

# **Competition Appeal Tribunal and Competition Service**

## **Annual Report and Accounts 2022-2023**

For the period 1st April 2022 to 31st March 2023

Presented to Parliament pursuant to Schedule 3,  
Paragraph 12(4) of the Enterprise Act 2002.

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# Annual Report and Accounts 2022/2023

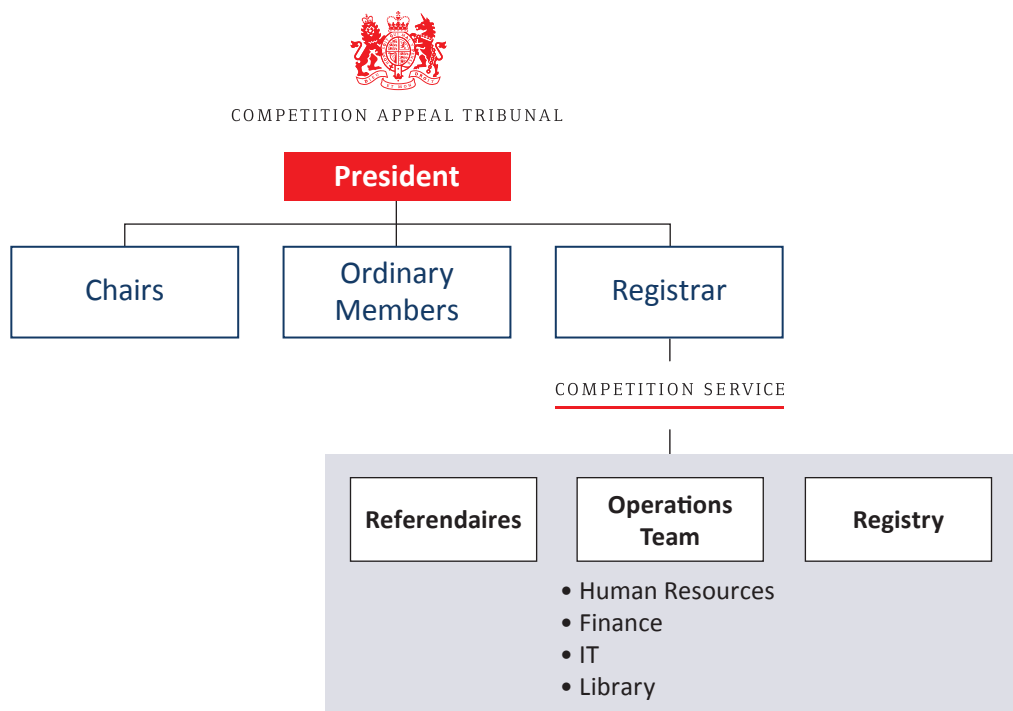
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# Introduction

The Competition Appeal Tribunal (Tribunal) and the Competition Service (CS) were established by the Enterprise Act 2002 (2002 Act). The Tribunal plays an important role along with the Competition and Markets Authority (CMA) and sectoral regulators in the UK Competition Regime by contributing to the Department for Business and Trade (DBT) objective on Markets: *“To create markets that serve businesses and consumers’ long-term interest.”*

The Tribunal is a specialist judicial body with cross-disciplinary expertise in law, economics, business and accountancy whose function is to hear and decide cases involving competition or economic regulatory issues. The role of the CS, which is a non-departmental public body, is to fund and provide support services to the Tribunal in order to facilitate the delivery of its statutory functions.

Although the Tribunal and the CS are in formal terms separate entities and treated as such for accounting purposes, in practical terms they are different elements of one integrated organisation.



## Principal Functions of the Tribunal

The Tribunal hears appeals against: decisions taken under the Competition Act 1998 (1998 Act) and (prior to 31 December 2020) Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) by the CMA and by designated sector regulators with concurrent powers; certain decisions of the Office of Communications (OFCOM) regarding the communications and broadcasting sectors under the Communications Act 2003 (2003 Act); and decisions of the CMA or the Secretary of State for Business and Trade on merger and market investigations under the 2002 Act.

Under the 1998 Act as amended by the Consumer Rights Act 2015, the Tribunal may hear any claim for damages in respect of an infringement of competition law. Furthermore, the Tribunal may hear collective actions for damages on both an “opt-in” and “opt-out” basis and also (except in Scottish cases) has powers to grant injunctive relief in order to prevent or curtail infringements of competition law.

The Subsidy Control Act 2022 gives the Tribunal jurisdiction to hear judicial reviews of subsidy decisions of public authorities.

The Tribunal may also hear appeals pursuant to a number of other economic sector specific legislative provisions which are listed on the Tribunal website.

Each case within the statutory jurisdiction of the Tribunal is heard and decided by a panel consisting of the President or a Chair and two Ordinary Members.

Decisions of the Tribunal may (with permission) be appealed on a point of law or as to the amount of any penalty to the Court of Appeal in relation to cases in England and Wales, the Court of Session in respect of Scottish cases or, with regard to Northern Irish cases, the Court of Appeal in Northern Ireland.

## Appointments

The President and Chairs are appointed by the Lord Chancellor for a fixed term upon the recommendation of the Judicial Appointments Commission and following an open competition. In addition, the Heads of the Judiciary in each of the three jurisdictions comprising the UK may nominate Judges to be Chairs of the Tribunal for as long as they hold judicial office.

Ordinary Members are recruited in open competition according to the guidelines of the Office of the Commissioner for Public Appointments and are appointed by the Secretary of State for Business & Trade for a term of eight years.

The Registrar is also appointed by the Secretary of State.

## Governance

The President, the Registrar, and a number of other non-executive members appointed by the Secretary of State are the membership of the Competition Service; they essentially constitute its Board, whose function is to ensure the funding and provision of support services to the Tribunal. During the period of this report, there were two non-executive members, Jeremy Mayhew OBE (who also chairs the CS Audit and Risk Assurance Committee) and Ben Tidswell (a Chair of the Tribunal).

## Register of Interests

The CS maintains a Register of Interests detailing any directorships or other significant interests held by the members of the CS Board. A copy of the register is published on the Tribunal's website.

## Premises

The Tribunal and the CS operate from premises in Salisbury Square House, 8 Salisbury Square, London, EC4Y 8AP. When cases involve matters pertaining to a specific part or region of the UK, the Tribunal may hear those cases at a location outside London. Past cases concerning Scottish, Welsh and Northern Irish undertakings have been heard in Edinburgh, Cardiff and Belfast respectively.

## Funding

The work of the Tribunal is financed entirely through Grant-in-Aid from DBT and administered by the CS. The Registrar is the designated Accounting Officer and is responsible for the proper use of these funds.

# President's Statement

Because the 2021-2022 accounts were published later than usual, on 30 January 2023, my first statement as President was dated 19 January 2023. As the auditors (National Audit Office) have completed their work on the accounts to 31 March 2023 at the beginning of 2024, this means that this statement is being made in January 2024 and therefore covers some matters of note that arose after the end of the financial year.

## A. Strategy 2023 to 2025

On 1 March 2023, the Competition Appeal Tribunal's Strategy – as approved by the Competition Service Board – was published. It sets out the Tribunal's strategy for the years 2023 to 2025 and the document can be found on the Tribunal's [website](#). The Strategy will re-published annually on a rolling basis. Any future strategy documents – including that for 2024 to 2026 - will (in addition to articulating forward-looking goals) assess performance against already articulated goals.

The strategy document is necessarily short. That is because the Tribunal's paramount objective – which informs everything that it does – is the effective performance of its judicial functions. It is this paramount objective that informs the Tribunal's other (subordinate) priorities. A main element of the strategy, concerns the expansion of the Tribunal's case hearing capacity. There is a pressing need for the Tribunal to increase (in addition to the courtroom dedicated to remote hearings) its capacity for in-person hearings beyond the two courtrooms the Tribunal presently has. These are concerns that are being raised with the Tribunal's sponsoring department, DBT.

## B. Workload

The workload of the Tribunal continues to increase in terms of the number of cases, their substance and complexity.

Detailed data for the period April 2022 to March 2023 can be found in this Annual Report and Accounts and detailed information with regard to all cases before the Tribunal can be found on the website. I will not burden this statement with a repetition of statistics, but instead make the following observations:

- (i) The volume of cases – by whatever metric – has never been higher, and the Tribunal is operating at a very full capacity. I hesitate to say that the Tribunal is operating beyond its capacity, because the Tribunal's dedicated and very capable staff make things happen, going beyond the call of duty when needed. That has particularly been the case when – in addition to workload – other problems (in particular rail strikes) have made the conduct of business altogether harder. I should take this opportunity to thank all of the staff for their past and continuing efforts. Without them, the Tribunal could not function in the way it does.
- (ii) My sense is that Competition Act and other “regulatory” appeals (including judicial reviews) continue at broadly the same level as in the past, and that the length of hearings also remains as it has been. In some instances – particularly mergers – cases can come before the Tribunal at very short notice and require very speedy resolution. One such case – probably the most prominent – was the MicroSoft-Activision merger, which (in the event) did not proceed to a substantive hearing, but was withdrawn. However, the Tribunal demonstrated that it was able and willing to hear such cases on very short notice.
- (iii) Regulatory appeals generate difficult questions both of procedure and substance. Two examples of the former are BMW and Volkswagen v. CMA, [\[2023\] CAT 7](#) (heard 27-27 January 2023, judgment 8 February 2023) and Apple v. Competition and Markets

Authority, [2023] CAT 21 (heard 10 March 2023, judgment 31 March 2023). Examples of the latter are a series of excessive pricing cases in the pharmaceutical industry, raising important questions of abuse of dominance and collusion. Because substantive judgments have been handed down, I will mention the liothyronine litigation ([2023] CAT 52) and the hydrocortisone litigation ([2023] CAT 56). Two other major appeals have been heard, and judgments are pending.

- (iv) The Tribunal has received (and heard) only one application under the Subsidy Control Act 2022 to date – *The Durham Company Limited v. Durham County Council*, [2023] CAT 50. Given the nature of the regime, it is both necessary and appropriate that such matters be determined swiftly and at appropriate cost levels. The Durham case commenced in late January 2023, was heard on 3 and 4 July 2023, and judgment was handed down on 27 July 2023. The number of Subsidy Control Act applications (at one) is significantly lower than I personally expected. My feeling is that this is an area of work that will increase over time.
- (v) Transfers from the High Court continue to be high, in accordance with the firm indication given by the Court of Appeal during the course of the interchange fee appeals. The Tribunal welcomes such transfers, because it enables similar cases to be case managed and heard at the same time, and so creates consistency of outcome. Although there have been a number of individual cases transferred to the Tribunal, the vast majority have been “interchange fee” cases or “Trucks” cases. Both classes of case are managed proactively in line with the Tribunal’s Practice Direction on Umbrella Proceedings. These cases present extraordinarily difficult procedural challenges: it is necessary for the Tribunal to try fairly (the paramount objective) many hundreds of similar claims in a manner that avoids delay, is efficient and achieves consistency of outcome. These cases are far harder to manage than equivalent collective proceedings.
- (vi) Private actions originating in the Tribunal are also increasing. In general, private actions (even excluding collective proceedings, to which I will come) require more work (in terms of interlocutory hearings, particularly in regard to disclosure) and take longer to try than Competition Act and other “regulatory” appeals. Disclosure, in particular, is an area that is receiving very careful consideration in the Tribunal. Competition cases tend to turn far more on “data” disclosure than “documentary” disclosure, and it may be that the Tribunal’s practices need to adapt further to the novel forms of action and litigation that come before it.
- (vii) We have yet to have a trial of collective proceedings – although one is scheduled to take place in the first quarter of 2024 in *Justin Le Patourel v BT Group PLC* (Case: 1381/7/7/21). The regime is a young one, but the Tribunal has dealt with multiple hearings concerning certification, carriage disputes and case management more generally. As a young regime, it is a developing one, and litigants as well as the Tribunal are learning what works and what does not. The length of hearing for certification and for carriage disputes is falling as our experience deepens. That is unsurprising, but nevertheless welcome. When multiple collective proceedings come to trial, which is likely to begin in 2024 and 2025, the Tribunal’s workload will shift up to another level again. These cases are all substantial, with a total value at risk of circa £100 billion.

The increased workload of course has implications for the Tribunal’s infrastructure, which is something considered in the Tribunal’s first published Strategy, referred to above. In terms of listing, the Tribunal will list cases as quickly as they can fairly be heard, without reference to courtroom capacity. That means we are concurrently listing three, and sometimes even four hearings, in circumstances where we have no guaranteed court space available. The alternative is to list “in series”, and so import delay, which may prove unnecessary if cases settle. This is a risk to the Tribunal’s operations of which I am acutely aware.

## C. Working practices

The review of the Tribunal's Rules is well underway informed by the need for certain rules consequential upon the Digital Markets, Competition and Consumers Bill. We are carrying out detailed work on the production of revised procedural rules and guidance – subject to consultation and Departmental approval. The rules will deal with the Tribunal's continuing move to digital or paperless operation, which is actively being worked on, but which (as any litigator will appreciate) is far more difficult to effect than might at first sight appear.

## D. People and the organisation

What I said in my last statement continues to apply with regard to the reliance of the Tribunal places on its members and staff. Once again they have performed effectively and efficiently. I will confine myself largely to identifying changes in personnel but before I do so I would like to note two matters. First, I am pleased that we have been able to retain our outgoing Chair, Peter Freeman as our Director of Policy. His knowledge of competition law and policy is invaluable and informs all our outreach activities and thinking with regard to legislative and policy interactions with the Government. I would also like to thank Adam Scott and Clare Potter, who once again have worked tirelessly on running our essential rolling training programme for members.

Turning to the Tribunal membership, following a recruitment exercise at the beginning of 2023, the Secretary of State appointed thirteen new Ordinary Members. Another seven were appointed in January 2024. Three more are due to be appointed in June 2024. Apart from economists – where need always exists - we are well placed in terms of Ordinary Members to deal with the quickening expansion in the Tribunal's workload and for the transition that will be necessary when those Ordinary Members who have been in post for the past seven years, step down during 2025. I will be welcoming incoming Members personally, and will be fully engaged in the training that we afford to all Members (and Chairs). But this is an excellent opportunity to welcome our new Ordinary Members and to express the hope that they find their time with the Tribunal interesting and fulfilling.

At the end of 2023, the Judicial Appointments Commission commenced a competition to recruit a number of fee paid Chairs for the Tribunal and when the resulting appointments are made during 2024, that will again enlarge our capacity to deal with a growing and ever more complex workload.

## E. Outreach

Once again it has been an extremely busy period in terms of speaking engagements and other outreach activities.

Ben Tidswell, Peter Freeman, Bridget Lucas KC and myself carried out a large number of speaking engagements on all aspects of competition law and during the year and written speeches relating to some of those events can be found on the website.

One of the most significant activities carried out during 2023 was the CAT@20 conference, held in Cambridge in May, and ostensibly celebrating the Tribunal's first 20 years. The conference culminated in a formidable and memorable lecture by the Tribunal's first President, Lord Bellamy, KC. There will be an annual Bellamy lecture in May every year (the next speaker will be Sir John Vickers, our plan being to alternate pre-eminent economist speakers with pre-eminent lawyer speakers). The conference itself, which focussed on evidence (particularly economic evidence) in competition litigation was superbly organised by Peter Freeman and others at the Tribunal. The papers – as well as Lord Bellamy's lecture – can be found on the Tribunal's [website](#).



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The Tribunal was also active internationally and in its role as the Secretariat for the Association of European Competition law, the Tribunal organised a conference of around a hundred senior judges from across Europe on in the Hague.

## F. Risk factors

One of my functions is to keep a watching brief on risks to the Tribunal's effective operation, and to address these. Although it would not be appropriate to go into any detail, the present risks (some of have already been mentioned) are (i) court space availability, (ii) the number of Ordinary member economists, (iii) the jurisdictional problems arising out of the increasing trend to "UK-wide" issues being litigated before the Tribunal, and (iv) threats to the Tribunal's independence.

On the third point, the Tribunal is a court with a UK-wide jurisdiction, reflected in terms of its accountability to the senior courts of England and Wales and their equivalents in Scotland and Northern Ireland. I have been working hard to remove a possibly justified perception that the Tribunal is a little too London-centric. Competition law affects all, and our operations, decisions, and appeals from those decisions should reflect that. Recently, in October 2023, the first "Trucks Wave 2" case management conference was conducted in Edinburgh, reflecting the significant number of Scottish cases comprising Wave 2. I would like to extend my thanks to all –in particular, the Lord President and Lord Erich – for enabling probably one of the most logistically complex hearings the Tribunal has ever undertaken to proceed as seemingly effortlessly as it did. Of course, the reason the hearing seemed effortless, and ran flawlessly, was because of the unstinting efforts of those involved.

# Performance Report

## Cases

During the year to 31st March 2023, the Tribunal issued 62 judgments and made 367 orders. Details of the Tribunal's judicial work during that period can be found in the Cases section of this report; in addition, the President's statement mentions some of the noteworthy points that emerged from proceedings before the Tribunal during 2023. As at 31 March 2023, 5 judgments were pending and 225 cases were carried forward to the next year.

## Other Tribunal Activities

In addition to its judicial work, during the year under review, the Tribunal was involved in a number of other activities that were related to or arose out of its role in the UK competition law system. Generally, such activities encompassed: speaking at seminars in the UK and abroad (virtually); participating in the work of the Association of European Competition Law Judges (AECLJ) and acting as its secretariat; liaising with the DBT and other Government departments on various policy issues relating to the competition and regulatory framework (some of which concerned legislative changes in the Digital Markets, Competition and Consumers Bill that related to the work of the Tribunal), running the rolling training programme for Tribunal members and other members of the judiciary who deal with competition law issues; and liaising with stakeholders in the Tribunal's work through the Tribunal's User Group or other fora.

## Competition Service Staff

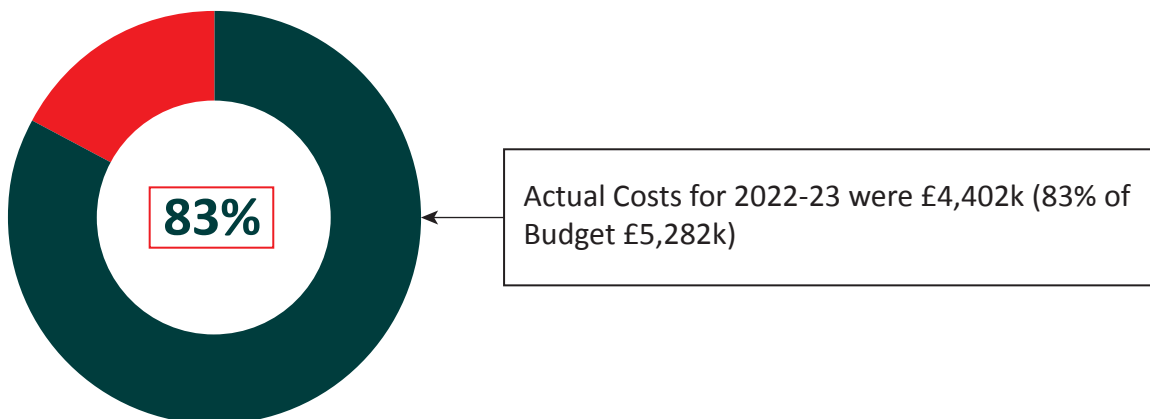
As at 31st March 2023, the CS staff team comprised 21 individuals, a number of whom multi-task across several roles. The staff absence rate was 0.87 per cent.

CS Staff turnover for the year was relatively high, at 25 per cent and included the departure of five members of staff from across the workforce.

## Financial

The programme and administration funding allocation from DBT for 2022/23 was £5,282,000, including £4,742,000 for resource expenditure (net of income from other sources) and £540,000 for capital expenditure. In addition, funding of £1,299,000 was allocated for rent liability for the premises occupied at 8 Salisbury Square. The total budgetary requirement for 2022/23 was £6,581,000.

## Actual v Budget



In 2022/23 grant-in-aid actually received from DBT was £4,672,000 (2021/22: £5,650,000); actual resource expenditure of the Tribunal/CS was £5,532,000 (2021/22 : £5,547,000) split between the Tribunal's actual expenditure of £1,220,000 (2021/22: £1,092,000) and the CS's actual expenditure of £4,312,000 (2021/22: £4,455,000).

Accommodation costs excluding rent, but including VAT on rent (mainly service charges, facilities management and business rates) comprised £799,000 (18% of the total resource expenditure of £5,532,000).

The main changes in the CAT/CS's costs compared to the prior year are set out in the table below. Full details are set out in the Statement of Comprehensive Net Expenditure on pages 72 and 85.

(Decrease)/increase in costs	2022/23 £'000	Reasons for (decrease)/increase
President's and Members' remuneration	114	Increase in the number of cases and case activity
Chairs' employer contributions for the year	(186)	In the previous year historic employer contributions from appointment date to September 2021 were accrued.
Chairs' historic judicial service award	102	Cost from date of appointment to September 2021 for the Judicial Pension Schemes, bereavement allowance
Members Travel & Subsistence, Tax on Members Travel & Subsistence Training and Audit Fees	98	Case hearings necessitating members to travel to CAT courts.
<b>Total increase in Tribunal cash costs</b>	<b>128</b>	
Members' remuneration	(2)	Fewer attendance at meetings by Audit and Risk Assurance Committee members
Staff costs	324	More members of staff, increased hours, costs for pay flexibility pay award
Accommodation and lease	(458)	No Variable FM costs, credit for move from VH to 8 SS
IT service fee	42	Increase in Webhosting costs
Travel, subsistence and hospitality	11	Attendance at conferences outside UK and subsistence costs in relation to more case hearings
Other administration including case related expenditure	(53)	Lower Recruitment and other office costs.
Audit fees	10	Increase in External auditors fees
<b>Total decrease in CS's cash costs</b>	<b>(126)</b>	
<b>Total increase in cash costs</b>	<b>2</b>	
Depreciation	(17)	Decrease as depreciation not commenced for assets under construction until fully functional
<b>Total decrease in operating costs</b>	<b>(15)</b>	

As a non-departmental public body, the CS records grant-in-aid as financing received from DBT. Therefore, any imbalance between grant-in-aid received and expenditure during the year results in a movement in the CS's reserves on the balance sheet.

The Tribunal's statement of financial position shows only those liabilities at 31 March 2023 relating to the activities of the Tribunal. Those liabilities are paid by the CS. The liabilities in the CS's Statement of Financial Position therefore include liabilities that relate to the activities of the Tribunal and the CS.

Capital expenditure during the year amounted to £165,000 and was mainly related to the purchase of IT equipment and Accounting System upgrades.

The book value of the CS's non-current assets decreased to £7,025,000 from £8,153,000. The total assets of the CS decreased to £9,175,000 from £11,083,000. This was primarily as a result of adopting Right of Use assets depreciation pursuant to IFRS 16. The closing cash balance was £1,542,000 (2021/22: £2,843,000). The tax payers' equity constituting the CS' general fund (which represents the total assets of the CS less its liabilities, but not any other reserves and financing items) decreased to £791,000 from £1,649,000.

The annual accounts, set out later in this report, record the detailed expenditure of grant-in-aid during the year.

Pension arrangements and liabilities for the President and the Registrar are mentioned separately in the Remuneration Report. Tribunal Chair appointments are pensionable;

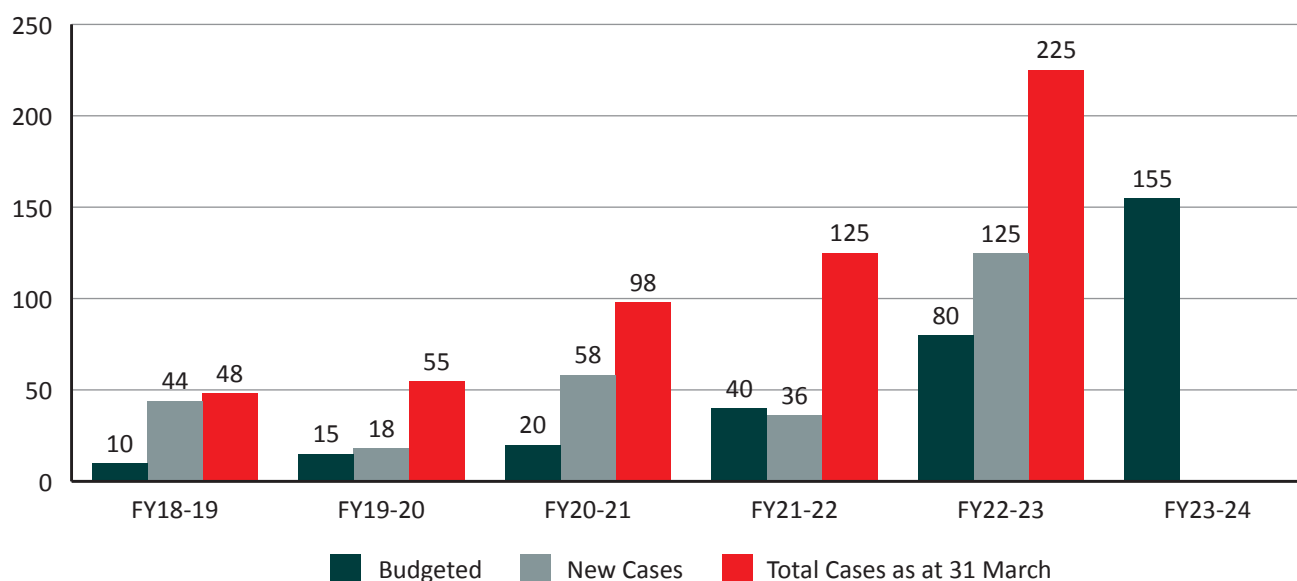
Ordinary Member appointments are non-pensionable. Note 5 on page 93 in the CS's accounts provides information on the pension provisions relating to CS staff.

