

1 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
2 placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to
3 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
4 record.

5 **IN THE COMPETITION**
6 **APPEAL TRIBUNAL**

Case No 1597/5/7/23

7
8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP

Friday 16th May 2025

14 Before:

15
16 The Honorable Lord Richardson
17 Paul Lomas
18 Professor Alasdair Smith

19
20 (Sitting as a Tribunal in England and Wales)

21
22
23 **BETWEEN:**

24
25 GLOBAL-365 PLC

26 **Claimant**

27
28
29 v

30
31 PayPoint PLC and others

32 **Defendants**

33
34
35 **A P P E A R A N C E S**

36
37 Philip Woolfe KC & Ligia Osepiciu for GLOBAL-365 PLC
38 (Instructed by Addleshaw Goddard LLP)

39
40 Josh Holmes KC & Daisy Mackersie for PayPoint
41 (Instructed by Cooley (UK) LLP)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(10.30 am)

Pre-trial Review

THE CHAIR: Good morning. Good morning Mr Woolfe.

MR WOOLFE: Good morning, sir. I appear with Ms Osepiciu for the claimants in this matter, and my learned friend Mr Holmes KC and Ms Mackersie appear for the defendants.

We have received the timetable the Tribunal has sent to us, and I'm assuming from that we don't need to persuade you about concurrent evidence being the preferred mode.

THE CHAIR: No. There is one aspect to it, for which I think we will be grateful for your thoughts on, but the Tribunal had reached the view provisionally that it would be of assistance to the Tribunal to have a short period of concurrent evidence in respect of the quantum issues which you will see on the Wednesday of the third week. I appreciate the parties, and I think this is common to you both, are of the view that the Tribunal would be assisted in its consideration of that part of the evidence by extensive cross-examination. We are not going to argue with you about that, as it were, but we did think it would be of some value to allow each of the experts to have a period to comment on each other's approach in concurrent evidence. So that's why we've inserted that there.

MR WOOLFE: We certainly have no objection to that at all.

THE CHAIR: Very well. The first issue -- very grateful to being able to give you the opportunity to look at this draft timetable because I think it sets out the Tribunal's views on a number of the matters. The second issue it touches upon clearly is the timetable more generally, and you will see the Tribunal's provisional view was that attractive though it was to reduce the overall trial length to four weeks from the original six, we

1 were slightly concerned it might be a case of more haste and less speed, therefore
2 building in some additional time for both the Tribunal, and no doubt for counsel as well,
3 to engage with the very significant quantity of evidence in the case would be of
4 assistance. I don't know from your perspective whether that timetable causes you any
5 difficulty.

6 **MR WOOLFE:** This timetable as we understand doesn't cause us difficulties in terms
7 of its length. There is one point about timetabling which is on this timetable of the
8 three days for pure cross-examination of the experts, it allocates Mr Hughes to be
9 cross-examined on Thursday of the week starting the 23rd, and then Mr Majumdar
10 and Mr Anaman being cross-examined on the Tuesday and Wednesday of the
11 following week.

12 **THE CHAIR:** Yes.

13 **MR WOOLFE:** My learned friend would like to have an equal split of
14 cross-examination time, which we had agreed to in a previous version, which is fine,
15 we don't object if that is what he wants. The issue then comes on this timetable that
16 if that is what happens, Mr Hughes will be in purdah over that weekend of 28th and
17 29 June, but also on the Friday before and the Monday after. The result of that would
18 be Mr Hughes will be giving his concurrent evidence on the Tuesday and Wednesday,
19 he would come out ever so briefly on the Wednesday evening and then go straight to
20 being cross-examined on the Thursday morning.

21 So the only chance I would have to talk to him at all -- if Mr Holmes wants an even
22 split of these three cross-examination days, the only chance I would have to talk to
23 him between concurrent evidence concluding and beginning to cross-examine
24 Mr Majumdar on the Tuesday lunchtime-ish would be the Wednesday evening. That
25 will be somewhat problematic --

26 **THE CHAIR:** It may assist your consideration -- first of all, I should be clear that the

1 allocation of cross-examination time was done at a very high level; in other words, the
2 point the Tribunal were making really was more about the allocation of the days rather
3 than what happens on those days. So if you wish to vary that and it's a matter of
4 agreement, the Tribunal has no strong feeling about that.

