Neutral citation [2026] CAT 51

Case No: 1689/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

3 June 2026

Before:

THE HONOURABLE MR JUSTICE WAKSMAN
(Chair)
MICHAEL CUTTING
PROFESSOR ALASDAIR SMITH

Sitting as a Tribunal in England and Wales

BETWEEN:

CONSUMERS' ASSOCIATION ("WHICH?")

Applicant/Class Representative

- v -

(1) APPLE INC.
(2) APPLE DISTRBUTION INTERNATIONAL LTD
(3) APPLE EUROPE LIMITED
(4) APPLE RETAIL UK LIMITED ("APPLE")

Respondents/Defendants

Heard at Salisbury Square House on 3 June 2026

RULING (CONSEQUENTIAL MATTERS AND NEXT STEPS)

APPEARANCES

Philip Woolfe KC and Rowan Stennett (instructed by Willkie Farr & Gallagher (UK) LLP) appeared on behalf of the Applicant/Class Representative.

Marie Demetriou KC, Laura John KC, Max Schaefer and Michael Quayle (instructed by Covington & Burling LLP) appeared on behalf of the Respondents/Defendants.

A. COSTS

(1) Strike-out application

1. Taking all of the matters referred to by the parties into account, applying the guideline rates with a slight uplift, leaving Counsel's fees essentially unchanged, and some costs for the experts, but not as much as the £26,000 sought, as well as something for the Class Representative, we will reach the figure of £200,000 to be awarded to the Class Representative, as opposed to £273,000 as claimed.

2. The order will be inclusive of VAT in relation to external costs only, reflecting the fact that the Which?, being a charity, cannot recover VAT in the normal way.

(2) CPO application

3. So far as the various issues in the case of the collective proceedings order (**CPO**) application are concerned, our ruling is as follows.

4. First of all, as a matter of principle, we consider that the correct approach is that taken by Which?. That is to say that there should be costs in the case for the period up to the filing of the CPO Response by Apple, and thereafter there should be a specific amount of costs which is claimed rather than saying the balance is costs in the case. We consider that we have enough information to deal with that second part, rather than simply saying that it should be costs in the case.

5. Having said that, we then consider that, as with the costs of the strike-out application, they should be summarily assessed, all the more so here, because the hearing of the CPO application was only one day. What we have then done is to create, as it were, a starting point for the costs which are claimed by Which?, and in relation to that, the core issue is the extent to which those costs should be subject to a deduction.

6. We begin, with the question of the solicitors' guideline hourly rates. The solicitors' fees claimed are £212,000. The calculation, if the solicitors' guideline hourly rates were strictly applied, would be £120,000.

7. We consider that there should be a modest increase here, given that there is a degree of complexity in this case. But it is only a modest increase, consistent with the sort of uplift that we gave in relation to the strike-out application. So the figure of £120,000 will be uplifted to £145,000. If we then add Counsels' fees of £55,000, and Which?'s own costs of £9,000, this yields a total of £209,00. However we consider that there should be a reduction for excess partner involvement, and also Which?'s costs are quite high, so that the starting point is £200,000.

8. Then, the question, effectively, is what discount we should apply to that. In prior cases, there has been discounts of 10–35%. The competing positions here are that, for the reasons advanced, Apple says that there should then be an 80% reduction, whereas Which? contends, following the earlier cases, that the deduction should be very modest indeed. Of course, we are not bound by any particular percentage deduction in previous cases, all of which depend on their own facts.

9. We take the following matters into account. First of all, there has to be some significant recognition of the fact that there are funding issues, particularly with this funder which Which? would have to have dealt with in any event, and we had our own concern in this regard, although it ultimately did not prevent the making of a CPO; this is reflected in our judgment: [2026] CAT 29.

10. However, we accept, as we said in the judgment at the time, that the debate about this and the correspondence in relation to it was unnecessarily prolonged by Apple, to the extent that there would have been costs incurred by Which? that otherwise would not have been incurred, even if the underlying funding issues had to be addressed one way or the other.

11. We have to take into account also that Apple did succeed in relation to two points it raised. First of all, in respect of the termination clause, which

required further work done by us and then an amendment to be made to the funding agreement. It is true that there was not, as it were, an all-out challenge to authorisation, but nonetheless, we would not have made the CPO, had that amendment not been made.

12. Secondly, there was a rather narrower point, which Apple made about the interpretation of a clause on priorities, where we agreed with Apple and disagreed with the approach taken by Which?.

13. We also consider that we should take into account, albeit only to a modest extent, the fact that these points were allied to a broader submission made by Apple, to the effect that the authorisation threshold could not be met.

