Party: Class Representative
Witness: David Gallagher
Number of Statement: 2
Dated: 25 August 2026
Exhibit: DG2

**In the Competition Appeal Tribunal** **Case No 1673/7/7/24**

**B E T W E E N:**

**Professor Barry Rodger**

**Joint Applicant / Class Representative**

**- and -**

**(1) Alphabet Inc**
**(2) Google LLC**
**(3) Google Ireland Limited**
**(4) Google Asia Pacific Pte Limited**
**(5) Google Commerce Limited**
**(6) Google Payment Limited**
**(7) Google UK Limited**

**Joint Applicants / Defendants**

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**Second witness statement of David Gallagher**

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I, **DAVID GALLAGHER**, of Geradin Partners Limited, 14-18 Copthall Avenue, London, EC2R 7DJ, will say as follows:

## I. INTRODUCTION

1. I am a partner at Geradin Partners Limited ("**Geradin Partners**"), solicitors for the Class Representative Prof Rodger, and a solicitor admitted in England and Wales. With my colleagues, I have had conduct of these proceedings for Prof Rodger since their inception. The matters set out below are true to the best of my knowledge, information and belief, and – where derived from other sources – I identify the source and believe them to be true.

2. I make this statement in support of the joint application under section 49A of the Competition Act 1998 (the "**1998 Act**") and rule 94(3) of the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**") for a collective settlement approval order ("**CSAO**") in respect of the settlement agreement dated 22 August 2026 between Prof Rodger and Google (the "**Settlement Agreement**"). I refer to the settlement embodied

in that agreement as the "**Proposed Settlement**" and the £260 million sum payable by Google pursuant to the Proposed Settlement as the "**Settlement Sum**".

3. I will refer to a paginated exhibit marked "**DG2**", containing copies of various documents to which I refer in this statement. Unless otherwise stated, references in this statement are to tabs and pages of DG2 (in the format: **[DG2/Tab number/Page number]**).

4. Prof Rodger seeks an order providing for a collective settlement approval order in the proceedings. Under Rule 94(8), the Tribunal may approve the Proposed Settlement only if satisfied that its terms are just and reasonable. Rule 94(9) requires the Tribunal, in making that assessment, to take account of all relevant circumstances, including the factors specified in that Rule. This statement addresses the factual matters relevant to a number of those factors.

5. This statement provides:

   5.1 an explanation of the structure of the Proposed Settlement and Prof Rodger's proposed initial allocation of the Settlement Sum between the Class and the stakeholders (**section II**);

   5.2 an overview of the procedural history, including the context in which the £260 million settlement figure was reached, being relevant to the Tribunal's assessment of the amount and terms of the settlement under Rule 94(9)(a) (**section III**);

   5.3 an explanation of the principal issues which remained for determination at trial and the parties' competing expert positions on quantum, being relevant to the Tribunal's assessment under Rule 94(9)(c) of the likelihood of judgment being obtained for an amount significantly in excess of the settlement amount (**section IV**);

   5.4 an explanation of the likely duration and cost of continuing the proceedings, as required by Rule 94(9)(d) (**section V**);

5.5 an explanation of the proposed payment and distribution arrangements, including the claims process, methodology for calculating Class Member entitlements, likely take-up and estimated recoveries. Rule 94(4)(d) requires the application to specify how settlement sums are to be paid and distributed, while Rules 94(9)(b) and (g) require consideration of the number of persons likely to share in the settlement and the treatment of any unclaimed balance, including the further application which Prof Rodger proposes to make before any payments are made (**section VI**); and

5.6 an explanation of the costs, fees and disbursements incurred in the proceedings, the contractual entitlements of the funder and other stakeholders, Prof Rodger's proposed treatment of those amounts, and the potential conflicts and safeguards relating to them. Rule 94(4)(b) requires the application to set out the settlement terms, including provisions for costs, fees and disbursements, and Rule 94(9)(a) requires those matters to be considered when assessing whether the settlement is just and reasonable (**section VII**).

6. This statement is filed alongside the third witness statement of the class representative, Prof Barry Rodger ("**Rodger 3**"), and a privileged and confidential opinion of Robert O'Donoghue KC addressing the merits of the settlement. The opinion is provided exclusively to the Tribunal pursuant to a limited waiver of privilege.

7. Nothing in this witness statement is intended to waive any right available to Prof Rodger to assert legal professional privilege and I do not have his consent to do so. Similarly, nothing is intended to waive or compromise the "without prejudice" protections afforded to the correspondence and discussions between RPC, the solicitors for Google, and Geradin Partners, on behalf of Prof Rodger, save that I confirm that the Proposed Settlement was entered into following arm's length negotiations between the parties through and on the advice of their legal representatives.

8. I have prepared this statement with the Tribunal's guidance in mind, in particular: that supporting documents "*must be rigorous in [their] assessment of both the points in favour and against the approval of a settlement*" and must let the Tribunal "*understand*

*with clarity the mechanics of that settlement and the likely amounts that will be apportioned to stakeholders relative to Class Members*" (McLaren ("K" Line) [2025] CAT 4 ("***McLaren (K Line)***") at [65]).

## II. STRUCTURE OF THE PROPOSED SETTLEMENT

9. Under the Settlement Agreement, Google will pay £260 million in full and final settlement of the Proceedings, subject to the Tribunal approving the Proposed Settlement (the "**Settlement Sum**").

10. In the joint application, Prof Rodger seeks approval for the Settlement Sum to be allocated in the first instance as follows:

    10.1 £160 million (the "**Class Pot**") will be made available for distribution to Class Members in accordance with the claims and distribution process described in **section VI** below; and

    10.2 £100 million (the "**Stakeholder Pot**") will be available towards the costs, fees, disbursements and other contractual entitlements of the stakeholders described in **section VII** below.

11. Once the claims and review process has been completed and actual take-up is known, Prof Rodger proposes to make a further application to the Tribunal before payments are made to either Class Members or stakeholders. In that application, he will seek approval of: the final amounts to be paid to Class Members from the Class Pot; and the particular stakeholder entitlements to be paid from the Stakeholder Pot. Additionally, Prof Rodger and Google will seek the Tribunal's directions as to the treatment of any undistributed sums from the Class Pot. The Tribunal will therefore determine each of those matters with the benefit of evidence of actual take-up, the final amounts proposed to be paid to Class Members and the updated stakeholder entitlements. I understand that Google will make its own submissions as to the treatment of any undistributed sums at the relevant time.

## III. PROCEDURAL HISTORY AND SETTLEMENT CONTEXT

12. These matters are relevant to the Tribunal's assessment under Rule 94(9) of whether the Proposed Settlement is just and reasonable.

13. At the time of settlement the proceedings are substantially advanced with trial listed to start on 28 September 2026 jointly with the Coll proceedings. In summary:

    13.1 Prof Rodger commenced the proceedings on 22 August 2024;

    13.2 His application for a collective proceedings order was heard on 6 March 2025, and the proceedings were certified by judgment dated 6 August 2025 and order dated 23 May 2025;

    13.3 By order dated 24 March 2025, the Tribunal directed that the Rodger proceedings be jointly case managed and tried together with the Coll and Epic proceedings,[1] with the result that Prof Rodger's case thereafter proceeded as part of substantial multi-party proceedings;

    13.4 Google filed and served its Defence on 25 April 2025;

    13.5 Prof Rodger filed and served his Reply on 16 May 2025;

    13.6 Google disclosed approximately 3.5 million documents between May 2025 and August 2026, and detailed developer transaction data in June 2025;

    13.7 Factual and reply factual witness statements were served on 31 October 2025 and 28 November 2025 respectively;

    13.8 Prof Rodger's economic expert report was filed and served on 23 December 2025 and his other expert evidence was filed and served on 17 December 2025;

    13.9 Prof Rodger amended his claim form on 13 February 2026 to reflect *inter alia* the expert evidence filed by his experts, and removed allegations that Prof Rodger no longer sought to pursue;

[1] By Order dated 9 March 2026, the Epic proceedings were withdrawn by consent.

13.10 Google filed and served its Amended Defence on 13 March 2026;

13.11 Google's reply expert reports were filed on 19 May 2026;

13.12 Prof Rodger further amended his claim form on 8 June 2026 to clarify his loss pleading;

13.13 Final trial expert reports were filed and served on 22 July 2026. These were page limited reports intended to act as the experts' final report for trial and which, in practice, effectively replaced earlier (lengthier) reports; and

13.14 Prof Rodger amended his claim form again on 31 July 2026 to update the class definition by extending the Relevant Period to the date of the Pre-Trial Review.

14. Therefore, by the time of the settlement, Prof Rodger had extensive information regarding the collective proceedings on which he could make an informed assessment as to whether the Proposed Settlement was just and reasonable.

15. A further key development in this case, which is relevant to whether the Proposed Settlement is just and reasonable, is Google's attempt to vary the CPO and subsequent disclosure requests against individual developers.

