the PPO terms, what Valve sometimes referred to as its policy that Steam customers have to be treated fairly; things like that. These are the core activities which are at the centre of the claim. I said, if it's a case of being more precise in the wording, we can obviously do that.

MR LOMAS: I think perhaps we should not be distracted by it now, but when Mr Kennelly is making his submissions, it would be interesting if he was able to give an idea of the size of the headcount and team within Valve and Steam, because these things scale very rapidly. I don't know if we're talking about ten people, 100 people, 10,000 people, and that would have quite an impact on the size of the exercise.

MR GREGORY: I would be very grateful for him to do that.

That, I think, is all my submissions on agenda item 1(a), which concerns the initial disclosure.

I'm now going to turn to what we consider to be the most significant item on the agenda, namely the issues relating to disclosure of third-party materials in Valve's

possession that have emerged in recent correspondence. You have seen that when we initially proposed the two-stage process, we proposed that Valve should include these third-party materials at the same time, because they're basically off-the-shelf. They are existing documents and have presumably been reviewed for confidentiality and legal privilege and so on.

On 8 May, we specifically asked them to flag if there are any constraints on the disclosure of third-party documents, and Valve has only very recently provided a clear explanation of what it says those constraints are. It's previously explained that the US disclosure includes third-party materials from 29 different entities, in addition to Valve. As I said, it's common ground that there's a very substantial overlap between the issues in the US proceedings and the issues here. The documents, which have been disclosed in the US proceedings, including by third parties, are highly likely to be relevant to the issues before the Tribunal. I mean, in reality, a lot of these materials have been disclosed by the plaintiffs in the US proceedings, so it's not unreasonable to suppose that they may contain some materials which are adverse to Valve's position.

The context, of course, is that Valve itself has disclosed a vast quantity of its own evidence from the US proceedings, and indeed, that seems to be the main evidence on which it's intending to rely here, and it has obviously had sight of all the third-party materials, and the Class Representative has not. So we say that the disclosure of these third-party materials will be necessary to ensure that the Tribunal has before it the evidence necessary fairly to determine the issues in dispute, and to ensure equality of arms.

Until a few days ago, Valve's position was that these materials could be disclosed in these proceedings, under the terms of the US order governing confidential materials which have been disclosed in the US. In particular, the first CMC in May 2025 was

concerned with the confidentiality arrangements that should be put in place. Ahead of the CMC, Valve served the first witness statement of Mr Ross, a partner at RPC. I would be grateful if you could turn that up. It's in the core bundle, tab 18, page 481. (Pause)

Please turn forward to page 483, and I'd be grateful if you could read paragraphs 7 to 10. (Pause)

When you have read that, I would be grateful if you could go to page 486 and read paragraph 21. (Pause)

Finally in this document, go to page 487 and read paragraph 25, including the various subparagraphs of that paragraph. (Pause)

I'm just looking at the time. I don't know if now might be a good time for a short break, but I'm happy to keep going if you'd rather --

THE CHAIR: It depends how long it's going to take you to finish (overspeaking).

MR GREGORY: Yes, I think it will take me over the when we should probably break for the transcribers.

THE CHAIR: Okay, well, let's break now then. We'll come back at 11.53 am.

MR GREGORY: I'm grateful.

(11.42 am)

(A short break)

(11.54 am)

MR GREGORY: Three miscellaneous points, based on the discussions I've been able to have with those behind me.

Our understanding, I think from an earlier public statement, is that Valve only has around 300 or so employees, but Valve is obviously going to be in a position to confirm what the current number is. The context is that Valve used to be involved in developing its own games, but over time has moved towards being a seller of other people's

games on its platform. We will to try and get some more information over lunch, given it looks like we'll be coming back after lunch, about the issues that we may encounter with the AI disclosure platform, and if we can provide any more information after lunch, then I will do.

THE CHAIR: Yes. Has anybody tested the AI platform with TIFFs or with text files?

MR GREGORY: Well, the people who run the AI disclosure review platform will obviously have experience of this. We are contacting them, and if I can give you more information based on what they tell us after lunch, then I will do. It would obviously, on the other side, be helpful just to have as much understanding as possible about the contents of the text files that Valve says we disclosed. Our understanding is those text files will include the metadata, but not the full text of the document. The full text of the document can't be disclosed, because it would have required Valve to have done the review exercise, to mark-up specific information and so on. But again, I don't know if Mr Kennelly wants to clarify.

MR KENNELLY: I will take instructions. I must say, it would have been helpful if we'd been given some notice of this issue about the use of AI to do specific document review. Had we been told even yesterday, I could have taken instructions. I'll do my best in the time.

MR GREGORY: All of this is by way of background context, because we obviously do have a mechanism, subject to the minor point about the wording, for us to request disclosure of the native format files and for Valve to respond and so on. But given that some of these issues may be coming to the Tribunal in due course, it's probably helpful just to understand them as best we can.

THE CHAIR: But if the issue is the whittling down the millions of documents to the level where you can do individual requests, then we need to deal with it up front.

MR GREGORY: Yes, it would certainly be helpful.

The only other point was one more question which Mr Kennelly may be able to take instructions on over lunch, which is he said that in relation to legal privilege, they would be able to tell us the number of documents which have been withheld and the categories, but not the number of documents within each category. It would be helpful to understand why they can't tell us the number of documents within each category. Again, I'm happy for him to provide information on that later.

THE CHAIR: Do we have any general understanding of the difference between US law on privilege and privilege as we understand it in the UK?

MR GREGORY: Well, at a very high level, they have the same sort of background concepts, but their application can differ. There have been cases including the judgment which was referred to in the skeleton, where what was being discussed with documents which had been redacted on the grounds of US legal privilege. Mr Justice Hildyard, who was responsible for the CPO hearing, held that those documents did not fall within the scope of UK legal privilege. Basically, they are broadly aligned, but the overlap isn't complete.

To return to where I was before the short break, I've shown you Ross 1. The US Protective Order itself was exhibited and was in the bundles. I'd be grateful if you could go to that. It's in the core bundle tab 19, at page 494. (Pause)

Just turning the pages on 495 to 496, you see the definition of confidential material. At the bottom of page 496, there is a provision regarding the scope of the order. I would be grateful if you could read that section 3 at the bottom of page 496. (Pause)

We have proposed that Valve should disclose a list of the third-party documents that were disclosed in In re Valve, so that we and also you, the Tribunal, can consider the third-party materials issues on a more informed basis. Valve has suggested that it cannot do that, on the basis that even providing a list of documents would be contrary to the US Protective Order. I presume it has the scope provision in mind, but on our

side, we cannot understand how even providing a list of documents would contravene the order.

Clause 4.1 on page 497; that sets out the central prohibition on collateral use. (Pause) Then after you've read that, I'd be grateful if you could turn forward to page 502, and please read clause 7. (Pause)

We are not US lawyers, but we can all read English. The point I make is that that on its face, the plain meaning of this provision would appear to cover a disclosure order made by this Tribunal in these proceedings. There's nothing expressed that limits the word "court" to a US court, and nor would there appear to be any obvious policy reason why --

THE CHAIR: Well, the term is "the court," isn't it, rather than "a court"?

MR GREGORY: Yes. "The court" is the --

THE CHAIR: So the "the" may suggest that it is whichever -- I'm not sure if this is a state proceeding or a federal proceeding, but presumably the federal court.

MR GREGORY: Yes, well, it says:

"... if a party is served with a subpoena or a court order issued in other litigation." [as read]

THE CHAIR: Where are you reading from?

MR GREGORY: Sorry, I'm looking at clause 7 at the top of page 502. This is the clause that governs where orders for disclosure are made in other proceedings.

THE CHAIR: I see.

MR LOMAS: But it's really about meaning of the word "litigation", isn't it?

MR GREGORY: It's really ...?

MR LOMAS: About the meaning of the word litigation.

MR GREGORY: Yes, possibly. I thought this was litigation.

MR LOMAS: Yes. I think the question is whether the American judge making it

thought this was litigation.

MR GREGORY: Well, certainly Valve's own understanding of this order was that this provision applied in these proceedings. As you've seen in Ross 1, there was also a similar statement in Valve's skeleton for the May 2025 CMC. Just for your notes, that's in the supplementary bundle, tab 2, page 22. The relevant paragraph is 24.5.

At that stage, Valve's submissions were that, were the Tribunal to order Valve to disclose materials from the In re Valve proceedings that had originated from third parties and had been designated as confidential, that clause 7 would apply, and that if Valve disclosed such materials in these proceedings, other than into a confidentiality ring, it would be in breach of clause 7. But Valve could disclose such materials in line with the requirements of clause 7 if they were disclosed into the sort of confidentiality ring which Valve proposed at the time, and that such a confidentiality ring should therefore be put in place for that reason.

In part, on the basis of those submissions, an interim confidentiality order was put in place. Again, just for your notes, that's in core bundle, tab 12.

That remained Valve's position until a few days ago. I'd be grateful if you could turn to the correspondence bundle at tab 38, page 176. (Pause)

So this is Valve's letter of 9 June. I'd be grateful if you could go over the page to page 177 and read paragraphs 4 to 7. (Pause)

THE CHAIR: So the key passage is the one in paragraph 7?

MR GREGORY: Yes. (Pause)

So at this point --

THE CHAIR: Is there an additional difficulty that even if this does apply to other courts, we're a Tribunal, not a court?

MR GREGORY: Well, I'll let Mr Kennelly make submissions on that. I mean, I don't think this -- there's no policy reason to regard that these proceedings before this

Tribunal should fall outside the scope of the order. I mean, that would be an extremely literal reading of the order.

The policy concern is obviously that there needs to be a balance struck between the interests of justice in other litigation and the legitimate right of third parties to have their confidential information protected, for example, by disclosure into a confidentiality ring. We are proposing to comply with the substance, the requirements of the order, and there does not seem to be any policy reason not to do that.

At this point in time, when you've read the letter, this is ten days after Valve has filed its US application. Valve then is still saying that it considers the terms of the US Protective Order to be clear and that the position is as set out in Ross 1.

As to what happened next, that's set out in our skeleton. I'd be grateful if you could go back to that. Core bundle, tab 2, page 19. I'd be grateful if you could just read paragraphs 47 to 52. (Pause)

THE CHAIR: Sorry, what was the paragraph again, please?

MR GREGORY: Our skeleton, paragraphs 47 to 52. (pause)

On the final point at paragraph 52(b), even if Valve were prohibited by the US order from disclosing the third-party materials, that would not prevent this Tribunal from ordering their disclosure. The issues of disclosure are governed by the lex fori English law, and there is case law saying that English courts can order the disclosure of materials, even where their disclosure would place the disclosing party in breach of a foreign law, even including a foreign criminal law. The fact that there would be such a breach is obviously irrelevant consideration, but it is not determinative.

The leading case is a judgment of the Court of Appeal in a case called *Bank Mellat*. The court must take into account all of the circumstances and consider what is appropriate to do justice. That would obviously include how things have developed on the facts of this case.

It would be one thing if Valve had simply sought clarification of the position from the US courts. It could have made an application asking the court to clarify the position, noting that the materials were likely to be relevant in these proceedings, and submitting that clause 7 should cover any disclosure ordered by this Tribunal in the interests of achieving justice, and to avoid Valve potentially being put in a position where it has to breach the terms of the US order.

But that is not what Valve has done; it has chosen to positively advance the opposite argument, and it is trying to persuade the US courts to construe clause 7 narrowly, contrary to what I would suggest is its plain meaning and Valve's own previous interpretation, such that it would not apply to the present proceedings.

It is very difficult to avoid the conclusion that Valve is deliberately trying to put in place an impediment to the disclosure of the third-party materials that you, the Tribunal, are able to order. If Valve was successful in the strategy, it would presumably only be possible for the Class Representative to get these materials by making applications for third-party disclosure from the 29 third parties who provided the documents. That would be a hugely expensive and time-consuming exercise, and the governing principles before the Tribunal mirror the overriding objective under the CPR. Both the parties are under an obligation to act in a way that ensures the parties are on an equal footing and saves expense and ensures the proceedings can be dealt with expeditiously and fairly. In the Class Representative's submission, in taking the course that it has, Valve has acted in breach of those general principles.

As to the implications for these proceedings, you are not being asked to determine any disclosure application today or all of the issues which are raised. The point for today is that what has happened has raised issues of considerable complexity. The disclosure of the third-party materials is going to be highly significant for these proceedings, and it is important that those issues are progressed efficiently.

Realistically, unless Mr Kennelly stands up and says that Valve has recanted its position, this point is not going to be agreed between the parties; it is going to require you to determine it. One procedural issue which is an issue for you is whether this Tribunal might write to the US courts to notify of these proceedings and the possibility that a disclosure order may be made. That is a matter for you.

But whatever happens in the US, you are likely to have to determine at some point an application for disclosure of the third-party materials in these proceedings. In our submission, it's important that that is progressed as quickly as possible, because it could be a source of significant delay.

Any decision you make could potentially be appealed. That is a realistic prospect, because there have been appeals against orders made in equivalent situations in other cases. If disclosure is granted, there will need to be a process for notification of third parties. If it's not granted, there may well then follow applications for third-party disclosure, which could take many months to determine.

The *In re Valve* materials are the most significant third-party materials. But for completeness, some of the same issues may arise in relation to third-party materials in the Polish investigation. In relation to that, I'd be grateful if you could just read paragraphs 56 to 57 of our skeleton.

MR LOMAS: Mr Gregory, before you move on, would it be possible for the Class Representative to make submissions to the American court on interpretation against the background of this case?

MR GREGORY: Well, it may be that Valve is in a position to give us some information about that. These developments have only occurred in the last few days. It is obviously something that we could look into, and it may well be possible for us to make such representations. If we can, we will consider doing that.

MR LOMAS: The American court is presumably going to look at it from the perspective

of the request coming from an arbitration process. The issue that you're raising is a slightly different one.

MR GREGORY: Yes, I certainly think it would be helpful for the US court to be made aware of these proceedings and the relevance of the materials for these issues in this claim, and the possibility that a disclosure order may be made. Whether that communication is better coming from us or the Tribunal is one question. But I think one way or another, it would be helpful for one of us to put that information before --

MR LOMAS: It was your comment that provoked the question.

MR GREGORY: Yes.

