Neutral Citation No. [2014] NIQB 101

Ref: **GIL9347**

Judgment: approved by the Court for handing down
*(subject to editorial corrections)**

Delivered: **08/08/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

_____

BETWEEN:

HL (A MINOR) BY HER FATHER AND NEXT FRIEND AL

Plaintiffs;

-and-

FACEBOOK INCORPORATED
FACEBOOK IRELAND LIMITED
(2) AND OTHERS

Defendants.

_____

GILLEN J

Summary

[1] In this matter the first two defendants have brought a summons under Order 26, Rule 3(2) of the Rules of the Court of Judicature (NI) 1980 ('the Rules') that interrogatories served by the plaintiff upon the first and second defendants on 6 June 2014 be withdrawn. The plaintiff has brought two applications. The first dated 28 May 2014 seeks specific discovery pursuant to Order 24 of the Rules and secondly, an application dated 28 May 2014 to compel adequate replies to a notice for further and better particulars served by him and responded to by the defendants pursuant to Order 18 Rule 12 of the Rules. There are a number of other defendants in this matter but for the purpose of these applications only the first and second defendants are relevant.

[2] These applications should conventionally be made before a Master as in every action begun by writ where automatic discovery of documents has been obtained

under Order 24 Rule 2. In the instant case however, following a direction of Horner J and by consent of both parties, the matter came before me without first coming to the Master. The object was to accelerate the pace of the case and ensure a timely hearing in the forthcoming term. I afforded both parties the opportunity to have the matter transferred before the Master but they both declined. In agreeing to hear them I was conscious of a precedent set by Carswell J in Eastwood v Channel 5 Video Distribution Ltd and Another (1992) 2 NIJB who permitted the transfer of interrogatories by the Master to him for a decision because of the shortness of time before trial.

[3] I am indebted to counsel – Mr Fitzgerald QC who appeared on behalf of the plaintiff with Mr Girvan and Mr Shaw QC who appeared on behalf of the defendants with Mr Hopkins – for their careful and detached skeleton arguments augmented by oral arguments dealt with before me with exemplary brisk efficiency.

Background to the applications

[4] The minor plaintiff is a vulnerable child who has been entered on the Looked After Children Register since March 2012 and has been the subject of an interim care order since 11 June 2012. She has been diagnosed with Attention Deficit Hyperactivity Disorder. Nothing in this judgment should be used to identify this child or any member of her family. Hence their names have been anonymised.

[5] The first defendant is an internet social network which is a publicly listed company on the NASDAQ stock exchange with registered offices in California. The second defendant is a subsidiary company of the first defendant and controls the data of users based outside the United States of America and Canada. It was registered on the Republic of Ireland Company Register on 6 September 2008. It has been a registered data controller for the purposes of the Data Protection Directive 95/46 EC of the European Parliament and Council. The third defendant is a Health and Social Services Trust which, the plaintiff contends, owes a general duty to safeguard and promote the welfare of children within its area. The fourth defendant is the United Kingdom Department of State with legislative competence in relation to social networks.

[6] The first defendant launched its social network in or around February 2004. The plaintiff submits it changed its registration system to an open registration system in or around 26 September 2006 and has operated an open registration system within this jurisdiction. The open registration system of the first and second defendants does not require registrants to provide any independent verification of their age or identity and is wholly reliant upon the registrant providing accurate registration information.

[7] From in or about March 2011 the minor plaintiff was sending and receiving inappropriate text messages on her mobile phone and was in contact with males

using the social network operated by the first and second named defendants at a time when she was 11 years old. Despite the first and second named defendant deactivating her account in March 2011, in April 2011 she registered a further profile which was also subsequently deleted. It is the plaintiff's case that the minor plaintiff operated the account for a significant period before the account was identified, reported and thereafter deactivated by the first and second defendants. Immediately thereafter the plaintiff again registered a further profile under a different name. Once again, upon discovery, the first and second named defendants deleted this profile within 24 hours.

