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IN THE COMPETITION

Case No. : 1433/7/7/22

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 30th September 2025

Before:

Justin Turner KC
Derek Ridyard
Greg Olsen
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Liza Lovdahl Gormsen

Class Representative

v

Meta Platforms, Inc. and Others

Defendants

A P P E A R A N C E S

NIRANJAN VENKATESAN KC, SARAH O'KEEFFE & IAN SIMESTER On behalf of Dr
Liza Lovdahl Gormsen (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

MARIE DEMETRIOU K.C., TONY SINGLA K.C. & JAMES WHITE On behalf of Meta
Platforms (Instructed by Herbert Smith Freehills Kramer LLP)

Tuesday, 30 September 2025

(11.00 am)

(Proceedings delayed)

(11.10 am)

THE CHAIR: Apologies, I think there were some minor technical issues. Some people are joining on live stream. I must start with a warning. An official recording is being made, and an authorised transcript will be produced. It is prohibited for anyone else to make a recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court.

(11.10 am)

Judgment - redacted pending approval

(11.40 am)

Discussion regarding consequentialia

MR WHITE: I am grateful for the decision. There is obviously the question of consequentialia and whether they are to be dealt with today or later.

As we understood the Tribunal's comments at the end of yesterday, merely because there is a hand-down hearing today for the judgment, that does not necessarily mean that consequential issues would also be dealt with orally today.

THE CHAIR: It does not necessarily mean, but it does not

1 mean that they cannot be.

2 MR WHITE: As we understood the Tribunal's comment, if
3 either of the parties required more time to consider
4 consequential, then the Tribunal would seek to
5 accommodate that.

6 THE CHAIR: What consequential are you talking about?

7 MR WHITE: So there are a number of potential issues.

8 There's obviously a potential application for permission
9 to appeal, which, as we read Rule 107, is in any event
10 subject to a three-week deadline to be made in writing
11 rather than orally, so we understand that that would not
12 be something that arises now in any event, and at least
13 on our side we would benefit from some additional time
14 to consider the issue of costs in light of the specific
15 findings that the Tribunal has reached.

16 We also received what the Class Representative
17 refers to as an interim schedule of costs overnight
18 which seeks just shy of half a million pounds in respect
19 of a one-day hearing.

20 As I say, we received this overnight.

21 THE CHAIR: Right.

22 MR WHITE: We are going to need a bit more time to consider
23 precisely how --

24 THE CHAIR: Why do you need more time? What are your costs?

25 MR WHITE: We have not been in a position to prepare

1 a schedule in time to consider our costs as a point of
2 comparison.

3 THE CHAIR: Well, you must know what your total costs are,
4 at least to an approximation. You may not choose to
5 disclose it, but you must know.

6 MR WHITE: In any event, I would need to discuss with my
7 client further in light of the specific findings what
8 our position on costs --

9 THE CHAIR: I think we can deal with costs now. You
10 received the schedule yesterday, yes?

11 MR WHITE: We received it yesterday evening.

12 THE CHAIR: Okay, well I think you have an application?

13 Application by MS O'KEEFFE

14 MS O'KEEFFE: Sir, yes, we do. Our understanding of the
15 Tribunal's indication yesterday was that both costs and
16 permission to appeal would be dealt with today orally
17 and that would be our preference.

18 THE CHAIR: Yes, but you are asking for your costs, I think,
19 is what I mean.

20 MS O'KEEFFE: Yes, very happy to address costs.

21 THE CHAIR: We will deal with that principle first.

22 Are you resisting costs?

23 Submissions by MR WHITE

24 MR WHITE: We will resist costs.

25 THE CHAIR: On what basis?

1 MR WHITE: The basis on which the Tribunal makes an order of
2 costs is obviously at the discretion of the Tribunal
3 under Rule 104, and in my submission, the specific
4 circumstances of this case, having regard to the
5 findings as I have been able to understand them in the
6 short time available, is such that the appropriate order
7 would be no order as to costs.

