Neutral citation [2026] CAT 75

Case No: 1759/7/7/25

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

28 September 2026

Before:

THE HONOURABLE MRS JUSTICE BACON
(President)
CHARLES BANKES
KEITH DERBYSHIRE

Sitting as a Tribunal in England and Wales

BETWEEN:

JLP A&A CLASS REPRESENTATIVE LIMITED

Proposed Class Representative

- v -

(1) APPLE INC.
(2) APPLE DISTRIBUTION INTERNATIONAL LIMITED
(3) AMAZON.COM INC.
(4) AMAZON EUROPE CORE S.À.R.L.
(5) AMAZON EU S.À.R.L.
(6) AMAZON.COM SERVICES LLC

Proposed Defendants

Heard at 7 Rolls Building on 30 June and 1 July 2026

JUDGMENT (CERTIFICATION)

APPEARANCES

Thomas de la Mare KC, Robert Marven KC and David Went (instructed by Hausfeld & Co. LLP) appeared on behalf of the Proposed Class Representative.

Sarah Abram KC, Roger Mallalieu KC and Michael Quayle (instructed by Freshfields LLP) appeared on behalf of the Proposed First and Second Defendants.

Paul Harris KC and Daisy Mackersie (instructed by Cleary Gottlieb Steen & Hamilton LLP) appeared on behalf of the Proposed Third to Sixth Defendants.

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A. INTRODUCTION

1. This is an application for certification of opt-out collective proceedings pursuant to s. 47B of the Competition Act 1998 (**CA98**). The Proposed Defendants are members of the Apple group of companies (**Apple**) and the Amazon group of companies (**Amazon**). The claims allege that in 2018 Apple and Amazon entered into unlawful anticompetitive agreements, contrary to the Chapter I prohibition set out in s. 2 CA98 and/or (until 31 December 2020) Article 101 TFEU. Those agreements are said to have caused prices to rise on Apple products purchased through the Amazon UK Marketplace (**On-Amazon**) and through other online and offline retail channels (**Off-Amazon**), causing loss to the proposed class members.

2. The claim has an unusual history. Essentially the same application for certification of collective proceedings was filed in July 2023 by Christine Riefa Class Representative Limited, a Proposed Class Representative whose sole director was Prof Riefa (the **PCR**). Following two hearings in July and September 2024, the Tribunal refused the application on the grounds that the PCR had not satisfied the authorisation condition: *Riefa v Apple and Amazon* [2025] CAT 5 (the ***Riefa* CPO judgment**). Permission to appeal was refused, and costs were awarded in favour of Apple and Amazon: [2025] CAT 34 (the ***Riefa* costs ruling**).

3. The PCR has subsequently reconstituted itself in order to reissue its claim. The PCR's sole director is now Justin Le Patourel, and the PCR itself has been renamed JLP A&A Class Representative Limited. The claim is brought on essentially the same basis as the *Riefa* claim, save that the claim period has been updated to run to the date on which the present CPO application was issued, and there is now an application to amend the relief sought in the claim form, to include a request for an injunction to put an end to the alleged infringements.

4. The Proposed Defendants oppose certification. Their position is that (1) the PCR's expert Dr Pike is unreliable and his evidence cannot be used in support of the application; (2) the Off-Amazon claim should be struck out and/or summarily dismissed and/or refused certification on the grounds that it is implausible and unsupported by the evidence; (3) the On-Amazon claim should be refused certification

on cost-benefit grounds; (4) the distribution proposals are unsatisfactory; (5) the proposed funding arrangements should not be approved, since they would allow recovery of costs and success fees attributable to the *Riefa* proceedings; and (6) the PCR is not a suitable class representative, on the basis of its decision-making on the funding and also the remuneration of Mr Le Patourel.

5. Submissions at the hearing were made by Mr de la Mare KC and Mr Went, for the PCR, Mr Mallalieu KC and Ms Abram KC, for Apple, and Mr Harris KC, for Amazon. Further written submissions and evidence were filed by the parties during and following the hearing, and we have taken those into account in this judgment.

B. THE CLAIM

6. The PCR claims that Amazon and Apple entered into a series of agreements, in particular in October 2018, which had and continue to have the object or effect of preventing, restricting or distorting competition in the sale of Apple products in the UK (the **Agreements**). This is said to have occurred in two ways. First, the Agreements exclude from Amazon's UK Marketplace (the **Amazon Store**) all resellers of Apple products other than a limited number of Apple authorised resellers selected by Apple and Amazon, based on criteria which are neither objective nor non-discriminatory. Secondly, the Agreements limit the ability of Apple's competitors to purchase advertising space on the Amazon Store to advertise their own products, as well as imposing advertising restrictions during the launch of new Apple products.

7. The PCR says that its preliminary analysis shows that the Agreements have led to a significant reduction in the number of resellers of Apple products active on the Amazon Store, and a consequent increase in the prices of Apple products sold on there. On that basis, the PCR claims that from 31 October 2018 the Agreements caused, and continue to cause, loss to the proposed class members through the payment of higher prices for Apple products purchased On-Amazon, as well as Off-Amazon on Apple's UK website and at its physical stores, and other online and physical retail channels. The PCR also says that many proposed class members will have suffered losses from increased financing costs.

8. The PCR seeks an aggregate award of damages on behalf of the proposed class in respect of such losses. The proposed class comprises all natural persons who purchased one or more Apple (including Beats-branded) products at the retail level in the United Kingdom during the relevant period (31 October 2018 to 15 December 2025). The PCR estimates the class size at around 28.9 million people.

9. The PCR's preliminary estimate of the total loss suffered in relation to the On-Amazon claim ranged from £431.2–£898.6 million, before interest and without taking into account any additional financing losses. Following the Proposed Defendants' disclosure of additional data, the PCR now estimates the loss in the On-Amazon claim between 2019 and November 2028 (the predicted date for the pre-trial review) at £289 million assuming 8% interest, or £306 million assuming 10% interest. Using those figures, the PCR estimates that the On-Amazon claim would amount to damages of £37 or £39 per customer (at 8% or 10% interest). There is no concrete estimate of loss for the Off-Amazon claim.

C. PROCEDURAL HISTORY

(1) The *Riefa v Apple* proceedings

10. The background to the present proceedings is of considerable relevance to Apple and Amazon's objections to certification. As noted above, the *Riefa* proceedings were commenced in July 2023, with Prof Riefa as the PCR's sole member and director. As in the present proceedings, the PCR was represented by Hausfeld & Co. LLP (**Hausfeld**).

11. The origins of that claim dated back to January 2022, when Dr Chris Pike and other economists at Fideres Partners LLP (**Fideres**) approached Hausfeld regarding a November 2021 decision of the Italian Competition Authority relating to Apple and Amazon's conduct in Italy (the **AGCM Decision**). Dr Pike and others at Fideres subsequently assisted Hausfeld in investigating the potential implications of that decision in the United Kingdom, including by preparing a memorandum analysing the decision in July 2022. At around the same time, colleagues of Dr Pike at Fideres also assisted experts involved in a class action filed in November 2022 in the United States

concerning substantially similar allegations against Apple and Amazon: *Floyd v Amazon* (Case No 2:22-cv-01599 JCC).

12. Dr Pike's involvement continued throughout the development of the *Riefa* claim. In December 2022, he received preliminary instructions from Hausfeld to provide expert evidence in support of the proposed proceedings, which were subsequently formalised by letter dated 24 July 2023. By that stage, Hausfeld had secured heads of terms with a litigation funder, Asertis Limited (**Asertis**), and approached Prof Riefa to conduct the proceedings as the PCR. Dr Pike thereafter provided evidence in support of the PCR's application for a collective proceedings order.

13. The *Riefa* application for certification came before the Tribunal at a hearing in July 2024. At that hearing the Proposed Defendants did not oppose certification in principle, but raised a number of concerns regarding the proposed proceedings, including the proposed class definition and the litigation funding arrangements. During the course of the hearing, questions were then raised regarding the suitability of the PCR. In those circumstances, the Tribunal adjourned the application for a further hearing in September 2024, and directed the filing of further evidence. The Tribunal also indicated that, once that evidence had been filed, the Proposed Defendants should consider whether cross-examination of Prof Riefa would assist the Tribunal in determining whether the authorisation condition was satisfied.

14. Once further evidence had been filed, the Proposed Defendants sought and obtained permission to cross-examine Prof Riefa at the September 2024 hearing. At that hearing, the focus of the Proposed Defendants' opposition to certification became whether it was just and reasonable to authorise a company owned and controlled by Prof Riefa to act as class representative. They raised particular concerns regarding Prof Riefa's understanding of, and ability to assess independently, the litigation funding arrangements entered into on the PCR's behalf.

15. In the *Riefa* CPO judgment, the Tribunal refused certification on the basis that the PCR had failed to satisfy the authorisation condition. The Tribunal was ultimately not persuaded that Prof Riefa had demonstrated "sufficient independence or robustness so

as to act fairly and adequately in the interests of the class" (§114). Permission to appeal was rejected on 19 February 2025.

16. Apple and Amazon then sought their costs of the proceedings, a substantial proportion of which related to work undertaken in preparing their respective defences to the underlying claim. The PCR resisted an immediate costs order in respect of those costs on the basis that it intended to replace Prof Riefa and bring a fresh application for certification advancing substantially the same claims. It therefore contended that any costs relating to the substantive defence should either be reserved to any future proceedings, or left to be determined if and when substantially similar proceedings were reissued.

17. The Tribunal rejected that submission in the *Riefa* costs ruling, holding (at §22) that:

> "… in the present case the PCR has failed entirely in its application for certification and should bear the costs associated with that failure. It is difficult to see how it could possibly be right for costs which have been incurred in these proceedings to be transferred to a future hypothetical claim brought by an entirely different PCR, or a differently constituted PCR. It is true that if future proceedings are issued on grounds very similar to those pursued by the PCR in this case, there will be savings for the Proposed Defendants through the reuse of material prepared for the first proceedings. That will, however, always be the case when similar successive proceedings are brought against the same defendants."

18. The Tribunal ordered payments on account totalling £3,051,144.93, with the remaining costs of the Proposed Defendants to be subject to detailed assessment if not agreed. The PCR then reached agreement with Apple and Amazon for the settlement of the remaining costs in a figure of £769,000.

(2) The present claim

(a) The PCR's claim form and evidence

19. Following the refusal of certification in the *Riefa* proceedings, the PCR was renamed and reconstituted, with Mr Le Patourel replacing Prof Riefa as the sole director. The present application for certification (the **CPO application**) was then filed on 15 December 2025.

20. Alongside the collective proceedings claim form, the PCR filed a preliminary expert report from Dr Pike (**Pike 1**), a witness statement from Mr Le Patourel (**Le Patourel 1**), a witness statement from John Astill (**Astill 1**), a senior managing director and co-founder of Exton Advisors Limited (**Exton**), which advises on litigation funding and insurance, and a witness statement from Scott Campbell, a partner at Hausfeld (**Campbell 1**). Le Patourel 1 exhibited an amended and restated version of the litigation funding agreement originally agreed with Asertis for the *Riefa* litigation (the **Amended LFA**), a primary after the event (**ATE**) insurance policy (which was also agreed for the *Riefa* litigation) plus an excess ATE insurance policy, a litigation plan and a notice and administration plan prepared by the PCR's proposed claims administrator, Epiq, and a litigation budget.

21. In Le Patourel 1, Mr Le Patourel explained that he was first approached by Hausfeld in January 2025, shortly after the Tribunal's refusal of certification in the *Riefa* proceedings, to discuss whether he might become involved in the proceedings either in an advisory capacity or as a replacement proposed class representative. He said that he considered the merits of the proposed claim, the suitability of collective proceedings as a means of obtaining redress for affected consumers, and whether any damages recovered could be distributed in a meaningful way. He also considered the arrangements necessary to pursue the proceedings, including the legal representation, funding and insurance available to the PCR.

22. As part of that process, Mr Le Patourel explained that he had considered whether the interests of the proposed class would be better served by instructing alternative solicitors. He had concluded that Hausfeld should continue to act, citing the firm's knowledge of the claim, the risk of duplication and delay if new solicitors were instructed, and Hausfeld's experience in collective proceedings before the Tribunal. He likewise decided that the application should continue to be supported by expert evidence from Dr Pike. In reaching that conclusion, he considered Dr Pike's experience and previous work, discussed the Tribunal's observations concerning aspects of Dr Pike's methodology in other proceedings, and sought an independent review of Dr Pike's report from another economist.

23. Mr Le Patourel also explained that he has appointed a consultative panel to advise him where relevant. At the time the CPO application was filed, that panel had five members. In Mr Le Patourel's subsequent evidence (which we discuss below), he explained that he had reduced the panel to three members, namely Christopher Warner, Leslie Perrin and Sir Gerald Barling. Mr Warner is a member of the Financial Services Consumer Panel and was previously a Legal Director at the CMA. Mr Perrin is the Chairman of Calunius Capital LLP, a litigation funder, and has more than 35 years' experience as a solicitor and funder/insurer. Sir Gerald Barling is a former High Court judge and was previously President of the Competition Appeal Tribunal. Mr Le Patourel states that he will consult the panel members on different points, as required, with Mr Warner being his most regular point of contact on the panel.

24. Turning to Dr Pike's evidence, Pike 1 extended to 176 pages and was, in large part, based upon the expert evidence previously prepared for the *Riefa* proceedings, updated to reflect developments occurring between the conclusion of those proceedings and the commencement of the present claim. It contained the following statements regarding Dr Pike's role in the instigation of these proceedings:

> "Following the publication by the AGCM of its findings, Fideres drew the AGCM Decision and its potential effects in the United Kingdom to the attention of Hausfeld. Since then, I and colleagues at Fideres have investigated whether the same findings of effects that were made by the AGCM in Italy and the CNMC in Spain might also apply in the UK."

and:

> "… prior to my formal instruction on this matter (originally in 1602/7/7/23 *Christine Riefa Class Representative Limited v Apple Inc. & Others*), colleagues of mine at Fideres and I drew the AGCM Decision to the attention of Hausfeld in January 2022. In July 2022, at Hausfeld's request, Fideres provided a detailed memorandum, and in August 2022, I, and colleagues at Fideres were instructed by Hausfeld to provide an initial assessment of the economic issues arising from that Italian regulatory decision. That initial approach led Hausfeld, as I understand it, to (a) investigate whether consumers in the United Kingdom may have been harmed in a similar way to consumers in Italy as a result of the same conduct as formed the subject-matter of the Italian regulatory proceedings, and (b) consider whether collective proceedings would provide an appropriate mechanism for redress. In addition, colleagues at Fideres have supported two independent experts in providing economic analysis on behalf of the plaintiff in a class action in the United States alleging substantively similar claims against Apple and Amazon (*Floyd v. Amazon*, Case No. 2:22-cv-01599 JCC) which was filed in November 2022. In December 2022, I received preliminary instructions from Hausfeld to provide independent economic evidence in support of the past class

> representative's proposed claim. These instructions were subsequently confirmed in a formal letter of instruction from Hausfeld dated 24 July 2023."

25. Shortly before the claim was issued, the Tribunal published Practice Direction 2/2025, which, amongst other things, introduced a presumptive 50-page limit for expert reports filed with CPO applications. The PCR therefore sought permission to rely upon Dr Pike's full report without abbreviation. The Tribunal granted that application, on the basis that the report had substantially been prepared before the Practice Direction came into force, such that it would be disproportionate to require the PCR to incur the expense of having the report redrafted: [2026] CAT 5, §§36-41.

26. The Tribunal subsequently directed Dr Pike to file a supplemental expert statement, not exceeding 20 pages, summarising the contents of his preliminary report. Pursuant to that direction, Dr Pike filed a summary report (**Pike 2**) setting out the principal features of his proposed methodology and his preliminary conclusions.

(b) Apple and Amazon's responses

27. Apple and Amazon filed their respective responses to the CPO application on 8 May 2026. Apple's response was accompanied by witness statements from Beatrice Tormey, a partner at Freshfields LLP, and Halle Matthews, a finance manager at Apple. Amazon filed a witness statement from Kunal Dongre, a data engineering manager at Amazon.

28. The Proposed Defendants deny that the Agreements were unlawful, and contend that they were in fact pro-competitive and beneficial to consumers. They do not, however, address the lawfulness of the Agreements in any detail, nor do they resist certification on that basis. Instead, they oppose certification on the basis of various grounds relating to the reliability and plausibility of the PCR's proposed methodology, the PCR's funding and proposed distribution arrangements, and the suitability of the PCR as the class representative.

29. Both Apple and Amazon contend that the Off-Amazon claim should be struck out, summarily dismissed or refused certification. An overarching contention is that Dr Pike's evidence cannot be regarded as independent or reliable, which they say

undermines the foundations of the claim as a whole. They also contend that the Off-Amazon claim is in any event speculative, implausible and unsupported by any sufficient empirical foundation. In particular they argue that available sales data demonstrate that Amazon's share of UK sales of new Apple products was and remains too small to support the Off-Amazon effects alleged by the PCR. On that basis, they say that even if not struck out or summarily dismissed, the Off-Amazon claim should be refused certification on the basis that it fails the *Microsoft* test. In the alternative, Amazon says that the Off-Amazon claim is too weak to be certified on an opt-out basis.

30. If those arguments are correct, and the claim is properly confined to purchases made through the Amazon Store, the Proposed Defendants say that the costs of the proceedings would outweigh any realistic benefits from the claim. The Proposed Defendants also criticise the PCR's proposed distribution arrangements.

31. Separately, the Proposed Defendants challenge the PCR's funding arrangements, in particular the proposed treatment of costs incurred in the *Riefa* proceedings, which they submit raises concerns regarding the PCR's independence and the extent to which the proceedings are being conducted in the interests of the proposed class members. They also submit that the remuneration proposed for Mr Le Patourel is excessive.

32. As a final point, Amazon says that if the proceedings are certified, further consideration will be required regarding the position of minors included within the proposed class definition.

(c) Further evidence filed by the PCR

33. The PCR filed a reply on 11 June 2026, accompanied by a third expert report from Dr Pike (**Pike 3**), a second witness statement from Mr Le Patourel (**Le Patourel 2**), a second witness statement from Mr Scott Campbell (**Campbell 2**), and a supplemental report from Epiq.

34. Pike 3 addressed in particular the Off-Amazon claim, in light of data disclosed by Apple and Amazon showing the proportion of sales of Apple products made through the Amazon Store. That led Dr Pike to reduce his estimate of Amazon's share of

relevant Apple product sales (and consequently his damages calculations). On 19 June 2026, Dr Pike filed an addendum to that report identifying a calculation error, the correction of which further reduced his estimate of Amazon's share of relevant Apple product sales. Dr Pike maintained, however, that the correction did not alter the substance of the conclusions expressed in Pike 3.

35. Le Patourel 2 provided further detail of, among other things, Mr Le Patourel's decision-making process in relation to the retention of the existing legal team and funding arrangements, as well as updates on the constitution and charges of the consultative panel, the PCR remuneration and budget, and other costs issues. Campbell 2 addressed and provided a breakdown of the PCR's actual and contingent litigation costs for the purpose of the cost-benefit analysis of the proceedings.

