



Neutral citation [2025] CAT 8

Case No: 1634/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

31 January 2025

Before:

JUSTIN TURNER KC
(Chair)
HUGH KELLY
PROFESSOR DAVID ULPH

Sitting as a Tribunal in England and Wales

BETWEEN:

MR DAVID ALEXANDER DE HORNE ROWNTREE

Proposed Class Representative

- v -

**(1) THE PERFORMING RIGHT SOCIETY LIMITED
(2) PRS FOR MUSIC LIMITED**

Proposed Defendants

RULING (CROSS EXAMINATION)

A. INTRODUCTION

1. The Tribunal received an application on 28 February 2024 for an opt-out collective proceedings order pursuant to section 47B of the Competition Act 1998 (the “1998 Act”) from Mr David Aleander de Horne Rowntree (the “Proposed Class Representative”), represented by Maitland Walker LLP. In the proposed collective proceedings damages are to be claimed against The Performing Right Society Limited and PRS For Music Ltd (together “PRS”) represented by Macfarlanes LLP for alleged infringement by way of abuse of a dominant position of Chapter II of the 1998 Act as well as Article 102 of the Treaty on the Functioning of the European Union.
2. The alleged abuse of a dominant position concerns the performing right royalties that are collected by PRS direct from licensees in the United Kingdom who play the musical works of PRS members in public and then distributes these royalties to its members. The claim relates to the portion of performing rights royalties collected by PRS which cannot be matched with the correct songwriter or publisher.
3. On 24 January 2025 the Proposed Defendants (PRS) made an application to cross-examine the Proposed Class Representative, David Alexander De Horne Rowntree, at the hearing of the application for a collective proceedings order.
4. The Proposed Class Representative responded to the application by written submission dated 27 January 2025. Further written submissions from the Parties were made by letters dated 29 and 30 January 2025.

B. THE APPLICATION

5. The Proposed Defendants’ application to cross-examine the Proposed Class Representative, raises three issues upon which it would wish to cross-examine.
6. The first is the funding terms. It is said that it is inappropriate for Mr Rowntree to agree a funding agreement which allows the funder to be paid out of

undistributed damages. Whether the terms of the funding agreement are appropriate is a matter for legal argument and we see no reason why that argument would be assisted by cross-examination.

7. The second issue is a complaint that some songwriters are likely to do better under the status quo than under any assumed counterfactual. It is suggested that Mr Rowntree is likely to be one of those people, and that this puts him in conflict with the class. Whether the Proposed Class Representative's interests are in conflict with the class is a matter which will no doubt be explored at the hearing but is not a matter which can only be resolved by cross-examination. Insofar as additional information is required from the Proposed Class Representative there are other mechanisms for obtaining that information.
8. The third issue concerns the distribution plan which is said to be unsuitable and means the proceedings do not pass any sensible cost benefit analysis. It is said that Mr Rowntree does not confront this problem in his witness statement. Again, that is a problem which can be addressed through legal argument and there seems no reason why that debate will be materially advanced by cross-examination.

C. CONCLUSION

9. The Tribunal decline to order cross-examination of Mr Rowntree. That is not to say the Tribunal will not have questions to put to Mr Rowntree, should the need arise.

Justin Turner KC
Chair

Hugh Kelly

Professor David Ulph

Charles Dhanowa O.B.E., Q.C. (*Hon*)
Registrar

Date: 31 January 2025