

# Opt-out collective actions regime review: call for evidence by the Department for Business and Trade

## Evidence from The Access to Justice Foundation

### Introduction

1. Established in 2008, the Access to Justice Foundation (the “**Foundation**”) is a registered charity that makes grants with the objective of improving access to justice throughout the UK.
2. The Foundation is led by its CEO, Clare Carter, and its board of trustees. One trustee is appointed to the board of trustees by each of the President of the Law Society of England and Wales, the Chair of the Bar Council of England and Wales, the President of the Chartered Institute of Legal Executives, the Chair of Advice Services Alliance, and the Lord/Lady Chief Justice, with the appointed trustees empowered to choose further trustees thereafter. The current board includes King’s Counsel, current and former solicitors, a retired judge, and individuals with decades of experience across grant-making, the charitable sector, internal audit and risk (including specialist charity accounting), social welfare, and other NGOs.
3. The Foundation was established in order to provide a vehicle for distribution of income raised via pro bono costs orders pursuant to s194 Legal Services Act 2007. Subsequently the Foundation was also named the prescribed charity to receive undistributed damages from opt out collective actions in the Competition Appeal Tribunal pursuant to the Consumer Rights Act 2015.
4. The Foundation receives grants and donations from a variety of sources, including grants from the Ministry of Justice and the National Lottery Community Fund, as well as grants from other foundations and trusts, and donations from members of the public.
5. The Foundation then makes grants to appropriate beneficiaries, working with donors and frontline agencies to develop funding criteria to meet the needs of both donors and funded partners. The Foundation runs open rounds of applications for its grants, and its experienced grants team carries out due diligence on, and assesses the merits of, prospective grantees’ applications.
6. Since its establishment, the Foundation has made over a thousand grants to advice providers. Its income has grown from £39,266 in 2008 to £13,275,093 in 2024. In 2024, it provided funding worth £14,671,923 to 140 organisations around the country. In every year since it was established, at least 90% of the Foundation’s funds have gone directly to its beneficiaries.

### Responses

We have limited our responses to the questions which are relevant to us and where we have some insight to share.

#### **Q26. What should happen to unclaimed funds from a settlement agreement?**

7. The present statutory regime does not provide for unclaimed funds from a settlement agreement to revert to the Foundation as of right. This was discussed during the Government’s prior consultation in 2012-13, which occurred in advance of setting the present statutory regime and CAT Rules. The Government’s response to the consultation concluded:

- a. Such sums should not revert to the Defendant, as the Government remained “*unconvinced that the party who has found to be in breach of competition law should be the one to benefit from an unjustified windfall*”.
  - b. That settlement could, potentially, include *cy-près* “*elements*”, subject to CAT approval.
  - c. That whilst parties could be free therefore to settle on other bases, that the “*Government considers that it would be far better if the funds were used for some purpose connected to the underlying driver for allowing collective actions, such as restoring competitive markets or enabling access to justice*” (our emphasis).<sup>1</sup>
8. It was on this basis that the Government determined its recommendation for the Foundation to be the recipient of residual damages following judgment, which remains the case today, but left open the question of what should happen in the context of settlement.
  9. The Foundation suggests that, on settlement, it should ordinarily be expected that a proportion of any unclaimed funds should be paid to a charity enabling access to justice, rather than reverting in full to the defendants, lawyers or funders.
  10. The CAT Rules currently fail to reflect that principle. The factors the Tribunal is obliged to consider when assessing a settlement proposal are contained at rr. 94(9) and 97(7) of the CAT Rules. Sub-paragraph (g) of each Rule states:
 

*“the provisions regarding the disposition of any unclaimed balance of the settlement, but a provision that any unclaimed balance of the settlement amount reverts to the defendants shall not of itself be considered unreasonable.”*
  11. The Foundation respectfully suggests that the underlined words above should be struck from the Rules. The collective actions regime is designed to provide redress for victims. Even in the settlement context, it is contrary to the interests of justice for the entirety of unclaimed funds to revert to the alleged wrongdoer, who would receive an unjustified windfall from the fact that a low level of people entitled to compensation have made such claims (which is itself indicative of challenges with access to justice), or to the litigation funder.
  12. In its place, the Foundation would propose that words to the following effect be inserted:
 

