1. Q. Okay, if you were, could you then go to bundle E5.5.
2. A. Yes.
3. Q. Were you aware of the initiative called "Making Sainsbury's Great Again"?
4. A. Not particularly, no. I know of Justin King obviously but I can't remember when he joined.
5. Q. 2004 was the year that Justin King arrived at Sainsbury's, can you remember that?
6. A. Yes, indeed. It was around about the middle of the year.
7. Q. Can you remember whether that was the beginning, middle or end of the year? It is a long way back, I know.
8. A. Yes, indeed. It was around about the middle of the year.
9. Q. 2004 was the year that Justin King arrived at Sainsbury's, can you remember that?
10. A. Not particularly, no. I know of Justin King obviously but I can't remember when he joined.
11. Q. Were you aware of the initiative called "Making Sainsbury's Great Again"?
12. A. Yes, I think I was.
13. Q. Okay, if you were, could you then go to bundle E5.5.

Tab 71. This is a pack of slides I think "Making Sainsbury's Great Again", dated 19th October 2004. But clearly there would have been some talk about it at Sainsbury's throughout 2004, I would have thought?

A. Yes.

Q. If you can go to page 1981, this is a -- kind of the intro to one of the themes and we see this is dealing with the second main theme, new and experienced management team. Because if we go over to 1990, this is the new management team that came on board in 2004?

A. Okay.

Q. Do you remember any of these people on the operating board? Do you remember Mike Coupe coming along?

A. I recognised the name. I mean, I have had dealings with Sainsbury's throughout my career past 2004, both at Barclaycard and at Amex, so I knew the names but that's it.
Q. Doing what? What was a project manager --

A. Some were smaller, some were bigger.

Q. When you say partly responsible, you were?

A. I was responsible for a large chunk of the store directly in terms of the departments that under my control, which was mostly fresh foods, and I felt and acted as if I was responsible for the rest of the stores as part of the leadership team and of course the area that I ran was an important part of the performance of the store.

Q. Then is it in 1998 you were appointed a project manager?

A. Yes, I believe so. It was around then.

Q. At paragraph 3.1 of your statement.

A. That is correct.

Q. As good a place as any.

A. Yes.

Q. Okay. So it was furniture, uniforms, not milk, eggs and cheese?

A. That is correct.

Q. That's what it is called?

A. Yes.

A. GNFR as the acronym goes.

Q. What was the difference between a project manager and a procurement buyer?

A. Not that much. As I moved within that role I took a lot more responsibility for in particular the facilities management side. Again refrigeration, cleaning, all those types of things and I worked with the outsourced third parties that Sainsbury's used to service its stores.

Q. If I then get the feeling of what you were doing here, this was what -- it is not a goods for resale role, it is a -- not concerned with retail.

A. It is a Goods Not For Resale role.

Q. So if then I get the feeling of what you were doing here, this was what -- it is a very good place to start.

A. That is correct.

Q. So let's, as it were, start at the very beginning, which is a very good place to start.

A. Yes.

Q. It was in the procurement department, Goods Not For Resale role.

A. Yes.

Q. That's what it is called?

A. Yes.

Q. Okay. So it was furniture, uniforms, not milk, eggs and cheese?

A. That is correct.

Q. So what was the difference between a project manager and a procurement buyer?

A. Not that much. As I moved within that role I took a lot more responsibility for in particular the facilities management side. Again refrigeration, cleaning, all those types of things and I worked with the outsourced third parties that Sainsbury's used to service its stores.

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Q. As good a place as any.

A. Yes.

Q. That's what it is called?

A. Yes.

Q. Okay. So it was furniture, uniforms, not milk, eggs and cheese?

A. That is correct.

Q. Goods Not For Resale role.

A. Yes.

Q. Goods Not For Resale role.

A. GNFR as the acronym goes.

Q. Would you, reading that, accept that improving customer price, the customer offer?

A. As I say, I was aware of the general initiative, I was aware of those numbers.

Q. Then is it in 1998 you were appointed a project manager?

A. I was responsible for a large chunk of the store.

Q. What was the difference between a project manager and a procurement buyer?

A. Not that much. As I moved within that role I took a lot more responsibility for in particular the facilities management side. Again refrigeration, cleaning, all those types of things and I worked with the outsourced third parties that Sainsbury's used to service its stores.

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Q. So if then I get the feeling of what you were doing here, this was what -- it is a very good place to start.

A. That is correct.

Q. As good a place as any.

A. Yes.

Q. That's what it is called?

A. Yes.
Sainsbury's were performing in the way that it had decided to price vis-a-vis its competitors.

Q. Just pause there. So you were in Goods Not For Resale.

A. Yes. I don't think it is always about increasing sales at any cost, but certainly, you know, as I think is generally understood how a supermarket is performing on a sales perspective is extremely important to it.

Q. But you fairly say in the last sentence of paragraph 4, you were not involved in price setting?

A. No, I wasn't.

Q. Then, after you -- you left procurement, as I understand it, and I'm looking at paragraph 3.1.4, where you say that you went from 2002 to the time you left in 2004, I think you moved into financial services aspect of Sainsbury's supermarket?

A. That is correct, yes.

Q. We have tried to dig out your blast from the past, but if you go -- I don't know if you have still got bundle E5.5?

A. No, I don't.

Q. If you could keep that bundle open because I will go to bundle E5.5?

A. That is correct, yes.

Q. We have tried to dig out your blast from the past, but if you go -- I don't know if you have still got bundle E5.5?

A. No, I don't.

Q. If you could keep that bundle open because I will go to some more documents. E5.5. It is the only bundle I will go to, along with the witness statements.

