Neutral citation [2026] CAT 25

Case No: 1634/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

16 March 2026

Before:

JUSTIN TURNER KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

MR DAVID ALEXANDER DE HORNE ROWNTREE

Proposed Class Representative

- and -

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

Proposed Defendants

- and -

LCM FUNDING UK LIMITED

Proposed Third Party for the Purposes of Costs

Heard at Salisbury Square House on 16 March 2026

RULING (COSTS)

APPEARANCES

Jack Williams (instructed by Willkie Farr & Gallagher (UK) LLP) appeared on behalf of the Proposed Class Representative.

Meredith Pickford KC, George McDonald (instructed by Macfarlanes LLP) appeared on behalf of the Proposed Defendants.

Jamie Carpenter KC appeared on behalf of the Proposed Third Party for the Purposes of Costs.

1. On 27 August 2025 we refused to grant Mr Rowntree (the **PCR**) a collective proceedings order (**CPO**) and struck out the claim in these proceedings: [2025] CAT 49 (the **Judgment**). The principal ground was that members of the class were not owed royalties and that consequently they did not have individual claims against the Defendants, **PRS**.

2. We also found that the claim was not suitable for an award of aggregate damages and that it failed the *Microsoft* test. Additionally, we raised concerns as to the cost-benefit of pursuing the proceedings.

3. I now need to address costs. An issue which has arisen in correspondence, leading up to this hearing, is whether the funder, **LCM**, is liable for costs. The funder has been represented by Mr Carpenter KC at this costs hearing.

4. Initially LCM made an offer to submit to an order that it be jointly and severally liable with the PCR for any costs in excess of £1.5 million, being the limit of the PCR's ATE insurance. On Friday 13 March 2026, the Tribunal wrote to the parties and alerted them to the fact that the question of a funder's liability in costs would arise in a forthcoming Tribunal judgment, *Gutmann v First MTR South Western Trains Limited* [2026] CAT 21, which was about to be handed down. We said that we would not hear this aspect of the application until the parties had had a chance to consider that judgment and, if advised, put in written submissions. This led to an application for an adjournment, by the PCR, of this entire application for costs, but that has not been pursued. The judgment in *Gutmann* was published on the afternoon of 13 March 2026 and has led to LCM withdrawing its offer to be jointly and severally liable in costs above £1.5 million.

5. The award of costs is governed by rule 104 of the Competition Appeal Tribunal Rules 2015:

> "104.—(1) For the purposes of these rules "costs" means costs and expenses recoverable before the Senior Courts of England and Wales, the Court of Session or the Court of Judicature of Northern Ireland, as appropriate, and include payments in respect of the representation of a party to proceedings under section 47A (claims for damages) or 47B (collective proceedings) of the 1998 Act(a), where the representation by a legal representative was provided free of charge.

(2) The Tribunal may at its discretion, subject to rules 48 and 49, at any stage of the proceedings make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings.

(3) For the purposes of paragraph (2), applications made under rule 62 or 63 are considered to be proceedings of the Tribunal.

(4) In making an order under paragraph (2) and determining the amount of costs, the Tribunal may take account of—

(a) the conduct of all parties in relation to the proceedings;

(b) any schedule of incurred or estimated costs filed by the parties;

(c) whether a party has succeeded on part of its case, even if that party has not been wholly successful;

(d) any admissible offer to settle made by a party which is drawn to the Tribunal's attention, and which is not a Rule 45 Offer to which costs consequences under rules 48 and 49 apply;

(e) whether costs were proportionately and reasonably incurred; and

(f) whether costs are proportionate and reasonable in amount.

(5) The Tribunal may assess the sum to be paid under any order under paragraph (2) or may direct that it be—

(a) assessed by the President, a chairman or the Registrar; or

(b) dealt with by the detailed assessment of a costs officer of the Senior Courts of England and Wales or a taxing officer of the Court of Judicature of Northern Ireland or by the Auditor of the Court of Session, as appropriate. […]"

6. The power given to the Tribunal is to make any order it sees fit in relation to the payment of costs and, in so doing, it should have regard, *inter alia*, to whether costs were proportionately and reasonably incurred, and whether costs are proportionate and reasonable in amount.

