

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

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

Case No. 1266/7/7/16

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

21 November 2016

Before:

**THE HON. MR. JUSTICE ROTH**  
(President)

(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

**WALTER HUGH MERRICKS CBE**

Applicant/Proposed Class Representative

- and -

**(1) MASTERCARD INCORPORATED**  
**(2) MASTERCARD INTERNATIONAL INCORPORATED**  
**(3) MASTERCARD EUROPE S.P.R.L.**

Respondents/Proposed Defendants

---

*Transcribed by BEVERLEY F NUNNERY & CO.  
(a trading name of Opus 2 International Limited)  
Official Court Reporters and Audio Transcribers  
25 Southampton Buildings, London WC2A 1AL  
Tel: 020 7831 5627 Fax: 020 7831 7737  
info@beverleynunnery.com*

---

**CASE MANAGEMENT CONFERENCE**

## **APPEARANCES**

Miss Marie Demetriou QC (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)  
appeared on behalf of the Applicant/Proposed Class Representative.

Mr. Mark Hoskins QC and Mr. Tony Singla (instructed by Freshfields Bruckhaus Deringer LLP)  
appeared on behalf of the Respondents/Proposed Defendants.

---

1 THE PRESIDENT: Yes, Miss Demetriou?

2 MISS DEMETRIOU: Sir, I act on behalf of Mr. Walter Merricks CBE, who is sitting behind me  
3 here today. Mr. Hoskins and Mr. Singla act for the three MasterCard entities who are the  
4 proposed defendants to this proposed collective action. You should have one bundle  
5 comprising primarily of correspondence produced for the purposes of this case management  
6 conference, and also an application bundle that had previously been filed on behalf of  
7 Mr. Merricks, comprising the collective proceedings claim form and his witness statement  
8 and various exhibits to that.

9 THE PRESIDENT: Yes, I have got that, and I have got the skeleton from you and your co-  
10 counsel, and Mr. Hoskins' skeleton argument, and a supplemental one that is marked at the  
11 moment confidential.

12 MISS DEMETRIOU: I am very grateful. I propose to follow the items on the agenda, subject to  
13 any other items you may have, Sir.

14 THE PRESIDENT: Let us start with the forum. I think there is no dispute that it should be  
15 England and Wales, and clearly this proposed action affects the whole of the United  
16 Kingdom, but we cannot be in two jurisdictions at once, so we have to make a choice, and  
17 the preponderance points to England and Wales, so that is agreed and I shall make that  
18 order.

19 MISS DEMETRIOU: Sir, I am grateful. The second item relates to exclusions from members of  
20 the proposed class, and you will recall that the Tribunal had suggested that the Tribunal  
21 members be excluded, or at least raised that as an item for the agenda. The parties have  
22 reached agreement as to the exclusion of various categories of persons from the proposed  
23 class, and you will see that probably most conveniently set out in my learned friend's  
24 skeleton argument. We propose to slightly broaden the category of people that are excluded  
25 from our team, in the sense that we would propose to exclude from the class any other  
26 advisers acting for Mr. Merricks, aside from his legal team and experts. At the moment we  
27 are really talking about advisers on the Epiq team.

28 THE PRESIDENT: There is a list in your skeleton at para.8, which sets out the respondents'  
29 proposal and your additions. That is what you are looking for, paras.8 and 9 of your  
30 skeleton argument.

31 MISS DEMETRIOU: That is right, Sir. I think that that is agreed. I am not sure that my friend  
32 has had a chance to comment on the slight broadening out of our category of exclusion to  
33 extend to other advisers, but subject to that point that is agreed between the parties, subject  
34 of course to the Tribunal's approval.

1 THE PRESIDENT: Yes, I think we just need to specify clearly who the applicant's advisers are.  
2 You have indicated whom you mean, but so that there is no doubt about it.

3 MISS DEMETRIOU: We will provide some wording, but we would like it to be broad enough to  
4 exclude his advisers from time to time, so that if anybody else does join the team providing  
5 advice - we are talking about professional advisers - they would be excluded, but perhaps  
6 the way to do that----

7 THE PRESIDENT: One can draft it in a way that does that.

8 MISS DEMETRIOU: We will draft it in a way that does that.

9 THE PRESIDENT: Yes, so if we can have a draft for the hearing in January.

10 MISS DEMETRIOU: Yes, of course.

11 THE PRESIDENT: That is acceptable, and that takes care of potential conflicts in that regard.  
12 That is acceptable to MasterCard. Thank you.

13 MISS DEMETRIOU: Sir, we are then up to item (c), which is to fix a date for the hearing of the  
14 application, and in a sense really has to be considered with the next two items, which relate  
15 to steps leading up to the application hearing.

16 THE PRESIDENT: I think we will work back. We will fix the timetable by reference to the  
17 hearing dates, and, as I understand it, the dates that were floated by the Tribunal, which is  
18 18<sup>th</sup> and 19<sup>th</sup> January, with the 20<sup>th</sup> held in reserve, are acceptable.

19 MISS DEMETRIOU: Yes, that is right, that is the position.

20 THE PRESIDENT: So we will direct that this application is heard then, so two days plus a third  
21 in reserve. That also perhaps then takes one to the limitation point that has been raised by  
22 MasterCard, as explained in para.8 of Mr. Hoskins' and Mr. Singla's skeleton. That, as I  
23 understand it, relates only to part of the period of the claim, so the period up to 20<sup>th</sup> June  
24 1997?

25 MISS DEMETRIOU: That is correct.

26 THE PRESIDENT: So it would not render the claim completely barred by any means, so I think  
27 it is indeed sensible, as suggested, that that is held over. If the application is refused, that  
28 falls away. If it is granted, then one can proceed to a separate hearing.

29 MISS DEMETRIOU: Sir, that was the thinking, and we are grateful for that.

30 THE PRESIDENT: That makes good sense, and it may be that in that event one can consider  
31 case management directions for it to be heard alongside the same point taken in other cases.

32 MISS DEMETRIOU: Sir, yes, obviously thought will have to be given for that.

33 THE PRESIDENT: So we will direct that the hearing is without prejudice to that argument or  
34 defence, partial defence, which is to be determined subsequently, if appropriate.

1 I think it might be sensible, before going in to the time for response to consider any other  
2 steps that might need to be taken. Miss Demetriou, we would like, please, for your client to  
3 set out a list of the common issues which you say can be determined. The expert report  
4 says something. The claim form simply says everything in Part III is a common issue. I do  
5 not find that, I have to say, very helpful. Part III, for a start, goes through the MasterCard  
6 Decision of the Commission. That is not in issue. That is there and binding.

7 Just as a list of issues, can you please draft and serve such a list. I think that should be done  
8 as soon as possible and before the respondents have to serve their response. When can that  
9 be done? Obviously thought has been given to it?