16. On 27 February 2026, Google applied to vary the CPO so that the claims of the 25 largest developers by claim value would proceed on an opt-in basis, with the claims of the remainder of the Class continuing to proceed on an opt-out basis; Google later proposed, in the alternative, that the variation be confined to the 5 largest developers. On 4 June 2026, the Tribunal dismissed that application. The Tribunal nevertheless held that Google could, if it wished to do so, make applications for disclosure from individual represented persons pursuant to Rule 89(1)(c) of the CAT Rules 2015.

17. On 12 June 2026, Google issued 17 applications seeking disclosure from a number of larger developers concerning agency and intra-group arrangements said to affect recoverable loss and class membership. Following a hearing on 9 July 2026, Mr Hodge Malek KC granted a narrowed disclosure application against one developer, and held

that the remaining disclosure applications would be determined on the papers following further written submissions. In his ruling and order, Mr Malek KC expressly left to the trial Tribunal whether any disclosure obtained should be admitted at trial, whether further factual or expert evidence would be required, and whether the relevant issues should instead be determined separately or at a later hearing.

18. Those questions therefore remained live at the pre-trial review ("**PTR**") heard on 31 July 2026. At the PTR, the Tribunal directed that the relevance of agency and intra-group arrangements to the assessment of aggregate damages would, in the first instance, be determined at trial as an issue of principle only. In broad terms, the issue of principle is whether such intra-group arrangements and/or the possibility that a represented person acts as an agent for a group company may, in law, render loss otherwise attributed to a UK developer irrecoverable by that developer, requiring a corresponding adjustment to the aggregate damages. This contention that such a reduction in the aggregate damages is required is disputed by Prof Rodger.

19. The Tribunal further directed that it would determine the issue of principle without making findings of fact about any individual developer's arrangements. Only if the issue were determined in Google's favour would any residual issues (including as to quantum) be determined at a further hearing following judgment in the main trial, with provision for further factual and expert evidence. No date has been set for this further hearing, since the date of judgment is unknown and it remains subject to the outcome of the issue of principle identified by the Tribunal.

20. The PTR order was made without prejudice to Mr Malek KC's determination of Google's disclosure requests that remained outstanding at the date of the PTR. On 7 August 2026, Mr Malek KC granted the outstanding disclosure applications against 10 other developers.

21. These developments in the months immediately preceding trial have introduced additional risk and uncertainty into the Rodger Proceedings. See also paragraphs 63 to 75 of Robert O'Donoghue KC's opinion. In particular:

21.1 Following the disclosure applications against individual developers, applications by a number of developers were made to opt-out of the class. DAZN Group Limited has already successfully opted out of the class and opt-out applications by four others are still pending;

21.2 The bifurcated manner in which the Tribunal has indicated that it will deal with these intra-group issues – which may include a further hearing and factual and/or expert evidence from individual developers – creates a real but difficult-to-quantify risk of further opt-outs by larger developers.

21.3 The intra-group and agency related arguments have introduced new risks in relation to the quantum of damages; and

21.4 These developments also give rise to the prospect of Prof Rodger having to incur further costs preparing additional factual and expert evidence on this issue and attending a second trial/hearing. If the risk of the further hearing materialises, this will delay (and potentially reduce) recovery for the class.

22. It is against that backdrop that the Proposed Settlement has been reached.

23. On 3 August 2026, Google confirmed a final proposed settlement sum of £260 million (subject to contract and internal approvals), following arm's length negotiations between the parties. By the time the final figure was proposed, the parties had the benefit of substantial disclosure, factual evidence and expert evidence, and the principal issues likely to determine the range of possible outcomes at trial had been identified and were substantially developed.

24. Prof Rodger instructed me to agree the proposed settlement sum after receiving advice from Geradin Partners and having discussed the proposed settlement sum with Sue Prevezer KC and Richard Whish of his Consultative Panel. Before the Settlement Agreement was finalised, Prof Rodger also consulted the full Consultative Panel, which unanimously considered that a settlement at £260 million represented an excellent outcome for the Class. Prof Rodger explains in his witness statement that he took those discussions, together with the advice received from Geradin Partners, into account

before deciding to agree the proposed settlement sum. This Proposed Settlement was considered just and reasonable in light of the merits of, and risks associated with, the claims, costs and delay of continued litigation, the amount which the Proposed Settlement would secure for the Class and sum available to the Class considering the payment of costs, fees and disbursements (Rodger 3, section II).

25. The agreement in principle (subject to contract and Google's internal approvals) was notified to the Tribunal on 6 August 2026. By letter of 11 August 2026 the Registrar indicated provisional availability for a hearing on 8 September 2026, with a day held in reserve on 9 September 2026.

## IV. LIVE ISSUES AT TRIAL

26. Rule 94(9)(c) requires the Tribunal to consider the likelihood of judgment being obtained for an amount significantly in excess of the settlement amount. Paragraph 6.125 of the Tribunal Guide to Proceedings 2015 (the "**Guide**") explains that: "*When considering the likelihood of judgment being obtained in collective proceedings for more than the amount of the settlement, the Tribunal need not conduct a detailed analysis of the claims to determine what it would have awarded in damages (if anything) following a trial. Rather, the Tribunal will adopt a broad brush assessment of the position, having regard to the prospect of success and estimated quantum of damages.*"

### A. Principal liability and quantum issues

27. At the time of the settlement in principle, substantial issues remained to be determined at trial. Prof Rodger maintained the case pleaded in his Re-Re-Amended Collective Proceedings Claim Form that Google is dominant in the markets for licensable smart mobile operating systems and Android app and content distribution for app developers, and that it abused those positions through the exclusionary conduct pleaded at paragraphs 169 to 178 and by charging an excessive and unfair Commission. Google denies dominance, abuse, causation and loss and advances the matters set out in its Defence.

28. The principal liability issues included: market definition and dominance; the effect, individually and cumulatively, of the contractual and technical practices challenged by Prof Rodger and Google's asserted justifications for them; and whether the Commission was excessive and unfair. The principal issues capable of affecting quantum included: the appropriate counterfactual Commission; pass-on; the applicable law and territorial scope of the claim; and Google's case concerning the corporate, agency and intra-group arrangements of certain Class Members. Those matters were the subject of substantial factual and expert evidence and remain contested. And, as noted above, there was also a substantial indirect risk concerning quantum that the individual developer disclosure ordered by the Tribunal and potential bifurcated second hearing extending into 2027 would lead to further opt-outs by larger developers, increasing uncertainty as to the composition of the Class and the ultimate value of the claims remaining before the Tribunal.

29. I do not set out an assessment of the relative merits of those issues or of the litigation risks arising from them. Prof Rodger has obtained a comprehensive written opinion from Robert O'Donoghue KC addressing the strengths and risks of the proceedings and the implications for the Proposed Settlement. That opinion accompanies the Approval Application on a privileged and confidential basis, by way of limited waiver to the Tribunal.

30. I do summarise below, however, the parties' competing expert estimates of aggregate loss, because they illustrate the range of possible outcomes which remained in issue at the time of settlement. Nothing in that summary is intended to express a view as to the relative merits of the competing expert positions.

## B. Economic experts' estimates of loss

31. The parties' economic experts produced materially different assessments of the Class's aggregate loss. At a high level, the difference reflects fundamentally different views as to the competitive commission that would have prevailed absent the conduct alleged by Prof Rodger, together with differing assumptions concerning pass-on, volume effects,

interest and the scope of transactions capable of giving rise to recoverable loss.[2] The principal calculations are summarised below.

32. Prof Fletcher's approach is to estimate the commission that would likely have prevailed in a competitive market and compare that counterfactual commission with the commissions actually charged by Google. Because there is no single accepted methodology for determining that competitive benchmark, she applies a number of alternative approaches, including cost-plus analysis, comparator evidence drawn from other app distribution platforms and bargaining-based methodologies. Each approach produces a different estimate of the competitive commission and therefore a different estimate of aggregate damages. The purpose of presenting those alternative calculations is not to identify a single correct figure, but to illustrate the range of damages outcomes which Prof Fletcher considers could reasonably arise depending on the methodology adopted.

33. In her Trial Report, Prof Fletcher calculated damages calculations by reference to the approximately [redacted] of Relevant Sales contained in the transaction data disclosed in these proceedings (the "**Rodger Transaction Data**") from August 2018 to March 2025.[3] In the below table, Prof Fletcher has extrapolated these calculations past the end of the Rodger Transaction Data period to 31 July 2026.[4] The resulting volume of commerce ("**VoC**") increases from [redacted] to [redacted]. The table then shows the aggregate damages produced by each of Prof Fletcher's alternative counterfactual commission methodologies when applied to that updated VoC figure. For ease of comparison with Mr Noble's calculations, the final column reproduces Prof Fletcher's damages calculations from her Trial Report, based only on the Rodger Transaction Data (i.e. to 31 March 2025 only).