*“Save in exceptional circumstances, a settlement shall not be considered reasonable unless it provides for a reasonable proportion of any unclaimed balance of the settlement amount to be paid to the Access to Justice Foundation, as the prescribed charity pursuant to s194(C) Legal Services Act 2007.”*
  13. Given that the Foundation is the charity designated in the event of judgment, it anticipates that, in the majority of settlements, it will be the named charity in any settlement agreement. This avoids the difficulty for the Tribunal of being asked to make judgments about how funds can most effectively be used. The Foundation is a grant-making charity, with its aim to benefit access to justice, and which can design grant-making programs to ensure that funds are deployed in the manner which is most efficient and impactful

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<sup>1</sup> Department for Business, Innovation & Skills, “*Private Actions in Competition Law: A consultation on options for reform – government response*”, January 2013, p. 42.

14. This proposal is in accordance with the Tribunal's decision in *Merricks* (as to which see further below).
15. The Foundation also considers that the proposed change to the Rule is desirable because, at present, Class Representatives are not given a positive incentive to negotiate for unclaimed funds to be paid to charity rather than to revert to the defendant. Rather, given that the Class Representative owes their duties to the class members, they may be placed in an invidious position if a defendant is only willing to settle on terms that include full reversion of unclaimed funds. Further, in cases where the settlement sum is relatively low, Class Representatives will often find themselves in a position where the funder is claiming to be entitled to any unclaimed funds and the Class Representative is under a contractual duty not to argue against the funder's interest. It is therefore highly desirable for the Rules to provide for an expectation that a proportion of any unclaimed funds will be paid to the designated charity, such that there is a positive incentive on all parties to ensure that an appropriate share of unclaimed funds is used for public benefit, rather than reverting to the alleged wrongdoer or being paid to the funder.

**Q28. Are consumers made sufficiently aware of proceedings/their right to claim their share of damages by current notice requirements? If not, how could awareness be improved?**

16. The Foundation, under s.194(8) of the Legal Services Act 2007, was selected as the recipient of undistributed or 'residual' damages awarded in opt-out collective proceedings (see s.47C(5) of the Competition Act 1998). No provision was made in statute for the automatic application of unclaimed funds from opt-out proceedings where the parties reached a settlement before trial.
17. As the Department for Business & Trade ("DBT") will be aware, proposed settlements in opt-out collective proceedings require the approval of the Competition Appeal Tribunal (the "**Tribunal**") and only three such judgments have been handed down,<sup>2</sup> including the recent decision in *Merricks*, in which the Foundation intervened.<sup>3</sup>
18. In *Merricks*, the Tribunal selected the Foundation as the charity to receive unclaimed funds over an alternative organisation proposed by the Defendants. The Tribunal was not obliged to approve any particular course however and retains the discretion to approve or not different settlement proposals for the distribution of unclaimed funds in future proceedings.
19. Whilst the Foundation hopes in time to receive unclaimed funds in *Merricks* following the Tribunal's decision,<sup>4</sup> and whilst it recently gained the Tribunal's approval to receive a sum from the settlement in *Gutmann*, the Foundation is yet to receive any funds from the opt-out collective actions regime.
20. The Foundation is uniquely positioned to generate the most impact from the opportunities afforded by the opt-out collective action regime and deliver real benefits to consumers and improve access to justice, it is also in the Foundation's interest for the opt-out collective actions regime to be a success as a whole. Commentators have noted that take up from opt-out class-members for the distribution of settlement sums has, on occasion, been low.<sup>5</sup> It is reasonable to suggest, however, that (i) a small number of examples have the potential to colour or

<sup>2</sup> Case 1339/7/7/20 *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others*.

Case 1304/7/7/19 *Justin Gutmann v First MTR South Western Trains Limited and Another*.

<sup>3</sup> *Walter Hugh Merricks CBE v Mastercard Incorporated & Ors (CSAO Application)* [2025] CAT 28.

<sup>4</sup> The DBT will be aware that the Claimants' litigation funder in that case, Innsworth, is seeking permission to bring a judicial review into the decision.

<sup>5</sup> For example, the parties' recent experiences in *Gutmann (Trains)*.

overshadow observers' view of other, and potential future, successes, and (ii) in any event, the Foundation considers that it remains too early in the regime's life to draw firm conclusions on its progress.

21. The Foundation is interested in the success of the CAT regime, given that (i) it is able to receive and distribute residual damages, for the public benefit, and (ii) it supports the successful redress to consumers of damages in respect of instances where they have suffered wrong or harm. The successful functioning of the UK's collective action regime, including as to the distribution of damages, equates to heightened access to justice for the public as a whole.