7. The approach to costs in this Tribunal was recently summarised in paragraph 13 of the decision in *Riefa v Apple* [2025] CAT 34:

"13. The question of costs has been addressed in a number of recent decisions by the Tribunal. The general principles can be summarised in the following way:

(a) The Tribunal has a broad discretion as regards to costs, but in exercising that discretion it should make an order that reflects the overall justice of the case: *Royal Mail v DAF Trucks* [2023] CAT 31, [36].

(b) Although there is no prescribed "general rule" in the Tribunal Rules corresponding to CPR 44.2(2)(a) that the unsuccessful party should pay the costs of the successful party, the Tribunal generally follows the practice of the High Court. Accordingly, where a party has been wholly successful it should generally be awarded its costs. The question of who succeeded should be approached as a matter of common sense, in a practical and commercially realistic way: *Merricks v Mastercard* [2024] CAT 57 (*Merricks*), [18].

(c) Where there has been a trial of a preliminary issue or a split trial, a party that has been successful on that issue or that stage of the trial should generally be awarded the costs of that issue or that stage: *Merricks*, [19].

(d) An issue-based order may be appropriate where the overall successful party has lost on a discrete issue which caused additional costs to be incurred. In such a case, if the issue was raised unreasonably that will usually justify an adverse costs order. If the issue was raised reasonably, the mere fact that the successful party lost on that issue does not by itself normally make it appropriate to deprive it of its costs; rather, the question is what order in respect of that issue is just and appropriate in all the circumstances of the case: *Merricks*, [20]–[21]. The Tribunal should not adopt an overly-granular approach to the identification of discrete issues: *Merricks*, [22].

(e) In evaluating recoverable costs, only reasonable and proportionate costs are recoverable, and the assessment of costs should pay close regard to the Guideline Rates: *Merricks*, [40]–[41]. As the Court of Appeal observed in *Samsung Electronics v LG Display* [2022] EWCA Civ 466, [6]:

> "If a rate in excess of the guideline rate is to be charged to the paying party, a clear and compelling justification must be provided. It is not enough to say that the case is a commercial case, or a competition case, or that it has an international element, unless there is something about these factors in the case in question which justifies exceeding the guideline rate."

(f) When assessing the amount of an interim payment on account of costs, the Tribunal should take a cautious approach and should seek to make a broad estimate of the reasonable and proportionate costs likely to be determined on detailed assessment, with an appropriate margin to allow for an overestimate: *Merricks*, [40] and [42].

(g) The same principles apply to costs in collective proceedings as in any other competition law claim: *Merricks*, [43]."

8. This case was not legally or factually complicated. It did not raise difficult questions of law or a complex economic analysis. It should have been heard in one to two days. It was adjourned because of some lack of clarity as to evidence relating to proportionality: the Tribunal required further evidence and therefore the hearing went into a third day. The costs of the hearing are, nevertheless, amenable to a summary assessment and that is the course that I have proposed. The PCR agreed with this course. The PRS accepted that it was open to the

Tribunal to summarily assess costs but weakly opposed that as a way forward. The PRS accepted that there was sufficient material before the Tribunal upon which to reach a summary determination.

9. The PRS is the overall winner and should be awarded its general costs of the claim. The PCR submits that the PRS should be denied costs in relation to certain specific issues, which I now address.

10. First, the PCR contends that the PRS was unsuccessful in opposing Mr Rowntree as a suitable class representative, and that there were significant costs associated with that issue. Mr Williams, for the PCR, makes reference to the decision in *Merricks v Mastercard* [2017] CAT 27, in particular to paragraph 21, where this Tribunal formed the view that because the authorisation of the applicant was an entirely separate issue it was considered appropriate to disallow that part of the respondent's costs.

11. I am not going to take that approach in this case. I, of course, accept that it may be appropriate in some cases to make a specific costs order in relation to a challenge to authorisation. Here, the principal point pressed by the PRS, was that Mr Rowntree may have a conflict of interest with the class. This was a short argument which occupied only two paragraphs of the 119-paragraph Judgment and little time at the hearing. I also need to keep in mind that the Tribunal was, in any event, required to scrutinise the suitability of Mr Rowntree as a class representative. I do not consider this relatively short point was substantive enough to justify a distinct costs order.

