Response to the Department for Business and Trade Consultation:

Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement

From the Transparency Task Force

https://www.gov.uk/government/consultations/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement

Date of submission: 24 September 2026

About the Transparency Task Force

The Transparency Task Force (TTF) is a UK-based Certified Social Enterprise with a formal mission to "Promote reform of the financial sector so it serves society better." We are UK-based but operate internationally, with various degrees of engagement in 20 countries.

We are 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.

We believe that "sunlight is the best disinfectant" and our "North Star" question is always: "what's best for the consumer?"

TTF responded to the Department's Call for Evidence on the Opt-out Collective Actions Regime Review in October 2025. This response builds on that submission and, where our position has developed in the light of the Department's proposals, we say so explicitly.

In preparing this response we have consulted practitioners with direct experience of collective proceedings before the Competition Appeal Tribunal. Their input has informed our answers and we are grateful for it. The positions taken in this response are TTF's own.

1. Introduction

The Transparency Task Force welcomes the opportunity to respond to this consultation.

We are responding from the standpoint of:

- Protecting consumers, small businesses and victims of unlawful conduct;
- Promoting transparency in regulatory and judicial decision-making;
- Challenging weaknesses in the framework that allow harm to go unremedied; and
- Ensuring that changes made in the name of efficiency do not inadvertently remove protection or restrict access to justice.

This consultation covers three regimes that share a single characteristic: each is a mechanism by which those who have been harmed, or those who represent them, can hold powerful institutions to account. The opt-out collective actions regime is the only realistic route to redress for dispersed consumer and small-business harm. Regulatory appeals are the mechanism by which the decisions of economic regulators — decisions that determine what households pay for water, energy, post and air travel — can be tested. Competition Act enforcement is the process through which the CMA establishes that unlawful conduct occurred at all, and thereby lays the foundation for private redress.

The consultation is framed throughout around speed, simplicity and growth. TTF supports all three where they genuinely serve consumers. Litigation that takes a decade serves nobody. Appeals routes so complex that only 15 per cent of businesses find them navigable serve nobody. Investigations that conclude years after the harm has crystallised serve nobody.

But swiftness and simplicity are not the same as fairness, and they are not free. Almost every proposal in this document purchases speed by removing a step at which someone could otherwise have been heard, or by moving a binding protection from statute or rules into guidance authored by the body being regulated. That trade is sometimes worth making. It should never be made without saying plainly what is being given up, and by whom.

Our overarching position is this: making competition redress, regulatory appeals and competition enforcement swifter and simpler is a legitimate and important goal, but it must be achieved by making these systems more effective at delivering justice — not by making it harder for those who have been harmed to bring their case, and not by making it cheaper for those who caused the harm to defend it.

2. Executive Summary of TTF's Position

2.1 What we support

- Lifting the prohibition on damages-based agreements in opt-out collective proceedings (Q7-Q9). TTF called for this in our Call for Evidence response and welcomes it. We go further than the consultation and argue that the prohibition has itself harmed consumers: because claims run on hourly rates whose costs do not scale down when recoveries disappoint, the class absorbs the whole of the shortfall. A DBA shares it.
- Empowering the CMA to accept binding redress undertakings and to direct the establishment of redress schemes (Q22-Q27). TTF called for CMA redress powers in our Call for Evidence response.
- Simplifying the Competition Act 1998 (Redress Scheme) Regulations 2015, which have produced not one approved scheme in over a decade.
- Empowering the CAT to encourage or require mediation after the exchange of expert reports, with costs consequences for unreasonable refusal (Q15-Q17). This matches the position TTF took in the Call for Evidence: ADR works post-disclosure, not before it.
- Requiring costs budgets from both parties following certification, with sanctions for conduct that unreasonably inflates costs (Q13-Q14).
- Listing live claims on the CAT website (Q34). TTF proposed a central, authoritative, government-backed portal in the Call for Evidence and regards this as one of the single most valuable proposals in the document.
- Broadening the CAT Rules so that relevant concurrent regulators are notified of claims and may submit written observations (Q31-Q33).
- Transferring regulatory appeals from the CMA to the CAT (Q44-Q46), subject to the conditions set out in this response.
- Harmonising eligibility to appeal so that persons whose interests are materially affected, and the bodies representing them including consumer bodies, have standing across all sectors (Q56-Q57).
- Cost protection for consumer bodies exercising appeal rights (Q60-Q63). This is, in our view, the most important consumer protection opportunity in the entire consultation.
- A standardised legal framework for confidentiality rings, with civil sanctions for breach (Q71-Q74).

- The full set of Competition Disqualification Order refinements (Q81-Q83) and the principle of a penalty cap for undertakings with no or unrepresentative turnover (Q84).

2.2 What we oppose or have significant concerns about

- The proposed change from relative to absolute suitability at certification (Q4). This imports a merits assessment into a stage that occurs before disclosure. It is the single most consequential proposal in Chapter 1 and we oppose it.
- Elevating the cost/benefit analysis into the statutory certification threshold (Q5). This would filter out precisely the dispersed, low-value, high-volume harms that the regime was created to address.
- The presumption that funders receive their return before distribution to the class concludes (Q11-Q12). This inverts the regime's priorities. The class comes first.
- Full civil immunity for Type A leniency applicants (Q28-Q30). TTF was cautious about this in the Call for Evidence and remains so. If it proceeds, it must be conditioned on victims actually being compensated, not on a theoretical possibility of recovery from co-cartelists.
- The introduction of CAT fees linked to claim value (Q38-Q40). A tribunal created to deliver access to justice for those who cannot afford litigation should not charge for entry.
- Replacing water price control redeterminations with an appeal on judicial review principles (Q53). This materially reduces the depth of scrutiny of water price controls at a moment of acute and justified public concern about the sector.
- Removing the CAT's power to substitute its own decision, leaving only quash-and-remit (Q51). This risks decision-making ping-pong and delay, and weakens the practical remedy.
- Omitting CMA Rule 3 and Rules 9(2)-(4), moving the decision-making model into CMA guidance (Q65-Q66). Separation between the officer who proposes an infringement and those who decide it is a procedural protection, not an administrative formality.
- Widening the categories of document the CMA may withhold on access to file (Q75), and disapplying access to file entirely in settlement cases (Q77).
- Requiring settling parties to waive their right of appeal as a binding condition in the Rules (Q68).
- A fixed penalty cap of only £300,000 for undertakings with no or unrepresentative turnover (Q85). This is far too low to deter.

2.3 The cumulative point

Individually, many of these proposals are defensible. Cumulatively, they move in one direction. Chapter 1 makes claims harder to certify and adds a fee to file them. Chapter 2 narrows the intensity with which regulators' decisions can be challenged. Chapter 3 moves procedural protections from binding rules into guidance written by the enforcing authority. Each step is presented as efficiency. The aggregate is a system in which it is harder to bring a case, harder to challenge a regulator, and harder to see what the enforcer did.

We ask the Department to assess this package as a package, and to publish an impact assessment that quantifies the effect on consumers and small businesses — not only the effect on defendants, regulated companies and the public bodies whose processes are being streamlined.

3. The Wider Context

3.1 The trust deficit is an economic problem, not merely a moral one

The FCA's Financial Lives Survey (May 2025) records that only 39 per cent of adults have confidence in UK financial services, and only 36 per cent believe most financial firms are honest and transparent. Comparable deficits exist across the regulated utilities. Public confidence in the water sector in particular has reached a level that prompted an independent commission into the regulatory system itself.

This matters directly to the Department's growth mission. Consumers who do not trust markets do not participate in them fully. Investors who cannot see whether rules are enforced discount the jurisdiction. The trust deficit is a drag on growth, and closing it requires demonstrating — consistently, and through outcomes people can see — that when things go wrong there is a route to redress and that the route works.

We describe this as the trust dividend. Consumer protection and sector growth are interdependent, not opposed. A regime that returns money to people who were harmed, visibly and reliably, generates confidence. A regime that filters those people out at the door does not, however efficiently it does so.

3.2 The pattern we have seen before

TTF has consistently documented a pattern: harm is identified, early warning signs are disregarded, the framework is loosened in the name of growth or burden reduction, and by the time reform occurs the scale of detriment has multiplied.

- London Capital & Finance: 11,600 bondholders lost £237 million.
- Woodford Investment Management: investors lost £3.7 billion.
- British Steel Pension Scheme: 7,700 people mis-sold.
- Motor finance: systematic wrongdoing affecting millions of consumers, with whistleblower evidence available from 2016.
- PPI: the largest retail financial mis-selling scandal in UK history, requiring a decade of redress activity.

In each case the framework existed. The rules were on the books. What failed was the willingness to use them, and the accessibility of the routes by which those harmed could act for themselves. Private collective redress exists precisely because public enforcement, however well-intentioned, does not compensate victims. Regulatory fines enrich the Exchequer. They do not put money back in people's pockets.

3.3 The lobbying landscape and the evidential standard

This review has attracted substantial, well-resourced advocacy from organisations whose funding derives predominantly from defendant-side corporate interests. Their consistent message is that the regime has produced an explosion of claims and an unfair burden on business.

We do not question anyone's right to make that argument. We ask only that the Department apply the same evidential standard to it that it would apply to ours. On the Department's own account, the regime has produced a modest number of claims over a decade, roughly half of which are brought on behalf of businesses rather than individual consumers, before a tribunal that has refused certification, struck out claims, removed and declined to authorise class representatives, and adjusted funder returns. That is a functioning filter, not an absent one.

Where this consultation cites evidence, it should cite it in full. Where it relies on stakeholder feedback, it should say how many respondents said what, and from which side of the litigation. We invite the Department to publish an anonymised breakdown of Call for Evidence and consultation respondents by category — claimant-side, defendant-side, funder, consumer body, academic, individual — so that the weight properly attaching to each strand of feedback can be assessed by anyone reading the response document.

3.4 Continuity with TTF's October 2025 Call for Evidence response

We record, for the Department's convenience, where this consultation adopts positions TTF advanced in October 2025 and where it departs from them.

Adopted:

- Permitting damages-based agreements.
- Legislating CMA redress powers with appeal rights.
- Encouraging ADR at mid-stage via CAT direction rather than mandating it pre-filing.
- A central, authoritative portal listing live claims.
- Rejecting hard caps on funder returns in favour of case-by-case judicial assessment.

Not adopted:

- Expanding the regime beyond competition law to other areas of dispersed harm. We accept the Department's decision to await the Law Commission, but ask that the review of the competition regime not be used to pre-empt that work by narrowing the model the Law Commission would be examining.
- An Access to Justice Fund seeded by undistributed damages. We return to this at Q37.
- Restitutionary and exemplary damages.

Where the consultation moves against positions TTF took:

- We said the existing statutory certification criteria were appropriate and that codifying case law into guidance was preferable to more rigid statutory rules. The consultation proposes the opposite at Q4-Q5.
- We said the CAT's settlement oversight was already sufficient and that expanding it risked cost and delay. The consultation proposes automatic cost-shifting offers and a compressed approval process.
- We said that if immunity for leniency applicants were considered, it should be subject to the proviso that victims receive compensation from other cartel members. The consultation's set-aside test is materially weaker than that.

4. Chapter 1 — Opt-out Collective Actions

Class representatives (Q1-Q3)

Q1. Do you agree that greater certainty is needed at this time in relation to the authorisation of class representatives?

TTF Position: QUALIFIED YES — but no legislative or CAT Rules change is needed. The existing framework and the case law developing under it are working. What would help is consolidation of that case law into guidance.

We want to be precise about what we are and are not supporting, because this question is capable of being read as an invitation to raise the threshold.

The current Rules, and the body of case law the CAT is generating by applying them, already provide a sufficient framework. Riefa v Apple demonstrates that the CAT will decline to authorise a proposed class representative who does not understand the arrangements they have entered into. The joint Amazon judgment demonstrates that the CAT will set expectations about costs scrutiny. The system is doing what it was designed to do, and legislative intervention in this area would not be proportionate.

What is genuinely lacking is consolidation. Requirements articulated across a series of judgments are difficult to read as a whole, and the resulting uncertainty is expensive. It drives proposed class representatives to over-specify — retaining costs specialists, standing up consultative panels, commissioning advice — in order to cover every base, before certification and therefore before any of that expenditure is recoverable. Those costs ultimately fall on the class, because they come from the pot that would otherwise be distributed.

So our answer is yes to clearer expectations, no to new obligations, and no to putting any of this into legislation or the Rules. We note the Department has said it does not intend to create new requirements for class representatives. We hold it to that.

Recommendation: the Department should confirm in terms that clarification of class representative requirements is not intended to raise the threshold for authorisation, and should ask the CAT to state expectations in a way that is proportionate to the size and complexity of the individual claim.

Q2. Which of the key areas identified do you agree would benefit from greater certainty?

TTF Position: All three, plus two additions.

- Role in funding arrangements — yes. Riefa established that a proposed class representative must understand what they have signed. What is unclear is the depth of understanding required and how it is to be evidenced.
- Use of costs lawyers — yes. The joint Amazon judgment indicated independent costs specialists should be standard. Whether that is now effectively mandatory, and in what size of claim, needs to be stated.

- Consultative panels — yes, and this is the area of greatest uncertainty. Judgments have scrutinised the existence of a panel, its meeting frequency and the expertise of its members, without any published standard against which those matters can be assessed.
- Other: communication with the class. There is currently no articulated expectation about how a class representative keeps class members informed during proceedings. This matters more than any of the above for take-up at the distribution stage.
- Other: the independence of the class representative from both the funder and the legal team, expressed as a positive standard rather than only as a ground for refusal.

Q3. What mechanism do you consider would be most helpful in providing increased clarity?

TTF Position: Consolidated CAT guidance or a practice direction — not amendment of the CAT Rules, and certainly not primary legislation.

The requirements have developed through case law and continue to develop. Freezing them into the Rules at this point would lock in a snapshot of a moving picture and would create satellite litigation about compliance with the Rule rather than about the substance. Guidance can be updated as the case law evolves; the Department's proposal to review the CAT Rules at least triennially provides the mechanism for periodic consolidation into the Rules where a principle has genuinely settled.

Recommendation: the CAT should publish consolidated guidance on class representative authorisation, developed with input from the CAT User Group and from consumer organisations, covering all five areas listed at Q2. It should be scaled to claim size, so that a modest claim is not required to carry the governance apparatus appropriate to a claim of hundreds of millions of pounds.

Certification (Q4-Q6)

Q4. Do you agree that specifying that "suitability" should relate to absolute suitability, and that this will ensure merits are considered as part of the certification threshold, providing a more meaningful filter?