5 As to the question of purdah, I don't know -- I approach these matters with more
6 austerity coming from north of the border -- the notion of a witness coming out of
7 purdah at my point until the end of his or her evidence is something I have to say I'm
8 slightly uncomfortable with. I think the Tribunal's view would be -- and I think
9 Mr Lomas takes the same view -- is that our anticipation will be the experts will enter
10 purdah, or if we are going to carry on --

11 **MR WOOLFE:** Sworn in at the start of the hot-tub, and then sworn until their
12 cross-examination has finished.

13 **THE CHAIR:** Yes.

14 **MR HOLMES:** Thank you, sir. I think on the basis, then, that it's fair to both parties,
15 we have no objection to that, sir.

16 **THE CHAIR:** Yes.

17 So that deals -- that's the timetable, and also you have helpfully raised the question of
18 purdah which was a matter that had been raised.

19 A further point raised in the skeletons is the question of an order being made as to the
20 fact that we are hearing evidence from experts concurrently, therefore the parties
21 would not be required formally to put their cases to the experts. The Tribunal was very
22 content that such an order be made in conventional terms, if you seek to defeat the
23 purpose of having concurrent evidence to do otherwise.

24 I think the only other matter the Tribunal wanted to raise in relation to concurrent
25 evidence was that what we would be minded to do -- we noted the parties offered their
26 assistance, as it were, in that process of agreeing an agenda and that seems a very

1 sensible thing to do -- what we would be minded to do is require the parties to lodge
2 an agreed agenda and an agreed list of questions by Friday 6 June, so that will be the
3 Friday before the trial starts on the week of the 9th.

4 The Tribunal will consider those lists of questions and agenda items and will revert to
5 the parties with a finalised list, as it were. That shouldn't be regarded as being binding,
6 but certainly in terms of topic areas, which set out the topic areas that will be covered
7 in each of the concurrent evidence sessions and some suggested questions,
8 the Tribunal would revert at, say, close of play on Monday 16 June, that being more
9 than a week before the concurrent evidence was due to begin. That's how the Tribunal
10 thought that the selection of topics, and indeed some questions, would be addressed.

11 I suppose the other thing I should touch on in that regard is the Tribunal's view would
12 be, given the nature of the evidence in this case, the concurrent evidence would be
13 led by the Tribunal as a whole as opposed to in some cases it's the economic expert
14 member of the panel who would do it, but in this case we think it would be more
15 appropriate that that be shared amongst the Tribunal as a whole.

16 I merely give you that information, it's not really something which I'm asking for any
17 comment. I think that covers the points on --

18 **MR WOOLFE:** I have one point. I'm envisaging we should be submitting three
19 documents, then: one agenda for the industry experts; one agenda for the -- what I call
20 them Mr Hughes/Dr Majumdar hot-tub, and then one agenda for Mr Hughes and
21 Mr Anaman.

22 **THE CHAIR:** It wasn't that the -- there's a slight uncertainty on the Tribunal's part
23 because of Mr Hughes' on the one hand giving evidence to all aspects of the case,
24 whereas on the other side the split between Mr Majumdar and Mr Anaman.

25 **MR WOOLFE:** I think there is quite a small overlap between Majumdar and Anaman,
26 but there will inevitably be some.

1 **MR HOLMES:** There is some overlap. We assumed that it wouldn't necessarily be
2 a case of switching the hot-tubs, it would simply be perhaps that Mr Anaman would
3 join when we came on to the discussion of loss, if that works.

4 **MR LOMAS:** If the parties are agreed about that, the Tribunal has -- we haven't
5 discussed this previously. I think we are not quite agreed with hot-tubbing, in which
6 we have uneven numbers, as it were, and (inaudible) angles is not necessarily hugely
7 helpful.

8 **THE CHAIR:** Although I think that's obviously a matter which could clearly be
9 managed by the Tribunal itself in directing questions. I quite see that you would not
10 like a situation in which Mr Hughes, Mr Majumdar and Mr Anaman, and Mr Hughes
11 essentially gets to say one thing and both Mr Majumdar and Mr Anaman then respond.
12 But I think that would be manageable by simply directing the questions from
13 the Tribunal either to Mr Anaman or to Mr Majumdar as would seem appropriate.

14 **MR WOOLFE:** If it's an issue the Tribunal is alive to ...