[2] Trial Expert Report of Hal J. Singer and Professor Amelia Fletcher, paras 327-337 and Tables 6-8 **[DG2/2/422-424; 432-433]**; Trial Expert Report of Robin Noble, paras 7.17-7.29 and Appendix A7 **[DG2/1/165-168; 272]**.

[3] Trial Expert Report of Hal J. Singer and Professor Amelia Fletcher, Table 6 **[DG2/2/432]**.

[4] As the actual transaction data ends in March 2025, extrapolation was used to bridge the period from April 2025 to July 2026.

| | | | In-App Purchase | Paid Downloads | Subscription | Total | Trial Report Figures |
|---|---|---|---|---|---|---|---|
| (a) | Total VoC (Actual) | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (b) | Google Revenue (Actual) | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (c) | Total Quantity (Actual) | Unit M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (d) | Average Effective Commission (b) / (a) | % | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (e) | Developer Revenue (Actual) (a) – (b) | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| | **Damages using the counterfactual commission rates** | | | | | | |
| (f) | **Upper Bound: 20%**<br><br>[{(100.20) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (g) | **Cost-Plus Analysis excluding Ad Revenue:** [redacted]<br><br>[{(1-0.149) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (h) | **Epic/Microsoft: 13.18%**<br><br>[{(1-0.1318) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (i) | **ONE Store with Stripe[5]: 5% + (3.25% + £0.20)**<br><br>[{1-(0.05+0.0325)) * (a)} – {£0.20 * (c)} – €] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (j) | **Bargaining Method:** [redacted]<br><br>[{1-0.105) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (k) | **Cost-Plus Analysis including Ad Revenue:** [redacted]<br><br>[{(1-0.034) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| (l) | **Pooled Estimate:** [redacted]<br><br>[{(1-0.1158) * (a)} – (e)] | £M | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |

34. The table demonstrates that Prof Fletcher's damages estimates are highly sensitive to the counterfactual commission adopted. Her updated calculations range from approximately [redacted] under a 20% commission counterfactual to approximately [redacted] under her cost-plus analysis including advertising revenues, with a pooled estimate of approximately [redacted] While Prof Fletcher regards the pooled

[5] The ONE Store is a comparator platform; Stripe is a payment solution which can be used alongside that platform.

estimate as her preferred overall estimate because it combines the results of the various methodologies she considers informative, the alternative calculations remain relevant because they illustrate the range of damages outcomes which she considers could reasonably arise depending on the methodology adopted by the Tribunal.

35. In contrast to Prof Fletcher, Mr Noble's calculations use three different counterfactual Commission scenarios in the event that liability were to be established by Prof Rodger. Scenario 1 uses a 26.25% <u>headline</u> counterfactual fee, being the average of the 30% fee charged by his high-weight comparators and the midpoint of the fees charged by his medium-weight comparators; Scenario 2 uses 27.5% <u>headline</u> counterfactual fee, giving twice as much weight to the high-weight comparators; and Scenario 3 uses a 27% <u>effective</u> counterfactual fee, based on a comparator, Steam. The Scenarios 1 and 2 correspond to <u>effective</u> counterfactual rates of [redacted] and [redacted] respectively. From these counterfactual commission scenarios, Mr Noble produces damages estimates in the range of [redacted] before interest.[6]

36. Mr Noble also presents further calculations reflecting Google's case as to the transactions properly attributable to the Class (i.e. with adjustments to account for the agency and intra-group transaction issues referred to at paragraphs 17-21 above) and the applicable law/territorial scope of the claims.

37. Those are the five alternative VoC scenarios in Noble's Appendix A7E:

| **1. Alternative VoC Scenario 1 – Excluding** [redacted] | | | |
|---|---|---|---|
| | Damages excluding interest(£m) | Interest accumulated (£m) | Total damages (£m) |
| Scenario 1 | [redacted] | | |
| Scenario 2 | | | |
| Scenario 3 | | | |

| **2. Alternative VoC scenario 2 – Excluding** [redacted] **and applying adjustments to sixteen other developers in various proportions** | | | |
|---|---|---|---|
| | Damages excluding interest (£m) | Interest accumulated (£m) | Total damages (£m) |
| Scenario 1 | [redacted] | | |
| Scenario 2 | | | |

[6] Trial Expert Report of Robin Noble, paras 7.17-7.22; Table A7.6 **[DG2/1/165-166; 273]**.

| | | | |
|---|---|---|---|
| Scenario 3 | [redacted] | | |

**3. Alternative VoC scenario 3 – UK/EU storefronts only**

| | Damages excluding interest (£m) | Interest accumulated (£m) | Total damages (£m) |
|---|---|---|---|
| Scenario 1 | [redacted] | | |
| Scenario 2 | | | |
| Scenario 3 | | | |

**4. Alternative VoC scenario 4 – UK/EU storefronts only & [redacted] excluded**

| | Damages excluding interest (£m) | Interest accumulated (£m) | Total damages (£m) |
|---|---|---|---|
| Scenario 1 | [redacted] | | |
| Scenario 2 | | | |
| Scenario 3 | | | |

**5. Alternative VoC scenario 5 – UK/EU storefronts only & excluding [redacted] [redacted] and applying adjustments to sixteen developers in various proportions**

| | Damages excluding interest (£m) | Interest accumulated (£m) | Total damages (£m) |
|---|---|---|---|
| Scenario 1 | [redacted] | | |
| Scenario 2 | | | |
| Scenario 3 | | | |

38. The tables illustrate the extent of the disagreement between the experts. The expert evidence indicates a wide range of possible quantum outcomes if liability were established. On the same approximately [redacted] underlying VoC, Prof Fletcher's preferred counterfactual produces [redacted] before interest and [redacted] with BoE + 2% interest and no pass-on, whereas Mr Noble's principal counterfactual scenarios produce [redacted] before interest and [redacted] on the same 0% pass-on and BoE + 2% interest basis. Prof Fletcher also identifies additional off-app-store damages of [redacted] whereas Mr Noble considers that no damages should arise from additional direct-channel transactions.

39. The amount of any aggregate damages award would accordingly have depended materially upon the Tribunal's resolution of disputed issues concerning, among other matters, the counterfactual Commission, pass-on, volume effects, interest and the scope of the transactions in respect of which loss could be recovered. I also repeat in this context that the risk of further developer opt-outs by the largest developers is a relevant

and material consideration here, since, if it occurred, it would substantially reduce the VoC represented in the proceedings and increase uncertainty as to the composition of the Class and the aggregate damages remaining in issue before the Tribunal. For perspective, the top five developers' claim values account for *circa* [redacted] of Prof Rodger's total claim value.

## V. LIKELY DURATION AND COST OF CONTINUING THE PROCEEDINGS

40. Rule 94(9)(d) requires the Tribunal to have regard to the likely duration and cost of continuing the proceedings. Those considerations are material in the Rodger Proceedings as not only does the continuation of the proceedings entail the remaining cost of trial and any appeal, but also the possibility of further unbudgeted work and a separate post-judgment hearing on the agency and intra-group issues.

### A. Remaining trial, hearing and appeal costs and timetable

41. As set out above, the proceedings are listed for trial commencing on 28 September 2026. If the Proposed Settlement is not approved and the proceedings continue, Prof Rodger is presently budgeted to incur approximately £3.35 million in additional costs through trial. His estimated further costs of any appeal are approximately £750,000 – £1.5 million, depending on the issues appealed. A judgment at first instance would be unlikely before summer 2027, and possibly later – see my comment below concerning timings in the analogous *Kent* proceedings. Any appeal then could add a further 12–24 months before the proceedings are finally resolved. In addition, there is scope for a further hearing as described at paragraph 43 below, which could itself cause material additional delay, including because of its interaction with appeals following the main trial.

42. By way of comparison, in *Kent v Apple* trial began on 13 January 2025 and ultimately resulted in a successful judgment for the class in October 2025. Yet, more than 10 months from judgment and 19 months after the trial began, the class has still received no compensation, with any payment remaining contingent on the resolution of Apple's appeal. That appeal is being heard over five days in May 2027 so there is a realistic prospect of no judgment before the fourth quarter of 2027 or possibly later. A further

appeal is also a possibility as is the prospect that certain issues would need to be remitted to the Tribunal following the Court of Appeal ruling.

43. There is also a possibility that the proceedings would not conclude with the principal trial and judgment. As explained at paragraph 19 above, at the PTR, the Tribunal directed that if the issue of principle on intra-group arrangements and agency were determined in Google's favour, any residual issues would be determined at a further hearing after the main trial and judgment, potentially involving further factual and expert evidence. The costs of such a hearing have not yet been quantified and are not included in the £3.35 million trial budget referred to above. As a very rough estimate this additional hearing, assuming leading counsel and a 3-5 day hearing, could cost over £1 million. The current funding arrangements do not extend to such a further hearing. Any additional funding would therefore need to be agreed with Prof Rodger's litigation funder, Bench Walk; there is no existing commitment that it will be provided. When additional funding has previously been required in these proceedings, Bench Walk has sought improved pricing as part of its terms. There is therefore a risk that the terms of any further funding would increase the funding costs ultimately sought from any recovery and, correspondingly, adversely affect the scope for actual recovery by Class Members. I address the funding arrangements further in **section VII.C** below.