Just for completeness, I was just going to ask you to read paragraphs 56 and 57 in our skeleton: core bundle, tab 2, page 21. (Pause)

So that takes me on to the agenda item 3(a), which concerns whether the Tribunal should list an autumn CMC. We obviously say that it would. We think there were some very significant issues regarding the third-party materials that are likely to require determination. Valve's suggestion seems to be that these issues should simply be parked until the next CMC, which would otherwise be in April/May next year. Valve I think says that's appropriate because we need to wait for the ruling of the US court on its application.

As I've said, it doesn't necessarily follow that that's the case, because even if the court rules that clause 7 does not apply, that does not preclude this Tribunal from ordering disclosure. In fact, it is possible to look at things the other way round, which is that it may be helpful for the US court to know what views this Tribunal has reached on an application for disclosure of those materials in these proceedings. It may well be relevant in its construction of clause 7 that on one construction, it would place Valve in breach of the US order, and another construction would not.

However you look at it, there are clearly some very significant issues here, and we

think parking them for 10 or 11 months, as Valve seems to suppose, is just a recipe for very significant delays to the proceedings. I've already flagged there may well be a number of other issues which may come before you relating to legal privilege and the form of which documents are disclosed.

Finally, in relation to the timetable, you asked for the party's views on whether there could be a split trial and the likely timetable to trial. I briefly covered in opening that neither of the parties consider that a split trial would be viable, because the various issues are closely interrelated. We actually also broadly agree as to when a trial may be possible. I think we probably are looking at early 2029. We say it could be brought earlier, but that obviously depends on disclosure issues being progressed quite quickly.

The last two agenda items concern communications with the class and updating the Tribunal on the Class Representative's budget.

If you just turn back to the agenda, core bundle tab 1. We're now at agenda item 4, "Communications with the class".

You can see that are three different points there. They arise from two sources. First on 15 June, the Tribunal asked for an update on the number of class members who have opted out. And in correspondence and in its skeleton, Valve has proposed that the three-month opt-out period should be extended by a further six months.

Just dealing with the factual matter first: during the CPO hearing, the Class Representative agreed to provide quarterly reports on its communications with the class and the level of engagement, and that that commitment was recorded in the recitals to the CPO order. The first report was provided by the Class Representative on 30 April of this year, covering quarter 1, 1 January to 31 March. That is at correspondence bundle tab 1, page 4. I'd be grateful if you could turn that up. (Pause)

You can see the first few pages provide some information about the claims websites

and the emails that were sent out on 12 and 13 March. If you turn forward to page 7, there you can see the data. If you look at the top few rows, the claim websites rows, the number of individuals visiting the claim websites and signing up to the mailing list are set out. For the first quarter, the numbers were 33,560 and 1,644. This is obviously only Q1. I'm told that as of last Friday, there are now 4,678 people signed up to the mailing list.

The next two sets of rows provide data on the emails that were sent out on 12 March and 13 March. The email on 12 March went to people who had signed up to receive emails on the claim website. It went to 3,962 people. It had an open rate of about 50 per cent, which I'm told is pretty high for these sorts of things.

The next set of rows cover the email on 13 March. That email was sent out because a number of people had spontaneously contacted Milberg directly, not through signing up on the claims website, so those people were also contacted. Again, the open rate is quite high.

Then you can also see that there are various FAQ emails that were sent to or from class members. That's covered in the final section.

The next report similar to this is due to be provided by mid-July. (Pause)

That will cover quarter 2 of 2026. The Class Representatives' communications with class members have all been carried out pursuant to the post-CPO engagement strategy, which is set out at section 8 of the NAP. That document was considered by the Tribunal as part of the CPO process, and their issues are raised by Valve in relation to it. Just for your notes, that document is at core bundle tab 8.

In relation to the number of opt-outs, the opt-out period ran from 12 March to 11 June. It's a three-month period that's become fairly standard in collective proceedings claims. Over that period, 3,815 class members opted out of the claim. 98 people opted in. Everyone who opted out is domiciled in the UK. Everyone who opted in is

non-UK domiciled, and we know that because the forms require you to enter your address when you complete the form.

Paragraph 29 of Valve's skeleton suggests that further opt outs have been received but have not been validated. I'm not sure where that comes from. It appears to be a misunderstanding. Epic and the Class Representatives seek to validate certain class communications data. For example, quite a lot of the website signups come from bots rather than real people. But there's no need to validate the opt-out numbers. That opt-out number is accurate and is not going to change.

Just to put the number of opt-outs in context, the estimated class size is 14 million. 3,815 opt-outs therefore amounts to about 0.03 per cent of the class members. That's about 1 in every 3,500 people have opted out.

THE CHAIR: But it's about 10 per cent of those who engaged with the website.

MR GREGORY: Yes. Oh, I see. Well, that, I think, is a slight misunderstanding on Valve's part as well, which has drawn an inference from a number of opt-outs of the number of people who clicked on the advertising, including the banner advertising. So there's various routes by which people can get to the claims website. There has obviously been a lot of media coverage, including articles in the general press and so on, associated with the launch of the claim and the CPO. I think it's estimated that that media coverage might have reached about 64 million people. (Pause)

Mr Kennelly is asking where that's from. I'll try to get him that figure over lunch.

THE CHAIR: 164 million people?

MR GREGORY: Yes. I presume that includes people in the US as well.

So anyone who becomes aware of the claim can obviously choose to go to the claim website. There are obviously also people who just have gone to the claim website through other routes who sign up to receive the emails. Then also there is the internet advertising which is put out, where you get a pop-up banner ad and people can click

on it, and that then takes them to the claim website and they can get in that way. So there is a number of different routes by which people can get to claim website and opt out.

THE CHAIR: But in the period to 31 March, only 33,000 got to the claims website; is that right?

MR GREGORY: Sorry, (inaudible) --

THE CHAIR: I'm looking at page 7, going back to those numbers.

MR GREGORY: Yes. Just to note, this quarter 1 period which is covered by this report is not the same as the opt-out period.

THE CHAIR: No, no, I've got that. Yes, so it's apples and pears.

MR GREGORY: Yes, it's apples and pears a little bit.

MR DAVIES: Just for clarity, is the only way to opt out to go to the claims website?

MR GREGORY: Well, I think you can see you people have received emails if they have signed up on the claims website. I'll just check whether those are --

MR DAVIES: But if you want to opt out --

MR GREGORY: Yes.

MR DAVIES: -- is the only way to do it to go to the claims website? Is your point that they might have heard about it through the general media and then gone to the claims website specifically to opt out? Maybe that's a slightly different question.

The interesting question is just about the claim. Does that mean they know they have to?

MR GREGORY: Yes. You can go to the claim website and opt out through the claim websites. Another route which still involves going to the claim website is you go to the claim website, sign up to receive the emails, and then you receive an email which gives you a link which you can click through to opt out. It's technically possible for people just to write directly to my solicitors.

THE CHAIR: And you mentioned there was general awareness through the media. Did that general awareness through the media include the awareness that if you didn't want to be in and you're within the UK, you needed to opt out?

MR GREGORY: A lot of the original media was at the time the claim was launched, so that was before the opt-out process. (Pause)

There was a lot of media at the outset of the claim. There was another wave of media at the time the certification judgment came out, so there was some media at this point. Also, the details of the claim websites and the possibilities to opt out have also been shared on various online fora which are used by PC gamers. Our understanding is that knowledge of the opt-out process has been spread partly that way. It seems to be common ground that PC gamers can be quite an animated lot. Some of them feel very strongly about their gaming and their preferred platform, and you may have seen attached to some of the correspondence some pages from a Reddit noticeboard. On those sorts of notice boards, there have been links to the claim website, which have provided details for people to opt out.

Then finally on the class communications, Valve has suggested that the opt-out period should be extended. It proceeds on the basis, that we say is wrong, that the Class Representative has achieved very low levels of engagement with the class members, but where the class members have engaged, Valve says that a significant portion have chosen to opt out. Largely, because this is Mr Kennelly's application, I'm going to let him make his positive arguments, and then I can respond to it later, subject to two initial points.

They have suggested or inferred that 25 per cent of people who clicked on the online ads have opted out, but that's not correct, for the reasons that I gave earlier. There has been wide press coverage, and then people will have got to the claim website through that, and many of the opt-outs will have come through that process rather than

through the online advertising.

THE CHAIR: Well, you can't really tell until we've got the communications report that covers the whole period.

MR GREGORY: Yes. Well, that will certainly --

THE CHAIR: Because that would tell us how many people responded to the press interest or the Reddit posts and went to the website and weighed it up, and then decided whether to opt out or to opt in if they needed to.

MR GREGORY: Yes. We will give you some insight into that.

MR DAVIES: I mean, even that wouldn't quite do it, would it? Because I think what you're saying is that Valve's contention is that the people going to the website is almost a random slice through the 14 million, and of those, quite a large proportion opted out. Whereas you're saying anybody who opted out, even if they've just seen it in the media, has gone to the website specifically to do that. So that's not a representative percentage of the broader population of the potential claim.

MR GREGORY: Yes, focusing on the click-through numbers is not an appropriate way, because there's all sorts of ways that people may choose to go through to the website, including the press articles and so on.

I said Valve has also included these internet chat discussions in some of its correspondence, and you can see that some people do feel very strongly. We suspect that a lot of those people are based in the US, but they are not class members anyway.

I said our impression is that because the claim has generated a lot of publicity, both generally and within the specific gaming community, we think that a large number of people will be aware of it and aware of the possibility of opting out, or had the chance to go to the claim website to find out about it. The reality is that only a tiny proportion of them, the total class, have opted out to date.

THE CHAIR: If we were to extend the period, would that have any implications for the

timetable?

MR GREGORY: I think the main implications would be cost implications. I don't think it would necessarily --

THE CHAIR: Could you explain that, please?

MR GREGORY: Well, I think presumably because there would be -- hang on, let me just check. (Pause)

Simply extending the periods in itself without doing anything else should not generate significant cost consequences. If it had to be accompanied by a fresh wave of PR activities and paid advertising and so on, that obviously would have cost consequences.

Those are my submissions on the --

MR LOMAS: Sorry, on that topic, and it closed on 11 June, at the moment -- so a couple of weeks later -- are there further requests that have been made to opt out that have been made after the deadline, which would otherwise come to the Tribunal, or is there a zero for the past couple of weeks?

MR GREGORY: The form shut at the end of the opt-out period.

MR LOMAS: Oh, I see. So you wouldn't know.

MR GREGORY: Yes. The only way we'd know is if someone had spontaneously written directly.

MR LOMAS: I see.

MR GREGORY: I understand there's been no, or no material number of, people doing that after the opt-out period.

MR LOMAS: Just pursuing this line of thought further. I don't think this came up at the hearing last year. It would presumably be possible to leave that form open on the website and say, "If you wish to opt out, please sign your name here so that we have a record", and you make an application to the Tribunal. So it's a relatively limited

amendment to what is on the website, rather than just shutting down the route. (Pause)

MR GREGORY: I recognise it would be technically possible to do that. I'll take instructions over lunch, perhaps, as to the wider implications of it; whether it would be possible.

MR LOMAS: Thank you.

MR GREGORY: The final item that I was going to address concerns the update to the Class Representative's budget. That information was provided to the Tribunal on Friday. You'll note that a couple of cells in this spreadsheet are confidential vis-à-vis Valve, because they would allow them to back out the level of ATE insurance which has been taken out. But other than that, Valve has the spreadsheet.

I was only proposing to make a couple of high-level points. One is that in very broad terms, we are sort of more or less on track in relation to the overall budgets. The main point to flag is the one that I've already flagged up, which is that there is a very real risk of a significant overrun on the costs relating to disclosure review, because the original budget estimates were put in place before we knew the size of the disclosure that would be coming: 2.6 million documents.

So obviously there is a contingency fund, but nonetheless, that's the main area of risk in the budget. If you've got specific questions about the update, then I'm happy to answer them as best I can, or failing that, I can take instructions on them over lunch.

Finally, the only other point to flag is that Mr Kennelly said it would be helpful to have known that we were proposing to use the AI disclosure platform to review the materials -- and that was a point relevant to the document format issue -- that was actually flagged in our skeleton argument. Unless you had any questions for me, those are my submissions.

THE CHAIR: Thank you very much. (Overspeaking).

MR LOMAS: I've got one point on a completely different issue which we were talking about at the end of last week, which is: one of the points taken in the CPO judgment was that given the number of minors in the class, a lawyer should be added to the advisory committee, to the Class Representative -- and I don't think we knew whether that had happened. I just wondered if there was any update on that.

MR GREGORY: It has happened. If I get more details over lunch, I'll give you some more specifics.

MR LOMAS: Thank you.

THE CHAIR: We can carry on now, or we could take our lunch break earlier. We've got a good 35 minutes, so no particular reason why we should take our lunch break earlier, but I offer that if that would be more helpful.

Submissions by MR KENNELLY

MR KENNELLY: I'm obliged. I think I can just get stuck in straight away --

THE CHAIR: Right; good.

MR KENNELLY: -- if it's convenient for Tribunal.

I will, if the Tribunal is content, track the order in the agenda, which isn't exactly how my learned friend took the points, but I'll approach it that way, subject to the Tribunal. The very first item on the agenda in relation to disclosure was the question of legal privilege. I'm just going to check with my friend to see if that's -- I think that's now on the basis of the discussion we had in the course of the hearing.

MR GREGORY: I think it's fully agreed -- you said you were able to identify categories of document which have been withheld on the ground of legal privilege. The overall number, we've asked if you could find out whether it's possible to provide the number of documents within each category.

The other outstanding point on legal privilege is that -- oh, I think actually you're going

to provide a list of the materials which have been held in their entirety, so I think that point is agreed.

MR KENNELLY: So on the question of privilege, we will, when we produce the initial disclosure, as I said, produce a list of the categories of documents which are withheld in their entirety. There's no dispute about the documents which are redacted, in part for US privilege. The description by category will track the approach which this Tribunal takes and the High Court takes in relation to the treatment of privilege. In that approach, it is not normally required that the party disclosing the documents gives the number of documents, either by category or in total. The standard approach is to do so simply by description of the category for which privilege is claimed. In this instance, we have agreed to give the total number of US documents which are withheld in their entirety for privilege, but we are not in a position to give the number by category. In my submission --

THE CHAIR: Would it be arduous to find those numbers?

MR KENNELLY: Yes, it would. It would. Because just to step back for a second, the whole approach to disclosure, which we've agreed, is that we are giving the US disclosure as is. In order to maintain control over costs and to approach this in a proportionate way, our approach -- and I understood, for a large part, the Class Representative's approach -- is simply to take Valve's disclosure as it is and deliver it to the Class Representative. That is how we managed to produce 2.6 million documents as quickly as we can. Anything that requires us to do further work requires a review of those documents, obviously increases delay and cost.

