Neutral citation [2026] CAT 56

Case Nos: 1437, 1529, 1530, 1531/7/7/22
and 1592/7/7/23

<u>IN THE COMPETITION APPEAL TRIBUNAL</u>

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

<u>13 July 2026</u>

Before:

THE HONOURABLE MRS JUSTICE BACON
(President)
HUGH KELLY
PAULA RIEDEL

Sitting as a Tribunal in England and Wales

BETWEEN:

ELISABETTA SCIALLIS

<u>Applicant</u>/<u>Proposed Class Representative</u>

\- v -

(1) FENDER MUSICAL INSTRUMENTS EUROPE LIMITED
(2) FENDER MUSICAL INSTRUMENTS CORPORATION

\- and -

(1) KORG (UK) LIMITED (2) KORG INC.

\- and -

(1) ROLAND EUROPE GROUP LIMITED (2) ROLAND CORPORATION

\- and -

(1) YAMAHA MUSIC EUROPE GMBH (2) YAMAHA CORPORATION

\- and -

CASIO ELECTRONICS CO. LIMITED

<u>Respondents</u>/<u>Proposed Defendants</u>

Heard at Salisbury Square House on 10 June 2026

JUDGMENT

APPEARANCES

David Cavender KC (instructed by Pogust Goodhead) appeared on behalf of the Applicant/Proposed Class Representative.

Sarah Ford KC (instructed by Gibson, Dunn & Crutcher UK LLP, Herbert Smith Freehills Kramer LLP and Dentons UK and Middle East LLP) appeared on behalf of Fender Musical Instruments Europe Limited, Fender Musical Instruments Corporation, Roland Europe Group Limited, Roland Corporation, Yamaha Music Europe GmbH and Yamaha Corporation.

Aqeel Kadri of Osborne Clarke LLP appeared on behalf of Korg (UK) Limited and Korg Inc.

A. INTRODUCTION

1. These proceedings relate to proposed opt-out collective claims by Ms Elisabetta Sciallis, the proposed class representative (**PCR**), against five manufacturer groups: Fender Musical Instruments Europe Limited and Fender Musical Instruments Corporation (**Fender**), Korg (UK) Limited and Korg Inc. (**Korg**), Roland Europe Group Limited and Roland Corporation (**Roland**), Yamaha Music Europe GmbH and Yamaha Corporation (**Yamaha**) and Casio Electronics Co. Ltd (**Casio**) (together, the proposed defendants or **PDs**). The collective proceedings claim forms were filed in 2022 and 2023.

2. The proposed claims involve a mix of follow-on and stand-alone claims sought to be combined under s. 47A of the Competition Act 1998 (**CA98**), arising following infringement settlement decisions of the Competition and Markets Authority (**CMA**) in the UK musical instruments sector, in which the CMA found resale price maintenance (**RPM**) infringements against each of the PDs, and imposed penalties. The CMA produced an infringement decision on 17 July 2020 in relation to the activities of Yamaha Music Europe GmbH (who received full immunity from penalties), as well as separate settlement decisions in relation to the activities of each of the other PD groups on 1 August 2019 (Casio), 22 January 2020 (Fender), 29 June 2020 (Korg), and 22 July 2020 (Roland).

3. The proposed claims are for breaches of statutory duty by infringing the Chapter I prohibition contained in s. 2(1) CA98 and/or Article 101 TFEU. The essence of the proposed claims is that the PDs' RPM policies suppressed intra-brand price competition at the retail level, causing UK consumers to pay higher prices for relevant musical instruments and accessories during the relevant infringement periods (around 2013 to 2018). The musical instruments in issue in the claims include acoustic guitars, electric guitars, digital pianos, digital keyboards and electronic drums. Some of the claims also relate to synthesisers and other high-tech products such as DJ equipment and stage controllers.

4. By early 2026 the claims had made no progress in the Tribunal, and the PDs had expressed concerns about the PCR's funding and legal representation

arrangements. The Tribunal therefore listed a case management conference (**CMC**) on 19 March 2026 (the **March CMC**). At that CMC it became apparent that the PCR had not secured funding for the proceedings. In those circumstances, the Tribunal listed a preliminary issues hearing for 10 June 2026 to determine the adequacy of the PCR's funding, insurance and legal representation for the purposes of certification of the proposed collective proceedings.

5. On 3 June 2026 the PCR confirmed that she had still not secured funding for the proceedings and would therefore be applying to withdraw the proceedings. The 10 June 2026 hearing therefore considered solely the issue of whether, in light of that withdrawal, the PDs' costs should be assessed on the standard or the indemnity basis.

6. Submissions at the hearing were made by David Cavender KC for the PCR, Sarah Ford KC for the Fender, Roland and Yamaha PDs, and Aqeel Kadri for Korg. Alan Bates provided a skeleton argument for Casio but did not attend the hearing. Following the hearing, the PDs provided costs schedules and written submissions were filed in relation to the costs claimed by the PDs, to enable the Tribunal to summarily assess those costs in light of whatever decision was reached on the basis of assessment.

7. On the basis of the submissions at the hearing, and the subsequent written submissions and costs schedules, this judgment addresses both the basis of assessment of costs and the amount of costs to be summarily assessed by the Tribunal. It also provides more general guidance on the Tribunal's expectations regarding funding, insurance and legal representation arrangements when proposed collective proceedings are filed pursuant to s. 47A CA98 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**).

B. PROCEDURAL BACKGROUND

8. It is necessary to explain the procedural background in some detail, in order to understand how these proceedings developed.

(1) The filing and service of the collective proceedings claim forms

9. The five collective proceedings claim forms were filed in 2022 and 2023. Each claim form was accompanied by a witness statement from the PCR and an expert report from Iestyn Williams, a partner at RBB Economics, setting out the proposed methodology to estimate the aggregate losses suffered by the proposed class. All five claim forms were also accompanied by applications to serve the claim out of the jurisdiction on the relevant foreign PDs. The position regarding service of the five claims can be summarised as follows.

10. The **Fender** claim form was filed on 21 March 2022, and directions were given for service on Fender Musical Instruments Europe Limited (**Fender UK**). Fender UK acknowledged service on 5 July 2022.

11. On 17 June 2022, the Tribunal granted the PCR permission to serve the Fender claim out of the jurisdiction on Fender Musical Instruments Corporation (**Fender US**), with directions for service given on 20 June 2022. Fender US acknowledged service on 8 December 2022.

12. The **Korg** claim form was filed on 26 August 2022, and directions were given for service on Korg (UK) Limited (**Korg UK**). Korg UK acknowledged service on 22 December 2022.

13. On 25 November 2022, the Tribunal granted the PCR permission to serve the Korg claim out of the jurisdiction on Korg Inc. (**Korg Japan**), with directions for service given on 2 December 2022. Korg Japan acknowledged service on 7 February 2023.

14. The **Roland** claim form was also filed on 26 August 2022, and directions were given for service on Roland Europe Group Limited (Roland UK). Roland UK acknowledged service on 23 December 2022.

15. On 25 November 2022 the Tribunal granted the PCR permission to serve the Roland claim out of the jurisdiction on Roland Corporation (**Roland Japan**), with directions for service given on 2 December 2022. The deadline for service

on Roland Japan was twice extended by the Tribunal: (i) on 24 March 2023, the PCR applied for an order that time for service on Roland Japan be extended until 2 November 2023, which was granted by the Tribunal on 19 April 2023; (ii) a further extension of time until 31 December 2023 was sought and granted on 26 September 2023. Roland Japan acknowledged service on 13 October 2023.

16. The **Yamaha** claim form was filed on 16 September 2022, and directions were given for service on Yamaha Music Europe GmbH (**Yamaha Germany**). Yamaha Germany acknowledged service on 30 December 2022.

17. The Tribunal granted the PCR permission to serve Yamaha Corporation (**Yamaha Japan**) out of the jurisdiction on 25 November 2022, with directions for service given on 2 December 2022. As with Roland Japan, the deadline for service on Yamaha Japan was twice extended by the Tribunal: (i) on 24 March 2023, the PCR applied for an order that the time for service on Yamaha Japan be extended until 2 November 2023, which was granted by the Tribunal on 19 April 2023; (ii) a further extension of time until 31 December 2023 was sought and granted on 26 September 2023. Yamaha Japan acknowledged service on 12 October 2023.

