Consultation response

Consumer Voice response to the consultation on opt-out collective actions

About Consumer Voice

Consumer Voice is an independent consumer organisation that helps people understand their rights and get money back when companies break the rules.

Our co-founders, Alex Neill and Nikki Stopford, each have more than two decades of experience in consumer research, campaigning, communications and engagement. Both also act as class representatives in consumer competition claims before the Competition Appeal Tribunal.

That gives us a particular perspective on this consultation. We have direct experience of the governance, funding, costs and strategic decisions involved in collective proceedings.

Through Consumer Voice, we also work on the consumer-focused parts of the process: helping people understand when they may be affected by a group claim, building consumer awareness and trust, and looking at what makes people engage with routes to redress.

Consumer Voice provides free information and tools through consumervoice.uk, helping people understand group claims and consumer rights issues, and sends alerts to an email community of more than 100,000 people as at the end of September 2026. Our website has attracted more than 110,000 new users in the last 90 days alone. We also undertake consumer research and work with class representatives, law firms and other organisations on consumer engagement and the distribution of redress.

We have focused our response on the questions in Chapter 1 of the consultation, where our expertise is most relevant. We have not answered the questions on cartel leniency, as we do not consider that we have the relevant expertise to add meaningfully to those issues.

We have included at Appendix 1 a position paper on research and evidence on class member take-up. It brings together emerging evidence from collective actions and regulatory redress schemes, explains why headline take-up rates are not directly comparable and sets out a practical approach to building a stronger shared evidence base. This includes making better use of existing research, commissioning independent cross-sector work where there are common evidence gaps and using case-specific research where it is genuinely needed. The paper underpins our responses on certification, consumer trust and distribution.

consumer voice

Consultation response

Introductory comments

Consumer Voice supports the Government's aim of making the opt-out regime swifter and simpler. The regime provides access to justice for forms of consumer harm that could not realistically be addressed through thousands or millions of individual claims, particularly where individual losses are relatively small or consumers may not even know they have been harmed.

Although the regime was introduced in 2015, there have still been relatively few completed cases and even fewer examples of full distribution. We therefore think substantive changes should respond to clear evidence of a problem and avoid creating additional cost, delay or uncertainty without a corresponding benefit to consumers. This is also consistent with the Government's recognition that the regime remains relatively young and that the evidence on outcomes is still limited.

We recognise collective proceedings can also deliver wider benefits, including deterrence and changes in business behaviour. However, for Consumer Voice, consumer engagement and direct redress should remain central to judging whether the regime is working. The starting point should be getting compensation to the people who suffered the harm. Where money genuinely cannot be distributed despite reasonable efforts, we also strongly support using residual damages to support wider access to justice and create public benefit.

It is possible to run sophisticated and successful litigation and still fall short if the people affected never know that compensation is available or find the process too difficult to complete. The evidence increasingly points to two related questions. First, how effectively can the class be reached? Second, once someone knows they may be entitled to money, how straightforward is it for them to receive it?

There is now an opportunity to build a much stronger evidence base around both. That should include bringing existing research together in one place, independent work on recurring consumer-behaviour questions, proportionate case-specific research and consistent reporting of actual distribution outcomes. This would allow future decisions to be based increasingly on evidence of what consumers actually do, rather than assumptions about what they might do.

Our response therefore focuses particularly on maintaining effective access to collective redress, the role and independence of class representatives, proportionate certification and funding safeguards, and improving the evidence and infrastructure around consumer awareness, trust and distribution.

We also welcome the Law Commission's project considering the potential introduction of a wider consumer class-actions regime. Consumers do not experience harm according to whether the underlying issue falls within competition law, consumer law or data law. Existing

opt-in routes will work well in some circumstances, particularly where people know they have suffered harm and have enough incentive to come forward. They are less obviously suited to widespread harm that is individually low-value or difficult for consumers themselves to identify.

Any wider regime would need appropriate gateway tests, judicial oversight, funding safeguards and protection against double recovery. It should also be designed from the outset with distribution in mind, rather than treating the question of how compensation reaches consumers as something to resolve once the litigation has finished.

Class representatives

Q1. Do you agree that greater certainty is needed at this time in relation to the authorisation of class representatives?
Answer: Yes, but through clearer guidance rather than new statutory requirements.

The existing legal framework sets out the central responsibilities of a class representative and the CAT has continued to develop those requirements through its judgments. We do not think there is evidence that the basic statutory test needs to be rewritten.

There would, however, be value in bringing the developing case law together in clearer guidance. Expectations of class representatives have developed considerably as the regime has matured, particularly around funding, costs, independence and the use of outside advisers.

Our own experience is that the role requires active oversight and independent judgment, but a class representative cannot sensibly be expected to replicate the expertise of every professional involved in complex competition litigation.

Class representatives should understand the important issues, question the advice they receive, understand the risks and options available to them and take decisions in the interests of the class. They should also be able to rely reasonably on appropriately qualified solicitors, counsel, economists, funding advisers and other specialists without routinely having to commission further advice simply to demonstrate independence.

Clearer guidance would help prospective representatives understand what the Tribunal expects without creating a single model for how every claim should be managed.

Different class representatives also bring different skills. Legal or economic expertise can be valuable, but so can experience of consumer detriment, business leadership, governance, research, communications and engaging large groups of consumers.

Guidance should also ensure that prospective class representatives are given a proper understanding of the potential personal, financial and professional risks of the role and the options available to mitigate them.

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

Selected:

- Role in funding arrangements;
- Use of costs lawyers;
- Consultative panels;
- Other – class representative risks and exposure; and consumer communications and distribution.

Funding arrangements

A class representative should understand the material features of the funding arrangements they enter into, including the proposed return, termination provisions, relevant insurance arrangements, significant risks and what happens if interests diverge.

That does not require them personally to interpret every specialist contractual provision. Appropriate professional advice will often be necessary. The important point is that the representative understands the significant issues and makes an independent decision about whether the overall arrangement is in the interests of the class.

Class representative risk and protections

Class representatives should also be given clearer guidance on the personal financial and professional risks of taking on the role, and the steps that can reasonably be taken to reduce those risks. This should include the potential exposure arising from funding and indemnity arrangements, adverse costs and the limits of ATE insurance, disputes with funders, and what happens if funding or insurance arrangements fail or change during proceedings.

