Disputes Outlook 2026
Competition disputes

For what comes next
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Live issues

Collective claims piggybacking on regulatory decisions may rise under the CMA's increased digital and consumer harm protection powers

Litigation funders, claimant firms, and proposed class representatives (**PCR**), in addition to bringing follow-on competition damages claims, have sought regulatory decisions on which to base collective competition claims – for example, **Le Patourel v BT and Spottiswoode v Airwave and another.**

The Digital Markets, Competition and Consumer Act 2024 (**DMCC**) gives the Competition and Markets Authority (**CMA**) new and enhanced powers to regulate large powerful tech firms who the CMA designates as having Strategic Market Status (**SMS**), and enhanced powers to protect consumers, including imposing fines for breaches of consumer law. While the DMCC does not change the competition collective proceedings regime, the overlap between consumer and competition issues means the CMA's decisions may provide valuable insight and generate opportunities for claimant firms, PCRs, and litigation funders to bring claims that piggyback on the facts exposed in these new CMA regulatory decisions to frame competition claims.

Large consumer class actions and group litigation are becoming more commonplace – for example, **Dieselgate**, which commenced trial in October 2025 in the largest group litigation case in UK history - so claimant firms, PCRs and funders may become more active, but note the Supreme Court's judgment in FX appeals on page 6.

Key takeaways

- The CMA's enhanced DMCC powers may open the door to more digital and consumer-framed competition claims. However, competition law has not changed, and claimant firms must still demonstrate a competition infringement through agreements that prevent, restrict or distort competition or an abuse of a dominant position.
- See also our Financial Services report.

UK Government's consultation on the opt-out regime

The Department for Business and Trade's (**DBT**) 'call for evidence' on the collective proceedings opt-out regime signals potential legislative or policy change. The consultation closed on 14 October 2025 with conclusions and any recommendations now not expected before 2027.

The call for evidence focused on whether the opt-out regime is "delivering access to justice for consumers in a way that brings value without being disproportionately burdensome on business," noting that only one case reached a trial within the first decade. The consultation covered four key areas: (i) access to, and the framework for, funding cases within the regime; (ii) scope and certification of cases; (iii) alternative dispute resolution, settlement, and damages; and (iv) distribution of funds.

Collective proceedings have significant guardrails, including: (i) the certification and approval process; (ii) the ability to apply for reverse summary judgment or strike out; and (iii) the fact that (most) funders want a return on investment and only fund cases where they believe there is real potential for them to recover a commercial return (the exception being the Home Office-funded **Spottiswoode v Airwave claim**). Nonetheless, the review has sparked intense debate. Claimant firms warn that weakening the regime would undermine consumer and SME rights, while business-aligned groups argue for stronger regulatory guardrails.

One proposal would empower the CMA to issue directions for redress, potentially reducing private litigation. While redress schemes have worked in regulated industries with ongoing customer relationships, they are harder to implement elsewhere, often ending up on appeal, and causing substantial costs for industry. Questions also remain about how the CMA would apply its finite resources. Another proposal concerns granting immunity from damages claims to businesses cooperating with CMA investigations, at least where another business is in the frame to pay.

The consultation also questions whether individual returns justify the regime, noting that in the recent **Merricks** settlement of £200 million, individual class members can expect to receive approximately £45 each, with no one exceeding £70. However, a key objective of the regime is to discourage businesses from breaching competition law and to deprive them of ill-gotten gains.

Key takeaways

- Collective proceedings trends show a general move towards opt-out. However, the government's review may materially reshape the regime, representing a critical juncture that could fundamentally alter competition litigation risk in the UK. The FX case (see page 6) may temper the use of opt-out for weaker cases. Proactive compliance review and early dispute resolution strategies are essential to mitigate exposure in this evolving landscape.
- See also the Financial Services and Commercial Disputes reports.

Guidance on certification from the Supreme Court in Michael O'Higgins FX Class Representative Ltd v Evans and others

The underlying follow-on collective proceedings are based on settlement and infringement decisions by the European Commission concerning foreign exchange (**FX**) spot trading cartels.

Rival PCRs brought competing proceedings, both seeking certification for the same claims (a carriage dispute).

After the Competition Appeal Tribunal (**CAT**) initially refused opt-out certification in March 2022, certifying the claim on an opt-in basis; the Court of Appeal reversed this decision in July 2023, holding that the CAT had applied the wrong approach to the opt-in versus opt-out merits assessment. The Court of Appeal allowed this aspect of the appeals, remitting the opt-in vs opt-out issue back to the CAT, with other matters, including which PCR is better placed to represent the class.

The banks appealed to the Supreme Court. They challenged whether the Court of Appeal was wrong to overturn the CAT's decision and to rely on the likelihood of claims failing if not certified as opt-out, among other principles underlying the statutory scheme for collective proceedings.