36. Together with its reply, the PCR applied for permission to amend its claim form so as to add a claim for injunctive relief requiring the Proposed Defendants to put an end to the alleged infringements.

37. On 19 June 2026 the Tribunal wrote to the parties requesting further submissions concerning the treatment of Dr Pike's evidence in light of the Tribunal's recent Practice Direction 3/2025 on expert evidence (**PD 3/2025**). The Tribunal also asked the parties to provide further information regarding the Apple sales figures relied upon by each side. In a further letter dated 22 June 2026, the Tribunal directed the PCR to provide a copy of Dr Pike's engagement letter and any other instructions he has received in relation to these proceedings, an explanation of the basis of his remuneration, and any further documentation that the PCR considered should be provided in light of PD 3/2025.

38. Responses were subsequently provided to these requests. In relation to the instruction of Dr Pike, Hausfeld sent a letter to the Tribunal on 23 June 2026 which attached:

(1) Fideres' initial memorandum to Hausfeld dated January 2022;

(2) Hausfeld's email to Fideres dated 21 July 2022 providing preliminary instructions;

(3) Fideres' letter of engagement with Hausfeld dated 31 August 2022;

(4) Hausfeld's letter of instructions to Dr Pike dated 24 July 2023 (which Hausfeld explained was maintained for the present proceedings); and

(5) a letter from Dr Pike to the Tribunal addressing the information provided in Pike 1 concerning his and Fideres' involvement in these and similar US proceedings, and the steps taken by him to ensure the independence and integrity of his evidence in these proceedings.

(d) Further submissions during and after the hearing

39. Various further materials were provided during the hearing, including in particular further submissions on the appropriate remuneration for the PCR, as well as a breakdown of the entitlements the PCR would be seeking for the legal team, funder and ATE insurers in the event of a successful outcome.

40. Following the hearing, (1) Apple filed further short submissions on the powers of the Tribunal to decline certification on the basis of the inclusion of *Riefa*-related costs and returns in the funding and fees package; (2) the PCR filed further evidence on the remuneration of Mr Le Patourel and PCRs more generally, in the form of a further witness statement from Mr Le Patourel (**Le Patourel 3**) plus exhibits. It also filed further submissions regarding the respective positions of the funder and insurers on their *Riefa*-related entitlements; (3) the Proposed Defendants provided brief submissions in response.

D. ISSUES

41. The parties' respective positions on the PCR's application for certification raise the following issues:

(1) As a preliminary issue, what weight, if any, should be given to Dr Pike's expert evidence in light of the objections to his independence and objectivity (section F below).

(2) On the substance of the claims, whether the methodologies proposed for the On-Amazon and Off-Amazon claims, respectively, satisfy the certification requirements, including consideration of the *Microsoft* test (section G below).

(3) Whether certification should be refused on the basis that the PCR's proposed distribution proposals are unsatisfactory, including whether the PCR has given sufficient explanation regarding how its direct credit distribution plan would operate and how effective it could be (section H below).

(4) The cost-benefit analysis of the claims, having regard to the conclusions on the certification of the On-Amazon and Off-Amazon claims and the distribution proposals (section I below).

(5) Whether certification should be refused on the basis that it is not acceptable for the PCR's funding, insurance and fee arrangements to include recovery in relation to the failed *Riefa* proceedings (section J below).

(6) Whether certification should be refused on the basis that it is not just and reasonable for the PCR to act as the class representative in these proceedings, having regard to the PCR's decisions on funding, insurance, fee arrangements, and the retention of the existing legal and economist team, and the level of remuneration proposed for the PCR (section K below).

(7) Whether the PCR should be given permission to amend the claim to include injunctive relief; and the position of minors within the class definition (section L below).

E. GENERAL LEGAL FRAMEWORK

(1) Certification conditions

42. Section 47B CA98 and r. 77 of the Competition Appeal Tribunal Rules 2015 (the **Tribunal Rules**) set out the requirements that must be fulfilled in order for the Tribunal to make a CPO.

43. 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).

44. The factors relevant to the determination of whether it is just and reasonable for the PCR to act as a class representative are set out in r. 78(2). These include consideration of whether the PCR: (a) would fairly and adequately act in the interests of the class members; (b) has, in relation to the common issues for the class members, a material interest that is in conflict with the interests of class members; and (d) will be able to pay the defendant's recoverable costs if ordered to do so.

45. 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) Whether the PCR is a class member, and if so its suitability to manage the proceedings: r. 78(3)(a).

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

(3) 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).

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

(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).

47. In determining whether the claims are suitable to be brought in collective proceedings, pursuant to r. 79(2) the Tribunal is to take into account all matters it thinks fit, including: (b) the costs and the benefits of continuing the collective proceedings; (d) the size and nature of the class; and (f) whether the claims are suitable for an aggregate award of damages.

48. As the Supreme Court explained in *Mastercard v Merricks* [2020] UKSC 51, §64, it follows from these provisions that the question of certification involves a "single, albeit multi-factorial, balancing exercise". That balancing exercise involves consideration of some factors that are statutory hurdles (such as the requirement for the proposed claims to raise common issues), and some factors that are not (such as the various matters which the Tribunal must "take into account" in determining whether the claims are suitable to be brought in collective proceedings). The Tribunal is entitled to regard one or more particular factors as being decisive for a particular outcome, but if it does so in relation to a factor that is not a statutory hurdle, it should explain that clearly: *Merricks* §68.

(2) The *Microsoft* test

49. In considering whether the claims raise common issues and are suitable to be brought in collective proceedings, it is now well-established that the Tribunal will apply what is typically referred to as the *Microsoft* test. This originates from the Canadian case of *Pro-Sys Consultants* v *Microsoft* [2013] SCC 57. It was endorsed in this jurisdiction by both the majority and minority of the Supreme Court in *Merricks*. The essence of the test was set out by Rothstein J at §118 of the *Microsoft* judgment, cited at §40 of *Merricks*, as follows:

> "In my view, the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement. This means that the methodology must offer a realistic prospect of establishing loss on a class-wide

> basis so that, if the overcharge is eventually established at the trial of the common issues, there is a means by which to demonstrate that it is common to the class (ie that passing on has occurred). The methodology cannot be purely theoretical or hypothetical but must be grounded in the facts of the particular case in question. There must be some evidence of the availability of the data to which the methodology is to be applied."

50. That test sets out, essentially, three conditions that the expert methodology must satisfy, if it is to provide a basis for the commonality and suitability requirements under s. 47B(6) and r. 79(1)(b) and (c):

    (1) The methodology must offer a realistic prospect of establishing loss on a class-wide basis.

    (2) The methodology cannot be purely theoretical but must be grounded in the facts of the particular case.

    (3) There must be some evidence of the availability of the data that the methodology requires.

51. The *Microsoft* test has subsequently been considered in numerous cases before the Tribunal (and on appeal). These include *London & South Eastern Railway v Gutmann* [2022] EWCA Civ 1077, *MOL (Europe Africa) v Mark McLaren Class Representative* [2022] EWCA Civ 1701, *Gormsen v Meta* [2023] CAT 10, *UK Trucks Claim v Stellantis* [2023] EWCA Civ 875, *Ad Tech v Google* [2024] CAT 38, *Hammond & Stephan v Amazon* ***(Hammond & Stephan (CAT))*** [2025] CAT 42, *Shotbolt v Valve* [2026] CAT 4 and *Stasi v Microsoft* [2026] CAT 34. We derive the following propositions from the authorities on this point:

    (1) The *Microsoft* test, unlike the test for strike out and summary judgment, is not concerned with the merits of a case. Rather, it considers whether a methodology has been set out that is sufficient to serve as an initial blueprint for determination of whether the economic issues are common and suitable for certification, and how they are to be resolved: *London & South Eastern Railway v Gutmann* §44, *Gormsen v Meta* §§36–40.

(2) The *Microsoft* test thus considers whether there is a sufficiently well considered and feasible theory as to how the alleged loss to the class can be established, and a route to producing the evidence required at trial, so that the trial can be expected to be effective in fairly determining the issues in the case: *Shotbolt* §75. That requires assessment of the plausibility of the expert evidence: *Stasi* §27.

(3) The level of detail required for the methodology will be fact and context sensitive. In some cases the methodology may need to be formulated at a high degree of generality, particularly where there is an asymmetry of information between the PCR and the Proposed Defendants: *McLaren* §47, *Ad Tech* §35(3). The PCR is not required to address every issue or defence that a defendant might raise: *Trucks* §102.

(4) At the certification stage an intense and granular dissection of the methodology, involving weighing of expert evidence on both sides, is generally inappropriate, and the Tribunal should avoid conducting a mini-trial. Rather, the question at this stage is whether the proposed methodology is plausible, coherent and workable, as opposed to purely hypothetical or unclear or impractical: *Hammond & Stephan (CAT)* §§77 and 79(1).

(5) The Tribunal has a broad discretion to make a value judgment regarding the methodology to be used at trial, and should apply a common-sense approach: *London & South Eastern Railway v Gutmann* §§53 and 57, *Hammond & Stephan (CAT)* §77.

(6) While the proposed methodology is inevitably hypothetical, in that it is based on a counterfactual model of how the market would have operated absent the alleged anticompetitive conduct, the methodology must be grounded in the facts of the case. The Tribunal will accordingly expect to see some factual basis for the assumptions made and the models that are proposed to be deployed, as well as evidence of the availability of the data required: *London & South Eastern Railway v Gutmann* §§53–54.

(7) The proposed methodology is necessarily provisional and subject to refinement following disclosure, and if certified the Tribunal can revisit it at any point. It is, however, important that the Tribunal exercises its gatekeeper role at the certification stage, so as to set out a judicially-approved trial preparation pathway, and to maintain collective proceedings within proper bounds: *London & South Eastern Railway v Gutmann* §55, *McLaren* §§47 and 51; *Hammond & Stephan (CAT)* §131.

(8) Where the Tribunal has doubts regarding the methodology, there are various possible means of addressing this. One possibility is to delay certification until a more developed and satisfactory methodology is provided: *Gormsen v Meta* §§40(5), 58 and 62. Alternatively, the Tribunal might certify the proceedings only in respect of those aspects of the claim (if any) for which there is an adequate methodology: *Hammond & Stephan (CAT)* §132.

(3) Opt-in vs opt-out

52. If the Tribunal makes a collective proceedings order, the order must specify whether the collective proceedings will be opt-in or opt-out. In making that decision, the Tribunal is to take account of all the matters it thinks fit including, in addition to the matters in rule 79(2), the strength of the claims and whether it is practicable for them to be brought as opt-in collective proceedings, having regard to all the circumstances including the estimated amount of damages that the claimants may recover: rule 79(3) of the Tribunal Rules.

53. In that regard, the Supreme Court in *Evans v Barclays Bank* [2025] UKSC 48 held that:

(1) The Tribunal has a broad discretion under the Tribunal Rules to take into account the matters it thinks fit in making a decision to grant a collective proceedings order on an opt-in or opt-out basis: §4.

(2) The proper starting point in making the determination is one of neutrality without any presumption or predisposition in favour of either opt-in or opt-out proceedings: §168(iii).

(3) The merits of the claim are not a neutral factor. As a general rule, the weaker the case, the less justification there is for certifying on an opt-out basis. Thus even if a claim survives an application for strike out and/or summary judgment, if it is very weak it is likely to be more difficult to find that the fair procedural balance between the claimants and defendant(s) favours certifying on an opt-out basis. Conversely if the Tribunal forms the view that the claim appears to be a strong case, that will support a decision to certify as opt-out: §§94–95, 101 and 168(iii).

(4) Strike-out/summary judgment

54. Under r. 41(1)(b) of the Tribunal Rules, the Tribunal may strike out in whole or in part a claim at any stage of the proceedings if it considers that there are no reasonable grounds for making the claim. Rule 43(1) provides that the Tribunal may give summary judgment against a claimant on the whole of a claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or issue, and there is no other compelling reason why the case or issue should be disposed of at a substantive hearing.

55. Strike out and summary judgment under the Tribunal Rules are approached on the same basis as in the High Court under the Civil Procedure Rules: *Gutmann v First MTR* [2021] CAT 31 §52.

56. In considering an application for strike out, it is necessary to consider whether the claimant has a realistic as opposed to a fanciful prospect of success. While the Tribunal should not automatically accept the claimant's factual contentions at face value, it will normally do so unless those factual assertions are demonstrably unsupportable: see *Begum v Maran* [2021] EWCA Civ 325, §22, and *BSV v Bittylicious Ltd* [2024] CAT 48, §36.

57. As noted at §37 of *BSV v Bittylicious*, the classic summary of the principles to be applied in a summary judgment application is set out in the judgment of Lewison J in *Easyair v Opal Telecom* [2009] EWHC 339 (Ch) §15:

> "i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

ii) A ‘realistic’ claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];

iii) In reaching its conclusion the court must not conduct a ‘mini-trial’: *Swain v Hillman*;

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent’s case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant’s case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.”

58. Mr de la Mare relied on the judgment of Cockerill J in *Lombard North Central v Natwest* [2021] EWHC 2025 (Comm) §§33–36 to emphasise that the bar for striking out a case is a high one. Cockerill J referred to, among other authorities, *Richards v Hughes* [2004] EWCA Civ 266, §22, where Peter Gibson LJ said that “the court must

be certain that the claim is bound to fail. Unless it is certain, the case is inappropriate for striking out." That proposition is not in dispute.

59. The Tribunal also notes the very recent judgment of the Court of Appeal in *Meta v Gormsen* [2026] EWCA Civ 993, §§35–36, in which Green LJ referred to *Begum v Maran* and noted that competition litigation is invariably heavily expert evidence led, and that it is difficult to predict how that evidence will evolve at trial. We do not read that judgment as setting any different standard for strike-out applications in a competition litigation context. What it does, however, is to emphasise the need for caution in circumstances where, at the stage of certification of collective proceedings, the Tribunal necessarily does not have a full picture of the evidence that will be available and the methodologies that may be used by the experts at trial.

60. It is also important to note that while the arguments put forward in support of an application for strike-out or summary judgment may overlap with the arguments put forward in favour of refusing certification (as the present case demonstrates), the effect of the strike-out or summary dismissal of all or part of a claim in collective proceedings is different to a refusal to certify a claim.

61. A decision to strike out or summarily dismiss all or part of a claim on the basis that the claim has no realistic prospect of success definitively puts an end to that claim or part of the claim. The effect of the Tribunal's judgment in such a case is to say that there is no realistic prospect of the claim being improved by the evidence that can reasonably be expected to be available at trial. That was the case for parts of the claims in, for example, *BSV v Bittylicious* as well as (more recently) *Gutmann v Vodafone* [2025] CAT 77 and *Gutmann v Apple* [2026] CAT 20.

62. If, however, the Tribunal refuses to certify all or part of a claim, whether on the basis that the proposed methodology does not satisfy the *Microsoft* test, or because on some other ground the claim fails to meet the authorisation condition and/or the eligibility condition, it may (depending on the facts) be possible for the PCR, or a different PCR, to return to the Tribunal to seek certification on the basis of a differently-formulated claim. The Tribunal may permit the PCR to do so in the same proceedings, as occurred in *Gormsen v Meta* and (more recently) *Waterside Class v Mowi* [2026] CAT 32.

Alternatively, if the original claim is dismissed, as in the present proceedings, it may be possible for the PCR to refile the claim in new proceedings, having addressed the defects in the original claim. Either way, a certification refusal does not prejudge the position that the Tribunal might take on the basis of a further application.

F. DR PIKE'S EVIDENCE

63. As explained above, the PCR's application was supported by three expert reports from Dr Pike, plus a correction to his third report. The Proposed Defendants argued that, in the light of both their contents and the circumstances in which those reports were prepared, the Tribunal should give no weight to any of the evidence of Dr Pike.

(1) Expert witness independence: the law

64. The Tribunal has set out the principles applicable to expert evidence in the Tribunal in PD 3/2025. Those include the following provisions:

> "2. While it is not bound by the Civil Procedure Rules, the Tribunal will take into account and will generally apply (in so far as relevant) the principles set out in CPR PD 35. The overarching principle is that experts should assist the Tribunal by providing objective, unbiased opinions on matters within their expertise. That duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid. Expert evidence in the Tribunal should therefore be, and should be seen to be, the independent product of the expert uninfluenced by the pressures of the proceedings, and an expert witness should never assume the role of an advocate: Tribunal Guide to Proceedings (2015), §7.67.
>
> 3. The Tribunal expects experts to acknowledge and respond in a fair-minded manner to evidence and views that challenge their positions, changing their minds if appropriate, particularly where the facts change or new evidence emerges.
>
> …
>
> 8. Any prior involvement of the expert with either the instructing client or the case in question must be declared either at the stage at which the Tribunal grants permission for the provision of expert evidence (if the identity of the proposed expert is known at that point), or as soon as possible thereafter, so that it may be considered by the Tribunal and the opposing parties. Where an expert report is submitted without prior permission having been given, for example to support an application for a collective proceedings order, details of any prior instructions or involvement must be provided together with that report. In appropriate cases the Tribunal may reject the proposed expert.
>
> 9. In particular: (a) Experts or the firms for which they work may have carried out prior consulting work for clients by whom they are instructed or paid, including

> ongoing concurrent work on similar cases whether in the UK or other jurisdictions. Experts or the firms for which they work may also have been involved in the case prior to their formal instruction and may even have been involved in instigating the case. In such cases the Tribunal may ask the expert to address explicitly the steps they have taken to ensure that the opinions presented to the Tribunal are untainted by their historic involvement with the client and/or the case."

65. Both PD 3/2025 and the Tribunal's Guide to Proceedings explain that the Tribunal will generally apply the principles set out in CPR PD 35, which supplements CPR Part 35. CPR PD 35 provides in §2 that:

> "2.1 Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.
>
> 2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.
>
> 2.3 Experts should consider all material facts, including those which might detract from their opinions.
>
> 2.4 Experts should make it clear –
>
> (a) when a question or issue falls outside their expertise; and
>
> (b) when they are not able to reach a definite opinion, for example because they have insufficient information.
>
> 2.5 If, after producing a report, an expert's view changes on any material matter, such change of view should be communicated to all the parties without delay, and when appropriate to the court."

66. The Proposed Defendants referred to the Court of Appeal's judgment in *Pfizer v CMA* [2026] EWCA Civ 765, §175, making the following comments about the concept of confirmation bias in the context of the decision-making of the CMA:

> "The concept of confirmation bias assumes that the decision maker applies a process of evidence collection and evaluation to arrive at an end result or decision which fits a predetermined conclusion as to what the outcome should be. With this mindset the decision maker seeks out and/or relies upon only such evidence as supports its predetermination and ignores other potentially exculpatory evidence or evidential lines of inquiry. A decision maker guilty of confirmation bias will not be conducting a procedure which requires that all evidence be collected and evaluated fairly and objectively."