As required by statute, separate accounts have been prepared for the Tribunal and the CS in accordance with the Accounts Directions issued by the Secretary of State for DBT under section 12 and Schedule 2 of the 2002 Act. The accounts are prepared so as to give a true and fair view of the state of affairs of the Tribunal and the CS at the year end and provide disclosures and notes to the accounts in compliance with the accounting principles and disclosure requirements issued by HM Treasury and included in the Government Financial Reporting Manual (FRM) in force for the financial year 2022/23.

The future financing of the Tribunal/CS's liabilities is to be met by grants of supply and the application of future income, both approved annually by Parliament. Confirmation of the indicative allocation in respect of the year to 31 March 2024 was received in January 2023. The allocation was though £630,000 less than the funding bid submissions made in August 2021 for the three years from 2022/23 for the Government Comprehensive Spending Review. It has been considered appropriate to adopt a going concern basis for the preparation of the Tribunal/CS financial statements, in accordance with the FRM.

For financial year 2023/24, grant-in-aid from DBT amounts to £5,954,000 split between £5,674,000 of resource expenditure and £280,000 of capital expenditure. In addition, grant-in-aid of £1,083,000 for the rent payable will be given by DBT. The spend for 2023/24 is expected to be in the region of £7,037,000. Nearly 74 per cent of the Resource Departmental Expenditure Limit (RDEL) is constituted by fixed costs. Costs for the specialised courtrooms and associated facilities excluding rent constitute 24 per cent of the RDEL.

## Case Workload



The forecast number of cases that the Tribunal may receive is likely to be similar in comparison to cases received in 2022/23, as well as the number of employees needed to front the increased pressures and workload. By the end of financial year 2023/24, Tribunal/CS costs could therefore increase by approximately 5% of its total forecasted spend of £7,037,000 (i.e. £352,000).

## Sustainability Reporting

The CAT / CS is committed to meeting the Greening Government Commitment targets set out to reduce water consumption, greenhouse gas emissions, minimise waste and ensure sustainable procurement of products. As an organisation with fewer than 50 full-time equivalent (FTE) staff, there is a case for exemption from the Greening Government Commitments. However, whilst physical attendance in court for hearings is the preferred *modus operandi*, alternative options using technical solutions (such as the use of MS Teams) to conduct the shorter and administrative aspects of cases have been adopted.

The organisation is an occupant of a multi-tenanted building and utility services and waste management are handled by the landlord. A co-ordinated programme to capture the annual consumption readings is under development.

## Governance

The CS Board is responsible for ensuring that effective arrangements are in place to provide assurance on governance, risk management, financial management and internal control. During 2022-23, the CS Board met on four occasions.

The subordinate CS Audit and Risk Assurance Committee (ARAC) chaired by the Independent non-Executive member also met on four occasions. Further information on the activity of the CS Board and ARAC can be found in the Corporate Governance Statement later in this report.

The main interface with Government is through DBT and in particular the Market Frameworks Group. Throughout the year, regular meetings took place with senior officials to maintain a close working relationship.

## Internal Whistleblowing

The Competition Service encourages a free and open culture in its business and operations and in particular recognises that effective and honest communication is essential to the success of both the Tribunal and the Service.

It acknowledges that employees have the right to raise issues with someone in confidence, where they believe malpractice may be occurring or might occur; this could include: criminal offences, miscarriages of justice, failures to comply with legal obligations or matters of Health & Safety.

The policy is made available to all staff on the intranet and is highlighted to new staff during their induction programme. There have been no whistleblowing complaints received during 2022/23.

## Data Security

There were no incidents involving loss of data or personal data during the year.

**Charles Dhanowa OBE, KC (Hon)**

Registrar and Accounting Officer

20 March 2024

# Membership as at 31 March 2023

## President



Sir Marcus Smith was called to the Bar in 1991 and was appointed Queens Counsel in 2010. He was appointed as a Chair at the Competition Appeal Tribunal in 2009, and has sat regularly since that date, hearing cases across the full range of work at the Tribunal. In 2017, he was appointed to the High Court (Chancery Division). He hears cases across the whole range of Business and Property Courts work, as well as sitting in the Upper Tribunal (Tax and Chancery), the Administrative Court, and the Patents Court. He is one of the judges authorised to sit as a judge of the Financial List. Between 2019 and 2021, Sir Marcus Smith was the Supervising Judge for the Business and Property Courts of the Midland and Western Circuits and Wales.

## Chairs

The Chairs of the Tribunal comprise the following Justices of the High Court and of the Courts of Scotland and Northern Ireland who have been appointed as Chairs, as well as Chairs appointed specifically to the Tribunal.

The Honourable Mr Justice Morris  
 The Honourable Mr Justice Zacaroli  
 The Honourable Mr Justice Fancourt  
 The Honourable Mr Justice Hildyard  
 The Honourable Mr Justice Saini  
 The Honourable Mr Justice Trower  
 The Honourable Mr Justice Miles  
 The Honourable Mr Justice Meade  
 The Honourable Mr Justice Bryan  
 The Honourable Mr Justice Butcher  
 The Honourable Mrs Justice Cockerill  
 The Honourable Mr Justice Foxtton  
 The Honourable Mr Justice Jacobs  
 The Honourable Mr Justice Waksman  
 The Honourable Mrs Justice Bacon  
 The Honourable Mr Justice Adam Johnson  
 The Honourable Mr Justice Michael Green  
 The Honourable Lord Ericht  
 The Honourable Mrs Justice Joanna Smith  
 The Honourable Lord Young  
 The Honourable Mr Justice Mellor  
 The Honourable Mr Justice Edwin Johnson  
 The Honourable Mr Justice Leech  
 The Honourable Mr Justice Roth  
 The Honourable Mr Justice Ian Huddleston  
 The Honourable Lord Richardson  
 The Honourable Mr Justice Jonathan Richards  
 The Honourable Mr Justice Richard Smith  
 The Honourable Mr Justice Rajah

## Andrew Lenon KC



Andrew Lenon was called to the Bar in 1982 and was appointed Queen's Counsel in 2006. A member of One Essex Court Chambers, his practice covers the full range of company and commercial litigation, arbitration and advisory work. He has been involved in many leading cases involving banking and financial services, company and insolvency matters and the insurance, reinsurance and energy industries. He sits as a Deputy High Court Judge, assigned to the Chancery Division and has been nominated by the Lord Chief Justice pursuant to section 12(2)(aa) of the Enterprise Act 2002 to sit as a Chairman of the Competition Appeal Tribunal.

## Hodge Malek KC



Hodge Malek was called to the Bar in 1983 and appointed Queen's Counsel in 1999. He is a member of 3 Verulam Buildings and his practice has covered many areas of commercial law and dispute resolution including banking and financial services, fraud, professional disciplinary cases, energy, insurance and reinsurance and procurement. He is the General Editor of the leading book on the law of evidence, Phipson on Evidence (20th edition, 2022), and the joint author of Disclosure (5th edition, 2017). He is also a contributor to Mithani, Directors Disqualification (Human Rights chapters), and various volumes of Atkins Court Forms (Financial Services, Human Rights, Disclosure and Information Requests and Administrative Court). He was a member of the Commercial Court working party chaired by Lord Justice Cresswell on Electronic Disclosure. He is a Bencher of Gray's Inn. He was a member of the Inns of Court Conduct Committee and acted as a Chairman of the Bar Disciplinary Tribunal. He is an acting Deemster of the High Court in the Isle of Man. He sits as a Deputy High Court Judge, assigned to the Chancery Division and has been nominated by the Lord Chief Justice pursuant to section 12(2)(aa) of the Enterprise Act 2002 to sit as a Chairman of the Competition Appeal Tribunal. He is Chairman of the Competition Appeal Tribunal Rules Advisory Committee. He is the Chairman of the Human Fertilisation and Embryology Authority.

## Bridget Lucas KC



Bridget Lucas was called to the Bar of England and Wales in 1989 and appointed Queen's Counsel in 2018. A member of Fountain Court Chambers, her practice has covered a wide range of company and commercial litigation, arbitration and advisory work. Her cases have included civil fraud matters; company, restructuring and insolvency matters; regulatory and investigations (including financial services), and disputes involving the insurance, telecommunications and energy sectors.



## Justin Turner KC



Justin Turner was called to the Bar of England and Wales in 1992 and appointed Queen's Counsel in 2009. A member of 8 New Square, he specialises in all aspects of intellectual property litigation with a particular interest in the pharmaceutical and biotechnology sectors. In addition to the UK courts he has appeared before the European Patent Office and the Court of Justice of the European Union. Prior to being called to the Bar he obtained a PhD in immunology and virology. He is a former member of GTAC (the Gene Therapy Advisory Committee), a former director of UK Anti-Doping and currently sits on the governing council of UCL.

## Ben Tidswell



Ben Tidswell was admitted as a barrister and solicitor in New Zealand in 1988 and joined City firm Ashurst in 1993, becoming admitted to the roll of solicitors in England & Wales in 1994 and a solicitor advocate in 1999. A partner in the London Disputes practice at Ashurst since 2000, he has worked on a wide range of commercial litigation and regulatory matters, including several cases before the Tribunal over a period of almost 20 years. He was the Global Chairman of Ashurst from 2013 to 2021. He was appointed as a non-executive director of Post Office Limited on 27 July 2021.

## Ordinary Members

### Peter Anderson



Peter Anderson has been a solicitor in Scotland since 1975 and a Solicitor Advocate in Scotland since 1994. He was a partner in Simpson & Marwick, Solicitors, Scotland from 1978 and since the firm merged with Clyde & Co Solicitors, has been a partner there since 2015. He has over 40 years' experience in general insurance work, specialising in complex and high value personal injury claims, professional negligence, commercial litigation and aviation disputes. He has lengthy experience as Chairman and Managing Partner of a sizeable law firm.

### Dr Catherine Bell CB



Catherine Bell has wide non-executive experience at Board level in the public, private and regulated sectors. She has been a Non-Executive Director at National Grid Gas plc and National Grid Electricity Transmission plc since April 2014 and at Cadent Gas Limited (formerly National Grid Gas Distribution Ltd), since October 2016. She is also a Non-Executive Director at Horder Healthcare. Her past roles include Non-Executive Director at the Civil Aviation Authority, United Utilities plc and the Department of Health.

## Dr William Bishop



William Bishop was formerly a Senior Advisor at Charles River Associates and is Professor of Economics of Competition Law at the College of Europe. His parliamentary and governmental experience includes being an Adviser to the UK Government on drafting the UK Competition Act and Adviser to the European Commission on its Market Definition Notice and on Remedies in Merger Control. His professional experience includes many cases concerning European and UK merger control and UK monopoly investigations.

## Jane Burgess



Jane's substantive career was with the John Lewis Partnership having first joined as an A level Trainee. She has a background in Human Resources and her last position before retirement in 2017 was Partners' Counsellor on the Main Board.

Her recent public appointments were as a Commissioner for the Civil Service Commission, from September 2017 to September 2022, with accountability for safeguarding the regulatory requirements that recruitment into the Civil Service is made on merit based on fair and open competition, and as a Lay member on the House of Commons, Committee on Standards, from May 2016 to May 2022, with responsibility for understanding applying and regularly reviewing the Code of Conduct and Guide to the Rules which set the standards required of Members of Parliament.

## Michael Cutting



Michael Cutting was from 1988 to 2018 a competition lawyer at Linklaters LLP, including terms leading its London and global competition practices. He also served terms on the Board of Linklaters and as Co-chair of the Joint Working Party on Competition Law of the Bar and Law Society. His experience in private practice included UK and EU merger control, cartels, abuse of dominance and utility regulation. He is also a member of the London Magistrates Advisory Committee.

## Paul Dollman



Paul Dollman was Group Finance Director at John Menzies PLC, between 2002 and 2013. He is currently Audit Committee Chairman for Wilmington PLC, Verastar and Arqiva. He is also a non-executive director of Scottish Amicable, a member of the Audit Committee of the National Library of Scotland, honorary teaching fellow at the University of St Andrews Business School and Governor of the Edinburgh Academy of St Leonards School.

## Eamonn Doran



Eamonn Doran spent 30 years working at Linklaters LLP, the international law firm, latterly as a partner and consultant. Specialising in competition law and EU law, he had particular experience of banking and financial services inquiries and is a former head of the London competition group. He sits as a JP in the Family Court, is a trustee of Missio, a Catholic aid & mission charity and is a founding trustee of the Grow Edo Support Group, developing projects to combat human trafficking from Nigeria. He chairs the Remuneration Committee of Magdalen College, Oxford.

## Tim Frazer



Tim Frazer was a partner at Arnold & Porter LLP (now Arnold & Porter Kaye Scholer LLP) from 1999, during which time he advised on both conduct and merger cases in the EU and UK, and on compliance and audit processes in various jurisdictions worldwide that have adopted the EU approach to competition law. He was previously at Newcastle University, between 1980 and 1997, as Lecturer in Law, Dean of Law and Professor of Law. He is the author of a number of textbooks on competition law and is a director and deputy chair of Citizens Advice Northumberland.

## Simon Holmes



Simon Holmes advised on competition law for some 35 years before joining the CAT. He was latterly head of competition at SJ Berwin and then King & Wood Mallesons –first in the UK and Europe and then on a global basis.

He is a Visiting Professor at Oxford University where he teaches competition law. He is also an adviser to the NGO, ClientEarth; a strategic Adviser to SustainablePublicAffairs in Brussels; a member of the competition commission of the International Chamber of Commerce (ICC) and Co-chair of its Taskforce on Sustainability and Competition; a member of the international advisory board of the LDC (Insituto de derecho de la competencia); and an associate member of the UCL Centre for Law, Economics, and Society (CLES).

He writes and speaks regularly on competition and regulatory issues (most recently on the relationship between climate change, sustainability and competition law).

## Paul Lomas



Paul Lomas is a litigation practitioner who was a partner at Freshfields Bruckhaus Derringer for 25 years. He led a number of their practice areas and specialised in EU and competition litigation, regulatory litigation and a wider range of general litigation. He was the author/editor of a text book on global investigations. He also holds an MBA from INSEAD. He was chair of REDRESS for the past 6 years, was chair of Local Giving (and on-line web giving platform for local charities), and helped create the Bingham Centre for the Rule of Law where he is a Bingham Fellow.

## Professor Robin Mason



Robin Mason is Pro-Vice-Chancellor (International) at the University of Birmingham; Chair of the Commonwealth Scholarship Commission; and Officer of the Order of the Rio Branco, for his contribution to academic co-operation between Brazil and the UK. He was previously Pro-Vice-Chancellor and Executive Dean (Business School) at the University of Exeter, as well as Professor of Economics. His area of expertise is industrial organisation in general, and in particular the economics of regulation and competition. He has provided expert advice for a number of regulators, in the UK and internationally, on competition matters and spectrum auctions. He served for eight years on the Competition Commission and Competition and Markets Authority. He is currently a panel Member at the Financial Conduct Authority and the Payment Systems Regulator.

## Sir Iain McMillan CBE, FRSE, DL



Sir Iain McMillan spent twenty-three years with the TSB Group prior to joining the Confederation of British Industry (CBI) in 1993. He held the position of Director, CBI Scotland for nineteen years until 2014. Sir Iain is currently Chairman of the University of Strathclyde Business School Advisory Board; a Member of the Audit & Risk Assurance Committee of the Competition Service; and Honorary Patron and former Chairman of the Scottish North American Business Council (SNABC).

Other appointments have included: Membership of the Boards of the Scottish Qualifications Authority, the NHS Scottish Ambulance Service; the British American Business Council; and the Teaching Awards Trust. Over the years, he has served on other Boards and public policy groups, including the Commission on Scottish Devolution (Calman Commission). He also chaired the Independent Commission for Competitive and Fair Taxation in Scotland. In 2003, Sir Iain was appointed CBE for services to the business community and lifelong learning in Scotland. In 2015, Sir Iain was knighted for services to the Scottish economy and, in 2018, was appointed a Deputy Lieutenant of Stirling and Falkirk. Sir Iain is also a Fellow of The Royal Society of Edinburgh and a Freeman of the City of Glasgow.

## Professor Anthony Neuberger



Professor Anthony Neuberger is currently Professor of Finance at Cass Business School at the City University of London where, since 2016, he has also been the Deputy Head of the Finance Faculty. He was previously at the University of Warwick as Professor of Finance and the London Business School as Associate Professor of Finance. He also has experience of working for the Department of Energy and the Cabinet Office, between 1973 and 1983.

## Derek Ridyard



Derek Ridyard is an economist with expertise in the economics of competition, regulation and intellectual property. He holds an MSc in economics from the London School of Economics. He spent 30 years as an economist working in private practice. Derek was one of the co-founders of economic consulting firm RBB Economics, prior to which he worked for 15 years establishing and heading up the European competition practice at NERA, and for five years in the UK Government Economic Service. He is also a member of the UK's Regulatory Policy Committee.

## Timothy Sawyer CBE



Timothy Sawyer is an executive with expertise in turnaround, start-up and growth opportunities having both a UK and international perspective. He is currently Chief Investment Officer at Innovate UK and was formerly Chief Executive Officer of Start-Up Loans and Chairman of Folk2Folk. He was awarded a CBE for services to Government and small business in the Queen's Birthday Honours 2016. He has been Executive Director of Cahoot and Ivobank and Non-Executive Director of Banque Dubois, China PNR, Visa UK, Link, Eftpos UK, Card Payment Group.

## Professor David Ulph CBE, FRSE



David Ulph has been Professor of Economics at the University of St Andrews since 2006. He was Director of the Scottish Institute for Research in Economics from 2010 to 2017. Between 2001 and 2006, he was Chief Economist and Director of Analysis at Inland Revenue (subsequently HM Revenue & Customs). He is currently a Commissioner of the Scottish Fiscal Commission and was a member of the NHS Pay Review Body from 2015 to 2021.

## Anna Walker CB



Anna Walker is currently Chair at South West Academic Health Science Network, Deputy Chair and non-executive director at South London and the Maudsley NHS Foundation Trust and a lay Member of the Nursing and Midwifery Council. She is also Chair of St George's Hospital Charity.

Anna's background is in competition, regulation, performance improvement and consumer policy. She was Chair of the Office of Rail and Road (2009 and 2015), Chief Executive of the Healthcare Commission (2004 to 2009) and Deputy Director General at the Office of Telecommunications. She was a Deputy Chair of the Council of Which? and a non-executive director at Welsh Water.

Anna was a civil servant at the Department of Trade and Industry with roles including competition policy and Director General Energy. She was also Director General Rural Affairs at Defra from 2002 to 2004.

## Professor Michael Waterson



Michael Waterson is Emeritus Professor of Economics at the University of Warwick where he has been a professor since 1991 and has previously been a professor at the University of Reading and lecturer at the University of Newcastle upon Tyne. He was a member of the Competition Commission for nine years and has also undertaken various consultancy activities for organisations including the Office of Fair Trading, National Economic Research Associates, Oxera and Frontier Economics in relation to various aspects of the energy industry and retail competition.

## Professor Pauline Weetman



Pauline Weetman is Professor Emerita of Accounting at the University of Edinburgh. She is a member of The Institute of Chartered Accountants of Scotland and has held previous professorial posts at the universities of Stirling, Heriot-Watt, Strathclyde and Glasgow. Her research interests in accounting cover corporate communications and international comparisons. She holds a Distinguished Academic award of the British Accounting and Finance Association and is a Fellow of the Royal Society of Edinburgh. She is currently a member of the Accounts Commission in Scotland, which is responsible for the audit of all Scottish local authorities, and is a member of the Finance Committee of the International Academy at the University of London. Previous public appointments have included the Pay Review Body for Nurses and Midwives and the Scottish Solicitors Discipline Tribunal. She has edited a leading academic journal and continues to provide editorial guidance for journal papers.

## Professor Stephen Wilks



Stephen Wilks is Emeritus Professor of Politics at the University of Exeter where he also served for four years as Deputy Vice Chancellor. From 2001 to 2005, he was a member of the Economic and Social Research Council and chaired its Research Strategy Board. He has written extensively on the politics, administration and enforcement of UK and European competition policy and His most recent book is “The Political Power of the Business Corporation” published by Edward Elgar in 2013. From 2001 to 2009, he was a member of the Competition Commission and served on 12 merger inquiries.

## CS Non-Executive Member

### Jeremy Mayhew OBE



Jeremy Mayhew became, in February 2022, a Non-Executive Board Member of the Competition Service. In the past, he has held a wide range of public appointments, for example, on: the UK Government's Regulatory Policy Committee; the British Transport Police Authority; the Legal Services Board; the Mayor of London's Office for Police & Crime; the London Development Board; and the Strategic Rail Authority. For over 25 years, Jeremy served as an Independent Member on the City of London Corporation, the local government for the City of London – where, amongst many other roles, he was Chairman of its Finance Committee for 5 years. He was previously a Board Director of BBC Worldwide and worked, for many years, as a strategy consultant, largely advising clients in the media sector. He read PPE at Balliol College, Oxford University and, subsequently, graduated with an MBA with High Distinction from Harvard Business School.

## Cases 2022/23





# Annual Report Case Summaries 2022/23

**Note:** The details set out below are only intended to be brief summaries of the judgments. There is no intention to add to, interpret or otherwise gloss the judgment. The definitive text of each judgment can be found in the Competition Appeal Tribunal Reports or on the website of the Competition Appeal Tribunal ([www.catribunal.org.uk](http://www.catribunal.org.uk)).

Judgment	Tribunal	Subject matter
1. Meta Platforms, Inc. v Competition and Markets Authority [2022] CAT 17 19 April 2022	Sir Marcus Smith	Ruling of the President concerning the approach to confidentiality at the final hearing in the proceedings.
2. Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others [2022] CAT 18 27 April 2022	The Honourable Mrs Justice Falk Dr William Bishop Eamonn Doran	Ruling of the Tribunal in respect of: (1) the Applicant's proposed methodology to exclude losses attributable to certain deceased persons; (2) the parties' submissions regarding the need to identify particular sub-classes; and refusing the First to Third and Fifth to Eleventh Respondents' and the Fourth Respondent's separate applications for permission to appeal the Tribunal's judgment of 18 February 2022 ([2022] CAT 10) and for a stay of the proceedings.
3. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2022] CAT 19 13 May 2022	The Honourable Mr Justice Roth Jane Burgess Professor Michael Waterson	Ruling of the Tribunal refusing the Defendants' application for permission to appeal the Tribunal's judgment of 9 March 2022 ([2022] CAT 13).
4. Consumers' Association v Qualcomm Incorporated [2022] CAT 20 17 May 2023	The Honourable Mrs Justice Bacon Professor Robin Mason Justin Turner KC	Judgment of the Tribunal regarding the application by the Consumers' Association, commonly known as "Which?", for a collective proceedings order ("CPO") under s.47B of the Competition Act 1998 ("CA 1998") to combine standalone claims under s.47A CA 1998 alleging that the Respondent ("Qualcomm") has abused its dominant position in breach of the Chapter II prohibition in s.18 CA 1998 and, until 31 December 2020, Article 102 of the Treaty on the Functioning of the European Union in relation to the royalties charged by Qualcomm to smartphone manufacturers for the licensing of its patents for chipsets (the "CPO Application"). The standalone claims are for loss suffered by consumers in the form of more expensive and/or lower quality products, alleged to have been passed on to them by smartphone manufacturers who paid inflated royalties for the use of Qualcomm's patents. Which? was seeking a CPO on an opt-out basis for those in the class definition who are domiciled in the UK and on an opt-in basis for class members domiciled outside the UK.

