



Neutral citation [2026] CAT 39

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1441-1444/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

29 April 2026

COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED

Class Representative/Respondent

- v -

- (1) **MASTERCARD INCORPORATED**
- (2) **MASTERCARD INTERNATIONAL INCORPORATED**
- (3) **MASTERCARD EUROPE SA**
- (4) **MASTERCARD/EUROPAY UK LIMITED**
- (5) **MASTERCARD UK MANAGEMENT SERVICES LIMITED**
- (6) **MASTERCARD EUROPE SERVICES LIMITED**

Defendants/Applicants

AND BETWEEN:

COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED

Class Representative/Respondent

- v -

- (1) **MASTERCARD INCORPORATED**
- (2) **MASTERCARD INTERNATIONAL INCORPORATED**
- (3) **MASTERCARD EUROPE SA**
- (4) **MASTERCARD/EUROPAY UK LIMITED**
- (5) **MASTERCARD UK MANAGEMENT SERVICES LIMITED**
- (6) **MASTERCARD EUROPE SERVICES LIMITED**

Defendants/Applicants

AND BETWEEN:

COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED

Class Representative/Respondent

- v -

- (1) VISA INC.
- (2) VISA INTERNATIONAL SERVICE ASSOCIATION
- (3) VISA EUROPE SERVICES LLC
- (4) VISA EUROPE LIMITED
- (5) VISA UK LTD

Defendants/Applicants

AND BETWEEN:

COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED

Class Representative/Respondent

- v -

- (1) VISA INC.
- (2) VISA INTERNATIONAL SERVICE ASSOCIATION
- (3) VISA EUROPE SERVICES LLC
- (4) VISA EUROPE LIMITED
- (5) VISA UK LTD

Defendants/Applicants

RULING (COSTS)

A. INTRODUCTION

1. In its judgment handed down on 2 March 2026 [2026] CAT 15 (the **Judgment**), the Tribunal considered which legal entities had validly opted in to the opt-in proceedings brought by Commercial and Interregional Card Claims I Limited (the **Class Representative**) against the Visa Defendants (**Visa**) and the Mastercard Defendants (**Mastercard**) (together the **Defendants**). The Tribunal found that various entities had not validly opted in, as the Defendants asserted

in their **Opt-In Application**, and refused the application by the Class Representative to give permission for these and other entities to opt in late under r.82(2) of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**).

2. Following this, both Visa and Mastercard sought an order from the Class Representative to pay their costs of the Opt-In Application, to be subject to detailed assessment on the standard basis if not agreed. Both Defendants sought an order that the Class Representative make a payment on account within 14 days of the Tribunal's order, with Mastercard claiming £400,000 and Visa claiming £366,638.58.
3. The Class Representative has agreed to pay the Defendants' costs of the Opt-In Application to be subject to detailed assessment on the standard basis if not agreed. However, its position was that this should exclude costs incurred in relation to whether non-UK domiciled entities could opt in to the proceedings (the **Domicile Issue**). It also disputed the amount sought on account.

B. THE PARTIES' RESPECTIVE POSITIONS

4. The Defendants justified the amount they sought to be paid on account by submitting that the Opt-In Application concerned multiple requests and applications brought over a lengthy period of time, with their costs being increased due to the Class Representative's obstructive and obfuscatory approach.
5. The Defendants sought their costs starting from when the Class Representative first disclosed the opt-in class register on 14 March 2025. The Class Representative then provided successive versions of the opt-in register in June 2025, October 2025 and November 2025, with each register containing a different number of specified entities and legal persons. From 14 May 2025, the Defendants sought the disclosure of the opt-in notifications from the Class Representative. This led to the Defendants making a disclosure application which was granted by the Tribunal following the case management conference on 21 October 2025. These notifications were disclosed, in some cases after the Tribunal's deadline, through October and November 2025. The Defendants

submitted that the Class Representative's delays and iterative approach forced the Defendants to incur material expense through repeated review.

