Neutral citation [2026] CAT 65

Case No: 1720/7/7/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

5 August 2026

Before:

THE HONOURABLE MR JUSTICE MEADE
(Chair)
JOHN DAVIES
ROBERT HERGA

Sitting as a Tribunal in England and Wales

BETWEEN:

OR BROOK CLASS REPRESENTATIVE LIMITED

Proposed Class Representative

\- v -

(1) ALPHABET INC.

(2) GOOGLE LLC

(3) GOOGLE IRELAND LIMITED

(4) GOOGLE UK LIMITED

(5) GOOGLE ASIA PACIFIC PTE. LTD.

(6) GOOGLE COMMERCE LIMITED

Proposed Defendants

Heard at Salisbury Square House on 8 July 2026

JUDGMENT (CERTIFICATION)

APPEARANCES

Kieron Beal KC and Ali Al-Karim (instructed by Geradin Partners Limited and KP Law Limited) appeared on behalf of the Proposed Class Representative.

Sarah Abram KC, Alfred Artley and Edmund Eustace (instructed by Simmons & Simmons LLP) appeared on behalf of the Proposed Defendants.

Francis Hornyold-Strickland (instructed by Hausfeld & Co. LLP) appeared on behalf of the Class Representative in Case 1606/7/7/23 *Nikki Stopford v (1) Alphabet Inc. (2) Google LLC, (3) Google Ireland Limited, and (4) Google UK Limited*.

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A. INTRODUCTION

1. This judgment follows the hearing on 8 July 2026 of an application dated 15 April 2025 for a collective proceedings order **(CPO)** under s. 47B of the Competition Act 1998 (**CA**) by Or Brook Class Representative Limited (**OBCRL** or the **PCR**) (the **CPO Application**). OBCRL is a special purpose vehicle formed for the purpose of this claim; the sole director and member is Dr Or Brook. The Proposed Defendants are six companies in the Google group. It is unnecessary for present purposes to distinguish between them, so we will refer to them collectively as **Google**. We refer to proposed class members as **PCM**s.

2. The CPO Application concerns claims on behalf of a proposed class of advertisers. Broadly, the PCR alleges that Google has abused dominant positions held in markets connected with mobile operating systems, app distribution, general search services and search advertising, causing PCMs to suffer loss. The nature of the alleged abuse is described in greater detail below.

3. The claims are brought on an aggregate basis pursuant to s. 47C(2) CA and seek damages, compound interest and costs. The PCR's expert economist, Professor Scott-Morton, estimates total damages in the region of £5 billion.

4. The present claim overlaps significantly with the consumer collective proceedings in Case 1606/7/7/23 *Nikki Stopford v Alphabet Inc., Google LLC, Google Ireland Limited, and Google UK Limited* (***Stopford***), which concern substantially the same underlying conduct and were certified on an opt-out basis on 22 November 2024 (*Stopford v Alphabet* [2024] CAT 67).

5. Mr Beal KC made the oral submissions for the PCR at the hearing. Ms Abram KC made most of the oral submissions for Google, with Mr Artley and Mr Eustace addressing some of the subsidiary points. Mr Hornyold-Strickland was present at the hearing for Ms Stopford but did not make any submissions, written or oral.

6. Ms Abram KC for Google stated at the hearing that Google's objections to certification fall into four broad groups of issues:

   (1) Issues relating to the PCR's funding arrangements (including in relation to the settlement of the carriage dispute – see below) and its level of costs, both budgeted and incurred to date.

   (2) Issues with certain amendments the PCR has sought the Tribunal's permission to make to the claim form.

   (3) Issues with the PCR's class definition.

   (4) Whether the proceedings should be certified on an opt-out basis, as proposed by the PCR, or on an opt-in basis, as contended for by Google. Issues as to the PCR's arrangements for the distribution of any potential damages award and the costs and benefits of the proposed proceedings are related to this question of opt-in/opt-out.

7. As to (4), Google said that if issues (1) to (3) were satisfactorily addressed then it did not oppose opt-in certification, but it opposed opt-out certification in any scenario. The conditionality on (1) to (3) of the non-opposition to opt-in certification was not very clear to us, in particular in that it was not clear to us which points Google said had to be addressed now and which could be addressed later in the proceedings, but in any event we have dealt with them and do not consider any of them a bar to certification.

B. BACKGROUND TO THE PROPOSED CLAIM

(1) The Kaye and Brook Proceedings

8. In addition to the overlap with *Stopford,* the conduct challenged in the present proceedings was the subject of a separate proposed collective claim brought on behalf of advertisers by Mr Roger Kaye KC (the ***Kaye*** proceedings). Mr Kaye's claim was filed on 27 May 2025, i.e. following the filing of the present claim (which where necessary will be referred to as the ***Brook*** proceedings). The

existence of the two overlapping advertiser claims gave rise to a carriage dispute as to which proposed class representative should be authorised to pursue the claims on behalf of the PCMs.

9. The carriage dispute was heard by the Tribunal on 6 and 7 October 2025. At the conclusion of the hearing, the Tribunal reserved its decision but encouraged the parties to consider whether a consensual resolution could be achieved. In particular, the Chair said:

> "We think it is unlikely that we will reach a decision that this is a clean decision all one way. I think it is much more likely we will reach a decision that there are factors in both directions. So against all of that background, we do encourage the parties to think about whether it is worth a further discussion. We do not want to intrude on the reasons why it did not happen before; we are not going to interrogate about those sensitive and potentially privileged matters. It may be that there is some roadblock that means what I am saying is completely unreal, but some points have fallen away, and we hope the indication that we do not see this as an easy clear cut one might provide some food for thought…"

10. Following the hearing, the *Brook* and *Kaye* teams indicated to the Tribunal that they were negotiating a resolution to the carriage dispute. By letter dated 24 October 2025, they informed the Tribunal that discussions had taken place and that both sides considered there to be a realistic prospect that the carriage dispute could be resolved by agreement. Judgment on carriage was accordingly deferred pending the outcome of those discussions.

11. On 10 November 2025, the parties informed the Tribunal that an agreement in principle had been reached. In broad terms, it was agreed that the *Brook* proceedings would continue as the sole set of proposed collective proceedings, with OBCRL remaining as the sole proposed class representative. The *Kaye* proceedings would be stayed pending determination of the present CPO Application, and members of the *Kaye* legal and expert teams would assume agreed roles within the *Brook* proceedings.

12. The agreement further provided for Mr Kaye to become chairperson of the consultative panel supporting the proposed claim, for the respective legal and expert teams to operate as a combined team, and for revised funding and insurance arrangements to be implemented. The proceedings would continue on

the basis of the existing *Brook* claim, subject only to amendments reflecting the agreed consolidation and related matters.

13. The parties subsequently filed the documentation required to give effect to the agreement, including an application by Mr Kaye for a stay of the *Kaye* proceedings and an application by the PCR to amend its claim form. By order made on 7 April 2026 (drawn on 8 April 2026), the Tribunal stayed the *Kaye* proceedings. The order further provided that, if the *Brook* proceedings are certified, the *Kaye* proceedings may be withdrawn. Alternatively, should certification be refused, an application may be made for their withdrawal or for further directions, including the lifting of the stay.

14. Accordingly, the CPO Application proceeds as the sole proposed collective proceedings in respect of the conduct alleged, with the *Brook* and *Kaye* teams acting pursuant to the agreed consolidated structure and Mr Kaye serving as chairperson of the consultative panel.

(2) The abuses alleged

15. The PCR alleges that Google is dominant in a number of markets, including:

(1) the worldwide market for licensable smart mobile operating systems;

(2) the worldwide market for Android app stores (the Play Store);

(3) the various national markets for general search services; and

(4) the UK (or wider) market for search engine management services.

