HAUSFELD

CONSUMER CLASS ACTIONS
LAW COMMISSION
SCOPING QUESTIONNAIRE RESPONSE
HAUSFELD & CO. LLP

Question 1: What would be the benefits associated with the introduction of an opt-out consumer class actions regime? Please explain the basis for your views. If your views are informed by the operation of another class actions regime or regimes, either in this jurisdiction or elsewhere, please provide relevant details.

An opt-out consumer class actions regime would deliver significant benefits for consumers who have suffered loss or harm, facilitate access to justice, provide efficiencies to businesses and complement the UK's public enforcement of consumer rights law.

Many mass harms, such as environmental damage, financial services including consumer securities claims, product liability, data exploitation or systemic consumer rights violations, are not actionable under the current collective opt-out regime, which is limited to competition law. However, there is no principled reason why collective redress should be confined to competition law, when similar patterns of dispersed harms exist across other areas, which are left without an efficient mechanism for group restitution and as a result commonly no redress at all.

The absence of an opt-out collective regime in the context of financial services claims is especially notable, given that such a mechanism was originally envisioned to be part of the Financial Services Act 2010, preceding even its introduction in the competition context, but was ultimately omitted from the Act as a result of parliamentary timetabling pressures ahead of the 2010 general election.

Nor should redress for such mass harms be limited specifically to individual consumers. The experience from the competition collective opt-out regime has demonstrated that opt-outs are an important and effective method of private enforcement to enable SMEs to seek redress from otherwise unassailable deep-pocketed defendants. To exclude SMEs from the ability to obtain redress for mass harms would be arbitrary as they often suffer the exact same harms as consumers, while facing the very same obstacles to bringing a claim on an individual basis. Including SMEs would also help ensure a level playing field for SMEs to operate, innovate, and contribute to the growth of the wider economy. This is particularly important for the UK economy, where 99.8% of the business population are SMEs and nearly 60% of employees are employed by SMEs. References in our response to consumers should therefore also be understood as including SME consumers affected by mass harms.

The present mechanisms for consumer group claims are fragmented, costs inefficient and/or lacking in procedural rules to make them effective. Introducing an opt-out class action regime that covers both consumers and SMEs would ensure that rights are meaningful and enforceable. Whilst there have been amendments to laws to improve consumer protection in recent years, there have been no steps taken to ensure a reliable mechanism to enforce consumer rights. This has resulted in a highly inefficient and ineffective litigation landscape, as illustrated by the following examples:

- ***GLOs - Pan-NOx Emissions Group Litigation (Dieselgate)***: This is a group action involving claims brought by around 1.6 million claimants against a variety of diesel motor vehicle manufacturers. In the absence of an opt-out mechanism, merely reaching service of the claims, selection of lead cases, and setting of a trial timetable took 13 Group Litigation Orders and four years including multiple hearings on procedural matters and satellite disputes. By the time of the liability trial, 21 claimant firms (five of which formed the Steering Committee) were simultaneously instructed. As was noted by the court in its judgment: "*written openings amounted to nearly 1,200 pages, closing submissions were nearly 2,000 pages. There were over 9,000 footnotes to the submissions. The experts' reports (without appendices) were over 10,000 pages.*" See *Various Claimants v Mercedes-Benz Group AG and Others* [2026] EWHC 1753.

- ***CPR 19.8 - McCann v YouTube***: This was a 'representative action' claim brought under CPR 19.8 against YouTube on behalf of 5 million children under 13 and their

parents. The claim alleged that YouTube used the children's data without their or their parents' consent to target the children with addictive content, breaching privacy and data protection rules including domestic and European data protection legislation. The claim was discontinued following the Supreme Court's judgment in *Lloyd v Google* [2021] UKSC 50. That judgment, alongside the absence of specific rules on funding and costs in large-scale representative actions, has rendered CPR 19.8 in practice typically too uncertain a route by which to bring mass consumer claims. To date, no consumer claims have successfully been brought under CPR 19.8.

- ***European Comparator - Dutch Apple Batteries Litigation***: This collective action is brought on behalf of Dutch consumers against Apple in respect of alleged unfair commercial practices. The class consists of consumers in the Netherlands who purchased an iPhone and were affected by a software update that restricted device performance to reduce the risk of unexpected shutdowns associated with degraded batteries. The claim alleges that Apple did not provide sufficient transparency concerning the performance-management feature and its effects and that this conduct constitutes unfair commercial practices. In the absence of a UK collective consumer redress regime, the action was commenced in the Netherlands, for the benefit of Dutch consumers, on 1 September 2025.