8 THE CHAIR: Right, and your reasons are?

9 MR WHITE: So, sir, if I can give an overview of the legal
10 framework at a high-level, I appreciate the Tribunal
11 will already be familiar --

12 THE CHAIR: I have just given a judgment, we know what it
13 is. What is your point?

14 MR WHITE: So as part of an assessment of what costs would
15 be ordered or what costs the Tribunal considers to be
16 fit, it is appropriate to have regard to the conduct of
17 the parties, that is in Rule 104, and by analogy with
18 the CPR, it is Rule 44.2(5). The conduct of the parties
19 considers issues such as the reasonableness of the party
20 who was not successful in taking the points that they
21 did, and the manner in which they took them, and, in my
22 submission, given what the Tribunal described as the
23 issue being complex and something that needs to go to
24 trial, the authorities are not, as I understand the
25 Tribunal's decision, entirely clear as to whether user

1 damages would be available. It is the Tribunal's
2 decision. It was perfectly reasonable for Meta to have
3 taken the points that it did around its reading of
4 Devenish and its position that Devenish is binding on
5 the point that user damages are not available in
6 competition claims, also having regard to Wass,
7 including Meta's interpretation of Morris-Garner, its
8 reading of Lloyd, etc, the Tribunal has heard our
9 submissions on that and seen them in writing, and in my
10 submission, given the state of the law, the position
11 that Meta adopted in response to the application was
12 perfectly reasonable and is something that the Tribunal
13 needs to take into account.

14 The same goes, sir, in my submission, as regards
15 certification where the basis for our submissions was
16 essentially to draw on Lord Leggatt's findings in Lloyd
17 as to the proper basis for an assessment of user damages
18 and then to apply that to our reading of Professor Scott
19 Morton's third report, and as we see it, they do not run
20 together. Professor Scott Morton is doing something
21 different as we see it to what Lord Leggatt was
22 suggesting in Lloyd, and in my submission, that was
23 again a reasonable point to take.

24 Finally, again, dealing with this at some speed, in
25 any event, the Class Representative would always have

1 needed to bring this application. It was an amendment
2 to her existing case and the Tribunal was emphatic at
3 the certification stage that the only claim that was
4 then pleaded, and it is consistent with your judgment
5 a moment ago, is conventional damages, not user damages,
6 and so the bringing of the application would always have
7 been necessary, and, in that context, I would also
8 invite the Tribunal to have regard to comments of
9 Mrs Justice Joanna Smith at CMC2 where she indicated
10 that having regard to the correspondence and the outline
11 of what the application concerned, she considered that
12 the application would not be something that could be got
13 through without a full hearing, and so, to a large
14 extent, the bringing of the application and detailed
15 consideration of it is something that would always have
16 needed to take place, and just to supplement that, the
17 application itself, which is brought, I think, in May,
18 was very light and did not substantively engage with the
19 relevant case law, and so it was quite proper in my
20 submission for Meta to draw out the relevant cases for
21 the Tribunal's awareness, so the Tribunal could consider
22 the proposed amendment on an informed basis by reference
23 to the relevant cases, which is not something which
24 would have been possible having regard only to the
25 amendment application itself.

1 So with all of that being so, it is my primary
2 position that, notwithstanding that the application to
3 amend and for certification has been granted, it is
4 relevant to have regard to the fact that the substantive
5 legal question, tied with the facts, is essentially
6 deferred to trial. In that context, it is important to
7 recognise that Meta's submissions on the law were
8 reasonable, both on the amendment, having regard to
9 Wass, Devenish, etc, and also on certification, and so
10 the appropriate order in all of those circumstances is
11 costs in the case.

12 As an alternative to that, in my submission in any
13 event, the costs up to the date of Meta's response which
14 was filed in July ought to be costs in the case because
15 the application --

16 THE CHAIR: Could you say that again, I beg your pardon?

17 MR WHITE: In any event, the Class Representative's costs up
18 to the date of Meta's response which was filed in July
19 ought to be costs in the case, and I make that
20 submission by analogy with the position in CPO
21 applications, for example, where the general practice of
22 the Tribunal is for the costs of the bringing of the
23 application, which would always have needed to happen,
24 are costs in the case, they are not ordered to be paid
25 by the respondent to the CPO application, and then cost

1 orders are made from the date, again, having regard to
2 all the relevant circumstances, that the response to the
3 CPO application went in, and the same principle ought to
4 apply in these circumstances for the reasons that I have
5 given.