Judgment	Tribunal	Subject matter
		<p>Qualcomm resisted the CPO Application on the basis that the methodology proposed by one of Which?'s economic experts for quantifying pass-on to consumers was not fit for purpose and that, in any event, the proposed claims were not suitable to be brought in collective proceedings because the costs of the proceedings would outweigh the benefits. In addition to these objections, Qualcomm contended that if a CPO is granted, the Tribunal should require Which? to obtain an anti-avoidance endorsement ("AAE") to its after-the-event ("ATE") insurance policies in order for Which?'s funding arrangements to meet the requirements of s.47B(5)(a) CA 1998 and Rule 78(2) of the Competition Appeal Tribunal Rules 2015.</p> <p>The Tribunal unanimously concluded that:</p> <ol style="list-style-type: none"> <li>1. Which? met the authorisation condition.</li> <li>2. The claims sought to be combined met the eligibility condition.</li> <li>3. A clause in Which?'s ATE policies should be amended but Which? was not required to add AAEs to its post-CPO ATE policies.</li> <li>4. A CPO would be made on an opt-out basis for those of the class domiciled in the UK and on an opt-in basis for class members domiciled outside the UK.</li> </ol>
5. Justin Le Patourel v BT Group PLC [2022] CAT 21 20 May 2022	The Honourable Mr Justice Waksman Eamonn Doran Derek Ridyard	Ruling of the Tribunal giving reasons for concluding that the currently constituted Tribunal case manage the collective proceedings through to trial and conduct the trial itself.
6. Belle Lingerie Limited v Wacoal EMEA Ltd and Wacoal Europe Ltd [2022] CAT 22 23 May 2022	Bridget Lucas KC Professor John Cubbin Anna Walker CB	Ruling of the Tribunal giving reasons for dismissing the Claimant's application for an order that the proceedings be subject to the fast-track procedure.
7. Belle Lingerie Limited v Wacoal EMEA Ltd and Wacoal Europe Ltd [2022] CAT 23 23 May 2022	Bridget Lucas KC Professor John Cubbin Anna Walker CB	Ruling of the Tribunal dismissing the Defendants' objections to paragraphs of the Claimant's Reply and annex, and giving directions for the service of amended pleadings by the parties.
8. Belle Lingerie Limited v Wacoal EMEA Ltd and Wacoal Europe Ltd [2022] CAT 24 24 May 2023	Bridget Lucas KC Professor John Cubbin Anna Walker CB	Ruling of the Tribunal dismissing the Claimant's application for an asymmetrical costs capping order and determining approved costs budgets for the parties.

Judgment	Tribunal	Subject matter
<p>9.</p> <p>UK Trucks Claim Limited v Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) and Others</p> <p>[2022] CAT 25 8 June 2022</p>	<p>The Honourable Mr Justice Roth</p> <p>Dr William Bishop</p> <p>Professor Stephen Wilks</p>	<p>Judgment of the Tribunal in relation to two applications for a Collective Proceedings Order pursuant to s. 47B of the Competition Act 1998 in respect of damages claims resulting from a cartel. The first application was brought by UK Trucks Claim Ltd (“UKTC”), a special purpose vehicle set up to pursue these claims. The second application was brought by the Road Haulage Association Limited (“RHA”), a trade association of those engaged in the haulage industry.</p> <p>By its decision in Case 39824 – Trucks adopted on 19 July 2016 (the “Decision”), the European Commission found that five major European truck manufacturing groups had carried out a single continuous infringement of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement over a period of 14 years between 1997 and 2011.</p> <p>The Decision was a settlement decision adopted pursuant to the procedure set out in Article 10a of Regulation 773/2004/EC and the addressees of the Decision all admitted their involvement. The infringement concerned, inter alia, the exchange of information on future gross prices and collusion on the timing and passing on of costs of the introduction of emission technologies required by EURO 3 to six standards for trucks weighing 6 or more tonnes, referred to as “medium and heavy trucks”. The Decision imposed fines in aggregate of a little over €2.9 billion.</p> <p>Both the UKTC and RHA applications sought follow-on damages alleged to arise from the infringement found by the Decision. However, in addition to the different character of the two applicants, there were a number of key differences between the applications. In particular:</p> <ul style="list-style-type: none"> <li>• UKTC sought to bring collective proceedings on an opt-out basis (its Claim Form presented opt-in proceedings as a second-best alternative, but that was not vigorously pursued). The RHA sought to bring collective proceedings on an opt-in basis.</li> <li>• The UKTC proceedings sought an award of aggregate damages. The RHA proceedings did not.</li> <li>• The UKTC proceedings covered only new trucks. The RHA proceedings covered both new and used trucks.</li> <li>• The UKTC proceedings covered trucks acquired in the UK. The RHA proceedings extended also to trucks acquired in the EEA so long as the acquirer belonged to a group of companies that had also acquired trucks in the UK.</li> <li>• UKTC’s proposed class definition included those who had acquired trucks between 17 January 1997 and 18 January 2011 (i.e. the period of the infringement) but allowed for a ‘run-off period’ to the end of 2011 before prices were assumed to have returned to competitive levels. Therefore it also covered any further trucks acquired by those proposed class members (“PCMs”) up to 31 December 2011. The proposed class definition in the RHA’s amended Claim Form assumed a much longer run-off period and the class covered those who had acquired trucks up to 17 May 2019.</li> </ul>

Judgment	Tribunal	Subject matter
		<ul style="list-style-type: none"> <li>• Both sets of proceedings comprised claims by those who had acquired trucks for use in providing carriage either as a haulier for third parties or in their own business and both proceedings excluded truck dealers. But beyond that, they defined the proposed class differently in terms of exclusions.</li> <li>• The RHA proceedings sought to cover claims for loss allegedly caused by delay in the introduction of new EURO emissions technology that resulted in additional fuel costs. The UKTC proceedings did not claim for such a distinct head of loss but UKTC’s application proposed as a common issue the impact of this aspect of the cartel on class members “in terms of operational costs or otherwise”.</li> <li>• Both UKTC and RHA relied on experts reports but their respective experts approached the estimation of loss by very different methodologies.</li> </ul> <p>The Tribunal held that the claims were in principle eligible and suitable for inclusion in collective proceedings, and therefore the Tribunal had to determine which of the two applications were preferable. The Tribunal reached the clear view that the RHA opt-in proceedings are preferable to the UKTC opt-out proceedings, or even to the UKTC proceedings on an opt-in basis:</p> <ul style="list-style-type: none"> <li>• The alternative approaches of the parties’ experts satisfied the test for evaluation of the expert evidence set out by the Supreme Court of Canada in Microsoft, but the Tribunal felt more confidence in the robustness of the method proposed by RHA’s expert. In part, that was because the use of regression analysis was well tested and widely acknowledged. But more significantly, it was because the RHA was proposing opt-in proceedings which would give their expert access to a significant volume of data from the class members, which could be deployed in sophisticated analysis that could take more account of the heterogeneity of the trucks market.</li> <li>• It was practicable for the proceedings to be brought as opt-in proceedings. The RHA had established a website dedicated to the proceedings which provided information and offered a platform for PCMs to register their interest and sign up. A significant number of operators had already signed up and many more were in the process of doing so or had registered their interest.</li> </ul>

Judgment	Tribunal	Subject matter
		<ul style="list-style-type: none"> <li>The Tribunal dismissed the Proposed Defendants' argument that the RHA application was unsustainable because the inclusion of claimants for both new and used trucks in the class would have given rise to an irreconcilable conflict of interest on the part of the RHA and its legal advisors (claims in respect of new trucks would have faced the pass-on argument that all or part of the overcharge would have been recovered in an enhanced price that could have been charged on re-sale of the truck after a period of use; and claims in respect of used trucks which were dependent on establishing such a pass-on by way of an overcharge in the used price). The Proposed Defendants pointed to strong statements in the Canadian jurisprudence to the effect that there cannot be fundamental conflicts of interest in the certified class. The Tribunal considered that there were two important and related distinguishing features of the RHA action: (i) the RHA sought certification of opt-in proceedings and this distinction was fundamental because in opt-out proceedings the class representative had no direct engagement with the class members it was representing and they would nonetheless be bound; and (ii) it was very relevant that there was a substantial overlap between PCMs who had acquired new trucks and PCMs who had acquired used trucks those were not two discrete categories. The Tribunal did not think it appropriate to identify sub-classes at the certification stage.</li> </ul> <p>The run-off period should not extend to 17 May 2019, and the relevant period should cover only contracts entered into by 31 January 2014 for new trucks and by 31 January 2015 for used trucks. The Tribunal considered that it was necessary to reach a view for the purpose of certification and avoid an over-broad class definition.</p>
<p>10.</p> <p>Meta Platforms, Inc. v Competition and Markets Authority [2022] CAT 26 14 June 2022</p>	<p>Sir Marcus Smith Professor John Cubbin Simon Holmes</p>	<p>Judgment of the Tribunal on an application by Meta Platforms, Inc. ("Meta") for a review under s.120 of the Enterprise Act 2002 ("EA02") of the decisions of the Competition and Markets Authority ("CMA") which were contained in its Final Report dated 30 November 2021 (the "Decision"). The Decision had concluded that the completed merger between Meta and GIPHY, Inc. ("GIPHY") had resulted or may be expected to result in a substantial lessening of competition (a) in the supply of display advertising in the UK due to horizontal unilateral effects from a loss of dynamic competition ("Horizontal SLC") and (b) in the supply of social media services worldwide (including in the UK) due to vertical effects resulting from input foreclosure ("Vertical SLC"). In order to address the Horizontal and Vertical SLCs, the CMA had required Meta to (a) sell GIPHY in its entirety to an independent purchaser with the capability and a demonstrable commitment to develop and provide GIF-based advertising in the UK and GIFs to social media platforms, (b) transfer at least US\$75 million in cash to GIPHY, and (c) enter into a short-term agreement for the supply of GIPHY's products.</p> <p>In its Re-Amended Notice of Application, Meta sought an order quashing the Decision on seven grounds:</p>

Judgment	Tribunal	Subject matter
		<p>Ground 1: (i) that the CMA had misdirected itself in law or misapplied the test in s.35(1)(b) EA02 in its finding that a Horizontal SLC arose from a loss of dynamic competition, or (ii) that the CMA's finding of a Horizontal SLC had been unreasonable.</p> <p>Ground 2: the CMA's finding of a Horizontal SLC contradicted or was inconsistent with the CMA's definition of the market in which it had concluded that Meta competed.</p> <p>Ground 3: the counterfactual used by the CMA did not rationally follow from the CMA's findings of fact and was inadequately specified.</p> <p>Ground 4: the Decision was procedurally flawed and otherwise unlawful because (i) the CMA had acted unfairly and/or in breach of its duty to consult under s.104 EA02, or (ii) the excisions made in respect of the Decision amounted to an unlawful failure to give reasons.</p> <ul style="list-style-type: none"> <li>• Ground 4A: the Decision was ultra vires and void in its entirety as the determination of the merger reference had been unlawfully delegated to the chair of the CMA group and then sub-delegated to CMA staff.</li> </ul> <p>Ground 5: the CMA had failed properly to assess the remedy it would have imposed in relation to the Vertical SLC in isolation and/or any option beyond the divestment of GIPHY by Meta.</p> <p>Ground 6: In determining the remedy for the Horizontal and Vertical SLCs, the CMA had acted irrationally and/or disproportionately, or acted ultra vires s.35(3) EA02.</p> <p>The Tribunal unanimously dismissed all of Meta's Grounds except part of Ground 4. The Tribunal decided that:</p> <p>In relation to Ground 1, the CMA had correctly directed itself to the test it had to apply and the decision made by the CMA was one that it was entitled to make.</p> <p>In relation to Ground 2, the CMA had acted rationally in order to put itself in a position properly to apply the substantial lessening of competition test in a case of dynamic competition.</p> <p>As regards Ground 3, the CMA's conclusions as to the counterfactual were, as conclusions in relation the static competition position, unassailable.</p> <p>In respect of the second element of Ground 4, the CMA had failed to properly consult and had wrongly excised portions from the Decision. In respect of the first element of Ground 4, the Tribunal did not consider it appropriate to consider whether, if its decision had been different in relation to the other element of Ground 4, this ground would have succeeded.</p> <p>Ground 4A failed as the named individual members of the CMA group were not expected to personally conduct a merger investigation and personally draft the CMA's provisional findings and final decision.</p> <p>Ground 5 was dismissed as it was predicated on a successful challenge to the Horizontal SLC and the Tribunal had concluded that Meta's substantive challenges to the Horizontal SLC in Grounds 1 to 3 had all failed.</p>

Judgment	Tribunal	Subject matter
		On the basis that the CMA's decisions regarding the Horizontal and Vertical SLCs were unimpeachable, Ground 6 failed as ss.35 and 41 EA02 conferred a broad and wide discretion on the CMA in crafting remedies in relation to completed mergers and the remedies ordered by the CMA were not irrational and were well within its remedial powers.
11. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2022] CAT 27 22 June 2022	The Honourable Mr Justice Roth Jane Burgess Professor Michael Waterson	Ruling of the Tribunal on costs.
12. Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd [2022] CAT 28 29 June 2022	Ben Tidswell Dr William Bishop Tim Frazer	<p>Judgment of the Tribunal on two applications. The first, made by the Proposed Class Representative ("Dr Kent"), was for a Collective Proceedings Order ("CPO") within the meaning of section 47B of the Competition Act 1998 ("CA") (the "CPO Application"). The case concerned a claim that the proposed Defendants, Apple Inc. and Apple Distribution International Limited (together, "Apple"), had abused their dominant position in the market for the distribution of individual software applications ("apps") and the associated payment processing market contrary to section 18 CA and Article 102 of the Treaty on the Functioning of the European Union by: (i) imposing restrictions on app developers to force them to distribute iOS apps exclusively via Apple's proprietary system; and (ii) charging excessive and unfair prices in the form of the commission charged on transactions, ("the Unfair Pricing Abuse claim"). The claim was brought on an opt-out basis. Apple did not oppose the CPO Application.</p> <p>The second application, made by Apple, was a cross-application (i) to strike out the Unfair Pricing Abuse claim pursuant to Rule 41 (1) (b) of The Competition Appeal Tribunal Rules 2015 ("the Rules") on the basis that there were no reasonable grounds for making it and/or (ii) for summary judgment to dismiss the Unfair Pricing Abuse claim pursuant to Rule 43 (1) (a) of the Rules on the basis that it had no real prospect of success.</p> <p>The Tribunal decided that Dr Kent's application for a CPO should succeed and Apple's cross-application to strike out and/or summarily dismiss the Unfair Pricing Abuse claim failed.</p>
13. Sportradar AG and Another v Football DataCo Limited and Others [2022] CAT 29 1 July 2022	Ben Tidswell	Following oral submissions at a hearing held in private on 9 June 2022, the Tribunal determined two competing applications brought by Football DataCo Limited ("FDC") (and supported by Betgenius Limited) and Sportradar AG and Another ("Sportradar") regarding whether a document disclosed by FDC was protected by privilege. The Tribunal determined that the document was privileged and Sportradar was refused permission to rely on its contents.

Judgment	Tribunal	Subject matter
14. David Courtney Boyle v Govia Thameslink Railway Limited & Others [2022] CAT 30 5 July 2022	Sir Marcus Smith	Ruling of the President in relation to the Proposed Class Representatives' application to amend their claim form.
15. Merchant Interchange Fee Umbrella Proceedings [2022] CAT 31 6 July 2022	Sir Marcus Smith Ben Tidswell The Honourable Lord Young	<p>Judgment of the Tribunal setting out how the issue of pass on would be dealt with by the Tribunal in order for the parties to have a clear understanding of what evidence they would have to adduce in order for the Tribunal to resolve that issue.</p> <p>The Tribunal was satisfied that the decision of the Supreme Court in <i>Sainsbury's Supermarkets Limited v. Mastercard Incorporated &amp; Others</i> [2020] UKSC 24 conclusively set out the law as to legal and factual causation in the context of pass on.</p> <p>Accordingly, the Tribunal considered that there was no legal issue requiring clarification (despite the Umbrella Interchange Fee Claimants' suggestion to the contrary), save to the extent that there was a question as to what had to be pleaded, and by whom.</p> <p>In relation to the pleading point, the Tribunal found that there was nothing objectionable in the way in which the Umbrella Interchange Fee Defendants (Visa and Mastercard) had pleaded the pass on defence, and that the Umbrella Interchange Fee Claimants' objections to the pleadings were unfounded in law and wrong.</p> <p>As to the adducing of further evidence to demonstrate pass on, the Tribunal considered that Visa's suggestion to use econometric evidence and existing studies of pass on rates to demonstrate pass on was prima facie, the correct approach. The Tribunal considered that claimant-specific factual evidence adduced from a sample of many thousand claimants would be disproportionate in light of the Tribunal's findings as to the nature of pass on. However, the Tribunal indicated that it would be sympathetic to some form of tightly controlled, expert-led disclosure, provided it was focussed, cost-effective and proportionate. This could include survey or questionnaire evidence. Finally, the Tribunal made clear that the Umbrella Interchange Fee Claimants were not precluded from adducing claimant specific evidence, but that would be controlled by the Tribunal's case management powers.</p>
16. Ryder Limited and Another v MAN SE and Others [2022] CAT 32 6 July 2022	Hodge Malek KC	Ruling of the Chair on the Defendants' disclosure application in relation to pass-on, loss of profits and mitigation.



Judgment	Tribunal	Subject matter
<p>17.</p> <p>CityFibre Limited v Office of Communications [2022] CAT 33 15 July 2022</p>	<p>Ben Tidswell Dr Catherine Bell CB Professor Michael Waterson</p>	<p>Judgment of the Tribunal on CityFibre Limited’s (“Cityfibre”) appeal under section 192 of the Communications Act 2003 against a decision made by the Office of Communications (“Ofcom”) in relation to a commercial offer from Openreach (“Equinox”). Under the offer, internet service providers would receive discounts from Openreach if they met certain targets for the percentage of new orders from Openreach which were Fibre to the Premises (“FTTP”) as opposed to slower, legacy products. Ofcom had concluded that the targets did not create a potential barrier to purchasing FTTP products from alternative networks, such as CityFibre, and that no intervention was necessary. CityFibre contended that a key conclusion relied upon by Ofcom – regarding the overlap between Openreach and CityFibre’s networks – had been inadequately investigated, consulted on and/or evidenced, and that Ofcom had misdirected itself in law by failing to apply its own analytical framework.</p> <p>The Tribunal unanimously rejected both grounds of CityFibre’s appeal. The Tribunal accepted that a court should be cautious about interfering with a consultation process carried out by an expert regulator. While the consultation process could perhaps have been improved on, it was not so flawed as to be unlawful, and the Tribunal found that no prejudice was suffered by CityFibre in any event. The Tribunal did not consider that Ofcom had misdirected itself in applying the tests set out in various policy statements: Ofcom had carried out this exercise reasonably, within the margin of discretion accorded to it as a regulator. The Tribunal also found that CityFibre had failed to identify failings in the investigation that amounted to a breach of Ofcom’s duty to enquire and that there had been a sufficient evidential basis for Ofcom to reach the conclusions it did.</p>
<p>18.</p> <p>Churchill Gowns Limited and Student Gowns Limited v Ede &amp; Ravenscroft Limited and Others [2022] CAT 34 15 July 2022</p>	<p>The Honourable Mr Justice Zacaroli Paul Lomas Derek Ridyard</p>	<p>Judgment of the Tribunal on issues of liability.</p> <p>The Tribunal unanimously dismissed the Claimants’ claim (i) that the Defendants had abused their dominant position in the market for the sale and hire of academic dress for use at graduation ceremonies in the UK through the conclusion of official supplier agreements with universities, or (ii) that such agreements have as their effect the appreciable prevention, restriction or distortion of competition within the UK.</p> <p>The Claimants had claimed that the Defendants’ agreements with universities granting them “official supplier” status had the effect of conferring de jure or de facto exclusivity on the Defendants, such that the Claimants were foreclosed from accessing the market by way of supplying academic dress directly to students. The Tribunal found that the Defendants held a dominant position in the market for the supply of graduation services to universities (one aspect of which was the hire of academic dress to students). However, the Claimants failed to prove that the inability to profitably access the market through their preferred route was in fact a result of behaviour by the Defendants abusing their dominant position under the Chapter II prohibition set out in section 18 of the Competition Act 1998, or a consequence of agreements entered into between the Defendants and universities under Chapter I. As a result, the claim failed.</p>

Judgment	Tribunal	Subject matter
19. David Courtney Boyle v Govia Thameslink Railway Limited & Others [2022] CAT 35 25 July 2022	Sir Marcus Smith Professor John Cubbin Eamonn Doran	<p>Judgment of the Tribunal in connection with an application (“the Application”) by Mr Boyle and Mr Vermeer (“the Applicants”), for a collective proceedings order (“CPO”) pursuant to section 47B of the Competition Act 1998 (the “CA”).</p> <p>The claim that the Applicants sought permission to make was a “standalone” claim which alleged an abuse of a dominant position by Govia Thameslink Railway Ltd and others (“the Respondents”) in breach of the Chapter II prohibition of the CA. Specifically, it was contended that the Respondents had issued – and continue to issue – branded fares permitting travel on a single branded train service (“Single-Brand Tickets”) at a lower price than fares permitting travel on multiple, differently branded, train services (“Multi-Brand Tickets”). It was alleged that this discrimination between Single-Brand Tickets and Multi-Brand Tickets constituted an abuse of a dominant position.</p> <p>In the course of the pleadings, the Applicants submitted expert reports from Mr Harvey (“Harvey 3” and “Harvey 4”) and draft Amended and Re-Amended Collective Proceedings Claim Forms. The Respondents did not file any expert evidence in response to that of Mr Harvey. The draft re-amendments were in part uncontroversial (save as to costs) and in part controversial. The Tribunal allowed the uncontroversial parts and left the controversial parts (which were supported by Harvey 4) for further consideration. The controversial draft re-amendments – and Harvey 4 – had been introduced late in the day by the Applicants, and necessitated a hearing (before the President alone) in order to determine whether, and if so how, this material might be adduced on the hearing of the Application.</p> <p>The Tribunal considered whether the Application had satisfied both: (i) the Authorisation Condition (which concerns the appropriateness of the Applicants to act as class representatives); and (ii) the Eligibility Condition (which concerns whether the claims are eligible to be certified for inclusion in collective proceedings).</p> <p>In relation to (i), the Tribunal held that it had jurisdiction to appoint joint class representatives, but that this jurisdiction should not be exercised, and that the Tribunal should rather appoint Mr Boyle as the sole representative of the class. The Tribunal considered that Mr Boyle would be well advised to establish advisory panel of consultants to act as a sounding board. This, however, was not a requirement for certification.</p> <p>In respect of (ii), the Tribunal considered that the <i>Pro-Sys v. Microsoft</i> requirement was simply concerned to ensure that only arguable cases were certified as collective actions. The standard is a very low one, and it turns on the difference between what must be pleaded in an individual claim compared with what must be pleaded in a collective action. The question of methodology was important in this case because the Applicants propose to establish loss and damage on a generic or class-wide basis. The Tribunal held that the approach enunciated by Mr Harvey satisfied the <i>Microsoft</i> requirements.</p>

Judgment	Tribunal	Subject matter
		<p>The Respondents raised two defences which fell for consideration. These were pass-on and set-off. Harvey 4 and the amendments sought to deal with these points. On the grounds of relevance, the Tribunal declined to allow the amendments in relation to these points, and refused to admit Harvey 4. The Tribunal explained that Harvey 4 raised the spectre of a new claim, accruing to the benefit of those class members purchasing (over-priced) Multi-Brand Tickets, but also purchasing (under-priced) Single-Brand Tickets. In such a case, Harvey 4 contended for damages assessed by reference to the “loss of the flexibility” arising out of the Single-Brand Ticket purchase, this loss existed because the ticket that would have been purchased in the counter-factual world would have been more “flexible”. The Tribunal accepted that the Respondents had not been afforded sufficient time to consider Harvey 4 and make any response, and that the Tribunal would not give permission to take this claim forward at this stage. The Tribunal stated that it would hear and consider any application by the Applicants (or, rather, Mr Boyle) should they wish to amend.</p>
<p>20. BGL (Holdings) Limited &amp; Others v Competition and Markets Authority [2022] CAT 36 8 August 2022</p>	<p>Sir Marcus Smith Bridget Lucas KC Professor David Ulph CBE</p>	<p>Judgment of the Tribunal on an appeal by BGL (Holdings) Limited and others (collectively, “Compare The Market”) under section 46(1) of the Competition Act 1998 (“the Act”) of a decision of the Competition and Markets Authority (the “CMA”) dated 19 November 2022 entitled “Price comparison website: use of most favoured nation clauses” (the “Decision”).</p> <p>In its Decision the CMA had found that Compare The Market had infringed the Chapter I prohibition contained in section 2 of the Act and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) by imposing certain obligations known as Wide Most Favoured National Clauses (“wMFNs”) on thirty two home insurance providers. In the context of home insurance, a wMFN is a clause imposed by a price comparison website which prevents a home insurance provider from pricing lower than the price quoted on that particular price comparison website for the same policy, both through the home insurance providers’ own website (or other direct marketing channels) and on any other price comparison website on which the home insurance provider may list its policies. In summary, the CMA concluded in the Decision that the imposition of thirty two wMFNs by Compare The Market had the appreciable effect of preventing, restricting or distorting competition in breach of the Chapter I prohibition and Article 101 TFEU by:</p> <ol style="list-style-type: none"> <li>i. Reducing price competition between price comparison websites.</li> <li>ii. Restricting the ability of Compare The Market’s rival price comparison websites to expand, enabling Compare The Market to maintain or strengthen its market power.</li> <li>iii. Reducing price competition between home insurers competing on price comparison websites.</li> </ol> <p>As a result of the findings made in the Decision, the CMA imposed on Compare The Market a financial penalty of £17,910,062.</p>