[8] It was subsequently discovered in August 2011 by the minor plaintiff's social worker that the child had further registered and operated an account with the first and second defendant.

[9] It is the plaintiff's case that:

- in relation to each of the accounts/profiles, the minor plaintiff was easily able to set up a number of profiles despite the fact that she was below the purported minimum age to operate an account.

- the first and second defendants published on its social network personal details of the plaintiff including her telephone number and location together with sexually suggestive and inappropriate photographs of the plaintiff. She received text messages from adult males as a result of her personal details being published by the first and second defendants on its social network with extreme sexual content.

- the first and second defendants should not have permitted her to set up these accounts given her extreme youth.

- The defendants are in breach of the Harassment (Northern Ireland) Order 1997, the Data Protection Act 1998, the right to privacy and family life under the European Convention on Human Rights and Fundamental Freedoms as enshrined in national law by the Human Rights Act 1998.

Principles governing interrogatories

[10] There are well trammelled principles governing such applications. Benefitting from a perusal of The Supreme Court Practice 1999, Valentine (Civil Proceedings in the Supreme Court), Eastwood's case and Foote v Quinn (2010) NIQB 89 together with the comprehensive skeleton arguments, I have distilled the following principles.

[11] First, Order 26 Rule 1, which expressly preserves the option of applying to the court for leave to serve interrogatories, unequivocally declares that interrogatories are only necessary for disposing fairly of the cause or matter or for saving costs.

[12] This rhymes well with the overriding objectives set out in Order 1 Rule 1A that dealing with a case justly includes ensuring the saving of expense, processing it expeditiously and fairly and allotting to it an appropriate share of the court's resources.

[13] Carswell J in Eastwood's case observed:

> "I think that one must always come back to asking whether an interrogatory is necessary for disposing fairly of the case or matter, or for saving costs, and all other principles expressed have to be seen in light of this governing principle. One views the principle in the light that interrogatories are not to be encouraged and that their administration has to have positive justification as being necessary".

[14] In that setting, the following principles operate:

- Interrogatories are a matter of discretion with which the Court of Appeal will not lightly interfere.

- Interrogatories relating solely to credit and "fishing interrogatories" are not allowed.

- It is not necessary to interrogate to obtain information or admissions likely to be contained in discoverable documents unless exceptionally a clear litigious purpose would be served.

- They are unlikely to be granted where the object is to obtain an admission of fact which can be proved by a witness who will in any case be called at the trial. That will not save costs or shorten a case by removing the need to call a witness to prove a particular matter and therefore the administration of interrogatories would constitute an unnecessary expense rather than a saving.

- Oppressive interrogatories will not be allowed in circumstances where they exceed the legitimate requirements of the occasion or put on the party sought to be interrogated a burden out of all proportion to the benefit to be obtained by the applicant. This will include a situation where the answer would require very substantial research but would result in only a small evidential contribution to the trial.

- Interrogatories as to the evidence of the party interrogated will not be allowed as distinct from the facts which he alleges. The interrogatories should relate to the primary facts, not to inferred facts and not on matters of conjecture, opinion or law.

- The court will consider any offer by the respondent to give particulars or make admissions or produce documents in considering whether or not the application for interrogatories is premature.

Applying these principles to the interrogatories

[15] I have read the affidavits of Mr David Craig of 28 May 2014, Laura Cunningham of 21 July 2014 on behalf of the plaintiff and the affidavits of Graeme King of 20 June 2014 and 4 July 2014 on behalf of the defendants. On foot of self-evident concessions by Mr Fitzgerald or where I have been satisfied that the interrogatories have not been necessary for disposing fairly of the cause or matter or for saving costs or where they were irrelevant, I have determined at the outset that the interrogatories sought at 12(i), 12(ii), 14, 15, 16, 17, 19 (with the exception of 19(v)), 20(i), 20(ii), 23, 24, 26, 27, 28, 34, 36, 42, 43, 44, 47, 48 are not appropriate interrogatories in this matter and I therefore order that they be withdrawn.