So to give numbers by category would be a fresh exercise, which is why we don't propose it and it's not normally required. The key question is what prejudice might be suffered by the Class Representative. Of course, there is a mechanism in the order where if they wish to challenge the claim for privilege, they can do so in the first

instance to RPC directly.

Again, by way of overall theme to all of the issues we've been discussing, the Tribunal requires the parties to work in a spirit of collaboration. Where queries are raised, it isn't even necessary to make a formal request for information; we are expected by you to collaborate. So if there's a question about a particular privilege claim, the appropriate thing is to write and for the parties to engage in a collaborative way, and if we don't, then we'll suffer the consequences at your hands in due course.

So in the first instance, as I think my learned friend suggested, we should take that approach to privilege, which again doesn't apply to -- we're not talking here about the limited privilege reductions. We're talking only about the set of documents which are withheld in their entirety for privilege.

The next issue was the question of confidentiality redactions in the US document set, in that 2.6 million document set. To take you back to the confidentiality ring order, so that you can see what's between us. It's in the supplemental bundle. I'm using the supplemental bundle. You have it in the core bundle. I'll give you both page numbers if that helps.

THE CHAIR: I've got it printed as well.

MR KENNELLY: Oh, I'm very grateful. It's paragraph 5.3 in the CRO. The confidentiality ring order, sorry. So it's core bundle, tab 16.

THE CHAIR: Sorry, page number?

MR KENNELLY: Page 402.

THE CHAIR: Thank you.

MR KENNELLY: Paragraph 5.3 begins there. I'll take it quickly, because you've seen this already with my learned friend. It deals with the explanations that are given by the defendant when a confidentiality designation is challenged.

Over the page at 403, the parties are agreed that the reasons that the defendant will

give will be by reference to the categories of documents. The reason why we propose explaining the redactions by category is that in the United States, the redactions, the confidentiality redactions, were done by category. There is no list of document-by-document explanation of confidentiality redactions.

So in order to do something more specific, it would require a fresh review, which is the thing that we're all trying to avoid.

Now, what the Class Representative wants to add are those words, "where appropriate", but we say that's unnecessary and it risks wasting costs because --

THE CHAIR: I suspect what was wanted with that was an ability to ask something more particular about an individual document if that arises. So perhaps it's not quite the right wording to do that, because then in every case you have to consider, "Well, is this appropriate?", and you'd say it is because of the point you've made about: that's what you've done in the US. But I wonder if there's some wording that just allows an exceptional case to be asked about.

MR KENNELLY: That's a helpful intervention, if I may say so. In my respectful submission, the word "may" that's already there provides the flexibility -- because we're not required to explain justification by reference to categories of documents. When the query comes in, RPC for Valve may decide that in order to deal with the query effectively, in order to head off a dispute that might ultimately end up here, we could give something more specific.

There's not an obligation to give an explanation by reference to categories of documents. It is better, in my respectful submission, to assume that the parties will work in a collaborative way, with the expectation that in general, the explanations will be given by reference to categories of documents. The words, "where appropriate", really don't add anything to that. Really, what it's suggesting is that the parties need to work in a collaborative way, but that's implicit in the rules and in the guide to

proceedings in any event. So the language that, "such reasons may be provided by reference to categories of documents ..."

THE CHAIR: Well, "may" gives a blanket permission, doesn't it? So you can say if you've done that, you're always within the permission?

MR KENNELLY: Well, except that if -- it allows flexibility as to how it's done, with an expectation that it will be done (overspeaking).

THE CHAIR: Well, it allows flexibility on your side: you can decide you want to be more specific, but it doesn't require you to be more specific.

MR KENNELLY: I see that, sir, but the real risk of prejudice is really non-existent, because the Class Representative, her lawyers and her economists are all within the confidentiality ring. They will all see the unredacted document. So they will see the unredacted text, and they will see instantly if our justification by category is adequate or not.

THE CHAIR: But would there be any problem in deleting those words, "where appropriate", and putting in some other sentence that just opens the possibility for individual questions in appropriate cases to be asked by the Class Representative?

MR KENNELLY: Sir, if it helps, I'm sure I'm happy to adopt that on the record of the Tribunal's transcript. It doesn't require anything in the order, but I'm happy to endorse the precise wording which you have outlined, sir, and that seems to me to be implicit in the rules anyway. Because in a challenge mechanism --

THE CHAIR: So you delete, "where appropriate", and you don't need anything else, because that's what everybody needs to do anyway.

MR KENNELLY: Absolutely. Then the challenge mechanism at 5.8, that's the mechanism which allows the Class Representative to challenge the explanation we've given. They will do that with the benefit of having the unredacted text, as well as our explanation. Really, that covers off any possible problem that they might be worried

about.

THE CHAIR: Right, so it's already there.

MR KENNELLY: Yes. Then I suppose the bigger question is open justice. This is all very well between ourselves, but what about the principle of open justice? As again the Tribunal has seen, there is a particular requirement in the same order between 5.4 and 5.5: that when documents are filed with the Tribunal, when they go into a hearing bundle or when they're going to be referred to a hearing, they will be specifically reviewed for confidentiality. So when it comes to anything that might go into the hearing, then, recognising the importance of open justice, we will specifically test whether the redaction needs to be reduced or dropped entirely.

I'll move on, then, to document format.

Just to be clear about the technical nature of what will be provided in July, the documents are going to be given in the TIFF format but also in a fully readable file and accompanied by a metadata load file. Those documents can be given on the relativity or --

THE CHAIR: So is the metadata load file itself a readable file or a TIFF file?

MR KENNELLY: I will check that, sir.

It's readable by the disclosure platform.

THE CHAIR: By the disclosure platform.

MR KENNELLY: Indeed. That is useful because we are happy to provide these documents through a disclosure platform, such as Relativity. And if they are using AI tools, then it's likely to be Relativity or Concordance or some other platform. This can be provided in a way that will allow them to use the AI tools that they've mentioned. They will have the readable file and the metadata load file.

THE CHAIR: If, for example, they wanted to search for all emails on 26 July 2022, the metadata would give them that.

MR KENNELLY: Yes.

Just to step back for a second about the unreality, if I may say so, of the concerns raised by my learned friends. As this Tribunal knows, we agreed to provide voluntary disclosure last year. We'll come to this when we look at the question of third-party disclosure. We provided the Class Representative in September 2025 with about 3,000 documents in this form, the TIFF form with the accompanying readable text file and the metadata load file. They've had them since September, and I would imagine they should have tested them since then, and if any problems had arisen with the format in which the documents were provided, we and the Tribunal would have been told. They've actually had thousands of documents already in this form, which would allow them to test the utility of them for the purposes of any AI platform they wish to use.

But coming back to the order itself, I'm now looking at paragraph 5 of the CMC order, not the confidentiality ring order. It's on page 84 of the supplemental bundle, page 392 of the core bundle.

The concern is that notwithstanding what I've told the Tribunal, the documents may still not be reasonably usable in the format in which we provide them. We agreed that where the US Valve documents are not reasonably usable in that format that we're providing, the Class Representative may subsequently request that we provide documents or categories of documents in native format. We've agreed that.

The Class Representative -- in the purple lettering -- which is simply to say that where reasonable, they may request documents or categories of documents in native format. We're concerned about that language, because again, the idea is that we provide everything in the form which we have it from the United States. If it's not reasonably usable, then we'll do the extra additional work of producing it in native format. But what we suggest is not appropriate is to have a general open question of

reasonableness in relation to further requests.

THE CHAIR: So your wording in the red colour, "US Valve Document is not reasonably usable".

MR KENNELLY: Yes.

THE CHAIR: You would mean by that, "including by AI search engines" or something like that.

MR KENNELLY: Yes, exactly. So if in the circumstances that was an appropriate way and if there was a problem, yes. I mean, "reasonably usable" provides a broad test for the effectiveness of the forum in which we're providing the documents. It is still more precise, even in that broad form, than simply the words "where reasonable". We're concerned about that because it lacks direction and specificity, and is potentially a cause for costly satellite disputes, which we are all seeking to avoid.

The Tribunal will be aware that in circumstances where we're talking about at least 2.6 million documents. It's incumbent upon us all to do our utmost to try and limit the scope for further additional or wasteful work in relation to disputes that might arise out of those, because even if only a few thousand documents need to be converted to native format, that is going to be costly and generate delay.

MR LOMAS: The 2.6 million: that's documents rather than pages. That's individual documents. A document could have 20 pages, or whatever.

MR KENNELLY: Yes. That's my understanding. In fact, many of them will be a lot larger than that.

MR LOMAS: Yes.

MR KENNELLY: I'm grateful to Mr Lomas. It gives you a flavour of the volume of what is going to be provided at the end of July.

I see it's 12.55. That's probably an appropriate time to finish this part of my submission. I'm moving on to the question of third-party documents and the US

Protective Order. I can take that up.

THE CHAIR: Okay. Well, it sounds like we're doing reasonably well, so I won't try and claw back for five minutes. We'll come back at 2.00 pm.

(12.52 pm)

(The short adjournment)

(2.00 pm)

MR KENNELLY: I was moving on then to the question of third-party documents.

To begin, it's important not to exaggerate the significance of this issue, because my learned friend said that it was highly significant. But of course, we are concerned with about 50,000 documents. That's about 2 per cent of the 2.6 million documents which are being provided in July.

The documents, as you've seen, were disclosed to Valve by third parties in the United States proceedings, and many of them are highly confidential. Obviously, they weren't obtained by Valve in the ordinary course of business. They came to Valve only through the litigation, and to a large extent they are held only by Valve's external lawyers. They're not held by Valve itself.

To be clear, and to address one of the main points my learned friend made, we are not saying that the Tribunal is prohibited from ordering their disclosure. When it comes, we will consider the issue. It is a matter for the Tribunal, even in the face of a risk of penal sanctions, to decide to order the production of these documents. It's a matter for the forum, and we are subject to the Tribunal's jurisdiction.

But in deciding whether to order the disclosure, the United States Protective Order is relevant. As you see now -- we shan't take it up again -- clause 4 prohibits Valve from using the documents received in the litigation for any purpose other than the United States litigation itself and clause 7 provides a mechanism for notifying third parties concerned when a court in other litigation orders a party to produce third-party

documents. As you have seen, clause 7 doesn't positively permit disclosure of the documents in other litigation, but that appears to be what's contemplated in clause 7. If I may just explain our reading of clause 7 in May --

THE CHAIR: Can we have it in front of us as we do that?

MR KENNELLY: Yes. It's in the core bundle, tab 19, page 502. (Pause) I'm afraid I shan't be doing careful textual analysis, partly for the reason that I'll go into now, because the issue in May 2025 was whether there should be an interim confidentiality ring order, because Valve had agreed to provide early disclosure voluntarily, and we asked that a confidentiality ring order be put in place, which the Class Representative unfortunately opposed, even though such a confidentiality ring order was obviously necessary because it wasn't in dispute that the documents that we were disclosing contained confidential information. We relied on clause 7 --

MR LOMAS: (Overspeaking) confidential information subject to the US Protective Order.

MR KENNELLY: Sorry, sir. You mean at that stage, the documents we sought to disclose --

MR LOMAS: Into the ring --

MR KENNELLY: Into the ring?

MR LOMAS: -- but not one subject to the US Protective Order.

MR KENNELLY: At that stage?

MR LOMAS: Yes, at that stage.

MR KENNELLY: I will check. Sorry.

MR LOMAS: That was my assumption.

MR KENNELLY: I'm sure you're right, but -- yes, that's right, because it ... (Pause)

MR LOMAS: Because otherwise the issue would be not whether you would be in breach, but whether you were already in breach.

MR KENNELLY: Already in breach. No, you're quite right, sir. Yes. That's right, because they weren't then covered by the order. We were relying on the order as an example of the kind of protection that would be necessary when they were covered by the order.

MR LOMAS: Thank you.

MR KENNELLY: We relied on clause 7, since your recollection is better than mine, sir, as one of the reasons why confidentiality ring order was appropriate, because that was the protection that the US court would expect to be given to third-party documents, which would be covered by the Protective Order.

MR GREGORY: I just wanted to check one point. My recollection is it's certainly true that Valve at that stage wasn't proposing to disclose documents which had originated from third parties, only documents originating from Valve. My recollection, however, is that Valve said that some of those documents contained information which was confidential vis a vis third parties. So the main category of documents which it disclosed were the Steam distribution agreements. I think one of the points that Valve was making is some of this information is confidential to third parties, even though they were Valve's own documents.

MR KENNELLY: That's quite right. It was --

MR LOMAS: I also recall that, yes.

MR KENNELLY: Exactly. It was the agreements, and they were confidential. They contained confidential information belonging to third parties. We were relying on clause 7 as one of the reasons why a confidentiality ring order ought to be in place. But even if clause 7 didn't exist, we would have been arguing, in any event, at that hearing for the need for confidentiality ring order for the purpose of the documents we were producing. Clause 7 was an additional but not necessary reason for the order that we sought. But we did read it at the time as appearing to cover foreign courts.

There was no need to be certain of that fact, or to get a ruling from the US court, because the only issue in May 2025 was whether there should be a confidentiality ring order or not. But that explains the point that Mr Ross made in his statement and the point that was suggested in the skeleton argument.

But since May 2025, the issue has arisen in a much more direct way in the United States, because there, as you've heard, Valve is sued in a number -- a large number -- of arbitrations, in addition to the federal developer class action. There is disagreement as to whether clause 7 applies outside of US federal and state courts. If you take up the motion -- may I show you that? The motion is in the supplemental bundle behind tab 4, and go, please, to page 29.

So first, at page 29 you see in footnote 4 the fact that the third parties themselves sought the sealing of these documents. The context here, of course, is that these third parties are very anxious to ensure that their documents and confidential information is properly protected. You see at footnote 4, Microsoft and Humble Bundle make themselves issuing motions to seal and ensure the confidentiality of their own documents and information contained in expert reports in the Valve proceedings. So they actively oppose wider production of their documents and information.

If you go over the page to page 30, you get a flavour of the disagreement that's arising between arbitrators between lines 13 and 17.

The motion refers in particular to one arbitrator, Mainland, who has ordered Valve to disclose documents which were sealed by the court in the In re Valve proceedings. But then Valve points out to the court, other arbitrators who've considered the very same issue, the proper interpretation of clause 7, have agreed with Valve's interpretation, which was that it applies only to US federal and state courts, and those are the arbitrators who have followed that view.