Judgment	Tribunal	Subject matter
		<p>In its Notice of Appeal, Compare The Market advanced six substantive grounds of appeal in respect of the Decision (in relation to the finding of the infringement):</p> <p>Ground 1: the market definition that had been adopted by the CMA in the Decision was flawed.</p> <p>Ground 2: the CMA had erred in respect of “effective coverage” of the wMFNs, such that certain home insurance providers should have been excluded from the assessment of “effective coverage”, and consequently the coverage of the agreements was far less than the CMA had found.</p> <p>Grounds 3 to 6: the CMA had failed to show – to the requisite standard, or at all – that the wMFNs had anti-competitive effects. In particular, (i) the CMA had failed to provide evidence of effect on Premiums or Commissions; (ii) the CMA had failed to provide evidence of effects on promotional deals; (iii) the CMA had failed to establish the counterfactual and causation; and (iv) there had been further factual errors in relation to Compare The Market’s wMFNs by the CMA.</p> <p>Compare The Market advanced two further grounds of appeal against the penalty imposed in the Decision (Grounds 7 and 8) contingently in the event that it was unsuccessful on Grounds 1 to 6.</p> <p>The Tribunal unanimously decided that all of the substantive grounds advanced by Compare The Market (except for Ground 2) had succeeded and that the Decision should be aside accordingly. In summary, the Tribunal decided that:</p> <p>In relation to Ground 1, the market definition in the Decision was materially wrong and the process by which the CMA had arrived at the market definition had been flawed. In particular, the Tribunal found that the CMA (i) had adopted an inaccurate definition of the consumer side of the market, (ii) had failed to properly consider the significance of other channels for the purchase of home insurance by consumers, (iii) had fallen into error by adopting an approach to market definition which was not “outcome neutral”, (iv) had failed to properly test for demand substitutability on the consumer side of the market by incorrectly applying the SSNIP test (Small but Significant Non-transitory Increase in Price), and (v) had incorrectly included Narrow Most Favoured Nation Clauses in the market definition assessment.</p> <p>Ground 2 was dismissed. The CMA had been correct and justified in considering all of the 32 wMFNs collectively for the purposes of assessing anti-competitive effects, instead of individually assessing whether any given wMFN in and of itself constituted a restriction of competition.</p>

Judgment	Tribunal	Subject matter
		<p>In relation to Grounds 3 to 6, the CMA had failed to establish that wMFNs had the anti-competitive effects that had been articulated in its Decision. The Tribunal considered that a great deal of the CMA's analysis as to the alleged anti-competitive effects of wMFNs in the Decision operated at the level of theory or bare assertion, with no significant reference to quantitative evidence (rather, the Decision had principally been based on qualitative evidence) and it was extremely difficult for the Tribunal, and Compare The Market, to identify the evidential basis for the effects stated to exist in the Decision. The Tribunal found that (i) there was no reliable evidence upon which to conclude the existence of any adverse effect of wMFNs on either Premiums or Commissions, (ii) the evidence which had been adduced by the CMA was anecdotal at best and lacked depth and consistency with the CMA's theory of harm, and (iii) it was not possible for Compare The Market, and the Tribunal, to test the evidence relied upon in any way. In relation to promotional discounts, the Tribunal did not consider that the competitive structure of the market was harmed, even potentially, through an effect on promotional discounts.</p> <p>Grounds 7 and 8 concerning penalty were not considered by the Tribunal given the Tribunal's findings on the substantive grounds of appeal.</p>
<p>21. Sportradar AG and Another v Football DataCo Limited and Others [2022] CAT 37 28 July 2022</p>	Sir Marcus Smith	Ruling of the Tribunal dismissing an application by Sportradar AG and Another for disclosure of certain documents by Betgenius Limited.
<p>22. Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd [2022] CAT 38 30 August 2022</p>	Ben Tidswell	Ruling of the Tribunal on costs.
<p>23. Elizabeth Helen Coll v Alphabet Inc. and Others [2022] CAT 39 31 August 2022</p>	Bridget Lucas KC Tim Frazer Professor Michael Waterson	<p>Judgment of the Tribunal in respect of an application by Ms Elizabeth Helen Coll, as proposed class representative ("PCR"), for a collective proceedings order ("CPO") pursuant to section 47B of the Competition Act 1998 ("the Act") ("the CPO Application").</p> <p>The CPO Application sought to combine "standalone" claims against the Proposed Defendants, five entities in the Google corporate group, (together "Google"), in respect of the proprietary operating system licensed by Google for smart mobile devices (smartphones and tablets) known as Android. The PCR contended that Google had contravened the Chapter II prohibition contained in section 18 of the Act and Article 102 of the Treaty on the Functioning of the European Union, by engaging in exclusionary and exploitative abuses of dominant positions in the markets for (i) the licensing of smart mobile operating systems, (ii) the distribution of Android apps via Google's Play Store, and (iii) the provision of payment processing services via the Play Store.</p>

Judgment	Tribunal	Subject matter
		<p>The PCR sought to bring the collective proceedings on an opt-out basis on behalf of all “GMS Device users” (essentially, all users of smart mobile devices which ran on Google Android) domiciled in the UK (and on an opt-out basis for those domiciled outside of the UK), a class which was estimated to include 19.5 million consumers and businesses.</p> <p>Google did not oppose the PCR’s CPO Application.</p> <p>The Tribunal decided that Ms Coll’s CPO Application should succeed as indicated at the hearing on 18 July 2022.</p>
24.		
Blue Planet Holdings Ltd v Orkney Islands Council and Others [2022] CAT 40 14 September 2022	The Honourable Lord Ericht The Honourable Lord Young Peter Anderson	<p>Ruling of the Tribunal on the First and Second Defender’s application, as adopted by the Third Defender, to strike out the Pursuer’s claim or alternatively grant summary judgment against the Pursuer. The application focused on two issues: (1) the damages sought; and (2) the alleged breaches of competition law.</p> <p>In respect of (1) the Tribunal:</p> <p>(a) struck out the claim for damages sought for alleged breaches of the Chapter I prohibition as the Pursuer had not set out any reasonable grounds in which it could be said that the damages were caused by a breach of competition law; and</p> <p>(b) struck out the claim for damages sought for alleged breaches of the Chapter II prohibition on the basis that there were no reasonable grounds for such a claim under any of the Pursuer’s headings.</p> <p>In relation to (2), the Tribunal stated that, had it not struck out the claim in respect of the damages issue, it would have refused the Defenders’ motion for strike-out in relation to the alleged breaches of competition law.</p>
25.		
Ryder Limited and Another v MAN SE and Others [2022] CAT 41 20 September 2022	Hodge Malek KC	Ruling of the Chair on the Claimants’ disclosure application seeking documents on the Commission File in relation to Bundled Products.
26.		
Michael O’Higgins FX Class Representative Limited v Barclays Bank PLC and Others [2022] CAT 42 4 October 2022	Sir Marcus Smith Paul Lomas Professor Anthony Neuberger	Reasoned Order of the Tribunal on various applications by the parties for costs and permission to appeal the Tribunal’s Judgment ([2022] CAT 16).

Judgment	Tribunal	Subject matter
27. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2022] CAT 43 14 October 2022	The Honourable Mr Justice Roth Jane Burgess Professor Michael Waterson	Judgment of the Tribunal in connection with an application by Mr Merricks to re-amend his Collective Proceedings Claim Form to allow class members to recover the loss they allegedly suffered as a result of the Infringement which arose after the end of the Full Infringement Period. As pleaded in the draft Re-Amended Collective Proceedings Claim Form, the Infringement was said to have caused the “MSC Run-Off Overcharge” and/or the “Domestic IFs Run-Off Overcharge”.  The Tribunal permitted Mr Merricks to make the amendments, but to allege an MSC Run-Off Overcharge for a period of two years and a Domestic IFs Run-Off Overcharge for a period of one year.
28. Allianz Global Investors GmbH & Others v Deutsche Bank AG London & Others [2022] CAT 44 11 October 2022	The Honourable Mr Justice Jacobs	Ruling of the Chair dismissing the Defendants’ application that limitation be determined as a preliminary issue.
29. Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd [2022] CAT 45 18 October 2022	Ben Tidswell Dr William Bishop Tim Frazer	Ruling of the Tribunal on the Defendants’ application for a split trial. The application was refused, and the issues of market definition and dominance would be heard together in a unitary trial scheduled to commence from October 2024.
30. David Courtney Boyle v Govia Thameslink Railway Limited & Others [2022] CAT 46 14 October 2022	Sir Marcus Smith Professor John Cubbin Eamonn Doran	Ruling of the Tribunal ordering a split trial in the proceedings.
31. Churchill Gowns Limited and Student Gowns Limited v Ede & Ravenscroft Limited and Others Neutral Citation Number [2022] CAT 47 27 October 2022	The Honourable Mr Justice Zacaroli Paul Lomas Derek Ridyard	Ruling of the Tribunal in respect of the Defendants’ application for costs following the Tribunal’s judgment issued on 15 July 2022 ([2022] CAT 34) and offers made by the Defendants pursuant to Rule 45 of the Competition Appeal Tribunal Rules 2015, which had not been accepted by the Claimants.

Judgment	Tribunal	Subject matter
<p>32.</p> <p>UK Trucks Claim Limited v Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) and Others</p> <p>[2022] CAT 48</p> <p>28 October 2022</p>	<p>The Honourable Mr Justice Roth</p> <p>Dr William Bishop</p> <p>Professor Stephen Wilks</p>	<p>Ruling of the Tribunal on applications by UK Trucks Claim Limited, DAF Trucks N.V. and MAN SE for permission to appeal the Tribunal's judgment of 8 June 2022 ([2022] CAT 25).</p>
<p>33.</p> <p>Justin Gutmann v First MTR South Western Trains Limited and Another</p> <p>[2022] CAT 49</p> <p>10 November 2022</p>	<p>The Honourable Mr Justice Roth</p> <p>Simon Holmes</p> <p>Professor Robin Mason</p>	<p>Ruling of the Tribunal in connection with an application by the Class Representative to extend his claim to include certain categories of season ticket journeys.</p>
<p>34.</p> <p>Merchant Interchange Fee Umbrella Proceedings</p> <p>[2022] CAT 50</p> <p>10 November 2022</p>	<p>Sir Marcus Smith</p> <p>Ben Tidswell</p> <p>The Honourable Lord Young</p>	<p>Ruling of the Tribunal on an application by Mastercard for permission to appeal the Tribunal's judgment of 6 July 2022 ([2022] CAT 31). The Tribunal refused permission to appeal on all four grounds advanced by Mastercard.</p>
<p>35.</p> <p>UK Trucks Claim Limited v Stellantis N.V. (formerly Fiat Chrysler Automobiles N.V.) and Others</p> <p>[2022] CAT 51</p> <p>10 November 2022</p>	<p>The Honourable Mr Justice Roth</p> <p>Dr William Bishop</p> <p>Professor Stephen Wilks</p>	<p>Ruling of the Tribunal in respect of various applications for costs following the Tribunal's certification judgment issued on 8 June 2022 ([2022] CAT 25).</p>
<p>36.</p> <p>Walter Hugh Merricks CBE v Mastercard Incorporated and Others</p> <p>[2022] CAT 52</p> <p>25 November 2022</p>	<p>The Honourable Mr Justice Roth</p> <p>Jane Burgess</p> <p>Professor Michael Waterson</p>	<p>Ruling of the Tribunal in respect of the parties' application for costs following the Tribunal's judgment dated 14 October 2022 ([2022] CAT 43).</p>



Judgment	Tribunal	Subject matter
<p>37.</p> <p>Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others</p> <p>[2022] CAT 53</p> <p>28 November 2022</p>	<p>Sir Marcus Smith</p> <p>Eamonn Doran</p> <p>Bridget Lucas KC</p>	<p>Ruling of the Tribunal in connection with an application by the Class Representative seeking <i>inter alia</i> a direction from the Tribunal that the Defendants do not communicate directly with actual or potential members of the class.</p> <p>By a collective proceedings order dated 20 May 2022, the Tribunal authorised Mark McLaren Class Representative Limited to act as class representative to continue collective proceedings against the Defendants.</p> <p>By a series of twenty letters dated 26 July 2022, the solicitors for the Fifth Defendant had written on behalf of all the Defendants except the Fourth Defendant to various large business purchasers concerning their participation in the proceedings. A further letter – dated 27 July 2022 – had been written to a further potential large business purchaser by the solicitors for the Sixth to Eleventh Defendants, again on behalf of all the Defendants except the Fourth Defendant.</p> <p>The Tribunal held that there was an inherent restriction in the Competition Appeal Tribunal Rules 2015 that precluded defendants from communicating with class members where a class had been certified (and similarly between proposed defendants and proposed class members at the application stage, where a collective proceedings order was being sought).</p>
<p>38.</p> <p>David Courtney Boyle v Govia Thameslink Railway Limited &amp; Others</p> <p>[2022] CAT 54</p> <p>28 November 2022</p>	<p>Sir Marcus Smith</p>	<p>Reasoned Order of the President in relation to an application by the Class Representative for its costs of, occasioned by, and incidental to the Defendants' unsuccessful opposition to the Collective Proceedings Order application.</p>
<p>39.</p> <p>Mr Justin Gutmann v Apple Inc., Apple Distribution International Limited, and Apple Retail UK Limited</p> <p>[2022] CAT 55</p> <p>22 November 2022</p>	<p>Justin Turner KC</p> <p>Jane Burgess</p> <p>Derek Ridyard</p>	<p>Ruling of the Tribunal in connection with an application by the Proposed Class Representative for disclosure by the Proposed Defendants of a decision by the French General Directorate for Competition Policy, Consumer Affairs and Fraud Control dated 7 February 2020.</p>
<p>40.</p> <p>Pfizer Inc. and Pfizer Limited v Competition and Markets Authority</p> <p>[2022] CAT 56</p> <p>15 November 2022</p>	<p>Sir Marcus Smith</p> <p>Eamonn Doran</p> <p>Professor Michael Waterson</p>	<p>Ruling of the Tribunal in respect of the timing of the main hearing of the appeal.</p>

Judgment	Tribunal	Subject matter
41. Ryder Limited and Another v MAN SE and Others [2022] CAT 57 7 December 2022	Andrew Lenon KC Paul Lomas Professor Anthony Neuberger	Reasoned Order of the Tribunal in relation to an application by the DAF Defendants to extend the deadline for the filing and exchange of reply expert reports.
42. Commercial and Interregional Card Claims I Limited (“CICC I”) v Mastercard Incorporated & Others [2023] CAT 1 13 January 2023	Ben Tidswell	Ruling of the Tribunal in respect of the Proposed Defendants’ request for clarification regarding communications with proposed class members and for disclosure.
43. Blue Planet Holdings Ltd v Orkney Islands Council and Others [2023] CAT 2 23 January 2023	The Honourable Lord Ericht The Honourable Lord Young Peter Anderson	Ruling of the Tribunal refusing the pursuer’s application for permission to appeal the Tribunal’s judgment dated 14 September 2022 ([2022] CAT 40).
44. Blue Planet Holdings Ltd v Orkney Islands Council and Others [2023] CAT 3 23 January 2023	The Honourable Lord Ericht The Honourable Lord Young Peter Anderson	Ruling of the Tribunal in respect of the parties’ application for costs following the Tribunal’s judgment dated 14 September 2022 ([2022] CAT 40).
45. Consumers’ Association v Qualcomm Incorporated [2023] CAT 4 13 January 2023	The Honourable Mrs Justice Bacon Professor Robin Mason Justin Turner KC	Ruling of the Tribunal granting the Class Representative’s application for specific disclosure of certain documents.
46. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2022] CAT 5 3 February 2023	The Honourable Mr Justice Roth The Honourable Lord Ericht Jane Burgess	Judgment of the Tribunal in relation to the Class Representative’s application to amend his Re-Amended Reply in respect of (i) deliberate concealment, pursuant to s.32 of the Limitation Act 1980 (and under Scots law, s.6(4) of the Prescription and Limitation (Scotland) Act 1973); and (ii) the ruling in Case C-267/20 <i>Volvo AB v RM</i> , EU:C:2022:494.

Judgment	Tribunal	Subject matter
47. Royal Mail Group Limited v DAF Trucks Limited and Others [2023] CAT 6 7 February 2023	The Honourable Mr Justice Michael Green Sir Iain McMillan CBE FRSE DL Derek Ridyard	<p>Judgment of the Tribunal in relation to follow-on claims for damages brought by Royal Mail Group Limited (“Royal Mail”) and three companies in the BT Group (“BT”) (together, the “Claimants”) against companies in the DAF Group (“DAF”).</p> <p>By its decision of 19 July 2016 in Case AT.39824 – Trucks the European Commission determined that five truck manufacturers, DAF, MAN, Daimler, Iveco and Volvo/Renault had carried out a single and continuous infringement of Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the Agreement on the European Economic Area between 1997 and 2011 (the “Infringement”). The Infringement consisted of collusive arrangements on pricing and gross price increases in the EEA for medium and heavy trucks; and the timing and passing on of costs for the introduction of emission technologies for medium and heavy trucks required by EURO 3 to 6 standards.</p> <p>The Claimants had purchased or leased large volumes of trucks from DAF during the Infringement period, and they claimed that the prices and lease payments that they had paid for those trucks were higher than they would have been without the Infringement (the “Overcharge”). The Claimants claimed damages in respect of the Overcharge together with other consequential losses.</p> <p>The main issues which required determination by the Tribunal were:</p> <ol style="list-style-type: none"> <li>1. Causation – had the Infringement caused the Claimants to suffer loss by way of the Overcharge?</li> <li>2. The Theory of Harm – both sides’ experts opined on whether it was “plausible” that the Infringement had caused loss to the Claimants, DAF’s expert maintaining that it was not “plausible”.</li> <li>3. The Overcharge – if loss had been caused, what was the quantum of such loss? Apart from whether it was appropriate to examine separate “before-during” and “during-after” Infringement models (the Claimants’ preferred approach) or “before-during-after” and “during-after” models (DAF’s approach), there were three main areas of disagreement between the experts in relation to their respective regression models, each of which considerably affected the estimated Overcharge: (a) The Exchange Rates – whether the models should be run in Pounds or Euros and what should be the applicable rate; (b) The Global Financial Crisis between 2008 and 2010 – whether this was such a shock that it needed to be controlled for separately from other demand controls; and (c) The Emissions Standards – whether the additional margin achieved on new emission standard trucks had been down to the Infringement or other factors, such as willingness to pay;</li> <li>4. The Value of Commerce – this was the amount to which the Overcharge percentage was to be applied, and there was a difference between Royal Mail only and DAF as to whether certain truck bodies should be included in that figure.</li> <li>5. Complements – if there had been an Overcharge, DAF contended that the price of bodies and trailers, which are manufactured by third-parties, would have decreased and the savings that the Claimants would thereby have achieved should be offset against the Overcharge; the Claimants denied any such effect of the Overcharge.</li> </ol>

Judgment	Tribunal	Subject matter
		<p>6. Resale Pass On – this concerned used trucks sold on by the Claimants; DAF contended that if the price of their new trucks had increased as a result of the Overcharge, then the price of used trucks sold by the Claimants would also have increased, and that benefit should be offset against the Overcharge.</p> <p>7. Supply Pass On (“SPO”) – if there had been an Overcharge, DAF contended that the Claimants would have mitigated their loss by passing it on to their customers by increases to the prices they would have charged for their own products such as postage stamps or telephone line rentals; the Claimants denied that there had been any such pass on as a matter of law and/or fact.</p> <p>8. Loss of Volume – Royal Mail contended that if there had been supply pass-on, then they would have suffered a loss of volume in their downstream market sales for which they should be compensated.</p> <p>9. Financing Losses – in addition to the Overcharge, Royal Mail claimed damages for the cost of financing the Overcharge and there was detailed expert evidence on this issue; the main area of disagreement was whether the weighted average cost of capital (“WACC”) was the best measure of converting historic losses to current values or whether alternatively there should be interest based on the cost of debt and the foregone returns on short term investments. DAF contended that any such interest charges should be calculated on a simple basis, whereas Royal Mail argued that interest charges should be compounded. BT, by contrast, claimed simple interest pursuant to s.35A of the Senior Courts Act 1981.</p> <p>10. Taxation – it was common ground between the parties that the claims would need to be adjusted for the effects of taxation and the parties’ respective tax experts were agreed on nearly all issues. The main outstanding issue was dependent on whether the WACC was adopted as the appropriate measure for Royal Mail’s financing losses.</p> <p>The Tribunal held that:</p> <ol style="list-style-type: none"> <li>1. The Infringement had caused loss to both Claimants in the form of the Overcharge.</li> <li>2. The Overcharge for which DAF was liable was assessed at 5% for both Claimants on their value of commerce over the whole of the relevant period.</li> <li>3. That Royal Mail’s value of commerce was £260,597,683 including bodies and trailers bought from DAF; BT’s value of commerce was agreed between the parties at £44,961,617.</li> <li>4. That DAF’s mitigation “defences”, that is SPO, Complements and Resale Pass-on, all failed. Mr Ridyard agreed with the majority on the overall conclusion to DAF’s SPO “defence” against the damages award, but he disagreed on the reasoning by which the Tribunal had arrived at that conclusion.</li> <li>5. Royal Mail’s claim to use the WACC to calculate its financing losses failed; they were to be calculated in accordance with an alternative interest rate based on a weighting of the cost of debt and short-term investment returns and on a compound basis.</li> </ol>

Judgment	Tribunal	Subject matter
		<p>6. BT was entitled to simple interest on its damages award of base rate plus 2%.</p> <p>7. The tax experts' agreed modelling was to be adopted.</p> <p>The Tribunal invited the parties to calculate the damages including interest and tax based on the above findings. If there were any issues arising that could not be agreed those issues would be dealt with at a further hearing after the judgment had been handed down.</p>
<p>48.</p> <p>Bayerische Motoren Werke AG v Competition and Markets Authority</p> <p>[2023] CAT 7</p> <p>8 February 2023</p>	<p>Sir Marcus Smith</p> <p>Tim Frazer</p> <p>Michael Cutting</p>	<p>Single Judgment of the Tribunal and the High Court in respect of two proceedings that engaged a common issue of law concerning the territorial scope of section 26 of the Competition Act 1998 ("CA 98").</p> <p>The application involved an appeal by Bayerische Motoren Werke AG ("BMW AG") pursuant to section 40(A)(9) of the CA 988 and section 114 of the Enterprise Act 2002 against the decision of the Competition Market Authority ("CMA") dated 6 December 2022 to impose a penalty on BMW AG for failure to comply with a notice under section 26 of the CA 98. The amount of the penalty was the maximum permitted by statute, which was a fixed sum of £30,000 plus a continuing daily fine of £15,000 since the date of the decision. The Respondent challenged the lawfulness of the imposition of a penalty on a foreign-domiciled company with no presence in the United Kingdom for failure to comply with a notice under section 26 requiring the production of specified documents and information held by it outside the jurisdiction for the purpose of an investigation commenced by the CMA.</p> <p>There was also an application for judicial review before the High Court which had been made by Volkswagen AG ("VW AG") against the decision of the CMA dated 29 April 2022 to serve a section 26 notice on them. The Claimant challenged the lawfulness of the issuance of a notice under section 26 requiring a foreign-domiciled company with no presence in the United Kingdom to produce specified documents and information held by it outside the jurisdiction for the purpose of an investigation commenced by the CMA. Given the common issue of law for determination in the two proceedings, the claim for judicial review was allocated to the President of the Tribunal to determine in his capacity as a Justice of the High Court.</p> <p>A single Judgment determining both proceedings was issued, with the appeal being a matter for the three-person panel constituted in the Tribunal and the claim for judicial review being a matter for the President of the Tribunal (sitting as a Justice of the High Court of England and Wales) alone. The Judgment of the Tribunal was unanimous and the Judgment of the President in the claim for judicial review was the same as that of the Tribunal.</p> <p>In summary, the Tribunal unanimously allowed the appeal in respect of BMW AG and the President granted VW AG permission to bring their claim for judicial review whilst furthermore deciding that the claim should succeed. Specifically, the decision to issue a notice and the decision to impose a penalty in respect of foreign-domiciled companies with no presence in the United Kingdom in relation to the production of specified documents and information held by those companies outside the jurisdiction had been ultra vires section 26 of the CA 98.</p>

Judgment	Tribunal	Subject matter
49. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2023] CAT 8 10 February 2023	The Honourable Mr Justice Roth  The Honourable Lord Ericht  Jane Burgess	Ruling of the Tribunal in respect of the parties' applications for costs following the Tribunal's judgment dated 3 February 2023 ([2023] CAT 5).
50. Consumers' Association v Qualcomm Incorporated [2023] CAT 9 17 February 2023	The Honourable Mrs Justice Bacon  Professor Robin Mason  Justin Turner KC	Ruling of the Tribunal granting the Defendant's application to strike out a passage of the Class Representative's Reply.
51. Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others [2023] CAT 10 20 February 2023	Sir Marcus Smith  Derek Ridyard  Timothy Sawyer CBE	<p>Judgment of the Tribunal in respect of an application by Dr Liza Lovdahl Gormsen, as proposed class representative ("PCR"), for a collective proceedings order ("CPO") pursuant to section 47B of the Competition Act 1998 ("the Act") ("the CPO Application").</p> <p>The Applicants sought permission to bring a "standalone" claim alleging an abuse of a dominant position by three corporate members of the Meta group ("the Respondents") in breach of the Chapter II prohibition of the Act.</p> <p>Specifically, the PCR contended that the Respondents had imposed complex and far-reaching terms of business on those who wished to use Facebook ("Users"), including requiring Users to give Facebook permission to collect, share and otherwise process personal data and to view targeted advertising alongside other content on Facebook ("the Unfair Data Requirement"). The Respondents did not pay Users for access to, or its use of, their personal data. The PCR contended that the Respondents then charged advertisers significant sums to show highly targeted adverts to Users based on their personal data. The PCR contended that the fact that the Respondents did not pay Users for access to, or use of, their personal data, constituted the imposition of an "Unfair Price" on Users. Finally, the PCR contended that the fact that Facebook's terms and conditions were complex, far-reaching, opaque and/or misleading, and imposed on a "take it or leave it" basis constituted "other Unfair Trading Conditions".</p> <p>The CPO Application alleged that the Unfair Data Requirement, the Unfair Price, and the other Unfair Trading Conditions, were three distinct abuses of dominance by the Respondents. The PCR relied on two expert reports that purported to outline a methodology for assessing the quantum of the loss to the proposed class as a result of the abuses alleged.</p>

Judgment	Tribunal	Subject matter
		<p>The Tribunal found significant problems with the pleaded claims in the CPO Application and with the methodology set out in the expert reports. Specifically, the Tribunal found that the proposed legal basis for assessing compensation owing to the class varied materially between the three alleged abuses, whereas the expert's economic analysis sought to provide a singular response to the Respondents' alleged wrongs. Furthermore, the expert's analysis failed to consider the two-sided nature of the relevant market, and risked incorrectly matching alleged "excess profits" earned by the Respondents from advertisers with alleged losses suffered by Users.</p> <p>The Tribunal considered that there were two key points to address in order to determine the CPO Application: (i) whether the CPO Application met the test in <i>Pro-Sys Consultants v. Microsoft</i> ("the <i>Pro-Sys</i> test"); and (ii) whether, under rule 79(2)(b) of the Competition Appeal Tribunal Rules 2015, the continuation of the proceedings could be justified in terms of cost/benefit.</p> <p>The <i>Pro-Sys</i> test was designed to ensure that before a CPO is made, the Tribunal was satisfied of the various steps that must be taken so that the proceedings can be heard effectively and efficiently. In relation to (i), the Tribunal found that the PCR had failed to meet the <i>Pro-Sys</i> test because of inadequacies identified in the pleading of the abuses alleged in the CPO Application, and the methodology proposed by the expert for the quantification of loss. The Tribunal considered that there was no effective blueprint for the efficient and effective trial of the issues raised by the PCR.</p> <p>In respect of (ii), the Tribunal considered that the problems identified in respect of the application of the <i>Pro-Sys</i> test to the CPO Application meant that no cost/benefit analysis could properly be carried out at this stage.</p> <p>The Tribunal proposed to stay the CPO Application for a period of six months to enable the PCR to file additional evidence setting out a new and better blueprint for the effective trial of the proceedings. Absent a new and better blueprint, the Tribunal would lift the stay and reject the CPO Application. If a new and better blueprint was produced, the Tribunal would give appropriate directions for the determination of the renewed application.</p>
52. Instaplanta (Yorkshire) Limited v Leeds City Council [2023] CAT 11 2 March 2023	Ben Tidswell	Ruling of the Tribunal giving reasons for dismissing the Claimant's application for an order that the proceedings be subject to the fast-track procedure.
53. Bayerische Motoren Werke AG v Competition and Markets Authority [2023] CAT 12 2 March 2023	Sir Marcus Smith Michael Cutting Tim Frazer	Reasoned Order of the Tribunal granting the CMA permission to appeal the Tribunal's substantive judgment ([2023] CAT 7). The Tribunal concluded that the issues of construction raised in the proceedings were by no means straightforward and had significant implications for the CMA's investigatory powers.