16. It is alleged that Google has abused that dominance through a series of exclusionary practices designed to prevent or discourage effective competition in general search and search advertising.

17. The alleged abuse comprises three principal elements. First, in relation to the Android ecosystem, it is alleged that Google imposed conditions in its mobile application distribution agreements with Android device manufacturers

(**OEM**s), which had the effect of tying Google Search to the Play Store, and Chrome to Google Search and the Play Store. The PCR also relies on anti-fragmentation agreements and related obligations which are said to have restricted the development of alternative versions of Android (**Android Forks**). In addition, Google is alleged to have offered substantial financial incentives to OEMs and Mobile Network Operators (**MNO**s), including pursuant to placement agreements, revenue-sharing agreements and mobile incentive agreements, in order to secure the pre-installation and prominent placement of Google Search and Chrome and to discourage the installation of competing search services.

18. Second, the proposed claim concerns agreements with browser developers under which Google Search was set as the default search engine in exchange for monetary incentives. Particular reliance is placed on Google's arrangements with Apple, although the PCR also refers to agreements with other browser developers, including Mozilla and Opera.

19. Third, the PCR challenges Google's conduct in relation to Search Ads 360 (**SA360**), an advertising management platform used by advertisers to manage campaigns across different search providers. It is alleged that Google introduced functionalities for its own advertising services while refusing, or delaying, the introduction of equivalent functionality for Microsoft's competing offerings, thereby restricting advertisers' ability to effectively use multiple search/advertising platforms (known as "multi-homing").

20. The PCR's case is that these practices were mutually reinforcing. In particular, the tying arrangements and anti-fragmentation obligations are said to have ensured that OEMs wishing to distribute devices with the Play Store were, in practical terms, also required to distribute Google Search and Chrome. It is further alleged that restrictions on Android Forks prevented the emergence of alternative Android ecosystems capable of operating independently of Google's services and thereby reinforced the central role of the Play Store within the Android ecosystem.

21. The financial incentive arrangements are likewise said to have made it commercially unattractive for OEMs, MNOs and browser developers to favour competing search providers. According to the PCR, those arrangements ensured that Google Search and Chrome were pre-installed, prominently placed and/or set as the default on a substantial proportion of devices and browsers, with the result that users were overwhelmingly likely to use Google Search rather than rival search engines.

22. The cumulative effect of the alleged practices is said to have been the foreclosure of competition, or at least the raising of barriers to entry and expansion, such that rival search providers were unable to achieve the scale necessary to compete effectively with Google. It is further alleged that Google's conduct in relation to SA360 biased advertisers towards Google's own search advertising services and inhibited effective multi-homing.

23. The PCR's case is that these various strands of conduct formed part of a single and continuous abuse of dominance directed towards securing and maintaining Google's position in general search and search advertising. It is alleged that, as a result, Google was able to charge supra-competitive prices for search advertising and reduce the value obtained from such advertising. The consequence, according to the PCR, was that advertisers paid more for search advertising and achieved a lower return on advertising spend than would have been the case in a competitive market.

24. The claim is advanced on both a follow-on and a standalone basis. The PCR relies, in part, on the European Commission's decision of 18 July 2018 in case AT.40099 *Google Android* (**Google Android (EC)**) as subsequently reviewed by the General Court and the Court of Justice of the EU, and contends that certain aspects of the conduct alleged in these proceedings correspond to conduct found to be unlawful in those proceedings.

25. According to the PCR, the tying arrangements and anti-fragmentation obligations described above were conclusively established by Google Android (EC), although it is alleged that such conduct continued beyond the period considered by the Commission. The PCR further relies on aspects of the

Commission's findings in relation to Google's financial incentive arrangements, whilst acknowledging that part of the Commission's decision concerning those arrangements was annulled by the General Court.

26. The PCR's case, it is said, is supported by other evidence, first from the Competition and Markets Authority, in the form of its: online platforms and digital advertising market study dated July 2019; mobile ecosystems market study final report dated 10 June 2022; mobile browsers and cloud gaming market report dated 12 March 2025; and its notices under s. 11(1) of the Digital Markets, Competition and Consumers Act 2024 to commence initial strategic market status investigations into Google. It is also said to be supported by the judgment of the District Court for the District of Columbia in *United States v Google* 20-cv-3010 (APM) dated 5 August 2024.

C. LEGAL FRAMEWORK

27. The legal framework for the granting of a CPO is set out in s. 47B CA and in Rules 77, 78 and 79 of the Competition Appeal Tribunal Rules 2015 (the **Rules**). The Tribunal must be satisfied that a proposed class representative can be authorised to act as class representative in accordance with r. 78 (the **Authorisation Condition**) and that the claims are eligible for inclusion in collective proceedings under r. 79 (the **Eligibility Condition**). The requirements under both conditions were described in *Spottiswoode v Airwave* [2025] CAT 60 (§§27–33) (also cited in *Stasi v Microsoft* [2026] CAT 34 at §25):

> "27. First, the Tribunal must be satisfied that the entity bringing the proceedings can be authorised as the PCR (the authorisation condition): s. 47B(5)(a) and r. 77(1)(a). The authorisation condition is met if the Tribunal considers that it is 'just and reasonable' for the PCR to act as a representative in the proceedings: s. 47B(8)(b) and r. 78(1)(b).
>
> 28. The factors relevant to the determination of whether it is just and reasonable for the PCR to act as the class representative are set out in r. 78(2). These include whether the PCR 'would fairly and adequately act in the interests of the class members' and whether the PCR will be able to pay the defendant's recoverable costs if ordered to do so.
>
> 29. Under r. 78(3), in determining whether the PCR would act fairly and adequately in the interests of the class members, the Tribunal must take into account all the circumstances, including:

(1) If the PCR is not a member of the class (as in the present case), whether it is a pre-existing body and the nature and functions of that body: r. 78(3)(b); and

(2) Whether the PCR has prepared a plan for the collective proceedings which satisfactorily includes a method for bringing the proceedings on behalf of the class; a procedure for governance and consultation taking into account the size and nature of the class; and any estimate of and details of arrangements as to costs, fees or disbursements which the PCR may be ordered to provide: r. 78(3)(c).

30. Second, the claims must be eligible for inclusion in collective proceedings (the eligibility condition): s. 47B(5)(b) and r. 77(1)(b). The eligibility condition comprises three cumulative requirements, set out in s. 47B(6) and r. 79:

(1) The proposed claims must be brought on behalf of an identifiable class of persons: r. 79(1)(a).

(2) The proposed claims must raise common issues, or, in other words, the same, similar or related issues of fact or law: s. 47B(6) and r. 79(1)(b). (3) The proposed claims must be suitable to be brought in collective proceedings: s. 47B(6) and r. 79(1)(c).

31. As to whether a claim is brought on behalf of an identifiable class of persons, the Tribunal's Guide to Proceedings 2015 notes the following at §6.37: 'It must be possible to say for any particular person, using an objective definition of the class, whether that person falls within the class. The need for an identifiable class of persons serves several purposes. It sets the parameters of the claim by clearly delineating who is within the class and who is not, thus determining who will be bound by any resulting judgment. It affects the scope of the common issues raised by the collective proceedings. And it has practical implications, such as in relation to the requirements to give notice. Indeed, it is the class definition which potential class members will read when considering whether to opt in or out of the proceedings.'

32. Rule 79(2)(e) also requires the Tribunal to consider, in the context of suitability of the claims to be brought in collective proceedings, whether it is possible to determine in respect of any person whether that person is or is not a member of the class.

33. As the Tribunal emphasised at §2 of *Gormsen v Meta* [2024] CAT 11, in considering whether to make a CPO, the Tribunal must consider whether the requirements of both the authorisation and eligibility conditions are satisfied, whether or not these are raised by the parties."