44. On 7 August 2026, Mr. Malek KC ordered disclosure against 10 further developers. In view of the Settlement Proposal, Prof Rodger and Google agreed to postpone the date by which these disclosure obligations have to be complied with. The Tribunal therefore ordered that deadlines falling on or before 18 September 2026 be extended to 2 October 2026. However, if the case is not settled, compliance with those orders would require Prof Rodger and his advisers to liaise with the developers concerned, review the disclosure produced and assess its implications, and potentially produce further factual and expert evidence. That work was not included in the initial budget for the proceedings or in the budget presented to the Tribunal on 28 July 2026. I presently anticipate such costs could exceed £1 million (assuming Google and Prof Rodger would each file expert evidence, as they have already done on these issues).

45. The disclosure orders also raise the risk that, if the proceedings do not settle, one or more of the 10 developers may seek to opt-out of the proceedings to avoid the disclosure obligations imposed by the 7 August 2026 order and Prof Rodger will incur yet more costs responding to those applications. If the proceedings continue to trial, Prof Rodger would also have to incur further costs responding to the outstanding applications to opt out of the proceedings brought by four developers which were originally triggered by Google's developer disclosure applications. The costs associated with this work are also not presently accounted for in the budget. Any further successful opt-out applications would further reduce the aggregate damages claimed.

46. Any further hearing would delay the final determination of aggregate damages and distribution amongst the class. It also raises the prospect of a further avenue of appeal.

47. As explained in **section VII.D** below, the LFA provides for an increased return to Bench Walk if the relevant post-trial trigger is reached, and continued proceedings may also require further capital to be drawn. Those matters may therefore increase the stakeholder entitlements ultimately sought from any recovery, potentially at the expense of the Class.

48. Thus, the developments in recent months have created the prospect of additional complexity, delay and cost, as well as uncertainty as to the ultimate amount of aggregate damages.

## B. Overall implications of continuing the proceedings

49. In deciding whether to recommend the Proposed Settlement, I considered the issues referred to above, together with the ordinary uncertainties of substantial litigation of this kind, the further costs of trial, the possibility of a further hearing and any appeal, and the resulting delay before any recovery could be distributed to the Class. The settlement follows disclosure, witness evidence and several rounds of expert evidence in the Rodger proceedings, in addition to the voluminous disclosure and witness and expert evidence in the jointly managed Coll and Epic proceedings, so Prof Rodger's assessment rests on a materially better evidential base than would have been available earlier. And it precedes a long joint trial, further hearing and any appeals, and possible

further factual and expert evidence on the agency and intra-group arrangements issues, each of which would entail further expenditure and would increase the costs and stakeholder entitlements ultimately sought from any recovery.

50. Prof Rodger's assessment of why the Proposed Settlement is just and reasonable is addressed in paragraphs 9 to 35 of his statement. See also Mr O'Donoghue KC's privileged opinion provided separately to the Tribunal.

## VI. PAYMENT AND DISTRIBUTION

51. Rule 94 requires the Tribunal to consider how the Settlement Sum will be paid and distributed, including likely take-up and the treatment of any unclaimed balance. I therefore set out below the proposed distribution arrangements.

### A. Claims and distribution process

52. Prof Rodger's claims administrators, Angeion, will administer the claims process. Angeion is a specialist U.S. class-action notice and claims administration firm. Its management team has collectively overseen more than 2,000 class-action settlements and distributed more than US$15 billion to class members.

53. Of particular relevance, Angeion was appointed settlement administrator in *Cameron v Apple*, a US class action concerning Apple's App Store and brought on behalf of small app developers, and in the *In re Google Play Developer Antitrust Litigation*, concerning claims brought on behalf of app developers in relation to the Google Play Store. The classes comprised 67,440 and 47,972 eligible developers respectively, compared to the [redacted] developers estimated in the present proceedings.

54. With the assistance of Geradin Partners, Angeion will be responsible for communications with Class Members, verification of claimants, the receipt and administration of claims and the payment process. The proposed process for notifying Class Members of the Proposed Settlement, receiving and determining claims, and distributing the amount made available for the Class is set out in the distribution plan prepared by Angeion which accompanies the parties' joint application ("**Angeion Distribution Plan**"). In summary:

55. Following approval of the Proposed Settlement, Angeion will undertake the notice and outreach programme described in the Angeion Distribution Plan. The proposed notice programme is designed to maximise awareness and participation through direct communication with class members wherever contact details are available. It will be centred on individual email notice, supported by reminder communications, targeted follow-up for non-responding developers, and supplementary outreach by post or telephone where appropriate. The programme will also include a dedicated website providing information about the distribution process and access to support services, together with broader digital advertising to increase awareness of the claims process. Class Members will be given 4 months from the commencement of the notice programme in which to submit a claim: Angeion Distribution Plan, para 32.

56. The notice process will permit targeted direct outreach. Prof Rodger's advisers are already in direct contact with [redacted] of estimated claim value. Further, Google has agreed, subject to appropriate legal and regulatory safeguards, to provide available email addresses (where available to Google) for the [redacted] developers in the Rodger Transaction Data for the period between 22 August 2018 and 22 August 2024. This will facilitate targeted direct notice and outreach as part of the Angeion Distribution Plan. I address the implications for likely take-up at **section VI.D** below.

57. The claims process is intended to minimise the burden on Class Members. A claimant will ordinarily only need to provide its Developer ID together with sufficient information to verify its identity, its ownership of that Developer ID and its membership of the Class. It will not be required to provide its own transaction data or other evidence of loss, unless it requests a review of Prof Rodger's estimate. The Rodger Transaction Data, disclosed in the course of the proceedings, will instead be used, so far as possible, to determine the claimant's entitlement. This Proposed Settlement therefore has an advantage not present in other proceedings: a substantial part of the identification and assessment exercise can be conducted using transaction records already available in the proceedings.

58. There will then be two routes for determining a represented person's level of entitlement: see further section C below.

58.1 Developers with Play Store revenues of £7,500 or less over the Relevant Period will be able to elect either a simplified fixed payment or a payment by reference to an individual calculation. £7,500 represents a practical revenue threshold: at or below it, bespoke calculation would add disproportionate cost for relatively small payments; above it, the greater amounts at stake justify individual calculation.

58.2 Developers with Play Store revenues of more than £7,500 will receive payment by reference to an individual calculation.

59. Each claiming developer will be provided with a provisional assessment of its entitlement. It will then have a certain number of days to request a review of its provisional entitlement. Further supporting information will be requested only where the claiming developer cannot be matched to the Rodger Transaction Data or the developer considers that the data is incomplete or inaccurate, including where the developer considers that the extrapolation described below does not fairly reflect its activity after the end of the period covered by the Rodger Transaction Data: Angeion Distribution Plan, paras 16 and 28. Where further information is required, the process is described at paragraph 72 below.

60. Following the end of the claims and review periods, Angeion and Prof Rodger's instructed economic consultancy, Fideres, will undertake a final reconciliation. They will determine the number and value of verified claims, the payments which would be due under the methodology described below, the aggregate amount proposed to be distributed to the represented persons and the amount, if any, which would remain undistributed.

61. Prof Rodger then proposes to make a further application to the Tribunal before any payments are made to Class Members or stakeholders. When determining that application, the Tribunal will have evidence of actual take-up and will be asked to approve: the final amounts to be paid to Class Members from the Class Pot; and the

particular stakeholder entitlements to be paid from the Stakeholder Pot. If the Stakeholder Pot is insufficient to meet the stakeholder entitlements in full, and if at the end of the distribution process not all of the amounts in the Class Pot have been distributed to eligible Class Members, Prof Rodger currently proposes to ask the Tribunal to permit those undistributed amounts to be used to pay any outstanding amounts to the funder, insurers and legal team. I understand that Google will make its own submissions as to the treatment of any undistributed sums at the relevant time. Following the Tribunal's determination, the approved payments to Class Members and stakeholders are intended to be made in a single coordinated payment round. This is reflected in the proposed order at paragraph 11.

62. Following approval of the Proposed Settlement, Google will pay the £260 million Settlement Sum to Prof Rodger within 50 days. This will be held on trust by Angeion in a dedicated, interest-bearing account established for the purposes of the settlement. Prof Rodger proposes that, subject to clause 1.2(b) of the Settlement Agreement in circumstances where interest needs to be repaid, any interest earned on the Settlement Sum will be allocated between the Class and stakeholders in the same proportions as the principal amounts paid to them.

## B. Costs of the claims and distribution process

63. The claims and distribution process will itself involve administrative costs. Angeion has provided estimates based on different assumed levels of class participation. Its present estimate for the core recovery notice, claims administration and distribution process ranges from approximately £928,841 to £1,532,559 excluding VAT, depending principally on the number of Class Members who participate. On an assumed participation rate of 75%, Angeion estimates those core costs at approximately £1,532,559 excluding VAT.