A. Oh, wow.

Q. I know, I told you it would be a blast from the past.

A. I'm surprised it isn't handwritten.

Q. There we go. Now, this is the finance division current structure. If we can just --

A. What date was this?

Q. Well, I don't know.

Q. So just what was your -- why were you there as a part of Goods Not For Resale?

A. Not much. One tends to come with the other I suppose would be the best way that I could put it, although, they are not mutually inclusive or exclusive as well.

Q. So it is all about increasing sales on items, generating goodwill, that sort of thing?

A. Yes. I don't think it is always about increasing sales at any cost, but certainly, you know, as I think is generally understood how a supermarket is performing on a sales perspective is extremely important to it.

Q. But you fairly say in the last sentence of paragraph 4, you were not involved in price setting?

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Q. If you could keep that bundle open because I will go to some more documents. E5.5. It is the only bundle I will go to, along with the witness statements.

A. Oh, wow.

Q. I know, I told you it would be a blast from the past.

A. I'm surprised it isn't handwritten.

Q. There we go. Now, this is the finance division current structure. If we can just --

A. What date was this?

Q. Well, I don't know.
A. It is certainly not 1977.
Q. I don’t know why that’s on there, it is probably because it is the page.
A. Oh, yes. Apologies.
Q. When I looked at it I thought — (Pause) I mean, if you just — you can see yourself there, Scott Abrahams in financial services?
A. Yes.
Q. Then to the left “Finance Systems”, what was that concerned with?
A. I believe that was concerned with the running and operating of all of the computer systems that — systems and processes probably, although I’m not certain of that, but systems and processes that any large business needs to effectively run its finance operation.
Q. Then, what is the BAS?
A. I think that’s business accounts services, I believe.
Q. That was quite a large operation that was based in Streatham at that time.
A. I think that’s business accounts services, I believe.
Q. Then to the left “OR”.
A. Yes.
Q. What was the purpose of this little group? Why is that group together?
A. I believe that that group was together purely because those managers were focused very much on the day-to-day mechanics of finance and running the finance division, so you have got people running the systems, the business accounting services function was all about payments to suppliers, invoice matching, fixed assets, all of those types of things, the very core of a finance function if you like.
Q. It is pretty obvious, but I put it to you, during this time, you are in kind of this mechanics of finance, you are not having very much visibility about price strategy, that’s gone?
A. I don’t have — apart from obviously ongoing meetings etc which I have already referred to which would have continued in this job, and perhaps a little bit more insight into the performance of the business as I was working in finance, and also because my job, unlike my colleagues’, was very much an externally facing job. My job was dealing with cash in transit, was dealing with banks, both as ATM providers, acquirers, cheque processing, cash processing. So no, I wasn’t, but I wasn’t any further away from the pricing decisions as I have already referred to them.
Q. If I could just summarise where we get to by 2004, and in yellow?
A. Yes.
Q. I believe I can get away without ... MR JUSTICE BARLING: Right. A. Do I have to be careful as well though?
MR JUSTICE BARLING: If you could just be careful, yes. If you feel it is impossible to give a proper answer without being not careful, then we will have to consider whether to —
A. For my clarity, everything in yellow is?
MR BREALEY: Is confidential to Sainsbury’s.
A. Okay.
MR BREALEY: So we have members of the public here.
A. Indeed, okay.
Q. Now, just to start off. These are — although — I do apologise.
MR JUSTICE BARLING: Is it going to be possible, Mr Brealey?
MR BREALEY: Let’s just take it in stages.
MR HOSKINS: If it is difficult for Mr Brealey, how is the witness going to manage, because he is trying to say:
I need to give an answer, but I’m not sure what I can say. It is not ideal.
MR JUSTICE BARLING: Are the answers going to propose a problem even if your questions don’t?
MR BREALEY: No, I will give it a go.
You say at paragraph 6 of your witness statement
that the transaction costs were at a certain figure and
I would ask you not to read that figure out. But that
figure was the amount of transaction costs, say, in
2004?
A. I believe so, yes.
Q. And at paragraph 3.1.4, which is not in yellow, which
I think is a public figure anyway, is that you say that
Sainsbury's turnover was circa 20 billion?
A. Yes.
Q. Then, at paragraph 10, the first two lines, you say,
given the transaction costs in the context of the total
budget, there is a percentage figure there. And this is
not trying to trick you, I'm just asking you whether you
are certain about that 0. point whatever percent of
turnover, because in my maths it should be a different
figure?
A. The point I was referring to there -- sorry,
apologies -- was my understanding of the credit fees --
the credit card fees.
I was just trying to aggregate the whole role that
I had that included moving a lot of money,
electronically and cash, moving a lot of money into the
stores for ATMs, that was a substantial figure.
Q. Sure, whatever.

PROFESSOR JOHN BEATH: Sorry, the term "transaction costs"
is to be used in two senses?
A. Yes.
MR BREALEY: Then also at paragraph 6, the last sentence,
you state that:
"Transaction costs were one of the major operational
costs of the business, for example the costs of goods
purchased, salaries, rents and utilities."
So you say:
"Transaction costs were one of the major operational
costs of the business, after, for example, costs of
goods purchased."
I just want to double-check, are you sure that the
costs of goods purchased, ie are regarded as
an operational cost? Because COGs are not generally
treated as an operational cost?
A. That's a fair point, I would say. It is just the
language that's been used there. What I mean is that
the costs of transacting and accepting different types
of payment were a significant operational cost to the
operation of Sainsbury's and its supermarkets.
Q. But you don't have any access to the amount of COGs that
Sainsbury's incurs, for example? You don't know the
level of COGs within Sainsbury's?

