



Response to the Department for Business & Trade Call for Evidence: Opt-out Collective Actions Regime Review

From the Transparency Task Force

<https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence>

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About the Transparency Task Force



The Transparency Task Force (TTF) is a volunteer-led coalition of over 12,000 individuals and organisations committed to driving positive change through transparency, accountability and

integrity across financial services and beyond. We advocate for consumer protection, fair markets, and access to justice for those harmed by misconduct.

Executive Summary

The Transparency Task Force strongly supports the opt-out collective actions regime as a vital mechanism for consumer protection and market accountability. This regime represents one of the few realistic means by which ordinary consumers and small businesses can enforce their rights when harmed by anti-competitive conduct at scale.

We urge the Department for Business & Trade to:

- Preserve the core architecture of the opt-out regime, which has proven effective in exposing misconduct and delivering compensation
- Resist lobbying from corporate interests seeking to weaken consumer protections under the guise of "reform"
- Maintain robust judicial oversight while ensuring litigation funding remains viable
- Consider targeted enhancements including expanding scope beyond competition law and improving distribution mechanisms
- Reject hard caps on funding arrangements that would make complex cases uninvestable

The regime is working. It needs refinement, not dismantling.

The Regime as a Pillar of Fair Markets and Consumer Protection

Civil justice and effective competition enforcement are fundamental to the UK's economic integrity. The opt-out collective actions framework has become an essential safeguard ensuring that legal rights are not merely theoretical but genuinely enforceable, particularly for those who would otherwise lack the resources to challenge powerful corporations.

Since its introduction in 2015, the regime has:

- Exposed serious anti-competitive practices across multiple sectors including technology, financial services, and transport
- Forced meaningful changes in corporate behaviour
- Secured compensation for victims who would otherwise have no practical remedy
- Demonstrated that wrongdoing carries real consequences, not just regulatory fines that are absorbed as a cost of doing business

The system operates with appropriate checks and balances: tight judicial control, loser-pays costs rules, and strict certification standards administered by the Competition Appeals Tribunal. These safeguards ensure that only meritorious claims proceed.

Countering the Corporate Lobbying Narrative

TTF notes with concern the increase in coordinated lobbying from organisations presenting themselves as neutral "consumer advocates" or "civil justice reform" groups - including Fair Civil Justice, EPICE, European Justice Forum, and others - which are predominantly funded by large corporate interests.

These groups characterise the regime as creating an "explosion" of claims and an unfair burden on business. The evidence does not support this narrative.

The actual statistics (as of 22 September 2025):

Metric	Lobbying Claim	Reality
Total formal applications filed at the CAT since 2015	"Explosion" of claims	37 applications
After accounting for carriage disputes and groupings by infringement	Hundreds of duplicative cases	Approximately 31 distinct claims (after resolving ~6 carriage disputes)
Active claims after withdrawals/dismissals	Overwhelming caseload	34 active claims over a decade (3 non-progressing: 2 dismissed, 1 carriage loss)
Follow-on claims (relying on prior regulatory findings)	Mostly novel, risky claims	8 follow-on (24% of total)
Claims on behalf of businesses or mixed business/consumer classes	Consumer-only burden on business	~50% (12 business-only + 5 mixed out of 34 active)

This is not an explosion. This is a measured, judicially supervised process that has provided redress where none would otherwise exist.

Weakening the regime in response to corporate lobbying would hand power back to the very companies it was designed to hold accountable. Businesses that comply with the law have nothing to fear from a properly functioning justice system.

Why This Regime Matters for Growth and Investment

Contrary to suggestions that the regime burdens business, it actually strengthens the UK economy by:

- **Levelling the playing field** for compliant firms that compete fairly
- **Building consumer confidence** in markets where misconduct has consequences
- **Fostering innovation** by ensuring dominant players cannot abuse their position without accountability
- **Signalling to responsible investors** that the UK is not a playground for exploitation but a jurisdiction where rules are enforced

The regime complements regulatory enforcement but delivers something regulators cannot: direct compensation to victims. Unlike regulatory fines - which enrich government coffers but leave victims uncompensated - collective actions ensure that those harmed receive redress.

Before 2015, small businesses and individual consumers generally could not bring damages claims due to prohibitive costs. The regime benefits businesses that play by the rules, particularly SMEs, not just individual consumers.

The Recent Civil Justice Council Review

The Civil Justice Council recently concluded a detailed, judge-led review of litigation funding. The CJC recognised that:

- Collective actions are well-considered and court-led by design
- Litigation funding is essential to access to justice
- Proportionate, light-touch improvements can provide transparency and capital adequacy while reinforcing judicial oversight

The CJC did not recommend dismantling the funding model. It recommended targeted refinements, including 58 proposals for statutory regulation. We support this balanced approach.

TTF's Vision for the Regime

The Department for Business & Trade has an opportunity to reinforce and enhance the present arrangements rather than undermining them. This means:

1. **Preserving opt-out collective actions** as the only practical route to redress for dispersed harms
2. **Maintaining the loser-pays principle** and active judicial gatekeeping
3. **Ensuring funding remains viable** through clear rules consistent with CJC recommendations
4. **Implementing procedural improvements** where evidence demonstrates they are needed
5. **Considering expansion** to other areas of mass harm beyond competition law

Detailed Responses to Consultation Questions

Part 1: Access and Funding

Q1: Is the regime currently affordable to a diverse range of classes?

