DBT Consultation: Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement

Questions 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.

Yes, but only to the extent that greater certainty is always desirable.

CORLA considers that the first ten years of the regime have produced a clear and workable picture of the role and responsibilities of the class representative. Further refinement will no doubt follow, but it should continue to be developed through the decisions of the Tribunal rather than through statutory intervention.

The CAT's judgment in *Riefa v Apple* in January 2025 established (if it were in doubt) that the class representative cannot be 'merely a figurehead for a set of proceedings', but must act as 'the independent advocate' for the class.[1] The Tribunal recognised this as a 'heavy responsibility' made necessary by the reality that the interests of the class and the funder and any solicitors acting on a conditional fee arrangement will not always be aligned.[2] The Tribunal's scrutiny in that case centred on the class representative's understanding of the funding arrangement, and on the value of a consultative or advisory panel where a representative is acting alone to support that process.

The importance of the advisory panel was reaffirmed in *Rowntree v Performing Rights Society* in August 2025, where the class representative was criticised for taking unilateral strategic decisions about the litigation.[3] Ben Tidswell, Chairman of the CAT, has separately observed — extra-judicially — that class representatives do not always have the expertise to manage costs to the level the CAT expects. CORLA agrees that this is best addressed through non-statutory means: either continued development through case management practice (as is now happening),[4] or, as CORLA proposes, guidance embedded in a Practice Direction for Class Representatives.

The tension between the interests of funder and class was addressed directly in *Merricks v Mastercard*, where the Tribunal considered a collective settlement application opposed by the claimants' funders.[5] That divergence of interest underlines why the class representative's independence must be robust: they must act entirely in the interest of class members and must not be led by the interests of solicitors or funders.

Most recently, the case of *Sciallis v Fender & Others,* handed down in July 2026, restated the class representative's duty of transparency to the Tribunal including the obligation of a duty of candour to disclose to the Tribunal any material change to funding arrangements.[6] That judgment and the imposition of indemnity costs, has prompted concern about the personal liability the class

[1] *Christine Riefa v Apple Inc* [2025] CAT 5, [115].
[2] *Ibid.*, [115].
[3] *David Alexander de Horne Rowntree v Performing Right Society* [2025] CAT 49, [116].
[4] See for example *Vicki Shotbolt Class Representative Ltd v Valve Corporation [2026] CAT 4* where the Tribunal required the independent review of funding draw requests to assist with costs budgeting.
[5] *Mastercard v Merricks* [2025] CAT 28, [107].
[6] *Elisabetta Sciallis v Fender & Others* [2026] CAT 56, [85].

representatives may face for defendants' costs. The better reading, however, is a warning to solicitors, class representatives and the Tribunal alike about class representative's exposure and the onerous nature of the role. The class representative and their representing solicitors should encourage the presence of an independent advisory board, and the Tribunal's continued attentiveness to the conduct of law firms advising class representatives remains an important safeguard for the regime.

CORLA does not consider that further statutory intervention is warranted. The most useful step would be a Practice Direction for Class Representatives, comparable to the Practice Direction for Experts, laying out their various duties, mindful of the need to give clear guidance on the Tribunal's expectations of a class representative and taking into account the pressures incumbent on a class representative. In addition, CORLA is working on its own guidance for class representatives and the law firms advising them.

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

- **Role in funding arrangements**
- **Use of costs lawyers**
- **Consultative panels**
- **Other (please specify)**

CORLA considers that greater certainty is required in relation to the class representative's role in funding arrangements, the personal liability that they assume by taking on the role and the insurance options available to them. The case of *Sciallis* has also drawn attention to this personal liability, especially if their funding agreement falls through (or one is not in place, as was the case for that claimant). Given how crucial class representatives are to bringing claims on behalf of consumers – to standing up for consumer rights and access to justice and thus facilitating a fair and competitive economy – this seems a potentially unfair balancing of risk. CORLA recognises the need, in this context, to incentivise the best people with the most appropriate skills to take on the role of class representative.

Relatedly, CORLA supports the Civil Justice Council's recommendation, in its June 2025 Final Report on the Review of Litigation Funding, that the current self-regulatory approach overseen by the Association of Litigation Funders be replaced by an independent, binding dispute resolution process for disputes between funders and funded parties, with costs borne by the funder. CORLA would encourage the government to prioritise implementation of this recommendation and to provide further detail on its practical operation, since class representatives negotiating competing stakeholder interests would benefit from a genuinely independent and accessible route of dispute, rather than incremental improvements to the existing voluntary Code of Conduct.

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

See the answer to question 2.

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.

No – the certification threshold is sufficiently clear and results in a transparent system and predictable outcomes for potential defendants. The CAT performs an 'important gatekeeper function' to ensure that opt-in and opt-out proceedings are used in appropriate circumstances and using its own experience.[7] Defendants retain, in any event, the ability to strike out an entirely speculative or without-merits claim; certification does not deprive defendants of that protection ordinarily applicable to civil claims.

The test from *Pro-Sys v Microsoft*[8] has remained largely unchanged over the last decade, with disputes concerning its application to specific facts r rather than its underlying appropriateness. The Supreme Court in *Merricks v Mastercard* confirmed that certification will never resemble a mini-trial.[9] *Evans v Barclays Bank [2025] UKSC 48* subsequently clarified a related but distinct point: that the strength of a claim is a relevant factor under Rule 79(3)(b) specifically when the Tribunal is choosing between opt-in and opt-out certification. Changing the established legal test would undo the decade of judicial precedent that has been built up, and would generate brand new legal uncertainty, that would require many additional years of satellite litigation as parties await clarificatory Supreme Court authority – as was seen in the first five years of the present regime before the Supreme Court judgment in *Merricks v Mastercard*. [10][11]

Meaningful self-filtering already occurs before the claim reaches certification. Funders and ATE insurers are economically incentivised to screen claims for their prospects of return and typically take independent legal advice before funding;[12] legal teams acting under CFAs take on claims aware they may work at risk.[13] A claim that survives these layers of commercial and professional scrutiny, and is nonetheless unmeritorious, is the rare exception (and indeed CORLA would query precisely which case or cases are being identified as unmeritorious), rather than the rule.