[16] Turning to the remaining interrogatories, first I shall deal with Nos. 1-10. These interrogatories spring from an article in the Guardian Newspaper first published on 23 January 2013 under the heading "Facebook admits it is powerless to stop young users setting up profiles: Director of Policy for UK and Ireland admits company has not got a mechanism for eradicating problem of underage users". The journalist was Mark Sweeney and contained therein a number quotations allegedly coming from Simon Milner the Director of Policy for Facebook UK and Ireland.

The plaintiff's case

[17] Mr Fitzgerald makes the following points in favour of these interrogatories being granted:

- It is the plaintiff's case that the defendants failed to adopt any sufficient means to identify the ages of members of the first and second defendants' social network. It will be the plaintiff's case that systems ought to have been introduced to deal with this.

- In paragraph 14 of the defence, the defendants deny that they were aware that significant numbers of profile or account holders were below 13 years of age.

- The Milner quotations indicate that they were very well aware of research that a number of children under 12 did have such accounts.

- The article admits that Facebook asserts that there is nothing it can do about this although it was aware of the high risk.

- Numbers do matter. If the defendants are aware that a large number of children under 13 are registering then there is all the heavier burden on them to produce systems that prevent this.

- This witness is an employee of the defendants and therefore will not be called to give evidence by the plaintiff.

- These admissions go to the nature of the duty since they reveal how great the risk is. The greater the problem, the heavier the requirement to do something about it.

- These interrogatories will save the costs of attempting to prove this article and will contribute to disposing fairly of the case. They are neither oppressive nor disproportionate.

- Order 26 Rule 2(c) indicates that where interrogatories are served, a note at the end of the interrogatories shall specify where they are to be answered by an agent or servant, which servant or agent. In this case the servant or agent specified is Mr Milner.

The defendant's case

[18] Mr Shaw on behalf of the defendants made the following points:

- The plaintiff is attempting to convert a narrow case as to the breach of duty owed to this particular plaintiff into a broad ranging case or class action.

- The numbers sought in this matter are irrelevant. The only questions are whether or not there was a duty owed to this plaintiff, was it breached and if so she did suffer harm.

- This is a report by someone else of what Mr Milner allegedly said. In particular the defendants do not know the answer to No. 3 and interrogatories 5, 6, 9 and 10 are purely matters of opinion.

- These are wide-ranging issues covering the 200 jurisdictions dealt with by Facebook rather than concentrating on the one case which is the subject of this action. This is not a seminar on Facebook as an institution.

- Facebook simply does not have or has not retained much of the information sought by way of discovery and interrogatories. In addition the sheer size of

the operation would render it too onerous a task to provide the discovery or interrogatories sought in other instances. In this regard, during the course of the hearing on 27 June 2014, I afforded both parties an opportunity to file further affidavits with reference to interrogatories 12, 20, 29-31, 32 and 33. Both parties availed of the opportunity to do so and I received further affidavits during the course of the vacation period. I pause at this stage to observe that Ms Cunningham of Johnson solicitors on behalf of the plaintiffs, objected to the affidavit of 4 July 2014 of Mr Graeme King of Johns Elliot solicitors on behalf of the defendants on the basis that there was no confirmation within his affidavit that he had attended at the offices of the Facebook defendants nor that he had satisfied himself that there were no documents relevant to the matters at issue in the application. In short she contended that his affidavit was merely a statement of belief founded upon his instructions as opposed to arising from matters within his own information. Having read the affidavit of Mr King, I am satisfied that he was duly authorised by the defendants to make this affidavit and had acted on the instructions of his clients. I was not persuaded that it was necessary for him to have attended the offices of the defendants or to have taken any further steps to satisfy himself as to the basis of his instructions. I therefore admitted the affidavit.

Conclusion

[19] I have come to the conclusion that the plaintiff is entitled to argue the case that contrary to the assertion in the defence at paragraph 14 that the defendants were unaware of significant numbers of profile or account holders below the age of 13, they were in fact so aware. These interrogatories go to this matter.