6 If the Tribunal were minded, ordering costs in the
7 case for the period up to the date of Meta's response,
8 to order a payment to be made in respect of the Class
9 Representative's costs from that date, which is contrary
10 to my primary position, we submit that the percentage of
11 the Class Representative's costs should be modest,
12 including having regard to the fact, as I have
13 mentioned, around the reasonableness of Meta's position,
14 having regard to the case law, etc.

15 So that is why, sir, in my submission the primary
16 position: costs in the case; if not: costs in the case
17 at least up to the date of Meta's response and
18 thereafter only a modest proportion, certainly no more
19 than 50% of the Class Representative's costs should be
20 awarded.

21 There are also then perhaps more detailed
22 submissions that may or may not need to be made on the
23 figures in the schedule.

24 THE CHAIR: We will get to the figures in your schedule.

25 MR WHITE: Yes.

1 THE CHAIR: (Pause) How many of the costs pre-date the
2 application?

3 Submissions by MS O'KEEFFE

4 MS O'KEEFFE: Sir, in terms of the breakdown between the
5 opposition to the application and the date of the
6 application, we are not sure, but I will just --

7 THE CHAIR: Sorry, let me rephrase that. How many costs
8 relate to before you served the amendment on --

9 MS O'KEEFFE: I will just take instructions.

10 THE CHAIR: Yes. It may be apparent from your schedule.

11 MS O'KEEFFE: Sir, I am informed that the costs run from the
12 date that we were informed that Meta would oppose the
13 application. We do not at the moment have broken out
14 the figure from before the application after the
15 indication that it would be opposed, but that is
16 certainly something that we can calculate after today's
17 hearing if that would be helpful.

18 THE CHAIR: If we go to the schedule of work on documents,
19 for example, we have preparation of the Class
20 Representative's application to amend, the preparation
21 of the witness statement in support.

22 MS O'KEEFFE: Yes, sir.

23 THE CHAIR: Preparation of -- so it seems -- what's
24 preparation of FSM3?

25 MS O'KEEFFE: That is the third expert report of Professor

1 Scott Morton, sir.

2 THE CHAIR: I see. So really from 4 is a consideration
3 of ... (Pause)

4 MS O'KEEFFE: Yes, although we would say that --

5 THE CHAIR: Just give me a second. (Pause)

6 Right, just to cut through things, we are going to
7 award the Class Representative its costs and we are
8 going to estimate costs after the application has been
9 made. We are not persuaded by the reasons that this was
10 a difficult application and it was helpful to draw the
11 relevant authorities to the court and have argument on
12 it. That is a matter for trial, as our judgment
13 records.

14 Looking at the numbers -- I will give you
15 a preliminary view and if you want to make further
16 submissions you can -- from the back of the cost
17 schedule, one gets an indication of costs associated
18 with preparation of the documents, so you can see those
19 as 1, 2 and 3 on the schedule of work done on documents.

20 We also consider there are too many counsel involved
21 in this. Of course you can consult as many counsel as
22 you wish, but I do not see why Meta should have to pay
23 for the privilege, so we are inclined to order costs
24 summarily assessed at 250,000, having given you an
25 indication of how we arrive at that figure. So that is

1 deduction made for the amount of counsel, deductions
2 made for preparation before Meta received the documents.

3 MR WHITE: Sir, if it is okay to have a go at chipping that
4 down?

5 THE CHAIR: You can have a go, yes.

6 Submissions by MR WHITE

7 MR WHITE: So in addition to the items that you identified,
8 number of counsel, etc, it also seems to us that of the
9 counsel who were used, there's some inefficiency in
10 their use. So, for example, it seems that one junior
11 was heavily involved in the work up to the hearing and
12 then another junior was involved for the hearing itself,
13 whereas it would have been more efficient --

14 THE CHAIR: We have nominally taken off 60,000 for counsel
15 which only leaves the first two counsel: Mr Simester and
16 Mr Venkatesan.