18. While the Fender claim referred only to the CMA infringement decision in relation to Fender itself, the later claims noted that the CMA had issued RPM infringement decisions in relation to all five PD groups, and stated that the PCR was bringing proposed collective proceedings in relation to all five PDs. Accordingly, on 6 February 2023 the Tribunal indicated by way of letter to all parties to the first four claims that it would list a joint CMC for all five proposed claims after the proposed Casio claim had been filed, served and acknowledged.

19. The **Casio** claim form was then filed on 31 May 2023, and directions were given for service on Casio Electronics Co. Limited (**Casio UK**). Casio UK acknowledged service on 25 August 2023.

20. The Tribunal granted the PCR permission to serve Casio Computer Co. Limited (**Casio Japan**) out of the jurisdiction on 21 July 2023, with directions given on

the same day. On 17 October 2023 the Tribunal ordered that the requirement to translate documentation for service on Casio Japan in accordance with the Hague Service Convention be omitted.

21. The deadline for service on Casio Japan was subsequently extended four times by the Tribunal, as follows:

(1) The first extension was to 21 May 2024 by order dated 18 January 2024 on an application dated 11 January 2024. The reason given by the PCR was that the proceedings had to be served via the Foreign Process Section (**FPS**) under Article 5 of the Hague Service Convention. The claim form was submitted to the Foreign Process Section on 4 December 2023, but the PCR was subsequently informed that the FPS had a severe backlog and was unable to provide any indication as to when the claim would be served.

(2) The second extension was to 20 September 2024 by order dated 17 May 2024 on an application dated 16 May 2024. By then, it appears that the FPS had carried out an initial review of the claim form bundle, and asked for amendments including the translation of certain documents. The PCR therefore sought a further extension of time to enable those amendments to be made.

(3) The third extension was to 20 May 2025 by reasoned order dated 20 November 2024 on an application dated 12 September 2024. The reason given by the PCR was that in July 2024 the FPS had sought yet further amendments to the documents filed, and that once those amendments had been made the claim would then (according to the FPS) "go to the back of the queue again".

(4) The final extension was to 20 November 2025 by order dated 20 May 2025 on an application dated 19 May 2025. The PCR explained that the claim form bundle had been resubmitted to the FPS on 19 December 2024 and had been subsequently dispatched to Japan. It appears, however, that the Tokyo District Court on receipt of the documents

informed Casio Japan that certain parts of the bundle had not been translated into Japanese and therefore failed to meet the conditions for formal service under the Hague Service Convention. While Casio Japan could accept voluntary service, it was under no obligation to do so, and it did not in fact do so. The PCR therefore said that it had "no option but to arrange for translation of the full bundle of documents and make another attempt at service via the Foreign Process Section". The PCR also submitted (among other things) that it would be unjust for the Tribunal to permit the claims to lapse because of a process which the PCR was obliged to follow, but which was not within her control following submission of documents to the FPS.

22. On 27 November 2025, Osborne Clarke LLP (**Osborne Clarke**), the solicitors for Korg, wrote to the Tribunal noting that it had received no update on the status of the proposed Casio proceedings in more than two years, and that the Korg proceedings had been pending for three years without any progress. The Tribunal wrote to the PCR's solicitors Pogust Goodhead on 2 December 2025 requesting an update. Pogust Goodhead responded on 8 December 2025 confirming that Casio Japan had not been served and that the PCR did not intend to take any further action in this regard. In further correspondence on 17 December 2025, the PCR confirmed that she intended to pursue her claim against Casio UK.

23. The PCR did not, at the time, provide any explanation for her decision not to progress the service of the claim on Casio Japan. In her witness statement of 3 June 2026 (discussed below), however, the PCR revealed that the reason that service could not be completed on Casio Japan was that the required translations could not be funded.

(2) The PCR's funding position prior to 2026

(a) The PCR's initial witness evidence

24. The PCR's witness statement filed in March 2022 in the **Fender** claim stated that she considered that she had the skills necessary to take on the role of class

representative and to act fairly and adequately in the interests of the Proposed Class, as demonstrated by, among other things, "[t]he funding arrangements that my legal representatives have put in place".

25. Later in the same witness statement, she said that:

> "In order to fund the Proposed Collective Proceedings, I am entering into a litigation funding agreement with North Wall Capital LLP ('NWC'), an alternative investment firm based in London. Together with my professional legal advisers, I am currently finalising the terms of the litigation funding agreement with NWC and will be able to provide to the Tribunal and Proposed Defendants a non-confidential copy of the agreement in due course. In the meantime, NWC has provided a letter, exhibited … to this witness statement, confirming its agreement to enter into a litigation funding agreement to fund these Proposed Collective Proceedings up to a total of £6.5 million, with such amounts to be paid in tranches as the litigation progresses.
>
> …
>
> NWC is investing a substantial sum of money in the Proposed Collective Proceedings and my legal advisers have advised that in previous proposed collective actions, the Tribunal has found that commercial litigation funders are entitled to a return on their investment from the award which would act as compensation for NWC investing their capital in this case."

26. As indicated in that passage, the witness statement exhibited a letter from North Wall Capital (**North Wall**) dated 21 March 2022 confirming that it had agreed to enter into a litigation funding agreement to fund the proposed collective proceedings up to a total of £6.5m.

27. The PCR's witness statements filed in the **Korg** and **Roland** claims, five months later in August 2022, continued to refer to "[t]he funding arrangements that my legal representatives have put in place". The PCR went on to state that in order to fund the proposed collective proceedings "I will be entering into a litigation funding agreement with North Wall Capital LLP". As with the Fender statement, she said that she was "currently finalising" the terms of that agreement. By that time, however, it appeared that the agreement with North Wall had extended to an agreement to cover all five proceedings, for which North Wall was said to have agreed to provide funding to a total of £18m.

28. The witness statements duly exhibited a letter from North Wall dated 25 August 2022 in which North Wall confirmed that it "has agreed to enter into a litigation

funding agreement with Elisabetta Sciallis" for all five collective proceedings, providing for a fund of up to £18m. The letter stated that it superseded the 21 March 2022 letter exhibited to the witness statement of the PCR in the Fender claim.

29. The PCR's witness statement in the **Yamaha** claim in September 2022 was in the same terms as for the Korg and Roland claims, exhibiting the same letter from North Wall.

30. The negotiations between North Wall and Pogust Goodhead regarding the possibility of funding the proceedings then ceased at some point between January and March 2023. The result was that by the time of the filing of the **Casio** claim in May 2023, the August 2022 letter from North Wall was no longer exhibited to the PCR's witness statement. However, as with the other witness statements, the PCR continued to refer to "[t]he funding arrangements that my legal representatives have put in place". She went on to say that:

> "In order to fund the Proposed Collective Proceedings, I am making arrangements for the provision of third-party funding for fees and disbursements. Copies of the relevant agreement(s) will be provided in due course."

31. Neither the Tribunal nor the PDs were informed that North Wall had withdrawn its involvement in the proceedings. Instead, in extensive correspondence between the solicitors for Yamaha, Roland and Korg and Pogust Goodhead, Pogust Goodhead repeatedly refused to confirm the status of the PCR's funding arrangements. We summarise that correspondence below.

(b) Correspondence with Dentons (Yamaha)

32. Yamaha's solicitors, Dentons UK and Middle East LLP (**Dentons**), wrote to the PCR on 23 January 2023 raising concerns with the PCR's funding arrangements, and sent chaser letters on 22 March 2023 and 5 May 2023 requesting a response. Pogust Goodhead eventually responded on 30 May 2023, stating that the PCR was "in the process of altering her arrangements for the funding of this matter", and that "it is appropriate for any amendments to our client's proposed funding agreements to be finalised after [the judgment of the

Supreme Court in *PACCAR*, which was then pending], and for disclosure of the relevant LFA (redacted if necessary) to take place after that". Pogust Goodhead also noted that the PCR would "provide the Tribunal with any necessary updated information pertaining to funding and other documentation to satisfy the requirements for approval of the application for collective proceedings prior to the first CMC".

