

British Institute of International and Comparative Law

Competition Law Forum Event: “Collective Actions: who acts and with whose money?”, 15 January 2026

Comments¹ of Ben Tidswell, CAT Chairman

Ben Tidswell emphasised that he was not speaking in an official capacity on behalf of the CAT, but that he was giving his personal opinions in relation to costs management in collective proceedings. He noted that costs are currently a “hot topic”, that the Tribunal is concerned about the costs of collective proceedings and that parties can expect this issue to come up at hearings.

Mr Tidswell stressed that the problem is not the size of the budgets *per se*, as the CAT recognises that these are large and complex cases which require significant budgets. It is the issue of whether parties have the discipline to make sure that the litigation is conducted as efficiently as possible so that costs are reasonable and proportionate. Otherwise, they can get out of hand, particularly with large matters. This is true of any litigation, but the risk is magnified with collective proceedings as the client who in charge of costs is not footing the bills, with the strong incentive for costs management that usually brings. There is also a risk of diverging incentives due to the use of multiples for calculating funder returns. This can mean that increased litigation costs have the potential to give rise to increased potential funder returns.

Mr Tidswell expressed the view that the regime will be undermined if costs (and the consequent impact on funding) use up a disproportionate share of the proceeds of a claim. It will lead to criticism in the press and damage to the public perception of collective proceedings.

So who should manage the costs?

This role cannot be undertaken by the lawyers, as it is their bills which may need to be challenged. On the other hand, where the funders are concerned, there is the problem that funders are not allowed to direct the conduct of the litigation, and the diverging incentives previously mentioned. In Mr Tidswell’s view it must therefore fall primarily to the class representative (CR).

It was acknowledged that there may be difficulties for the CR as:

- he or she is often appointed by the lawyers or funder, so may have a relationship with them that impairs the necessary authority;

¹ With thanks to Beverley Robertson of the Class Representatives Network, who attended the event and kindly prepared this note.

- the case (and in particular the budgets) may already be well developed by the time the CR becomes involved; and
- it requires a certain skill set and commitment to deal with the situation where budgets go off track.

However, if the CR does not effectively manage costs then budgets will instead be subject to the forced oversight of the CAT. This is not desirable because:

- CAT assessment of costs is a blunt instrument and may result in less accuracy than a carefully managed budget;
- it will result in expensive hearings;
- the Tribunal is necessarily reactive rather than proactive. It often cannot easily prevent the costs being incurred in the first place. It is more likely to be dealing with problems which lead to costs being disallowed after the event;
- many advisers may already have been paid, so any costs which are disallowed may ultimately have to be met by the funder; and
- it may result in unwelcome criticism of the CR in court or in judgments.

How can CRs be better equipped to undertake this task?

Mr Tidswell stressed that his comments should not be interpreted as criticism of CRs and that he understood the difficulty and heavy responsibility of managing large and complex litigation. In order to do this, however, he expressed the view that the CR along with his or her advisory committee needs to have access to the experience and wherewithal better to control litigation costs. Suggestions of ways in which CRs might be helped to do this included:

1. some kind of training in the procedure before the CAT, managing litigation and managing costs;
2. embedding costs expertise into the CR's advisory committee; and
3. recruiting independent external assistance in the form of, for example, cost assessors who could report directly to the CR on the setting of and compliance with budgets.