12. Second, there were arguments relating to LCM's fee. These were of narrow compass and involved no more than reading the Litigation Funding Agreement (**LFA**). The Tribunal had to consider the LFA as part of certification and I considered these are properly viewed as general costs of the application.

13. Third, reference is made in paragraph 83 of the Judgment to where we observed that some of the reasons for striking out the claim were "elusive". This was a point raised in the PCR's skeleton argument, but it has not been pressed before me at this hearing. Insofar as it is still live, I make the point that, generally

speaking, the submissions made by the PRS on strikeout were appropriately focused, and this reference in the Judgment to some points being elusive does not mean that material time was spent on them, or that they are circumscribed issues in respect of which there should be a deduction.

14. Fourth, a deduction is sought in respect of the evolving case on the size of "Black Box" royalties, on which it is contended the PCR ultimately succeeded. It is difficult to say that these costs were circumscribed. Both parties failed to deal adequately with the question of proportionality at the outset, and insofar as there is any criticism to be levelled, that is not a criticism only to be levelled at the PRS. The PRS submit that the parties were – and it is my wording, not the PRS's – at times ships passing in the night, and that the PRS really did not understand the case it had to meet. That is the impression I had at the outset of the certification hearing. Taking this matter in the round, it is not appropriate to make a deduction in costs in respect of this issue, because it is not suitably circumscribed.

15. Turning then to indemnity costs, the PRS contends that costs should be paid on an indemnity basis. There was a dispute as to the correct law to be applied. Reference was made by the PCR to two cases. One was *Suez Fortune Investments v Talbot Underwriting* [2019] EWHC 3300 (Comm); [2019] Costs LR 2019. My attention was drawn to paragraphs 7 and 8:

> "7. There is a long line of authority that where it is said that a party's conduct was unreasonable it must be unreasonable to a high degree to justify an order for indemnity costs. That requirement was first stated in *Kiam v MGN Ltd (No. 2)* [2002] 1 WLR 2810 by Simon Brown LJ and has been repeatedly stated since; see *Euroption Strategic Fund Ltd v Skandinaviska Enskilda Banken AB* [2012] EWHC 749 (Comm) at para 14 per Gloster J, *Elvanite Full Circle Ltd v AMEC Earth & Environmental (UK) Ltd* [2013] 4 Costs LR 612 at para 16(a) per Coulson J, *ICI v Merit Merrell* [2017] 5 Costs LR 631 at para 12 per Fraser J and *Hislop v Perde* [2019] 1 WLR 201 at paras 35–36 per Coulson LJ.
>
> 8. It was suggested that the requirement that conduct must be unreasonable to a high degree was not stated in the CPR and that this gloss on the CPR was therefore wrong in principle. However, the requirement is, I think, a necessary corollary of the scheme of the CPR. Having regard to the importance ascribed to the principle of proportionality in the CPR, where unreasonable conduct is relied upon as justifying costs on the indemnity basis, and hence removing the need for the costs to be proportionate, the conduct must be unreasonable to a high degree. […]"

16. Mr Pickford KC submitted that the relevant question is whether anything is "out of the norm" sufficient to justify an order for indemnity costs and that there is no higher threshold criteria which applies in relation to questions of conduct. He referred to the case of *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hamer Aspden & Johnson (Costs)* [2002] C.P. Rep. 67, and drew my attention to paragraphs 31 through to 39, in particular, the conclusion at paragraph 39, in the judgment of Lord Justice Waller:

> "39. The question will always be: is there something in the conduct of the action or the circumstances of the case which takes the case out of the norm in a way which justifies an order for indemnity costs?"

I agree that I should follow the test set out in *Excelsior*.

17. The points relied upon are as follows. The first is the point that class members were effectively suing themselves, which is a matter raised in the Judgment. This, it is said, brings the case outside the norm, particularly when one considers questions of proportionality and the appropriateness of this litigation. It is *a fortiori* when the claim is formulated as an opt out case in circumstances where no effort was made to get the support from PRS writer members including those members on the board of the organisation.