CORLA's position is that a more rigorous test at the certification stage is neither necessary nor workable. At that stage the parties argue their case without full disclosure and detailed expert evidence. Any attempt to narrow that information asymmetry would require early disclosure, inflating costs at precisely the stage the regime is designed to keep proportionate. running directly counter to the efficiency and cost objectives that should guide any reform of the regime. Given the time value of money over a claim's likely lifespan, even a modest increase in pre-certification cost can have a disproportionate effect on the funder's Internal Rate of Return and increase the cost of funding,

[7] *Ibid.*, [2].
[8] *Pro-Sys v Microsoft* 2013 SCC 57, per Rothstein J at [118] and elsewhere.
[9] [2020] UKSC 51, [113].

[12]
[13]

meaning that some meritorious claims no longer meet the economic criteria for funding. CORLA considers this front-loading effect should be weighed explicitly in any cost-benefit assessment of certification reform, as it risks deterring funders and widening the justice gap, which the DBT's own proposals are intended to close.

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.

No – not because cost-benefit analysis has no bite at present, but because the current, flexible approach is doing this work adequately and hardening it into a fixed statutory threshold risks causing more harm than it cures by limiting access to justice.

Cost-benefit is already a mandatory consideration at certification under Rule 79(2)(b) of the CAT Rules 2015 – a statutory instrument made under s.15(1)–(3) of, and Part 2 of Schedule 4 to, the Enterprise Act 2002.[14] The primary legislation itself, s.47B of the Competition Act 1998 (as substituted by Schedule 8 to the Consumer Rights Act 2015), sets certification at a high level of generality and leaves the detailed suitability factors – including cost-benefit – to the Rules.[15] The consultation paper's own paragraph 29 acknowledges this is "currently provided for in the CAT Rules."[16] The question is not whether cost-benefit is considered, but whether converting it into a fixed statutory gateway improves on the current, case-managed approach – and the recent case law suggests it does not.

Waterside Class Ltd v Mowi ASA and Others is worth examining closely, because it cuts both ways: it shows the existing rule filtering out a claim assessed by the Tribunal to be disproportionate, but also shows how easily the same filter could be turned to filter out precisely the kind of small-value, large-class claims the regime exists to serve.[17] In that case, the Tribunal refused a CPO for a claim on behalf of 35–44 million consumers with individual losses of £2–£9, against a litigation budget that rose to some £21 million including ATE cover. In doing so, however, the Tribunal went beyond criticising the PCR's unexplained failure to pursue cost synergies with parallel retailer claims: it also distinguished *Merricks v Mastercard*, holding that Lord Briggs's observations there addressed how distribution operates as between class members, not whether damages reach the class at all, and that where the cost-benefit balance is "plainly against" the proceedings, certification will not ordinarily be appropriate.[18] Commentary has correctly noted that this is a narrowing of the *Merricks* approach to certification as a low, non-merits threshold, applied specifically through the cost-benefit lens and now raises concerns about whether modest individual losses of the type the regime was designed to facilitate may be “squeezed out” if this approach hardens, particularly if wider benefits (cy-près and the deterrent value of enforcement) are excluded from the ledger.[19] The same commentary notes

[14] CAT Rules 2015 (SI 2015/1648), r.79(2)(b).
[15] Competition Act 1998, s.47B(6) (as substituted by Consumer Rights Act 2015, Schedule 8).
[16] *Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement* (DBT, 17 July 2026), [29]; n.15.
[17] *Waterside Class Ltd v Mowi ASA and Others* [2026] CAT 32, [48]; see also [38]-[42] on the litigation budget.
[18] Waterside Class Ltd v Mowi ASA and Others [2026] CAT 32, distinguishing Merricks v Mastercard Inc [2020] UKSC 51.
[19] Matthew Lo, "Waterside: Is the CAT's Cost-Benefit Approach Squeezing the Life Out of Smaller Collective Actions?", Kluwer Competition Law Blog, 4 May 2026

independent estimates that the regime generates £3.5–10.5 billion per year in net benefit – value which a narrow per-claimant cost-benefit test does not capture.[20] Stephenson Harwood LLP, has also estimated that, with proper investment, the annual economic impact of the regime could potentially be between £12.1 billion and £24.2 billion per year.[21]

This is precisely the risk the consultation should be concerned about, and provides strong evidence against converting cost-benefit into a rigid statutory threshold. What prevented *Waterside* from simply extinguishing a large follow-on consumer claim was the flexibility of the current, rule-based approach: the Tribunal did not strike the claim out, but invited the PCR to reformulate and re-apply, suggesting that a scheme involving retailer cooperation could return close to 100% of damages to the class.[22] The same pattern appears in *Spottiswoode v Nexans France* where, rather than refusing certification for want of an effective distribution plan, the Tribunal directed the PCR to report back on distribution proposals within three months.[23] *Or Brook Class Representative Ltd v Alphabet Inc and Others*, decided on materially comparable facts to Waterside (overlapping claims at different levels of the same supply chain), shows the same discretion working the other way: certification was granted because the aggregate benefit was found to outweigh the costs, with the Tribunal instead using case management directions to control costs and duplication going forward.[24] Read together, these decisions show a system correcting and refining claims through iterative, tribunal-led case management – not a single binary certify/refuse gate. That flexibility is the safeguard against the very risk the consultation is trying to address, and it is precisely what a fixed statutory threshold, applied at a single certification hearing, would put at risk.

There is also a more basic point of principle. The purpose of the regime is to enable redress even where individual losses are small; the Court of Appeal in *Le Patourel* confirmed that the regime exists to facilitate, not impede, the vindication of rights, and that aggregation is a benefit to judicial efficiency and access to justice.[25] This was confirmed by the Supreme Court in *Evans*, which referred to claims where a large class of consumers suffers small individual losses as the paradigmatic opt-out case, given that "*the large numbers of claimants and the small sums involved are likely to make an opt-out procedure the only basis on which it is practicable to bring proceedings*".[26] A statutory cost-benefit threshold measured primarily against direct per-claimant payout risks systematically failing exactly the claims – large class, modest individual loss, real aggregate harm – that the regime was built for, regardless of their merits or their wider deterrent value.