64. Those estimates cover the principal costs of administering the claims and distribution process, including notice, claimant communications, claims processing, payments and project management. They remain estimates: certain items are volume-dependent or charged as incurred, and additional costs may arise if further outreach, reissued

payments or other administrative work is required. Angeion also provides for a £50,000 reserve for additional services.

65. The actual costs of the claims and distribution process may therefore differ from Angeion's present estimates depending on take-up, the extent of claimant queries or remediation required, the payment methods used and whether any additional outreach or administrative measures prove necessary. Angeion will report on those costs as the process progresses.

66. Importantly, those costs will not be deducted from the Class Pot. They will be met from Prof Rodger's overall litigation budget under the existing funding arrangements described in **section VII.C** below. Accordingly, subject to the Tribunal's approval, the full £160 million Class Pot will remain available for distribution to Class Members under the methodology described below.

## C. Method for calculating Class Member entitlements

67. Prof Rodger's economic advisers, Fideres, has advised on the methodology for calculating individual Class Members' entitlements within the process set out above. Their methodology is set out in their memorandum dated 25 August 2026 which accompanies the parties' joint application (the "**Fideres Note**"). For distribution purposes, Fideres proposes to use Prof Fletcher's preferred counterfactual Commission. The calculation is simplified by excluding pass-on, interest and additional off-app-store damages.

68. The objective is to use the transaction data already available from Google so far as possible, while providing a straightforward route for developers whose data cannot be matched or who consider that the data attributed to them is incomplete or inaccurate.

69. Fideres will first calculate aggregate damages by extrapolating the available Rodger Transaction Data from its current cut-off in March 2025 to 31 July 2026. That aggregate amount will provide the denominator by reference to which the relative entitlement of developers receiving an individual calculation will be determined. For the extrapolation period, Fideres has adopted a constant-share approach: each developer's share of the

transactions in the Rodger Transaction Data over the full observed period is assumed to remain constant to 31 July 2026. Fideres considered that the full observed period was a better indicator than, say, a recent snapshot because developer revenues may be uneven and driven by periodic app or game releases. The approach remains subject to any additional or corrected transaction information accepted through the review process described below.

70. The process then differs depending on the size of the developer:

70.1 Developers with Play Store revenues of £7,500 or less: a simplified procedure is proposed for developers with less than £7,500 or less of revenue over the Relevant Period. Each verified developer in that category may elect to receive a fixed payment of £200 or may instead request an individual calculation. Approximately [redacted] developers fall below the proposed £7,500 revenue threshold, although together they represent only approximately [redacted] of Prof Fletcher's estimated claim value (Fideres Note, Table 1). The purpose of this option is to provide a proportionate and straightforward means for developers claiming where the amount at stake is relatively small.

70.2 Developers with Play Store revenue of more than £7,500 and those electing an individual calculation: Fideres will calculate damages using the transactions attributed to that developer in the Rodger Transaction Data. The developer's share of transactions during the period for which actual data are available will be projected forward to 31 July 2026, using the methodology described in the Fideres Note. Fideres will apply the developer's actual effective Commission rate and Prof Fletcher's preferred counterfactual Commission, with the calculated harm being zero where the effective Commission was below that level. The resulting individual damages figure will be expressed as a percentage of aggregate calculated damages, and that percentage will be applied to the amount of the settlement fund available for Class claims. Where the developer cannot be matched to the Rodger Transaction Data or establishes that the transactions attributed to it are incomplete or inaccurate, Fideres will use additional or corrected transaction information supplied by the developer.

71. As explained above, a developer which can be matched to the Rodger Transaction Data will only need to provide its Developer ID and verification information; it will not be required to produce its own transaction records or other evidence of loss. If any developers are unable to provide evidence of this sort, e.g. because they are no longer in business or no longer have access to their Play Console account (to which each active developer has access and which provides app, transaction and financial reporting, including information on commission / service fees charged by Google on their transactions via Google Play), Prof Rodger's advisers will consider whether alternative evidence the developer is able to provide may suffice to establish their entitlement under the distribution.

72. Further information will ordinarily be required only where a developer cannot be matched to the Rodger Transaction Data, or the developer considers that the transactions attributed to it are incomplete or inaccurate or that the constant-share extrapolation does not fairly reflect its later activity. In those circumstances, Fideres may request supporting information from the developer, including relevant reports from the developer's Google Play Console. The intention is that any additional information sought should be limited to what is reasonably necessary to establish or correct the developer's transaction history.

73. Where additional or corrected transaction information is accepted through the review process described above, Fideres will take that information into account and update the aggregate calculation before final entitlements are determined.

74. The proposed methodology involves simplifications which do not affect every developer in the same way. As is explained in the Fideres Note, Fideres proposes to omit the effects of pass-on, interest and additional off-app-store damages. This has certain potential effects:

   74.1 omitting pass-on may benefit, relative to a full damages calculation, developers for whom Prof Fletcher would otherwise estimate a greater degree of pass-on;

74.2 omitting interest may relatively disadvantage developers whose Relevant Sales occurred earlier in the Relevant Period; and

74.3 omitting additional off-app-store damages may relatively disadvantage developers whose counterfactual losses would have included a greater proportion of direct-channel transactions.

75. These are deliberate simplifications adopted for proportionality and administrability.

76. There remains a possibility that a substantial developer which is not presently identified in the Rodger Transaction Data will come forward and establish that it is a Class Member, or that a substantial developer will establish that the transactions attributed to it are materially incomplete. If that occurs, the accepted additional transactions will increase the aggregate damages denominator and may reduce the percentage shares of other developers.

77. That risk is mitigated by the claims and reconciliation process. Developers which cannot be matched, or which dispute the data or extrapolation applied to them, may provide supporting information. Fideres will review that information and, where it is accepted, update both the developer's individual assessment and the aggregate damages denominator. The Tribunal will then consider the final reconciliation, with the benefit of the actual claims and supporting data received, before any payments are made. Their effect is mitigated by the option for a smaller developer to request an individual calculation, the claimant-review process, the final reconciliation and the requirement for further Tribunal approval before payments are made.

78. Additionally, the £200 fixed payment (which is an election that can be made for developers with total Play Store revenues during the relevant period of £7,500 or less) will also mean that some smaller developers receive more than their individually modelled loss, and that the small-developer cohort receives more than it would receive under a strictly pro rata allocation. For example, Fideres' current table shows that the [redacted] Developer IDs in the lowest revenue band have an average modelled claim value of approximately [redacted] and an average strict pro rata settlement amount of approximately [redacted], compared with the proposed fixed payment of £200 (Fideres Note, Table 1).

79. I understand that a distribution of aggregate damages is not required to reproduce precisely the individual compensatory loss of every Class Member. As the Tribunal observed in *Merricks v Mastercard*, citing the Supreme Court, a central purpose of aggregate damages is to avoid individual assessment of loss, and a simpler method may be more reasonable, fair and just where individual assessment would be disproportionate. The proposed distribution must nevertheless be just.

80. In my view, the proposed fixed-payment mechanism is proportionate because:

80.1 it is intended to encourage participation among developers for whom a materially lower payment may not justify the effort of making a claim;

80.2 an individualised assessment of every small claim would impose disproportionate cost and complexity;

80.3 any smaller developer may instead elect an individual calculation; and

80.4 the aggregate financial effect on the Class Pot is expected to be limited as the developers to whom it applies account for a very small proportion of estimated Class value.

81. The current Fideres table identifies [redacted] Developer IDs with Play Store revenue of £7,500 or less (Fideres Note, Table 1). If all [redacted] submitted valid claims and selected the £200 payment, the aggregate fixed payments would be approximately [redacted] or [redacted] of the Class Pot. The actual figure is expected to be lower because take-up will not be 100%, some developers may elect an individual calculation, and the current table will need to be updated to reflect the final verified claimant population. If take-up across that cohort were 13.21%, corresponding to the overall take-up of similarly size app developers by number in *Cameron v Apple*, and all those developers chose the fixed payment, the aggregate amount would be approximately [redacted] or [redacted] of the Class Pot.

82. For completeness, the simplifications described above do not affect every developer in the same way. These are deliberate simplifications adopted for proportionality and

administrability rather than because they are neutral in every individual case. Their effect is mitigated by the option for a smaller developer to request an individual calculation, the claimant-review process, the final reconciliation and the requirement for further Tribunal approval before payments are made.

83. As noted above, it is intended that there will be a second application to the Tribunal before any payments are made to the represented persons which means the Tribunal will have an opportunity to assess the appropriateness of individual awards for developers before they are made. Deferring payment permits the Class and Stakeholder payments approved by the Tribunal to be made in a single coordinated payment round after the reconciliation process envisaged in the Angeion Distribution Plan.

**D. Likely take-up**

84. On the basis of the very high concentration of estimated claim value among a relatively small number of developers, the level of Prof Rodger's engagement with larger developers during the proceedings and the advice received from Angeion, I expect take-up to be very high by value.