TTF Position: NO. We oppose this proposal. It is the most consequential change in Chapter 1 and, in our assessment, would materially alter the function of certification as the gateway to opt-out redress.

The Supreme Court in Merricks held that certification is not a merits test, save in the specific contexts of choosing between opt-in and opt-out and of strike-out. The consultation states that the intention of the change is to "lock in consideration of merits as part of the threshold as laid out in statute". That is a substantive change to the present approach, and it should be recognised as such rather than presented as a clarification of what suitability means.

Our objection is not to the principle that unmeritorious claims should be filtered out. It is to changing the certification threshold from relative to absolute suitability without a sufficiently developed evidential basis for concluding that the present filter is inadequate or that an absolute suitability test would improve outcomes overall.

The timing problem.

Certification occurs before disclosure. In a standalone abuse of dominance claim — which the consultation confirms is the typical case — the evidence of the abuse sits inside the defendant. The class representative has published material, expert economic inference and whatever the regulator has said. The defendant has everything else. Requiring the CAT to assess prospects of success at that point does not test the claim; it tests the asymmetry of information between the parties, and the party with less information loses.

This is precisely the reasoning of the Merricks majority, and precisely why the minority view — which the consultation adopts — did not prevail.

The satellite litigation problem.

A statutory merits threshold at certification will be litigated. Every certification hearing becomes a mini-trial on prospects of success, with expert evidence on both sides, appealed as a matter of routine because the stakes are terminal. The Department's stated objective is swifter and simpler proceedings. This proposal produces slower and more expensive ones. Respondents to the Call for Evidence raised exactly this concern and the consultation acknowledges it at paragraph 27 without answering it.

The Evans v Barclays point.

The Supreme Court decided Evans v Barclays in December 2025. It held that the CAT was right to consider the strength of the claim in choosing between opt-in and opt-out, that there is no presumption in favour of opt-out, and that vindication and deterrence are not strong factors in every case. That is a significant rebalancing, delivered by the Supreme Court, eight months before this consultation was published. The CAT has since refused certification on cost/benefit grounds in Waterside Class Limited v Mowi and others.

The case for legislative change therefore requires more evidence. The present approach has only recently been recalibrated by the Supreme Court and applied by the Tribunal, and the consultation does not, in TTF's assessment, provide a systematic comparative analysis of the experience of opt-out class actions in other common-law jurisdictions, including Canada and

Australia, particularly on certification and the practical consequences of different certification thresholds. Before moving from relative to absolute suitability, the Department should establish what the evidence from those jurisdictions shows and how far it is transferable to the English regime.

Recommendation: do not proceed with the absolute suitability proposal at this stage. Allow the effect of Evans v Barclays and the Pro-Sys "blueprint to trial" requirement to be assessed over a defined period — we suggest three years — and commission independent empirical research on certification outcomes. That research should include a systematic review of relevant common-law jurisdictions, including Canada and Australia, addressing how certification operates in practice, what evidence is required at that stage, how often certification is refused or contested, whether merits-based certification generates satellite litigation or delay, and what effect the different approaches have on access to consumer redress. TTF also considers it appropriate to await the Law Commission's systematic work on consumer class actions before making a broader policy judgment about the design of opt-out collective redress. If, after that work and evidence-gathering, the Department concludes a statutory change is needed, it should be consulted on separately with a full impact assessment quantifying the number and type of claims that would no longer proceed.

Q5. Do you agree that making the cost benefit analysis part of the statutory certification threshold test will guard against the risk of claims being brought that carry disproportionate cost when compared to the benefit delivered to the underlying class?

TTF Position: NO. The diagnosis is right. The remedy is aimed at the wrong stage of the process.

We accept the premise. The outcome in Gutmann v SSWT — approximately £216,000 reaching class members against more than £10 million to other stakeholders, on take-up below one per cent — is indefensible and TTF says so without reservation. A regime that produces that ratio is not delivering what Parliament intended.

But that was not a certification failure. The claim was properly brought, the infringement was real, the class was real and the money was there. What failed was distribution. Fewer than one in a hundred eligible people claimed. The response to a distribution failure is to fix distribution — which Chapter 1 Section 5 of this consultation begins to do, and which we strongly support — not to prevent the claim from being brought in the first place.

Why elevating cost/benefit is the wrong lever.

The regime exists because individual losses are too small to litigate individually. That is its entire premise. A statutory threshold weighted towards cost/benefit, expressly including "likely take-up by the underlying class", will operate hardest against exactly the claims the regime was designed for: very large classes, very small individual losses, historically low take-up rates.

Applied honestly, the test would have blocked Gutmann. Applied honestly to a future rail, energy or financial services claim with a class of millions and an individual loss of a few pounds, it will block that too. The Department would in effect be legislating a threshold below which unlawfully obtained gains may be retained because it is not worth the trouble of recovering them. We do not believe that is the intention. We believe it would be the effect.

The deterrence dimension.

Cost/benefit as currently framed in Rule 79 measures the benefit to the class. It does not capture disgorgement or deterrence. A claim that strips a dominant firm of £25 million in unlawful gains has delivered a benefit even if distribution is imperfect, because the alternative is that the firm keeps the money. If cost/benefit is to be given greater weight, the statutory formulation must require the CAT to weigh deterrent and disgorgement value alongside per-capita return.

Recommendation: do not elevate cost/benefit into the statutory threshold. Retain it as one of the Rule 79 factors. Instead, make an evidenced distribution plan — with a realistic take-up estimate, a communications strategy, defendant cooperation where available, and a specified mechanism for undistributed sums — a condition of certification. That addresses the Gutmann problem at the point where it is actually soluble.

If the Department nonetheless proceeds, the statutory test must expressly require the CAT to weigh deterrence and disgorgement value, not only anticipated per-capita distribution.

Q6. Do you agree that the Tribunal should consider whether there is sufficient evidence for aggregate damages as one of the factors relevant to certification?

TTF Position: QUALIFIED YES — if this means a credible methodology, and NO if it means proof of quantum.

It is reasonable for the CAT to satisfy itself that there is a workable route to assessing damages on an aggregate basis. The Pro-Sys "blueprint to trial" standard already requires a plausible methodology, and adding this as an express Rule 79(2) factor codifies existing practice.

The risk is drift. "Sufficient evidence for assessment of damages on an aggregate basis" could be read as requiring the class representative to prove quantum before disclosure, which is impossible and which Merricks expressly held should not defeat certification. The wording matters.

Recommendation: if this factor is added, it should be expressed as whether there is a credible and workable methodology for assessing damages on an aggregate basis, capable of being

applied once disclosure and expert evidence are complete. It should not be expressed in terms of sufficiency of evidence, which invites a quantum trial at certification.

Financing a claim (Q7-Q9)

Q7. Will permitting DBAs increase options/competition for the financing of claims?

TTF Position: YES. TTF called for this in our Call for Evidence response and welcomes the proposal.

The regime is currently dependent on a single commercial market. The consultation records that a claim now needs a quantum of around £500 million to attract funder backing, and gives an example of a viable follow-on action with a quantum of around £230 million that could not be brought because it was too small to fund. That is a justice gap of considerable size, sitting immediately below the threshold of commercial viability.

Permitting DBAs introduces a second source of risk capital with a different cost base and a different risk appetite. The Victorian experience since 2020 indicates funding rates fall and claimant returns improve where contingency fees are permitted alongside third-party funding. Competition between funding models should reduce the cost of finance, and the cost of finance is ultimately borne by the class.

Q8. Are there sufficient safeguards to protect against speculative litigation?

TTF Position: YES — under the existing framework, and without the Q4 and Q5 changes.

Under a DBA the law firm is paid nothing unless the claim succeeds. That is a powerful commercial discipline and it aligns the firm with the class in a way that a multiple-based funding agreement does not. Combined with the loser-pays rule, the existing certification requirements, the Pro-Sys blueprint standard, the CAT's power to strike out, and the recalibration effected by Evans v Barclays, the safeguards are sufficient.

We note the Department relies at paragraph 45 on the proposed revision of the certification threshold as a safeguard justifying DBAs. We do not accept that linkage. DBAs are justified on their own merits, and the certification changes are objectionable on their own merits. The two should not be traded against each other.

Q9. Are there other risks of permitting DBAs to the regime that the government should consider?

TTF Position: YES — three risks, each manageable. But we begin with a point that runs the other way, because it is the strongest argument for DBAs and the consultation does not make it.

The prohibition on DBAs has itself harmed consumers.

DBAs were prohibited in 2015 on the basis that a percentage-based fee would see a disproportionate share of a very large award going to lawyers. The reasoning assumed that awards would be very large. In practice they have not been. Settlements and awards have generally come in well below the headline figures pleaded.

The consequence is the opposite of what was intended. Because claims are run on hourly rates rather than on a percentage, the costs are fixed in absolute terms and do not scale down when the recovery does. Where the recovery disappoints, hourly-rate costs and the funder's return consume a large proportion of it, and the class receives what is left. The Gutmann v SSWT distribution — approximately £216,000 to class members against more than £10 million to other stakeholders — is the clearest illustration available, and it occurred under the very prohibition that was supposed to prevent stakeholders taking a disproportionate share.

A DBA reverses that risk allocation. The class's share is fixed as a proportion of whatever is actually recovered, so a disappointing outcome is shared rather than absorbed entirely by the class. It also aligns the legal team with the size of the recovery in a way that an hourly rate does not.

This is directly relevant to the certification proposals at Q4 and Q5. The Department has correctly identified that too little money reaches class members. Permitting DBAs addresses that from the funding side, and does so without preventing any claim from being brought.

Recommendation: the Department should state expressly in its response that permitting DBAs is a consumer protection measure as well as an access to justice measure, and should test this proposition against actual outcome data from concluded claims — recovery against pleaded quantum, and the proportion of recovery reaching class members — rather than against the assumptions made in 2013.

The three risks we identify, all manageable:

- Conflict at settlement. A firm on a DBA has a direct percentage interest in the settlement sum and in the timing of payment. That interest may diverge from the class's interest in holding out for a better outcome. This is a known feature of contingency fee regimes and is manageable through CAT scrutiny, independent costs oversight and consultative panel input, but it should be addressed expressly rather than assumed away.
- Conduct risk. The consultation notes SRA investigations into law firms handling high-volume consumer claims, concerning transparency, client interests and management of safeguards. Those investigations do not concern DBAs or the CAT,

but they indicate where the pressure points lie. The FCA and SRA experience of claims management conduct should inform the design.

- Percentage cap. The Department should consider whether a cap on the DBA percentage recoverable in opt-out proceedings is appropriate, set at a level that preserves commercial viability. We do not advocate a hard cap on third-party funder returns — our Call for Evidence response opposed that, and we maintain that position — but a solicitor acting under a DBA occupies a different position from an arm's-length funder, and is already subject to professional conduct rules.

Recommendation: permit DBAs; require full disclosure of DBA terms to the CAT at certification on the same basis as litigation funding agreements; require a plain-language summary of the funding and fee arrangements to be made available to class members; and require the class representative's consultative panel, where one exists, to be consulted before any settlement is accepted where a DBA is in place.

Preserving the use of litigation funding (Q10-Q12)

Q10. Will an indication of reasonableness of funder returns and order of payment at the point of certification be likely to increase certainty for funders and reduce the risk of their withdrawal from the regime?

TTF Position: QUALIFIED YES — provided the indication is genuinely indicative and not a binding pre-approval.

We accept the underlying point. Funders price uncertainty, and the price is paid by the class. If the CAT can reduce uncertainty at low cost to the class, it should. An indication at certification is a reasonable way to do that.

Our concern is that an early indication hardens into an entitlement. The consultation preserves the CAT's discretion to revisit the assessment where there is a notable change, but then adds that returns "should also be considered in the context of information available to parties to the LFA at the time of entering the agreement". That qualification pulls in the opposite direction and risks insulating an early indication from later scrutiny even where the outcome turns out to be disproportionate to what the class actually receives.

Recommendation: the CAT Rules should make clear that an indication at certification is provisional; that the CAT retains an unqualified discretion to assess reasonableness at the conclusion of proceedings by reference to the actual outcome; and that the reasonableness of a funder's return falls to be assessed in the round, including by reference to the proportion of the recovery reaching class members.

Q11. Will a presumption that funders will receive their return at the point of a damages award being ordered or settlement sum being approved be likely to increase certainty for funders and reduce the risk of their withdrawal from the regime?

TTF Position: NO. We oppose this proposal.

It will increase certainty for funders. That is not the test. The test is whether it is right, and in our view it is not.

The consultation itself states, at paragraph 51, that "opt-out collective actions should primarily be for the benefit of the underlying class". A presumption that the funder is paid in full at the moment of award or approval, before distribution has occurred and therefore before anyone knows how much has reached class members, is inconsistent with that principle. It converts the class from the primary beneficiary into the residual one.

The practical consequence follows directly from the Gutmann arithmetic. Where take-up is low, a presumption of payment ahead of distribution guarantees that the funder receives the return calculated on the headline sum while class members receive a fraction of theirs. The party bearing the risk of poor distribution should not be the party that was harmed.

We also note the incentive effect. If funders are paid before distribution concludes, no stakeholder in the proceedings has a financial interest in take-up being high. Every proposal in Chapter 1 Section 5 aimed at improving distribution works against that grain. The Department should be aligning incentives towards distribution, not removing them.

Recommendation: reject the presumption. Instead, provide expressly in the CAT Rules for a tiered return mechanism: the CAT may order repayment of the funder's deployed capital at the point of award or settlement approval, but any funder uplift should remain contingent on satisfactory distribution and be payable only on conclusion of distribution. The CAT should have discretion to permit an appropriate proportion of the uplift earlier only where the circumstances justify it, and in exercising that discretion should have regard to the proportion of the sum that has reached class members. This addresses the genuine time-value concern funders raise while retaining an incentive to maximise distribution and keeping the class as the primary beneficiary.

If the Department considers that some further certainty is required, the minimum safeguard should be that the funder's deployed capital may be returned on award or settlement approval, but the uplift is not treated as earned or payable until distribution has satisfactorily concluded.

Q12. Does the proposed approach retain sufficient discretion for the CAT to safeguard against unfair outcomes?

TTF Position: NO, as drafted.

The proposal reserves discretion to the CAT only "where there is a demonstrable risk that this approach would result in an unjust outcome". A demonstrable risk of injustice is a high threshold, and the burden of demonstrating it would in practice fall on nobody — the class is unrepresented at that point except through a class representative whose funding agreement is the very instrument in question.

Combined with the Q10 qualification about information available at the time the agreement was entered into, the two proposals together substantially narrow the CAT's room to protect the class at the point where protection matters most.