If the government nonetheless proceeds with elevating cost-benefit into the statutory threshold, three safeguards should be built in, to guard against this risk:

- Express preservation of the *Le Patourel/Merricks* principle that low individual claim value is not, by itself, a ground for treating a claim as disproportionate. The statutory test should focus

[20] Ibid., citing Flint Global, Collective Proceedings in the UK (2026)
[21] Stephenson Harwood (2025), Realising the benefits of competitive markets: strengthening the Competition Appeal Tribunal at page 31.
[22] Waterside Class Ltd v Mowi ASA and Others [2026] CAT 32 (Tribunal's invitation to the PCR to reformulate and re-apply).
[23] Clare Mary Joan Spottiswoode CBE v Nexans France S.A.S. & Others [2024] CAT 31.
[24] Or Brook Class Representative Ltd v Alphabet Inc and Others [2026] CAT 65, paras 54–58.
[25] Le Patourel v BT [2022] EWCA Civ 593, [29].
[26] *Evans v Barclays Bank* [2025] UKSC 48, [116].

on the efficiency of costs actually being incurred and the credibility of the proposed distribution mechanism, not the raw size of per-capita recovery.

- A requirement that the Tribunal consider, and where appropriate direct, cost-mitigation measures – cost-sharing with parallel claims, revised or more creative distribution mechanisms – before refusing certification on cost-benefit grounds, mirroring the Tribunal's own practice in *Waterside*, *Spottiswoode* and *Or Brook*. Converting today's iterative, correctable process into a single-hearing statutory gate should not be allowed to remove this step.
- Express recognition that cy-près distribution (currently, to the Access to Justice Foundation) and the deterrent value of enforcement both count as benefits in their own right, not only direct payout to identified class members — a claim should not be treated as disproportionate under Rule 79(2)(b) solely because take-up among individual class members is likely to be low, where a substantial cy-près recovery remains realistic.

Beyond this, the existing tools for managing cost risk should not be overlooked: CFAs, certification-stage budget scrutiny and post-certification budget revision are already in active use. Post-PACCAR funding scrutiny in *Gutmann v Apple* shows the Tribunal already willing to require funding arrangements to be renegotiated where disproportionate to the benefit likely to reach the class.[27] These tools, exercised through the existing flexible rule, are a more proportionate response to the *Gutmann v SSWT* distribution shortfall that motivated this proposal than a new, rigid statutory threshold.[28]

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.

Again, this factor already weighs into the Tribunal's decision on certification. It is difficult to see how greater weight could be attributed to it, given that economists and other experts are working without disclosure and therefore inevitably rely on assumptions. To insist on any greater precision would be to increase costs and reduce the efficiency of proceedings. The strike-out / summary judgment threshold applied to certification – that 'the expert methodology must be sufficiently credible or plausible to establish some basis in fact for the commonality requirement', offering 'a real prospect of establishing loss on a class-wide basis' – aligns with the threshold for proceeding to trial in other areas of English law. The Supreme Court in *Merricks v Mastercard* acknowledged that the "broad axe" principle for quantifying damages was not unfamiliar to the English courts and therefore found that forensic difficulty in quantifying loss should not stop a class claim at the certification stage. The current certification standard enables the CAT to play its gatekeeping role while minimising unnecessary expenditure on expert evidence and disclosure at that preliminary stage.

[27] Justin Gutmann v Apple Inc and Others [2024] CAT 18, para 38; Apple Inc v Justin Gutmann [2025] EWCA Civ 459, para 78.
[28] Justin Gutmann v First MTR South Western Trains Ltd and Another [2024] CAT 32; (Stakeholder Entitlement) [2025] CAT 72.

Financing a claim

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

Yes.

CORLA supports the proposal to permit damages-based agreements (DBAs) in opt-out collective proceedings. In CORLA's view, permitting DBAs should increase both the range of finance structures available and the sources of funding, which should combine to increase competitive pressure within the funding market.

DBAs more closely align the economic interests of the lawyers advancing the claim with the interests of the class in achieving a successful outcome. A solicitor acting under a DBA has a direct financial exposure to the quality and outcome of the case and is not remunerated in the ordinary way irrespective of success. That alignment should be seen as a positive factor, rather than a problem to be guarded against; properly regulated, it can create a powerful incentive for careful case selection and efficient conduct of the litigation, both of which in turn are of value to the class.

DBAs may also encourage different combinations of law-firm capital and third-party funding, increasing the availability of financing options rather than being solely reliant on third-party funding. Greater competition should, over time, place downward pressure on the overall cost of funding and allow proposed class representatives to compare structures on matters such as return, risk allocation, control, duration and waterfall arrangements. CORLA therefore agrees with the government's assessment that widening the available funding options can mitigate the risk of a justice gap and improve the resilience of the regime. It may also then open the door to bring claims which are realistically current below the funding threshold notwithstanding that they are very strong and meritorious cases, including for example follow on decisions from CMA infringement decisions but where the overall damages do not work with current funding options.

The focus should accordingly be on ensuring that DBAs are transparent, properly governed and subject to effective professional and judicial safeguards, rather than preserving a prohibition which unnecessarily narrows the available routes to finance litigation. To that end, CORLA would support a review of the current DBA Regulations and would commit to participating in a consultation on possible reforms to those Regulations.

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.

CORLA considers that the existing safeguards adequately addresshe risk of speculative or unmeritorious litigation. CORLA would caution against designing the regime on the assumption that permitting DBAs will materially increase speculative claims. The consultation itself recognises the basic economic discipline inherent in a DBA: lawyers do not get paid unless the claim succeeds and therefore assume substantial cost risk. That is a significant disincentive to pursuing claims with poor prospects.

Claims are likely also to require insurance in the same way maintain the additional scrutiny placed on the merits.