Previously, in **Merricks v Mastercard**, the Supreme Court lowered the bar for certification, establishing that "subject to two exceptions, the certification process is not about, and does not involve, a merits test." The two exceptions being: (i) strike out applications and (ii) determining whether the claim should proceed on an opt-in or opt-out basis. The Supreme Court, in the appeals of these underlying collective proceedings, address this second exception.

On 18 December 2025, the Supreme Court handed down judgment, finding the Court of Appeal was wrong to interfere with the CAT's judgment, clarified that a fair balance must be struck between claimant and defendant when deciding whether a collective claim should proceed on an opt-out or opt-in basis, requiring the CAT necessarily to consider the merits (weakness) of a claim.

Key takeaways

- The Supreme Court's decision could have far-reaching implications for the funding of future weaker collective proceedings claims before the CAT.
- Where a claim lacks merit, but survives strike out or summary judgment, the CAT should nonetheless consider whether a weak claim justifies the benefits an opt-out certification would bring.

Emerging trends

Litigation funding uncertainty continues to reshape who brings cases and how

In July 2023, the Supreme Court ruled in **PACCAR** that litigation funding agreements are not enforceable in competition proceedings because they amount to damages-based agreements (**DBAs**), which are prohibited in opt-out collective proceedings.

In June 2025, the Civil Justice Council (**CJC**) urged government to legislate to reverse the decision in **PACCAR** "as soon as possible". A previous attempt was derailed by the 2024 general election.

At the time of writing, government has not set a deadline for reversing **PACCAR**. The DBT's call for evidence on the opt-out regime specifically covers litigation funding and will directly inform the government's response to the CJC's call for change.

The Supreme Court also faces two linked appeals (**Visa v Commercial** and **Apple v Gutmann**) on the statutory interpretation of legislation regarding litigation funding agreements. Specifically, the interpretation of the statutory conditions required for a DBA to be lawful. These appeals concern revised funding agreements following **PACCAR** and should provide clarity when judgment is handed down.

Key takeaways

- Significant uncertainty remains around litigation funding in opt-out collective proceedings. While we have seen movement towards funding hybridisation to overcome **PACCAR** issues, the outcome of the DBT's consultation will shape who brings these cases and how they are funded, and as the market adjusts to the Supreme Court's FX judgment's implications for weaker cases.
- See also the Financial Services report.

Slow-down in number of proceedings, but some encouragement for claimants following Kent v Apple

After a slow start to the collective proceedings regime with two cases issued in its first two years (one of which was withdrawn by consent), momentum built. In 2022, 15 cases were issued, in 2023, 17 cases were issued (although this includes claims based on the same facts, e.g. Water and Mobile claims) and in 2024, 11 cases were issued, far exceeding original impact assessments.

However, the number of collective proceedings slowed in 2025 with only four applications by the end of November 2025. Funders may have been discouraged by the **PACCAR** decision on litigation funding and adverse outcomes for PCRs in **Le Patourel v BT** (the first liability trial for collective proceedings, resulting in defeat for the class representative), **Riefa v Apple** (where the CAT refused certification on grounds that it was not satisfied the PCR would adequately represent class members' interests), and **Merricks v Mastercard** (where the £14bn claim settled for £200m) with a dissatisfied funder.

The tide may be turning once more following the recent case of **Kent v Apple**. On 23 October 2025, claimants and funders received a boost after the CAT found that Apple had abused its dominant position by charging unfair and excessive commission and imposing exclusionary practices. The Court of Appeal has granted Apple permission to appeal – watch out for developments in 2026.

Kent v Apple brings the collective proceedings score to PCRs 1:2 Defendants, with 3 settlements.

There is also potential for non-commercially funded claims to increase, following certification of the UK state-funded **Spottiswoode v Motorola** claim on behalf of 400-2,000 blue light radio network users.

Key takeaways

- While collective proceedings have declined following adverse outcomes and **PACCAR**-related funding uncertainty, recent successes such as **Kent v Apple** and the emergence of state-funded claims may reinvigorate claimant activity.
- The landscape remains cautious pending regulatory and judicial clarity on opt-out and on funded costs, and the DBT's call for evidence.

Settlements and testing fairness following the Merricks settlement

The CAT's approval of the **Merricks v Mastercard** settlement in May 2025 demonstrated intense scrutiny of distribution mechanisms and funder remuneration. This included a judicial review brought by the funder challenging the CAT's approach to settlement distribution (not the settlement figure itself).

In October 2025, the CAT ruled that the funder should be liable for additional costs incurred by the settling parties due to its unsuccessful intervention.

While the outcome of the judicial review proceedings will clarify aspects of settlement fund distribution, it is unlikely to fundamentally disrupt the collective proceedings regime. Until then, the distribution of funds to the funder and class members remains stayed.

Key takeaways

- Given recent adverse outcomes for claimants and funders there may be greater appetite to settle cases early. This case highlights tensions between parties involved in collective proceedings and their competing priorities.
- With minimal guidance on the CAT's approach to approving settlements (court approval is a feature unique to the collective proceedings regime) and distribution mechanisms, settlements in 2026 are likely to face similar scrutiny and potential appeals.

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