[20] In addition the plaintiff is entitled to argue that if there is a very large number of children under the age of 13 accessing accounts/profiles, this will affect the nature of a duty of care and potentially how it is dealt with by the defendants including in particular the methods to be adopted by them to combat this mischief. The strength or weakness of that point is a matter for the trial judge.

[21] If these words were spoken by someone on behalf of or with the authority of the defendants then these interrogatories arising therefrom are necessary for disposing fairly of the action and costs will be saved by avoiding the necessity of proving when they were said, to whom they were said and by whom they were said.

[22] I therefore conclude that the plaintiff is entitled to interrogate the defendants through the servant and agent Milner on interrogatories 1, 2, 3, 4 in its entirety with the exception of 4(i), (the latter being too uncertain in its meaning to require an answer), 5, 6, 7 and 8.

[23] I do not consider that 5 and 6 are matters of opinion but merely factual assertions which are either accepted or not accepted as such by the defendant.

[24] I consider that interrogatories 9 and 10 are matters of opinion and interpretation which are not suitable for interrogatories. I therefore order interrogatories 9 and 10 be withdrawn.

Reporting-- Interrogatories 11-13

[25] Although Mr King on behalf of the first and second named defendants has admitted that "it is common case that these defendants received a number of reports in respect of the plaintiff and acted upon those to deactivate the plaintiff's corresponding Facebook account", it is relevant to ascertain whether or not this part of a reporting function was set up upon the network for registered users/profile holders and non-users whereby a report could be made alleging that a user/profile holder is under the age of 13. I therefore am satisfied that No. 11 is a proper interrogatory.

[26] Prima facie I consider it relevant to ascertain how well this function is operating and that the number of reports made to the defendants is relevant. However I consider that insofar as interrogatory 12 is seeking the number of reports between 2006-2014, this is too onerous a task to impose on the defendants. Accordingly I would have restricted this interrogatory to a period of three years namely 2011-2014 and only in respect of reports from within Northern Ireland. However the affidavit of Mr King of 4 July 2014 made further representations even on this matter asserting that these defendants do not retain such data regarding reports for more than six months and data for reports dating back to 2011 simply do not exist. He avers that these defendants do not have access to an accurate number of user reports of underage users as that information is not kept in any Facebook's reporting or logging systems. "An accurate count of underage user reports would require careful review of reports in thousands of queues. It would be an especially burdensome and manual exercise to sort through these reporting channels to provide an accurate assessment of reports specifically relating to minors in the UK or Northern Ireland". In any event he avers that the number of reports is not an accurate reflection of the number of underage users. Multiple reports may be associated with a single account or certain reports may be found to be unjustified.

[27] Ms Cunningham's affidavit counters this by asserting that any claim that Facebook has no statistics regarding underage use is contradicted by five articles which she exhibits together with the cover page of the report of the Australian Joint Committee on Cyber Safety. She avers that each of the reports is prefaced upon statements made by Facebook's Chief Privacy Advisor Mozelle Thompson in March 2011 to the Australian Federal Parliament's Cyber Safety Committee in which she stated, inter alia, that Facebook removes 20,000 people a day who are underage.

In short the plaintiffs challenge the veracity of the claim by Facebook that it does not retain the information sought by way of discovery and interrogatories.

[28] I am therefore faced with competing assertion and counter assertion as to whether or not such documentation exists. At this stage, given the unequivocal assertions in the affidavit of Mr King and the factual standoff thus created, I am not prepared to order that Facebook comply with interrogatory 12 on the basis that they assert they do not have such information and that the task of obtaining any part of it would be unduly burdensome. At the trial the plaintiff of course will be entitled to comment upon this assertion, challenge its veracity, invite the court to draw inferences and cross-examine any defendant witness on the veracity and credibility of these statements. If it should emerge that the defendants' assertions are unsustainable then at the very least the case may be adjourned in order to compel appropriate replies to the interrogatories with attendant cost consequences. At this stage however I am not prepared to go behind the contents of the affidavit of Mr King.

