DBIST and DBT Consultation on Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement

RESPONSE OF THE LONDON SOLICITORS LITIGATION ASSOCIATION

The LSLA was formed in 1952 and currently represents the interests of a wide range of civil litigators in London. It has almost 4,000 members throughout London among all the major litigation practices, ranging from the sole practitioner to major international firms. Members of the LSLA Committee sit on the Civil Justice Council, the Chancery Court Users Committee, the Rolls Building Users Committee, the Law Society Civil Litigation Committee and the Commercial Court Users Committee to name but a few. As a consequence, the LSLA has become the first port of call for consultation on issues affecting civil and commercial litigation in London, and it has on many occasions been at the forefront of the process of change.

This document sets out the response of the LSLA to the consultation exercise by the Department for Business, Innovation, Science and Trade (**DBIST**), and the Department for Business and Trade (**DBT**) on swifter and simpler competition redress, regulatory appeals and competition enforcement. In this, we draw on the experience of members of the LSLA Committee who have either acted for clients bringing competition claims, or have defended such claims. Given this, the views that are expressed below reflect a range of perspectives.

There are a number of questions for consultation, and this document responds to those to which the LSLA feels it can provide a meaningful response.

Chapter 1 – Opt-out Collective Actions

Class Representatives

***Q1. Do you agree that greater certainty is needed at this time in relation to the authorisation of class representatives? [Yes / No / Not sure] Please explain your views*.**

We consider that greater certainty would be helpful at this time in relation to the authorisation of class representatives.

Since the collective proceedings regime came into force in 2015, the Tribunal has developed a substantial body of guidance around the statutory requirements that must be met by proposed class representatives under Rule 78 of the CAT Rules. The Tribunal has done so both through its active supervisory role as well as its decisions issued at the certification stage. However, in some cases, the Tribunal's decisions were made by reference to factors not considered in preceding decisions. While such evolution is natural in a developing regime, the resulting uncertainty makes it difficult for both prospective class representatives and defendants to assess the suitability of a person or corporate entity to act as a class representative.

Claimants and defendants alike would therefore be assisted by (i) clearer guidance as to the Tribunal's interpretation of the statutory requirements for class representatives, and (ii) clarity and certainty on the factors that the Tribunal considers relevant to its corresponding assessment, taking into account the learning over the last decade on the nature and pressures of the role. This would promote **efficient case management**, **proportionate costs** and **greater predictability** at the certification stage.

Collective proceedings in general, and opt-out collective proceedings, in particular, are inherently costly and demanding to pursue and defend. Both claimants and defendants are likely to expend considerable time and resources before an application reaches a collective proceedings order (**CPO**) hearing. From a claimant perspective, it is undesirable that such proceedings should be vulnerable to failure at the first hurdle because the Tribunal takes novel factors into consideration. From a defendant perspective, clearer guidance on the class representative requirements would allow a more reliable assessment of potential challenges on this front, thereby preventing the parties and the Tribunal from incurring unnecessary time and costs where the statutory requirements are met (or not met) with a sufficient degree of certainty. Such certainty would also reduce the risk of satellite disputes emerging, which again tend to be time-consuming and costly.

Accordingly, we strongly encourage the provision of greater certainty around the authorisation of class representatives. Such guidance would not only result in more efficient proceedings, but it would also promote consistency across certification decisions, thereby reducing cases in which certification is refused on the basis of a criterion not previously articulated, or not previously required of a proposed class representative.

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

We consider that guidance should identify all factors potentially relevant to the Tribunal's assessment of the statutory requirements, rather than covering a rigid list of specified areas, so as to retain appropriate discretion to tailor arrangements to the particular case.

We agree that the following areas would benefit particularly from clearer guidance, in a way that is useful to both claimant-side and defendant-side practitioners:

- **Role in funding arrangements**

  Guidance here should relate to the proposed class representative's understanding of the funding and insurance arrangements, and their practical implications for case management and risk allocation. Transparency and competence in dealing with funding issues are important to claimants, defendants and the Tribunal.

- **Use of costs lawyers**

  The Tribunal should be satisfied that the proposed class representative is properly supervising costs. Use of costs lawyers is one way to achieve this, but guidance could also recognise alternative means of ensuring effective oversight, provided the Tribunal can be confident that costs are being controlled and monitored.

- **Consultative panels**

  The possible use of consultative panels should be identified as a factor to be considered, but without prescribing a single format. The appropriateness of a panel, and the expertise required, will depend on whether the representative is an individual or an organisation, the complexity of the case, the size and nature of the class, and the range of issues arising. Properly used, consultative panels can assist both sides by improving the quality of the class representative's decision-making.

- **Other (please specify) – remuneration of class representatives**

  Over recent months, the Tribunal has begun to query the level of remuneration of proposed class representatives, including in one judgment where authorisation was refused partly on the basis of the proposed hourly remuneration, which was compared to levels received for work in the public sector.[1] The Tribunal itself has acknowledged that this is an area of some uncertainty.[2]

  Given the substantial and time-consuming responsibilities undertaken by class representatives, together with the personal financial and reputational risks inherent in assuming that role, it would be beneficial for guidance to be developed – following consultation with the Tribunal, the Class Representatives Network and other stakeholders – as to the appropriate approach to class representative remuneration.

  Any guidance should recognise that:

[1] *Waterside Class Limited v Mowi ASA and Others* [2026] CAT 32, at [54].
[2] *Or Brook v Google* [2026] CAT 65, at [71] and [76].

