APPROVED **[2024] IEHC 264**

THE HIGH COURT

2022 339 MCA

IN THE MATTER OF AN APPEAL PURSUANT TO THE DATA PROTECTION ACT 2018

BETWEEN

META PLATFORMS IRELAND LTD

APPELLANT

AND

DATA PROTECTION COMMISSION

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 10 May 2024

INTRODUCTION

1. This judgment addresses an aspect of the case management of these proceedings. In particular, this judgment addresses the optimal sequencing of these proceedings vis-à-vis proceedings which are currently pending before the Court of Justice of the European Union ("*CJEU*"). For ease of exposition, the within

proceedings will be described by the shorthand "*the domestic proceedings*", and the proceedings before the CJEU will be described as "*the EU proceedings*".

2. Both sets of proceedings raise questions of legislative interpretation in relation to the General Data Protection Regulation (Regulation (EU) 2016/679) ("*GDPR*").

3. The parties to the case management application are in broad agreement that the hearing and determination of at least part of the domestic proceedings must be deferred to await the outcome of the EU proceedings. The parties are in disagreement, however, on whether it would be appropriate to direct a modular trial in respect of such issues, if any, arising in the domestic proceedings as are not directly affected by the outcome of the EU proceedings. The alternative course would be to adjourn the domestic proceedings in their entirety pending the resolution of the EU proceedings. This is the course agitated for by Meta Platforms Ireland Ltd. The Data Protection Commission submits that the High Court is obliged under EU law to determine the domestic proceedings expeditiously and that this is best achieved by a modular trial. Ireland and the Attorney General, who are parties in related judicial review proceedings, did not participate in the case management application.

PROCEDURAL HISTORY

4. The Data Protection Commission ("*DPC*") commenced an own-volition inquiry in relation to certain historical conduct by Meta Platforms Ireland Ltd ("*Meta*"). It should be explained that Meta had already ceased the conduct, which subsequently became the subject of inquiry, prior to the commencement of the own-volition inquiry. The temporal scope of the own-volition inquiry is limited

to the period between May 2018 and September 2019. The start date corresponds to the date upon which the GDPR came into force, and the end date is the date upon which the conduct ceased.

5. The own-volition inquiry was carried out in a single phase. More specifically, there was no distinction drawn by the DPC in terms of sequencing as between (i) the hearing and determination of the question of whether Meta's conduct entailed a breach of the GDPR, and (ii) the hearing and determination of the question of sanction, i.e. whether the DPC should exercise its corrective powers including its power to impose an administrative fine. Put otherwise, the question of breach and sanction were heard and determined together. This contrasts with the approach which the DPC now suggests that the High Court should adopt to the appeal proceedings before it.

6. The DPC is the "*lead supervisory authority*" in respect of Meta Platforms Ireland Ltd for the purposes of the GDPR. Accordingly, the DPC was obliged to submit its *draft* decision on the own-volition inquiry to the other supervisory authorities concerned for their opinion. In circumstances where there was consensus between the supervisory authorities, it did not become necessary to invoke the "*consistency mechanism*" under the GDPR. This would have involved the matter being referred to the European Data Protection Board. The Board is empowered to issue a binding direction to a supervisory authority. The fact that the final decision in respect of Meta had been reached by the DPC without the involvement of the European Data Protection Board represents an important point of distinction between the impugned decision and that in respect of WhatsApp referred to below.

7. The impugned decision is dated 25 November 2022. The Commissioner, as the authorised decision-maker for the DPC, exercised her corrective powers by making the following directions:

> "(1) An order pursuant to Article 58(2)(d) GDPR to MPIL to bring its processing into compliance with the GDPR in the manner specified in this Decision. This should be done within three months of the date of notification of any final decision;
>
> (2) A Reprimand to MPIL pursuant to Article 58(2)(b) GDPR regarding the infringements identified in this Decision; and
>
> (3) Two administrative fines, as follows:
>
> 1. In respect of MPIL's infringement of Article 25(1) GDPR (Finding 1), I impose an administrative fine of €150 million.
>
> 2. In respect of MPIL's infringement of Article 25(2) GDPR (Finding 2), I impose an administrative fine of €115 million."

8. Meta exercised its statutory right of appeal against the impugned decision. The appeal has been brought pursuant to section 142 and section 150 of the Data Protection Act 2018. The statutory right of appeal under the domestic legislation implements the requirement, under article 78 of the GDPR, to provide an effective judicial remedy against a legally binding decision of a supervisory authority.