So what is sought is the guidance of the federal court as to whether clause 7 is

restricted in that way. As you heard, the motion was issued in May and the ruling is expected -- of course, these are estimates, but having asked the question of the US lawyers, the ruling is expected well within the year, so several months is what we're told.

If clause 7 is restricted to federal or state courts in the US, Valve would then appear to be prohibited under US federal law from disclosing these third-party documents in these proceedings, and if it is ordered to do so by this Tribunal, Valve may be exposed to penal sanctions in the United States.

Now, the authorities say, as you've heard, that is not an absolute bar to disclosure, but it must be weighed in the balance against the importance of the documents in question and the proportionality of the disclosure. We say the appropriate time to make that assessment, to weigh that in the balance, is when we know whether such disclosure in these proceedings places Valve at risk of such penal sanctions. We say that is likely to be before the next CMC in April or May 2027. It is certainly not likely to be clear before the so-called autumn CMC in November 2026. So scheduling a CMC for this issue in the autumn of this year is not likely to be useful for the resolution of this issue.

It seems to be just this issue which is of concern. The issues arising out of the Redfern schedule and the processing of the 2.6 million documents, no one is suggesting that that's a matter for an autumn CMC. On the Class Representative's own assessment, they'll still be examining the initial disclosure by November 2026, and that's when the Redfern process begins.

So for the purpose of the US third-party disclosure issue, an autumn CMC is not likely to be useful. The issues will not have crystallised.

The extra or the further reason why it's proportionate to deal with the third-party disclosure issue in April or May 2027 and not November 2026, is it should cause no disruption to the trial timetable. As I've said, there's about 50,000 third-party

documents. When the Class Representative is examining the 2.6 million documents, it will, in that process, be better able to understand the third-party documents, if and when it receives them, following the April or May CMC.

The real concern that the Class Representative has is that this issue may disrupt the trial timetable. The trial timetable may not be able to accommodate delaying this issue until the US federal court ruling. We say that concern is misplaced; there's enough space in the timetable to deal with this question. You can see that from the Class Representative's trial timetable itself.

If you go, in that same supplemental bundle, behind tab 1, to page -- this is the original proposed litigation timetable. If you go, please, to page 6, it brings it up to what will be a CMC in April or May. So the third CMC is the fourth row down. You see, "Tribunal to hold third CMC". We all agree that there should be CMC in April or May 2027, and then that allows -- you see that says "25 to 29 months", and then the factual witness statements to be exchanged, "34 months", so seven to nine months later depending on when the spring 2027 CMC is held. There's a gap of seven to nine months between that and the suggested factual witness statement exchange stage.

Then following that, there's a further three-month period for the reply witness statements a year from now, and then about three months after that, expert reports.

So in parallel to the question of the US third-party disclosure, we will progress with the review of the 2.6 million documents and the agreed follow-up Redfern process. That all takes place as planned. None of that is delayed by this question of third-party US documents. In my submission, when this Tribunal is able to rule in April or May 2027 on the question of third-party documents, the steps can be relatively tight. At that point, you will take a decision and based on your decision, if you decide to order disclosure, third parties can be notified. The deadlines given to them to respond can be relatively tight again, depending on the extent to which they have notice of this

issue. They obviously are aware of the US motion. Their documents are in issue in the US motion, and I understand they have already intervened in the US motion to make submissions on the question.

So they're already aware of the broader issue, if not the question in our Tribunal. There is no need for this process, for the process of the Tribunal deciding what to do and ordering notification of third parties and then disclosure by us.

THE CHAIR: Are we talking about 2026?

MR KENNELLY: 2027.

THE CHAIR: 2027. Why don't we just write to them now?

MR KENNELLY: Write to the third parties now?

THE CHAIR: Yes.

MR KENNELLY: Yes. I mean, pausing there, since we're just dealing with solutions.

THE CHAIR: Yes.

MR KENNELLY: Yes, obviously that can be done. The question of notifying the US court -- it's the question I think Mr Lomas picked up, or perhaps it was also the chair -- the US court isn't, as far as I'm aware, sighted of our particular issue. Could the Class Representative write to the US court pointing out its interest in the outcome of the motion before the US federal court? The answer is yes, of course they can do that. They can intervene via written submissions to the US court, in the same way that the third parties have communicated with the US court to say that they have an interest and they wish to make a submission in relation to the issue which the US court is considering.

Of course, the Class Representative's solicitors, Milberg, are part of a US firm, and from our reading of the costs budget, they seem to be working alongside US attorneys concerned with these cases, not the *In re Valve* litigation; they're involved in these issues in the US in some way. So they're well-placed, in my respectful submission, to

file an intervention before the US court, pointing out their interest in the outcome of that ruling. We have no objection to that.

THE CHAIR: What I was wondering was whether you need the court's permission at all if you write to the third parties and they say, "We're fine for this to be used in this litigation".

MR KENNELLY: They could do that. I don't want to send them on a wild goose chase, because certainly our understanding of the position of the third parties is that they are very reluctant. That's why they've intervened in the US court.

THE CHAIR: (Overspeaking) be explained to them the confidentiality arrangements that are here.

MR KENNELLY: Yes.

THE CHAIR: But am I right in thinking that the third parties are generally against your client in the US litigation?

MR KENNELLY: No -- well, yes. I mean, the plaintiffs are -- obviously of the 50,000 documents, about 44,000 of those belong to the plaintiffs who are against us in the US litigation.

THE CHAIR: Right.

MR KENNELLY: But 4,000 documents then belong to the 29 or so third parties. Whether they are against us or not, I do not know; I'll have to take instructions. But the extent to which we can expect them to resist disclosing even into a ring in this jurisdiction, again I don't know. Perhaps if you give me a moment, sir, I'll just check, because it may be that I can be told that (inaudible). (Pause)

So as I suspected -- obviously we can't speak for the third parties, but we expect them to resist the disclosure of documents, even into a confidentiality ring. Many of these third parties are our direct competitors, and even with the protection of the confidentiality ring, we understand that from the position of the United States, they are

unlikely to support the disclosure into the ring voluntarily. But we don't suggest for a moment that the Class Representative shouldn't try, but it may not be a worthwhile exercise. But if the US court --

THE CHAIR: So are you saying the only way we're likely to be able to get these documents is if the US court allows it?

MR KENNELLY: Not so. The US court can say that there's a prohibition on disclosure, but you still have the power to -- notwithstanding that, notwithstanding the fact that it would expose Valve to sanction, you could still order us to produce the documents. You have that jurisdiction.

THE CHAIR: No, I've understood that point.

MR KENNELLY: But it would obviously have to be weighed against the degree of the risk that we would face in terms of those sanctions against the utility of the documents themselves. That would require a proper relevance review of those documents in order to conduct that balancing exercise. But that would happen in any event, because this 50,000 document set will require a relevance review. That's a necessary but unfeasible task, because it's a much smaller set of documents than the 2.6 million that we've been discussing until now.

My simple point is this: at some point, the Tribunal is going to have to do that assessment, that weighing of the risk to the third parties, the risk to Valve and the utility of the documents. The best time to do it is when you know the outcome of the US proceeding. It may be that the US court, with the benefit of submissions will say, "We're perfectly content from our perspective", and then all that remains is a relevance review and a discussion before this Tribunal as to whether the documents should be disclosed in full or not. But the time to do that --

THE CHAIR: In your submission to the US court, you were comparing the order with arbitrations. Did your submission deal with the question of foreign court procedures,

or court or Tribunal procedures? Because it seems to me, it's one thing for a US court to say, "I'm not going to allow arbitrators to deal with that. That's a matter of private contract", another thing for the US court to -- no, I won't use a pejorative phrase -- to not act with comity in relation to a foreign court.

MR KENNELLY: Yes. I'll be corrected, but I don't believe that we have raised -- no, we've not raised in a motion before the US court anything about comity and the possibility that a foreign court, a United Kingdom court, which this is, would order disclosure with the protection of the confidentiality ring. That has not been raised before the US court.

THE CHAIR: Would it be open to you to put in a further submission to the court to say: while you're considering this, please consider the fact that there are proceedings in the United Kingdom. The Tribunal in the United Kingdom has indicated an interest in seeing these documents, and could they rule on that at the same time?

Because it's going to be very useless if we wait, as you suggest we do, and they come out with a decision about arbitrations in the US and still leave us hanging about what they say about foreign court procedures or Tribunal procedures, which I think are very similar to court procedures.

MR KENNELLY: Yes. I'll pause while those who instruct me reflect on that, because of course, I don't know about the deadlines for making submissions in terms of the timetable that the parties are subject to in relation to the US motion, but I'll be told. Obviously, the Class Representative is free to inform the US court of the matters which the Tribunal has outlined.

But of course, normally, one doesn't even have a ruling of a foreign court in these matters. One normally has to rely on a letter from a foreign law expert, not even a part 35 expert report, explaining the risk of breach and sanctions, and the Tribunal makes up its mind. So even if all we have from the court is a ruling that deals with

arbitration, that will at least assist the Tribunal and whichever experts the parties instruct to take that further step and say, "In view of that ruling ..."

THE CHAIR: Well, then we have to weigh now whether that level of assistance is a good enough reason to wait to deal with the point.

MR KENNELLY: Indeed, and here I have the answer.

Ah, sorry. Yes, I thought -- we'd have to make a new motion. The existing motion has been briefed. So the written submissions are in on the existing motion, and we have no right to file further submissions. But we would have to issue a new motion before the same judge, raising this point. But it is open to the Class Representative, I'm instructed.

THE CHAIR: And to the Tribunal.

MR KENNELLY: And to the Tribunal to contact them. In my respectful submission, even if all we get from the US court is a decision that arbitral Tribunals may receive the documents, that would be of immense assistance to this Tribunal in deciding whether we would likely be subject to sanctions, in my submission. Obviously, if the US court says clause 7 only means US federal and state courts, well, then again, we have a form of clarity, and that will assist you in making your decision about whether to order.

THE CHAIR: Well, it would be a minor form of clarity in that the argument about foreign courts wouldn't have been before them.

MR KENNELLY: That's correct. Yes. They would have had heard part of the argument.

Subject to those points, and notwithstanding those points, it would still make sense to deal with them, in April or May 2027, because even if the steps are taken which the Tribunal has outlined, even if the Class Representative were to contact the court, if the Tribunal did so, realistically the resolution of the issues will not take place until on or

about the April or May CMC. On no view will we get an answer on anything by November 2026. So….

THE CHAIR: What about January 2027?

MR KENNELLY: It depends on --

THE CHAIR: I thought you said several months from --

MR KENNELLY: Several months from May 2026.

THE CHAIR: Right.

MR KENNELLY: January 2027, possibly, but it just seems less likely. Several months; apparently that means within the year. It could be January, but we may get the ruling in January. Keeping April or May 2027 seems, in my submission, to be preferable, because in that CMC, we will already need to deal with the outcome of the Redfern process and any outstanding disclosure issues from the 2.6 million documents. That hearing is going ahead anyway, and it would be easy to deal with, at that hearing, the outcome of the US third-party disclosure issue also. By then, hopefully we'll not just have the ruling, but also time to reflect on it and to do submissions in relation to it. If we were to list a separate hearing in January 2027 just for the US third-party issue, it's highly likely that it wouldn't be effective.

Those are my submissions on the third-party documents, and really, it comes down ultimately to timing, and the timing of the next hearing, at which this would be resolved. But we are anxious to assist in any way we can in order to make sure that the ruling of the US court is helpful. We obviously don't oppose the Class Representative contacting the US court.

The next issue on the agenda -- well, actually this wasn't on the agenda, but it probably fits here -- is the request for organograms and organisational charts that the Class Representative raised. My learned friend very helpfully clarified that in fact the request wasn't as broad as it appeared in the draft order. What they really want is a list of key

individuals to assist them in their document review exercise.

THE CHAIR: I think with the broad areas of responsibility of those individuals over the period.

MR KENNELLY: Indeed. As we explained in correspondence, Steam isn't run like a regular US or UK PLC. It is a very relatively small and tight operation. It has a total number of employees, total headcount, of only about 350, notwithstanding its very significant commercial strength.

What we can provide to help the Class Representative is a list of the custodians. There are 24 custodians, and --

MR LOMAS: Those are the equivalent of a board of directors.

MR KENNELLY: I hesitate to agree. What I've been instructed to say is that the people who run Steam are known as the Steam business team, but even that gives them a level of formality which they don't have in the organisation. At any one time, there are about 12 to 15 people running Steam and save for the CEO and the COO, Mr Newell and Mr Lynch, their roles are interchangeable. They don't have the typical corporate titles that one would expect in a PLC, but they are the -- I'm so sorry. I'm talking about the part of the business with which the case is concerned, the Steam business team who work with Steam partners, and they are the ones responsible for the matters which are an issue in this litigation. And they.

THE CHAIR: Would they be the people, for example, who set the amount of revenue share that Steam obtained?

MR KENNELLY: That's my understanding, yes. As I say, these are the individuals --

MR LOMAS: Or decided whether Steam keys should be granted, how many and so forth.

MR KENNELLY: Precisely. It's for this reason that these members of the Steam business team were the custodians in In re Valve, because these are the ones who

are who the US court determined would be the ones likely to have relevant documents, where the analogous issues.

THE CHAIR: Can you explain the term "custodians", then? What is a custodian?

MR KENNELLY: A custodian, meaning it's an individual whose mailbox, whose document retention platform in his or her name would have held relevant documents. It's really a custodian in the English disclosure sense.

THE CHAIR: Right. (Overspeaking) service, almost.

MR KENNELLY: It's more when one does a disclosure exercise, one has to identify the holders of the relevant documents; who is responsible for them; whose email box has to be searched.

THE CHAIR: Right, so it may have no bearing whatsoever on whether they were the controlling mind of the business practices.

MR KENNELLY: It's unlikely that there would be -- that's an unlikely outcome in this scenario, because the teams are so tight and so small. The Steam business team that deal with Steam partners, as I said -- these are senior people -- are between 12 and 15 in number, and over the entire period, that group of 24 custodians catches the Steam business team more or less over the whole of the period.