33. The *PACCAR* judgment was handed down by the Supreme Court on 26 July 2023: [2023] UKSC 28, [2023] 4 All ER 675. Dentons wrote again on 8 September 2023 stating that the lack of disclosure as to the PCR's funding arrangements was unsatisfactory, and sought further information. Pogust Goodhead replied on 22 September 2023 noting that the PCR was considering the implications of *PACCAR*, and reiterated that the PCR was "in the process of reviewing" her funding arrangements. Pogust Goodhead stated that it "failed to see how it can be in the interests of efficiency to provide [Dentons] with information in respect of funding arrangements which may no longer apply". The letter reiterated that any "updated information" pertaining to funding to satisfy the Tribunal would be disclosed and filed prior to any CMC to be listed.

34. Dentons responded on 13 October 2023 repeating that the disclosure of the PCR's funding arrangements had been inadequate, and noting that recent news articles had suggested that North Wall had withdrawn their investment in the proposed claims, and that new funding arrangements had been agreed with a different funder. The letter sought (again) confirmation as to the PCR's funding position. Pogust Goodhead responded on 20 October 2023, repeating that the correct point at which issues as to funding should be raised was in the context of any response to the collective proceedings order (**CPO**) applications.

35. Further correspondence in similar vein from Dentons in November and December 2023 elicited no further information from Pogust Goodhead, who maintained their position that it would provide an update ahead of the first CMC.

(c) Correspondence with HSF Kramer (Roland)

36. Roland's solicitors Herbert Smith Freehills Kramer LLP (**HSF Kramer**) wrote to Pogust Goodhead raising concerns similar to those expressed by Dentons, and were met with similar responses. HSF Kramer's correspondence on this started with a letter on 28 March 2023 noting that "it appears that [the PCR] does not yet have either litigation funding in place in respect of her own costs or provision for Roland's recoverable costs". Pogust Goodhead responded on 13 April 2023 refusing to provide any funding documentation, referring to the Supreme Court's pending decision in *PACCAR* and stating that it was "prudent for any amendments to [the PCR's] proposed funding arrangements to take place after that". It then noted that the PCR will provide to the Tribunal "any necessary updated information pertaining to funding" prior to any joint hearing when listed.

37. HSF Kramer responded on 25 April 2023, noting it was "telling" that Pogust Goodhead "declined to provide the simple confirmation as to the status of [the PCR's] litigation funding agreements". HSF Kramer stated that Roland would draw the inference from that refusal that the PCR had no funding, but again sought confirmation from Pogust Goodhead that funding was in place. Pogust Goodhead responded on 9 May 2023, again claiming that it was appropriate to defer disclosing funding arrangements, and stating "[i]t is [the PCR's] prerogative … to make amendments to funding arrangements in advance of the CPO hearing. It is unreasonable and indeed it is a waste of the parties' resources, to provide documents now that may be subject to amendment".

38. HSF Kramer sent further letters on 16 June, 24 October and 17 November 2023 maintaining their requests in relation to the PCR's funding arrangements, and referring to an article in "The Lawyer" which indicated that funding from North Wall had been terminated and that Pogust Goodhead might have secured funding from an alternative funder known as Gramercy. Pogust Goodhead, as with its correspondence with Dentons, refused to provide any information as to the PCR's funding arrangements, and repeated that any concerns should be raised by Roland in the context of its response to the CPO application.

39. HSF Kramer raised the issue again in January 2024, and Pogust Goodhead again refused to provide any substantive response.

(d) Correspondence with Osborne Clarke (Korg)

40. Osborne Clarke wrote to Pogust Goodhead on 19 May 2025 seeking confirmation that a litigation funding agreement had been concluded and provision of a copy of same. It followed this up on 28 May and 25 June 2025, indicating that it was instructed to apply to the Tribunal for the disclosure of materials related to funding arrangements if that was not forthcoming from the PCR. Pogust Goodhead sent a holding response by email on 2 July 2025 and then responded further on 11 July 2025, saying that the PCR would "provide the Tribunal with all necessary updated information pertaining to funding", and noting that Korg "will of course be provided with any additional documents filed with the Tribunal." Pogust Goodhead also stated that any application for disclosure was premature, would be contested, and also that, if it were to proceed, the PCR would seek her costs of contesting it on an indemnity basis.

41. Osborne Clarke responded on 14 July 2025 indicating that if the funding materials were not disclosed by 18 July 2025, it would apply to the Tribunal to compel their disclosure. On 18 July 2025, Pogust Goodhead responded noting that "some of the CPO documentation is likely to be subject to some revision prior to the hearing, owing to the passage of time," and stating that the PCR's "funding arrangements are currently being amended, and therefore we have nothing to disclose … in that respect at present." It further stated that it would "of course provide you with a final LFA for consideration in due course".

42. Osborne Clarke wrote to Pogust Goodhead on 22 July 2025 noting that it understood its previous letter to mean the PCR "currently has no valid litigation funding agreement in place", and requesting an explanation of why the PCR's witness statement filed alongside the Korg claim had not been updated to reflect this change. Pogust Goodhead responded on 25 July 2025 stating that the PCR "is not required to provide a running commentary on any developments in her application, and all updates to it will be addressed in full at the appropriate time".

43. Osborne Clarke wrote again on 1 August and 10 September 2025, seeking confirmation of "whether any litigation funding agreement was entered into, whether that agreement is now being amended or whether a new agreement is being concluded, and whether any new or amended agreement is with North Wall Capital or another funder." Pogust Goodhead did not respond.

(3) The March 2026 CMC

44. On 15 December 2025 the Tribunal contacted the parties seeking their availability for a CMC. That prompted HSF Kramer to write again to Pogust Goodhead on 8 January 2026 asking for an update on the PCR's funding arrangements, to which it received only holding responses.

45. On 16 February 2026 the Tribunal wrote to the parties listing a CMC on 19 March 2026 (i.e. the March CMC) to be heard by the President. HSF Kramer, Dentons and Osborne Clarke then wrote again to Pogust Goodhead repeating their requests for an update on the PCR's funding arrangements prior to the CMC.

46. On 20 February 2026, Pogust Goodhead wrote to the Tribunal explaining that it would be unable to continue to represent the PCR in the proceedings, and that it was assisting the PCR to identify alternative representation. Given the circumstances, the PCR's solicitors requested that the March CMC be vacated. The Tribunal refused that request, in light of the delay in the proceedings that had already taken place.

47. In a letter to all the parties sent on 27 February 2026, Pogust Goodhead confirmed that the PCR would be seeking to make amendments to the CPO applications, stating that the proposed amendments "will relate largely to the matters arising from the effluxion of time since the CPO applications were filed", and that those amendments would include amendments "to reflect the PCR's amended funding arrangements". Pogust Goodhead still did not confirm, at that stage, that there were in fact no funding arrangements in place.

48. Ahead of the deadline for skeleton arguments for the March CMC, both HSF Kramer and Osborne Clarke wrote again to Pogust Goodhead, asking for the PCR to provide a witness statement updating the Tribunal and the PDs on the status and adequacy of her funding, insurance and legal representation arrangements. No witness statement was forthcoming.

49. The parties filed their skeleton arguments for the March CMC on 12 March 2026. In the PCR's skeleton argument, the PCR confirmed for the first time that the funding agreement with North Wall had "never materialised" and that although the PCR had been taking steps to procure alternative funding, "such funding has not been put in place". The PCR requested a period of three months within which to secure funding and to disclose any documentation to the PDs. The PCR stated that Pogust Goodhead intended to represent the PCR until a suitable successor firm could be identified.

50. At the March CMC, the PCR sought directions to the hearing of the CPO applications. The Tribunal instead listed a preliminary issues hearing to consider the PCR's funding, ATE insurance and legal representation. The Tribunal gave directions requiring the PCR to file and serve written evidence by 1 May 2026 providing detailed evidence of any funding and ATE arrangements she currently had in place, together with the position as to her current legal representation and any expected changes to that legal representation going forward. The PCR's updated funding and insurance arrangements were ordered to be disclosed into a confidentiality ring.