More generally, CORLA is not aware of any evidence demonstrating a systemic problem of abusive, unmeritorious or purely speculative collective claims being brought because of third-party funding or otherwise, or the perception that defendants are routinely being forced to settle unmeritorious claims simply because funded litigation may create leverage. Nor has the Tribunal seen evidence of this perception being borne out in fact. In its recent settlement approval ruling in *Qualcomm,* the Tribunal held that it "*has not, in its experience, encountered wholly unmeritorious claims being advanced by funders seeking to extract settlements from defendants. That has not been a feature of the cases that have come before it.*" Rather, funding creates a level playing field by allowing litigation to be pursued. Assertions of that kind should be tested against evidence. Complex collective proceedings undoubtedly create commercial pressure for all parties given the costs of these claims, as major litigation does, but commercial pressure is not itself evidence that a claim is abusive or lacks merit. This is also reflected in the number of claims that have progressed to trial to date without defendants having felt forced to settle. On the contrary, these costs, which can run into tens of millions of pounds act as a disincentive. Furthermore, funding is non-recourse so the concept of pursuing non meritorious would be uncommercial. In fact, we know that funders reject the vast majority of applications for funding CAT claims and that number is increasing.

The regime already contains multiple safeguards. The CAT controls certification and the authorisation of the proposed class representative; funding arrangements are scrutinised as part of that process; defendants can challenge certification and seek appropriate case-management orders (and de-certfication later in the proceedings if appropriate); costs remain a central feature of the certification process, particularly to ensure that adequate security for costs is in place, and the CAT is moving towards much greater budgetary control. Moreover, the Tribunal has case management powers to control unreasonable or disproportionate conduct and has shown a willingness to take a robust position in claims which do not meet the certification threshold.

There is also an important professional-regulation safeguard. Solicitors remain subject to their professional and fiduciary obligations to their clients notwithstanding that they have a financial interest in the outcome under a DBA. They must act in the client's best interests, manage conflicts appropriately and comply with the applicable professional rules and duties to the court a financial interest therefore does not displace the solicitor's obligations; it operates within them. Where a particular firm breaches those obligations, the appropriate response is effective regulatory enforcement against that conduct, not a strict regulatory framework based on an assumption that all contingency-based remuneration is too vulnerable to abuse.

If the government considers that additional protection is desirable, CORLA would favour targeted measures directed at identifiable risks: clear disclosure to the proposed class representative of the economic terms and material conflicts; appropriate governance and independent advice where necessary; transparent explanation of the waterfall and the circumstances in which returns may change; effective capital-adequacy and conduct regulation for third-party funders; and proportionate CAT scrutiny of arrangements at certification. These measures address the real risks without undermining access to finance.

CORLA would not support generic caps or prescriptive price controls presented as safeguards against speculative litigation. The merits of a claim and the price of financing are distinct issues. Funding prices reflect the individual risk profile of the investment, including duration, merits, enforcement risk, adverse costs exposure, capital committed, opportunity cost and the possibility of a complete loss. A rigid cap may simply cause capital to leave higher-risk or lower-value claims, thereby reducing access to justice without providing any meaningful additional filter against weak cases.

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.

Yes, but those risks are manageable and should not outweigh the benefits of permitting DBAs.

The principal risks are conflicts of interest, information asymmetry, and the possibility that economic incentives could influence decisions about strategy, settlement or expenditure. These are legitimate matters for consideration, but they are not unique to DBAs and should not be overstated. Litigation funding agreements, conditional fee arrangements and ordinary solicitor-client relationships can all produce potential divergences of interest. The relevant question is whether those risks can be identified, disclosed and managed. In CORLA's view, they can.

Indeed, the economic alignment created by a DBA can be beneficial. Class members ordinarily have very small individual stakes and cannot sensibly supervise complex proceedings. A law firm which commits its own resources and is paid by reference to success has a strong incentive to progress the claim efficiently and maximise recoveries. That alignment can reduce, rather than increase, costs. The possibility of conflict should therefore be addressed through existing governance and professional duties rather than treated as a reason to prohibit or materially constrain DBAs.

Solicitors' existing professional and fiduciary duties are an important part of that framework. Those duties should prevent a solicitor from subordinating the client's interests to its own financial return. The CAT's oversight of the proposed class representative and of settlements provides an additional layer of protection in the collective context. If experience identifies particular patterns of misconduct, those should be addressed through focused regulatory enforcement, professional discipline and case management.

CORLA would also encourage the government to distinguish between risks arising from financing and risks arising from the conduct of litigation. Concerns about aggressive pleading, excessive costs, unnecessary procedural steps or inappropriate settlement pressure are primarily conduct and case-management issues and are not Claimant-specific. This is demonstrated by the learnings from the Post Office litigation. They should be addressed using the CAT's powers and the relevant professional regulatory framework. Restricting the availability of or regulating the economics of DBAs would not be an appropriate response to the real issue and could reduce the ability to bring meritorious claims without curing the conduct said to be of concern.

A further risk lies in over-regulation itself. If the new regime imposes uncertain, duplicative or overly restrictive requirements, law firms and funders may be unwilling to deploy capital in opt-out proceedings. That would reduce competition, concentrate the market among a smaller number of

providers and make financing more expensive. The government should therefore assess any additional safeguard against its likely effect on the availability and pricing of funding.

The preferable approach is clear and proportionate regulation, transparency of material economic terms, effective supervision of professional conduct and robust CAT case management. Those tools permit genuine risks to be controlled without impacting the key benefit of access to justice that the proposed reform is intended to achieve. DBAs have also of course been tested in other types of litigation without evidence of such concerns arising.

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.

Yes, provided that the indication gives meaningful and durable guidance and does not become an indirect form of price control or create a risk of satellite litigation.

CORLA supports the objective of giving funders greater certainty at an early stage. Litigation funding requires substantial capital to be committed for an uncertain period with a real possibility that the investment will be lost in full. The economic viability of an investment therefore depends materially on the funder being able to assess at the outset, the range of returns that is likely to be regarded as permissible if the claim succeeds. A regime in which that question remains materially uncertain until the end of proceedings and even when a successful judgment has been obtained necessarily increases the risk premium and may deter funders from entering the market.