67. In similar vein, the Tribunal made the following comments in *BAA v Competition Commission* [2009] CAT 35, §§108 and 113 in the context of decision-making by the Competition Commission:

> "Thus (1) apparent bias is to be distinguished from actual bias: a decision may be affected by apparent bias without the decision-maker being actually biased; (2) in relation to apparent bias, not only are outward appearances and public perceptions important, but it is also to be borne in mind that a person who in good faith believes that he or she is impartial or is capable of acting impartially, may nevertheless be subconsciously affected by bias; (3) the test to be applied is an objective one: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision-maker was biased; (4) the fair-minded and informed observer, who is not to be equated with the complainant, must adopt a balanced approach and will be taken to be a reasonable member of the public, neither unduly complacent or naïve nor unduly cynical or suspicious; (5) this test is consistent with the requirement under article 6 of the European Convention on Human Rights of an independent and impartial tribunal.
>
> …
>
> However, it follows from the underlying assumption that bias may be subconscious as well as conscious that protestations by the decision-maker that he is not biased are, in the words of Lord Hope of Craighead in *Porter v Magill* 'unlikely to be helpful' from the point of view of the fair-minded and informed observer (see [2002] 2 AC 357 at 495). Indeed, Lord Hope approved Schiemann LJ's approach, in the Court of Appeal in the same case, of treating such assertions as self-serving and of no weight. In a similar vein, in *Locabail* (above), at paragraph 19, the Court of Appeal said:
>
>> 'Nor will the reviewing court pay attention to any statement by the judge concerning the impact of any knowledge on his mind or his decision: the insidious nature of bias makes such a statement of little value …'"

68. Mr de la Mare, by contrast, drew our attention to the following passage from the judgment of the Master of the Rolls in *R (Factortame) v SS for Transport (No. 8)* [2002] EWCA Civ 932, distinguishing the position of an expert witness from that of a tribunal in relation to the question of apparent bias, and commenting at §70 that:

> "Expert evidence comes in many forms and in relation to many different types of issue. It is always desirable that an expert should have no actual or apparent interest in the outcome of the proceedings in which he gives evidence, but such disinterest is not automatically a precondition to the admissibility of his evidence. Where an expert has an interest of one kind or another in the outcome of the case, this fact should be made known to the court as soon as possible. The question of whether the proposed expert should be permitted to give evidence should then be determined in the course of case management. In considering that question the judge will have to weigh the alternative choices open if the expert's evidence is excluded, having regard to the overriding objective of the Civil Procedure Rules."

69. We will return to this case-law in our discussion below.

(2) Proposed Defendants' objections

70. The Proposed Defendants argued that Dr Pike could not be considered a genuinely independent expert in these proceedings. Accordingly, they said that without an expert methodology from a reliable independent expert, no part of the proposed collective proceedings could be certified. A specific concern was Dr Pike's response to developments in the evidence, which the Proposed Defendants said should have led him to fundamentally reconsider his approach following Pike 1.

71. In particular, for the purposes of quantifying the On-Amazon claim, Pike 1 had assumed the Amazon Store share of Apple products sold online to be the same as Amazon's share of UK online consumer electronics, i.e. approximately 48%, giving a value of commerce of £22.3 billion. (He also included a lower possible estimate of £10.7 billion, implying an online market share of 23%.) In response, Apple and Amazon submitted data which showed that the share of UK sales of new Apple products made through the Amazon Store was in fact only 1.2% before 2019 and 3.7% since then. They contended that this rendered the Off-Amazon claim implausible, on the basis that a tiny group of On-Amazon resellers could not conceivably have had an impact on the Off-Amazon pricing of Apple products.

72. That did not, however, lead to a material revision to Dr Pike's assessment. On the contrary, the response in Pike 3 was to dispute the Proposed Defendants' 1.2%/3.7% figures and contend that the appropriate figure was 18.5%, on the basis of removal of offline and bundled sales (i.e. sales of mobile phone handsets bundled with a mobile phone contract). The Proposed Defendants pointed out that this contradicted Pike 1 which said that offline sales were affected by the conduct and included within the claim. Furthermore, when Dr Pike corrected this figure further in his addendum, reducing his calculation of Amazon's online share to 11.4%, he continued to maintain that this did not change the substance of his earlier conclusions.

73. Moreover, while Pike 1 said in terms that he did not have the data available to analyse the impact of the Agreements on Off-Amazon pricing, and therefore did not set out any damages assessment (even provisional) for that part of the claim, the addendum to Pike 3 set out "illustrative damages" for the Off-Amazon claim of £1,345 million or £1,435

million, assuming an overcharge of 1% and interest of either 8 or 10%. Those damages figures were, the Proposed Defendants said, entirely meaningless, since Dr Pike had no evidence that the overcharge was indeed 1% or indeed any other figure at all.

74. Mr Harris submitted that Dr Pike's evidence was thereby tainted by subconscious confirmation bias, or at least that there was an appearance of subconscious bias. Since Dr Pike and Fideres had instigated the claim, Dr Pike had a vested interest in maintaining the validity of his own initial analysis. Dr Pike would therefore unconsciously avoid undermining that analysis, and his assurances that he was independent were no safeguard against that unconscious process.

(3) The position of Dr Pike and the PCR

75. As noted at §37 above, following the Tribunal's letters of 19 and 22 June 2026 the PCR and Dr Pike provided further information concerning Dr Pike's involvement in the proceedings and the steps taken to ensure compliance with PD 3/2025.

76. In a letter dated 23 June 2026, Dr Pike expanded upon the information already given in his expert reports concerning his historical involvement with the claim. He referred to the matters described at §§11–12 above concerning his and Fideres' involvement in identifying and investigating the potential claim prior to his formal instruction as an expert in the *Riefa* proceedings, including Fideres' work in relation to the similar US litigation against Apple and Amazon. Dr Pike maintained that the information provided in Pike 1 was accurate and complete.

77. On the question of independence, Dr Pike stated that he understood his overriding duty to the Tribunal; that his initial assessment of the AGCM decision and the initial memo provided to Hausfeld in January 2022 had not predetermined the conclusions subsequently expressed in his reports in these proceedings; and that those conclusions had instead been reached having "considered the issues afresh" in light of the available evidence, including material subsequently disclosed by Apple and Amazon and the objections raised in their responses to the CPO application.

78. The letter further stated that Dr Pike had taken personal responsibility for the analysis and opinions expressed in his reports, sought to identify and consider factors that might undermine or qualify those opinions, and communicated changes in his views to the Tribunal and the parties where appropriate. Dr Pike also referred to information barriers established between those involved in the present proceedings and colleagues engaged in the US litigation. He confirmed that neither he nor Fideres had any direct financial interest in the outcome of these proceedings, that no contingent or success fee arrangements were in place, and that neither he nor Fideres had previously acted for Apple, Amazon, Prof Riefa or Mr Le Patourel.

79. On the basis of those comments, the PCR said that Dr Pike had been transparent about his prior involvement from the outset and had taken appropriate steps to ensure compliance with PD 3/2025. It submitted that neither Dr Pike's role in identifying the potential claim nor the work undertaken by Fideres before his formal instruction was inconsistent with Dr Pike's duties as an expert witness.

80. During the hearing, Mr de la Mare submitted that Dr Pike had considered the criticisms advanced by the Proposed Defendants, reassessed the available evidence, and remained of the view that the economic framework advanced in his reports was sound. Mr de la Mare characterised that as an entirely proper exercise of expert judgment rather than an indication of partiality.

(4) Discussion

81. We do not in any way criticise the transparency of the information provided by Dr Pike regarding his prior involvement in these proceedings and the involvement of Fideres in the US proceedings. We likewise make no criticism of the instructions provided by Hausfeld to Dr Pike, which clearly set out (among other things) the scope of Dr Pike's instructions at this stage of the proceedings, the requirement for any methodology put forward in support of an application for certification to have regard to the *Microsoft* test, and Dr Pike's duties as an expert, including by reference to CPR Part 35 and PD 35. There are nevertheless a number of aspects of Dr Pike's involvement in this case to date which cause us concern and affect the weight that we can put on his evidence.

82. First, it is clear that Dr Pike was very closely involved in instigating the case. It was Dr Pike and colleagues at Fideres who first approached Hausfeld in January 2022 following the AGCM decision, and subsequently assisted Hausfeld in considering the potential implications of that in the UK. That initial work provided the basis for Hausfeld's approach to the funder, Asertis. Dr Pike's work was therefore relied upon for a substantial investment of time and resources by multiple stakeholders, even before Prof Riefa was introduced to the proceedings as the PCR.

83. We accept the submissions of Mr Harris that, in those circumstances, Dr Pike has a reputational interest in the success of the case which materially differs from that of an expert who is approached by a solicitor who is contemplating bringing a collective action. In the latter case, the expert can without losing any credibility opine (for example) that the proposed theory of harm is unworkable or that there are material problems in the calculation of loss. In the present case, having first come up with the proposal for a collective action, a *volte face* of that type might have caused considerable damage to Dr Pike's (and by extension Fideres') credibility.

84. Those factors do not inevitably mean that an expert who has initiated proceedings cannot then properly go on to give evidence in the same proceedings. But they underscore the need, in such a case, for that expert to be particularly mindful to ensure their impartiality and to be able to demonstrate that impartiality, as PD 3/2025 §§8 and 9(a) make clear.

85. We do not, in that regard, consider that the contents of either Pike 1 or Pike 2 give rise to cause for concern – albeit that, as we discuss in section G below, we do not consider that those reports, together with Pike 3, provide a sufficiently coherent and well-developed methodology for the Off-Amazon claim to be certified. Our focus at this point, however, is on Dr Pike's independence and objectivity. In that respect, we consider that Pike 3 and the addendum to Pike 3 go further into advocacy than we would expect of an expert witness. We would, at the very least, have expected an objective analysis of the data provided by the Proposed Defendants as to the share of Amazon's sales, and an equally objective consideration of the potential impact of that on the assessment of the plausibility and quantum of the different aspects of the claim, consistent with §3 of PD 3/2025. Instead, both the content and tone of Pike 3 are

defensive and adversarial, describing the Proposed Defendants' figures as "misleading" and "not meaningful", contending that the new data do not undermine "at all" the plausibility of his theory of harm, and making a range of assertions in categorical and unqualified terms.

86. We make no criticism of Dr Pike for responding to the Proposed Defendants' share of sales figures by explaining that a different comparison, omitting offline and bundled sales, might produce a different share of sales figure (which he ultimately calculated at 11.4%). At this provisional stage, however, we would have expected a fair-minded evaluation of both (1) the way in which the relevant share of supply might be calculated and the potential uncertainties in that regard, given that Dr Pike has not yet formulated any specific market definition, and (2) the impact of the range of figures in contention on Dr Pike's assessment of causation, particularly given that on any basis Amazon's share of online sales fell far below Dr Pike's initial assumption of a 23% to 48% figure. Pike 3 does neither of those things.

87. Likewise, Dr Pike is entitled to advance a proposition that particular features of Amazon's impact on the market might result in its pricing being regarded as a pricing reference point for other UK retailers irrespective of its actual share of Apple product sales. The problem, from the perspective of an assessment of Dr Pike's independence and objectivity, is that Pike 3 does so in adversarial terms, without properly and objectively engaging with the potential consequences of the sales data for his theory of harm, or acknowledging or explaining the change in his position on this point since Pike 1. Nor does Pike 3 acknowledge the fact that (beyond a few price match guarantees) he has not yet obtained any evidence that demonstrates the extent to which the Amazon Store is indeed a material reference point for other retailers selling Apple products, sufficient to produce the Off-Amazon effects that he postulates.

88. There is in this regard a striking contrast between Pike 1 and Pike 2, on the one hand, and Pike 3:

(1) The theory of harm described in Pike 1, in relation to both On-Amazon and Off-Amazon sales, rested on the alleged market power of the Proposed Defendants, and the effect of that market power by way of the competitive constraints on the

different sellers of Apple products. In the context of that theory of harm, Pike described as no more than "plausible" the proposition that the Agreements resulted in a reduction in the discounts offered by other online or offline stores "to the extent that" those are set by reference to the price of the Amazon Store or Apple's RRP.

(2) Pike 2, consistent with Pike 1, said that "it is also plausible that other UK retailers such as Currys, John Lewis and Argos may set their prices by reference to either UK Amazon Marketplace or Apple's RRP."

(3) Pike 3 now says that "The starting point for any assessment of plausibility of such pricing effects should be the fact that Amazon is a clear pricing reference point for UK retailers, both for consumer electronic goods and as a whole. … the role of UK Amazon Marketplace as a clear pricing reference point for UK consumers means that the prices that it offers affect the price setting behaviour of other UK retailers regardless of its share of Apple product sales in particular." He concludes that it is "highly plausible" that other retailers would set their online and offline prices by reference to prices on the Amazon Store.

89. The initial statement in Pike 1 that it is "plausible" that the Amazon Store and/or Apple's RRP provide a reference point for the pricing of other UK retailers, in the context of a theory of the market power of the Proposed Defendants, has thus become in Pike 3 an assertion that Amazon is a "clear pricing reference point" affecting the price setting behaviour for Apple products sold by other UK retailers, whatever the Amazon Store's share of Apple product sales. That is, in our view, advocacy for the PCR, rather than objective evidence of the nature that we would expect from an independent expert.

90. In similar vein, rather than engaging objectively with the Proposed Defendants' comments on the implications of the Apple sales data, Pike 3 dismisses those comments in terms that rely heavily on assumptions and assertions about the overall market position of the Amazon Store, and which do not fairly acknowledge the limitations in the evidence currently available. We return to this in more detail in section G below; in the context of this discussion, however, our concern relates to the lack of objectivity

of Dr Pike's response to the sales data provided by the Proposed Defendants. In that regard, PD 3/2025 §3 explicitly calls for experts to "acknowledge and respond in a fair-minded manner to evidence and views that challenge their positions".

91. We also agree with the Proposed Defendants that the "indicative" Off-Amazon damages figures set out twice in Pike 3 are meaningless. As Dr Pike acknowledged, he had not been able to test empirically the impact of the Agreements on Off-Amazon purchasers. His supposition of a 1% overcharge therefore has no evidential foundation. The fair-minded and objective course would have been simply to maintain the position set out in Pike 1 of describing the data that would be required to conduct that analysis.

92. These concerns go to both Dr Pike's objective independence and the extent to which he has demonstrated such independence. We do not find it necessary or helpful to consider whether this fits the description of confirmation bias, whether subconscious or merely apparent. We agree with the submissions of Mr de la Mare that the *Pfizer* and *BAA* cases relate to final decision-makers rather than experts. We consider that the approach set out in *Factortame* is the more appropriate approach in this case: namely that the question is one of case-management. The Tribunal is faced with an evaluative assessment, having regard to all the circumstances of the case, as to what if any weight can be placed on the evidence of Dr Pike for the purposes of this stage of the proceedings.

93. In that regard, Apple and Amazon effectively invited us to give no weight at all to any evidence from Dr Pike. We agree that we must treat Dr Pike's evidence with considerable caution, but we do not consider that it is appropriate to disregard it in its entirety. In relation to the On-Amazon part of the claim, as we set out in section G below, Dr Pike's assessment is supported by an initial empirical analysis in relation to which neither of the Proposed Defendants identified particular objections; nor do they identify any fundamental problems with his proposed methodology for the assessment of loss. We do not, therefore, consider that it would be right to ignore Dr Pike's evidence on that part of the claim or to see it as an insurmountable barrier to certification.

94. The difficulty arises with the Off-Amazon claim, in relation to which the Proposed Defendants have identified a number of serious objections to Dr Pike's assumptions and methodology. Given the concerns that we raise above, including specifically as to the manner in which Dr Pike has responded to those objections, we consider that we can place limited weight on his evidence on that issue.

95. As for the future conduct of these proceedings, we express no view at this stage. Applying the approach set out by the Master of the Rolls in *Factortame*, the question of whether Dr Pike should give further evidence in this case, and the weight that we should attribute to that evidence, is a matter for case management in due course.

G. THE THEORY OF HARM AND QUANTUM METHODOLOGY

(1) Preliminary comments

96. As we have summarised at §§29–30 above, the Proposed Defendants raised a plethora of objections to the merits of the claim, which they say should lead to the Tribunal striking out, summarily dismissing or refusing to certify the Off-Amazon claim, and refusing to certify the On-Amazon claim.

97. The arguments of the Proposed Defendants did not always clearly distinguish between the On-Amazon and Off-Amazon claims. The substance of the objections was, however, materially different for the two categories of claims. We will therefore address, separately, the methodological arguments relating to the On-Amazon and Off-Amazon claims.

98. Before doing so, however, it is worth bearing in mind two preliminary comments. The first is that the Proposed Defendants' case has evolved considerably since the *Riefa* proceedings. In those proceedings, as recorded at §120 of the *Riefa* CPO judgment, although the Proposed Defendants advanced substantial criticisms of the PCR's case and Dr Pike's methodology, they did not resist certification on that basis. Their position now, as we discuss below, is that the Tribunal should not certify any part of the claim, and should strike out or summarily dismiss the Off-Amazon claim. That change of position appears to have come about for several main reasons. The first is their

objections to the evidence of Dr Pike, which we have already addressed. The second is the disclosure of the Amazon Store share of sales data, which we have discussed above, and which formed the central basis of the Proposed Defendants' objections to the Off-Amazon claim (and their corresponding contention that the On-Amazon claim alone fails a cost-benefit analysis). Finally, there is now a considerably greater body of authority, including at appellate level, on the approach to certification, on which the Proposed Defendants unsurprisingly rely.

99. The other preliminary comment is that neither Apple nor Amazon have filed any economic evidence of their own in response to Dr Pike's reports. Instead their objections were put forward as a matter of reasoning, logic and availability of evidence. We comment on the implications of that below.

(2) The On-Amazon claim

(a) Dr Pike's proposed methodology

100. Dr Pike's theory of harm in relation to On-Amazon purchases is, in essence, that the exclusion of most of the resellers of Apple products from the Amazon Store, and the advertising and marketing restrictions on that platform, had the effect of reducing both intra-brand and inter-brand competitive constraints on the prices of Apple products set by Amazon Retail and the remaining resellers on the Amazon Store, which he would expect to have caused higher prices for Apple products on the Amazon Store.

101. As a preliminary matter, to test that theory of harm, Dr Pike says that he will analyse various different indicators of the market power of the Amazon Store, Amazon Retail and Apple, which he describes in detail in Pike 1.

102. To estimate the loss suffered by class members who purchased On-Amazon, Dr Pike proposes to do a before-and-after comparator analysis on a sample of Apple products to assess the likelihood of obtaining discounts from the Apple RRP before and after the introduction of the Agreements. Dr Pike says he could conduct his analysis using an event study, using a short timeframe around the implementation of the Agreements in 2018. If a longer period needs to be considered, Dr Pike proposes to run a regression

analysis controlling for factors such as seasonality, new releases and/or product shortages. A difference-in-difference analysis could also be undertaken, comparing changes in discounts on the UK Amazon Store with the Canadian Amazon Store, which was not subject to the Agreements.