15 **THE CHAIR:** Yes, absolutely. It would seem slightly unfortunate if in covering topics
16 during the first part of the session, it might seem that this was actually an issue that
17 fell within -- touched upon issues that Mr Anaman was dealing with and he wasn't in
18 the hot-tub. So it would seem sensible to have everyone in the one place at the one
19 time.

20 Were there any other issues from your perspective, Mr Woolfe, you wanted to raise in
21 relation to the concurrent evidence?

22 **MR WOOLFE:** No, I don't -- I understand no.

23 **THE CHAIR:** I think the parties were agreed skeleton arguments would be lodged on
24 21 May on your side, and on 30 May from Mr Holmes, and the Tribunal is perfectly
25 content with that. I think the other matter before us is the question of the content and
26 length of the core bundle, and again the Tribunal is content with what's being

1 proposed. It seems given the length of the bundles, certainly using an electronic
2 bundle both provides flexibility and avoids huge waste in printing that out. So the
3 Tribunal is very content to proceed on that basis.

4 There was one other matter touched upon I think in Mr Holmes' skeleton which we
5 wanted to raise, which is the status of the Utilita evidence. Clearly that evidence is in
6 the bundle and there's no proposal that it be extracted from the bundle -- indeed it
7 would make the expert evidence quite difficult to understand, given it's all predicated
8 on the basis of all three experts being involved on the liability issues.

9 But what the Tribunal wanted to understand was the extent to which the parties are at
10 one as to how evidence, for example from a witness statement from a Utilita witness
11 which is not spoken to, how that is to be treated by the Tribunal. The Tribunal was
12 keen that that be ventilated today to avoid us getting at the end of five weeks of trial,
13 to get to the end and someone making a submission and it proving to have been
14 controversial.

15 **MR WOOLFE:** The position as I understand it -- and my learned friend will stand and
16 rise if he disagrees with this, and as has been dealt with in previous proceedings -- is
17 it's hearsay evidence under the Civil Evidence Act, therefore it is admissible without
18 more as evidence.

19 **THE CHAIR:** Yes.

20 **MR WOOLFE:** However, the fact that it is hearsay evidence, a statement outside
21 court which hasn't been cross-examined on, goes to the weight that can be placed
22 upon it and as a matter of weight in all the circumstances. Obviously there are lots of
23 things that are hearsay evidence, but a contemporaneous email stating some fact
24 when nobody ever thought it would be an issue is one situation, a witness statement
25 prepared for court proceedings is another. It's a matter for the Tribunal to assess the
26 weight in all the circumstances.

1 I suspect that if that is agreed, there will be relatively minor points on which either side
2 is going to be specifically relying upon, statements by each of the witnesses. They will
3 be small in number -- I am not sure they might be insignificant, but they will be small
4 in number.

5 **MR HOLMES:** If it assists, we agree that the evidence is admissible and admitted.
6 The fact they are not being heard at the hearing or subject to cross-examination goes
7 to weight.

8 **THE CHAIR:** Because presumably it would be open to either of you, should you wish
9 to bring those witnesses before the Tribunal. If you are both choosing not to do so,
10 then you can both comment on the fact that the evidence has the weight it has,
11 essentially.

12 **MR HOLMES:** I suspect that Mr Woolfe is correct that the evidence won't (inaudible)
13 at trial. Insofar as it does assist to refer to it, it won't be on the points that are
14 controversial.

15 **THE CHAIR:** That's very helpful. It does also occur to me, I should have before we
16 started, to have said that of course this is a livestream and an official recording is being
17 made and an authorised transcript is being produced, but it's strictly prohibited for
18 anyone else to make an unauthorised recording, whether audio or visual, of
19 proceedings, and breach of that provision is punishable as contempt of court. No
20 doubt the controversial nature of this morning's hearing meant that the number of
21 those watching will be spiking. But in any event, I should have said that before we
22 started.

23 Sorry for that interruption, Mr Woolfe.

24 I think that probably covers all the points we wish to cover. Was there anything else
25 you wish to raise?

26 **MR WOOLFE:** There was one minor point, which is actually about the bundle.

1 **THE CHAIR:** Yes.

2 **MR WOOLFE:** What the parties have been referring to as the core bundle is in fact
3 the documents bundle which going to be used. I think there's been some
4 understanding that when the Tribunal's Practice Direction on bundles refers to
5 a core bundle of key documents, that is what it's talking about.