The real value of increased certainty will depend on the degree of predictability it provides in practice. By the time a case reaches certification, a funder has already raised capital and incurred a cost in doing so, and will also have already committed a significant amount of funding in preparing for certification.

A broad discretion applied differently from case to case would not resolve the underlying problem. The CAT should adopt a principled approach, applied consistently and with sufficient published guidance to allow funders, proposed class representatives and their advisers to understand the relevant factors and likely range of outcomes.

At the same time, 'reasonableness' should not be used as a mechanism for imposing standardised returns across fundamentally different investments. The financing of litigation is an individual risk and investment decision and is priced accordingly. In that respect it has important similarities with insurance and other risk-transfer products: price depends on the nature, probability, duration and magnitude of the risk assumed, the amount of capital exposed and the conditions prevailing when the commitment is made. A return that is commercially rational for one case may be wholly inadequate or excessive for another. It is worth noting that collective cases require significant investment by funders and insurers and there are typically not multiple options currently available for any given case which permits significant negotiation of commercial terms. The commercial terms which are currently available are very much influenced by the uncertainty as to returns and the duration risk.

For that reason, the assessment should be made by reference to the circumstances known or reasonably anticipated when the LFA was entered into. Relevant matters may include merits risk, duration, capital commitment, funding structure, adverse costs and security exposure, enforcement

risk, portfolio effects where relevant, and the possibility of complete loss. A case which resolves (successfully) quickly or produces a large recovery may have appeared highly uncertain when the capital was committed.

CORLA would therefore strongly discourage fixed caps, rigid multiples or percentages, or any de facto tariff. Such controls risk making certain claims economically unfinanceable, particularly claims involving a higher degree of risk on the merits, long duration, substantial capital requirements or relatively modest damages. The consequence would not necessarily be cheaper funding; it may simply be no funding. That would undermine the objective of securing and improving access to justice that the government is seeking to preserve.

Accordingly, an early indication of reasonableness is welcome if it operates as a genuine source of certainty, is grounded in the facts and circumstances of the particular claim and is departed from only for clearly identified and material reasons.

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.

Yes.

CORLA supports the proposed presumption. The timing of payment is economically significant to a funder and is an important component of the pricing and availability of capital. Requiring a funder to remain unpaid through a potentially lengthy distribution process after a damages award has been ordered or a settlement approved extends the duration of the investment, creates additional uncertainty and increases the cost of capital without necessarily producing a corresponding benefit for the class. The funding return may also continue to increase on an annual or other basis, which cost might be significant in view of the time it has taken to date to deal with approval of distribution plans.

A clear presumption that the contractual waterfall will be respected at the point of an award or approved settlement should therefore improve predictability and reduce an avoidable source of risk. It also recognises the commercial reality that the funder has provided the capital and borne the downside risk necessary to enable the claim to be pursued. Subject to appropriate safeguards, there is no obvious reason why that return should routinely be contingent on the timing or administrative success of a later distribution exercise over which the funder, and indeed other stakeholders such as the legal team, may have limited control.

This is also consistent with the broader objective of maintaining a sustainable funding market. Delayed or uncertain realisation affects funders' internal rates of return, capital recycling and ability to finance new cases. If collective proceedings systematically trap capital for longer than is justified by the litigation risk itself, the likely effects are higher required returns, more selective investment criteria and reduced competition. Each of those outcomes would ultimately be adverse to proposed class representatives and class members.

A similar presumption should apply to deferred fees of solicitors and counsel who have been prepared to act for several years on discounted rates in the interests of allowing the litigation to be brought.

Having to wait up to 2 years more for distribution to take place will put pressure on the arrangements which lawyers are willing to enter into.

The presumption should nevertheless operate within a transparent and properly disclosed waterfall. The proposed class representative should understand the priority of payments and the likely implications under reasonable outcome scenarios. That information should be available to the CAT when considering the funding arrangements and, where appropriate, communicated clearly to class members in a form that enables meaningful understanding rather than merely formal disclosure.

CORLA agrees that the CAT should retain a power to depart from the presumption where there is a demonstrable risk of an unjust outcome. That should, however, remain an exception supported by clear reasons. If the exercise of the CAT's discretion is too broad or unpredictable, the intended certainty will be lost, and funders will be required to price that into the cost of financing.

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

Yes, provided that the discretion is structured and exercised consistently and with restraint.

In CORLA's view, the proposed approach which combines an early indication that funding terms are reasonable, a presumption of early payment in accordance with the agreed order of priority, and an express power to revisit the position in materially changed circumstances is capable of striking the right balance. It gives the CAT sufficient flexibility to prevent genuinely unfair outcomes while recognising that certainty is itself an important safeguard for the continued availability of funding.

CORLA would, however, caution against an unduly broad use of judicial discretion. From the perspective of a funder, uncertainty as to whether an agreed return will ultimately be respected is itself a material risk. If the CAT's approach varies materially between cases, or if an indication given at certification can readily be reopened simply because the eventual outcome appears more favourable than anticipated, the practical benefit of the proposed reform will be limited. The result is likely to be a higher risk premium, reduced willingness to fund and greater concentration of capital in only the largest and safest claims.

The better approach is to identify clear principles governing the assessment of funding returns and other deferred fees, as well as the circumstances in which the CAT may revisit an earlier indication or depart from the payment presumption. Material changes in the economics or structure of the claim may justify reconsideration. By contrast, the mere fact that a funder ultimately earns a substantial return should not, without more, establish unfairness. Successful investments must be considered alongside the real risk of total loss across funded cases and the circumstances existing when the investment decision was made.

The same analysis militates against hard caps or limits. Litigation funding is not, and should not be, an off-the-shelf product created on the basis of one-size-fits-all. Cases differ materially in merits, duration, capital intensity, adverse costs exposure, enforcement prospects and expected recovery. A rigid cap may appear to create simplicity, but it would complicate the assessment and allocation of risk and could very likely prevent certain cases being funded.