Guidance could also address when independent legal advice may be appropriate and the role that corporate structures may play in limiting personal exposure. The aim should be to ensure that people understand the risks they are taking on before accepting the role, and that there are proportionate protections in place where those risks can reasonably be managed.

This is particularly important as expectations of class representatives have increased. If the regime wants experienced and independent people to take on these responsibilities, they should not be exposed to significant personal risks that were not clear or properly understood at the outset.

Costs specialists
Independent costs expertise can be valuable, particularly in large or complex proceedings. We do not think it should become an automatic requirement. The question should be whether the class representative has an effective and proportionate way of scrutinising costs, taking account of the size and complexity of the proceedings and the expertise already available to them. Making an additional specialist mandatory in every claim risks adding cost even where the role would add little.

Consultative panels
Our experience is that consultative groups can be useful, particularly when major strategic decisions need to be made. Their value depends on bringing expertise or challenge that is not already available from the instructed team. Their composition may therefore change over the life of a case. Expertise that is useful around funding or certification may be different from the expertise needed at settlement or distribution. We would favour flexibility rather than a requirement to maintain a particular type or size of panel throughout proceedings.

Consumer communications and distribution
We would also include the representative's role in notice, communications and distribution. Class representatives should not be expected personally to design claims websites or communications campaigns. But they should satisfy themselves that there is a properly researched and funded strategy for reaching the class and, where compensation is secured, enabling people to receive it. As the regime develops, that should form a more explicit part of what good representation looks like.

Q3. What mechanism would be most helpful in providing increased clarity?
The most useful approach would be consolidated, non-statutory guidance developed or endorsed by the CAT with input from the CAT User Group and other relevant stakeholders. That guidance should bring together the principles established through judgments, distinguish clearly between minimum expectations and examples of good practice, and explain where different approaches may be proportionate depending on the circumstances of the case. We would not support detailed new statutory requirements at this stage. Guidance can provide greater consistency without creating a rigid structure that every class representative has to follow irrespective of whether it adds value.

Certification

Q4. Do you agree that "suitability" should relate to absolute suitability?
Answer: No.
We agree that certification must provide a meaningful filter. We are not persuaded that a new statutory requirement of "absolute suitability" is needed to achieve that. The CAT already examines the proposed methodology, the suitability of collective proceedings, the proposed class representative and the funding arrangements. Existing strike-out and summary

judgment procedures also provide routes for dealing with claims that cannot properly proceed.

A broader merits assessment at certification risks front-loading substantial parts of the eventual trial. At that stage the proposed class representative will often not have obtained disclosure or had access to information held by the defendant. Asking the Tribunal to reach firmer conclusions on the merits in those circumstances may add cost, delay and further appeals without necessarily producing a more reliable assessment of the case.

Certification should require a claim to have a proper basis and a credible route to trial. It should not require the proposed class representative effectively to establish the case before the relevant evidence has been assembled.

The lack of any realistic individual route to redress also remains relevant. In many consumer collective actions, the practical alternative is not individual litigation. It is that no claim is brought at all.

Q5. Do you agree that cost-benefit analysis should form part of the statutory certification threshold?
Answer: No.
Costs and likely benefits are relevant and the CAT should be able to consider them. We do not think they should become a rigid or disproportionately weighted statutory gateway.

There is a risk that a statutory test would give undue weight to the costs that can be quantified at certification, while understating benefits that are harder to predict at that stage. This is particularly relevant to consumer redress, where the amount ultimately reaching class members will depend in part on decisions about distribution that may be several years away.

Our particular concern would be the proposal to place greater weight on predicted take-up. Our review of the available research shows that there is no reliable single “normal” rate of take-up. The figures produced in different cases measure different things and depend heavily on the class, the amount available, existing awareness, direct contact, trust, the evidence consumers are asked to provide and how much effort is required.

The FCA’s live redress trial provides a particularly clear example of how communication design can affect take-up. A firm wrote to almost 200,000 customers who may have been due redress. Its original letter generated a response rate of just 1.5%; changes to the communication and follow-up reminders increased this to 11.9% – more than seven times higher, equivalent to around 20,000 additional responses.[1] The FCA estimated that the changes generated more than £500,000 in additional compensation. Among people who had

[1] Paul Adams and Stefan Hunt, Financial Conduct Authority, *Encouraging consumers to claim redress: evidence from a field trial*, Occasional Paper No. 2, April 2013, pp. 4–6 and 14. Link.

not responded after three weeks, a reminder increased response by 2.6 percentage points, while each additional week before the reminder reduced response by around half a percentage point.

These results show why a take-up forecast at certification should not be treated as a fixed estimate of what the class will ultimately do.

More recent collective-action research shows the same sensitivity to the assumptions used. Portland surveyed 5,088 eligible class members in Merricks. Forty-seven per cent met its basic willingness criteria, falling to 21% when relevant past behaviour was taken into account and 7% when awareness was added. Seventy-three per cent were unaware of the proceedings and only 14% said they actively sought out compensation schemes.

Similarly, the McLaren research produced much lower figures after making a deliberately conservative adjustment to awareness. The CAT described those adjusted figures as a "conservative lowball".

At certification, we would therefore favour asking whether there is a credible route to distribution. That might include the characteristics of the class, whether direct contact is possible, what records exist, likely evidence requirements, likely award levels and whether an appropriate distribution budget can realistically be provided. Any take-up estimate can then be refined as better evidence becomes available and the distribution strategy develops.

Direct consumer redress is also not the only benefit of collective proceedings. Deterrence and changes in business behaviour are relevant too. And, where money genuinely remains after reasonable efforts have been made to distribute it, the use of undistributed damages to improve access to justice can also produce wider benefits.

But direct consumer engagement and direct redress should remain important measures of whether the regime is working.

Q6. Should the Tribunal consider whether there is sufficient evidence for aggregate damages at certification?
Answer: Yes, but we consider this is already substantially addressed through the existing certification test.

The CAT already considers whether there is a credible methodology for establishing loss on a class-wide basis and whether the claim is suitable for an aggregate award of damages. We support that scrutiny.

We do not, however, think this should become a new or higher evidential threshold. At certification, the proposed class representative should be able to show a credible and

workable methodology, grounded in the facts of the case, and a realistic basis for expecting that the evidence needed to apply it will be available.

