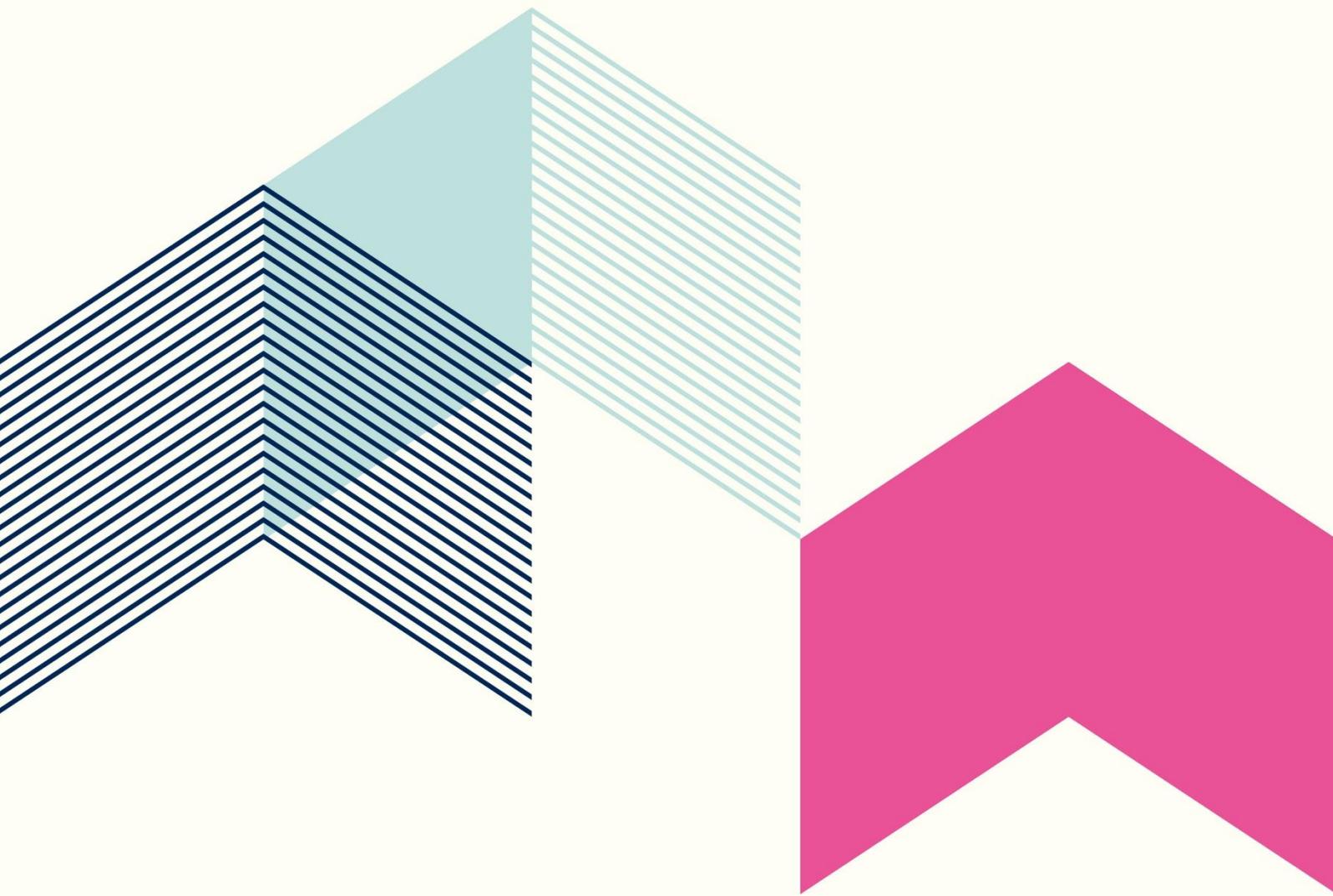


Response to Scottish Civil Justice Council's call for evidence on group proceedings



9. If the case is resolved by a decision of the court, what role should the court have in approving the distribution of the award?

1. 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. It is registered as a charity in Scotland.
2. The Foundation is named as the prescribed charity to receive undistributed damages from opt out collective actions in the Competition Appeal Tribunal (CAT) pursuant to the Consumer Rights Act 2015.
3. The Foundation’s view is that unclaimed damages awards should be distributed in a way which improves access to justice for people in Scotland and that, accordingly, any rules for opt out collective actions should provide that (subject to any contrary order of the court) unclaimed damages should be paid to a charity which furthers such objectives. It would be undesirable, following a decision of the court, for a wrongdoer to retain the benefit of sums reflecting loss it has caused simply because the victims do not come forward; to the contrary, such funds should be used to benefit the public. Further, it would be desirable for an opt out group procedure regime in Scotland to align with the approach taken by the CAT in relation to undistributed damages, especially given that it is a UK wide regime.