22. Indeed, this was recognised by the Tribunal in *Merricks*, where it noted:

*"Since the justification of the collective proceedings is that [class members] could not in practice bring these claims otherwise, a charity which has as its object the provision of assistance to a very wide range of bodies across the UK to help the disadvantaged pursue or protect their legal rights seems to us an appropriate recipient of residue funds in these proceedings."*<sup>6</sup>

23. The Foundation founded a Collective Actions Advisory Group, which includes members from across legal services, litigation funding, and class representative organisations, which exposes it to different perspectives across the regime. One topic that is often raised amongst the group is the lack of 'official' information, for example on the CAT website or elsewhere, on how consumers can take up their share of damages from collective actions. Given the present state of online resources, where consumers are understandably wary of providing personal information, including financial information, to third-parties online – often of limited or dubious reputation – we consider that, as a first and relatively simple practical step, the establishment of a Government portal to access consumers' share of damages would do much to increase take up.

24. Finally, we note recent research published by Thorndon Partners, which identifies certain barriers to uptake, including a wariness on the part of the public providing personal information, including financial details, to third parties online, as well as a general lack of understanding of the legal processes involved.<sup>7</sup>

**Q29. The quantum of damages can vary from case to case. For example, out of the recent *Merricks* settlement of £200 million, £100 million was set aside for class members. Of this, individual class members can expect to receive approximately £45 each and no more than £70.**

25. *Merricks* should be acknowledged as simply one data point in the context of the overall collective actions regime. As noted elsewhere in this response, whilst the Government's previous consultation on "Private actions in competition law" occurred in 2013, and whilst ten years have passed since the introduction of the Consumer Rights Act 2015, the number of occasions where a case has progressed to settlement or final determination are few, and as such we consider that it is too early for conclusions to be drawn on the effectiveness of the regime in this (and other) regards. Given the nascent regime experienced novel questions of interpretation and case management, for example questions of class certification that reached the Supreme Court (the Supreme Court's decision on the CPO in *Merricks* was only handed

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<sup>6</sup> *Merricks*, at [202].

<sup>7</sup> Thorndon Partners, "*Beyond Dispute: Collective Settlement take-up rates in the UK*" (2025), p.2. We note for completeness that, of those polled by Thorndon Partners, 40% considered that undistributed damages from settlement proceedings should be distributed to charity (p.7).

down in December 2020), and given the scale (and therefore case management considerations) of some of the claims currently working through the system, it is perhaps unsurprising that few cases have yet to reach final determination or settlement. We respectfully suggest that such context is not a good reason to propose changes to the regime before its results can be assessed in full – indeed, it is a good reason *not* to propose such changes.

26. Finally, whilst the question above has been framed in terms of per capita distributions, the DBT should also consider the effect of the total distribution. £100 million paid to class members or the Foundation is clearly not insignificant, particularly if several million pounds (depending on the uptake from consumers), is eventually payable to the Foundation for onward distribution to causes supporting access to justice.

**Q30. What should happen to unclaimed or residual damages? Should different expectations be applied to settlements?**

27. The Foundation considers that the current mechanism for distributing residual damages following judgment continues to be appropriate.
28. Parliament determined, by amendments to the Competition Act 1998 through the Consumer Rights Act 2015, that the prescribed charity under s.194(8) of the Legal Services Act 2007 should also be the recipient of unclaimed or residual damages from opt-out collective proceedings, with the Foundation being that charity.
29. In this regard, it is instructive to consider the pre-statute Department for Business, Innovation & Skills (as it then was) government response to the consultation on the subject in January 2013.<sup>8</sup>
30. In its response, the government determined, having considered the evidence and responses from the consultation, that:
- a. *“Allowing cy-près damages would be undesirable, due to the fact that there would be frequently substantial difficulties in determining a suitable candidate for the organizational distribution and that this in turn would likely lead to the lobbying of judges and potentially also satellite litigation [...]”.*
  - b. it would therefore be preferable to allocate the funds to a “named recipient”, and suggested suitable candidates in the Treasury, the defendant, the Foundation, or another named charity (although note further below);
  - c. settlement could potentially, if suitable, include an element of *cy-près* damages.
  - d. reversion to a defendant was undesirable, in that it was *“unconvinced that the party who has been found to be in breach of competition law should be the one to benefit from an unjustified windfall”*;
  - e. it was desirable for funds to be *“used for some purpose connected to the underlying driver for allowing collective actions, such as [...] enabling access to justice”*;

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<sup>8</sup> Department for Business, Innovation & Skills, *“Private Actions in Competition Law: A consultation on options for reform – government response”*, January 2013, pp. 41-43.

