

**Keynote introductory address for
Bar Council Collective Redress conference – 8 May 2026**

Introduction

Good morning, everyone. Thank you for inviting me to open the Bar Council's Collective Redress Conference. It is a real pleasure to be here, and to see so many of you for what I am sure will be a practical and forward-looking day.

The programme for this conference covers a wide range of current topics relating to collective proceedings. What I want to do now, to set the scene, is to address three things: to explain why collective redress matters; to reflect on what we can take from the UK experience of collective actions, so far; and to explain along the way why case management and judicial control throughout the stages of litigation are central to a well-functioning collective action regime.

As the President of the Competition Appeal Tribunal, I obviously can't comment on pending cases, or express views on particular legal points that may arise in future proceedings. I can, however, comment on some of the central procedural issues that have arisen and will arise in the CAT, and the way in which the CAT will seek to contribute to the efficacy of the regime going forward.

Why collective redress matters

So why does collective redress matter? There are three related answers to that question. The first is access to justice. There are many contexts where wrongdoing may cause harm to large numbers of people, but where each claimant suffers a relatively small loss, meaning that individual claims are often not viable in practice. Collective redress facilitates those claims that would not otherwise be brought.

The second and closely related point is efficiency. A collective action regime enables claimants to benefit from economies of scale by combining numerous small claims into a single managed set of proceedings. Compensation for claimants is therefore maximised, while reducing the burden of hundreds or thousands of individual lawsuits.

The third objective of a collective action regime is deterrence and compliance. Properly designed and controlled, collective actions can support compliance, by ensuring that unlawful conduct does not remain profitable simply because the individual losses are too small to litigate.

Collective redress is therefore about making the civil justice system work proportionately for the many, and not only for the few large and well-resourced claimants for whom individual litigation is realistic.

The UK experience since 2015

Those objectives help explain why, a decade ago, the UK introduced a more workable collective proceedings regime for competition cases. Experience under the old opt-in model had been unpromising. The only case brought under that model was *Replica Football Kit*, which led to a settlement where consumers who opted in could receive £20 compensation for each eligible England or Manchester United shirt bought during the relevant period. But despite widespread publicity, only 130 claimants ultimately signed up for compensation, representing less than 0.1% of those estimated to have been affected.

The replacement of that model with the current opt-out regime has led to a major change in direction. Since 2016, 69 collective actions have been commenced in the CAT, across a wide range of sectors, and for sums ranging from tens of millions of pounds to over £25bn. The overwhelming majority of these have been brought on an opt-out basis. Collective proceedings are therefore now a real feature of the UK litigation landscape. And they are generating a developing body of case law about what is needed, in concrete terms, to run large-scale claims fairly, proportionately and efficiently.

So far, however, returns to class members have been limited. Of the 69 claims brought to date, only three have produced final trial judgments. In two of those, the claims failed. Only one case, *Kent v Apple*, has resulted in a final judgment for the claimants, for around £1.5bn.

There have, of course, been several settlements. But not all of them have translated into payments to the class. In *Qualcomm*, for example, listed for an approval hearing in a few weeks' time, the settlement announced is on a drop-hands basis. And we have a final damages take-up figure in only one case so far: the *Gutmann trains* settlement. There, total take-up was around £200,000, less than 1% of the settlement sum available.

There are several reasons why the collective actions regime has not yet delivered significant sums to claimants. The very large sums claimed in some of the actions are likely to be a hindrance to settlement discussions. In some cases, defendants are being sued in multiple jurisdictions, which may also make settlement more difficult. Another problem has been that collective proceedings so far have tended to be fairly long-running, as a result of having to address complex and novel procedural questions, as well as frequent appeals to the higher courts.

This is therefore still a developing regime, in which we are all working out how to ensure that meritorious cases lead as quickly as possible to redress for the class. The CAT is very conscious of the public interest in having a successful and well-functioning collective action regime. The problem is that these are typically enormous claims, of huge complexity, that are often pursued on behalf of millions of class members. They are not easy cases to manage, and we are still grappling with the many new procedural problems that they throw up.

So let me turn to some of the themes that have emerged from the UK cases so far.

Emerging themes

The starting point has to be certification, which is a crucial gateway that enables the CAT to determine whether the proceedings will progress to trial, and if so on what basis. The Tribunal has to be satisfied, at that stage, that collective proceedings are a suitable and proportionate vehicle for the claims in question, especially if the proposed claim is framed on an opt-out basis.

As is well known, a relatively low threshold for certification was set by the Supreme Court in *Merricks* in 2020. But that has now been called into question by the more recent Supreme Court judgment in *Evans* last year. *Evans* requires the Tribunal to assess the strength of the claim when determining whether proceedings should be certified on an opt-out basis, which as I have said is the basis on which almost all collective actions are now brought.

It is still too early to assess how that ruling will play out. But we have already seen various cases since the *Evans* judgment where applications have been made either for decertification, or for claims to proceed on a hybrid basis with both opt-in and opt-out claimants. I would also expect that in the future the Tribunal will be asked to examine the merits of opt-out claims

more intensively at the certification stage. What that means in practice is something that will no doubt be vigorously debated.