18. Second, it is contended that Mr Rowntree made misleading representations about the costs consequences of the claim to class members. In particular, that it was not made clear to class members, through their membership of the PRS, that they may end up having effectively to meet a claim in costs. In a message on the claim website to class members, seeking to explain the nature of the claim, it was stated:

> "<u>18. What are the risks for me in joining the claim?</u>
>
> Usually in litigation, the losing party is ordered to pay the winning party's costs. As the Proposed Class Representative is bringing this matter on behalf of you, any such order would generally be made against the Proposed Class Representative. If the claim is unsuccessful, the Proposed Class Representative and his funder will have to pay costs to cover the expenses of the Defendant. The Proposed Class Representative has obtained £10,000,000 of insurance to cover these costs. There are exceptional circumstances in which you as an individual claimant might be ordered to pay costs where individual issues arising in the litigation do not apply generally to all class members, although

> the Proposed Class Representative does not currently foresee any such individual issues arising."

19. The statement did not point out that it was conceivable that members of the PRS would, indirectly through reduced payments, have to pay costs. That possibility is by no means clear and in any event is not a matter which takes this case out of the norm. Furthermore, even if there was an omission, that omission does not really have any proximity to what went on at the certification hearing or the costs that were expended at the hearing.

20. Third, it is said Mr Rowntree failed to resolve the dispute by making representations to the PRS Members Council, the Board or using other dispute resolution procedures. I am reminded of what this Tribunal said in paragraph 107 of the Judgment:

> "107. An alternative way of resolving the dispute – which has not been attempted – is for class members to make representations to the Members Council and/or the Board and/or the Distribution Committee, through its writer member representatives. There is no evidence that this has been attempted by members of the class prior to this claim being put together by the solicitors and funders. Nor is it clear that those writer members on the governing bodies support these proceedings. The first salvo in this dispute was formal correspondence on 14 February 2022 from Maitland Walker LLP to the PRS stating that it had been instructed to pursue opt-out collective proceedings. The letter stated that "*we do not consider that any formal mediation or ADR is appropriate*". This approach was unfortunate and not in the interest of the class. It is in reasonable contemplation that there was scope for formulating alternative ways of distributing Black Box royalties which might benefit the class more than spending these eye-watering sums on lawyers and funders. If this claim were to have proceeded, we would have encouraged the parties to look at alternative ways of resolving this dispute."

21. I was shown correspondence. The initial letter from Maitland Walker LLP was sent on 14 February 2022 and set out relevant facts relating to the claim. Paragraph 56 of that letter stated:

> "Alternative Dispute Resolution
>
> 56. At this stage and at least until our client receives your response to this letter, we do not consider that any formal mediation or ADR is appropriate. We suggest that we consider ADR if and when you dispute this claim and we have received your full response to this letter. However, in the meantime, our client is prepared to consider any reasonable settlement proposal you wish to make."

22. After some further correspondence over the next year, there was then a letter written by Macfarlanes for PRS on 10 March 2023 which contained the following statements:

> 2. It is disappointing that you and your client have yet again failed to engage substantively with our client's prior correspondence. We do not accept that you have "dealt substantively with each and every point made in [the 16 May Letter] seeking clarification and/or further information on each point". All we have received since your initial letter of claim dated 14 February 2022 are essentially requests for further information without any meaningful attempt by you to engage with the detailed explanations provided by our client which refute your client's allegations. As a result, the basis on which your client maintains that damage has been suffered due to alleged breaches of competition law is unknown.
>
> 3. As illustrated by our correspondence to date, this exercise continues to be a prolonged request for information, which is not yielding any genuine concerns that could be substantiated into a claim, let alone of the magnitude alleged in your letter of claim which, as demonstrated, was quantified based on erroneous assumptions. PRS has engaged significant resource in this exercise, which continues to be a waste of costs. As stated in the 3 February Letter, our client's position in that regard remains reserved.
>
> 4. Nonetheless, PRS takes any concerns expressed by its members very seriously and is committed to being open and transparent about the way in which it operates. PRS has therefore spent considerable time and resources compiling information in response to your 12 January 2023 letter. Those responses are set out below. You will see that some of the information you have requested cannot be provided because PRS' systems do not record the exact information requested. PRS' systems are designed to ensure transparency to its members and accuracy in the distribution of royalty revenues. Some of the information you have requested is not necessary to achieve these objectives, and therefore is not recorded in PRS' systems.
>
> 5. **To the extent that it would assist, members of PRS' Members Council would be willing to meet with your client. Such a meeting could avoid the incurrence of further unnecessary costs in protracted correspondence regarding concerns which are clearly unfounded (costs which, for the avoidance of doubt, our client will seek to recover from your client if proceedings are commenced). Our client would also be willing to consider and discuss specific suggestions or proposals which your client may wish to make regarding its distribution policies – as explained below, our client is confident in its position that its policies deal with revenue in a fair and proportionate manner, but nonetheless takes concerns raised by members very seriously.**"
>
> (emphasis added)