103. If necessary, for example if costs changed, Dr Pike would extend the discount comparator analysis into a mark-up analysis to analyse whether the retail mark-up increased due to the Agreements. This would use similar methods to those proposed for the discount analysis.

104. Dr Pike proposes to conduct these analyses using transaction and cost data from Amazon and Apple in relation to Apple products and selected rival brands. Having estimated the impact of the Agreements on the pricing of Apple products, the aggregate damage will be calculated by multiplying the estimated overcharge by the volume of sales of Apple products on the Amazon Store for the relevant period of time.

105. Dr Pike undertook a preliminary analysis using publicly available data from the Amazon Store on the price and discounting of iPhones and Samsung Galaxy phones from 2017 to 2021. The results are set out in Pike 1. He found that the percentage of iPhones discounted from RRP fell from 91% to 49% during that period, with the average discount also falling. By comparison, Samsung Galaxy phones continued to be discounted at a similar rate throughout the period. That preliminary analysis suggests a 4.1% increase in prices of iPhones sold On-Amazon relative to RRP following the Agreements.

(b) Proposed Defendants' objections

106. Apple does not challenge the PCR's proposed methodology in relation to On-Amazon sales, as such. Amazon criticises Dr Pike for not defining the relevant markets, and contends that his theory of harm rests on an asymmetry of substitution in respect of Apple products sold On-Amazon and Off-Amazon. Sales of Apple products on the Amazon Store are regarded as substitutes for sales of Apple products by other retailers, but sales of Apple products by other retailers are only weak substitutes for sales of Apple products On-Amazon. Conspicuously, however, neither Apple nor Amazon

contended that as a matter of substance Dr Pike's theory of harm in relation to the On-Amazon claim was implausible, nor did either of the Proposed Defendants identify any problem with the proposed methodology for the calculation of On-Amazon loss.

107. The other argument raised by the Proposed Defendants relates to the cost-benefit of the On-Amazon claim if the Off-Amazon claim is not certified. We address this separately below.

(c) Discussion

108. In our view, the PCR and Dr Pike have advanced a credible theory of harm in respect of On-Amazon sales, and the Proposed Defendants do not contend otherwise. Dr Pike has proposed a range of approaches to quantifying possible harm, summarised above, and has given considerable thought to the data required for these approaches. The Proposed Defendants made no criticism of any of his proposed methodologies; nor do they suggest that there are likely to be any fundamental problems with the availability of data for the purposes of those methodologies.

109. The On-Amazon claim is supported by the data already available showing that before the Agreements Amazon Retail accounted for 25% of sales of Apple products on the Amazon Store, whereas since the Agreements it has accounted for 99% of those sales, making it virtually the only supplier of Apple products on the Amazon Store. Further strong support is given by Dr Pike's preliminary empirical analysis of reduced discounting of Apple products on the Amazon Store since the Agreements, which is consistent with the effects that he hypothesises. We therefore find the theory of harm in relation to On-Amazon sales to be plausible, credible and grounded in the facts. The proposed methodologies advanced by Dr Pike on behalf of the PCR are credible, demonstrate the availability of necessary data, and provide a clear blueprint to trial. The On-Amazon part of the claim clearly passes the *Microsoft* test, in terms of the methodology proposed.

(3) The Off-Amazon claim

(a) Dr Pike's proposed methodology

110. Dr Pike identifies three interrelated mechanisms by which, he says, higher On-Amazon prices for Apple products might plausibly lead consumers to suffer losses when purchasing Apple products Off-Amazon. These are referred to as (1) the RRP effect, (2) the umbrella effect, and (3) the diversionary effect.

111. The RRP effect posits that the profit-maximising retail price for Apple products is constrained by On-Amazon sales. Accordingly, if there is a reduction in discounting from RRP for On-Amazon sales, Apple can set a higher RRP. The RRP of Apple products might therefore be expected to have been lower but for the Agreements, leading to an overcharge for consumers buying directly from Apple.

112. In order to measure that overcharge, Dr Pike plans to compare Apple's mark-ups on its products in the counterfactual world without the Agreements with its actual mark-ups. He proposes to make that comparison using essentially the same three proposed methodologies as summarised for the On-Amazon claim at §102 above, namely an event study using a short timeframe and a simple comparison of mark-ups on products before and after the event, or a regression analysis over a longer period, or a difference-in-differences analysis comparing the change in margins on UK sales with the change in margins on Canadian sales over the same period. Dr Pike says that he expects to find information on Apple's mark-ups within Apple's internal strategy documents. In the absence of such information, Dr Pike says that he will estimate the mark-ups himself for a sample of products, using Apple's aggregate financial data and information on Apple's sales profitability data.

113. As explained above, in response to the Proposed Defendants' objections that the Amazon Store's share of sales for new Apple products was and remains very small, making any constraint on Apple's pricing (and also other Off-Amazon effects) implausible, Pike 3 says that the share of sales made through the Amazon Store should be calculated by reference to online sales only, and excluding Apple products bundled with a mobile phone contract. That provides an On-Amazon share of sales of around

11.4%, which Dr Pike says makes the Amazon Store the second largest online channel for the sale of unbundled Apple products (after Apple itself). On that basis he says that as prices rise on the Amazon Store, Apple will be able to sell more Apple products itself, and the constraint on its pricing will therefore be weaker than absent the Agreements.

114. The umbrella effect hypothesises that if On-Amazon prices or Apple's RRP rise, that may also lead to rises in the prices charged by other (online or offline) Apple retailers. To assess that effect, Dr Pike proposes to analyse the extent to which other retailers' prices are correlated with the prices of either the Amazon Store or Apple's RRPs, using a standard price correlation analysis, controlling for cost and demand shocks that may drive changes in price. Dr Pike says he will be able to control for almost all cost shocks using data from Apple on its wholesale prices. He also expects Amazon and/or Apple to have price-monitoring data on Apple products sold by other retailers.

115. Pike 3 says that Amazon is a "clear pricing reference point for UK retailers", both for consumer electronic goods and as a whole, on the basis that it is used by almost the entire UK adult population, and is the largest online seller of consumer electronics products in the UK, as well as the largest online intermediated marketplace. He therefore regards it as "highly plausible" that Off-Amazon Apple sellers would set their prices by reference to those on the Amazon Store (a change in language from Pike 1 and 2, which we have referred to at §88 above). He also refers to price-match promises offered by John Lewis and Currys.

116. Finally, the diversionary effect assumes that some consumers who would have bought from the Amazon Store in the absence of the Agreements were diverted from there to Apple or other retailers, once the Agreements led to higher On-Amazon prices. Those customers would then, Dr Pike assumes, have paid RRP rather than the discounted prices that they would have paid if they had purchased On-Amazon.

117. To calculate the number of customers who would have diverted from On-Amazon to Apple itself, Dr Pike says that he would expect to find relevant evidence of the cross-price elasticity of demand in Apple's own internal documents concerning its pricing strategy. In the absence of such evidence, Dr Pike says that he would calculate the

diversion ratio using Apple transaction data, which would allow him to measure the change in the quantity sold by Apple when prices on the Amazon Store changed. A further approach might be to run a survey of purchasers from Apple to understand their likely reaction to a price change on the Amazon Store.

118. To calculate the diversion ratio in respect of Apple products sold by other retailers, Dr Pike expects that Apple would have sales and price data from third-party retailers that sold Apple products, which could then be used to calculate a diversion ratio in the same way as Dr Pike proposes for direct sales by Apple. An alternative might be to use web traffic data for those other retailers to estimate changes in web traffic and conversion rates when prices on the Amazon Store change, or to run a similar survey to that proposed for Apple sales. The loss suffered by the diverted customers would then be calculated by comparing the On-Amazon counterfactual price with the prices offered by Apple and the other retailers to whom the customers are assumed to have diverted.

(b) Proposed Defendants' objections

119. Whether put as strike out/summary judgment or certification arguments, Apple and Amazon's arguments rest on a common set of objections to Dr Pike's evidence.

120. First, as noted above in relation to the On-Amazon claim, Amazon contends that Dr Pike's Off-Amazon theory of harm rests on an assumed market asymmetry, which exposes a crucial flaw in his reasoning. If the On-Amazon claim rests on the proposition that On-Amazon prices are not constrained by Off-Amazon sales and prices, the On-Amazon pricing cannot coherently be said to affect Off-Amazon pricing, because there would on that hypothesis be very little consumer switching in response to a change in On-Amazon prices, and certainly not enough to drive up prices Off-Amazon. Dr Pike's failure to define the relevant markets for the purposes of his theories of harm for On- and Off-Amazon purchases is therefore, Amazon argues, indicative of a hypothesis that lacks credibility.

121. Secondly and relatedly, both Apple and Amazon contend that Dr Pike's methodology fails to explain how the alleged infringement could plausibly have caused any Off-Amazon price increases. They rely in particular on the Amazon Store share of sales for

Apple products as a whole (1.2% before 2019 and 3.7% since then) and argue that it is fanciful to suggest that a reduction in the number of sellers, and consequent increase in price, on such a minor sales channel could affect prices across all other sales channels, including Apple itself which Dr Pike asserts to have market power. If anything, it would be more likely that On-Amazon prices followed Off-Amazon prices, rather than the other way around.

122. The Proposed Defendants dispute Dr Pike's alternative share of sales figure of 11.4%, which excluded offline sales while including those sales within his definition of affected Apple products. Nevertheless, even with a market share of 11.4%, they contend that it remains implausible that On-Amazon prices would have the Off-Amazon effects alleged by the PCR.

123. In response to Dr Pike's general claims as to the importance of the Amazon Store as a price reference point for other retailers, the Proposed Defendants contend that Amazon's market position in relation to consumer electronics generally does not assist in relation to Apple products. They also said that the price match policies referred to by Dr Pike did not, in fact, support the effects that he claimed.

124. Thirdly, the Proposed Defendants submit that Dr Pike has not explained how he proposes to test for causation of the Off-Amazon effects, particularly the alleged umbrella effect, in circumstances where he does not propose to obtain any evidence about how third-party retailers set their prices.

125. Fourthly, given the inherent implausibility of the Off-Amazon claim, the Proposed Defendants say that it is incumbent on the PCR to demonstrate a reasonable factual basis for that claim. Dr Pike, however, has undertaken no preliminary empirical analysis of the Off-Amazon claim to test his hypothesis. The PCR has therefore failed to demonstrate a realistic prospect of success that the Agreements caused any loss in Off-Amazon purchases.

126. Finally, Amazon says that overall the Off-Amazon claim is too weak to be certified on an opt-out basis, following the guidance given by the Supreme Court in the *Evans* case.

(c) Discussion

127. For the reasons set out further below, our conclusion is that there is considerable force in the arguments of the Proposed Defendants. But we are not persuaded that they go so far as to show that the Off-Amazon claim should be struck out or summarily dismissed at this stage, before disclosure and the development of the economic evidence. We bear in mind the necessary caution adverted to by Green LJ in *Meta v Gormsen*, in cases that are heavily dependent on expert evidence which invariably evolves during the course of the proceedings. As Lewison J emphasised in *Easyair*, §15(vi), the court should hesitate before making a final decision without trial where reasonable grounds exist for believing that a fuller investigation into the facts of the case will add to or alter the picture before the court.

128. That does not mean that the Tribunal should refrain from striking out or summarily dismissing a case where it is clear that the relevant issue does not turn on the factual evidence likely to be available at the trial. But where the relevant issue is one that turns on the assessment of complex factual and economic evidence, the Tribunal may conclude that it is premature to dismiss the claim at the certification stage, where all that is before the court is (necessarily) a preliminary consideration of the evidence that might be available at trial. This distinction is illustrated by the approach taken by the Tribunal to the different heads of loss claimed in *BSV v Bittylicious*.

129. In the present case, the Proposed Defendants do not say that the Off-Amazon claim fails as a matter of law. Nor have they suggested that the data that might be relevant to the determination of causation and quantum in relation to the Off-Amazon claim are unavailable or will be practically impossible to obtain. Nor is this a case where the evidential picture is clear enough to conclude from the outset that the PCR's case is untenable. The Proposed Defendants' case is rather that Dr Pike has not articulated in a consistent and coherent way what his theory of harm is and how the data which he proposes to use will enable him to test that theory, so as to establish that any observed Off-Amazon price changes are indeed factually caused by the On-Amazon price increases which are said to have arisen from the Agreements.

130. In that regard, we consider that the Proposed Defendants' objections are better addressed under the question of whether the Off-Amazon claim is suitable for certification, in light of the requirements of the *Microsoft* test. In the present case, we do not consider that the evidence before us satisfies that test.

131. As a preliminary point in that regard, the "blueprint to trial" rests entirely on the evidence of Dr Pike, and his views of the plausibility of the theory (or theories) of harm, the methodologies that might be used to test both causation and quantum, and the likely availability of data and other information required for the purposes of those methodologies. For the reasons set out in section F above, however, we consider that Dr Pike's evidence must be treated with caution.

132. That does not, as we have explained, lead us to reject Dr Pike's evidence in relation to the On-Amazon claim, for which the theory of harm is on its face credible, and for which Dr Pike has provided a preliminary empirical analysis which is consistent with that head of loss. But the Off-Amazon claim is a different matter: it relies on a far more questionable set of theories of harm, which Dr Pike himself characterised in Pike 1 and 2 as no more than "plausible", and for which Dr Pike has not done any empirical analysis at all. Ultimately, Dr Pike can do no more than speculate as to whether Off-Amazon effects might be shown. We are not satisfied that we can place significant weight on that speculation (and Dr Pike's underlying analysis) in the light of our comments above as to the manner in which Dr Pike responded, in Pike 3, to the points raised by the Proposed Defendants, and our consequent concerns about his independence and objectivity.

133. Even taking Dr Pike's evidence on its face, however, his analysis of the Off-Amazon claim does not set out a sufficiently credible methodology that is grounded in the facts of the case and offers a realistic prospect of establishing loss across the proposed class. The common concern raised by the various objections advanced by the Proposed Defendants is the absence of a consistent and coherent theory of harm for the Off-Amazon effects. The theory of harm is of central importance in the articulation of the economic methodology, because it provides the framework within which the proposed empirical analysis must be assessed. Without a clear understanding of that theory, the

Tribunal cannot assess whether the proposed methodology is capable of testing the alleged effects of the infringement at trial.

134. Dr Pike's reports thus properly (in our view) do not put forward his proposed empirical analyses in a vacuum, but attempt to frame those analyses by reference to the different mechanisms by which he says the Off-Amazon effects could have arisen, as we have described above. For the reasons we set out below, however, we do not consider that Dr Pike's evidence articulates a consistent and coherent set of theoretical loss mechanisms together with a plausible methodology for testing those at trial.

135. The first concern is the question of market definition. Pike 1, as we have noted, was a lengthy report of 176 pages, of which 60 pages were devoted to market power. That analysis did not, however, identify the relevant markets which Dr Pike considers likely to form the basis of his theories of harm for the Off-Amazon claim. In consequence, there was no explanation of how substitution between those markets would or might operate in response to price changes, so as to give rise to the (rather complex, and interwoven) inter-brand and intra-brand competitive constraints and changes in competitive constraints which Dr Pike suggests underlie his theories of harm for the Off-Amazon effects. Instead Dr Pike assumes a market asymmetry whereby On-Amazon prices are insulated from Off-Amazon prices, but Off-Amazon prices are still influenced by On-Amazon prices.

136. In response to Amazon's objections in that regard, Dr Pike's response in Pike 3 is as follows:

> "Given differences in products offered by retailers, and asymmetric constraints in play, there are many potentially related markets. While I did not, and do not, consider it necessary to undertake a formal market definition exercise in the context of my first report … in my summary report I explain that I will be able to undertake such an exercise at trial."

137. That is unsatisfactory and misses the point. The Tribunal does not expect an expert providing evidence for a CPO application to undertake a full market definition exercise at that stage (indeed any such expectation would be unrealistic). But in a case where a central part of the economic evidence rests on an analysis of market power, we would expect to see at least some preliminary consideration of what the relevant markets are for the analysis in the claim, in order to provide a basis for the proposition that the

market power on those relevant markets supports the theory or theories of harm which the proposed empirical analysis is then designed to test.

138. Dr Pike's reliance on asymmetric constraints and the existence of "many potentially related markets" does not justify his failure to do so, but rather underscores the problem, indicating that the analysis of this part of the claim has not been adequately thought through. It is not sufficient for Dr Pike to say that he will undertake this exercise at trial. The point of the *Microsoft* test is precisely that there should, at the outset, be a preliminary methodology that is not purely theoretical. In this case Dr Pike has not even provided a theoretical market definition which can be evaluated by the Tribunal, let alone establishing that this is grounded in the facts of the case. On any view, it falls well short of the requirement for a sufficiently well considered and feasible theory as to how the case can be proved.

139. Secondly, similar concerns arise in relation to Dr Pike's response to the Proposed Defendants' data on the actual sales of Apple products on the Amazon Store, and their objections that those data render any Off-Amazon effects highly implausible. Given Dr Pike's reluctance to define any relevant market at this stage, it is difficult to understand how he can definitively contend, in Pike 3, that the market definition must exclude offline and bundled sales, so as to produce a share of sales figure of 11.4% rather than the Proposed Defendants' figures of 1.2%/3.7% (a point which adds to our concern about Dr Pike's independence and objectivity).

140. More importantly, however, Dr Pike has not provided a consistent and coherent explanation of his theory that a price effect impacting even 11.4% of the online market will or may have caused Apple (with far greater market power) and other retailers to adjust their own pricing in response. In Ms Abram's words, Dr Pike has not explained how he considers an On-Amazon share of supply of that level to exercise a "gravitational pull" on Apple itself or the rest of the market. Instead of doing so, Pike 3 adds to the lack of clarity as to what his theory of harm actually is.

141. As we have noted in section F above, a notable difference between Pike 1 and Pike 3 is the switch in emphasis in Pike 3 to a claim that Amazon is a "clear pricing reference point" for UK retailers. That is said, in Pike 3, to become the "starting point" for the

assessment of the plausibility of Off-Amazon pricing effects. But for sales by Apple itself, the RRP effect is (unsurprisingly) *not* said to arise from Apple using Amazon Store prices as a reference point. Rather, Dr Pike's theory is that the RRP effect arises from a diversion of demand arising from On-Amazon price rises, weakening the competitive constraint on the profit-maximising RRP. That is set out in both Pike 1 ("economic theory predicts that the profit-maximising retail price for Apple products that are constrained by [products on the Amazon Store] would rise as well, given the diversion of demand") and Pike 3 ("As prices rise on UK Amazon Marketplace and the difference between prices available on UK Amazon Marketplace and through Apple stores reduces, Apple will itself be able to sell more Apple Products").

142. Dr Pike thereby assumes an RRP increase arising from a diversionary effect, or in other words demand switching from Amazon to Apple. But he does not explain how he considers that any such effect of a magnitude sufficient to create any material impact on Apple's RRP could have arisen on the basis of the Amazon Store sales data which have been provided by the Proposed Defendants, particularly when combined with his theory of asymmetric constraints under which (as he repeats in Pike 3) customers do not readily substitute between Amazon and other retailers in response to price changes. His theory of harm in this regard is therefore simply not clearly articulated at all, let alone grounded in the facts. It leaves us with no confidence that his methodology would be able to identify a causal relationship between the Agreements and any Off-Amazon price increases, amidst all the other factors that could affect how Apple sets its RRP.