9. Meta has also instituted parallel proceedings by way of an application for judicial review. These judicial review proceedings include a challenge to the constitutional validity of the Data Protection Act 2018. In particular, there is a challenge made to the conferral of powers upon a non-judicial body to impose significant financial penalties.

10. Save where necessary to distinguish between aspects of same, the statutory appeal and the judicial review proceedings will be referred to collectively as "*the domestic proceedings*".

11. Meta has brought a formal motion to adjourn the domestic proceedings pending the final determination of the WhatsApp proceedings before the European Court. (Those proceedings are described below). This motion was issued on 3 July 2023 and ultimately came on for hearing before me for two days, commencing on 11 April 2024. Judgment was reserved to today's date.

CURRENT STATUS OF DPC'S DECISION

12. Insofar as relevant to the present case management application, the current status of the DPC's decision may be summarised as follows. First, the corrective measures prescribed in the impugned decision have been complied with by Meta to the satisfaction of the DPC. The conduct, which had been criticised in the own-volition inquiry, has now ceased and there is no ongoing breach of any data subject's rights. Secondly, the parties are agreed that Meta cannot be obliged to discharge the administrative fine of 265 million euro imposed by the DPC until such time as the domestic proceedings have been determined. Thirdly, the DPC accepts that those aspects of the domestic proceedings which are directly related to the interpretation of article 83 of the GDPR should not be determined until such time as the EU proceedings taken by WhatsApp have been resolved.

13. The corollary of this is that the most significant element of the impugned decision, i.e. the administrative fine of 265 million euro, will not become legally effective until *after* the EU proceedings taken by WhatsApp have been resolved.

This is so irrespective of whether or not the High Court directs a modular trial in the interim.

THE WHATSAPP PROCEEDINGS

14. One of the principal issues which will arise for determination in Meta's domestic proceedings is the interpretation of article 83 of the GDPR. This article addresses the general conditions for imposing administrative fines.

15. There is ongoing controversy as to the proper interpretation of paragraph 3 of article 83 which reads as follows:

> "If a controller or processor intentionally or negligently, for the same or linked processing operations, infringes several provisions of this Regulation, the total amount of the administrative fine shall not exceed the amount specified for the gravest infringement."

16. The DPC had previously interpreted this provision as meaning that in circumstances where *the same set of processing operations* gives rise to simultaneous breaches of multiple articles of the GDPR, the amount of any consequent fine cannot exceed the amount specified for the gravest infringement. This interpretation was overridden by the European Data Protection Board by its binding decision in relation to the DPC's own-volition inquiry into WhatsApp. (Binding Decision 1/2021, 28 July 2021). The DPC was obliged, in accordance with article 65 of the GDPR, to adopt its own final decision on the basis of the European Data Protection Board's binding decision. Put shortly, the DPC was required to incorporate, in its final decision, the Board's interpretation of article 83. Both WhatsApp and Meta disagree with the Board's interpretation.

17. WhatsApp has instituted proceedings before the High Court seeking to challenge the DPC's decision. WhatsApp has also instituted EU proceedings seeking to annul the European Data Protection Board's binding decision. The General Court of the European Union has ruled that the EU proceedings are inadmissible: *WhatsApp Ireland Ltd*, Case T-709/21, EU:T:2022:783. This ruling is dated 7 December 2022. In brief, the General Court held that the contested decision of the European Data Protection Board has no legal effect vis-à-vis WhatsApp that is independent of the final decision of the DPC, and that WhatsApp is afforded effective judicial protection by means of the remedy available to it before the national courts against the final decision of the DPC. Put otherwise, on the General Court's analysis, the validity of the European Data Protection Board's binding decision falls to be assessed in the context of WhatsApp's statutory appeal to the High Court.

18. WhatsApp has brought an appeal to the Court of Justice against the General Court's first instance ruling: *WhatsApp Ireland Ltd*, Case C-97/23 P.

19. In the event that the WhatsApp proceedings currently pending before the CJEU were held to be admissible, then the ultimate outcome of those proceedings would be directly relevant to some of the issues which arise in the domestic proceedings taken by Meta. More specifically, the correct interpretation and operation of the provisions of the GDPR in relation to the assessment of administrative fines would be determined in the WhatsApp proceedings, and this would have a direct bearing on the resolution of the domestic proceedings taken by Meta. Of course, there is also the prospect that the Court of Justice would uphold the first instance decision of the General Court and dismiss the WhatsApp proceedings as inadmissible. Were this to happen, then, obviously,

the substantive issues would not be determined in the WhatsApp proceedings. In such a scenario, the WhatsApp proceedings would be of no precedential value in relation to the issues to be determined in the domestic proceedings taken by Meta.