23. An offer of a meeting was made by the PRS to avoid the incurrence of further unnecessary costs and to discuss ways forward. At the end of that letter this offer was repeated:

> "44. As noted above, if your client continues to have queries, members of PRS' Members Council would be willing to meet with your client to avoid the incurrence of further unnecessary costs in protracted correspondence regarding concerns which are clearly unfounded. Our client would also be willing to consider and discuss specific suggestions or proposals which your client may wish to make regarding its distributions policies – our client is confident in its position that its policies deal with revenue in a fair and proportionate manner, but nonetheless takes concerns raised by members very seriously."

The PCR did not take up this invitation.

24. The next letter is dated 23 May 2023, which was a letter from Macfarlanes saying that they have not had any substantive response to their letter of 10 March 2023:

> "We have not had any substantive response to our letter, from which we infer that the information we have provided has answered your client's questions and allayed the concerns which they have expressed in this line of correspondence.
>
> Notwithstanding this, PRS remains open to the prospect of a meeting between the parties if that would be beneficial, per our letter."

25. Proceedings were issued on 28 February 2024 by way of an application for a CPO. Since proceedings were issued, there was a single meeting between the parties which did not resolve any issues. I will return to this point.

26. There were two other reasons given as to why there should be indemnity costs. The fourth point is the fact that Mr Rowntree brought a speculative claim which failed on multiple fronts. I am reminded that the PRS was successful, and that the Tribunal was unpersuaded that, even if there was a viable claim, the cost-benefit analysis favoured continuation of the proceedings. That is reliance on the merits of the claim, but does not identify anything else out of the norm.

27. The fifth point, although not relied on as a reason justifying the indemnity costs in its own right, is a reference to Mr Rowntree's conduct during proceedings, including Mr Rowntree changing solicitors at the eleventh hour and seeking an adjournment.

28. Mr Pickford KC for the PRS correctly points out that I should not just look at these points in isolation but should look at the totality of the way these proceedings have been conducted and whether that brings them out of the norm.

29. I am not going to make an order for indemnity costs. I have formed the view that there is considerable force in the submission that further and more constructive attempts should have been made by the PCR to avoid these proceedings altogether and to that end the PCR should have engaged more fully with the PRS, and should, *inter alia*, have accepted the invitation of a meeting, and consulted more widely. However, I am not convinced that the fault of the parties to resolve issues falls only at the feet of the PCR. The PRS also could have been more active in attempting to resolve issues. Furthermore, the way that these proceedings have progressed indicates that it would not actually have made any difference whether there were meetings between the parties or not. The preparation for the certification hearing shows that the parties have been largely ships passing in the night. Although further engagement may have narrowed some of the issues and led to a greater understanding of the PRS's systems, there is no reason to expect that the proceedings would have taken a materially different course.

30. I will make an order that the PRS gets all its costs on a standard basis. I propose to summarily assess them. The PRS's total costs are just shy of £2.6 million excluding VAT. That does not include the costs of this hearing. This is a significantly larger sum than I would have expected given the lack of complexity of the issues at the certification hearing.

31. Costs incurred in collective proceedings before this Tribunal are a major concern and have drawn comments from this Tribunal before, including costs relating to certification. For example, in *Gutmann v First MTR South Western Trains Ltd* [2021] CAT 36 the applicant's CPO application costs were £1.7 million plus VAT and were described as a "staggering" sum. In *Spottiswoode v Airwave Solutions Ltd* [2025] CAT 76, costs of £1.425 million, including VAT, were described as an "extraordinarily large" sum. In that judgment, a contrast was drawn with the applicant's costs of certification in *Kent v Apple* (£958,415.38) and *Neill v Sony* (£939,394).