Judgment	Tribunal	Subject matter
54. The Durham Company Limited v Durham County Council [2023] CAT 13 17 March 2023	Sir Marcus Smith	Reasoned Order of the President refusing The Binn Group permission to intervene. The President held that the Binn Group did not have a sufficient interest in the outcome of proceedings, and its presence would not add any value to the issues in the Appellant's case or assist the Tribunal in resolving those issues.
55. The Durham Company Limited v Durham County Council [2023] CAT 14 21 March 2023	Sir Marcus Smith	Judgment of the President imposing a costs cap as from the date of the case management conference held on 17 February 2023 in the amount of £50,000 in the case of the Appellant, and £60,000 in the case of the Respondent.
56. Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2023] CAT 15 21 March 2023	The Honourable Mr Justice Roth The Honourable Lord Ericht Jane Burgess	<p>Judgment of the Tribunal in relation to several preliminary issues, namely:</p> <ol style="list-style-type: none"> <li>1. Was the application of the general legislation on limitation/prescription precluded by the Competition Act 1998 ("CA 1998") and the Competition Appeal Tribunal Rules ("the CAT Rules")? ("the Limitation/Prescription issue").</li> <li>2. If the answer to question (1) was no, did section 11(2) of the Prescription and Limitation (Scotland) Act 1973 ("PLSA 1973") apply to the claims insofar as they were governed by Scots law? ("the PLSA s. 11(2) issue").</li> <li>3. For the purpose of limitation or prescription, what law governed the claims by Class Members in relation to transactions with foreign merchants? ("the Proper Law issue").</li> <li>4. As a matter of law, was Mastercard entitled to advance a counterfactual based on an alternative, exemptible EEA MIF pursuant to Art 101(3) TFEU? ("the Exemptibility issue").</li> </ol> <p><b>The Limitation/Prescription Issue</b></p> <p>The relevant period for the claims started on 22 May 1992. Mastercard contended that in the case of claims governed by English law, insofar as they were based on transactions prior to 20 June 1997 they were time-barred; and in the case of claims governed by Scots law, insofar as they were based on transactions prior to 20 June 1998 they are time-barred. This was said to follow from the effect of, respectively, the English law on limitation and the Scots law on prescription, as at the time when the original s. 47A CA 1998 and the Competition Appeal Tribunal Rules 2003 (the "2003 Rules") came into force, i.e. 20 June 2003. The Class Representative contended that all the claims were within time, on the basis of section 47A CA 1998 and rule 31(1)-(3) of the 2003 Rules, applied by reason of rule 119(2) of the Competition Appeal Tribunal Rules 2015 (the "2015 Rules").</p>



Judgment	Tribunal	Subject matter
		<p>The present proceedings were started after 1 October 2015 but comprised claims which arose before 1 October 2015. Accordingly, they fell within r. 119(3) of the 2015 Rules and were therefore subject to r. 119(2). They were therefore governed by rule 31(1)-(3) of the 2003 Rules. It was on that basis that the proceedings could be commenced on 6 September 2016, just within two years of the judgment of the CJEU. However, the 2003 Rules, which introduced this exceptional “two years after final decision” limitation provision, came into force on 20 June 2003.</p> <p>The Tribunal considered that s. 47A CA 1998 has to be read as a whole. The statutory requirement to “disregard” limitation or prescription rules was not unlimited but, on the contrary, expressly directed to be “[f]or the purpose of identifying claims which may be made in civil proceedings” and therefore related back to the jurisdiction of the Tribunal in private actions as defined by s. 47A(1)-(3). The sub-section precluded any argument that the jurisdiction of the Tribunal could not be engaged because the claim could not be made in civil proceedings because it was out of time.</p> <p>The Tribunal concluded that the legislator could not have intended the illogical conclusion that proceedings commenced before 1 October 2015 might be subject to a time bar in respect of claims arising prior to 20 June 1997, whereas proceedings commenced after 1 October 2015 in respect of claims arising in the same period would not be time barred. The relevant legislative provisions should be construed insofar as possible to avoid this result.</p> <p><b>The PLSA s. 11(2) Issue</b></p> <p>The Class Representative contended that the special rule in s.11(2) applied in this case. Mastercard submitted that it did not.</p> <p>The Tribunal held that s. 11(2) PLSA applied and the loss and damage were deemed for the purpose of s. 11(1) to have occurred on 21 June 2008, being the date when Mastercard was required to (and did) bring the infringement to an end. In coming to its conclusion, the Tribunal considered and applied Scots law and the conclusion as to Scots law was consistent with the relevant EU law on limitation.</p> <p><b>The Proper Law Issue</b></p> <p>The parties agreed that the question of proper law needed to be decided in respect of two periods:</p> <ol style="list-style-type: none"> <li>1. from 1 May 1996 to the end of the claim period, for which it is governed by the Private International Law (Miscellaneous Provisions) Act 1995 (“PILMPA 1995”); and</li> <li>2. from 22 May 1992 to 30 April 1996, for which it is governed by the common law rules.</li> </ol>

Judgment	Tribunal	Subject matter
		<p>The Tribunal considered that the assessment of significance should be made on the basis of the significance that the various events would have in the actual proceedings before the Tribunal. The Tribunal held that the general rule in section 11 led to the applicable law being English law for claimants in England and Wales (and, in effect, Northern Ireland), and Scots law for claimants in Scotland. The Tribunal additionally considered whether the general rule should be displaced under section 12 PILMPA 1995 and recognised that as a departure from the general rule, section 12 should not readily be engaged, and that the threshold was a high one. However, section 12 was in the statute because the legislator envisaged that there would be circumstances where it was appropriate to displace the general rule. If the law of the place where the restriction of competition had occurred would be the governing law under the general rule, the Tribunal had no doubt that in the particular circumstances of these proceedings that should be displaced for the purpose of determining the issues that arise by the law of the place where the Class Members resided at the time they suffered loss, i.e. the law of England or Scotland as the case may be.</p> <p>In relation to the common law rules, the Tribunal concluded that this was an unusual case where there were clear and strong grounds for the exception to apply as regards the issue of limitation/prescription, and that the governing law for that issue should be the law of the place where the loss was suffered, i.e. English law for the claims by Class Members resident in England and Wales (and Northern Ireland) and Scots law for Class Members resident in Scotland.</p> <p><b>The Exemptibility Issue</b></p> <p>The Tribunal noted that it was bound by, and Mastercard therefore could not challenge, the infringement of Art. 101 TFEU found in the Decision. Mastercard contended that it was open to it to demonstrate that the conditions of Art 101(3) for exemption would have been met in relation to alternative EEA MIFs set at a different level. The Class Representative argued that the only permissible counterfactual was a zero MIF with settlement at par (i.e. a prohibition on ex post pricing) and put its case in two ways: (1) this resulted from the binding effect of the Decision for the purpose of these proceedings; alternatively (2) it was an abuse of process for Mastercard in these proceedings to seek to contend otherwise.</p> <p>The Tribunal held that Mastercard was not entitled to advance a counterfactual based on alternative, exemptible EEA MIFs pursuant to Art 101(3) TFEU: by reason of the binding effect of the Decision; or, alternatively, because that would be an abuse of process.</p>
57. Road Haulage Association Limited v Man SE and Others [2023] CAT 16 23 March 2023	Th Honourable Mr Justice Roth	Reasoned Order of the Chair granting the Road Haulage Association disclosure of the decision of the EU Commission dated 19 July 2016 AT/39824 <i>Trucks</i> and the Commission file.

Judgment	Tribunal	Subject matter
58. Commercial Buyers Group Limited v Associated Lead Mills Limited and Others [2023] CAT 17 23 March 2023	Hodge Malek KC	Ruling of the Tribunal dismissing the applications by the First to Second Defendants and the Fourth to Fifth Defendants for security for costs.
59. Justin Gutmann v Govia Thameslink Railway Limited & Others [2023] CAT 18 24 March 2023	The Honourable Mr Justice Roth Simon Holmes Professor Robin Mason	Judgment of the Tribunal setting out its reasons for granting a Collective Proceedings Order (CPO) in the proceedings. Given the close similarity of the proceedings with the previous Gutmann proceedings (Cases 1304 and 1305), the Respondents, whilst making clear that they would strongly contest the substantive proceedings, did not seek to oppose the making of a CPO. Nonetheless, the Tribunal noted that it was necessary for the Tribunal to be satisfied that conditions in section 47B(5) of the Competition Act 1998 were fulfilled. The Tribunal was satisfied that these conditions i.e., the “authorisation” and “eligibility” conditions were fulfilled.
60. David Courtney Boyle v Govia Thameslink Railway Limited & Others [2023] CAT 19 24 March 2023	Sir Marcus Smith Professor John Cubbin Eamonn Doran	Judgment of the Tribunal vacating the trial listed for the last quarter of 2023, staying the proceedings and providing directions for the future case management of the claim.
61. Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd [2023] CAT 20 29 March 2023	Ben Tidswell	<p>Ruling of the Chair in relation to the appropriate way to manage the disclosure of documents by the Defendants (“Apple”). The documents in question were the output of disclosure exercises which Apple had carried out previously, in proceedings in the United States and Australia (collectively, the “Repositories”).</p> <p>The parties agreed that they would each formulate proposals for search terms to be applied to the Repositories in order to identify documents relating to the issues (these searches were described as “search strings”). Apple would report on the outcome of applying the search strings to the Repositories. The parties would then meet to finalise the appropriate search strings to determine the production of documents to the Class Representative, and would apply those search strings to the Repositories, resulting in a universe of “Responsive Documents” for production to the Class Representative.</p> <p>The Tribunal declined the Class Representative’s request to require Apple to conduct a relevance review of the Responsive Documents in Repositories prior to their production. The documents in the Repositories had been subject to a relevance review which ought to be sufficient for the present purposes.</p>

Judgment	Tribunal	Subject matter
62. Apple Inc. & Others v Competition and Markets Authority [2023] CAT 21 31 March 2023	Sir Marcus Smith Michael Cutting Anna Walker CB	<p>Judgment of the Tribunal on an application by Apple Inc and others (together, the “Applicants”) for a review under section 179 of the Enterprise Act 2002 (“EA 2002”) of the decision of the Competition and Markets Authority (the “CMA”) to make a market investigation reference under section 131 EA 2002 regarding the supply of mobile browsers and mobile browser engines and the distribution of cloud gaming services through app stores on mobile devices in the UK (the “Decision”).</p> <p>On 15 June 2021, the CMA had published a market study notice entitled Market Ecosystems under section 130A EA 2002. On 14 December 2021, the CMA had issued a decision entitled Mobile Ecosystems: Notice of decision not to make a market reference under section 131 of the Enterprise Act 2002. On the same date, the CMA had issued an interim report in relation to the market study. On 10 June 2022 the CMA had published a final report, explaining the CMA’s decision to consult on a market investigation reference into the supply of mobile browsers and mobile browser engines and the distribution of cloud gaming services through app stores on mobile devices. The Decision was then taken on 22 November 2022.</p> <p>In summary, the Applicant contended that the decision was <i>ultra vires</i> because it was outside the statutory time-limits stipulated in sections 131B(4), 131B(5) and 131B(6) of the EA 2002. For the reasons given in the judgment, the Tribunal unanimously allowed the Applicants’ challenge.</p> <p>The Tribunal found that section 131A EA 2002 did apply to the Decision, as the CMA had published a market study notice, and was proposing to make a reference under section 131 EA 2002 in relation to the matter specified in the market study notice. The time limits in section 131B EA 2002 therefore applied. The CMA had failed to comply with these deadlines. The deadline for a notice of a proposed market investigation reference was 15 December 2021, whereas the CMA had published its proposal on 10 June 2022, and the deadline for the period of consultation to begin was 15 December 2021, whereas the CMA had commenced its consultation on 10 June 2022. This meant the Decision lacked the statutory pre-requisites for a valid decision, was <i>ultra vires</i>, and must be quashed.</p>

# Overall Case Activity within the period 1 April 2022 to 31 March 2023

01/04/2022 to 31/03/2023	2022/23	2021/22	2020/21	2019/20
<b>Appeals, applications and claims received of which:</b>	146	36	58	18
section 46 Competition Act 1998 <sup>1</sup>	6	10	3	1
section 47 Competition Act 1998 <sup>2</sup>	0	-	1	-
section 47A Competition Act 1998 <sup>3</sup>	122	16	45	9
section 47B Competition Act 1998 <sup>4</sup>	14	7	2	3
section 114 Enterprise Act 2002 <sup>5</sup>	1	-	3	-
section 120 Enterprise Act 2002 <sup>6</sup>	1	1	4	4
section 179 Enterprise Act 2002 <sup>7</sup>	0	1	-	-
section 192 Communication Act 2003 <sup>8</sup>	1	1	-	1
section 317 Communications Act 2003 <sup>9</sup>	0	-	-	-
section 49B Competition Act 2003 <sup>10</sup>	0	-	-	-
Section 70 Subsidy Control Act 2022 <sup>11</sup>	1	-	-	-
applications for interim relief <sup>12</sup>	0	-	-	-
<b>Applications to intervene</b>	4	7	3	3
<b>Case management conferences held</b>	49	45	23	13
<b>Hearings held (sitting days):</b>	14 (82)	10 (48)	13 (31)	13 (44)
<b>Judgments handed down of which:</b>	62	47	25	30
Judgments disposing of main issue or issues	20	18	6	11
Judgments on procedural and interlocutory matters	24	18	13	9
Judgments on ancillary matters (e.g. costs)	18	11	6	10
<b>Orders made</b>	367	237	231	137

## Notes:

1. An appeal by a party to an agreement or conduct in respect of which the CMA (or one of the other regulators with concurrent powers to apply the 1998 Act) has made an "appealable decision".
2. An appeal against an "appealable decision" made by the CMA or other regulator with concurrent powers to apply the 1998 Act and made by a third party with a sufficient interest in the decision not otherwise entitled to appeal the decision pursuant to section 46 of the 1998 Act.
3. A claim for damages or any other claim for a sum of money or, in proceedings in England, Wales or Northern Ireland, a claim for an injunction by a person who has suffered loss or damage as a result of an infringement or an alleged infringement of the 1998 Act or of EU competition law (if prior to 31 January 2020).
4. Proceedings brought before the Tribunal combining two or more claims to which section 47A applies (collective proceedings).
5. An appeal by a person on whom a penalty has been imposed pursuant to section 110(1) or (3) of the 2002 Act
6. An application by "any person aggrieved" by a decision of the CMA or the Secretary of State in connection with a reference or possible reference in relation to a relevant merger situation or special merger situation under the 2002 Act.
7. An application by "any person aggrieved" by a decision of the CMA or the Secretary of State in connection with a market investigation reference or possible market investigation reference under the 2002 Act.
8. An appeal by "a person affected" by a decision of OFCOM or of the Secretary of State in relation to matters concerning telecommunications and data services in the UK.
9. An appeal by "a person affected" by a decision of OFCOM to exercise its Broadcasting Act power for a competition purpose (pursuant to Section 317 of the 2003 Act).
10. Proceedings brought before the Tribunal for approval of a collective settlement where a collective proceedings order has not been made.
11. An appeal made in respect of decisions made by public authorities to give a subsidy or make a subsidy scheme.
12. Applications for interim relief pursuant to Rule 24 of the Tribunal Rules 2015.

# Accounts 2022/2023



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# Accountability Report of the Tribunal and CS for the year ended 31/03/2023

## Report of the Accounting Officer

In law, the Tribunal and the CS are two separate bodies. In practice, the CS provides the means by which the Tribunal manages itself: the CS's entire staff, premises and other resources being fully deployed in the daily work of the Tribunal.

The Tribunal's membership comprises: the President, Sir Marcus Smith; the members of the panel of Chairs; the members of the panel of Ordinary Members; and the Registrar, Charles Dhanowa.

The President, the Registrar, and other non-executive members appointed by the Secretary of State constitute the membership of the CS; they constitute its Board, whose function is to ensure the funding and provision of support services to the Tribunal. Currently, there are two non-executive members, Jeremy Mayhew (who also chairs the CS Audit and Risk Assurance Committee) and Ben Tidswell (a Tribunal Chair).

The CS maintains a Register of Interests detailing any directorships or other significant interests held by CS Board members. This is published on the Tribunal's website.

The work of the Tribunal/CS is financed entirely through grant-in-aid from DBT and administered by the CS. The Registrar is the Accounting Officer and is responsible for the proper use of these funds.

## Statement of the board and Accounting Officer's responsibilities in respect of the Tribunal and the CS

Under Paragraph 12 of Schedule 3 of the Enterprise Act 2002 (2002 Act), the CS is required to prepare a statement of accounts for the Tribunal and the CS for each financial year. Each set of accounts is prepared on an accruals basis and it must give a true and fair view of: a) the state of affairs of the Tribunal and the CS at the year end; and b) operating costs, cash flows and total recognised gains and losses for the financial year.

In preparing the accounts for the Tribunal and the CS, the CS is required to:

- observe the accounts directions issued by the Secretary of State, including relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed and disclose and explain any material departures in the financial statements; and
- prepare the financial statements on a going concern basis.

The Accounting Officer for DBT has designated the Registrar of the Tribunal as Accounting Officer for both the Tribunal and the CS (the Accounting Officer). The responsibilities of the Accounting Officer (which include responsibility for the propriety and regularity of the public finances and for the keeping of proper records) are set out in the Accounting Officer's Memorandum issued by HM Treasury and published in "Managing Public Money".



## Disclosure of relevant audit information

So far as the Accounting Officer is aware:

- there is no relevant audit information of which the Tribunal/CS's external auditors are unaware;
- the Accounting Officer has, to the best of his knowledge, taken all the steps that he ought to have taken to make himself aware of any relevant audit information and to ensure that the Tribunal/CS's external auditors are aware of that information; and
- this annual report and accounts, as a whole, is fair, balanced and understandable. The Accounting Officer takes personal responsibility for this annual report and accounts and the judgement required for determining that it is fair, balanced and understandable.

## Governance Statement

The Governance Statement is intended to provide a clear picture of the structure of control systems in place in the Competition Service for the management of risk. The Accounting Officer has been assisted in this by the Competition Service Board and the Audit and Risk Assurance Committee to which reports and updates are regularly made.

The Accounting Officer has ensured that a system of governance and internal controls is in place to support the delivery of the Tribunal's statutory functions, whilst safeguarding the public funds and departmental assets for which he is responsible. He is directly responsible to the DBT Accounting Officer and, ultimately, to Parliament.

## Competition Appeal Tribunal/Competition Service Governance Framework

The Competition Service Board is responsible for taking forward the statutory responsibilities and strategic objectives of the Competition Service to support the Competition Appeal Tribunal and monitoring performance of the tasks in the Business Plan. Formal membership of the Board comprises the following:

• President of the Competition Appeal Tribunal (Chair)	Sir Marcus Smith
• Registrar of the Competition Appeal Tribunal	Charles Dhanowa OBE KC (Hon)
• Independent Non-Executive Member	Jeremy Mayhew OBE
• Non-Executive Member	Ben Tidswell

The President, Registrar and Ben Tidswell have a detailed knowledge of the working of the Tribunal and the CS, whilst Jeremy Mayhew provides the Board with wider knowledge and experience of strategic organisational and corporate governance matters.

The Board met on four occasions during the year 2022-2023, at which all members were in attendance, and when reports and updates on the Tribunal's workload, financial and administrative matters and the work of the Audit and Risk Assurance Committee were reviewed and discussed. The Minutes of CS Board meetings are published on the Tribunal's website.

The Competition Service Audit and Risk Assurance Committee (ARAC) is a sub-committee of the CS Board and is responsible for providing independent advice, support and assurance to the CS Board and Accounting Officer on governance arrangements, financial matters and, risk assessment and mitigation. Membership of the committee comprises the following:

• CS Board Non-Executive Member (Chair)	Jeremy Mayhew OBE
• CS Board Non-Executive Member	Ben Tidswell
• CS ARAC Member	Sir Iain McMillan CBE FRSE DL
• CS ARAC Member	Timothy Sawyer CBE

The membership of the committee includes two Ordinary Members of the CAT with considerable Audit Committee experience. In addition, representatives from the DBT Sponsor Team and the internal and external auditors (the Government Internal Audit Agency (GIAA) and the National Audit Office (NAO) respectively) provide advice and guidance on risk management, governance and accountability issues to ensure that the CS properly accounts for and uses its financial resources effectively and efficiently.

The Committee met on four occasions this year, to review the financial performance of the Tribunal/CS and to examine the Annual Report and Accounts prior to publication.

At each meeting, committee members and auditors are offered the opportunity of a 'closed session' without CS staff present so that management performance can be discussed.

## Board's Performance/Review of Effectiveness

The Accounting Officer is responsible for reviewing the effectiveness of the CS's governance, risk management and internal control systems and their compliance with the HM Treasury/Cabinet Office "Code of Good Practice".

The review is informed by the work of the internal auditors and the relevant CS managers, advice from the ARAC and external auditors' reports. The review is also informed by the CS Board's review of its own effectiveness, which is carried out on an annual basis.

The Accounting Officer's overall conclusion is that the CS has established a solid and resilient governance structure and put in place a range of supporting management systems and processes. Periodic review takes place to ensure that any new emerging issues are dealt with promptly.

## Account of Corporate Governance

The CS has a clear strategy which is focused on the delivery of its statutory requirement, to fund and provide support services to the CAT. This strategy is implemented through the CS Business Plan, which is produced annually, approved by the CS Board and copied to DBT for awareness. The plan includes key business objectives for the year and is published on the CAT's website.

Quarterly Grant-in-Aid requests provide DBT with detailed information on the CS's financial position. In addition, members of the CS's senior management team meet DBT at regular intervals during the year to discuss governance matters, priorities, challenges and financial information.

