

Swifter and Simpler Competition Redress, Regulatory Appeals and Competition Enforcement

Making opt-out collective actions, regulatory appeals and competition enforcement swifter and simpler to benefit businesses and consumers.



Government of the United Kingdom

Department for Business and Trade

Swifter and Simpler Competition Redress, Regulatory Appeals, and Competition Enforcement

Presented to Parliament

by the Secretary of State for the Department for Business and Trade

by Command of His Majesty

July 2026



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Foreword by the Secretary of State for Business and Trade



Where claims are brought before the Competition Appeal Tribunal, where the decisions of regulators are appealed and where competition authorities enforce the law, processes should be as swift and simple as possible.

Swifter and simpler competition redress, regulatory appeals and competition enforcement benefit businesses and consumers. They can act with greater certainty, money is put back in their pockets sooner when they have lost out and they can put the time they save to better use, pursuing what matters to them.

Processes to ensure fair outcomes for businesses and consumers are important, whether in enforcing against a business which may have broken competition law, ensuring redress for other businesses and consumers, or ensuring important regulatory decisions are well made. But nobody wants to be stuck for longer than necessary in litigation, regulatory processes or appeals that are confusing, costly and time-consuming.

This consultation includes proposals to make each of the opt-outs collective action regime, regulatory appeals and competition enforcement swifter and simpler. It is part of this government's mission to achieve growth. Yes to strong enforcement, yes to appropriate safeguards and protecting rights, yes to fair outcomes. No to excessive cost, no to undue complexity and no to wasted time.

Swifter and simpler competition redress, regulatory appeals and competition enforcement, so businesses can get on with expanding and growing the economy and so consumers can get money back in their pockets and get on with their lives.

17 July 2026

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Consultation information

This consultation seeks views on a package of reform proposals to make opt-out claims, regulatory appeals and competition enforcement swifter and simpler to benefit businesses and consumers.

Consultation details

Responsible body: the Department for Business and Trade (DBT)

Issued: 17 July 2026

Respond by: 25 September 2026

How to respond

You can respond to this consultation through the [online survey](#).

We strongly encourage that responses are made via the online platform. Using the online survey will assist our analysis of the responses, enabling more efficient and effective consideration of the issues raised.

If you cannot respond via the online platform, you may send your response by email to: competitionpolicy@businessandtrade.gov.uk.

If you are responding in writing, please make it clear which question or paragraph number each comment relates to.

Written responses can also be sent to:

Competition Policy Team
Department for Business and Trade
Old Admiralty Building
Admiralty Place
London
SW1A 2DY

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. When responding, state whether you are responding as an individual or representing the views of an organisation.

Evidence will be reviewed thereafter by the review team. If further information or clarification is required, the review team will be in contact with you.

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SW1A 2DY

Email: data.protection@businessandtrade.gov.uk

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You can contact the Information Commissioner for independent advice about data protection issues or to make a complaint:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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Email: casework@ico.org.uk

Telephone: 0303 123 1113

Textphone: 01625 545860

Monday to Friday 9am to 4:30pm

If you make a complaint to the Information Commissioner, it does not prejudice your right to seek redress through the courts.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#). If you have any complaints about the way this consultation has been conducted, email: enquiries@businessandtrade.gov.uk.

Enquiries

For enquiries on this consultation, contact: competitionpolicy@businessandtrade.gov.uk.

Executive summary

This consultation contains three chapters.

Chapter 1 sets out proposals to improve the competition opt-out collective actions regime. The regime enables a single claim to be brought before the Competition Appeal Tribunal (CAT) on behalf of a large group (a class) who have all suffered small individual losses without each member of the class having to actively opt in to the claim. The proposed improvements build on responses to the call for evidence (CfE) that ran between August and October 2025¹, and balance providing redress and protecting businesses from unmeritorious claims. The aim is to provide a route to redress that is swifter, simpler, less costly and distributes more money to consumers and businesses who have been harmed.

Chapter 2 sets out proposals to simplify and improve the efficiency of the system for appeals against decisions made by economic regulators, while maintaining robust regulatory accountability. The proposals include transferring appeal functions held by the Competition and Markets Authority (CMA) to the CAT, introducing a harmonised appeal standard, aligning eligibility criteria and improving cost-recovery arrangements.

Chapter 3 sets out proposals to improve the efficiency of antitrust enforcement under the Competition Act 1998, enabling faster and more streamlined action by the CMA, while preserving procedural fairness. The proposals include reforms to the CMA decision-making model, access to evidence, settlement procedures, and further targeted measures to modernise procedural rules and strengthen deterrence, notably by refining rules on competition disqualification orders for companies' directors and penalty caps.

Chapter 1: Opt-out Collective Actions

Chapter 1 is split into six sections. Section 1 deals with bringing an opt-out collective actions claim in the CAT. It addresses the scope of the regime, the role of class representatives and the test to be applied at the stage of certifying a claim as an opt-out collective action. Section 2 deals with financing a claim. It addresses the use of damages-based agreements, how to preserve litigation funding and reduce claim costs. Section 3 deals with alternative routes to redress. It covers alternative dispute resolution, settlement and the possibility of empowering the CMA to order redress. Section 4 covers the interaction between the opt-out collective action regime and public enforcement by the CMA and other regulators. This includes the CMA's leniency regime, where the first business to report a cartel (Type A) receives immunity from penalties. It explores whether further protection, including immunity from civil claims, may be needed to preserve incentives while balancing impacts on compensation and fairness. Section 5 deals with distribution of damages. It addresses how to increase consumer trust, so more money reaches consumers and what to do with undistributed sums. Section 6 deals with CAT resourcing and efficiency. It covers fees, the composition of CAT panels and the frequency with which the CAT Rules should be reviewed.

¹ [Opt-out collective actions regime review: call for evidence](#), 6 August 2025.

Bringing a Claim

Opt-out collective actions are currently only available in respect of a loss suffered owing to a breach of competition law. The government has considered whether to expand the scope of the regime to other areas of law or, alternatively, to narrow it to only competition law claims that follow on from the decision of a regulator. It has decided not to expand or narrow the regime at this stage. However, the government has sponsored the Law Commission to look at the benefits and risks associated with introducing a consumer class actions regime.

The CAT can authorise a person to act as a representative of a class where it is just and reasonable to do so. Under the CAT Rules, a class representative must be able to fairly and adequately represent the interests of the class; must not have a material interest in conflict with the interests of the class; must be able to pay the defendant's recoverable costs if ordered to; and must have a satisfactory plan for the collective proceedings.

The government has decided not to increase the requirements or obligations placed on class representatives, but it seeks views on whether changes should be made to the CAT Rules or if non-statutory guidance should be provided to make the current requirements clearer in relation to:

- a proposed class representative's involvement in and knowledge of funding arrangements;
- the use of costs lawyers or specialists; and,
- the use and role of consultative panels.

Certification focusses on whether a claim is suitable to be brought in opt-out collective proceedings. Recent developments in case law have affected the threshold for certification, including reducing the prominence that consideration of the merits of a claim has. The government's view is the threshold for certification is too low. It seeks views on amending the law:

- so there is consideration of the absolute suitability of a claim to be brought as a collective proceeding, including consideration of its prospect of success and proportionality;
- to give greater weight to considering case costs against the benefits that might be returned to a class; and,
- to ensure there is sufficient evidence to assess damages on an aggregate basis.

Financing a Claim

Most opt-out collective claims are financed by third party litigation funders, usually through litigation funding agreements (LFAs). Damages based agreements (DBAs) are currently not permitted in the opt-outs regime, but evidence from other jurisdictions suggests they could be beneficial. To preserve funding, the government seeks views on allowing damages-based agreements for opt-out collective action claims.

To further preserve funding, the government seeks views on proposals to increase certainty in relation to funder returns by requiring the CAT to give an indication of reasonableness in

relation to the funder's return and order of payment at the point of certification, based on the expected damages award or settlement sum, and introducing a presumption that funders receive their return at the point of a damages award being ordered or a settlement sum being approved without needing to wait for the outcome of distribution.

The CAT has broad cost management powers and is already taking action to manage costs and improve case management. To supplement this, the government seeks views on whether to change the law to require budgets from both parties following certification to improve transparency, with notable budget changes as a claim proceeds to be brought to the CAT's attention; and to clearly set out that costs sanctions will apply in relation to behaviour that unreasonably drives up costs, including tactics to drain budgets.

Alternative Dispute Resolution, Settlement, and Alternative Routes to Redress

Alternative dispute resolution (ADR) can support earlier and more efficient resolution of disputes, but the scale, complexity and early uncertainty of opt-out collective actions can limit effective engagement at the outset. To address this, the government seeks views on empowering the CAT to encourage or require mediation at appropriate stages of proceedings, with failure to engage potentially reflected in costs.

Settlement can offer a quicker and more cost-effective route to redress, but in opt-out proceedings it can be complex and time-consuming, including with the requirement for CAT approval. To accelerate resolution and reduce costs, views are sought on strengthening incentives to engage in settlement discussions, including allowing settlement offers with automatic cost consequences, and improving the efficiency of the approval process.

Voluntary redress schemes can also provide compensation without litigation, but their use has been limited by complexity and uncertainty. To expand routes to redress, the government seeks views on option to simplify these schemes and give the CMA a greater role in securing redress, including accepting binding undertakings and requiring redress in appropriate cases.

Interaction Between Opt-outs and Public Enforcement

Public enforcement and private actions both play an important role in enforcing competition law and delivering redress. These systems should complement, rather than clash with, each other to support the wider competition enforcement landscape. The CMA's leniency regime is an important part of its work to detect and act against cartels. Type A leniency applications, in which the applicant is the first to report and provide evidence of a cartel where there is no pre-existing investigation, are particularly important. However, the risk of litigation could be disincentivising potential Type A applicants from coming forward. The government therefore seeks views on whether greater protection from litigation is needed, to incentivise Type A leniency applications and support public enforcement work against cartels.

The CAT Rules provide for the CMA to be notified when private competition cases are initiated. However, claims brought before the CAT vary greatly. Claims often touch on sector-specific issues where it may be beneficial to notify relevant concurrent regulators in addition to the CMA. The government seeks views on expanding CAT Rules that provide

for the CMA to receive key documents in a claim and submit written observations to relevant UK concurrent regulators.

Distribution

The opt-out regime was created to provide redress to consumers and small businesses, but that only works if they are aware of and trust the regime, there is good take up, and damages can be distributed to them. The government seeks views on whether listing claims on the CAT website will increase trust and encourage take up, how class-member trust might be increased and if there are other ways to incentivise collaboration between parties to maximise distribution.

There is the potential for undistributed damages or settlement sums to be considerable. They currently go to the Access to Justice Foundation (AtJF), a charity to facilitate access to legal advice and assistance to those who need it most. The government seeks views on whether this should remain the case or whether some or all the undistributed sums should go to activities that benefit consumers by going to the Consumers' Association, commonly known as *Which?*.

CAT Resourcing

The CAT does not currently charge fees for applications before it. This puts it out of step with other forums for private litigation and means the CAT's costs fall entirely to the taxpayer. The government seeks views on introducing fees, initially only for private litigation, linked to the value of claims filed and subject to an upper cap. The structure and rates of application fees would be reviewed after no longer than five years.

CAT panels consist of a chair and two other members for any proceedings before it, save for fast-track proceedings. This can be inefficient; some decisions could be appropriately made by a chair and a single lawyer or economist or by the chair sitting alone. The government seeks views on increasing flexibility in panel composition, such that panels would consist of up to three members.

Feedback suggests the CAT Rules should be reviewed more routinely to ensure they are reflective of current practice and developments in case law. The government proposes to review the rules at least triennially.

Chapter 2: Simplifying the Regulatory Appeals Framework

Chapter 2 covers appeals against the decisions of economic regulators. Decisions by economic regulators are subject to several appeals systems. The proposals seek to harmonise who hears and decides the appeal, the appeal standard and eligibility criteria to bring an appeal. This Chapter also discusses the costs associated with regulatory appeals.

The Appellate Body

Though some regulatory appeals are heard by the CAT or UK courts, appeals against the decisions of various regulators relating to matters such as modifications of licence conditions, price controls and industry code modifications, are currently determined by the CMA. The CMA, as an enforcement body, is not as well placed to determine appeals as a judicial body, such as the CAT, and this role reduces the CMA's focus on, and leaves fewer resources available for, market interventions that could promote competition for the benefit of consumers. The government has also recently consulted on proposals to amend the CMA's decision-making model in merger and market cases. If regulatory appeals remain within the CMA's remit, the current decision-making model would have to be maintained only for regulatory appeals, which would create unnecessary complexity.

The government seeks views on transferring responsibility for the regulatory appeals, including price control appeals, that are currently determined by the CMA, to the CAT. This would create a more accessible and transparent appeals system, help achieve consistency across sectors, and increase efficiency. In summary, the following appeals would be transferred from the CMA to the CAT: appeals against certain decisions of:

- the Water Services Regulation Authority (Ofwat) in the water and sewerage sector;
- the Office of Gas and Electricity Markets (Ofgem) and the Northern Ireland Authority for Utility Regulation (NIAUR) in the energy sector;
- the Civil Aviation Authority (CAA) in the air traffic, airport and air transport sector;
- the Office of Communications (Ofcom) in the postal services sector; and,
- the price control aspects of certain telecoms appeals against decisions of Ofcom.

Subject to the outcome of this consultation, the government will seek legislative consent motions, where appropriate, if it chooses to legislate.

Appeal Standard and Parameters

The appeal standard currently differs considerably across these regimes. To achieve a clearer, more effective and more proportionate appeal process, the government proposes to harmonise appeal standards across sectors. The CAT would decide the appeal by applying judicial review principles, while taking due account of the merits of the case to assess whether the regulator's decision was materially wrong. The parties would have to specify in the notice of appeal whether their appeal relates to an error of fact, an error of law, or an error in the exercise of the regulator's discretion. The CAT could admit new evidence where just and proportionate. Cross-examination of witnesses would be permitted subject to the CAT Rules. The CAT would have the power to dismiss the appeal or quash a decision in whole or in part. Where a decision is quashed, the CAT would direct the regulator to make a new decision in accordance with the CAT's ruling.

The government also seeks views on proposals to convert regulatory references to the CMA in relation to modifications of licence conditions in the water sector into appeals to the CAT. Under this model, the regulator would have the power to make modifications to license conditions, and the licence holders (and other eligible parties) would then have the

right to appeal the regulator's decision. The government proposes to remove the regulatory reference process in relation to non-licensable activities in the energy sector.

Eligibility to Appeal or Intervene

There are also differences across sectors in terms of who can appeal or intervene in an appeal. The government seeks views on whether the sector-specific eligibility provisions should be retained or whether it should harmonise the eligibility criteria across sectors. If the eligibility criteria were harmonised, the right to appeal could be granted to: licence holders and companies holding an appointment, any persons whose interests are materially affected by the regulator's decision, as well as bodies or associations representing such persons, including consumer bodies or associations. Parties would be required to apply to the CAT for permission to appeal.

Costs

The government also seeks views on cost-recovery mechanisms or other arrangements that could support all eligible parties in exercising their appeal rights.

Chapter 3: More efficient Competition Act 1998 enforcement

When investigating or taking enforcement action in relation to anti-competitive agreements or abuse of a dominant position, the CMA must comply with the procedural rules set out in the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (CMA Rules).

Chapter 3 covers a set of reforms to the CMA Rules to enable faster, more efficient investigations, while preserving procedural fairness. The proposals include giving greater flexibility to the CMA to determine its decision-making model through guidance, simplifying confidentiality requirements, improving access to evidence (notably through the introduction of a standardised framework for confidentiality rings), and changes to improve the efficiency of settlement procedures. The government also proposes to: refine the rules on competition disqualification orders for company directors; introduce an alternative penalty cap to ensure the CMA can impose appropriate penalties on companies with no, or no representative, turnover; and make further changes to reflect CMA and modern practices.

Abbreviations

ADR	Alternative dispute resolution
ATE	After the event
AtJF	Access to Justice Foundation
CA98	Competition Act 1998
CAA	Civil Aviation Authority
CAT	Competition Appeal Tribunal
CDDA86	Company Directors Disqualification Act 1986
CDO	Competition Disqualification Order
CJC	Civil Justice Council
CMA	Competition and Markets Authority
CMC	Case management conference
DBA	Damages based agreement
DBT	Department for Business and Trade
DfE	Department for the Economy
DMCCA	Digital Markets, Competition and Consumers Act 2024
FCA	Financial Conduct Authority
GEMA	Gas and Electricity Markets Authority
HMCTS	His Majesty's Courts and Tribunals Service
LFA	Litigation funding agreement
NIAUR	Northern Ireland Authority for Utility Regulation
Ofcom	Office of Communications
Ofgem	Office of Gas and Electricity Markets
Ofwat	Water Services Regulation Authority
PCR	Proposed class representative
PSR	Payment System Regulator
SO	Statement of objections
SRO	Senior responsible officer
SSF	Summary statement of facts
WIA	Water Industry Act 1991

Chapter 1 – Opt-out collective actions

Bringing a claim

Summary

1. The opt-out collective actions regime was introduced in 2015 with three key objectives: to provide improved redress mechanisms for those harmed through anti-competitive behaviour; to provide a deterrent effect to future anti-competitive behaviour through an effective system for collective actions; and, to strike the right balance between the need for an effective collective redress system and protecting defendants from having to settle unmeritorious claims.
2. Opt-out collective actions are currently only available in respect of loss suffered as a result of competition law breaches. Once a class is defined, class members are automatically eligible for redress without requiring them to take any proactive steps. Class members will be bound by the result of the relevant claim unless they 'opt-out'.
3. Two kinds of collective action claim are available under the regime: follow-on and standalone. Follow-on cases are brought where the Competition and Markets Authority (CMA) or European Commission have already investigated anti-competitive behaviour and made an adverse finding. Standalone cases are brought where no regulatory investigation has yet been undertaken or concluded, although – due to the international nature of competition issues – they may also be rooted in findings made in other jurisdictions.
4. An opt-out claim must be certified before it can continue as an opt-out collective proceeding. For certification to be granted and a collective proceedings order (CPO) to be issued, the Competition Appeal Tribunal (CAT) must be satisfied that the included individual claims are brought on behalf of an identifiable class of persons, raise common issues, and are suitable to be brought as a collective proceeding.
5. In addition, prior to issuing a CPO, the CAT must authorise a proposed class representative (PCR) to act in that capacity. The PCR must be able to demonstrate that it would be just and reasonable for them to lead the collective proceeding, including that they have the ability to act fairly and adequately in the class's interests and that they have the ability to pay the defendant's recoverable costs, if ordered to do so.