A. And from the best of my memory trying to come up with
a number -- because as I have stated here, we and
colleagues of mine managed those lines and those cost
lines very, very, very closely on behalf of all of the
stores.
Q. If you just do the maths on 20 billion and the figure at
paragraph 6, it is not 0.8.
You can't say because that's just not correct as
a matter of maths. So what you are saying -- are you
saying that the transactional costs were just the
interchange fees or what are you saying?
A. I was referring in 10 to the rough costs of credit
cards.
Q. So transaction costs are not the -- anything else --
cash or --
A. Yes, I think part of the -- is the number which isn't in
yellow, so the 20 billion, includes -- that was the
amount of cash, when I say "cash" I mean value, if you
like, that people who work within my team and I were
accountable roughly, very roughly, for moving every year
and that included a lot of ATM turnover cash as well.
MR JUSTICE BARLING: But the transaction cost in
paragraph 10, that doesn't include the ATM and all those
things?
A. No and that's the things. It was my best rough
A. I don't know what I said in paragraph --

PROFESSOR JOHN BEATH: My understanding of your answers is that you are using a rather global sense of transaction costs in paragraph 6 and it seems the beginning of paragraph 10 you are talking of a rather smaller --

A. A subset.

PROFESSOR JOHN BEATH: A subset of that. I'm just -- at the end of the paragraph have you changed to a bigger definition?

A. Was that a question to me?

PROFESSOR JOHN BEATH: Yes.

A. I apologise. I was waiting for somebody else to answer that, to be honest with you. Sorry, I think I might use one of my lifelines, if that's all right!

MR JUSTICE BARLING: That's everything then? Cards, cash, accountable for the movement and banking of all the way I used to talk about my job there was I was in as financial services manager at Sainsbury's.

A. In as financial services manager at Sainsbury's.

MR JUSTICE BARLING: That's everything then? Cards, cash, cheques, processing?

A. Everything to do -- I had a relatively large budget and the way I used to talk about my job there was I was accountable for the movement and banking of all Sainsbury's turnover, somebody else counted it but I needed to make sure it got to where it should be.

With the transaction charges I'm talking about there are -- I'm talking in paragraph 10 about the transaction charges had been lower than budgeted?

Q. If you for example go -- we will have a bit of -- since we are in supermarkets, if you go to tab 74 --

A. If my budget was running better than planned, yes.

Q. If you take the last sentence where it is not specific to anybody:

"Certainly no supermarket would have wanted to run the risk of losing sales by keeping prices high."

That is correct, isn’t it?

A. Yes.

Q. You refer in paragraph 11 and again two-thirds of the way down essentially you are referring to how supermarkets --

A. Is that confidential? This is still confidential, this paragraph?

Q. It is.

A. Okay.

Q. You say:

"If transaction charges were lower than budgeted, this would have provided scope for a reduction in prices or increases in marketing and promotions."

A. Yes.

Q. So, again, we touched on this earlier, what type of marketing could have been increased if transaction charges had been lower than budgeted?

A. As I made clear in my statement, I was -- I prepared a budget, a very detailed budget that was monitored on at least a monthly, if not weekly, basis. That was relatively significant and therefore within my statement I firmly believed that a shift in that one way or the other would have been an impact of Sainsbury’s overall business plan for that financial year, if they are -- if I’m spending too much, action may needed to have been taken somewhere else and if I’m coming in under budget, that could -- Sainsbury’s have choices then. They either take that to the bottom line or they look to invest it in other ways.

Simply what I’m referring to there is that choice that any business has, any trading business has around promotion as you have said it, quality, everything else, but you say pricing would have been considered. So lower prices would at least have been considered an option, that’s your --

A. If my budget was running better than planned, yes.

Q. Q. If you for example go -- we will have a bit of -- since we are in supermarkets, if you go to tab 74 --

A. E5.5 again?

Q. E5.5. You will see there that I printed off from the website Tesco’s offer of potatoes. We will call this the potatoes example. Try and put this into context. So as we know, in this case, and I’m sure you are aware, we are talking about an overcharge. You are aware of what this case is about, I take it?

A. Yes.

Q. You discussed it with them. You are aware that there is an allegation that there is an overcharge on interchange fees?

A. Yes.

Q. What I’m trying to do here is to work out if that overcharge was to be reflected in prices across the board of any major supermarket, what would the implications be? So that is why I’m going to show you this.

A. Okay.
Q. We know from your evidence that Sainsbury's turnover is 20 billion, correct? Assume -- this should not be taken as a fact, assume that the overcharge is 20 million. So you have a 20 billion turnover and an overcharge of 20 million per year. Now that figure of 20 million compared to 20 billion is 0.1%; correct?

A. Yes.

Q. Now, if you look at the Tesco baby potatoes of £1, if Tesco was to increase the price of baby potatoes because of the 20 million overcharge, Tesco's would increase it by 1/10 of a penny?

A. Not necessarily, no.

Q. What would it do, then?

A. Potentially. It depends how much --

Q. A promotion?

A. It depends how much it is, obviously. I just think that that would be -- you know, in my experience, both at Sainsbury's and afterwards, where you have that opportunity to make some decisions on what you do with an unexpected upside, that would be one of your options. And I believe the supermarkets took that option regularly.

Q. Going back to paragraph 10, you say that you believe that investors would not have allowed Sainsbury's to take a hit on profit, is that essentially what you are saying there? Investors would not have allowed Sainsbury’s to take a hit on profit?

A. What I’m saying there is that it is my belief, although it might be confidential, that a supermarket is normally, in my experience, judged on two things. It is judged on many things but from a City perspective, it is judged on like for like sales. Actually there is three: for like sales, market share and profitability and when I make that statement -- which you have said, haven’t you? So that is not confidential now, is it?

Q. Go on.

A. That what I meant by that is that obviously Sainsbury's have made certain commitments to the City and their investors, normally both in terms of like for like sales and profits. I’m not so sure whether they make commitments around market share but of course if you look like you may not achieve those commitments, like any business, I think it is a fair belief to say that you would take action.