That should not amount to proving aggregate damages at certification. Important information will often be held by the defendant and become available only through disclosure. The existing "blueprint to trial" approach properly allows methodologies to be developed and refined as the evidence emerges.

We would therefore favour clearer application of the existing test rather than adding a separate requirement that risks turning certification into an early assessment of quantum.

Financing a claim

Q7. Will permitting DBAs increase options or competition for financing claims?
Answer: Yes, potentially.
Greater flexibility in financing meritorious proceedings is useful, particularly where collective claims require very substantial capital over a number of years.

We do not have a strong preference for one commercial funding model over another. From the class's perspective, the important questions are whether the funding is sufficiently resilient to take the claim through to completion; whether the potential returns and deductions are clear; whether the class representative remains independent; and whether sufficient resources remain available for notice, administration and distribution.

DBAs may provide another financing option, but we would not assume that lifting the prohibition alone will materially expand the market. Our view remains as it was in our previous call-for-evidence response, that litigation funding remains central to the practical operation of the regime.

Q8. Are there sufficient safeguards against speculative litigation?
Answer: Yes, broadly.
The regime already contains substantial safeguards, including certification, adverse-cost exposure, professional obligations and CAT scrutiny. A firm acting under a DBA would also bear significant financial risk if the claim did not succeed.

If DBAs are permitted, the CAT should be able to understand the complete economic arrangement, including any funding or insurance behind it, the maximum potential deductions and how settlement decisions will be made.

There should also be appropriate safeguards around conflicts, financial resilience, continuity of funding and the resources needed to administer and distribute any eventual award.
We do not think the introduction of DBAs itself provides a reason to introduce a higher merits threshold.

Q9. Are there other risks of permitting DBAs?
Answer: Yes.
There are potential risks where the legal representative has a direct financial interest in the outcome, but these risks are not unique to DBAs; CFAs can also create financial incentives. These include pressure around settlement, the possibility of complex external financing sitting behind the DBA and the risk that a firm becomes unable to continue funding long-running proceedings. Those issues should be addressed through transparency, conflict rules, continuity planning and case-specific CAT scrutiny. They do not, in our view, justify retaining an absolute prohibition.

Litigation funding

Q10. Would an indication of the reasonableness of funder returns at certification improve certainty?
Answer: Yes.
Greater predictability should benefit class representatives as well as funders. The regime depends heavily on third-party funding to meet the substantial costs of bringing proceedings, including legal advice, counsel, economic expertise and insurance. Greater certainty about the likely treatment of a funder's return should therefore help class representatives secure and maintain the funding needed to take a claim through to conclusion.

Any indication at certification should be provisional and reflect the information and market conditions that existed when the funding was agreed, including the capital committed, the expected duration of the case and the level of risk. We agree that the CAT should retain the ability to revisit that indication where the economics of the case change materially.

Q11. Should there be a presumption that funders receive their return once an award or settlement is approved?
Answer: Yes, provided the distribution process is properly protected.
An approved funder should not ordinarily have to wait until a potentially lengthy distribution exercise is completely finished. Before payment, however, the CAT should be satisfied that sufficient resources have been set aside to run the distribution properly. That includes notice and communications, administration, payment costs, consumer support, evaluation and a reasonable contingency. Distribution should be properly budgeted as part of the outcome of the proceedings, rather than funded from whatever happens to remain after other stakeholders have been paid.

Q12. Does the proposal give the CAT sufficient discretion to avoid unfair outcomes?
Answer: Yes, provided the discretion is drafted sufficiently broadly.
Greater predictability is useful, but the CAT should be able to revisit the amount, timing or priority of payment where there has been a material change in recovery, the distribution budget proves inadequate or the original waterfall would leave an unfair result for the class. Clear guidance about the circumstances in which that may happen would help preserve the certainty the proposal is intended to create.

Costs

Q13. Are changes to the CAT Rules necessary in addition to the CAT's work on costs guidance?
Answer: No, not at this stage.
We would allow the CAT's current work on costs guidance to develop before introducing a more detailed costs-management regime. Our previous call-for-evidence response identified scope for stronger procurement discipline, including clear scopes of work, obtaining alternative quotations where there is a genuine market, agreeing caps and using independent benchmarking or specialist advice where appropriate. We would also support greater transparency around material budget changes and clearer consequences where conduct unreasonably drives up the other party's costs. Those principles should apply to defendants as well as claimants. If experience shows that guidance is not sufficient, targeted Rule changes could then be considered.

Q14. Would greater oversight of budgets improve stability and transparency?
Answer: Yes.
Proportionate oversight should help identify significant cost increases earlier and assist class representatives in understanding adverse-cost exposure and insurance requirements. It should not operate as a fixed spending cap or require repeated reporting of routine changes. The focus should be on material changes, why they occurred, whether the additional expenditure is reasonable and whether either party's conduct unnecessarily contributed to it.

Alternative dispute resolution

Q15. Should mediation be encouraged or mandated at set points?
Answer: We support active encouragement, but not automatic mediation at a fixed point in every case.
Settlement can provide certainty of compensation being paid and paid more quickly, and can avoid considerable additional time and cost being incurred by both parties. For mediation to be useful, however, the parties need to be ready and willing, with enough information to make a realistic assessment of the case. The exchange of substantial expert evidence may often be an appropriate stage, but the right timing will vary. The CAT should therefore be able to encourage or require mediation where it considers that the case has developed sufficiently for it to be worthwhile.

Q16. Are the proposed case-management powers likely to have a meaningful impact?
Answer: Yes.
Judicial encouragement can ensure that both sides give serious consideration to settlement once the case has reached an appropriate stage. The value is in creating an informed opportunity to resolve the case, involving people with authority to negotiate, rather than simply adding another procedural requirement.

Q17. Should unreasonable failure to engage in ADR have potential costs consequences?
Answer: Yes.
A party that unreasonably refuses to take part in an appropriate mediation should be exposed to a proportionate cost consequence. That should be distinguished from participating properly in mediation but deciding that at that stage the settlement available is not acceptable. A class representative must remain able to reject an offer they reasonably consider not to be in the interests of the class.