85. This Class differs materially from the large consumer classes considered in several earlier collective settlements. On the analysis presently available, the largest 24 developers by claim value account for around [redacted] of Prof Fletcher's estimated claim value.

86. In the course of the proceedings, Prof Rodger's advisers have already been in contact with [redacted] of Prof Fletcher's estimated claim value. Those developers are aware of the proceedings and, in some cases, have engaged directly with them, including in relation to Google's disclosure applications, and in many cases also have separate legal representation. That pre-existing engagement, together with the concentration of claim value in a relatively small number of businesses, is the principal basis for my expectation that take-up by value will be very high. Angeion addresses its separate assessment of likely take-up (which it estimates at 50-80% by value), and the basis for that assessment, at paragraphs 44 to

51 of its Distribution Plan, and I would be optimistic that take up would be at the higher end of this range.

87. Take-up by number (rather than by value) is necessarily less certain because the Class also contains a large number of smaller developers who collectively account for only a small proportion of estimated claim value. The simplified fixed-payment procedure described above is intended to reduce the burden on those developers and encourage participation. Angeion addresses expected take-up among the remainder of the Class, including the effect of direct contact details to be provided by Google and any relevant comparator evidence, at paragraphs 44-51 of its Distribution Plan. Outside of the largest 24 developers by claim value, the present working assumption is that the level of uptake will be approximately 50-80% by value and 8-15% by number, although, particularly in the latter case, the direct contact information to be provided by Google may improve that outcome. That assessment is informed by Angeion's experience in *Cameron v Apple*, a US class action on behalf of small app developers in which it acted as settlement administrator. There, 13.2% of Class members submitted approved claims. *Cameron* is not directly comparable to these proceedings, not least because as Angeion explains it concerned only smaller developers with revenues, but it provides a useful practical benchmark for likely engagement among the smaller-developer segment of the Rodger Class.[7]

88. No survey of Class Members has been undertaken specifically for the purpose of these proceedings. I do not consider that a survey is necessary to provide a reliable basis for assessing likely take-up in this particular case in light of the likely high take-up by value: the fact that, unusually, the claim value is highly concentrated among a small number of identifiable businesses; Prof Rodger's advisers having already engaged with developers representing a substantial proportion of that value; direct contact information is available for many developers; and transaction data already being available in the proceedings which permit their potential entitlements to be estimated.

[7] *Cameron and others v Apple Inc*, Case No 4:19-cv-03074-YGR (ND Cal), Developer Plaintiffs' Notice of Initial Post-Distribution Accounting and Proposed Schedule for Further Distributions (29 June 2023), ECF No 502, pp 1, 3.

In those circumstances, a survey of the wider Class, much of which consists of developers accounting individually and collectively for comparatively small amounts of claim value, would in my view add limited evidence to the assessment of likely take-up by value. Angeion addresses likely take-up and the relevance of its experience of comparable distributions, at 44-51.

**E. Estimated individual recoveries**

89. Fideres estimates that there are approximately [redacted] potential Represented Persons. That estimate is based on Google's transaction data disclosed in the proceedings, which identifies [redacted] distinct UK developers who recorded at least one Relevant Sale during the period 22 August 2018 to 22 August 2024 and a further [redacted] appearing through March 2025. Applying the same rate of increase, Fideres have projected a further [redacted] through July 2026. This remains an estimate.

90. The presently estimated recoveries, including the fixed-payment treatment of smaller developers and the distribution of recoveries for the remainder of the Class, are set out in the Fideres Note.

## VII. COSTS, FEES AND DISBURSEMENTS, AND STAKEHOLDER INTERESTS

**A. Introduction**

91. Rule 94(4)(b) requires the CSAO application to address any provisions for the payment of costs, fees and disbursements, and Rule 94(9)(a) requires the Tribunal to take those provisions into account when assessing whether the settlement is just and reasonable. I therefore set out below the relevant entitlements of persons with contractual or contingent entitlements in respect of costs, fees or disbursements as the Stakeholders.

92. In summary, Prof Rodger proposes that, of the £260 million Settlement Sum, £160 million should be made available for distribution to Class Members and £100 million should be available in respect of the costs, fees and other stakeholder entitlements described below (Rodger 3, section II.A and II.C). To the extent there are undistributed damages, under the Settlement Agreement, Prof Rodger and Google will seek the Tribunal’s directions as to the treatment of such sums. Prof Rodger will seek the

Tribunal's permission to apply some or all that balance towards outstanding stakeholder entitlements, although the appropriate treatment of any such balance will be considered at that stage and will be subject to the Tribunal's approval. I understand that Google will make its own submissions as to the appropriate treatment of any such balance at the relevant time.

## B. Stakeholder contractual arrangements generally

93. The proposal summarised above has been formulated against the background of the contractual arrangements entered into to fund and conduct these proceedings. Those arrangements include Bench Walk's entitlements under the Litigation Funding Agreement, Geradin Partners' entitlement to its incurred and deferred fees and any applicable success fee, the corresponding arrangements with counsel, and contingent fees due to insurers under the ATE insurance policies. The relevant contractual arrangements and the amounts presently claimed or estimated under each are summarised at paragraph 95 below.

94. The contractual entitlements provide the starting point for Prof Rodger's consideration of these amounts. Prof Rodger's proposal reflects both the contractual arrangements which enabled the proceedings to be pursued and the shortfall in those entitlements and/or amendments to the timing of when they are paid out, which are proposed in order to make a greater amount available for the Class.

95. As at 31 July 2026, the stakeholders' estimated contractual entitlements are as follows:

| **Stakeholder** | **Contractual basis** | **Accrued entitlement at 31 July 2026**[8] | **Projected entitlement assuming full budget drawn**[9] | **Proposed payment from Stakeholder Pot assuming full budget drawn** | **Estimated shortfall** |
|---|---|---|---|---|---|
| Funder | Entitlement under the LFA to a return of Capital Outlay | £24,403,256.52 | £27,671,000.00 | £27,671,000.00 | N/A |
| Funder | Profit Share calculated as a multiple of its Capital Outlay.[10] | £69,715,875.51 | £82,786,849.42 | £56,213,149.49 | 32%[11] |
| Insurers | Contingent Premium | £6,000,000 | £6,000,000 | £4,074,064 | 32% |
| Solicitor | Deferred and success fees owed under the solicitor's Conditional Fee Agreement | [redacted] | [redacted] | [redacted] | 32% |
| Counsel | Deferred and success fees owed under the counsel's Conditional Fee Agreements | [redacted] | [redacted] | [redacted] | 32% |
| **Total** | | **£114,857,422** | **£134,192,163** | **£100,000,000** | |

96. On current estimates, stakeholder entitlements as at 31 July 2026 exceed the amount in the Stakeholder Pot, and on Prof Rodger's proposed allocation that there will be around £30 to £40 million remaining.

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[8] The accrued entitlement figures for the Solicitors and Counsel are estimates based on a review of their respective invoices and CFA arrangements and should therefore be treated as indicative only. They may be subject to adjustment following a detailed reconciliation. Any final distribution to stakeholders will be made only once that review has been completed and their exact entitlements determined.

[9] The projected entitlements, proposed payments and reduction on the accrued entitlements have been calculated on the basis of various assumptions, including that the stakeholders draw on the entirety of Prof Rodger's remaining litigation budget. The final payment and reduction may therefore be subject to change once the final figures are taken into account.

[10] The exact multiple used to calculate Bench Walk's contractual entitlement has changed as increases to Prof Rodger's litigation budget have been negotiated. The profit multiple applicable to Bench Walk's funding to 31 July 2026 is estimated to be a blended rate of 2.86x. The profit multiple applicable to Bench Walk's funding to the end of the budget is estimated to be a blended rate of 2.99x. These profit multiples reflect Bench Walks' contractual entitlements i.e. Bench Walk's blended profit multiple on the proposed payment from the Stakeholder Pot of £83,884,149 is 2.03x.

[11] This represents the estimated contractual shortfall as a percentage of the Funder's Profit Share, excluding Capital Outlay, to illustrate a like-for-like comparison with the shortfalls of other stakeholders. I consider it would be financially misleading to treat the Capital Outlay and Profit Share as a single undifferentiated amount. Any proper assessment must take into account the distinction between the capital invested and the profit generated. For example, a claimant who incurs £1 million in legal costs to secure a £2 million settlement is not, in economic terms, £2 million better off.

97. The proposed payments and percentage reductions shown above are high-level estimates and may require adjustment before the further application Prof Rodger proposes to make to the Tribunal prior to distribution. Actual stakeholder entitlements may differ, including because the amount and allocation of future expenditure between the stakeholders may differ from those forecasts and because the contractual entitlements themselves may depend on the expenditure actually incurred.