- f. *“The [Foundation] has an impact and is valued by those whom it exists to serve. The [Foundation] is used to dealing with uneven inflows of funds and, as a grant-giving organisation, does not directly fund litigation.”; and therefore*
  - g. *“That any unclaimed sums must be paid to the [Foundation], though leaving defendants free to settle on other bases [...] subject to approval by the CAT judge.”*
31. Clare Carter, the Foundation’s CEO, submitted a witness statement in the course of the Foundation’s Intervention in *Merricks v. Mastercard Inc. & Ors* [2025] CAT 28. This witness statement and its exhibit is attached below with this response at **Annex A**. The DBT is invited to consider it in full.
  32. Paragraphs 4-7 of the witness statement detail the Foundation’s history, objectives and structure. Paragraphs 8-14 detail the Foundation’s present grant-making activities. Paragraphs 15-17 discuss the Foundation’s role in collective proceedings in the UK, its particular function in relation to residual damages in opt-out collective proceedings and suggests reasons why Parliament thought it appropriate to name the Foundation as the recipient for such sums. Paragraphs 18-24 of the witness statement thereafter provide examples of how the funds the Foundation receives and distributes in its grants make a real difference to individuals and families around the country.
  33. In brief, and per paragraph 17 of the witness statement, the Foundation considers distributing residual damages or unclaimed funds to the Foundation:
    - a. avoids the Tribunal or another having to make policy choices between worthwhile causes.
    - b. allows a wide array of organisations, and the public they service, to benefit equitably.
    - c. enables a specialist and independent charity, with significant expertise amongst its staff and trustees, to identify how funds can be distributed to greatest effect, likely between a significant number of organisations. The Foundation is able to monitor and evaluate the use and impact of such funds, so as to learn from its experience. It is unrealistic to expect parties and the Tribunal to perform that function on a case-by-case basis; and
    - d. improves access to justice (as to which, as the witness statement notes, a significant proportion of unclaimed funds is in fact a symptom of *lack* of access to justice).
  34. The DBT should further consider in full the Foundation’s Statement of Intervention in the *Merricks* CSAO Application, which discusses in further detail the merits of distributions to the Foundation in the context of settlement.
  35. Approving the CSAO Application in *Merricks*, the Tribunal commented, in approving the selection of the Foundation to receive unclaimed funds (from settlement sums) in that case:
    - a. At [202]:
 

*“Since the justification of the collective proceedings [applicable to, essentially, all other collective proceedings] is that the [class members] could not in practice bring these claims otherwise, a charity which has as its object the provision of assistance to a very wide range of bodies across the UK to help the disadvantaged pursue or protect their legal rights*

*[being the Foundation] seems to us an appropriate recipient of residue funds in these proceedings."*

36. As above, the Foundation notes that whilst the current regime, with the Foundation the named charity to receive residual damages, has been in place since the Consumer Rights Act 2015, relatively few cases governed by the regime have resulted in trial or settlement since its creation. As such, the Foundation considers that it is too early for the DBT to judge the effectiveness or otherwise of the present regime, and the Foundation's work within it; there is simply as yet insufficient data from which to draw accurate conclusions.
37. Concerning settlements, the Foundation refers to its answer in response to Question 26, above.

**Q31. Is there anything else that you would like to share regarding the operation of the opt-out collective actions regime?**

38. The Foundation respectfully suggests that consideration of other jurisdictions' collective actions regimes is likely to be of value to the DBT, considering that that some of those regimes are considerably more established than the UK's own. The following jurisdictions have systems in place which allow for some kind of charitable payment, usually focused on improving access to justice – British Columbia, Ontario, various US states, Australia and the Netherlands. This is not an exhaustive list.
39. The Foundation is working with the Centre for Socio Legal Studies at Oxford University on a research project exploring new ways of funding access to free legal advice. One of the models being explored is undistributed damages in collective actions cases. We would be happy to share the emerging learning from this research.