Settlement

Q18. Should automatic cost-shifting settlement offers operate differently in collective proceedings?
Answer: Yes.
Collective proceedings differ from ordinary bilateral litigation. A class representative is making a decision for absent class members and any settlement remains subject to CAT approval. A Rule 45-style mechanism therefore needs to reflect those differences. The class representative should have enough time and information to take advice and properly assess an offer. Any later costs assessment should take account of the information available when the decision was made.

Automatic consequences should also not arise where an offer did not make adequate provision for distribution or could not realistically have been approved as fair, just and reasonable. A class representative should not face personal liability simply because a reasonable decision later turned out to produce a less favourable financial outcome.

Q19. Are additional safeguards required to avoid undue pressure on class representatives?
Answer: Yes.
The class representative should remain responsible for the settlement decision and should be protected from inappropriate financial pressure from any other participant in the claim. Depending on the circumstances, appropriate safeguards may include independent advice, sufficient time to consider the offer, consultation with a consultative group or other adviser and a clear record of the reasons for the decision. The CAT should retain discretion over any automatic costs consequence.

Q20. Would automatic cost shifting increase willingness to settle?
Answer: Not sure.
It may encourage greater attention to reasonable settlement proposals. But costs are generally likely to be a second-order consideration. Many of the barriers to settlement in complex competition litigation arise from information asymmetry, disputed expert evidence and uncertainty over quantum. Automatic costs consequences will not remove those problems. This is particularly the case when the claim goes to the heart of an organisation's business model.

The impact of any new mechanism should be reviewed once there is enough experience to assess whether it led to earlier fair settlements, reduced overall costs or simply created another area of dispute.

Q21. Should the settlement approval process be changed now?
Answer: No.
CAT approval is an important safeguard for class members who are not themselves involved in settlement negotiations. There are still relatively few collective settlements from which to draw conclusions. We do not think there is enough evidence at this point to justify substantial changes to the approval framework. Practical improvements could still be made through clearer expectations about the evidence required, indicative timetables, payment waterfalls and distribution plans.

CMA redress

Q22. Would a simpler approach to assessing quantum make redress schemes less burdensome?
Answer: Yes, provided it remains evidence-based and capable of adjustment.
A simpler approach could allow compensation to be delivered more quickly in straightforward cases and avoid disproportionate expenditure on economic analysis.

The assumed figure should, however, have a transparent evidential basis and should not become an automatic ceiling on compensation where better case-specific evidence exists. Consumers should also be able to understand how the amount has been calculated and have a proportionate route to challenge it where their circumstances are materially different.

Q23. What changes could simplify the Redress Scheme Regulations?
We would put the consumer experience much more firmly at the centre of scheme design. Where businesses or regulators already hold information about who is affected, consumers should not routinely be required to provide the same information again.

Schemes should make proactive use of existing records, contact eligible consumers directly wherever possible, explain entitlement and how compensation has been calculated in plain

language, keep evidence requirements proportionate and provide a straightforward route to payment.

Where reliable payment information already exists, direct or automatic payment should be considered rather than requiring consumers to discover the scheme and submit a new claim.

Communications and claims journeys should be tested with consumers before launch. Consumers should also have a clear way to verify that a scheme and any communication they receive about it are genuine. Where the business responsible for the underlying harm is responsible for administering the scheme, independent oversight and a clear route for complaints or review will be important to driving confidence in the process.

Schemes should also have a properly funded outreach plan, clear service standards and published measures showing how many people were identified, contacted, entered the process, completed it and received compensation. Reporting should also show the amount of redress actually paid, not only the amount that is theoretically available.

These points are consistent with the Public Accounts Committee's recent findings on government compensation schemes.[2] The Committee called for early co-design with affected groups, properly funded outreach including direct contact where details are already held, proportionate evidential requirements and performance measures covering the processing and payment of claims. Its findings on trust are also relevant: it found that people can be reluctant to engage where they lack confidence in the organisation administering the scheme.

Q24. Is the proposed protection against duplicate damages liability sufficient?
Answer: No.
We agree with the principle that consumers should not be compensated twice for the same loss. But credit should be given for compensation that has actually been paid, rather than money simply offered through a scheme. Otherwise a scheme that few consumers hear about, trust or manage to complete could reduce the value of a later collective claim without producing meaningful compensation. Any waiver should be clear, informed and confined to the loss for which the consumer has accepted redress. Consumers should understand both the amount they are receiving and the rights they are giving up before the waiver takes effect.

[2] House of Commons Committee of Public Accounts, *Government compensation schemes*, Twelfth Report of Session 2026–27, HC 88, 9 September 2026, paras 15-23 and 17. Link.

Q25. Would giving the CMA power to direct a redress scheme encourage voluntary schemes?
Answer: Yes.
A credible mandatory backstop may encourage businesses to put forward fair and workable voluntary schemes earlier. Those schemes should be judged by their outcomes for consumers – that includes whether the compensation fairly reflects the harm, the amount paid, the proportion of affected people reached, how long the process takes and how much effort consumers are required to make. Where appropriate, the CMA should also consider whether the scheme has sufficient independent oversight to command consumer confidence.

Q26. Could the framework increase redress without litigation?
Answer: Yes.
There will be cases where the affected group and the method of calculating loss can be identified sufficiently clearly for a regulatory redress scheme to provide compensation more quickly than litigation. That is a useful route where it works. Public and private enforcement should, however, remain complementary. A regulatory scheme will not be appropriate in every case and should not prevent private enforcement where the regulator has not acted or where the scheme does not provide fair, complete and effective redress in practice.

Q27. Are there other ways to encourage voluntary redress schemes?
Answer: Yes.
Businesses should have clearer guidance on what a good scheme looks like and how compensation actually paid will be treated. We would support early CMA engagement, clear deadlines, direct payment where possible, proactive notification, proportionate evidence requirements and transparent reporting of participation, processing times and payments.

Good practice should also include a transparent basis for calculating redress, an independent route for complaints or disputed cases, and communications that consumers can easily verify as genuine.

Schemes should also include contingency arrangements where actual participation or processing volumes differ significantly from forecasts. Any regulatory benefit given to a business should reflect fair redress actually delivered to consumers, rather than simply the creation of a scheme.

Interaction with wider regulatory action

Q31. Will it be sufficiently clear which concurrent regulators may be relevant?
Answer: No, not in every case.
In many cases the relevant regulator will be obvious. In others, particularly where competition issues overlap with financial services, digital markets, data, communications or wider consumer protection, the position may be more complicated.