- **Rates must be sufficient to attract suitably qualified candidates**, who will often be drawn from private-sector roles with commensurate remuneration.
- If remuneration is set at an unrealistically low level, candidates may be unwilling to take on the role, which would impact the regime's effectiveness from both a claimant and defendant perspective (fewer well-run actions; greater pressure on the Tribunal).
- As has been clear from cases to date, the role of the representative is demanding and may involve difficult decisions affecting a wide class of persons and significant sums.
- The costs of the class representative are typically, in relative terms, a small part of the overall case budget, so any guidance on remuneration should be proportionate and focused on attracting quality rather than solely minimising cost.
- However, guidance should not prevent the Tribunal from supervising the level of remuneration class representatives are receiving or from determining that the class representative's remuneration is at a level which might cause conflicts with their duty to the class. For example, although there has been no evidence of this to date, some members consider that a class representative with high remuneration, or where the position is their main or sole source of income, could in theory be motivated to continue proceedings where settlement is in the interests of the class.

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

Any mechanism providing greater clarity must strike a balance between:

- offering sufficient certainty to assist parties (claimants, defendants, funders, insurers and potential class representatives) in case planning and risk assessment; and
- retaining flexibility where developing experience shows that amendment or refinement is required.

In our view, that balance would best be achieved through a **Practice Direction** issued by the Tribunal. A Practice Direction can:

- be updated more easily than primary legislation or formal rule changes;
- sit alongside the CAT Rules, providing interpretative and practical guidance; and
- be sensitive to the evolving case law and experience of users.

Certification

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? [Yes / No / Not sure] Please explain your views.

There are a range of views within the LSLA membership on the question of suitability, and the need for a merits review.

Against a change, some members consider that:

- The existing CAT Rules, together with a substantial body of case law developed over the past decade – very recently reviewed and tightened by the Supreme Court in *Evans* – already provide sufficient clarity on the certification threshold and enable the Tribunal to operate a meaningful filter on claims.
- Introducing a fundamental change to the certification threshold risks unsettling a decade of legal development and generating further uncertainty, as parties would have to test the new threshold and await further guidance from the appellate courts on its operation in practice.
- Experience shows that changes to fundamental aspects of the regime can cause significant delay. For example, collective actions were stayed for a considerable period while the *Merricks* case proceeded to the Supreme Court. Further changes to guidance or threshold concepts could produce similar delays and increased costs, at precisely the time when there is a shared interest, from both claimant and defendant perspectives, in establishing the regime on a cost-efficient basis with more predictable timescales.
- Moreover, besides commercial motivations that generally militate against unmeritorious claims (funders, insurers and lawyers are unlikely to support claims lacking prospects), the regime already contains an established mechanism for excluding unmeritorious claims: applications to strike out (which the Tribunal may also use of its own motion). This has proven to be a substantive filter in practice in certain cases, as demonstrated by the fact that the Tribunal has utilised its power of strike-out at the certification stage to strike out all[3] or parts[4] of collective claims.

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[3] *Rowntree v Performing Rights Society* [2025] CAT 49.
[4] *BSV Claims Ltd v Bittylicious and Others* [2024] CAT [48].

- In cases where certified claims have proceeded through to trial, and defendants have succeeded, they were entitled to recover their reasonable costs of defending the action, as determined by the Tribunal.[5]

An uncertain merits-based threshold at certification would, in the view of some LSLA members:

- increase uncertainty for all parties,
- risk reducing funders' willingness to support claims and thereby deter some meritorious proceedings that the regime is intended to facilitate, and
- potentially lead to prolonged substantive litigation on certification issues (including expert cross-examination and quasi "mini-trials"), similar to experience in some US jurisdictions, with attendant cost increases for both claimants and defendants.

Other LSLA members consider that there is a need for greater scrutiny of claims at certification and that the current certification test is not producing optimal results. Cases in which the defendants unsuccessfully oppose certification but go on to win at trial[6] raise the question as to whether significant costs could have been saved – for funders, defendants and the Tribunal – if the certification test were more rigorous. The test of "relative suitability" has not, in practice, acted as a meaningful filter and is inherently ill-suited to end-consumer cases, in which it appears always to be met. A free-standing merits threshold which goes beyond strike-out while avoiding a mini-trial would help to ensure that the Tribunal's limited time and resource to hear collective actions is directed where it is most needed.

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? [Yes / No / Not sure] Please explain your views.

We agree that a cost-benefit analysis is an important component of the Tribunal's overall assessment of whether collective proceedings are suitable. Views within the membership differ on whether it is necessary to elevate it above other factors in the statutory test or to change the fundamental structure of the certification threshold.

As recognised in the Government's consultation paper,[7] the CAT Rules already require the Tribunal to consider the **costs and benefits of granting a CPO**, and the Tribunal

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[5] For example: *Le Patourel v BT Group plc* [2024] CAT 76.
[6] For example: *Gutmann v First MTR South Western Trains Ltd & Anor; Gutmann, v London & South Eastern Railway Ltd; Gutmann v Govia Thameslink Railway Ltd & Ors* [2025] CAT 64*;* see also *Le Patourel*.
[7] *Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement*, July 2026, at para. 29.

may revisit this proportionality assessment throughout the life of the proceedings. It may withdraw or vary a CPO on its own initiative[8] where circumstances change. *Waterside Class Limited*,[9] demonstrates that the existing framework can operate as an effective cost-benefit safeguard: the Tribunal refused certification because it was not satisfied that the likely benefits to the class were proportionate to the costs of the proposed proceedings, while leaving open the possibility of a reformulated application. However, in *Gutmann*, the Tribunal certified a collective action despite concluding that the costs outweighed the benefits (and the claim ultimately failed at trial).