28. Opt-in and opt-out proceedings are defined in ss. 47B(10) and (11) CA:

"(10) 'Opt-in collective proceedings' are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.

(11) 'Opt-out collective proceedings' are collective proceedings which are brought on behalf of each class member except—

> (a) any class member who opts out by notifying the representative, in a manner and by a time specified, that the claim should not be included in the collective proceedings, and
>
> (b) any class member who—
>
> > (i) is not domiciled in the United Kingdom at a time specified, and
> >
> > (ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings."

29. The approach of the Tribunal as to whether to certify proposed collective proceedings on an opt-in or opt-out basis is set out in r. 79(3) of the Rules:

> "(3) In determining whether collective proceedings should be opt-in or opt-out proceedings, the Tribunal may take into account all matters it thinks fit, including the following matters additional to those set out in paragraph (2)—
>
> > (a) the strength of the claims; and
> >
> > (b) whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover."

30. A number of authorities were referred to by both parties. Most of the discussion around relevant authorities however centred around the implications of the Supreme Court's decision in *Evans v Barclays Bank Plc and others* [2025] UKSC 48, which was delivered in December 2025. There, the Supreme Court considered in detail the form of assessment to be undertaken by the Tribunal when considering whether to certify collective proceedings on an opt-in or opt-out basis. It is useful to set out in full relevant paragraphs of that judgment given the dispute between the parties as to whether the proceedings should be certified on an opt-in or opt-out basis:

> "94. To sum up, if the claim is very weak it is likely to be more difficult to justify resort to the opt-out procedure as striking a fair procedural balance between the claimants and the defendant(s). It is also likely to be difficult to justify resort to the opt-out procedure as a proportionate way of providing access to the Tribunal for the vindication of such a claim.
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> 95. The assessment involved is not all or nothing. The detriments and potential unfairness to a defendant of an opt-out procedure are real, and do not drop out of the picture just because the claimants have claims which might have some merit. The less the Tribunal has confidence about that, the harder it is to conclude that imposing those additional detriments on the defendant is fair and

a price worth paying in the overall interests of justice. Contrary to the conclusion of the Court of Appeal (see para 69 above), it is indeed appropriate, in our view, to view the strength of the claim in terms of a sliding scale.

96. The Tribunal adopted this approach, stating (para 374(3)) that 'as a general rule it seems to us that the weaker a case, the less justification there is for certifying on an opt out basis. Of course, this is one factor amongst many'. We agree. The Tribunal analysed the pleaded causes of action with care, in the light of Mr Evans' proposed economic theory of harm. Having done so, it concluded that the pleaded case on causation was both intrinsically weak and that it lacked the necessary particularity: para 375. On the basis that the pleaded claims suffered from such fundamental weakness, we consider that the Tribunal majority were right to regard this as 'a powerful reason *against* certifying on an opt-out basis': ibid (emphasis in original).

…

99. In doing so, the Court of Appeal started from the position that, where a collective proceedings order is to be made, section 47B and rule 79 do not establish any legislative presumption in favour of either opt-in or opt-out; rather, the choice is to be made by the Tribunal on the basis of all the circumstances of the case: para 68. We agree that there is no general legislative presumption one way or the other as regards the choice between opt-in and opt-out proceedings and that the Tribunal has a wide discretion to decide between them. At the same time, however, rule 79(3) specifically identifies the strength of the claim as a factor which, depending on the circumstances, may have weight in exercising that discretion. The legislation would not have singled out this factor (and that of the practicability of opt-in proceedings) from the entire range of factors potentially relevant to the choice between the opt-in and opt-out procedures if it was intended that it should generally be regarded as a neutral consideration. The object of these procedures is to promote access to justice for claimants while not imposing a disproportionate burden on defendants. Therefore, the natural explanation of the significance attached to this factor is that the stronger the claim, the greater the confidence the Tribunal can reasonably feel that certifying an opt-out claim will achieve a just outcome (eg by way of settlement) notwithstanding the additional burden imposed on the defendant.

…

112. The implication of rule 79(3)(b) is that, if it is practicable for the proceedings to be brought as opt-in proceedings, then generally speaking they should be. The principle is clear: if it is practicable for claimants to bring opt-in proceedings, it is unlikely to be proportionate to confer upon them the additional advantages associated with the opt-out procedure and unlikely to be reasonable to expect the defendants to have to face the additional commercial pressures to settle the claims regardless of their true merit which that would involve. As with the strength of the claim, this is only one factor (though clearly, since it is singled out in the rule, potentially an important one) which feeds into the overall evaluation which the Tribunal has to make. Its weight may vary from case to case, depending on just how difficult it might be for the claimants to bring their claims on an opt-in basis. The Tribunal noted this at para 121 of its judgment.

…

115. Another feature of the collective proceedings regime is also relevant. The regime provides additional opportunities for claims to be brought and vindicated, but it does not guarantee that this will be possible in every situation where there has been a breach of competition law. The regime still operates on the basis of commercial factors that affect whether individual claimants or third party funders are prepared to provide the funding necessary to bring the proceedings. What the regime seeks to provide is a reasonable opportunity, not available previously, for a group of claimants to club together (or, in the case of opt-out proceedings, to be grouped together by a claims entrepreneur) to vindicate their rights in a way which would not be practical or cost-effective if they had to proceed individually. But the regime is not intended to immunise them completely from the usual background commercial considerations which have a role in determining when proceedings are thought to be sufficiently viable to be worthwhile.

…

119. In assessing the practicability of bringing opt-in proceedings, we agree with the Tribunal (see para 122(5) of its judgment) that an objective assessment is called for, in the sense that it should not depend on evidence about the subjective state of mind of, and legal advice received by, individual potential claimants. The subjective state of mind of a claimant regarding whether it is worthwhile to join in opt-in collective proceedings will almost invariably be informed by legal advice received. That advice can be expected to cover the likelihood of the claim succeeding or settling, the amount of damages that could potentially be recovered and the likely costs and risks of litigation. Legal professional privilege will attach to that advice, but it is difficult to interpret the response from potential claimants without knowing how they have been advised. So there are legal barriers to approaching the question of practicability on a subjective basis. The Tribunal could not be confident that it has an accurate picture of a claimant's state of mind without legal professional privilege being waived, and it would be inappropriate to place a party under pressure to waive such privilege as the price for seeking to persuade the Tribunal to certify opt-out proceedings. Moreover, where there are large numbers of potential opt in claimants, as will be usual, it is not feasible to produce evidence of the subjective states of mind of all of them. More fundamentally, the Tribunal's decision as to the appropriate procedure should not depend on the quality and accuracy of the advice which potential claimants have in fact received. The inference to be drawn is that rule 79(3)(b) requires the Tribunal to stand back and make an objective determination by reference to the inherent likelihood of how a reasonable person in the position of a potential claimant would assess the situation.

120. This does not require the Tribunal to assume that the position of all potential claimants is the same. It is relevant to consider the composition of the proposed class and whether it is relatively homogeneous or comprises potential claimants of different types and with different sizes of potential claim. The identification of distinct groups of claimants is a matter for evaluative assessment by the Tribunal depending on the particular facts, and is one in relation to which it again has a wide discretion. In our view, where the Tribunal identifies groups of claimants with distinct profiles relevant to the assessment to be made, it should consider the practicability of bringing an opt-in claim for each group separately; and if this yields a different conclusion for each group, it should then stand back and make an overall assessment of the balance of justice having regard to those underlying assessments. In substance, this is the approach which the Tribunal majority adopted in this case.

