

Neutral citation [2026] CAT 87

Case No: 1639/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

19 November 2026

Before:

HODGE MALEK KC
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

BULK MAIL CLAIM LIMITED

Class Representative

- v -

INTERNATIONAL DISTRIBUTION SERVICES LIMITED
(FORMERLY ROYAL MAIL PLC)

Defendant

RULING (CLASS COMMUNICATION)

A. INTRODUCTION

1. By its application of 12 November 2026 (the **Application**), the Class Representative sought urgent directions requiring the Defendant to withdraw its requests for voluntary disclosure from three class members and obtain permission and relief from sanctions to rely on such disclosure, or alternatively to send a corrective communication.

2. Paragraph 8 of the Tribunal's Order drawn on 8 October 2025 required the parties, by 19 February 2026, to confirm whether they sought further disclosure, including from class members or third parties. Paragraph 1 of the Order drawn on 27 January 2026 extended that deadline to 30 April 2026 (together the **Orders**). On that date, the Defendant stated that "at this stage" it did not intend to seek further disclosure from the Class Representative or class members.

3. On 23 October 2026, Royal Mail informed the Class Representative that it proposed to seek voluntary disclosure concerning downstream pass-on from three class members in the "Fulfilment Mail" segment of the market, specifically: Immediate Media Company Limited, Future Plc, and The Economist Newspaper Limited (the **Contacted Class Members)**. It supplied a draft communication for comment, explained its selection and why it considered the requests necessary and proportionate, and invited the Class Representative's agreement or comments.

4. The Class Representative responded on 5 November 2026, objecting to the Defendant's proposal. The Class Representative stated the deadline for the parties to indicate whether they intended to make any third-party disclosure applications was 30 April 2026, which passed near six months ago. The Class Representative said it would suffer unfair prejudice if this disclosure was obtained as it may mean it would need to seek further disclosure of its own, with the deadline for reply factual evidence being 22 January 2027 and its expert report being due 5 April 2027. The Class Representative questioned the relevance, necessity and proportionality of the categories of disclosure and said

the disclosure wording was too broadly drawn. The Class Representative also questioned the utility and representativeness of the disclosure sought for the purposes of establishing pass-on from only three class members.

5. The Class Representative asked the Defendant how it sought to advance its case on pass-on and requested a response in seven days. The Class Representative added that it reserved its right to "comment on the proposed communication to Class Members and its compliance with the guidelines established by the Tribunal in due course in the event that satisfactory answers are received to this letter."

6. On 11 November 2026, the Defendant wrote to the three class members listed above seeking voluntary disclosure. The disclosure sought included management accounts, documents on the treatment of postage costs including internal spreadsheets and documents that explain how prices of products are set included internal memos, price models and board papers. In these letters, the Defendant explained the nature of the proceedings and stated that the recipients were class members and, in particular, Fulfilment Mail customers likely to hold documents relevant to pass-on.

7. The letters included the following wording:

> "6. Royal Mail would, in principle, be willing to pay any expenses reasonably incurred in complying with the requests. We would be grateful if you could provide an indication of what costs you envisage would need to be incurred to provide the requested documents.
>
> 7. Various confidentiality protections are available to be applied to any documents disclosed and we would be content to provide further information on this.
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> 8. You are not under any obligation to undertake any searches or to make any disclosure in response to the requests in the letter, unless the Tribunal makes an order to that effect. The Tribunal has not made any order at this stage. As explained in paragraph 3 above, Royal Mail is, in the first instance, therefore requesting that you provide disclosure on a voluntary basis.
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> 9. If you are not willing to provide the requested disclosure on a voluntary basis, Royal Mail intends to make an application to the Tribunal to obtain a disclosure order. You will have an opportunity to resist any application which Royal Mail may make for such an order, and you are entitled to take your own legal advice before responding to this letter. You are also free to contact BMCL

> [the Class Representative], who is conducting this litigation on behalf of class members.
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> 10. We would be grateful if you could please provide a substantive response by 25 November 2026. If we do not receive a response by 25 November 2026, Royal Mail intends to proceed to apply to the Tribunal for an order requiring the disclosure. However, our aim is to engage with you in correspondence and avoid the need to obtain any formal order."