Greater clarity would be useful. The CAT and CMA should establish a simple process for identifying relevant concurrent regulators and make clear who is responsible for notification. A proposed class representative should identify any obvious regulatory overlap, but the burden should not rest entirely with them.

Our work on motor finance has found that consumers can be affected by overlapping private litigation, regulatory redress and other routes to compensation. If the organisations responsible for those different routes do not have a clear understanding of each other's scope, there is a risk of confusion for consumers and of gaps or inconsistencies in the redress available.

Q32. Is automatic notification necessary to ensure harmony between public and private enforcement?
Answer: Yes, where there is a relevant concurrent regulator.
We support notification of relevant concurrent regulators where there is a genuine overlap. Early awareness of private proceedings should help regulators understand what other routes to redress already exist and allow potential interactions to be identified before regulatory decisions are made.

The focus should be on coordination, rather than control. And notification should not give a regulator a veto over private proceedings or lead automatically to a stay. Nor should it add unnecessary processes where the regulatory connection is remote.

Where public and private routes do overlap, however, we think there should be a clearer expectation that the regulator and the parties understand how they fit together. This should include the scope of the affected groups, the conduct and periods covered, the remedies available and the implications for consumers using one route rather than another.

Consumer communications should also be a key consideration. Where several routes to redress exist, consumers need clear information about what each route covers, what options they realistically have and whether taking action through one route affects their rights under another, including any implications as a result of statutory time limitations.

Q33. Could regulator involvement benefit claims with clear sector-specific issues?
Answer: Yes, where there is a relevant concurrent regulator.
A relevant regulator can bring useful knowledge of the sector, regulatory framework and related public enforcement or redress activity.
Better coordination can also help identify overlaps and gaps in redress, reduce the risk of inconsistent approaches and make it clearer to consumers how different routes relate to one another.

Where a regulator is considering or developing a redress scheme that overlaps with existing collective proceedings, it should have a clear understanding of those proceedings and consider how the two mechanisms interact. Equally, the class representative and Tribunal should be aware of relevant regulatory work.

Regulatory involvement should still support rather than determine the private proceedings. But where both systems are trying to address related consumer harm, they should not operate in separate silos.

Consumer trust and distribution

Q34. Will listing claims on the CAT website increase trust and take-up?
Answer: Yes.
An official CAT listing would give consumers a clear way of checking that a claim and its website are genuine. We have seen with the recent UK Avast settlement over the sale of browsing data that the most common Google search query was "is the Avast settlement legit?" This followed affected customers receiving an unexpected email about the settlement. The same applies to an advert telling people they may be entitled to money, directing them to an unfamiliar website and asking them to provide personal information.

However, while the listing will be useful for consumers who actively check whether a claim is genuine, it should not be confused with a way of generating awareness in its own right. Most consumers will never independently search the CAT website – nor is a CAT listing alone likely to appear prominently when someone searches online to check whether a compensation message is genuine. Its main value is as an authoritative source that claim communications and websites can point consumers towards when they want to check that what they have received is legitimate.

Q35. Are there other ways to increase trust among class members?
Answer: Yes.
We think distribution needs to be considered as a consumer journey rather than simply a notice requirement. People first need to hear that compensation may be available. They need to understand why they may be entitled to it and believe the communication is genuine. The process then has to be straightforward enough for them to start and complete it and ultimately receive payment without too much friction.

Consumer Voice was partly established because our own market research ahead of launching our business in early 2023 showed low awareness of collective legal claims. At the time, 49% of consumers said they had low or no awareness of them as a route to redress, while only 24% described themselves as very or extremely aware. The evidence from Merricks is similar. Seventy-three per cent of eligible respondents had not heard of the proceedings and only 14% said they actively looked for compensation schemes.

Trust is another barrier. Consumers are routinely warned not to click links in unsolicited messages or provide financial information. A genuine compensation communication can therefore look very similar to the scams people are being told to avoid.

The findings from the Public Accounts Committee show the importance of trust in practice.[3] Although government compensation schemes operate in a different context, the Committee found that lack of trust in schemes and the organisations administering them had affected engagement. It cited lower-than-expected early participation in the Windrush Compensation Scheme, partly because of a lack of trust, and difficulties engaging eligible veterans in the LGBT Financial Recognition Scheme for similar reasons. The Committee also highlighted early involvement of affected communities in scheme design as an important way of building trust.

The FCA's evidence also shows why communications should be tested rather than simply assumed to work. As referenced earlier, in its live field trial, the best communication and follow-up approach produced a response rate of 11.9%, compared with 1.5% for the original communication. Some seemingly reassuring features did not help. Adding the regulator's logo made no measurable difference, while using the chief executive's signature actually reduced response.

Good Notice and Administration Plans should therefore make routine use of consumer research, message testing, segmentation, direct contact where possible, trusted sources, straightforward claims journeys and realistic outreach budgets.

They should also include proper measures of performance. A final take-up percentage tells us relatively little about where the process succeeded or failed. It would be more useful to know how many people were reached, how many engaged, how many began the process, where people dropped out and how many ultimately received payment.

We also think there is an opportunity to improve the evidence available across the regime. We set this out in more detail in Appendix 1.

At the moment, useful work is spread across individual judgments, regulatory schemes and research commissioned for particular cases. Different studies use different measures and are not recorded on a common basis.

A shared evidence bank could record the methodology used, the assumptions behind any take-up estimate, the interventions used to improve participation, their cost and the eventual distribution result. Predictions could then be compared with what actually happened.

[3] House of Commons Committee of Public Accounts, *Government compensation schemes*, Twelfth Report of Session 2026–27, HC 88, 9 September 2026, paras 7 and 17. Link.

There is also a case for independent cross-sector research into questions that recur across claims: the effect of compensation value; direct contact; trust in different senders; evidence requirements; requests for bank details; reminders; and the gap between what people say they will do and what they actually do.

This would not replace case-specific research. It would give class representatives and the CAT a stronger starting point and reduce the need for each claim to commission the same work again.