…

> 123. In the light of its assessment of the composition of the class, the Tribunal majority stood back and made the overall assessment which was required. It concluded that it should not allow a sub-class of persons whose total claims were by value a tiny fraction of the aggregate claim to alter their conclusion on practicability. 'That would be to allow the tail to wag the dog': see para 381(10).
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> 124. It is difficult to see why the financial institutions and large entities with substantial claims should be allowed to proceed by way of opt-out collective proceedings. The additional leverage that this would give them cannot be justified having regard to their particular circumstances. The Tribunal was entitled to conclude that they should not be permitted to bolster their position by pointing to and bundling themselves together with another group of potential claimants with a different profile who, for quite separate reasons, are not able to bring their claims. It would certainly not be appropriate for the Tribunal to order opt-out proceedings simply to give the large commercial operators the advantage arising from the expectation that the smaller entities for whose benefit the opt out proceedings are supposedly being brought will increase the overall award of damages but will not ultimately come forward at the end of the day to claim their share of the award."

31. The Tribunal has more recently engaged with the question of certification on an opt-in or opt-out basis further to the *Evans* judgment in *Stasi* (above at §27), *Rodger v Alphabet* [2026] CAT 49 and *Ennis v Apple* [2026] CAT 55. In all three judgments, when addressing the question of how to approach the question of the practicability assessment, the Tribunal referred to the statement in §120 of *Evans* that the Tribunal should "stand back and make an overall assessment of the balance of justice". The PCR refers to these judgments, in which opt-in or partially opt-in certification was sought (and rejected) by the defendants or proposed defendants in place of opt-out certification, as authorities for its position that opt-in certification is not appropriate here.

32. Google on the other hand points to *Evans* as support for its argument that the proceedings should be certified on an opt-in basis. In particular it notes that the long tail of smaller claims from smaller PCMs in the present proceedings should not be allowed to "wag the dog" of the higher value claims by a far smaller percentage of PCMs (as referred to in §123 of *Evans*). It argues that the large entities which make up the bulk of the claim by value should not, further to §§123–124 of *Evans*, be allowed to bolster their position by pointing to and bundling themselves with other PCMs whose claims make up a tiny fraction of the aggregate claim.

33. With regard to the requirement that the PCR should consider the form of distribution of any potential damages award, Google cites the level of take-up by the class as referred to in *Gutmann v First MTR South Western Trains Limited* [2025] CAT 72 in support of its argument that the PCR should engage more at this stage with the level of take-up by the PCMs of any potential damages award, pointing out that, in that case, take-up was less than 1%. Google also points to *Spottiswoode v Nexans* [2024] CAT 31 (at §42ff) and *Waterside Class Limited v Mowi ASA* [2026] CAT 32 in this regard. In *Waterside*, where certification was not granted, the Tribunal stated at §49 that:

> "…it is important, on an application for a CPO, for this Tribunal to consider the financial benefit to the class as a whole in the event that these proceedings are successful. That inevitably requires addressing the level of take-up, of damages awarded, by individual class members."

34. Google also points out that the PCR has failed to take serious account of potential costs saving arising from synergies with the *Stopford* proceedings. *Waterside* is also of relevance in this context as to consideration of the costs and benefits of proposed collective proceedings. The Tribunal stated at §38:

> "In order to determine the balance of the costs and benefits of the proceedings it is necessary to consider the costs of pursuing this claim. We find the costs spent by the PCR to date, and the proposed costs to be spent in the future, to be inexplicably high. As we have explained above there are already the *Asda* and *Tesco* Proceedings afoot. Those claims will necessarily seek to prove the existence of a cartel between the defendant groups and measure the size of any overcharge. It is to be expected that they will rely on expert evidence, deploying methods broadly similar to those proposed by Oxera. In the *Tesco* and *Asda* Proceedings there will be applications for disclosure and a detailed review of documents produced. The interests of the proposed class appear to be the same as those of the Claimants in the Asda and Tesco Proceedings in relation to these matters. Their interests will divide when it comes to arguing whether any overcharge was passed on by the supermarkets to consumers and if so, how much was passed on."

35. The PCR refers to *Rodger v Alphabet* [2025] CAT 45 and *Spottiswoode v Airwave Solutions Limited* [2025] CAT 60 as examples of the Tribunal granting collective proceedings orders on an opt-out basis where the class size was far smaller than in the present proceedings: 2,200 in the case of the former, and between 400 and 2,000 for the latter. Google notes however that in the *Trucks* litigation the Tribunal chose to certify the opt-in claim, where 11,000 claimants opted in, over an opt-out proposed alternative (Case No. 1282/7/7/18 *UK Trucks*

Claim Limited v Stellantis N.V and others). Google also relied on the "Dieselgate" litigation (*Various Claimants v Mercedes-Benz Group AG*, Case QB-2022-002405), where there are 1.6m claimants in a group litigation order claim.

36. Google also points to *Waterside* where the Tribunal noted that incurred costs of £2.5m pre-certification were considered to be "inexplicably high" (§38), as compared with incurred costs of over £6m in the present proposed proceedings.

D. ISSUES

37. As noted above at §5, Google's objections to the CPO Application fall into four broad groups of issues. Although Google ordered them so that opt-in/opt-out came last (and was conditional on the other points), we are going to deal with it first since it is the biggest issue and took the most time and argument. We resolve the earlier issues essentially in the PCR's favour anyway, at least to the extent that they do not pose a bar to certification now, though some will require addressing further later in the proceedings.

E. OPT-IN/OPT-OUT, DISTRIBUTION AND COST-BENEFIT ANALYSIS

(1) Notification and distribution

38. Central to Google's position on opt-in versus opt-out is that the PCR has not shown that it would be impracticable to notify the very large number of members of the class, and also has not engaged adequately with the question of how to distribute any aggregate award. So we will deal first with this overall issue.

39. On this and other aspects of whether opt-in proceedings are practicable, we have considered a range of materials, of which the main ones have been the parties' statements of case (the **Claim Form**, Google's **Response**, and the PCR's **Reply**), the witness statement of Mr Teague of the PCR's solicitors, and a supplemental report from Epiq (the claims handlers retained by the PCR) of 10

June 2026 (the **Epiq Supplemental Report**). A letter from Google's solicitors of 29 June 2026 giving details about the information Google says that it does and does not have about individual advertisers is also important, but did not come until after Mr Teague's statement and the Epiq Supplemental Report; we can see no reason why Google could not have provided it earlier. It is material to assessing Google's criticisms of the PCR's evidence and its arguments in support of opt-in certification that the PCR was not able to deal with the matters raised in the letter. It is unfair for Google to pick away at the PCR's materials in these circumstances, and we take that into account.

40. We consider Mr Teague's evidence cogent and reliable, coming as it does from a solicitor at a firm with a lot of experience in collective proceedings, and the challenges involved in putting together opt-in claims.

41. We will deal with the various points that Google makes in support of these arguments as we go, but note at the outset, and briefly comment on, two recurrent themes.

42. First, Google says that there is a tension in the PCR's position, in (1) saying that there will be major difficulties in contacting PCMs because Google may not be able to identify them even if they still have accounts (which some may not), but at the same time (2) saying that distribution ought not to be difficult since, for example "a large number of class members will be readily identifiable because they are current Google account-holders".

43. Second, as already mentioned, Google relies on the fact that in *Gutmann* (above at §33), the only case that has so far gone to distribution, take-up was less than 1%. Google points out that the claim handler in *Gutmann*, Epiq, was the same as the PCR is using in these proceedings. Google says that there is no sound basis to conclude that the take-up would be any higher in this case and feeds this into the cost-benefit analysis: it says a 1% take-up could imply that even if an aggregate award is in fact £5bn, only £50m might be distributed, which is comparable to the total projected costs.