(4) The PCR's application to withdraw the proceedings

51. On 1 May 2026 the PCR filed a witness statement confirming that litigation funding had not yet been secured for the purpose of the CPO applications. She stated that she was "actively involved in efforts to secure" alternative funding, exhibiting a list of 25 funders that had been approached by her or Pogust Goodhead. She made clear that legal representation would be conditional on acquiring adequate funding arrangements. She confirmed that ATE insurance was in place, but noted that the relevant policies did not include anti-avoidance endorsements.

52. On 11 May 2026 the Tribunal received a letter from Osborne Clarke on behalf of all the PDs, seeking an order that the CPO applications be dismissed on the papers and the preliminary issues hearing vacated. The PDs also sought their costs on an indemnity basis. On 22 May 2026 the Tribunal confirmed that the hearing would proceed.

53. On 3 June 2026, Pogust Goodhead wrote to the Tribunal and the PDs' solicitors explaining that the PCR had reviewed her position with her legal representatives in light of the absence of secured funding sufficient to enable the proceedings properly to continue. She had been advised by counsel that, in those circumstances, the proceedings could not realistically and responsibly be pursued further, and therefore applied for permission to withdraw the proceedings. The PCR accepted that she would be liable for the reasonable costs of the PDs, but sought assessment on the standard basis, subject to detailed assessment if not agreed.

54. The letter made the following comments in relation to the failure to withdraw the proceedings at any earlier stage:

> "It is also important to explain why the proceedings were not brought to an end earlier. As the PCR's evidence below sets out, the progress of the proceedings after issue was materially shaped for a significant period by procedural matters relating to service out of the jurisdiction, particularly in relation to the foreign Casio defendant. In Casio, multiple extensions for service were granted, but service on Casio Japan was ultimately not completed because of the costs associated with translation and the position adopted by that defendant in relation to service. Until those matters had largely been worked through, there was no immediate certification step requiring the funding issue to be brought to a head.
>
> At the same time, efforts to secure replacement funding continued, including with the assistance of Edwin Coe LLP and through live discussions with multiple potential funders which continued until very recently. In those circumstances, the PCR did not consider it appropriate to withdraw the proceedings at an earlier stage while there remained a realistic prospect that replacement funding might yet be secured and the proceedings might continue on a properly funded basis.
>
> However, it has now become clear that no concluded funding arrangement can be put in place within the timeframe required by the Tribunal's directions and before the hearing on 10 June 2026. In the absence of secured funding, the proceedings cannot properly or realistically be continued."

55. Enclosed with that letter was a further witness statement from the PCR. As noted above, that statement revealed that the final extension of time granted until 20 November 2025 in the Casio proceedings was "allowed to lapse because the translations could not be funded." The PCR further noted that:

> "Although funding options continued to be actively pursued throughout this period, the procedural focus – particularly in relation to service out in Casio – meant that there was no immediate certification requirement necessitating that the funding position be finally resolved at that stage. It was only once those procedural matters had largely been worked through, and the Tribunal listed the joint case management conference and then the Preliminary Hearing to consider funding, insurance and representation, that the question of replacement funding became an immediate threshold issue requiring resolution within a short timetable.
>
> In that context, the fact that the proceedings were not withdrawn earlier should not be understood as inactivity or delay for its own sake. Rather, it reflected both the procedural posture of the cases and the fact that efforts to secure replacement funding continued while there remained a realistic prospect that the Proceedings might still be able to continue on a properly funded basis."

56. She also referred to the change in position between the filing of the Yamaha and Casio claim forms:

> "By the time the fifth application was issued against Casio on 31 May 2023, the earlier reference to [North Wall] was no longer repeated. In that application, I stated instead that I was making arrangements for the provision of third-party funding for fees and disbursements and that copies of the relevant agreement or agreements would be provided in due course. There was therefore no concealment of the position as it had developed."

57. Further she noted that:

> "Since the departure of the original funder, I remained willing to pursue any realistic route by which proper funding could be secured, so that the Proceedings could continue on a responsible footing and in the best interests of the proposed class. In those circumstances, I did not consider it appropriate to withdraw the Proceedings at an earlier stage while there remained a realistic possibility that replacement funding might yet be secured, for instance a funder showed willingness to co-fund the claim. Rather, I continued, with my legal representatives, to pursue those avenues so as to give the Proceedings the best available opportunity of continuing on a properly funded basis. It is only now, in light of the absence of any concluded funding arrangement within the timeframe required by the Tribunal's directions and the proximity of the Preliminary Hearing, that I have been advised, and have concluded, that the Proceedings can no longer properly be continued as currently constituted."

58. It was apparent from the PCR's final witness statement, cited above, that the funding negotiations with North Wall had ceased by the end of May when the

Casio claim was filed in the Tribunal. Mr Cavender also confirmed that in his submissions at the hearing, but was unable to provide further information on when exactly the negotiations with North Wall had come to an end. Following the hearing, the Tribunal wrote to the PCR requesting that she confirm the exact date on which North Wall had dropped out of the picture. The PCR replied on 11 June 2026 confirming that this occurred between January and March 2023.

C. THE PARTIES' SUBMISSIONS

(1) Submissions on the basis of assessment of costs

59. In support of their application for costs to be assessed on the indemnity basis, the PDs made the following main submissions, in the skeleton arguments (from Ms Ford and Mr Bates), the oral submissions (of Ms Ford and Mr Kadri) and the correspondence with the Tribunal (in particular the 11 May 2026 letter from Osborne Clarke). First, they submitted that the PCR should not have issued any proceedings without ensuring that adequate funding was in place, let alone issuing five successive sets of proceedings without funding.

60. Secondly, the PDs said that the PCR's *ex parte* applications to serve the proceedings outside the jurisdiction, or to extend the deadline for service out of the jurisdiction, were made without full and frank disclosure, in so far as they were made after the funding negotiations with North Wall had ceased.

61. Thirdly, the PDs said that in any event the PCR's failure to update the Tribunal and the PDs that the North Wall funding negotiations had ceased was unreasonable and out of the norm. In particular, they criticised the repeated refusals by Pogust Goodhead to provide a proper response to the questions asked in correspondence by Dentons, HSF Kramer, and Osborne Clarke, repeatedly and over the course of three years (from early 2023 to early 2026). Had they known the true position, the PDs said that they could have invited the Tribunal to exercise its case management powers at the outset by bringing the funding issue to a head, rather than doing so only in 2026 once the PDs had incurred considerable costs.

62. In response, Mr Cavender for the PCR submitted that the normal order on an application for discontinuance/withdrawal is for costs to be paid on the standard basis, by analogy with CPR r. 44.9(1)(c). He argued that the simple fact of being unable to obtain funding should not result in an order of indemnity costs, since that would not amount to conduct that could be considered "unreasonable to a high degree" and so outside the norm of litigation practice. He contended that the PCR was not required to have obtained funding prior to initiating the present proceedings, and that a requirement for confirmed funding prior to filing a collective proceedings claim form would have a chilling effect on those seeking in the future to bring collective proceedings.

63. As to the PDs' knowledge of the PCR's funding situation, Mr Cavender accepted that the correspondence from Pogust Goodhead was "an opaque way of keeping the thing going while they seek funding" and "wasn't … a clear response to what the position really was". He also accepted that there was a breach of the PCR's duty of full and frank disclosure in relation to the application for an extension of time for service out of the jurisdiction for Yamaha, in circumstances where by the time of the last extension of time (sought and granted in September 2023) the North Wall funding negotiations had ceased and no alternative funding arrangements were in place.

64. But he argued that the position was different for Casio, since the wording of the PCR's witness evidence in the Casio claim made clear that the PCR did not, at the time, have litigation funding. He said that the other PDs must also have been aware that the PCR did not have litigation funding from the tenor of their correspondence – for example the HSF Kramer letter of 28 March 2023 (§36 above).

(2) Submissions on the amount of costs to be summarily assessed

65. On 17 June 2026 the PDs provided schedules of their costs incurred in these proceedings. The Tribunal asked for those schedules to be revised by reference to the Solicitors' Guideline Hourly Rates (the **Guideline Rates**), and to indicate the costs incurred up to and including March 2023, and the costs incurred thereafter. The Tribunal also asked for clarification of expenditure of Yamaha

and Casio in relation to economic expert reports. Revised cost schedules with further explanations were provided on 22 June 2026. Korg, Roland and Yamaha filed updated costs schedules on 2 July 2026, to include the provision of revised costs schedules and responsive submissions on costs.