MR LOMAS: Just to take that further forward, and perhaps not up to us to find solutions, but in terms of what the claimants were looking for, if you're talking about 24 custodians -- and maybe expanding that slightly, that's including maybe hypothetically another ten people in their orbit, even if they weren't custodians -- you're only talking about descriptions of the job roles of 35 people in broad terms over a relatively short period, without necessarily being precise as to months or job titles, and accepting that they will have covered for each other and moved and changed. Describing the roles of 35 people over a relatively short period is not a terribly big exercise, I would have thought, in terms of its potential savings in relation to

configuring the AI tool. I'm not sure you need reporting lines and levels of authority and that type of stuff, as you might see in an organogram. You're almost talking about dramatis personae.

MR KENNELLY: Yes. I'll quickly check. If I can have a moment. (Pause)

Sorry. I appreciate when one looks at the business of this size, it seems hard to imagine, but I am instructed -- and this is not the first time I've heard this -- that there really is no broader group of ten around this 24. The 24 are the key people who make the decisions, and they have --

MR LOMAS: Right, in which case, simplify it to the 24.

MR KENNELLY: Indeed, it makes Mr Lomas's point a fortiori. So yes, we can for those 24 give -- it will be a relatively generic description because of the way in which they operate; but yes, a description of the work, a description of their responsibility over the relevant period for each of those 24 custodians can be provided.

I should say that the extent to which this will help the Class Representative or not remains to be seen. We have no clarity as to the tool they're using or how this will help them. But if it isn't helpful, if they do need more help, there is no need to file a formal request for information. Again, in the spirit of collaboration, they can contact us and they can ask for such help as they need. We've approached the situation --

THE CHAIR: If, for example, they find an individual has written various emails that seem to be making business decisions and isn't in your 24, they can come back to you and say, "This person seems to be having a significant role. What was his role within the business?"

MR KENNELLY: Absolutely. That's what I've been trying to say really throughout, which is that much of this discussion really is answered by the same point, which is: they can ask; we will answer. If we don't answer in a collaborative way, we will be in

breach of the guide to proceedings, and the Tribunal will deal with us in due course. So really, we invite them to do that, to take the documents we're giving them and review them. If they have queries, they should arise out of those documents, and that should be the focus of the Class Representative.

With that in mind, I move on to the next question, which is a question of further disclosure. Here, there's a dispute about the wording of the --

MR LOMAS: Sorry, Mr Kennelly. Before you go on, have you dealt with paragraph 6? The specific request for the list of documents in the context of the Protective Order.

MR KENNELLY: Sorry, no. I think my learned friend made my point for me when he looked at the order. Should we take it up, and I'll show you the problem. We're looking at the US Protective Order, behind tab 19 on page 496. (Pause)

It's in the core bundle, page 496. She says, "Why can't we produce a list of the third-party documents?". Our concern, as he pointed out to the Tribunal, is in clause 3 of the Protective Order. It's not just the material as defined above that is protected, but also subparagraph 1:

"Any information extracted from confidential material [and 2] all summaries of the material". [as read]

A list of the documents which contains really any useful information, any summary of what's contained in them or who produced them, their dates and so forth, would seem to us to be in breach. Sorry. Of course it's not a matter for me. This is a matter for the US lawyers who are responsible for this.

THE CHAIR: I don't quite get there by reading the definition of confidential material, because the confidential material isn't defined as "the documents containing confidential material", but the bits in the documents that are confidential. So it seems to me to say, "There was an agreement between A and B, dated this and no more", would not include any of the matters that are defined as confidential material.

MR KENNELLY: Sir, the definition of confidential material on page 495 is very broad --

THE CHAIR: Yes.

MR KENNELLY: -- because it includes information of non-public product use, business plans, research and so forth, and then any proprietary commercial or client information. So even commercial or client information is caught by confidential material.

THE CHAIR: Which is defined as ...?

MR KENNELLY: Which it is defined as, but again, research development --

THE CHAIR: Search development. It's not the name and address of the client.

MR KENNELLY: No. Well, not on the face of clause 2(a). No, sir. But --

THE CHAIR: It has to be of a competitively sensitive nature.

MR GREGORY: Could I just simply ask the Tribunal just to read clause 5.1 in relation to this issue as well? It's on page 499. (Pause)

THE CHAIR: You draw my attention to:

"The designating party must designate for protection only those parts of material documents, items [et cetera] that qualify, so other parts for which protection is not warranted are not swept unjustifiably into the ambit of this agreement." [as read]

MR KENNELLY: Well, I'm grateful for that. That seems to assist the point I'm making, which is that to be covered by this order at all, in order to have the protection of it, it is necessary for the designating party to be careful only to designate material that is genuinely covered, and not to include communications and information for which protection is not warranted. We're only concerned here with documents which are covered by the Protective Order, bearing in mind --

THE CHAIR: Well, parts of documents, this is dealing with. So if the parts of the document was the title of the document and the parties to it and the date of the document, wouldn't that be parts of the document that do not qualify as confidential

within the definition of confidentiality we've just looked at?

MR KENNELLY: If the document has redacted such or covered such so that only part of it is covered by the Protective Order, the --

THE CHAIR: But we're dealing here with a list with just the names and dates and the title of the document. Obviously, I'm assuming it doesn't include summarising the contents; that clearly would get you into (inaudible). But if it was just name, date and title of the document, how would that be a breach of this?

MR KENNELLY: Well, the title and date of the document could well be highly confidential. For example, if there's a document from Microsoft and there's a particular date and a particular title, the combination of the title of the document and the date could reveal something highly sensitive as to when a certain thing was happening within that company, when a certain event, certain business plan was being considered or a strategy was being discussed. The date and the title alone, one could see straight away without any further information, could well be highly sensitive.

THE CHAIR: Well, within the definition -- do you want to bring it within the definition of confidential information that we've got here?

MR KENNELLY: Yes, it would be competitively sensitive commercial information, because it could be of relevance to its competitors to know when a certain thing was being discussed on a certain day. Remember, sir, members of the Tribunal, the matters which are in issue between the parties concern their most sensitive commercial and business strategies, and their product strategies. Presumably, that's why the US court made this Protective Order and why my clients are very anxious not to breach it by disclosing extracts or parts taken from material which third parties have produced.

Of course, without taking instructions, I'd be reluctant to offer to produce a list which might reveal third-party information without those third parties having any right to

comment on it.

MR LOMAS: Without wishing to salami slice this too far, I can understand your point that you can hypothesise an agreement whereby the title might reveal commercially sensitive or competitive information, but it's far more likely that the majority of documents in that class won't. So would a solution to the problem be to say, yes, produce that list, but with the right to withhold any document whereby its very title could credibly regard it as a breach of the Protective Order? That's not a --

THE CHAIR: Or withhold the title.

MR LOMAS: Sorry?

THE CHAIR: Or withhold the title.

MR LOMAS: Or withhold the title. Which would not be a complete solution, but would enable progress to be made.

MR KENNELLY: So Mr Coates reminds me of what we have actually agreed to produce in relation to this. This may actually go some way to reassure the Tribunal. Could I ask you to turn up our skeleton argument? Our skeleton argument, paragraph 20. (Pause)

So page 10 of the internal document numbering. Paragraph 20 explains what we will provide. This will be provided in the disclosure report and EDQ or in correspondence, but all(?) -- this is at the end of July this year. So the identities of the third parties who produce the material, how many each produced and information as to the categories of documents produced by those third parties. Of course, that will allow the Class Representative to contact the third parties directly if they wish to ask them if they're willing to --

THE CHAIR: Sorry, can I just see where you're reading from there?

MR KENNELLY: Paragraph 20. Sir.

THE CHAIR: Oh, 20. Sorry. That's right, yes.

"Identities of the third parties who produced", so if this was a -- let's say this is the most embarrassing thing you could possibly have: anti-competition agreement with Microsoft, dated July 2023. The identities the parties produce might be Steam or Valve.

MR KENNELLY: It would be a --

THE CHAIR: How many documents they produce: three. The categories of the documents, what would that say? Commercial agreement with a counterparty?

MR KENNELLY: Yes.

THE CHAIR: I can't see how that's going to help anybody.

MR KENNELLY: Well, first of all, just based on what is going to be provided, the identities of third parties is of assistance to the Class Representative because that allows them to know --

THE CHAIR: Well, that might name the law firm.

MR KENNELLY: No, it will name the third parties. It will name the companies who produce the material. It's not suggested --

THE CHAIR: Right, but that company might in most cases be Valve.

MR KENNELLY: No, it's the identities of the third parties who produce the material.

THE CHAIR: But if they didn't produce the material, Valve produced it and they signed it. That wouldn't be caught by this wording.

MR KENNELLY: This is the material which the third parties produced under subpoena. This material --

THE CHAIR: Oh, you mean who produced it under subpoena --

MR KENNELLY: Yes.

THE CHAIR: -- not who created it?

MR KENNELLY: Forgive me. No. I mean, under subpoena, this is definitely material produced by third parties, under subpoena into the US case.

THE CHAIR: I see. I'm sorry, I misunderstood.

MR KENNELLY: No, I could have been clearer. This will allow the Class Representative to know exactly who the third parties are, and they can approach the third parties if they think that they can get the documents or get their consent to produce the documents into these proceedings with the protection of the confidentiality ring.

Again, the numbers will give the Class Representative an idea of the size of the task and the categories of documents information will tell them what kinds of documents are in play. Giving the titles of the documents is problematic for two reasons. First of all, it requires Valve to examine each of the documents and work out what summary or what title can be given in respect of each of them. We know we're dealing with approximately 50,000 documents.

THE CHAIR: How is that any different to producing the category of the document?

MR KENNELLY: Because Valve already has -- we already have --

THE CHAIR: You've already done that for US courts.

MR KENNELLY: Exactly.

THE CHAIR: I see.

MR KENNELLY: We have descriptions of the categories of documents already.

THE CHAIR: Right, but would those categories be things like the commercial agreements?

MR KENNELLY: Yes, and that's why we can give that information. If we have to go through the 50,000 documents and work out what title should be given for each one, that will be a costly and time-consuming exercise. It may ultimately --

THE CHAIR: By the titles, I wasn't thinking of the one that you gave it, but one that it had, on the face of it, you know, software distribution agreement or something like that.

MR KENNELLY: Some documents may have titles like that, others may have an email, or (overspeaking) --

THE CHAIR: Or it may just say "Agreement" or "email".

MR KENNELLY: Or it may say nothing. It could be a note without any title. It will require a document-by-document analysis to work out how it is to be described, and then a separate analysis of whether that description or that title discloses competitively sensitive or commercially sensitive information, which again, Valve is badly placed to judge when it is the competitively sensitive information or commercially sensitive information of a third party. In fact, it'd be for Valve a very dangerous position to be deciding whether something is commercially or competitively sensitive for a completely different company, which is presumably why the companies themselves are -- the third parties are intervening in the US case to clarify the degree of protection their information will receive.

So I entirely understand why the Tribunal wants to assist the Class Representative here and to give as much clarity as possible, but it's not practicable to expect Valve to go through 50,000 documents, which are documents produced by completely different competing companies, and then work out what title they should be given or whether the title that's going to be given will reveal something sensitive to that company.

MR LOMAS: Which it would presumably also say would not be necessary if clause 7 was interpreted in a broad fashion. So if litigation in court included stuff outside the US, then it wouldn't be necessary.

MR KENNELLY: Exactly, which is why we say please wait for the US court to rule and we'll deal with this in --

MR LOMAS: Just to clarify, the documents that you're offering to provide in paragraph 20, would that be part of the 31 July disclosure set?

MR KENNELLY: Yes.

MR LOMAS: So on 1 August, some of this is going to become clearer, if not completely clear.

MR KENNELLY: Yes.

MR LOMAS: Thank you. (Pause)

MR KENNELLY: So I'll move on, if I may, to the question of further UK-specific disclosure. This requires us to look at the CMC order, which is in both the core and the supplemental bundle, paragraph 8. (Pause)

The purple text is the text which is agreed, and the orange or red text is what Valve has suggested and to which the Class Representative objects. Our concern here is to ensure that the Redfern schedule stage of the disclosure process, the further disclosure process, is confined to the issues in this case. Because we have been concerned by the approach in the correspondence, some of which you saw today, about the risk that this Class Representative will cast the net wider than it ought to be cast in a disproportionate way.

Now, just to appreciate where the language is coming from, the fact that the further disclosure should only be given if it's necessary, perhaps it should be "necessary and proportionate", because that language is taken from a judgment of this Tribunal in the *Ryder* case. Can I show that to you, please? It's one of the important rulings on the proper approach disclosure in this Tribunal. It's in the authorities bundle behind tab 8 on page 103. (Pause)

At paragraph 35, the then president deals with the proper approach disclosure in the Tribunal. Much of this will be very familiar to you. I wish to draw the Tribunal's attention to paragraph 7, just below F:

"Disclosure will only be ordered and the order will be framed to ensure that it is limited to what is reasonably necessary and proportionate, bearing in mind the factors that follow, including the cost and burden of providing such disclosure." [as read]

So when we ask the order to include that the supplemental disclosure shall be specified as necessary, that is reflecting the language of the Tribunal in the *Ryder v MAN* case:

"[That] The US documents shall be supplemented as necessary by the defendant by supplemental disclosure ... [and then we write] solely in respect of any UK-specific issues." [as read]

Now pausing there, we're not suggesting for a moment that if the document is also relevant to issues in the United States or anywhere else, that's a bar to disclosure. The purpose of that is simply to say that the disclosure should be in respect of the issues in these proceedings. It's perfectly possible that the documents that are relevant to the issues in these proceedings may be relevant in other jurisdictions where similar issues are raised.

MR LOMAS: Wouldn't that be the case in any event? I mean, you're only giving disclosure relevant to issues in these proceedings.

MR KENNELLY: Absolutely. The "necessary and proportionate" part, or "as necessary", is more important. That's to ensure that the parties understand the proper approach to disclosure in this (overspeaking).

MR LOMAS: Well, I think the point that was taken against you, if I understood it properly, was not just the reference to *Ryder* and the president's comments there on "necessary and proportional", but it was supplemented as necessary, which I think gave rise to a concern that the phrase might be interpreted quite narrowly, reading the two together. So I'm not sure the issue that's being taken is quite the same as in the *Ryder* case.

MR KENNELLY: Well, I think we all agree that the purpose of the further disclosure is to supplement, in the ordinary sense of that word, the initial disclosure that Valve is giving; that having reviewed the 2.6 million, and having considered the EDQ and the

disclosure report, the Class Representative will consider what further documents it needs for the purposes of litigating the issues in the case. By definition, such further disclosure will be supplementing the disclosure given at the initial stage. Now, the extent to which it is necessary will depend on the adequacy of what's already been given. So we may have a debate, when we come back before you in April or May, whether the particular further disclosure they seek is necessary and proportionate in view of what they already have. That's really what this additional wording says.