143. As regards third party retailers of Apple products, the theory of harm set out in Pike 1 was that an umbrella effect may have arisen as a result of raised prices On-Amazon, taken together with the supposed consequential effects on Apple's RRP. The absence of a coherent theory of harm for the Apple RRP effect therefore also affects the claimed umbrella effect in relation to third party retailers.

144. As for the proposed On-Amazon driver of the umbrella effects, that turns on Pike 3's claim that Amazon is a "clear pricing reference point" for other UK retailers of consumer electronics. But that is a largely unsupported assertion, with little attempt to reflect the facts as they have now emerged. Reliance on Amazon's overall market position as giving rise to competitive constraints is clearly not sufficient, if the relevant

market is one for Apple products on which the Amazon share of supply is small; this again raises the problem with the absence of any market definition, even on a preliminary basis. Dr Pike therefore falls back on an assumption that third party retailers monitor and adjust their prices to reflect those on the Amazon Store. He extrapolates from that assumption a further assumption that the On-Amazon prices of Apple products, specifically, affect the price-setting behaviour of other UK retailers, regardless of the On-Amazon share of Apple sales.

145. The available evidence for that is, however, very thin, consisting of two generic price-matching policies from John Lewis and Currys. Neither of those provides any evidence of the retailers adjusting prices for Apple products by reference to the prices on the Amazon Store. The Currys policy simply refers to price matching against other UK retailers, by refunding the difference if the identical item is available cheaper elsewhere, subject to various detailed terms and conditions. It does not claim that Currys adjusts its prices for any products by reference to the Amazon Store, or indeed any other specific retailer. While the John Lewis policy does say that John Lewis runs "regular checks" and changes its prices if one of its 25 main competitors (including Amazon, for electrical products) sells the same item at a better price, the current terms of the John Lewis price promise specifically provide that it will *only* price match Apple products sold by one of those competitors "if they offer a minimum 2 year guarantee as standard at no additional cost (at the time of going to print, no competitors currently do so)". The effect of this qualification is that John Lewis does not currently price match Apple products sold by its competitors.

146. The available evidence therefore demonstrates that assumptions cannot safely be made about the impact of On-Amazon prices for Apple products on third party retailer pricing. What is required is a consistent and coherent theory of how that impact is expected to have arisen, grounded in the preliminary analysis of the relevant competitive constraints, and taking account of the data already provided by the Proposed Defendants on the On-Amazon sales of Apple products. Dr Pike's evidence fails to provide that.

147. Thirdly, there is the closely related question of how Dr Pike proposes to test at trial his theories of harm in relation to the different Off-Amazon effects that are advanced. That

question can only properly be assessed on the basis of a clear understanding of what those theories of harm are, which for the reasons set out above we do not have. Even leaving aside that point, however, if Dr Pike does maintain as his "starting point" the proposition that Amazon is a pricing reference point for consumer electronics including Apple products, that would fall to be tested at trial. Given the complex and speculative nature of the pricing effects proposed, a careful explanation is required of the potential sources of evidence and the methodology proposed for using that evidence.

148. Unfortunately, Dr Pike's evidence provides little insight as to the evidence that he expects to find of the way in which other retailers set their prices, and how he would use that evidence. In relation to Apple, Dr Pike suggests (in very general terms) that he would expect to find relevant evidence in Apple's internal documents, but it is difficult to place any weight on that speculation without a clear explanation of what Dr Pike would be looking for in that regard, based on his theory of harm (which in turn would require a coherently articulated theory of harm). Nor does Dr Pike indicate what he might do if internal Apple evidence is not forthcoming; nor does he suggest any exploration at all of the price-setting strategies of any other retailers. Again, that falls well short of the requirement for a sufficiently well considered and feasible route to proving the case at trial.

149. Drawing all of these threads together, the Off-Amazon claim rests on a complex and speculative theory of harm which has not been clearly and coherently explained. Notwithstanding the considerable volume of evidence filed by the PCR, over the course of three expert reports by Dr Pike, the material before us does not establish a clear and coherent methodology grounded in the facts of the case, with at least some evidence of the availability of data that will be required to test the theories that form the foundation of that methodology. In addition, and importantly, we do not feel able to place significant weight on the reliability of Dr Pike's evidence in this regard. Taking all of these points together, we do not consider that the evidence satisfies the *Microsoft* test in relation to the Off-Amazon claim.

150. We therefore refuse to certify the Off-Amazon claim. It follows that we do not need to go further and consider the separate arguments of Amazon that certification should be refused on the basis of the comments of the Supreme Court in *Evans*.

H. DISTRIBUTION PROPOSALS

(1) PCR's proposals

151. The PCR's proposals for the distribution of any damages awarded are set out in the PCR's litigation plan and in the notice and administration plan prepared by its proposed claims administrator, Epiq.

152. In broad terms, the PCR envisages two potential methods of distribution:

(1) A direct credit method, under which Apple and Amazon would use customer and transaction data held by them to identify class members and make direct payments to those individuals, either through payment methods associated with their accounts or by way of credits to those accounts. Epiq believes that a very high percentage of class members and Apple products will be identified through the use of Apple and Amazon data.

(2) An online application hub on which class members would be able to submit claims, supported where necessary by relevant documentation. Claims would then be validated by Epiq before any payment is made.

153. The PCR's proposal is that both methods would operate concurrently. The direct credit method would be used wherever available account and transaction data permitted direct payment, whilst the online application hub would provide an alternative route to compensation for class members who could not be identified through available data or who considered that they had not received their full entitlement through the direct credit process.

154. With its reply, the PCR attached a supplemental report from Epiq addressing the extent of the customer data likely to be held by Apple and Amazon, and the ways in which that data could support the proposed distribution process. Epiq's evidence was that both Apple and Amazon were likely to hold substantial amounts of information relating to proposed class members, including account details, contact information and payment information, which could assist both in identifying class members and, where appropriate, making direct payments to them.

155. Whilst recognising that some purchasers and some categories of product may be more difficult to identify than others, Epiq expressed the view that a substantial proportion of proposed class members could be identified through existing account data. It maintained that the combination of direct payments, prompted claims and the online application hub would provide an effective mechanism for distributing any damages awarded.

156. Epiq noted that the Financial Conduct Authority (**FCA**) has published modelling in connection with its proposed motor finance redress scheme which estimates an overall take-up rate of 75%. Epiq suggested that a similar scheme in this case could achieve similar take-up rates, particularly if there is a possibility of direct credits that do not require action on the part of class members. Epiq also relied on a consumer redress scheme arising from proceedings brought by the United States Federal Trade Commission against Amazon (*FTC v Amazon.com,* Case No. 2:23-cv-00932-JHC). It suggested that the scheme was an example of the use of data-driven methods to distribute consumer redress, and submitted that it supported the practicality of distributing compensation to a large number of consumers without requiring each consumer to make an individual claim.

(2) Proposed Defendants' objections

157. Both Apple and Amazon take issue with the PCR's proposed distribution arrangements. They contend that the PCR has not adequately explained how the direct credit method could be implemented in practice, including the technical, regulatory and operational issues which they say would arise from the use of customer account and payment data. Even if those obstacles could be overcome, the proposal would require class members to take active steps and therefore cannot properly be described as a wholly automatic distribution mechanism. The Proposed Defendants point out that the FCA motor finance redress scheme arises in a very different regulatory context, and concerns average claims of around £830, which are far larger than the amounts that will be available in the present case. As regards the US FTC consumer redress scheme, in that case payments were made through a very different mechanism, namely a claims administrator using third-party payment services or, where necessary, paper cheques.

158. Regarding the use of an online application hub, which may be the only means of distribution for purchases made from retailers other than Apple and Amazon, the Proposed Defendants submit that this would depend upon class members taking a number of positive steps, including submitting an application form and in some cases providing supporting documentation. In their submission, those requirements are likely to reduce take-up, particularly where the amount recoverable by individual class members may be relatively modest.

159. The Proposed Defendants also express concerns that Epiq's analysis relies on assertions regarding the extent of the customer data likely to be held by Apple and Amazon, and does not put forward any estimate of likely take-up.

160. Accordingly, both Proposed Defendants submit that the PCR has failed to demonstrate that its proposed methods of distribution are likely to result in a meaningful proportion of any damages award reaching class members. In their submission, that deficiency weighs against certification and is relevant to the assessment of the overall benefits of the proposed collective proceedings. They do not agree that the detailed distribution methodology can be left to a later stage of the proceedings, given that recent decisions of the Tribunal, including *Waterside*, make clear that issues relating to distribution and take-up should be considered at the certification stage.

(3) Discussion

161. The recent case law of the Tribunal emphasises that it is necessary to consider distribution at the stage of certification of collective actions: see *Gutmann v First MTR* [2025] CAT 72, §183, and *Waterside* §20. In the present case we are conscious that, in the event that the PCR is ultimately successful, the average payment to each potential class member is likely to be relatively small (as noted above, the PCR's estimate is that an On-Amazon damages figure of £289–306 million would result in a claim of £37–£39 per customer). It is therefore very important to ensure that there is a simple and effective method of distribution of any damages award. The likelihood of a low level of distribution and therefore financial benefit to the class as a whole would call into question the cost-benefit assessment of whether the case should proceed.

162. The Proposed Defendants have emphasised that the examples of other such schemes given by the PCR are different to that being proposed here. Nevertheless, we consider that the direct credit proposals of the PCR and Epiq do offer the possibility of a considerably more straightforward distribution methodology than is often the case, including the possibility that it may be possible to identify and distribute damages to potential class members with little, if any, need for those members to do anything to make a claim.

163. We accept that this is a case in which the Proposed Defendants are likely to have a substantial amount of relevant data, which will facilitate distribution. Epiq's evidence also shows that considerable thought has been given to how those data could be deployed to enable compensation to be calculated efficiently and (as far as possible) without the need for customer input. The Proposed Defendants in their submissions stopped short of saying that such a distribution scheme would inevitably fail.

164. The use of Apple and Amazon's data and infrastructure to facilitate direct credits to class members will obviously be relevant to class members whose entitlement arises as a result of the On-Amazon claim. We accept that this might also provide a means of distribution in respect of the Off-Amazon claim (e.g. if a class member has purchased Off-Amazon but also has an Amazon account), if that claim were to be certified. Where a direct credit is not possible, however, distribution will need to rely on the proposed online distribution hub. We agree that this is likely to be a far less effective distribution mechanism than a direct credit method, given the active steps that will be required from customers.

165. Moreover, although there is no meaningful estimate of the likely total damages amounts in relation to the Off-Amazon claim, any RRP and umbrella price effect cannot (taking Dr Pike's evidence at its highest) higher than the On-Amazon price effect and will almost certainly be lower because of Amazon's small market share. That in turn suggests that individual damage sums for the Off- Amazon claim are likely to be even smaller than the On-Amazon damages figures, making it even less likely that customers would make active claims. We therefore consider it to be inevitable that, if the PCR were to succeed in an Off-Amazon claim, there would be a lower level of distribution in relation to that claim – indeed potentially much lower.

166. In summary, in relation to the On-Amazon claim, we consider that the proposed direct credit distribution method is sufficiently credible and practical for the purpose of certification. On the evidence so far available, we consider that there is a reasonable likelihood that it will enable effective distribution of any damages award to a high proportion of the class members, notwithstanding the fact that payments to individual class members are likely to be relatively small.

167. As regards the Off-Amazon claim, the evidence before us suggests that any individual damages sums are likely to be even smaller than for the On-Amazon claim. Although some Off-Amazon damages might be able to be distributed via the direct credit distribution method, we are not convinced that the proposed alternative in the form of an online application hub is likely to result in significant take-up. That adds further support to our conclusion that the Off-Amazon claim should not be certified.

I. COST-BENEFIT ANALYSIS

(1) The parties' submissions

168. Apple argued that if the Off-Amazon claim is for whatever reason not certified (which is the conclusion we have reached above), the cost of the remaining On-Amazon claim would outweigh its benefits, making it unsuitable for collective proceedings having regard to r. 79(2)(b) of the Tribunal Rules.

169. If Dr Pike's provisional calculation of a 4% overcharge is applied to the value of Apple sales on the Amazon Store for the period from January 2019 to June 2025, the projected value of damages is about £112 million excluding interest, or £145 million including interest at 8%. As the Agreements are still in force, the PCR told us that it will seek to extend the claim period through to the date of trial. If the claim period extends to November 2028, the predicted date for the pre-trial review, Dr Pike estimates that it will reach a value of £289 million (at 8% interest) or £306 million (10% interest), assuming growth of Apple sales at a rate consistent with the overall sales between 2019–2024. Apple and Amazon dispute the assumptions on which those figures are based. However, in the absence of any other figures, it is appropriate to take these as

the starting point in our assessment of the costs and benefits of these proceedings, albeit with a degree of caution.

170. Campbell 2 sets out an analysis of the potential costs that the PCR may incur in this litigation and the value of payments that the PCR has agreed to make in the event of a successful outcome. Mr Campbell calculates that, if there is a judgment in January 2030 in favour of the PCR, then the full entitlement at that point of the funder, insurers and the PCR's legal team in relation to deferred fees, on the basis currently agreed to include *Riefa*-related costs, would be approximately £128 million.

171. At the hearing, the PCR provided an updated version of the calculation which excludes all *Riefa*-related costs, producing a figure of around £92 million. The breakdown of the costs on these two alternative bases was as follows:

Stakeholders	Returns including *Riefa*-related costs (£)	Returns excluding *Riefa*-related costs (£)
Asertis' drawdown	19,188,716	14,644,750
Asertis' success fee	82,876,213	56,748,405
ATE insurers	19,052,145	15,232,000
Hausfeld	5,041,382	3,662,432
Counsel	2,241,072	1,977,740
Total	**128,399,528**	**92,265,326**

172. The PCR contended that even based on the larger £128 million figure, that would be a reasonable cost recovery for a total damages pot of £289 million.

173. We note that a judgment in January 2030 would not of course mean an immediate return to the funder or mark the point at which the funder's success fee (as set out at §183 below) will cease to increase under the Amended LFA. But in light of the uncertainties as to what might happen thereafter, we consider it reasonable to use the January 2030 date as illustrative for these purposes.

(2) Discussion

174. As a starting point, for the reasons set out in section J below we do not consider it appropriate to certify these proceedings on a basis that permits any recovery of costs

or adverse costs relating to the *Riefa* proceedings, whether on the part of the funder, insurers, or the legal team. The exclusion of those figures will therefore immediately significantly reduce the costs of litigation if there is a successful outcome, resulting in the lower figure of around £92 million set out above.

175. While that remains a very substantial sum, it is based on the current litigation budget. In the event that only the On-Amazon claim goes forward, we would expect to see a reduction in that budget to reflect adjustments including a shorter trial and considerably less work for the experts. This would result in lower costs being incurred and therefore a reduction in the entitlement of the funder, insurers and legal team on success. A more rapid judgment would also reduce the balancing multiplier under the Amended LFA, thereby also reducing the funder's success fee. There will also be some savings in relation to Mr Le Patourel's remuneration, if he agrees to continue to act on the basis we discuss below.

176. We also note that all payments by the PCR to its funder, insurer and legal team are subject to the scrutiny of the Tribunal at any stage of the proceedings. The Tribunal has, in that regard, a broad supervisory jurisdiction enabling it to control the reasonableness of those payments, and to ensure that what is recovered is not excessive: *Gutmann v Apple* [2025] EWCA Civ 459, §§78–99; *Stephan & Hammond v Amazon (**Stephan & Hammond (CA)**)* [2026] EWCA Civ 183, §§23–26.

177. Set against those considerations, it is necessary to consider the benefits to the class members, both individually and as a whole, if the proceedings are certified. It is fair to say that the projected returns for each class member are not significant. Using, again, the PCR's own estimate of an On-Amazon damages claim of £37–£39 per customer, the returns are on any basis modest.

178. Having said that, the On-Amazon claim is one where, for the reasons set out above, we consider that there should be a straightforward distribution mechanism which should allow direct credits to be made to consumers without the necessity for a separate application. We note that the PCR has not given us an estimate of take-up by class members, and it has been criticised by the Proposed Defendants for not doing so. However, the proposed distribution model is not one which has previously been

deployed in an action such as this, and is dependent on the Proposed Defendants' data and systems. In that context we consider that, notwithstanding the likely modest returns for each class member, we would expect the take-up to be significantly higher than the eventual take-up in *Gutmann v First MTR* (see [2025] CAT 72, §§67–68).

179. We are also conscious of the wider implications of this litigation. The Agreements remain in force, and it is in principle appropriate that their legitimacy should be examined. As we have noted, the PCR now also seeks injunctive relief which, if the alleged infringements are established, would require the Proposed Defendants to bring those infringements to an end. That is not a decisive factor in our assessment, but it is a further and very relevant matter to take into account in the cost-benefit analysis.

180. Taking all these factors into account we consider that, subject to the amendments to the funding and PCR remuneration arrangements which we discuss in sections J and K below, the benefits to the class as a whole of the continuation of the On-Amazon part of the claim, without certification of the Off-Amazon claim, sufficiently outweigh the likely costs. We therefore do not refuse certification on this basis.

J. FUNDING ARRANGEMENTS

(1) Original agreements entered into by the PCR

181. The PCR's funding is provided by Asertis, who also funded the *Riefa* proceedings. As explained above, the PCR is the same legal entity as the PCR in the *Riefa* proceedings, albeit that it has been renamed. As a result, the PCR and Asertis have not entered into a new LFA. Rather, the LFA before us is the agreement originally entered into in February 2023 for the purposes of the *Riefa* proceedings, amended on a number of occasions, most recently to provide for further funding in these proceedings. The amendments are consolidated in the Amended LFA, which is dated 6 August 2025. The original LFA for the *Riefa* proceedings and its evolution up to September 2024 (the ***Riefa* LFA**) was described at §§32–54 of the *Riefa* CPO judgment. We do not repeat that description here, but refer below to the main terms of relevance for the present proceedings.

182. Under the Amended LFA, Asertis has committed to provide total funding of £19,188,716 (including VAT and any insurance premium and insurance premium tax) in claim funding. This includes funds already drawn down in the *Riefa* proceedings, which amounted to £4,543,967. The remaining balance of the available funding is £14,644,749.