Proposed opt-out proceedings are also increasingly likely to be scrutinised on cost-benefit grounds. That issue was highlighted by the Tribunal's recent judgment in the *Waterside* case, refusing to certify claims of purchasers of salmon where the estimated loss was less than £20 per household. Mindful of the low take-up in *Gutmann* trains, the Tribunal expressed concern about the proposals for distribution to the class members, noting the potential for a disconnect between the ultimate benefits to the class and the commercial benefits to the lawyers and funders.

Comments like this are not about discouraging properly brought cases. Rather, the Tribunal is seeking to ensure that the machinery of collective litigation remains proportionate and credible, and that it does not result in a situation where the main beneficiaries are persistently the lawyers and funders rather than the class.

In light of these concerns, it is perhaps not surprising that recent CAT judgments have also started to look more closely at the role of the class representative. The Tribunal has made clear that the class representative plays a pivotal role in managing the conflicts of interest that might arise between the different stakeholders in a collective action. The Tribunal will therefore actively scrutinise the suitability of the class representative and the support structure available to them.

But proportionality comes into play here too. On the one hand, it is essential to ensure that the litigation can be managed effectively on behalf of a large absent class. On the other hand, questions have been raised about the increasing costs incurred by class representatives, advisory panels and their wider legal teams. We are aware that class action regimes across the world take different approaches to the role and remuneration of class representatives, and this is something that I'm sure we will continue to consider going forward.

Proportionality is also a dominant theme in the case management of the litigation after certification, and efficient case management is a key priority for the CAT. We continue to work through questions such as how to structure the proceedings, how to manage disclosure, and how to make appropriate and proportionate use of the experts.

The irony is that progressing the case efficiently and fairly requires intensive case management, but that can itself increase the time and cost burden on the parties. So we face a dilemma: how is the Tribunal to exercise active case management at an early stage so as to avoid later inefficiency, without that intervention generating the spiralling costs that we seek to prevent?

There aren't easy answers to that. Part of the solution is, I think, predictability and consistency, so that parties know what to expect and can plan accordingly. Another important consideration is costs control. In recent cases the Tribunal has emphasised the importance of cost budgeting, so that costs are controlled during the proceedings rather than merely argued about at the end. That is something that you can expect to see developed more over time.

Finally, I should say something about funding. In some jurisdictions, particularly in North America, proceedings are typically funded by claimant lawyers through contingency fee arrangements and class proceedings funds. By contrast, it is no secret that almost all collective claims in the CAT require third-party funding.

Third-party funding is central to our collective actions regime, because it enables claims to be pursued that would otherwise be unviable. But it also raises legitimate questions about incentives and conflicts of interest, because it separates the litigating class and their lawyers from the financial risk of the litigation. As the *Merricks* settlement has highlighted, that can ultimately lead to a divergence of interests between the class members and the funders.

That is one reason why the Tribunal has maintained scrutiny of funding arrangements throughout the litigation, including at the stage of settlement and distribution. Funders, unsurprisingly, seek maximum certainty as to recovery, as early as possible in the proceedings. But the established position, upheld by the Court of Appeal, is that the CAT has a wide discretion to review a funder's return at any stage of the proceedings, including at the time of judgment or settlement.

At that stage, as the CAT emphasised in its *McLaren* settlement judgment this year, the degree of success is an important factor in determining payments to stakeholders – and, importantly, success includes whether the proceedings have delivered meaningful benefits to the class. The Tribunal will therefore seek to avoid outcomes where class members receive very little, leaving the stakeholders as the main beneficiaries of the litigation.

That is not just about *ex post facto* control, but about emphasising the Tribunal's expectation that there must be a rigorous focus from the outset of the proceedings on the robustness of distribution plans and the ultimate likely benefits to the class members. Again, the overarching concern is and must be a strengthening of the effectiveness of the regime at achieving the objectives that I outlined at the start of this talk.

Concluding comments

The themes I have outlined are not unique to the UK, and they are not confined to competition law. That is one reason why today's international perspective is so valuable. Different jurisdictions have made different choices about opt-in and opt-out mechanisms, funding, certification thresholds, case management, and the approval of settlements. Some regimes are now mature and have well-established principles. The UK regime is, by contrast, still in an active, early phase of development and refinement.

I hope that our experience may offer some useful lessons about what can work well, and where friction points can arise. And I am sure that UK practitioners will in turn find much of interest and insight in the experience of other jurisdictions.

We know that all of this is under close review by policymakers. The DBT is, as you know, currently considering the responses to its call for evidence on the current opt-out regime. In addition, the Law Commission has now launched a new project to consider the potential introduction of a consumer class actions regime, which will no doubt play close regard to the way in which the competition regime has worked so far. So there is much to think about for the future.

On that note, let me end by thanking the Bar Council, the organisers, and all of today's speakers for putting together this conference. Collective redress is an area where procedure and principle are inseparable. It raises questions about access to justice and effective enforcement, but also about proportionality, safeguards and confidence in outcomes. I very much hope that today's discussions will help all of us, across jurisdictions and across different disciplines, to think clearly about how to achieve that balance. I wish you a stimulating and productive conference.