[29] In the affidavit of Ms Cunningham she now seeks leave for additional interrogatories to be addressed to Mozelle Thompson. Interrogatories must be dealt with in the appropriate manner under the Rules with, as in this instance, an opportunity for the defendant to bring a summons under Order 26 Rule 3(2) of the Rules of the Court of Judicature (NI) 1980 etc. Accordingly I am not prepared to deal with the additional interrogatories raised at paragraph 14 by Ms Cunningham in the manner suggested by her.

Risks and reporting of violations---- interrogatories 18, 19, 20, 21, 22 and 25

[30] I consider that interrogatory 18 is admissible as an interrogatory notwithstanding that the defendants claim that the papers make clear that they do have such available mechanisms. I am not clear that this has been unequivocably stated as between 2011 and 2014 and hence I permit it.

[31] So far as 19 is concerned, Mr Shaw declares that these matters are all present on the website where the mechanisms can be considered. I am not clear whether they are all present with this degree of specificity and again for the removal of doubt, and to save costs, I consider that 19(i)-(vi) are appropriate. I do not permit 19(vii) and 19(viii) as these are outside the ambit of matters which will save costs and time by admission and I order they be withdrawn.

[32] Interrogatory 20 is relevant in that I consider that the number of reports made to the defendants on the matters referred to in interrogatory 19(i)-(vi) could be relevant to the nature and extent of the steps that need to be taken to address them. However, for precisely the same reasons to which I had adverted in paragraphs [26]-[28] concerning interrogatory 12, I am not prepared to go behind the assertions by the defendants at this stage as set out in the affidavit of Mr King that these

defendants do not retain such data for more than six months, that it does not have access to an accurate number of user reports of underage users, that multiple reports may be associated with a single account and, in relation to interrogatory 20(5), that Facebook does not have a specific reporting flow or mechanism that keeps count of the number of reports relating to child exploitative images. Again I recognise the challenge to the credibility and veracity of these assertions as presented in the affidavit of Ms Cunningham and I reiterate that the plaintiff at trial will be entitled to challenge this, to invite the court to draw inferences and to challenge the defendants' reliance upon its reporting mechanism or its efficacy in the absence of such discovery. However that is a matter for trial. Accordingly I order the withdrawal of interrogatory 20 in the circumstances now before me.

[33] I do not consider interrogatories 21 and 22 are sufficiently relevant or clear to permit the defendants to be interrogated. Accordingly I order their withdrawal.

[34] I do not permit interrogatory No. 25 as it is too vague in terms of its descriptive content and in many respects is a matter of opinion/comment. Accordingly I order its withdrawal.

Monitoring

[35] I consider that it is relevant for the plaintiff to establish the system of monitoring to ascertain if the mechanisms for protection of children under 13 include such a system and whether or not, if there are such monitors, they look at matters with a discerning eye in terms of qualifications either legal or of child protection.

[36] Hence, dealing with interrogatory 29 I consider that it would prima facie be a proper interrogatory to ask how many people were employed by the second defendant between 2011-2014 monitoring the network in Northern Ireland (the entirety of the world outside USA and Canada is far too wide) and who read and processed reports of violation categories mentioned in 11 and 19. Similarly it would prima facie be relevant to ascertain whether they have any legal qualifications or any qualifications relevant to child protection as set out in interrogatories 30 and 31. The guidance given to such people as set out in interrogatory 32 would also be helpful.