Scope

6. The scope and certification of the regime continue to be topics of discussion. Currently, opt-out collective actions are limited to competition claims. Most claims have been abuse of dominance, standalone claims. Prior to the regime's introduction, the government stated that it did "not favour the introduction of a generic collective redress mechanism covering all sectors"², noting that competition law was an area where there was a robust case for the introduction of opt-outs.
7. While the regime is restricted to competition claims, a theme in feedback we received is that claims not obviously rooted in competition are brought "dressed up" as abuse of dominance claims. This adds another, unhelpful, layer of complexity to proceedings that are brought, with some claims being reconfigured for multiple attempts at certification in order to make it over the line. This can occur even when the CAT has commented that proceedings "seem not to be competition law infringements at all"³ at the certification stage.
8. Call for evidence (CfE) responses diverge on this issue. Some argue that widening the availability of opt-outs would be of benefit to the existing regime, reducing the risk of non-competition claims being "shoehorned in" and bringing greater alignment with international jurisdictions (Australia, Canada, the United States, and European Union member states such as the Netherlands and Portugal) where the availability of opt-outs is not restricted based on claim type or sector.
9. In contrast, many respondents called for the regime to either be further restricted or dissolved. For example, some feedback suggested restricting the regime to follow-on actions only, safeguarding the regime against speculative or novel claims.
10. The government considers the regime offers a beneficial route to redress where victims of anti-competitive behaviour would otherwise have no recourse; however, due to the impact any significant changes in this area are likely to have, more time is needed to get the current regime right. The government is not currently persuaded to either further restrict or expand the regime.
11. However, the availability of private redress for consumers deserves careful consideration. Mechanisms to improve the private collective action landscape for consumer law are being examined by the Law Commission, including the risks associated with extending opt-out collective actions to consumer claims, and relevant findings from the government's review of the competition opt-out collective actions regime will be taken into account as part of that work.

Class representatives

² [Private Actions in Competition Law: A Consultation on Options for Reform](#), April 2012, paragraph 5.7.

³ *Gormsen v Meta* [2023] CAT 10, paragraph 30(1).

12. Under section 47B(8) of the Competition Act 1998 (CA98), the CAT may only authorise a person to act as a class representative if it considers that it is just and reasonable for them to do so. Rule 78(2) and (3) of the Competition Appeal Tribunal Rules 2015 (the “CAT Rules”) provide additional detail on what the CAT must consider in making this determination. This includes provision that the class representative is able to fairly and adequately represent the interests of the class; that they do not have a material interest that is in conflict with the interests of the class; that they are able to pay the defendant’s recoverable costs if ordered to do so; and that they have a satisfactory plan for the collective proceedings.
13. Case law has further developed what is required of class representatives. Significantly, the PCR in *Riefa v Apple*⁴ was not authorised, with particular concern raised in relation to the litigation funding terms agreed to. The judgment indicated a view that the PCR did not demonstrate “a strong understanding of the arrangements they had entered into” or “sufficient independence”, relying too heavily on her legal representatives.
14. In the *Hammond v Amazon* and *Stephan v Amazon* joint CPO judgment⁵, the CAT set out that it should be standard practice for the PCR to address the steps they took to secure a litigation funding agreement on appropriate terms. In the same judgment, the CAT also indicated that it should be the standard approach in collective proceedings for PCRs to be “assisted by independent costs specialists” to properly scrutinise costs arrangements and fees⁶.
15. While it has not been articulated as a mandatory or obligatory practice (in *Riefa v Apple*⁷ it specifically states that it is not, as a matter of course, mandatory), increasing and notable focus has been given in recent judgments to the availability of a consultative panel to support PCRs. Scrutiny has been given to the availability of such a panel and to how often it meets and what standard of expertise its members hold.
16. The role of a class representative is an important and significant one. The individual in this position is responsible for the interests of a class with members potentially in the millions, and is expected – rightly – not to simply act as a figurehead but be capable of scrutinising and understanding complex financial arrangements, following and directing difficult and protracted legal proceedings, and, in the context of settlements, making decisions on agreements worth hundreds of millions of pounds or more.

⁴ [2025] CAT 5, paragraphs 95 and 114.

⁵ [2025] CAT 42, paragraph 67(1).

⁶ [2025] CAT 42, paragraphs 56 and 156(1).

⁷ [2025] CAT 5, paragraph 89(5).

17. It is right, therefore, that the CAT pays close attention to the capabilities of a PCR and their suitability to fulfil this role. However, it should also be clear what the expectations of a class representative are – both so that PCRs have confidence that they meet expectations prior to a CPO hearing, but also so they do not undertake excessive expenditure to cover all bases, which may not be necessary in their particular claim.

Proposal

18. The government does not intend at this stage to create new obligations or requirements for class representatives. However, a key theme in responses to the CfE was a need for greater consistency and a clearer framework for the approach to class representative authorisation.

19. The government seeks views on whether changes to the CAT Rules or updates to accompanying guidance would be of assistance in clarifying requirements for class representatives set out in case law. Feedback suggests that, for example, additional clarity may be of assistance in relation to:

- a PCR's involvement in and knowledge of funding arrangements;
- the use of cost lawyers or specialists;
- the use of consultative panels, including expectations in relation to membership, terms of reference, and the role the consultative panel is expected to fulfil.

Questions

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.

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 cost lawyers**
- ☐ **Consultative panels**
- ☐ **Other (please specify)**

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

Certification

20. While the government does not consider it the right time to revise the scope of the regime, it does consider it necessary to review the certification threshold for claims to proceed.

21. The government response to the consultation that established the regime⁸ stated that there should be “a strong process of judicial certification, including a preliminary merits test, an assessment of the adequacy of the representative and a requirement that a collective action must be the best way of bringing the case”. However, requirements set out in legislation are more high level – section 47B(6) CA98 states that “claims are eligible for inclusion in collective proceedings if ... they raise the same, similar or related issues of fact or law and are suitable to be brought in collective proceedings”. Rule 79 of the CAT Rules sets out what the CAT may consider in assessing suitability, including costs and benefits of a claim, whether a similar claim has already been brought, and the size and nature of the class. The current approach to certification is therefore guided by case law, which has reduced the prominence of a merits test as part of the certification process.
22. Two Supreme Court judgments are relevant to consideration of the certification test as it currently stands. First, the *Merricks v Mastercard* judgment of 2020⁹, which found that:
- the CAT should apply a relative suitability test to claims, asking itself if a claim is suitable to be brought in collective rather than individual proceedings, and suitable for aggregate rather than individual damages;
 - a claim should not be stopped from proceeding because of challenges relating to the quantification of harm;
 - save for in the context of choosing between opt-in or opt-out proceedings or consideration of strike out, “the certification process is not about, and does not involve, a merits test”.
23. The minority opinion in the *Merricks v Mastercard* judgment expressed concern that the regime could be used opportunistically by claimants and that the view taken by the majority risked “significantly diminishing the role and utility of the certification safeguard”¹⁰. This is the concern now raised by some stakeholders of the regime.
24. More recently, in December 2025, the Supreme Court also issued a judgment in the case of *Evans v Barclays*¹¹, finding that:

⁸ [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, page 40, paragraph 5.55.

⁹ [2020] UKSC 51, paragraphs 59, 70, and 74.

¹⁰ [2020] UKSC 51, paragraph 118.

¹¹ [2025] UKSC 48, paragraphs 87, 124, and 138.

- it was right for the CAT to have considered the strength of the claim in its decision of whether the claim was suitable to bring on an opt-out, rather than opt-in, basis, as identified in Rule 79(3)(a);
- the CAT was right to have considered it practicable for the claim to be brought on an opt-in basis, giving less weight to the interests of individuals and smaller entities who stood to recover damages in light of the low financial value of their claims;
- the principles of vindication of rights and deterring wrongdoers are not strong factors in favour of opt-out proceedings rather than opt-in in every case. There should be no presumption in favour of either opt-in or opt-out proceedings; a balance must be struck between the competing interests of each party.

25. Since 2023, the CAT has also applied the *Pro-Sys v Microsoft*¹² test, requiring the class representative to come armed with a “blueprint to trial”¹³ in order to succeed in seeking certification.

26. While the *Evans v Barclays* judgment will go some way to rebalancing the certification threshold for opt-outs, post-Merricks the bar for obtaining a collective proceedings order is, in the government’s view, still low, weakening the filter effect intended to guard against speculative claims. Comments in the *Barclays* judgment highlight the need to get this right, acknowledging the access to justice rights of both claimants and defendants and that there is no entitlement to certification of an opt-out proceeding simply because no other basis for proceeding is suitable.

27. Feedback in responses to the CfE on this issue was mixed, with some concerns raised that any change to the certification threshold in statute may result in a stalling of the regime, with an increase in satellite litigation and a reduction in confidence about what claims may be taken forward. However, the original intent was for the certification process to provide a meaningful safeguard against novel or unmeritorious claims and for it to include consideration of the merits of a claim prior to permitting it to proceed. It is important that those that have breached competition law be held to account, but the regime must also operate proportionately to be of benefit. As noted in the minority judgment of Merricks, collective actions “confer substantial legal advantages on claimants and burdens on defendants”¹⁴.

¹² [2013] SCC 57.

¹³ *Dr Liza Lovdahl Gormsen v Meta Platforms*, [2023] CAT 10.

¹⁴ [2020] UKSC 51, paragraph 118.

28. Feedback in the CfE regarding amendment to the certification test included: an assessment of social value; interrogation of the methodology supporting the claim; greater weight, or standalone status, given to consideration of cost vs benefit; and a demonstration of genuine interest from the class.

Proposal

29. The government considers that it would be beneficial to set out more clearly in statute the safeguarding function that certification holds, by making clear that:

- Consideration of suitability should be in relation to absolute suitability, not relative suitability – the test should not stop at whether it is suitable for a claim to be brought as a collective, rather than individual, proceeding. It should include it is proportionate for a claim to be brought using the opt-out collective proceeding mechanism. This will lock in consideration of merits as part of the threshold as laid out in statute – providing greater predictability to all than evolution via case law.
- Greater weight should be given to the cost/benefits consideration – while this is currently provided for in the CAT Rules, and the CAT has only recently refused certification on the basis of this criterion not being met¹⁵, it is one of many elements that are taken into account in a certification decision. This means that even where it is foreseeable that a claim may result in negligible returns for class members, in contrast with the significant cost of hiring lawyers and economic experts and securing litigation funding, it may still be permitted to continue. Giving greater weight to the cost/benefit consideration will prevent this. It should further be made clear that consideration of the costs and benefits of collective proceedings includes the likely take-up by the underlying class.

This will guard against claims being brought that risk primarily benefitting stakeholders of the claim (such as lawyers and litigation funders) rather than the class. This was seen, for example, in *Gutmann v SSWT*¹⁶, in which only ~£216,000 went to the underlying class in comparison with more than £10 million going to stakeholders.

- The CAT should give consideration to whether it appears there is sufficient evidence for assessment of damages on an aggregate basis as one of the factors listed in Rule 79(2) of the CAT Rules.

Questions

¹⁵ *Waterside Class Limited v (1) Mowi ASA, (2) Mowi Holding AS, (3) Grieg Seafood ASA, (4) Salmar ASA, (5) Lerøy Seafood Group ASA, (6) Scottish Sea Farms Limited* [2026] CAT 32.

¹⁶ [2025] CAT 72.

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.

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.

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.

Financing a claim

Summary

30. The nature of the opt-out collective actions regime means most claims are financed by third party litigation funders. In recent years, this has been heavily affected by the Supreme Court judgment in PACCAR¹⁷, which found that litigation funding agreements (LFAs) formulated on a percentage basis (where the funder’s return is a percentage of a damages award or settlement sum) are a form of damages-based agreement (DBA).
31. DBAs are not currently permitted in the opt-outs regime, meaning that the enforceability of many LFAs before the CAT came into question. Some funders have since shifted to operating on a multiples basis (where the funder’s return is a multiple of its original investment); however, this approach can cause misalignment between class and funder, increasing the cost of funding and reducing returns for the underlying class. The impact of PACCAR continues to cause uncertainty even where a multiples basis is used.
32. The government is committed to ensuring that litigation funding works fairly for all. In response to the Civil Justice Council (CJC)’s 2025 Review of Litigation Funding¹⁸, the government has committed to legislate to mitigate the effect of PACCAR and to introduce proportionate regulation of litigation funding agreements when parliamentary time allows¹⁹. The government will continue to carefully consider the CJC’s wider litigation funding recommendations in detail, and any further changes will be announced, by the Ministry of Justice, in due course.

¹⁷ R (PACCAR Inc) v Competition Appeal Tribunal [2023] UKSC 28.

¹⁸ [Civil Justice Council Review of Litigation Funding – Final Report](#), June 2025.

¹⁹ [Third-party Litigation Funding statement](#), 17 December 2025.

33. Where proposals made in this consultation relate to litigation funding, both in this section and others, they are in the context of the CAT specifically. The wider development of options for litigation funding reform is ongoing, and nothing in this consultation prejudices that work. Once broader changes, including a regulatory framework for LFAs, are implemented, we will review any measures proposed in this consultation after an appropriate period to assess their impact and ensure they remain aligned with wider litigation funding reforms and that they continue to function effectively.

Methods of funding

34. Claims under the regime are often lengthy and complex. Competition issues are inherently complicated and require the input of specialist legal, economic, and other advisors and experts. Responses to the CfE indicate that claimant budgets are often now £20 million or more, and the cost of litigating means that the regime is virtually reliant on support offered by third-party litigation funders. Defendant costs can be expected to match, if not exceed, those of the claimant.

35. Some criticism has been directed at the use of litigation funding in the opt-outs regime. In particular, this has centred around concerns that the regime is vulnerable to being exploited solely for money-making purposes, and that litigation funders will inappropriately assert control or influence over the handling of a claim, with their investment prioritised over the interests of the class. Concerns in this area centre in particular on the *Merricks v Mastercard* claim, in which the class representative's funder disagreed with the class representative's decision to settle, launched a judicial review action relating to the CAT's decision on distribution, and sued the class representative in private arbitration. The judicial review action has since been dismissed²⁰.

36. *Merricks* is unique, as all claims are, and this example does not mean that relationships in other claims are fraught or that undue influence is being exerted by litigation funders as a matter of course.

37. Stakeholder views on the relationship between funders and class representatives are mixed; while some raise concerns in relation to conflicts of interest and control, others express that funders maintain the correct level of independence and do not attempt to direct proceedings. However, *Merricks* is an example of where regulation could guard against the risk of disputes or issues of control. This is one of the reasons the government has committed to introducing proportionate regulation of litigation funding agreements to ensure the sector functions fairly for all²¹.

²⁰ R (Innsworth Capital Ltd.) v. Competition Appeal Tribunal [2026] EWHC 1393 (Admin).

²¹ [Third-party Litigation Funding statement](#), 17 December 2025.

38. Litigation funding is an important access to justice tool; however, it is to be expected that funders will only – and can only – invest in claims that are expected to be commercially beneficial. There has been significant growth in the regime since 2020, with a cumulative estimated total of over £130 billion damages claimed and 655 million class members represented²². However, feedback in the CfE suggests that a claim must now have a quantum of ~£500 million or more to receive funder backing, meaning there may be legally viable but lower value claims that will never make it before the CAT. One respondent to the CfE gave an example of a viable follow-on action with a lower end quantum of ~£230 million that they were unable to bring because the value was considered insufficient to attract funding.
39. Additionally, many responses to the CfE refer to the stability of the litigation funding market and the risk of funding “drying up”, particularly in light of the impact of PACCAR and a perceived unwillingness by the CAT to approve returns for funders that reflect the level of risk undertaken in financing a claim. The government has announced its intention to mitigate the impact of PACCAR to reduce uncertainty in relation to the enforceability of LFAs²³; however, stakeholder feedback suggests that reliance on a single commercial market to support claims puts the regime’s survival in a vulnerable position.
40. In the consultation that introduced the regime²⁴, the government chose to prohibit the use of DBAs, also known as contingency fees, in an effort to safeguard against stoking a litigation culture in the UK. It was thought that permitting DBAs may encourage speculative litigation and create an incentive for lawyers to focus on only the largest cases. However, feedback in the CfE has exposed fears that funders’ focus is on the largest cases in any event, at least in part due to the need to offer sufficiently large returns to attract funding. Responses flagged that the introduction of DBAs may in fact promote competition in funding claims, driving down costs and potentially promoting access to justice for lower value claims.
41. However, the risk of an increase in speculative litigation – as was raised in the 2012 consultation – was also noted, and concern was raised over the handling of DBAs by law firms. Some CfE responses cited ongoing investigations by the Solicitors Regulation Authority (SRA) into law firms and concerns raised by the SRA in relation to transparency, compromising of client interests, and poor management of safeguards. These SRA investigations do not relate specifically to the use of DBAs by law firms, but to the conduct of high-volume consumer claims outside of the CAT.

²² [CMS European Class Action Report 2025](#), pages 14 and 36 (figure converted from €).

²³ [Third-party Litigation Funding statement](#), 17 December 2025.

²⁴ [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, paragraph 5.63.

42. While these risks are noted, there is precedent for DBAs being beneficial to class action regimes. In 2018, the Victoria Law Reform Commission in Australia recommended that contingency fees be permitted for class actions²⁵. Subsequently, contingency fees have been permitted for class actions in Victoria (although no other Australian state) since 2020²⁶; evidence shows that funding rates have decreased and claimants have received superior returns²⁷.

Proposal

43. The government proposes lifting the prohibition on DBAs in opt-out collective actions. Access to the regime is important to ensure that there is a genuine route to redress for those that have suffered loss. An increase in options for funding claims could increase competition and therefore drive down the cost of litigation finance, mitigating the risk of a justice gap and increasing the resilience of the regime.
44. The government recognises concerns raised in the original consultation that permitting DBAs may increase the risk of speculative litigation and a litigation culture. However, under the DBA model, lawyers do not get paid unless a claim is successful. This means they undertake significant cost risk, and it is not in their interest to bring a claim that has a low chance of success. It is of course important that, where firms make use of DBAs, this is done in compliance with applicable regulations and requirements and that the interests of class representatives and the class are safeguarded.
45. Revision of the certification threshold, as set out in paragraph 29, will strengthen the filter effect at the commencement of proceedings, further guarding against the risk of an increase in speculative or unmeritorious claims. DBAs will also be subject to scrutiny by the CAT in the same way that LFAs currently are as part of the process to authorise class representatives and certify proceedings.

Questions

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

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.

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.

²⁵ [Access to Justice – Litigation Funding and Group Proceedings](#), 14 June 2018, paragraph 7.12.