The opt-out regime is expensive to access, with costs (including After the Event insurance, expert economists, extensive disclosure, and counsel) routinely reaching many millions of pounds. Defendants frequently escalate costs strategically to make proceedings difficult for claimants.

Without third-party litigation funding, the regime would be practically inaccessible. Funding is not merely helpful - it is indispensable for the regime to function as intended.

The regime is affordable to diverse classes only because funding exists. The relevant question is whether funding continues to be available on terms that make cases investable while protecting class members.

Impact on competition between funders: The high cost of claims does limit the pool of funders capable of financing such cases, particularly the most complex or uncertain ones. This can reduce competition among funders for any given case. However, the UK litigation funding market has matured significantly, and multiple funders are now active in this space.

Impact on funder decision-making: The cost and risk profile of a claim significantly influences funders' willingness to invest. This is appropriate - funders should conduct rigorous due diligence. The concern would be if meritorious claims with strong public interest elements cannot attract funding because returns are capped or uncertain.

Q2: Do you consider the way litigation funders' share of settlement sums or damages awards is approached currently to be fair and/or proportionate?

Yes, subject to robust judicial oversight, which already exists.

The Competition Appeals Tribunal examines funding arrangements at multiple stages:

- During certification (to ensure the class representative is adequately funded and terms are reasonable)
- At settlement (where the CAT has repeatedly scrutinised and adjusted funder returns to protect class interests)
- At distribution (ensuring class members receive appropriate compensation)

The CAT has shown itself willing to require amendments to funding agreements and to rewrite commercial terms where necessary to ensure fairness.

Hard caps would be counterproductive. They would:

- Make complex, evidence-heavy cases uninvestable
- Prevent funding of cases at early stages when risk is highest
- Effectively protect wrongdoers by making enforcement uneconomic
- Fail to account for varying risk profiles, case complexity, and duration

The better approach is case-by-case judicial assessment, which already occurs and can be codified into clearer guidance.

Q3: Are there lessons to be drawn from other models of funding that could support access to the regime?

We support exploration of an **Access to Justice Fund** modelled on structures like the Ontario Class Proceedings Fund in Canada. Such a fund could be seeded and replenished by:

- Unclaimed or undistributed damages from settlements and judgments
- A modest levy on successful settlements
- Government contribution as a justice policy priority

This would enable cases with strong public interest merit but marginal commercial viability to proceed, particularly at early stages or for novel legal theories. It should complement, not replace, commercial litigation funding.

Other mechanisms to consider:

- **Damage-Based Agreements (DBAs)** are currently prohibited in opt-out collective proceedings. Enabling DBAs (with appropriate safeguards) could provide an additional funding route, particularly for mid-sized cases
- **Conditional Fee Agreements (CFAs)** and **After the Event (ATE) insurance** help but cannot bridge eight-figure disbursement gaps on their own
- **Crowdfunding** and **trade union support** can work for smaller claims but are insufficient for large collective actions

The reality is that **civil legal aid will not be reintroduced** at the scale necessary. Alternative funding mechanisms must therefore remain viable.

Q4: How has the secondary market in litigation funding developed?

The secondary market remains relatively nascent in the UK compared to more mature jurisdictions. Where it exists, it can provide liquidity for funders and enable risk-sharing across portfolios.

Transparency and client confidentiality concerns can be addressed through:

- Disclosure requirements to the court of any assignment or participation arrangements
- Ensuring class representatives and their solicitors are informed of changes in funding structure
- Judicial oversight of whether changes affect the adequacy of funding or create conflicts

Q5: Are funding agreements fair and transparent for class members and clear for the court to understand?

Generally yes, but improvements are possible.

The CAT requires disclosure of funding agreements (subject to appropriate redactions for commercial sensitivity) and has established clear expectations. However:

Improvements could include:

- Standardised disclosure frameworks to ensure consistency
- Plain-language summaries for class members explaining key terms
- Clear templates or guidance on what terms the CAT expects to see addressed
- Ongoing disclosure obligations if material terms change

The CJC has made recommendations on this (recommendations 19 and 20), which we support in the context of opt-out cases.

Q6: Is funding provision for the full potential cost of a claim sufficiently considered on the commencement of claims?

This is a critical certification requirement, and the CAT rigorously examines funding adequacy, including:

- Whether funding covers all anticipated disbursements through trial and any appeal
- Whether ATE insurance is in place for adverse costs
- Whether funding is committed or conditional, and on what terms
- Capital adequacy of the funder

There have been cases where funding adequacy has been challenged or found wanting. The CAT's approach has appropriately evolved to ensure that funding is genuinely sufficient and that funders have the financial capacity to honour commitments.

Recommendation: The CAT could issue guidance consolidating its expectations on funding adequacy at certification, creating greater certainty for all parties.

Q7: To what extent should extra-curial dispute resolution be used or required to be used to resolve conflict between the funder and class representative?