32. It is not sufficient to approach costs just as a matter of overall impression; it is necessary to consider the costs in further detail, albeit at a high level. The claim for an interim payment was supported by a witness statement from Mr Simon Day, a partner at Macfarlanes, and he exhibits a Statement of Costs which records the hourly rates charged and the hours spent at different stages of the proceedings.

33. The hourly rates charged are significantly above the 2025 Solicitors' Guideline Hourly Rates (the **Guideline Rates**). In my judgement, there is no particular complexity in this case which justifies an uplift. Applying the Guideline Rates, the costs would be in the order of £2 million. This is still a very large sum and requires further scrutiny.

34. Turning to the Statement of Costs it can be seen that there was a large number of solicitors involved in these proceedings. There are four partners working on the case and eight non-partner solicitors. Ten fee earners charged more than £500 an hour. I accept the point that the number of solicitors does not *necessarily* mean that costs are excessive, as work may be divided between the team efficiently, however it does raise a concern because it means there are likely to be multiple solicitors reading the same materials in the case.

35. The Statement of Costs is divided into periods. The first period (Period 1) is from 3 March 2022 to 10 March 2024. It bears the description:

> "Period 1: Work in the period including: (i) pre-action correspondence (including responding to the letter before action and points on service), (ii) matters arising from pre-action correspondence and (iii) all attendances on the client."

The solicitors' fees for this period are £292,680 excluding VAT. This appears to be an extraordinarily large amount and must involve extensive investigation of matters within the PRS. I accept there would have been challenges in obtaining all the necessary information from the client which subsequently appears in the witness statements, but it needs to be kept in mind that all the information which was required, if not at PRS's fingertips, was at least available from the PRS. There seems no obvious explanation as to why pre-action costs

should be so great, particularly when one considers them in the context of subsequent costs incurred once the claim had been served.

36. Period 2 is from 11 March 2024 to 11 October 2024. Work in this period bears the description:

> "Period 2: Work in the period including: (i) considering the PCR's CPO Application, (ii) preparing the Proposed Defendants' Response to the Application, (iii) liaising with experts, (iv) preparing witness evidence (Arber 1 and Fishman 1), (v) considering and responding to inter partes correspondence (including in relation to service, funding, CMC/directions, class exclusions) and (vi) all attendances on client."

The amount billed is really staggering over this period, particularly given how much work had already been done in Period 1. The solicitors billed £981,532 excluding VAT, and a further £99,163 for counsel. This amount needs to be considered in the context of the witness statements of Mr Timothy Arber and Ms Karen Fishman, which we will come to in a moment.

37. With regards to liaising with experts, one can see that Oxera Consulting were instructed in this period and also Mr Austin Jacob of Prager Metis, but their total bills are only £78,462 and £3,105 respectively. Therefore, attendance on experts would only seem to explain a small amount of Macfarlanes time billed in this period.

38. We arrive at the position that, by 11 October 2024, over three months before the hearing of the application for a CPO, the PRS had spent over £1.37 million.

39. We then have Period 3, being 12 October 2024 to 13 February 2025. Work in this period is described by the PRS as:

> "Period 3: Work in the period including: (i) considering the PCR's Reply to the Proposed Defendants' Response, (ii) considering and responding to inter partes correspondence (including on funding issues, class communications, the hearing timetable and list of issues), (iii) preparing for the February hearing (including work on the skeleton argument, witness evidence (Arber 2), bundles and engaging transcription services), (iv) attending the hearing and considering the PCR's hearing notes, and (v) all attendances on the client."

That amounted to a further bill of £325,301 excluding VAT from the solicitors and £222,420 for counsel. Counsel sums are considerable for preparation of a

relatively short and straightforward skeleton argument and a two-day CPO hearing.

40. Then we have the period post the initial two-day hearing, with a bill from 14 February 2025 to 20 March 2025. The solicitors bill for this period is £104,471 excluding VAT with counsel billing a further £3,885.

41. Period 5 includes the subsequent one-day hearing held on 16 June 2025. This period is described as follows:

> "Period 5: Work in the period including: (i) considering the PCR's expert evidence (Savage 4) and preparing evidence in response (Arber 4), (ii) considering and responding to inter partes correspondence (including change of solicitors and the PCR's Adjournment Application), (iii) preparing for the June hearing (including preparing skeleton arguments and bundles), (iv) attending the hearing, and (v) all attendances on the client."