The majority of CS contractors are selected from the Crown Commercial Service (CCS), an executive agency sponsored by the Cabinet Office, that provides centralised commercial and procurement services to the Government and the UK public sector.

The internal auditor's report on the adequacy and effectiveness of the CS's systems of internal control provides recommendations for improvement to senior management who undertake to respond within agreed timescales. As stated above, internal audit services are provided by the GIAA and their work complies with Public Sector Internal Audit Standards.

## Data Quality

The CS operates management, information and accounting systems, which provide accurate data to enable it to review its financial and non-financial progress against its budget and annual business plan in a timely and effective manner.

## Risk and internal control framework

The CS ensures that risks are dealt with in an appropriate and proportionate manner, in accordance with relevant aspects of best practice in corporate governance. A Risk Register is maintained, which articulates the major strategic, financial, security/fraud, reputational and operational risks faced by the CAT/CS. The associated risk profile refers to the threats to which the organisation is exposed. The register is managed and kept under regular assessment by the Registrar and the Director of Operations, supported by input/mitigation plans from the nominated Risk Owners. It is reviewed at each ARAC meeting. There have been no new major risks identified during the period and no significant lapses of protective security.

# Remuneration and Staff Report for the Tribunal and the CS for the year ended 31/03/2023

## Remuneration policy

The remuneration of the President and the Registrar is determined by the Secretary of State under Schedule 2 of the 2002 Act.

The President is a High Court Judge and his salary is set at the applicable level in the judicial salaries list. There was a 3% increase applied to the President's salary for 2022/23. The President's salary is paid by the Ministry of Justice (MoJ) and invoiced to the CS.

The salary of the Registrar is linked to Group 7 of the judicial salaries scale as determined by the Secretary of State. For 2022/23, the salary of the Registrar was also increased by 3%.

The salary costs of the President are charged to the Tribunal's Statement of Comprehensive Net Expenditure. The salary costs of the Registrar are charged to the CS's Statement of Comprehensive Net Expenditure.

Fee-paid Tribunal Chairs (i.e. those Tribunal Chairs who do not hold full-time judicial office) are remunerated at a rate of £600 per day (2021/22: £600 per day), a rate which was set at the inception of the Tribunal in 2003. Ordinary Members are remunerated at a rate of £400 per day (2021/22: £400 per day). The cost of remuneration of fee-paid Tribunal Chairs and Ordinary Members is charged to the Tribunal's Statement of Comprehensive Net Expenditure.

The two non-executive Members of the CS are remunerated at a per diem rate of £400 (2021/22: £350 per day, the rate that had prevailed since 2003, and which was increased to £400 w.e.f. September 2020), as determined by the Secretary of State pursuant to Schedule 3 of the 2002 Act. The remuneration costs of the two CS Members are charged to the CS's Statement of Comprehensive Net Expenditure.

The following sections provide details of the contracts, remuneration and pension interests of the President, Registrar and Members of the CS.

## CS contracts

The President is appointed by the Lord Chancellor under Schedule 2 of the 2002 Act. The Registrar is appointed by the Secretary of State pursuant to section 12(3) of the 2002 Act. The Registrar's appointment must satisfy the requirements of Rule 5 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648).

The two Members of the CS are appointed by the Secretary of State under Schedule 3 of the 2002 Act. Their appointments carry no right of pension, gratuity or allowance on their termination.

## Remuneration (audited)

### Gender Demographics

	Male	Female	Remarks
CS Board Directors	3	0	President, Independent Non Executive Director, CS Board Member
CS Board Director (SCS)	1	0	Registrar
Chairs (Fee paid)	4	1	
Ordinary Members	16	4	
CS Staff	11	10	
<b>Total</b>	<b>35</b>	<b>15</b>	

### Single total figure of remuneration (Tribunal)

The President is in-scope of the McCloud remedy, therefore the default option for a member to choose in the McCloud immediate choice exercise is that members will return to Judicial Pensions Retirement Act (JUPRA) 1993 scheme for pre 2022 accrual. The pension disclosure for 2021/22 for the President is in the JUPRA 1993 scheme and for 2022/23 is in the Judicial Pension Scheme (JPS) 2022 scheme.

### Judicial Pensions Retirement Act (in respect of period of service 5 November 2021 to 31 March 2022) – JUPRA 1993 Scheme

	Salary (£'000)		Pension benefits (to nearest £'000)		Total (£'000)	
	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22
President	0	75-80	-3	39	-3	115-120
		190 – 195 (FTE)				

### Judicial Pension Scheme 2022 (in respect of service for 2022/23) – JPS 2022 Scheme

	Salary (£'000)		Pension benefits (to nearest £'000)		Total (£'000)	
	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22
President	195 – 200	0	98	0	295 – 300	0

## Single total figure of remuneration (CS)

	Salary (£'000)		Non-Consolidated Award (£'000)		Pension benefits (to nearest £'000)		Total (£'000)	
	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22
Registrar (Highest Paid Officer)	120 – 125	115 – 120	5 – 10	5 – 10	-44	-12	80 – 85	110 – 115

	Fees (£'000)		Non-Consolidated Award (£'000)		Pension benefits (to nearest £'000)		Total (£'000)	
	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22	2022/23	2021/22
Peter Freeman	0 – 5	5 – 10	0	0	0	0	0 – 5	5 – 10
Jeremy Mayhew	5 – 10	0 – 5	0	0	0	0	5 – 10	0 – 5
Ben Tidswell	0 – 5	0	0	0	0	0	0 – 5	0

## Pay multiples (audited)

Reporting bodies are required to disclose the relationship between the remuneration of the highest paid officer in their organisation and the median remuneration of the organisation's workforce. For 2022/23 and 2021/22 as required by HM Treasury guidance, the mid- point of the banded remuneration of the highest paid officer has been used.

In 2022/23, the fair pay ratio was 2.23 (2021/22: 2.42); this ratio excludes pension. In the year ended 31 March 2023, remuneration ranged from £26,750 to £125,000 – £130,000 (2021/22: £25,000 to £120,000 – £125,000).

Total remuneration includes salary, non-consolidated performance-related pay and benefits in kind. It does not include severance payments, employer pension contributions and cash equivalent transfer value of pensions. The non-consolidated awards reported in 2022/23 and 2021/22 relate to project work completed in those years. The non-consolidated performance-related pay for 2022/23 (not paid pending pay flexibility pay remit approval) and 2021/22 is based on performance reports from financial years 2021/22 and 2020/21 respectively.

The table below shows the ratios between the highest paid officer's remuneration and the pay and benefits of the employee at the 25th percentile, the median and the 75th percentile.

	2022/23			2021/22		
	Total pay & benefits (£)	Salary (£)	Pay ratio	Total pay & benefits (£)	Salary (£)	Pay ratio
25 <sup>th</sup> percentile	38,500	36,000	3.31:1	31,463	29,500	3.89:1
Median	57,125	55,400	2.23:1	50,625	49,000	2.42:1
75 <sup>th</sup> percentile	70,000	70,000	1.82:1	65,263	64,300	1.88:1

There have been decreases in the pay ratios at the 25th percentile, the median and the 75th percentile ratios and an increase in the total pay and allowances. These differences are attributable to an increase in the number of staff workforce in 2022/23, the 2022/23 pay award which resulted in the

total pay and allowances at the 25th percentile, median and 75th percentile all being higher than 2021/22.

## Percentage change in pay (audited)

There has been a 3% increase to salary and performance pay and bonuses but no changes to allowances for the highest paid officer, from 2021/22.

There has been an average percentage increase to salary and allowances of 10.44% since 2021/22 for all employees, excluding the highest paid officer, mainly due to additional staff at higher grade than 2021/22 and pay increases for the legal staff based on rates in the public sector for similar roles.

The change to salary and allowances is as a result of the increase in number of people employed across grades A2, G6 equivalent, which has increased the average salary.

There has been an average percentage decrease of 8.05% to performance pay and bonuses.

The decrease in performance pay and bonuses is due to new joiners during the year who were not eligible for performance pay and bonuses.

On the basis that fee-paid Tribunal Chairs and Ordinary Members are only paid when engaged in Tribunal work and the two Members of the CS are paid on an ad-hoc basis, they are excluded from the calculation above.

Members of the CS are remunerated at the rate of £400 (2021/22: £400 per day).

## Benefits in kind

The CS does not provide any allowances or benefits in kind to the President, Registrar and its Members.

## Pensions applicable to the Tribunal and the CS

### Judicial pensions

The Judicial Pensions Scheme (JPS) is an unfunded public service scheme, providing pensions and related benefits for members of the judiciary. Participating judicial appointing or administering bodies make contributions known as Accruing Superannuation Liability Charges (ASLCs) to cover the expected cost of benefits under the JPS. ASLCs are assessed regularly by the Scheme's Actuary, the Government Actuary's Department (GAD).

Eligible judges could accrue pension benefits under a number of different pension schemes: the JUPRA 1993, the Fee-Paid Judicial Pension Scheme (FPJPS) 2017, the New Judicial Pension Scheme (NJPS) 2015. However, from 31 March 2022, these schemes closed to future accrual.

JPS 2022 was established under the Public Service Pensions Act 2013, with the rules of the scheme set out in the Judicial Pensions Regulations 2022.

From 1 April 2022 it is the only scheme in which eligible judges are able to accrue benefits for future service. JPS 2022 is a tax-unregistered pension scheme. This means that the annual allowance and the lifetime allowance do not apply. The annual allowance is the limit on the amount that you can save into your pension each year while still receiving tax relief. The lifetime allowance is the limit on the amount of pension benefits that can be built up in pension schemes. Member contributions to the scheme will also not receive any tax relief.

The contribution rate for financial year 2022/23 has been assessed at 51.35 per cent of the relevant judicial salary. This includes an element of 0.25 per cent as a contribution towards the administration

costs of the scheme. Details of the Resource Accounts of the Ministry of Justice (MOJ) JPS can be found on the MOJ's website.

Further eligible judicial offices were added to the scheme with effect from 1 April 2021 by the Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2021, to include the Tribunal. All the current six Tribunal fee-paid Chairs have opted into the judicial pension. Pension contributions deductions commenced from 1 October 2021 to the JPS.

The Judicial Pension Scheme 2015 (JPS 2015), which came into effect on 1 April 2015, applies to all new members appointed from that date onwards and to those members and fee-paid judicial office-holders who are currently in service and who do not have transitional protection to allow them to continue as a member in the previous scheme. Four fee-paid Tribunal Chairs have opted into the JPS 2015.

Provisions for historic employer contributions from the date of appointment of 51.35 per cent and long service award of 2.25 times of pension and 45 percent tax thereon have been made for the fee-paid Chairs eligible for the Fee Paid Judicial Pension Scheme (FPJPS).

All the current six Tribunal fee-paid Chairs moved to the JPS 2022 scheme, a non tax registered scheme from 1 April 2022.

The majority of terms of the judicial pension arrangements are set out in (or in some cases are analogous to) the provisions of two Acts of Parliament: the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993.

## Civil Service pensions

Staff pension benefits are provided through the Civil Service pension arrangements. From 1 April 2015 a new pension scheme for civil servants was introduced – the Civil Servants and Others Pension Scheme or alpha, which provides benefits on a career average basis with a normal pension age equal to the member's State Pension Age (or 65 if higher). From that date all newly appointed civil servants and the majority of those already in service joined alpha. Prior to that date, civil servants participated in the Principal Civil Service Pension Scheme (PCSPS). The PCSPS had four sections: three providing benefits on a final salary basis (classic, premium, or classic plus) with a normal pension age of 60; and one providing benefits on a whole career basis (nuvos) with a normal pension age of 65.

These statutory arrangements are unfunded with the cost of benefits met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus, nuvos and alpha are increased annually in line with Pensions Increase legislation. Existing members of the PCSPS who were within 10 years of their normal pension age on 1 April 2012 remained in the PCSPS after 1 April 2015. Those who were between 10 years and 13 years and 5 months from their normal pension age on 1 April 2012 switched into alpha sometime between 1 June 2015 and 1 February 2022. Because the Government plans to remove discrimination identified by the courts in the way that the 2015 pension reforms were introduced for some members, it is expected that, in due course, eligible members with relevant service between 1 April 2015 and 31 March 2022 may be entitled to different pension benefits in relation to that period (and this may affect the Cash Equivalent Transfer Values shown in this report – see below). All members who switch to alpha have their PCSPS benefits 'banked', with those with earlier benefits in one of the final salary sections of the PCSPS having those benefits based on their final salary when they leave alpha. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the two schemes.) Members joining from October 2002 may opt for either the appropriate defined benefit arrangement or a defined contribution (money purchase) pension with an employer contribution (partnership pension account).

Employee contributions are salary-related and range between 4.6% and 8.05% for members of classic, premium, classic plus, nuvos and alpha. Benefits in classic accrue at the rate of 1/80th of final



pensionable earnings for each year of service. In addition, a lump sum equivalent to three years initial pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum. Classic plus is essentially a hybrid with benefits for service before 1 October 2002 calculated broadly as per classic and benefits for service from October 2002 worked out as in premium. In nuvos a member builds up a pension based on their pensionable earnings during their period of scheme membership. At the end of the scheme year (31 March) the member's earned pension account is credited with 2.3% of their pensionable earnings in that scheme year and the accrued pension is uprated in line with Pensions Increase legislation. Benefits in alpha build up in a similar way to nuvos, except that the accrual rate is 2.32%. In all cases members may opt to give up (commute) pension for a lump sum up to the limits set by the Finance Act 2004.

The partnership pension account is an occupational defined contribution pension arrangement which is part of the Legal & General Mastertrust. The employer makes a basic contribution of between 8% and 14.75% (depending on the age of the member). The employee does not have to contribute, but where they do make contributions, the employer will match these up to a limit of 3% of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.5% of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach pension age, or immediately on ceasing to be an active member of the scheme if they are already at or over pension age. Pension age is 60 for members of classic, premium, and classic plus, 65 for members of nuvos, and the higher of 65 or State Pension Age for members of alpha. (The pension figures quoted for officials show pension earned in PCSPS or alpha – as appropriate. Where the official has benefits in both the PCSPS and alpha the figure quoted is the combined value of their benefits in the two schemes, but note that part of that pension may be payable from different ages.)

Further details about the Civil Service pension arrangements can be found at the website: [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk)

## Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies.

The figures include the value of any pension benefit in another scheme or arrangement which the member has transferred to the Civil Service pension arrangements. They also include any additional pension benefit accrued to the member as a result of their buying additional pension benefits at their own cost.

CETVs are worked out in accordance with The Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008 and do not take account of any actual or potential reduction to benefits resulting from Lifetime Allowance Tax which may be due when pension benefits are taken.

For the President, a member of the JPS, the pension figure shown below relates to the benefits that the post holder has accrued since being appointed as President of the Tribunal in November 2021. For the Registrar, a member of the PCSPS, the pension figure shown below relates to the benefits that the individual has accrued as a consequence of his entire membership to the pension scheme, not just his service in the senior capacity to which disclosure applies.

## Real increase in CETV (audited)

The real increase in CETV reflects the increase in CETV that is funded by the employer. It does not include the increase in accrued pension due to inflation or contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation and other actuarial factors for the start and end of the period.

### President's pension benefits (Tribunal)

The President is a member of the JPS. For 2022/23, employer contributions of £102,000 (5 November 2021 to 31 March 2022: £40,000) were paid to the JPS at a rate of 51.35 per cent of pensionable pay. The member has previous service as a fee paid judge from 2009 to 2017 which could put the member in scope for the McCloud remedy. The default option for a member to choose in the McCloud immediate choice exercise is that members will return to JUPRA 1993 for pre 2022 accrual. The member's potential benefit accrual and CETV have been calculated assuming that they have only accrued pension benefits under the JUPRA 1993 for the period from 5 November 2021 to 31 March 2022. Benefits accrued after 31 March 2022 are assumed to be in the JPS 2022 Scheme.

The following part of the Remuneration Report has been audited.

### Judicial Pensions Retirement Act (in respect of period of service 5 November 2021 to 31 March 2022) – JUPRA 1993

President	Accrued pension as at 31 March 2023 and related lump sum £'000	Real increase in pension and related lump sum as at 31 March 2023 £'000	CETV at 31 March 2023 £'000	CETV from 5 November 2021 as at 31 March 2022 £'000	Real increase in CETV £'000
Pension	0 – 2.5	0	36	34	-2*
Lump sum	2.5 – 5	0			

\* Taking account of inflation, the CETV funded by the employer has decreased in real terms.

### Judicial Pension Scheme 2022 – JPS 2022

President	Accrued pension as at 31 March 2023 and related lump sum £'000	Real increase in pension and related lump sum as at 31 March 2022 £'000	CETV at 31 March 2023 £'000	CETV from 5 November 2021 as at 31 March 2022 £'000	Real increase in CETV £'000
Pension	0 – 5	2.5 – 5	80	0	70
Lump sum	0	0			

JPS 2022 does not offer automatic lump sum.

### Registrar's pension benefits (CS)

The Registrar's pension benefits are provided through the Civil Service Pension arrangements. For 2022/23, employer contributions of £37,000 (2021/22: £36,000) were paid to the PCSPS at a rate of 30.3 per cent (2020/21: 30.3 per cent) of pensionable pay.

The following part of the Remuneration Report has been audited.

Registrar	Accrued pension as at 31 March 2023 and related lump sum £'000	Real increase in pension and related lump sum as at 31 March 2023 £'000	CETV at 31 March 2023 £'000	CETV at 31 March 2022 £'000	Real increase in CETV* £'000
Pension	60 – 65	0	1,384	1,331	-59
Lump sum	170 – 175	0			

\* Final salary member (classic/classic plus/premium) who has transitioned to alpha. The final salary pension of a person in employment is calculated by reference to their pay and length of service. The pension will increase from one year to the next by virtue of any pay rise during the year. Where there is no or a small pay rise, the increase in pension due to extra service may not be sufficient to offset the inflation increase – that is, in real terms, the pension value can reduce, hence the negative values.

## Staff Report (audited)

### Tribunal

- (a) Remuneration costs for the fee-paid Tribunal Chairs are shown in the table below. Pension contributions commenced to the JPS from 1 October 2021 and provisions were made from date of joining to 30 September 2021 for historic contributions.

	Fees 2022/23 £	Employer Pension contributions 2022/23* £	Fees 2021/22 £	Employer Pension contributions 2021/22* £
Heriot Currie QC*, **	0	0	0	0
Peter Freeman CBE, KC (Hon)*, ***	0	0	10,500	5,392
Andrew Lenon KC*	54,645	28,060	22,884	11,751
Bridget Lucas KC*	37,557	20,265	30,343	14,602
Hodge Malek KC*	13,478	6,921	17,844	8,967
Benjamin Tidswell*, ****	38,150	19,590	14,287	7,336
Justin Turner KC*	9,943	5,106	4,072	2,091
Andrew Young KC*, *****	321	88	3,472	1,860

\* In 2021/22, Heriot Currie opted out of JPS; Peter Freeman and Andrew Lenon contributed to the FPJPS 2017; transitional protection allowance was paid to Hodge Malek; Bridget Lucas, Ben Tidswell, Justin Turner and Andrew Young contributed to the JPS 2015.

\*\* Heriot Currie deceased – 20 April 2021.

\*\*\* In 2021/22, Peter Freeman retired as fee-paid Chairman on 31 July 2021.

\*\*\*\* In 2021/22, Ben Tidswell was newly appointed fee-paid Chairman on 1 August 2021.

\*\*\*\*\* In 2022/23, Andrew Young was appointed Court of Session judge on 16 May 2022.

Fee-paid Tribunal Chairs are remunerated at a rate of £600 per day (2021/22: £600 per day) or pro rata. Salary costs of those Judges who hold full-time judicial office and have been appointed or nominated to sit as Tribunal Chairs are paid by the MOJ (in respect of Judges of the High Court of England and Wales), the Supreme Courts of Scotland (in respect of Judges of the Court of Session), or the Northern Ireland Courts and Tribunals Service (in respect of Judges of the High Court of Justice in Northern Ireland).

- (b) Ordinary Members are remunerated at a rate of £400 per day (2021/22: £400 per day). Total remuneration of £225,323 paid to Ordinary Members in 2022/23 (2021/22: £184,609) is included in the table in note (d) below.
- (c) In 2022/23, there were no benefits in kind paid to fee-paid Chairs, so no tax was payable. The Tribunal has an agreement with the HMRC allowing the Tribunal to claim tax relief under s.338, for travel from a members' home to the Tribunal's premises, where the members spend less than 40% of their working time at Tribunal's premises, thereby classing that location as temporary and home as the permanent workplace. In 2021/22, benefits in kind (travel and subsistence) of £84 were paid for Andrew Lenon and £1,150 were paid to Andrew Young, but no tax was payable.
- (d) The total cost of Tribunal Members' remuneration is shown in the table below.

	2022/23 £'000	2021/22 £'000
Members' remuneration (including the President, fee-paid Chairs and Ordinary Members)	577	481
Social security costs	71	56
Pension contributions for the President	102	99
Pension contributions and transitional protection allowance for fee-paid Chairs	202	388
<b>Total Members' remuneration</b>	<b>952</b>	<b>1,024</b>

## CS

- (a) Staff costs are shown in the table below. No temporary staff were employed in the year.

	Total 2022/23 £'000	Total 2021/22 £'000
Wages and salaries	1,142	910
Social security costs	138	106
Other pension costs	307	247
<b>Total employee costs</b>	<b>1,587</b>	<b>1,263</b>

- (b) The average number of staff employed during the year (full-time and part-time) was 20 (2021/22: 17), including the Registrar of the Tribunal.
- (c) One member of staff is a SCS equivalent.
- (d) The Tribunal/CS operates a fair recruitment policy which is based on merit and open to all, including those with a disability.

## Parliamentary Accountability Report (audited)

In 2022/23, there were no exit packages.

In 2022/23, there were no losses, special payments or remote contingent liability.

**Charles Dhanowa OBE, KC (Hon)**  
Registrar and Accounting Officer  
20 March 2024

# Tribunal's Audit Report

## The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

### Opinion on financial statements

I certify that I have audited the financial statements of the Competition Appeal Tribunal for the year ended 31 March 2023 under the Enterprise Act 2002.

The financial statements comprise the Competition Appeal Tribunal

- Statement of Financial Position as at 31 March 2023;
- Statement of Comprehensive Net Expenditure, Statement of Cash Flows and Statement of Changes in Taxpayers' Equity for the year then ended; and
- the related notes including the significant accounting policies.

The financial reporting framework that has been applied in the preparation of the financial statements is applicable law and UK adopted International Accounting Standards.

In my opinion, the financial statements:

- give a true and fair view of the state of the Competition Appeal Tribunal affairs as at 31 March 2023 and its net operating cost for the year then ended; and
- have been properly prepared in accordance with the and Secretary of State directions issued thereunder.

### Opinion on regularity

In my opinion, in all material respects, the income and expenditure recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

### Basis for opinions

I conducted my audit in accordance with International Standards on Auditing (UK) (ISAs UK), applicable law and Practice Note 10 *Audit of Financial Statements and Regularity of Public Sector Bodies in the United Kingdom (2022)*. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my certificate.

Those standards require me and my staff to comply with the Financial Reporting Council's Revised Ethical Standard 2019. I am independent of the Competition Appeal Tribunal in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK. My staff and I have fulfilled our other ethical responsibilities in accordance with these requirements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Conclusions relating to going concern

In auditing the financial statements, I have concluded that the Competition Service's use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the Competition Appeal Tribunal's ability to continue as a going concern for a period of at least twelve months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the Accounting Officer with respect to going concern are described in the relevant sections of this certificate.

The going concern basis of accounting for the Competition Appeal Tribunal is adopted in consideration of the requirements set out in HM Treasury's Government Financial Reporting Manual, which require entities to adopt the going concern basis of accounting in the preparation of the financial statements where it is anticipated that the services which they provide will continue into the future.

## Other Information

The other information comprises the information included in the Annual Report, but does not include the financial statements nor my auditor's certificate. The Accounting Officer is responsible for the other information.

My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my certificate, I do not express any form of assurance conclusion thereon.

My responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

I have nothing to report in this regard.

## Opinion on other matters

In my opinion the part of the Remuneration and Staff Report to be audited has been properly prepared in accordance with Secretary of State directions issued under the Enterprise Act 2002.

In my opinion, based on the work undertaken in the course of the audit:

- the parts of the Accountability Report subject to audit have been properly prepared in accordance with Secretary of State directions made under the Enterprise Act 2002; and
- the information given in the Performance and Accountability Reports for the financial year for which the financial statements are prepared is consistent with the financial statements and is in accordance with the applicable legal requirements.

## Matters on which I report by exception

In the light of the knowledge and understanding of the Competition Appeal Tribunal and its environment obtained in the course of the audit, I have not identified material misstatements in the Statutory Other Information.