Recommendation: any presumption should be rebuttable on the ordinary balance of what is fair, just and reasonable — the standard the CAT already applies to settlement approval under Rule 94 — and not on a demonstrable risk of injustice standard.

Costs (Q13-Q14)

Q13. Do you consider changes to the CAT Rules to be necessary in addition to ongoing work by the CAT to develop guidance in relation to costs in collective proceedings?

TTF Position: YES — for the defendant budget requirement specifically.

The asymmetry the consultation identifies is real and one-sided. The class representative must produce a costs budget to trial as part of demonstrating suitability. The defendant produces nothing. That asymmetry has a direct practical consequence: a class representative cannot properly scope after-the-event insurance without knowing the scale of the adverse costs risk, and cannot price the risk of continuing without knowing what the other side is spending.

This is not merely an information imbalance. It is a strategic asset. A defendant that knows the claimant's budget and can conceal its own can calibrate expenditure to exhaust the claimant. The consultation records claimant-side reports of exactly this — a "scorched earth approach", litigating every point to drain budgets — and defendant-side reports of repeated attempts at certification. Both complaints are credible. Both are addressed by transparency.

Recommendation: amend the CAT Rules to require both parties to file costs budgets following certification, with an obligation to notify the CAT of material variation. Guidance alone is insufficient because the requirement needs to bind, and because the CAT should not have to negotiate it case by case.

Q14. Would increased oversight of budgets be likely to have a positive effect on their stability and transparency?

TTF Position: YES.

Budget transparency has a disciplining effect independent of any sanction. A party that must explain a doubling of its budget to the tribunal is less likely to double it. The consultation cites an example of a class representative's budget doubling within months of certification; visibility would have surfaced that at the time rather than at the end.

We support the proposed costs sanctions for conduct that unreasonably drives up costs, and we emphasise that they must be symmetrical. The consultation lists tactics from both sides. The Rules should not be drafted in a way that reads as directed only at claimants.

Recommendation: the costs sanctions provision should be expressed neutrally and should expressly capture both repeated unmeritorious challenges at certification and disproportionate defence of every issue. The CAT should publish, annually and in anonymised form, data on costs budgets filed, variations notified and sanctions applied.

Alternative dispute resolution (Q15-Q17)

Q15. Should mediation be encouraged or mandated at set points of proceedings as a matter of course?

TTF Position: YES — encouraged, and capable of being required, after the exchange of expert reports. Not before.

This is the position TTF took in our Call for Evidence response and we are pleased the consultation has reached the same conclusion. ADR is effective when both parties can price the risk. Before disclosure and expert evidence, they cannot: the information asymmetry means the parties are not negotiating about the same case. Mandatory pre-filing ADR, as operates in some jurisdictions, adds cost and delay without producing settlements.

Post-expert-report is the right trigger. At that point both sides have seen the documents and the economic analysis, the range of outcomes is visible, and mediation can do real work.

Recommendation: adopt the proposal as framed. In addition, the CAT should be empowered to direct mediation at any later stage where it considers it likely to assist, and to direct that a party attend with someone authorised to settle.

Q16. Are these case management powers likely to have a meaningful impact on bringing parties together?

TTF Position: YES, with the caveat that the effect will be moderate rather than transformative.

The English and Welsh experience following Churchill v Merthyr Tydfil and the 2024 Civil Procedure Rules amendments suggests courts ordering engagement in ADR does change behaviour, but that the change is incremental. In collective proceedings the additional obstacles the consultation identifies — the scale of the sums, the fact that standalone abuse claims go to the heart of a defendant's business model, and the loss of privacy created by the approval requirement — will not be removed by a mediation order.

The larger lever is the costs consequence at Q17, not the power to order mediation itself.

Q17. Do you agree that, if a party unreasonably fails to engage in ADR when encouraged or ordered to do so by the CAT, this conduct should be taken into account when considering costs, with the potential for penalties?

TTF Position: YES.

The Kent v Apple consequentials outcome illustrates the gap. The claimant made a Calderbank offer; the defendant did not accept it and did not engage; the CAT found that unhelpful but not unreasonable; no costs consequence followed. If failing to engage at all in settlement dialogue in a claim of that value does not reach the threshold, the threshold is not doing any work.

A party that declines to engage should have to explain why, and an unpersuasive explanation should carry a costs consequence. This must apply to both sides equally.

Settlement (Q18-Q21)

Q18. Should there be differences in how settlement offers with automatic cost shifting consequences operate in collective proceedings, compared with Rule 45 offers in other kinds of claim?

TTF Position: YES. Substantial differences are required.

The reason Rule 45 offers were excluded from the opt-out regime was that automatic cost shifting could create conflicts within the class and put unreasonable pressure on the class representative. The consultation argues that the regime has matured and that class representatives are now better supported. Both points are true. Neither eliminates the structural difference.

A class representative is not a normal claimant. They do not own the claim; they hold it for a class of people who are not present, who cannot be consulted individually, and whose interests may not be uniform. A costs consequence that would fall on the class — or on the funder, and therefore ultimately on the class's share — creates a pressure to accept an offer that an individual claimant weighing their own money would refuse.

The asymmetry runs the other way too. A defendant making a Rule 45-style offer knows the class representative faces this pressure. That is a negotiating advantage that does not exist in bilateral litigation.

Recommendation: if a mechanism of this kind is introduced, it should differ from Rule 45 in the following respects: the CAT should retain a discretion to disapply the costs consequence where the class representative acted reasonably in declining; the consequence should never fall personally on the class representative; the class representative should be required to take independent advice and, where a consultative panel exists, to consult it before declining an offer above a specified threshold; and the mechanism should be available symmetrically to both parties.

Q19. Are there additional safeguards that should be considered to avoid undue pressure on class representatives to settle?

TTF Position: YES.

- Independent advice on any offer above a specified proportion of the pleaded claim, funded as a recoverable cost.
- Mandatory consultation with the consultative panel, where one exists, before declining or accepting such an offer.
- An express provision that the class representative bears no personal costs liability arising from the operation of the mechanism.
- A requirement that the funding agreement or DBA may not confer on the funder or the law firm a right to direct the response to a settlement offer.
- CAT discretion to disapply the costs consequence where refusal was reasonable in the interests of the class, judged at the time of refusal and not with hindsight.
- An express provision that the existence of a costs-shifting offer does not relieve the CAT of its Rule 94 obligation to satisfy itself that any resulting settlement is fair, just and reasonable.

Q20. Is it likely that introducing settlement offers with automatic cost shifting consequences, akin to Rule 45 offers, will have a meaningful impact upon the willingness of parties to engage in settlement discussions?

TTF Position: NOT SURE — and the evidence base is thin.

There have been very few settlements in the regime and only one distribution. Drawing conclusions about what would change behaviour is largely speculative on all sides. The Kent v Apple example suggests the current Calderbank threshold is too high to bite, which is an argument for lowering the threshold rather than necessarily for automatic consequences.

Recommendation: consider first whether the existing Calderbank mechanism can be given effect through clearer guidance on what constitutes unreasonable conduct, before introducing automatic consequences with the attendant risks at Q18. If automatic consequences are introduced, commit to reviewing their operation within three years, with published findings including data on settlements reached and class member outcomes.

Q21. Do you consider it to be necessary to make changes to the settlement approval process at this time to increase efficiency?

TTF Position: NO — this is an area that would benefit from review in due course.

This is the answer TTF gave in the Call for Evidence and we maintain it. The CAT has overseen a handful of settlements. There is not yet a body of practice from which to identify what is inefficient as opposed to merely unfamiliar. The consultation itself acknowledges at paragraph 84 that development of the process is still in its early stages.

Rule 94 approval exists because in opt-out proceedings only the class representative is at the negotiating table. It is the single mechanism protecting the absent class from a settlement that suits the represented parties and not them. Compressing it before there is evidence about what causes delay would be a poor trade.

Recommendation: defer changes. Ask the CAT to publish, after a defined period or a defined number of settlements, an assessment of where time is actually being taken in the approval process, and consult on any changes at that point.

Empowering the CMA to order redress (Q22-Q27)

Q22. Do you agree that the simpler approach outlined in relation to assessing quantum is likely to make the use of redress schemes less burdensome?

TTF Position: YES on burden — with a significant condition on the presumption itself.

A presumed level of overcharge, based on OECD guidance and academic evidence, removes one of the principal obstacles to redress schemes: the cost and contestability of quantifying loss. We support that.

The condition is this: the presumption must operate as a floor, not a ceiling. TTF has extensive experience of standardised redress methodologies in financial services, and the pattern is consistent. A methodology introduced to simplify calculation becomes, in practice, the maximum anyone receives, and it is set at a level that suits the paying party. In the motor finance context we have set out at length our concern that a scheme-designed calculation systematically under-compensates relative to the loss actually suffered. The same risk arises here.

Recommendation: the presumed overcharge should be expressed as a minimum; the methodology and its evidential basis should be published in full; it should be reviewed at least every three years against the current empirical literature; and any party entitled to redress should retain the right to demonstrate a greater loss.

Q23. What changes to the Competition Act 1998 (Redress Scheme) Regulations 2015 could be made to simplify requirements for redress schemes?

TTF Position: Substantive response below. No statutory voluntary redress scheme has been approved in over a decade. That is a total failure of the instrument and warrants root-and-branch simplification.

- Replace the bespoke application process with a standard template scheme, pre-approved in outline, that a business may adopt with limited variation. Bespoke design is the principal cost.
- Publish the CMA's approval criteria in full, so that a business can assess before it starts whether a scheme is likely to be approved.
- Impose a statutory time limit on CMA determination of an application for approval, so that uncertainty is bounded.
- Remove the requirement for a separate independent board where the scheme adopts the standard template and the presumed overcharge, replacing it with independent verification of implementation and outcomes.
- Require the scheme to be designed with input from a consumer organisation, and require the CMA to consult a consumer body before approving a scheme affecting consumers.
- Require publication of take-up data, sums offered, sums accepted and sums distributed, in a standard format, at defined intervals. Without this nobody can tell whether a scheme worked.
- Require the scheme to provide multiple claim channels including a non-digital route, and to be tested for accessibility with real users before launch.
- Provide a simple, free route by which a person who considers the scheme has been misapplied to their circumstances may have that reviewed independently of the business operating the scheme.

Q24. Do you consider that the protection from duplicative damages liability outlined is sufficient to incentivise use of redress schemes where an infringement of competition law has been found?

TTF Position: QUALIFIED — sufficient to incentivise, but the waiver mechanism as described is not adequately safeguarded.

We accept that businesses will not adopt redress schemes if they face paying twice, and that clarity on this point is necessary. Taking sums offered under a scheme into account when quantifying a subsequent claim is straightforwardly right.

The waiver of further actions is a different matter and requires care. TTF's experience of full and final settlement clauses in financial services redress schemes is that they are routinely presented to people who do not understand what they are giving up, at a moment when they want the matter closed, and in circumstances where the full extent of the wrongdoing has not yet been established. Where a scheme is designed by the infringing business around a presumed overcharge, a waiver signed on acceptance may extinguish a claim substantially larger than the sum accepted.

Recommendation: any waiver must be limited to the conduct actually addressed by the scheme and must not extend to related conduct not investigated; must be preceded by clear, tested, plain-language disclosure of what is being given up including the right to participate in collective proceedings; must not be capable of being made a condition of receiving any part of the redress offered; and must not operate where the CMA subsequently establishes that the infringement was wider than the scheme assumed.

Q25. Do you agree that a power for the CMA to direct the establishment of a redress scheme will encourage the use of redress schemes on a voluntary basis?

TTF Position: YES. TTF called for CMA redress powers in our Call for Evidence response and supports this proposal.

The logic is sound: a business that knows a scheme may be directed anyway has an incentive to propose one on its own terms. The FCA precedent under section 404 FSMA demonstrates that a regulator can operate a mandatory redress power, and the existence of the power changes behaviour even when it is not used.

We ask the Department to be alive to two matters. First, resourcing: the concern raised when this was considered in 2013 — that it would divert the CMA from investigation and enforcement — has not gone away, and the power will be worthless if the CMA lacks capacity to use it. Second, appeal rights: our Call for Evidence response supported legislating CMA redress powers with appeal rights, and we maintain that a direction to establish a scheme must be appealable.

Q26. Do you agree that this framework could increase the likelihood of redress being made available to consumers without the need for litigation?

TTF Position: YES — and this is, in our view, among the most valuable proposals in the consultation.

Litigation is a poor mechanism for compensating large numbers of people who each lost a small amount. It is expensive, slow, and a substantial share of the recovery is consumed by the process. Where the CMA has already established the infringement, requiring the infringing business to pay redress directly is faster and cheaper and returns a far higher proportion of the money to the people who lost it.

We emphasise that this must complement private actions, not displace them. The consultation is right that redress schemes will tend to be used in straightforward cases where the affected range can be established clearly. The complex, contested and standalone cases will still require litigation, and the collective actions regime must remain viable for them. This reinforces our objections at Q4, Q5 and Q38.

Q27. Are there other ways to incentivise the use of voluntary redress schemes?

TTF Position: YES.

- A defined and published penalty discount for a business that proposes and implements an approved scheme, on the model of the settlement discount, so that the commercial calculation is explicit.
- Public recognition: the CMA should publish which businesses have provided redress voluntarily and what proportion of affected parties received it. Reputational incentive is real and costs nothing.
- Conversely, publication of cases in which redress was directed rather than offered.
- Express provision that a scheme may be proposed at any stage, including alongside a commitments decision, without that proposal being treated as an admission for other purposes.
- Consideration of a director-level accountability dimension: whether a business provided redress could be a relevant factor in the fitness assessment for a competition disqualification order.
- Guidance from the CMA, published in advance, on what it regards as an adequate scheme, so that businesses are not designing against an unknown standard.

Interaction with public enforcement (Q28-Q30)

Q28. Do you agree that it is necessary to intervene to support public enforcement work on cartels at this time?

TTF Position: NO — not on the evidence presented, and not by way of full immunity from civil litigation.

We accept that Type A leniency is important, that cartels are exceptionally hard to detect without insiders, and that Sir Peter Roth is right that proving a cartel by private action alone is exceptionally difficult. We do not dispute the premise. We dispute that full civil immunity is the answer, and we dispute that the case for it has been made.

The evidence does not establish causation.

The consultation shows Type A applications falling from an average of 21 a year in 2014-16 to eight a year in 2022-24, and infers that the growth in private claims is the cause. Other explanations are at least as plausible and are not examined: changes in CMA cartel enforcement activity and visibility over the same period, resource allocation, the effect of EU exit on multi-jurisdictional leniency strategy, and the composition of the CMA's caseload. The consultation also records that around half of cartel cases originate from the CMA's own intelligence work.