²⁶ [Supreme Court Act 1986, No. 110 of 1986](#), section 33ZDA.

²⁷ [A Model for the Nation](#), The McKell Institute, May 2024, Part 5: The Victorian experience so far.

Preserving the use of litigation funding

46. Concern has been raised about the potential for litigation funding to “dry up”. This risk was raised by the CAT alongside recognition of the importance of funders to the regime²⁸. Many CfE respondents cited a need for funders to have more certainty on returns, with some arguing that the CAT could build its understanding of how litigation funding works and there have sometimes been unnecessary court interventions in commercial agreements that have been negotiated in a competitive market between sophisticated parties.
47. Claims brought under the regime are complex, costly, and often take several years to conclude. These elements alone can make an opt-out collective action a high-risk investment for funders; however, the size of proceedings and potential for significant returns can make that risk worthwhile. As potential returns grow more uncertain, the risk becomes greater, and funders become less willing to invest. Where funding is provided, a greater return will be required under the terms of the LFA, reflective of the level of risk to the funder.
48. Several suggestions were made in responses to the CfE to increase certainty for funders and therefore preserve the availability of litigation funding for potential claimants, with a particular focus on the CAT addressing the reasonableness of funder returns at the point of certification rather than waiting for distribution, and allowing funders to receive their returns ahead of other stakeholders without the need to wait for distribution to the class to conclude.
49. Currently, while the CAT considers the PCR’s funding arrangements at the point of certification, it typically considers the reasonableness of the funder’s return at the end of a claim. Reasons for this include uncertainty in relation to the size of damages and the potential for other elements of the claim to change prior to its conclusion, affecting what may be assessed as fair and proportionate. Particularly in light of decisions such as that in *Merricks*²⁹, which some funders have cited as an example of a misunderstanding of the distinction between a funder’s return on investment and a funder’s multiple on invested capital, feedback indicates that the current approach is causing increased uncertainty for litigation funders. Examples of disputes between lawyers and funders at the conclusion of a claim in relation to order of payment, despite this usually being set out in the LFA at an early stage, have exacerbated concerns that there is a risk the CAT may be willing to make changes to agreements at a late stage in proceedings.

²⁸ Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others [2024] CAT 47, paragraph 21.

²⁹ *Merricks v Mastercard* [2025] CAT 28, paragraph 188.

50. Judgments by the CAT and the Court of Appeal in the case of *Gutmann v Apple*³⁰ make clear it is permissible for funders and lawyers to be paid ahead of the class where appropriate. However, responses to the CfE further expressed concern in relation to how long funders must wait to receive their return, even when a settlement has been agreed. A funder's return diminishes with the passage of time due to the time-value of funds and cost of capital, meaning that decisions that delay payment to the funder may seem administrative but can have a significant impact.

51. There are limited examples of settlement or distribution thus far to draw from. However, responses to the CfE indicate that prolonged or increased uncertainty is likely to be off-putting to funders. Opt-out collective actions should primarily be for the benefit of the underlying class, but a balance must be achieved. There is a credible risk to the regime if litigation funders withdraw from the market. Increased certainty would mitigate this and preserve an essential access to justice tool.

Proposal

52. The government proposes to increase certainty in relation to funder returns by requiring in the CAT Rules that the CAT give an indication of reasonableness in relation to the funder's return and order of payment at the point of certification, based on a damages award or settlement sum similar to that in the claim filing. The CAT will retain discretion to revisit this assessment at the conclusion of a claim if there is a notable change (for example, to the quantum of the claim) in the course of proceedings, although returns should also be considered in the context of information available to parties to the LFA at the time of entering the agreement.

53. The government proposes to introduce a presumption into the CAT Rules that funders receive their return at the point of a damages award being ordered or a settlement sum being approved, without needing to wait for the outcome of distribution and in accordance with waterfall arrangements set out in the LFA. The CAT would retain the discretion on the order of distribution where there is a demonstrable risk that this approach would result in an unjust outcome.

Questions

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.

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

³⁰ [2024] CAT 18, paragraph 38, and [2025] EWCA Civ 459, paragraph 78.

increase certainty for funders and reduce the risk of their withdrawal from the regime? [Yes / No / Not sure] Please explain your answer.

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

Costs

Summary

54. The CAT has broad cost management powers, as set out in Rule 104 of the CAT Rules, including the ability to make costs decisions based on the conduct of the parties.
55. At the commencement of a claim, and as part of its role authorising the class representative and certifying proceedings, the CAT has sight of a PCR's costs budget from the point of certification up to trial. However, there is not currently a set approach for continued oversight of budgets as the claim proceeds and there is not a similar requirement for defendants. CfE responses from both a claimant and defendant perspective have cited concerns about spiralling costs, litigation tactics that drain budgets and unclear recoverable cost risk.
56. As part of its report on litigation funding, the CJC made several recommendations related to costs in funded proceedings³¹. The government is considering these recommendations as part of its wider consideration of third-party litigation funding. Any proposals made in relation to costs in this consultation do not prejudge this work and are made in the context of the CAT specifically. Once broader reforms to litigation funding have been implemented, we will review any CAT-specific measures within the normal five-year post implementation review period to assess their impact and ensure they remain aligned and continue to function effectively.

Budgets and costs consequences

57. The CAT's broad cost management powers enable it to take a fairly flexible approach on a case-by-case basis, which has been acknowledged further in case law.
58. The CAT has the ability to make decisions on costs that take into account the conduct of the parties, whether costs incurred are reasonable and proportionate, and – crucially – which party has been successful in the relevant application. An important element of

³¹ [Civil Justice Council Review of Litigation Funding – Final Report](#), June 2025, recommendations 37-44.

the regime set out in the original consultation was that the 'loser pays rule' should be retained, and the government does not propose changing this.

59. The CAT also has the ability to interrogate schedules of costs. However, currently, only the claimant is required to provide a costs budget up front to the point of trial (Rule 78; Rules Guidance paragraph 6.30). This is an important part of the CAT's consideration of whether it is just and reasonable for the PCR to act in that capacity, which does not similarly apply to the defendant.
60. However, responses to the CfE indicate that budgets can increase rapidly and significantly – one example was given of a class representative's budget doubling within months of certification. A lack of transparency in relation to defendant budgets can also affect the ability for the class representative to seek comprehensive after the event (ATE) insurance, with a lack of clarity in relation to the level of potential recoverable costs.
61. Feedback also indicates that certain behaviours during litigation can unreasonably inflict or drive up costs. This feedback comes from both sides, with defendants citing multiple "bites of the cherry" at the certification stage until success is achieved, and claimants reporting tactics to take a "scorched earth approach", litigating every point as far as possible to drain claimant budgets.

62. How much a party can and does spend on litigation is not within the CAT's control; even if the CAT deems a cost unrecoverable, that doesn't preclude a party from continuing to incur it. This is not something the government proposes attempting to exercise control over. However, if it is possible to increase transparency and guard against unreasonable tactics that drain budgets or incur cost unnecessarily, this should be explored.
63. Further, highly changeable budgets and a perceived lack of transparency can make cases harder to manage and make conflict over costs liability more likely at the end of a claim. It would be to the benefit of both parties to have greater transparency and ongoing oversight of costs with increased clarity on when conduct will have consequences.

Proposal

64. The CAT is already in the process of considering what guidance may be of assistance in relation to costs and case management. The government supports this work, which is still in its early stages.
65. However, the government seeks views on whether changes to the CAT Rules would be beneficial in addition to the work the CAT is already undertaking. Namely, changes to:
- require budgets from both parties following certification to improve transparency, with notable changes to budgets as the claim proceeds to be brought to the attention of the CAT;
 - clearly set out that cost sanctions – such as becoming responsible for a portion of the opposing party's costs, or losing the ability to recover costs – will apply in relation to behaviour that unreasonably drives up costs, including tactics to drain budgets.

Questions

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.

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.

Alternative dispute resolution (ADR), settlement, and alternative routes to redress

Summary

66. It was the government's position on introduction of the regime that litigation should be an action of last resort, with ADR to be encouraged³². The government's position remains the same; however, there are difficulties in the context of opt-out competition claims that make meaningful engagement with ADR or early settlement more difficult.
67. Even where individual class member's losses are small, opt-out collective competition claims are typically worth hundreds of millions or even billions of pounds due to the size of the prospective class. There is also a significant degree of uncertainty at an early stage, prior to disclosure and the exchange of expert reports taking place. This means parties have significantly different starting points, making it less likely that an agreement can be reached prior to filing or at the beginning of proceedings.
68. The CAT's oversight of settlement agreements in the regime is necessary for the protection of the underlying class; however, this can slow down the settlement process in comparison with other types of litigation.
69. Litigating to trial is costly for all parties; ADR and/or settlement at as early a stage as possible is to the benefit of both the claimant and the defendant. Where this can be incentivised and facilitated, best efforts should be made to do so.

ADR

70. Currently, the availability of ADR is a factor considered by the CAT on certification of a claim in accordance with Rule 79(2)(g). The use of ADR was considered, for example, in the CPO judgment for Rowntree v PRS³³. This noted that, while an alternative way of resolving the dispute was available, it was not engaged and the PCR's lawyers in fact stated that they did not "consider that any formal mediation or ADR was appropriate". This approach was not considered by the CAT to be in the best interests of the class, and the claim was ultimately struck out. However, ADR is not required prior to a claim being filed or certified.
71. In some jurisdictions (such as the Netherlands) an attempt at resolving the dispute is required prior to a claim proceeding. However, feedback from the CfE indicates that mandating ADR at such an early stage of a claim is not often successful in resolving the dispute and preventing litigation, instead it adds to delays and costs that are already significant. The original position not to make ADR mandatory in the regime reflects these concerns, with the additional concern that it could undermine the right of parties to litigate.

³² [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, paragraph 3.18

³³ [2025] CAT 49, para 107.

72. It can similarly be difficult to incentivise early settlement once a claim is filed. The nature of claims brought before the CAT can pose more barriers to settlement than in other kinds of litigation, and the unique element of any settlement needing to be approved also removes a degree of the privacy parties can enjoy in settlement discussions elsewhere. Claims brought are typically standalone abuse of dominance cases, which can go to the heart of the defendant's business model. The absence of disclosure until a claim has progressed further also delays the likelihood of an agreeable settlement offer, with an asymmetry of information meaning that the parties can be far apart in their positions.
73. However, while it does not appear appropriate or beneficial to mandate ADR prior to the filing of a claim or to expect settlement to be plausible at the earliest stages of proceedings, there may be other levers to incentivise settlement as a case progresses and once the parties have the information they need to assess a realistic outcome.
74. A greater focus on ADR during live proceedings is not a new concept – in Australia, it is already standard procedure in class actions for the court to proactively explore steps towards settlement (including facilitating ADR) after pleadings are filed³⁴. In England and Wales, following the case of *Churchill v Merthyr Tydfil Borough Council*³⁵, changes were made to the Civil Procedure Rules in 2024³⁶ that empower the court to order engagement in ADR, as well as to take into account a failure by parties to engage in ADR when considering costs.

Proposal

75. The government proposes that the CAT be empowered to encourage or require mediation between the parties to promote earlier discussions of settlement. It is proposed that this power be available to the CAT following the exchange of expert reports, to reflect the greater ability of each party after that stage to understand the other's case and assess a realistic outcome of proceedings.
76. It is further proposed that, should a party unreasonably decline to engage in mediation or refuse to comply with an order for mediation, this be considered by the CAT when assessing costs.

Questions

³⁴ [Class Actions Practice Note \(GPN-CA\)](#), paragraph 9.2(c).

³⁵ *Churchill v Merthyr Tydfil Borough Council* [2023] EWCA Civ 1416.

³⁶ See [The Civil Procedure \(Amendment No. 3\) Rules 2024](#), and [Civil Procedure Rules](#) 1.1(2)(f), 1.4(2)(e), 3.1(2)(o), 28.7(1)(d), 28.14(1)(f), 29.2(1A), 44.2(5)(e).

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'.

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

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.

Settlement

77. Parties in proceedings can discuss settlement outside of mediation or other ADR mechanisms. However, parties face many of the same obstacles to settlement talks as they do for engagement in ADR.

78. Settlement offers can be made in different forms, with different incentives for engagement. In the opt-out collective actions regime, Rule 45 offers³⁷ (a formal, without prejudice offer to settle) are currently not permitted, but parties can make Calderbank offers³⁸ (a confidential, without prejudice save as to costs settlement proposal). Where permitted (such as in non-collective claims), if a Rule 45 offer is made and declined, but a judgment is handed down that puts the declining party in a less advantageous position than if the Rule 45 offer had been accepted, that party will face costs consequences. This type of offer is designed to incentivise parties to engage in reasonable settlement offers, rather than to see a claim through to judgment 'just in case'. The CAT is not made aware of Rule 45 offers until after a judgment is made, and costs consequences are automatic.

79. Calderbank offers are also made privately. The CAT is made aware of offers following judgment, and the declining party can potentially face costs consequences if the CAT deems their conduct to be unreasonable – but it is not automatic, and the hurdle for costs consequences being applied is higher. The incentive to settle is therefore not as strong.

³⁷ As set out in the CAT Rules, Rule 45 offers must: be made in writing; state clearly that they are a Rule 45 offer; state whether the offer relates to all or only part of the claim; state whether it takes into account any counterclaims; provide a period of at least 21 days for the responding party to accept (save where made less than 21 days prior to the hearing); be inclusive of all interest up to the end of the 21-day period; and, be deemed without prejudice except as to costs.

³⁸ Originating from *Calderbank v Calderbank* [1975] 3 All ER 333 (EWCA), *Calderbank* offers must: be marked without prejudice save as to costs; reference the principles outlined in *Calderbank v Calderbank*; be clear and capable of being accepted by the responding party; specify a timeframe for response; set out reasons to justify acceptance of the offer; and, state that – if rejected – the offer will be used to apply for indemnity costs.

80. For example, in *Kent v Apple* – the first claim to reach judgment in the claimant’s favour, valued at ~£1.5 billion (subject to an application for permission to appeal by the defendant) – the claimant made a Calderbank offer that was not accepted by the defendant. While the CAT found the defendant’s failure to engage in settlement dialogue unhelpful, it did not find that that amounted to unreasonable conduct. No costs consequences were therefore applied³⁹.

81. One of the reasons for the exclusion of Rule 45 offers from the opt-outs regime was that it was considered the application of automatic cost shifting consequences had the potential to create conflicts between members of the class and put unreasonable pressure on the class representative. However, the regime has developed significantly since its introduction, including in relation to class representatives. Requirements for class representatives to be authorised by the CAT have grown, and there is increasing use of tools such as consultative groups in addition to the legal teams already available to class representatives. It is to the benefit of all, including underlying class members, if a dispute can be resolved swiftly where appropriate, avoiding the inefficiencies and expense that inevitably accompany litigation.

82. While settling is a quicker and more cost-effective way of concluding a dispute, feedback received in the CfE indicates that it is still a drawn out, sometimes complex, process. In opt-out proceedings, the CAT must approve a settlement agreement as fair, just and reasonable in accordance with Rule 94.

83. The CAT has greater oversight of settlements in opt-out proceedings compared with other kinds of claim. This provides greater certainty that the underlying class is protected – an important element given only the class representative is directly involved in settlement discussions. However, this also means the process for settlement in an opt-out claim can take significantly longer than in other types of litigation.

84. The CAT has thus far only overseen a handful of settlements within the regime. This could mean that development of the process is still in its early stages; with increased experience and judicial decisions to offer guidance, it is possible that the process will become more efficient with time.

Proposal

85. It is proposed that a mechanism for settlement offers with automatic cost shifting consequences be permitted in collective proceedings, akin to Rule 45 offers that are available elsewhere before the CAT. It is envisaged that this would encourage engagement in reasonable settlement discussions by all parties.

³⁹ [Transcript of Consequential Hearing in Kent v Apple](#), 13 November 2025, starting from page 125, line 24.

86. The government is further interested in whether there are changes that could and should be made to shorten the settlement approval process. There are currently few examples of settlement approval orders; this means there are challenges to implementing substantive guidance on the settlement process at this stage. It may be beneficial to allow more time for more settlements to take place and more precedents to be set, but we seek views on what intervention may be beneficial to increase efficiency in the approval of settlements.

Questions

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.

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.

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.

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?**

Empowering the CMA to order redress

87. Litigation should not be the only route to redress for those that have suffered harm as a result of anti-competitive behaviour. Litigation has its place, but it is costly for claimants, and defendants. In circumstances where the CMA, or pre-Brexit the European Commission, has already taken action in respect of particular conduct, there may be more efficient ways for redress to be achieved than for harmed parties to pursue litigation.

88. Statutory voluntary redress schemes were introduced by the government in 2015⁴⁰ at the same time as the opt-outs regime. Their voluntary nature, albeit subject to approval by the CMA, was intended to embody the spirit of ADR. However, while there are examples of redress being voluntarily paid in CMA cases⁴¹, no statutory voluntary redress scheme has ever been put into place. Feedback in a post-implementation review⁴² and during the course of the CfE highlight various reasons for this, including the complex and burdensome nature of setting up and running a redress scheme, lack of incentives for business, and – significantly – insufficient certainty that this would be taken into account in calculating the quantum or validity of any future private litigation. Companies are therefore, theoretically, at risk of paying twice for the same conduct – although it should be noted that the CAT Rules state use of a voluntary redress scheme is a factor taken into account at certification (Rule 79(2)(g)).
89. At the time of the regime's introduction, the government also considered empowering the CMA to impose mandatory redress scheme requirements on companies. This was not pursued, with concern raised in relation to the additional burden it may impose, diverting resources away from the CMA's central investigation and enforcement functions⁴³. Stakeholders were concerned that it may be outside of the CMA's expertise to assess appropriate quantum of redress.
90. However, a decade on from the regime's introduction, it is clear that bringing an opt-out claim is not easy. There could also be opportunities in appropriate cases for redress to be achieved where it may not be possible for a collective claim to be taken forward, with the CMA playing a key role.

Proposal

91. The government recognises that there are improvements that can and should be made to redress schemes. Views are sought on ways to provide greater incentives for the use of voluntary redress schemes, as well as the option of empowering the CMA to order redress where no voluntary scheme has been put forward and it is appropriate in the case at hand.
92. To achieve this, the government proposes:

⁴⁰ [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, paragraph 6.38.

⁴¹ For example: [CMA levies fines of £2.3m and secures £8m for NHS in pharma probe - GOV.UK](#) and [NHS set to benefit from £23 million following CMA pharma probe - GOV.UK](#).

⁴² [Review of the Competition Act 1998 \(Redress Scheme\) Regulations 2015](#).