8. On the same day, the Defendant responded to the Class Representative saying, in the absence of substantive comments from the Class Representative and the need to avoid unnecessary delay, it had sent the letters (the **Communications**) to the class members, and had copied the Class Representative to this. It had incorporated the single drafting request made by the Class Representative, changing "documents that may provide information…" to "documents that provide information…". The Defendant said it did not accept that there were serious difficulties with its approach and did not accept that it was causing the Class Representative any prejudice.

9. The Class Representative then made the present Application, alleging breach of the Orders and inadequate safeguards in the Communications.

10. In the Defendant's response dated 13 November 2026, the Defendant opposed the Application. It maintained that the Orders did not prohibit subsequent requests for voluntary disclosure, denied any breach or need for relief from sanctions, and submitted that its Communications contained appropriate safeguards. The Defendant acknowledged that Lewis Silkin LLP's contact details, being the Class Representative's solicitors, had been omitted in error from the Communications. The Defendant maintained that it had sought the Class Representative's engagement and invited the Tribunal to make no order.

B. ANALYSIS

11. The Tribunal has been actively case managing these proceedings, including by establishing an organised process for identifying and resolving requests for disclosure; in particular, see the following case management Rulings and Orders in these proceedings: [2025] CAT 56; [2025] CAT 84; the Orders drawn on 8

October 2025 and 27 January 2026. That process was intended to allow sufficient time for disclosure to be obtained and considered.

12. The Defendant has nevertheless sought disclosure from class members nearly six months after the deadline set by the Tribunal. While the Defendant has explained why it considers the material sought is relevant, no explanation has been provided for why this exercise was not undertaken within the period prescribed by the Tribunal.

13. The Application raises two distinct issues. First, the Class Representative seeks an order that the Defendant write to the Contacted Class Members to withdraw its voluntary request and an order that if the Defendant now seeks to rely on evidence from class members, the Defendant is to apply for permission and relief from sanctions.

14. Secondly, and in the alternative, the Class Representative seeks an order that the Defendant send a further corrective communication to the Contacted Class Members providing further information regarding its request along the lines of what was ordered in *Ennis v Apple* [2026] CAT 72 (***Ennis***) at §§114–121 and *Stephan v Amazon* [2026] CAT 79 (***Stephan***) at §33.

15. As to the first issue, the Tribunal's powers regarding ordering disclosure including disclosure from class members were set out in *Rodger v Google* [2026] CAT 58 (***Rodger***) at §§14–19. It is not appropriate on the present Application to determine whether the Defendant's requests for voluntary disclosure breached the earlier orders, or to require its withdrawal on that basis. As stated in *Rodger*:

> "70. However, whilst there are numerous examples in practice where late applications for disclosure have been dismissed on the grounds of timing, it does not automatically follow that applications heard at a late stage will be refused on that ground alone."

16. The Defendant has not currently made an application for disclosure. If such an application is made, the Defendant will need to: (i) establish that the disclosure sought is necessary and proportionate; (ii) explain why it is sought now and why it was not sought earlier; and (iii) show how it can be accommodated fairly at

this stage of the proceedings. Within this, the Tribunal will consider the burden on the class members and the effect on the timetable in these proceedings. The Class Representative will have an opportunity to respond if and when such an application arises. Similarly, the Tribunal will not at this stage prejudge whether any material obtained by the Defendant may be admitted in evidence. That question can be considered only once the nature of the material is known.

17. The second issue concerns the safeguards governing communications with represented class members. This question has arisen in several collective proceedings in this jurisdiction, notably *Mark McLaren Class Rep v NYKK* [2023] EWCA Civ 1471, [2024] Bus LR 490 (***McLaren***), *Ennis* and *Stephan*.

18. Rule 53 of the Tribunal Rules confers broad powers on the Tribunal to give directions in proceedings under s. 47A of the Competition Act 1998, including directions under rule 53(2)(l) for the disclosure and production of documents by a party or third party. In collective proceedings, those powers are supplemented by rule 88, which permits the Tribunal to give any directions it considers appropriate. The examples of directions set out in both rules are non-exhaustive. Consistent with *McLaren*, the Class Representative does not contend that the Defendant is generally barred from communicating with class members. Its complaint is that the Defendant should have followed the guidance in *Ennis* and *Stephan* when doing so in order to avoid communicating with class members in a manner which, even if unintentionally so, is misleading or intimidatory.