20. Notwithstanding the uncertainty as to whether the substantive issues will ever be reached in the WhatsApp proceedings, both Meta and the DPC are agreed that *at least some* of the issues raised in the domestic proceedings taken by Meta cannot be determined by the High Court until such time as the WhatsApp proceedings have been resolved one way or the other.

LEGAL TEST GOVERNING THE ADJOURNMENT APPLICATION

21. The parties adopted, at least initially, diametrically opposed positions on the question of the legal test to be applied by the court in deciding whether or not to adjourn the domestic proceedings in their entirety. The opening position on the part of the DPC had been that Meta was required to meet a "*high threshold*" in terms of justifying the imposition of a stay upon the domestic proceedings. It was submitted that Meta must demonstrate a "*real risk of serious or irreparable damage*", or, at least, a "*very real risk of prejudice*" if the adjournment were to be refused. Counsel cited *Zuckerfabrik*, Joined Cases C-143/88 and C-92/89, EU:C:1991:65.

22. Counsel also cited domestic case law in relation to stays on administrative decisions including, in particular, *Okunade v. Minister for Justice and Equality* [2012] IESC 49, [2012] 3 I.R. 152. There, the Supreme Court emphasised the importance of permitting measures which are *prima facie* valid to be carried out

in a regular and orderly way: see paragraph 92 of the reported judgment as follows:

> "The entitlement of those who are given statutory or other power and authority so as to conduct specified types of legally binding decision making or action taking is an important part of the structure of a legal order based on the rule of law. Recognising the entitlement of such persons or bodies to carry out their remit without undue interference is an important feature of any balancing exercise. It seems to me to follow that significant weight needs to be placed into the balance on the side of permitting measures which are prima facie valid to be carried out in a regular and orderly way. Regulators are entitled to regulate. Lower courts are entitled to decide. Ministers are entitled to exercise powers lawfully conferred by the Oireachtas. The list can go on. All due weight needs to be accorded to allowing the systems and processes by which lawful power is to be exercised to operate in an orderly fashion. […]".

23. The opening position adopted by Meta had been that a national court owes an obligation of sincere co-operation to the European Court, and that when there is a dispute before the national court, which is already the subject of a case which is before the European Court, the national court should stay the proceedings before it. Counsel cited, in particular, the judgment in *Masterfoods Ltd*, Case C-344/98, EU:C:2000:689.

24. With respect, the legal test is less extreme than that advocated for by either party. As explained by the Supreme Court in *O'Leary v. An Bord Pleanála* [2008] IESC 55, the courts have a general discretion under national law to grant an adjournment of proceedings for any reason should the interests of justice to one or more of the parties so require.

25. The proper starting point in the present case is to consider the impact which an adjournment would have upon the implementation of the DPC's decision. This necessitates consideration of, first, the statutory appeal mechanism, and, secondly, the particular circumstances of the case.

26. The first-instance decision of the DPC is subject to a statutory right of appeal. This appeal is provided for, as a matter of domestic law, under the Data Protection Act 2018. Crucially, however, domestic law merely reflects the obligation under the GDPR to provide an effective judicial remedy. Under article 78 of the GDPR, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.

27. It is not necessary, for the purpose of the determination of the adjournment application, to consider in detail the nature and extent of the statutory appeal which must be provided in order to fulfil the requirement of an effective judicial remedy. In particular, it is not necessary to consider whether an appeal by way of a *de novo* hearing is required (as contended for by Meta). It is sufficient to say that the CJEU has recently held that the national court hearing an action under article 78(1) of the GDPR must have full jurisdiction to examine all questions of fact and law relating to the dispute concerned (*SCHUFA Holding*, Joined Cases C-26/22 and C-64/22, EU:C:2023:958).

28. It is incorrect, therefore, to suggest (as the DPC does) that a first-instance decision made by the DPC is equivalent to the type of decision discussed by the Supreme Court in the passage from *Okunade* cited above. The first-instance decision of the DPC is not a final decision which should be treated as presumptively valid. The bringing of an appeal, by definition, has a suspensive effect on the decision of first instance, at least insofar as the payment of any administrative fine is concerned. The overall decision-making in relation to the GDPR, as reflected under the Data Protection Act 2018, does not achieve finality until such time as any appeal has been heard and determined.