Most significantly, the consultation acknowledges that the CMA made changes specifically intended to increase Type A applications in October 2025 — nine months before publication. No data on their effect can yet exist. Legislating full immunity before the effect of the most recent intervention is known is premature.

The fairness objection.

Full immunity means a business that participated in a cartel, profited from it, and harmed consumers and other businesses, pays nothing to those it harmed — while its co-conspirators bear the whole liability. The consultation answers that joint and several liability preserves recovery. That is true in theory. In practice it means the victims recover from whoever remains solvent, and the immunised party retains its gains.

There is also a competitive distortion, which the consultation notes but does not resolve: an immunised firm may gain a decisive advantage over rivals bearing the full damages burden. The answer that all cartelists had an equal opportunity to apply first is not an answer to the market effect.

The EU comparison undercuts the proposal.

The EU considered this question and, in the 2014 Damages Directive, limited leniency recipients' liability to their own direct and indirect purchasers and protected leniency statements from disclosure. It did not grant full immunity. The UK implemented protections from joint and several liability and inadmissibility of leniency statements in 2017. The consultation notes these did not reverse the decline — but that is an argument that the decline has causes other than litigation risk, not an argument for going further than any comparable jurisdiction has gone.

Recommendation: do not introduce full immunity from civil litigation. Instead: (a) publish the evidence on which the causal link between private claims and declining Type A applications is asserted; (b) evaluate the October 2025 changes over a defined period; (c) consider intermediate measures short of immunity, such as a statutory cap on the immunity recipient's damages liability, or a contribution regime under which the immunised party's share is met first from the co-cartelists; and (d) if immunity is pursued, consult on it separately with a full impact assessment quantifying the compensation forgone by victims.

Q29. If introduced, are there additional protections you feel are necessary to ensure that the availability of immunity from civil litigation (a) isn't exploited and (b) doesn't frustrate avenues to seek redress?

TTF Position: YES — extensive protections would be essential.

- Immunity conditional on full compensation being available in fact. The immunity should not take effect unless and until the CAT is satisfied that the remaining undertakings are able to meet the whole of the damages otherwise recoverable. This is a materially stronger condition than the proposed set-aside power and it is what TTF called for in the Call for Evidence.
- No immunity for coercers. A party that coerced others into the cartel should not qualify, consistent with the existing Type C treatment.
- Immunity limited to the applicant undertaking, expressly excluding parent companies and affiliates not party to the application.
- A continuing cooperation condition, with immunity revocable for the whole period if the applicant fails to cooperate fully with the CMA or with subsequent private proceedings, including disclosure.
- An express duty on the immunised party to provide disclosure in private proceedings against co-cartelists, so that immunity does not become an evidential shield.
- No immunity in respect of conduct outside the scope of the leniency application.
- A contribution mechanism under which the immunised party remains liable to contribute to co-cartelists who have paid more than their share, so that the benefit is directed to the applicant's exposure to claimants rather than becoming a windfall against fellow wrongdoers.
- A sunset and review clause: the immunity provision should expire after five years unless renewed following published evaluation of its effect on both leniency applications and victim compensation.

Q30. Is it sufficiently clear when it would be appropriate and possible for the CAT to set aside immunity to enable recoverability of damages?

TTF Position: NO. The proposed test is neither sufficiently clear nor sufficiently protective.

The consultation says the CAT would retain power to set aside protections "where damages are otherwise unrecoverable from remaining undertakings", giving insolvency as the example. Several questions are unanswered. Does unrecoverable mean wholly or partly? At what stage is it assessed — before proceedings, at judgment, or at enforcement? Who bears the burden? What happens where the remaining cartelists are solvent but the recovery process would be disproportionately costly relative to the sums at stake, which is the ordinary situation in a consumer claim?

The practical problem is timing. Insolvency of a co-cartelist may become apparent only at enforcement, years after certification, by which point the claim will have been framed and funded on the basis that the immunised party is out of scope. A set-aside power exercisable at that stage is of little value.

Recommendation: if immunity proceeds, replace the set-aside power with a condition precedent as described at Q29 — immunity does not operate unless full recovery from the remaining undertakings is demonstrably available. Where a set-aside power is retained in addition, the CAT should be able to exercise it at certification on a prospective assessment, so that claimants know at the outset whom they are proceeding against.

Interaction with wider regulatory action (Q31-Q33)

Q31. Will it be sufficiently clear what other concurrent regulator(s) may be relevant to the claim?

TTF Position: QUALIFIED YES — with a safeguard for the cases where it is not obvious.

In most cases the relevant concurrent regulator will be apparent from the sector. In some it will not: claims touching payment systems, consumer credit, data and platform conduct may fall within more than one remit or within none clearly. The consultation defines a relevant concurrent regulator as any within whose concurrent competition remit a claim falls, which is workable but places the identification burden on the filing party.

Recommendation: the CAT should be able to direct notification of a regulator on its own initiative or on application, and a regulator should be able to request notification of claims in its sector as a standing matter. The CAT should publish a short list of the concurrent regulators and their sectors alongside the claim form guidance.

Q32. Is this step necessary to ensure harmony between private and public enforcement action?

TTF Position: YES.

The current position, in which only the CMA is notified, reflects the assumption that competition claims are a CMA matter. That assumption no longer holds. Claims before the CAT touch data protection, environmental, consumer and financial services issues alongside the central competition question, and the regulators with expertise in those areas currently have no systematic visibility of them.

We note in particular that the Financial Conduct Authority is a concurrent competition regulator. Claims concerning financial services conduct that are framed as abuse of dominance may bear directly on matters within the FCA's remit, and vice versa. Systematic notification is a modest step that would materially improve coordination.

Q33. Will this step be of benefit to claims brought that have clear sector-specific elements over and above the central competition issues?

TTF Position: YES — and we ask for one addition.

A concurrent regulator's written observations may be of real assistance to the CAT on technical sector matters. Our request is that those observations be public.

A regulator's view on a market it supervises, filed in proceedings brought on behalf of consumers of that market, is a matter of legitimate public interest. It may also be revealing about the regulator's own understanding of harm in its sector, which is information consumers and Parliament should have. Publication should be the default, subject to the CAT's ordinary confidentiality powers.

Recommendation: amend Rule 50 as proposed, and provide that written observations submitted by a concurrent regulator are published on the CAT website unless the CAT directs otherwise. Regulators should also be required to report annually on the claims of which they were notified and the observations they made.

Distribution (Q34-Q37)

Q34. Will the listing of claims on the CAT website increase trust and encourage take up?

TTF Position: YES — strongly. This is among the most valuable proposals in the consultation and TTF called for it in the Call for Evidence.

The Gutmann take-up rate of under one per cent has an explanation that the consultation identifies correctly: consumers have learned, rightly, not to give financial details to unsolicited communications about money they did not know they were owed. Every instinct that protects people from fraud also prevents them from claiming legitimate redress. Absent an authoritative way to verify that a claim website is genuine, caution wins.

An official listing on the CAT's own site solves this at negligible cost. It gives consumers a single trusted place to check, gives claim administrators something to point to, and gives journalists and consumer organisations an authoritative source.

There is a further benefit the consultation does not mention, and it matters. An authoritative listing allows a class member to establish that they are dealing with the class representative directly, rather than through a claims management intermediary that has attached itself to the claim and will take a proportion of their award for doing nothing the class member could not have done free of charge.

TTF has long experience of this pattern in financial services redress, where intermediaries have systematically inserted themselves between consumers and compensation they were already entitled to. The FCA has taken action on claims management conduct, phoenixing and fee transparency; the SRA has open investigations into the conduct of high-volume consumer claims, a point the consultation itself notes at paragraph 41. As collective proceedings become better known, the same pattern will emerge here unless there is an easy way for a class member to verify the legitimate route. The CAT listing is that way.

Recommendation: proceed, and go further. The listing should be prominent rather than buried; searchable by sector, product and date range so that a person can check whether they are in any live class; include the claim status and, where a distribution is open, the deadline; carry clear guidance on what a legitimate claim process will and will not ask for; and be promoted through consumer organisations, regulators and government channels rather than relying on people finding the CAT website unprompted. It should also list concluded distributions so that people who missed a deadline understand what happened.

Q35. Are there other ways to increase trust among class members that the government should consider?

TTF Position: YES.

- Standardised, plain-language, user-tested notification materials, with a common visual identity so that a legitimate notice is recognisable. Test them with real consumers, including those with low financial literacy and those who are digitally excluded, before use.
- A clear published rule that no legitimate claim process will ask for a password, a full bank login, or a fee — and prominent anti-fraud messaging on both the CAT listing and every claim site.
- Clear statements on every claim site and in every notification that class members do not need to use, and do not need to pay, an intermediary in order to claim what they are owed.

- Staged verification: eligibility should be confirmed before any payment details are requested, so that people are not asked to hand over financial information on the strength of a maybe.
- Multiple claim channels as standard, including telephone and postal routes, and assistance for those who need it.
- Partnership with trusted intermediaries — Citizens Advice, consumer organisations, sector regulators, trade unions, local authorities — to carry notifications through channels people already trust.
- Longer claim windows with staged reminder campaigns rather than a single notification.
- A requirement that the CAT publish take-up data for every distribution, so that what works becomes visible and can be learned from.
- Consideration of whether class members should be able to register a standing interest with the CAT, to be notified of future claims for which they may be eligible.

Q36. Are there ways to incentivise a collaborative approach between parties to maximise distribution that should be considered?

TTF Position: YES — and this is where the Gutmann problem is actually soluble.

The defendant usually holds the class list. It has the contact details, often the payment details, and an existing relationship in which its communications are opened. A notification from the company a person actually dealt with will outperform a notification from an unfamiliar claims administrator by a wide margin.

At present the defendant has no reason to help and every reason not to. Higher take-up means more money paid out. That incentive should be reversed.

- Where undistributed sums revert in whole or part to the defendant under a settlement, the CAT should treat the defendant's cooperation with distribution as a condition of approving that reversion.
- Costs: cooperation with distribution should be an express factor in the CAT's costs discretion.
- Direct credit: where the defendant holds live payment details — a utility, a transport operator, a subscription business — distribution by direct credit to the account should be the default, with an opt-out, rather than requiring an active claim.
- An evidenced distribution plan, including whatever cooperation has been agreed with the defendant, should be a condition of certification.
- The CMA and concurrent regulators should be able to take a defendant's conduct in distribution into account in subsequent regulatory dealings.
- Publication of take-up achieved, by claim and by defendant.

Q37. In light of the purpose of the regime and the likely interests of class members in claims brought under the regime, which organisation(s) do you consider would best benefit from undistributed damages?

TTF Position: OTHER — a dedicated Collective Redress Access to Justice Fund. If the Department will not create one, our order of preference is: a split between the Access to Justice Foundation and the Consumers' Association, then the Access to Justice Foundation alone.

TTF proposed a fund of this kind in our Call for Evidence response, modelled on the Ontario Class Proceedings Fund, and we renew that proposal here because this consultation makes the case for it stronger, not weaker.

Why a dedicated fund is the right answer.

The consultation identifies a justice gap: claims with a quantum below roughly £500 million cannot attract commercial funding, including a viable follow-on action of around £230 million that could not be brought. Meanwhile, undistributed damages from claims that were funded may run to very large sums, and the question the Department is asking is where to send them.

The obvious answer is to send them where they close the gap. A fund capitalised by undistributed damages, capable of financing meritorious claims that are too small for the commercial market, would recycle money derived from unlawful conduct into the enforcement of the law against unlawful conduct. It would reduce dependence on a single commercial funding market — a dependence the consultation itself describes as leaving the regime vulnerable. And it directly benefits the same population: consumers and small businesses harmed by anti-competitive conduct.

Such a fund could be administered by an existing body, could operate on a revolving basis with successful cases returning capital, and could apply a public interest test alongside a merits test, allowing it to support claims that are legally strong but commercially marginal.

If the Department will not create a fund.

Both named candidates have a real claim and neither is a complete answer. The Access to Justice Foundation supports the free legal advice sector, which is where people harmed by financial and consumer wrongdoing actually go for help, and it operates as a conduit so that many organisations benefit. Its Improving Lives Through Advice 2026 programme, funded from the Gutmann settlement, targeted the regions where the class members were. That is a genuine connection.

The Consumers' Association has a consumer focus, a super-complaints power, designated enforcer status, and direct experience as a class representative. Its work is closer to the subject matter of the claims.

That last point is also the difficulty. Which? is an active participant in this regime as a class representative. Making it the default recipient of undistributed damages from the regime creates an appearance of interest that would need careful handling, whatever the reality. We do not suggest any impropriety; we say the Department should think about how it would look, and how it would be managed, before designating a current market participant as the beneficiary of residual sums arising from proceedings of the kind it brings.

On balance, if a dedicated fund is rejected, we favour a split, with the Consumers' Association's share ring-fenced for consumer education, awareness of collective redress and research into distribution effectiveness rather than for general operating purposes, and with appropriate arrangements to manage the position where Which? is itself the class representative in the claim generating the sums.

Recommendation: create a Collective Redress Access to Justice Fund, capitalised by undistributed damages, to finance meritorious claims below the commercial funding threshold. In the alternative, split undistributed damages between the Access to Justice Foundation and the Consumers' Association, with the safeguards described above. In either case, publish annually what sums arose, where they went and what they achieved.

CAT fees (Q38-Q40)

Q38. How significantly do you consider the introduction of CAT fees would impact access to justice?

TTF Position: QUITE SIGNIFICANTLY, and in collective proceedings VERY significantly. We oppose the introduction of fees.

The Competition Appeal Tribunal exists, in this part of its jurisdiction, to provide redress for people who cannot afford to litigate. Charging for access to it, on a scale linked to the value of the claim, is in tension with that purpose.

The consultation offers two justifications. The first is revenue: the CAT's costs currently fall on the taxpayer. The second is behavioural: fees linked to claim value would encourage realistic pleading of quantum. Neither withstands much weight.

On revenue.

The CAT is a court. Courts are a public good funded from general taxation because access to justice is a public good. The consultation notes the CAT has three courtrooms and is under resource pressure. That is an argument for funding it properly, not for charging the people who need it. If the concern is that the burden falls on the taxpayer rather than on users, we note that the users in this jurisdiction include very large corporate defendants who are perfectly capable of bearing a cost, and consumers who are not.

On realistic pleading.

The proposition is that a fee calculated on claimed value will discipline headline damages figures. Perhaps. But the mechanism operates by making it expensive to claim the full loss. A class representative facing a fee scaled to quantum has a financial reason to plead less than the class actually lost. That is not a discipline on exaggeration; it is a discount on recovery, paid for by the class.