66. In total, the costs claims of the PDs (revising those costs down to London band 1 Guideline Rates where applicable, and rounding the figures to the nearest pound) were as follows:

(1) Fender: £158,250;

(2) Korg: £161,757 plus £1,722 in supplemental schedule. This included a modest sum of £26,667 incurred by Korg's initial solicitors at the Milton Keynes offices of EMW Law, which Korg submitted should be recovered at that firm's actual rates rather than National band 1 rates, given the type of work being carried out and the fact that the rates charged were considerably lower than the London band 1 Guideline Rates;

(3) Roland: £287,802 plus £6,974 in supplemental schedule;

(4) Yamaha: £1,957,536 plus £16,671 in supplemental schedule; and

(5) Casio: £811,005.

67. The PCR's written submissions, filed on 26 June 2026, did not take issue with the costs claimed by Roland, Fender and Korg, provided that those were assessed by reference to the Guideline Rates (which the PCR considered was appropriate for the present early stage of proceedings). The PCR did, however, object to the scale of the costs claimed by Yamaha and Casio, as being excessive and unreasonable given the stage at which the proceedings had reached, and the limited correspondence between the parties. Particular objection was taken to Yamaha and Casio's claims in respect of expert evidence, and excessive partner time.

68. The PDs submitted that their costs were reasonable and proportionate, and that they should be assessed by reference to their actual rates rather than the Guideline Rates. Yamaha justified its claims in relation to expert evidence on the grounds that the PCR's claim was "ambitious and complex", alleging breaches in multiple markets, and including alleged umbrella effect losses which would have been a key issue for certification. Casio said that it had spent significant time identifying and selecting a suitable expert. Both Yamaha and Casio said that partners were required to advise on strategic and procedural issues.

D. LEGAL FRAMEWORK

(1) Costs

69. Rule 104 of the Tribunal Rules gives the Tribunal a wide discretion as to costs. It provides in particular:

> "(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.
>
> …
>
> (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."

70. The award of costs on an indemnity basis depends on whether there is something in the conduct of the action or circumstances of the case which takes it "out of the norm": *Excelsior v Salisbury* [2002] EWCA Civ 879, §32. While that does

not require conduct deserving of moral condemnation, the conduct must be unreasonable to a high degree: *Kiam v MGN* (No. 2) [2002] EWCA Civ 66, [2002] 1 WLR 2810, §12; *Royal Mail v DAF Trucks* [2023] CAT 31, §§49–50.

71. Where costs are summarily assessed by the Tribunal on the standard basis, only reasonable and proportionate costs will be recoverable. In that regard, the Tribunal follows a similar approach to that set out in CPR r. 44.3(2), such that when assessing on the standard basis the Tribunal will resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party: *Ryder v MAN* [2020] CAT 21, §19. In relation to solicitors' costs, the Tribunal's starting point is the Guideline Rates for the relevant period of time: *Spottiswoode v Airwave (CPO costs*) [2025] CAT 76, §17.

72. Where costs are summarily assessed on the indemnity basis, following the approach set out in CPR r. 44.3(3), the Tribunal will normally resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party; and will not normally limit the recoverable costs by reference to considerations of proportionality: *Socrates v Law Society* [2017] CAT 12, §7.

(2) The PCR's funding arrangements

73. The structure of the collective proceedings regime under s. 47A CA98, which is unique to the Tribunal, requires two threshold conditions to be satisfied before it will make a collective proceedings order:

(1) First, it must be satisfied that the entity bringing the proceedings can be authorised as the class representative (the **authorisation condition**): s. 47B(5)(a) CA98 and r. 77(1)(a) of the Tribunal Rules. That condition is met if the Tribunal considers that it is just and reasonable for the proposed class representative to act as a representative in the proceedings: s. 47B(8)(b) and r. 78(1)(b). Rule 78(2)–(4) set out the factors that the Tribunal must take into account in considering whether the authorisation condition is met.

(2) Secondly, the claims must be eligible for inclusion in collective proceedings (the **eligibility condition**): s. 47B(5)(b) and r. 77(1)(b). The requirements for eligibility are set out in r. 79.

74. Rule 75(3)(d) and (e) require the proposed class representative, in the collective proceedings claim form, to summarise the basis on which it seeks to be authorised in accordance with r. 78, and the basis on which it is contended that the criteria for certification and approval under r. 79 are satisfied. Rule 75(3) further specifies a number of other matters that must be set out in the claim form. The purpose of those provisions is to enable the Tribunal to be provided, from the outset, with the information necessary to understand the basis on which the proposed class representative contends that the authorisation and eligibility conditions are met.

75. The criteria for the authorisation of the class representative set out in r. 78 include the following provisions:

> "(2) In determining whether it is just and reasonable for the applicant to act as the class representative, the Tribunal shall consider whether that person –
>
> (a) would fairly and adequately act in the interests of the class members;
>
> …
>
> (d) will be able to pay the defendant's recoverable costs if ordered to do so;
> …
>
> (3) In determining whether the proposed class representative would act fairly and adequately in the interests of the class members for the purposes of paragraph (2)(a), the Tribunal shall take into account all the circumstances, including –
>
> … (c) whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes – … (iii) any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide."

76. The Tribunal's Guide to Proceedings 2015 addresses each of the factors set out in r. 78(2) and (3), commenting specifically on r. 78(2)(d) at §6.33 as follows:

> "The factor the Tribunal is required to consider relates to the proposed class representative's financial resources: would the proposed class representative be able to pay the defendant's recoverable costs if ordered to do so? (Rule 78(2)(d)) By extension, the proposed class representative's ability to fund its own cost of bringing the collective proceedings is also relevant. In considering

> this aspect, the Tribunal will have regard to the proposed class representative's financial resources, including any relevant fee arrangements with its lawyers, third party funders or insurers. The costs budget appended to the collective proceedings plan referred to above is likely to assist the Tribunal's assessment in this regard."

77. Consistent with these requirements, the Tribunal has repeatedly emphasised the requirement for a proposed class representative to disclose their funding arrangements to the Tribunal at the outset of the proceedings, and for the Tribunal to examine those arrangements as part of its assessment of whether it is just and reasonable for the applicant to act as the class representative. Thus in *Coll v Alphabet* [2022] CAT 6, the Tribunal commented at §22 that (footnotes omitted):

> "(1) The collective proceedings regime is a statutory regime in which PCRs are required to disclose their funding arrangements to the Tribunal, which is under a duty to examine them. We agree that the situation is therefore very different to that arising in general civil litigation, and that case law decided in that context cannot necessarily be read directly across to collective proceedings. Different considerations apply. In this regard, we were directed by Counsel for the Proposed Defendants to observations the then President made at the CMC in the CPO Application in *Gutmann* when querying the extent of proposed redactions to funding documents, and in the context of a discussion about confidentiality: '*this is a very special form of proceedings for which your clients get various benefits ... But there is, as it were, a price to pay to get those benefits*'.
>
> (2) In our view, the starting point in collective proceedings must be that the whole of a PCR's funding arrangements are relevant to the Tribunal's assessment of the CPO application. This is made clear by Rule 78(2)(d); 78(3) and paragraph 6.33 of the Guide. Subject to issues of privilege or confidentiality, we consider that the presumption should be that if the litigation funding agreement or ATE policy is relevant then, *prima facie* all of its terms are relevant and any redaction to the documents must be properly justified. This presumption of transparency is consistent with it being incumbent on a party to make a request for confidential treatment of a specified document, or part of a document, pursuant to Rule 101 should circumstances require."