6. Mastercard's cost schedule came to £600,677.34, of which it sought just under 65% for payment on account. Visa's cost schedule came to £611,064, of which it sought 60% for payment on account. Both sought hourly rates for their respective solicitors above the Guideline rates, citing the importance and complexity of the matter in determining which legal entities were included in the opt-in collective proceedings.
7. The Defendants resisted the making of an issue-based order in relation to the Domicile Issue as this could not be characterised as a discrete point and only arose once the Class Representative filed its skeleton argument for the hearing held on 16 December 2025.
8. The Class Representative submitted that the Defendants' claimed costs, totalling just over £1.2 million for a matter determined in a one-day hearing, are excessive.
9. The Class Representative submitted that the Defendants did not justify the amounts charged by their solicitors which are materially more expensive than the Guideline rates. The Class Representative also submitted that the number of solicitors working on the matter – comprising four associates and two partners each from Freshfields LLP for Mastercard and Linklaters LLP for Visa and then an additional partner and associate from Jones Day for Mastercard – is indicative of each Defendant's over resourced approach. Similarly, the Class Representative submitted that the Defendants' choice to instruct separate sets of counsel was unjustifiable.
10. The Class Representative also opposed the Defendants' claiming costs in respect of the case management conference held on 21 October 2025, on the basis that the Tribunal has already ordered those costs to be in the case.
11. The Class Representative submitted that, as it was successful on the Domicile Issue, the Tribunal should use its broad discretion to make an issue-based cost

order. This issue, the Class Representative submitted, was foundational to the overall Opt-In Application and was addressed in submissions at the December 2025 hearing.

12. The Class Representative submitted that, while the Defendants have applied a discount to the sums they claim on account, the claims remained excessive for the reasons given above.

C. RELEVANT PRINCIPLES

13. The Tribunal has discretion under r.104 of the Tribunal Rules at any stage of proceedings to make any order it thinks fit in relation to the payment of costs in respect of the whole or part of the proceedings. The Tribunal is entitled to, and frequently does, make orders by reference to the success of one party or another in relation to discrete issues. See *Riefa v Apple* [2025] CAT 34 at §13(d). The question is whether to do so is just and appropriate in all the circumstances of the case and the Tribunal should not adopt an overly granular approach to the identification of discrete issues.
14. 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. See *Riefa* at §13(f).

D. ISSUES FOR DETERMINATION

15. The following points arise for determination from the submissions of the parties:
 - a) Whether the Domicile Issue should for costs purposes be treated as a discrete issue on which the Class Representative has been successful.
 - b) For the purposes of ordering a payment on account, what broad estimate of the reasonable and proportionate costs likely to be determined on detailed assessment should be adopted, bearing in mind:

- (i) The rates claimed in respect of the Defendants' solicitors.
- (ii) The approach taken to resourcing by the Defendants, including the use of two firms of solicitors by Mastercard and the instruction of separate counsel by each Defendant.
- (iii) The proper treatment of the costs of the October CMC.
- (iv) The overall reasonableness of the costs by reference to the complexity and longevity of the matter.

E. ANALYSIS

(1) Should the Domicile Issue be treated as a separate issue?

16. It is correct that the Class Representative was successful in relation to the Domicile Issue, although (as the Defendants point out) the Class Representative at one stage adopted, as an alternative argument, the approach that the CPO order ought to be amended in order to ensure that non-UK domiciled entities could opt in.
17. The real question is whether the Domicile Issue is of sufficient consequence to treat as a discrete issue, or whether to do so would be to adopt the overly granular approach that *Riefa* and other decisions warn against. Neither party has provided a separate breakdown of the costs associated with that issue. The Class Representative makes the point that Mastercard's costs submissions identify it as a specific issue going to increased costs, although that is part of a long list of items which are said to have had that effect.
18. In the absence of any real guidance from the parties as to the materiality of the issue, any view on the relative significance of the issue has necessarily to be rough and ready. The Judgment suggests that the issue was not particularly significant, occupying some five paragraphs recording the arguments of the parties and six paragraphs of analysis by the Tribunal – in a judgment of 134 paragraphs. A review of the skeleton arguments for the hearing of the Opt-In

Application and of the transcript of the hearing supports the conclusion that the Domicile Issue was a secondary one, on which relatively little time was spent at the hearing.

19. It would therefore seem to be taking an overly granular approach to make a separate costs order in respect of the Domicile Issue and not unfair, in the greater scheme of things, to decline to do so. As a result, the Domicile Issue is not to be treated as a discrete issue for the purposes of the costs order.

(2) Estimating the reasonable and proportionate costs likely to be determined on detailed assessment

(a) The rates charged by the Defendants' solicitors

20. The rates charged by the Defendants' solicitors very substantially exceed the Guideline rates (whether by reference to the Guidelines which came into force in January 2026, or those in force in 2025, which were some £5 to £13 per hour lower for London 1 fee earners). In some bands, such as Grade A, the rates charged are more than double the Guideline rates and in others the rates are closer, such as for Grade D where they are slightly less than 20% higher than the Guideline rates.
21. The Defendants recognise that the rates sought are in excess of the Guideline rates and submit that an increase above the Guidelines is justified. Mastercard says that it is not seeking a payment on account reflecting these rates, as it is requesting a materially lower sum by way of payment on account. It also suggests that it has not included all of the time actually recorded on the matter in its costs schedule.
22. However, neither of these points provides any real assistance. I must deal with the costs schedule as it stands, which involves the actual rates applied to specified hours worked. Further, any assessment of the likely recoverable amount of the costs in that schedule must take account of all the factors which might cause the level of costs awarded to be lower than the costs schedules, not

just the possibility that the rates might be reduced to a level which is at or near Guideline rates.