We recognise the legitimate concerns underlying the proposal of Q5: collective proceedings typically involve substantial costs for all parties; and certification may materially alter the litigation dynamics and create significant settlement pressure for defendants given claims are often aggregated on behalf of a large class. There is therefore a legitimate interest in ensuring that collective proceedings are not pursued where the likely costs substantially exceed the benefits that can realistically be delivered to the class. As such, there should be appropriate scrutiny of litigation funding and remuneration arrangements where these could result in a disproportionate share of the value generated by proceedings being retained by lawyers or funders rather than reaching class members.

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? [Yes / No / Not sure] Please explain your views.

We agree that the Tribunal should consider whether there is sufficient evidence for aggregate damages as one of the factors relevant to certification, within the framework that already exists.

As part of its determination whether claims are suitable to be brought in collective proceedings, the Tribunal must consider suitability for an aggregate award of damages.[10] This is where the Pro-Sys test becomes relevant: determining whether claims are suitable for aggregate damages involves a value judgment about the plausibility of the expert evidence relied upon to establish loss on a class-wide basis.[11]

We consider that this provides an important safeguard against claims proceeding where there is no realistic basis on which aggregate damages could ultimately be assessed. This is relevant to the interests of defendants as well as class members. Defendants should not be required to incur the substantial costs and burdens of collective proceedings where the proposed aggregated damages methodology is fundamentally

[8] CAT Rules 2015, Rule 85.
[9] *Waterside Class Limited v Mowi ASA and Others* [2026] CAT 32.
[10] CAT Rules 2015, Rule 79(2)(f).
[11] *Stasi v Microsoft* [2026] CAT 34, at [27].

unsupported by the available evidence or depends on assumptions for which there is no reasonable evidential foundation. At the same time, we do not consider that a material change is required here, save that guidance and decisions should remain sensitive to the **limits of the evidence reasonably available at the certification stage**, particularly in relation to disclosure. Experts will not, at that point, have access to the full evidential record, and their models and methodologies necessarily rest on preliminary data. The Tribunal's assessment of aggregate damages suitability must take into account this reality for both sides.

Financing a Claim

Q7. Will permitting DBAs increase options/competition for the financing of claims? [Yes / No / Not sure] Please explain your views.

We consider that permitting DBAs within the collective proceedings regime is likely to increase options and competition for financing claims, in a way that can benefit claimants while also aligning interests and managing risks recognised by defendants.

Experience from more mature class action jurisdictions – including Victoria (Australia) – suggests that DBAs (or equivalent mechanisms) can provide:

- more flexible and sometimes more cost-effective ways of funding collective claims than traditional funding structures;
- greater diversity of funding models (firms financing from their own balance sheets, portfolio arrangements with funders, shared contingency structures), which can expand the range of viable claims, including lower-value but meritorious claims;
- potentially downward pressure on contingency rates, particularly in higher-value claims, as competition between claimant firms, and between firms and funders, increases.

At present, the minimum threshold for bringing an opt-out collective action is high in practice, which may exclude some meritorious claims (including claims based on certain CMA infringement decisions) that cannot be viably funded or insured under existing models. DBAs could help bridge that gap.

DBAs also create direct incentives for efficient litigation, as lawyers are rewarded for successful outcomes and will generally seek to avoid unnecessary cost and delay. Properly structured, DBA arrangements can therefore align law firms' interests more closely with those of the class, meaning both sides benefit from an efficient resolution.

We recognise that defendants may be concerned about any mechanism that appears to encourage more claims. However, DBAs also expose lawyers to significant cost risk, which is likely to discourage speculative claims. The ability of defendants to challenge unmeritorious claims through strike-out, summary judgment or trial – with the prospect of recovering costs if successful – remains an important safeguard.

Q8. Are there sufficient safeguards to protect against speculative litigation? [Yes / No / Not sure] Please explain your views, including any additional protections the government should consider.

We consider that there are already significant safeguards against speculative litigation and that these would continue to apply if DBAs were permitted.

Key safeguards include:

- The Tribunal's supervisory jurisdiction at certification and throughout proceedings, allowing early scrutiny of the merits and structure of claims.
- The economic reality that funders, insurers and claimant firms bear substantial risk and have no commercial incentive to pursue wholly speculative actions.
- Defendants' ability and incentive to resist unmeritorious claims vigorously (including via strike-out, summary judgment and trial), with the prospect of costs recovery if successful.

We also recognise, however, the legitimate concern that speculative litigation can impose significant costs and uncertainty on defendants even where the claim ultimately fails. The fact that a defendant may ultimately succeed, or recover some of its costs, does not necessarily eliminate the material burdens carried by defendants to collective proceedings. The Government's summary of the responses to its call for evidence[12] recorded concerns from business and defence respondents about the availability of effective "off-ramps" after certification and about irrecoverable costs incurred in defending unsuccessful proceedings. Having said that, the Tribunal has itself observed that it has not, in practice to date, encountered wholly unmeritorious claims advanced solely to extract settlements.[13] There is no evidence that the regime has, to date, encouraged a pattern of speculative actions.