Q. Are you aware that the City analysts are always reviewing their profit forecasts for big companies like this?

A. I see and read in the press all the time, views of City analysts on all businesses and what I see and I still work with a lot of retailers, the two lead indicators, which are like for like sales and profitability are something that are always the sort of lead headlines when -- you only have to see it very recently after Christmas, all the news reports, the first thing they talk about is the sales performance of those businesses over Christmas. Profitability less often because they only report profitability twice a year in their accounts, rather you can do like for like sales more often.

So I think it is fair belief to say that if there was downside or upside in a large budget, action would have to be taken to try and get that business back on track with its commitments to the City.
Q. It is a belief you hold reading the FT and your knowledge --
A. No, it is a belief I hold from working at Sainsbury’s for a number of years, for working at a large bank and working at another large American business in increasingly senior roles.
Q. Have you ever spoken to investors about Sainsbury’s performance?
A. No.
Q. In paragraph 12 onwards you refer to Sainsbury’s Bank.
A. Yes.
Q. You state that Sainsbury’s Bank and Sainsbury’s Supermarkets are operationally separate. What do you mean by that?
A. I meant that what I’m talking about there is that the reporting line, if you like, of myself and colleagues within Sainsbury’s Bank, that there was no crossover, certainly not at my level and even higher up into the organisation.
Q. Can you expand on that? It is part of your evidence.
A. In my general role, if I talk about that first and then further up into the business -- these were two group reported functions, I believe at that time, the supermarket and the Bank, which at the time was a joint venture, and that those two entities reported into the Sainsbury’s group function as it stood at that time.
Q. When you say there is no crossover, what does that mean?
A. I meant that there is no -- at my level and certainly further up into the business -- these were two group reported functions, I believe at that time, the supermarket and the Bank, which at the time was a joint venture, and that those two entities reported into the Sainsbury’s group function as it stood at that time.
Q. Can you assist the Tribunal as to the nature of Sainsbury’s Bank’s fiduciary duties, the directors of Sainsbury’s Bank fiduciary duties: are you aware of their duties to be independent?
A. I’m not aware of those duties.
Q. The Bank in Edinburgh employs about 1,000 people. Are you aware of that?
A. No, I wasn’t aware of the numbers.
Q. Are you aware that the major central business roles are carried out in Edinburgh?
A. Are you talking about when I was working there?
Q. Let’s take from your experience when you were at the ATM.
A. I was -- certainly the senior people that I dealt with within the Bank were all in Edinburgh.
Q. Are you aware that the training division, the risk division, the audit division, the customer care division, the operations division are all out of Scotland rather than London?
A. I was not aware of those specifics but it doesn’t surprise me that those departments were all in Edinburgh, no.
Q. If you go to paragraph 17.4, in the light of what you have just accepted, can you at least qualify that statement which is “to all intents and purposes, the Bank was run out of the supermarkets” because that is not a fair and accurate description?
A. I believe it is fair in the sense that I meant it.
Q. How did you mean it?
A. I meant it in terms of the supermarkets were by far the largest and most effective channel for Sainsbury’s Bank to be successful. They had -- I don’t know how many supermarkets they had then, probably 500 or 600 and the internet was only really kicking off, even then. So what I mean by run out of the supermarket was that -- and this was a key part of my role -- that to access customers and for the Bank to be successful and therefore for the supermarket to be successful because of the success of the Bank, they had to have access to customers through the supermarkets and that is the sense that I meant that statement.
Q. You state that Sainsbury’s Bank and Sainsbury’s Supermarkets are operationally separate. What do you mean by that?
A. I meant that what I’m talking about there is that the reporting line, if you like, of myself and colleagues within Sainsbury’s Bank, that there was no crossover, certainly not at my level and even higher up into the organisation.
Q. Can you expand on that? It is part of your evidence.
A. In terms of where all those people were based, yes. I don’t accept that it was independent. I spent days, weeks, with the Bank and I didn’t work for the Bank, I worked for the supermarket.
Q. What did you actually do in your role as ATM?
A. I used to use them to take money out, if that’s any help!
Q. That is a fair point.
A. Sorry.
Q. I’m sorry about that.
A. I used to use them to take money out, if that’s any help!
Q. Yes. That’s fine. So we can --
A. I’m more than happy to answer that question.
Q. Yes.
A. In my general role, if I talk about that first and then Sainsbury’s Bank. Q. Yes.
A. In the time that I was there as financial services manager, ATMs were a relatively profitable thing to site at any locations, but at supermarket locations, you have got a lot of space and there were -- I inherited this, I did not do this but there were many, many ATMs, as there are to this day, at supermarket locations. I even had stores where there were five ATMs within the store. Now, some of that was because before the advent of Link,
A. We had many, many, different ATMs for many different

MR JUSTICE BARLING: It could be a Barclays ATM or a Natwest

A. No, I will come to that now. It was a good thing to

Q. Would these be Sainsbury's Bank ATMs?

A. It made a lot of sense and that's why I query slightly

Q. It made sense?

MR JUSTICE BARLING:MR JUSTICE BARLING: Would these be Sainsbury's Bank ATMs?

Q. Essentially I think what you are saying is you certainly

A. No, I knew exactly how much it was costing because that

Q. On the ATM?

A. I didn't play a part in that.

Q. On the ATMs, absolutely. We put a financial model in

A. On the ATMs, absolutely. We put a financial model in

place that allowed us to understand the costings for

every single site, because obviously it is building

works and they have to be done in a relatively secure

environment. So I understood every cost on every line.

It is a big decision for the supermarket to make. You

know, you may not be able to trade as effectively while

you are having that work done.