Who actually pays.

In an opt-out claim, the fee is paid by the funder and recovered from the damages. It therefore comes, ultimately, out of the class's share. In a jurisdiction where the acknowledged problem is that too little money reaches class members, adding a charge that reduces the sum available for distribution is difficult to reconcile with the Department's own stated aim of distributing more money to consumers and businesses who have been harmed.

Recommendation: do not introduce fees for collective proceedings. If fees are introduced elsewhere in the CAT's private litigation jurisdiction, publish a full access to justice impact assessment first, and commit to reviewing their effect on filings within three years with published data.

Q39. Do you consider it appropriate for fees to be restricted to private litigation?

TTF Position: NO — because we do not support fees in this jurisdiction at all, and because the restriction proposed does not protect the people who need protecting.

The consultation reasons that fees can be confined to applications where "the parties are typically sophisticated with access to significant budgets to bring high value, complex claims". That characterisation fits a section 47A claim between two large businesses. It does not fit a section 47B collective proceeding, where the sophisticated party at the table is representing millions of people who are not sophisticated, do not have significant budgets, and whose individual loss is measured in pounds.

If the Department proceeds, the distinction that matters is not public versus private litigation. It is collective versus individual.

Recommendation: if fees are introduced, exclude collective proceedings under section 47B entirely. In the alternative, set a low flat fee for collective proceedings, not linked to claimed

quantum, and provide for remission where the CAT considers a fee would impede a meritorious claim.

Q40. Do you believe the introduction of CAT fees would be beneficial to its efficient operation?

TTF Position: NO.

Fee income may increase the CAT's resources. It will not by itself increase courtroom capacity, judicial capacity or the number of ordinary members, which are the actual constraints the consultation identifies. Those require decisions about accommodation and appointments that can be taken now, independently of a fee regime, and should be.

There is also a signalling consideration. The CAT is widely regarded as a high-performing specialist tribunal and part of its standing rests on being accessible. A tribunal that is funded by charging claimants for entry, in a jurisdiction created to give ordinary people a route to redress, invites a question about whose tribunal it is.

Recommendation: resource the CAT properly from public funds. Publish what additional resource the CAT has requested and what has been provided.

Panel composition and CAT Rules (Q41-Q43)

Q41. Do you agree that there are decisions that could appropriately be made by a chair sitting alone or sitting with only one other panel member?

TTF Position: QUALIFIED YES — for procedural and case management matters.

The examples the consultation gives are persuasive. A purely legal question about part of a statement of case, or a case management conference concerned with directions, does not require three members. Convening a full panel for such matters consumes capacity and makes listing harder, which slows every other case.

The safeguard needed is a clear line between procedural matters, where flexibility is appropriate, and decisions that determine or substantially affect the outcome, where the collective expertise of a full panel is the protection.

Q42. Are there particular decisions or issues that should always be dealt with by a full panel of three with no exceptions?

TTF Position: YES.

- Authorisation of a class representative and certification, including any refusal of certification.

- Strike-out or summary determination of the whole or a substantial part of a claim.
- Approval of a settlement under Rule 94.
- Any decision on distribution, including the destination of undistributed sums.
- Determination of liability and any assessment of damages.
- Assessment of the reasonableness of a funder's return or a DBA, whether at certification or at conclusion.
- Any decision to set aside or apply immunity, if immunity for leniency applicants is introduced.
- Determination of a regulatory appeal transferred from the CMA under Chapter 2, including price control matters.

The common feature is that each of these decisions affects people who are not in the room. Where the tribunal is deciding for absent parties, the collective judgement of a full panel is not a formality.

Q43. Are there other ways to increase efficiency in decision-making by the CAT on discrete issues that should be considered?

TTF Position: YES.

- Increase capacity directly: appoint additional chairs and ordinary members, and address the courtroom constraint the consultation identifies. Three courtrooms, one of which is limited, is the binding constraint and no procedural reform will relieve it.
- Standard directions for common stages of collective proceedings, so that each case does not negotiate its own timetable from first principles.
- Published target timescales for each stage, with annual reporting against them.
- Greater use of remote and hybrid hearings for procedural matters.
- Consolidated published guidance on certification, funding and settlement, reducing the volume of argument about settled points.
- Extending the practice direction approach used for expert evidence in December 2025 — page limits, joint expert meetings — to other recurring sources of delay.
- A docketing approach so that the same chair manages a case throughout, reducing the time spent re-familiarising.

5. Chapter 2 — Simplifying the Regulatory Appeals Framework

TTF approaches this chapter from a specific standpoint. Economic regulators set the prices households pay for water, energy, post and air travel. Their decisions are among the most consequential financial decisions made about ordinary people by anyone, and they are made without those people having any say. The appeals framework is one of very few mechanisms by which those decisions can be tested.

At present, on the Department's own account, consumer bodies rarely use that mechanism because they cannot afford to lose. That is the central fact of this chapter and it shapes every answer below.

Appellate body (Q44-Q46)

Q44. Should Regulatory Appeals be transferred to the CAT?

TTF Position: YES — subject to three conditions.

The case is sound. The CMA is an enforcement body performing a quasi-judicial function, which is an awkward fit. A specialist judicial body with economic and financial expertise is better placed to review regulatory decisions. Consolidating appeals in one body should produce consistency across sectors and allow read-across of precedent, which currently does not happen. And the CMA's estimate that a large regulatory appeal consumes resource equivalent to two or three market studies, against average direct consumer benefits from the markets regime exceeding £1.7 billion a year, is a serious opportunity cost argument.

We attach three conditions.

- Resourcing. The CAT is already under capacity pressure on the Department's own account. Transferring an additional jurisdiction without additional chairs, ordinary members with sectoral expertise, and physical capacity will simply relocate the delay. The transfer should not take effect until the resource is in place.
- Consumer participation. The transfer is only a gain for consumers if consumer bodies can actually use the new forum. That depends entirely on Q56-Q57 and Q60-Q63.
- Transparency. CAT proceedings are more public than CMA inquiry group processes. That is an advantage and should be preserved deliberately: pleadings, decisions and, so far as possible, hearings should be publicly accessible.

Q45. Should the CAT have jurisdiction to determine price control matters in Telecoms Appeals?

TTF Position: YES.

The present arrangement, in which the CAT hears the appeal but must refer price control elements to the CMA, fragments a single dispute across two bodies and adds delay for no evident benefit. The CAT already determines complex economic and financial questions, including in excessive pricing claims. It should determine the whole case.

Q46. Would any amendments to the CAT Rules be necessary to ensure that Regulatory Appeals can be heard fairly and efficiently?

TTF Position: YES.

- Costs: express provision for costs capping and protective costs orders for consumer bodies and other public interest parties, whether appearing as appellants or interveners. See Q60-Q63.
- Intervention: a route for consumer bodies and representative associations to intervene proportionately, including on a written-only basis at low cost.
- Permission: published criteria for permission to appeal, and provision that a party is not exposed to adverse costs at the permission stage.
- Transparency: publication of notices of appeal, pleadings and decisions, subject to ordinary confidentiality protections.
- Timetabling: published target timescales, given that regulatory uncertainty during an appeal has real costs for consumers as well as companies.
- Expertise: provision for ordinary members with sectoral expertise to sit on regulatory appeals, and transparency about how panels are constituted.
- Duty of candour: an express obligation on the regulator to disclose material adverse to its own decision, reflecting the public law character of the jurisdiction.

Appeal standard and parameters (Q47-Q55)

Q47. Should Regulatory Appeals be determined in accordance with the standard of review set out in paragraph 204(a)?

TTF Position: QUALIFIED — we support harmonisation, but not harmonisation downwards, and the proposed standard is a reduction in some sectors.

Harmonisation is worth having. The current position, in which similar issues are decided under different standards in different sectors with no ability to read across, is genuinely costly and genuinely confusing. The 2024 Business Perceptions Survey figure — 15 per cent of businesses finding the appeals process easy and transparent — makes the point.

Our concern is the level at which harmonisation occurs. Judicial review principles with due account of the merits, as applied in Telecoms Appeals, is a real standard: the CAT assesses whether the decision was materially wrong, not merely whether it was rational. But it is a lower intensity of scrutiny than a redetermination, and it involves according an appropriate degree of respect to the regulator's expert assessment.

Where the decision under appeal determines what households pay, that deference cuts against consumers, because the regulator's judgement is precisely what is in issue. The consultation frames the benefit of harmonisation largely in terms of investor certainty. Consumer certainty — that a price control which is wrong can be effectively challenged — deserves equal weight.

Recommendation: adopt the harmonised standard, but state expressly in the legislation that taking due account of the merits requires the CAT to reach its own view on the evidence, and that the degree of respect accorded to the regulator does not extend to matters where the regulator's own duties towards consumers are in issue. Commit to reviewing the operation of the harmonised standard within five years, with published data on appeal outcomes by sector and by appellant type.

Q48. Should the notice of appeal set out the grounds of appeal and indicate whether the regulator's decision was based on an error of fact, an error of law, or an error in the exercise of the regulator's discretion?

TTF Position: YES — with a safeguard against technicality.

Requiring grounds to be specified focuses the appeal and is sensible. The risk is that categorisation becomes a trap: the boundary between an error of fact, an error in the exercise of discretion, and an error of law is not always clean, and a well-resourced respondent can spend considerable effort arguing that a ground was mislabelled.

Recommendation: provide expressly that the CAT may permit amendment of the categorisation of a ground where the substance of the challenge is clear, and that mischaracterisation is not of itself a basis for refusing permission or dismissing a ground.

Q49. Should parties be allowed to submit new evidence on appeal?

TTF Position: YES, subject to the CAT's discretion under Rule 21(2).

The just and proportionate test, with regard to whether the evidence was available before the decision and if not why, is the right approach. We add one point: consumer bodies frequently do not have the resources to participate fully in the regulator's process, and material they could not afford to produce at that stage should not be excluded on the basis that it could theoretically have been produced. The CAT's discretion should be exercised with the resource asymmetry between parties in mind.

Q50. Should the cross-examination of witnesses be permitted, in line with the CAT Rules?

TTF Position: YES.

Cross-examination is a core mechanism for testing evidence and its availability is one of the features that distinguishes a genuine merits-informed review from a documents-only exercise. Subjecting it to the CAT's case management powers under Rule 55 provides the necessary control against disproportionate use.

Q51. In case the CAT quashes the decision, should the matter be remitted to the regulator, as proposed in paragraph 204(d)?

TTF Position: NO, not exclusively. The CAT should retain a power to substitute its own decision in defined circumstances.

The proposal removes a power that exists in several current regimes. Under the energy, carbon transport and storage, air traffic and airport regimes the CMA may substitute its own decision on price control matters; in postal services it may allow the appeal and make its own decision. Quash-and-remit only is therefore a reduction.

The practical objection is delay and repetition. A regulator whose decision is quashed makes a new decision, which may be appealed again. Where the error is narrow and its correction admits of only one answer, requiring remission adds a full further cycle during which consumers continue to pay a price the tribunal has found materially wrong.

There is also an accountability point. A regulator that knows the tribunal can only send the matter back has a weaker incentive to get it right than one that knows the tribunal can decide the question itself.

Recommendation: the default should be quash and remit with a direction. The CAT should additionally have power to substitute its own decision where the error is capable of correction in only one way, where remission would cause disproportionate delay or detriment to consumers, or where the matter has already been remitted once. The CAT should give reasons for exercising the substitution power.

Q52. Would the proposed appeal parameters set out in paragraph 204 create any barriers or challenges for the parties seeking to appeal a regulator's decision?

TTF Position: YES — three.

- Cost. The parameters themselves are not the principal barrier; costs are. See Q60-Q63. But the parameters do not reduce cost, and the permission stage adds a step.

- Depth of scrutiny. For consumers, the shift from redetermination to a merits-informed judicial review standard in the water sector is a reduction in the intensity with which a price control can be tested. See Q53.
- Remedial limitation. Quash-and-remit without substitution weakens the practical value of a successful appeal. See Q51.

We add a fourth observation. Nothing in the parameters addresses the resource asymmetry between a regulated company appealing a price control and a consumer body doing so. The same rules applied to parties with radically different capacity do not produce equal access.

Q53. Should the new appeal replacing Water Redeterminations be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204?

TTF Position: SERIOUS CONCERN. If the redetermination is to be replaced, the CAT is the right body — but we do not accept that the case for replacing it has been made, and the timing is troubling.

The consultation's argument is efficiency: redeterminations are costly and burdensome, their scope has grown, Ofwat's 2024 price control ran to more than a thousand pages against 63 pages in 1994, and a complete reconsideration creates uncertainty for customers.

The last point deserves scrutiny. Uncertainty for customers is presented as a cost of full reconsideration. But customers are not, in practice, parties to water redeterminations at all — the consultation confirms at paragraph 210 that only regulated companies can request a redetermination of price control decisions in the water sector. The uncertainty being described is uncertainty for companies and investors. Consumers experience the outcome, not the process.

What consumers lose under the change is the ability, through the Consumer Council for Water or another representative body, to have a price control examined afresh rather than reviewed for material error with deference to the regulator that made it.

The timing matters. The water sector is the subject of sustained public concern, an independent commission into its regulatory system, and a government White Paper. Public confidence in the regulation of water is at a low ebb. Reducing the intensity with which water price controls can be challenged, at this moment, requires a stronger justification than administrative burden.

Recommendation: if the redetermination is replaced, the replacement must be paired with (a) an express right of appeal for the Consumer Council for Water and other bodies representing customers whose interests are materially affected; (b) cost protection for those bodies as described at Q62; (c) a standard of review that permits genuine scrutiny of the regulator's

judgement on matters bearing on customer bills; and (d) a commitment to review the change within five years against evidence on outcomes for customers. Without all four, we would oppose the change.

Q54. Should Water Regulatory References be converted into an appeal process overseen by the CAT in accordance with the appeal parameters set out in paragraph 204?

TTF Position: QUALIFIED YES — provided eligibility extends to consumer representation.

The reference process, under which Ofwat refers opposed licence modifications to the CMA to report on whether matters operate against the public interest, is an unusual and cumbersome model. Converting it to an appeal — the regulator decides, affected parties may appeal — is consistent with the direction taken in other sectors and is defensible.

The qualification concerns who may appeal. Under the reference model the CMA examines the public interest as such. Under an appeal model, only those with standing can bring the matter forward, and the public interest is represented only to the extent that someone with standing chooses to raise it. If eligibility is confined to licence holders and appointed companies, the public interest dimension of the current process is lost.