6 But in a full trial like this, what we are really talking about is the large documents
7 bundle. The question is: does the Tribunal itself want a small core bundle in hard copy
8 in a more traditional sense of core bundle? We are very happy to provide one if you
9 do. One suggestion my learned friend made this morning was perhaps one could be
10 in a sense compiled as the hearing goes along. You may well find there are a small
11 number of documents coming up a significant number of times, and you will be
12 assisted by having those provided to you in hard copy. You can say at the time, "We
13 think this should go in the core bundle", or something, and that will be of assistance
14 you to as the trial progresses.

15 But if there is something more specific you want, do let us know now or between now
16 and the hearing starting if it will assist.

17 **THE CHAIR:** I think it's fair to say the Tribunal as a whole is reasonably content with
18 an electronic bundle. However, we are also very happy if the parties are agreed that
19 these are particular documents that we are going to be referring to constantly, for those
20 to be provided in hard copy.

21 I'm always slightly sceptical about core bundles which end up just being essentially
22 the same as the other bundle. And so to avoid unnecessary repetition and further
23 copies of documents I would be slightly sceptical about what is truly a core document.
24 But no doubt if the parties can agree on that then the Tribunal is happy to be assisted
25 in that way. Does that cover your points, Mr Woolfe?

26 **MR WOOLFE:** That covers the point.

1 On timetabling, you may have spotted from our supplementary note that
2 Mr Greatbatch is being heard -- interposed during what is otherwise PayPoint's factual
3 evidence on Wednesday 18 June.

4 **THE CHAIR:** Yes.

5 **MR WOOLFE:** And I'm just wondering whether it might be possible to slightly extend
6 the sitting hours on that day by sitting slightly earlier and/or later in order to ensure
7 that he had sufficient time for his cross-examination of (inaudible) and also our time
8 with PayPoint's witnesses (inaudible).

9 **THE CHAIR:** I don't think there's any difficulty with that. One advantage, one virtue
10 of the timetable that the Tribunal has proposed is as we have Friday at the moment
11 as a non-sitting day, at worst, if we needed to spill into the Friday to conclude the
12 evidence then we could do that. But I don't, I think, in general terms, and within reason
13 and subject to giving the transcribers sufficient breaks, I don't think there is a difficulty
14 with that.

15 **MR WOOLFE:** Thank you, sir. I think that's everything from us.

16 **THE CHAIR:** Thank you, that's very helpful.

17 Good morning, Mr Holmes.

18 **MR HOLMES:** Sir, one short point on the trial timetable.

19 **THE CHAIR:** Yes.

20 **MR HOLMES:** This may not be possible, depending on availability, but one point, one
21 thought that did strike us was that -- the hot-tub currently falls in the week of 23 June
22 and we move straight into cross-examination at the conclusion of the hot-tub. In order
23 to allow for refinement of scripts and to make that as streamlined as possible, we
24 wondered whether the Tribunal would have availability to sit for three days instead of
25 two in the week beginning 30 June; so from the Tuesday to the Thursday, and to
26 include the hearing in the week of 23 June when the hot-tub ends. I think that might

1 allow to us cut back and save time.

2 **THE CHAIR:** I don't think that would cause the Tribunal any difficulty. Are you talking
3 about cross-examination in relation to -- I think the way that we had envisaged it was
4 that on the Tuesday of that week there will be concurrent evidence from the industry
5 experts and then such cross-examination as there are going to be there.

6 **MR HOLMES:** Yes, indeed.

7 **THE CHAIR:** Then we move into the concurrent evidence from Mr Hughes,
8 Mr Majumdar and Mr Anaman. Were you anticipating that we might get to
9 cross-examination of Mr Hughes ...

10 **MR HOLMES:** On the Tuesday, the following Tuesday. Then hot-tub, the conclusion
11 on Wednesday, and instead of having the cross-examination split between the
12 Thursday and the Tuesday and Wednesday the following week, we would have a run
13 of cross-examination Tuesday to Thursday in the week beginning 30 June.

14 **THE CHAIR:** I see, I see. So we wouldn't therefore sit, as it were, on the Thursday
15 of the week of the 23rd, I understand. I understand. But we would move and we've
16 moved -- I see. Have you made the suggestion --

17 **MR HOLMES:** We discussed it briefly in the context of --

18 **THE CHAIR:** Of a new timetable.