10 MISS DEMETRIOU: By the end of this week, Sir?

11 THE PRESIDENT: Yes, that would be fine. In fact, if there are then individual issues - often in  
12 these cases there are common issues and then there may be some individual issues, and  
13 those should be identified as well, so it will cover the issues in the case, the ones you say  
14 that are common and the ones that are individual. The end of this week is 25<sup>th</sup> November.

15 MISS DEMETRIOU: That is right.

16 THE PRESIDENT: So by 4 pm on 25<sup>th</sup> November.

17 Secondly, the costs budget which has been served, which is in rather summary form, which  
18 is annex 2 to the litigation plan, obviously thought has been put into it. I did not quite  
19 understand it, it is 8F(ii). It has got solicitors' costs, counsel's fees, experts, other third  
20 parties. There is the Epiq costs, then there is the ATE insurance. So it is £10 million  
21 cover, £10 million costs. I did not follow that.

22 MISS DEMETRIOU: £10 million cover in relation to adverse costs.

23 THE PRESIDENT: This is a costs budget, your costs. Is not the cost the premium?

24 MISS DEMETRIOU: Yes, you have a point, Sir, I think. Can I just take instructions on that?

25 (After a pause) Sir, I am not quite sure I understand the position fully, but it is part of the  
26 budget of the funders apparently, the £10 million, so it is not an insurance premium, but  
27 they have set aside £10 million of their budget for adverse costs.

28 THE PRESIDENT: Does it come under the funding agreement? Is that it?

29 MISS DEMETRIOU: It does, yes.

30 THE PRESIDENT: Then I do not see how it is part of your costs. You have got funding  
31 arrangements, and all sorts of other things there as well. I will leave you with that question.  
32 What we want to know is, if this is going to proceed to trial what will be your side's  
33 expenditure, as estimated at this stage. It would be a broad estimate, and one can see that in

1 terms of solicitors, counsel, experts, PR consultant, and so on. That one rather stands out.

2 It is quite a big figure.

3 MISS DEMETRIOU: No, it seems to me that that should perhaps be taken out, because it is not  
4 our side's expenditure.

5 THE PRESIDENT: Not the way you have just explained it, no.

6 MISS DEMETRIOU: It does not seem to me to be our side's expenditure. It is a provision we  
7 have made to cover the other side's costs.

8 THE PRESIDENT: That is a different thing altogether.

9 MISS DEMETRIOU: I think we should take that out.

10 THE PRESIDENT: Can you serve an amended costs budget, but also setting out the assumptions  
11 underlying the legal fees, as to how that has been calculated - for example, what are the  
12 hourly rates of the six categories of solicitors there on which it has been calculated.

13 MISS DEMETRIOU: Sir, we can. Can I take instructions as to how long that would take us to  
14 do?

15 THE PRESIDENT: I do not think that is quite as urgent as the other matters.

16 MISS DEMETRIOU: Sir, can we have a couple of weeks? We should be able to do it in a couple  
17 of weeks, so by----

18 THE PRESIDENT: If we say by 5<sup>th</sup> December, which is a Monday?

19 MISS DEMETRIOU: The 5<sup>th</sup> December would be fine.

20 MR. HOSKINS: When we come to the confidential part, one of the things we are talking about is  
21 indeed the details of the fee arrangement between Mr. Merricks and Quinn Emanuel. So  
22 that is going to tie in when we come to that. It may well be that that is the sort of issue that  
23 we might want to address in writing prior to the CPO hearing. I just raise it as a marker.  
24 Currently we have said we will provide our CPO response on 29<sup>th</sup> November. That may  
25 have to be pushed back a little bit.

26 THE PRESIDENT: We have not got to that timetable.

27 MR. HOSKINS: Exactly, that is why I say, if it is two weeks then that might have an impact on  
28 when we put in our CPO response. I do not think anyone wants us to be pushed back more  
29 than two weeks.

30 THE PRESIDENT: This is basically setting out some of the assumptions on which those figures  
31 have been calculated, but we will come back to timing.

32 I think those were the two additional matters that I was concerned to clarify. I do not think,  
33 apart from the disclosure, that we will come to, there is particular further information that  
34 has been asked for by the respondents to the application.

1 Can you help me on the funding agreement, which is said to be confidential, only in part?

2 MISS DEMETRIOU: Sir, the position is this: when this was filed, you will have seen that  
3 Mr. Merricks' statement stated at para.30 that the funding agreement was confidentially  
4 exhibited. The funding agreement itself is marked confidential. The reason it is  
5 confidential is that it is commercially confidential to the funders. To adopt the wording of  
6 para.1(2)(b) of Schedule IV to the 2002 Act, it is commercial information, the disclosure of  
7 which would, or might, significantly harm the legitimate business interests of the  
8 undertaking to which it relates, and the undertaking to which this commercial information  
9 relates is the funding undertaking.

10 Sir, we say that litigation funding is a competitive business, and were the terms on which  
11 this funder has agreed to fund this litigation to become public, then that would be of value  
12 not only to its competitors, but also to potential clients. That is why it is commercially  
13 confidential to the funders.

14 Sir, by way of context, this had been agreed by the parties.

15 THE PRESIDENT: It is agreed as between them. There are two aspects of this: first, the funding  
16 arrangement is important to our consideration of whether to grant authorisation for this to  
17 proceed, and we have to give a public judgment; secondly, you are not acting for, or  
18 proposing to act for defined clients in the sense of people who can be shown it under  
19 confidentiality undertakings. It is a wide class of people with whom you do not have direct  
20 relations and whose interests we have to safeguard and who may be concerned about the  
21 funding arrangement.

22 What puzzles me is, as I understand it, at the moment the total amount of funding is not  
23 confidential.

24 MISS DEMETRIOU: No, Sir, that has been in the public domain for some time.

25 THE PRESIDENT: The return of the funder, you say, which is their commercial return, which  
26 you would think is the competitive interests to which you referred, is also not confidential.

27 MISS DEMETRIOU: Sir, on the basis that we recognise that the class have an interest in  
28 understanding the return.

29 THE PRESIDENT: Absolutely. That is the thing that, of course, competitors would also want to  
30 know. You recognise that. What I am trying to understand, if we look at it, is what actually  
31 is said to be commercially confidential once the return is in the public domain. Can we just  
32 look at it, because I want to be clear exactly what is said to be confidential now and what is  
33 not.

34 MISS DEMETRIOU: There is slight difficulty in doing this in open court, given that----

1 THE PRESIDENT: No, we can go through it without reading out the words. You can tell me  
2 which clauses. We have got the agreement at 8D.

3 MISS DEMETRIOU: Sir, I am not in a position to go through it today - the first time we were  
4 alerted to the fact that this may be in issue was on Friday.

5 THE PRESIDENT: It is an issue for the Tribunal.

6 MISS DEMETRIOU: Sir, I do appreciate that, but the way in which this arose, can I just explain  
7 to you, Sir, a little about the way that this arose? Of course, there is no disclosure order in  
8 place at this point in time. We indicated to the respondents in correspondence that we  
9 would be prepared to disclose it to them early before any disclosure order was made by the  
10 Tribunal on the basis that they offered a confidentiality undertaking.