## **ANNEX A**

### **IN THE COMPETITION APPEAL TRIBUNAL**

**Case no. 1266/7/7/16**

**B E T W E E N: -**

**WALTER HUGH MERRICKS CBE**

**Class Representative**

**and**

**(1) MASTERCARD INCORPORATED**

**(2) MASTERCARD INTERNATIONAL INCORPORATED**

**(3) MASTERCARD EUROPE S.A.**

and

(1) INNSWORTH CAPITAL LIMITED  
(2) THE ACCESS TO JUSTICE FOUNDATION

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**FIRST WITNESS STATEMENT OF CLARE CARTER**

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I, **CLARE CARTER**, of the Access to Justice Foundation, 7 Bell Yard, London WC2A 2JR will say as follows:

1. I am the Chief Executive of the Access to Justice Foundation (the “**Foundation**”), a registered charity which is named by the Class Representative and the Defendants in their joint application for the approval of a collective settlement in this matter as a potential recipient of undistributed funds from the proposed settlement. I make this statement in support of the Foundation’s intervention in that application.
2. The facts and matters set out in this statement are within my own knowledge, unless otherwise stated, and are true. Where I refer to facts and matters which are not within my own knowledge, I identify the source of that information, and those facts and matters are true to the best of my knowledge and belief. I refer below to copies of documents exhibited to this witness statement in a paginated bundle of documents marked “**Exhibit CC1**”. I refer to Exhibit CC1 in the format **CC1/page**.
3. I will address the following topics:
  - (1) the Foundation’s history, objectives and structure;
  - (2) the nature and extent of our grant-making activities;
  - (3) our role in collective proceedings; and
  - (4) how funds from this case would make a real difference.

## **THE FOUNDATION'S HISTORY, OBJECTIVES AND STRUCTURE**

4. The Foundation is a company limited by guarantee registered in England and Wales (company registration number 06714178) and a charity registered with the Charity Commission (charity registration number 1126147). For the avoidance of doubt, we make grants throughout the UK.
5. The Foundation was set up in response to widely held concerns about difficulties many people have in accessing the legal advice they need to uphold their rights and challenge injustices, and the lack of available funding for this. Lord Goldsmith KC PC, who was Attorney General of England and Wales from 2001 to 2007, was a particular driving force in the Foundation's establishment in 2008, becoming the first Chair of the Foundation's Trustee Board, a post which he held until 2020, since which time he has remained the Foundation's President.
6. The Foundation's objects, as set out in clause 3 of its original Memorandum of Association and reproduced in article 2 of its current Articles of Association dated 4 April 2020 (exhibited in full at **CC1/1-25**), are:  
  
*"1. the provision of financial and other support (including such financial support as is envisaged by section 194 of the Legal Services Act 2007 as amended or re-enacted from time to time) to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge (that is, otherwise than for or in expectation of fee, gain or reward) and which is provided directly or indirectly to people who are in need of such advice or assistance by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; and*  
  
*2. the promotion of such other purposes aimed at improving access to justice being exclusively charitable according to the law of England and Wales as the Trustees may from time to time determine."*
7. Our governance is led by a board of trustees. One trustee is appointed to the Foundation's board of trustees by each of the President of the Law Society of England and Wales, the Chair of the Bar Council of England and Wales, the President of the Chartered Institute of Legal Executives, the Chair of Advice Services Alliance, and the Lord/Lady Chief Justice. In turn, those appointees are empowered to choose further trustees, which they have done, with the consequence that the board includes experts in grant-making, finance, risk, human resources and the charity sector. I refer to brief CVs of the trustees at **CC1/26-28**.