We see no reason to expect this would change simply because DBAs are permitted, as the Government has observed.[14] As lawyers acting under DBAs would assume substantial cost risk, DBAs can themselves be a safeguard: they align lawyers' incentives with the need to bring only claims that have realistic prospects.

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[12] Opt-out collective actions regime review: summary of call for evidence responses dated 17 July 2026 (https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/outcome/opt-out-collective-actions-regime-review-summary-of-call-for-evidence-responses)
[13] Consumers' Association v Qualcomm Inc. [2026] CAT 50, at [87], emphasis added.
[14] *Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement*, July 2026, at para. 44.

Q9. Are there other risks of permitting the DBAs to the regime that the government should consider? [Yes / No / Not sure] Please explain your views.

We do not see additional systemic risks specific to permitting DBAs, beyond those already addressed by the Tribunal's supervisory role.

We note the Government's commitment to legislate in order to mitigate the effects of PACCAR by clarifying that litigation funding agreements (**LFA**s) are not damages-based agreements.[15] The Tribunal has acknowledged[16] that such legislative clarification should enable funders' returns to be formulated as a percentage of damages awards or settlement sums, thereby aligning funders' interests more closely with those of the class.

Properly managed, percentage-based returns can:

- cap funders' returns in higher-value cases to protect the class's share of the outcome;
- help keep cases viable where multiple rounds of funding or extended durations would otherwise make the economics difficult;
- preserve flexibility so that both claimants and defendants can structure settlements in a way that is predictable and fair.

Preserving the Use of Litigation Funding

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? [Yes / No / Not sure] Please explain your answer.

We consider that an indication, at certification, of the **reasonableness of funder returns** and the proposed **order of payment** is likely to increase certainty for funders and thereby reduce the risk of withdrawal from the regime, provided that the Tribunal's assessment is informed by commercial realities and remains flexible.

It is important that:

- funding terms, which are often tied to case duration, are assessed in light of realistic expectations about how long collective proceedings may take, including where the Tribunal is considering amalgamating proceedings or issues, which can prolong litigation.

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[15] Sarah Sackman, '*Third-party Litigation Funding'* (Written Statement, HC Deb 17 December 2025, vol 777, WS1192).
[16] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2025] CAT 28, at [185].

- any indication given by the Tribunal recognises the balance between incentivising funders to support claims and ensuring that returns remain proportionate in relation to the class's interests and defendant exposure.

Such early guidance would also be valuable in contexts where:

- a DBA is used; or
- the funder's return is expressed as a percentage of damages recovered; or
- lawyers act under Conditional Fee Agreements with deferred or success-fee components.

An early judicial view on whether proposed percentages or structures fall within a reasonable range would assist all parties in understanding the likely shape of the relevant financial outcomes and reduce later disputes on the same.

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? [Yes / No / Not sure] Please explain your answer.

We consider that a presumption that funders receive their return when damages are awarded or a settlement sum is approved is likely to enhance certainty and reduce the risk of funders exiting the regime.

However, any such presumption should:

- reflect the reality that collective proceedings depend on a broader ecosystem of **class representatives, lawyers and funders/ATE insurers**[17];
- recognise the legitimate interests of each of these stakeholders in being paid within a reasonable timeframe; and
- preserve the Tribunal's discretion to ensure that the overall outcome, including payment priority, remains fair and proportionate for the class.

In particular:

- Many collective proceedings take four or more years to reach judgment or settlement, and distribution can take additional time.
- Where lawyers have agreed to act on risk (e.g. CFAs, DBAs), it would be undesirable if they were routinely required to wait until the conclusion of distribution before receiving payment. That would reduce the willingness of firms to take on

[17] *Gutmann v First MTR South Western Trains Ltd* [2025] CAT 72, at [171].

risk and, in some cases, could jeopardise the viability of claims that serve a legitimate purpose.

Any presumption should be framed so that:

- funders have sufficient certainty about returns;
- lawyers acting on risk can be paid within a reasonable period; and
- the class's share of proceeds is protected, including through appropriate judicial oversight of the distribution terms.

Q12. Does the proposed approach retain sufficient discretion for the CAT to safeguard against unfair outcomes? [Yes / No / Not sure] Please explain your answer.

We consider that the Tribunal's supervisory jurisdiction, and the proposed caveat that it retains discretion over the order of distribution where adopting a presumption would risk an unjust outcome, does provide sufficient flexibility to safeguard against unfair results.

Costs

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? [Yes / No / Not sure] Please explain your answer.

We consider that the current approach – involving a sub-group from the CAT User Group looking at costs and how proceedings can be made more efficient – is sensible and rooted in practical experience from early cases that have now reached conclusion.

Within that process:

- It will be important to consider how claims can be made more cost-efficient and reach trial more quickly, while recognising that parties may sometimes have differing views on what drives or increases costs.
- We agree with the proposal that the CAT Rules should be reviewed on a **triennial basis**, reflecting the fast pace of development in the regime.
- As part of such periodic reviews, it may be appropriate to consider whether costs guidance should be incorporated within the CAT Rules themselves rather than existing solely in a Practice Direction, provided this does not reduce flexibility or responsiveness.

Q14. Would increased oversight of budgets be likely to have a positive effect on their stability and transparency? [Yes / No / Not sure] Please explain your answer.