17 MR WHITE: Okay, understood. There is also the issue of
18 CRA's fee, CRA are the experts for the Class
19 Representative, and in my submission, their line item,
20 which I think, if I can just turn it up, £23,000. It is
21 on the final -- above the signature, the statement of
22 truth and above the total, it is in "other expenses",
23 there is court fees and then "others", and then within
24 the box --

25 THE CHAIR: That I have also picked up. You can see some of

1 the preparation of FSM3 is item 3 which we have
2 nominally taken off.

3 MR WHITE: You have taken out?

4 THE CHAIR: Yes, that is 7,000, but you are observing there
5 is more than the 7,000 there.

6 MR WHITE: Well, as I understand it, sir, you went to the
7 schedule of work on documents which is obviously
8 solicitor time.

9 THE CHAIR: Yes.

10 MR WHITE: Whereas this line item is the experts' work, and
11 I am not making a submission to disallow the entirety of
12 that, but, sir, you will have seen the brevity of
13 Professor Scott Morton's third report and that its
14 substance essentially explains that she is instructed to
15 file a report and that she relies on the substance of
16 Professor Scott Morton's first report, and so in my
17 submission a fee of £23,000 for that is excessive, or at
18 least it is something that Meta should not be ordered to
19 pay, and so I would invite the Tribunal to make
20 a further reduction to that.

21 Of a more minor order of magnitude immediately below
22 "CRA" you have "Opus 2 costs", and those were costs that
23 were proposed by the Class Representative in terms of
24 how they would prefer the hearing to run with realtime
25 and EPE. Meta did not oppose those features from Opus 2

1 being used, but they were proposals from the Class
2 Representative that we acquiesced to, so we say we
3 should not be paying for those; they were preferences
4 from the Class Representative.

5 Those are the specific line items that I wanted to
6 draw out. There are also broader questions around
7 reasonableness and proportionality of the costs that are
8 not disallowed so to speak. So, of the --

9 THE CHAIR: We have made an allowance for that. We have got
10 guideline rates, so we have very much factored in what
11 the guideline rates are. That is why you get such
12 a substantial reduction. Bear in mind the reduction at
13 the moment is from 465 down to 250. Those factors have
14 been -- and indeed the Opus was taken into account in
15 arriving at that.

16 MR WHITE: Could I just take instructions?

17 THE CHAIR: Yes.

18 MR WHITE: (Pause) Thank you.

19 Submissions by MS O'KEEFFE

20 MS O'KEEFFE: Sir, if I may, just first on the point of
21 principle about whether to disallow the costs that
22 pre-dated Meta's response to the application, we would
23 submit that, just like the principle at certification
24 where a certification is unopposed, then it proceeds by
25 consent and extra costs are not incurred, whereas, if

1 certification is opposed, you are able to go back before
2 the date of the first formal opposition to the
3 application, we would say that the situation in the
4 present case is analogous insofar as we indicated to
5 Meta that we were planning to make this amendment, and
6 it was only after they indicated that they would be
7 opposing it that we started to record the costs that the
8 Tribunal sees in the costs schedule.

9 We would say actually, particularly given that in
10 effect matters -- second point -- opposing the amendment
11 application was in effect to say that the second
12 amendment should not be certified, we say this is a case
13 where there is a close parallel between the principles
14 that should apply for certification and the principles
15 that should apply for amendment, so --

16 THE CHAIR: I am sure that -- the case is already certified,
17 let us not -- every application from now on is not going
18 to be a certification application. I appreciate the
19 point was taken against you, but in any event you would
20 ordinarily have to pay the costs of and occasioned by
21 the amendment.

22 MS O'KEEFFE: Yes.

23 THE CHAIR: So preparing it, consulting the authorities,
24 considering with your experts, those are all costs that
25 normally come under costs of and occasioned by the

1 amendment, as I understand it, so neither of you have
2 persuaded us to shift from the 250,000, I am afraid.