Recommendation: convert the references to appeals only on the basis that eligibility includes the Consumer Council for Water, consumer bodies and associations representing persons whose interests are materially affected — consistent with the harmonised eligibility we support at Q57.

Q55. Should Energy Regulatory References be removed to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities?

TTF Position: QUALIFIED YES — subject to the consultation safeguards being retained and strengthened.

We accept the practical case. The Department is not aware of any instance in which such a reference has been made, and the process sits inconsistently with the equivalent order-making powers for other licensable activities such as smart meters.

The safeguards that remain are the requirement on Ofgem and NIAUR to consult before applying, and Parliamentary or Assembly approval of the order. The consultation relies on both. We note that the consultation requirement expressly involves Citizens Advice and Consumer Scotland, and must be publicised to anyone likely to be affected. That is the consumer protection in the process and it should be reinforced rather than left as it is.

Recommendation: remove the reference, but strengthen the retained consultation duty: require Ofgem and NIAUR to publish the consultation responses and a reasoned account of how objections were addressed, and require that account to be laid before Parliament or the Assembly alongside the draft order. Where a consumer body objects and the objection is not accepted, the reasons should be published.

Eligibility to appeal or intervene (Q56-Q59)

Q56. Should eligibility criteria be harmonised across sectors?

TTF Position: YES — strongly.

The current position is indefensible on any principled basis. In energy, Citizens Advice, Consumer Scotland and other consumer representative bodies may appeal licence modification decisions including price controls. In Northern Ireland the General Consumer Council may. In water, the Consumer Council for Water may appeal appointment condition modifications but nobody may seek a redetermination of a price control except the regulated company. In air traffic, only the licence holder and affected aircraft and aerodrome operators may appeal — consumers of air travel have no standing at all. In airport and air transport, only the licence holder and affected air transport providers.

There is no coherent reason why a consumer of energy may have their representative body challenge a price control while a consumer of water or air travel may not. These differences are historical accidents. Harmonisation should remove them.

Q57. In case of harmonised eligibility criteria for Regulatory Appeals and Telecoms Appeals, should the right to appeal be granted to (i) licence holders and companies holding an appointment, and (ii) persons whose interests are materially affected by the regulator's decision and bodies or associations representing such persons, including consumer bodies?

TTF Position: YES — strongly. This is the most important consumer protection proposal in the entire consultation and TTF supports it without qualification.

Economic regulation exists to protect consumers from the consequences of natural monopoly. The consultation says so at paragraph 148: the purpose is to address market failures and secure efficient investment, output and fair consumer prices. If that is the purpose, then consumers — through bodies capable of representing them — must be able to test whether the regulator has achieved it.

At present, in most sectors, the only parties who can challenge a price control are the companies whose revenues it determines. The structural consequence is that every appeal argues in one direction. A regulator that sets a control too generously faces no challenge; a regulator that sets it too tightly faces a well-resourced one. Over time, an appeals system in which only one side ever appeals will produce decisions calibrated to survive appeals from that side.

Extending standing to consumer bodies does not guarantee they will use it — Q60 to Q63 address why they currently do not — but without standing the question does not arise at all.

Recommendation: adopt the harmonised eligibility as proposed. Name the statutory consumer bodies expressly — the Consumer Council for Water, Citizens Advice, Consumer Scotland, the General Consumer Council for Northern Ireland — so that their standing is beyond argument, while retaining the general category so that other representative bodies are not excluded. Apply the harmonised eligibility to price control appeals in every sector, including water and aviation.

Q58. Should parties be required to seek the permission of the CAT to bring an appeal?

TTF Position: QUALIFIED YES — subject to published criteria and no costs exposure at the permission stage.

A permission stage is a reasonable filter and already exists in most of the current regimes, where permission of the CMA is required. Moving it to the CAT is consistent with the transfer.

The qualification matters more where eligibility is widened. If consumer bodies gain standing but face an unpredictable permission stage with costs attached, the widened standing will be theoretical. A body deciding whether to commit scarce resources needs to know the test and needs to know that failing at the threshold will not generate a bill.

Recommendation: require permission, but (a) publish the criteria; (b) provide robust protective costs protection at the permission stage, so that a consumer body or representative body is not exposed to adverse costs merely for testing whether it should be permitted to appeal; (c) where appropriate, determine a protective costs cap on the papers before the permission application is pursued; (d) allow permission applications to be determined on the papers; and (e) require reasons for refusal. Standing without effective costs protection at the permission stage risks becoming standing on paper only.

Q59. Should third parties be permitted to intervene in an appeal, subject to obtaining permission from the CAT?

TTF Position: YES.

Intervention is often the proportionate route for a consumer body: it allows the consumer interest to be put before the tribunal without the body carrying the full burden of running an appeal. The current position, in which some regimes provide expressly for interveners and their costs while others are silent and the CMA makes no costs orders for interveners, is another unprincipled inconsistency.

Recommendation: provide expressly for intervention with CAT permission across all regulatory appeals; allow written-only intervention as a low-cost option; provide that an intervener acting in the public interest bears no adverse costs risk; and allow the CAT to make costs orders in favour of interveners whose participation assisted it, as it may in other proceedings.

Costs (Q60-Q64)

Q60. What barriers to appeal exist for consumer groups or other groups (such as environmental groups) in regulated sectors?

TTF Position: Substantive response. The Department has identified the central barrier itself at paragraph 220, and we commend it for doing so.

The consultation states that although consumer bodies are eligible to challenge certain decisions, they often do not because they are concerned about the cost implications of losing, and that where an appeal fails the appellant is typically required by statute to pay the CMA's costs. That is the barrier. Everything else is secondary.

The barriers, in order of significance:

- Adverse costs risk. A consumer body facing the possibility of paying the CMA's or a regulator's costs of defending a complex price control appeal is being asked to gamble its reserves. Most such bodies are charities or statutory bodies with fixed budgets and no litigation reserve. The rational decision is not to appeal, however strong the case.
- The statutory costs rule itself. That a losing appellant must pay the appellate body's costs of reviewing the decision is unusual and operates as a deterrent quite distinct from ordinary inter partes costs.
- Partial success still carries cost. Where an appellant succeeds in part, it must still pay a proportion. A body cannot budget for that.
- Resource asymmetry. A regulated water or energy company appealing a price control deploys leading counsel, financial advisers and economists as a matter of course. A consumer body cannot match that, and the appeal is decided on the material put before the tribunal.
- Technical complexity. Price control appeals turn on cost of capital, totex allowances, efficiency benchmarking and regulatory finance. Meaningful participation requires expert economic and financial advice, which is expensive.

- No funding route. There is no legal aid, no public interest funding, and no established mechanism for financing consumer participation in regulatory appeals.
- The barrier defeats pro bono representation too. Solicitors and counsel are frequently willing to act without charge in cases raising a genuine public interest. They cannot indemnify a client against an adverse costs order. So even where the legal work could be donated, the costs risk still prevents the appeal — which means the adverse costs regime is not merely an obstacle to funded participation, it forecloses the unfunded route as well.
- Timescales. Appeal windows are short relative to the time a small organisation needs to obtain advice, take a governance decision to litigate, and prepare a notice of appeal.
- Standing gaps. In several sectors the question does not arise because there is no standing at all. See Q56-Q57.

Sectors.

The barriers are most acute in water, where the redetermination route is closed to consumers entirely and where public concern about the sector is highest; in aviation, where consumers of air travel have no standing; and in energy, where standing exists but the costs risk means it is exercised rarely relative to the frequency of company appeals.

Q61. In addition to existing CAT Rules on cost recovery, what cost arrangements or other aspects of the appeal process could help ensure fair participation by all eligible parties in Regulatory Appeals and Telecoms Appeals?

TTF Position: Substantive response.

- Protective costs orders, available on application at the outset and, critically, capable of being determined at the permission stage, capping a consumer body's maximum exposure at a defined and affordable figure before it commits to the appeal. Certainty at the point of decision is what matters; a discretion exercised later does not help a body deciding whether to start or whether to seek permission. The same protection should be available to any party represented pro bono.
- A presumption of no adverse costs against a body acting in a representative or public interest capacity, rebuttable only where the appeal was brought unreasonably.
- Removal of the statutory requirement that an unsuccessful appellant pays the appellate body's costs, at least as regards consumer and representative bodies.
- A funded intervener mechanism: where the CAT considers the consumer interest requires representation and no body is able to fund it, provision for the costs of an intervener to be met from a sectoral levy.

- Recoverability of expert costs for a successful consumer body appellant or intervener, so that the economic advice needed to participate meaningfully is within reach.
- Written-only intervention as a low-cost route, with a defined and modest page limit.
- Longer or extendable appeal windows for representative bodies, reflecting governance timescales.
- Publication of pleadings and decisions, so that a body considering an appeal can assess prospects without commissioning advice from scratch.
- A standing consumer challenge fund, financed from a modest sectoral levy, available to support meritorious consumer participation in regulatory appeals. The sums involved are trivial relative to the value of the price controls being determined.

Q62. Should costs be capped for certain parties, such as consumer groups?

TTF Position: YES — strongly, and this is the single change most likely to make consumer standing meaningful.

Standing without robust cost protection is standing on paper. The Department has already accepted the diagnosis at paragraph 220. The remedy follows directly, and it must operate early enough to make the permission right usable.

A cap must be available at the outset, on application, at a figure the body can actually bear, and determined before the body is committed. A discretionary power exercised at the end of proceedings does not address the problem, because the decision that matters is taken at the beginning, under uncertainty, by trustees or a board who must consider whether they can responsibly expose the organisation.

Cost capping would also unlock pro bono representation, which at present the costs regime forecloses. Practitioners are often willing to act without charge in a case raising a genuine public interest, but they cannot protect the client from an adverse costs order, and no responsible board or trustee body will authorise proceedings with uncapped downside however good the legal help is. Capping converts pro bono willingness into pro bono participation. That is a substantial resource made available to the system at no public cost, and it is currently being wasted.

We note that the proportionality of this is not seriously arguable. A price control determines billions of pounds of consumer expenditure. The cost of enabling a consumer body to test it is a rounding error against that sum. The current arrangement saves a trivial amount of public money at the cost of ensuring that one side of the argument is never made.

Recommendation: provide expressly in the CAT Rules for cost capping orders on application by a consumer body, representative association, other public interest party, or a party represented pro bono, determinable on the papers at the outset of proceedings, at a level the

CAT considers the party can reasonably bear. Provide that where such an order is made the party's exposure is limited to the capped sum whatever the outcome, and that the availability of pro bono representation is not a reason to refuse or reduce a cap.

Q63. Should specific cost arrangements exist in relation to the costs incurred by regulators in defending their decisions?

TTF Position: YES.

A regulator defending its own decision is discharging its statutory function, and the cost of doing so is properly a cost of regulation, met from the levy on the regulated sector, not a cost to be recovered from whoever challenged it. The present arrangement — under which an unsuccessful appellant typically pays the appellate body's costs — makes the price of being wrong about a regulator's decision very high and the price of the regulator being wrong very low.

That asymmetry has an accountability dimension. A regulator whose costs of defending are met by the loser has less financial exposure to the quality of its own decision-making than one that bears its own costs.

Recommendation: provide that regulators bear their own costs of defending appeals, funded from sectoral levy; that no costs order may be made in favour of a regulator against a consumer body or representative body; and that the CAT retains discretion to award costs against a regulator where its conduct of the appeal, or the quality of the decision under challenge, warrants it.

Q64. We welcome any further views on how to improve the effectiveness of Regulatory Appeals.

TTF Position: Substantive response.

- A statutory duty of candour on regulators in appeal proceedings, requiring disclosure of material adverse to their own decision. TTF has argued in the parliamentary context that the Hillsborough Law model of a duty of candour has application to economic and financial regulators, and regulatory appeals are a natural place to begin.
- Publication as the default: notices of appeal, pleadings, expert reports subject to confidentiality, and decisions should be publicly available. Regulatory appeals determine public prices and should be conducted publicly.
- Annual reporting by the CAT on regulatory appeals: number, sector, appellant type, outcome, duration and cost. Without this nobody can tell whether the reformed

system is working, and the Department will face the same evidential vacuum in five years that it faces now.

- Consumer impact statements: where a regulator makes a decision that may be appealed, it should publish an assessment of the consumer impact in accessible language, giving consumer bodies a basis on which to assess whether to act.
- A route by which the CAT can invite the participation of a consumer body where it considers the consumer interest is not adequately represented before it.
- Consistency of approach between the CAT's regulatory appeals jurisdiction and its competition jurisdiction on transparency and costs, so that the two do not develop divergent cultures.
- A post-implementation review of the whole Chapter 2 package within five years, published, with data disaggregated by appellant type.

6. Chapter 3 — More Efficient CA98 Enforcement

TTF has a direct interest in this chapter. Faster, more effective enforcement against anti-competitive conduct is good for consumers: it stops harm sooner and it establishes the findings on which follow-on redress depends. We support the objective.

Our concern is with method. A substantial number of these proposals achieve speed by moving a protection from a binding rule into guidance authored by the CMA, or by removing a step at which a party or a third party could be heard. The CMA is a capable and generally well-regarded authority. That is not the point. Protections are written into rules precisely so that they do not depend on the disposition of the body applying them, and so that they survive a change of leadership, resourcing or priorities.

There is also a specific consequence for consumers that the chapter does not address. Findings of infringement and the material underlying them are the foundation of follow-on private actions. Where access to evidence is narrowed, publication reduced and settlement processes compressed, less material becomes available to those who were harmed and who wish to seek redress. That can materially impair the evidential case in subsequent private proceedings, including consumer-credit claims where section 75 of the Consumer Credit Act 1974 is engaged. Chapter 3 is not, in that sense, separable from Chapter 1: procedural streamlining at the enforcement stage can alter the practical ability of consumers to obtain private redress afterwards.

Streamlining the CMA decision-making model (Q65-Q66)

Q65. Should Rule 3 be omitted to enable the CMA in guidance to establish its decision-making model in CA98 cases?

TTF Position: NO. We oppose the omission of Rule 3.

Rule 3 secures a structural separation: the Senior Responsible Officer authorises the investigation and decides whether to issue a statement of objections; a separate case decision group decides the infringement and any penalty. The person who forms the case is not the person who judges it.

That is not an administrative formality. It is the mechanism that prevents confirmation bias in a body that is simultaneously investigator, prosecutor and decision-maker, and it is one of the reasons the CMA's infringement decisions carry the weight they do — including with the CAT on appeal and with claimants in follow-on actions.