[37] However, whilst prima facie that would have been my conclusion, I note in the affidavit of Mr King of 4 July 2014 that he is advised that these defendants claim that Facebook does not track how much time an individual works on analysing or handling underage user reports and has never utilised a single team that focuses solely on underage user reports. Individuals are assigned to teams which handle all types of reports, some of which may include underage reports. I am not prepared to go behind this assertion despite the attack mounted upon it in paragraph 16 of Ms Cunningham's affidavit of 21 July 2014. Of course the plaintiff will be entitled to cross-examine the defendants on these matters at the appropriate time and I reiterate

that I am open to be persuaded at trial that the defendants' arguments are flawed. In the event that that should occur, this will at least merit an adjournment for these interrogatories to be revisited with attendant cost consequences. Moreover the plaintiff will be entitled to argue that the absence of proof of such reporting mechanisms or efficacy flaws the defendants' defence in this matter. However these are matters for the trial judge during the course of the hearing. I therefore order the withdrawal of interrogatories 29-31 in the circumstances. I do not consider however that the absence of this material merits the draconian step of striking out the defence at paragraphs 9 or 18 or at all. It is much too early to determine the strength or weakness of the defence at this stage.

[38] For similar reasons, whilst I consider that interrogatory 32 would have been prima facie appropriate, I am not prepared to go behind the assertions made in the affidavit of Mr King of 4 July 2014 that there is no specific department or individuals that focus exclusively on underage reports and that Facebook cannot specifically identify individuals that deal primarily with such reports. Hence it will be difficult to provide specific policies or guidance that they may have received in training. Once again the plaintiff will be able to challenge both the veracity and the credibility of these assertions at trial and invite the court to draw inferences therefrom. If it should emerge that these assertions are flawed, the consequences to which I have earlier adverted will once again apply. However these are matters for the trial judge and in the circumstances I therefore order the withdrawal of interrogatory 32.

[39] I do not consider that interrogatory 33, asking who is *presently* appointed and ultimately made responsible for monitoring etc is relevant to the dates in issue in this case.

Age and identity verification

[40] No. 34 contains insufficient material to convince me that these interrogatories are sufficiently necessary to dispose fairly of the case or to save costs. I therefore order the withdrawal of interrogatory 34.

[41] I consider that interrogatory No. 35 is insufficiently relevant to the particular issues pertinent to this case. I therefore order the withdrawal of interrogatory 35.

[42] So far as Nos. 37- 41 are concerned, I consider that it is relevant to this action to ascertain the nature of any method of verification for children. Whilst on their face these interrogatories deal with those who can have credit cards i.e. those over 18, and therefore arguably will not be relevant to children under 13, nonetheless it might open the door to an argument by the plaintiff that steps should be taken to ensure parents underwrite children's accounts by means of their credit cards etc. It seems to me that potentially this deals with a bedrock of fact which will feed into the fair disposal of the case and will save the costs of the plaintiff being put to proving the existence of this method of verification.

[43] I do not consider that interrogatory 41 is appropriately relevant or that answering it will contribute to a saving of costs. I therefore order the withdrawal of interrogatory 41.

Financial issues

[44] I consider that interrogatory 45 is too remote from the specific issues before the court and in any event deals with the issue of children between 13 and 18 as opposed to the age group in this case i.e. a child under the age of 13. Similarly I consider that interrogatory 46 is too remote from the issue now before the court to merit an interrogatory. I therefore order their withdrawal.

[45] I do not consider that interrogatory 49 is anything other than a matter of law and is not appropriate for an interrogatory. I therefore order the withdrawal of interrogatory 49.

[46] Finally, for the removal of doubt those interrogatories that I have admitted between Nos. 1-10 as well as Nos. 11, 12 and 13 are required to be answered by Simon Milner. I make it clear at this stage that I recognise that admissions made by an agent acting within the scope of his authority are admissible against his principal when he is authorised to make such admission expressly or when he is authorised to represent the principal for any purpose and the admissions have been made in the proper course of that representation. Consequently whilst I have allowed these interrogatories to be made by Mr Milner that is without the prejudice to the right of the defendants to give evidence that he had no proper authority to do this and to challenge the existence and scope of the alleged agency at the trial of this action. I order that the remaining admissible interrogatories be served on the appropriate executive officer of the first defendant and the second defendant or whichever appropriate servant or agent with the first and second named defendant is best qualified to provide such answers (the same to be identified by the defendants within seven days of this judgment).