183. The Amended LFA provides for a success fee to be payable to Asertis in the event of a "successful outcome", defined in clause 1.1 of the Amended LFA as a "final judgment or settlement pursuant to which the Claimant or Class Members become entitled to an Award". The success fee is defined in Schedule 1 of the Amended LFA as being an amount equal to the aggregate of (a) the drawn funds, plus (b) a priority multiplier, plus (c) a balancing multiplier. The priority and balancing multipliers are calculated by reference to the time elapsed from the *Riefa* LFA (i.e. from 27 February 2023) or the Amended LFA (i.e. from 6 August 2025), until the receipt by the funder of all funds due to it following a successful outcome, as follows:

Months elapsed	**0–47**	**48 – 83**	**84 +**
Priority Multiplier	1.25x	1.75x	1.75x
Balancing Multiplier	2.25x	1.9375x at month 48, increasing by 0.1875x every 3 months thereafter up to and including month 83	4.00x

184. The LFA also retains the obligation in clause 4.1.17 for the PCR, in the event of a successful outcome, to apply to the Tribunal for an order permitting the payment of fees to the funder, insurers and legal team ahead of distribution to the class, "where it is appropriate in all the circumstances". That provision was the subject of extensive comment in the *Riefa* CPO judgment, which we do not repeat here. Ultimately, the Tribunal concluded that the funding terms were not in themselves sufficiently extreme to warrant calling out, noting that the Tribunal had in at least one previous case certified an LFA that contained payment priority provisions similar to the relevant clause in the *Riefa* LFA (*Riefa* CPO judgment §110).

185. Of particular note in the Amended LFA as it now stands, however, is that in the event of a successful outcome in these proceedings, Asertis is entitled to recoup the sum already drawn down in the *Riefa* proceedings, together with a success fee calculated (on the basis set out above) from 27 February 2023. On the basis of the multipliers set out in the table above, and the PCR's own estimate in its litigation plan of a trial in the first half of 2029, with judgment in around January 2030, the effect of that would be for Asertis to claim, in addition to the *Riefa* drawn funds of around £4.5 million, a success fee in relation to those funds based on the maximum multiplier of 5.75x, amounting to around £26.128 million, giving a total of £30.67 million.

186. The decision to agree to the Amended LFA in those terms followed a market tendering process described in Astill 1 and Le Patourel 1. Mr Le Patourel devoted considerable time to the funding negotiations and received input from Exton, Hausfeld, independent costs counsel and members of his consultative panel. Nine potential funders were approached in addition to the existing funder. Only one provided indicative competing terms. Mr Le Patourel explained that those terms were materially more expensive than those offered by Asertis, in part because the proposal included its own adverse costs package, whereas Asertis was willing to continue with the existing ATE package, described below. The competing funder ultimately withdrew its offer when Exton sought improved terms. The evidence of both Mr Le Patourel and Mr Astill was that Asertis offered the most favourable terms available in the market.

187. A similar position exists with the ATE insurance, in that the PCR has retained the original ATE insurance package from the *Riefa* proceedings, together with an excess policy to cover the present proceedings. The original ATE policy was described in the *Riefa* CPO judgment at §§55–56 as providing aggregate adverse costs cover up to £20 million. The excess policy increases that cover by £8 million. That increase, the PCR explained, is in part intended to cover the costs paid out to the Proposed Defendants at the conclusion of the *Riefa* proceedings, which amounted to £3,820,144.93. The remaining adverse costs coverage for these proceedings therefore stands at £24,179,855.07. In the event of a successful outcome in the proceedings, according to the terms of the ATE policy and the LFA, the original ATE insurer would be reimbursed the sums that it paid to the Proposed Defendants.

188. As with the Amended LFA, Mr Le Patourel concluded that continuing with the existing insurer was preferable to obtaining a new policy. The evidence from Exton was that new insurance, if available, would have involved higher premiums and a substantial new deposit premium. Replacing the existing policy would also have meant abandoning the benefit of the deposit already paid.

189. As we have also noted, the PCR is instructing the same solicitors and essentially the same counsel team from the *Riefa* proceedings. The terms of the instructions provide that, in the event of success, Hausfeld and the counsel team can claim deferred fees and contingent uplifts in respect of work undertaken for the *Riefa* proceedings, in addition to their fees for the present proceedings (which likewise include deferred fees and contingent uplifts).

190. Mr Le Patourel states that he considered this to be "sub-optimal" given that some of that work, such as attendance at the certification hearing in the *Riefa* proceedings, cannot be redeployed in the current proceedings. Nevertheless, Mr Le Patourel considered that it was in the best interests of the class to instruct the same legal team, in order to ensure continuity and preserve the existing work product. By comparison, seeking to instruct a new legal team would have required further work and costs, with no assurance that the alternative team would be able to use the existing work as efficiently as the existing legal team.

191. As an overarching submission, the PCR stated that it was artificial to characterise all the costs incurred in the *Riefa* proceedings as wasted, because much of the work from those proceedings was being reused in these proceedings. This included, as set out in Campbell 2, the first deposit premium for the ATE policy which amounted to just over £2 million, the benefit of which had been carried over into these proceedings. Campbell 2 estimates that in total the class has benefited from around £3.6 million of the *Riefa* related drawdown costs in these proceedings. While this still leaves some wasted costs, the PCR argued that all of the PCR's payment costs and entitlements to stakeholders would ultimately be subject to the Tribunal's control at the conclusion of the proceedings.

192. On that basis, Mr Went submitted at the hearing that the correct course would be to leave the question of recovery of the *Riefa*-related costs to a later stage in the proceedings. Any such payments would then be possible only if, after a successful outcome to the litigation, the PCR deemed it appropriate to make an application to the Tribunal for permission to make such payments, and if the Tribunal subsequently approved the payments at that stage.

(2) Alternative proposals at and after the hearing

193. As set out above, at the request of the Tribunal, the PCR provided figures for the stakeholder returns that it would seek in the event of a successful outcome, excluding the *Riefa*-related costs. The difference between the total stakeholder returns including and excluding those entitlements was over £36 million.

194. The Tribunal then asked the PCR whether the funder, insurers and legal team would agree to the exclusion of the *Riefa*-related costs from the funding arrangements, in the event that the Tribunal were to conclude that it would not certify the present proceedings on a basis that permitted those entitlements to be recovered. At the start of the second day of the hearing, having considered that matter overnight, Mr Went made the following statement on instructions:

> "In the event the Tribunal considers that their *Riefa* fees ought to be permanently disallowed at this stage, then the Tribunal is invited so to rule, and I can confirm that solicitors and counsel then simply write off those fees other than the discounted fees already paid by the funder. The PCR's application ought then to be regarded as an application made on that amended basis."

195. In relation to the position of the funder and insurers, in letters sent to the Tribunal following the hearing the PCR has confirmed that if the Tribunal is only willing to certify the proceedings on the basis that the *Riefa*-related costs are excluded, then:

(1) Asertis will not seek repayment from the case proceeds in these proceedings of the *Riefa*-related drawn funds, or any success fee attributable to those funds; and

(2) The ATE insurers under the primary policy will agree not to exercise their contractual right to seek repayment from the case proceeds in these proceedings of the adverse costs paid in connection with the *Riefa* proceedings.

196. In all cases, however, the PCR's primary position remains that the *Riefa*-related costs should be allowed; and the agreements set out above do not represent an acceptance by any of the stakeholders that the *Riefa*-related costs were inappropriately included in the funding arrangements placed before the Tribunal.

(3) Proposed Defendants' objections

197. The Proposed Defendants were highly critical of the PCR's proposed funding arrangements and its decision to continue with substantially the same arrangements for the funder, ATE insurance and legal team, such that the PCR accepted liability for the *Riefa*-related costs. This outcome and the process by which that occurred was said to demonstrate that the PCR was not sufficiently independent, such that the PCR should be regarded as failing the authorisation condition.

198. Regarding the funder, the Proposed Defendants questioned the information provided by the PCR to prospective funders during the market tendering process. They also objected that there had been no proper market review of alternative ATE cover. Rather, the original ATE appears to have been extended on the assumption that any other insurer was unlikely to be cheaper and would require a new large deposit premium. There was also no suggestion that Mr Le Patourel had approached any other solicitors or counsel, who would not have sought any recovery for work undertaken in the *Riefa* proceedings. The Proposed Defendants pointed out that the work product from those proceedings belonged to the PCR, or in any event would largely now be in the public domain.

199. More importantly, even leaving aside the basis on which the negotiations were conducted, the Proposed Defendants submitted that given the Tribunal's ruling referred to at §17 above, there was no basis on which the PCR's costs of the *Riefa* proceedings could ever be recoverable against the Proposed Defendants in these proceedings. That meant that the liability the PCR had accepted in respect of costs incurred in the *Riefa* proceedings would have to be borne out of any damages awarded to the class. This ultimately called into question the PCR's ability to protect the interests of the class, and raised concerns as to whether these proposed proceedings were being run primarily for the benefit of the funder and legal representatives. That conclusion was not altered by

the stakeholders' agreements to forgo the *Riefa*-related costs if certification were granted only on that basis, since the PCR should not have agreed to arrangements permitting recovery of those sums in the first place.

200. The Proposed Defendants' conclusion was that the PCR's agreement to the inclusion of the *Riefa*-related costs in the funding arrangements indicated that the PCR does not satisfy the authorisation condition, by reference to rr. 78(2) and (3) of the Tribunal Rules. Further or alternatively the Proposed Defendants contended that the Tribunal should refuse to approve the *Riefa*-related costs, on the basis of consideration of the costs and benefits of the proceedings under r. 79(2)(b).

201. The Proposed Defendants raised two further points related to the LFA and funding arrangements, concerning the PCR's scrutiny of its costs and the basis on which the funder can terminate the LFA.

(4) Discussion

202. We will first consider the Proposed Defendants' objections to the *Riefa*-related costs, before considering other points relating to the funding arrangements.

(a) The Riefa-related costs

203. No party disputed the Tribunal's jurisdiction, at the stage of certification of collective proceedings, to control the funding arrangements by refusing to certify the proceedings unless the *Riefa*-related costs are removed. There are several bases on which the Tribunal can do so, as identified by the Proposed Defendants. The first is the requirement for the Tribunal to consider, for the purposes of determining whether it is just and reasonable to authorise the PCR, whether the PCR would act fairly and adequately in the interests of the class members. That includes consideration of the arrangements made by the PCR regarding costs, fees and disbursements, including adverse costs cover: r. 78(2)(a) and (d), and r. 78(3)(c). The second is the requirement for the Tribunal to determine, for the purposes of the eligibility condition, whether the proposed claims are suitable to be brought in collective proceedings. That in turn requires the Tribunal to take into account, among other things, the costs and benefits

of continuing the collective proceedings: rr. 79(1)(c) and 79(2)(b). On the basis of the figures set out above, the *Riefa*-related costs are undoubtedly of such a size as to impact the overall assessment of the costs and benefits of the current litigation.

204. The *Riefa* LFA was the subject of close examination during the *Riefa* proceedings. The PCR has negotiated changes to the agreement to address the concerns that were raised in those proceedings and in subsequent cases, as explained in Mr Le Patourel's witness statements. Those witness statements, and that of Mr Astill, also set out details of the work undertaken by the PCR to assess whether the funding arrangements are the best available for these proceedings.

205. The most serious problem with the funding arrangements as they now stand, so far as we are concerned, is the fact that they enable the funder, insurers and legal advisers to be paid the *Riefa*-related costs. As we have set out above, these provisions have the result of adding around £36 million to the stakeholder entitlements in the event of success. They are, moreover, directly contrary to the position of the Tribunal in the *Riefa* costs ruling, where the Tribunal held unequivocally (at §22) that in light of the failure of the PCR's application for certification in the *Riefa* proceedings, it was not appropriate for costs incurred in those proceedings to be transferred to a future hypothetical claim, whether that was brought by a different PCR or a differently constituted PCR. As the Tribunal explained, although a reissued claim would benefit from savings through the reuse of material prepared for the *Riefa* proceedings, that would always be the case for successive claims brought against the same defendants.

206. Mr Le Patourel has said in his evidence that he concluded that even with these provisions in the PCR's agreements with the various stakeholders, he considered that this was likely to result in the best outcome for the proposed class. But there was no evidence from Mr Le Patourel explaining why, in light of the very clear terms of the *Riefa* costs ruling, he considered that it was legitimate and appropriate for the PCR to enter into agreements with the funder, insurers and legal team, all of which contained provisions permitting recovery of *Riefa*-related costs.

207. Nor do we find Mr Le Patourel's explanation of his attempts to negotiate the removal of those entitlements entirely compelling. In the case of the funder Asertis, there was

evidence from both Mr Le Patourel and Mr Astill that multiple other potential funders were approached, but ultimately no other funder was willing to offer funding for these proceedings. Mr Le Patourel considered, on that basis, that he would have no option but to take the terms required by Asertis, since there was no other funding proposal on the table. By contrast, there was no evidence from either Mr Le Patourel or Mr Astill of any attempts to persuade the provider of the primary insurance policy to forgo any recovery by it of payments made in relation to adverse costs in the *Riefa* litigation. Nor is there any evidence as to the extent of Mr Le Patourel's efforts to persuade the legal team to forgo their recovery on *Riefa* (and Mr Went accepted that Mr Le Patourel had not approached any other legal team).

208. It is, moreover, striking that, within two weeks of the hearing, the PCR had secured the agreement of the funder, insurers, Hausfeld and the counsel team to forego the recovery of costs relating to the *Riefa* proceedings. In consequence, while those stakeholders had apparently insisted on the inclusion of the *Riefa*-related costs as the price of their continued involvement in the proceedings, they were ultimately all willing to continue without those entitlements if the Tribunal rejected their recovery. On the PCR's own estimates, that will leave the class members around £36 million better off in the event of a successful outcome.

209. That is, in itself, a reason for us to reject the terms originally provided to us. Quite simply: it is apparent that there are now better terms available. More importantly, as a matter of principle, we do not consider that it is appropriate to certify the proceedings on the basis of funding arrangements that include the *Riefa*-related costs. The question for the Tribunal is not whether the funding terms originally presented to us were competitive, in the sense of being the best available in the market. Rather, the question is whether they are reasonable in all the circumstances: *Stephan & Hammond (CA)* §33. While the costs and benefits to the class members are part of the factors to be taken into account, the assessment of whether the PCR is appropriate to be authorised, and the suitability of the claims to be brought in collective proceedings, requires the Tribunal to take into account all of the circumstances of the case.

210. Inclusion of the *Riefa*-related costs in the funding package is in our judgment manifestly unreasonable and inappropriate, for the reasons already set out in the *Riefa*

costs ruling at §22. The *Riefa* CPO application failed in its entirety, and resulted in final judgment in favour of the Proposed Defendants, with consequential costs orders. There is no conceivable basis on which it could be appropriate to transfer to the present new proceedings, brought by a reconstituted PCR, any aspect of the costs of a failed prior certification application. Given the terms of the *Riefa* costs ruling, the *Riefa*-related costs could not possibly be recovered from the Proposed Defendants in the event of a successful outcome of the present proceedings. Nor is it right that they should be borne by the class members. The funder, insurers and legal team in the *Riefa* proceedings all entered into the funding arrangements for those proceedings in the knowledge that they were at risk of non-recovery of costs and success fees, and payment of adverse costs, if the proceedings failed. That being the outcome, that risk must be borne by those stakeholders, as they contracted to do. It would be quite improper for the PCR to be permitted to transfer that contractual risk to the present new set of proceedings, thereby diminishing the potential returns of the class members in these proceedings.

211. As we have noted above, the question of certification is ultimately a multifactorial balancing exercise, and the Tribunal is entitled to regard one or more factors as decisive in that exercise. Both rr. 78 and 79 are relevant in this case, as already explained. Our conclusion that it is manifestly unreasonable and inappropriate for the funding arrangements to include the *Riefa*-related costs is, in our judgment, sufficient in itself for us to refuse certification if those entitlements are included in the funding arrangements, irrespective of our conclusions on any of the other factors relevant to certification.

212. We do not accept the submission that it is appropriate to leave this until a later stage in the proceedings. As the authorities have repeatedly made clear, the Tribunal has broad powers to scrutinise the costs and funding arrangements at any stage of the proceedings (see §176 above). Our conclusion above is definitive, and we see no basis on which it might change between now and the conclusion of the proceedings. In those circumstances the position should be made clear now, so that all parties have certainty as to the financial arrangements on which these proceedings are being conducted, and the costs and benefits that may potentially arise on all sides.

213. It follows that the *Riefa*-related costs must be removed from the funding arrangements, as the stakeholders have all now agreed to do if required. That removal must be formally confirmed by amended contractual arrangements, before any order is made certifying the present claim.

214. There is a separate question as to whether the PCR's decision-making in this regard calls into question whether Mr Le Patourel, as sole director of the PCR, has satisfied us that he would act fairly and adequately in the interests of the class members, for the purposes of the authorisation condition. We consider that question in section K below.

(b) Scrutiny of legal costs

215. In its recent decisions the Tribunal has emphasised the importance of proper scrutiny of legal costs and invoices that are paid in the course of the litigation: *Bulk Mail v International Distribution Services* [2025] CAT 19, §22; *Hammond & Stephan (CAT)* §45. It is important that the PCR should be in a position to subject such costs to proper scrutiny. In those cases the PCR has appointed specialist costs lawyers to scrutinise invoices on behalf of the PCR.

216. In Le Patourel 2, Mr Le Patourel explains that he considers that he has the requisite experience properly to scrutinise the monthly funding notices prepared by Hausfeld. In order to cross check his approach, he instructed costs lawyers to review one of Hausfeld's monthly bills. The outcome of that review was consistent with Mr Le Patourel's own review. The hourly rate of that costs lawyer was higher than the agreed hourly rate for Mr Le Patourel.

217. We consider that costs scrutiny is an important element of safeguarding the interests of the class. Where the PCR does not, itself, have sufficient expertise, the PCR should consider carefully whether the appointment of an independent costs specialist would assist it with costs control. In the present case, in light of Mr Le Patourel's consideration of this and explanation for his view that this would be an unnecessary additional cost, we accept the proposal that Mr Le Patourel should himself carry out the required scrutiny. However, we would expect him to procure a periodic external cost review, by way of cross-check, as he has already done on one occasion.

(c) Termination by the funder

218. Apple drew our attention to the provisions of clause 12.4 of the Amended LFA which sets out the terms in which the funder may cease to provide funding or terminate the funding agreement. Clause 12.4 of the *Riefa* LFA provided that:

> "The Funder may cease to provide Claim Funding or terminate this Agreement, at any time, where:
>
> 12.4.1 the Funder reasonably ceases to be satisfied about the merits of the Claim, such a view to be reached based on independent legal advice and, where appropriate, expert advice that has been provided to the Funder; and/or
>
> 12.4.2 the Funder reasonably believes that the Claim is no longer commercially viable, such a view to be reached based on independent legal advice and, where appropriate, expert advice that has been provided to the Funder."

219. The clause 12.4 of the Amended LFA reads:

> "The Funder may cease to provide Claim Funding or terminate this Agreement, at any time, where:
>
> 12.4.1 the prospects of a Successful Outcome have deteriorated materially since the Amendment and Restatement Date; and/or
>
> 12.4.2 the amounts reasonably expected to be recovered in the Claim have deteriorated materially since the Amendment and Restatement Date, such that the Funder will no longer earn a commercially viable return under this Agreement even if the Claim achieves a Successful Outcome."