THE CHAIR: We get to the same result if you just say reasonably necessary and proportionate, having regard to the matters dealt in this paragraph of *Ryder*.

MR KENNELLY: Yes.

THE CHAIR: You would be happy with that, and I suspect the other side might be happy with that.

MR GREGORY: Just to clarify, I think we might be slightly at cross purposes. The *Ryder* judgment is about the scope of disclosure that will ultimately be ordered by the Tribunal when it's asked to make a disclosure order. Our concern is that certain material should not be excluded from the process that gets us there - if they are relevant. Any relevant documents should be referred to in the disclosure reports and the EDQ, so that we --

THE CHAIR: Even if they are unnecessary and disproportionate?

MR GREGORY: Well, I mean, it's a question then about the basis on which Valve is going to be exercising that sort of judgment. We think if they might reasonably be considered to be relevant, and the Tribunal may wish to disclose them, then they should be included. We want the disclosure report to take a reasonably broad approach. If Valve wants to come to the Tribunal and say, "Well, we've included these documents which are potentially relevant; we don't think they should be disclosed because we don't think it's necessary, or in the light of the materials that have already

been provided", then it can do that.

But our concern, on the basis of the correspondence and to some extent the skeleton, was that Valve was just going with a mindset where if these materials originated, say, in the Polish investigation, they're not relevant, because they're just to do with Poland. For the reasons I explained, because Valve's practices seem to be general and not country-specific, I don't think that's right. Our concern is more that Valve is not taking an unduly narrow approach to what it includes.

THE CHAIR: (Overspeaking) you say the test is relevant and not a test of "reasonably necessary and proportionate".

MR GREGORY: Yes. I think we would have a concern if Valve was only including materials in the disclosure report which it thought, from its point of view, were necessary, because we would say that's unduly narrow. That narrowing can happen later down the line, if the Tribunal is persuaded of that by Valve, but it shouldn't happen right at the outset.

THE CHAIR: Well, the test would be an objective one, wouldn't it? Reasonably necessary, not what Valve considers to be necessary, or even what Valve considers to be reasonably necessary.

MR GREGORY: Yes. If you don't know about the documents, then you won't be able to exercise that objective judgment.

MR LOMAS: Well, this may be relevant to the role of the word "supplemented", but you're using the disclosure of the US Valve documents, not because it's logically or intellectually a way of addressing disclosure for this case. You're doing it because it already exists, and it's an off-the-shelf disclosure, so it's the logical, easy, cheap, efficient place to start, even if it's 2.6.

So, supplement, I would have thought in terms of general principle of disclosure, shouldn't be by reference to something that happened to be convenient, and therefore

is it necessary. The test should be applied almost de novo of: are the documents that are not in the US Valve documents, which would meet the test in Ryder, on a standalone basis, because in which case they ought to be part of the litigation process?

MR KENNELLY: Well, it's a question of what is effective and proportionate, and what has already been agreed by people in the parties. The parties agree that the most effective and proportionate way of doing this is to take the US disclosure, the 2.6 million documents, as the base level of disclosure, and what is very likely to be the vast majority of disclosure in this case. That is both convenient but also true, because it represents the very considerable disclosure given in very closely analogous proceedings. No one is suggesting that Valve then conduct separately a de novo standard disclosure exercise. That would be time consuming and wasteful.

What's been agreed is that when the Class Representative has the benefit of the 2.6 million documents and the EDQ and disclosure report, they will then produce targeted requests -- and this is consistent with the practice of the Tribunal -- targeted requests for further documents. Whether it's called supplemental or something else doesn't matter. It's just a question of the next stage, which is a targeted stage. The wording that we've inserted here is solely intended to focus minds on the issues in our case.

If, for example, the Class Representative says in the Redfern request, "We have seen reference to a document in a different case -- the Polish investigation, for example -- and we think that document is necessary and proportionate, we want it to be produced to us, and/or it fills a gap which we've noticed in the US case, because the US case was not concerned with an EU issue", that would be something we have to consider. We're not saying that documents produced in other cases or other jurisdictions are excluded. We simply don't want this process to become a general

sweep-up of every dispute in which Valve is engaged throughout the world. We want to make sure that it remains focused on the issues in the UK. But the documents that go to issues in the UK may well be produced in other countries, and they may well overlap with the issues in other countries, and we have that well in mind. We should be trusted to deal, when we get the Redfern requests, we understand precisely what's required. The extra wording here is designed simply to ensure that such searches as are required should be necessary and proportionate by reference to the issues in this case. That's it. The reason --

THE CHAIR: So are you envisaging that this would be a request for specific documents, or would it be all documents dealing with a specific issue or issue-based disclosure? How would you see it working?

MR KENNELLY: Well, we both see it working the same way, which is that it would be by reference to documents, or it could be categories of documents. No one is suggesting issue-based disclosure, as one would have in a standard disclosure process. As you saw in Mr Roth's judgment, that's not normally the order made. We will respond to requests for specific documents or categories of documents, and if they're necessary and proportionate, then they should be given, and in determining whether things are necessary and proportionate, we say reference ought to be made to documents which the Class Representative has already seen.

For example, if the Class Representative isn't bothering to review the 2.6 million documents they have, and fires out requests for other documents from other jurisdictions, we will, I would say, legitimately respond to the effect that, "You ought to review what you have before asking us to search for and incur costs in relation to categories of other documents from other jurisdictions".

THE CHAIR: So what you're envisaging is that this disclosure doesn't happen, as this wording on either wording seems to suggest, kind of in the round automatically. This

happens because the claimant says, "There are these further documents or categories of documents which we consider ought to be disclosed, and if you agree that that's reasonable and proportionate, you'll do so; and if you don't, you'll object to it".

MR KENNELLY: Yes. Then the Tribunal will decide.

THE CHAIR: And the Tribunal will decide.

MR KENNELLY: Exactly.

On the process, my learned friend said that he thought that this wording was going to be somehow what we would be revealing to them. That's not how it works, with respect. On the basis of the 2.6 million documents, the claimants will have an extraordinarily detailed view of the issues in the case and the documents which are available, and the documents which they may not have, but which the documents they do have prompt them to seek. With the benefit of that, they can make very targeted requests, we will say. It's to that that this extra language goes. The process is what follows, in the rest of paragraph 8.

I think Mr Gregory wants to speak, and I'll give you a moment.

MR GREGORY: Sorry. One brief point. I think Mr Kennelly's submissions have highlighted our concern, actually, because I think his position is if the Class Representative is aware of documents, say, from the Polish investigation that have not been included, then they can just ask for them. The problem with that is we're not involved in the Polish investigation, so we don't know what documents are there and we won't know unless they are set out in the disclosure reports. What's happened in correspondence is we asked very early, "Please can you give a summary of the materials from these Polish investigations", for example, and the response came back, "No, those proceedings are not relevant". It seems obvious that they are highly relevant, and in fact, Valve has disclosed many of the same documents that it's proposing to disclose here from the In re Valve. But the situation is that we are very

concerned we're just not going to be aware about the documents that exist which could be relevant, which Valve knows about but we don't.

MR KENNELLY: When they receive our disclosure report in EDQ, we will be referring to, among other things, the Polish proceeding. But the relevance of that is that the documents -- because we're concerned here with the documents -- the documents produced in the Polish proceedings overlap largely with the documents produced in the US proceedings, as you would expect when Valve as a US company run out of the United States, and where the very same issues have been litigated or are being litigated in the United States.

This focus on Poland is surprising, because the Class Representative has told the Tribunal today that they are struggling to deal with the 2.6 million documents. They expected 300,000, they said, and now they have to deal with 2.6 million. Put to one side how realistic it was that everybody had just 300,000 documents in a case of this type. But really, they should focus on the 2.6 million documents of highly relevant material they're getting in July, and then decide, when they've reviewed that, the extent to which they need other documents from other investigations which are much more marginal.

But of course, it's open to them to make targeted requests in relation to documents or categories of documents arising out of the Polish case. We will be dealing with the Polish case, as I said in the disclosure report in EDQ; but by reference to the documents which are generated in that case, because the object of the exercise is to identify the documents that ought to be disclosed to the Class Representative to assist it in litigating the issues in this case.

THE CHAIR: I'm having difficulty envisaging in my mind what you might put in about the Polish -- could you give me a line item that might be in there?

MR KENNELLY: A description of what it involves, and, well, actually I'll quickly check,

because I think it may be something which is already in train. (Pause)

Okay. It's as you'd expect in a standard disclosure report. We will deal with the Polish litigation in the context of whether it is a repository of relevant documents in these proceedings. We will explain the extent to which the Polish case throws up -- by reference to the issues in the Polish case, we have identified repositories of documents which we will agree to search for relevant documents in this litigation, as you would expect in a regular disclosure report. That will then allow them to decide whether they should follow up with further requests about the relevance that Polish repository.

THE CHAIR: Mr Gregory's concern that he won't know what documents are there to ask for is answered, that you're going to give him a list of those documents.

MR KENNELLY: Yes.

MR LOMAS: I think, hope, I expect to know the answer to this question, but in this process it's not envisaged that to take this example, documents falling within the Polish sphere, which are specific to the Polish sphere and new to the US Valve documents, will not be disclosed because the issue has already been addressed by evidence in the US Valve documents.

MR KENNELLY: No. The extent that the Polish repository contains relevant documents, that will include documents in the repository at the time of the disclosure report. I think that answers your --

MR LOMAS: Exactly. There would be, as envisaged, no process of filtering out of, in this terminology, "Polish documents", because the issue to which they related had already been clarified or illuminated by the US Valve disclosure.

MR KENNELLY: No.

MR LOMAS: Right. That was my expectation. Thank you.

MR KENNELLY: That's the Polish example. More strange was the case against

Microsoft. It's points like this that prompted us to seek more focused language in the order, because it was suggested that we also need to produce documents in relation to a case brought against a different company, where Valve has no involvement in the litigation at all. Our response is, well, obviously if there are documents in Valve's possession -- I think the exchange was had with Mr Lomas -- we will produce them in the ordinary way, either through the *In re Valve* disclosure or by a supplemental disclosure. But that's it. Beyond that, it's hard to see what the incremental value is of focusing on this Microsoft case to which we are not a party.

THE CHAIR: If, for example, there was a witness statement by one of the Valve executives for the purpose of the Microsoft litigation, which touched on its business practices in a way that was relevant to this, that is something that would be on your initial list?

MR KENNELLY: It wouldn't be on our initial list, because the Microsoft case has just been issued.

THE CHAIR: Right, I'm saying if there was one.

MR KENNELLY: (Overspeaking).

THE CHAIR: But it might come up on your further list, then.

MR KENNELLY: Depending on the progress in that case, possibly. But down the line, one of the issues the Tribunal will have to consider is the extent to which you order disclosure in respect of material which has been created for the purpose of other litigation in the United States in a year's time or in two years' time. That's a common concern, which has arisen in other multi-jurisdictional antitrust cases, but that's not for today. That's something which you will have to consider either in the April/May CMC, or at a later CMC.

But again, the Tribunal's practice is: yes, subject to confidentiality protections, to order the production of that kind of material that's of assistance to the experts and the

Tribunal at trial.

The discussion we've been having, in my submission, shows why it's necessary to keep the parties focused. The Class Representative cannot on the one hand complain about the excessive documentation and the risk of cost overruns, and at the same time seek extensive further disclosure before they've even considered the 2.6 million documents that are about to land on their desktops.

I'm turning to the confidentiality designations for the non-US documents. That was the next thing on the agenda. I've actually addressed that the submissions I would make are the very same ones I made in relation to the confidentiality designations for the US documents. I've already addressed paragraph 5.3 of the confidentiality ring order. This is 5.2. But my submissions are the same. There's no prejudice to the Class Representative. They have the unredacted documents, and no concern about open justice, because we have a mechanism for re-reviewing documents before they go before the Tribunal or in any bundle.

The next issue on the agenda was timetabling. I hopefully made my submissions about why an autumn CMC would likely be too early effectively to resolve the US third-party disclosure issue, and that is the only reason my learned friend identified today as -- well, it was the main reason he identified for why there should be a CMC in the autumn. We say that just is too early, for the purpose of the US third-party issue. The Tribunal mustn't be, or shouldn't be, concerned that a CMC then is needed to chivvy us along. We have a very detailed, agreed process, and the discussion which has taken much of today shouldn't discourage the Tribunal. There is a huge amount of agreement between us, and that really will drive this process forward until we get to April or May next year, when a major CMC will have to be held.

The next issue was class communications. This is something that does concern us, because there are three features that are unusual in this case compared to the other

collective proceedings which this Tribunal has heard, in which we have some experience.

The first is that the Class Representative's advertisements and communications with class members appear to have reached a very small proportion of the class.

The second unusual feature is that an unusually large number of class members have opted out. 3,815, we were told on Friday. Mr Gregory, my learned friend, says, well, that's not a big number compared to the size of the class, which is 14 million. But it is a large number when you compare it to the level of engagement with class members. My learned friend pointed out the fact that 4,000 people had signed up to the website. That's almost the same number as the peak number who have opted out, positively opted out --

THE CHAIR: (Inaudible) not only in the first three months.

MR KENNELLY: Yes.

THE CHAIR: I don't know how many months were not covered then by the -- but I think it was another two months at least, wasn't it?

MR KENNELLY: Yes. So it's possible that more have signed up. I don't seek to make an exact comparison. I fully appreciate that we have the opt-out number as of Friday, whereas the level of engagement numbers are up to 31 March. I fully accept that, but it's still very odd. This is the second of the three odd features, that there should be such a high number of opt-outs, which is close to the number of people who have actually signed up to the website.

MR DAVIES: Signed up, but not the number who visited, which was about ten times that.

MR KENNELLY: Indeed. But even so, sir, in your experience, you would have seen no other case where full 10 per cent of the visitors of the website -- I don't mean of the number of visitors, 10 per cent have opted out -- I just mean, because we can't know

exactly how it came to pass, but to have 31,000 visiting the website and 4,000 odd opting out, that that suggests a relatively high level of willingness not to be involved in the litigation on the part of the class members.

MR DAVIES: Quite possibly. But I mean, it is relevant to the intervention I made earlier when Mr Gregory was speaking, that if you're assuming that the people visiting the website are a sort of random selection of the customer base, and then 10 per cent of them choose to opt out, that's a very high number. But if you assume that 160 million people, or whatever it is, were contacted and then everyone who wanted to opt out went to the website, then it's not surprising that, you know, quite so many of the people who went to the website are opt-outs, because that's why they're on the website.