We consider that increased oversight of budgets is likely to promote greater transparency and stability in collective proceedings and is therefore, in principle, welcome. However, any budgeting regime should be **proportionate**. The process of preparing and presenting budgets should not itself become a major cost driver or source of satellite litigation. Overly prescriptive rules could generate delay and complexity that undermine the objective of reducing overall costs. As the regime matures, it should be expected that budgets become more predictable, subject to case-specific factors such as the number of defendants, the scope of disclosure, and the complexity of economic evidence.

Alternative Dispute Resolution (ADR)

Q15. Should mediation be encouraged or mandated at set points of proceedings as a matter of course? [Yes / No / Not sure] Please explain your answer, including at which stages this would be appropriate if responding 'Yes'.

We consider that **mediation and ADR should be actively encouraged** but not generally mandated at fixed stages.

- There is value in the Tribunal taking an active role in encouraging ADR where it appears sensible to do so, particularly in complex collective proceedings.
- However, mandatory mediation at set points in all cases could:
    - generate significant costs;
    - be used tactically by a party with no genuine interest in settlement to increase the other side's costs or delay; and
    - reduce flexibility to tailor ADR to the circumstances of each case.
- Mandatory mediation specifically at an early stage also risks being inappropriate, because the parties may not yet have sufficient information to assess the claim reliably, notwithstanding that substantial disclosure may already have been provided by the defendant. In particular, the class representative may not yet have analysed the disclosed material fully or developed its expert case, while the defendant may not yet have sufficient clarity as to the claimant's methodology on issues such as causation, quantum, pass-on, counterfactuals and class composition. A mediation before these issues have sufficiently crystallised may therefore risk being less productive and may result in both sides incurring substantial costs without materially improving the prospects of settlement.

Some LSLA members favour an approach under which ADR is treated as a **standing agenda item at case management conferences**. This would allow the Tribunal and parties to then determine, in light of case-specific developments, whether and when ADR (including mediation) should be built into the timetable.

Q16. Are these case management powers likely to have a meaningful impact on bringing parties together? [Yes / No / Not sure] Please explain your answer.

We consider that the case management powers described in the consultation can have a meaningful impact, particularly as the regime matures and parties gain more experience of settlement in collective proceedings.

Their effectiveness will depend, in practice, on the incentives facing defendants and claimants.

The Tribunal's willingness, where appropriate, to give **indications of its provisional views** on key issues can help narrow disputes and encourage realistic settlement discussions. This can foster a more collaborative approach to resolution, which is in the interests of both sides.

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? [Yes / No / Not sure] Please explain your answer.

Views within the LSLA membership differ on this question.

Some agree that, where a party unreasonably fails to engage in ADR encouraged by the Tribunal, that conduct may properly be taken into account in costs, with the Tribunal's assessment addressing both whether a party formally agreed to participate in ADR and the quality of engagement.

Others do not consider it appropriate to penalise a party in costs for declining to engage in ADR. It may be that declining to engage is not an unreasonable refusal but rather a decision based on any number of legitimate reasons, including that the dispute is not capable of being resolved via ADR (for example because the parties are too far apart), and the party has taken a reasonable view as to the likelihood of wasted costs.

Settlement

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? [Yes / No / Not sure] Please explain your answer.

Views within the membership differ on whether opting into a Rule 45-style automatic cost-shifting mechanism in collective proceedings would be appropriate in all cases.

On the one hand:

- Rule 45-type offers may increase incentives to consider settlement on both sides.
- Cost-shifting mechanisms can, in some circumstances, encourage realistic offers and realistic evaluation of risk. They might also assist class representatives in persuading funders and insurers as to the reasonableness of a settlement.

On the other hand:

- In some cases, such mechanisms may create undue pressure on class representatives, as noted in the consultation document,[18] particularly where offers are attractive from an insurer or funder perspective but are considered insufficient from the standpoint of the class's interests (although we note that a settlement that benefits funders to the detriment of the class would not be likely to meet the Tribunal's approval requirements).
- This risk is heightened in a developing regime where relatively few concluded proceedings exist against which representatives, funders and insurers can benchmark trial outcomes.

Q19. Are there additional safeguards that should be considered to avoid undue pressure on class representatives to settle? [Yes / No / Not sure] Please explain your answer.

Our principal suggested safeguards are the:

- retention of Tribunal discretion over costs;
- flexibility to consider the representative's duties to the class and the structure of funding/insurance arrangements in assessing settlement-related conduct;
- caution about mechanisms that could indirectly favour the priorities of funders or insurers over those of class members.

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? [Yes / No / Not sure] Please explain your answer.

The views of the membership differ on whether introducing a Rule 45-style regime would have a uniform or significant impact on settlement across all cases.

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[18] *Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement*, July 2026, at para. 81.

Any adoption of such mechanisms should be accompanied by robust safeguards and clear judicial discretion to avoid outcomes that undermine the regime's broader objectives.

Q21. Do you consider it to be necessary to make changes to the settlement approval process at this time to increase efficiency? [Yes / No / Not sure]

We do not consider that wholesale changes to the settlement approval process are required at this time, but we see merit in targeted clarifications focused on evidential expectations.

To date:

- only a small number of settlements have been approved;
- settlement approval hearings have tended to be longer and more expensive than in many other forms of litigation, partly reflecting the novelty and complexity of issues (including distribution methodologies, take-up rates, consumer engagement);
- the experience to date suggests that the approval process can itself become a substantial further phase of litigation, particularly where extensive evidence or third-party interventions are involved.