⁴³ [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, paragraph 6.36.

- **Enhancing the current voluntary redress scheme model** by empowering the CMA, in cases where the CMA considers it to be appropriate, to accept binding undertakings to provide redress alongside (or as part of) an infringement decision in Competition Act cases (including as part of a settlement procedure), or as part of a commitments decision.
- **Simplifying the requirements set out in the Competition Act 1998 (Redress Scheme) Regulations 2015** in relation to obtaining CMA approval of a redress scheme. Feedback indicates that the regulations as they stand are burdensome, costly, and complex. The government therefore further seeks views on whether and how these requirements could be simplified and made more proportionate.
- **Setting an assumed level of overcharge by businesses to consumers** to create a presumption to be used to calculate the appropriate overall level of redress. This could be based on Organisation for Economic Co-operation and Development (OECD) guidance and relevant academic studies⁴⁴. Some concern was expressed in CfE responses that outside of private actions, injured parties may be undercompensated. However, it is clear that the costliness of litigation means that some claims may never see the light of day. A simpler approach to redress schemes and calculating loss in appropriate cases will help to ensure that affected consumers receive at least some compensation for the loss they have suffered.
- **Introducing mandatory redress schemes**, by empowering the CMA to direct businesses to establish a redress scheme. These would include the same mechanism for calculating overcharge and requirements for approval as for voluntary redress schemes. Once imposed, mandatory redress schemes would also be enforceable by both the CMA and those entitled to compensation under the scheme in the same way as voluntary redress schemes. The CMA would not be able to use this power in cases where it had accepted a statutory voluntary redress scheme.

In this context, it is likely that the power to direct the establishment of a redress scheme would tend to be used in straightforward cases, such as where the range of those impacted by the infringement can be established relatively clearly.

⁴⁴ For example, as set out in the OECD paper [Assessing the impact of competition authorities' activities \(EN\)](#).

This power would potentially increase the number of cases in which redress would be available in respect of competition infringements. The prospect of a redress scheme being required by the CMA, coupled with clearer protection from duplicative damages liability as outlined below (which would apply both to voluntary and mandatory redress schemes), is expected to increase incentives for voluntary redress in appropriate cases.

- **Giving greater certainty of protection against duplicative damages liability** by making explicit that a) schemes may include a waiver of further actions for those that accept the redress offered to them and b) sums offered via redress scheme (be it voluntary or mandatory) should be taken into account when quantifying the value of a potential claim, and this will be considered at certification. Particularly in light of proposed revisions to the certification threshold, including greater emphasis on the cost benefit analysis, it is expected that this will give greater certainty of protection against duplicative damages liability.

Questions

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.

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

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.

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.

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.

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

Interaction with public enforcement

Summary

93. Alongside the work of the CMA and concurrent competition regulators to investigate the conduct of businesses and hold them to account, private litigation plays an important role in the enforcement of competition law and the preservation of

competitive markets and fair prices in the UK. This, in turn, is good for economic growth.

94. While both public and private enforcement action work to uphold competition law and deter anti-competitive behaviour, they operate in different ways. This means additional measures may be necessary to ensure that both work together in an optimal way.

Ensuring harmony with regulatory action

95. Upon the regime's implementation, the CAT Rules were amended to require notification to the CMA when private competition cases are initiated and to provide the CMA with the right to intervene in them. The CAT also has the power to stay proceedings, including where they overlap with an ongoing investigation by a competition authority. These measures go some way towards ensuring that private enforcement action complements, rather than clashes with, public enforcement.
96. The risk of private actions frustrating public enforcement work has been a point of discussion that predates the regime's inception – particularly in relation to the detection of cartels, which is inherently difficult and often relies on a cartel member stepping forward to share information. The difficulty in identifying cartels is why the CMA has a 'leniency regime', allowing the CMA to offer a reduction in (or immunity from) penalties when applicants report and provide evidence on the existence of a cartel.
97. Applicants are not all eligible for the same level of leniency. There are three categories of leniency applicant, with Type A receiving the highest levels of protection:
- Type A – the first applicant to report and provide evidence of a cartel, where there is no pre-existing investigation.
 - Type B – the first applicant to report and provide evidence of a cartel, where there is a pre-existing investigation.
 - Type C – second or later applicants, and applicants who would otherwise qualify for Type A or Type B leniency but who have 'coerced' others to participate in a cartel.
98. Current protections for Type A candidates include guaranteed immunity from financial penalties, criminal prosecution, director disqualification, and debarment/exclusion from public contracts. Type A applications are particularly important – without them, cartels are difficult to detect due to their inherently secretive nature.
99. However, with the growth of private claims, there are concerns that potential Type A leniency candidates are disincentivised from coming forward on the basis that it would expose them to the risk of litigation. This is problematic not only for public enforcement, but also for attempts to seek redress through private actions – as

acknowledged by Sir Peter Roth, “it is exceptionally difficult to prove a cartel by way of private action”⁴⁵. Robust public enforcement action is therefore essential to hold cartelists to account, and increased applications for Type A leniency could in turn create greater scope for private action.

100. Whether or not to provide greater protection to Type A leniency candidates – specifically, immunity from litigation – has been explored by previous governments, including in the 2012 consultation⁴⁶ that led to the opt-out regime’s introduction and again in 2021⁴⁷. The decision not to proceed on those occasions was influenced by ongoing work on the same issue by the EU and, in 2021, unclear evidence as to the impact of the growth of private litigation on cartel enforcement action.
101. The EU implemented a number of protections for leniency candidates via its 2014 Damages Directive⁴⁸, including limiting liability for damages to the candidate’s direct or indirect purchasers and preventing the disclosure of self-incriminating documents such as leniency statements and settlement submissions in private claims. It did not, however offer full immunity for leniency candidates.
102. Responses on this issue in the CfE were mixed. While some acknowledged the potential benefits of protection from liability for wider competition enforcement, some responses highlighted risks:
- the potential for unfairness, with the leniency recipient potentially escaping hundreds of millions of pounds worth of liability and leaving remaining cartelists to fill the gap. Concern was raised that the significance of this financial impact could even have a market tipping effect in the leniency candidate’s favour (although it should be noted that all cartelists have an equal opportunity to apply for Type A leniency);
 - creating a risk that cooperation from other cartelists will be disincentivised, leading to an over-reliance on information provided by the leniency recipient;
 - a reduction in compensation to victims, with leniency recipients able to profit from their wrongdoing with the knowledge that immunity is available;

⁴⁵ [25th Burrell Lecture: The Private Enforcement of Competition Law – Reflections Upon its Development, Progress and Challenges](#), page 5.

⁴⁶ [Private Actions in Competition Law: A Consultation on Options for Reform](#), April 2012, section 7: Complementing the Public Enforcement Regime.

⁴⁷ [Reforming Competition and Consumer Policy](#), October 2021, paragraph 1.161.

⁴⁸ [Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of Member States and of the European Union](#).

- the potential impact such a change may have on public enforcement action against cartels being overstated, due to half of cartel cases originating from the CMA's own intelligence work rather than from leniency candidates.

103. The government is conscious of the ability of consumers to seek redress and how fair a measure to offer immunity from litigation liability may be, both for victims of anti-competitive behaviour and co-cartelists. However, there are other arguments that should be considered, including:

- the risk of a fellow cartel member stepping forward as a Type A leniency applicant, gaining total immunity and leaving remaining members of the cartel bearing all responsibility for damages with significant financial impact, would present a disincentive against participating in a cartel from the outset;
- victims of cartels will continue to have the ability to seek redress in light of joint and several liability, and – to ensure this is preserved – immunity could be set aside in the event that damages are unrecoverable (for example, if co-cartelists are insolvent). Further, it should be noted that without detection victims would not be able to seek compensation from cartelists at all;
- those engaging in cartels would not be able to do so comfortably in the knowledge that guaranteed immunity would later be available to them, given that Type A leniency is only available to the first applicant to report and provide evidence of a cartel, and there cannot be certainty of when another cartel member may take this step;
- while the CMA's own intelligence work is also an important part of identifying and holding cartels to account, the contribution of leniency is significant. The key role that leniency applications play is recognised internationally: the European Commission has reported that 91 out of 112 cartel infringement decisions between 2004 and 2022 originated from leniency applications⁴⁹, and the majority of respondents to a survey of OECD member states indicated that leniency programmes are the most effective tool to identifying cartels⁵⁰. In the UK, cases with leniency applicants have resulted in more than £355 million in financial penalties.

104. Numbers of applications for Type A leniency vary year on year. However, the trend is that they are declining – in 2014-16, there was an average of 21 applications per year; in 2022-24, there was an average of eight⁵¹. These declines are in spite of protections introduced in 2017, such as protection from joint and several liability and

⁴⁹ [Final Report – Support Study for the Evaluation of Regulations 1/2003 and 773/2004](#), 2024, paragraph 31.

⁵⁰ [The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels](#), 2023.

⁵¹ Data provided by the CMA.

inadmissibility of cartel leniency statements⁵², and steps taken by the CMA to increase the incentives for Type A applications, including by reducing benefits for Type B and C applicants⁵³ (although it should be noted that the most recent updates intended to incentivise Type A leniency applications were made as recently as October 2025⁵⁴).

105. While changes made in the past decade have gone some way to increase protections and enhance the attractiveness of Type A applications, it remains a possibility that companies may consider the risk of private enforcement to be greater than the benefits of protection against public enforcement penalties. Guaranteed immunity from financial penalties is unlikely to persuade a cartel member to step forward if a calculation is made that potential damages would be significantly higher.

Proposal

106. The government recognises the risks raised in some responses to the CfE. However, it also recognises the need for public and private enforcement action to work in harmony. There is broad benefit for markets and individuals if more cartels are detected and held to account.

107. The government therefore seeks views on the possibility of full immunity from civil litigation for Type A leniency candidates to enhance public enforcement action against cartels.

108. Liability for cartel conduct is joint and several, meaning that damages will generally continue to be recoverable from those not in receipt of Type A leniency protections. However, to protect against the risk of reduced recoverability (for example, if remaining cartel members are insolvent and unable to pay damages sought), if immunity were introduced, the government proposes that the CAT would retain the power to set aside protections where damages are otherwise unrecoverable from remaining undertakings involved in the cartel.

Questions

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.

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.

⁵² As introduced by [The Claims in respect of Loss or Damage arising from Competition Infringements \(Competition Act 1998 and Other Enactments \(Amendment\)\) Regulations 2017](#).

⁵³ [Cartels: being first to apply for leniency matters more than ever](#), October 2025.

⁵⁴ [Applications for leniency and no-action in cartel cases](#), October 2025.

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.

Interaction with wider regulatory action

109. The focus thus far has been on how the regime works alongside competition regulators. This is right – the regime is exclusively for claims rooted in competition law. However, it is clear that the subject matter of claims filed before the CAT varies greatly. Responses to the CfE highlighted their diversity, with claims touching on data protection, environmental, and wider consumer law issues in addition to the central abuse of dominance claim. This means that claims may touch upon work by other regulators, or that it may be beneficial to have the insight of concurrent regulators with sector-specific expertise.
110. Where there is concurrent ongoing regulatory action by a body other than the CMA, there is the potential for the decisions of regulators and rulings of the CAT to clash. Where there is no ongoing regulatory action, but a claim nevertheless focuses on an area within the expertise of a concurrent regulator, that regulator could be of assistance to the CAT.

Proposal

111. The government proposes to broaden the existing requirements currently set out in the CAT Rules (Rules 33(7), 35(6), 36(4), and 76(6)) to send the claim form and other relevant documents (such as a defence or reply) to the CMA on the filing of a new claim, so that any other relevant UK concurrent regulator must also be notified.
112. The government further proposes to broaden Rule 50 (which sets out the basis for parties to intervene in a case), to permit relevant concurrent regulators to submit written observations to the Tribunal.
113. A relevant concurrent regulator will be any regulator within whose concurrent competition remit a claim falls.

Questions

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.

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

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.

Distribution

Summary

114. The opt-out regime was created to provide a route to redress for consumers, including small businesses. There are additional benefits that come with an effective private enforcement avenue, such as deterrent effect and disgorgement – but genuinely bringing redress within reach of the consumer (including businesses) is our priority.
115. Its success can be measured by returns seen by class members. It is too early to make this assessment fully, with few examples of concluded claims and even fewer examples of distribution. However, there is sufficient evidence to highlight potential for improvement and opportunities to maximise the benefits of the regime in the future.
116. *Gutmann v SSWT* is the only example of distribution available currently. There was less than one per cent take-up by the class in this case, equating to only ~£216,000 out of a potential ~£25 million reaching consumers, in comparison with over £10 million to other stakeholders of the claim. This is one particular claim, with one particular class, and it cannot be viewed as an indication of how all other claims may proceed. However, the aspiration of the regime must be to achieve a greater rate of returns to class members than was seen in this case.

Consumer trust

117. In future claims, as awareness of the regime grows, we would expect take up rates to increase. Responses to the CfE indicate that there is an element of trust that “must be earned” to achieve consumer confidence. Consumers are becoming savvier in relation to the risks of fraud and scams, and there is an understandable lack of willingness to hand over financial details in return for what can be relatively modest sums.
118. Several responses have noted the lack of consistency in presentation of claim websites and that the lack of a ‘rubber stamp’ by either the government or the CAT means that class members cannot have certainty of legitimacy.
119. The CAT is undertaking work to create a new page on its website that lists and provides links to live claim websites to enable class members to confirm their legitimacy. This will be an important step in increasing the confidence among class members that, where required for take up, the information they provide is not going to be misused. The government supports this step.
120. The potential for more creative approaches to distribution have also been raised, including both the method of delivery and a collaborative approach between the parties. Involvement by the defendant in particular has been noted as potentially helpful, due to the likely increased trust in communications sent by a company that

class members already have a relationship with and the existing ability of a company to easily access contact and payment details for their customers.

121. Due to the limited examples of distribution to date, there has not been significant opportunity for creative approaches to distribution to be tested or explored in opt-out proceedings. It is expected that approaches in this area will develop with time.

Questions

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

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

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.

Undistributed sums

122. The question of how undistributed sums are handled is a significant one in the context of this regime, where quantum often runs in the hundreds of millions to billions of pounds. The aspiration is for perfect distribution; however, more mature regimes (such as those in North America) indicate that take up will not often exceed ~10 per cent⁵⁵. Fees, costs, and the funder's return also need to be accounted for – but there is still potential for consumers not to receive a substantial amount of money that they are entitled to.

123. It was envisaged in 2012 that distribution to a named organisation would be administratively simple and avoid the potential problems of finding a suitable recipient on a case-by-case basis, including the lobbying of judges and satellite litigation. The only potential recipient put forward in the original consultation was the Access to Justice Foundation (AtJF), a charity to facilitate access to legal advice and assistance to those who need it most. AtJF was previously recommended by the Jackson Review of Civil Litigation Costs⁵⁶ and the Civil Justice Council⁵⁷.

⁵⁵ Gutmann v SSWT [2024] CAT 32, paragraphs 67 and 77.

⁵⁶ [Review of Civil Litigation Costs: Final Report](#), December 2009, Chapter 33, paragraph 4.10.

⁵⁷ [“Improving Access to Justice Through Collective Actions”: Developing a More Efficient and Effective Procedure for Collective Actions](#), November 2008, Recommendation 10.

124. Alternative approaches were put forward by respondents to the original consultation, including reversion to the defendant, the creation of a new body entirely to act as recipient, or full discretion to the CAT to decide on a recipient dependent on the individual case⁵⁸. However, AtJF received the most support and there was no other clear candidate at that time. AtJF is therefore the current named recipient for undistributed damages.
125. There has not yet been a damages award in the regime. *Kent v Apple* is the first case to reach trial and be found in the claimant's favour. This claim represents a potential ~£1.5 billion in damages and, therefore, the possibility of notable undistributed sums (although this case is subject to an application for permission to appeal). In the context of settlement, parties are left the freedom to decide how to handle undistributed sums, in line with the general spirit of settlement. However, the approach to settlement agreements thus far indicates a trend of undistributed sums to go to a charitable organisation in any event, with the AtJF often being identified as the appropriate recipient.
126. Feedback from the CfE indicated significant support for AtJF, including many responses from frontline legal advice services noting the AtJF's important role in facilitating access to justice. Others supportive of AtJF's status as the designated charity noted its role as a 'conduit' to other charities, meaning many can benefit. However, some responses also noted the lack of a competition focus or direct relevance to class members in the AtJF's work and an unclear link between its role and the regime that these undistributed sums have originated from.
127. The government's position on the benefits of a designated charity for undistributed damages is unchanged. However, it is considering other options for the designated charity. The government has considered two organisations for this role:
- **Access to Justice Foundation.** AtJF is a registered grant-making charity that acts as a vehicle for distributing money to organisations increasing access to justice. These organisations provide the legal advice and services which are critical for individuals to enforce their consumer rights.

⁵⁸ [Private Actions in Competition Law: A consultation on options for reform – government response](#), January 2013, paragraphs 5.49 and 5.50.

AtJF receives uneven streams of income from a variety of sources including grants from Ministry of Justice, National Lottery Community Fund, grants from other foundations and trusts, and donations from members of the public. AtJF then produces and manages the distribution of large grants to a number of beneficiaries, increasing access to justice whilst running on the principle of ensuring efficient disbursement to its grantees. It received support in the original consultation due to its work being reflective of the regime's broader purpose in facilitating access to justice, and the government believes this option still has the same benefits now.

The AtJF has already been named as the appropriate recipient of undistributed sums in settlement agreements such as the *Justin Gutmann v First MTR South Western Trains Limited* action. Using these funds, it has since launched a new funding programme, *Improving Lives Through Advice 2026*. This will deliver £3.9 million to support organisations delivering free legal advice services across the United Kingdom including locations in London, the Southeast of England, Scotland and Wales to allow consumers to enforce their rights. These regions were selected according to where class members from the boundary fare class are based, and areas that face the most persistent gaps in access to free legal advice.

- **UK Consumers' Association.** The Consumers' Association, commonly known as *Which?*, is an independent charity that champions consumer rights. It undertakes consumer research, develops consumer policy and conducts campaigns across a broad range of consumer markets to achieve its objectives of protecting and empowering consumers.

Having operational independence and a focused remit on consumer protection has assisted the Consumers' Association in gaining experience as a class representative in the CAT and initiating opt-out proceedings to represent consumers. It is a private designated enforcer under Part 3 of the Digital Markets, Competition and Consumers Act 2024, qualifying it to seek court-based remedies, and is also enabled under Section 11 of the Enterprise Act 2002 and financial services legislation to submit 'super complaints' to regulators including the CMA, Ofcom, and the FCA.