Did I make the decision to actively swap out ATMs?

A. No. Was I very clear on the direction of that strategy

and how I had to enact it in a way that made sense for

Q. If I were to say to you 70 million, would you have any

A. No.

Q. No. So again you didn't play a part in it so you

A. I didn't play a part in that.

Q. I think you signed the Amex deal with Sainsbury's in

A. Yes.

Q. And then onto Amex?

A. Yes.

Q. At Amex, you worked for seven years?

A. Yes.

Q. After you left MasterCard, you went to Barclaycard?

A. I don't know. I was simply then answering your question

regarding you would need to invest that money in a way

that got you some cut-through, knock 10 basis point off

every single product you had.

Q. After you left MasterCard, you went to Barclaycard?

A. Yes.

Q. After you left MasterCard, you went to Barclaycard?

A. Yes.

Q. I think you signed the Amex deal with Sainsbury's in

December 2011, is that correct? Can you remember that?

A. No I don't. Did I?
Q. I have seen your signature --
A. Yes, well, they go all the way up from a Centurion card, I believe it is still invite only, maybe it isn’t, through platinum, gold, most of these cards are charge cards. They are not a massively large credit issuer and then down to more -- for want of a better expression -- everyday cards such as the dual products they have with Lloyds, joints card issuance with people like MBNA and their own blue credit cards and charge cards as well.
Q. They have higher fees generally?
A. Yes.
Q. Generally, to accept?
A. Yes.
Q. I think it is well evidenced that Amex still has a problem with acceptability --
A. Yes, that was -- you sound like my boss there. Yes, indeed.
Q. It is also fair to say I think that MasterCard, with its premium card, doesn’t have the same problem with acceptability because it rides on the back of the “honour all cards” rule?
A. That’s true to say to some extent. In terms of American Express’ position in the marketplace, my job was to maintain and grow the acceptance footprint that we as a company had. Our acceptability challenges at Amex were mostly focused around much smaller retailers: you know, restaurants and corner shops and those types of things. The vast, vast majority of large retailers, such as Sainsbury’s, accepted American Express and still do to this day and that was clearly my main area of focus and I’m very pleased to say that I was actively successful in maintaining that coverage in the time that I was in that job.
Q. What, in broad terms, would be the difference between an Amex rate, and I appreciate there are lots of different cards, but can you give in broad terms what the difference between the Amex rate would be and the MasterCard rate be? MasterCard Standard card, for example.
A. I’m not sure whether that’s confidential. In terms of -- I can give you in very broad senses, those cards, American Express cards are not charged at different rates, in my experience. I do not think they have changed that, they may have done --
MR JUSTICE BARLING: The ones you have referred to?
A. They are all charged in my time there at the same rate.
MR JUSTICE BARLING: So whether a Lloyds Duo product was accepted by Sainsbury’s or a Centurion card that is £2,000 a year to have, that the price of that card was the same to accept. In my time there, the average gap would be -- and I want to be very -- I want to be relatively clear about this, I hope you understand that, 80 basis points, 1%, something like that.
A. Apologies, I would have signed a lot of deals. My first role at Amex was head of client management in the UK which meant every customer that accepted American Express was my customer, so Sainsbury’s were obviously an important customer.
Q. Obviously Amex are premium cards. Could you just give the Tribunal a flavour of the sort of cards that Amex has, issues?
A. Yes, well, they go all the way up from a Centurion card, I believe it is still invite only, maybe it isn’t, through platinum, gold, most of these cards are charge cards. They are not a massively large credit issuer and then down to more -- for want of a better expression -- everyday cards such as the dual products they have with Lloyds, joints card issuance with people like MBNA and their own blue credit cards and charge cards as well.
Q. They have higher fees generally?
A. Yes.
Q. Generally, to accept?
A. Yes.
Q. I haven’t compared it.
A. Does it match the one on this? I would have signed a lot of deals.
MR JUSTICE BARLING: The ones you have referred to?
A. Yes. American Express, they charge a lot more within things like airlines and other bits and pieces like that and much less within supermarkets and other retailers.
MR BREALEY: Obviously you left Amex to go to MasterCard, do you know why MasterCard entered into what you could call the premium card market?
A. Well, it is difficult for me to say, as I wasn’t currently sat on other card schemes and so I would imagine that to some extent that was a reaction to that, although I was not at MasterCard, so I don’t know.
Q. But you have taken over quite a substantial operation?
A. Yes and the cards’ market is highly competitive and
1 a lot of relationships with large acquirers that are 1 UK has stayed at 2?
2 based in the UK and in Ireland. I have -- I'm 2 A. The main reason they have done it, in my belief -- and
3 accountable for our merchant relationships. I'm 3 I have met the head of the commercial area of the Irish
4 accountable for all of our commercial public sector 4 Government -- the main reason they have done that is
5 relationships, of which we have a lot, both in central 5 that Ireland is still a very large cash economy,
6 government and the wider public sector and I'm also 6 particularly outside of Cork and Dublin. Ireland have
7 accountable for emerging and digital payments, so all of 7 had some challenging times, haven't they, over the last
8 the new things. My team helped the contactless cards 8 few years and part of the agreements that they have had
9 into TI, for instance. We helped Apple Pay launch here 9 to make within the EU put them under certain pressure to
t 10 last year. It is quite a wide-ranging role, if you 10 do certain things, I believe that many studies will show
11 like. 11 that there is a correlation between the amount of cash
12 MR JUSTICE BARLING: The public sector, that's the 12 in the economy and the amount of things that perhaps
13 relationship with government, lobbying and so on? 13 wouldn't be as good for the economy as if it was all
14 A. No, no, nothing to do with lobbying. It is all about -- 14 electronic.
15 that's why I always call it the commercial relationships 15 So it is my opinion that they have set those rates
16 we have with government. Government use thousands of 16 at that level to drive and to encourage more businesses
17 our corporate cards for their employees, they use our 17 to act and transact electronically, rather than just
18 virtual cards to transact with suppliers, we have 18 with cash.
19 2,000ish, I think. No, maybe a bit less than that 19 Q. Coming back to the UK, and going back to 2014,
20 actually. But we have a lot of relationships on the 20 MasterCard decided to lower its interchange fees, do you
21 prepaid side. So government is beginning to use prepaid 21 remember that, 2014? MasterCard decided to lower the
22 cards for disbursement purposes. We think that will 22 rate of the interchange fees? I'm not trying to trick
23 grow as universal credit comes into the marketplace. So 23 you or anything. If you go to tab 73 of E5.5-bundle --
24 we have a very wide-ranging relationship with many areas 24 MR JUSTICE BARLING: Mr Brealey we have had a plea from the