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- Adequate accounting records have not been kept by Competition Appeal Tribunal or returns adequate for my audit have not been received from branches not visited by my staff; or
- I have not received all of the information and explanations I require for my audit; or
- the financial statements and the parts of the Accountability Report subject to audit are not in agreement with the accounting records and returns; or
- certain disclosures of remuneration specified by HM Treasury's Government Financial Reporting Manual have not been made or parts of the Remuneration and Staff Report to be audited is not in agreement with the accounting records and returns; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

## Responsibilities of the Accounting Officer for the financial statements

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for:

- maintaining proper accounting records;
- providing the C&AG with access to all information of which management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;
- providing the C&AG with additional information and explanations needed for his audit;
- providing the C&AG with unrestricted access to persons within the Competition Appeal Tribunal from whom the auditor determines it necessary to obtain audit evidence;
- ensuring such internal controls are in place as deemed necessary to enable the preparation of financial statement to be free from material misstatement, whether due to fraud or error;
- ensuring that the financial statements give a true and fair view and are prepared in accordance with Secretary of State directions made under the Enterprise Act 2002;
- ensuring that the annual report, which includes the Remuneration and Staff Report, is prepared in accordance with Secretary of State directions directions made under Enterprise Act 2002; and
- assessing the Competition Services ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Accounting Officer anticipates that the services provided by the Competition Appeal Tribunal will not continue to be provided in the future.

## Auditor's responsibilities for the audit of the financial statements

My responsibility is to audit, certify and report on the financial statements in accordance with the Enterprise Act 2002.

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue a certificate that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

## **Extent to which the audit was considered capable of detecting non-compliance with laws and regulations including fraud**

I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of non-compliance with laws and regulations, including fraud. The extent to which my procedures are capable of detecting non-compliance with laws and regulations, including fraud is detailed below.

### **Identifying and assessing potential risks related to non-compliance with laws and regulations, including fraud**

In identifying and assessing risks of material misstatement in respect of non-compliance with laws and regulations, including fraud, I:

- considered the nature of the sector, control environment and operational performance including the design of the Competition Service's accounting policies, key performance indicators and performance incentives.
- inquired of management, the Competition Services head of internal audit and those charged with governance, including obtaining and reviewing supporting documentation relating to the Competition Appeal Tribunal's policies and procedures on:
  - identifying, evaluating and complying with laws and regulations;
  - detecting and responding to the risks of fraud; and
  - the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations including the Competition Appeal Tribunal's controls relating to the Competition Service's compliance with the Enterprise Act 2002 and Managing Public Money
- inquired of management, the Competition Appeal Tribunal's head of internal audit and those charged with governance whether:
  - they were aware of any instances of non-compliance with laws and regulations;
  - they had knowledge of any actual, suspected, or alleged fraud;
- discussed with the engagement team regarding how and where fraud might occur in the financial statements and any potential indicators of fraud.

As a result of these procedures, I considered the opportunities and incentives that may exist within the Competition Appeal Tribunal for fraud and identified the greatest potential for fraud in the following areas: revenue recognition, posting of unusual journals, complex transactions and bias in management estimates. In common with all audits under ISAs (UK), I am also required to perform specific procedures to respond to the risk of management override.

I obtained an understanding of the Competition Appeal Tribunal's framework of authority and other legal and regulatory frameworks in which the Competition Appeal Tribunal operates. I focused on those laws and regulations that had a direct effect on material amounts and disclosures in the financial statements or that had a fundamental effect on the operations of the Competition Service. The key laws and regulations I considered in this context included Enterprise Act 2002, Managing Public Money, employment law, pensions legislation and tax Legislation

### **Audit response to identified risk**

To respond to the identified risks resulting from the above procedures:



- I reviewed the financial statement disclosures and testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described above as having direct effect on the financial statements;
- I enquired of management, the Audit and Risk Committee concerning actual and potential litigation and claims;
- I reviewed minutes of meetings of those charged with governance and the Board and internal audit reports;
- in addressing the risk of fraud through management override of controls, I tested the appropriateness of journal entries and other adjustments; assessed whether the judgements on estimates are indicative of a potential bias; and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business; and

I communicated relevant identified laws and regulations and potential risks of fraud to all engagement team members including and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

A further description of my responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at: [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my certificate.

## Other auditor's responsibilities

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control I identify during my audit.

## Report

I have no observations to make on these financial statements.

**Gareth Davies**  
Comptroller and Auditor General  
  
National Audit Office  
157-197 Buckingham Palace Road  
Victoria  
London  
SW1W 9SP

20 March 2024

# Tribunal's Statement of Comprehensive Net Expenditure for the year ended 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
Members' remuneration costs	3(b)	(952)	(1,024)
Other operating charges	4(a)	(268)	(68)
<b>Total expenditure</b>		<b>(1,220)</b>	<b>(1,092)</b>
<b>Net Expenditure for the financial year</b>		<b>(1,220)</b>	<b>(1,092)</b>

There is no other comprehensive net expenditure. The notes on pages 75 to 79 form part of these accounts.

# Tribunal's Statement of Financial Position as at 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
<b>Non current assets:</b>			
Trade receivables and other receivables	5	563	457
<b>Total non current assets</b>		<b>563</b>	<b>457</b>
<b>Current assets:</b>			
Trade receivables and other receivables	5	790	555
<b>Total current assets</b>		<b>790</b>	<b>555</b>
<b>Total assets</b>		<b>1,353</b>	<b>1,012</b>
<b>Current liabilities:</b>			
Trade payables and other payables	6	(659)	(555)
Provisions	7(b)	(131)	–
<b>Total current liabilities</b>		<b>(790)</b>	<b>(555)</b>
<b>Total assets less current liabilities</b>		<b>563</b>	<b>457</b>
<b>Non current liabilities:</b>			
Provisions	7(b)	(163)	(132)
Other liabilities	7(c)	(400)	(325)
<b>Total non current liabilities</b>		<b>(563)</b>	<b>(457)</b>
<b>Assets less liabilities</b>		<b>–</b>	<b>–</b>
<b>Taxpayers' equity:</b>			
General fund		–	–
<b>Total taxpayers' equity</b>		<b>–</b>	<b>–</b>

The notes on pages 75 to 79 form part of these accounts.

**Charles Dhanowa OBE, KC (Hon)**

Registrar and Accounting Officer

20 March 2024

## Tribunal's Statement of Cash Flows for the year ended 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
<b>Cash flows from operating activities:</b>			
Net expenditure		(1,220)	(1,092)
(Increase)/decrease in trade and other receivables	5	(341)	(785)
Increase/(decrease) in trade and other payables	6 & 7(c)	179	775
Increase/(decrease) in short term provisions	7(b)	131	–
Increase/(decrease) in long term provisions	7(b)	31	10
<b>Net cash (outflow) from operating activities</b>		<b>(1,220)</b>	<b>(1,092)</b>
<b>Cash flows from financing activities:</b>			
Grant-in-aid	2	1,220	1,092
<b>Net cash inflow from financing activities</b>		<b>1,220</b>	<b>1,092</b>
<b>Increase/(decrease) in cash in the period</b>		<b>–</b>	<b>–</b>

The notes on pages 75 to 79 form part of these accounts.

## Tribunal's Statement of Changes in Taxpayer's Equity for the year ended 31/03/2023

	General Fund £'000
<b>Balance at 31 March 2021</b>	<b>0</b>
Net operating cost for 2021/22	(1,092)
Net financing from DBT for 2021/22	1,092
<b>Balance at 31 March 2022</b>	<b>0</b>
Net operating cost for 2022/23	(1,220)
Net financing from DBT for 2022/23	1,220
<b>Balance at 31 March 2023</b>	<b>0</b>

# Notes: Tribunal accounts

## 1. Basis of preparation and statement of accounting policies

These financial statements have been prepared in accordance with the 2022/23 Government Financial Reporting Manual (FRoM). The accounting policies contained in the FRoM apply International Financial Reporting Standards (IFRSs) as adapted or interpreted for the public sector.

The Tribunal does not enter into any accounting transactions in its own right as the CS has a duty, under the Enterprise Act 2002, to meet all the expenses of operating the Tribunal.

Accounts are prepared for the Tribunal on the basis that it has directly incurred the expenses relating to its activities. On that basis, therefore, the accounts of the Tribunal include those assets, liabilities and cash flows of the CS which relate to the Tribunal's activities.

Where the FRoM permits a choice of accounting policy, the one which has been judged to be the most appropriate to the particular circumstances of the Tribunal, for the purpose of giving a true and fair view, has been selected. The Tribunal's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

### (a) Going concern

The financing of the Tribunal's liabilities is to be met by future grant-in-aid and the application of future income, both approved annually by Parliament. In January 2023 DBT provided indicative settlement amounts required in respect of the year to 31 March 2024. It has therefore been considered appropriate to adopt a going concern basis for the preparation of these accounts.

### (b) Accounting convention

The financial statements have been prepared under the historic cost convention.

### (c) Grant-in-aid

The FRoM requires non-departmental public bodies to account for grant-in-aid received as financing. The CS draws down grant-in-aid on behalf of the Tribunal to fund Tribunal's activities. The receivable balance of £790,000, shown in note 5 below, is of equal amount to the liability of £659,000, shown in note 6 below and £131,000 shown in 7b below, which represents the amount that the CS shall transfer to meet those liabilities.

### (d) Pensions

Pension arrangements for the President and the fee-paid Tribunal Chairs are mentioned separately in the Remuneration Report. Fee-paid Tribunal Chairs' appointments are pensionable; Ordinary Members' appointments are non-pensionable. Judicial pension contribution provisions have been included in relation to fee-paid Tribunal Chairs who have opted into the relevant judicial pension arrangements.

In accordance with accounts directions issued by the Secretary of State, with the approval of HM Treasury, the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Corporate Governance Statement.

## 2. Government grant-in-aid

Total grant-in-aid allocated in financial year 2022/23 was £1,220,000 (2021/22: £1,092,000).

### 3. Members' remuneration

- (a) The President and Chairs are appointed by the Lord Chancellor upon the recommendation of the Judicial Appointments Commission. In addition, Judges of the High Court of England and Wales, the Court of Session of Scotland and the High Court of Northern Ireland may be nominated (by the head of the judiciary for the relevant part of the UK) to sit as Tribunal Chairs. The appointments of Tribunal Chairs (other than those nominated by a head of Judiciary) are for a fixed period of eight years. Ordinary Members are appointed by the Secretary of State for a fixed term of eight years. The membership of the Tribunal as at 31 March 2023, is set out in the Introduction to this report.
- (b) Members' remuneration costs are shown in the table below.

	2022/23 £'000	2021/22 £'000
Members' remuneration (including the President, fee-paid Chairs and Ordinary Members)	577	481
Social security costs	71	56
Pension contributions for the President	102	99
Pension contributions and transitional protection allowance for fee-paid Chairs	202	388
<b>Total Members' remuneration</b>	<b>952</b>	<b>1,024</b>

### 4. Other operating charges

- (a) Other operating charges are shown in the table below.

	2022/23 £'000	2021/22 £'000
Members' travel and subsistence	31	5
Members' PAYE and National Insurance on travel and subsistence expenses*	15	(47)
Members' training	53	44
Long service award	162	60
Audit fees**	7	6
<b>Total other operating charges</b>	<b>268</b>	<b>68</b>

\* In 2021/22, HMRC refunded the last four years of tax and six years of NI, as tax relief is being made available under s.338 to the Tribunal, in respect of travel by members from home to the Tribunal's premises in circumstances where members spent less than 40% of their working time at the Tribunal location.

\*\* Audit fees relate to statutory audit work. No fees were paid to the external auditors in relation to non-audit services.

- (b) The long service award is explained in note 7(b) below.

## 5. Trade receivables and other receivables

Analysis by type

	2022/23 £'000	2021/22 £'000
Amounts falling due within one year:		
Trade receivables and other receivables with the CS*	790	555
Amounts falling due after more than one year:		
Trade receivables and other receivables with the CS	563	457
<b>Total trade receivables and other receivables</b>	<b>1,353</b>	<b>1,012</b>

\* Trade receivables and other receivables with the CS are explained below in Note 6 below.

## 6. Trade payables and other payables

Analysis by type

	2022/23 £'000	2021/22 £'000
Amounts falling due within one year:		
Taxation and social security	26	13
Trade Payables	4	57
Accruals*	629	485
<b>Total trade payables and other payables</b>	<b>659</b>	<b>555</b>

\* Further eligible judicial offices were added to the Judicial Pension Scheme with effect from 1 April 2021 by the Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2021, to include the Tribunal. This entitles the fee-paid Chairs (Judicial Office Holders – JOH) to be able to accrue a FPJPS 2017/ JPS 2015 pension in respect of this office. As well as being able to accrue pension from 1 April 2021 onwards, any past service in this judicial office(s) (potentially back as far as 7 April 2000, depending on any limitations that apply) will also count as pensionable service towards a FPJPS 2017/JPS 2015 pension. Contributions commenced from December 2021 for work done in the months for October and November 2021.

The historic employer contributions from date of appointment have been accrued (for both FPJPS 2017 and JPS 2015 schemes) payable to the JPS and the Judicial Pay Award (for FPJPS 2017) payable to members has been provided for and included in the provisions Note 7 page 78.

The payables balance represents the total liabilities outstanding at the balance sheet date that directly relate to the activities of the Tribunal. The CS meets all expenses relating to the Tribunal's activities.

## 7. Provisions

### (a) Pension-related provisions for liabilities and charges

	Long service award costs £'000
Balance at 31 March 2022	132
Provided in the year	162
<b>Balance at 31 March 2023</b>	<b>294</b>

### (b) Analysis of expected timing of pension-related provisions

	2022/23 £'000	2021/22 £'000
No later than one year	131	–
Later than one year, and not later than five years	73	132
Later than five years	90	–
<b>Balance at 31 March</b>	<b>294</b>	<b>132</b>

The provision made in the year relates to the expected cost of the President's long service award which becomes payable on retirement and is to be met by the CS. The liability has been calculated by the Government Actuary's Department (GAD) and is based on the President's judicial grade and length of service.

Both the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993 are not registered schemes for the purposes of the Finance Act 2004. As a result, lump sum benefits payable from the schemes and members' contributions payable to the schemes do not attract income tax relief. Judges therefore receive a service award which becomes payable when they near retirement. The level of the award, which is a proportion of the lump sum, reflects their years of service and judicial grade and ensures their net position is maintained. The level of the long service award is dependent on the tax paid by the member of the JPS on his retirement lump sum. For this year's disclosures, the GAD has assumed that tax is paid on the lump sum at a rate of 45 per cent, the prevailing tax rate as at 31 March 2022. However, if the President is required to pay tax on the lump sum at a different rate, the long service award would differ.

The Value of the long service award payable to the previous President is £73,000 and current President is £4,000. There is a further provision of £217,000 for long service awards payable to a few fee-paid Tribunal Chairs.

### (c) The other liabilities include legal hearing costs of £400,000 held in Escrow in a Legal Funds account on behalf of parties in a case pending before the Tribunal.

## 8. Contingent liability

We are awaiting calculations from the MOJ on compensation of an interest-like nature and other allowance payable to one ex CAT Chairmen.



## 9. Related party transactions

The President, Chairs and Ordinary Members did not undertake any material transactions with the Tribunal during the year. Their salaries are reflected in the Remuneration Report. Due to the nature of their relationship, the Tribunal has had material transactions with the CS.

## 10. Events after the reporting period

There were no events to report after the reporting period. These financial statements were authorised for issue on the same day as the date of certification by the Comptroller and Auditor General.

# CS's Audit Report

## The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

### Opinion on financial statements

I certify that I have audited the financial statements of the Competition Service for the year ended 31 March 2023 under the Enterprise Act 2002.

The financial statements comprise the Competition Service

- Statement of Financial Position as at 31 March 2023;
- Statement of Comprehensive Net Expenditure, Statement of Cash Flows and Statement of Changes in Taxpayers' Equity for the year then ended; and
- the related notes including the significant accounting policies.

The financial reporting framework that has been applied in the preparation of the financial statements is applicable law and UK adopted International Accounting Standards.

In my opinion, the financial statements:

- give a true and fair view of the state of the Competition Service affairs as at 31 March 2023 and its net operating cost for the year then ended; and
- have been properly prepared in accordance with the and Secretary of State directions issued thereunder.

### Opinion on regularity

In my opinion, in all material respects, the income and expenditure recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

### Basis for opinions

I conducted my audit in accordance with International Standards on Auditing (UK) (ISAs UK), applicable law and Practice Note 10 *Audit of Financial Statements and Regularity of Public Sector Bodies in the United Kingdom (2022)*. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my certificate.

Those standards require me and my staff to comply with the Financial Reporting Council's Revised Ethical Standard 2019. I am independent of the Competition Service in accordance with the ethical requirements that are relevant to my audit of the financial statements in the UK. My staff and I have fulfilled our other ethical responsibilities in accordance with these requirements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Conclusions relating to going concern

In auditing the financial statements, I have concluded that the Competition Service's use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the Competition Service's ability to continue as a going concern for a period of at least twelve months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the Accounting Officer with respect to going concern are described in the relevant sections of this certificate.

The going concern basis of accounting for the Competition Service is adopted in consideration of the requirements set out in HM Treasury's Government Financial Reporting Manual, which require entities to adopt the going concern basis of accounting in the preparation of the financial statements where it is anticipated that the services which they provide will continue into the future.

## Other Information

The other information comprises the information included in the Annual Report, but does not include the financial statements nor my auditor's certificate. The Accounting Officer is responsible for the other information.

My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my certificate, I do not express any form of assurance conclusion thereon.

My responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

If I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact.

I have nothing to report in this regard.

## Opinion on other matters

In my opinion the part of the Remuneration and Staff Report to be audited has been properly prepared in accordance with Secretary of State directions issued under the Enterprise Act 2002.

In my opinion, based on the work undertaken in the course of the audit:

- the parts of the Accountability Report subject to audit have been properly prepared in accordance with Secretary of State directions made under the Enterprise Act 2002; and
- the information given in the Performance and Accountability Reports for the financial year for which the financial statements are prepared is consistent with the financial statements and is in accordance with the applicable legal requirements.

## Matters on which I report by exception

In the light of the knowledge and understanding of the Competition Service and its environment obtained in the course of the audit, I have not identified material misstatements in the Statutory Other Information.

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- Adequate accounting records have not been kept by the Competition Service or returns adequate for my audit have not been received from branches not visited by my staff; or

- I have not received all of the information and explanations I require for my audit; or
- the financial statements and the parts of the Accountability Report subject to audit are not in agreement with the accounting records and returns; or
- certain disclosures of remuneration specified by HM Treasury's Government Financial Reporting Manual have not been made or parts of the Remuneration and Staff Report to be audited is not in agreement with the accounting records and returns; or
- the Governance Statement does not reflect compliance with HM Treasury's guidance.

## Responsibilities of the Accounting Officer for the financial statements

As explained more fully in the Statement of Accounting Officer's Responsibilities, the Accounting Officer is responsible for:

- maintaining proper accounting records;
- providing the C&AG with access to all information of which management is aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;
- providing the C&AG with additional information and explanations needed for his audit;
- providing the C&AG with unrestricted access to persons within the Competition Service from whom the auditor determines it necessary to obtain audit evidence;
- ensuring such internal controls are in place as deemed necessary to enable the preparation of financial statement to be free from material misstatement, whether due to fraud or error;
- ensuring that the financial statements give a true and fair view and are prepared in accordance with Secretary of State directions made under the Enterprise Act 2002;
- ensuring that the annual report, which includes the Remuneration and Staff Report, is prepared in accordance with Secretary of State directions directions made under Enterprise Act 2002; and
- assessing the Competition Services ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the Accounting Officer anticipates that the services provided by the Competition Service will not continue to be provided in the future.

## Auditor's responsibilities for the audit of the financial statements

My responsibility is to audit, certify and report on the financial statements in accordance with the Enterprise Act 2002.

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue a certificate that includes my opinion. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

## Extent to which the audit was considered capable of detecting non-compliance with laws and regulations including fraud

I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of non-compliance with laws and regulations, including fraud. The extent to which my procedures are capable of detecting non-compliance with laws and regulations, including fraud is detailed below.

### Identifying and assessing potential risks related to non-compliance with laws and regulations, including fraud

In identifying and assessing risks of material misstatement in respect of non-compliance with laws and regulations, including fraud, I:

- considered the nature of the sector, control environment and operational performance including the design of the Competition Service's accounting policies, key performance indicators and performance incentives.
- inquired of management, the Competition Services head of internal audit and those charged with governance, including obtaining and reviewing supporting documentation relating to the Competition Services's policies and procedures on:
  - identifying, evaluating and complying with laws and regulations;
  - detecting and responding to the risks of fraud; and
  - the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations including the Competition Services's controls relating to the Competition Service's compliance with the Enterprise Act 2002 and Managing Public Money
- inquired of management, the Competition Services' head of internal audit and those charged with governance whether:
  - they were aware of any instances of non-compliance with laws and regulations;
  - they had knowledge of any actual, suspected, or alleged fraud;
- discussed with the engagement team regarding how and where fraud might occur in the financial statements and any potential indicators of fraud.

As a result of these procedures, I considered the opportunities and incentives that may exist within the Competition Service for fraud and identified the greatest potential for fraud in the following areas: revenue recognition, posting of unusual journals, complex transactions and bias in management estimates. In common with all audits under ISAs (UK), I am also required to perform specific procedures to respond to the risk of management override.

I obtained an understanding of the Competition Services' framework of authority and other legal and regulatory frameworks in which the Competition Service operates. I focused on those laws and regulations that had a direct effect on material amounts and disclosures in the financial statements or that had a fundamental effect on the operations of the Competition Service. The key laws and regulations I considered in this context included Enterprise Act 2002, Managing Public Money, employment law, pensions legislation and tax legislation

## Audit response to identified risk

To respond to the identified risks resulting from the above procedures:

- I reviewed the financial statement disclosures and testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described above as having direct effect on the financial statements;
- I enquired of management, the Audit and Risk Committee concerning actual and potential litigation and claims;
- I reviewed minutes of meetings of those charged with governance and the Board and internal audit reports;
- in addressing the risk of fraud through management override of controls, I tested the appropriateness of journal entries and other adjustments; assessed whether the judgements on estimates are indicative of a potential bias; and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business; and

I communicated relevant identified laws and regulations and potential risks of fraud to all engagement team members including and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

A further description of my responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at: [www.frc.org.uk/auditorsresponsibilities](http://www.frc.org.uk/auditorsresponsibilities). This description forms part of my certificate.

## Other auditor's responsibilities

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control I identify during my audit.

## Report

I have no observations to make on these financial statements.

**Gareth Davies**

Comptroller and Auditor General

National Audit Office

157-197 Buckingham Palace Road

Victoria

London

SW1W 9SP

20 March 2024

# CS's Statement of Comprehensive Net Expenditure for the year ended 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
<b>Income:</b>			
Other income	7	2	2
<b>Total income</b>		<b>2</b>	<b>2</b>
<b>Expenditure:</b>			
Funding the activities of the Tribunal		(1,220)	(1,092)
CS and Audit and Risk Assurance Committee Members' remuneration	3(a)	(18)	(20)
Staff costs	4	(1,587)	(1,263)
Other expenditure	6	(1,414)	(1,862)
Depreciation and profit/(loss) on disposal of assets	6	(1,293)	(1,310)
<b>Total expenditure</b>		<b>(5,532)</b>	<b>(5,547)</b>
<b>Net expenditure</b>		<b>(5,530)</b>	<b>(5,545)</b>
<b>Net expenditure after interest</b>		<b>(5,530)</b>	<b>(5,545)</b>
<b>Net expenditure after taxation</b>		<b>(5,530)</b>	<b>(5,545)</b>

All activities were continuing during the year. The notes on pages 89 to 102 form part of these accounts.

# CS's Statement of Financial Position

## as at 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
<b>Non current assets:</b>			
Right of use asset	8	4,666	5,468
Property, plant and equipment	8	2,314	2,675
Intangible assets	9	45	10
<b>Total non current assets</b>		<b>7,025</b>	<b>8,153</b>
<b>Current assets:</b>			
Trade receivables and other receivables	10	608	87
Cash and cash equivalents	11	1,542	2,843
<b>Total current assets</b>		<b>2,150</b>	<b>2,930</b>
<b>Total assets</b>		<b>9,175</b>	<b>11,083</b>
<b>Current liabilities:</b>			
Trade payables and other payables	12(a)	(1,321)	(1,554)
Financial liabilities	12(a)	(1,032)	(1,062)
Provisions	13(b)	(131)	–
<b>Total current liabilities</b>		<b>(2,484)</b>	<b>(2,616)</b>
<b>Total assets less current liabilities</b>		<b>6,691</b>	<b>8,467</b>
<b>Non current liabilities:</b>			
Financial liabilities	12(a)	(5,207)	(6,156)
Provisions	13(b)&(c)	(693)	(662)
<b>Total non current liabilities</b>		<b>(5,900)</b>	<b>(6,818)</b>
<b>Assets less liabilities</b>		<b>791</b>	<b>1,649</b>
<b>Taxpayers' equity:</b>			
General fund		791	1,649
<b>Total taxpayers' equity</b>		<b>791</b>	<b>1,649</b>

The statement of financial position shows a positive balance on the general fund because of timing differences between consumption and payment. The CS draws grant-in-aid to cover its cash requirements. The notes on pages 89 to 102 form part of these accounts.