44. As to the first, we agree that there was something of a tension in the PCR's position as Google asserts, but it was not as profound as Google says. Matters have moved on with Google's letter of 29 June 2026, and the PCR's position is now clear. As Mr Beal clarified in oral submissions, in the light of Google's letter, it is the PCR's position that it ought to be reasonably possible to communicate to PCMs for the purpose of encouraging them to opt in (were that the basis of certification), and reasonably possible to communicate to them at the distribution stage. The PCR's basic point however is that the exercise which has to be undertaken in respect of each PCM, once contacted, is radically different when trying to secure an opt-in, compared with trying to distribute money.

45. We agree with this. It can reasonably be expected that individual PCMs will be far less attracted by a communication which requires them to consider joining a legal action with uncertain and rather distant prospects, and to take steps committing themselves to some further action, than they would be by a communication at the distribution stage which simply requires them to accept money, or (even easier) to accept what would amount to a refund from Google, if they are continuing account holders.

46. As to the second, we accept that take-up has been extremely low in *Gutmann* but do not regard it as a yard-stick or benchmark. The distribution exercise there was totally different from that which would be required in these proceedings, particularly because of the availability of a good, direct means of individual communication to PCMs, which was severely lacking there but ought to be present here, in relation to the amounts potentially owing to individual PCMs so as to engage their interest, and in relation to the steps which individual PCMs would have to take once contact is made.

47. Google submitted that the PCR's evidence in relation to distribution was just far too thin and inadequately thought-out. It pointed out that there is no attempt in the Epiq Supplemental Report to quantify the percentage that might be distributed, in money terms or in terms of numbers of individual PCMs. For example, Ms Abram said in oral submissions that given experience in other

jurisdictions it ought to have been possible to undertake at least a comparative and semi-quantitative assessment.

48. The PCR's position was that serious work had been done on distribution, in Professor Scott-Morton's evidence and in the Epiq Supplemental Report. Professor Scott-Morton's evidence is however about how to calculate the amount owing to any individual PCM given an aggregate award and that is simply not the focus of Google's points.

49. Google majored on a number of points which we think reflected rather a nit-picking, negative approach, and which in some cases were attacks on arguments that the PCR was not making. For example, Google said that it might not hold payment details for some PCMs, or that some PCMs might no longer be account-holders. While it would be ideal if Google did have payment details for every account-holder, and if no account-holder had ever moved on, these points did nothing of substance to suggest that it would not be possible, with the information Google has, and with appropriate engagement of the media agencies (by whom much of the advertising on behalf of the PCMs is placed with Google, as agents for the PCMs, so that there may be no direct contact between a PCM and Google in such cases), for the PCR to directly contact the majority of PCMs at the distribution stage, which we regard as the real question.

50. Although we agree with Google that it was the PCR's overall obligation to present a coherent plan for distribution, there are limits to this, and Google should play its part, too. In particular, the PCR could not reasonably be expected to know what information and systems Google has to allow efficient and direct contact with PCMs. We consider it inherently improbable that a company like Google, in the business in which it operates, cannot identify and contact its advertisers if it wants to, even if it places advertising through the medium of agencies. In practical terms the burden on this issue was shifted and it was for Google to show that there were difficulties. As we have already mentioned, it does not seem to have engaged with that until very late – the 29 June 2026 letter – after the Epiq Supplemental Report and the PCR's Reply and evidence. By way of example of the consequences of this, at the hearing one important (though far from decisive) question was whether the unique identifiers used

when media agencies place advertisements with Google map back to individual advertisers, since a distribution exercise would obviously be much easier (at least potentially) if they did. Google was not able to tell us the answer to this.

51. While we accept to some extent Google’s argument that the Epiq Supplemental Report is a little low on detail, we do not think it puts us in a position where we cannot, with what the Report does provide and with common sense, reach conclusions about the viability of a distribution exercise of the kind likely to follow any aggregate award. In addition, we think that to a considerable extent the level of detail possible was severely constrained by Google’s late engagement, as described above at §39.

52. We consider it very likely that Google has contact details for many of the PCMs and that for a large proportion of those for whom it does not at the moment have contact details, these can be obtained from, or contact made via, the media agencies. Working through the media agencies does not mean simply giving those agencies many millions of pounds and hoping that they pass it on (which Google rightly said would be a hopeless proposition): the PCR never suggested that. It means securing their assistance in an information-gathering and analysis task to enable contact to be made and potentially money to be offered and then given to their clients, which we think it is obvious they would be motivated to help with (and indeed Google postulated their assistance when arguing that an opt-in would be practicable).

53. We recognise that it is inevitable that for some PCMs it will not be possible to contact them because of the sheer passage of time, or because they no longer use Google advertising, or for some other reasons. We do not expect that these PCMs will be a large proportion of the total.

54. We take account of the fact that payment details will be lacking for some PCMs. We do not know the scale of this issue in any quantitative sense. For those in respect of whom payment details are not available it would be necessary to make contact to try to get them at the distribution stage, and we take account of the fact that there would be some attrition in the sense of there being a cohort who are contacted but do not take up the payment due to them. But we think in the

overall context there is likely to be a really material subset of the PCMs for whom, with Google's data, it should be possible to identify and provide with a refund with no significant effort on their part at all. This is quite different from a *Gutmann*-type situation.

55. The PCR also put forward the possibility of dealing with unclaimed aggregate damages by ordering account credits to Google advertisers, as has been discussed in some of the cases including *BT v Le Patourel* [2022] EWCA Civ 593, [2023] 1 All ER (Comm) 667 at §98. We agree with Google that this was somewhat speculative and uncertain but it is only a fallback to cater for the proportion of an aggregate award that could not effectively be distributed to identifiable individual PCMs. We think it has some potential for that scenario, but that is not necessary to our decision.

56. Although we have said that we do not think that *Gutmann* is a benchmark, we have considered what Epiq said in its Supplemental Report about the differences between a distribution exercise based on defendant-held data in circumstances where the defendant has a continuing relationship with class members (in particular in the present case where they have Google accounts) on the one hand, and a "broader public facing campaign" on the other hand (which is, in broad terms, what *Gutmann* was).

57. The points of difference which Epiq noted include:

(1) Direct and credible communication versus communication through general advertisements or websites.

(2) Likelihood that PCMs will be accurately identified.

(3) PCMs are more likely to regard communications as authoritative and credible.

(4) A "lower friction" claims experience – this means that PCMs contacted through defendant-held information have less to do by way of showing

they are themselves genuine, giving information of their usage of the services concerned, and the like.

58. We consider that these are all highly material points, and persuasive. They are supported by Epiq with its experience, but they are common sense anyway.

59. Overall we think that an effective, direct distribution to specifically identified individual PCMs of any aggregate award far in excess, in total, of the 1% relied on by Google may reasonably be expected, and that is the basis on which we will approach the costs/benefit exercise. It means that the effective recovery direct to PCMs is much greater than the expected costs (large though those are), while recognising that we cannot put a specific number to the ratio between them.

(2) Class profile and practical issues with an opt-in certification

60. It was common ground that the great majority of the claim value is accounted for by a small percentage of the PCMs (a tiny percentage have claims in the millions of pounds), and conversely many PCMs have very small claims. We will not include the specific numbers as they are asserted to be commercially confidential, and consider it is enough to describe them in these general terms. We also note, and attach importance to the fact, that there is a material number of claims of middling size (tens of thousands of pounds) which account for a significant proportion of the claimed damages.

61. Google did not argue that this pattern provides a way to cleanly subdivide the population of PCMs into sub-classes, and it has not contended for a "hybrid" arrangement with part opt-in and part opt-out.