41 done in other parts of the business.
42 Is that okay?
43 MR BREALEY: I'm sorry.
44 MR JUSTICE BARLING: Don't worry. While you are finding the
45 place there and Mr Abrahams is thinking about it, we
46 will just take a short break.
47 (12.00 pm)
48 (A short break)
49 (12.08 pm)
50 MR BREALEY: I think I said go to tab 73 --
51 A. I'm there, yes.
52 Q. -- which is not confidential.
53 A. No.
54 Q. This is in the context of what I was saying, that in
55 2014, MasterCard decided to reduce its interchange rates
56 for standard and premium UK credit cards before the
57 adoption of the interchange fee regulation?
58 A. Yes.
59 Q. It wasn't certain that it was going to be -- I think you
60 probably foresaw that it was going to be adopted but it
61 wasn't certain it was, let alone the date by which --
62 correct?
63 A. I have not been involved in many of those discussions
64 but I would imagine that that's a fair assumption.
65 Q. You see here that this is an email from a Holly Hewitt
66 at Sainsbury's, she works for David Brooks?
67 A. Okay.
Q. You see here the planned reduction. So April 15th, 0.8.
A. Yes. So I was aware of that. Yes.
Q. Are you able to say when it -- what it came down from?
A. Potentially. You know, I think -- I don't work in
American Express any more and, you know, I would imagine
that some of them, some businesses, as we have seen here
I think are quite aware of -- that the mix of their
transactions and the charges that they incur and
therefore it is not a huge leap of faith to say that
they rang them up.
Q. With a view to discussing that gap was growing.
A. I would imagine that one thing they did was probably

Q. With a view to?
A. I would imagine of course that there were

Q. Actually, that 0.3 came in earlier because the
regulation was adopted on 29th April 2005 and therefore
the --
Q. If we go back a tab, and I won't read this out because
you have been involved with Amex. You are
widening gap? You must have certain other market
intelligence, you have been involved with Amex. You are
referred to in email from Holly in tab 73 regarding the
potential of Amex's rates coming down.
A. Yes. I do think that's realistic.
Q. But on the MasterCard side, you can well see that it
clearly were aware --
A. Yes, and the reason I stumbled when you first raised it
was that I couldn't remember the date of when we
announced it versus implemented it.
Q. Yes.
A. I knew we implemented it in 15, as it has been shown in
Holly's email, but I was racking my brains in terms of
when we actually made an announcement out to our
customers and to the market.
Q. But clearly MasterCard were doing something, reducing
its rates even before it was obliged to. I mean, that's
an obvious fact?
A. Yes.
Q. As a result of its dropping its premium rates, clearly,
the gap between MasterCard premium and Amex would grow?
A. Yes.
Q. You are dropping the rates then clearly --
A. Yes.
Q. Are you aware of how retailers responded to this
widening gap? You must have certain other market
intelligence, you have been involved with Amex. You are
quite high up in MasterCard now. Are you aware of how
the retailers reacted to this widening gap?
A. I would imagine that one thing they did was probably
call American Express.
Q. With a view to?
A. With a view to discussing that that gap was growing,
Q. With a view to Amex reducing its rate?
A. Yes. So I was aware of that. Yes.
Q. Again you were obviously involved in the reduction of
the MasterCard rates. You will be aware that a few
months later Visa followed MasterCard's lead. If you
take some of the press statements, they say "hot on the
heels of". Are you aware of Visa followed
MasterCard's lead in dropping its rates?
A. Yes, Visa had already made a number of announcements in
the market as -- you may know, one of the things --
i apologise if I get this slightly wrong -- that Visa
had done, and I'm not aware of the specific timing, but
they had allowed acquirers to export interchange rates
from one market to another. I believe that's actually
referred to in email from Holly in tab 73 regarding the
fact that supermarkerts -- sorry, anybody could
potentially receive that reduced interchange if they
were acquired offshore, for want of a better expression.
Q. This is the Worldpay application to the CMA --
A. Yes. So I was aware of that. Yes.
Q. If we take -- but you accept then that MasterCard
dropped its rates, Visa dropped its rates, you are not
A. I believe that to be the case.

Q. You were asked about the premium card credit card debit card rates at 0.2%?

A. I don't know. I couldn't answer that question.

Q. -- in the UK. Has that changed over the period of time that you have been involved in that industry? Sorry, in terms of size and scale?

A. I really don't know. I couldn't answer that question.

MR COOK: I would imagine so if you -- if we see the general growth in prosperity of the UK, then perhaps, but I'm not aware of the market sizes.

Q. Sorry, it may well be obvious but you were talking about Ireland and the advantages of transactions being done electronically?