Solicitors' fees for this period was £259,362 and counsel fees of £110,025.

42. Then we have period 6, 17 June 2025 to 7 August 2025, which was following the hearing. Costs in this period are relatively modest at £13,657 of solicitors' fees.

43. Period 7 is from 8 August 2025 to 31 August 2025. Work in this period is described as follows:

> "Period 7: Work in the period including: (i) considering the CAT judgment, and (ii) all attendances on the client."

Again, these seem extraordinarily high. Mr Day charged for 28 hours (£26,180 excluding VAT) in this period. It is unclear how much was considering the Judgment and how much was for attendance on the client, but that does seem very large, particularly give then PRS had been successful and the Judgment was only 44 pages. One Associate at Macfarlanes spent 46.2 hours during this period (£23,366). The total bill is £72,682 of solicitors' fees and £2,623 for counsel.

44. I also consider the scope of the evidence produced. For present purposes, I will look at the materials up to the first hearing. We have the witness statement of

Mr Arber to which reference has been made. This is a 29-page witness statement. It really just sets out what the PRS's distribution policies are, all of which should be relatively straightforward to identify. Then there is a witness statement from Ms Fishman. Very straightforward. She is a lead counsel, and she sets out the corporate structure and the various committees within the PRS organisation. It is only an eight-page statement. Then we have a second witness statement from Mr Arber, which is just three pages long and does not involve a great deal of additional work product.

45. One needs to bear in mind that if one had two partners working on these statements for a month, at Guideline Rates, which would seem a long time, it would only come up to a bill of about £180,000.

46. The response to the claim which was drafted by counsel does not seem to raise complex issues and would not have been burdensome to produce.

47. Nothing in the documents produced on the CPO application required investigation outside the PRS. There was no disclosure. No apparent need to speak to third party witnesses.

48. I need to be cautious about making assumptions of what went on which is not manifest in the evidence which has been produced. I did ask for an explanation as to why costs were so high. Three points were made. First of all, it was said that there was time spent generally worrying about the case being put by the PCR. It was necessary to think about how the case was formulated and what responses should be made against it. But the pleaded case is self-evident and notwithstanding the criticisms this Tribunal has made about it, there was no lack of clarity about what that case was.

49. Second, reference was made to having to deal with experts. But, as I have already pointed out, the experts charged relatively modest sums and therefore were not engaged at length. Moreover, there was no difficult economics which had to be addressed. Neither of these points explain the amount of costs.

50. Thirdly, it was said that it was necessary to review compendious documents such as the PRS Rules and Distribution Policy. But they did not feature in the case in any detail. We comment in the Judgment on this matter at paragraph 56. It is unclear why exhaustive consideration of those documents was important at this stage of the proceedings or why it would have been particularly burdensome.

51. The arguments presented by the PRS, on which it succeeded, were straightforward and did not require expenditure of the amounts which are being claimed. In the circumstances, I consider it appropriate to take a robust view of costs in this case. I summarily assess the costs at £750,000 plus VAT.

52. I arrive at this figure by taking a broad axe and considering the scope and complexity of the arguments as they were developed before the Tribunal. As I have said, I am conscious there can be more complexity to an action than is apparent to the Tribunal. But having considered the evidence of Mr Day and asked for further explanations, I do not conclude that this is one of those cases. I do not, therefore consider an assessment based solely on the hours reported to have been spent on this case is appropriate. I have to consider what is proportionate, not only by reference to the value of the claim, which may have been considerable, but also to the stage of the proceedings the claim was at and the complexity of the arguments that were dealt with, and that were being presented to this Tribunal.

53. The costs order made here does not include the costs of this hearing. I am not going to order interests on the costs and will provide reasons in writing for this in due course.

54. I had intended also to state in my ruling, but neglected to mention it, that had I not summarily assessed costs I would have ordered an interim payment of £750,000 plus VAT and directed that claimed costs of £2,597,492 excluding VAT were not in the opinion of the Tribunal reasonable or proportionate. I would have directed that in assessing costs particular regard should be had to whether costs were proportionately and reasonably incurred and whether they were proportionate and reasonable in amount.

Justin Turner KC
Chair

Charles Dhanowa CBE KC (Hon)
Registrar

Date: 16 March 2026