29. Moreover, even in the absence of an appeal, a decision by the DPC to impose an administrative fine is not self-executing. Rather, it is necessary first to apply to the Circuit Court, pursuant to section 143 of the Data Protection Act 2018, for confirmation of the decision.

30. For these reasons, then, the DPC's reliance on the case law in relation to the granting of stays in judicial review proceedings is misplaced.

31. The DPC's reliance on the judgment in *Zuckerfabrik* is also misplaced. That judgment is concerned with the suspension of the operation of a piece of EU legislation, rather than the suspension of a first-instance decision pending the hearing and determination of an appeal mandated by the applicable EU legislation. Here, the adjournment of the domestic proceedings would not involve the suspension of EU legislation on the grounds that its validity is in question. Rather, the precise purpose of the adjournment would be to ensure that proper effect is given to the GDPR. The adjournment would allow the High Court, as the entity designated under domestic law, to provide the effective judicial remedy mandated under article 78 of the GDPR. More specifically, the purpose of the adjournment is to await the (potential) determination by the CJEU of the correct interpretation of the GDPR in relation to the lawful imposition of administrative fines. The High Court could then apply the principles enunciated by the European Court to the circumstances of the case before it. Conversely, the *refusal* of an adjournment would create the risk that the national court would reach a determination on the interpretation of article 83 of the GDPR which would subsequently transpire to have been incorrect in the light of the judgment of the European Court.

32. If one moves on from the generalities of the statutory scheme, and considers the particular circumstances of the present case, then the limited impact of the adjournment becomes even more apparent. The fact of the matter is that the parties are agreed that the High Court should not determine the issues in relation to the interpretation of article 83 of the GDPR until the WhatsApp proceedings have been determined. It is also agreed that there is no obligation on Meta to pay the administrative fine until such time as the WhatsApp proceedings have been determined. It follows as a corollary that the *refusal* of an adjournment in relation to the domestic proceedings would not result in legal effect being given any quicker to the outstanding measures under the impugned decision. All other aspects of the impugned decision have already been implemented by Meta to the satisfaction of the DPC.

DISCRETION TO DIRECT MODULAR TRIAL

33. In light of the concession by the DPC that *at least part* of the domestic proceedings will have to be deferred, the issue before the court reduces itself to one of whether a modular trial should be directed.

34. The High Court's inherent jurisdiction to direct a modular trial has been considered in *McCann v. Desmond* [2010] IEHC 164, [2010] 4 I.R. 554. The following criteria were identified by Charleton J. as being relevant to an application for a modular trial:

> "(1) Are the issues to be tried by way of a preliminary module, readily capable of determination in isolation from the other issues in dispute between the parties? A modular order should not be made if the case could be characterised as an organic whole, the taking out from which of a series of issues would tear the fabric of what the parties need to litigate, so that the case of either of the plaintiff or the defendant would be

damaged through being seen in the isolated context of a hearing on a number of limited issues.

(2) Has a clear saving in the time of the court and the costs that the parties might have to bear been identified? The court should not readily embark on a modular hearing simply because of a contention that a saving in time and costs has been identified, but rather it should view that factor in the context of the need to administer justice in the entire circumstances of the case.

(3) Would a modular order result in any prejudice to the parties? If, for instance, the issue as to what damage was occasioned by reason of the wrong alleged by the plaintiff was so intricately woven in to the proofs that were necessary to the proof of liability for the wrong, so that the removal of the issue of damages would undermine the strength of the plaintiff's case, or the response which a defendant might make to it, then the order should not be made.

(4) Is a motion a device to suit the moving party or does it genuinely assist the litigation by being of help to the resolution of the issues? I return to the idea that a judge should always be aware that tactical decisions are made, often out of an abundance of enthusiasm, by parties to litigation, who may seek to put the other party at a disadvantage through the obtaining of an order under the Rules of the Superior Courts 1986, or one capable of being made within the inherent jurisdiction of the court. Obvious examples of pre-trial motions that may merely be tactical are motions to strike out proceedings as being vexatious or frivolous or to seek an order for security for costs under s. 390 of the Companies Act 1963. Other instances include the lengthy arguments that can sometimes ensue in relation to discovery. If the removal of issues to a modular hearing is likely to disadvantage the proper process of pre-trial preparation that discovery orders, notices for particulars and notices to admit facts involve, then such a motion should be refused as resulting not from a genuine process that will assist the trial but for tactical reasons related to wrong footing the other party."