As experience accumulates, we expect costs and inefficiencies to diminish. Meanwhile, a targeted improvement would be:

- Clearer guidance on the **evidential material** needed to support an application for a collective settlement approval order, including the circumstances in which expert, survey or empirical evidence is likely to be required.
- A proportionate approach to the level of scrutiny required, particularly where a settlement has been reached after substantial disclosure, expert evidence, interlocutory hearings or mediation, such that the merits and risks of the claim have already meaningfully been tested.
- Where no material objections are raised by class members or other permitted participants, the Tribunal should be able to adopt a proportionate procedure for determining the application, including on the papers where appropriate.
- The Tribunal's existing jurisprudence sets a demanding standard, including references to empirical or survey evidence about likely take-up.[19] In practice, such

[19] *Mark McLaren Class Representative Limited v MOL & Others (Collective Settlement)(WWL/EUKOR)(K Line)* [2025] CAT 4, at [65]. See also *Mark McLaren Class Representative Limited v MOL & Others (MOL/NYKK Collective Settlement*) [2026] CAT 6, at [81].

evidence can be costly and difficult to obtain, especially where settlement is reached close to trial.

- The Tribunal has recognised that the absence of a fully finalised distribution plan at approval stage is not an absolute bar to approval.[20] We consider it appropriate that detailed empirical evidence should not be a condition of approval, provided that a robust distribution plan is presented for review and approval following the grant of a collective settlement approval order.
- Where issues concerning funding or remuneration arrangements arise, these should, where possible, be dealt with separately from the substantive question of whether the settlement is just and reasonable for the class, so that collateral disputes do not unnecessarily delay approval of an otherwise appropriate settlement.

This approach would balance the need for **rigorous scrutiny** with practical realities on both sides.

Empowering the CMA to Order Redress

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? [Yes / No / Not sure] Please explain your answer.

We are not certain that simplifying the approach to quantum alone will materially increase defendants' willingness to use voluntary redress schemes.

We note:

- The voluntary redress scheme has, to our knowledge, not yet been widely used in practice.
- Approval of such schemes may require the CMA to endorse arrangements that compensate some categories of affected persons but not others (e.g. direct vs indirect purchasers), placing the CMA in a difficult position and risking over or under-compensation for some victims.

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

As above, any simplification of requirements should be accompanied by safeguards ensuring:

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[20] *Mark McLaren Class Representative Limited v MOL & Others (Collective Settlement)(WWL/EUKOR)(K Line)* [2025], at [92].

- proper scrutiny of the scope and level of compensation offered;
- consideration of impacts on the feasibility of subsequent private enforcement;
- transparency for affected persons about what rights they waive by joining the scheme.

Q24. protection from duplicative damages liability outlined is sufficient to incentivise use of redress schemes where an infringement of competition law has been found? [Yes / No / Not sure] Please explain your answer.

The views of the membership differ as to the proposals regarding protection from duplicative damages liability.

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? [Yes / No / Not sure] Please explain your answer.

The views of the membership differ on this question.

Q26. Do you agree that this framework could increase the likelihood of redress being made available to consumers without the need for litigation? [Yes / No / Not sure] Please explain your answer.

We are uncertain whether the proposed framework will significantly increase the likelihood of redress being made available without litigation. In principle, encouraging defendants to offer voluntary redress and making it easier for them to do so should reduce the need for litigation.

We hope that greater maturity in the regime will increase constructive engagement, but at present we see limited empirical support for that expectation.

Q27. Are there other ways to incentivise the use of voluntary redress schemes? [Yes / No / Not sure] Please explain your answer.

We refer to our response to Question 26. Incentives might include:

- clearer recognition of penalty discounts for early, robust redress schemes;
- communication strategies that make it reputationally valuable for firms to adopt high-quality redress schemes.

Ensuring Harmony with Regulatory Action

Q28. Do you agree that it is necessary to intervene to support public enforcement work on cartels at this time? [Yes / No / Not sure] Please explain your answer.

We accept that robust public enforcement against cartels is essential given their serious impact – higher prices, reduced choice, weakened innovation incentives – and the difficulty of detection. Public enforcers' investigation tools, which exceed those available to private parties, are key to uncovering secret cartels.

However, support for public enforcement should not come at disproportionate expense to victims' ability to obtain compensation. At the same time, the interaction between public enforcement and private damages claims should be recognised: the prospect of substantial civil liability may reduce the incentive for cartel participants to self-report, particularly where the first-in applicant still exposes itself to significant follow-on claims. The Government has previously recognised that the prospect of damages may act as a disincentive to apply for leniency, while noting that the evidence on the extent of this effect is mixed. [21] The OECD has likewise identified private damages exposure as a potential factor affecting leniency incentives, against a background of a 58% decline in leniency applications across OECD jurisdictions between 2015 and 2021. [22] The evidence does not, however, establish that the risk of private damages litigation is the sole or principal cause of the decline. The proposal to grant **leniency applicants immunity from civil actions** raises concerns from an access-to-redress perspective, but also merits consideration as a means of strengthening the incentives for the first cartel participant to self-report.