A. Yes.

Q. What were the advantages particularly you were referring to?

A. There is advantages across the board. There would be advantages for the business itself in terms of guarantees of payments and all of the things that come with it. My main contention there was more around, as Ireland making that decision, as a country, for reasons of more economic well-being for the country as a whole in terms of traceability of payments, in terms of all of the things that come with that, is my belief that that's the main reason, if not the only reason, why Ireland has made the decision it has made on debit cards.

Q. Again it is probably obvious, but traceability on payments, what's the advantage for a country of that?

A. They could be taxed.

Q. Thank you.

MR SMITH: You said earlier that you were group head of everything except the issuing of credit cards within --

A. Yes, I don't have direct accountability of that obviously, it is an area of interest for me, but my main day to day role is everything else, if you like.
MR SMITH: Including in particular what we would call card acquisition and acquiring banks.

A. Yes, sorry, for me card acquisition is getting a new customer, so I apologise. Card acquiring.

MR SMITH: I was unclear.

A. Worldpay, Barclaycard, the likes of those businesses.

MR SMITH: How many acquirers are there in the UK?

A. I’m going to have to take a guess.

MR SMITH: Rough figure, yes.

A. There’s I think about 20 have a licence to acquire transactions with MasterCard in the UK, something of that ilk.

MR SMITH: That is a present figure?

A. That is a present figure.

MR SMITH: How is that looking back to -- over the years, has that figure been decreasing over time or increasing over time?

A. It has been a very interesting marketplace in that some players have got in and some players have got out. What we have seen over the years, particularly in the UK, less so in other parts of Europe, but particularly in the UK we have seen the advent of sort of monoline acquirers and processors, businesses set up just to do that, the best example of that being Worldpay, but Worldpay was created, as we know, from the challenges that RBS had in 2008. So my feeling in the marketplace is that more acquirers are entering that marketplace and not leaving it, particularly in this country and of course you know acquiring is quite a complicated business. You can be based here and acquire a transaction in Indonesia almost as well as you can acquire a transaction in -- I can’t think of anywhere in this country beginning with I now, but somewhere like that.

Those businesses on the whole have been growing and have been relatively successful. In fact, we are seeing some banks now moving back into the acquiring world after years of not having much interest in it.

MR SMITH: Focusing on the UK, and looking at the interchange relationship between issuers and acquirers, obviously, there is a default, the MIF, that is set by MasterCard. Do you have any sense of how many bilateral interchange fee agreements exist between issuers and acquirers in the UK?

A. I have a sense that there aren’t any.

MR SMITH: None at all?

A. That’s my sense. I’m not telling you there aren’t clearly, because that may be of confidential nature between those parties. I can’t think of any, no.

MR SMITH: Do you have any explanation as to say why that might be?

A. No. As I mentioned earlier, we have a situation where most acquirers aren’t owned and run by the bank. They are a separate business entity which may or may not explain -- where such arrangements may occur would actually be between potentially retailers and acquirers and banks. And you would have to -- you would be in a position where -- and that could be the case, I don’t know whether it is, but it could be the case between retailers who have their own banking function, for instance, or retailers who have a close relationship with a banking function, but between acquirers and issuers, I’m not saying they don’t exist, but I’m not aware of any.

MR SMITH: Lastly, let me ask you a hypothetical question, let’s suppose that for whatever reason MasterCard was not permitted to set a default that there was therefore no MIF, how do you or would you envisage the market, in particular MasterCard, reacting to that because clearly you would have to have bilaterals there?

A. It is a very hard thing to say. I think it would be chaotic to start off with. I think it is important to remember that if you are a retailer and let’s -- or an acquirer and you have to have a bilateral agreement that would mean having a bilateral agreement with every single bank in the world who issued MasterCard or Visa. You know, you could nail most of your volume with Barclays, with Lloyds, with RBS but you would have to have a deal with ITEL in Brazil, you would have to have a deal with Westpac in New Zealand, you would have to have a deal with Commonwealth Bank of Australia. I envisage that to be chaotic.

MR SMITH: Thank you very much.

A. Thank you.

MR JUSTICE BARLING: Just on that, you are talking now about MasterCard licensees, so they would all be licensees of MasterCard, these banks?

A. Yes.

MR JUSTICE BARLING: I don’t know whether it is a confidential figure, there are presumably several thousands of them, aren’t there?

A. I really don’t know the number but several thousand is a good ballpark, I think, to talk about. It would be a lot.

MR JUSTICE BARLING: Can I just ask you one thing too? You talked about premium cards and I think you mentioned a figure of £2,000 a year or something at one point.

A. Yes.

MR JUSTICE BARLING: Can you just sort of give me a rough idea of what the attractions -- why would anyone want
MR JUSTICE BARLING: The Centurion or something?
A. Yes, I roughly know how many of those cards there are but I think that is confidential to Amex, so I won’t say that. Part of it was the status. They were made of titanium as well which meant they set off the x-ray machines at airports.
MR JUSTICE BARLING: It is desirable.
A. A thought it was my bad hip but it is actually my two grand a year card in my pocket. So there is that and then on top of that, there are a huge amount of benefits with those types of cards that businesses, such as the one I work for now, where Amex provides -- they get you into any restaurant you want, any play you want, any show you want, they are -- some of them are advertised to personal concierge service, you get fantastic insurance etc. I would say it is partly the cachet of having it and how much they use it rather than necessarily how much they are paying for it. Of course a key piece with many premium cards is the rewards that users of those cards get for using those cards and in American Express’ world and in MasterCard’s world, what a good thing that is for retailers, for airlines etc that people are encouraged to use because they have a large credit line open to them and they are also rewarded for spending and spending more, whether that be by giving you Avios points for BA flights and all those things.
MR JUSTICE BARLING: Thank you very much. I don’t know if there is anything arising out of our questions that any of you want to ask?