## **NATURE AND EXTENT OF OUR GRANT-MAKING ACTIVITIES**

8. The Foundation is a fundraising grant maker. This means we raise funds from a range of sources and then distribute those funds in grants to appropriate beneficiaries. We take a collaborative approach and work with donors and frontline agencies to develop funding criteria which both meet the needs of the donor and the funded partners.
9. We only fund agencies who know how to work effectively and efficiently with the grants they receive. We run open rounds of applications for grants, so applications can be assessed fairly and consistently. We carry out due diligence on all applications, our experienced grants team assess applications considering factors such as the quality of the application, the ability of the applicant organisation to carry out the work on time and on budget, whether the applicant's project is duplicative of any work already being done.
10. The Foundation is now, over 16 years after its establishment, a substantial and experienced grant-maker. Indeed, the Foundation has now made a total of 1,097 grants to 380 advice providers. Our income has grown from £39,266 in 2008 to £10,739,408 in 2023. Our grant making has grown from £25,050 in 2009 to £39,114,295 worth of grants currently in place.
11. I refer to our latest filed annual report, for the year ended 31 December 2023, at **CC1/29-63**, which includes a statement of our strategic objectives, and details of our activities including financial statements.
12. I wish to draw particular attention to the list at **CC1/59-63** of the very many institutions we supported in 2022 and 2023. We fund a wide range of justice-focused charities, from small frontline community groups to big national charities like Shelter. Some of the small but highly impactful projects we have funded include:
  - (1) RCJ Advice: Enabling more women who are experiencing domestic violence to apply online for non-molestation orders to secure their safety.
  - (2) Law for Life: Providing easy-to-use simple guides on how to resolve a range of everyday legal problems which are accessed by nearly a million people each year.
  - (3) Nishkam Civic Association: A Birmingham-based Sikh association. Using the law to help keep people in their homes, retain their jobs and ensure they have a basic income.
  - (4) SATEDA: A Kent based domestic violence charity providing court-based support services to women. They have seen a 97% increase in demand for this service

over the last two years and describe our five-year grant to them as transformational.

13. Statements from our funded partners of how much they value our support include:

*"The Access to Justice Foundation is different from a lot of other funders. They have a unique recognition that organisations need a stable infrastructure to deliver support and build innovative partnerships to help those that need it most."*

(Leicester Community Advice and Law Centre)

*"We need to be responsive and expert across multiple areas of law so that we can provide exactly what clients need. It is only through flexible and multi-year funding, like that from The Access to Justice Foundation, that we are able to resource this."*

(Cumbria Law Centre)

*"By funding this project, you have allowed us to employ staff to help clients with remote and digital advice where appropriate. This has particularly been helpful when dealing with a significant number of vulnerable clients who would have struggled to use digital means to access advice"*

(Citizens Advice Sherwood and Newark)

*"Our Mobile Legal Adviser attends a range of locations around our large, rural county which are familiar to and trusted by local people. Her work provides greater accessibility for people for whom rural isolation and digital literacy are problematic. If clients are able to access advice in a way convenient to them, they are less likely to bury their heads in the sand and leave legal problems unresolved."*

(Norfolk Community Law Service)

14. We keep our organisational overheads to a minimum, ensuring maximum funds reach the frontline where they are most needed. Our filed accounts show that, in every year since we were established, at least 90% of our funds have gone direct to our beneficiaries.

### **OUR ROLE IN COLLECTIVE PROCEEDINGS**

15. By its amendments to the Competition Act 1998 through the Consumer Rights Act 2015, Parliament decided that the prescribed charity under section 194(8) of the Legal Services Act 2007 should also be the recipient of unclaimed damages from opt-out collective proceedings. The Foundation is that charity. It is my view that this choice was made because:

- (1) Identification of a particular charitable cause by the legislature/executive means that the Tribunal as a judicial body is relieved from making potentially invidious policy decisions as to an appropriate cause to benefit from unclaimed damages. I note that in its response on consultation options for reform in 2013, the Government rejected *cy-près* as undesirable for unclaimed sums from damages awards in collective proceedings “*due to the fact that there would be frequently substantial difficulties in determining a suitable candidate for organisational distribution and that this in turn would likely lead to the lobbying of judges and potentially also satellite litigation disputing the party chosen*” (CC1/69, para. 5.64). Permitting parties to suggest a charity, and the Tribunal then having to review that proposal as part of the approval of a settlement, would result in the very thing considered to be undesirable.
- (2) Whilst the Foundation is just one charity, it is a *grant-making* charity which supports many *service-delivery* charities and has a tried and tested system for making such grants. It is a vehicle which is well designed to distribute funds appropriately and non-duplicatively. We can, if desired, distribute to charities falling under our umbrella objectives which are aligned with the subject matter of particular cases. We can be relied on to survey the field, applying our experience and connections, relieving the Tribunal of the burden of selection.
- (3) If collective proceedings result in unclaimed damages, this indicates a problem with access to justice. Those who have suffered loss are not obtaining the compensation to which they are entitled. The causes that the Foundation supports are all concerned directly with access to justice.