98. The figures will be updated before the further application. The amount shown as a contractual or estimated entitlement is not an assertion that the Tribunal should approve that amount. It is included so that the Tribunal can understand the comparison between the £100 million Stakeholder Pot and the amounts which the stakeholders could otherwise seek under their contractual arrangements. No stakeholder entitlements will be paid from the Settlement Sum unless and until approved by the Tribunal.

## C. Litigation funding arrangements specifically

99. Prof Rodger entered into a litigation funding agreement with Bench Walk Guernsey PCC Limited, contracting on behalf of the GPS UK Funding Cell ("**Bench Walk**"), on 6 December 2023. Bench Walk initially committed up to £16.5 million to fund the proceedings.[12] That funding enabled Prof Rodger to meet the costs of the litigation without requiring Class Members to contribute to those costs. The LFA also provides for Bench Walk to meet Prof Rodger's adverse costs liability to the extent that it is not met by the ATE insurance arrangements.[13]

100. The original funding commitment subsequently proved insufficient. Following certification and the joint case management of the Rodger, Coll and Epic proceedings, the proceedings became materially more expensive than had been anticipated when the original budget was agreed. Among other matters, there were substantially more post-certification hearings than had originally been budgeted for, including on issues related to joint case management, trial directions, disclosure and expert evidence; the work

[12] LFA dated 6 December 2023, Schedule: Key Terms **[DG2/4/485]**.

[13] LFA dated 6 December 2023, clause 5.1 **[DG2/4/466]**; Rodger 3, para 19.

required in relation to disclosure and expert evidence was materially greater than had been anticipated, including reviewing more than 3.4 million disclosed documents and almost 4,000 pages of existing expert evidence, pursuing further disclosure, and undertaking additional expert work arising from the joint case management arrangements; and there was a costly exercise of having to condense all of the expert reports into materially shorter final trial reports, which required, in Prof Rodger's case, detailed interactions with Ms Coll's experts, including via a joint report from Prof Fletcher and Ms Coll's expert. In addition, Prof Rodger had to assume a £1.5 million indemnity obligation to Ms Coll as part of the arrangements required to secure joint case management.

101. In September and October 2025, Geradin Partners therefore sought an increase in the available funding from Bench Walk on Prof Rodger's behalf. Following protracted and difficult discussions, Bench Walk agreed to increase its commitment from £16.5 million to £22.3 million. Geradin Partners was required to move to a substantially increased level of fee deferral under its conditional fee arrangements ("**CFA**") with [redacted] of its rates thereafter being deferred. Bench Walk also sought an increase in its contractual return in return for advancing the extra funds. The increased pricing applied to the additional £5,800,000 provided in connection with the budget increase ("2025 Tranche Capital Outlay"), with that tranche required to be utilised first. Under the December 2025 amendments, its pricing increased from 200% (if proceeds are received before the start of trial) or 400% (if proceeds are received after the start of trial) of the Capital Outlay to an amount equal to the aggregate of (i) 200% of the Initial Tranche Capital Outlay and (ii) 350% of the "2025 Tranche Capital Outlay" (if proceeds are received before the start of trial) or (i) 400% of the Initial Tranche Capital Outlay and (ii) 550% of the "2025 Tranche Capital Outlay" (if proceeds are received after the start of trial).[14] Prof Rodger obtained advice from independent costs counsel (Nicholas Bacon KC) and

[14] The "2025 Tranche Capital Outlay" means the additional £5,800,000 provided by the budget increase. The amended LFA provided that from the date of the amendment, any amount requested in a payment request shall be paid by the funder firstly from the 2025 Tranche and thereafter (to the extent that the 2025 Tranche has been utilised in full) from the "Initial Tranche" at the original return of 200%.

LFA dated 15 December 2025 **[DG2/6/549]**.

his Consultative Panel before agreeing to the budget increase. An updated budget reflecting that funding was filed with the Tribunal on 19 December 2025.

102. By early 2026 it had become apparent that further funding would be required to take the proceedings through trial. This reflected, among other matters, further work arising from developments in the proceedings after the first budget increase, including Google's application to vary the CPO. It also followed the complexity and intensity of multi-party and high value litigation, which involved substantial interlocutory, evidential and expert work against a well-resourced defendant, being one of the world's largest companies. Prof Rodger therefore sought a further increase in March 2026. Again, there followed lengthy negotiations with Bench Walk. Geradin Partners was again required to move to increase the proportion of its fees deferred under its CFA (this time its headline rates being reduced by [redacted]. In exchange for the additional funding Bench Walk again sought an increase in its contractual return in respect of amounts paid by Bench Walk from 1 June 2026. The Profit Share in the current LFA is therefore unchanged in respect of the profit multiple applicable to Capital Outlay funded prior to 1 June 2026 (when the increase was agreed) but provides for a multiple of 400% of Capital Outlay drawn thereafter (if settlement occurred pre-trial) or 600% of Capital Outlay (if the case proceeded to trial). This results in (a) a pre-trial Profit Share of £45,297,150.59[15] plus 400% of Capital Outlay drawn from and including 1 June 2026; and (b) a post-trial Profit Share of £81,894,301.17 plus 600% of Capital Outlay drawn from and including 1 June 2026. As illustrated above, Bench Walk's pre-trial overall contractual blended profit multiple is 2.99x.

103. Prof Rodger again obtained independent advice from independent costs counsel and from his Consultative Panel before agreeing to Bench Walk's terms. On 20 July 2026, the LFA was amended again. The current LFA provides for a Maximum Outlay of

[15] Calculated in accordance with the Amended and Restated LFA dated 15 December 2025 and being the aggregate of 200% of Initial Tranche Capital Outlay plus 350% of 2025 Tranche Capital Outlay.

£27.671 million.[16] That figure is the maximum funding commitment; it is not the amount presently advanced by Bench Walk. The amount actually advanced by Bench Walk is referred to in the LFA as its "Capital Outlay".[17]

104. Bench Walk were advised by Macfarlanes LLP in relation to the documentation of each of the budget increases referred to above.

105. While the Capital Outlay is significant and the budget has increased materially since the outset of the case, I do not consider the rate of spend in this case to be an outlier compared to budgets in other claims of equivalent value or complexity. [redacted] It is also a matter of public record that in the *Merricks* case the costs fees and disbursements that had been incurred by the time of the settlement were £45,567,946.28.[19] The multi-party nature of the present proceedings also added to overall costs, as the £1.5m indemnity Prof Rodger had to provide to Ms Coll shows.

## D. Bench Walk's return

106. In return for providing that funding and assuming the associated risk, the LFA provides for Bench Walk to receive a "Total Fee", comprising its Capital Outlay together with a contractual Profit Share. If proceeds, such as a settlement sum, were received before the commencement of the liability trial, a lower formula would apply and entitle Bench Walk to a profit share of approximately £45.3 million plus 400% multiplied by the aggregate portion of the Capital Outlay drawn on or after 1 June 2026.[20] The £45.3

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[16] LFA dated 20 July 2026, Annex 6: Budget **[DG2/8/588]**. While this total is significantly higher than the current budget, it is worth noting that it is not dissimilar to the budget increase that the Coll team has obtained. [redacted] **[DG2/12/643]**.

[17] LFA dated 20 July 2026, Annex 1, definition of "Capital Outlay" **[DG2/8/578]**.

[18] Letter from Hausfeld to the Tribunal (amended and restated Litigation Funding Agreement) dated 23 June 2026, **[DG2/12/643]**.

[19] See *Merricks* [2025] CAT 28 (non-confidential Judgment (CSAO Application)), paragraph 71(2).

[20] LFA dated 20 July 2026, Schedule: Key Terms **[DG2/8/589]**.

million figure is the sum of all Bench Walk's entitlements before its pricing was increased at the last budget amendment. Accounting for the amendments to Bench Walk's multiple of return, the applicable multiple for all its funding to date is a blended rate of 2.86.[21] As detailed at paragraphs 111 and 112 below, it is my experience that a profit multiple of less than 300% shortly before trial for a case of this size and complexity is materially lower than prevailing market norms for claims of this nature. I also note that the allocation of the overall settlement between stakeholders and class members results in Bench Walk accepting a reduction to its contractual entitlements, notwithstanding this relatively modest profit multiple.

107. As at 31 July 2026, Bench Walk's Capital Outlay was approximately £24.4 million of which £6,104,681.23 had been drawn on or after 1 June 2026. Applying the pre-trial formula, its contractual Total Fee (being its Capital Outlay plus Profit Share)[22] was approximately £94.1 million.[23]

108. If proceeds were received after the commencement of the liability trial, a higher formula would apply, entitling Bench Walk to a Profit Share of approximately £81.9 million plus 600% of the aggregate portion of the Capital Outlay drawn on or after 1 June 2026.

109. The LFA contains a so-called "ratchet" mechanism under which Bench Walk's return increases if Proceeds are received after trial commences. I am familiar with this concept both from my experience in opt-out claims at Geradin Partners and from my previous role as Director of Litigation Funding at Harbour Litigation Funding, where similar provisions were used in LFAs supporting opt-out litigation before the Tribunal. Such provisions are commonly intended to encourage settlement before trial. In practice, defendants will have sight of the LFA and can take into account the increased funding costs that may arise if proceedings continue beyond trial. In this case, unredacted copies

[21] This is calculated by dividing the Profit Share Entitlement as at 31 July 2026 (£69,715,875.50) by the Capital Outlay (£24,403,256.52).