MR KENNELLY: Yes.

MR DAVIES: I mean, there are two interpretations (overspeaking).

MR KENNELLY: There is, but I'm afraid we cannot place any weight on the idea that 160 million people became aware of this litigation. As I said to Mr Gregory, I don't know where that number has come from, but even if -- I think this is a point actually in our favour -- even if there's a relatively high level of awareness, to take up the chairman's point, that is not the same as awareness that you need to positively opt out if you don't want to be represented in this claim. The level of awareness is about the claim generally. The question is: how many of those class members who are aware of the claim are aware of the need positively to opt out if you don't support it? That depends on the manner in which the claim is being advertised by the Class Representative, because the Class Representative has an obligation to be transparent and to direct class members to the parts of the website which do identify their right to opt out if they don't support the claim.

The high levels -- it actually is a concern. It should concern the Tribunal. There may

be high levels of awareness, a relatively high level of dissent on class members' part from the claim, and low levels of positive engagement with the Class Representative itself. Our concern is that because the Class Representative has not done a good enough job in promoting or advertising the claim and drawing attention to the information that identifies the opt-out option, there is a high number of class members who would opt out if they knew that was positively required in order to not be involved in the claim itself. That's the problem.

So the high-level of awareness is actually a concern where there's no suggestion that that awareness is linked to an awareness about the right to opt out. The figures, if I may show you in the correspondence bundle; if you look at the correspondence bundle behind tab 28 is sent in May 2026. Page 76. (Pause)

Correspondence bundle, please, sir.

You've seen the reference to visits to the claim website, but the CPO notice was, in May 2026, opened by just over 2,000. We're now told it's closer to 4,000. But again, the number of people opening the CPO notice is about the same as -- sorry. That is an up-to-date number. The number that opened the CPO notice is, again, very similar to the number who have positively opted out. CPO notice is important, because it identifies the need positively to opt out if you don't support the claim.

If you go on, please, in the same correspondence bundle to page 183, behind tab 39, and go to paragraph 5, we make the point that having got information from the Class Representative, there's very little conversion from the advertising to engagement. In fact, we suggest to the Class Representative that there are problems with the way in which they have been engaging with class members.

To give you one example of that: if you go back, please to page 163 and 164 of the correspondence bundle, and start on page 164, please. This the click-through rate. The Class Representative is advertising, and this is the percentage of clicks per

impression. The ad flashes up on your screen. You either click on it, or you don't click on it, and of the impressions, for example, you see that for YouTube, only 0.2 per cent results in a click. But for Twitch.tv, there appears to be a better click-through rate. You see 0.18 per cent of people are clicking on the impression. But then when you go across to page 163, you see how the Class Representative is organised.

THE CHAIR: Sorry, what was the sponsored search? It seems to have done rather better.

MR KENNELLY: Oh, sorry. The sponsored search is where someone has positively typed into the search box a question about the --

THE CHAIR: Yes, I see.

MR KENNELLY: Obviously, that's why the figure is better there. But what's interesting is when you go to page 163, you see for Twitch.tv, the Class Representative has only planned or had planned 250,000 impressions, despite its good click-through or better click-through rate; it's not great. But for YouTube, 2.5 million impressions, but a very bad click-through rate. We have concerns that the Class Representative has not organised the engagement in an effective way. The problem there, from our perspective, is that there may be thousands -- or higher -- hundreds of thousands of class members who are unhappy with the claim being brought in their name, but unaware of the fact they have to positively opt out.

THE CHAIR: Can we hold that thought, then, over the next ten minutes while we take the transcriber break?

MR KENNELLY: Yes, I'm grateful.

(3.20 pm)

(A short break)

(3.40 pm)

MR KENNELLY: I'm very, very near the end of my submissions.

On this question of class communications, for the reasons that I gave before our break, Valve seeks, as you've seen, a six-month extension to the opt-out period, because we are concerned that there appears to be a high level of interest, a high level of unhappiness among class members with being represented in this way, but a lack of understanding of the need to opt out, owing to poor engagement.

THE CHAIR: What level of advertising would be needed, then, to deal with that?

MR KENNELLY: So at the very least, the Class Representative should send a message -- I think they call it a "blast" -- using their own communications lists to those who have expressed interest to notify them of this extension. The website obviously needs to have that made clear.

We are happy to discuss better ways in which they can advertise that fact. We don't seek a specific order in relation to a particular form of advertising, because really that's a matter for the Class Representative and the Tribunal.

In terms of advertising the fact that it's been extended for a further six months -- and this is the only point I'm going to make about the budget -- there appears to be some money spare for this purpose. If you can take up the revised budget that was sent to the Tribunal on Friday. I'm afraid if your eyesight is like mine, you'll need to zoom in because the figures are tiny. But in the bottom main row, under the across from the heading "Other", you'll see in the very far left column there's a reference under "Other" to media notices, advertising and so forth. That's in the far left column.

As you track across to the right, you will see the budgeted figure on the left and the spend on the right. So for media notices, notification plan and so forth, the Class Representative appears to have spent, most recently, only £29,000 out of a budget of £130,000. So there appears to be an underspend in their budget for this purpose, and the money would be well spent in a more targeted, effective way of notifying class members not only of the claim, but also of the availability of the opt-out process.

THE CHAIR: Is six months really the right number of months? It's tripling the original allowance. Would not three months be more proportionate?

MR KENNELLY: In view of the unusual circumstances in this case, our submission is that six months is appropriate. As I said when I opened my submissions on this point, we have an unusually high level of opt-out. We have an unusual high level of disaffection among class members with the claim. My solicitors, Milberg, even myself, we've all received unsolicited emails from class members expressing unhappiness with the claim being brought in their names, but not always, and in fact rarely, focusing on the opt-out process.

THE CHAIR: There was a suggestion from Mr Gregory that some of these might be not class members, but American gamesters.

MR KENNELLY: There are many, many gamesters in this jurisdiction too. I mean, Mr Gregory doesn't know -- and neither do I -- precisely where these people are coming from, but if they are expressing concern with the fact that a claim is brought in the United Kingdom, it stands to reason they're more likely to be from here. It's more likely to excite the interest of a UK resident than it is to excite the interest of somebody in Seattle or Washington.

So we were inferring from the deluge of material that we've seen and received that there's an unusually high level of unhappiness among class members with the claim being brought in their names. This is not the first collective proceeding; it is very odd to see so many complaints from class members, but not necessarily focusing on the need to opt out. They don't seem to be aware that that's something that they can do if they want to act on their unhappiness.

So for the high level of opt-outs, the high level of unhappiness that we've undeniably evidenced, and the poor level of engagement that we see in the figures given to us by the Class Representative, six months seems to us to be the appropriate time. It's my

final point, not least because, as Mr Gregory acknowledged, it doesn't prejudice the progress of the rest of the case. None of this interferes with the steps that will be taken in relation to disclosure and the Redfern-EDQ process that will progress in any event. So for that reason, six months, in our submission, is the right figure on.

That leaves costs budgeting. We have no specific submissions to make in relation to the revised costs budget that the Class Representative has submitted. Happy to answer questions if the Tribunal has any, but we have no particular points to make in relation to it.

The next issue is the split trial and trial listing. We agree with the Class Representative that having, again, reviewed the possibility for preliminary issues or a split trial, we agree with them that it's not appropriate, in our submission, to have a split trial; it doesn't admit of a neat split that is necessary if a split trial is to work in these proceedings. I'm happy again to answer any questions relating to that, but you have our written submissions (overspeaking).

THE CHAIR: Well, we do have some thoughts about the end date for the trial timetable, having found out that this building can't accommodate a trial of this length in the autumn of 2028. So that does seem to either tip us into 2029, which we have some concerns about, given that the longer this goes on, the more costs there'll be, which is not good for anybody. We do wonder whether there's any possibility of putting it earlier on the other side of the summer holidays in 2028, but we would like both of your reactions to that, really.

MR KENNELLY: I understand the concern. We have reflected independently of the Class Representative on the trial timetable. Unfortunately, having given it careful consideration, we don't believe there's any possibility of having the ten-week trial -- we both agree it's about a ten-week trial -- earlier than the end of 2028.

In fact, autumn 2028 was itself ambitious, because of the need to take -- when one

tracks through the steps, as I'm sure the Tribunal has done, to force the trial on sooner removes any flexibility in those deadlines, in circumstances where we don't know what will emerge from the April and May CMC in 2027. It creates a risk that the trial will be forced on too soon, which will ultimately generate increased costs overall, because the parties be forced to do disorganised and unsynchronised work. Our experience in other cases is that when trials are forced on quickly, it can lead to extra spend, and the Tribunal is not ultimately assisted because the natural process whereby issues are narrowed doesn't take place.

So certainly it seems to be the Class Representative's position also that it wouldn't be possible to have an orderly trial brought on before the autumn of 2028. I can expand on that, but --

THE CHAIR: No, I think that's enough.

Mr Gregory, have you got anything brief in reply, perhaps starting with that point?

Reply submissions by MR GREGORY

MR GREGORY: Yes, of course. So I think we would obviously like the trial to come on as soon as possible. I've explained that the longer it goes on, the greater the costs, and it has particular implications for collective proceedings claims such as these.

It's very difficult for us to say with confidence that it will be possible to have a trial before the summer of 2028, particularly in circumstances where we've not yet received the 2.6 million documents from Valve and started to review them. I think once we've engaged with that process, we'll be in a better position to say when we think the earliest possible date for a trial would be. But not having done that, I can't really stand here and say, "Well, yes, of course we can aim for it right now for before the summer of 2028".

There were two additional points that I said I would revert on at various points.

Mr Lomas asked whether we'd added someone to the advisory panel to deal with the fact that a number of the class members are minors. We have. They're called Aswini Weereratne KC, a silk at Doughty Street. They're an expert in the rights of vulnerable people, including children. We've also added someone who's a costs expert. I think probably the best thing for us to do is just to write to the Tribunal with the details and fully update you.

One miscellaneous point was Mr Kennelly noted that we'd had about 3,000 documents disclosed to us pre-certification and suggested, well, you must have had some experience of how your disclosure review platform was going with that. It's true, we have had those documents, but I think they were almost exclusively Steam distribution agreements, so the contracts that Steam enter into with its publishing partners. They're basically pure Word documents.

So, yes, we haven't had loads of problems with that, but we also haven't had any experience of dealing with the sort of files that normally have metadata or hidden data: PowerPoint presentations, Excel spreadsheets, and that sort of thing. We're just going to have to wait and see, basically, when we start reviewing the data, the extent to which problems come up.

Very brief reply submissions on the other points, just starting with the third-party materials issue. These issues are not for determination today, of course. The issue is when they should be progressed, and in particular whether we should have a CMC before April/May next year to deal with them, and also whether there should be some form of communication with the US court about the position that we are in over here.

On that, we think there certainly should be some communication with the US courts. A letter from the Tribunal would carry particular weight, given that you are obviously objective in these matters and there are issues of comity at play. I've been involved in other cases where the parties have produced a draft letter for consideration by the

Tribunal to be sent to, for example, the European Commission or other overseas courts. We could try that approach here and send you a draft letter, and you consider whether you could send it. If you didn't want to, then we would investigate the possibility of making submissions on our own part to highlight these proceedings to the US court and the fact that you may wish to disclose these and have these materials disclosed over here.

THE CHAIR: To let you know how we're leaning on this point, subject to any final representations. We don't think it's appropriate for the Tribunal to be writing on this. There are various difficulties with that. We do think it's appropriate for you to be seeking to intervene in whatever way is possible within the US courts, and I think we would be happy to say that you're intervening at the suggestion of this court (inaudible) any more comity weight.

On that basis, I think we're also leaning towards keeping the November CMC at least pencilled in the diary. But if it becomes apparent that that's not going to achieve anything, we should be prepared to abandon it. We are also thinking, though, that it does seem to us very likely that earlier next year, it should be possible to know what the court -- has happened -- and that we might move forward the other CMC on the basis that that would give more time elsewhere in the timetable, particularly if it turns out that an interaction is needed with the third parties.

So that's generally how we're thinking about this, but we'll of course listen to any further representations.

MR GREGORY: Those indications are very helpful, Sir. It's also been suggested that we might contact the third parties now. We're grateful for that suggestion. We think there could be some benefit in doing that. Mr Kennelly noted that many of the third parties may have concerns about the disclosure of their documents in these proceedings, based on the position they've taken in the US.

Of course, at least in some of the US proceedings, the plaintiffs are active in the market: they're developers and publishers. Whereas here, the claimant is a Class Representative who is not present in the market and we wouldn't have thought the third parties would have confidentiality concerns about the disclosure of their documents to us.

There is Valve, of course, but Valve will have had these materials disclosed in the context of the US Valve proceedings already. To the extent the third parties would not wish the materials to be seen by in-house personnel within Valve, that is of course possible by making appropriate provisions within the confidentiality order. That's quite common. If we wrote to the third party sooner rather than later, that would provide some clarity, even prior to a ruling by the US courts.

THE CHAIR: I suppose November might be a chance to review what came out of that; whether an order was needed for some sort of confidentiality ring on the other side.

MR GREGORY: Yes. I mean, in terms of the timing, the indication I'm getting is that you're quite keen to not simply let things drift for 10 or 11 months and to try and put some sort of CMC.

THE CHAIR: That's certainly right.

MR GREGORY: We obviously fully endorse that. Hopefully, we might not be completely in the dark as to the timing of the US proceedings. I hope that Valve will keep both us and the Tribunal updated if it becomes aware of a sort of timeline. Perhaps if we write the US court, the US court will also notify us of the speed at which it's proposing to determine Valve's application.

One point that Mr Kennelly touched on is we've obviously asked that it provide a list of the third-party documents from the In re Valve proceedings, and you had a number of exchanges with him about that. Mr Kennelly has volunteered a list of categories of documents. Our position on that is that it would be much less informative than actually

a list of the materials that are provided.

Mr Kennelly suggested that even a document list might contain confidential information, and then you had an exchange with him about the document titles and so on. He suggested that even removing the document titles would require it to review the underlying documents. I'm not sure that's right. I mean, yes, there are 50,000 documents, but it probably requires reviewing 50,000 lines on a spreadsheet. You're only concerned with what the document title is. Yes, it might take a day or two's work, but it's not, weeks, months of work, of reviewing the underlying documents themselves.