The introduction of a competition opt-out regime, introduced in 2015, was intended as a front-runner before considering whether to extend the regime to other areas of law. A decade on, with extensive experience of the CAT and appellate courts in refining the operation of the opt-out regime and with the benefit of a ten-year government review, we are now in a position to extend the benefits of the collective redress scheme to consumer harm. In doing so, this will ensure that consumers in England and Wales are not disadvantaged compared to their European counterparts and potentially to their Scottish counterparts as Scotland progresses steps to introduce a general opt-out regime which would extend to consumer law and other sectors. We are not aware of any other jurisdiction which restricts collective redress mechanisms solely to competition law.

The experience of the UK competition collective proceedings regime, together with broader collective redress regimes in the EU and jurisdictions such as Australia and Canada, demonstrates that collective proceedings can provide an efficient and effective mechanism for addressing mass consumer harms.

Key benefits include:

- **Improved access to justice.** Many consumer harms involve large numbers of individuals suffering relatively small losses, making individual claims economically unrealistic. An opt-out regime would make it possible to obtain redress in circumstances where consumers would otherwise receive no compensation for harms and losses suffered. This would provide consumers with an efficient and effective route to obtain redress, in contrast to the current patchwork of costly opt-in mechanisms and the non-viable Representative Action procedure under CPR 19.8. It would also bring the rights of UK consumers to obtain access to justice and redress into line with those of citizens in other EU and Commonwealth jurisdictions.

- **Stronger deterrence of unlawful conduct and a level playing field for businesses.** While a regulatory fine may be written off by unscrupulous companies as merely a cost of doing business, collective proceedings can ensure that businesses face the full financial consequences of their wrongdoing. This accordingly increases compliance with consumer protection laws and prevents businesses from retaining the benefits of unlawful conduct. It also promotes fair competition by ensuring that businesses which comply with the law are not placed at a competitive disadvantage compared to those that generate profits through unlawful practices. A collective redress regime therefore helps create a level playing field in which businesses compete on the merits through better prices, services, and products.

- **Complementing public enforcement.** While the UK has a robust framework of consumer rights legislation, its enforcement is primarily in the hands of a single regulator, the CMA, which is reliant on finite public resources. A regulator must therefore maintain enforcement priorities and cannot pursue every instance of widespread consumer harm. As has been acknowledged in a similar way by the CMA in the competition sector, consumer class actions would accordingly supplement the deterrent force of existing consumer rights legislation by providing an additional privately-funded enforcement mechanism.

- **Greater procedural efficiency.** Litigation is significantly easier to manage where a single class representative, advised by a core group of legal advisors and independent experts, can pursue common issues on behalf of a wider class, rather than requiring thousands or hundreds of thousands of individual claimants - and multiple legal teams and advisors - to participate separately in multiple proceedings which take up limited judicial time and resources. The creation of a consumer opt-out regime is therefore not only a benefit to consumer claimants, but also to defendants, who would have the advantage of addressing a single, coordinated claim within one set of proceedings, brought by a single, clearly identified, claimant team on behalf of a defined class of victims. It should also lead to costs savings and legal certainty as businesses can obtain a single definitive judgment on an issue affecting a class of consumers, rather than facing many (sometimes tens or hundreds of thousands) of individual county court claims. It will also facilitate more efficient use of court resources.

- **Procedural safeguards for consumer claimants.** Current consumer claims under GLOs or otherwise on an opt-in basis often require extensive efforts to identify and contact claimants, increasing costs and delay. A thematic review by the Solicitors Regulation Authority has highlighted concerns in respect of advertising to consumers in relation to individual consumer claims which require them to sign up to join a legal action, including acceptance of engagement, funding and insurance terms which can be very long and complex. Concern has also been raised regarding the role of claims management companies. Extending the opt-out regime would remove the need for individual consumers to have to sign up individually to claims up front, thereby introducing judicial oversight and procedural safeguards. This would also help solve the concerns raised regarding the conduct of claims management companies and ensure that engagement, funding and insurance terms were overseen separately by the courts.