14. Taking all of those matters into account and leaving any question of limitation costs, as a separate matter, we consider that the right deduction should be 40 per cent, which means that the total recoverable costs exclusive of VAT would be £120,000.

(3) Preparing the costs schedules

15. So far as the costs of preparing the costs schedule is concerned, these are put at £38,000 and consists exclusively of solicitors' time. As to this, we make a significant reduction to take account of the hourly rates point. The starting point would be about £20,000 if we took the hourly rates into account, Also, while Which? has been the net beneficiary of the substantive costs orders we have made, those costs have been very significantly reduced and so we make a further reduction so that we will award £15,000 here in total.

(4) Consequentials hearing

16. So far as the costs of the consequentials hearing for today is concerned, the total costs would be £17,925. It is mainly counsel, not solicitors. There would be some reduction in relation to guideline rates and although the permission to appeal point did not take very long, we would still have to have the debate on

the costs on the summary assessment and so on. We will make some deduction. Instead of £17,925 we will award £14,000.

B. PERMISSION TO APPEAL

17. In view of the differences between the majority and the Chair in the strike-out judgment ([2026] CAT 41), and notwithstanding the points that have been made by Apple, and bearing in mind this is a point of law, we consider that an appeal based on all three grounds has a real prospect of success.

18. Further, since this is a developing jurisdiction, the issues raised on the strike-out application are important matters which should be considered by the Court of Appeal, and that is a compelling reason for an appeal.

19. We are therefore unanimous in granting permission to appeal on this basis, and it is granted in respect of all grounds advanced.

C. DIRECTIONS TO TRIAL

20. On the issue as to whether we should make detailed directions to trial now rather than await a further case management conference (**CMC**) to take place at some future date, we are persuaded not to make detailed directions to trial now, in particular because of the question of expert evidence which we consider should be fully provided for in directions in one go, as it were, consistent with the new practice direction of this tribunal. We cannot do that now.

21. However, having said that, we consider that we can and should do the following beyond simply approving the agreed directions as to the exchanges of further statements of case, which will be as follows:

    (1) to fix a trial date;

    (2) to fix directions for the disclosure exercise;

    (3) to fix a further CMC for the autumn term; and

(4) to give some indicative directions.

22. We consider that the present scope of this case, which started in November 2024, is not so uncertain that it is impossible for us to take that course.

23. On the basis of the high-level budgets filed by the parties, we see no reason not to accept a trial period of nine weeks, which will be one-week pre-reading and then eight weeks to follow.

24. Taking into account the points that have been made by Apple on timing and in particular in relation to disclosure, we accept that to have a trial starting in May 2028 be unduly tight. Taking a realistic approach, however, and one which is suitably cautious, we consider that the trial can and should start at the beginning of October 2028.

25. We will then give the following indicative directions which will be subject to refinement and possible change at the CMC. In that regard, we have noted the submissions made in relation to other cases over the time at which a tribunal has given directions to trial. Each of those cases, of course, turns on their own facts, and this is pre-eminently a question of case management for the tribunal concerned.

26. The indicative directions are as follows:

(1) The process of expert evidence will conclude, which we expect would be by way of a final joint statement, by the end of April 2028.

(2) The factual evidence, such as it is, will be concluded by mid-December 2027.

(3) The deadline for the final provision of disclosure will be the beginning of October 2027. However, there will rolling disclosure prior to then. We consider that, notwithstanding what has been said, there is no reason

why disclosure should not be completed by October 2027; that is one year ahead of the trial.

(4) Bearing those points in mind, there will be a one-day CMC on 27 November 2026, at which fleshed-out directions, as it were, will be made.

D. COSTS BUDGETS

27. We took the initiative, shortly before this hearing, to direct that the parties should provide high level costs budgets. They are in the form of a precedent Z spreadsheet form which is used in the High Court for costs budgeting in lower costs cases. Each spreadsheet has only two sections: one setting out the cost estimate for each stage, and the other explaining the assumptions underlying the estimates provided.

28. We made that direction in line with the order that had been made for such budgets by the President in the recent case of *Spottiswoode v Airwave*, Case 1698/7/7/24. This is against a background where there is increasing concern expressed by the Tribunal in a number of cases about the level of costs being incurred by parties to collective proceedings, and there is a pressing need for this to be the subject of proper scrutiny.

29. By way of example, we refer to the observations of the Tribunal in *Rowntree v Performing Right Society* [2026] CAT 25, at §31:

> "Costs incurred in collective proceedings before this Tribunal are a major concern and have drawn comments from this Tribunal before, including costs relating to certification."