11 I can take you to the correspondence, Sir, but essentially----

12 THE PRESIDENT: No, I accept it is confidential as between you. I am concerned about the  
13 position of the Tribunal and the public.

14 MISS DEMETRIOU: The next point that I wanted to make is that the respondents' solicitors at  
15 some point in the discussion in the correspondence suggested that, instead of them signing a  
16 confidentiality undertaking, the parties approached the Tribunal with a proposed order  
17 establishing a confidentiality ring, which would cover this agreement. That was a proposal  
18 made by Freshfields in correspondence. Indeed, the parties did write to the Tribunal  
19 seeking that, and the Tribunal said, essentially, and I am paraphrasing, that it is premature  
20 because no disclosure order has been made at this point, and that is something which may  
21 arise later on. At the moment, of course, our client would be free to disclose this on  
22 whatever private arrangements they saw fit.

23 In the light of that, we proceeded on the basis - do you want to see the correspondence, Sir?

24 THE PRESIDENT: No, but the point is quite different. This is exhibited to a witness statement,  
25 is it not?

26 MISS DEMETRIOU: It is.

27 THE PRESIDENT: Which you are putting before the Tribunal for an open hearing. Therefore, I  
28 have got to be satisfied - not as between you and the respondents because they have seen it -  
29 that justice can be done and we can have a fair hearing having regard to the nature of these  
30 proceedings where we have got a class, or potential class, that is not directly instructing,  
31 without it being made public. So it is quite different from the interests of the respondents.

32 MISS DEMETRIOU: Sir, I understand that. Our position, just practically speaking - and we can  
33 talk in a moment about how to take this forward - until Friday afternoon when we received  
34 the supplemental skeleton argument, we did not understand that the funding agreement

1 would be a matter that would be discussed at this hearing. Of course, we anticipated that it  
2 would be something that would be discussed and reviewed by the Tribunal at the CPO  
3 application hearing. That is why we have not made any application for this hearing. Of  
4 course, it has been submitted as an exhibit to the witness statement, but those are not public  
5 documents at this stage, so it is not open to anyone to come and review those documents on  
6 the Tribunal's file. So for that reason we have not made a formal application for  
7 confidential treatment of the witness statement at this stage.

8 Sir, because it is not our confidentiality, I do see your point, but I think provision needs to  
9 be made for us to take proper instructions, and indeed potentially for the funders to be  
10 separately represented in relation to this point.

11 THE PRESIDENT: When are you proposing that should be done? Do you want another hearing,  
12 are you saying?

13 MISS DEMETRIOU: Sir, I do not think we necessarily need another hearing. What I think we  
14 need to do is take instructions from the funders as to which particular provisions they accept  
15 can be put into the public domain and which they want to assert confidentiality over.

16 THE PRESIDENT: What would help me is, as you had already had instructions obviously on the  
17 return - is that right?

18 MISS DEMETRIOU: The position is that the funders view the whole agreement as being  
19 commercially confidential, but a balance has to be struck between what is the public interest  
20 between disclosure and the private interests of the funders. Given the amount of the  
21 funding and the total return, we perceive those to be the key items that are of interest to the  
22 class, then we accept and the funders accept that they will not seek protection for those  
23 items.

24 THE PRESIDENT: So you have got instructions?

25 MISS DEMETRIOU: We have got instructions on that point.

26 THE PRESIDENT: Can you just help me on that point, please, for today, if we look at the  
27 agreement. The statement that I have got, and I am looking at your skeleton argument,  
28 para.27:

29 "For the avoidance of doubt, the confidentiality of that agreement:

30 (a) does not extend to the amount of funding ...

31 (b) nor does it extend to the return which the funder may receive ..."

32 Just so that it is clear, tying that to the agreement, which we have in the exhibit to  
33 Mr. Merricks' witness statement at 8D, the amount----

34 MISS DEMETRIOU: The amount of funding is contained in s.2.1. That sets out the maximum.

1 THE PRESIDENT: So 2.1 is confidential - is that right? I am trying to understand, applying  
2 what you have said to the document.

3 MISS DEMETRIOU: Sir, yes, I understand. The position is that what is in the public domain is  
4 the total amount of funding. So this particular clause, as drafted, is not in the public  
5 domain. The total amount of funding, so the fact emanating from this clause, is.  
6 You will see there are two figures.

7 THE PRESIDENT: What is the amount that is not confidential? If it is not confidential, you can  
8 say it.

9 MISS DEMETRIOU: The amount that is not confidential is the amount of £43,442,250.00. That  
10 is the amount that is not confidential, inclusive of VAT.

11 THE PRESIDENT: That is the increased amount.

12 MISS DEMETRIOU: That is the increased amount, so that is the maximum amount of funding.

13 THE PRESIDENT: That is not confidential, yes.

14 MISS DEMETRIOU: Then, Sir, what we accept that the class has an interest in knowing is the  
15 investment return, and you see that at s.2.5(b). You will see there a reference, which has to  
16 be read in conjunction with the definition which is on p.2.

17 THE PRESIDENT: So the definition is not confidential.

18 MISS DEMETRIOU: That is correct. The basis on which we had been proceeding was that those  
19 were the items that were of interest to the class. So the other terms and conditions are  
20 commercially confidential.

21 THE PRESIDENT: I will interrupt you to say I do not think those are the only items likely to be  
22 of interest to the class. I would have thought that s.2.4 is fairly obviously of interest to the  
23 class, and I would have thought that s.4.1 and 4.2 are obviously of interest to the class. I  
24 mention that now. There may be others. I would have thought they were fairly  
25 fundamental, and I would like you, therefore - you say you have not got instructions today -  
26 to take instructions by the end of this week and write to the Tribunal. What I would really  
27 like is a copy of the agreement with the confidential bits highlighted, so that we can have a  
28 redacted copy.

29 MISS DEMETRIOU: We will do that by the end of this week.

30 THE PRESIDENT: If there are any objectors who attend the hearing - there may not be any, but  
31 if there are, it is something that they might ask to see, and one can understand why. So that  
32 is to be provided to the Tribunal and obviously to the respondents. That is as regards the  
33 agreements. I know the respondents have seen it all. So we can proceed with that.

1 MISS DEMETRIOU: Sir, while we are on that topic, it may be premature, but the respondents  
2 have also raised a point about publicity and how much of this should be publicised to the  
3 class at this point. You will have seen, Sir, that we did not anticipate that this needed to be  
4 publicised at this point, but if the Tribunal thinks otherwise then that is something which we  
5 will address in parallel.

6 THE PRESIDENT: I will hear what Mr. Hoskins has to say about that, but that is a slightly  
7 separate point.

8 Can I be clear, Mr. Hoskins, you are pursuing an application, are you not, for some further  
9 disclosure?

10 MR. HOSKINS: (Without microphone) Yes, we want to see the engagement agreement between  
11 Mr. Merricks and Quinn Emanuel. I do not know if that is confidential, I look to  
12 Miss Demetriou.