35. The criteria germane to an application for a modular trial have also been enumerated by the High Court (Clarke J.) in *Cork Plastics (Manufacturing) v.*

Ineos Compound U.K. Ltd [2008] IEHC 93 (at paragraphs 3.1 to 3.14). The criteria which are of most immediate relevance to the present proceedings are as follows:

(i). The default position is that there should be a single trial of all issues at the same time. In any straightforward litigation, and in the absence of some unusual feature (such as, for example, the unavailability of quantum witnesses which might otherwise lead to an adjournment), the risk that the proceedings will be longer and more costly if divided will be seen to outweigh any possible gain in court time and expense in the event that the plaintiff fails on liability.

(ii). The first and most obvious factor to be considered is the likely length and complexity of the proceedings (if heard as a unitary trial), and the relative length and complexity of the proposed modules. It is the length and complexity of the *subsequent* module which is most relevant. The perceived advantage of modularisation is the potential to dispose of the proceedings on the basis of a relatively short first module. If the subsequent module would not be lengthy or complex, then this advantage would not weigh very heavily in the balance.

(iii). The question of the extent to which there might be significant overlap in the evidence or witnesses that would be relevant to all modules needs to be taken into account.

(iv). The court should consider the difficulties and delay which might be encountered in relation to a modular trial were there to be an immediate appeal by a party dissatisfied with the result of the first module.

36. It has been submitted on behalf of the DPC that the test may require to be modified in circumstances where a modular trial would mitigate against the disruptive effect on legal certainty which would otherwise be caused by a blanket adjournment. The court might, therefore, be required to direct a modular trial notwithstanding that the traditional tests above might not be met. It is further submitted that a modular trial might be required even though it might result in some duplication or some overlapping between the two modules.

37. There is some merit in these submissions. The criteria identified in the existing case law were never intended to be exhaustive. It may be appropriate, therefore, to amplify these criteria to allow for consideration of other potential benefits of modularisation. To date, the normal justification for modularisation had been that a modular trial has the potential to produce a saving in time and costs. Thus, for example, modularisation will often be directed where the outcome of the modular trial, if it goes one way, will be dispositive of the proceedings. The classic example is where an issue arises in relation to the Statute of Limitations.

38. It may well be that modularisation would also be justified if it has the advantage of ensuring the progress, in part at least, of proceedings which are urgent. A court might decide, in the particular circumstances of the case, that some aspect of the litigation might usefully be advanced notwithstanding that another aspect is on hold. It is not correct, however, to suggest that modularisation must always be allowed in circumstances where the proceedings involve issues of EU law. EU law is now firmly embedded in the domestic legal order and the mere fact that proceedings give rise to issues of EU law does not, of and in itself, confer an especial urgency on those proceedings. Any assertion that the proceedings

are urgent will have to be assessed by reference to the specific subject-matter of the proceedings.

39. Modularisation will not be directed unless the court is satisfied that the issues which it is sought to separate out can properly be heard and decided in isolation. This must be the principal determinant of whether or not to direct a modular trial. If the separation out of the issues would cause prejudice to one of the parties, then modularisation would have to be refused. This is so even where the underlying proceedings present issues of EU law.

DECISION AND DISPOSITION

40. In circumstances where the parties are agreed that the statutory appeal cannot be heard in its totality until the EU proceedings taken by WhatsApp have been determined, the question becomes whether the court should take a step less drastic than the adjournment of the proceedings. More specifically, the question is whether the court should direct a form of modular trial whereby some issues raised in the statutory appeal and related judicial review can be heard and determined in isolation, with consideration of those issues which overlap with the EU proceedings being deferred to a later module.

41. For the reasons which follow, I have concluded that this is not an appropriate case in which to direct a modular trial. Instead, the statutory appeal (and the related judicial review proceedings) should be adjourned in their entirety to await the outcome of the WhatsApp proceedings pending before the CJEU.

42. First, the making of an order directing a modular trial would not result in legal effect being given to the DPC's decision any quicker. Even were a modular trial to be directed, the most significant element of the impugned decision, i.e. the

administrative fine of 265 million euro, will not become legally effective until after the EU proceedings taken by WhatsApp have been resolved. The impugned decision has already been implemented in part, and the only outstanding measure required by the impugned decision, i.e. the payment of the administrative fine, cannot be enforced until such time as the EU proceedings are determined. It follows that the adjournment of the domestic proceedings will not result in any *additional* delay in the implementation of the DPC's decision (assuming it were to be upheld on appeal). The delay is already "*locked in*" as an inevitable consequence of the need for the national court to await the outcome of the EU proceedings taken by WhatsApp.