Funding agreements typically include dispute resolution clauses. We support the CJC's recommendation (recommendation 15) for a binding dispute resolution process.

However, the CAT must retain ultimate supervisory jurisdiction. If a dispute affects the conduct of proceedings, threatens adequate representation of the class, or raises concerns about conflicts of interest, the court should be able to intervene.

A tiered approach works best:

1. Internal dispute resolution procedures
2. Mediation or expert determination
3. CAT intervention where necessary to protect class interests

The class representative's duties run to the class, not to the funder. Where irreconcilable conflicts arise, the CAT has shown itself willing to remove class representatives or impose solutions.

Part 2: Scope and Certification of Cases

Q8: Is the current scope of the regime appropriate?

No - the scope should be **expanded beyond competition law**.

Dispersed, low-value but systemically significant harms exist in many contexts:

- **Environmental damage** (pollution, climate-related harms)
- **Data protection and privacy breaches** (already arising in some competition cases but awkwardly fitted into that framework)
- **Consumer protection violations** (mis-selling, unfair terms, defective products)
- **Financial misconduct** (beyond competition issues)
- **Employment rights violations** affecting large groups

These harms share the characteristics that make collective redress appropriate:

- Individual losses are too small to justify litigation
- Wrongdoing is systemic and affects many people
- Deterrence requires accountability beyond regulatory fines
- Access to justice demands aggregation

Expansion would:

- Align the UK with mature jurisdictions (Australia, Canada, US) that permit class actions more broadly
- Speed jurisprudential development
- Strengthen deterrence that supports market integrity and growth
- Deliver on public policy objectives around environmental protection, social justice, and good governance

Q9: How are cases which cut across multiple areas dealt with? Is this appropriate? Are certification decisions sufficiently predictable and transparent?

Some cases involve overlapping legal issues - for example, competition claims that also involve data protection considerations. The CAT has shown pragmatism in certifying cases that predominantly concern competition harm even where other issues arise.

Certification has become more predictable as the case law has developed. Early cases involved significant uncertainty; now a substantial body of CAT jurisprudence provides guidance on:

- Commonality requirements
- Class definition
- Suitability of the claim for collective proceedings
- Adequacy of the class representative

Many recent certifications have been unopposed, suggesting defendants recognise when certification criteria are met.

Transparency is generally good. Certification decisions are publicly reasoned, creating precedent. However, the process can still be lengthy and expensive. Clearer published guidance from the CAT codifying established principles could improve efficiency.

Q10: What approach should be taken if the same issues are concurrently being investigated by the CMA and brought before the CAT?

The CAT's existing rules enable:

- **CMA intervention** in private proceedings to make submissions
- **Case management stays** to await relevant CMA decisions
- **Coordination** to avoid inconsistent findings

This works well. Private enforcement complements public enforcement - it does not replace it. The two should coexist, with appropriate case management to avoid duplication or inconsistency.

Recommendation: The CMA and CAT should continue to engage proactively where overlapping issues arise, but private actions should not be routinely stayed pending CMA investigation. This would effectively give defendants a veto by triggering CMA complaints.

Q11: Do you consider that there is currently sufficient certainty for businesses in relation to the level of liability they face?

Businesses that comply with competition law have certainty: they face no liability.

For businesses that breach the law, uncertainty is inherent in damages-based liability. This is true across all civil litigation, not unique to opt-out collective actions.

The certification process provides early clarity on:

- Whether a claim will proceed collectively
- The defined class
- The legal and factual issues to be determined

Businesses have full opportunity to defend on the merits. The regime does not create strict liability - claimants must prove breach and loss.

What defendants sometimes characterise as "uncertainty" is actually accountability. The appropriate response is to comply with the law, not to seek protection from liability for breaches.

Q12: Are there circumstances where it would be appropriate to provide protection to businesses from liability?

This requires careful consideration. General immunity would undermine accountability and deterrence.

The CMA's leniency programme already provides significant protection for whistleblowing cartel members. This is appropriate and should be preserved.

Should cooperating businesses receive protection from private actions? This is more controversial:

- **Arguments for:** Encourages cooperation, aids regulatory enforcement
- **Arguments against:** Victims still suffered harm; why should they be denied compensation because the wrongdoer cooperated? Immunity could reduce overall deterrence

If immunity is considered, it should be:

- Limited to full immunity recipients under the CMA's leniency programme (not mere cooperation)
- Subject to the proviso that victims receive compensation from other cartel members
- Designed to ensure overall deterrence is maintained

TTF is cautious about broad immunities that leave victims uncompensated.

Q13: Should there be specific requirements in order to be eligible to act as a class representative?

The existing framework is appropriate. The CAT assesses whether the proposed class representative:

- Is a member of the class (where seeking to act in a representative capacity personally) or is otherwise appropriate
- Has a suitable funding arrangement
- Has retained competent legal representation
- Has arrangements in place to consult with and govern in the interests of the class
- Has no conflicts of interest with class members
- Will act in the best interests of the class

These are robust requirements. The CAT has refused to certify representatives who did not meet these standards.