CORLA considers that the more effective safeguard is a combination of proportionate regulation of funders, lawyers and other providers of funding/financing, transparent funding terms, informed decision-making by proposed class representatives and effective CAT oversight. Greater transparency could usefully include standardised disclosure of the principal economic terms, the waterfall, the circumstances in which the return may vary, material control or termination rights, and the principal conflicts/disputes protections. That would better equip proposed class representatives and, where appropriate, class members to understand what should be scrutinised or challenged.

In CORLA's view, the government should seek to create a framework in which funders know the rules, proposed class representatives can compare financing options on an informed basis, and the CAT can intervene where a concrete risk of unfairness is demonstrated - without introducing uncertainty so extensive that it undermines the financing on which access to justice depends.

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 support the CAT User Group sub-group considering costs and efficiency in light of experience from concluded cases. Any review must, however, bear in mind the need to safeguard equality of arms where class representatives, reliant on limited third-party funding, face exceptionally well-resourced defendants. CORLA supports a review of the CAT Rules given the regime's rapid development but we see no need to establish a triennial review (para 145) which may cause delay because it means with a set timetable reforms may be delayed for 4 to 5 years. The CAT Rules should be under regular review as are the Civil Procedure Rules. That process should also consider whether any costs guidance should be incorporated into the Rules.

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.

Yes. Increased budget oversight is likely to promote transparency in collective proceedings and is therefore welcomed.

However, caution will need to be exercised to ensure that the costs of preparing and presenting budgets does not become a significant expense in itself. An overly prescriptive regime risks satellite litigation and delay.

Further, any budgeting framework should allow class representatives to advance meritorious claims effectively against well-resourced defendants, while recognising that the Tribunal already supervises whether collective proceedings remain proportionate and may vary or revoke a CPO where it considers the costs of continuing the proceedings outweigh the benefits.

Meaningful oversight also requires visibility of the parties' *actual* expenditure, not only recoverable costs. Related to this, there should be clear limits on adverse-cost exposure so that class representatives can secure appropriate insurance. Defendants' recoverable costs ought therefore be

capped to an agreed budget with limited circumstance in which this can be revisited given it is typically much more difficult/expensive to increase ATE cover late on in a case.

Alternative dispute resolution

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'.

Yes. The Tribunal should promote mediation where it appears capable of assisting resolution. We would not, however, favour making mediation a default requirement: it can be expensive, and an unwilling party may use the process only to impose further cost or delay rather than resolve the proceedings.

ADR should not take place automatically at predetermined stages as the right point for settlement engagement will vary from case to case. A better approach is for ADR to be treated as an active case management item for the Tribunal to consider as the proceeding develops.

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

Yes. These powers could assist, especially as parties become more familiar with when collective proceedings are realistically capable of being resolved. Where appropriate, provisional indications from the Tribunal in the course of proceedings may help parties focus on the real issues and assess settlement more realistically.

The practical effect of these powers will depend on whether defendants have a genuine commercial incentive to settle. In some cases, and particularly where the challenged conduct is an ongoing business practice, defendants may view litigation as an acceptable business expense rather than seek to resolve the proceedings.

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.

Yes, although for the reasons given in response to Question 15, ADR should generally be encouraged rather than imposed as a routine requirement.

Where the Tribunal has encouraged or directed ADR and a party acts unreasonably in response, that conduct should be relevant to costs, consistent with the approach under the Civil Procedure Rules. Unreasonable conduct is broader, however, than a simple refusal to engage in ADR. The Tribunal should also consider the substance of the party's participation. As has been acknowledged by the High Court; a party's adoption of an unreasonable position during mediation can be equivalent to an unreasonable refusal to engage (see *Earl of Malmesbury v Strutt and Parker & Ors* [2008] EWHC 424 (QB)).

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.

Not sure.

The original policy reason for excluding the Rule 45 mechanism from the opt-out regime - namely safeguarding the class representative from unreasonable pressure – is still relevant.

In some cases permitting Rule 45 offers with cost consequences may assist the parties in focusing on settlement, particularly where there is a greater equality of arms between the parties, and where the alleged infringing conduct is not an ongoing business strategy pursued by the defendant.

However, in other cases, where costs are less important to a defendant with significant resources (as is the case with the majority of CAT cases) and/or where the alleged conduct is ongoing, permitting Rule 45 offers may operate only to place undue pressure on the class representative, while doing little to increase the defendant's incentive to settle.

The regime has to date also seen only a few settlement hearings and even fewer concluded proceedings. A class representative therefore has very limited precedent against which to test the merits of a defendant's settlement offer for fairness and reasonableness and to assess the likelihood of obtaining a better result at trial. Conversely, a defendant will have an incentive to pitch a Rule 45 offer strategically at a level which is low but where it may nevertheless create pressure with respect to the class representative's ATE insurers as to whether the offer is sufficiently reasonable and should be accepted, given the cost consequence.

We believe the Tribunal should therefore retain a discretion in respect of costs and, in doing so, should bear in mind, among other factors, (i) the class representative's duty to act in the interest of the class, (ii) the regime's dependence on multiple stakeholders, including lawyers, funders, and insurers, and (iii) the reasonableness of the parties' conduct in settlement discussions.

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.

Yes, as per the response to the above question 18.

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.

Not sure.

As explained above, in cases where the challenged conduct is ongoing the defendants may well view that conduct as an important financial aspect of their business strategy – or in other cases for strategic reasons (including proceedings in other jurisdictions) choose not to settle at a particular stage. For example, where such defendants have significant financial wherewithal - as is often the case in abuse of dominance proceedings - they may well view the costs of going to court, as well as any automatic cost-shifting, as merely the price of doing business.

We therefore do not consider that the proposal is likely to have a meaningful impact on such defendants.

Conversely, defendants may view automatic cost-shifting as an effective tool to increase pressure on class representatives to accept settlement offers that may not be in the best interests of the class.