Q36. Are there ways to encourage greater collaboration between parties to maximise distribution?
Answer: Yes.
Once compensation has been secured, there may be practical reasons for parties that have spent years litigating against one another to cooperate on distribution. A defendant may have accurate contact details for class members, existing communication channels and, in some cases, reliable payment information. Where that information can lawfully be used to improve distribution, there is a strong case for doing so.

The defendant should not control eligibility, messaging or the distribution process. But the CAT should be able to mandate sensible cooperation where customer data or communication channels could materially increase reach or reduce the effort required of class members.

Distribution plans should also include clear measures and contingency arrangements. If a communications channel or claims process is performing poorly, there should be scope to adapt it rather than discovering at the end of the process that participation was much lower than expected.

Undistributed damages

Q37. Which organisation should receive undistributed damages?
Answer: Access to Justice Foundation.
Every reasonable effort should be made to distribute compensation directly to class members. The existence of a residual recipient should never reduce the effort or resources devoted to doing that. Once reasonable distribution efforts have been exhausted, we support retaining the Access to Justice Foundation as the prescribed recipient.

We recognise the important role Which? plays as one of the UK's leading consumer organisations and the very substantial contribution it has made to consumer protection over many decades. Our preference for the Access to Justice Foundation reflects the institutional role we think the prescribed recipient should perform, rather than any question about Which?'s consumer credentials or its ability to put additional funding to good use.

The ATJF is an independent grant-making organisation. Rather than being the ultimate beneficiary of the money, it can assess need and distribute funding across a range of organisations, projects and communities, with oversight of how the money is used.

There is evidence of that model working in practice. Following the South Western Trains settlement, £3.7 million of undistributed funds was used to support 16 organisations providing free legal advice, with the geographical focus informed by where class members lived and where gaps in access to legal advice were greatest.

There is also value in keeping the prescribed recipient institutionally separate from organisations that may themselves bring collective proceedings. We think retaining an independent grant-making body reduces the risk of actual or perceived conflicts of interest, while allowing consumer organisations to play an important role in shaping how funds are used.

Consumer Voice has been involved in the ATJF's work on collective action funding alongside organisations including Citizens Advice, Age UK, AdviceUK, Law Centres Network and Which?. That collaborative approach allows the expertise of organisations such as Which? to help inform funding priorities while maintaining an independent grant-making structure.

We therefore favour retaining the ATJF as the single prescribed recipient rather than splitting the fund. We would also support stronger annual reporting on collective action money received, the projects supported, the consumers reached and the outcomes achieved.

CAT fees

Q38. How significantly would CAT fees affect access to justice?
Answer: Neutral.
For the largest collective proceedings, a modest capped application fee is unlikely on its own to determine whether a claim can be brought. The position may be different for lower-value claims that are already more difficult to finance. For that reason, any fees should be modest and capped and their effect on the range and value of cases being funded should be reviewed after implementation. We would not support fees developing into a substantial additional barrier to private enforcement.

Q39. Is it appropriate initially to restrict fees to private litigation?
Answer: Yes, if fees are introduced.
If the Government decides to introduce fees, restricting them initially to private litigation is preferable to extending them to public-enforcement proceedings or regulatory interventions. Any later extension should be based on evidence and subject to consultation rather than treated as automatic.

Q40. Would CAT fees improve the Tribunal's efficient operation?
Answer: Not sure.
That depends on whether the revenue raised provides additional resources for the CAT. Before fees are introduced, it would be useful to understand the likely revenue, the administrative cost of collecting it and what additional judicial, registry or technical capacity it would fund. The important outcome is that the CAT has sufficient and stable resources to deal with its caseload efficiently.

Panel composition

Q41. Could some decisions appropriately be made by a chair alone or with one other member?
Answer: Yes.
Routine or discrete procedural matters do not always require a panel of three.
A chair sitting alone could deal with straightforward timetabling, agreed directions, hearing arrangements and similar case-management issues. A chair sitting with one specialist member may be appropriate for a discrete issue involving economics or sector expertise. The chair should remain able to refer any issue to a full panel where its significance or complexity warrants it.

Q42. Are there decisions that should ordinarily be taken by a full panel?
Answer: Yes.
We would expect a full panel to deal with decisions that materially determine the rights of absent class members, including certification and decertification, authorisation or removal of a class representative, final liability and quantum judgments, approval of a collective settlement and significant final distribution decisions. The benefits of multidisciplinary decision-making are most important where an outcome affects large numbers of people who are not themselves participating in the proceedings.

Q43. Are there other ways to improve efficiency?
Answer: Yes.
The CAT is already making use of, and could go further with, the use of paper decisions for genuinely discrete issues, short remote hearings, standard directions, sensible page limits, joint expert processes and continuity of the same chair or panel where practical. There is also value in using published guidance where an issue has implications across the regime. That is particularly relevant to developing expectations around class representatives, costs and distribution.

On distribution, greater consistency in the information reported after each scheme would also improve future decision-making. Over time, evidence on reach, completed claims, payments, abandonment and the cost and impact of different interventions would give the CAT and future class representatives a much stronger basis on which to plan.

Appendix 1. Position paper:

Research and evidence on class-member take-up

Prepared by Nikki Stopford, 31 August 2026

Why better evidence on take-up is needed

Take-up is moving from being an issue considered mainly at the end of a collective action to one that may need to be evidenced much earlier.

The Government's current review of the opt-out collective actions regime proposes giving greater weight to the costs and benefits of a claim at certification and specifically says this should include likely take-up by the underlying class. Its proposals on distribution also focus on awareness, trust and how to get more money to class members.[4]

There is useful evidence on take-up, but it has been produced for different purposes and is not brought together on a common basis. Some research estimates likely participation, some tests what might increase it and some records what people actually did. The figures are difficult to compare without understanding the methodology and circumstances behind them.

The Government acknowledges that there have been few concluded claims and even fewer examples of distribution. It identifies Gutmann v SSWT as the only available example of actual distribution, while cautioning against treating the experience of one claim as representative of others.

Individual class representatives, claims administrators and regulators have started to develop take-up assumptions or commission research for particular cases. The approaches differ considerably, as do the results.

Bringing that evidence together could provide a stronger and cost-effective starting point when a new claim is being developed. It could also help identify where case-specific research is genuinely needed rather than requiring every claim to start from scratch.

[4] Department for Business and Trade, *Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement*, 17 July 2026, particularly paragraphs 29 and 114-130. Link.