16. There is some discussion on the topic in “*Private actions in competition law: a consultation on options for reform – government response*” (January 2013), which includes the following text:

*“5.46. The question of what to do with unclaimed sums was one that divided respondents. As Figure 5 indicates, the majority of those who responded on this issue favoured distributing the funds to the Access to Justice Foundation (ATJF). Approximately two-thirds of those who favoured this option were local or regional organisations who thought highly of the AtJF’s work and who only answered Questions 20-21.*

*5.47. Arguments put forward by these respondents (most of whom responded using identical language) included that it would avoid “the associated lobbying of judges and potential satellite litigation”, that “A full deterrent effect against anti-competitive companies is achieved as companies practising such behaviour” and that “The purpose at the heart of collective actions is to enable access to justice for individuals who would otherwise not have it, in this case from illegal anti-competitive of companies. Therefore it is logical that residue damages be used to support further access to justice for the public.” They further argued that the AtJF “has a trusted role in the advice sector and legal profession” and “has experience with*

*receiving funds from litigation and has the necessary expertise when legal issues arise as well as dealing with inherently unpredictable sources of income.”*

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Relevant extracts from that Government consultation response are reproduced at **CC1/64-71**.

17. Whilst I recognise that there is no default rule in the legislation in respect of unclaimed funds from collective settlements, in my opinion precisely the same considerations apply to favour a distribution of undistributed settlement monies to the Foundation as I identified in paragraph 15 above – i.e.:
- (1) It avoids the Tribunal having to make potentially invidious policy choices between worthwhile causes.
  - (2) It allows a range of organisations to benefit equitably.
  - (3) It helps access to justice, which the fact of unclaimed funds indicates is wanting in the very case in question.
  - (4) It ensures that organisations ultimately benefitting from undistributed damages are held to account for how the money is spent and we can report back on its impact.

### **HOW FUNDS FROM THIS CASE WOULD MAKE A REAL DIFFERENCE**

18. Relatively small amounts of funding can make a huge difference to people in need. With a grant of £5 million pa from the Ministry of Justice our funded partners provide advice to nearly 40,000 individuals. That means families avoiding eviction, single parents retaining their employment, disabled people receiving benefit income to which they are entitled and elderly people accessing essential health and social care services. A similar sized sum generated from this settlement could be just as impactful.
19. The ultimate beneficiaries of these funds would be some of the most vulnerable people in our society. 83% of clients are experiencing poverty, 76% are disabled, 62% have insecure housing and 45% experience digital exclusion.
20. Levels of unmet legal need are huge. 64% of adults have had a legal problem within the last four years<sup>9</sup> but over 14 million people living in poverty cannot access legal advice. This need

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<sup>9</sup> [Largest ever legal needs survey in England and Wales - The Legal Services Board](#)

is reflected in the demand for our funding, as we can only fund 20% of the requests for funding we receive.

21. The cost-of-living crisis massively increased demand for advice, with our funded partners reporting demand for their services up nearly 50% from 2021 to 2023. One of our partners in Liverpool describes the impact of the work they do to address this: -

*“At a time of large waiting lists and phone lines jammed due to queries regarding the cost of living, this project offers direct access even at a late stage for client's issues. It is already saving client's homes and saving local authorities money for homelessness provision as well as relieving pressure on local NHS services from helping his clients.”*

22. Funds from undistributed damages would have a range of significant impacts. Our funding improves people's health and well-being, their finances and housing situations and empowers them with an increased understanding of their rights. Access to legal advice also benefits the economy as a whole as research we recently commissioned shows, each individual case saves the public purse over £9,000<sup>10</sup>. Also 67% of our funded partners report that their early legal advice provision helps to reduce pressure on courts by ensuring disputes resolve at an earlier stage.
23. We are committed to working collaboratively with parties to collective proceedings who are contemplating settling their cases, or are concerned about the destination of undistributed damages, to design an appropriate funding programme. We are working with a group of consumer-focused charities to develop a set of principles for how such programmes could work.
24. Funds from this proposed settlement between Mr Merricks and Mastercard could be directed if thought fit to a justice-related project aligned with the nature of case – for example, with a focus on consumer advice and support, tackling digital exclusion, or to support work to change unfair policies and practice. We would engage with relevant partners to develop a meaningful programme of grants, addressing areas of greatest need, which we would report back on.

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<sup>10</sup> [The-value-of-justice-for-all-a-report-for-the-Access-to-Justice-Foundation-and-the-Bar-Council-from-Pragmatix-Advisory.pdf](#)

**STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true.

Signed: *Clare Carter.*

Clare Carter

Dated: 7 February 2025