Due to its consumer focus and overriding charitable objectives, undistributed sums would always be used to benefit consumer market-related issues, be this through its day-to-day work, the issuing of grants for consumer-focused research, or elsewhere.

128. Many of those respondents that expressed support for AtJF in the CfE also suggested that undistributed settlement sums be dealt with in the same way as undistributed damages, or that at least a portion should go to charity. However, many respondents to the CfE noted the benefits of taking a different approach to

undistributed settlement sums. The possibility of reversion to the defendant, or even increased flexibility in the destination for undistributed sums, can incentivise engagement in settlement discussions. The government would like to encourage engagement in ADR and settlement discussions, as outlined in paragraph 66. Further, the approach typically taken thus far in settlement agreements indicates that a portion of undistributed sums will generally be ringfenced for charity in any event – this reduces the argument for intervention.

Proposal

129. In relation to undistributed settlement sums, the government is not persuaded to depart from the current approach. The CAT already has significant and unprecedented oversight of settlement agreements, and the spirit of parties being free to agree settlement terms between themselves should be retained as far as possible.

130. The government does not propose changing the approach of diverting undistributed damages to a designated charity. However, the government seeks views on what the best destination for these sums would be.

Questions

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)**

CAT resourcing and efficiency

Summary

131. A focus of much of the feedback received during the course of the CfE was on efficiency and the need to streamline costs and reduce unnecessary burden. While some of this can be achieved through case management processes, the day-to-day operation of the CAT also plays a part. Multiple responses to the CfE referred to a need to review CAT resources, citing its increasing caseload and a need to ensure this can be handled efficiently and in a timely way.

132. The CAT is a high-performing specialist tribunal, widely recognised for its expertise and effectiveness. Alongside the conduct of this review, the CAT has already commenced work to implement changes that will increase efficiency – for example, the CAT published a practice direction on expert evidence in December

2025⁵⁹. This includes procedural requirements such as strict page limits for expert reports and the use of joint expert meetings as directed by the CAT.

Fees

133. The CAT's caseload is increasing, and this trend is set to continue. The CAT currently only has three courtrooms, one of which is designated for remote hearings with limited physical capacity, and there is notable pressure on its current resources. This can lead to less efficient processes and reduced capacity to manage caseload, meaning cases take longer to progress.
134. Since its inception, the CAT has not charged fees for applications before it. This puts it out of step with other forums for private litigation and means the burden of the CAT's costs falls entirely to the taxpayer.
135. Fees carry a clear benefit in raising revenue to support the operation of the CAT and an increase in its resources. However, fees can also carry an additional benefit in ensuring that the stated quantum of a claim on filing is reasonable and realistic. For example, for money claims in HMCTS application fees are linked to the value of a claim (five per cent of the value of claims between £10,000 and £200,000 and a maximum of £10,000 thereafter); this encourages careful consideration of quantum from the outset.
136. This has the potential to address a concern raised by some respondents to the CfE that reported headline damages figures are not always accurate, reducing certainty for defendants and affecting the ability of the CAT to assess the costs and benefits of proceedings.
137. The introduction of fees for applications before the CAT may have implications for access to justice. The cost of litigating before the CAT is already considered high, and it will be important to guard against the risk of creating obstacles to the right to pursue private actions. However, this impact could be mitigated by restricting the introduction of fees to limited application types, particularly those where the parties are typically sophisticated with access to significant budgets to bring high value, complex claims. A cap for fees would also ensure that the cost does not pose an unreasonable burden.

Proposal

138. The government proposes introducing fees to applications before the CAT. It is proposed that the introduction of fees will initially apply only to private litigation, with fees being linked to the value of claims filed (subject to a cap).

⁵⁹ [Practice Direction 3/2025: Expert Evidence](#), 2 December 2025.

139. Once in place, the structure and rates of application fees will be reviewed after no more than five years, including the range of applications for which fees are charged.

Questions

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.

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.

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

Panel composition

140. Section 14 of the Enterprise Act 2002 requires the tribunal panel to consist of a chair and two other members for any proceedings before it, save for fast-track proceedings of a claim under s47A of the Competition Act 1998. While some decisions can be made by the chair of a panel in accordance with paragraph 10A of Schedule 4 of the Enterprise Act and Rule 110 of the CAT Rules, decisions that are dispositive of proceedings must be dealt with by a full panel of three.

141. This structure is in place to allow the CAT to benefit from relevant sectoral expertise of panel members and to increase confidence in decision-making. However, this rigidity can also lead to inefficiency; there may be certain hearings or decisions that would be appropriately served by a chair and a single lawyer or economist or even by a chair sitting alone.

142. For example, where there is an application for strike out of part of a statement of case, the issue being considered is purely legal and does not require specialist expertise. These applications, however, are currently frequently brought in case management conferences (CMC), with a full panel being convened when it may otherwise be appropriate for a chair to sit alone. A CMC involving consideration of economic evidence may also appropriately be heard by a chair sitting with a single economist member, without an additional ordinary member.

143. Increasing flexibility in panel composition could ease pressure on CAT resources and enable greater efficiency in dealing with more discrete issues, reducing logistical complexities in listing a hearing and facilitating decision-making. However, there will remain contexts where a full panel will be necessary to ensure chairs are able to benefit from ordinary member expertise and that decision-making is robust.

Proposal

144. The government proposes increasing flexibility in panel composition, requiring that panels consist of up to three members, rather than requiring three members in every circumstance.

Questions

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.

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.

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.

CAT Rules

145. The CAT Rules have been subject to amendment over time to reflect changes in the wider landscape. However, this is generally on an ad hoc or 'as and when' basis. Feedback in the CfE indicates that it would be beneficial for reviews of the Rules to be conducted more routinely, to ensure they are reflective of current practice and developments in case law.

146. The CAT Rules will therefore now be reviewed at least triennially. Reviews of the CAT Rules should be supported by a sub-group of the CAT User Group.

Chapter 2 – Simplifying the regulatory appeals framework

Background

147. Improving regulation in the UK is an essential part of this government's growth mission. In March 2025, the government published its plan for a UK regulatory system that drives sustained economic growth and is proportionate, consistent and predictable⁶⁰. To achieve that vision, the government is committed to consider reforms that can tackle the complexity and burden of regulation and reduce uncertainty across the regulatory system.
148. This Chapter specifically relates to decisions made by economic regulators. While there is no fixed definition, economic regulation broadly concerns the use of price, competition and enforcement tools to address market failures (e.g. controlling the excesses of natural monopoly) to incentivise efficient levels of investment, output and fair consumer prices. It impacts both market structure and business behaviour⁶¹.
149. A well-functioning economic regulation system requires an effective appeals framework that helps ensure fair outcomes, strengthens regulator accountability, and gives stakeholders, including regulated companies, investors and consumers, confidence that the decisions of regulators are robust and made in line with their legal duties.
150. For the purposes of this Chapter, unless stated otherwise, "regulatory appeals" refer to the different types of challenges that parties can raise against a decision of an economic regulator, as well as matters that regulators can refer to the Competition and Markets Authority (CMA) for determination. These include appeals on specified grounds, applications for judicial review, regulatory references and redeterminations.
151. At present, decisions by economic regulators are subject to a variety of regulatory appeals regimes. There are differences notably in relation to the body hearing and deciding the regulatory appeal ("appellate body"), the appeal standard and the parties eligible to bring an appeal.
152. These differences make the system complex and difficult to navigate for stakeholders⁶². The 2024 Business Perceptions Survey highlighted that only 15 per

⁶⁰ [New approach to ensure regulators and regulation support growth](#).

⁶¹ For a fuller discussion, see Decker, C. (2023) *Modern Economic Regulation: An Introduction to Theory and Practice*, Second Edition. Cambridge University Press.

⁶² For example, the 2021 Penrose report noted that under the current system, "firms that need to appeal against sector regulators' decisions face a complicated thicket of different legal routes and rules" and that the "CMA has proposed the system should be simplified so that any appeals which they currently consider should instead be dealt with by CAT. This is a pragmatic step and should go ahead promptly".

cent of businesses consider that the process to appeal against a decision made by regulators is easy and transparent⁶³.

153. While the government recognises that each sector may have specific characteristics, it is important to minimise unnecessary inconsistencies across sectors that render the overall system disproportionately complex. Greater alignment across sectors can improve clarity, legal certainty and confidence.
154. The government therefore considers that there is an opportunity to refine the current framework, with the aim of developing a regulatory appeals system that is more consistent, efficient and proportionate, promotes stakeholder confidence and better supports an effective use of resources.
155. Subject to the outcome of this consultation, the government anticipates that the reform proposals would be taken forward via sector-specific legislation when Parliamentary time allows.

Scope of this Chapter

156. This Chapter covers the regulatory appeals that fall within the CMA's competence and that are listed in the table in paragraph 163 (hereafter referred to as the "Regulatory Appeals").
157. The CMA is also responsible for hearing regulatory appeals in the rail and payment services sectors.
158. However, the rail sector is not included within the scope of this consultation, given that the two regulatory appeals processes to the CMA that currently exist in the Railways Act 1993 (access charge references under paragraph 9 of Schedule 4A and licence modification references under sections 13-15C) are both due to change as a result of the Railways Bill introduced in Parliament in November 2025⁶⁴. Access charge references will cease to be relevant and the licence modification process will change to ensure consistency in industry-wide obligations and better align rail with other regulated sectors. Subject to the Bill's progress through Parliament, the licence modification process is not expected to include a role for the CMA.
159. Similarly, appeals against decisions made by the Payment System Regulator (PSR) are not included within the scope of this consultation, as HM Treasury is preparing legislation to abolish the PSR and transfer its functions to the Financial Conduct Authority. This includes provisions on payment systems sector-specific regulatory appeal routes.

⁶³ [Business regulation: business perceptions survey 2024](#).

⁶⁴ [Railways Bill](#).

160. The CMA is responsible for hearing regulatory appeals and references in the water and energy sectors, responsibility for these sectors has been devolved to the Devolved Governments (the “Devolved Sectors Regulatory Appeals”), as set out in the table below.

Regulator	Decision challenged / Matter referred	Relevant legislation
Water and sewerage (Wales)		
Water Services Regulation Authority (Ofwat)	Water and sewerage - Modification of appointment conditions reference (non-price control)	Section 14 of the Water Industry Act 1991 (WIA)
Water and sewerage (Northern Ireland)		
Northern Ireland Authority for Utility Regulation (NIAUR)	Water and sewerage - Licence modifications reference (non-price control)	Article 21 of the Water and Sewerage Services (Northern Ireland) Order 2006/3336
	Water and sewerage - Appointment conditions and price control redeterminations reference	Article 19 of the Water and Sewerage Services (Northern Ireland) Order 2006/3336
Water and sewerage (Scotland)		
Water Industry Commission for Scotland	Water and sewerage - Granting of a license, license modifications, determinations of maximum amounts of charges reference (including price control)	Article 3 of the Water Services etc. (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005/3172
Energy (Northern Ireland)		
NIAUR	Gas and electricity – Modification of licence conditions appeal (including price control)	Articles 14B – 14G of the Electricity (Northern Ireland) Order 1992 Articles 14B – 14G of the Gas (Northern Ireland) Order 1996
	Gas and electricity - Non-licensable activities reference	Paragraph 3 of Schedule 2 to the Energy (Northern Ireland) Order 2003/419

161. The government is engaging with the Devolved Governments in relation to the Devolved Sectors Regulatory Appeals.

Appellate body

162. At present, the appellate body varies depending on the sector and the type of decision made by the regulator. Regulatory appeals may be heard by either the CMA, the Competition Appeal Tribunal (CAT) or UK courts.

163. The CMA is responsible for hearing Regulatory Appeals across a number of sectors, as detailed in the table below. These appeals concern matters such as modifications of licence conditions, price controls and industry code modifications.

Regulator	Decision challenged / Matter referred	Relevant legislation
Water and sewerage		
Ofwat	Water and sewerage - Modification of appointment conditions appeal (non-price control)	Sections 12D – 12I of, and Schedule 2ZA to, WIA
	Water and sewerage - Price control redeterminations reference	Sections 12(3) and 12(3A) WIA
	Water supply and sewerage - Licence condition modification references (non-price control)	Section 17K WIA
	Infrastructure projects - Appointment conditions and price control reference	Paragraph 4 to Schedule 1 of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013/1582
	Water Codes - Code modification appeal (non-price control)	Regulations 2 and 4 of the Water Industry Designated Codes (Appeals to the CMA) Regulations 2017/447
	Water and sewerage - Modification of appointment conditions	Section 14 WIA

	reference (non-price control) (Wales) ⁶⁵	
Energy		
Office of Gas and Electricity Markets (Ofgem) ⁶⁶	Gas and electricity - Modification of licence conditions appeal (including price control) ⁶⁷	Sections 23B – 27 of, and Schedule 4A to, the Gas Act 1986 Sections 11C – 11H of, and Schedule 5A to, the Electricity Act 1989 Section 10(2) of the Nuclear Energy (Financing) Act 2022
	Gas and electricity codes - Modification of codes appeal	Sections 173 - 175 of, and Schedule 22 to, the Energy Act 2004
	Carbon dioxide transport and storage - Licence modifications appeal (including price control)	Sections 20 – 25 of, and Schedule 2 to, the Energy Act 2023
NIAUR	Gas and electricity – Modification of licence conditions appeal (including price control) (Northern Ireland) ⁶⁸	Articles 14B – 14G of the Electricity (Northern Ireland) Order 1992 Articles 14B – 14G of the Gas (Northern Ireland) Order 1996
Air		
Civil Aviation Authority (CAA)	Air traffic - Modification of licence conditions appeal (including price control)	Sections 19A – 19F of, and Schedule A1 to, the Transport Act 2000
	Airport and air transport – Licence conditions and modification of licence conditions appeal (including price control)	Sections 24 – 30 of, and Schedule 2 to, the Civil Aviation Act 2012
Postal services		

⁶⁵ Following discussions with the Welsh Government, this reference is included in the scope of this consultation.

⁶⁶ Acting on behalf of the Gas and Electricity Markets Authority (GEMA).

⁶⁷ Section 10(2) of the Nuclear Energy (Financing) Act 2022 also enables a relevant licensee nuclear company to, for example, appeal a decision of the authority which relates to the company's allowed revenue where this has not immediately resulted in a modification to the company's licence.

⁶⁸ Following discussions with the Northern Ireland Executive, this appeal is included in the scope of this consultation.

Office of Communications (Ofcom)	Price control appeal	Section 59 of the Postal Services Act 2011
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164. In addition, the CMA is responsible for hearing regulatory references relating to non-licensable activities in the energy sector (the “Energy Regulatory References”)⁶⁹ and price control matters in telecoms appeals brought before the CAT under section 192 of the Communications Act 2003 (the “Telecoms Appeals”)⁷⁰.
165. **However, the CMA may not be the most appropriate body to hear these regulatory appeals.**
166. First, although the CMA is primarily an enforcement body, it must perform a quasi-judicial role when reviewing regulators’ decisions, given the nature, process and scope of the CMA’s legal powers as provided for by statute. A specialist judicial body would be better placed to resolve the overall set of issues raised through an appeal process. The economic and financial expertise needed to review regulatory decisions does not require that appeals be heard by another regulator; a judicial body, with access to the appropriate technical expertise, would be equally capable of dealing with these issues.
167. Second, the CMA’s role in relation to regulatory appeals requires it to divert key resources away from its primary statutory duty: promoting competition for the benefit of consumers. On average, the CMA hears one to two regulatory appeals per year, with the scale and complexity of these cases increasing in recent years. The number of cases can also vary, resulting in resourcing difficulties during periods where the CMA sees a higher frequency of appeals. This role mobilises the CMA’s resources and workforce (including economists, financial and business advisers, and lawyers) and limits the CMA’s capacity to make other market interventions. For instance, the CMA estimates that a large regulatory appeal could be equivalent to two or three CMA market studies, which could deliver significant consumer benefits. According to the CMA’s estimates, direct consumer benefits from the CMA’s interventions through the markets regime exceeded £5 billion in total during the financial years 2022-2023 and 2024-2025, giving an average of over £1.7 billion per year⁷¹.
168. Transferring the CMA’s appellate functions to another body would enable the CMA to focus its resources on its core duty and on other interventions that can support economic growth and generate substantial benefits for consumers, further delivering in line with the government’s Strategic Steer⁷².

⁶⁹ Section 41E of the Gas Act 1986; section 56C of the Electricity Act 1989. Following discussions with the Northern Ireland Executive, the reference set out in paragraph 3 of Schedule 2 to the Energy (Northern Ireland) Order 2003/419 is also included in the scope of this consultation.

⁷⁰ Reference of price control matters to the CMA provided for by section 193 of the Communications Act 2003.

⁷¹ [CMA Impact Assessment 2024 to 2025](#), 10 July 2025.

⁷² [Strategic steer to the CMA](#), 15 May 2025.

169. Third, the CMA's regulatory appeals functions are currently carried out by inquiry groups consisting of members drawn from the CMA Panel. In January, the government consulted⁷³ on a proposal to amend the decision-making model in merger and market cases, by introducing decision-making by CMA Board sub-committees (including the involvement of expert decision-makers akin to Panel members) in place of inquiry-group decision-making. If this reform is implemented, retaining the inquiry group model solely for Regulatory Appeals would likely place an unnecessary burden on the CMA, reduce the number of experts available to sit in sub-committees and create unnecessary complexity by retaining multiple decision-making models across CMA functions.
- 170. The government's view is that the CAT would be a more appropriate body to hear Regulatory Appeals.**
171. The CAT is already responsible for hearing certain appeals against the decisions of economic regulators, such as Ofcom, Ofgem, the PSR and the CAA. Transferring Regulatory Appeals to the CAT would consolidate a greater number of regulatory appeals within a single body, supporting more consistent appeal outcomes and improving certainty for stakeholders.
172. As a specialist judicial body, the CAT is well placed to exercise judicial oversight over regulators' decisions and to address the full range of issues that Regulatory Appeals may raise, such as questions of statutory interpretation, vires⁷⁴ and whether regulators complied with their legal duties.
173. The CAT also has the necessary skills and expertise to review complex and technical regulatory decisions. Cases before the CAT are typically heard by a chairman and two members drawn from a panel of persons who have been specifically selected for their expertise in economics, business, accountancy and other related fields ("Ordinary Members"). The CAT already hears cases that require complex economic and financial assessments, such as competition enforcement appeals and private damages actions involving claims for excessive pricing⁷⁵. As such, the CAT has the necessary expertise to decide on all questions arising in Regulatory Appeals, including on price control matters.
174. In Telecoms Appeals, although the CAT is responsible for hearing appeals against Ofcom decisions, it must refer the price control elements of those appeals for determination by the CMA⁷⁶. Since the CAT has the necessary expertise to review

⁷³ [Refining our competition regime](#), 20 January 2026.