What existing research tells us

The evidence available so far shows why there is unlikely to be a single normal rate of take-up and why the basis for each estimate needs to be understood.

Merricks v Mastercard

The distribution plan for the £200 million settlement approved in May 2025 assumed take-up of around 5%, or approximately 2.2 million people from a class of around 44 million. At that level, payments would be around £45, rising to a maximum of £70 if fewer people claimed.[5]

Epiq considered take-up of 10% – around 4.4 million people – unlikely, although the CAT subsequently noted that the Portland research suggested take-up around this level was plausible in some circumstances.

Portland Communications surveyed 5,088 eligible class members and used behavioural measures to get beyond simple stated intention. The research looked at willingness to provide personal information and wait three to six months for payment alongside past behaviour – including making complaints, challenging bills and actively looking for compensation – and awareness of the proceedings.[2]

While 47% of respondents met Portland's basic "willing" criteria, this fell to 21% when past behaviour was also taken into account and to 7% when awareness of the proceedings was added. Across different payment scenarios, Portland said estimates narrowed from 11-61% for the class as a whole to 3-8% for the most tightly defined group. It concluded that initial survey responses were likely to overstate take-up and that behaviour and awareness should also be taken into account.[6]

The research also gives some useful context on the barriers to take-up: 73% were unaware of the proceedings at the time of the survey, only 14% said they actively sought out compensation schemes and 68% were willing to provide the personal details needed to receive compensation.

McLaren – car delivery charges

The McLaren research built on the approach used in Merricks and tested likely participation among consumers and fleet managers at different compensation levels.[7]

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[5] Competition Appeal Tribunal, *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* [2025] CAT 28, 20 May 2025, particularly paras 71, 74 and 126-132. Link.
[6] Portland Communications, *Merricks/Mastercard: CAT Settlement Support Research*, 18 February 2025, particularly pp. 10-17 and 20-23. Link.
[7] Competition Appeal Tribunal, *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others* [2026] CAT 6, 15 January 2026, particularly paras 24 and 132-158. Link.

For consumers, 6.8-11.5% were willing to claim, showed relevant past behaviours and said they were aware of the proceedings. This fell to 0.7-1.2% after a further adjustment for possible overstatement of awareness. For businesses, the equivalent figures were around 30-33%, falling to 3.5-3.9% after the final adjustment.

The CAT described the adjusted figures as a "conservative lowball". The research was also intended as an early estimate, before further work to increase awareness and test messaging, channels and incentives.

The CAT also asked for take-up to be expressed in pounds as well as percentages and sought direct evidence on likely participation by the 20 largest potential class members.

FCA motor finance

The FCA's motor finance redress scheme provides a very different example. It is a lender-led model in which firms are expected to identify potentially eligible customers and contact them directly. The FCA models overall participation at around 75%, drawing on research and evidence from previous redress schemes.[8]

For opt-in cases, the model uses a 70% join rate, made up of a 58% baseline plus a further 12 percentage points for the expected effect of the scheme in increasing motivation and reducing the effort involved in taking part. It also drew on PPI evidence about the impact of proactive communications and wider awareness campaigns.

The FCA model shows how take-up can be broken down between people's underlying willingness to act and the additional participation generated by the distribution process itself. That is relevant to collective actions where usable customer records or other direct routes to class members are available, as well as to understanding what can be achieved through better communications and a simpler claims process.

What can be learned from across the different cases

Merricks, McLaren and the FCA scheme involve very different classes and routes to redress. Their take-up figures are therefore not directly comparable.

But the research starts to identify factors that recur across cases: awareness, the ability to contact people directly, trust in the sender, compensation value, previous behaviour, the information people are asked to provide and the amount of effort required to receive payment.

[8] Financial Conduct Authority, *PS26/3: Motor Finance Consumer Redress Scheme*, 30 March 2026, including Cost Benefit Analysis. Link.

The importance of each factor will vary from claim to claim, but the evidence does not necessarily need to be recreated each time. A central body of research could provide evidence on how these factors affect behaviour, to be considered alongside the circumstances of a particular case.

For example, evidence about the effect of direct contact could inform a case where a defendant holds usable customer records. Evidence about the relationship between award value and willingness to act could be relevant across a much wider range of claims. Research on trust, reminders, evidence requirements or providing bank details could similarly support different distribution models without determining the expected take-up in any individual case.

The role of shared evidence would therefore be to inform the assumptions that sit underneath a case-specific take-up assessment, not to provide a standard percentage that can be applied across proceedings.

Going beyond asking people whether they would claim

A useful evidence base needs to go beyond asking people whether they would claim compensation if it were available.

There is a significant gap between what people say they will do in a survey and what they may do when faced with a real decision. Portland and McLaren show how stated intention can be tested against awareness, willingness to complete the process and evidence of past behaviour.

Research can go further by testing not just whether someone is likely to act, but what changes their likelihood of acting. Rather than asking a single hypothetical question, people can be shown realistic communications or claims journeys. Different groups can be shown different compensation amounts, senders, evidence requirements, numbers of steps or reminder messages. This allows the effect of each change to be measured rather than assumed.

The FCA used this approach when developing its motor finance scheme. It combined qualitative research with 51 consumers and an online experiment involving 10,006 people, who were randomly shown different versions of the communication inviting them into the scheme.[9]

Relatively small changes made a measurable difference. The proportion saying they were likely to opt in ranged from 67% to 72% depending on the version they saw. Plain English

[9] Financial Conduct Authority, *Motor finance redress scheme firm-led communications: Insights from consumer and behavioural research*, 30 March 2026. Link.

performed best on intended participation, while the more urgent "Supercharged" version performed worst and also reduced perceptions that the communication was legitimate and trustworthy. Some consumers said its design looked more like something a scammer might send.

The FCA also looked at "informed intent" – whether somebody both intended to participate and understood the important features of the scheme. Plain English was the only version to produce a statistically significant improvement on this combined measure.

There is an important limit to this type of research. An online experiment is better at showing whether one approach performs better than another than predicting the absolute number of people who will respond in real life. Participants knew they were taking part in FCA-commissioned research, which may itself have increased attention or trust. Observed behaviour provides a stronger test still. In an earlier live redress exercise involving almost 200,000 customers, the FCA tested different versions of letters and reminders. The firm's original communication generated a response rate of 1.5%; the best combination of changes increased it seven-fold to 11.9%. The average amount owed was only around £21.[10]

Among people who had not responded after three weeks, a reminder increased response by 2.6 percentage points. Each additional week before the reminder was sent reduced response by around half a percentage point.