3 MS O'KEEFFE: May I just address the granular detail of --

4 THE CHAIR: Well, you can, yes.

5 MS O'KEEFFE: Just on a couple of short points.

6 THE CHAIR: You may be facing an uphill struggle, but, yes.

7 MS O'KEEFFE: Understood, sir.

8 THE CHAIR: You have far too many counsel, and this did not
9 require four KCs.

10 MS O'KEEFFE: Sir, we would say that the work was split
11 between the KCs rather than duplicated. Often it is
12 a question of availability rather than multiple people
13 looking at the same thing.

14 THE CHAIR: I would be surprised if there was not any
15 duplication. I am going to work on the assumption that
16 they all had to read into the case, they all had to
17 understand what the point was. It may be a difficult
18 point to solve, but it is a pretty simple point to
19 articulate, so there must have been some duplication.

20 MS O'KEEFFE: Yes, sir, but we would say if -- without
21 meaning to sort of put myself in the spotlight, my
22 appearance today, we would ask if we could also get
23 that, because that was 18,000, rather than much more
24 senior counsel appearing today.

25 THE CHAIR: Yes, we are not -- sorry, we are nominally

1 crossing you off the list; we are not actually crossing
2 you off the list.

3 MS O'KEEFFE: Right, sir.

4 THE CHAIR: It doesn't mean you do not get paid and
5 everybody else does. It is just that one has to
6 approach these things with a broad brush and, taking it
7 in the round, we see it as a two counsel application, so
8 that is why.

9 MS O'KEEFFE: Yes, sir.

10 THE CHAIR: It is not that your contribution is less
11 valuable than Mr Simester's. Please do not interpret
12 anything we are saying that way.

13 MS O'KEEFFE: It definitely is.

14 One final point that my solicitors raise is that the
15 breakdown on the back in respect of documents might not
16 be representative of costs across the whole, and we
17 offer the alternative of going away and providing
18 a proper calculation of the breakdown --

19 THE CHAIR: No, we are going to do this today. You have had
20 an opportunity to provide further breakdowns before:
21 250,000.

22 Right, how long?

23 MR WHITE: Meta request 28 days in order to run its internal
24 processes.

25 THE CHAIR: Very good, 28 days, and if you are minded to

1 appeal, that will come in due course, but the time is
2 running, so I think you said -- I cannot remember what
3 the time is. 21 days, is it, you said?

4 MR WHITE: Three weeks in the rules, yes.

5 THE CHAIR: Three weeks.

6 MS O'KEEFFE: Sir, would it be possible to maybe address
7 directions on service of the Re-Amended Claim Form and
8 Meta's Amended Defence?

9 THE CHAIR: Okay, yes. What do you say?

10 MS O'KEEFFE: So we are in a position to be able to file the
11 amendments -- the amended -- the Re-Amended, rather,
12 Claim Form by Friday. We would propose that Meta then
13 have 21 days to make any consequential amendments to
14 their Defence, and then we would reply if so advised
15 within seven days after that.

16 MR WHITE: Could we have six weeks bearing in mind
17 commitments on other cases?

18 THE CHAIR: It is only a few lines. You are only going to
19 respond with a few lines I anticipate.

20 MR WHITE: I should, sir, explain that, in parallel with
21 these specific amendments that would address -- and
22 I accept they are relatively small paragraphs that are
23 in the Re-Amended Claim Form -- we would consider
24 whether other amendments ought to be made at the same
25 time in the interests of efficiency.

1 THE CHAIR: I am not giving you permission for those today,
2 so we will say 28 days for these --

3 MR WHITE: 28 days for these amendments.

4 THE CHAIR: If you want to make an application to amend or
5 agree amendments on other aspects it is a matter for
6 you, but this does not give you carte blanche to
7 introduce things --

8 MR WHITE: I was not seeking carte blanche.

9 THE CHAIR: -- that we have not -- that do not arise
10 directly from this.

11 MS O'KEEFFE: 28 days is great for us.

12 THE CHAIR: 28 days, and then you get?

13 MS O'KEEFFE: Seven days for our reply.

14 THE CHAIR: And you are going to have to serve on Friday.

15 MS O'KEEFFE: Yes, thank you sir.

16 THE CHAIR: Very good.

17 (12.06 pm)

18 (The hearing adjourned)

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