78. More recently, in *Riefa v Apple* [2025] CAT 5, the Tribunal repeated (at §31) that consideration of the authorisation condition includes:

> "(3) … consideration of the PCR's ability to pay the defendant's recoverable costs, as well as its ability to fund its own costs, such that the proceedings are conducted effectively.
>
> …
>
> (6) In forming its view as to the ability of the PCR to act fairly and adequately in the interests of potential class members the Tribunal will consider all relevant circumstances, including the question of how the PCR has satisfied

> itself that the funding arrangements reasonably serve and protect those interests.
>
> (7) A further protection is that the terms of any funding agreement should be open to scrutiny, not only by the court but also by the members of the class on whose behalf the claims are brought.
>
> (8) The Tribunal should nevertheless exercise caution in intervening in relation to the funder's return under the funding arrangements, at the certification stage, bearing in mind the Tribunal's ability to control the return to the funder at the subsequent stage of judgment or settlement. In extreme cases, however, the Tribunal's concerns regarding the funding arrangements may lead to a refusal to certify."

79. The requirement for scrutiny of the proposed class representative's funding arrangements at the certification stage is an essential and central part of the balance struck by the collective proceedings regime. As the Supreme Court recognised in *Evans v Barclays Bank* [2025] UKSC 48, [2026] 2 All ER 733, §89, the regime imposes "substantial legal and commercial advantages on claimants and burdens on defendants". The safeguards provided for defendants include the Tribunal's consideration of whether the funding arrangements will enable the proceedings to be conducted effectively. It would be oppressive and unfair to a proposed defendant who is subject to a claim of this nature to allow the proposed class representative to maintain a claim without the Tribunal being satisfied both that the proposed class representative has adequate arrangements for its own costs, and that there is suitable adverse costs cover in place to enable the defendant to recover costs if it is ultimately successful in defeating the claim.

80. A prudent proposed class representative will therefore normally wish to ensure that its funding arrangements are finalised before its collective proceedings claim form is filed. There may, however, be circumstances in which the proposed class representative considers it necessary to file its claim form prior to finalisation of its funding arrangements, for example for limitation reasons. In such a case, the proposed class representative should give a full and candid explanation of the stage the funding arrangements have reached, the reasons why it has not been possible to finalise a funding agreement before filing, and how much further time is expected to be needed to do so. The Tribunal may then, in an appropriate case and having regard to all the relevant circumstances, give the proposed class representative a reasonable further period to finalise its

funding arrangements, before giving further directions leading up to the certification hearing.

81. In such a case, however, the proposed defendant should not be required to take any steps that would require it to incur material costs before the proposed class representative has confirmed that it has concluded its funding arrangements and has provided the documentation necessary for those arrangements to be scrutinised by the proposed defendant and the Tribunal.

82. If the proposed class representative simply files its collective proceedings claim form without having finalised its funding agreements and without any explanation of how it proposes to secure funding within a reasonable timeframe, and/or if the proposed class representative is unable to secure funding after any such further period as the Tribunal may allow it to do so, the Tribunal will be entitled to consider the matter (either on the papers or at a hearing) and if appropriate dismiss the application for certification summarily, on the basis that the authorisation condition under r. 78 is not met.

83. A proposed class representative should, in that regard, have no expectation that the Tribunal will indefinitely postpone consideration of whether the conditions for certification are satisfied, in order to enable the proposed class representative to finalise its funding arrangements and thereby to meet the requirements for the authorisation condition set out in r. 78.

(3) The PCR's duties of transparency

84. Rule 75(4) requires the contents of the collective proceedings claim form to be verified by a statement of truth signed and dated by the proposed class representative or on its behalf by its duly authorised officer or legal representative. Rules 85(1) and (2) emphasise that a collective proceedings order may be varied or revoked at any time, including on the initiative of the Tribunal or one of the parties. In considering whether to do so the Tribunal is to take account of whether the criteria for certification still apply or apply in the same way (r. 85(2)(a)) and whether the class representative continues to satisfy the criteria for authorisation (r. 85(2)(b)). As the Tribunal noted in *Ennis v Apple*

[2026] CAT 55, §57(7), the language of r. 85(2)(a) and (b) suggests that the Tribunal should consider, in that regard, whether there has been a change of circumstances.

85. It is inherent in those provisions that if, at any time during the proceedings, the facts and matters set out in the claim form and accompanying evidence change in a material way relevant to the authorisation or eligibility conditions for certification of the collective proceedings, the class representative and their legal representatives have a duty to bring that matter promptly to the attention of the Tribunal and the other parties to the proceedings.

86. We do not consider that this should be a particularly onerous duty. It is, however, one which we consider an intrinsic part of the responsibilities of a class representative who is conducting major litigation on behalf of what is typically a very large class, in proceedings that (as noted above) impose substantial burdens on defendants. As the Tribunal observed in *Boyle v Govia* [2023] CAT 19, §12(3):

> "in collective actions, class representatives need to regard themselves as under a somewhat greater responsibility with regard to the conduct of those proceedings than a claimant in individual litigation. A claimant in individual litigation generally has no choice – if litigation is necessary – but to act as claimant. But that is not so with a class representative. Class representatives put themselves forward and, where given the responsibility of conducting the litigation if certified as an appropriate class representative, must act in a manner appropriate to that responsibility."

87. The need to provide updated information where there has been a material change of circumstances is, moreover, in our view not confined to the period after a collective proceedings order has been made. It also applies in the period between the filing of the collective proceedings claim form and the Tribunal's determination of the application for a collective proceedings order. During that period, the Tribunal may be required to give directions for a range of procedural steps, including service outside the jurisdiction, the proposed defendant's response to the application for a collective proceedings order, objections from interested parties (including prospective class members), directions for the hearing of the application, and any stay for alternative dispute resolution. These steps may be complex and may involve the parties in significant expense. They

can be case-managed efficiently and proportionately only if the Tribunal and other parties are informed promptly of any material change to the information originally provided by the proposed class representative.

88. In *Boyle,* where the class representative's expert witness withdrew from the proceedings, the Tribunal made clear that this sort of problem must be brought to the Tribunal's attention immediately: §12(4). Another obvious example is the situation (which has already unfortunately occurred several times in the Tribunal) where a class representative or proposed class representative dies or is otherwise temporarily or permanently unable to act in the proceedings. If that occurs, it must be addressed promptly by the parties and the Tribunal, in order for a determination to be made as to whether and if so how the proceedings can continue. Likewise, the Tribunal and other parties must be promptly informed of any change of legal representatives in collective proceedings, or any problems that arise with the availability of ATE insurance cover.

89. The same must also be true if there is a material change in the funding arrangements for the collective action, such as the withdrawal of the funder or a material change in the basis on which funding is advanced. Given that, as set out above, the proposed class representative's ability to fund its costs is a central factor in the assessment of the authorisation condition under r. 78, the class representative is under a duty to inform the Tribunal and other parties promptly of any material change to the funding arrangements that have been described in the collective proceedings claim form and any accompanying evidence, so that this can be taken into account by the Tribunal in its ongoing case management of the proceedings, and so that the other parties can make representations on the consequences of this as appropriate. In an extreme case, if the funding falls away entirely, the Tribunal will need to address whether the proceedings can continue at all and if so on what basis.

90. The Tribunal may also, in all of these situations, need to consider whether to direct that appropriate changes are made to any claims site set up for proposed class members to register their interest in the claim. That may be particularly relevant in cases where a publicly-announced change in the status of a claim might lead to another proposed class representative stepping in to file an

alternative claim (for example with a different legal representative and/or funder).

91. The duty of the class representative or proposed class representative to provide prompt updated information to the Tribunal and other parties is, in this regard, a manifestation of the general requirement set out in r. 4(7) for the parties and their representatives to cooperate with the Tribunal to give effect to the principles in r. 4, which include the requirement for the Tribunal to ensure that each case is dealt with justly and at proportionate cost.

92. In addition to those general duties, where the proposed class representative makes an *ex parte* application for service outside the jurisdiction, it is subject to an obligation to give full and frank disclosure of all matters of fact or law which are material for the Tribunal to know: see *Ennis v Apple* [2024] CAT 23, §145, referring to (among other cases) *Brink's-Mat v Elcombe* [1988] 1 WLR 1350, 1356. The corollary of that principle is that in any application for extension of the time for service out, which is also necessarily made *ex parte*, the applicant must likewise make full and frank disclosure of all matters that may constitute a ground for not granting the order sought. That includes the disclosure of material matters that have changed since the original application was made: *Gunn v Diaz* [2017] EWHC 157 (QB), [2017] 2 All ER (Comm) 129, §§53ff (addressing, in that case, the non-disclosure of a judgment of the Court of Appeal, which changed the basis for service out originally relied upon).