13 THE PRESIDENT: I thought that had been supplied.

14 MR. HOSKINS: No, it was something else that was supplied.

15 THE PRESIDENT: Litigation Counsel Engagement Agreement.

16 MR. HOSKINS: That is a different agreement. This is expressly referred to in the funding  
17 agreement. If we go back to that, tab 8D. It is in the definitions and it is the second page,  
18 and you will see “Litigation Counsel Engagement Agreement”. I will not read it out, I do  
19 not want to trespass, but I think I can safely say it is clearly the - we have called it the  
20 Engagement Agreement for short. It is the terms upon which Quinn Emanuel have agreed  
21 to provide legal services. We have asked to see a copy of that, and that has been refused.

22 THE PRESIDENT: What you have seen is the letter of 17<sup>th</sup> November. I do not know quite what  
23 that is, the Litigation Counsel Letter, that is something else, is it?

24 MR. HOSKINS: Yes, it is. If you look, it is the next thing, and you can see what it relates to.

25 THE PRESIDENT: Why do you want to see the engagement agreement beyond that?

26 MR. HOSKINS: For two reasons. First of all, can I take you to a copy of the CAT Guide, and  
27 perhaps we could look at para.6.33. Perhaps I could ask you to read that and then I will  
28 make a submission on it. If you turn to p.72, you will see the heading, it goes to the  
29 authorisation of class representative, which obviously relates to one of the specific rules for  
30 certification. I would like to draw your attention to the sentence that begins just below half  
31 way:

32 “In considering this aspect, the Tribunal will have regard to the proposed class  
33 representative’s financial resources, including any relevant fee arrangements with  
34 its lawyers.”

1 So the guide expressly says the Tribunal will have regard to that. So it is not just a question  
2 of should the applicant be showing us that agreement, it should clearly be showing the  
3 Tribunal that agreement.

4 Again, this is not a private matter between us and the applicant, it is public justice.

5 Sir, as you said, the estimate of costs is pretty high level. You, yourself, have asked for  
6 further detail of it. If they are going to provide further details of it, then the easiest way to  
7 do that is to actually say, "Here is the engagement agreement".

8 There is either something important in it that would merit it not being disclosed to us and/or  
9 the Tribunal or there is nothing of interest. If there is not something super-important in it  
10 then it should be provided to the Tribunal.

11 THE PRESIDENT: Our concern is that Mr. Merricks has appropriate arrangements such that he  
12 can cover the costs, which we have seen an estimate of it. The detail of the terms on which  
13 they act are not important for this case. It is important to know that they are able to fund  
14 your costs in case you should succeed, and we have seen the amount, and so on, and that  
15 may be the subject of submissions. We just want to be satisfied that he has resources in  
16 place to pay their costs in a case where a DBA, a damages based agreement, or conditional  
17 fee, is not permissible.

18 MR. HOSKINS: We would like to see the agreement to know exactly what the terms are. It  
19 seems very odd to say----

20 THE PRESIDENT: Why do you want to know the terms?

21 MR. HOSKINS: Because there are provisions in the Act that deal with, as you know, the types of  
22 funding arrangements, the types of fee arrangements with lawyers that may be entered into,  
23 and if it is a vanilla agreement we do not understand why there is such a sensitivity to  
24 showing that. That is what we do not understand. If this is simply a letter saying, "Here are  
25 the hourly rates", then why is it being withheld from us, from the Tribunal, from the public?  
26 That takes me to my second point.

27 THE PRESIDENT: What is your legitimate interest in seeing it? One can always say, "We want  
28 to see things and if they will not be produced, that means there might be something in it".  
29 You can only get disclosure if you have legitimate interest.

30 MR. HOSKINS: We have a legitimate interest, because it may go - when we come to the CPO  
31 hearing, we will be making submissions to you on our behalf about, for example, the  
32 funding agreement and rates of return, etc, where that is appropriate. We also want to know  
33 whether there is anything which we should be entitled to make submissions on to the

1 Tribunal about the arrangement with their lawyers - how much money are they making and  
2 on what basis?

3 THE PRESIDENT: On what grounds would you be entitled to make submissions on the  
4 arrangements that Mr. Merricks has with his lawyers, other than the Tribunal's concern that  
5 at some point the lawyers cannot get paid, so the action would grind to a halt?

6 MR. HOSKINS: Because the Tribunal has a broader public interest to protect.

7 THE PRESIDENT: What interest?

8 MR. HOSKINS: Can I come on to the second point, because if you are not attracted by us seeing  
9 it, let me come on to the public interest? You have taken Miss Demetriou this morning to  
10 para.27(b) of their skeleton argument for this hearing, which says the class clearly has an  
11 interest in knowing the return which the funder may receive. We say it must follow that the  
12 class clearly has an interest in knowing the return which the law firm acting for the class  
13 may receive.

14 THE PRESIDENT: We have got that. That is why we have a costs budget.

15 MR. HOSKINS: We do not, Sir, because, as you have said, we have a total, but we do not know  
16 how it is made up. It may well be, it is not for me, a member of the public may actually, if  
17 they are allowed to see this, see something exceptional.  
18 I am not happy with this because these lawyers - this is not to be pejorative, this is me just  
19 imagining.

20 THE PRESIDENT: I understand that.

21 MR. HOSKINS: They may have something in it or not, but unless they can actually see the  
22 document which sets out what their return is, then they have no chance of making that sort  
23 of objection.

24 THE PRESIDENT: They can see the amount that will be paid.

25 MR. HOSKINS: An individual might object to the rates the lawyers are charging.

26 THE PRESIDENT: They will see the rates.

27 MR. HOSKINS: Sir, you have my submission, I am not going to push it any further. We are not  
28 happy with a document that is said to be vanilla, and yet is being guarded like the crown  
29 jewels. If you do not share that concern, Sir, you do not share that concern.

30 THE PRESIDENT: I do not at the moment see that as something that is, in this situation, of  
31 particular concern. I will look again and see what Mr. Merricks says about how the  
32 lawyers----

1 MR. HOSKINS: I think it is para.30 of his witness statement, Sir. Actually, it does not contain  
2 the figure of £43 million which you have just been referred to in open court. It is in more  
3 general terms.

4 THE PRESIDENT: It says £40 million. There may be a question, and I have not traced that  
5 through to see what that ties in with. We know what the lawyers say they expect to be  
6 earning on the case, and that will be broken down a little more. We also know what the  
7 funding is that is available, and therefore, how it is going to be paid because the money is  
8 being put up by the funders. So the concern about how much are the lawyers going to  
9 charge for this case we can see, and that is not confidential, and where the money is coming  
10 from. Those are the concerns.