THE CHAIR: Well, I assume quite a lot of these documents will be emails. There, I suspect the document title can only be "email".

MR GREGORY: It may well be, yes.

In relation to further disclosure, Mr Kennelly kindly suggested we might just want to focus on Valve's disclosure from the *In re Valve* proceedings and not worry about getting any additional documents. No doubt most parties in litigation would like the proceedings to be determined solely on the basis of their own disclosure. He accepted that the third-party materials are likely to be unfavourable to Valve and more favourable to the Class Representative. That's obviously why we've got a particular interest in getting them, effectively to sort of balance out the very large quantity of documents that Valve will be producing itself.

In relation to the Polish investigation, Mr Kennelly stated that if there are relevant materials, they will be included in the disclosure report. I welcome that clarification which was not clear from the correspondence.

One point of information --

MR KENNELLY: I'm so sorry. I don't want my friend to be misled. I said that we'd identify repositories in the Polish document.

THE CHAIR: Repositories?

MR KENNELLY: Repositories.

THE CHAIR: Repositories.

MR KENNELLY: So sources of documents that we would then search, but we're not listing all the potential documents in the Polish proceedings.

THE CHAIR: I'm not sure I understand what that means.

MR KENNELLY: So what we're doing is we'll say -- as you often see in a disclosure report -- we'll say sources of potential relevant documents. The Polish proceeding: for these issues, we identified these repositories. That is a source where documents can be obtained. It could be -- I mean, I'm speculating -- the inbox of a particular executive.

That's not the case here because, in fact, as they will find out, the documents are generally coming from the US and overlap with US disclosure. But it's about identifying sources of documents which will then be searched according to search terms that will be agreed with the Class Representative. That's the normal approach one uses in a disclosure report and an EDQ.

MR GREGORY: You also had various exchanges in relation to the organogram, which were helpful and we're grateful for what Mr Kennelly said on that.

Then the last subject I was going to address you on is Mr Kennelly's submissions on extending the opt-out period. What underlies this is Valve's submission that there haven't been high levels of engagement with the media campaign and communications. As I said earlier, the reach of the campaign has been very significant. There's been widespread coverage in the news; 14.4 million impressions on the media advertisements. We've also seen it being promoted in online chat rooms of the sort(?), which are --

THE CHAIR: Sorry, 14.4 million ...?

MR GREGORY: Impressions from the display adverts.

THE CHAIR: So do you mean that 14.4 million people have clicked on a display --

MR GREGORY: No, (overspeaking) --

THE CHAIR: 14.4 million people have had an advert in (overspeaking).

MR GREGORY: Yes. For example, I don't know if you use LinkedIn, but if you open LinkedIn and scroll down, every time you see a post, that's an impression. You may not click on it, so you might just keep scrolling, but it's just someone's eyeballs have rested on it, however momentarily.

THE CHAIR: But might this also be that I've done a search for computer games or a particular computer game and an advert pops up on that?

MR GREGORY: I think it depends where the adverts have been placed. Obviously, if you do a Google Search advertising - I don't know the extent to which that's been used - but it's just that people have seen the advert --

THE CHAIR: Anyway, 14.4 million people have had a display saying that this process is going on.

MR GREGORY: Yes.

THE CHAIR: Did that display tell them that they needed to come to your website if they wanted to opt out?

MR GREGORY: Yes, I think generally the advert's referred to the claim website, and so if you clicked on it --

THE CHAIR: But did it just say, "Claim happening. Go to the website to see more"?

MR GREGORY: I think basically what you said, "Claim happening. Click to see more".

THE CHAIR: Right.

MR GREGORY: More or less.

Yes, only 1 per cent of the people who've seen the impression have clicked on the link, but that is completely standard, both generally for this sort of advertising and in

particular for advertising related to collective proceedings claims.

In terms of the application that Valve has made for extending the period, the context for this is that a three-month opt-out period is now standard in collective proceedings cases. It was signed off by the Tribunal and Valve raised no objections to it at the outset. In that context, we say there'd have to be a good reason to justify taking a different approach in extending the period.

Yes, the data that's been provided on the campaign may show that, with the benefit of hindsight, certain types of advertising have been more effective than others. But the mix of advertising was identified by a reputable claims administrator with considerable experience, and again, no objection was raised to them at the time. The low click-through rates overall are completely standard.

As to the level of spend, Mr Kennelly showed you some parts of the updated budget, suggesting that there had been an underspend. That's slightly misleading, because some of the claims administration has in fact been carried out by my solicitors in-house. They're involved in certain claims where they carry out the claims administration in-house, and they've done some of the claims administration for this claim in-house as well. So some of those costs have been incurred in a different bit of the budget. So just looking at the sort of spend on third-party activities is to understate the amount of spend on the campaign.

Another point just to note is we have asked Valve what communications it has had with the class, and we haven't had an answer to that. It may have had direct communications. Our understanding is that Valve communicates both directly and indirectly. So, for example, it has relationships with influencers who may be posting online, and it may be that Valve has been messaging indirectly about the claims through that way.

We don't know. We have asked that information and we've not received it. But having

that information would allow us to form, and you to form, a more rounded view about whether, in fact, there has been adequate publicity around the claim.

In terms of a potential extension to the opt-out period, we would also like to know what, if any, communications Valve will be intending to make itself during that period. We say that because large numbers of people have contacted both my solicitors and the Class Representative directly, and dealing with those direct communications -- so they're not simply going on to the opt-out form on the website -- actually imposes quite significant costs.

So if we're going to go through a new period where those sorts of communications become possible or likely because there's some sort of new wave of publicity, we would like to understand what's going to be happening on Valve's side, if anything.

The opt-out period has obviously closed, but it may be that this is an issue that could be revisited on a more informed basis at the next CMC.

Those submissions that I had in reply, unless you have any questions. (Pause)

THE CHAIR: Yes, well, we'll take five minutes. Then what I'm going to suggest we do is we go through the two orders with the alternative wording. We're going to tell you how we're leaning on those points and hope that we can get a position, based on how we're leaning, that you can agree on in the wording.

Thank you.

(4.06 pm)

(A short break)

(4.12 pm)

Discussion re alternative wording

THE CHAIR: Very good. Well, as I suggested, I suspect, rather than giving you a lengthy judgment at this point, what we're going to do is run through the orders that

are before us, and hopefully as we do that, deal with each of the points that are between you.

Let's start with the CMC draft order. So I think there's nothing on page 1 that we need to deal with.

Paragraph 1.2 at the top of page -- I think we have a good understanding of what's being offered there, which is a description of the roles of the senior people within the organisation and an ability to ask further questions about other people, if that becomes necessary. So I think we can leave it to you to craft the wording on that, but hopefully we've reached a reasonable position on that.

Paragraph 3: do we have anything outstanding there? Valve may where appropriate respond to that. (Pause)

I thought we'd lost the --

MR LOMAS: Because of the "may", we lose the word "appropriate".

THE CHAIR: Yes, I didn't like that because I thought it gave Valve the entire choice within that. So I think -- well, I think it's either "Valve may respond" or "Valve shall, where appropriate, respond". I think I prefer, "Valve, where appropriate, shall respond".

Does anyone have a difficulty with that? (Pause)

That deals with that.

In 5, I think, having understood the point, the red wording is the wording that should stand rather than "where reasonable", but where we talk about "reasonably usable", we mean including in relation to your AI, however you describe it: search engines or litigation support document, whatever it is. (Pause)

Did we need any further wording? I've written something about "not specific" on the "Valve produce certain documents or categories of document in native format". No, I think that deals with the point, doesn't it?

6, where did we get to on 6? (Pause)

Yes, yes. So I think the discussion on 6 leads us to a position where there is a list of documents, but what you put in that list shouldn't include anything at this stage that requires you to breach your US order.

MR KENNELLY: Just to be clear, sir. What we've suggested in relation to that was, paragraph 20 of our skeleton, that in relation to the 50,000-odd documents, we would give the identities of the third parties producing them, the number of documents each one produced, and descriptions by category (overspeaking).

THE CHAIR: Yes, that was it. We had a discussion about what we meant by "produced", but you meant "produced to the US court".

MR KENNELLY: Paragraph 20 of our skeleton. I made clear it's the third-party document.

THE CHAIR: Yes. I think we are happy with that approach.

We would like to retain the case management conference listing. We acknowledge now -- I don't know if it needs to be in the order -- that that might be vacated if there's nothing for it to do, but we suspect there will be something for it to do.

As regards paragraph 8, I think generally we prefer the approach of the claimant here, that further disclosure will be determined in accordance with the usual rules. Happy to see how that is, but we think the wording in red, even if we augment it to say "as reasonably necessary", is just going to add some confusion to it. So I think some blander wording. If there's some wording you want to agree between you that describes the usual rules, we will be very happy to see that, but we hope you can agree something with that approach.

Coming on to 8.1, we think certainly from 8.2, the dates could be slightly more ambitious. We're going to suggest shaving two weeks off each of the dates. 8.5 doesn't have a date, but 8.2 to 8.4, just to give a little bit more give later in the

timetable. We think those dates look quite leisurely.

I should have dealt with the question of supplemental UK approach or further disclosure, but I think I've already said in relation to paragraph 8, we prefer the claimant's wording, so I think we're going to use the term "further disclosure" at 8.5.

Expert evidence. We think that this is certainly a case where there's really no need to wait for everything else to happen before we start dealing with the steps at paragraph 9, so we would suggest a date in January or February 2027, and by February -- I think we probably mean in the first half of February -- for dealing with the steps mentioned in paragraph 9. That means that when we get to 10, we can be talking about a date in February.

Then paragraph 12; would we adjust that date as well?

MR LOMAS: I think (inaudible) would be to bring that date forward, to the beginning of March.

THE CHAIR: That date goes forward towards the beginning of March. However, at this stage, we don't think we can amend the trial date from this suggestion of January 2019(sic), because of the court's availability. Obviously, that point can be revisited at any further CMC, but the way the court's schedule is piling up, we doubt whether we can bring that forward; but we still think that these steps should be advanced to give a little bit more give towards the end of the timetable.

MR GREGORY: We've obviously discussed the possibility of a trial date. There's no reference to a trial date listing in the draft order as it stands. I just wanted to check that you were content with that.

THE CHAIR: Yes, I think there should be, and we should take best available date suiting counsel's availability in January ...

MR LOMAS: 2029.

THE CHAIR: 2029, yes.

MR KENNELLY: Sorry, sir. May I, since we're just interrupting you; on the dates you suggested for the, further disclosure process, as we now must call it --

THE CHAIR: Yes.

MR KENNELLY: -- the 8.3. That has to be brought forward, I think by two weeks, you said. Would that be 8 January?

THE CHAIR: I've written 7 January, but you're right. It's the 8th.

MR KENNELLY: Could we add a week to that, just because it comes straight after Christmas? That could be a squeeze, because that's when we're responding to their Redfern schedule requests.

THE CHAIR: Yes, I think that's fair. Yes, that 8.4 probably comes back a week as well.

Good. Well, that deals with that one, I think. Then we come on to the confidentiality ring order.

MR KENNELLY: I'm sorry, sir. The opt-out period extension is at paragraph 13 in that order.

THE CHAIR: Is it paragraph 13? Sorry.

MR GREGORY: I think Mr Kennelly is referring to the version of the order in the supplemental bundle, which is tab --

MR KENNELLY: In the supplemental bundle, tab 16.

THE CHAIR: Oh, right. Okay.

MR KENNELLY: Tab 16 of the supplemental bundle, page 86.

THE CHAIR: Well, I can answer the general -- we do think that there should be a further opportunity for people to opt out, but we think that opportunity should be limited to three months, probably from the date on which it is first advertised. We are not going to ask for any further publicity beyond an e-blast and publicity on the website, and at this time in the afternoon, we're not going to ask you what the defendant is

going to do about publicity, although that might be a question you're entitled to ask them at the next CMC, what they have done.

MR KENNELLY: On that subject we have already agreed. We've offered to agree a communication. We are not communicating without having (inaudible) the Class Representative.

THE CHAIR: Well, that's very helpful. If you want to put that in the order, that can go in, but no need for it.

Does that then bring us on to the confidentiality order, which I don't think has anything before 5.2? I'm not sure we discussed the words subject to paragraph 5.3 below, but I don't see any problem with them.

MR GREGORY: No, I think it's just saying that 5.2 sets out the position generally, and 5.3 is a slightly different regime for the In re Valve disclosure. So I don't think either of us has any issue with that wording.

MR KENNELLY: That's correct.

THE CHAIR: Should it be without prejudice to 5.3 below? I think we didn't like the words "where appropriate" at the end of 5.2, but we thought that there should be something to make it clearer that there could be requests for specific documents.

MR GREGORY: Could I just check the consistency of that with what you said about paragraph 3 of the draft CMC order, because you had an exchange with Mr Lomas, and I thought you said that your preferred wording was, "Valve, where appropriate, shall respond". I think this is the equivalent.

MR KENNELLY: Yes. We're content that the wording, sir, that you outlined for paragraph 3 in the CMC order, we're happy for it to be carried across.

THE CHAIR: Okay. Let's do that then.

Similarly, at the end of 5.3.

MR KENNELLY: Yes.

THE CHAIR: Was there anything on 5.5 that we needed to deal with? I've written "specific review" next to it, but I think that was probably just my notes of what it said. That, then, I think has dealt with those orders. Do we need to do anything else about noting a revised costs schedule?

MR GREGORY: One point I was going to make on costs is the Tribunal asked whether the defendant should be asked to provide updated cost budgets.

THE CHAIR: Yes. I've seen the defendants' representations about that, and I think it's our view that there's no need to require the defendant to do that.

Have we dealt with everything?

MR KENNELLY: I think so, yes. Thank you.

THE CHAIR: Right.

Well, thank you very much for your very clear representations. I'd also commend the amount of cooperation that has gone into this, very clearly, to limit this to so few a number of things. That augurs well for the rest of this. Thank you for that.

MR GREGORY: Sorry, I (inaudible).

THE CHAIR: Yes.

MR GREGORY: My junior has just reminded me. When we introduced the new opt-out period, ordinarily you would also have an equivalent opt-in period, so I just wanted to check that both the Tribunal and Valve is content with that. That is the normal approach, that people from inside the UK can choose to opt out, and people from outside the UK can choose to opt in during that period.

MR KENNELLY: I see no objection to both being extended.

THE CHAIR: Very good.

Well, we're happy with that and I should leave it there. Thank you.

(4.27 pm)

(The court adjourned)