No need for additional formal eligibility criteria (such as requiring certain corporate forms or excluding certain types of entity). This would unduly restrict access to justice. The CAT's case-by-case assessment ensures suitability.

Q14: Do you feel the current rules for class representatives are clear enough regarding the relationship between the class, class representative and funder and how to manage potential conflicts of interest?

Yes, the CAT has developed clear expectations through case law:

- The class representative owes duties to the class, not to the funder
- Conflicts of interest must be identified and managed
- Governance arrangements (such as consultative panels, independent cost consultants) provide oversight
- Funding agreements should not give funders inappropriate control over proceedings

The CAT actively supervises these relationships and has intervened where concerns arise.

Improvements:

- The CAT could publish consolidated guidance on its expectations
- Standard governance frameworks could be encouraged (while retaining flexibility for case-specific needs)
- Greater transparency to class members about governance and decision-making processes

Q15: Should there be more defined rules on what cases can be certified as opt-out proceedings?

The existing statutory criteria (in s47B Consumer Rights Act 2015 and CAT Rules) are appropriate:

- Claims must be eligible (competition claims under s47A)
- Claims must raise common issues suitable for collective resolution
- Opt-out must be appropriate (considering factors like the size of individual claims and practicability of opt-in)
- The class representative must be suitable
- Collective proceedings must be superior to individual actions

The CAT has developed this framework through case law, creating predictability while retaining flexibility to address the specifics of each case.

More rigid rules would be counterproductive. The range of competition cases is diverse; prescriptive rules risk excluding meritorious claims or including inappropriate ones.

Recommendation: Codify the principles that have emerged from case law into updated guidance, but maintain judicial discretion in their application.

Part 3: ADR, Settlement and Damages

Q16: Do you have any experience of involvement in ADR to resolve a loss suffered by consumers as a result of anti-competitive behaviour?

Q17: Are you aware of voluntary redress schemes and under what circumstances could they be used?

Q18: Do you consider that additional alternative routes for redress could reduce the need for litigation?

Q19: What barriers do you consider there are to pursuing alternative routes to redress?

TTF's collective experience across our network indicates that ADR, voluntary redress schemes, and additional regulatory routes can play supportive roles but rarely substitute for litigation. ADR is most effective post-disclosure, when risks are quantifiable and judicial pressure incentivises good-faith engagement; early mandatory ADR adds delay without leverage. Voluntary schemes under the Consumer Rights Act 2015 remain unused due to approval complexities, litigation overhang, and under-compensation risks - no schemes approved since 2015. Empowering the CMA for direct redress (akin to FCA powers) merits exploration but requires resources and safeguards to ensure full compensation, complementing - not replacing - private actions. Barriers include power imbalances, resource constraints, and lack of compulsion; all routes rely on litigation as a credible backstop for deterrence.

Recommendation: Encourage ADR at mid-stage via CAT directions; simplify voluntary scheme approvals with judicial oversight; legislate CMA redress powers with appeal rights.

Q20: Do direct financial, rather than cy-près, damages deliver justice effectively?

Direct compensation should always be the primary goal. This is what victims are entitled to - redress for their actual loss.

Cy-près distributions (to charitable or quasi-charitable purposes loosely related to the class's interests) should be a last resort, used only where:

- Direct distribution is genuinely impracticable (not merely inconvenient or costly)
- Reasonable efforts to notify class members and facilitate claims have been exhausted
- The alternative would be to return funds to the defendant, which would eliminate deterrence

Why direct compensation matters:

- Vindicates individual rights
- Provides tangible benefit to victims
- Maintains deterrent effect by ensuring wrongdoers do not retain unlawful gains
- Builds public confidence in the justice system

Even modest per-capita returns (such as ~£2-70 depending on take-up in the Merricks case) are meaningful:

- In aggregate (£200 million to up to 46 million class members in Merricks), these sums are substantial
- For many individuals, even modest sums matter
- The principle of compensation reinforces that unlawful conduct has consequences
- Deterrence is preserved

Alternatives to pure cy-près:

- **Staged distribution:** Initial direct distribution, followed by cy-près only for truly unclaimed residual funds
- **Charitable purposes closely aligned** with class interests (e.g., consumer education, access to justice funding)
- **Proportionate return to defendants** only where class members have been fully compensated and funds remain unclaimed after exhaustive efforts

Q21: What degree of influence do you consider litigation funders currently have over the resolution of a case?

Funders inevitably have influence because they control capital and their commercial interests affect decision-making. However, the CAT's oversight ensures this influence does not become inappropriate.

Legitimate funder influence:

- Providing commercial perspective on settlement value
- Ensuring decisions are economically rational
- Protecting their investment within the bounds of their contractual rights

Inappropriate influence would be:

- Vetoing settlements that are in the class's interests to pursue higher funder returns
- Forcing settlement to exit a case, leaving class under-compensated
- Dictating litigation strategy contrary to legal advice or class interests

Safeguards that exist:

- Class representative's duties run to the class, not the funder
- CAT approval required for settlements, including scrutiny of distribution as between funders and class members
- CAT can and does require amendments to settlements to reduce funder returns
- Funding agreements are disclosed and supervised

Recommendation: Codify expectations that funding agreements should not give funders control over settlement decisions (though their views can be considered); class representative must have final say, subject to CAT approval.