11 MR. HOSKINS: I will encapsulate and then we will move on if you are not with me.

12 THE PRESIDENT: Yes, I have to say I am not.

13 MR. HOSKINS: I have that strong sense. We are in the early days of a class action regime. In  
14 our submission, and obviously it is a matter for the Tribunal, a firm, a law firm, a funder,  
15 who wishes to act for a class should have nothing to hide and should demonstrate to the  
16 public that they have nothing to hide. A refusal to disclose what we are led to believe - we  
17 do not know whether it is or not - is a vanilla legal agreement. It strikes completely the  
18 wrong chord. You will see that we have got perhaps over-excited, but really in an opt-out  
19 class action where you are going to be acting for people, it seems to us absolutely vital that  
20 those seeking to do so should come and put all their cards on the table. This refusal to  
21 provide what should be a standard document just does not smell right. If it does not smell  
22 right for us it will not smell right for other people as well, and that is basically our  
23 submission.

24 THE PRESIDENT: Yes.

25 MISS DEMETRIOU: Sir, can I just respond briefly to that, because I think it is important to  
26 correct one impression that Mr. Hoskins has given. Could you turn, please, to the  
27 correspondence bundle at p.213, because it is very, very odd, in my submission, that  
28 Mr. Hoskins is making submissions that if this were a vanilla agreement, or if we did have  
29 interest----

30 THE PRESIDENT: Sorry, page?

31 MISS DEMETRIOU: Page 213 of the correspondence bundle.

32 THE PRESIDENT: No, I cannot do that because mine stops at 201, and it has been updated this  
33 morning.

1 MISS DEMETRIOU: Sir, this is correspondence that is marked confidential, but I can say to the  
2 Tribunal in open court that we have made it very clear that Quinn Emanuel are not  
3 instructed on a damages based agreement or on a conditional fee agreement. The agreement  
4 provides for them to raise invoices on an hourly rate. So there is nothing whatsoever to hide  
5 in this engagement letter. The reason we have not simply offered it up is because, of  
6 course, the terms on which Quinn Emanuel contracts are commercially confidential to it.  
7 There is absolutely no legitimate interest for anyone to know anything more about this  
8 agreement than the fact that it is not a damages based agreement or a conditional fee  
9 arrangement and the information that will be in the expanded costs budget, including the  
10 hourly rates of the lawyers and the total amounts that they propose to charge and how that is  
11 to be broken down.

12 So, Sir, there is absolutely nothing to hide here, but there is also no reason at all to disclose  
13 this letter. We have made that clear in correspondence, and my friend having made this  
14 application----

15 THE PRESIDENT: When you say “no reason to disclose this letter”, you mean----

16 MISS DEMETRIOU: The engagement letter, the engagement agreement. Having made the  
17 application at the eleventh hour - because, of course, my friends will have appreciated that  
18 there would be some kind of agreement in place, but we were never asked to provide it at all  
19 - not in the form of a proper application but just in the form of a supplemental skeleton  
20 argument served late on Friday, we wrote back immediately conveying the necessary  
21 information, and you will see that on the second part of the letter, so just above the heading  
22 ‘Confidentiality’, and the response we got was, “This still does not meet our concerns”, but  
23 absolutely no reason why. There is nothing to hide, Sir.

24 THE PRESIDENT: I am not going to order disclosure of it. One does bear in mind the  
25 exceptional nature of these proceedings and that is why I am concerned about maintenance  
26 of confidentiality in the litigation funding agreement, as I have indicated. Some of the  
27 observations that Mr. Hoskins has just made ring powerfully in my mind with regard to that  
28 agreement, for reasons I briefly indicated earlier. This seems to me rather different. The  
29 concerns of both parties will be as to the amount the lawyers might earn from this case; and  
30 secondly, that provisions are in place that the lawyers can be paid, what they will be  
31 charging, such that they can continue to act and that Mr. Merricks has made or is the  
32 beneficiary of suitable arrangements for those fees to be discharged. I do not think at the  
33 moment, from what I have heard, it goes beyond that. There has to be greater transparency  
34 in proceedings of this nature as opposed to what one might describe as regular proceedings

1 in damages claims. I do not think, from what I have heard and seen, it goes this far, and so  
2 I will not order that disclosure.

3 MISS DEMETRIOU: Sir, I am grateful.

4 THE PRESIDENT: That is without prejudice - not without prejudice but in distinction from the  
5 view I might take on the funding agreement.

6 MISS DEMETRIOU: Sir, I understand. Sir, going back to the timetable, I am not sure where we  
7 are at now. By Monday, 5<sup>th</sup> December, we are going to produce for the Tribunal a version  
8 of the funding agreement which is highlighted to show the proposed redactions for  
9 confidentiality. I think that is where we had got to.

10 THE PRESIDENT: I think it is common issues by the 25<sup>th</sup> November, and confidential redactions  
11 also by 25<sup>th</sup> November, and the costs budget is by 5<sup>th</sup> December. It may be that we are not  
12 satisfied with your redactions. That will not affect the position of Mr. Hoskins and his  
13 clients, because they have seen it, so they can make confidential submissions in their  
14 skeleton, but we might need to revisit it, and sensibly we would do that at the opening of the  
15 hearing in January.

16 MISS DEMETRIOU: I understand.

17 THE PRESIDENT: I do not think we want a separate hearing for that. You have heard what I  
18 have said and the indications I have given about it.

19 MISS DEMETRIOU: We have, yes, Sir.

20 THE PRESIDENT: If there are objectors or just individual members of the class who hear about  
21 this and want to come along and ask to see it on or before the 18<sup>th</sup>, they can be given the  
22 redacted version, and we will have to deal with the question of whether they should be  
23 shown more at the start of the hearing.

24 MISS DEMETRIOU: Yes, Sir, I understand.

25 THE PRESIDENT: We then go on with the timetable. I think a timetable has been suggested,  
26 which you have both had a chance to consider. The first is publicising the CPO and how  
27 that publicity should be done and what it should include. There has been a certain amount  
28 of very general publicity already, but clearly this will, apart from anything else, specify the  
29 date when the application is going to be heard and the place where it will be heard. You  
30 have set out some detailed proposals of how you are intending to publicise it.

31 MISS DEMETRIOU: Yes, Sir, and we say that you have seen from the draft directions that we  
32 say that we intend to publicise it by 24<sup>th</sup> November, so essentially very shortly after this  
33 hearing, according to the proposals at para.5.1 to 5.13 of the Epiq plan. Do you want me to  
34 take you through that?

1 THE PRESIDENT: I think just because of the interest this has generated, perhaps you could just  
2 summarise what it is you are proposing to do.

3 MISS DEMETRIOU: Sir, yes, it is probably best summarised in Mr. Merricks' witness  
4 statement, or perhaps we should take it directly from the plan, which is at 8F(i) of your  
5 bundle, and if you turn to para.5.1, that is the start of the section, and it goes up to 5.13.  
6 That is the section that concerns publicity of the application, so pre the making of any CPO.  
7 What is anticipated is that a website will be set up and will go live. You will have seen a  
8 draft of the website which is exhibited to this plan, and the website will set out the matters  
9 in 5.3, namely a summary of the proposed claim, including the proposed class definition,  
10 and explain in simple, non-legal, readily comprehensible terms what the objective is of the  
11 proceedings.