19. The Defendant says no such order is required and that the substance of the Communications contained the relevant protections previously envisaged by the Tribunal and that the Tribunal has not set out a "mandatory code" in its previous rulings. The Defendant denied that it sought to intimidate class members noting that the Contacted Class Members comprised little over 1% of the claim value, therefore there would be little benefit in the Defendant seeking to intimidate these particular class members.

20. As stated in *Stephan* at §32, the governing concern of the Tribunal when it comes to communications with the class is to protect the "integrity of the collective proceedings" and to prevent conduct from a defendant which might

place class members under unfair pressure to seek to opt out. A Tribunal can and should be prescriptive about certain matters which it would regard as good practice when a defendant seeks to communicate to a class to seek voluntary disclosure: see *Ennis* at §115.

21. When considering what safeguards are appropriate in any particular instance of a defendant communicating with the class, the Tribunal must consider the factual circumstances particular to the case before it in order to preserve the right of a defendant to prepare its defence.

22. Such communications can be a delicate issue. While these proceedings are naturally adversarial in nature, the parties are required to cooperate with the Tribunal to give effect to the Tribunal's overriding objective to deal with cases justly and at proportionate cost. Where possible, the parties should seek to agree an approach for a defendant to communicate to a class and seek disclosure: see *Ennis* at §108. Likewise, in *McLaren* at §113, the Court of Appeal referred to the guidance set out by Perell J as a 'postface' to his judgment in the Superior Court of Ontario in *Del Giudice v Thompson* [2021] ONSC 2206, which included the following regarding a defendant seeking to communicate with a class (with particular emphasis here on (d) and (e)) at §53:

> "a. If the defendant wishes to communicate with class members and the communication is: (a) out of the normal course of the defendant's business or affairs; and (b) on a topic that is substantively significant to the class action, then - not as a matter of courtesy - but as a means to avoid problems and objections, the defendant's lawyer should ask Class Counsel if there are any problems or objections to the notice.
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> b. Class Counsel should respond with its objections, if any. Class Counsel should appreciate that for unofficial notices from the defendant, the court has a high threshold for exercising its jurisdiction to supervise the communication.
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> c. If Class Counsel has comments, the defendant's lawyer should consider Class Counsel's comments and objections seriously. For example, Class Counsel may have advice as to how not to alarm the class members by the details of the notice. In a given case, it is even conceivable that Class Counsel may not wish to discourage the Class Members from obtaining such benefits as the defendant may be offering.
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> d. If after considering Class Counsel's comments, there remains a dispute between the parties about the notice, then the defendant's counsel should consider inviting Class Counsel to schedule a case management conference to determine whether a motion is actually warranted to address the propriety of the notice.

> e. If after considering Class Counsel's comments, there remains a dispute between the parties and the defendant's counsel decides not to suggest a case management conference, then the defendant should issue its communication. The defendant, however, should understand that proceeding in this way runs the risk that the plaintiff will move for an order that a corrective notice be issued likely at the expense and possible embarrassment of the defendant.
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> f. In any event, neither side should use the occasion of the notice opportunistically or tactically.
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> g. If there is a motion, in deciding that motion, the court's role is purely adjudicative. The court will not be deciding the merits of the case and will be making a decision in the context of the adversary system. It is not the court's role to prejudge the merits of either side's case."

23. The Tribunal in *Ennis* and *Stephan* commended the defendants in those proceedings for engaging responsibly with the Tribunal and the respective class representatives. Unfortunately, the Defendant's engagement in these proceedings has fallen short. The Tribunal would have expected a higher degree of engagement prior to sending the Communications, which the Tribunal notes are not in accordance with the guidance given by the Tribunal in previous cases. It may fairly be said that the Class Representative should have responded more fully rather than reserve its right to comment on the proposed communications. However, the Defendant should have engaged more with the Class Representative before sending out its Communications when it was clear the Class Representative had numerous "serious difficulties" with the Defendant's approach. The Defendant's desire to avoid unnecessary delay did not justify pressing ahead without further engagement, particularly when the Defendant has not explained why it did not take this action nearly six months earlier as ordered by the Tribunal.

24. Having reviewed the content of the Communications, the Tribunal does not consider that the tone or content was either intended to, nor likely to, intimidate the Contacted Class Members. The Tribunal notes that the Communications were sent to three sophisticated commercial enterprises. However, as acknowledged by the Defendant, it should have included the contact details of the Class Representative's solicitors in the Communications itself. Such an oversight would have been avoided if the parties had corresponded further on this matter.