- **More efficient litigation funding.** Experience from the competition collective regime demonstrates that third party litigation funding is indispensable in enabling access to justice. By aggregating all affected consumers into a single claim, opt-out proceedings increase the scale of potential recoveries and are therefore much more likely to make funding/insurance viable than smaller opt-in claims. The competition opt-out regime also makes provision for court review and oversight of funding and approval of cost budgets. By comparison to existing mechanisms, there are no equivalent provisions in the rules relating to representative actions under CPR 19.8 and, in the case of GLOs, is left to individual applications by defendants, taking up considerable use of court time.

Question 2: What would be the risks associated with the introduction of an opt-out consumer class actions regime? Please explain the basis for your views. If your views are informed by the operation of another class actions regime or regimes, either in this jurisdiction or elsewhere, please provide relevant details.

The principal risk associated with the introduction of an opt-out consumer class actions regime is that a poorly designed regime could inadvertently undermine access to justice by creating uncertainty, excessive procedural complexity or barriers to funding in order to safeguard against perceived risks that have little to no basis in reality. In our view, any supposed risks can be effectively mitigated through procedural safeguards and by drawing upon the lessons

of existing collective proceedings regimes, particularly the UK competition collective proceedings regime before the Competition Appeal Tribunal ("**CAT**"), the input of the appellate courts over the last decade and the government's ten-year review of the regime currently underway. We have identified below some risks which are typically raised in the context of discussions of extension of the opt-out regime and how we are confident these can be sensibly mitigated.

(1) Ensuring appropriate certification standards which enable access to justice but prevent any risk of increase in unmeritorious claims

A common concern raised in discussions around collective redress is the possibility of an increase in speculative or unmeritorious litigation, and that the certification test should accordingly set a high threshold for claimants. However, this risk is without factual basis.

Experience from the competition collective proceedings regime does not support the suggestion that the availability of an opt-out mechanism has resulted in unmeritorious claims before the CAT. The regime is characterised by extensive judicial oversight, including certification requirements, scrutiny of funding arrangements, active case management including the power of strike-out, and cost-shifting. These features provide multiple safeguards against unmeritorious claims progressing. Moreover, litigation funders, insurers and claimant law firms all undertake rigorous merits assessments before committing substantial financial resources and investment to a case. The commercial reality is that none of these stakeholders has an incentive to fund and bring claims lacking a realistic prospect of success. We expand further on these points in our response to Question 5, including the safeguards that operate in practice to prevent unmeritorious claims from progressing.

It is, of course, unsurprising that the introduction of a collective redress mechanism will result in claims being brought that could not previously have been pursued in the absence of such a mechanism. This was the case with the opt-out regime introduced in the CAT, which opened the door to claims for breaches of competition law which were previously without any remedy absent an effective collective redress mechanism. That does not, however, mean frivolous claims will be brought. It is also worth noting that the focus of commentary suggesting that claims have been inappropriately brought under the CAT competition opt-out regime relates in practice to the question of whether claims which could be brought as "consumer claims" (but for want of an effective mechanism) can alternatively be brought as competition claims in appropriate cases. The limited cases that have come in for criticism have, for example, been brought in other jurisdictions as consumer claims under their opt-out mechanisms.

A further risk is that uncertainty around certification standards could generate extensive - and expensive - satellite litigation and mini-trials at the certification stage. The early experience of the competition collective opt-out regime illustrates this risk: although the regime came into force in 2015, it did not become operational in practice until a 2019 Supreme Court judgment clarified the certification standard. As a result, we are only now seeing the first cases reach settlement or judgment and distribution.

If a consumer class action regime is introduced, it will therefore be important that the certification test is clear, predictable and proportionate from the outset and could sensibly borrow from the learnings of the CAT regime to help reduce the risk of early satellite litigation.

(2) Access to justice for consumers presupposes the availability of litigation funding

A consumer class action regime is likely to involve large classes of consumers, each with relatively low individual losses. Such claims are generally not capable of being brought without third party litigation funding and insurance and the competition regime has demonstrated that litigation funding is often an essential component of access to justice in collective proceedings.

Any approach that creates uncertainty around funding returns or materially reduces the availability of funding may prevent meritorious claims from being pursued. In that context, the

Government's recent proposal, as set out in its consultation on Swifter and Simpler Competition Redress, to lift the prohibition on DBAs in opt-out collective actions is welcomed. As noted by the Government in that consultation, 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. DBAs create direct incentives for efficient and meritorious litigation by rewarding lawyers for achieving successful outcomes quickly and at minimal costs. Under DBAs, law firms' financial interests are accordingly well aligned with those of class members - both benefit from a swift and efficient resolution of the case. DBAs also function as an additional safeguard against speculative litigation. Further, the availability of DBAs allows law firms to finance litigation in different ways either off their own balance sheet or by portfolio deals with funders or by sharing contingency with funders, all of which should both depress the cost of funding litigation and allow a broader array of claims to be brought, particularly and importantly at the lower value end.