In summary:

- There is a credible case that civil exposure can weaken the incentive to be the first cartel participant to approach the CMA. A first-in applicant voluntarily exposes its own conduct and provides evidence that may enable public enforcement against otherwise secret cartels. The CMA itself has previously considered that civil immunity for full public-immunity recipients could provide a further incentive to apply for immunity. [23]

- There is no clear evidence that full civil immunity is necessary to increase leniency applications, given recent data suggesting a recovery in leniency numbers alongside growth in private damages claims.[24] The evidence identifies private damages exposure as one possible contributing factor to declining applications, alongside other possible explanations.[25]

[21] UK Government, Reforming competition and consumer policy: Government response, paras. 1.104–1.106.
[22] OECD, The Future of Effective Leniency Programmes (2023).
[23] CMA, Reforming Competition and Consumer Policy, response to Q17.
[24] e.g. The OECD's 2025 [OECD Competition Trends 2025], which considers data up to 2023.
[25] UK Government, *Reforming competition and consumer policy: Government response*, para. 1.106; OECD, *The Future of Effective Leniency Programmes* (2023).

- Full civil immunity would create the risk that victims are unable to recover losses where other cartelists are insolvent or otherwise unable to satisfy claims.
- Given that major cartels are often global, immunity in one jurisdiction is unlikely materially to change the calculus of whether to seek leniency in the first place, but would significantly affect where sophisticated claimants choose to litigate, leaving smaller claimants and especially consumers exposed to increased risk and complexity at home. Nevertheless, UK civil exposure may form a material part of the decision whether to self-report and should not be discounted simply because parallel enforcement may occur elsewhere.
- There is a stronger case for protecting the **first-in applicant** than subsequent leniency applicants. The first applicant makes the greatest contribution to detection and enforcement, and the CMA's previous consultation response specifically supported limiting any additional civil immunity to undertakings benefiting from full public immunity, in order to preserve private redress against other cartel members.[26]

If the Government concludes that further civil protection is required for leniency applicants, we consider that a proportionate approach would be to focus that protection on the first qualifying leniency applicant, while preserving victims' rights against other cartel participants. In particular:

- the first-in applicant could receive immunity from civil proceedings arising from the cartel, subject to appropriate safeguards where victims cannot obtain adequate compensation from other cartelists; and
- subsequent leniency applicants would remain liable to compensate victims in civil litigation, potentially with adjusted contribution obligations reflecting their cooperation. An alternative, less extensive approach would be to preserve the first-in applicant's liability to victims while substantially limiting its contribution obligations vis-à-vis co-cartelists.

The above proposal would strengthen the incentive for the first cartel participant to self-report, while reducing the risk that civil immunity deprives victims of compensation where other cartelists cannot meet their liabilities. It would also recognise the different contribution made by the first-in applicant to public enforcement, without extending the same level of protection to subsequent applicants.

Overall, we consider that the Government should address the potential tension between public and private enforcement directly. The objective should be to ensure that the prospect of follow-on litigation does not materially undermine the incentive for the first

[26] CMA, *Reforming Competition and Consumer Policy*, response to Q17.

cartel participant to expose secret cartel conduct, while preserving an effective route to compensation for those harmed.

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? [Yes / No / Not sure] Please explain your answer.

If full civil immunity is nevertheless introduced, we consider that from the perspective of potential civil claimants, additional protections would likely be necessary to mitigate (though not eliminate) adverse impacts on victims and the justice system, including:

- Making immunity strictly conditional on formal grant of leniency, with automatic loss of immunity if leniency is later revoked.
- Conferring immunity only on corporate entities with clearly identified Type A leniency, to avoid complex satellite litigation about whether particular entities are covered.

Certain members consider that in such circumstances it would also be appropriate to introduce a statutory duty of cooperation by immune entities with civil claimants.

Even with such protections, implementing full immunity would require extensive legislative reform and would still leave the UK in a unique position internationally, with potentially uncertain benefits for leniency uptake and significant implications for victims.

Q30. Is it sufficiently clear when it would be appropriate and possible for the CAT to set aside immunity to enable recoverability of damages? [Yes / No / Not sure] Please explain your answer.

We do not consider it sufficiently clear how, in practice, the CAT would set aside immunity to enable recovery of damages.

Key uncertainties include:

- How immunity could be set aside where the leniency applicant has not been a party to the proceedings from the outset;
- How the Tribunal would ensure procedural fairness, including the applicant's right to participate and defend itself, if immunity is reconsidered at a late stage;
- Whether defendants would seek to be involved from the outset if there is a risk of being joined later, potentially complicating case management.

Further detailed procedural provisions would be required to make such a power workable in practice.

Interaction with Wider Regulatory Action

Q31. Will it be sufficiently clear what other concurrent regulator(s) may be relevant to the claim? [Yes / No / Not sure] Please explain your answer.

We consider that, in most cases, it will be sufficiently clear which concurrent regulators may be relevant to a claim, given the sector-specific mandates of bodies such as Ofwat, Ofgem, Ofcom, etc., and existing practice in Tribunal proceedings.

Q32. Is this step necessary to ensure harmony between private and public enforcement action? [Yes / No / Not sure] Please explain your answer.

We are not certain whether the proposed step is strictly necessary for harmony between private and public enforcement. Concurrent regulators themselves are likely best placed to assess whether formal changes are needed or whether existing cooperation and intervention mechanisms are adequate.

Q33. Will this step be of benefit to claims brought that have clear sector-specific elements over and above the central competition issues? [Yes / No / Not sure] Please explain your answer.