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]

- **If yes, what changes do you believe would be beneficial?**
- **If no, is this an area that would benefit from review in due course once the Tribunal and its users have more experience of settlement approval processes in collective proceedings?**

There have to date been only a few settlements. To date, securing settlement approval has been an involve process requiring much more time and expense than in ordinary litigation, but it is likely that this will change as the Tribunal and its users obtain more experience as guidance builds up from early cases.

One change that might assist would be to provide clearer guidance on the evidential material to be filed in support of an application for a collective settlement approval order. In particular, in early cases the Tribunal has set a high evidential threshold in relation to proposed settlement structures and distribution methodologies, with the Tribunal noting that "[a]*n estimate, with empirical evidence or by survey of the Class Members, of the likely take-up is critically important*".[24] In practice, however, obtaining such empirical or survey evidence is costly and will take some time and may therefore be difficult to achieve while settlement discussions and trial preparations are ongoing. This is particularly so where settlement is reached close to trial, as is often the case. The Tribunal has therefore recognised that the absence of a finalised distribution plan at the collective settlement approval stage is not an absolute bar to approval.[25] We believe it helpful to consider amending the rules to make clear that detailed empirical evidence should not be required as a condition for the Tribunal approving a collective settlement application, provided that - following the grant of a collective settlement approval order - a robust distribution plan is placed before the Tribunal for review and approval.

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.

No.

CORLA supports redress schemes that are fair, effective and ensure proper compensation to the public. It is vital that they are independent and do not exclude representation or challenge in the court. They should apply an assessment process and conclusions that are not dissimilar to those that would apply in normal judicial process. The 2015 Regulations were put in place to protect claimants and to ensure the independence of the process. The danger in corporate redress schemes as has been seen in various

redress schemes e.g. the Post Office Scheme in which the underlying commercial dynamic by the corporate wrongdoer is to reduce the level of compensation in service to shareholders' interests. Further redress schemes must allow claimants to take advice and allow solicitors to make submissions in support of the claim, given the complex economics involved in calculating overcharge resulting from anticompetitive conduct; these are not cases concerning straightforward compensation of money paid. Claims, for instance in relation to cartels, can be complex and difficult and it is vital that claimants are entitled to take advice and for that advice to be applied in the claim.

The paper suggests that procedure should be proportionate. CORLA agrees with that intent, but it must be remembered that claims may run into many millions of pounds and potentially billions. It is vital that any compensation process provides for equality of arms between claimants and the relevant corporation.

There must be balance so that claimants are not simply bulldozed by corporate might the rational for which is to compensate at the lowest possible rate.

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

As above the 2015 Regulations sought to ensure an independent process for redress schemes. CORLA sees no issues with that and bearing in mind Regulation 7 that stipulates that a claim cannot be submitted by a third-party the Regulations were intended to ensure a fair process for Claimants. CORLA does not object to simplification but the principle of a properly constituted panel which is independent of the corporation is essential.

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

No. CORLA sees the proposal as resulting in substantial litigation complications and huge delays. Any addition of extra hurdles to pursuit of a claim will give rise to uncertainty and satellite litigation. Further the proposal would require that the redress scheme would need to conclude on a level of damages for the purpose of assessing duplication and this would inbuild substantial delay in the process.

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.

Not sure. CORLA has extreme concerns that voluntary schemes will not be policed and will under compensate consumers who will be outgunned by the resources available to the corporation.

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.

No. Redress is a qualitative term. A redress scheme that is open, transparent, independent, provides for representation, ensures levels of compensation that are properly assessed and the findings of which can be tested in court will increase the likelihood of redress being made available to consumers without the need for litigation. Anything less than that will not and nothing in the history of redress schemes suggests that corporations or government rush to the door to provide redress on that basis.

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

Yes, ensure that the public knows they are independent, effective, transparent. award proper compensation for victims and allow victims to be represented.

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

CORLA understands this question to refer to the DBT proposal to protect Type A leniency applicants from civil damages claims. On that basis, CORLA's answer is 'No'

No. The proposal to grant leniency applicants immunity from civil damages claims would represent a significant and unjustified departure from the fundamental principle that victims of wrongdoing should be entitled to full compensation from those who caused their loss. While robust public enforcement against cartels is essential and should be actively supported, that objective should not come at the expense of access to justice for those harmed by anti-competitive conduct.

Cartels are among the most serious infringements of competition law, generating unlawful profits through higher prices, reduced choice and diminished innovation at the expense of consumers and businesses. It is therefore difficult to reconcile a policy that would permit a cartel participant, notwithstanding its self-admitted involvement in the infringement, to retain the fruits of that illegal conduct while limiting the ability of victims to obtain redress. Such an outcome is incongruent with the first principles of our compensatory system of justice, which seeks, so far as possible, to restore victims to the position they would have been in absent the wrongdoing. Such complete immunity would also, to our knowledge, go beyond any form of immunity granted to cartelists in any other jurisdiction.

Nor is there convincing evidence that such immunity is necessary to support public enforcement. The available evidence suggests that leniency applications are already recovering without any need to confer immunity from civil liability. Recent data, reported in the OECD Competition Trends 2025 Report, records a "*significant increase in leniency applications*" across most jurisdictions. Against

that backdrop, granting complete immunity from civil damages risks imposing substantial costs on victims without delivering any meaningful increase in cartel detection.

In our view, a reform that weakens victims' ability to obtain effective redress, while allowing an admitted participant in a cartel potentially to retain unlawful profits, would undermine confidence in the civil justice system and risk damaging the United Kingdom's reputation both as a public enforcer of competition law and as a forum committed to providing effective compensation to victims.

However, it is well recognised that budget restrictions on public enforcement can leave a regulatory gap. Private enforcement can work perfectly well with public enforcement and supplements public enforcement but may, on occasion, also replace it entirely.

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.

CORLA accepts that whistle blowing may be encouraged by leniency programmes but there may be many reasons why a whistle blower takes that course of action. CORLA believes that immunity should follow the models of the EU and USA that immunity is from joint liability for civil damages only, not for losses caused by their own wrongdoing. A cartel member that whistle-blows will be admitting a civil and, possibly, criminal wrong. It would be improper for the whistleblower to avoid all possible consequences of their conduct causing the victims loss. This would fly in the face of victims' rights. Joint liability can be a very substantial part of a damages claim and will be substantial incentive to the whistleblower.