Q22: What safeguards could be implemented to mitigate the risk of litigation funders inappropriately influencing a case?

Existing safeguards are substantial, but could be reinforced:

1. **Disclosure requirements:** Funders' identity, terms, and any changes should be disclosed to the CAT (already largely the case)
2. **Governance structures:** Independent cost consultants, consultative panels, and oversight boards can provide checks on funder influence
3. **Clear contractual terms:** Funding agreements should explicitly preserve the class representative's independent judgment on case conduct and settlement
4. **CAT intervention:** The CAT should retain and exercise its power to require amendments to funding agreements or governance structures where conflicts arise
5. **Dispute resolution mechanisms:** As discussed in Q7, providing clear processes for resolving funder/representative disputes
6. **Funder codes of conduct:** Industry self-regulation through the Association of Litigation Funders can establish standards, with regulatory backstop if needed
7. **Enhanced transparency to class members:** Ensuring class members understand the funder's role and economic interests

Q23: Should remedies other than compensatory damages be available?

Compensatory damages should remain primary, but additional remedies could enhance the regime's effectiveness:

Restitutionary damages (disgorgement of gains):

Yes, these should be available where:

- Compensatory damages are difficult to calculate or apportion
- The wrongdoer's gain is more readily ascertainable than victims' losses
- Doing so would strip unlawful profits and reinforce deterrence

Restitution ensures wrongdoers do not profit from breaches even where victim losses are hard to quantify precisely.

Exemplary (punitive) damages:

Should be considered to ensure parity with other areas of civil law where they are available. Competition cases can involve deliberate, egregious conduct. Exemplary damages:

- Reinforce deterrence for the most serious breaches
- Recognise the culpability of conduct, not just its consequences
- Provide additional compensation where actual losses understate the harm

However, these should be subject to clear criteria and judicial discretion to prevent disproportionate awards.

Injunctive relief:

While less common in damages-focused collective actions, the ability to seek forward-looking relief (to prevent ongoing harm) could be valuable in some cases.

Q24: What factors might incentivise you to settle rather than continuing to judgment?

From a claimant perspective:

- **Certainty:** Settlement eliminates trial risk and appeal risk
- **Timing:** Settlement provides compensation years earlier than judgment would
- **Cost:** Avoiding trial and appeal costs benefits the class (more funds available for distribution)
- **Risk assessment:** Where liability or quantum is uncertain, settlement may deliver better expected value
- **Defendant solvency:** If there is any risk the defendant could not satisfy a full judgment, settlement provides certainty

From a defendant perspective:

- **Trial risk:** Strong claimant case may make settlement more economical than risking judgment
- **Cost control:** Avoiding trial costs
- **Reputational considerations:** Settling may limit public exposure compared to a judgment
- **Business certainty:** Resolving litigation enables forward planning

Critical factor for both sides: Judicial encouragement and realistic assessment of prospects facilitates settlement at the right time (typically post-disclosure, when both sides have sufficient information).

Q25: To what extent do you think it would be beneficial for the CAT to have increased oversight of settlement?

The CAT already has strong settlement oversight, which is appropriate given the opt-out nature of proceedings. The CAT:

- Must approve all collective action settlements
- Scrutinises distribution plans and adequacy of compensation
- Reviews funder returns and can require amendments
- Considers whether settlement is fair, reasonable, and in class members' interests
- Assesses notification and claims processes

This is sufficient. The CAT has shown itself willing to intervene robustly where needed, as in the recent Merricks settlement approval.

No need for substantially increased oversight, which could:

- Undermine party autonomy and make settlement less attractive
- Increase costs and delay
- Create excessive judicial involvement in commercial negotiations

Refinements rather than expansion:

- Clearer published guidance on the CAT's settlement approval criteria
- Transparency requirements ensuring class members understand settlement terms
- Empirical assessment of settlement outcomes (take-up rates, distribution efficiency)

Q26: What should happen to unclaimed funds from a settlement agreement?

Tiered approach:

1. **Maximise direct compensation:** Extensive notification efforts, user-friendly claims processes, reasonable claims periods
2. **Cy-près to aligned charitable purposes:** Where funds remain unclaimed after exhaustive efforts, distribution to charities that serve the class's interests (consumer protection, access to justice, sector-specific causes)
3. **Limited return to defendant:** This could be considered as an incentive for settlement (knowing that unclaimed funds may partially revert), but should be proportionate (e.g., 50% to charity, 50% to defendant) and subject to CAT approval

4. Access to Justice Fund: Unclaimed settlement funds could seed or replenish a fund supporting future collective actions

Funds should never simply revert entirely to the defendant. This would eliminate deterrence and incentivise low take-up.

For judgments (not settlements): Unclaimed funds already go to the Access to Justice Foundation under existing rules, which is appropriate and should be maintained.

Part 4: Distribution of Funds

Q27: How are funds distributed among consumers? How could this be improved?