We consider that steps facilitating input from relevant sector regulators are likely to benefit claims with significant sector-specific components, by improving the quality of economic and regulatory evidence and promoting coherent outcomes.

The Tribunal has already permitted concurrent regulators to intervene (for example, Ofwat in collective proceedings concerning water and sewerage undertakers),[27] which suggests that the concept is workable and can contribute positively.

Distribution

Consumer Trust

Q34. Will the listing of claims on the CAT website increase trust and encourage take up? [Yes / No / Not sure] Please explain your answer.

We consider that listing collective claims on the CAT website is likely to:

- improve transparency;
- increase public confidence;
- assist potential class members in identifying relevant claims.

To maximise benefit:

- Listings should be presented in **clear, accessible, non-technical language**.

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[27] *Carolyn Roberts v Thames Water and Others* [2025] CAT 17.

- Summaries by class representatives, focusing on practical implications and steps class members may need or wish to take, would help bridge the gap between legal detail and consumer understanding.

Q35. Are there other ways to increase trust among class members that the government should consider? [Yes / No / Not sure] Please explain your answer.

Additional measures to enhance trust might include:

- A dedicated official Government website explaining the collective proceedings regime in non-technical terms, including FAQs, details of active cases, and records of settlements and damages awards.
- Clear guidance on how class members can verify the legitimacy of communications about settlements or distributions, particularly in an era of heightened cyber-crime risk.

Q36. Are there ways to incentivise a collaborative approach between parties to maximise distribution that should be considered? [Yes / No / Not sure] Please explain your answer.

We consider that collaboration between class representatives and defendants may in some cases improve distribution efficiency and take-up.

The Tribunal, at certification, already considers whether proposed distribution methodologies envisage or facilitate collaboration where appropriate.[28] For example, defendants holding customer or transactional data may be well placed to assist with direct distribution.

Views within the membership differ on whether powers should be introduced to require defendants to participate in distribution (including direct payments to class members where feasible).

The potential role of defendants in distribution should be kept under review, as methods are likely to evolve over the life of long-running proceedings (for instance, new technologies or data-sharing frameworks emerging between certification and conclusion).

Undistributed Sums

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:

- ***Access to Justice Foundation***

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[28] *Or Brooks v Google and Others* [2026] CAT 65, at [50]-[59].

- ***Consumers' Association (Which?)***
- ***A split between AtJF and Which?***
- ***Other (please specify)***

Views of the membership are mixed on whether the Access to Justice Foundation should be the designated charity with some advocating for that and others advocating for flexibility on charities and / or favouring tailored cy-près distributions in some cases.

Fees

Q38. How significantly do you consider the introduction of CAT fees would impact access to justice? [Very / Quite / Neutral / Not at all] Please explain your answer.

We take a neutral view on the principle of introducing fees, provided that:

- any fee structure is proportionate;
- fees are broadly consistent with approaches in other civil forums, such as the High Court;
- waivers or reductions can be considered where appropriate to safeguard access to justice.

Q39. Do you consider it appropriate for fees to be restricted to private litigation? [Yes / No / Not at all] Please explain your answer, including if there are other application types before the CAT where charging a fee would be appropriate.

We consider it appropriate that fees (if introduced) be restricted to **private litigation** applications, rather than extending to all application types before the CAT, given the distinct nature and purposes of regulatory and competition enforcement proceedings

Q40. Do you believe the introduction of CAT fees would be beneficial to its efficient operation? [Yes / No / Not sure] Please explain your answer.

We consider that a well-designed fee structure may have some beneficial impact on efficiency, for example by:

- discouraging purely tactical applications;
- contributing to resource planning;
- aligning the Tribunal's funding model more closely with usage.

Panel Composition

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? [Yes / No / Not sure] Please explain your answer.

We agree that there are categories of decisions that could appropriately be made by:

- the chair sitting alone; or
- the chair sitting with one other panel member (for example, an economist in cases where damages or disclosure issues are heavily economic).

  In practice, the Tribunal already uses "mini-CMCs" on discrete procedural issues, sometimes presided over by the Chair alone.[29] Used judiciously, this is a sensible and efficient use of resources and assists with timely listing.

Q42. Are there particular decisions or issues that should always be dealt with by a full panel of three with no exceptions? [Yes / No / Not sure] Please explain your answer.

We are not certain that rigid rules are needed as to which issues must always be heard by a full panel, but we recognise that:

- Competition proceedings often involve overlapping legal and economic questions, and
- A full panel may be appropriate for major merits or certification decisions, complex strike-out applications, or matters with significant precedential impact.

Ultimately, we consider that:

- The Chair should retain discretion on panel composition, taking into account case complexity, the nature of issues and resource considerations;
- Parties should be informed and able to make submissions on composition where appropriate.

Q43. Are there other ways to increase efficiency in decision-making by the CAT on discrete issues that should be considered? [Yes / No / Not sure] Please explain your answer.

We consider that the Tribunal generally manages case-management issues efficiently and pragmatically. Additional efficiencies could be achieved by:

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[29] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others*, Order of the President (Directions to Trial 2), 30 January 2024.

- wider use of **decisions on the papers** for discrete issues where oral argument is not essential;
- minimising unnecessary procedural burdens, such as extensive paper bundles, where electronic filing and e-bundles are adequate;
- continuing the Tribunal's pragmatic approach to confidentiality and closed sessions, so that confidentiality disputes do not consume disproportionate time and cost (as reflected in the most recent Practice Direction).