Disclosure

[47] The plaintiff seeks an order pursuant to Order 24 Rules 2(5)(a), 3(1), 7 and 14 of the Rules of the Court of Judicature (Northern Ireland) 1980 that the first and second defendants make specific discovery of certain documents, together with an accompanying verifying affidavit.

Principles governing disclosure

[48] The principles governing disclosure are also well known. Having revisited Compignie Financiere du Pacifique v Peruvian Guano Company (1882) 11 QBD 55, Hutchinson v Glover (1875) 1 QBD 138, Foot v Quinn (2010) NIQB 89, Berkeley Administration v McClelland (1990) FSR 381, Kennedy v Chief Constable of the PSNI (2010) NIQB 57, Martin v Giamborne (2013) NIQB 48, the Supreme Court

Practice 1999 Vol. and "Supreme Court Practice: Civil Proceedings" by Barry Valentine I have distilled the following guiding principles relevant to this case;

- Order 24 Rule 7 makes provision for this application for specific discovery.

- Such matters are governed by the domestic law of Northern Ireland and a party to litigation in Northern Ireland must adhere to the statutory provisions and regulations operating in this jurisdiction.

- The onus is on the moving party.

- Disclosure relates to any matter in question or which relates to an issue in dispute in the pleadings and covers any document likely to contain information which may help a party to establish his case or damage his opponent's case. The document may lead one party to a train of enquiry to advance his case and damage his adversary.

- There must be sufficient evidence that the document exists which is in dispute and that it is in the possession, custody or power of the other party.

- In exercising its discretion the court must contemplate the possible influence of factors such as oppression, undesirable delay, inappropriate cost and want of proportionality. The documents must be necessary for disposing fairly of the cause or manner.

- The court can consider redacting portions of a document.

- As in the case of interrogatories, these applications must be seen in a context of the overriding principle in Order 1 Rule 1A.

[49] I stated at the outset of this case that I do not believe any question of obtaining the consent of this child to any such documentation arises. Not only has the family court directed that the child be not made aware of these proceedings until further or other court order but in any event a child of these tender years cannot consent. The action is brought on behalf of the father and I am satisfied that he can give the appropriate consent.

[50] The first documentation sought is that of notes and records in relation to the number of active users, profile or page account holders in Northern Ireland and elsewhere. I consider that prima facie it is relevant to know the number of active users, profile or page account holders in Northern Ireland in order that I may assess the size of the task confronting the defendants if taking steps to address the mischief of underage children registering. I did invite Mr Shaw to produce further evidence as to whether the production of such documentation would be possible or, if it was, that it would be too onerous but I have received no further affidavit dealing with

this matter. To that extent the issue is simple. Either the defendants do have documentation showing the number of active users etc in Northern Ireland or they do not. If they do have them, they should be discovered. If they do not have them then obviously they can properly indicate that they do not have such information in their possession, custody or power.

[51] I do not consider that the category of documents sought in Nos. 2 and 3 are appropriate for this action on the grounds of relevance or benefit to the plaintiff given the obvious nature and size of the task.

[52] The defendants have conceded that they will provide the terms and conditions of the defendants between 2011 - the present.

[53] I consider that specific discovery should be made of request No. 5 where the documentation contains notes and records relating to the use of the defendants' network by children under 13 held by the defendants between 2011-2014 insofar as it is possible to be obtained with reference to Northern Ireland/United Kingdom. If the defendants do have them, they should be discovered. If they do not have them then obviously they can properly indicate that they do not have such information in their possession, custody or power.