220. That clause removes the requirement for the funder to obtain independent legal advice before terminating the agreement. However, any dispute about termination remains, by virtue of clause 12.9, subject to the dispute resolution provisions set out in Schedule 3 of the Amended LFA. Schedule 3 (which was also in the *Riefa* LFA) provides for a dispute between the parties as to whether the agreement has been validly terminated to be referred for determination by a KC, whose decision is to be final and binding on the parties unless there is fraud or manifest error.

221. Le Patourel 1 explained that the amendments to clause 12.4 were made in the light of concerns raised by the Tribunal in *Carolyn Roberts v Severn Trent Water* [2025] CAT 17 at §§93–94. In that case the termination clause followed a similar structure to the amended clause 12.4 set out above, but the opening words of the clause referred to the "reasonable opinion of the funder" regarding one of the two defined adverse events. As

in the present case, disputes were to be referred to a KC for determination. The Tribunal took the view that the decision of the KC should not be as to whether the funder's opinion as to the adverse event was "reasonable", but whether on an objective basis the relevant event had occurred. The Tribunal therefore requested the deletion of the opening words referring to the "reasonable opinion of the funder". The Tribunal also requested the amendment of the equivalent of what is, in this case, clause 12.4.2. The amendments were agreed by the funder. The amended clause 12.4 in this case has been drafted to reflect the amended form of the *Roberts* LFA.

222. We do not see any reason to depart from the position adopted by the Tribunal in the *Roberts* case. We are satisfied that the rights of the class are sufficiently protected by the dispute resolution procedure under Schedule 3 that will apply in the event of such an event. Given the existence of such a mechanism, it is to be expected that the funder would obtain appropriate legal advice before purporting to exercise its rights under clause 12.4 in any event.

(d) Confidentiality

223. At §§52–54 of the *Riefa* CPO judgment the Tribunal expressed concerns about the confidentiality provisions contained in the *Riefa* LFA. The Tribunal considers it important that the terms of the Amended LFA are available to all class members so as to enable them to make an informed decision on whether to opt out of the class.

224. The Amended LFA still contains the confidentiality provisions that were the subject of our critical comments in the *Riefa* proceedings, but with an amendment to permit disclosure of the Amended LFA to all members of the proposed or certified class. In Le Patourel 1, Mr Le Patourel stated that a redacted version of the Amended LFA will be made available to the proposed class on the claim website. On that basis, and for so long as it remains available on that website, we do not consider that further amendments to the confidentiality provisions of the Amended LFA are necessary.

K. WHETHER TO AUTHORISE THE PCR

225. As we have discussed above, both Apple and Amazon strongly criticised the PCR's funding arrangements and its decision to accept a package of arrangements that included *Riefa*-related costs on the part of all the stakeholders. In addition, they relied on their criticisms of the PCR's decision-making as part of their submission that the authorisation condition is not met in the present case, also referring to the PCR's decision to retain the existing legal and economist team from the *Riefa* proceedings.

226. In addition, both Apple and Amazon contended that Mr Le Patourel's agreed hourly rate for these proceedings, currently set at £200, is too high and should not be approved by the Tribunal. We address these points separately below.

(1) The PCR's decision-making

(a) The parties' submissions

227. Mr Harris submitted that there were several matters which called into question the judgment of Mr Le Patourel, such that the Tribunal should decline to authorise the PCR as the class representative in these proceedings. In particular, Mr Harris referred to Mr Le Patourel's willingness, first, to retain Dr Pike and the existing legal team from the *Riefa* proceedings, without seeking independent advice on whether it was in the best interests of the class to do so, and secondly, to enter into financial arrangements with the existing funder, ATE insurers and legal representatives on terms which allowed for the possible recovery of the *Riefa*-related costs. Mr Mallalieu made similar points in his submissions.

228. In response, Mr Went drew attention to the explanation set out in Le Patourel 1 and Le Patourel 2, submitting that Mr Le Patourel undertook a thorough process to satisfy himself of the merits of the claim and the credentials of the legal and economic advisers. He had concluded that the most favourable terms were those on offer from the existing funder and ATE insurers, and that it would overall be in the interests of the class to retain the existing legal representatives and economic expert.

(b) Discussion

229. We approach this question on the basis that, as we have concluded above, the *Riefa*-related costs will be removed from the funding package in respect of all the stakeholders. That being the case, the only remaining grounds for questioning the authorisation of the PCR are the decision-making of Mr Le Patourel, and the PCR's remuneration.

230. As regards the decision-making of Mr Le Patourel, the question for the Tribunal is not whether it would have made the same assessment as Mr Le Patourel on the funding arrangements and the retention of the legal and economic team, but whether it is in all the circumstances just and reasonable for the PCR to act as the class representative, for the purposes of r. 78(1)(b). That includes an assessment of whether the PCR is suitably qualified to act for the class, whether the manner in which the PCR has approached the funding arrangements reflects sufficient regard for the interests of the class members, and whether overall the PCR has demonstrated sufficient independence and robustness so as to satisfy the Tribunal that it will act fairly and adequately in the interest of the class: *Riefa* CPO judgment, §§114 and 117.

231. The issues now before us arise from the unusual procedural history of this case. By the time that Mr Le Patourel became involved, the PCR's lawyers and experts had already done significant work to develop the case, and the PCR was already party to an LFA and an ATE insurance policy. Mr Le Patourel explained that he did not simply assume that it was in the interests of the proposed class to adopt the arrangements that were in place in the *Riefa* proceedings, but took a fresh decision in light of the funding tender process, and discussions with Hausfeld, Exton, independent costs counsel and the consultative panel. He said that he accepted the existing funding arrangements because he considered those likely to generate the best value for the proposed class. Similarly, he took the view that retention of the existing legal and economist team would be in the best interests of the class: see §22 above. He took the view that obtaining separate legal advice on whether Hausfeld and the existing counsel team should continue to act would have involved further unnecessary cost, and would not have added materially to his own assessment.

232. In the particular circumstances in which Mr Le Patourel was appointed to replace Prof Riefa as the director of the PCR, we do not consider that decision to have been an unreasonable one, and certainly not so unreasonable as to warrant a refusal to authorise the PCR. We are satisfied that Mr Le Patourel considered, carefully, the arrangements presented to him, and took an independent and objective view of their merits, supported by the advice of the consultative panel now appointed in these proceedings. We are also, more generally, satisfied that Mr Le Patourel has the experience and knowledge, including from other collective proceedings for which he is the class representative, to act as the class representative in these proceedings.

233. We have considered carefully whether the inclusion of provisions relating to the *Riefa*-related costs call into question Mr Le Patourel's judgment, in the light of the clear statement of the Tribunal's position in the *Riefa* costs ruling. We are inclined to agree with the Proposed Defendants that Mr Le Patourel should have gone further to seek to remove the *Riefa*-related costs from the funding package for the various stakeholders in these proceedings. Although he considered the inclusion of the *Riefa*-related costs in respect of the legal team as "sub-optimal", he was satisfied that those terms did not render the arrangements inappropriate. For the reasons set out above, we disagree with that assessment. Nevertheless, it is also appropriate to bear in mind that, as Mr Le Patourel expressly states, he was aware that the Tribunal might decide that it was inappropriate for these to be recovered. It was in our view not unreasonable for Mr Le Patourel to take the view that, although he had been unable to negotiate the removal of the *Riefa*-related costs, the Tribunal could refuse to permit them at a suitable stage in the proceedings if it considered those to be inappropriate.

234. In reaching that conclusion we emphasise that we do not in any way endorse the practice of putting forward inappropriate funding terms at the certification stage, in the expectation that the Tribunal will intervene to require their amendment as a condition of certification. While the Tribunal is, ultimately, the gatekeeper at the certification stage, an application for certification is not a process of negotiation with the Tribunal. Rather, it is incumbent on all parties to give careful consideration to whether the proposals set out in the CPO application meet the certification criteria. Failure to do so may lead to a decision to refuse certification.

235. In the present case, having considered all the circumstances, we do not consider that Mr Le Patourel's decision-making indicates that he would fail to act fairly and adequately in the interests of the class members.

(2) Remuneration of the class representative

(a) PCR's submissions

236. The remuneration of the PCR or, in this case the sole director of the PCR, was a central issue at the certification hearing, particularly in light of the Tribunal's recent judgment in *Waterside*. At the time proceedings were commenced, Asertis had agreed that the PCR should pay Mr Le Patourel at an hourly rate of £190. That rate was said to reflect the nature of the proceedings and Mr Le Patourel's previous experience acting as the class representative in *Le Patourel v BT Group*. Le Patourel 2 then disclosed that the agreed hourly rate had increased from £190 to £200 with effect from 1 January 2026, pursuant to an arrangement providing for annual review by reference principally to inflation.

237. The litigation budget filed with the CPO application incorporates projected fees for the PCR at various stages of the litigation. The budget provides for Mr Le Patourel to be paid approximately £90,000 through the certification stage, a further £125,000 through to trial, £65,000 for participation in a seven-week trial and a further £57,000 in respect of mediation, settlement and contingencies. Excluding VAT, and excluding the fees incurred by Prof Riefa, the total projected remuneration of Mr Le Patourel through to trial is £339,535. The litigation budget does not provide for any daily or other cap on the amount that can be charged by Mr Le Patourel.

238. Mr Le Patourel maintains that the revised rate of £200 per hour is reasonable, relying on his previous experience in collective proceedings, the remuneration typically charged for his consultancy work, and comparator rates said to have been charged by other class representatives.

239. During the hearing, Mr de la Mare submitted that the role of a class representative requires a substantial degree of skill, judgment and ongoing engagement, reflecting the

increasing responsibilities placed upon class representatives in collective proceedings. He argued that the public-sector comparisons referred to by the Proposed Defendants did not provide an appropriate benchmark for assessing PCR remuneration, and suggested instead that a closer comparison was with a professional trustee, such as one acting as the chair of a pension scheme board. He contended that both roles involve acting independently in the interests of a large and largely passive body of beneficiaries, overseeing professional advisers, and exercising responsibility for governance and costs. In support of that comparison, the PCR provided a Pension Chair Remuneration Report 2025 carried out by WTW and Winmark, which the PCR submitted showed median/average annual remuneration and hourly rates that are comparable to the remuneration of Mr Le Patourel in the present proceedings.

240. Mr de la Mare also submitted that the Tribunal should not, in any event, introduce any substantial change to its approach to PCR remuneration or determine a generally applicable benchmark in the context of an individual certification application, but should instead carry out a broader consultation before doing so.

241. Following the submissions of the Proposed Defendants at the hearing (which we summarise below) to the effect that the appropriate hourly rate should lie in a range of £50 to £100, at the conclusion of the hearing we invited Mr Le Patourel to consider whether he would be prepared to accept a reduction in his hourly rate to a rate at the top end of that range, i.e. £100. We also granted the PCR permission to file evidence of wider industry views on capping PCR remuneration.

242. On 10 July 2026 the PCR filed Le Patourel 3, in which Mr Le Patourel indicated that he was not prepared to reduce his hourly rate to £100. He stated, however, that he would be willing, if required as a condition of certification, to accept a cap on his total daily remuneration of £1,250. He justified that rate on the basis of his experience and expertise, the part-time and unpredictable nature of his role, and the fact that the rate is lower than his usual rate for senior regulatory consultancy work and below the average hourly rate of £243 reported by Global Competition Review (**GCR**) in an article in April 2026.

243. Attached to Le Patourel 3 was an anonymised survey of authorised and prospective class representatives conducted by Hausfeld following the hearing, facilitated by the Class Representatives Network, of which Mr Le Patourel is one of the directors (the **CRN survey**). We will discuss that survey further below.

(b) Proposed Defendants' alternative comparators

244. The Proposed Defendants made a number of submissions in favour of a lower level of remuneration for Mr Le Patourel. They submitted that, in light of the Tribunal's observations in *Waterside*, public-sector remuneration provided the most appropriate benchmark against which the PCR's proposed remuneration should be assessed. They produced a document on the second day of the hearing identifying a range of public-sector and quasi-public-sector comparators together with the remuneration attaching to those roles. In particular, the document set out annual salaries for a range of senior public-sector positions (including Directors at Ofcom and the CMA, and High Court Judges), and daily rates paid to holders of various public appointments and non-executive positions.

245. The Proposed Defendants did not contend that the role of a class representative should necessarily be remunerated at the same level as any particular role identified in either table. Rather, they relied on the tables as illustrating the levels of remuneration paid to individuals holding positions of responsibility and public trust, including some of the most senior public offices. They noted that Mr Le Patourel's proposed remuneration of £200 per hour exceeded all of the comparators identified, and submitted that a rate in the region of £50 to £100 per hour would be more consistent with the approach indicated by the Tribunal in *Waterside*.

246. In considering the Proposed Defendants' submissions on this and other matters relating to the PCR, we have borne in mind that they are unlikely to have been motivated by concern for the interests of the potential class members. Rather, the purpose of those submissions is likely to have been to create circumstances in which Mr Le Patourel was no longer willing to participate in the litigation.

(c) Discussion

247. In *Waterside* the proposed class representative was, as in the present case, a special purpose vehicle incorporated for the purpose of acting as a class representative in the proposed proceedings. Its sole director was Ms Anne Heal. The Tribunal noted that she was charging £300 an hour, and would be willing to cap her fees at £900 per day. The litigation budget contemplated that her total costs during the proceedings would be up to £316,950. The Tribunal considered that the PCR had not adequately considered the cost-benefit balance and therefore declined to authorise it as the class representative. In particular, the Tribunal made the following comments about Ms Heal's remuneration:

> "53. … Being a class representative carries with it solemn responsibilities and is likely to be time-consuming, and for that reason a class representative may desire to receive remuneration. But the receipt of remuneration at the levels claimed by Ms Heal gives the appearance of a motivation beyond pursuing the interests of the class. Being paid a commercial hourly rate, while the case is on-going, may be seen as aligning the class representative's interests with those of the legal advisers who are also charging commercial hourly rates.
>
> …
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> 55. … We consider that the trend towards class representatives self-authorising fees of this magnitude is undesirable and gives rise to a potential blurring of the lines between the interests of the class representative and the interest of the legal advisers and funders which they are required to scrutinise. If the class representative is, by reason of the existence of the claim, engaged in a highly profitable activity, their interests are not the same as those of the class. Ordinarily we would expect the remuneration of the class representative to be in line with levels of remuneration received for work in the public sector."

248. The *Waterside* case was the first occasion on which the Tribunal had commented on the level of remuneration charged by a PCR. Since that judgment, the Tribunal has considered the matter in only one other judgment, *Or Brook v Alphabet* [2026] CAT 65. In that case, Dr Brook's hourly rate was £250, but Dr Brook's evidence was that she did not charge in the same way as a solicitor would, in that she frequently did not charge for individual tasks that took a small time, like half an hour. In addition, she was willing to cap her fees at a daily rate of £750, even if she worked more than three hours. The Tribunal noted that these factors meant that Dr Brook's actual effective hourly rate would be considerably lower than £250, especially for periods when she

worked whole days on the case, which the Tribunal considered would account for a lot of the total time spent (§§73–74).

249. The Tribunal also balanced the hourly rate against Dr Brook's contribution to the case and her professional profile and career, noting among other things Dr Brook's academic career (in the field of competition law) and that Dr Brook was not making a profession out of being a class representative. The Tribunal therefore concluded that her hourly and daily rates were not undue or excessive, but noted that later decisions of the Tribunal might set policy under which Dr Brook's rate could be said with hindsight to be on the high side (§§75–76).

250. In the present case Mr Le Patourel's hourly rate of £200 is below those of Ms Heal and Dr Brook. His proposed daily cap of £1,250 is, however, far above those of Ms Heal (£900) and Dr Brook (£750). It is clear that Mr Le Patourel is spending a great deal of time on the present proceedings, as is highlighted by the litigation budget of £90,000 for the PCR up to the stage of certification. At £200 per hour, that suggests around 450 hours' work, or almost 13 weeks of full time work on the basis of a 35-hour week. Mr Le Patourel's evidence indicates that he spent around 195 hours negotiating the funding and insurance arrangements alone. A total budget to trial of £339,535, assuming (as the PCR does) judgment in around January 2030, would provide Mr Le Patourel with an average annual remuneration of over £67,900 from the start of his involvement in these proceedings.

251. We have considered carefully Mr de la Mare's submission that any discussion of PCR remuneration should await a wider consultation exercise. The Tribunal may in due course publish more general guidelines on PCR remuneration. The matter has, however, been raised squarely in these proceedings and there is no good reason for declining to address it. No party suggested that the Tribunal does not have jurisdiction to control the costs of a class representative or proposed class representative, whether at the stage of certification or any other stage of the proceedings. As we have already noted, the Tribunal has broad powers to control costs during collective proceedings (§176 above) and we do not see any reason why that should not include consideration of the remuneration of the class representative.

252. Indeed, the issue is a paradigm example of the maxim *"quis custodiet ipsos custodes?"* – "who watches the watchmen?" The answer is that the Tribunal has an essential supervisory role. If a class representative or proposed class representative agrees a remuneration package that is excessive, it is for the Tribunal to intervene on behalf of the class members, to ensure that the remuneration is set at an appropriate and reasonable level. The certification stage is an appropriate point for the Tribunal to do so, given that the class representative will be paid regularly throughout the course of the litigation.

253. We therefore consider that it is proper for us to address and determine the question of whether Mr Le Patourel's remuneration arrangements are reasonable, within the context of our assessment of the authorisation condition under r. 78, and as part of our analysis of the costs and benefits of the proposed litigation under r.79.

254. Our starting point is that in this jurisdiction, unlike in some other jurisdictions (for example Australia, Canada and USA), class representatives are not typically aggrieved members of the class, but generally fall into one of two categories: either consumer associations, such as Which?, or individuals with relevant expertise. These individuals are drawn from a range of backgrounds, including academia, industry, consumer advocacy, and regulatory or public policy roles. (The one recent case where a class member with a particular personal interest in the case applied for certification of a collective action was *Rowntree v PRS*, where the CPO application was struck out, albeit not on grounds relating to his suitability to be authorised as the class representative: [2025] CAT 49.) Individual class representatives now increasingly act as the directors of companies incorporated for the purpose of acting as class representatives, as Mr Le Patourel is doing in the present case. That enables them to take on less personal risk than if they were acting in an individual capacity.

255. The appointment of individuals (or companies controlled by them) with relevant professional expertise as class representatives enables those individuals to carry out their role with the benefit of their professional experience. That is to the benefit of the collective actions system generally. The corollary is, however (as the Tribunal noted in *Waterside*) that such class representatives will expect to be remunerated for their time. In that regard, the Tribunal recognises that acting as the class representative is a serious

responsibility (as the Tribunal observed at §115 of the *Riefa* CPO judgment) and that the collective actions system cannot function effectively without class representatives who have the abilities necessary to take on that responsibility and represent the interests of the class independently and robustly. It is reasonable that they should be remunerated for doing so.