62. Mr Teague's evidence said that in this sort of situation it would be a long and difficult process to carry out an opt-in "book-building" exercise. We accept his evidence about the practical difficulties of engaging with a class of the sort of size involved here (about 880,000). It is not just a question of making contact with them (an issue we have addressed above at §50), because for those that are businesses, many would want to understand and ask questions about their

liability for costs, their exposure to giving disclosure, their relationships with the lawyers handling the case, and so on. This would be difficult and time consuming, for the PCMs and for the lawyers, and the total exercise would be lengthy.

63. We consider that these issues would have two effects. First, many PCMs would simply not join, and hence a significant proportion of the possible aggregate claim would be lost. We think it is likely that that impact would materially be felt in relation to the middle-sized claims.

64. Second, the overall length of the book-building exercise would be significant. We do not have the materials to put a specific time on it but we think could be well over a year, perhaps two. That would be all too likely to involve extra delay for the *Stopford* proceedings given the imperative to manage the common issues efficiently, and it would be unfair for that to happen. We accept Ms Abram's submission that the *Stopford* proceedings are not and would not be at a complete halt because the Tribunal has made directions for disclosure on the common issues in them which is being progressed, but that is only partial amelioration.

65. The PCR also said through Mr Teague's evidence that rearranging funding and insurance to be on an opt-in basis rather than the current opt-out setup that is in place would take a lot of time and be uncertain. We can see that this would be a practical issue but find it somewhat presumptuous for the PCR unilaterally to arrange the whole proceedings on an opt-out basis and then to say that changing it to opt-in would be hard. In any event, our overall decision would be the same with or without this factor.

66. An additional issue about which Google was understandably sensitive was the argument by the PCR that some PCMs would not want to opt in because of a concern about damaging their long-term and existing relationships with Google in relation to their advertising, which might be critical to their businesses. Google interpreted this as an allegation that it might deliberately take revenge on PCMs who opted in. We do not consider there is any evidence of that and it was fair for Google to react as it did. But that does not mean there would not be a general disinclination to enter into a dispute with a key commercial partner.

There is some evidence of that in the regulatory materials that the PCR relies on and it is also common sense. Again, however, we would have reached the same overall conclusion with or without this factor.

(3) Other factors

67. Other factors are as follows.

(1) First, these are not weak claims. The simple fact that they are largely follow-on demonstrates that. Google did not really try to argue that they are. This factor weighs in favour of opt-out (in contrast to *Evans*).

(2) Second, the *Stopford* proceedings are going to be decided (absent a settlement) and there would be a risk of inconsistency, given those proceedings are opt-out, if these proceedings were opt-in. This factor disfavours opt-in.

(3) Third, opt-out would increase the size of the claims within the proceedings. That will in turn increase Google's overall exposure. The PCR argued that Google is so big and so powerful that it need not care. We reject that; the same could have been said in *Evans*. Google would be under somewhat more pressure with opt-out certification, but we assess it as a modest difference and one which is not unfair in all the circumstances. In addition, to the extent that the claims are meritorious, there are sound policy reasons as to why recovery should be maximised.

(4) Cost-benefit analysis

68. As we have mentioned above, Google sought to argue that the prospective costs would be very similar to the asserted value of the aggregate damages actually recovered in the event that there were only a 1% take-up by value, as in *Gutmann*. We have rejected the argument that there is any real likelihood of the take-up being anything like as low as that. We assess the likely take-up as being much higher, so that the prospective value of the aggregate damages is much

higher than the costs (large though they are) and overall the cost-benefit analysis is well in favour of certification on an opt-out basis.

(5) Assessment

69. Taking these factors overall, the balance is very clearly in favour of opt-out certification. Opt-in would have many practical problems, would be slow, would have an undesirable and unfair impact on the *Stopford* proceedings, and would unjustifiably reduce the size of the overall claim because of appreciable numbers of PCMs being lost. There is almost nothing to be said in favour of opt-in, by contrast. This assessment is not based on any presumption; in so far as there is a presumption in favour of opt-in, it is comfortably displaced on the facts.

F. FUNDING AND COSTS

(1) Dr Brook's remuneration as the sole director of the PCR

70. Google submitted that Dr Brook's hourly rate of £250 is excessive, relying on the expectation in *Waterside* that governance arrangements should be proportionate and aligned with public sector benchmarks.

71. The level of remuneration of the proposed class representative in *Waterside* received intense scrutiny, and we are aware that in other cases currently before the Tribunal there has been detailed argument about the issue, such as in relation to the consequences of high fees for the integrity of the collective proceedings scheme, whether high quality proposed class representatives will be willing to act for much lower fees, and other related matters. In particular we understand that the decision of the Tribunal in the application for certification in Case 1759/7/7/25 *JLP A&A v Apple Inc. and Amazon*, with judgment expected later this year, may give detailed consideration to this issue.

72. By contrast, we heard relatively little argument, especially about the broader context. We therefore make clear that our decision is not to set a pattern, precedent or significant data point going forward.

73. Dr Brook and her team have engaged in a serious and considered way with the criticism of her headline rate. Most importantly: (1) Dr Brook is willing to cap the amount she charges for any one day at £750, even if she works more than three hours; (2) Dr Brook does not charge in the same way as a solicitor would, in that she frequently does not charge for individual tasks that take only a small time, like half an hour; and (3) Dr Brook has given information about monthly totals billed which are by no means excessive.

74. Points (1) and (2), especially (1), mean that Dr Brook's actual effective hourly rate will be considerably lower than £250, especially in relation to periods where she works whole days on the case, which we think will account for a lot of the total time spent. It is not readily possible to calculate with precision what the effective rate will be, however. Points (2) and (3) satisfy us that she has been and will be careful about the total amount of time billed.

75. We believe we should balance her hourly rate against the contribution that Dr Brook makes to the case and her professional profile and career generally. We are satisfied that Dr Brook makes major, careful, detailed contributions to the shaping, drafting, management and governance of the claim. She is not a mere figurehead. She has a career as an academic in a highly relevant area of law, which both validates her ability to contribute to the case and demonstrates that she is not making a profession out of being a proposed class representative. These comments are not made by way of veiled criticism of proposed class representatives in any other case; they are confined to assessing Dr Brook's position and appropriate remuneration.

76. Balancing the fact that her effective rate is considerably lower than the headline against the positive aspects of her contribution to the case just mentioned we conclude that the rate is not undue or excessive. Later and more wide-ranging decisions of the Tribunal as referred to above at §71 may set policy under which Dr Brook's rate could be said, with hindsight, to be on the high side, but we can only make our decisions as matters stand and with the information and argument which we have had.

(2) The consultative panel

77. Google focused relatively less attention on the consultative panel, but pointed to the number of members, and to the fact that two (Mr Kaye and Ms Prevezer KC) have hourly rates of £1,000. We recognise that members of consultative panels may be regarded as outside professional advisers and the argument that rates should be comparable to public sector rates does not necessarily apply to them in the same way as to proposed class representatives. Nonetheless, these rates are extremely high and we think it is important for there to be ongoing scrutiny of whether the panel and its members are being used appropriately and economically. Surely not every matter needs the involvement of all of them, and the use of the more expensive members should be carefully constrained to those matters where they, and only they, are specifically necessary. It will also be necessary to have regard to the fact that Mr Kaye will not be the class representative and his continuing work ought not to duplicate that of OBCRL, who will be.

78. We regard this as a significant and specific concern and we expect that careful records must be kept of what the consultative panel does, and how much time is required of each of its members on each matter that it considers, and why. Its usage will be reviewed on an ongoing basis. We do not however regard it as a reason to withhold certification.