12 There will be a section of answers to frequently asked questions covering information about  
13 the proposed claim, a link to the Tribunal's website----

14 THE PRESIDENT: Pausing there, 'frequently asked questions', one potentially asked question  
15 will be, 'How is it going to be funded?'. That is a fairly obvious question that somebody  
16 might want to know. They will want to know, 'Will I have to pay anything if I am in the  
17 class?' and they will also want to know, 'How is it being funded?'. Is that going to be one  
18 of the questions?

19 MISS DEMETRIOU: This website is the website which will be there for the duration of the  
20 proceedings. It will be the website that is live after the CPO is granted, if it is granted. You  
21 will know, of course, Sir, that the Tribunal Rules do not, themselves, set out requirements  
22 for pre-CPO publicity, but of course the guide provides that the Tribunal will make  
23 appropriate directions. We had not anticipated at the pre-CPO stage there would be a need  
24 for the website to contain information about funding. We thought that that was something  
25 which could better and more appropriately be dealt with after the order is made, assuming it  
26 is made, save for the fact that there is funding and the amount of the funding. We had not  
27 proposed to go into any further detail at this stage.

28 THE PRESIDENT: That is already a bit of detail, so the amount of the funding. I think it should  
29 also probably state that that funding includes provision up to - and that is not confidential, it  
30 is in your costs budget - £10 million to cover potential liability.

31 MISS DEMETRIOU: Sir, we are happy to include that.

32 THE PRESIDENT: Any potential liability of costs to the defendant and the total amount of  
33 funding, which will cover the estimated costs of the class. It should explain that. I think  
34 that is sufficient, but I think you should state that it includes up to £10 million to cover----

1 MISS DEMETRIOU: Sir, we are happy to do that and we will make that change.

2 Moving on, Sir, you will see the other bullet points that we propose to include, so a link to  
3 the claim form, to the application and hearing notice, an explanation of the right to object,  
4 which I will come on to, and a link to any other documents that the Tribunal directs should  
5 be made available.

6 One proviso to para.5.4, we have said there, that visitors will be encouraged to register their  
7 interest in receiving future updates. That will not happen immediately, the registration,  
8 because there are still some technical issues surrounding data protection which need to be  
9 resolved. What we envisage is that the live aspect of the link, so the registration, will  
10 happen after any CPO is made, because that is the point at which we will need to  
11 communicate directly with class members, as opposed to just put them on notice.

12 THE PRESIDENT: I think the other thing you should say in dealing with the proposed claim is  
13 that the class definition now proposed will exclude members of the Tribunal and the  
14 advisers, and so on, you do not have to set out the full list, but in general descriptive terms.

15 MISS DEMETRIOU: I understand, Sir, and we will make that change as well.

16 Moving on to para.5.8, a press release will be issued by Mr. Merricks' public relations  
17 advisers in order to publicise the application for a CPO, and provide the press with a copy  
18 of the CPO application and the hearing notice. There will be an active, as you see in 5.9,  
19 PR campaign contacting the media outlets and reporters who have provided coverage up to  
20 now.

21 You have probably seen in exhibit 5 in Mr. Merricks' statement that there has already been  
22 considerable press coverage.

23 Then at 5.10, Mr. Merricks will liaise with **Which?** and **MoneySavingExpert** to seek their  
24 assistance in publicising the CPO application and hearing notice. **Which?** has confirmed  
25 willingness to provide relevant information to consumers at each stage of the proposed  
26 claim, and that they will assist with providing notice to the class via their magazine and  
27 their website and other social media channels.

28 You will have seen from my skeleton argument, Sir, that because of the publication  
29 deadline for the hard copy, the magazine copy of **Which?**, we will not be able to publicise  
30 the right to object in sufficient time in the paper copy of **Which?** magazine because of the  
31 publication date. That will be published via other electronic means of **Which?** for  
32 providing information, and we consider that there will be more than sufficient publication of  
33 the right to object. Of course, the paper magazine will include notice of the CPO

1 application hearing. That will all go out before the hearing. It is just that the notice to  
2 object will not be in the paper version.

3 Also **MoneySavingExpert.com**, which has very wide coverage, and we have referred to  
4 that in our skeleton argument, will also assist with publicising the application.

5 So, in a nutshell, those are the means by which Mr. Merricks intends to publicise the  
6 application, and also inform relevant persons of their right to object, to either him as the  
7 authorised representative or to the proceedings themselves.

8 THE PRESIDENT: What was not quite clear from your para.19(b), the reference to Facebook,  
9 that is **Which?**'s Facebook?

10 MISS DEMETRIOU: Yes. Going back to our draft directions----

11 MR. HOSKINS: If we are moving on, can I just make two short observations on publicity in  
12 relation to funding. First of all, you will remember, Sir, that para.27(b) of the applicant's  
13 skeleton for today says that the class will clearly have an interest in knowing the rate of  
14 return to the funder. So it is accepted that the class should be informed of the return to the  
15 funder. It just becomes a question of when should the class be informed? It seems to us by  
16 way of observation, for it to be effective for the class now, they should know before the  
17 deadline expires for them to come forward and actually say, "I object", because that may be  
18 a reason why someone wants to object. So it seems it must follow, if it is accepted that the  
19 class has a right to know and should be told about the return, they should be told now and  
20 not when it is too late after certification.

21 To pick up a point that we dealt with earlier this morning, again it would seem to make  
22 sense that the publicity for consumers for the proposed class should say that a redacted  
23 version of the funding arrangement will be made available upon request. Otherwise most  
24 members of the public probably would not realise, even in an ideal world, that such a  
25 document existed.

26 So we would suggest those two small additions to actually make it more effective.

27 THE PRESIDENT: Miss Demetriou, what do you say to that?

28 MISS DEMETRIOU: In relation to that point, could I just ask you to turn up Rule 93 of the  
29 Tribunal's Rules, and it is Rule 93(4), so where the Tribunal is notified that there are  
30 undistributed damages in accordance with para.3(b), it may make an order directing that all  
31 or any part of undistributed damages is paid to the class representative in respect of all or  
32 any part of costs, fees or disbursements incurred. So, Sir, that is the process by which the  
33 costs would be covered. Of course, that is to be determined by the Tribunal at a later date.  
34 So we do say it is premature at this stage for the class to comment on the detail of the

1 funding arrangements, although that is something which in due course, and in order to apply  
2 to make submissions at that stage, they would have an interest in knowing. So that is our  
3 thinking.

4 THE PRESIDENT: It is accepted that the return that the funder might potentially make is  
5 something that is relevant and should be disclosed when the Tribunal hears in public the  
6 application for the grant of a collective proceedings order. The amount of funding available  
7 is going to be included in the publicity in advance of the hearing of that application. The  
8 question is whether the potential return should also be included in that publicity. It is said  
9 for the respondent that this might be a reason on the basis of which someone might decide  
10 to object to the application and so it ought to be disclosed.