256. It is, nevertheless, important to acknowledge the particular nature of these proceedings and the specific nature of the role played by the class representative. The proceedings are not typical commercial litigation between two commercial market actors, but are proceedings brought on behalf of a class, frequently a very large consumer class. The role of the class representative is to represent the interests of the class members, and thereby to act as the advocate for the class. In this jurisdiction, that is not regarded as a "mere figurehead" role; rather, the class representative has a responsibility to act diligently to ensure that the proceedings are conducted in the best interests of the class members.

257. That puts the class representative in a quite different position from the lawyers, economists and other professionals engaged to act in the litigation. Those stakeholders will inevitably have a commercial interest in the certification and continuation of the proceedings, even if the fees paid to them diminish the ultimate pot available for distribution to the class. By contrast the interest of the class representative is, or should be, to obtain the maximum possible return to the class, as efficiently as possible, with the minimum possible outlay of costs to the funders, insurers, legal representatives and experts.

258. While, therefore, it is in the commercial interests of all the stakeholders that the proceedings are successful, the interests of the class members are not fully aligned with those of the professional and commercial stakeholders such as the funders, insurers, and legal and economic advisers. Indeed, as *R (Innsworth) v Merricks* [2026] EWHC 1393 (Admin) highlights, collective actions may give rise to a direct dispute between the class representative and the commercial stakeholders.

259. The class representative is therefore not, and should not become, simply another commercial stakeholder in the proceedings. That would, as the Tribunal noted in

Waterside, create misaligned incentives, by blurring the line between the class representative and the commercial stakeholders such as the funders and lawyers. Rather, the role of a class representative necessarily has a public service element as the champion of the class, which should be reflected in any consideration of the appropriate level of remuneration.

260. We acknowledge that the fees charged by the class representative may be, overall, modest by comparison to those of the other stakeholders in the proceedings, and make up a small proportion of the total cost of the proceedings. That does not, however, mean that those fees should be immune from scrutiny. As indicated above, there is an important point of principle regarding the incentives of class representatives in the proceedings, which tells in favour of some measure of control of their costs.

261. Moreover, it is apparent that the fees of class representatives have the potential to represent larger sums by the end of the proceedings, given that those fees represent costs drawn down by the funder, which are then subject (under the present LFA as under other typical LFAs in collective proceedings) to a multiplier as part of the calculation of the success fee. In the present proceedings, if Asertis were to receive payment in January 2030 (which was the basis of the costs figures provided to us at the hearing for the purpose of the cost-benefit analysis: see §§170–173 above), the Amended LFA success fee provisions would entitle it to claim a multiplier of 3.875 on drawn funds in addition to the principal amounts drawn. A draw-down of £339,535 for the PCR's remuneration would on that basis become a claim to over £1.65 million from the final damages figure. In practice that is likely to be a significant underestimate as it will be some time after any judgment in favour of the class before the funder is paid, and during that time the success fee multiplier will increase. As we have emphasised above, the funder's return is subject to the control of the Tribunal; but the point for these purposes is that the potential cost to the class cannot simply be seen in terms of the headline PCR remuneration figure.

262. Turning to the comparators with which we have been presented, we accept that there are some similarities in the specific tasks carried out by the chair of a board of pension trustees, such as responsibility to a large and largely passive group of beneficiaries, and the need to exercise independent judgment in the interests of those beneficiaries. We

would expect the chair of a board of pension trustees to be highly experienced and well regarded in their professional field. It is, however, also relevant that, in the pension fund context, the beneficiaries' interests are of very substantial significance, since the fund provides the basis for their retirement income. That differs materially from a collective action such as the present proceedings, where, despite the large aggregate claim, the financial impact on each individual class member is very small. We therefore draw some assistance from this comparator, but we do not regard this as a perfect analogy.

263. We also have difficulty in deriving a clear benchmark from the WTW/Winmark report relied on by the PCR. It is apparent from that report that the levels of remuneration of the respondents to the survey undertaken for that report vary widely. For fund sizes of up to £1 billion, annual reported remuneration ranged from £5,000 to £120,000, with median figures of £44,000 (fund of less than £100 million) and £47,000 (£100 million to £1 billion). Higher remuneration ranges were reported for fund sizes of over £1 billion. Remuneration also varied depending on the background of the chairs, and their previous experience. Most significantly for present purposes, we note that the majority of chairs (79%) reported receiving a fixed annual fee, whereas Mr Le Patourel's remuneration is based on an hourly rate.

264. Even leaving aside those factors, however, which make reliable comparisons difficult to draw, we note that the median remuneration reported for a fund size of £100 million to £1 billion (reflective of the claim value in these proceedings) is significantly below the remuneration claimed for Mr Le Patourel. If (as Mr Le Patourel suggests) the median is used to calculate an implied hourly rate, taking the report's findings that pension trustee chairs work on average 3.3 days per month (amounting to 39.6 days per year), and assuming 7-hour working days, a median annual salary of £47,000 would be equivalent to around £170 per hour.

265. As regards the Proposed Defendants' comparators, we agree that we cannot reliably compare hourly rates for part-time work with annual full-time salaries, such as those of High Court Judges and Directors at the CMA, since those salaries will come with benefits such as holiday and pension entitlements. Le Patourel 3 acknowledges, however, that the Proposed Defendants' comparisons with part-time fee-paid panel and

non-executive roles are structurally closer to that of a class representative. The examples given by the Proposed Defendants for those types of roles, with either actual daily rates or daily rates implied from annual remuneration, and hourly rates implied on the basis of a seven-hour working day, were as follows:

Role	**Actual/implied daily rate (£)**	**Implied hourly rate (£)**
Financial Ombudsman Service non-executive director	681–1021 (implied from annual fee and expected time commitment)	97–146
CMA panel member	400	57
Tribunal ordinary member	400	57
Charity Commission non-executive board member	350	50
Ofgem enforcement decision panel member	200–800 (implied from annual fee and expected time commitment)	29–114

266. Mr Le Patourel says that these are nevertheless not good comparators, because the roles are generally narrower functions performed within established institutions providing administrative, legal and operational support. By contrast, he said, a class representative is personally responsible for the continuous independent oversight of the litigation as a whole, including its funding, insurance, expenditure, advisers and strategic conduct.

267. We accept that the role of a class representative carries with it broader responsibilities than some of the comparator fee-paid and non-executive roles provided by the Proposed Defendants, although we consider that a non-executive director role on a body such as the Financial Ombudsman Service is likely to require strategic decision-making carrying with it a significant level of responsibility. We note, moreover, that the class representative role is or should be well-supported by the legal representatives in the case, as well as the consultative panel and any independent advisers that the class representative chooses to instruct (such as independent costs counsel). We therefore consider that some assistance may be drawn from the fee-paid panel and non-executive comparators relied upon by the Proposed Defendants.

268. As regards the publicly available information on the remuneration of class representatives in proceedings before this Tribunal, the April 2026 GCR article

provided by the PCR reported an average hourly rate of £243 per hour, on the basis of public and private data compiled by GCR, referring to class representatives across 21 historic and pending collective actions. We do not regard that average figure as particularly reliable, given that it is drawn from less than a third of the 69 historic and pending collective actions filed in the Tribunal by the time of the GCR article. It is also apparent from the GCR reporting that there is a considerable variation in the reported hourly rates, ranging from £150 per hour (charged by Carolyn Roberts, Justin Gutmann and Walter Merricks) to an undisclosed class representative charging £750 per hour. There are, moreover, several cases not referred to by GCR where the publicly available information indicates that the class representative or proposed class representative was not claiming any hourly fee, namely: *Rowntree v PRS* (see transcript of the hearing of 12 February 2025); *Consumers' Association v Qualcomm* (see §75 of the settlement judgment, [2026] CAT 50); and *BIRA v Amazon* (see transcript of the hearing of 13 November 2024).

269. Finally, we consider the CRN survey conducted by Hausfeld, the results of which were attached to Le Patourel 3. It appears that the survey had 32 respondents, of whom 21 had acted or were acting as class representatives in one or more certified proceedings before the Tribunal. Ten were prospective class representatives. We therefore make at the outset the same caveat as above in relation to the size of the GCR sample; and Mr Le Patourel fairly accepted that the results were not "a statistically representative sample of a wider population". It is also unfortunate that the survey did not ask what hourly or daily rates were actually charged by the respondents in the certified collective actions in which they acted as class representatives, which could have provided useful additional evidence to that obtained by the GCR survey. Instead, the survey was essentially confined to the views of the respondents on the £100 per hour maximum hourly rate proposed by the Proposed Defendants, and the merits of a daily cap at a range of figures.

270. On those points, the survey results indicated that:

(1) 20 of the 21 certified class representatives and all of the 10 prospective class representatives were unwilling to act on the basis of remuneration capped at £100 per hour. One certified class representative was willing to do so.

(2) 13 of the 21 certified class representatives would be willing to act on the basis of remuneration capped at a daily rate. Seven were unwilling to do so; one did not answer. Eight of the 10 prospective class representatives would also be willing to act on the basis of a capped daily rate, with two unwilling to do so.

(3) Six of the certified class representative respondents were willing to accept a daily cap of up to £750; one was willing to accept between £750–£1,000; three were willing to accept between £1,000–£1,250; five would only accept a cap in excess of £1,250. None of the prospective class representatives were willing to accept a daily cap of below £750.

271. In addition to the questions referred to above, the survey invited the respondents to provide narrative explanations of their answers. As might be expected, these produced a range of responses, from those supportive of proportionate cost controls, to those who considered that class representative costs are insignificant compared to the other costs of collective proceedings. We do not consider that these responses add anything to the comments that Mr Le Patourel has already made, and the policy considerations which we have discussed above. (We make one further comment about those responses at §§281–282 below.)

272. The most relevant of the evidential material before us, as discussed above, can therefore be summarised as follows:

(1) The WTW/Winmark pension trustee report, taken at its very highest, implies a median hourly rate of around £170, with a wide range either side of that figure, for funds of a value comparable to the value of the present claim.

(2) The comparators provided of public sector fee-paid panel and non-executive roles imply hourly rates of between £29–£146.

(3) The GCR article and other publicly reported information indicate individual class representative hourly rates ranging from zero to £750.

(4) Since the *Waterside* judgment, the Tribunal has considered class representative remuneration in one certification judgment, in *Or Brook*, approving an hourly

rate of £250 (but on the basis that the actual effective rate was likely to be considerably lower), and a daily cap of £750.

(5) The CRN survey indicated that almost no certified or prospective class representative respondents would accept an hourly rate of £100. On the other hand, a majority of certified and prospective class representative respondents would accept a daily cap, with a significant number of those being willing to accept a cap of up to £750.

273. Having regard to all of the evidence discussed above, our conclusion is that in this case it would not be reasonable for Mr Le Patourel to charge more than **£170 per hour**. We note that an hourly rate of that level is exactly the rate implied by the relevant figures in the WTW/Winmark report, which the PCR relied on as an appropriate comparator, but which in our view, for the reasons given above, may give a somewhat generous rate for present purposes. An hourly rate of £170 is, moreover, above the very top end of the public sector comparators provided to us for fee-paid panel and non-executive roles, which we regard as the better of the comparators that we were given. The hourly rate is also above the rate reported by GCR as being charged by three certified or proposed class representatives in proceedings currently pending before the Tribunal or on appeal.

274. We also, in this particular case, take account of the fact that Mr Le Patourel was engaged in these proceedings on the basis of an agreed hourly rate of £190, which then increased to £200. That hourly rate was agreed prior to the Tribunal's judgment in *Waterside*, and reflected rates comparable to those charged by some other class representatives at the time in comparable proceedings. Mr Le Patourel has, moreover, now carried out considerable work in these proceedings and it would be undesirable for him to have to be replaced by another class representative, which in this case would (effectively) be the third successive class representative in this claim. We do not consider that this factor weighs so heavily in the balance that we should not exercise any control over Mr Le Patourel's remuneration; but we have, on careful consideration, concluded that it should be a relevant factor in the upper bound that we regard as reasonable. Were it not for that factor, we would have found a somewhat lower hourly rate of around £150 to be the maximum reasonable hourly rate for a case of this nature.

275. We also consider that Mr Le Patourel's remuneration should be subject to a **daily cap of £750**. There are sound justifications for a daily cap as a means of controlling costs, particularly on court sitting days. We also note that a majority of the respondents to the CRN survey were willing to act on the basis of a capped daily rate, with a significant number of those willing to accept a cap of up to £750. A daily cap of £750 is, moreover, the rate proposed by the PCR and approved by the Tribunal in the recent *Or Brook* case, for a class representative who is an Associate Professor of competition law, and whose experience is therefore, as the Tribunal commented in that case, highly relevant to her role in collective proceedings in the Tribunal. We consider that to be a fair comparator for the present case. (As we have commented above, a comparison with Dr Brook's hourly rate in that case is less reliable, given her evidence that she regularly does not bill small periods of time.)

276. Given the likely duration of these proceedings, we consider it reasonable that both the hourly rate and the daily cap may be increased annually in line with inflation.

277. We recognise that the hourly and daily rates set out above are below what Mr Le Patourel and some other class representatives are currently charging, and it may be that some current or proposed class representatives consider that they would be unwilling to act at these rates. We nevertheless consider that the rates set out above are reasonable, by reference to the comparators that we were given, and having regard to the nature of the role. By contrast, we consider the hourly and daily rates proposed by Mr Le Patourel to be unreasonable and excessive, including (in the case of the hourly rate) by reference to his own proposed pension trustee comparator.

278. We express the hope that, in the present case, Mr Le Patourel will be willing to accept a remuneration package for his future work in the case that falls within the bounds set out above, with a commensurately reduced litigation budget for the remainder of the proceedings. If he does so, and in light of our other conclusions above, we would consider it just and reasonable to approve him as the class representative in these proceedings. We do not suggest that Mr Le Patourel's remuneration for work done prior to the date of this judgment should be retrospectively amended. Our conclusions above apply from the date of this judgment. Furthermore, whilst we have noted above the amount of work that Mr Le Patourel has already carried out on this matter, we

intend no criticism of him in that regard. Indeed we regard diligence as a desirable quality in any class representative.

279. There are three final points that we need to make in this regard. First, as we have set out above, our assessment is based on the evidence available to us at this stage. If and when any broader consultation exercise is carried out, it may be appropriate to revisit these conclusions on the basis of any further evidence received during that process.

280. Secondly, while the remuneration of class representatives has now been discussed by the Tribunal in several cases, it is apparent that this has not been publicly disclosed in most collective actions. We consider that the class members are entitled to be informed of the fees that are being paid to the class representatives acting on their behalf. It should therefore now become standard practice for the class representative's hourly rate, along with any daily or other cap, to be provided on the relevant claims website, alongside the other details given of the class representative.

281. Lastly, we record our disappointment that some of the respondents to Hausfeld's CRN survey regarded the survey as an opportunity to air their views on the management of the Tribunal more generally, including in one case an offensive personal attack on the President of the Tribunal. On 17 July 2026, having considered Le Patourel 3 and the contents of the CRN survey, the Registrar of the Tribunal asked Hausfeld to explain how the PCR's evidence was informed by that response. Hausfeld responded on 20 July 2026, accepting that the response contained "irrelevant and inappropriate commentary outside the scope of the PCR Remuneration Survey", but said that they had wished to present the full survey results in unedited form.

282. We do not accept that explanation. The survey was put forward as part of formal evidence submitted to the Tribunal, and was relied upon extensively in Le Patourel 3. It was entirely improper for the PCR and its legal representatives to have included, in that evidence, anonymous material that was not only (as Hausfeld accepted) irrelevant and inappropriate, but was also personally offensive to the President of the Tribunal. It is also quite extraordinary that someone putting themselves forward as a class representative or prospective class representative, in complex, high value and high-profile litigation in the Tribunal, thought fit to make a comment of that nature in

evidence intended to be provided to the Tribunal in support of certification of a collective action. It goes without saying that we have wholly disregarded this comment in our assessment above.

L. OTHER MATTERS

(1) Claim for injunctive relief

283. As noted above, alongside its Reply the PCR applied to amend its claim form to seek an injunction requiring the Proposed Defendants to bring the alleged infringements to an end in England, Wales and Northern Ireland, pursuant to s. 47D CA98. The Proposed Defendants' position was that if the proceedings were certified, they would not oppose this amendment.

284. The Tribunal will therefore grant the amendment if, following this judgment, the proceedings are certified.

(2) Class definition

285. Amazon made a brief point in its response to the CPO application that the proposed class definition was likely to include minors. Amazon submitted that, if the proceedings were certified, additional steps would be required to ensure that those minors were adequately protected within the class, citing *Shotbolt* at §155.

286. This submission was made on the basis that the proposed class definition would include purchasers from retailers other than Amazon. As Amazon noted, Amazon's Conditions of Use & Sale only permit purchases by adults. In light of our conclusion above regarding the Off-Amazon claim, this point does not arise and no further action by the PCR is required.

287. Even if there were minors in the class, we do not consider that additional steps would be necessary. In *Shotbolt*, the Tribunal required the PCR to appoint a senior lawyer to the consultative panel, noting the large number of minors in the class. The PCR in these proceedings already has a senior lawyer on its consultative panel, in the form of Sir Gerald Barling. We do not, in any event, consider the class of Apple product purchasers

to be comparable to a class of video game purchasers when it comes to the preponderance of minors and the consequential protection of their interests.

M. CONCLUSIONS

288. For the reasons set out above, we will certify the On-Amazon claim, subject to the amendments to the funding arrangements and the PCR's remuneration identified below. We refuse to certify the Off-Amazon claim. Our conclusions are as follows:

(1) Dr Pike's evidence should be treated with caution. We do not disregard it in its entirety, and consider that it can be relied upon for the purposes of the On-Amazon claim, but we place limited weight on it in relation to the Off-Amazon claim.

(2) The On-Amazon claim satisfies the *Microsoft* test. The Off-Amazon claim is not struck out or summarily dismissed, but it does not satisfy the *Microsoft* test and is therefore not certified.

(3) The proposed direct credit method is credible and practical for the On-Amazon claim, and is likely to enable effective distribution to a high proportion of class members. The proposed online application hub appears much less likely to result in significant take-up, which reinforces our conclusion that the Off-Amazon claim should not be certified.

(4) Subject to the amendments to the funding arrangements and the PCR's remuneration that we have identified, we consider that the likely benefits of continuing the On-Amazon claim outweigh the likely costs.

(5) The proceedings should not be certified on the basis of funding, insurance or fee arrangements that permit recovery of the *Riefa*-related costs. Those entitlements must therefore be removed from the relevant arrangements before any collective proceedings order is made.

(6) Mr Le Patourel's future remuneration should be revised to no more than £170 per hour, capped at £750 per day. If that is done, we are satisfied that the PCR will

act fairly and adequately in the interests of the class members, and that the costs and benefits of the proceedings favour certification of the On-Amazon claim.

(7) If the proceedings are certified, permission will be granted to amend the claim to include injunctive relief. In light of our conclusion refusing certification of the Off-Amazon claim, no further steps are required in relation to minors within the class definition.

289. This judgment is unanimous.

The Honourable Mrs Justice Bacon President	Charles Bankes	Keith Derbyshire

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

Date: 28 September 2026