(3) Economies to be had by cooperation with Ms Stopford

79. The PCR, supported by the evidence of Mr Teague, has so far identified savings of about £2–3m to be had by cooperation with Ms Stopford. We regard this as very disappointingly small in the context of the budgeted costs of up to almost £30m for this claim alone. On instructions during the hearing Mr Beal said that the estimates had been made on a conservative basis so as not to give the hope of savings which did not later materialise. Even so, we think the efficiencies ought to be much greater. We also think that the way this has been looked at embeds the original budget and then looks for "savings". The PCR should consider instead the more ambitious approach of identifying the minimum work

necessary to deal with issues unique to *Brook*, and then assume everything else is common and enter discussions with Ms Stopford from there.

80. On the other hand, however, and importantly, it became apparent that the currently identified potential savings have been estimated without allowing for the scenario in which the Tribunal later makes joint case management directions in both the *Stopford* and *Brook* proceedings which explicitly limit the resources which the PCR and Ms Stopford may each devote to issues.

81. We firmly intend that the Tribunal will make such case management directions. Other than in relation to pass-on, where the two classes have a direct conflict, it ought to be possible for there to be only one team of lawyers and (where relevant) one expert on any part of the case. We recognise that each of Ms Stopford and the PCR will want to have an understanding and oversight of those issues not being run by them, but that should not be costly.

82. Dr Brook has expressed the concern that if joint issues were left to the *Stopford* proceedings and that case then settles, then the present claim would be left stranded. The obvious solution to this, as Google submitted, is for there to be an agreement for joint instruction of a single expert and legal team for common issues, on terms that if one class drops away the instruction on behalf of the other can continue. This is a reasonably common sort of arrangement and we see no reason why it would not work; Mr Beal more or less accepted that it could.

83. Thus, although we think the efforts to date to identify savings having been unimpressive, the Tribunal has a key case management part to play by actively ensuring that major savings take place, which it will fulfil. The joint case management conference (**CMC**) held in order to do that will be of critical importance and, as well as ensuring cooperation in this way, will be an opportunity for the Tribunal to exercise its continuing supervisory role over the costs of the proceedings as a whole, including the matters referred to above, but especially the cost and use of the consultative panel.

(4) Costs to date

84. The costs to date exceed £6.4m. We regard this as extremely high and it is not easy to see that it can be justifiable. We accept that this is a very complicated case and much analytical work has been front-loaded, and we also accept that direct comparison in terms of sheer spend with cases such as *Waterside* (in respect of which Google pointed out that pre-certification costs of £2.5m were described by the CAT as "inexplicably high") is not meaningful; the claims are very different. Nonetheless, we do not think we need a direct comparator to have a well-founded concern that the costs may be unjustifiable. The case has not reached disclosure, and yet about £2m has already been spent on experts.

85. As with the other matters referred to above, we do not regard this as a reason to withhold certification. The important thing will be to control the costs going forward, and that can and will be looked at in detail and overall at the same stage as, and in the context of, working out how to deduplicate costs between these proceedings and *Stopford*.

(5) Settlement of the carriage dispute

86. As we have indicated above, the carriage dispute was settled after the hearing of 6–7 October 2025, an agreement in principle being reached by 10 November 2025 (by which time, we would mention, our judgment was well-advanced).

87. We regard it as positive that the carriage dispute was compromised, but the consequences of the way in which it was compromised both for Google and for the proposed class have to be considered.

88. The broad shape of the new arrangements is described above at §§11–14, but in addition it is relevant at this stage to mention that both Mr Kaye's costs and the PCR's costs of the carriage dispute are included within the **Total Investment Amount** for which: (a) the funder is entitled to be fully reimbursed; and which (b) is used to calculate the funder's return (as a multiple of the Total Investment Amount, up to a maximum of 6x). These payments to the funder were to rank

ahead of the proposed class. This means that the settlement of the carriage dispute may cost the proposed class a substantial amount of money.

89. A further matter is that under the arrangements following settlement of the carriage dispute, Mr Kaye's legal team may be entitled to success fees for their work on the *Kaye* proceedings.

90. Google invites us to decide now (and not at the end of the proceedings) that: (1) the carriage dispute costs are not recoverable against Google; (2) the funder is not entitled to be paid any return on them out of any damages award in the proceedings; and (3) that Mr Kaye's legal team should not be entitled to any success fees.

91. As to (1), we regard it as clear that Google ought not to be liable for the carriage dispute costs, a dispute between two other parties defending their own interests in which it had no interest and did not participate. No submission to the contrary was made. Accordingly, we so rule and will say no more about it in this judgment.

92. Google did not submit that we are compelled to decide (2) and (3) now, but said it was desirable to do so. The PCR submitted that it was more appropriate to make a decision later in the proceedings, as and when appropriate, under the Tribunal's continuing and general supervisory jurisdiction. Part of the reason Google said it was desirable to make a decision now was that the current Chair is unlikely to be involved in the proceedings in future.

93. Google also submitted, more broadly, that it can be seen that the PCR did not have sufficient regard to the interests of the class in making the settlement and the revised funding arrangements around it. Google said that this concern was part of the general picture such that we should decline certification altogether.

94. Google's argument was that the PCR should have had confidence in the position that the *Brook* claim was superior and should have backed its judgment by declining to settle the carriage dispute; the PCR had not previously said it was not resourced in terms of its legal team to fight the *Brook* claim so did not need

to and should not have agreed to keep on the *Kaye* team; and that even if it was considered that more resource was needed, it could have obtained it from the market in the usual way without having to expose the proposed class to the funder's premium. As a subsidiary matter, Google said it was concerning that the PCR relied on advice from the funder on these matters, but we attach no weight to that since we accept Dr Brook's later explanation that she consulted the funder as was necessary to find out that funding would be continued given the settlement, but did not rely on its advice.

95. The PCR responds that there is no rule that carriage dispute costs can never be recovered, and indeed that they are in principle recoverable, subject to the Tribunal's scrutiny if and when an application is made, relying on *Hunter and Hammond v Amazon* [2024] CAT 68 at §§22–23.

96. On the success fees, the PCR says that it was difficult to do anything about success fees on pre-consolidation work, to which Mr Kaye had already agreed, but that Dr Brook has negotiated down the former *Kaye* team's success fees to match hers for post-consolidation work and so that the historical higher fees are to rank only after the proposed class.

97. In relation to the funder's position, the PCR says that the arrangements are quite standard in general. The PCR has also pointed out that the *Kaye* claim has not at the moment been dismissed and cannot be said to have failed.

98. As to the PCR's decision to settle the carriage dispute in the way that occurred, Mr Beal said during oral submissions that there was pressure to reach a resolution given that it was thought that the Tribunal might be going to criticise the parties' conduct. We did not really understand this. The indication that we gave to the parties (quoted above at §9 from the transcript) was that they might wish to consider settlement because the decision was a close one and some important points had fallen away. We did this because we thought that a hindrance to settlement may up to then have been that one side or the other (or both) thought that they had much the better chance of winning, and we thought it was fair to say that we did not see it that way, which in turn we thought might enable or prompt an agreement, especially since we had been told that

discussions had taken place previously without success. We thought both sides had points to make and that the overall balance was very even.

99. We question whether, even if the parties thought that some criticism was possible, it was necessarily an appropriate course to make an agreement which increased the burden on the proposed class by a potentially significant amount. That, however, is a complex question, as are all these matters concerning the settlement of the carriage dispute. We have heard only limited argument about it because, sensibly, the time at the hearing before us was used mainly on the bigger issue of opt-in versus opt-out. The PCR has reacted to some of the criticisms made by Google, as indicated above, and may, we think, want to respond in more detail in due course to Google's heavy reliance on the argument that from a cost perspective it would have benefitted the PCMs if the carriage dispute had not been settled at all. In these circumstances we agree with the PCR that specific resolution of the matters raised as (2) and (3) above is better deferred until later in the proceedings, although we make clear that these are significant issues that will merit proper consideration then.