30. Where in the cases referred to, the costs involved were described as being in a "staggering" sum or an "extraordinarily large" sum and we share that concern here. It was for that reason that although there is not at present, in proceedings before the CAT, a costs budget regime akin to that provided for by CPR r. 3.12–3.18 (which itself does not apply to cases worth more than £10 million unless otherwise ordered), we made the directions that we did and with which the parties have helpfully complied.

31. The cost budgets came with the understandable caveat, that because pleadings have not yet closed, there is a degree (we emphasise only a degree in our view) of uncertainty about the shape of this case going forwards. What the costs budgets have revealed is as follows:

(1) On Which?'s budget, the total cost estimate exclusive of deferred fees and success fees on the basis of a seven-week trial, is just over £26 million. Costs of the expert evidence is estimated at £4.7 million, of which about three quarters is the cost of the experts and the rest are the costs of the legal team. Trial costs including trial preparation, £5.2 million. Contingencies at £5.3 million and costs incurred, £2.1 million.

(2) On Apple's budget, the total cost estimate, on the basis of an eight-week trial, is between £40 and £50 million. Total estimated costs of disclosure are between £7.4 million and £10 million. Expert evidence, for the experts alone, between £5.5 million and £6 million. Estimated costs of witness evidence on the basis of four lay witnesses appears to be about £2.5 million with the total estimated costs of both forms of evidence between £8.1 million and £9.9 million, with total trial costs to include a pre-trial review and trial preparations at between £13.5 and £16.4 million, with contingencies between £3.2 million and £4.1 million.

32. We observe, even on the basis of the understandable caveats for a high-level budget at this stage, if these were to be the real budgets, costs figures of this order are extraordinary. Perhaps more glaringly so in the case of Apple's cost budgets. But it cannot be said that Which?'s own budget is simply very modest by comparison. Once a deduction is made for the costs of disclosure, which falls essentially upon Apple, even on Which?'s case, £2.5 million is the cost of the expert evidence that they would expect to incur on the basis, of three experts. Apple's experts costs are even more. On the contingencies, each side is putting in £4 million to £5 million.

33. Further, on Apple's budget, as we have already mentioned, the cost of four witness statements of £2.5 million is, very difficult, if not impossible, to comprehend. If this was the budget and it was going to be their total costs claim, and Ms Demetriou KC has stressed that it may well not be, but if it were – of course it is only our view, not the view of a costs judge – it is plain that the costs of that order would be unreasonable and disproportionate. Of course, the original costs protection for Apple which remains in place is ATE insurance limited to £15 million. This was not objected to by Apple at the time of the CPO application hearing, and Apple does not seek today to increase it. So even if Apple were to have its costs assessed at significantly more than £15 million after trial, the recovery of any costs above £15 million is effectively academic.

34. It is of course, a matter for Apple how much it spends on defending the claim, and if it wishes to take the risk of most of that expenditure being irrecoverable; however, it should not be thought that if Apple chooses to spend money of that order, it necessarily entitles it to increase the amount of materials which it can present in the case beyond what would otherwise be the case, for example in terms of the length of witness statements or the detail of the expert reports or submissions. That is the point which has been made by Professor Smith. In this regard, Ms Demetriou has realistically accepted that the Tribunal is going to make highly focused orders in relation to expert evidence, going forward.

35. As we say, it does not mean that Which?'s budget is immune from the same type of criticism in relation to at least some of its elements. What we are saying at the moment is that we want both parties to bear all of our observations in mind. We should also say that we expect orders to produce high-level budgets in this form will become routine in collective proceedings.

36. The question then is what to do about this now that we have obtained those costs budgets. Which? asks effectively for an order in the same term as the costs budgeting regime in the High Court. Full costs management, by simply reading over the High Court regime to the cases in the CAT, was not something which the President said she was contemplating in the *Spottiswoode* case and we agree. We are not going to ask for there to be cost budgeting according to that regime

and if we did, it would most certainly apply to Which?'s costs as well as to Apple's costs.

37. What we propose to do is more limited at this stage. Bearing in mind the comments we have made, not only in relation to the overall sums, but also about solicitors' guideline hourly rates, we will direct that both parties should submit revised high-level budgets in the same form, to be produced seven days before the November CMC. At this point, the parties will have a clearer picture of what is involved in this case, because they will by then have the proposals for the more detailed directions going forward to trial.

The Honourable Mr Justice Waksman Michael Cutting Professor Alasdair Smith
Chair

Charles Dhanowa CBE, KC (*Hon*) Date: 3 June 2026
Registrar