Current distribution mechanisms vary by case but typically involve:

- CAT approval of a distribution plan
- Public notification campaigns (advertising, direct contact where possible)
- Claims process (often online portal)
- Verification of eligibility
- Payment to class members who successfully claim

Challenges:

- Low public awareness of the regime generally
- Complexity of explaining eligibility and claims processes to non-legal audiences
- Administrative burden of processing potentially thousands or millions of claims
- Balancing accessibility against fraud prevention
- Costs of distribution reducing net compensation

Improvements:

1. **Government-hosted central portal:** A single, official website where all certified collective actions and live distributions are listed, with links to claims processes. This would:
 - Increase visibility and public awareness
 - Provide authoritative information
 - Build trust (reducing concerns about scam communications)
 - Allow "one-stop" checking for eligibility across multiple cases
2. **Standardised, user-tested notification materials:** Plain-language communications, accessibility-compliant, available in multiple languages where appropriate
3. **Proactive notification where possible:** Using data matching (within data protection constraints) to notify likely class members directly
4. **Multiple claim channels:** Online, phone, postal to accommodate varying levels of digital access

5. **Longer claim periods** where appropriate, with staged notifications (initial wave, reminder campaigns)
6. **Simplified verification processes:** Balancing fraud prevention with accessibility
7. **Learning from each distribution:** Empirical assessment of what works, published guidance on best practices

Q28: Are consumers made sufficiently aware of proceedings/their right to claim?

Awareness is currently insufficient, though improving. The challenge is that:

- Most people are not monitoring CAT proceedings
- Even targeted advertising may not reach all class members
- Many potential claimants may be sceptical of communications (assuming scams)
- Legal language and process complexity can be off-putting

How to improve awareness:

1. **Central government portal** (as noted above) would be transformative
2. **Standardised notification requirements** with empirical testing of effectiveness
3. **Partnership with consumer organisations, regulators, and sector bodies** to amplify notifications through trusted channels
4. **Media engagement:** Proactive engagement with press to publicise settlements and claims processes
5. **Social media and digital advertising:** Targeted campaigns on platforms where class members are likely to be reached
6. **Financial institutions and service providers:** In some cases, businesses that have customer data could be required to notify their customers (with appropriate safeguards)
7. **Education campaigns:** Building general public awareness of collective actions so people know to look for information when cases are publicised

Q29: The quantum of damages can vary from case to case. To what extent do you consider that returns like £45-£70 per person are meaningful?

Yes, such returns are meaningful, both individually and systemically. (Note: Recent distributions, such as Merricks, show variability from ~£2.50 if full take-up to £70 at lower rates, underscoring aggregate impact over per-capita focus.)

Individual perspective:

- For many households, even modest sums represent tangible value - it is not trivial
- The amount reflects actual harm suffered; victims are entitled to compensation regardless of quantum

- The principle matters: receiving redress validates that wrongs were committed and accountability followed
- Without collective actions, these individuals would receive nothing

Systemic perspective:

- In aggregate (£200 million to class members in Merricks), these sums are substantial
- The total stripped from the wrongdoer reinforces deterrence
- Even if some individuals view their share as modest, the collective impact is significant
- The alternative - allowing wrongdoers to retain unlawful gains because individual losses are small - would be unjust

Context matters:

- The harm occurred; compensation is owed
- Small individual losses are precisely why collective actions exist - they would never be pursued individually
- The regime's success should be measured not only by per-capita returns but by:
 - Total compensation delivered
 - Deterrent effect on future misconduct
 - Vindication of legal rights
 - Changes in corporate behaviour

Critique of this question's framing:

This question risks suggesting that if individual returns are "too small," the regime is failing. This fundamentally misunderstands the purpose. The regime exists precisely for cases where individual losses are too small for individual litigation. If individual losses were large enough to justify solo actions, collective proceedings would be unnecessary.

Asking whether modest returns are "meaningful" implies there is some threshold below which justice should not be pursued. TTF rejects this premise. All victims of unlawful conduct deserve compensation, and the system that enables this - even for modest per-capita sums - is fulfilling its purpose.

Q30: What should happen to unclaimed or residual damages?

Unclaimed funds from judgments:

The current rule (distribution to the Access to Justice Foundation) is appropriate and should be maintained. Funds support access to justice broadly, serving public interest, and ensure wrongdoers do not benefit from low take-up.

Unclaimed funds from settlements:

More flexibility is appropriate, subject to CAT approval:

1. **Extended claims periods:** Before deeming funds "unclaimed," ensure adequate time and notification efforts
2. **Cy-près to appropriate charities:** Aligned with class interests (consumer protection, sector-specific causes, access to justice)
3. **Access to Justice Fund:** Contributing to a fund that supports future collective actions - recycling compensation to enable justice in other cases
4. **Proportionate return to defendants:** As settlement incentive, but capped (e.g., maximum 50%) and subject to strict CAT scrutiny to ensure:
 - Genuine efforts were made to maximize take-up
 - Reversion does not undermine deterrence
 - Class interests are protected
5. **Enhancement of successful claims:** Where feasible, residual funds could increase payments to those who did claim, ensuring all compensation goes to victims

Different expectations for settlements:

Yes. Settlements involve commercial negotiation; allowing limited reversion may facilitate resolution. However, this should not apply to judgments, where the defendant has been found liable - in such cases, all unclaimed funds should benefit access to justice, not return to the wrongdoer.