Equally important is the availability of DBAs and funding agreements based on a percentage funding return, as this ensures that there is a minimum return safeguarded for claimants and avoids the risk of how a multiple based funding return might sit against a settlement or judgment sum by conclusion of the proceedings. Reversal of the Supreme Court judgment in *PACCAR* [2023] UKSC 28 ("***PACCAR***") is key here to support consumer claims under any mechanism which, contrary to frequent commentary, in fact can help support consumer interests in obtaining a meaningful or minimum return.

(3) Complying with consumer rights law is not a burden on businesses

Another frequently cited concern by defendants is that opt-out proceedings may impose disproportionate burdens on businesses. It is important, however, to distinguish between the burden of defending unmeritorious claims and the consequences of being held accountable for breaches of consumer law.

A properly framed collective redress system promotes compliance with consumer protection legislation and helps ensure that businesses which adhere to the law are not placed at a competitive disadvantage compared with businesses that profit from unlawful conduct. Effective private enforcement should therefore be viewed as complementary to competition and economic growth rather than inconsistent with those objectives.

It is also important to note that it is possible to build in opportunities for redress or settlement schemes within any opt-out mechanism. There is a built-in mechanism within the competition opt-out regime whereby a defendant may agree with a proposed class representative to apply jointly to the Tribunal for the representative to act as a settlement representative prior to the commencement of proceedings, or for a settlement to be agreed once proceedings have been issued. There are therefore mechanisms for avoiding significant litigation costs in appropriate cases, for example where a case follows on from a regulatory decision or there has otherwise been a clear breach of consumer protection laws.

(4) Modest individual losses are worth recovering

A further commonly raised concern is that a regime in which class members receive relatively modest individual recoveries is not worth the candle. However, while individual damages may in some cases be modest, that reflects the nature of many consumer harms which are dispersed across large groups of consumers. In circumstances where consumers could not realistically pursue individual claims, a modest recovery achieved through collective proceedings is preferable to the absence of any effective redress, in which case consumers are left to shoulder the costs of businesses' wrongdoings. It is also important to consider by whose standards a judgment on the "modesty" of returns is being considered. In the midst of a cost-of-living crisis, even small amounts back to consumers may be very meaningful and in line with the current government focus.

Any such modest individual returns must also be considered alongside the other substantial

positive effects achieved through a class action regime, as set out in our response to Question 1, including the prospect of bringing to an end unlawful breaches of consumer rights law and future savings for consumers that will result from businesses complying with their regulatory obligations.

Question 3: What features should be included within the design of an opt-out consumer class actions regime to improve access to redress for consumers, including by ensuring that compensation is distributed to affected class members? Please explain the basis for your views. If your views are informed by the operation of another class actions regime or regimes, either in this jurisdiction or elsewhere, please provide relevant details.

The design of any opt-out consumer class actions regime should place particular emphasis on ensuring that compensation reaches affected consumers wherever possible and that any undistributed damages continue to be used for consumer benefit and to enable access to justice. It is also important that it is designed to operate as efficiently as possible to avoid consumers having to wait up to a decade or more to obtain redress. This in turn will assist in distribution.

We consider that the CAT's collective proceedings regime provides a strong starting point but note that, to date, only one collective proceeding – the *Gutmann (Boundary Fares)* litigation – has progressed all the way through distribution. While important lessons can and have been learned from that first experience, any broader extrapolation from that singular datapoint must be approached with a degree of caution. Since then, we have seen settlements approved in *Merricks*, *Maclaren* and *Rodger*, and experience in effective distribution and awareness can be expected to develop through these early cases. The following features and lessons from the competition collective opt-out regime are particularly important:

- **A broad range of effective remedies**: Quantifying consumer losses on a collective basis may not always be a straightforward calculation. It is therefore important that, as in the CAT, there should be no need for an individual assessment of loss and a clear recognition that the application of the compensatory principle is not essential in relation to the distribution of aggregate damages. Rather, as was held by the Supreme Court in *Mastercard v Merricks* [2020] UKSC 51 ("***Merricks***"), the distribution of damages must be "*just, in the sense of being fair and reasonable*".