⁷⁴ For example, whether the regulator acted within the scope of its powers.

⁷⁵ For example, *Justin Le Patourel v BT Group PLC* [2024] CAT 76.

⁷⁶ Section of the 193 of the Communication Act 2003.

price control decisions, the appeal process would be more efficient if the CAT were to decide on the entire case, including on price control matters.

175. Transferring the CMA's appellate functions to the CAT would also enable a more effective and proportionate overall use of resources, as a judicial body like the CAT can run a more efficient process, which in turn can enable parties to save costs.

176. In particular, proceedings before the CAT are characterised by active case management, which ensures that cases are heard justly and at proportionate cost, notably by ensuring that the parties are on an equal footing, that expense is saved and that appeals are dealt with expeditiously and fairly⁷⁷. Through the use of active case management, the CAT – working together with the parties – ensures that the case proceeds in the quickest and most efficient manner possible. For instance:

- the CAT sets a trial date for the main hearing and the timetable for the proceedings to ensure the case progresses efficiently;
- the CAT can limit the production of evidence or the cross-examination of witnesses, where justified;
- the parties are requested to limit the length of their pleadings and to fully set out their case as early as possible, with supporting documents produced at the outset of the proceedings, so far as practicable;
- the CAT also has the power to expedite proceedings and treat cases as urgent where the circumstances of the case justify it.

177. These features would help ensure that Regulatory Appeals are dealt with efficiently and that regulatory certainty is not unduly delayed.

Proposal

178. The government proposes to transfer to the CAT the responsibility for hearing (i) all Regulatory Appeals, as well as (ii) price control matters in Telecoms Appeals that are currently referred to the CMA.

179. Should this reform be taken forward, the government will consider any additional resources the CAT may require to hear such appeals, for instance through the appointment of additional Ordinary Members with sector-specific expertise. The government also welcomes views on case management rules that could help ensure Regulatory Appeals are heard fairly and efficiently.

Questions

⁷⁷ Rule 4, Competition Appeal Tribunal Rules 2015, S.I. 2015/1648 (CAT Rules). CAT's Guide to proceedings, paragraph 3.1.

Q44. Should Regulatory Appeals be transferred to the CAT? [Yes / No / Not sure]
Please explain your views.

Q45. Should the CAT have jurisdiction to determine price control matters in Telecoms Appeals? [Yes / No / Not sure] Please explain your views.

Q46. Would any amendments to the CAT Rules be necessary to ensure that Regulatory Appeals can be heard fairly and efficiently? [Yes / No / Not sure] Please explain your views.

Appeal standard and parameters

180. An effective appeals system must provide checks and balances in relation to regulatory decisions, while not creating prolonged uncertainty or unduly delaying benefits for businesses and consumers. This requires adopting an appeal standard that is proportionate and appropriately focused.

181. Currently, Regulatory Appeals are subject to different standards, as further explained below.

Appeals on specified grounds

182. Under this standard, the CMA decides whether the regulator's decision was wrong on the specified grounds set out in statute. The grounds differ across sectors, as set out in the table in paragraph 195.

183. Appeals focus on identifying errors in the regulator's decision and do not involve a re-run of the original investigation or a re-hearing of all the evidence. In line with the case law, the appeal will succeed only where the decision cannot stand in light of that error. For example, if the CMA concludes that the decision can be supported on a basis other than that on which the regulator relied, the appellant will not have shown that the decision was wrong and the appeal will fail. Further, if an error is found but it is not considered to be material, then the appeal will also not succeed.

Regulatory references

184. In the water and energy sectors, regulators can make a reference to the CMA. Under most of these regulatory reference regimes, the statute provides for the CMA to investigate and report on public interest issues and how to remediate them. In the water sector, the regulator's price control determinations are the subject of a type of regulatory reference known as a "redetermination" ("Water Redetermination").

Energy Regulatory References

185. In the energy sector, the Secretary of State has the power to make an order providing for specified activities to become licensable activities, in accordance with the process set out below⁷⁸:

- An order may only be made on the application of Ofgem⁷⁹. Before applying to the Secretary of State for an order, Ofgem must conduct a consultation for at least 28 days. The consultation must involve Citizens Advice and Consumer Scotland and must be publicised to anyone likely to be affected by the order, including anyone Ofgem believes is carrying out the specified activities.
- If any objection is raised, Ofgem must refer the matter to the CMA. Ofgem may also refer the matter to the CMA in any other case. The CMA then investigates and reports on whether the proposed change would be in the public interest. Ofgem's application may only proceed if the CMA's finding is positive.
- Subject to Parliamentary approval, the Secretary of State may then make an order providing that the specified activities will become licensable activities.

186. In Northern Ireland, the Department for the Economy (DfE) also has the power, subject to the Northern Ireland Assembly's approval, to make an order providing for specified activities to become licensable activities. This power can only be exercised on the application of NIAUR and is subject to a similar procedure⁸⁰.

187. The government is not aware of any instance in which such references have been made to the CMA. The requirement to refer the matter to the CMA could be removed to simplify the order-making process. The requirement on Ofgem and NIAUR to consult before making an application to the Secretary of State or DfE ensures that stakeholder views will be gathered and considered. In addition, the requirement for the UK Parliament's or the Northern Irish Assembly's approval, as relevant, provides an additional safeguard.

188. Removing this requirement would also ensure greater consistency with the process existing for order-making powers relating to other licensable activities in the energy sector⁸¹.

Water Regulatory References (excluding Water Redeterminations)

⁷⁸ Sections 41C to 41H of the Gas Act 1986 and sections 56A to 56F of the Electricity Act 1989.

⁷⁹ Acting through GEMA.

⁸⁰ Sections 39, 40 and 66(2) of, and paragraph 3 of Schedule 2 to, the Energy (Northern Ireland) Order 2003/419.

⁸¹ For instance, with respect to smart meters, the Secretary of State also has the power to make an order providing that specified activities are to become licensable activities. However, there is no regulatory reference process overseen by the CMA. The Secretary of State is instead required to consult GEMA and other persons as the Secretary of State thinks appropriate. See sections 56FA and 56FB of the Electricity Act 1989.

189. The CMA is responsible for hearing regulatory references relating to modifications of licence or appointment conditions for water supply and sewerage services and infrastructure projects (the “Water Regulatory References”).
190. In particular, where modifications of licence or appointment conditions in relation to water supply and sewerage services are opposed by the relevant licence holder or appointed company, Ofwat can make a reference to the CMA so the CMA investigates and reports on whether certain matters operate against the public interest and whether the proposed modifications could remedy or prevent such effects⁸².
191. A similar reference process exists in relation to infrastructure projects⁸³.

Water Redeterminations

192. In Water Redeterminations, the CMA does not report on public interest issues but takes a fresh look at the case, reconsiders the evidence and reaches its own conclusion. Unlike an appeal, where the CMA is required to determine whether the regulator was wrong, in a Water Redetermination, the CMA must make its own determination by reference to the regulator’s duties and will substitute its own view if it would have reached a different decision.
193. As such, redeterminations can often be costly, time-consuming and burdensome, especially as their scope and complexity have increased over time. Price control redeterminations have become much more complex, with regulators balancing a broader range of duties and objectives. For example, the final determinations document for the 1994 Periodic Review (PR94) issued by Ofwat in 1994 was 63 pages long, while in 2024, Ofwat’s price control was more than a thousand pages⁸⁴. The benefits of moving from redeterminations to a more focused appeal process in terms of efficiency have therefore grown stronger over time. Redeterminations also increase uncertainty for customers, as they involve a complete reconsideration of the case and all matters considered by the regulator may therefore change.
194. Originally, most sectors had regulatory references or redeterminations, but they gradually moved to appeals to be consistent with European legislation or as part of a wider review of sector regulations. For instance, in the air traffic sector, modifications of certain licence conditions, if opposed by the licence holder, were originally subject to a reference process whereby the Competition Commission would determine whether the proposed modifications met certain public interest considerations and could be imposed. This was seen as a costly and time-consuming process, which

⁸² Section 17K WIA. Section 14 WIA (Wales).

⁸³ Paragraph 4 of Schedule 1 of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013/1582.

⁸⁴ [Independent Commission on the Water Sector Regulatory System: Call for Evidence – Response from the Competition and Markets Authority](#), April 2025.

risked both delaying and significantly weakening the benefits to consumers, and it was subsequently converted into an appeal process in 2021⁸⁵.

195. The table below sets out the appeal standard for each Regulatory Appeal.

Decision / matter concerned	Appeal standard	Powers of the CMA
Water and sewerage		
Water and sewerage - Modification of appointment conditions (non-price control)	Appeal on specified grounds: • Failure to properly have regard to certain specified matters • Failure to give the appropriate weight to such matters • Error of fact • Modification failed to achieve the stated effect • Failure to follow the applicable procedure • Decision otherwise wrong in law	• Quash the decision • Remit the matter back to the regulator
Water and sewerage - Price control redeterminations	Reference made to the CMA to review price controls imposed as conditions of licence in accordance with specified matters.	CMA submits a report to Ofwat setting out its redetermination.
Water supply and sewerage - Licence condition modifications	Reference made to the CMA to investigate whether any matters operate against the public interest.	The CMA prepares a report and, if it makes a finding of “against the public interest”, the report must specify modifications by which those effects could be remedied or prevented.
Infrastructure projects - Appointment conditions and price control	Reference made to the CMA in relation to questions arising under or in connection with a project licence held by a licensed infrastructure provider.	The CMA prepares a report setting out its determination.

⁸⁵ Schedule 3 to the Air Traffic Management and Unmanned Aircraft Act 2021. Modernising the licensing framework for air traffic services: [Modernising the Licensing Framework for Air Traffic Services](#).

Water code modifications (non-price control)	Appeal on specified grounds: • Failure to properly have regard to certain matters • Failure to properly have regard to certain purposes • Failure to give the appropriate weight to such matters or purposes • Error of fact • Decision wrong in law	• Quash the decision • Remit the matter to the regulator • Where it quashes a decision not to revise a code or part of it - give directions to the regulator to ensure that the code has effect as if it had been revised
Water and sewerage - Modification of appointment conditions (non-price control) (Wales)	Reference made to the CMA to investigate whether any matters operate against the public interest.	The CMA prepares a report and, if it makes a finding of “against the public interest”, the report must specify modifications by which those effects could be remedied or prevented.
Energy		
Gas and electricity – modification of licence conditions (including price control)	Appeal on specified grounds: • Failure to properly to have regard to certain matters • Failure to give the appropriate weight to such matters • Error of fact • Modification failed to achieve the stated effect⁸⁶ • Decision wrong in law	Price control and licensee nuclear company allowed revenue appeals⁸⁷: • Quash the decision • Remit the matter to the regulator • Substitute its decision Other decisions • Quash the decision • Remit the matter to the regulator
Gas and electricity code modifications	Appeal on specified grounds: • Failure to properly have regard to certain matters • Failure to properly have regard to certain purposes • Failure to give the appropriate weight to such matters or purposes	• Quash the decision • Remit the matter to the regulator • Where it quashes the refusal of a consent, give directions to the regulator/other appropriate persons for securing that the

⁸⁶ For appeals against decisions relating to allowed revenue of licensee nuclear companies, the appeal grounds do not include the failure to achieve the stated effect (section 10(4)(b) Nuclear Energy (Financing) Act 2022).

⁸⁷ Section 10(4)(c) Nuclear Energy (Financing) Act 2022.

	• Error of fact • Decision wrong in law	relevant condition has effect as if the consent had been given
Carbon dioxide transport and storage – licence modifications (including price control)	Appeal on specified grounds: • Failure to properly have regard to certain matters • Failure to give the appropriate weight to such matters • Error of fact • Failure to achieve the stated effect • Decision wrong in law	Price controls • Quash the decision • Remit the matter to the regulator • Substitute its decision Other decisions • Quash the decision • Remit the matter to the regulator
Gas and electricity - Modification of licence conditions (including price control) (Northern Ireland)	Appeal on specified grounds: • Failure to properly have regard to certain matters • Failure to give the appropriate weight to such matters • Error of fact • Failure to achieve the stated effect • Decision wrong in law	Price controls • Quash the decision • Remit the matter to the regulator • Substitute its decision Other decisions • Quash the decision • Remit the matter to the regulator
Air		
Air traffic - Modification of licence conditions (including price control)	Appeal on specified grounds: • Error of fact • Decision wrong in law • Error made in the exercise of a discretion	• Quash the decision • Remit the matter to the regulator • Substitute its own decision
Airport and air transport – Licence conditions and modification of licence conditions (including price control)	Appeal on specified grounds: • Error of fact • Decision wrong in law • Error made in the exercise of a discretion	• Quash the decision appealed against • Remit the matter to the regulator • Substitute its own decision
Postal services		
Price control	Appeal against a price control decision. The grounds of appeal	• Allow the appeal and make its own decision

	must be set out in the notice of appeal to indicate the error (or errors) which the appellant considers the regulator has made.	• Quash the decision – in which case, it may refer the matter back to the regulator
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196. A clear, effective and proportionate appeal process could be better achieved by harmonising the appeal standard across all Regulatory Appeals.

197. This would create a more accessible and transparent appeals system that would be easier for stakeholders, and their legal and economic advisers, to navigate.

198. It would also help achieve a consistent approach to similar issues arising across different sectors, providing greater certainty to stakeholders over time. Currently, the lack of a uniform approach across sectors means that there is less ability to read across and have regard to precedents from other appeals. The current system may increase the legal costs incurred by the parties, which have to raise new legal arguments that have not been previously addressed in their sector.

199. In addition, the differences in regulatory appeals regimes can also increase uncertainty for investors and ultimately deter investments in UK markets. This is most clearly illustrated by the difference between the CMA effectively stepping into the regulator's role in a redetermination (e.g. in relation to price control references in the water sector) and the CMA reviewing whether the regulator is wrong on the basis of one or more of the specified legal grounds in an appeal (e.g. in the energy sector). Many aspects of price control decisions (e.g. the cost of capital) are complex matters requiring the exercise of regulatory judgement with no single right answer. This can create a perception of inconsistency for investors, with seemingly different answers emerging from regulators and appeal outcomes in different sectors.

200. The harmonised standard could be similar to the standard applied by the CAT in Telecoms Appeals.

201. In Telecoms Appeals, the CAT must decide the case on judicial review principles⁸⁸, while ensuring that the merits of the case are duly taken into account⁸⁹. In practice,

⁸⁸ Section 194A requires appeals to the CAT against specified regulatory decisions to be decided by applying the same principles as would be applied by a court on an application for judicial review. In an application for judicial review, a court reviews the lawfulness of the decision being challenged. It scrutinises the decision for legal flaws such as illegality (e.g. whether the decision-maker acted within its powers), irrationality (e.g. whether the decision-maker applied proper reasoning) and procedural unfairness (e.g. whether the decision-maker followed the proper procedures in coming to its decision).

⁸⁹ Section 194A of the Communications Act 2003 and formerly, Article 4(1) of the EU Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, now EU Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

this means that, in addition to scrutinising the decision for procedural unfairness, illegality and unreasonableness, the CAT also assesses whether the decision was “wrong” after considering the merits of the case⁹⁰.

202. The CAT does not conduct a “re-hearing” of the case. Instead, the CAT takes Ofcom’s decision as a starting point and assesses whether it is materially wrong. In doing so, the CAT allows an appropriate degree of respect for Ofcom’s expert assessment⁹¹.

203. The CAT may dismiss the appeal or quash the decision, in whole or in part, and remit the matter back to Ofcom with a direction to reconsider and make a new decision in accordance with the CAT’s ruling⁹².

Proposal

Appeals

204. The government proposes the following appeal parameters for all Regulatory Appeals:

- a) **Standard of review:** the CAT would apply the same principles as would be applied by a court on an application for judicial review, while also taking due account of the merits of the case. This means that the CAT would review the regulator’s decision on judicial review grounds (unfairness, illegality, unreasonableness) and would assess whether the regulator’s decision is materially wrong after considering the merits of the case, in line with the approach explained and taken by the CAT in the case law⁹³.
- b) **Grounds of appeal:** the parties would be required to set out the grounds of appeal in the notice of appeal and specify whether they consider that the regulator’s decision was based on an error of fact, was wrong in law, or whether there was an error in the exercise of the regulator’s discretion.
- c) **Admissibility of new evidence and cross-examination of witnesses:** the treatment of new evidence would be subject to the CAT Rules⁹⁴. Rule 21(2) enables the CAT to control the admission of new evidence; the CAT may admit or exclude new evidence on appeal where it is just and proportionate to do so (taking into account factors such as whether or not the evidence was available before the regulator’s decision was taken, and if not, the reason why). In addition, the CAT would be entitled to use its discretion as to what weight to give to new

⁹⁰ TalkTalk Telecom Group PLC v Ofcom 2020 CAT 8, paragraphs 137 - 139.

⁹¹ While the CAT pays appropriate respect to Ofcom’s position as a specialist regulator, it also takes its own view on the evidence presented to it. E.g. TalkTalk Telecom Group PLC v Ofcom 2020 CAT 8 at para 139.

⁹² Section 194A(3) of the Communications Act 2003.

⁹³ TalkTalk Telecom Group PLC v Ofcom [2020] CAT 8, paragraphs 137 to 140.

⁹⁴ [Competition Appeal Tribunal Rules](#).

evidence. Cross-examination of witnesses would also be permitted, in line with Rule 55 of the CAT Rules.

- d) **Remedies available to the CAT:** the CAT would have the power to dismiss the appeal or quash the whole or part of the regulator's decision. Where it quashes the decision, the CAT would have to remit the matter back to the regulator with a direction to reconsider and make a new decision in accordance with the CAT's ruling.

205. These appeal parameters would maintain robust oversight over regulators' decisions, while continuing to ensure that appropriate respect is accorded to the expert judgement of specialist sectoral regulators, and would ensure that appeals focus on identifying material errors or otherwise unreasonable decisions.

Energy Regulatory References

206. The government proposes to remove the Energy Regulatory References to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities.

Water Redeterminations

207. In its 2026 White Paper on "A new vision for water", the government expressed its intention to replace the current water redetermination led by the CMA with a more focused appeals process⁹⁵. This will help create a price review process that is faster, more resource efficient, and more predictable for water companies and investors. The government proposes that this new appeal be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204.

Water Regulatory References

208. The government proposes to convert Water Regulatory References into an appeal process. Under an appeal model, the regulator would be able to make the relevant licence modifications, and the licence holders (and other eligible parties⁹⁶) would then have the right to appeal the regulator's decision. To ensure consistency with other regulatory appeals, the appeal would be made to the CAT under the appeal parameters set out in paragraph 204.