E. DISCUSSION

(1) Standard or indemnity costs?

93. It follows from our comments above that we do not consider that the PCR can be said to have behaved unreasonably when she filed the first four claims (in the Fender, Korg, Roland and Yamaha proceedings) during March to September 2022, with evidence stating that she was in the process of "finalising" the terms of a funding agreement with North Wall. On the material before the Tribunal, we have not seen anything to indicate that those statements were inaccurate at the time that they were made.

94. Once the negotiations with North Wall had broken down, however, the PCR was under a duty to inform both the Tribunal and the PDs in the Fender, Korg, Roland and Yamaha proceedings of that fact. There can be no doubt that this was a highly material change in circumstances of which the Tribunal and the parties were entitled to be aware, because the result was that the funding position was then categorically not as stated by the PCR in her witness statements filed in support of her applications in those proceedings, and the letters from North Wall exhibited to those witness statements. Indeed, the PCR's situation was then that she had no offer of funding whatsoever for the proceedings then on foot, whether "finalised" or not.

95. The PCR's duty to inform the Tribunal and the PDs of that change of position arose as part of her general duties of transparency, as set out above. It also arose, specifically, once the PCR made applications for extensions of the time for service out of the jurisdiction. In the cases of both Roland and Yamaha, extension applications were made on 24 March 2023 (granted on 19 April 2023) and on 26 September 2023 (granted on the same day). Those applications were subject to a duty of full and frank disclosure, with which the PCR did not comply.

96. As for the Casio proceedings, since North Wall had dropped out of the picture by the time the claim form was filed in May 2023, the PCR's witness statement simply claimed that the PCR was "making arrangements for the provision of third-party funding", without reference to North Wall. Mr Cavender submitted that this language was sufficiently clear for the Tribunal and Casio to understand that no funding had been secured and that the North Wall offer was no longer on the table. We disagree. We do not consider that the Tribunal or the parties should be required to draw inferences from statements in collective proceedings claim forms or accompanying witness evidence that are elliptical and incomplete, as the PCR's witness statement undoubtedly was, particularly given the earlier reference in the same statement to "[t]he funding arrangements that my legal representatives have put in place". It is now clear that, by then, the PCR had no funding at all, no alternative funder having come forward to replace North Wall. The "arrangements" supposedly being made were therefore, in fact,

merely the hope that another potential funder would come forward. The PCR should have said that candidly in her witness statement.

97. That was particularly important given that the PCR had exhibited to her witness statements in the Korg, Roland and Yamaha proceedings the 25 August 2022 letter from North Wall stating that it had agreed to enter into a litigation funding agreement for all five collective proceedings, including Casio. The PCR should have made absolutely clear, in the Casio proceedings, that this was no longer the case. Full and frank disclosure was also required in relation to the PCR's application to serve Casio Japan out of the jurisdiction, and (similarly) the PCR's repeated applications for extension of the deadline for service on Casio Japan. Failure to make clear that there was no offer of funding from anyone was therefore a clear breach of the PCR's duties of transparency and candour.

98. Instead of being candid and transparent with the Tribunal and the PDs, Pogust Goodhead repeatedly refused to answer the enquiries made by the solicitors for Yamaha, Roland and Korg over a period of three years from early 2023. The history of that correspondence is set out at §§32–43 above. Mr Cavender accepted that Pogust Goodhead's responses were opaque and unclear. They were in fact unhelpful, uncooperative, deliberately obfuscatory and misleading. It was not accurate to say that the PCR was "altering" her funding arrangements or making "amendments" or "revisions" to the proposed agreements. The truth of the matter was that by March 2023 there were no funding arrangements to alter, amend or revise, since the proposed agreement with North Wall had never come to fruition and the negotiations with North Wall had ceased. The Tribunal and the PDs were entitled to know that, and should have been informed of the position promptly after the negotiations broke down. Instead, Pogust Goodhead spent three years refusing to provide that information.

99. Pogust Goodhead seems to have thought that it was entitled to withhold this information from the PDs and the Tribunal until the very last minute before a CMC was held before the Tribunal – indeed it steadfastly refused to confirm the position even in 2026, until the PCR's skeleton argument filed on 12 March 2026 for the March CMC finally revealed that the funding agreement with North Wall had never in fact materialised. That position was, in our judgment, wholly

misconceived, for the reasons that we have already given. The Tribunal and the PDs should have been given full and transparent information as soon as the funding arrangements were no longer as stated in the collective proceedings claim forms.

100. We should emphasise that we do not suggest that a proposed class representative has a duty to provide a "running commentary" on any and all developments in their claim, whether before or after certification. Rather, as we have made clear in this judgment, the duty is to inform the Tribunal and the parties to the proceedings of a material change in the facts and matters set out in the claim form and accompanying evidence, which are relevant to whether the proceedings should be certified, or whether the certification should be varied or revoked. In the present case, that required the PCR to inform the Tribunal and PDs, promptly after the end of negotiations with North Wall, that North Wall was no longer offering funding for the proceedings and that no alternative funding had by then been secured (even if the PCR considered, at the time, that there was a prospect of obtaining funding from other potential sources).

101. Revealingly, Mr Cavender accepted that Pogust Goodhead's refusal to confirm the position was "an opaque way of keeping the thing going while they seek funding". That indicates a recognition of what might well have happened if the truth had been disclosed. Had the Tribunal been told that the proposed funding had fallen away, once the negotiations with North Wall had broken down, it may well have declined to extend time for service out of the jurisdiction (in the case of Roland and Yamaha), or to make any order for service out (in the case of Casio). Instead, the Tribunal could have listed a hearing to consider the dismissal of the applications for a CPO, in the terms of the hearing that was eventually listed for June 2026, or could (at least) have given directions to ensure that no further costs would be incurred by the PDs until the PCR's funding was resolved. The difference would have been that the matter could have been considered and addressed by the Tribunal in 2023, rather than continuing to run on for another three years.

102. In these circumstances we have concluded that the failure of the PCR to inform the Tribunal and parties of the breakdown of negotiations with North Wall, and

the consequent absence of any funding agreement, was unreasonable to a high degree and outside the norm of litigation practice. It was a breach of the general duties of the PCR in the conduct of collective proceedings, including under r. 4(7), as well as a breach of the PCR's duty to provide full and frank disclosure in relation to the applications for service out of the jurisdiction (and extensions of time for such service).

103. We have been told that negotiations with North Wall ceased at some point between January and March 2023. We will therefore assess costs from April 2023 on the indemnity basis. The costs prior to that date will be assessed on the standard basis.

(2) Summary assessment of the PDs' costs

(a) General comments

104. Given the disparity in the costs claimed, we will address each PD in turn. Before doing so, however, we make some general comments applicable to all five PDs.

105. The first point to make is that we do not consider that the stage at which this litigation reached, and the nature of these proceedings, warrants a claim for solicitor costs at in excess of the London band 1 Guideline Rates. While in some cases an uplift has been allowed, a "clear and compelling" justification is required for the application of a rate in excess of the Guideline Rates, bearing in mind that London band 1 is already calibrated to reflect "heavy commercial and corporate work": *Spottiswoode*, §17. The Tribunal recently applied the Guideline Rates without an uplift in *Spottiswoode*, §§17–19, *Rowntree v PRS* [2026] CAT 25, §33 and *Gutmann v Vodafone* [2026] CAT 44, §§47–48.

106. None of the features of the present case indicates that this was a case of such unusual complexity as to justify rates above the guidelines for London band 1, particularly in circumstances where the case did not even reach the stage of a CMC prior to a certification hearing.

107. Secondly, in respect of the additional costs claims of Korg, Roland and Yamaha submitted on 2 July 2026, those claims appear to relate to the costs of filing revised costs schedules as requested by the Tribunal (to reflect Guideline Rates) and filing responsive costs submissions seeking to maintain the original costs claims at actual hourly rates, and in Yamaha's case to justify its claim for costs substantially in excess of those incurred by any of the other PDs. Given our conclusion above at §105 regarding the appropriate hourly rates, and our specific comments on Yamaha's costs at §§116–122 below, we reject those submissions.