11 I think that it is a little more complicated than that. The return is not by any means a  
12 guaranteed return. It depends, first, upon there being sufficient undistributed funds - that is  
13 to say that after the action goes, on that hypothesis, through to trial, an award is made, and  
14 then, despite the process of distribution and publicity for distribution there remains a  
15 sufficient pot that has not been claimed to pay that return.

16 Secondly, it depends upon the Tribunal being satisfied, on application at that time, that it is  
17 appropriate for that amount to be paid to the funder. The agreement indeed provides not  
18 that this return should come, and I refer to this because I cannot imagine that it could be  
19 confidential, but Mr. Merricks would seek to persuade the Tribunal to make such an order.  
20 As Rule 93(4) makes clear, it is a matter for the Tribunal's discretion and the statute indeed  
21 provides that undistributed damages can be paid out to the specified charity, which is the  
22 Access to Justice Foundation. So there would need to be a hearing to determine whether  
23 and, if so, what amount should be paid to the funder, and the Tribunal would have to  
24 exercise its judgment then.

25 I think that indicates that this is a more complex matter and, in my view, not one that can be  
26 sensibly explained, or needs to be explained, at this very early stage when the hearing is  
27 being publicised in necessarily short form to alert the public that a claim is being brought,  
28 that there will be authorisation and a certification hearing at this Tribunal in January, and in  
29 broad outline what is involved.

30 So, on balance, I do not think it is appropriate to include what has been described as the rate  
31 of return in that notice.

32 The second point is whether it should be said that a redacted version is available. As I  
33 understand it, at the moment, the notice is going to refer to the claim form but not to the  
34 witness statement at all - is that right?

1 MISS DEMETRIOU: That is correct, Sir, yes.

2 THE PRESIDENT: I think that is a broader question, but whether really the witness statement  
3 should be something that could be made available, in which case it would include non-  
4 confidential exhibits, and therefore the revised version with redactions of this particular  
5 exhibit that is being prepared. I would like to hear from Miss Demetriou on that. Is there  
6 any objection to saying in the notice - you say the claim form is available - that the witness  
7 statement is available?

8 MISS DEMETRIOU: I do not think there is any objection at all to doing that. We were guided  
9 by the order in *Mobility Scooters*. Obviously, there is a balance to be struck between  
10 conveying simply all the information that is needed, and over-burdening and over-  
11 complicating the information that is provided. There is no reluctance or objection, we just  
12 thought that this struck a reasonable balance.

13 THE PRESIDENT: Yes, I think it is probably better if you say that, on request, the witness  
14 statement can be supplied with exhibits, and that would include the version of this exhibit  
15 with redactions. I do not think this exhibit is very different from any of the others in that  
16 regard.

17 MISS DEMETRIOU: Sir, we will do that.

18 THE PRESIDENT: You can say that this is quite a bulky document, if you like, so that people  
19 realise. I would be surprised if you got a huge number of requests, but I think probably  
20 people ought to have a right to see it.

21 MISS DEMETRIOU: Sir, I think that is fine in principle, but can I just check that there is no  
22 technical obstacle to that. (After a pause) Sir, there is no objection in principle. We may  
23 need to give a little thought to how it is done because of data protection issues. I think there  
24 is no difficulty with people writing in and saying, "Could you send it to us", but if we  
25 collect information at this stage those data protection issues are still to be finalised.

26 THE PRESIDENT: It would be on request.

27 MISS DEMETRIOU: We will find a way of doing it which is on request.

28 THE PRESIDENT: Yes, you can say on request in writing.

29 MISS DEMETRIOU: So, Sir, I think that addresses publicity.

30 THE PRESIDENT: You have helpfully outlined the steps that are proposed, and it seems to me  
31 that a lot of thought has been given to that. With the very small amendments that I have  
32 indicated, the explanation about the class and the funding and the reference to the witness  
33 statement, what is being proposed is a satisfactory plan at this stage and I approve it.

1 MISS DEMETRIOU: Sir, we are grateful. I think that then brings us on to the question of  
2 objections. It may be that you are in a position, Sir, to assist us with this, but there does  
3 seem to be an overlap between two Rules. Can I just point it out to you, Sir? Rule 76(1)(c)  
4 is the Rule that provides that at this CMC the Tribunal will give, or may give, directions:

5 “... to the time by which any person with an interest (including any class member)  
6 may object to the application for a collective proceedings order or the authorisation  
7 of the proposed class representative.”

8 We have suggested, really in order to give any interested person the maximum amount of  
9 time within this timetable to put in their objection - which we anticipate, like the *Mobility*  
10 *Scooters* order, would be an objection with reasons, so that would be the document - by  
11 23<sup>rd</sup> December 2016. So that is our proposal in the directions.

12 Sir, before thinking about the date, could you just turn forward in the Rules to 79(5). Rule  
13 79 is dealing with certification, and 79(5) says:

14 “Any member of the proposed class may apply to make submissions either in  
15 writing or orally at the hearing of the application for a collective proceedings  
16 order.”

17 This was not something which was dealt with in the *Mobility Scooters* order following the  
18 CMC, but given the proposed timetable for the hearing we thought that that would need to  
19 be catered for in the Tribunal’s order, subject to any comments you have, Sir, because it  
20 provides for members of the proposed class to apply to make submissions, and so the  
21 Tribunal would have to rule on such application before the CPO application hearing. It did  
22 seem to us, Sir, but we are, of course, very happy to be guided by the Tribunal, that there  
23 might be an overlap between those two Rules. If one is a member of a class who wishes to  
24 object, but to do it by way of submission, then potentially one could go under either route.  
25 It may be that we are over-complicating it.

26 THE PRESIDENT: I think it may not be the happiest of drafting, but the idea is that there is an  
27 initial stage where anyone can indicate they want to object with short reasons. Then they  
28 can be asked if they want to make full submissions in writing or orally at the hearing. Then  
29 the Tribunal decides whether to grant them that permission. It may be that the question of  
30 whether they can make oral submissions is held out to the hearing. For example, somebody  
31 might write in saying, “I want to object for these reasons, and I want to instruct a solicitor to  
32 act for me”. So they have registered their objection by a certain date, explaining why, but  
33 they want to make fuller submissions and that comes for the hearing. Those are the two

1 stages that are envisaged. So the first one is a fairly brief one, but there is still a reasoned  
2 objection. That is the thinking behind.

3 MISS DEMETRIOU: That is very helpful, Sir. I confess that is not how we had understood it,  
4 simply because in the Tribunal's order in *Mobility Scooters*, the way it was dealt with was  
5 that interested persons were given an opportunity to object and make their reasoned  
6 submissions at the same time.

7 However, be that as it may, can I just show you----

8 THE PRESIDENT: They can be taken together, there is no magic in it, but clearly in making an  
9 objection by whatever date it is, 23<sup>rd</sup> December or some other date, they must indicate  
10 whether they wish to oral submissions, but it does not give them a right to make oral  
11 submissions. So there is still an application to make oral submissions which would have to  
12 be decided, probably at the start of the hearing, I would have thought. If they want to  
13 instruct lawyers and seek an earlier determination, we will take it as it comes.