The consultation says the CMA is expected to adopt a model that continues to introduce input from individuals not previously involved, and suggests an SRO-plus-two approach. We take that expectation seriously and have no reason to doubt the present CMA's intentions. But an expectation in a consultation document is not a rule. If the SRO-plus-two model is the right one, it should be in the Rules. If it is not required to be in the Rules, then by definition it can be departed from.

We note the comparison drawn with the direct consumer enforcement regime. That regime is very new and its decision-making model has not been tested by appeal or by time. It is not yet an appropriate benchmark for loosening a settled protection in a mature enforcement regime.

Recommendation: retain a rule-based requirement for separation of decision-making. If Rule 3 is too prescriptive in its detail, replace it with a shorter rule stating the principle — that the final decision on infringement and penalty must be taken with the participation of decision-makers of at least equal seniority who were not involved in the decision to issue the statement of objections — and leave the operational detail to guidance.

Q66. Should Rules 9(2) to 9(4) be omitted to enable the CMA to establish its decision-making model in CA98 settlement cases in guidance?

TTF Position: NO, for the same reasons, and with additional force.

Settlement cases carry a lower level of procedural protection by design: the party admits infringement, accepts a streamlined process and receives a penalty discount. The decision-making requirements in Rules 9(2) to 9(4) are part of what makes that trade acceptable. Removing them at the same time as the consultation proposes to make waiver of appeal rights a binding condition of settlement (Q68), to remove the statement of objections in pre-settlement cases (Q69), and to disapply access to file in settlement cases (Q77) is a substantial cumulative reduction in the protections applying to the fastest and least scrutinised route to an infringement decision.

Recommendation: retain rule-based decision-making requirements for settlement cases. At minimum, if Rules 9(2) to 9(4) are omitted, the Rules should require that the decision to accept a settlement and impose a penalty is taken by a decision-maker not involved in negotiating it.

Confidentiality requirements (Q67)

Q67. Should Rule 7 be amended, or omitted in its entirety, to give the CMA greater flexibility to decide on a case-by-case basis when it would be appropriate to seek further views on confidentiality?

TTF Position: SHOULD BE AMENDED — not omitted in its entirety.

We accept the burden. Requiring representations in every case where confidentiality is claimed, regardless of the merit of the claim or whether reasons were given, is disproportionate, and there is an obvious efficiency gain in allowing the CMA to filter unmeritorious claims without a full process.

But Rule 7 protects real interests, and not only those of the businesses under investigation. It protects third parties who supplied information, including complainants, competitors, small suppliers and individuals, who may have provided material on the understanding that they would be consulted before it was disclosed. Omitting the rule entirely removes their protection along with the burden.

There is also a chilling risk. Parties who fear disclosure without consultation may be less forthcoming, which slows investigations rather than speeding them.

Recommendation: amend Rule 7 to introduce proportionality — for example, by providing that the CMA need not seek representations where a confidentiality claim is made without reasons, or where it has already determined that materially identical information is not confidential — while retaining the core obligation to consult before disclosing information a person has claimed, with reasons, to be confidential. Retain the protection in particular for information supplied by third parties and by individuals.

Settlement procedures (Q68-Q70)

Q68. Should Rule 9 be amended to include a requirement that the settling parties must agree not to challenge or appeal the infringement decision as a condition of settlement?

TTF Position: SIGNIFICANT CONCERN. We do not support incorporating this requirement into the Rules in unqualified form.

We recognise that this is already CMA practice under the CMA8 Guidance, and that the consultation presents the change as reflecting current practice. But there is a meaningful difference between a practice operated as a condition of a discount and a binding statutory rule requiring waiver of access to a tribunal. Putting it in the Rules gives it a legal character it does not currently have, and does so without the safeguards one would expect around a waiver of the right to challenge a public authority's decision.

Our specific concerns are these. A waiver agreed at settlement necessarily precedes knowledge of what the final decision says; if the decision departs from what was settled, the party has waived its remedy in advance. A blanket waiver would extend to the penalty as well as the infringement finding. And a waiver by settling parties should not, and must not, affect the rights of third parties — including those harmed by the conduct — to challenge aspects of the decision that affect them.

Recommendation: if the requirement is incorporated, provide expressly that it does not extend to (a) grounds arising from a material departure between the settled position and the final decision; (b) challenges to the penalty on grounds not agreed as part of the settlement; (c) any challenge by a person who was not a settling party. Provide also that the waiver does not preclude the CAT from considering the decision in the context of a follow-on damages claim.

Q69. Should Rule 9(5) be amended to remove the requirement to issue an SO in cases which are settled with all parties pre-SO?

TTF Position: QUALIFIED NO — because of the position of third parties.

As between the CMA and the settling parties, the argument is reasonable. Where all parties have settled on the basis of a summary statement of facts or draft statement of objections, issuing a formal statement of objections and inviting comment adds a step whose value to those parties is limited.

The difficulty is that the statement of objections is not only a document addressed to the parties. It is the principal moment at which the CMA states publicly what it says happened. Complainants, victims and those who may later seek redress learn from it. Removing it in settled cases means that a whole category of infringements — potentially including significant ones — proceeds from investigation to final decision without any intermediate public statement of the alleged conduct. That matters not only for transparency but for the evidential foundation of subsequent private redress. A public regulatory finding, and the reasoning and factual account that support it, may materially assist consumers and representative bodies in establishing what happened and connecting the conduct to loss. In consumer-credit cases, that evidential record may also be relevant to private rights under section 75 of the Consumer Credit Act 1974 where its statutory conditions are met. The Department should therefore assess settlement reform not only by reference to the efficiency of the CMA process, but also by reference to the evidence that remains available to people seeking private redress afterwards.

Recommendation: if the SO requirement is removed in fully settled cases, require the CMA to publish, at the point of settlement, a sufficiently detailed statement of the conduct, parties, relevant market, findings and evidential basis to inform those who may have been harmed and those considering subsequent private redress. The published material should be sufficient to preserve a meaningful evidential foundation without disclosing protected material. Alternatively, retain a lightweight notification requirement for persons other than the settling parties who are likely to be affected. The Department should expressly consider the downstream effect of any reduction in formal regulatory findings on follow-on and other private redress, including section 75 claims where applicable.

Q70. Should Rule 9(5) be amended to specify that the SSF or draft SO provided to the settling parties constitutes a written notice for the purposes of section 31 CA98?

TTF Position: NO, as drafted.

Section 31 requires the CMA to give notice to persons likely to be affected by a proposed decision. Persons likely to be affected are not confined to the parties under investigation. They can include complainants, those who supplied evidence, and those whose commercial position is directly affected by the decision.

Deeming a document shared only with the settling parties to discharge a statutory obligation owed potentially to a wider group is a legal fiction. If the obligation to those other persons is to be modified, that should be done openly and consulted upon, not achieved by re-labelling a document.

Recommendation: do not deem the SSF or draft SO to constitute section 31 notice generally. If the intention is to confirm that it discharges the obligation as regards the settling parties, say so expressly and preserve the obligation as regards other persons likely to be affected.

Access to evidence (Q71-Q78)

Q71. Should there be a prescribed legal framework for confidentiality rings?

TTF Position: YES.

This is a good proposal and TTF supports it. Confidentiality rings allow evidence to be tested without exposing genuinely sensitive material, and the present position — where every ring must be negotiated with every party on bespoke terms — is a predictable source of delay. A standard framework improves both speed and certainty, and reduces the scope for terms to be used tactically.

We support two features the consultation identifies: accessibility to both legal and non-legal advisers, which matters because economic experts frequently need access; and applicability across the CMA's mergers and markets functions.

Recommendation: prescribe the framework in the Rules, retaining a limited discretion to vary its terms where the circumstances of a case require. Consult on the framework itself before it is made.

Q72. Should civil sanctions be available for breaches of confidentiality rings?

TTF Position: YES.

The current position is binary: a breach either warrants criminal prosecution under Part 9 of the Enterprise Act 2002, or nothing happens. That gap means that in practice most breaches attract no consequence, which undermines confidence in the mechanism and makes parties reluctant to place material into rings.

A proportionate civil sanction fills the gap and is likely to improve compliance more than the theoretical availability of prosecution ever has.

Q73. Should these sanctions be applicable to both the individual responsible and their employer?

TTF Position: YES.

Individual accountability changes behaviour in a way that corporate liability alone does not. TTF has argued this consistently in the financial services context in relation to the Senior Managers and Certification Regime, and the principle is the same here. Employer liability provides the incentive for firms to train, supervise and put controls in place; individual liability provides the incentive for the person handling the material to take care.

Recommendation: apply sanctions to both, with an express defence for an employer that took all reasonable steps to prevent the breach, and mitigation for prompt self-notification and remediation as the consultation envisages.

Q74. Should this legal framework, and the associated civil sanctions, be applicable across the CMA's other functions such as in mergers and markets?

TTF Position: YES.

A single framework across all CMA functions is simpler for practitioners, reduces the scope for argument about which regime applies, and means that a party moving between a merger inquiry and a Competition Act investigation is operating under familiar terms. We see no reason for divergence.

Q75. Should Rule 6(2) be amended to include the same exceptions as those set out in Rule 5 of the Direct Consumer Enforcement rules?

TTF Position: NO. We oppose this amendment.

Access to the file is a foundational element of procedural fairness in an enforcement process where the same body investigates, prosecutes and decides. A party facing a substantial penalty and a finding of unlawful conduct is entitled to see the material relied upon and the material that might assist it.

The proposal would allow the CMA to withhold additional categories: documents to the extent they identify an individual, routine correspondence, and documents provided by the respondent. Each is capable of being read broadly. Almost every document identifies an individual somewhere. What counts as routine correspondence is a matter of characterisation. And documents provided by the respondent may nonetheless be material whose selection and treatment the respondent needs to see.

There is a further consequence relevant to consumers. Material disclosed in an investigation may become available, directly or indirectly, in follow-on damages proceedings. Narrowing what is disclosed narrows the evidential base for redress. This is particularly important where a later claimant must establish the factual and causal foundation of harm without access to the regulator's investigative record. The Department should therefore treat access to file as part of the architecture of private redress, not simply as a procedural entitlement of the undertaking under investigation. That downstream effect should be assessed expressly, including in relation to private consumer-credit remedies such as section 75 of the Consumer Credit Act 1974 where applicable.

We do not accept the alignment argument. The direct consumer enforcement regime is new, untested by appeal, and concerns a different type of decision. Alignment with an unproven regime is not a reason to reduce protections in an established one.

Recommendation: do not extend the withholding categories. If the operational difficulty is the cost of redacting personal data at scale, address that directly — for example by permitting

redaction of personal identifiers rather than withholding of whole documents, or by placing such material into the standardised confidentiality ring the consultation proposes at Q71.

Q76. Should Rule 6(2) be amended to specify that access to file can be granted in hard copy or by electronic means?

TTF Position: YES.

This is a straightforward modernisation reflecting practice, and electronic access is likely to be faster and more useful for parties in most cases. We ask only that hard copy remain genuinely available where a party has an accessibility need, and that electronic access be provided in a usable, searchable form rather than as an undifferentiated dump.

Q77. Should Rule 9 be amended to disapply access to file requirements set out in Rule 6(2) in cases where the CMA has followed settlement procedure?

TTF Position: NO.

Disapplying access to file entirely, and leaving the CMA's approach to be set out in guidance, removes the protection rather than tailoring it. A settling party has admitted infringement, but it has not thereby abandoned any interest in seeing the material on which the penalty is calculated, and the streamlined access currently provided as a matter of practice under CMA8 is not the same as no rule-based entitlement at all. More importantly, the consequences extend beyond the settling party: the investigative record may be the evidential foundation for subsequent private redress. Eliminating rule-based access therefore risks weakening the information available to consumers and representative bodies in later proceedings. The Department should expressly assess that consequence, including where the underlying consumer-credit relationship may engage section 75 of the Consumer Credit Act 1974.

The cumulative point at Q66 applies here. Settlement is already the least scrutinised route to an infringement decision. Combining removal of the statement of objections, waiver of appeal rights, relaxed decision-making requirements and disapplication of access to file produces a process with very little external check.

Recommendation: rather than disapplying Rule 6(2), provide in the Rules for a streamlined access entitlement in settlement cases — the documents referred to in the SSF or draft SO — reflecting current practice but keeping the entitlement rule-based.

Q78. Should Rules 13(1) and 13(2) be omitted to give the CMA more discretion on access to file in relation to interim measures, with the aim of faster decisions?

TTF Position: QUALIFIED — we support faster interim measures, but the minimum should stay in the Rules.

TTF supports interim measures being usable in practice. They are one of the few tools capable of stopping consumer harm while it is happening rather than years afterwards, and their underuse has been a longstanding criticism of UK competition enforcement. If access to file requirements are genuinely impeding their use, that is a real problem worth solving.

But interim measures impose obligations on a business before any finding of infringement, on the basis of urgency. The party must be able to make meaningful representations, and that requires knowing enough about the case to respond. Leaving the extent of disclosure entirely to guidance, on a case-by-case basis, is not the right balance.

Recommendation: replace Rules 13(1) and 13(2) with a shorter rule requiring the CMA to disclose sufficient material to enable the recipient to make meaningful representations on the proposed direction, with the CMA free to determine in guidance how that is achieved in the circumstances of the case. This preserves the flexibility sought while keeping the minimum standard binding.

Publication requirements (Q79-Q80)

Q79. Should the publication requirements under Rule 19(2)(b) be removed?

TTF Position: YES — with a proviso.

Publication in the London, Edinburgh and Belfast Gazettes, a national daily newspaper and a trade journal is a genuinely outdated mechanism. Very few people learn about CMA decisions that way, and the cost is not trivial.

The proviso concerns what replaces it. Publication only on the CA98 public register means that notice reaches those who already know to look. For a decision that may found redress claims by consumers or small businesses, that is a narrow reach.

Recommendation: remove the Gazette and newspaper requirements, but require the CMA to publish notices in a machine-readable, subscribable form — an alerts service, an RSS or API feed — and to notify relevant consumer bodies, sector regulators and, where the conduct affected consumers, to consider proactive communication. The saving from removing print publication should be reinvested in making the electronic notice actually reach people.

Q80. Should the requirement under Rule 20(2)(a), to maintain a physical copy of the CA98 Public Register at the CMA's head office, be removed to reflect modern practices?

TTF Position: YES.

Maintaining a physical register at a single London office serves almost nobody. The commitment to provide a physical copy on request where necessary for accessibility is the right safeguard. We ask that this commitment be stated in the Rules or in published guidance rather than only in the consultation, and that it be free of charge.

Competition Disqualification Orders (Q81-Q83)

Q81. Should section 9A(5)(b) CDDA86 be amended to specify that a court can have regard to the conduct of a person as a director of an overseas company for the purposes of making a CDO?