[22] LFA dated 20 July 2026, Annex 1, definition of "Total Fee" **[DG2/8/582]**.

[23] Based on a Capital Outlay of £24,403,256.52 and Profit Share Entitlement of £69,715,875.50.

of the LFA have consistently been available on the claim website. I consider the ratchet mechanism to have been helpful in encouraging the defendants to consider settlement.

110. The LFA also provides that, from three months after the "Success Date", any unpaid portion of Bench Walk's Capital Outlay or Profit Share attracts interest at 15% per annum. Bench Walk has confirmed that, for the purposes of the Proposed Settlement, no such interest will accrue pending the Tribunal's further determination.

111. In terms of how Bench Walk's pricing compares to other pricing I have seen in opt-out claims before the Tribunal, I consider it to be at the lower (i.e., more competitive) end. For example, in the Coll proceedings, under Ms Coll's LFA,[24] her funder is contractually entitled to a return of both the "Funder's Outlay" (defined as Action Costs actually paid by Bench Walk) and a "Funder's Fee". [redacted]

112. Additionally, since LFAs in opt-out proceedings are now routinely made available, it is possible to give other examples; when looked at against these, Bench Walk's pricing compares favourably – indeed, it appears to be the lowest of these examples:

| **Claim** | **Return** |
|---|---|
| *Rodger v Google* | Currently estimated to reach 2.99x capital outlay if the full budget is drawn |
| *Coll v Google* | [redacted] |
| *Ennis v Apple* | 3x capital outlay rising to 4x upon the start of trial.[26] |
| *Gormsen v Meta* | Up to 14x funding commitment.[27] |
| *Gutmann v Apple* | Up to 3.9x funding commitment.[28] |

[24] Ms Coll's LFA dated 19 May 2026, [DG2/10/616].

[25] Ms Coll's LFA dated 19 May 2026, [DG2/10/616].

[26] *Ennis v Apple* [2024] CAT 58, at [58].

[27] *Gormsen v Meta* [2024] CAT 11, at [39].

[28] *Gutmann v Apple* [2024] CAT 18, at [16].

| | |
|---|---|
| *Stephan v Amazon* | Up to 10x capital outlay.[29] |
| *Hammond v Amazon.com, Inc. & Others* | Up to 7.4x funding commitment.[30] |
| *Bulk Mail v International Distribution Services* | Up to 5.75x of capital outlay.[31] |
| *Riefa v Apple Inc. & Others* | Up to 4.5x of capital outlay.[32] |

113. The LFA does not give Bench Walk an unconditional right to receive that amount from damages. As is true in all opt-out claims before the Tribunal, any distribution is ultimately subject to Tribunal approval. Additionally, the LFA expressly provides that the Total Fee cannot exceed the amount which the Tribunal approves for distribution to Bench Walk. The LFA similarly provides explicitly that, in the event of a collective settlement, Prof Rodger must use his best endeavours to seek an order permitting payment of the relevant costs, fees and disbursements, but the amount ultimately payable remains subject to the Tribunal's approval.[33]

114. Bench Walk does not control decisions concerning settlement. Under the LFA, Prof Rodger remains entitled to make, accept or reject a settlement offer, subject to receiving appropriate legal advice and notifying Bench Walk. Bench Walk also expressly covenants not to seek to cause Prof Rodger's legal representatives to cede control or conduct of the proceedings to it.[34]

[29] *Stephan v Amazon* [2025] CAT 6, at [54].

[30] *Robert Hammond v Amazon* [2025] CAT 42, at [63].

[31] *Bulk Mail Claim v International Distribution Services* [2025] CAT 19, at [34].

[32] *Riefa v Apple Inc. and others* [2025] CAT 5, at [44].

[33] LFA dated 20 July 2026, paras 3.1–3.2, 7.4 and 7.1(o); Annex 1, definition of "Total Fee", **[DG2/8/567; 569; 571; 582]**.

[34] LFA dated 20 July 2026, paras 7.2 and 7.5, **[DG2/8/571-572]**.

## E. Solicitors' and counsel's fees

115. Geradin Partners acts under a conditional fee agreement ("**CFA**") dated 17 October 2025 providing for its fees to be deferred and success fees to be payable. The level of deferred fees under the CFA has varied over time:

115.1 Before certification the percentage of fees deferred under the CFA was [redacted]

115.2 After certification the percentage of fees deferred under the CFA was [redacted] (from 13 March 2025 to end July 2025);

115.3 After the first budget increase, the percentage of fees deferred under the CFA was [redacted] (backdated to August 2025 and up to 30 April 2026);

115.4 After the second budget increase, the percentage of fees deferred under the CFA was [redacted] (backdated to 1 May 2026 and ongoing).

116. The individual members of the counsel team also act under conditional fee agreements. Cumulatively, these agreements provide for success fees of [redacted] and [redacted] of their fees are deferred. The percentage of fees deferred under the CFAs has varied over time:

116.1 Before certification, the percentage of fees deferred for the entire counsel team was [redacted]

116.2 After certification, the percentage of fees deferred for the entire counsel team was [redacted] (from 13 March 2025);

116.3 For certain members of Prof Rodger's counsel team, the percentage of fees deferred was [redacted] for their trial brief fees.

## F. Other costs and disbursements

insurers' contingent premium would increase to £7.5 million. I set those figures out separately from Bench Walk's entitlement so that the Tribunal can see the amount sought by each stakeholder.

## G. Relationship between stakeholders and class

118. As noted above, Geradin Partners, members of the counsel team, Bench Walk and the insurers have contractual or contingent financial interests in the amount ultimately made available in respect of costs, fees and disbursements. Stakeholders and the Class are aligned in desiring a result that the Tribunal considers just and that it can approve. However, it is recognised that there may be a potential conflict of interest – in particular on the question of how much of the Settlement Sum should be made available for Class compensation and how much should be applied towards Stakeholder entitlements.

119. A number of safeguards are in place in order to address any perception of conflicts. First, the proposal as to the treatment of the Settlement Sum was made by Prof Rodger in his capacity as Class Representative. It is presently proposed that £160 million be made available for Class claims in the first instance and £100 million be available towards stakeholder contractual entitlements. Prof Rodger explains his reasoning for that proposal in Rodger 3 at section II.C.

120. Second, the proposed approach to distribution has been specifically designed so there is a further application before any payments are made to Class Members or stakeholders. At that application, the Tribunal will have evidence of actual take-up and will be asked to determine together: the final payments to Class Members from the Class Pot; the particular Stakeholder entitlements to be paid from the Stakeholder Pot; and any further Stakeholder entitlements which Prof Rodger proposes should be paid from residual Class monies.

121. Following that determination, the approved payments are intended to be made in a single coordinated payment round. This preserves the Tribunal's control over each category of payment while avoiding the delay and cost of separate payment rounds.

122. Third, Prof Rodger has been able to obtain advice on the proposed allocation from his Consultative Panel and Nicholas Bacon KC – none of whom have any interest contingent on the outcome of the case. Prof Rodger discussed those matters with Mr Bacon KC on 9 and 12 August 2026. Neither Geradin Partners, the counsel team acting on CFAs, Bench Walk nor the insurers were present at those meetings.

123. Prof Rodger also was able to consult his independent Consultative Panel. For example, Prof Rodger met with his Consultative Panel on 18 August 2026 without Geradin Partners being present. Following that meeting, he instructed Geradin Partners to advance the £160 million/£100 million proposal, with the treatment of any residual Class funds remaining subject to the further Tribunal approval described above.[35]

124. I was therefore deliberately not in a position of advising Prof Rodger alone on a question in which my firm has a financial interest.

125. Fourth, the LFA itself recognises Prof Rodger's overriding responsibility to the Class. It requires him to "*act fairly and adequately in the best interests*" of Class Members at all times and to seek recovery of proceeds in their best interests. Although the LFA also requires Prof Rodger to use his best endeavours to seek Tribunal approval for payment of Bench Walk's contractual entitlement, any such payment remains expressly subject to an order or direction of the Tribunal.[36]

126. I do not suggest that those arrangements remove any possible differing financial interests of the Class and the stakeholders. Rather, they are intended to ensure that the persons who stand to benefit from a payment of costs, fees and disbursements do not determine for themselves either the amount made available to the Class or the amount ultimately paid to them. Those matters are proposed by Prof Rodger, acting as Class Representative and with independent advice, and ultimately remain subject to the Tribunal's approval.

**Statement of truth**

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[35] Rodger 3, para 40.

[36] LFA dated 20 July 2026, paras 3.1–3.2, 7.1(j), (l) and (o), **[DG2/8/567; 570]**.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

[redacted]

Dated:

25 August 2026