209. This proposal would align the Water Regulatory References with the appeal framework existing in other sectors (and with future water price control appeals), therefore bringing greater alignment across the regulatory appeal landscape.

⁹⁵ [A new vision for water: white paper](#), January 2026.

⁹⁶ Eligibility to appeal is discussed in the section on "Eligibility to appeal or intervene".

Questions

Q47. Should Regulatory Appeals be determined in accordance with the standard of review set out in paragraph 204(a)? [Yes / No / Not sure] Please explain your views.

Q48. Should the notice of appeal set out the grounds of appeal and indicate whether the regulator's decision was based on an error of fact, an error of law, or an error in the exercise of the regulator's discretion, as set out in paragraph 204(b)? [Yes / No / Not sure] Please explain your views.

Q49. Should parties be allowed to submit new evidence on appeal? [Yes / No / Not sure] Please explain your views.

Q50. Should the cross-examination of witnesses be permitted, in line with the CAT Rules? [Yes / No / Not sure] Please explain your views.

Q51. In case the CAT quashes the decision, should the matter be remitted to the regulator, as proposed in paragraph 204(d)? [Yes / No / Not sure] Please explain your views.

Q52. Would the proposed appeal parameters set out in paragraph 204 create any barriers or challenges for the parties seeking to appeal a regulator's decision? [Yes / No / Not sure] Please explain your views.

Q53. Should the new appeal replacing Water Redeterminations be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.

Q54. Should Water Regulatory References be converted into an appeal process overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.

Q55. Should Energy Regulatory References be removed to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities? [Yes / No / Not sure] Please explain your views.

Eligibility to appeal or intervene

Appellants

210. The persons eligible to bring a challenge against a regulator's decision vary across sectors. For instance, only regulated companies can request a redetermination of price control decisions in the water sector⁹⁷. However, additional organisations, such

⁹⁷ Section 12(3) of the Water Industry Act 1991.

as consumer bodies, may be entitled to challenge a regulator's decision via an appeal process⁹⁸.

211. The table below sets out the parties who are eligible to bring an appeal against regulators' decisions. In relation to regulatory references and redeterminations, matters are referred to the CMA by the regulators.

Appeal	Parties eligible to bring an appeal
Water and sewerage	
Water and sewerage - Modification of appointment conditions (non-price control)	• Regulated water company to which the appointment relates • Other regulated water companies whose interests are materially affected • Licensees whose interests are materially affected • Representative bodies of regulated water companies or licensees • Consumer Council for Water Permission of the CMA needed to bring an appeal.
Water Codes - Code modification (non-price control)	• Water supply or sewerage licensees where their interests are materially affected • Undertakers where their interests are materially affected Permission of the CMA needed to bring an appeal.
Energy	
Gas and electricity - Modification of licence conditions (including price control) ⁹⁹	• Relevant licence holders • Licence holders whose interests are materially affected • Representative bodies or associations of these licence holders • Citizens Advice, Consumer Scotland, other consumer representative bodies

⁹⁸ For instance, under section 11C(2) of the Electricity Act 1989, Citizens Advice and Consumer Scotland may bring an appeal in the capacity of representing consumers whose interests are materially affected by Ofgem's decision.

⁹⁹ For appeals against decisions relating to allowed revenue of licensee nuclear companies, section 10(4)(a) of the Nuclear Energy (Financing) Act 2022 provides that an appeal may be brought only by a relevant licensee nuclear company.

	Permission of the CMA needed to bring an appeal.
Gas and electricity - Modification of licence conditions (including price control) (Northern Ireland)	• Relevant licence holders • Licence holders whose interests are materially affected • Representative bodies or associations of these licence holders • The General Consumer Council for Northern Ireland Permission of the CMA needed to bring an appeal.
Gas and electricity code modifications	• Any person whose interests are materially affected • Representative bodies or associations Permission of the CMA needed to bring an appeal.
Carbon dioxide transport and storage – licence modifications	• Relevant licence holder • Transport and storage network users whose interests are materially affected • Representative bodies or associations Permission of the CMA needed to bring an appeal.
Air	
Air traffic - Modification of licence conditions (including price control)	• Licence holder • Owner or operator of an aircraft whose interests are materially affected • Owner or manager of a prescribed aerodrome whose interests are materially affected Permission of the CMA needed to bring an appeal.
Airport and air transport – Licence conditions and modification of licence conditions (including price control)	• Licence holder • Provider of air transport services whose interests are materially affected Permission of the CMA needed to bring an appeal.

Postal services	
Price control	Any affected person

212. With respect to Telecoms Appeals, a person affected by Ofcom's decision can bring an appeal before the CAT¹⁰⁰.

Interveners

213. In certain cases, third parties can intervene in an appeal brought by an appellant.

214. The treatment of interveners differs across sectors, as the statutory provisions vary and do not always refer to interveners.

215. For instance, with respect to licence modification appeals in the energy sector, section 23B of the Gas Act 1986 and section 11C of the Electricity Act 1989, and the accompanying schedules, do not refer to interveners. However, in both appeal regimes, the CMA has addressed interveners in its rules¹⁰¹ and guide¹⁰². Although the statute does not establish a formal framework for intervention in appeals, the CMA may give third parties permission to intervene in an appeal but does not make cost orders for interveners in these regimes.

216. In contrast, other appeal regimes include express provisions for interveners in the statute. For instance, with respect to airport and air traffic licence modification appeals, the concept of an intervener is set out in the statute, which provides that third parties can be given permission to intervene in an appeal¹⁰³. The statute also includes provisions in relation to intervener costs.

Proposal

217. The government invites views on whether, in the context of the proposed transfer of Regulatory Appeals to the CAT, it would be preferable to retain the distinct, sector-specific appeal eligibility provisions listed in the table in paragraph 211, and set out the specific categories of eligible parties in each sector, or whether it would be beneficial to harmonise eligibility criteria for Regulatory Appeals to simplify the legal framework and create greater consistency across sectors.

¹⁰⁰ Section 192(2) of the Communications Act 2003.

¹⁰¹ [Energy licence modification appeals: rules.](#)

¹⁰² [Energy licence modification appeals: guide.](#)

¹⁰³ Schedule 2 of the Civil Aviation Act 2012 that governs procedure for appeals under sections 24 and 25. Appeal under section 19A Transport Act 2000 – see part 2 of schedule A1, and paragraph 24(4) providing for interveners to pay a proportion of CMA costs.

218. For instance, if eligibility criteria were harmonised, the right to appeal could be granted to (i) licence holders and companies holding an appointment and (ii) persons whose interests are materially affected by the regulator's decision, including bodies or associations representing those persons, such as consumer bodies. The parties wishing to bring an appeal would be required to seek permission to appeal from the CAT. The government proposes that intervention from third parties to support or supplement the parties' position would also require permission from the CAT, as in other CAT proceedings¹⁰⁴.

Questions

Q56. Should eligibility criteria be harmonised across sectors? [Yes / No / Not sure] Please explain your views.

Q57. In case of harmonised eligibility criteria for Regulatory Appeals and Telecoms Appeals, should the right to appeal be granted to (i) licence holders and companies holding an appointment, and (ii) persons whose interests are materially affected by the regulator's decision and bodies or associations representing such persons, including consumer bodies? [Yes / No / Not sure] Please explain your views.

Q58. Should parties be required to seek the permission of the CAT to bring an appeal? [Yes / No / Not sure] Please explain your views.

Q59. Should third parties be permitted to intervene in an appeal, subject to obtaining permission from the CAT? [Yes / No / Not sure] Please explain your views.

Costs

219. The government acknowledges the importance of ensuring that all eligible parties can effectively exercise their appeal right.

220. At present, it appears that although consumer bodies are eligible to challenge certain decisions, they often do not do so because they are concerned about the cost implications of losing. In case of an unsuccessful challenge, appellants are typically required by statute to pay the CMA's costs in reviewing the decision¹⁰⁵. Where appellants have succeeded in part, they are required to pay a proportion of the CMA's costs. This may deter consumer bodies from submitting their own appeal.

221. The transfer of Regulatory Appeals to the CAT may help address some of these issues. In particular, the CAT is not required to recover its costs in reviewing the decision (like the CMA) and has a wide discretion, at any stage of the proceedings, to

¹⁰⁴ See in particular Rule 16 of the CAT Rules.

¹⁰⁵ For example, see paragraph 12 of Schedule 4A to the Gas Act 1986.

make any order it sees fit in relation to the payment of costs¹⁰⁶. This includes discretion to make costs orders in favour of intervening parties.

222. However, the government welcomes views on cost-recovery mechanisms or other arrangements, such as cost-capping mechanisms for certain parties, that could further support all eligible parties, including consumer bodies, in exercising their appeal rights, either as appellants or interveners.

Questions

Q60. What barriers to appeal exist for consumer groups or other groups (such as environmental groups) in regulated sectors? Please specify the sector you are referring to.

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

Q62. Should costs be capped for certain parties, such as consumer groups? [Yes / No / Not sure] Please explain your views.

Q63. Should specific cost arrangements exist in relation to the costs incurred by regulators in defending their decisions? [Yes / No / Not sure] Please explain your views.

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

¹⁰⁶ Rule 104 of the CAT Rules.

Chapter 3 – More efficient CA98 enforcement

223. Anti-competitive agreements and abuses of dominance can have the most significant real-time negative impacts on affected businesses and consumers. The Digital Markets, Competition and Consumers Act 2024 (DMCCA) strengthened and provided additional investigatory powers for UK competition authorities to allow them to take enforcement action against these illegal activities effectively. The government is keen to take further action to ensure that competition enforcement delivers results more effectively and quickly.
224. UK competition enforcement of the Competition Act 1998 (CA98) relies on a complementary relationship between the Competition and Markets Authority (CMA) public enforcement and private competition litigation. The CMA plays a key role in identifying and stopping harmful conduct and establishing legal certainty, while private actions enable businesses and consumers to secure redress, stop certain types of harmful conduct, establish legal certainty and reinforce deterrence. The regime is designed to ensure these mechanisms support rather than undermine each other, with safeguards to protect effective public enforcement, including leniency, alongside a role for the Competition Appeal Tribunal (CAT) to act as a specialist forum. Together, they strengthen accountability and confidence in the UK's competition regime, driving economic growth and improving household prosperity.
225. When investigating or taking enforcement action in CA98 cases relating to the Chapter I (anti-competitive agreements) or Chapter II (abuses of dominant position) prohibitions, the CMA must follow the procedural rules set out in the Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 (CMA Rules).
226. The following proposals aim to deliver faster and more efficient investigations, enabling the CMA, and the concurrent regulators¹⁰⁷, to address anti-competitive conduct more quickly, while preserving procedural fairness. They also seek to ensure greater consistency with the new direct consumer enforcement regime introduced by the DMCCA.

Streamlining the CMA decision-making model in CA98 cases

227. Rule 3 of the CMA Rules sets out the decision-making requirements for making a direct infringement decision in CA98 cases. Having regard to this Rule, the current CMA decision-making model involves (i) a Senior Responsible Officer (SRO) who is responsible for authorising the opening of the investigation and taking certain other decisions, including deciding whether to issue a proposed infringement decision in the

¹⁰⁷The sector regulators with concurrent competition law powers are the Civil Aviation Authority (CAA); the Office of Communications (Ofcom); the Financial Conduct Authority (FCA); the Northern Ireland Authority for Utility Regulation (NIAUR); the Gas and Electricity Markets Authority (Ofgem); the Payment Systems Regulator (PSR); the Office of Rail and Road (ORR); and the Water Services Regulation Authority (Ofwat).

form of a statement of objections, and (ii) a separate case decision group which is responsible for issuing any final decision on the infringement and penalties.

228. The government believes that Rule 3 is unnecessary, and that other decision-making models could be faster, while still delivering fair and robust decisions.

229. The government therefore proposes to remove Rule 3 and to allow the CMA to define its approach to decision-making in relevant guidance, such as the guidance on the CMA's investigation procedures in CA98 cases¹⁰⁸ (CMA8 Guidance). This would provide the CMA with greater autonomy to determine the most effective decision-making process to deliver fair and robust decisions. The two-stage decision-making process involving a proposed infringement decision followed by a final decision and potential penalties – which is important to ensure procedural fairness – will remain unchanged. This is also in line with the approach for the CMA's direct consumer protection powers. The government expects that the CMA will adopt a decision-making model that continues to introduce input from individuals not previously involved in the making of the proposed infringement decision for final and penalty decisions. While it will be up to the CMA how it would take this forward, one option would be for the CMA to adopt an SRO + 2 approach. Under this approach, the SRO, from the first stage of the process, would make final decisions, including on penalties, alongside two other decision-makers of at least equal seniority to the SRO who were not previously involved in the investigation. The decision-making framework under the CMA's direct consumer enforcement powers allows for a similar approach in suitable cases¹⁰⁹.

230. Consistent with the proposed approach to decision-making in contested cases described above, the requirements on how the CMA makes decisions in settlement cases in Rules 9(2) to (4), the government also proposes to remove these rules.

231. The CMA's CA98 respective decision-making processes in this regard would be set out in CMA guidance, which the CMA would consult on.

Questions

Q65. Should Rule 3 be omitted to enable the CMA in guidance to establish its decision-making model in CA98 cases? [Yes / No / Not sure] Please explain your views.

Q66. Should Rules 9(2) to 9(4) be omitted to enable the CMA to establish its decision-making model in CA98 settlement cases in guidance? Note: The CMA would be required to consult on guidance setting out such decision-making processes. [Yes / No / Not sure] Please explain your views.

¹⁰⁸ [CMA investigation procedures in Competition Act 1998 cases: CMA8](#), 19 December 2024.

¹⁰⁹ See for example [Direct consumer enforcement guidance. CMA200](#) at paragraphs 8.18 – 8.19.

More proportionate confidentiality requirements

232. During a CA98 investigation, the CMA may acquire confidential information relating to businesses and individuals. Under Rule 7(1), where a person has indicated that the information it has supplied the CMA should be treated as confidential and where the CMA proposes to disclose such information, the CMA must (a) inform that person of the CMA's proposed action and (b) give them a reasonable opportunity to make representations. Rules 7(2) to 7(5) provide further requirements in relation to confidential information.
233. This requirement goes beyond the confidentiality obligations set out in Part 9 of the Enterprise Act 2002. The CMA must follow this process in all cases where confidentiality is claimed, irrespective of the merits of the claim and irrespective of whether reasons have been given in support of it and whether the information is ultimately determined confidential. This can create a significant burden on the CMA and slow down investigation procedures, especially where large amounts of information have been gathered.
234. In mergers, markets and consumer protection investigations, the CMA is afforded greater flexibility to assess whether it is reasonable and practicable in the circumstances of the case to seek further views on confidentiality.
235. To ensure the efficiency and effectiveness of CA98 investigations and to improve consistency across other CMA functions, the government proposes to omit Rule 7 in its entirety. The approach to the disclosure of information over which confidentiality has been claimed would instead be set out in the CMA8 Guidance¹¹⁰ (in addition to the information provided in the CMA's Transparency and Disclosure Statement – CMA6¹¹¹). This would give the CMA greater flexibility over whether to seek further representations before disclosing information for which confidentiality has been claimed and would be similar to the approach taken under the direct consumer enforcement regime.

Question

Q67. Should Rule 7 be amended, or omitted in its entirety, to give the CMA greater flexibility to decide on a case-by-case basis when it would be appropriate to seek further views on confidentiality? [Should be amended / Should be omitted in its entirety / Should be retained / Not sure] Please explain your views.

¹¹⁰ [CMA investigation procedures in Competition Act 1998 cases: CMA8](#), 19 December 2024.

¹¹¹ [Transparency and Disclosure: Statement of the CMA's Policy and Approach](#), 24 May 2024.

More efficient settlement procedures

236. In CA98 investigations, the CMA may decide to follow a settlement procedure, where a business is prepared to admit that it has infringed competition law and to accept that a streamlined administrative procedure will govern the remainder of the investigation, in exchange for a fine reduction.

237. Rule 9 sets out the requirements imposed on the CMA when it decides to follow a settlement procedure. We are seeking views on potential changes to Rule 9 to ensure a more robust and more efficient settlement process.

Agreement not to appeal

238. The CMA8 Guidance¹¹² provides that as part of the conditions of settlement, businesses must agree not to challenge or appeal against the infringement decision to the CAT.

239. The government proposes to incorporate this requirement into Rule 9. This would be consistent with the approach under the new consumer enforcement regime, where the applicable procedural rules require the parties not to appeal or otherwise challenge any matter set out in the final infringement decision. This will ensure the Rules reflect current CMA practices.

Question

Q68. Should Rule 9 be amended to include a requirement that the settling parties must agree not to challenge or appeal the infringement decision as a condition of settlement? [Yes / No / Not sure] Please explain your views.

Removing the requirement to issue a statement of objections in certain settlement cases

240. In some instances, the CMA agrees settlement with all parties prior to issuing a statement of objections (SO). Such settlements are typically agreed on the basis of either a summary statement of facts (SSF) or a draft SO.

241. However, the CMA is currently required under Rule 9(5) to give parties formal notice of their proposed decision (which the CMA does in the form of an SO) and a further opportunity to comment even after a settlement agreement has been reached with those parties based on the SSF or draft SO, slowing down the making of a final decision, which can be both costly and burdensome for businesses.

242. In these cases, it would be more proportionate and efficient to allow the CMA to directly issue the infringement decision reflecting the agreement reached between the

¹¹² [CMA investigation procedures in Competition Act 1998 cases: CMA8.](#)

parties based on the SSF or draft SO. This is consistent with the approach in consumer protection enforcement.

243. In addition, under section 31 CA98, the CMA is required to provide notice of infringement decisions to persons likely to be affected by the proposed decisions. In pre-SO settlement cases, the CMA would meet this obligation by sharing an SSF or draft SO with the parties as part of the settlement process.

244. The government proposes to amend Rule 9(5) to specify that in pre-SO settlement cases the SSF or draft SO provided to the settling parties constitutes a written notice for the purposes of section 31 CA98. This will streamline the settlement process and reduce associated administrative costs.

Questions

Q69. Should Rule 9(5) be amended to remove the requirement to issue a SO in cases which are settled with all parties pre-SO? [Yes / No / Not sure] Please explain your views.

Q70. Should Rule 9(5) be amended to specify that the SSF or draft SO provided to the settling parties constitutes a written notice for the purposes of section 31 CA98? [Yes / No / Not sure] Please explain your views.