[54] I considered that it would have been unnecessary to provide all the information sought at paragraph 6 save for that referred to in paragraph 6(4). Any statistical analysis of such documentation relating to two such reports during the period 2011-2014 could well have been relevant. However having read the affidavit of Mr King of 4 July 2014 at paragraph 6 I am satisfied on the basis of those averments that it would be a disproportionate task at inappropriate cost amounting to an oppressive request to insist that discovery of such documentation is made. I repeat my earlier remarks however about the ability of the plaintiffs to argue at trial both that such averments are lacking in credibility, or, if they are credible, that it serves to flaw the defendants' defence.

[55] Similarly, the documentation sought at paragraph 7 will come within the objection raised by Mr King at paragraphs 6 and 7 of his affidavit and therefore I am not prepared to go behind the current averment that it is not possible to ascertain who would have been responsible for monitoring the second defendant's non-US and non-Canada's users report for the relevant period. I repeat my assertion as to the right of the plaintiff to challenge this at trial with the usual attendant consequences should the defendants' arguments prove fallible.

[56] So far as the documentation sought at paragraph 8 of the summons is concerned, I consider this to be rather vague and uncertain and I recognise Mr Fitzgerald's concession that this was perhaps "not the most important" aspect of his application. I therefore refuse discovery of such documentation.

[57] I consider that it is appropriate that the documentation mentioned at paragraph 9 i.e. the registration details of the persons named therein should be discovered and I so order.

[58] I grant specific discovery of the totality of the plaintiffs account activity for the person named in number 10.

[59] I note that Mr Fitzgerald did not press paragraph 11 of the summons for disclosure.

[60] I regard the material sought in paragraphs 12 and 13 of the disclosure application to be too vague and insufficiently relevant to require disclosure.

Reply to particulars

[61] The plaintiff in this matter had sought 112 further particulars (several of which contained a large number of sub-questions) arising out of the defence. This is an apposite moment to make some general comments about a Notice for Particulars. The question of whether and what particulars should be ordered is one of discretion. Such a notice may ask about material facts, not law or evidence albeit it may ask an opponent to identify a point of law raised by him, the statutory duty breached etc. A well trammelled test in deciding whether a point asked for in the Notice is proper, is to ask "would the point be proper if the respondent had himself inserted it in his own pleading?" (see Valentine on "Civil Proceedings The Supreme Court" at paragraph 9.85).

[62] If the overriding objective governing litigation in the High Court – enshrined in Order 1 Rule 1A requiring the court to deal with each case in a manner proportionate to the importance of the case, the complexity of the issues and the need to recognise that the court's resources must take into account the need to allot them to other case—is to be observed it is crucial that such Notices be relevant and avoid the danger of over-elaboration and prolixity. This Notice fell into both of these latter traps and betrayed a basic misunderstanding of the role of particulars. They created a risk of being oppressive, over time consuming and costly. Many of them were self-evidently not matters for particulars and more appropriate for discovery or interrogatory applications.

[63] Turning to the Particulars which are the subject of this application, it was immediately apparent to me that 29, 30, 31, 35, 36, 68, 73 and 77 would never have found themselves into a well drafted statement of claim and are not appropriate for a Notice for Particulars.

[64] The Particulars sought at numbers 49-51 and those between 82 - 91 are also in my view inappropriate for a Notice for Particulars and, as Mr Fitzgerald frankly conceded, are more appropriate for applications for discovery/interrogatories.

[65] The Particulars sought between 38 - 47 are in a different category however. They address a fundamental point which is that paragraphs 18(b)-(k) of the Defence seem to deal with protection measures once children are registered. At this stage I have some difficulty understanding how they could address the issue of preventing children under the age of 13 *from registering in the first place*. Accordingly I consider that Particulars 38 to 47 – all purporting to extract information as to how such measures would *prevent* children registering – are appropriate questions to be raised in the Notice for Particulars. Mr Shaw, in the course of exchanges before me, indicated that he would consider a revision of these answers 38-47. If by the time of this judgment he has failed to do so, then I order that the replies be given.

[66] Due to the sheer weight of numbers of the various interrogatories, specific documents and particulars sought it is possible that I may have overlooked some. If so these may be brought back before me for determination.