  Accordingly, it should be possible in consumer class actions to bring claims for unjust enrichment and user damages (or negotiating damages). Such damages will be essential where the consumer's loss is hard to evidence, but defendants have made clear gains from a breach. The need for such remedies is clearly demonstrated in cases of misuse of personal data, where the value of an individual's user data may be very hard to quantify, while the defendant can reap immense profits from utilising or selling such data.

  Finally, it should also be possible for consumers to seek an injunction requiring defendants to bring infringement to an end. Such injunctive relief is available under the CAT regime, and is an important safeguard to ensure consumers benefit from the class action, lest the defendant be able to continue their infringing behaviour even following a defeat in court.

- **Flexible distribution mechanisms**, including through direct payments, account credits, automatic reimbursements and streamlined digital claims processes designed to maximise consumer redress with minimal procedural steps for consumers to claim compensation. Legislation should also clarify that the relevant court has the power, where appropriate, to require defendants to participate in the distribution of damages. Such a clarification would help maximise take-up and reduce unnecessary distribution costs, particularly in cases where defendants hold customer or transactional data that would enable compensation to be paid efficiently. New mechanisms for distribution will

also no doubt continue to evolve with advances in technology, even through the life of a case.

- **A central government-backed information portal**, providing a trusted and readily accessible source of information on ongoing class actions, settlements and compensation schemes. Such a portal would improve transparency, awareness of collective actions being brought on behalf of affected consumers, strengthen public confidence in the regime and help potential class members identify claims that may affect them and compensation to which they may be entitled. Information should be presented in clear, accessible and non-technical language, supported where appropriate by summaries prepared by the Class Representative. Importantly, given the increasing prevalence of cybercrime, a trusted official source would also enable class members to verify the legitimacy of distribution schemes, settlements, and related communications. This could be aided by validation via other trusted intermediaries such as Citizens Advice, Which?, Martin Lewis and banks/building societies.

- **Undistributed damages should be used to benefit consumers**. Focus should rightly be first on ensuring as high a direct distribution to class members as possible. However, account should also be given to the benefits of indirect distribution as well as the cessation of unlawful conduct and future benefit to consumers. Undistributed damages obtained via a judgment award should not be returned to unsuccessful defendants, as doing so would undermine both compensation and deterrence objectives. Instead, provision should be made so that unclaimed sums should be used to further the interests of consumers. In our view, it would be appropriate to permit the parties, subject to the relevant court's approval, to identify one or more charities whose purposes are closely aligned with the interests of the class or the nature of the proceedings. In some cases, a tailored *cy-près* distribution may better reflect the compensatory objectives of the regime than a default allocation to a single designated organisation. A class representative could therefore identify an appropriate charity or other beneficiary for any undistributed funds which is allied to the case, or alternatively undistributed damages could otherwise default to the Access to Justice Foundation or Which?. With government funding of law centres and Legal Aid under such significant pressure, this provides an alternative funding source to provide legal advice/access to justice which will indirectly assist consumers in getting access to legal advice for everyday problems and help identify infringements of consumer protection law in the future.

  In addition, consideration should be given to the constitution of a class action fund similar to the Ontario Class Proceedings Fund in Canada, using damages which go undistributed in collective claims. This could help support access to the regime for claims where it is typically not possible to use commercial funding – either because the aim of the claim might be to terminate unlawful behaviour such as environmental harm rather than a damages award or in cases where damages might be too low to obtain commercial funding.

Question 4: What features should be included within the design of an opt-out consumer class actions regime to ensure that it promotes the efficient conduct of litigation at proportionate cost? Please explain the basis for your views. If your views are informed by the operation of another class actions regime or regimes, either in this jurisdiction or elsewhere, please provide relevant details.

The design of any opt-out consumer class actions regime should draw on the existing CAT collective proceedings regime, which provides important lessons as to the procedural mechanisms that may generate efficiencies. That regime was also designed following review of experience in other jurisdictions, including Canada. Ongoing learning from early consumer class action claims will also help identify ways in which directions can be tailored to the case to promote efficiency and earlier determination.

Pivotal to any consumer class action regime, however, is that it should not be allowed to turn into a war of attrition, in which consumers - supported via limited third-party funding - face deep-pocketed defendants with the strategic incentive and financial wherewithal to cause costs to be driven up needlessly and put pressure on funding budgets and insurance cover.