MR BREALEY: Just to pick up what Mr Smith said about if you get rid of the MIF and you now have a system of bilaterals. You said it was chaotic, but can I just kind of drill down in that question, which is that kind of assumption that you can have a MIF for cross-border transactions, so that you will have a common MIF for Indonesia speaking to the UK or wherever, but we are only talking about the UK MIF, so domestic transactions. As I understand it, there are fewer issuers. So you are not talking to the whole world and there are fewer acquirers. So I would suggest that you wouldn’t have that chaotic nature because you are only having bilaterals with a much smaller group of banks, would you accept that?
A. No, I wouldn’t.
Q. Why not?
A. Because I think if I can see forward to that, you would have to -- so what could happen is that you would have to some aggregation somewhere, right? You would have to. Because I run a barber’s shop -- I don’t run a barber’s shop, by the way, but if I was to run a barber’s shop I’m supposed to go and get a deal for every bank to get cards?
Q. No. We are talking about the common interchange fee has gone and it is now for issuing banks and acquiring acquirers in the UK. It is not concerned with retailers. It is just -- how many acquirers -- I think you said 20 -- but how many of the big ones are there, four or five?
A. Yes, four or five but you have also got to remember there is acquirers who are acquiring domestic transactions not within the soil of the UK. So you must remember that too. I do take your point now, I still think it would be chaos. I don’t know how many licensees there are of MasterCard in the UK but there would be -- there is quite a lot. I also think -- Q. When you say “licensees”, sorry, “issuers”, you mean?
A. Apologies, issuers. There is quite a lot. I also think you would have to consider how new entrants would enter into the market, so, you know, one of the big things the government is trying to grow are new entrants into the banking community. If I am the likes of Atom Bank and I have to go and do bilateral agreements with every acquirer before my products are even used, that would stop me getting my business off the ground as quickly as I would want.
Q. Is that really the case if Atom Bank only has to negotiate bilaterals with four or five acquirers in the UK?
A. The point I’m trying to make is that you may have to go and do 20 if you want your card to be able to be accepted everywhere. That’s what I’m saying. It isn’t five or six. You then get to the situation that you
MR JUSTICE BARLING: Good. Thank you very much.

MR BREALEY: I'm comfortable with starting at 10.30 am. Can

MR JUSTICE BARLING: So the answer is no.

MR BREALEY: I'm certainly -- haven't got any of mine --

MR BREALEY: I'm comfortable with starting at 10.30 am?

MR JUSTICE BARLING: Do you agree that Sainsbury's have a huge amount of power in

MR JUSTICE BARLING: Anything arising out of that?

MR JUSTICE BARLING: Thank you.

MR BREALEY: No, thank you.

MR JUSTICE BARLING: Thank you very much, Mr Abrahams.

A. Thank you.

MR JUSTICE BARLING: So the answer is no.

MR BREALEY: 5.15 pm is double.

MR JUSTICE BARLING: Do you see any reason why we need to

start early on Monday or are you comfortable with

starting at 10.30 am?

MR BREALEY: I'm comfortable with starting at 10.30 am. Can

we see how we go and then maybe on the Tuesday we will

start -- I'm certainly happy.

MR JUSTICE BARLING: Good. Thank you very much.

PROFESSOR JOHN BEATH: I have no further questions.

PROFESSOR JOHN BEATH: I have one question which is, I was
wondering whether you might be able to tell us something
about how the interchange fee regulation that has come
into place is likely to affect the nature of competition
between card schemes? How will it change the

competitive environment?

A. The competitive environment is very competitive already
and was very competitive before regulation.

PROFESSOR JOHN BEATH: Yes.

A. In terms of the fact that as we have been discussing
that the interchange fees caps have been kept consistent
between ourselves and Visa and to some extent with
American Express as well, I don't see -- the regulation
will not impact adversely the competitive market as it
currently stands.

PROFESSOR JOHN BEATH: Yes, but every firm is trying to
increase its market share. So what is the basis, or on
what basis do you then compete if you can't compete with
price?

A. Well, you can compete on many other things and you know
to be fair the one thing I would say is that the
regulation is still pretty new so there is a lot of
interpretation to be made both by ourselves, by Visa, by
retailers, by acquirers etc, but there are -- and we
have just been discussing them now, the types of
benefits you get from using cards, the types of benefits
you get from accepting cards, rewards that retailers
give on their own, on their own products such as
Sainsbury's Bank product, John Lewis product, Marks &
Spencer products so I still think that with the

So what is being said there: it is possible for
Sainsbury's Bank to enter into a bilateral agreement
with Worldpay for an interchange fee?

A. Yes.

Q. If you look at the footnote 360, this is what MasterCard
are saying:

"It is obvious that an acquirer, and particularly
an acquirer under pressure from SSL, one of the largest
merchants in the UK would have been willing to agree
a reduction of interchange fees since this would have
reduced the payments which the acquirer had to make and
in turn what they were charging merchants putting them
in a commercially advantageous position."

Do you agree from your experience with what
MasterCard is saying there?

A. I agree that Sainsbury's have a huge amount of power in
the marketplace and that if they were able to do
a bilateral agreement with an issuer, there would be no
reason why an acquirer wouldn't facilitate that.

Yes, I do agree with that.

Q. Then, if other issuers entered into bilaterals,
Sainsbury's would also have a leverage?

A. Yes, I don't know whether they did that with their own
issuer, which they could have done.

MR BREALEY: I have no further questions.

PROFESSOR JOHN BEATH: I have one question which is, I was
wondering whether you might be able to tell us something
about how the interchange fee regulation that has come
into place is likely to affect the nature of competition
between card schemes? How will it change the

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Day 7 Redacted
(12.45 pm)

(End of non-confidential session)
(The court adjourned until 10.30 am
on Monday, 8th February 2016)
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