**Charles Dhanowa OBE, KC (Hon)**  
Registrar and Accounting Officer  
20 March 2024



# CS's Statement of Cash Flows

## for the year ended 31/03/2023

	Note	2022/23 £'000	2021/22 £'000
<b>Cash flows from operating activities:</b>			
Net expenditure after interest		(5,530)	(5,545)
Adjustments for non-cash expenditure	6	1,293	1,310
(Increase)/decrease in receivables	10(a)	(521)	35
(Decrease)/increase in payables	12(a)	(158)	5,352
Increase/(decrease) in short term provisions	13	131	–
Increase/(decrease) in long term provisions	13	31	10
<b>Net cash inflow/(outflow) from operating activities</b>		<b>(4,754)</b>	<b>1,162</b>
<b>Cash flows from investing activities:</b>			
Property, plant and equipment purchases	8	(113)	(69)
Intangible asset purchases	9	(52)	(14)
<b>Net cash used in investing activities</b>		<b>(165)</b>	<b>(83)</b>
<b>Cash flows from financing activities:</b>			
Capital element of payments in respect of right of use asset	8	–	(5,779)
Capital payments against leases	12(a)	(1,054)	
Grant-in-aid from DBT	2	4,672	5,650
<b>Net cash generated from/(used in) financing activities</b>		<b>3,618</b>	<b>(129)</b>
<b>Net (decrease)/increase in cash and cash equivalents in the period</b>	11	<b>(1,301)</b>	<b>950</b>
Cash and cash equivalents at the beginning of the period	11	2,843	1,893
<b>Cash and cash equivalents at the end of the period</b>	11	<b>1,542</b>	<b>2,843</b>

The figure for purchase of assets represents the cash paid in the year. The cumulative figures for right of use asset, lease liability and depreciation represent the lease for 8 Salisbury Square, following adoption of IFRS16 on 1 April 2021. The notes on pages 89 to 102 form part of these accounts.

# CS's Statement of Changes in Taxpayer's Equity for the year ended 31/03/2023

	General Fund £'000
<b>Balance at 31 March 2021</b>	<b>1,053</b>
Adjustment to net operating cost resulting from adoption of IFRS 16	491
Restated Balance at 31 March 2021	1,544
Net operating cost for 2021/22	(5,545)
Net financing from DBT for 2021/22	5,650
<b>Balance at 31 March 2022</b>	<b>1,649</b>
Net operating cost for 2022/23	(5,530)
Net financing from DBT for 2022/23	4,672
<b>Balance at 31 March 2023</b>	<b>791</b>

# Notes: CS accounts

## 1. Statement of accounting policies

These financial statements have been prepared in accordance with the FReM. The accounting policies contained in the FReM apply IFRSs as adapted or interpreted for the public sector.

Where the FReM permits a choice of accounting policy, the accounting policy which has been judged to be the most appropriate to the particular circumstances of the CS, for the purpose of giving a true and fair view, has been selected. The CS's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

### (a) Going concern

On the basis that in January 2023 DBT provided indicative settlement amounts for the CS in respect of the year to 31 March 2024, a going concern basis has been adopted for the preparation of these accounts.

### (b) Accounting convention

The financial statements have been prepared according to the historic cost convention. Depreciated historical cost is used as a proxy for fair value as this realistically reflects consumption of the assets. Revaluation does not cause a material difference.

### (c) Basis of preparation of accounts

Schedule 3 of the Enterprise Act 2002 requires the CS to prepare separate statements of accounts in respect of each financial year for itself and for the Tribunal.

The statutory purpose of the CS is to fund and provide support services to the Tribunal; all relevant costs related to these activities are included in the CS's accounts. Direct costs specifically attributable to the Tribunal are incurred initially by the CS but shown in the Tribunal's accounts.

In accordance with accounts directions issued by the Secretary of State for DBT (with the approval of HM Treasury), the Tribunal and the CS have prepared a joint Statement of Accounting Officer's Responsibilities and Corporate Governance Statement.

### (d) Grant-in-aid

The CS is funded by grant-in-aid from DBT. In drawing down grant-in-aid, the CS draws down sums considered appropriate for the purpose of enabling the Tribunal to perform its statutory functions.

The FReM requires non-departmental public bodies to account for grant-in-aid received as financing which is credited to the general reserve as it is regarded as contributions from a sponsor body.

### (e) Non current assets

All assets are held by the CS in order to provide support services to the Tribunal. Items with a value of £500 or over in a single purchase or grouped purchases, where the total group purchase is £500 or more, are capitalised.

### (f) Depreciation

Depreciation is provided for all non current assets using the straight line method at rates calculated to write off, in equal instalments, the cost of the asset over its expected useful life. Non current assets are depreciated from the month following acquisition and are not depreciated in the year of disposal. The expected useful life relating to the fit-out asset of 8 Salisbury Square ends on termination of the lease in January 2029.

## (i) Useful lives of property, plant and equipment assets:

Laptops and printers	3 years
Servers and audio visual equipment	5 years
Office equipment	5 years
Furniture	7 years
8 Salisbury Square fit-out and Dilapidations	9.25 years
8 Salisbury Square Lease	10 years

## (ii) Useful lives of intangible non current assets:

Software Licences	1 to 3 years
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## (g) Taxation

- (i) The CS is liable for corporation tax on interest earned on bank deposits.
- (ii) The CS is not registered for VAT and therefore cannot recover any VAT. Expenditure in the income and expenditure account is shown inclusive of VAT. VAT on the purchase of non current assets is capitalised.

## (h) Pension costs

Present and past employees are covered by the Civil Service pension arrangements. The CS pays recognised employer pension contributions for all its employees, for the entire duration of their employment. Liability for payment of future benefits is a charge on the pension schemes with the Civil Service pension arrangements.

In respect of the defined contribution element of the schemes, the CS recognises contributions payable in the year. The Civil Service pension arrangements are therefore treated as defined contribution scheme and the contributions are recognised as they are paid, each year.

## (i) Income

The CS's main source of income is from publication licensing (see note 7). The income is recognised when the service is provided.

## (j) Leases

The Tribunal /CS moved to 8 Salisbury Square on 18 November 2019, pursuant to a 10 year lease which commenced on 25 January 2019 with an initial 25 month rent-free period (see note 12).

## (k) Financial instruments

Financial instruments play a limited role in creating and managing risk. The majority of the financial instruments for the CS relate to the purchase of non financial items and therefore pose little credit, liquidity or market risk.

## (i) Financial assets

The CS holds financial assets which comprise cash at bank and in hand and receivables. These are non-derivative financial assets with fixed or determinable payments that are not traded in an active market. Since these balances are expected to be realised within 12 months of the reporting date, there is no material difference between fair value, amortised cost and historical cost.

## (ii) Financial liabilities

The CS has financial liabilities which comprise payables and non-current payables. The current payables are expected to be settled within 12 months of the reporting date. There is no material difference between fair value, amortised cost and historical cost for both current and non-current payables.

## (l) IFRS 16 – Leases

IFRS 16 requires the recognition of leased assets, representing the right to use the leased item, and lease liabilities, representing the respective future lease payments, on the Statement of Financial Position (SoFP) for all applicable lease agreements. The rental expense on operating leases under IAS 17 is replaced by a depreciation charge and a finance charge within the Statement of Comprehensive Net Expenditure (SoCNE). The initial value of the right of use asset will consist of the present value of the minimum lease payments, adjusted for: any lease payments made prior to the commencement of the lease; and any lease incentives received less accruals and prepayments associated with the lease, discounted in accordance with HM Treasury direction. If the underlying right of use asset is of low value (less than £10,000 or a short lease term of 12 months or less) payments will be expensed as they are made.

The CS has only one lease of premises, for the 7th Floor, 8 Salisbury Square. The CS uses the historical cost model in IFRS 16 as a proxy for current value in existing use or fair value as the lease agreements contain regular rent review periods which is expected to minimize the divergence between cost and fair value. The present value of future lease payments for the “Right of Use Building” is measured at HM Treasury 2021 discount rates of 0.91% for leases promulgated in Public Expenditure System (PES) papers, as the lease started in January 2019 and transitioned to IFRS 16 on 1 April 2021.

The CS leases photocopiers, a franking machine and a water cooler machine, where the lease is either low value or short term and for which the payments have been expensed.

## (m) Reserves

The general fund represents the total assets less liabilities of the CS, to the extent that the total is not represented by other reserves and financing items.

## (n) Provisions

Recognition and valuation of provisions rely on the application of professional judgement, historical experience, and other factors expected to influence future events. A provision is recognised where the likelihood of a liability crystallising is probable and where such provision can be measured with reasonable certainty. Provisions are based on valuations, supplemented by management judgement. Specific assumptions are given in note 13.

## (o) Policy for accounting judgements and for key sources of estimation uncertainty

The key areas of estimation uncertainty are accruals in respect of which there are no accounting judgements as these are based purely on goods and services received but not invoiced in the accounting year reported. There is key accounting judgement and estimation uncertainty for the 8 Salisbury Square lease, as the present value of future lease payments is measured at HM Treasury discount rates for leases, that change each year, as promulgated in PES papers.

The long service award provision is estimated on the basis that tax is paid on the retirement lump sum at a rate of 45 per cent.

## 2. Government grant-in-aid

	2022/23 £'000	2021/22 £'000
Allocated by DBT	5,282	4,614
Allocated for 8 Salisbury Square lease rent liability*	1,299	1,299
Total Allocated	6,581	5,913
<b>Total drawn down</b>	<b>4,672</b>	<b>5,650</b>

\* 8 Salisbury Square lease rent exclusive of irrecoverable VAT is £1,083,000 and inclusive of VAT is £1,299,000.

## 3. The CS and ARAC Member's remuneration

(a) The total cost of the CS and Audit and Risk Assurance Committee Members' remuneration is shown in the table below.

	2022/23 £'000	2021/22 £'000
CS and ARAC Members' remuneration	17	19
Social security costs	1	1
<b>Total CS and ARAC Members' remuneration</b>	<b>18</b>	<b>20</b>

(b) The President's and the Registrar's salary costs are mentioned in the Remuneration and Staff Report.

(c) Other Members of the CS are remunerated at a rate of £400 (2021/22: £400 per day). In 2022/23, Peter Freeman's total remuneration was £2,800 (2021/22: £6,514); Jeremy Mayhew's total remuneration was £6,500 (2021/22: £2,200) and Ben Tidswell's total remuneration was £2,200 (2021/22: £0).

## 4. Staff related costs and numbers

Information on staff related costs is shown in the table below.

	Total (£'000) 2022/23	Permanently employed staff (£'000) 2022/23	Total (£'000) 2021/22	Permanently employed staff (£'000) 2021/22
Wages and salaries	1,142	1,142	910	910
Social security costs	138	138	106	106
Other pension costs	307	307	247	247
<b>Total employee costs</b>	<b>1,587</b>	<b>1,587</b>	<b>1,263</b>	<b>1,263</b>

## 5. Pension costs

The Civil Service pension arrangements is an unfunded multi-employer defined benefit schemes and the CS is therefore unable to identify its share of underlying assets and liabilities. Further information can be found on the resource accounts of the Cabinet Office Civil Service Pensions website: [www.civilservicepensionscheme.org.uk](http://www.civilservicepensionscheme.org.uk).

For 2022/23, employer contributions of £307,333 (2021/22: £247,002) were payable to the Civil Service pension arrangements at one of the four rates available in the range of 26.6 to 30.3 per cent (2021/22: 26.6 to 30.3 per cent) of pensionable pay, based on salary bands. The Schemes, actuary reviews employer contributions every four years following a full scheme valuation. The contribution rates reflect benefits as they are accrued, not when the costs are actually incurred, and reflect past experience of the schemes.

Employees can opt to open a partnership pension account, which is a stakeholder pension with an employer contribution. There were no employers' contributions paid to Legal and General, the Civil Service appointed stakeholder pension provider in 2022/23 or 2021/22. Employer contributions are age-related and ranged from 3.0 to 12.5 per cent of pensionable pay until 30 September 2015 and from 8.0 to 14.75 per cent of pensionable pay from 1 October 2015. Employers match employee contributions of up to 3 per cent of pensionable pay.

## 6. Other expenditure

	2022/23 £'000	2021/22 £'000
Hire of plant and machinery	4	5
Non case related expenditure including internal audit fees	30	22
IT service fees	194	152
Accommodation, interest expense on lease liability and utilities*,**	799	1,303
Travel, subsistence and hospitality	19	7
Other administration including case related expenditure	327	334
Audit fees***	41	39
<b>Non cash item</b>		
Depreciation and loss on disposed right of use asset, property, plant and equipment	1,293	1,310
<b>Total other expenditure</b>	<b>2,707</b>	<b>3,172</b>

Amounts recognised in the Statement of Comprehensive Net Expenditure.

	2022/23 £'000	2021/22 £'000
<b>Interest on lease liabilities**</b>	<b>48</b>	<b>38</b>

\* The Tribunal/CS moved to its premises at 8 Salisbury Square in November 2019 under a terms of occupation agreement (TOA) with the Government Property Agency. The 10 year lease commenced on 25 January 2019 with an initial 25 months rent free period.

\*\* It is the CS's policy not to charge other government bodies for using Tribunal/CS's court facilities. The accommodation, interest expense and utilities costs include the finance cost of servicing the 8 Salisbury Square lease.

\*\*\* Audit fees relate to statutory audit work.

## 7. Tribunal/CS's income and interest received

	2022/23 £'000	2021/22 £'000
Website and publication licensing income	2	2
Gross interest received	–	–
<b>Total income</b>	<b>2</b>	<b>2</b>

LexisNexis Butterworths are paying an annual fee for inclusion of information from the Tribunal's Guide to Proceedings in one of their publications.

## 8. Right of use asset, property, plant and equipment

Right of use asset

	8 Sal Sq ROU £'000
<b>Cost or valuation:</b>	
At 31 March 2022	8,018
Additions	–
<b>At 31 March 2023</b>	<b>8,018</b>
<b>Depreciation:</b>	
At 31 March 2022	2,550
Charged in the year	802
<b>At 31 March 2023</b>	<b>3,352</b>
<b>Asset financing:</b>	
Net book value at 31 March 2022	5,468
Leased	5,468
<b>Asset financing:</b>	
<b>Net book value at 31 March 2023</b>	<b>4,666</b>
Leased	4,666



## Property, plant and equipment

	Information Technology (IT) £'000	Assets under construction £'000	Furniture and Fittings (F&F) £'000	Office Machinery £'000	8 Sal Sq Fit-out & Dilapidations £'000	Total £'000
<b>Cost or valuation:</b>						
At 31 March 2022	702*	–	395*	30	2,830	3,957
Additions	113					113
Disposals	(5)		(2)	(21)		(28)
Transfer of assets under construction						
<b>At 31 March 2023</b>	<b>810</b>		<b>393</b>	<b>9</b>	<b>2,830</b>	<b>4,042</b>
<b>Depreciation:</b>						
At 31 March 2022	359	–	217	18	688	1,282
Charged in year	122		38	1	306	467
Disposals	(5)		(2)	(14)		(21)
<b>At 31 March 2023</b>	<b>476</b>		<b>253</b>	<b>5</b>	<b>994</b>	<b>1,728</b>
<b>Asset financing:</b>						
Net book value at 31 March 2022	343	–	178	12	2,142	2,675
Owned	343	–	178	12	2,142	2,675
<b>Asset financing:</b>						
<b>Net book value at 31 March 2023</b>	<b>334</b>	<b>–</b>	<b>140</b>	<b>4</b>	<b>1,836</b>	<b>2,314</b>
<b>Owned</b>	<b>334</b>	<b>–</b>	<b>140</b>	<b>4</b>	<b>1,836</b>	<b>2,314</b>

\* Included in the cost of fixed assets, shown in the table above, are IT assets with a value of £200,011, F&F assets with a value of £126,986 and Office Machinery assets with a value of £1,854 which have been fully written down but are still in use.

	Information Technology (IT) £'000	Assets under construction £'000	Furniture and Fittings (F&F) £'000	Office Machinery £'000	8 Sal Sq Fit-out & Dilapidations £'000	Total £'000
<b>Cost or valuation:</b>						
At 31 March 2021	661*	16	401*	27	2,830	3,935
Additions	62	–	1	6	–	69
Disposals	(37)	–	(7)	(3)	–	(47)
Transfer of assets under construction	16	(16)	–	–	–	–
<b>At 31 March 2022</b>	<b>702</b>	<b>–</b>	<b>395</b>	<b>30</b>	<b>2,830</b>	<b>3,957</b>
<b>Depreciation:</b>						
At 31 March 2021	257	–	185	15	382	839
Charged in year	139	–	39	6	306	490
Disposals	(37)	–	(7)	(3)	–	(47)
<b>At 31 March 2022</b>	<b>359</b>	<b>–</b>	<b>217</b>	<b>18</b>	<b>688</b>	<b>1,282</b>
<b>Asset financing:</b>						
Net book value at 31 March 2021	404	16	216	12	2,448	3,096
Owned	404	16	216	12	2,448	3,096
<b>Asset financing:</b>						
<b>Net book value at 31 March 2022</b>	<b>343</b>	<b>–</b>	<b>178</b>	<b>12</b>	<b>2,142</b>	<b>2,675</b>
<b>Owned</b>	<b>343</b>	<b>–</b>	<b>178</b>	<b>12</b>	<b>2,142</b>	<b>2,675</b>

\* Included in the cost of fixed assets, shown in the table above, are IT assets with a value of £195,896 and F&F assets with a value of £128,850 which have been fully written down but are still in use.

## 9. Intangible assets

	Purchased software licences £'000	Assets under construction £'000	SharePoint £'000	Total £'000
<b>Cost or valuation:</b>				
At 31 March 2022	72	–	31	103
Additions	25	27	–	52
Disposals	–	–	(31)	(31)
<b>At 31 March 2023</b>	<b>97</b>	<b>27</b>	<b>–</b>	<b>124</b>
<b>Amortisation:</b>				
At 31 March 2022	63	–	30	93
Charged in the year	16	–	–	16
Disposals	–	–	(30)	(30)
<b>At 31 March 2023</b>	<b>79</b>	<b>–</b>	<b>–</b>	<b>79</b>
Net book value at 31 March 2022	9	–	1	10
<b>Net book value at 31 March 2023</b>	<b>18</b>	<b>27</b>	<b>–</b>	<b>45</b>

	Purchased software licences £'000	SharePoint £'000	Total £'000
<b>Cost or valuation:</b>			
At 31 March 2021	58	31	89
Additions	14	–	14
<b>At 31 March 2022</b>	<b>72</b>	<b>31</b>	<b>103</b>
<b>Amortisation:</b>			
At 31 March 2021	47	28	75
Charged in the year	16	2	18
<b>At 31 March 2022</b>	<b>63</b>	<b>30</b>	<b>93</b>
Net book value at 31 March 2021	11	3	14
<b>Net book value at 31 March 2022</b>	<b>9</b>	<b>1</b>	<b>10</b>

## 10. Trade and other receivables

Analysis by type

	31 March 2023 £'000	31 March 2022 £'000
<b>Amounts falling due within one year:</b>		
Deposits and advances	8	10
Other receivables	2	0
Prepayments and accrued income	598	77
<b>Total trade receivables and other receivables</b>	<b>608</b>	<b>87</b>

There were no balances falling due after one year.

## 11. Cash and cash equivalents

	2022/23 £'000	2021/22 £'000
Balance at 1 April	2,843	1,893
Net change in cash balances	(1,301)	950
<b>Balance at 31 March</b>	<b>1,542</b>	<b>2,843</b>
The following balances were held at 31 March:		
Cash in Government Banking Service (GBS)	1,542	2,843
<b>Balance at 31 March</b>	<b>1,542</b>	<b>2,843</b>

## 12. Trade payables and other current/non-current liabilities

(a) Analysis by type

	31 March 2023 £'000	31 March 2022 £'000
<b>Amounts falling due within one year:</b>		
Payables representing activities of the Tribunal at 31 March	659	555
Taxation and social security	52	45
Trade Payables	127	567
Accruals	417	319
Untaken leave accrual	66	68
8 Salisbury Square lease liability*	1,032	1,062
<b>Total amounts falling due within one year</b>	<b>2,353</b>	<b>2,616</b>
<b>Amounts falling due after more than one year:</b>		
8 Salisbury Square lease liability*	4,807	5,831
Legal Funds Liability	400	325
<b>Total amounts falling due after more than one year</b>	<b>5,207</b>	<b>6,156</b>

\* The lease liability is the rent payable by the Tribunal/CS for the time lapsed in the initial 25 month rent-free period for its premises at 8 Salisbury Square.

The difference in the actual cash lease liability payable and the lease liability shown in the table above is the interest expense on the lease liability under IFRS 16, recognised in the Statement of Comprehensive Net Expenditure and referred to in Note 6.

## 13. Provisions

### (a) Pension-related provisions for liabilities and charges

	Long service award costs £'000
Balance at 31 March 2022	132
Provided in the year	162
<b>Balance at 31 March 2023</b>	<b>294</b>

### (b) Analysis of expected timing of pension-related provisions

	2022/23 £'000	2021/22 £'000
No later than one year	131	–
Later than one year, and not later than five years	73	132
Later than five years	90	–
<b>Balance at 31 March</b>	<b>294</b>	<b>132</b>

The provision made in the year relates to the expected cost of the President's long service award which becomes payable on retirement and will be met by the CS. The liability has been calculated by the Government Actuary's Department (GAD) and is based on the President's judicial grade and length of service.

Both the Judicial Pensions Act 1981 and the Judicial Pensions and Retirement Act 1993 are not registered schemes for the purposes of the Finance Act 2004. As a result, lump sum benefits payable from the schemes and members' contributions payable to the schemes do not attract income tax relief. Judges therefore receive a service award which becomes payable when they near retirement. The level of the award, which is a proportion of the lump sum, reflects their years of service and judicial grade and ensures their net position is maintained. The level of the long service award is dependent on the tax paid by the member of the JPS on his retirement lump sum. For this year's disclosures, the GAD has assumed that tax is paid on the lump sum at a rate of 45 per cent, the prevailing tax rate as at 31 March 2022. However, if the President is required to pay tax on the lump sum at a different rate, the long service award would differ.

The Value of the long service award payable to the previous President is £73,000 and is £4,000 in respect of the current President. There is a further provision of £217,000 for long service awards payable to a few fee-paid Tribunal Chairs.

### (c) Provisions

	31 March 2023 £'000	31 March 2022 £'000
<b>Dilapidations for 8 Salisbury Square</b>	<b>530</b>	<b>530</b>

The CS has made a provision for dilapidations costs payable to reinstate 8 Salisbury Square to its original condition at the end of the 10 year lease, in January 2029. The CS benchmarked the per square feet estimate provided by GPA against its dilapidations experience with its previous premises at Victoria House including an inflationary increase of 0.91 per cent, as promulgated by HM Treasury in its PES papers.

There is some estimation uncertainty regarding the dilapidations provision and the final amount payable may differ from the figure currently provided. The dilapidations provision will be reviewed, should other information become available in the future that enables a more reliable estimate of expected restoration costs to be funded. There is no discount applied to the provision on the grounds of materiality.

## 14. Lease Liabilities

A maturity analysis of lease liabilities within scope of IFRS 16 – Leases, based on undiscounted gross cashflows, is reported in the table below.

	2022/23 £'000	2021/22 £'000
<b>Maturity analysis – contractual cashflows: undiscounted</b>		
Not later than one year	1,089	1,110
Later than one year and not later than five years	4,330	4,330
Later than five years	882	1,964
<b>Total lease liabilities: undiscounted</b>	<b>6,301</b>	<b>7,404</b>

Amounts recognised in the Statement of Financial Position

	2022/23 £'000	2021/22 £'000
<b>Lease liabilities: discounted</b>		
Lease Liabilities: current liabilities	1,032	1,062
Lease Liabilities: non-current liabilities	4,807	5,831
<b>Total lease liabilities: discounted</b>	<b>5,839</b>	<b>6,893</b>

## 15. Financial instruments

IAS 32 (Financial Instruments Presentation) requires disclosure of the role that financial instruments have had during the period in creating or changing the risks that an entity faces in undertaking its activities. The CS has limited exposure to risk in relation to its activities.

The CS has no borrowings, relies on grant-in-aid from DBT for its cash requirements and is therefore not exposed to liquidity, credit and market risks. The CS has no material deposits other than cash balances held in current accounts at a non-commercial bank. As all material assets and liabilities are denominated in sterling, the CS is not exposed to interest rate risk or currency risk. There was no difference between the book values and fair values of the CS's financial assets. Cash at bank was £1,542,000 as at 31 March 2023.

## 16. Contingent liability

We are awaiting calculations from the MOJ with regard to compensation of an interest-like nature and other allowance payable to one ex CAT Chairmen.

## 17. Related party transactions

During the year, the CS had various material transactions with the GPA relating mainly to the occupancy of 8 Salisbury Square.

The CS received grant-in-aid from its sponsor department, DBT, with whom it also had various other material transactions. In addition, the CS had material transactions with the MoJ, JPS and the Cabinet Office to which accruing superannuation liability charges and employee contributions were paid for the President and permanent staff respectively. Salary and national insurance for the current President and a sum in regard of the long service award for the former President were also paid to the Ministry of Justice. Employer pension contributions for the current President were paid to the JPS.

No CS member, key manager or other related party has undertaken any material transactions with the CS during the year.

## 18. Events after the reporting period

There were no events to report after the reporting period. These financial statements were authorised for issue on the same day as the date of certification by the Comptroller and Auditor General.