14 MISS DEMETRIOU: I am very grateful. Can I just take you to what we have set out in the draft  
15 directions, which I anticipate will have to be revised, in the light of your observations. The  
16 Tribunal raised a third point in the agenda, which is that any third party - so to consider  
17 whether any third party, so here we are talking non-class members who are nonetheless  
18 interested, who might seek permission to make observations at the hearing, to make  
19 provision for those people.

20 The way that we had anticipated dealing with it, but this now may be subject to revision, is  
21 that in relation to objections under Rule 76(10)(c) - that is dealt with in para.7 - and we had  
22 anticipated giving those persons until 23<sup>rd</sup> December.

23 Then in relation to Rule 79(5), recognising that the Tribunal has to rule on the permission  
24 application, we had thought that a reasonable deadline for that was 12<sup>th</sup> December, given  
25 that the Tribunal, we thought, would wish to rule perhaps before the Christmas period on  
26 applications for permission to make submissions either in writing or orally at the hearing.

27 THE PRESIDENT: I think it is better to take them to the same date, and to give a later date.

28 THE PRESIDENT: The 23<sup>rd</sup> is not an ideal date, certainly not 4 pm, because no doubt you want  
29 those objections to be sent on to you as quickly as possible. The date for publicity, you say,  
30 is 24<sup>th</sup> November, which is this Thursday. If we were to give four weeks, that would be  
31 22<sup>nd</sup>, and I think that would work rather better. If we say by 4 pm on 22<sup>nd</sup>, I think we can  
32 manage that.

1 Is there any reason why we cannot have third party also on that date? I think that is all right  
2 to have it on the 12<sup>th</sup>. You probably need that time so you know what is going on and you  
3 can respond if that is necessary.

4 MISS DEMETRIOU: Can I also just clarify what we will do, because it is not clear in the draft  
5 directions, but we will make it clear in the final order, that paras.5 and 6, so publicising the  
6 right for someone to make objections, and publicising the rights of members of the  
7 proposed to make written or oral submissions, or to apply for permission to do so, we will  
8 also do that by 24<sup>th</sup> November, so that will all go out at the same time.

9 THE PRESIDENT: Yes, and then para.9. We do not need that, do we?

10 MISS DEMETRIOU: Paragraph 9 is any member of the proposed class who seeks permission, so  
11 we could tweak 8 so that it says “any third party with a legitimate interest or member of the  
12 proposed class”.

13 THE PRESIDENT: I think if they only have to object by the 23<sup>rd</sup>, the application to make  
14 submissions orally comes after that. It cannot come any earlier than they are making their  
15 objection.

16 MISS DEMETRIOU: So maybe what we should do is tweak para.7, so we say, “Any person may  
17 object”, so they can do that as of right by the 22<sup>nd</sup>, and by the same date, if they wish to  
18 apply to make oral submissions at the hearing, to make such application by the same date.

19 THE PRESIDENT: Yes, indicating whether they want permission to make oral submissions at  
20 the hearing.

21 MISS DEMETRIOU: That means that para.9 goes.

22 Then, Sir, under this heading, we have suggested that any person - this relates to third  
23 parties, so any person whose application to make----

24 THE PRESIDENT: I think they have to ask for permission, and then, if they are given  
25 permission, they will be given a deadline. So we do not need that.

26 MISS DEMETRIOU: Sir, before turning to skeleton arguments, I think one stage we missed was  
27 the respondents’ response. We had agreed, prior to the amendments that we have discussed  
28 today, that should be on 29<sup>th</sup> November.

29 THE PRESIDENT: Let us seek what Mr. Hoskins says about that?

30 MR. HOSKINS: That is absolutely fine, but the only caveat I would put down is unless there is  
31 some great shock, which seems unlikely, that comes out in the list of common and  
32 individual issues that means that we have to rejig the way we formulate it, and we might  
33 say, “Can we have an extra 24 hours”, or something, but we do not need to make an order to

1 that effect so long as everyone understands that if we make that point we are given some  
2 leeway.

3 THE PRESIDENT: The 29<sup>th</sup> November is a Tuesday, so shall we say the 30<sup>th</sup>, so that you have  
4 your extra 24 hours. There is liberty to apply, but I would rather put a date that you are  
5 going to meet.

6 Are you going to serve any expert evidence?

7 MR. HOSKINS: That is not the current intention.

8 THE PRESIDENT: Thank you. We have got that for 30<sup>th</sup> November.

9 MISS DEMETRIOU: Sir, may we have permission to file a reply to the response if we consider  
10 that is appropriate, having seen it? The respondents have no objection, and we have  
11 suggested we do that by 13<sup>th</sup> December?

12 THE PRESIDENT: Yes, all right.

13 MISS DEMETRIOU: I think that takes us to skeleton arguments, and the agreed proposal is that  
14 we file and exchange skeleton arguments by 4 pm on 11<sup>th</sup> January, which is a week before  
15 the hearing?

16 THE PRESIDENT: Yes, that is fine.

17 MISS DEMETRIOU: And the hearing bundle by 4 pm on 13<sup>th</sup> January.

18 THE PRESIDENT: Yes, and any authorities.

19 MISS DEMETRIOU: And any authorities. I think that is all I had in relation to directions unless  
20 there is anything further that you have, Sir.

21 THE PRESIDENT: Only that we would like your economic expert to attend the hearing for  
22 potential questioning by the Tribunal, and indeed by Mr. Hoskins.

23 MR. HOSKINS: There is just a very minor and practical point just on the skeletons and bundles:  
24 I imagine that there is nothing more annoying than getting a skeleton argument without  
25 references to the bundles, and then getting another one with the bundles. I am happy with  
26 11 and 12, but the bundles need to be agreed between the parties before the skeleton  
27 arguments go in.

28 THE PRESIDENT: What sort of bundles do we envisage having?

29 MR. HOSKINS: That is true, there may not be much else.

30 THE PRESIDENT: This is not a case with lots of bundles. Essentially, there is the application,  
31 there will be your response and any reply. It may even be, depending how things look, we  
32 will not require you to lodge separate bundles. I am not making any promises, but we will  
33 be practical about it.

34 MR. HOSKINS: Maybe we could just put in a supplemental bundle.

1 THE PRESIDENT: I do not think the need for cross-referencing is going to be such a problem.  
2 MR. HOSKINS: My request can be easily met, I think, so there will not be many documents. We  
3 can all work together to make sure that is achieved.  
4 THE PRESIDENT: Is there anything else?  
5 MISS DEMETRIOU: Nothing that I had, Sir.  
6 THE PRESIDENT: We will put a liberty to apply in the order, you have got that in your draft.  
7 Costs are reserved. Thank you all very much.  
8 \_\_\_\_\_