19 **MR HOLMES:** -- the question of purdah and I think there was no objection then, but
20 ...

21 **MR WOOLFE:** Yes. The point being made by my instructing solicitors is it would
22 squeeze the time preparing for written submissions, if we sit the Tuesday, Wednesday
23 and Thursday of the week starting 30 June. So we only have one and a half working
24 days then to prepare closings.

25 **THE CHAIR:** That is very much a matter which is for you rather than for us. Perhaps
26 the thing to do is -- what I'd be minded to do in relation to the order generally is to invite

1 the parties to submit a draft order to cover all of the matters we've touched upon and
2 essentially I would invite the parties to continue their discussions, and if you can't
3 reach an agreement on it then the Tribunal will reach a view, one way or the other.
4 But I can see the sense in what you are suggesting, Mr Holmes; equally I can see the
5 force in what Mr Woolfe is saying in relation to timing.

6 **MR WOOLFE:** (Inaudible) assist on that one question, sir, is I know generally Monday
7 is a non-sitting day. If that is on the schedule, it is what it is. But if the proposal was
8 to shift that sitting day from the Thursday of the week starting the 23rd to be the
9 Monday 30 June, that would meet Mr Holmes' concern and still leave a gap before
10 written closings. Obviously that depends on the Tribunal --

11 **MR HOLMES:** That sounds sensible. If it works for the Tribunal, yes.

12 **MR WOOLFE:** -- which is not a matter for us.

13 **THE CHAIR:** For reasons of practicality, I'm not keen on sitting on a Monday, so
14 I think that's probably not going to work. Can I leave it with counsel to consider the
15 matter?

16 **MR HOLMES:** We'll discuss it and we'll see what we are going to do.

17 **MR LOMAS:** I suppose there's also the possibility of cutting the baby in two, if
18 necessary, and doing a half-day on the Thursday, the week of the 23rd, and a half
19 day on the week of 30 June, if needed, at least then reducing the stress.

20 **MR WOOLFE:** Yes. That sounds a quite interesting proposal

21 **MR HOLMES:** That may well provide a basis for submitting (inaudible).

22 One final point just to flag to the Tribunal --

23 **THE CHAIR:** Of course, yes.

24 **MR HOLMES:** -- a discussion we have been having on this side of the Bar in relation
25 to confidentiality. The Tribunal will be conscious that there's a fair amount of
26 confidential material --

1 **THE CHAIR:** Yes.

2 **MR HOLMES:** -- given the nature of the proceedings. The way in which we would
3 propose to proceed is to have separate -- confidential and non-confidential bundles on
4 Opus to assist in identifying confidential material. We'll try where we can to refer you
5 to confidential materials elliptically without reading them in court to minimise the time
6 that needs to be spent in closed session. But we should flag that particularly in relation
7 to cross-examination it will be necessary to have some time in closed session because
8 a number of the key documents are designated as confidential and we request the
9 Tribunal's indulgence for that. We are obviously mindful of the considerations of open
10 justice, but we don't see any way around that. We'll work to minimise it, but it will be
11 a feature of the trial.

12 **THE CHAIR:** Yes.

13 Mr Woolfe, I take it you are --

14 **MR WOOLFE:** I entirely agree with what Mr Holmes has said.

15 **THE CHAIR:** Very well.

16 Nothing else from your side, Mr Holmes?

17 **MR HOLMES:** No.

18 **MR WOOLFE:** Sorry, I do have one (inaudible) agree on this. Another thing that may
19 help as an indication: at the moment the parties to file written closings by 1.00 pm on
20 Monday, 7 July.

21 **THE CHAIR:** Yes.

22 **MR WOOLFE:** If the Tribunal were content for that to be moved to Tuesday 8 July
23 that would, I think, alleviate our concern about pressure arising from moving that day,
24 but equally I know that you need time with the written closings, sir.

25 **THE CHAIR:** I think we might be prepared to give you until 4.00 pm on the 7th.

26 **MR WOOLFE:** But that should be the limit of it. With that indication, we will take it

1 away and discuss.

2 **THE CHAIR:** Thank you. I'm very grateful to counsel for the preparation in advance
3 of the hearing. That concludes this hearing. Thank you.

4 **(11.08 am)**

5 **(The hearing concluded)**

6

7

8

9

10

11

12

13

14

15

16

17

18