The relevant court should therefore be alert to litigation tactics intended to introduce inefficiency into the proceedings and designed to exhaust available budgets. We welcome the Government's proposal, in its consultation on Swifter and Simpler Competition Redress, to strengthen judicial budgetary oversight. In applying any budgeting framework, the relevant court should remain mindful of the need to ensure equality of arms, so that proposed class representatives can pursue meritorious claims effectively and on an equal footing with even the most well-resourced defendants. Meaningful oversight requires visibility not only of recoverable costs, but also of the parties' actual expenditure; focusing exclusively on recoverable costs may give an incomplete picture of the resources deployed in the litigation.

As noted in our response to Question 2 above, permitting DBAs and reversing *PACCAR* would also promote the efficient conduct of litigation. Reversing *PACCAR* would permit both DBAs and litigation funding agreements based on a percentage of recoveries, helping to safeguard an appropriate minimum return for claimants.

Lastly, consumer claims are likely to be more straightforward than competition claims, which often involve complex legal and economic issues, necessitating extensive disclosure exercises and evidence from economic and industry experts. The absence, or reduction, of these complexities should result in more streamlined and efficient proceedings.

Question 5: What features should be included within the design of an opt-out consumer class actions regime to ensure that it does not promote speculative claims that are without merit? Please explain the basis for your views. If your views are informed by the operation of another class actions regime or regimes, either in this jurisdiction or elsewhere, please provide relevant details.

As noted in our response to Question 1, the perceived risk of speculative claims has been severely overstated. Experience of the UK competition collective proceedings regime does not support concerns that the opt-out proceedings regime has resulted in unmeritorious litigation. The CAT itself confirmed recently that it "*has not, in its experience, encountered wholly unmeritorious claims being advanced by funders seeking to extract settlements from defendants. That has not been a feature of the cases that have come before it*." (*Consumers' Association v Qualcomm Inc.* [2026] CAT 50, at [87]).

The absence of speculative claims in the competition collective regime is due to the following reasons:

- **A clear and proportionate certification test**. The certification test utilised by the CAT following the Supreme Court judgment in *Merricks* sets an appropriate and understood standard for the CAT to exercise its gatekeeping function, while also avoiding a costly and onerous mini-trial. This is important to ensure that cases do not get bogged down at an early stage with extensive cost but can proceed quickly to the substantive issues which need to be determined.

  In setting the appropriate test for certification, it is important to bear in mind that this test will need to be applied at the very start of the proceedings, before disclosure has taken place. In the words of the Court of Appeal, the certification test should accordingly not result in the class representative or their experts "*being cross-examined at a pre-disclosure stage in the proceedings about their ability to prove the claim at trial by reference to sources of evidence which they had identified but had not yet been able fully to analyse or assess.*" (*Mastercard v Merricks* [2019] EWCA Civ 674, at [52]).

There have been several proceedings in which the CAT has refused to certify CPO applications (in whole or in part), demonstrating the effectiveness of the CAT's certification standard as an effective filter.

- **The power to strike out**. In addition to the test for certification, the competition collective regime also contains an established and effective mechanism for excluding unmeritorious claims: an application to strike-out, which can also be used by the Tribunal of its own volition. The strike-out test is familiar, principled and a substantive filter in practice, as demonstrated by the fact that the Tribunal has utilised its power of strike-out at the certification stage to strike-out all or parts of collective claims.

- **Market-based safeguards against speculative claims.** Collective actions are expensive and complex to pursue. Claimant firms, funders and insurers all undertake extensive due diligence before committing substantial resources to a claim including invariably a senior counsel opinion, expert input and funder investment committee scrutiny. In practice, these stakeholders operate as an additional and robust screening mechanism, since they have no commercial incentive to support claims that lack a realistic prospect of success where financing and time investment is being put at risk. In our experience, funders only fund claims if reasonably confident they can be taken to trial and won, if necessary. Funders will not risk funding a purely speculative claim in the hope of an early settlement. Permitting DBAs would further bolster this market-based safeguard. In a similar way, lawyers operating under a DBA assume significant time and cost risk and would therefore have no commercial interest in pursuing purely speculative claims but rather to undertake very careful and often lengthy due diligence.

The design of any consumer class actions regime should therefore seek to strike an appropriate balance. Safeguards should be sufficient to prevent unmeritorious claims from progressing, but should not be so onerous that they deny consumers an effective means of obtaining redress for widespread harms. The experience of the CAT regime demonstrates that this balance can be achieved.

We believe that in today's UK consumer environment, where big business, especially big tech, is so dominant, the case for a consumer class action regime is particularly compelling.