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.

No. This is likely to lead to extensive satellite litigation.

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.

Yes. CORLA does not see a problem there.

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

No. The court or tribunal are seeking to ensure properly assessed compensation in accordance with long established principles of liability and quantification. It is unclear to what end the regulator would want to intervene save to skew that process. This is likely to lead to satellite litigation.

There is already well established jurisprudence on the principle of when a court or tribunal will interfere in matters deemed to be part of the regulatory process rather than the judicial process. The assessment of damages is one for the judicial process.

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.

No. As above CORLA does not see a need for this added procedure.

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.

Yes

Listing live claims on the CAT website will increase trust and encourage take-up. It provides class members with a single, authoritative reference point against which to verify that a claim website is genuine, directly addressing the fraud and scam concerns that currently deter participation.

The CAT should go further; it should link directly to each live claim or distribution website and provide a clear indication that the site has been verified as legitimate. The page should be easily searchable and simple for consumers to navigate.

We recognise the CAT's legitimate concern not to be seen to take sides between parties. That concern is met by drawing a clear distinction between confirming that a claim website is authentic and endorsing the merits of the underlying claim. Verifying legitimacy does not compromise the CAT's neutrality. More broadly, the CAT has a constructive role to play in supporting take-up; where distributions have not succeeded, responsibility should not simply be directed elsewhere.

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

Yes

Government endorsement would materially increase trust. A statement from a DBT minister encouraging eligible consumers to participate in distributions would carry significant weight and directly counter the perception that engagement carries a risk of fraud.

This presents an opportunity to relaunch the regime effectively. Publicising recent developments in the regime, including those in Merricks and RoRo, would build public awareness and confidence. Prominent, easily located information and links on gov.uk would reinforce that message and give

consumers a trusted, official starting point.CORLA recommends implementing a government "trust badge" for example the GOV.UK or HM government logo in communications and marketing materials. This in turn would reassure consumers and businesses and help to bring trust among class members.

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.

Yes

Where class members are the defendant's direct customers, the defendant is often best placed to reach them and to effect distribution, given its existing access to contact and payment details. The Tribunal should be empowered to require defendants to co-operate in appropriate cases, for example by providing customer data or facilitating distribution directly.

Co-operation of this kind should be ordered, not incentivised. Rewarding a defendant for assisting with distribution, whether through a settlement discount or an enhanced reversion of undistributed sums, would benefit the very party responsible for the underlying infringement. That would run counter to the deterrent purpose of the regime.

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

The Access to Justice Foundation should remain the default recipient of undistributed sums, preserving consistency and certainty across cases. Parties should, however, retain the flexibility to propose an alternative charity or cause with a demonstrable connection to the subject matter of the claim or the interests of the class, subject to the CAT's approval. This approach maintains a predictable default while allowing a more directly relevant beneficiary to be nominated where one exists.

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.

Not at all.

Provided fees are set at levels comparable to those in the High Court, their introduction should not impede access to justice. Parties to CAT proceedings should expect to bear fees on the same basis as litigants in the High Court.

Fees must not discourage a pragmatic and efficient approach to interlocutory matters. If a separate fee is payable on every application, parties may be deterred from making sensible applications or from resolving discrete issues cost-effectively. The fee structure should be designed so that it does not penalise proportionate case management.

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.

Yes

It is appropriate to confine fees to private litigation, at least initially. Regulatory appeals and challenges to decisions of the CMA and concurrent regulators perform an important public accountability function. Imposing fees on those seeking to challenge regulatory decisions risks deterring meritorious challenges and is less justifiable than in private damages litigation.

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

Yes, but only if the revenue is reinvested in the CAT.

Fees could support the CAT's efficient operation, but only if the revenue raised is ring-fenced and used to increase the Tribunal's resources and staff capacity. Absent such reinvestment, the benefit to efficiency is doubtful.

We would caution against linking fees to the number or value of applications in a way that alters how the Tribunal operates or how parties conduct proceedings. A fee structure that discourages appropriate applications would undermine, rather than assist, effective case management.

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.

Yes

Greater flexibility is appropriate and reflects existing practice. Discrete interim applications are already dealt with effectively by a chair sitting alone or with one other member, and this works well.

The appropriate composition should, however, depend on the nature of the decision. Discrete interim applications are suitable for a chair sitting alone, or with one other member. More substantive applications, such as disclosure and case management conferences, are better heard by a chair sitting with a member who has economic expertise. Trials should retain a full panel of three, including an economist, because the balance and range of expertise across three members is integral to the fairness of the determination. Certification and decertification should always be determined by a full panel.

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.

Yes

The following should always be reserved for a full panel of three, including a member with economic expertise, with no exceptions: (i) trials and final determinations on the merits; (ii) certification of collective proceedings; and (iii) decertification. These determinations turn on the balance of legal and economic judgement that a three-member panel is designed to deliver, and each carries such significance for the class and for the integrity of the regime that the full range of expertise should be brought to bear.

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.

Yes

Several measures would improve efficiency on discrete issues. Suitable discrete matters should be capable of determination on the papers, without a hearing, where the circumstances permit. For non-adversarial matters such as distribution, listing short, half-day hearings at which the Tribunal provides its initial views would help to focus and resolve issues quickly, and the panel indicating provisional views on non-contentious points would narrow the matters genuinely in dispute.

Clear page limits on submissions and bundles, ex tempore judgments where appropriate, and the use of reduced panels for discrete applications, consistent with our response to Q41, would each contribute to faster disposal. Finally, the judgment embargo process should be reformed.

Current embargo periods, often ten days to two weeks, are too long and delay hand-down. Parties also, on occasion, use the embargo to make substantive submissions rather than to identify genuine corrections. The embargo period should therefore be shortened, and there should be an express prohibition on using it to reargue the case, with corrections confined to typographical and factual errors.