Access to evidence

Confidentiality rings

245. Providing access to the CMA's investigation file requires balancing the need to disclose evidence to businesses under investigation, with the need to protect confidential information¹¹³. This process can be burdensome and significantly slow down an investigation. To address this issue, the CMA has made greater use of confidentiality rings. Confidentiality rings can, however, be difficult to implement because they are contingent on all the parties involved agreeing to the same terms and playing by its rules.

246. The government is therefore considering establishing a prescribed legal framework in the CMA Rules for confidentiality rings, to support a more standardised approach to the use of confidentiality rings, so it is fast and simpler for the CMA to use these tools. The framework will need to maintain a degree of flexibility to adapt to the specific circumstances of different cases. This will remove the need for the CMA to discuss the terms of the ring with parties or third parties on a case-by-case basis, and it could also be applied across the CMA's other functions such as in mergers and markets cases. This proposal aims to improve procedural clarity for businesses and reduce

¹¹³ See Rule 1 of Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014 for definition of "confidential information".

administrative burden on the CMA, while maintaining robust safeguards for sensitive information.

247. To ensure the framework operates effectively, the government believes it should:

- be accessible to both legal and non-legal advisers;
- allow confidential information to be disclosed into the ring without requiring the CMA to obtain and consider confidentiality representations from the relevant parties.

248. To promote compliance and reassure parties that confidentiality of information disclosed into the confidentiality ring will be respected, the government is also considering introducing civil sanctions for the breach of the confidentiality ring. While stakeholders generally take their obligations very seriously, breaches can occur.

249. Part 9 of the Enterprise Act 2002 already provides robust safeguards for data shared during CMA investigations, with breaches potentially constituting a criminal offence. The government is considering whether civil sanctions should also be available for breaches of confidentiality ring rules across the CMA's CA98, mergers and markets functions. Civil penalties could help ensure that, in cases where the breach does not justify prosecution, the CMA has a tool to make a proportionate response to the nature of the breach and has an effective means of ensuring compliance.

250. Such penalties could apply to both the individual responsible and their employer, ensuring shared accountability for protecting confidential information.

251. The regime would also incentivise prompt notification of breaches to the CMA and timely remediation.

Questions

Q71. Should there be a prescribed legal framework for confidentiality rings? [Yes / No / Not sure] Please explain your views.

Q72. Should civil sanctions be available for breaches of confidentiality rings? [Yes / No / Not sure] Please explain your views.

Q73. Should these sanctions be applicable to both the individual responsible and their employer? [Yes / No / Not sure] Please explain your views

Q74. Should this legal framework, and the associated civil sanctions, be applicable across the CMA's other functions such as in mergers and markets? [Yes / No / Not sure] Please explain your views.

Scope and means of access to file

252. Under Rule 6(2), while the CMA must give the parties the opportunity to inspect the file, it is permitted to withhold documents containing confidential information and internal documents.

253. The government proposes to amend Rule 6(2) to align the exceptions for withholding access with those set out in Rule 5 of the Direct Consumer Enforcement Rules¹¹⁴. In practice, this would allow the CMA to withhold additional categories of documents, including documents to the extent that they identify an individual, routine correspondences and documents provided by the respondent.

Question

Q75. Should Rule 6(2) be amended to include the same exceptions as those set out in Rule 5 of the Direct Consumer Enforcement rules? [Yes / No / Not sure] Please explain your views.

254. To reflect CMA practices, and in alignment with Rule 5 of the Direct Consumer Enforcement Rules¹¹⁵, it is also proposed that Rule 6(2) be amended to clarify that access to the documents in the file may be granted in hard copy or by electronic means.

Question

Q76. Should Rule 6(2) be amended to specify that access to file can be granted in hard copy or by electronic means? [Yes / No / Not sure] Please explain your views.

255. As noted above, in CA98 settlement cases, parties are required to admit they have infringed one or both of the CA98 prohibitions and agree to an expedited administrative process in return for a discount on penalties.

256. Whilst Rule 6(2) applies to CA98 settlement cases, as part of this expedited administrative process a settling party must agree to streamlined access to the file arrangements¹¹⁶. This involves the CMA providing the key documents in the case, namely, the documents referred to in the SSF or draft SO.

257. The government proposes adding a provision to Rule 9, in alignment with Rule 7(2) of the Direct Consumer Enforcement Rules¹¹⁷, to disapply the access to file requirements set out in Rule 6. The CMA would set out in guidance its approach to access to the file in settlement cases (which could include the use of streamlined access to the file or confidentiality requirements/rings).

¹¹⁴ [Direct consumer enforcement rules – CMA201](#), 4 April 2025.

¹¹⁵ [Direct consumer enforcement rules – CMA201](#), 4 April 2025.

¹¹⁶ See for example paragraph 14.8 of [Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8](#), 19 December 2024.

¹¹⁷ [Direct consumer enforcement rules – CMA201](#), 4 April 2025.

258. The government believes this will help provide greater clarity and reflect CMA practices in settlement cases.

Question

Q77. Should Rule 9 be amended to disapply access to file requirements set out in Rule 6(2) in cases where the CMA has followed settlement procedure? [Yes / No / Not sure] Please explain your views.

Interim measures

259. During CA98 investigations, the CMA may issue temporary directions (known as “interim measures”) to impose specific requirements on businesses, where it considers that it is necessary to act as a matter of urgency, for the purpose of protecting the public interest or preventing significant damage to a particular person or category of person.

260. Interim measures do not involve a finding of illegality or the imposition of a sanction. They are temporary in nature and aim to preserve the status quo or mitigate harm while the investigation continues.

261. Under Rule 13, the CMA is required to give each person to whom it proposes to give a direction on interim measures a reasonable opportunity to inspect the documents in the CMA's file relating to the proposed direction (Rule 13(1)), excluding documents containing confidential information and internal documents (Rule 13(2)).

262. Providing access to the CMA's file involves balancing the need to disclose evidence to businesses under investigation with the need to protect confidential information. This process can be burdensome and time-consuming, particularly where the CMA has obtained a large number of documents from other businesses that require filtering for sensitive commercial information prior to disclosure. This can impede the CMA's ability to impose interim measures promptly.

263. To improve the effectiveness of interim measures, the government proposes to remove Rules 13(1) and 13(2) and enable the CMA to set out its approach to access to the file in such cases in guidance. The CMA must still provide reasons for wishing to give the direction, and in practice, the level of disclosure would be determined on a case-by-case basis, to ensure that recipients of the proposed direction still have a meaningful opportunity to make representations in relation to the proposal.

Question

Q78. Should Rules 13(1) and 13(2) be omitted to give the CMA more discretion on access to file in relation to interim measures, with the aim of faster decisions? [Yes / No / Not sure] Please explain your views.

Modernising publication requirements

264. Rule 19(2)(b) requires the CMA to publish certain notices in the London, Edinburgh and Belfast Gazettes, in one national daily newspaper and in an appropriate trade journal if there is one.

265. These requirements appear outdated in light of modern practices. The government therefore proposes to remove Rule 19(2)(b). The CMA would only be required to publish the notice in the public register of decisions made under CA98¹¹⁸ (the CA98 Public Register).

Question

Q79. Should the publication requirements under Rule 19(2)(b) be removed? [Yes / No / Not sure] Please explain your views.

266. In addition, under Rule 20(2), the CMA is required to maintain a copy of the CA98 Public Register:

- at the CMA's head office (Rule 20(2)(a)), and
- on the CMA's website (Rule 20(2)(b)).

267. To reflect modernised practices, the government proposes to remove the requirement under Rule 20(2)(a) to maintain a physical copy of the CA98 Public Register at the CMA's head office. The Register would continue to be available online and the CMA would provide a physical copy upon request, where necessary to accommodate users with specific accessibility needs.

Question

Q80. Should the requirement under Rule 20(2)(a), to maintain a physical copy of the CA98 Public Register at the CMA's head office, be removed to reflect modern practices? [Yes / No / Not sure] Please explain your views.

Competition Disqualification Orders (CDOs)

268. The amendment proposed is to make section 9A(5)(b) consistent with the approach in section 6(1)(b) of the Company Directors Disqualification Act 1986 (CDDA86) and to ensure that conduct of a director in respect of an overseas company is expressly able to be considered as part of the fitness assessment for a competition disqualification order. This will avoid potentially arbitrary outcomes due to the current inconsistency which could allow some overseas conduct to be considered when assessing a

¹¹⁸ [Competition Act 1998: public register of decisions.](#)

director's fitness while excluding similar conduct in other cases, even though such distinctions are irrelevant to judging the individual's behaviour and risk.

Question

Q81. Should section 9A(5)(b) CDDA86 be amended to specify that a court can have regard to the conduct of a person as a director of an overseas company for the purposes of making a CDO? [Yes / No / Not sure] Please explain your views.

CDOs against former directors

269. Under section 6 CDDA86, which relates to disqualification orders in the context of insolvency, a court can make a disqualification order against former directors of a company.

270. The government proposes to amend section 9 CDDA86, to expressly confirm that CDOs can be made against current and former company directors, reflecting the existing approach taken by courts. This will ensure that there can be no suggestion that a director who could otherwise be subject to a CDO can avoid being disqualified by simply resigning their directorship prior to a CDO being issued by the court.

Question

Q82. Should section 9 CDDA86 be amended to clarify that a court can make a CDO against former directors? [Yes / No / Not sure] Please explain your views.

Matters to be taken into account in making a CDO

271. Section 9A(5)(b) CDDA86 allows the court to take into account a person's conduct as a director of a company in connection with any other breach of competition law, when deciding whether to make a CDO.

272. However, section 9A(5)(c) provides that the court must not have regard to the matters mentioned in Schedule 1 CDDA86. These matters include the director's responsibility for any material contravention by a company of any applicable legislative or other requirement.

273. To avoid any confusion between these two provisions, the government proposes to clarify that the requirement not to have regard to the matters set out in Schedule 1 does not apply to breaches of competition law – which can be taken into account in accordance with section 9A(5)(b).

Question

Q83. Should section 9A(5)(b) be amended to clarify that the requirement not to have regard to the matters set out in Schedule 1 CDDA86 does not apply to breaches of competition law? [Yes / No / Not sure] Please explain your views.

Introducing a penalty cap for undertakings with no turnover or where that turnover is not representative

274. The CMA may impose a financial penalty on an undertaking that infringed the prohibitions laid down in Chapter I and/or Chapter II CA98.
275. Such a penalty cannot exceed 10 per cent of the turnover that the undertaking achieved in the business year preceding the date of the CMA's decision or, if figures are not available for that year, the year immediately preceding it¹¹⁹.
276. This rule prevents the CMA from imposing a penalty where the infringing undertakings had no turnover in the last business year (or the year preceding it), even if they held substantial cash or other assets, and also limits the CMA's ability to impose an appropriate penalty where such entities did not generate a turnover representative of their normal business activities
277. To ensure competition law infringements can be effectively addressed and deterred, the government proposes to introduce an additional penalty cap, in the form of a fixed amount. This change would be similar to the consumer enforcement regime, where penalties under section 182(6) DMCCA may be either a fixed amount (of up to £300,000) or up to 10 per cent of the party's turnover, whichever is higher.

Questions

Q84. Should the CMA be able to impose a financial penalty on undertakings with no turnover, or no representative turnover, in the last business year? [Yes / No / Not sure] Please explain your views.

Q85. If so, would a fixed-amount penalty cap of up to £300,000 be appropriate? [Yes / No / Not sure]

¹¹⁹ Section 36(8) CA98 and Article 3 of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000.

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.

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)

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

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.

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.

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.

Financing a claim

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

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.

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.

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.

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.

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

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.

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.

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'.

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

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.

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.

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.

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.

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?

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.

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

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.

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.

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.

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

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.

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.

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.

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.

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

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.

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.

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

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.

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)

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.

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.

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

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.

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.

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.

Chapter 2 – Simplifying the regulatory appeals framework

Appellate body

Q44. Should Regulatory Appeals be transferred to the CAT? [Yes / No / Not sure] Please explain your views.

Q45. Should the CAT have jurisdiction to determine price control matters in Telecoms Appeals? [Yes / No / Not sure] Please explain your views.

Q46. Would any amendments to the CAT Rules be necessary to ensure that Regulatory Appeals can be heard fairly and efficiently? [Yes / No / Not sure] Please explain your views.

Appeal standard and parameters

Q47. Should Regulatory Appeals be determined in accordance with the standard of review set out in paragraph 204(a)? [Yes / No / Not sure] Please explain your views.

Q48. Should the notice of appeal set out the grounds of appeal and indicate whether the regulator's decision was based on an error of fact, an error of law, or an error in the exercise of the regulator's discretion, as set out in paragraph 204(b)? [Yes / No / Not sure] Please explain your views.

Q49. Should parties be allowed to submit new evidence on appeal? [Yes / No / Not sure] Please explain your views.

Q50. Should the cross-examination of witnesses be permitted, in line with the CAT Rules? [Yes / No / Not sure] Please explain your views.

Q51. In case the CAT quashes the decision, should the matter be remitted to the regulator, as proposed in paragraph 204(d)? [Yes / No / Not sure] Please explain your views.

Q52. Would the proposed appeal parameters set out in paragraph 204 create any barriers or challenges for the parties seeking to appeal a regulator's decision? [Yes / No / Not sure] Please explain your views.

Q53. Should the new appeal replacing Water Redeterminations be overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.

Q54. Should Water Regulatory References be converted into an appeal process, overseen by the CAT in accordance with the appeal parameters set out in paragraph 204? [Yes / No / Not sure] Please explain your views.

Q55. Should Energy Regulatory References be removed to simplify the order-making process and ensure greater consistency with similar powers existing for other licensable activities? [Yes / No / Not sure] Please explain your views.

Eligibility to appeal or intervene

Q56. Should eligibility criteria be harmonised across sectors? [Yes / No / Not sure] Please explain your views.

Q57. In case of harmonised eligibility criteria for Regulatory Appeals and Telecoms Appeals, should the right to appeal be granted to (i) licence holders and companies holding an appointment, and (ii) persons whose interests are materially affected by the regulator's decision and bodies or associations representing such persons, including consumer bodies? [Yes / No / Not sure] Please explain your views.

Q58. Should parties be required to seek the permission of the CAT to bring an appeal? [Yes / No / Not sure] Please explain your views.

Q59. Should third parties be permitted to intervene in an appeal, subject to obtaining permission from the CAT? [Yes / No / Not sure] Please explain your views.

Costs

Q60. What barriers to appeal exist for consumer groups or other groups (such as environmental groups) in regulated sectors? Please specify the sector you are referring to.

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

Q62. Should costs be capped for certain parties, such as consumer groups? [Yes / No / Not sure] Please explain your views.

Q63. Should specific cost arrangements exist in relation to the costs incurred by regulators in defending their decisions? [Yes / No / Not sure] Please explain your views.

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

Chapter 3 – More efficient CA98 enforcement

Streamlining the CMA decision-making model in CA98 cases

Q65. Should Rule 3 be omitted to enable the CMA in guidance to establish its decision-making model in CA98 cases? [Yes / No / Not sure] Please explain your views.

Q66. Should Rules 9(2) to 9(4) be omitted to enable the CMA to establish its decision-making model in CA98 settlement cases in guidance? Note: The CMA would be required to consult on guidance setting out such decision-making processes. [Yes / No / Not sure] Please explain your views.

More proportionate confidentiality requirements

Q67. Should Rule 7 be amended, or omitted in its entirety, to give the CMA greater flexibility to decide on a case-by-case basis when it would be appropriate to seek further views on confidentiality? [Should be amended / Should be omitted in its entirety / Should be retained / Not sure] Please explain your views.

More efficient settlement procedures

Q68. Should Rule 9 be amended to include a requirement that the settling parties must agree not to challenge or appeal the infringement decision as a condition of settlement? [Yes / No / Not sure] Please explain your views.

Q69. Should Rule 9(5) be amended to remove the requirement to issue a SO in cases which are settled with all parties pre-SO? [Yes / No / Not sure] Please explain your views.

Q70. Should Rule 9(5) be amended to specify that the SSF or draft SO provided to the settling parties constitutes a written notice for the purposes of section 31 CA98? [Yes / No / Not sure] Please explain your views.

Access to evidence

Q71. Should there be a prescribed legal framework for confidentiality rings? [Yes / No / Not sure] Please explain your views.

Q72. Should civil sanctions be available for breaches of confidentiality rings? [Yes / No / Not sure] Please explain your views.

Q73. Should these sanctions be applicable to both the individual responsible and their employer? [Yes / No / Not sure] Please explain your views

Q74. Should this legal framework, and the associated civil sanctions, be applicable across the CMA's other functions such as in mergers and markets? [Yes / No / Not sure] Please explain your views.

Q75. Should Rule 6(2) be amended to include the same exceptions as those set out in the Rule 5 of the Direct Consumer Enforcement rules? [Yes / No / Not sure] Please explain your views.

Q76. Should Rule 6(2) be amended to specify that access to file can be granted in hard copy or by electronic means? [Yes / No / Not sure] Please explain your views.

Q77. Should Rule 9 be amended to disapply access to file requirements set out in Rule 6(2) in cases where the CMA has followed settlement procedure? [Yes / No / Not sure] Please explain your views.

Q78. Should Rules 13(1) and 13(2) be omitted to give the CMA more discretion on access to file in relation to interim measures, with the aim of faster decisions? [Yes / No / Not sure] Please explain your views.

Modernising publication requirements

Q79. Should the publication requirements under Rule 19(2)(b) be removed? [Yes / No / Not sure] Please explain your views.

Q80. Should the requirement under Rule 20(2)(a), to maintain a physical copy of the CA98 Public Register at the CMA's head office, be removed to reflect modern practices? [Yes / No / Not sure] Please explain your views.

Competition Disqualification Orders

Q81. Should section 9A(5)(b) CDDA86 be amended to specify that a court can have regard to the conduct of a person as a director of an overseas company for the purposes of making a CDO? [Yes / No / Not sure] Please explain your views.

Q82. Should section 9 CDDA86 be amended to clarify that a court can make a CDO against former directors? [Yes / No / Not sure] Please explain your views.

Q83. Should section 9A(5)(b) be amended to clarify that the requirement not to have regard to the matters set out in Schedule 1 CDDA86 does not apply to breaches of competition law? [Yes / No / Not sure] Please explain your views.

Introducing a penalty cap for undertakings that have no turnover or where that turnover is not representative

Q84. Should the CMA be able to impose a financial penalty on undertakings with no turnover, or no representative turnover, in the last business year? [Yes / No / Not sure] Please explain your views.

Q85. If so, would a fixed-amount penalty cap of up to £300,000 be appropriate? [Yes / No / Not sure]

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