100. In deciding to defer consideration of these matters, we have had in mind Google's suggestion that it would be preferable to deal with them under the same Chair as heard the carriage dispute, but we consider that this is a considerably more minor factor. In any case, two members of the panel will be continuing, it is objectively clear what actually happened, and so far as it matters, we have expanded in this judgment on our thinking at the time.

101. Although we can and do defer the matters raised as (2) and (3) above, we have to address at this stage Google's broader argument that the whole episode shows that Dr Brook has not had the interests of the proposed class adequately in mind, since it goes to whether or not to certify. But we believe we can assess it at a higher level without detailed consideration of the funding, or exactly what might have happened or be done in a counterfactual situation where she refused to settle the carriage dispute.

102. We think that the argument that the proposed class would so clearly have been better served by refusing to settle the carriage dispute that it may be inferred

that Dr Brook did not have proper regard to the interests of the proposed class does not take adequate account of the complicated situation at the time, or to the fact that the Tribunal had requested the parties to try to settle. Dr Brook gives evidence that she genuinely considered the claim put together under her leadership to be superior to the *Kaye* claim. She had objective grounds to think that might well be so, and clearly and unsurprisingly did believe it. Yet she was confronted by a situation in which the *Kaye* claim might prevail on carriage in the absence of settlement, which by definition as she saw it would be less good for the proposed class. We accept her evidence that she attempted and intended to take into account the interests of the proposed class. It may yet turn out when the Tribunal returns to it that the financial terms are found to be sufficiently inappropriate or burdensome that they ought not be allowed to be implemented to some extent as a matter of the Tribunal's supervisory jurisdiction, but that does not mean that Dr Brook did not make appropriate efforts to take account of the proposed class's interests at the time.

G. CLASS DEFINITION, CONTINUING LOSS, LIMITATION

103. There are three procedural matters complained of by Google which come under the above individual headings but all in one way or another go to the proper scope of the proceedings.

(1) Class definition

104. In relation to class definition, Google refers to the definition of the class at §25 of the Claim Form by reference to "search advertising services". Google says that this does not make it clear what falls within this definition. In the Reply, the PCR sought to clarify by saying that the definition includes both text ads and product listing ads (**PLA**s) on Google's search engine result pages. The definition itself was not changed, however.

105. We do not consider the class definition problematic. The fact that there might be some possible arguments at the fringes does not affect this. In particular, there was discussion at the hearing about whether ads on YouTube would be covered. The PCR's answer, which we consider reasonable, was that video ads

are not covered by the definition (Google did not seem to have any difficulty with this proposition), and there will need to be an appropriate amount of factual inquiry or disclosure to discover whether text ads or PLAs are provided via YouTube. We also accept the PCR's point that Google has been able to compile data in relation to the proposed class for the purposes of its expert evidence.

106. There was some suggestion in Google's Response that the class definition ought to be tied to market definition, but this was not pursued.

(2) Continuing loss

107. Google objected to proposed amendments by the PCR to claim for PCMs' losses with an open-ended end date. We heard argument from both sides about the theoretical basis on which losses continuing past any eventual trial or judgment might be claimed, including about the position under the Civil Procedure Rules and the Rules of the Supreme Court before that, and whether those carry across to the Tribunal.

108. Interesting as the discussion was, we do not need to decide the point. The PCR accepts that it will be appropriate to limit, and it will limit, the relief sought so as to claim loss only in the period from the issue of the Claim Form through to a suitable, defined moment pre-trial. So loss continuing past a trial and judgment will not be claimed. The PCR says the suitable moment may be the last CMC or the pre-trial review. The PCR points out that this approach was adopted in *Kent v Apple* [2026] CAT 1 at §6.

109. On this basis, as matters stand, only proposed class members who fit the class definition and had a crystallised loss at the date of the final amended version of the Claim Form will be included upon certification. The losses for which they can claim will have an end date as indicated above. We envisage, and the PCR agreed, that this will be achieved by an amendment of the Claim Form at the appropriate point indicated above (or possibly by the issue of an additional Claim Form, although we think that would be less desirable).

110. The choice of an appropriate point will be a case management decision. The PCR will no doubt want to make it as late as possible to cover as much loss as possible but that will not be the only constraint because it will need to account for the need for the final contentions on quantum to be appropriately recalculated and addressed by the experts. In any event, though, this is and will be a matter of case management decisions and on the basis indicated above. Google's principled objection to continuing losses post-trial being claimed no longer arises, as it effectively accepted at the hearing. We should mention that after the hearing before us and while this decision was in preparation, another panel of the Tribunal gave a decision in *Kent v Apple* [2026] CAT 57 concerning the permissible period for claiming losses, and Google very fairly drew our attention and the attention of the PCR to it, by letters of 27 July 2026. Google says that the decision is to the effect that losses may be claimed up to the date of judgment, but not beyond. We have not had submissions from the PCR in response and consider we do not need to, because Google's letter to the PCR about the decision noted and endorsed the approach arrived at during the hearing before us, that the PCR will need to propose an appropriate end date for losses, and Google will comment. So in terms of our decision, nothing relevant has changed.

(3) Limitation

111. In relation to limitation, Google pleaded that certain aspects of the PCR's proposed claims are time barred (the claims are framed by the PCR by reference to the **Relevant Period**). The position varies for the standalone aspects of the claim and the follow-on claim, the Relevant Period being reduced by eight years for the former and 3.5 years for the latter, as the PCR has accepted, subject to a point about claims subject to Scots law.

112. The PCR says that in relation to the Scots law claims, prescription does not begin to run until the relevant offending conduct has ended, and on that basis, there is no time gap (i.e. period in respect of which no PCM has a valid claim) in either category of claims. Google disputes this analysis and the parties agree that it should be argued out at the next CMC.

113. There was an arid and formalistic dispute about whether the PCR had "conceded" in some way, or failed to amend the Claim Form appropriately. So far as it matters, we agree with the PCR that it was for Google to plead a limitation defence and for the PCR to reply to that. The basis going forward is clear: claims other than Scots law claims are time-barred to the extent that Google said, with the necessary consequences for PCMs affected, and Scots law claims have to await the Tribunal's decision. The PCR will then have to redo its quantum calculations, and directions for that can be given at the same time as the decision on Scots law. It is clear that the total claim value is likely to be reduced appreciably from the position at the time of the Claim Form and the PCR's initial evidence but the approach depends on the Scots law point. We have borne in mind the general likely level of impact of limitation on the aggregate damages in considering cost-benefit analysis above at section E(4) (and also the fact that there is an uncertainty over the degree of pass-on, with the PCR applying what is said to be a conservative 50%).

(4) Formalisation of the position on class definition, continuing loss and limitation

114. Our decisions on these issues are indicated above. We consider the position on each of them to be clear, but it depends in each case to some extent on what the PCR argued at the hearing. We think it is desirable that it be formalised, and require the PCR to put its position in writing in a clear and concise way. A letter will be adequate, and it must be provided within 14 days of this decision. This is to be used only for the PCR to record its positions as taken at the hearing. New points are not to be raised. Google may comment if it wishes, but strictly on whether what the PCR says properly embodies what was said at the hearing.

H. DISPOSITION

115. For the reasons set out above, the Tribunal unanimously concludes that:

(1) The PCR meets the Authorisation Condition.

(2) The proposed collective proceedings meet the Eligibility Condition.

(3) Google is not liable for the costs of the carriage dispute in any event.

(4) We require the PCR to formalise the matters identified in section G above within 14 days of the date of this decision.

116. We grant the CPO Application on an opt-out basis.

The Honourable Mr Justice Meade	Robert Herga	John Davies

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

Date: 5 August 2026