Transparency requirement: Whatever approach is adopted, it should be clearly specified in settlement terms and communicated to class members so they understand what happens to unclaimed funds.

Closing Question

Q31: Is there anything else that you would like to share regarding the operation of the opt-out collective actions regime?

The Regime's Broader Significance

The opt-out collective actions regime represents more than a technical legal procedure. It embodies fundamental principles of justice, accountability, and fair markets:

Access to Justice: For the vast majority of competition law victims - consumers and SMEs suffering dispersed but cumulatively significant harm - this regime is the only realistic pathway to redress. Without it, legal rights become theoretical, unenforceable in practice. The regime makes justice accessible at scale.

Market Integrity: Effective private enforcement complements public regulation in maintaining competitive markets. It ensures that anti-competitive conduct carries real consequences beyond regulatory fines, creating incentives for compliance and penalising wrongdoing.

Consumer Confidence: When consumers know that misconduct will be held to account and compensation delivered, confidence in markets increases. This benefits compliant businesses and the wider economy.

Levelling the Playing Field: The regime protects not only consumers but also businesses - particularly SMEs - that compete fairly and are harmed by others' anti-competitive conduct. It ensures that following the rules is not a competitive disadvantage.

The Stakes of This Review

TTF is deeply concerned that this review may be used as a vehicle to weaken the regime in response to corporate lobbying rather than to enhance its operation based on evidence.

The lobbying landscape:

Well-resourced organisations backed by major corporate interests have invested significantly in advocacy against collective actions, often disguised as "civil justice reform" or "consumer protection." Their messaging emphasises:

- Alleged "explosions" in claims (contradicted by evidence)
- Portrayal of litigation funding as exploitative (ignoring that it enables access to justice)
- Characterisation of the regime as a burden on business (ignoring that compliant businesses face no burden)
- Selective criticism of outcomes (focusing on per-capita returns without acknowledging aggregate compensation or deterrence)

The reality:

- 37 claims over ten years is measured, not excessive
- Nearly half are brought on behalf of businesses
- The CAT provides robust oversight
- Funding is essential and appropriately supervised
- Alternatives to litigation rarely work without litigation pressure as backstop
- Businesses that comply with the law have nothing to fear

The choice before DBT:

1. **Preserve and enhance:** Maintain the regime's core architecture, implement light-touch refinements based on evidence and CJC recommendations, and expand scope to other areas of mass harm
2. **Weaken in response to lobbying:** Impose hard caps on funding, restrict certification, mandate ineffective ADR, narrow scope - effectively making the regime inaccessible and non-viable

The first path serves justice, consumers, SMEs, fair competition, and long-term economic growth.

The second path serves only those who benefit from avoiding accountability for misconduct.

Specific Additional Points

1. International Competitiveness:

The UK risks falling behind peer jurisdictions if the regime is weakened:

- **Australia:** Mature class action regime across multiple areas of law
- **Canada:** Provincial and federal class actions well-established, with Access to Justice funds
- **European Union:** Growing collective redress mechanisms, including EU Representative Actions Directive
- **United States:** Despite criticisms, robust class action system that holds corporations accountable

Weakening the UK regime would:

- Make the UK an attractive forum for corporations seeking to avoid accountability
- Disadvantage UK consumers and businesses relative to international peers
- Signal that the UK prioritises corporate interests over rule of law

Strengthening the regime positions the UK as a leader in access to justice and fair markets.

2. The Deterrence Function:

Regulatory fines alone provide insufficient deterrence. They:

- Are often absorbed as a cost of doing business
- May be less than the profits from misconduct
- Do not compensate victims

Private collective actions:

- Strip unlawful gains

- Create additional financial consequences
- Generate reputational costs
- Demonstrate that misconduct will be pursued by both public and private enforcers

Deterrence protects compliant businesses from unfair competition and benefits the economy by preventing harm before it occurs.

3. The "Litigation Funding Crisis" Narrative:

Some submissions will likely argue that litigation funding is exploitative, that funders take excessive returns, and that consumers are harmed by the funding model.

This narrative is false:

- Funding enables cases that otherwise could not proceed - without funders, there would be no compensation
- CAT oversight ensures funder returns are proportionate to risk and investment
- Hard caps would make complex cases uninvestable, protecting wrongdoers
- Alternative funding (legal aid, CFAs, crowdfunding) cannot fill the gap for high-value, complex collective actions
- The CJC conducted a thorough review and recommended light-touch regulation, not caps or prohibition

4. The Role of Data and Evidence:

This review should be evidence-based. TTF urges DBT to:

- Require empirical evidence for claims about the regime's operation and impact
- Commission independent research on outcomes, take-up rates, and distribution effectiveness
- Be sceptical of advocacy masquerading as evidence
- Distinguish between anecdotal concerns and systemic problems
- Examine actual funding terms and funder returns across cases (not hypotheticals)
- Assess the regime's impact on corporate behaviour and deterrence

5. Expansion Beyond Competition Law:

TTF strongly supports expanding the regime to other areas of dispersed harm:

Environmental claims:

- Pollution, climate damage, ecological harm
- Particularly important given government's climate commitments
- Individual environmental harms are often small but collectively massive

Data protection and privacy:

- Already arising awkwardly in competition cases (e.g., Google, Facebook claims)
- GDPR provides substantive rights but enforcement via individual litigation is impractical
- Collective actions would make data rights meaningful

Consumer protection:

- Mis-selling, unfair terms, defective products
- Currently requires individual litigation or regulatory action
- Collective redress would enhance consumer confidence

Financial misconduct:

- Beyond competition issues: mis-selling, market manipulation, breach of fiduciary duties
- Financial services have seen regulatory redress schemes with mixed success; collective actions would complement these

Employment rights:

- Systemic discrimination, wage theft, unlawful dismissals affecting large groups
- Currently requires individual employment tribunal claims
- Collective mechanism would enable enforcement at scale

Expansion would:

- Align UK with international best practice
- Accelerate jurisprudential development (more cases, more precedent)
- Enhance deterrence across sectors
- Deliver on policy objectives around environmental protection, social justice, consumer protection
- Strengthen the UK's position as a jurisdiction committed to rule of law and access to justice

Legislative mechanism: Could be achieved through:

- Amending Consumer Rights Act 2015 to broaden scope beyond competition
- Sector-specific legislation enabling opt-out collective actions in particular contexts
- A new standalone collective redress statute modelled on successful international examples

6. The Need for Proportionality:

Any reforms must be proportionate to actual, evidenced problems - not hypothetical concerns or lobbying narratives.

Before imposing restrictions (caps, additional certification hurdles, mandatory ADR), DBT should require clear evidence that:

- Current mechanisms are failing
- The proposed restriction would address the specific failure
- The restriction would not create worse problems (e.g., eliminating access to justice)
- Less restrictive alternatives have been considered

Proportionality requires:

- Preserving what works (judicial oversight, loser-pays, certification)
- Fixing genuine operational issues (distribution efficiency, awareness)
- Rejecting restrictions that protect wrongdoers at the expense of victims

7. Consultation with Genuine Stakeholders:

TTF urges DBT to ensure diverse consultation, including:

- **Consumer organisations** (Citizens Advice, Which?, Consumer Council)
- **SME representatives** (FSB, British Chambers of Commerce)
- **Claimant law firms and representatives** with direct experience
- **Academics and researchers** studying collective redress
- **Judiciary** (Civil Justice Council, CAT judges where appropriate)
- **International experts** from jurisdictions with mature regimes

And to be appropriately sceptical of:

- Corporate-funded advocacy groups presenting as neutral reformers
- Submissions that make claims without evidence
- "Consumer protection" arguments advanced by business interests
- Industry associations representing defendants

True stakeholders are those who have been harmed by anti-competitive conduct and those who represent them - not those who benefit from avoiding accountability.

Conclusion: A Regime Worth Defending

The opt-out collective actions regime is a success. It has:

- Delivered hundreds of millions of pounds in compensation to consumers and businesses

- Exposed serious misconduct across major sectors
- Forced changes in corporate behaviour
- Demonstrated that the UK's competition regime has teeth beyond regulatory fines
- Provided a model that balances access to justice with appropriate safeguards

It is not perfect. Improvements are warranted:

- Enabling DBAs in opt-out cases
- Exploring an Access to Justice Fund
- Improving distribution mechanisms and public awareness
- Expanding scope beyond competition law
- Codifying CAT guidance on certification and funding oversight
- Enhancing ADR at appropriate case stages

But the core architecture must be preserved:

- Opt-out mechanism for dispersed harms
- Third-party litigation funding as essential to access
- Judicial gatekeeping through certification
- Loser-pays costs rules
- CAT oversight of settlements and distribution
- Case-by-case assessment of funding terms rather than hard caps

The alternative - weakening the regime - would:

- Deny compensation to victims of unlawful conduct
- Protect wrongdoers from accountability
- Undermine deterrence and fair competition
- Disadvantage compliant businesses
- Signal that the UK prioritises corporate interests over rule of law
- Reduce the UK's competitiveness as a responsible investment destination

TTF's call to action:

The Transparency Task Force urges the Department for Business & Trade to:

1. **Reject lobbying** from corporate-backed groups seeking to weaken consumer protections
2. **Preserve the regime's core architecture** while implementing evidence-based refinements
3. **Expand scope** to other areas of dispersed harm
4. **Ensure funding remains viable** through light-touch regulation consistent with CJC recommendations

5. **Improve distribution and awareness** through practical measures like a central government portal
6. **Commission independent research** on the regime's operation and impact
7. **Consult widely** with genuine stakeholders, including victims and their representatives
8. **Recognise that access to justice, deterrence, and market integrity serve economic growth** - they are not in opposition to it
9. **Publish anonymised summaries of submissions** to promote transparency in the review process

The regime works. It needs refinement, not dismantling. The choice before DBT is whether to strengthen access to justice or to weaken it in response to corporate lobbying.

TTF strongly advocates for the former. Justice, fairness, and economic integrity demand no less.

Submitted by:

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