TTF Position: YES.

The present inconsistency with section 6(1)(b) is arbitrary. Whether a director's prior conduct is relevant to their fitness does not depend on where the company was incorporated. Competition infringements are frequently international, and a rule that ignores overseas conduct produces a gap that is easy to exploit through corporate structuring.

TTF supports director-level accountability as a matter of principle. Corporate penalties are absorbed; individual consequences change behaviour.

Q82. Should section 9 CDDA86 be amended to clarify that a court can make a CDO against former directors?

TTF Position: YES.

A director should not be able to escape disqualification by resigning ahead of the order. The consultation confirms this reflects the approach courts already take, so the amendment removes an argument rather than changing the law. It should be made.

Q83. Should section 9A(5)(b) be amended to clarify that the requirement not to have regard to the matters set out in Schedule 1 CDDA86 does not apply to breaches of competition law?

TTF Position: YES.

The interaction between section 9A(5)(b), which permits the court to consider conduct in connection with other competition law breaches, and section 9A(5)(c), which excludes Schedule 1 matters including responsibility for material contraventions of legislative requirements, is genuinely confusing. Clarification is sensible and we support it.

Penalty cap for undertakings with no or unrepresentative turnover (Q84-Q85)

Q84. Should the CMA be able to impose a financial penalty on undertakings with no turnover, or no representative turnover, in the last business year?

TTF Position: YES — this is a clear and necessary gap-filling measure.

The present position is indefensible. An undertaking that infringed competition law, holds substantial cash or assets, but recorded no turnover in the relevant year cannot be penalised at all. An undertaking whose turnover was unrepresentative of its normal activity faces a cap unrelated to its actual scale. Both outcomes reward structuring and both undermine deterrence.

We note that this is the sort of loophole that is exploited by exactly the entities least deserving of protection — shells, holding vehicles and businesses wound down ahead of a decision. Closing it is straightforwardly right.

Q85. If so, would a fixed-amount penalty cap of up to £300,000 be appropriate?

TTF Position: NO. £300,000 is far too low to deter, and the alignment with the consumer enforcement regime is not a sound basis for setting it.

The proposal is to import the section 182(6) DMCCA figure. But that figure was set for a different regime addressing different conduct with a different profile of infringer. Competition Act infringements can generate gains running to many millions of pounds. An entity with no representative turnover but substantial assets — the very case this measure is designed for — would treat a maximum of £300,000 as a cost of doing business.

The result would be a perverse incentive. An undertaking facing a potential penalty of 10 per cent of turnover has a reason to ensure it has no representative turnover in the relevant year, because the alternative cap is fixed and low. A measure introduced to close a loophole would create a ceiling that is, in some cases, more attractive than the rule it replaces.

Recommendation: set the fixed cap materially higher, and provide in addition for a cap by reference to the value of the undertaking's assets, or to the gain derived from the infringement, whichever produces the higher figure. At minimum, provide a power to uprate the fixed figure by regulations so that it does not erode, and commit to reviewing it within five years. The governing principle should be that a penalty cap for entities with no representative turnover is at least as capable of deterring as the 10 per cent cap it substitutes for.

7. What Is Missing from This Consultation

7.1 Historical harm

The consultation is entirely forward-looking. It does not address the position of those already harmed by conduct that was never pursued because the claim was too small to fund, or whose claim failed at certification, or who were eligible for redress under Gutmann and never received it because they did not know. TTF makes this observation in every consultation response because it is true in every one of them, and because the accumulated population of people with unremedied harm is a substantial part of why trust in institutions is where it is.

At minimum, the Department should consider whether the CMA's proposed redress powers can be exercised in respect of infringements already established, and should ask the CAT to consider whether unclaimed sums from concluded distributions can be reopened where improved distribution methods could now reach the class.

7.2 No consumer impact assessment

The consultation contains no quantified assessment of what these proposals mean for consumers: how many claims would not be certified under the proposed threshold, how much compensation would be forgone under leniency immunity, what the effect of CAT fees would be on filings, or what the reduction in scrutiny of water price controls is worth in consumer bills. Costs to business and efficiency gains to public bodies are described. The other side of the ledger is not.

Recommendation: publish a full impact assessment quantifying consumer effects before any final policy decision, and consult on it.

7.3 Vulnerable and excluded consumers

Nothing in Chapter 1 addresses the specific position of class members who are elderly, digitally excluded, in financial difficulty, or otherwise vulnerable. Distribution processes designed around online claim portals systematically exclude them. Given that the regime's central acknowledged failure is distribution, this omission matters.

Recommendation: require distribution plans to address accessibility explicitly, including non-digital channels and assisted claiming, as a condition of certification and of settlement approval.

7.4 The interaction with financial services redress

The consultation notes that the Payment Systems Regulator is excluded from scope because HM Treasury is preparing legislation to abolish it and transfer its functions, including appeal routes, to the FCA. The FCA is also a concurrent competition regulator. The result is that the appeals architecture for payment systems, and the relationship between FCA competition powers and the CAT, are being settled in a separate process on a different timetable.

TTF has a substantial interest in this. We ask the Department to confirm how coherence between the two workstreams will be maintained, and to ensure that consumer standing and cost protection secured under Chapter 2 are mirrored in whatever appeal routes emerge from the PSR transfer.

7.5 Measuring success

The consultation proposes substantial change without specifying how anyone will know whether it worked. There are no metrics, no targets and no commitment to publish outcome data.

Recommendation: adopt a published framework of success measures covering, at minimum: number of claims filed and certified; time from filing to resolution; total compensation distributed and take-up rate by claim; proportion of recovery reaching class members; number of redress schemes approved and sums distributed under them; number of regulatory appeals by sector and appellant type, including consumer bodies; and CMA investigation durations. Report annually.

7.6 Expansion of scope

TTF argued in the Call for Evidence for expanding the regime beyond competition law to other areas of dispersed harm. We accept the Department's decision to await the Law Commission. That is especially important in the present context because certification is not a purely technical issue: it goes to the rationale, design and practical operation of consumer class actions more generally. The Department should therefore avoid treating the proposed move from relative to absolute suitability as a settled template for any wider consumer regime. Before making a change of this significance, the Department should take account of the Law Commission's systematic review and of comparative evidence from established common-law class-action jurisdictions, including Canada and Australia. This would also reduce the risk that a controversial general policy choice is made on an evidential base that has not yet been fully developed.

8. Compliance with the Government's Consultation Principles

TTF assesses each consultation we respond to against the Cabinet Office Consultation Principles. We record the following observations, offered constructively.

Positive:

- The consultation period of ten weeks is adequate and the document is well-structured, with proposals clearly separated from background.
- The Department has been candid about matters that do not favour its proposals — notably the acknowledgement at paragraph 220 that consumer bodies do not appeal because of cost risk, and the Gutmann distribution figures.
- Questions are clearly numbered and consolidated in an annex.

Concerns:

- Accessibility. The document assumes familiarity with the CAT Rules, the Competition Act, the CDDA 1986, sector-specific statutes and a substantial body of case law. It is not realistically accessible to consumers, and responses will therefore come overwhelmingly from those with the resources to engage. This is a structural bias in what the Department will hear.
- No impact assessment. A consultation proposing changes of this magnitude should be accompanied by a quantified impact assessment. Its absence makes it impossible for respondents to test the Department's assumptions.
- Some proposals appear pre-decided. Paragraph 146 states that the CAT Rules will now be reviewed at least triennially — a decision, not a question. Elsewhere the framing of questions presumes the answer.
- Weighting of responses. There is no indication of how the Department will weigh responses from consumer interests against responses from the far larger number of defendant-side, regulated-company and professional respondents likely to engage.
- Evidence base. Several significant propositions — the causal link between private claims and declining leniency applications, the assertion that the certification bar remains too low post-Evans — are asserted rather than evidenced.

Recommendation: publish an impact assessment and re-consult on any proposal that changes materially in the light of it. Publish an anonymised breakdown of respondents by category. Publish the evidence underlying the leniency and certification propositions.

9. Summary of TTF's Recommendations

9.1 Critical recommendations

- 1. Do not proceed with the absolute suitability certification threshold (Q4). Allow the effect of Evans v Barclays to be assessed over three years, commission independent research on certification outcomes including systematic comparative evidence from Canada and Australia, and take account of the Law Commission's work on consumer class actions before legislating.
- 2. Do not elevate cost/benefit into the statutory certification threshold (Q5). Instead make an evidenced distribution plan a condition of certification.
- 3. Reject the presumption that funders are paid before distribution concludes (Q11). Replace it with a tiered return mechanism under which deployed capital may be returned on award or settlement approval, but the funder's uplift remains contingent on satisfactory distribution and is payable on conclusion of distribution, subject to CAT discretion in exceptional circumstances.
- 4. Do not introduce full civil immunity for Type A leniency applicants (Q28). If pursued, condition it on full compensation being demonstrably available, not on a set-aside power exercisable after the event.
- 5. Do not introduce CAT fees for collective proceedings (Q38-Q39).
- 6. Adopt harmonised eligibility extending the right to appeal to consumer bodies and representative associations across all sectors (Q57).
- 7. Provide robust protective cost capping for consumer bodies, public interest parties and parties represented pro bono in regulatory appeals, with protection available at the permission stage and on application at the outset (Q58, Q61-Q62), and provide that regulators bear their own costs (Q63).
- 8. Retain a rule-based requirement for separation of CMA decision-making (Q65-Q66).
- 9. Do not widen the categories of document the CMA may withhold on access to file (Q75), and do not disapply access to file in settlement cases (Q77). Preserve a meaningful public and evidential record so that later private redress is not weakened by settlement or enforcement streamlining.
- 10. Set the alternative penalty cap materially above £300,000, with an assets or gains-based alternative (Q85).
- 11. Publish a full impact assessment quantifying consumer effects before any final decision.

9.2 Important recommendations

- 12. Create a Collective Redress Access to Justice Fund capitalised by undistributed damages (Q37).

- 13. Proceed with the CAT claims listing, made prominent, searchable and actively promoted (Q34).
- 14. Make defendant cooperation with distribution a condition of any reversion of undistributed settlement sums, and default to direct credit where payment details are held (Q36).
- 15. Permit DBAs, recognising them expressly as a consumer protection measure, with full disclosure of terms, a plain-language summary for class members, and consultative panel involvement in settlement decisions (Q7-Q9).
- 16. Require costs budgets from both parties post-certification, with symmetrical costs sanctions (Q13-Q14).
- 17. Retain the CAT's power to substitute its own decision in defined circumstances in regulatory appeals (Q51).
- 18. Pair any replacement of water redeterminations with consumer standing, cost protection and a genuinely searching standard of review (Q53).
- 19. Publish concurrent regulators' written observations in CAT proceedings (Q33).
- 20. Amend rather than omit CMA Rule 7, preserving protection for third-party and individual information (Q67).
- 21. Qualify the settlement appeal waiver so that it does not extend to material departures, penalty grounds, or third parties (Q68).
- 22. Require publication of a summary of alleged conduct where the statement of objections is dispensed with in settled cases (Q69).
- 23. Keep a minimum disclosure standard for interim measures in the Rules rather than in guidance (Q78).
- 24. Treat the presumed overcharge in redress schemes as a floor, published, reviewable, with a right to demonstrate greater loss (Q22).
- 25. Safeguard redress scheme waivers against the full-and-final settlement problem (Q24).

9.3 Process recommendations

- 26. Publish an anonymised breakdown of respondents by category, so the weight attaching to each strand of feedback can be assessed.
- 27. Publish the evidence underlying the leniency decline and certification threshold propositions.
- 28. Adopt and publish a framework of success measures with annual reporting (section 7.5).
- 29. Re-consult on any proposal that changes materially in the light of the impact assessment.

- 30. Engage directly with consumer organisations on the design of the CAT claims listing, distribution standards and redress scheme requirements.
- 31. Confirm how coherence will be maintained with the separate HM Treasury workstream transferring PSR functions to the FCA.
- 32. Commit to a post-implementation review of the whole package within five years, published, with data disaggregated by claim type and appellant type.

10. Conclusion

The Transparency Task Force supports much of this consultation. Damages-based agreements, CMA redress powers, mediation after expert reports, costs budgets from both sides, the CAT claims listing, notification of concurrent regulators, the transfer of regulatory appeals to a judicial body, harmonised eligibility including consumer bodies, cost protection for those bodies, a standardised confidentiality ring framework, and the director disqualification reforms are all, in our view, good proposals. Several of them are proposals TTF itself advanced in October 2025 and we are pleased to see them taken up.

Where we part company with the Department is on a set of proposals that share a common structure. Each purchases speed or simplicity by removing a point at which someone could be heard, or by moving a binding protection into guidance authored by the body it constrains. Certification becomes harder to obtain. Filing acquires a fee. Funders are paid before the class. Cartelists who report first pay nothing to those they harmed. Water price controls become harder to challenge. The CMA decides how it will decide. Access to the file narrows.

None of these is unreasonable taken alone. Together they describe a system that is faster because fewer people can use it and less can be seen of what happens inside it.

The Department's stated aim is a route to redress that is swifter, simpler, less costly and distributes more money to consumers and businesses who have been harmed. TTF endorses that aim without reservation. But the evidence in this consultation points to where the failure actually lies. It is not that too many claims are being certified. It is that in the one distribution the regime has completed, £216,000 reached class members and more than £10 million reached everyone else.

That is a distribution problem, and this consultation contains the beginnings of a solution to it: the claims listing, defendant cooperation, better notification, redress schemes that pay people without litigation at all. Those are the proposals that will deliver the Department's stated aim. The certification threshold, the fees and the funder priority will not — and may make it harder.

We ask the Department to press hard on the first set and think again about the second.

The TTF's North Star question is always: "what's best for the consumer?" We urge the Department to ensure that question is asked, and honestly answered, at every stage of the design, implementation and review of these reforms.

Kind regards,

Andy

Andy Agathangelou FRSA

Founder, Transparency Task Force; a Certified Social Enterprise
Chair, Secretariat Committee, APPG on Investment Fraud and Fairer Financial Services
Chair of Trustees, The Consumer Financial Protection Charity
Founder, The International League of Ethical Financial Services Leaders
Founder, The March for Justice
Chair, Violation Tracker UK Advisory Board
Co-Founder, The Woodford Campaign Group
Leader, RSA's Economy, Finance and Business Network
Governor, The Pensions Policy Institute
Member, Better Finance
Editor, The Transparency Times
Telephone: +44 (0)7501 460308
Email: andy.agathangelou@transparencytaskforce.org