43. Secondly, the issues in the domestic proceedings cannot sensibly be separated out. This is because the question of liability and sanction are inextricably bound up together. Meta had strongly contended that the conduct complained of did not involve any infringement of the GDPR. For example, Meta placed emphasis on the limited categories of information which had been disclosed as a result of the (alleged) infringement. In particular, the point was made that the disclosed material included information which would have been *publicly viewable* on the affected users' Facebook profiles.

44. Issues of this type come back into play in the context of the calculation of any administrative fine. This is because article 83 of the GDPR requires consideration of, *inter alia*, the nature, gravity and duration of any infringement; the categories of the personal data affected by the infringement; and any aggravating or mitigating factors. An argument that the information disclosed was not especially sensitive is relevant both to the threshold question of whether an infringement has occurred, and, if so found, the calculation of the

administrative fine (if any). It would be artificial to require the parties to participate in a truncated hearing of the domestic proceedings whereby only one side of this equation, i.e. liability, would be considered. Indeed, it is telling that the DPC itself did not conduct its own-volition inquiry on a modular basis.

45. Moreover, it must be borne in mind that Meta's judicial review proceedings incorporate a constitutional challenge to the validity of the legislation which allows the DPC to impose administrative fines. The High Court, in hearing a challenge to the constitutional validity of the legislation, will be required to apply the double construction rule. Put otherwise, one of the issues which will arise for determination is the correct interpretation of the Data Protection Act 2018. This cannot be addressed in isolation. Logically, one of the first issues to be addressed in any judgment in the domestic proceedings is the correct interpretation of article 83 of the GDPR. This interpretation will inform the type of procedures which must be applied by the DPC as decision-maker. It will also be relevant to the constitutional challenge to the legislation. It would be inappropriate for the High Court to embark on a detailed consideration of the proper interpretation of the Data Protection Act 2018 without first awaiting the outcome of the EU proceedings. It would be artificial to attempt to determine any part of the domestic proceedings without forming a view on the proper interpretation of the Data Protection Act 2018 as a whole, which interpretation will, in turn, be affected by the proper interpretation of, *inter alia*, article 83 of the GDPR.

46. Counsel on behalf of the DPC sought to draw a parallel with a case involving the assessment of liability and quantum as separate issues. It was submitted that the question of liability could be dealt with conveniently as a standalone issue.

The point was made—correctly insofar as it goes—that if the liability issue were to be resolved in favour of Meta, then, obviously, the question of the imposition of an administrative fine would simply not arise. With respect, I do not think that the issues can be "*sliced and diced*" in this way. This is not a case such as, for example, a personal injuries action where there will be no overlap between the evidence and argument relevant to the determination of liability and that relevant to the determination of the quantum of damages. Here, the two issues of liability and sanction are inextricably linked and cannot be separated out.

47. Thirdly, a modular trial runs the risk of prolonging the proceedings because of the potential for fragmented appeals to the Court of Appeal and/or preliminary references to the CJEU. It is preferable that all issues raised by Meta in its domestic proceedings be heard and determined in a unitary trial, following the resolution of the WhatsApp proceedings. This would ensure that if a preliminary reference to the CJEU were to become necessary, it would encompass all relevant issues. It would be suboptimal were there to be two modules, each of which might generate its own preliminary reference. Two staggered references are likely to result in additional delay.

48. Fourthly, the length of any adjournment of the domestic proceedings is likely to be short. This is because there is a reasonable prospect of the EU proceedings being disposed of peremptorily in a relatively short period of time. The EU proceedings might be dismissed as inadmissible, without there being any consideration of the substantive legal issues in relation to the GDPR.

CONCLUSION AND PROPOSED FORM OF ORDER

49. The statutory appeal and the judicial review proceedings will be adjourned generally to await the outcome of the WhatsApp proceedings currently pending before the CJEU. The parties have liberty to apply.

50. As to the costs of the case management motion, my *provisional* view is that Meta, having been successful in its application, is entitled to recover the costs of the motion as against the DPC. The matter will be listed on 30 May 2024 at 10.30 o'clock for submissions, if any, on the form of order.

Appearances

Andrew Fitzpatrick SC, Caren Geoghegan SC and Andrea Mulligan for the appellant instructed by A & L Goodbody LLP
Catherine Donnelly SC, David Fennelly and Cillian Bracken for the respondent instructed by Philip Lee LLP