23. The Defendants also submit that the complexity, novelty and importance of the matter justify an increase above Guideline rates. It may well be that the matter is of some importance to the Defendants, given the number of entities involved in the Opt-In Application. It is also true that the Opt-In Application raised novel issues. It is perhaps not the case that the matter was especially complex, involving in the main limited questions of statutory interpretation and the weighing of policy considerations for the purposes of the r.82(2) application. In any event, it is far from obvious that these factors will provide the clear and compelling justification required for a material increase above Guideline rates – see *Samsung Electronics v LG Display* [2022] EWCA Civ 466 at §6.
24. I therefore have to allow for the possibility that the judge who conducts the detailed assessment might be unwilling to allow any such increase. The proper, cautious approach is to assume that the Defendants might only recover at Guideline rates, without any increase.

(b) The Defendants' approach to resourcing

25. There are some indications that the approach taken by the Defendants has not been proportionate. Mastercard has chosen to instruct two firms of solicitors. The costs of the second firm (Jones Day) instructed by Mastercard may well turn out to be duplicative rather than additive and it is therefore appropriate to exclude them from any assessment of a payment on account.
26. The Class Representative submits that there was excessive representation by solicitors at the hearing on 16 December 2025, suggesting that two partners and four associates from each firm attended the hearing. That does not in fact seem to be borne out by the costs schedules provided by the Defendants, although it does seem the case that there were two senior associates (in addition to a partner) present from each firm at the hearing.

27. There are also significant costs for each firm for work done on documents (in the region of £230,000 each), which seems a very substantial sum given the relatively limited documents involved. This is also arguably work which ought sensibly to have been shared between the Defendants, rather than each conducting the same exercise, and it is not clear whether there has been duplication of effort as a result. In relation to counsel, it does seem appropriate for Mastercard and Visa to have separate representation, given they are competitors and given the nature of the claims against them. The brief fees seem large (£215,000 for Visa's counsel and £158,000 for Mastercard's), given the hearing occupied only one day.
28. There is therefore evidence of resourcing which goes beyond that which might be considered reasonable and proportionate and that needs to be taken into account when considering the level of the payment on account. It is difficult, on the information before me, to form a view as to the extent of that, but it seems to have the potential to reduce the recoverable costs by a material amount.

(c) The costs of the October 2025 CMC

29. The Class Representative is correct in its submission that the costs of the October 2025 CMC were ordered to be costs in the case. The costs claimed by the Defendants in that regard should be removed from their costs schedules.

(d) Overall assessment of reasonableness and proportionality

30. It is correct that the issues were of obvious importance for Mastercard and Visa. The shape of the opt-in collective proceedings, and therefore the extent of the opt-in cases against them, was materially affected by the Opt-in Application.
31. It is also the case that that the period of time over which the costs have been incurred is material, starting in March 2025 and continuing to the 16 December 2025 hearing.
32. However, there are also indications (beyond the issue of the Guideline rates) that the Defendants have incurred costs which are not reasonable and

proportionate, and some allowance needs to be made to reflect the potential for reduction upon assessment.

33. In my view, a reduction of 40% from costs claimed at Guideline rates ought adequately to provide an appropriate margin to allow for any reductions in costs claimed to a level which is reasonable and proportionate.

F. DISPOSITION

34. The Class Representative should pay the Defendants their costs of the Opt-in Application, to be subject to detailed assessed on a standard basis if not agreed, without any adjustment to treat the Domicile Issue as a discrete issue.
35. The Defendants should, for the purposes of finalising the order for a payment on account, each provide a revised costs schedule, taking into account the following matters:
 - a) The reduction of the rates of solicitor fee earners to the Guideline rates in force in 2025.
 - b) The removal from Mastercard's costs schedule of costs incurred by Jones Day.
 - c) The removal of all costs incurred in relation to the October 2025 CMC.
36. The Tribunal will then make the appropriate order for costs, including an order for a payment on account reflecting a reduction of 40% from the revised schedules.

Ben Tidswell
Chair

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

Date: 29 April 2026