This suggested that take-up is not determined only by the characteristics of a class; it is also shaped by how distribution is designed. An early estimate should therefore be clear about the level of participation expected before active distribution and the additional response that different interventions might reasonably produce.

Qualitative research can support this by explaining the reasons behind the numbers. Interviews and small-group testing can explore why apparently straightforward processes put people off: whether a message looks like a scam, the person does not understand why they are entitled to money, they are reluctant to provide financial information, a warning or declaration creates concern, or the amount simply does not feel worth the effort. These findings can then be tested at scale rather than assumed.

Building a shared evidence base

There is already some cross-cutting work looking at consumer behaviour across collective actions rather than within a single case.[11] However, the wider evidence remains spread

[10] Paul Adams and Stefan Hunt, Financial Conduct Authority, *Encouraging consumers to claim redress: evidence from a field trial*, Occasional Paper No. 2, April 2013. Link.
[11] Thorndon Partners, *Beyond Dispute: Consumer behaviour and collective actions 2026*. Link.

across judgments, research reports, regulatory schemes and individual claims and is not recorded on a common basis.

Evidence bank for existing research

There would be value in developing a central evidence bank, with each result recording what it measures, how it was produced and the insights that can reasonably be drawn from it.

Where research seeks to predict take-up, the evidence bank should record both the estimate and the assumptions behind it. Where research tests ways of improving participation, it should record the change produced by the intervention rather than treating the final percentage as a forecast for another claim.

Importantly, predictions should eventually be matched against actual distribution results. This would show which approaches have proved most reliable, how far active distribution changed the starting position and which factors consistently affected participation.

Over time, this would create something that does not currently exist: a cumulative record of what was predicted, how it was predicted, what was done to improve participation and what ultimately happened.

This could provide an early evidence base against which a new claim can be considered, before substantial case-specific research is proportionate.

Cross-sector commissioned research

An evidence bank on its own will only answer the questions that individual cases have chosen or been able to research. There is also a case for commissioning independent research across collective actions to fill gaps and test common questions more consistently.

Some questions recur across very different cases: the effect of compensation value; trust in different sources of communication; whether direct contact changes response; the impact of evidence requirements or requests for bank details; how much effort people will make to claim; the effect of reminders; and the gap between stated intention and actual behaviour.

Research commissioned specifically around these questions could test them across different realistic scenarios rather than through the circumstances of a single claim. Larger quantitative studies could measure differences between groups and test controlled changes to communications or claims journeys. Targeted qualitative work could be used where there is a need to understand why people respond as they do, without requiring every individual case to fund extensive qualitative research of its own.

There may also be value in repeating some research periodically. Consumer awareness of collective actions, attitudes towards scams, willingness to provide financial information and familiarity with compensation schemes are all capable of changing as the regime develops.

A repeatable core study, with additional questions asked as evidence gaps emerge, could track those changes rather than relying indefinitely on evidence collected at one point in time. This research would not seek to predict take-up for a particular claim. Its value would be in establishing stronger evidence about the factors that influence behaviour, which could then be applied alongside the particular facts of an individual case.

The role of case-specific research

A shared evidence base does not remove the need for bespoke research, but it should make it easier to identify what genuinely needs to be researched in a particular case.

Where an important assumption cannot reasonably be answered from existing evidence, bespoke work could test the characteristics of the particular class, likely compensation, distribution route or claims process. As a case develops, research may also move from estimating likely participation towards testing specific communications, channels, reminders or other ways of improving distribution.
Survey research will not always be the strongest evidence. In some business claims, for example, direct engagement with significant potential class members may provide more useful information than a larger survey.

Case-specific work should then feed back into the central evidence bank, including the methodology, findings and, where the case eventually distributes, the actual outcome. Shared research would inform individual cases, while individual cases would continually strengthen the shared evidence.

Cost and efficiency

Bespoke research can provide strong evidence, but commissioning substantial work from scratch for every claim can be expensive and repetitive. A central evidence bank should allow existing research to be reused where it is relevant, while cross-sector research could answer recurring questions once rather than requiring individual proceedings to fund them separately. Case-specific budgets could then be focused on what is genuinely uncertain in the particular claim.

There is also value in building evidence about the cost of improving take-up, rather than simply the level achieved. In an FCA live field trial involving almost 200,000 consumers, relatively low-cost changes to communications increased response substantially. Reminder letters generated additional compensation worth more than twice the cost of sending them.

Over time, comparable evidence about the cost of reaching additional class members, securing completed claims and making successful payments could help distribution plans focus resources on approaches that have been shown to work.

Independence, funding and procurement

For shared evidence to carry weight, the methodology needs to be capable of scrutiny and should not be designed around the interests of a particular claim.

For commissioned cross-sector research, the questions it is intended to answer and the core measures to be recorded should be agreed before procurement. Research providers could then be asked to set out the strongest methodological approach, including how they would deal with sample quality, behavioural testing and differences between consumer and business audiences.

Published work should, where possible, include questionnaires and methodology alongside the findings. Any adjustments made to headline results should also be transparent. McLaren illustrates the importance of this: its final adjusted-awareness figure was deliberately conservative and answered a different question from its wider measures of willingness and awareness.

There is a case for independent funding of cross-sector research so that questions with value across collective actions can be investigated without being tied to the budget or interests of a single proceeding.

The Access to Justice Foundation could be a particularly relevant body to approach. As the prescribed charity for undistributed damages from opt-out collective actions, it is already working with sector partners on distribution and is committed to supporting the distribution of damages. It has also established its first grant programme funded by unclaimed class action money.[12] This gives it a direct interest in strengthening the evidence about how effective redress reaches class members.

A competitive procurement process would also help demonstrate independence and allow different providers to respond to a common brief. The aim should be consistency and transparency in the evidence produced, rather than requiring individual claims to use the same research supplier or methodology.

[12] Access to Justice Foundation, *Collective Actions*; see also its July 2026 update on distribution and its first grants programme using unclaimed class action funds. Link.