25. The Tribunal also agrees with the Class Representative that further information regarding costs and the scope of disclosure that may be ordered as against third parties should have been provided. This was covered in *Ennis* at §80, which stated as follows:

> "80. At this stage, we make the following general observations, which arise from our discussion of the legal position.
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> (1) There is, in the absence of legislation, no general prohibition on defendants in collective proceedings (or indeed the class representative) requesting represented persons to provide them with documents or information relevant to the issues in the case.
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> (2) Any such communication from the defendant, or the defendant's solicitor, to a class member must comply with any direction which the Tribunal may give and should be framed in terms which do not take unfair advantage of the class member, bearing in mind that the class member has a claim against the defendant which is combined in these collective proceedings. We propose to set out later in this judgment certain information which we consider should be included in the proposed communications.
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> (3) Class members are under no obligation to respond voluntarily to a request to provide documents or information – whether that request should come from [the] defendant or from the class representative. Any class member who receives such a request is entitled to insist that a formal application be brought before the Tribunal so that the Tribunal can determine the extent to which, if at all, that class member should be required to disclose information or documents for the purpose of the proceedings.
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> (4) If the defendants apply for an order under r. 89(1)(c) for disclosure by a class member, the class member will be given an opportunity to respond to that application, and to object to providing the disclosure sought. The class representative will also be given an opportunity to respond to any such application. The class representative will usually be better placed than the class member to advance arguments, for example, about the relevance of the disclosure sought to the issues in the proceedings.
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> (5) Any order for disclosure against a class member requires to be justified as necessary and proportionate in order to fairly resolve the issues in the proceedings. The Tribunal has recognised that an order for disclosure against class members "should be carefully circumscribed so as not to impose too high a burden on class members": Rodger, §15. The Tribunal will accordingly, as a general rule, frame an order for disclosure against a class member so as to require specific disclosure of individual documents or defined categories of documents the production of which is justified as necessary and proportionate in the context of the proceedings.
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> (6) Class members may have legitimate concerns about the disclosure of documents which contain confidential or commercially sensitive information. The Tribunal has well-established processes for protecting justified claims to confidentiality whilst ensuring that the proceedings are conducted fairly. In the context of an application for disclosure under r. 89(1)(c), the Tribunal can consider whether any claim to confidentiality or commercial sensitivity justifies refusal, or restriction, of the order sought. If an order is granted, the

> Tribunal can consider whether it should put in place arrangements to protect the confidentiality of the information in question.
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> (7) The Tribunal has wide power to regulate the costs associated with any application for disclosure under r. 89(1)(c), including power to direct that the party seeking an order under r. 89(1)(c) bear the reasonable costs incurred by the class member in complying with the order. Whilst the Tribunal cannot prejudge the decision on costs in any particular case, the starting point in the ordinary case is that – unless there is a good reason to make some other order – the party seeking a disclosure order against a class member should be prepared to bear the costs of the application and to pay the class member's reasonable costs in responding to any application and in complying with any order: *Rodger*, §19."

26. Similarly, more information should have been provided regarding what "pass-on" means in the context of these proceedings and the types of documents the Defendant sought. Such information is intended to assist the class members in ascertaining which documents in their possession would be responsive to the Defendant's request.

27. Finally, as was the case with *Stephan* and *Ennis*, the class members should have been given more time to respond, at least 28 days.

28. Therefore, the Defendant is ordered to write again to the Contacted Class Members in order to: (i) provide the contact details of the Class Representative's solicitors; (ii) bring their attention to this Ruling, including §25; (iii) explain with more detail the documents it seeks regarding "pass on"; and (iv) specify that they have 28 days to respond to the Defendant's initial request contained in the Communications.

29. The costs of the Application will be dealt with at the end of the next hearing in these proceedings currently fixed for 15 December 2026. The parties should provide written submissions on costs to be filed at the Tribunal by 12 pm on 11 December 2026. The parties are given notice that if costs are to be ordered the Tribunal is likely to assess such costs summarily.

Hodge Malek KC
Chair

Charles Dhanowa, CBE., KC (Hon)
Registrar

Date: 19 November 2026