108. We therefore do not consider it appropriate to make any costs award for those PDs in relation to the costs incurred after 22 June 2026, and do not therefore include the supplemental costs schedules filed on 2 July 2026 in our costs assessment below.

(b) Fender

109. Fender's costs, pre- and post-April 2023, and revised down to London band 1 Guideline Rates, are as follows (in £):

	Pre-April 2023	**Post-April 2023**	**Total**
Solicitors	13,356	84,198	97,554
Counsel	4,080	54,890	58,970
Other	-	1,726	1,726
Total	**17,436**	**140,814**	**158,250**

110. The PCR advances no criticisms of the level of costs claimed by Fender (if revised down to Guideline Rates), and indeed positively contends that the Fender, Korg and Roland costs schedules "provide a reliable benchmark for what was reasonably required". In particular, the PCR comments that the claim by Roland is a reliable comparator, providing a realistic measure of the costs incurred by an active and well-advised defendant. While Fender's original costs schedules claimed solicitor costs at almost double the Guideline Rates, when

revised down to Guideline Rates its total cost claim is considerably below that of Roland.

111. We therefore consider it appropriate to summarily assess Fender's costs in the amount of **£158,250**.

(c) Korg

112. Korg's costs, pre- and post-April 2023, revised down to London band 1 Guideline Rates for the work done by Osborne Clarke, but allowing recovery at the actual rates for the initial work done by EMW Law, are as follows (in £):

	Pre-April 2023	**Post-April 2023**	**Total**
Osborne Clarke	-	127,288	127,288
EMW Law	26,667 (2022–March 2025)		26,667
Counsel	7,802	-	7,802
Total			**161,757**

113. As with Fender, the PCR advances no criticisms of the level of costs claimed by Korg if revised down to Guideline Rates. For the small part of the cost claim that relates to the work done by EMW Law, we consider that it is appropriate for Korg to recover costs at the actual rates charged, given that those are significantly lower than the London band 1 rates. Even with that small adjustment, Korg's total cost claim remains the lowest of the cost claims of all of the PDs; and indeed its original costs claim was only a little above the revised schedule applying Guideline Rates. We therefore consider it appropriate to summarily assess Korg's costs in the amount of **£161,757**.

(d) Roland

114. Roland's costs, pre- and post-April 2023, and revised down to London band 1 Guideline Rates, are as follows (in £):

	Pre-April 2023	Post-April 2023	Total
Solicitors	52,219	145,822	198,040
Counsel	15,746	55,000	70,746
Experts	19,016	-	19,016
Total	**86,980**	**200,822**	**287,802**

115. Roland's original costs claim was based on solicitor rates significantly above Guideline Rates. As noted above, however, once revised down to Guideline Rates, the PCR considers that the Roland costs claim is realistic and appropriate, and thus a reliable comparator for the costs claims of the other PDs. We therefore consider it appropriate to summarily assess Roland's costs in the amount of **£287,802**.

(e) Yamaha

116. Yamaha's costs, pre- and post-April 2023, and revised down to London band 1 Guideline Rates, are as follows (in £):

	Pre-April 2023	Post-April 2023	Total
Solicitors	191,427	495,251	686,678
Counsel	25,825	105,605	131,430
Experts	138,429	953,160	1,091,589
Other	277	47,562	47,839
Total	**355,958**	**1,601,578**	**1,957,536**

117. Yamaha's costs are the highest of all five PDs, and even when assessing those costs on the indemnity basis we are unable to find any justification for the extraordinary level of the costs claimed, in respect of proceedings that did not even progress to a first CMC prior to the certification hearing.

118. We acknowledge that the claim against Yamaha may have been more extensive than the scope of the claim against the other PDs. We also acknowledge that (as

the Tribunal observed in *Riefa v Apple (Costs)* [2025] CAT 34, §23), it is appropriate for a proposed defendant to start work on its substantive defence as soon as a collective proceedings claim form has been received; and indeed it will need to do so in order to respond to the application for certification and to avoid delay if the proceedings are certified. In the present case, therefore, it was not unreasonable for Yamaha to start to consider, with its economic experts, the scope of the claim against it and the merits of the various elements of that claim. We do not, however, consider it reasonable for Yamaha to have incurred expert costs of anything resembling the amount claimed in the present case.

119. We also have considerable sympathy with the PCR's objections regarding the extent of the costs claim for solicitors and counsel, which amounts (on the revised costs schedules at Guideline Rates) to more than three times the costs incurred by solicitors and counsel for Roland. It is apparent, from the details provided by Yamaha, that a large part of those costs arose from the vast amount of partner time spent by Dentons – a total of over 500 hours during the course of these proceedings. Partner engagement on that scale is, we consider, wholly unwarranted given the early stage that these proceedings had reached.

120. In those circumstances we do not consider it appropriate to summarily assess the costs of Yamaha. Instead, we will order detailed assessment with a payment on account. In respect of the solicitor, counsel and other costs, we agree with the PCR that the Roland costs provide an appropriate comparator. We take account that the scope of the Yamaha claim (in terms of the range of instruments allegedly affected) was more extensive than that of the Roland claim, and that Yamaha's preliminary work on its expert evidence went considerably further than that of Roland. For the reasons given above, we do not consider it unreasonable for Yamaha to have started to consider the economic basis of the claim. We therefore consider it appropriate to make some allowance for the costs of discussing the evidence with the economic experts. We will therefore order a payment on account in relation to solicitor, counsel and other costs of £350,000.

121. In respect of the expert costs, we consider it appropriate to set the payment on account at £200,000. We acknowledge that this is considerably below the sum

claimed. We note, however, that in the *Riefa* case, where the claim was advanced on a basis not dissimilar from that of the present case (alleged unlawful agreements said to have suppressed price competition, and including a claim for loss based on umbrella effects), and where as in this case expert work had been done but no expert reports produced, the sum ordered to be paid on account for expert evidence for each proposed defendant was £162,500 (see [2025] CAT 34 §§32–33). In that case, costs were ordered on the standard basis, but the case had reached the stage of the certification hearing, which is considerably further progressed than the present proceedings.

122. We will therefore order a payment on account in respect of Yamaha's costs in the total sum of **£550,000**, with the remainder being subject to detailed assessment.

(f) Casio

123. Casio's costs, pre- and post-April 2023, and revised down to London band 1 Guideline Rates, are as follows (in £):

	Pre-April 2023	**Post-April 2023**	**Total**
Solicitors	12,174	759,071	771,245
Counsel	-	35,260	35,260
Other	-	4,500	4,500
Total	**12,174**	**798,831**	**811,005**

124. Our assessment of Casio's costs is similar to our assessment of Yamaha's costs. The total amount of Casio's claimed costs is more than twice the costs claimed by Roland. Those costs reflected an even greater amount of partner time than claimed by Yamaha – in Casio's case over 980 hours. We consider that wholly inexplicable and extravagant, particularly in circumstances where (unlike Yamaha's experts) Casio's experts did not get as far as producing any work product, and the legal team therefore did not have to spend time reviewing any preliminary economic evidence.

125. Taking account of the absence of economic evidence to review, we consider that it is appropriate to order a payment on account in respect of Casio's costs in the total sum of **£300,000**, with the remainder being subject to detailed assessment.

F. CONCLUSIONS

126. The PCR is permitted to withdraw all five CPO applications, and those applications are therefore dismissed.

127. The costs of the PDs prior to April 2023 are to be assessed on the standard basis, and the costs from April 2023 onwards are to be assessed on the indemnity basis. We have summarily assessed the costs of Fender, Korg and Roland as follows:

(1) Fender: £158,250;

(2) Korg: £161,757; and

(3) Roland: £287,802.

128. We will order the PCR to make the following payments on account to Yamaha and Casio, with the remainder of the costs of each of those PDs to be subject to detailed assessment if not agreed:

(1) Yamaha: £550,000; and

(2) Casio: £300,000.

129. This judgment is unanimous.

The Honourable Mrs Justice Bacon
President

Hugh Kelly

Paula Riedel

Charles Dhanowa CBE KC (Hon)
Registrar

Date: 13 July 2026