[Annex - Rule 93 of The Competition Appeal Tribunal Rules 2015

93.—(1) Where the Tribunal makes an award of damages in opt-out collective proceedings, it shall make an order providing for the damages to be paid on behalf of the represented persons to— (a) the class representative; or (b) such person other than a represented person as the Tribunal thinks fit.

(2) Where the Tribunal makes an award of damages in opt-in collective proceedings, it may make an order as described in paragraph (1).

(3) An order made in collective proceedings in accordance with paragraphs (1) and (2), may specify— (a) the date by which represented persons shall claim their entitlement to a share of that aggregate award; (b) the date by which the class representative or person specified in accordance with paragraph (1)(b) shall notify the Tribunal of any undistributed damages which have not been claimed; (c) any other matters as the Tribunal thinks fit.

(4) Where the Tribunal is notified that there are undistributed damages in accordance with paragraph (3)(b), it may make an order directing that all or part of any undistributed damages is paid to the class representative in respect of all

or part of any costs, fees or disbursements incurred by the class representative in connection with the collective proceedings.

(5) In exercising its discretion under paragraph (4), the Tribunal may itself determine the amounts to be paid in respect of costs, fees or disbursements or may direct that any such amounts be determined by a costs judge of the High Court or a taxing officer of the Supreme Court of Northern Ireland or the Auditor of the Court of Session.

(6) Subject to any order made under paragraph (4), the Tribunal shall order that all or part of any undistributed damages is paid to the charity designated in accordance with section 47C(5) of the 1998 Act(a) and a copy of that order shall be sent to that charity.

10. If the case is resolved by a settlement, what role should the court have in approving the settlement amount and its distribution?

4. The Foundation's view is that the court should be required to approve any settlement in an opt out collective action in a manner similar to that required in the CAT.
5. Whilst the Foundation favours the court have a broad discretion to make a fair order in all the circumstances of the particular case, it considers that at least a proportion of unclaimed funds from settlements should also be distributed in a way which improves access to justice for people in Scotland. This would align with the approach taken by the CAT in relation to unclaimed funds from settlements.
6. Accordingly, the Foundation proposes that any rules should provide that, on settlement, a proportion of any unclaimed funds from settlement should be paid to a charity enabling access to justice, rather than reverting in full to the defendants, or being paid in full to lawyers or funders. See further the response to Question 11 below.

[See Annex Rule 94 of The Competition Appeal Tribunal Rules 2015]

94.—(1) Where a collective proceedings order has been made and the Tribunal has specified that the proceedings are opt-out collective proceedings, the claims which are the subject of the collective proceedings, may not be settled other than by a collective settlement approval order issued in accordance with this rule.

(2) Any offer to settle by a defendant in the collective proceedings shall be made to the class representative.

(3) An application for a collective settlement approval order shall be made to the Tribunal by— (a) the class representative; and (b) the defendant in the collective

proceedings, or if there is more than one defendant, such of them as wish to be bound by the proposed collective settlement.

(4) The application referred to in paragraph (3) shall— (a) provide details of the claims to be settled by the proposed collective settlement; (b) set out the terms of the proposed collective settlement, including any related provisions as to the payment of costs, fees and disbursements; (c) contain a statement that the applicants believe that the terms of the proposed settlement are just and reasonable, supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representatives as to the merits of the collective settlement; (d) specify how any sums received under the collective settlement are to be paid and distributed; (e) have annexed to it a draft collective settlement approval order; and (a) 1998 c.41; section 47C of the Competition Act 1889 was inserted by paragraph 6 of Schedule 8 to the Consumer Rights Act 2015 (c. 15). (f) set out the form and manner by which the class representative proposes to give notice of the application to— (i) represented persons, in a case where it is expected that paragraph (11) will apply; or (ii) class members, in a case where it is expected that paragraph (12) will apply.

(5) Unless the Tribunal otherwise directs, the signed original of the application for a collective settlement approval order shall be accompanied by five copies of the application and its annexes certified by the class representative or its legal representative as conforming to the original.

(6) On receiving an application for a collective settlement approval order, the Tribunal may give any directions it thinks fit, including— (a) for the confidential treatment of any part of an application for a collective settlement approval order; (b) for the giving of or dispensing with the notice referred to in paragraph (4)(f); (c) for further evidence to be filed on the merits of the proposed collective settlement; (d) for the hearing of the application.

(7) Any represented person or, in a case where paragraph (12) applies, any class member may apply to make submissions either in writing or orally at the hearing of the application for a collective settlement approval order.

(8) At the hearing of the application, the Tribunal may make a collective settlement approval order where it is satisfied that the terms of the collective settlement are just and reasonable.

(9) In determining whether the terms are just and reasonable, the Tribunal shall take account of all relevant circumstances, including— (a) the amount and terms of the settlement, including any related provisions as to the payment of costs, fees and disbursements; (b) the number or estimated number of persons likely to be entitled to a share of the settlement; (c) the likelihood of judgment being obtained in the collective proceedings for an amount significantly in excess of the amount of the settlement; (d) the likely duration and cost of the collective proceedings if they

proceeded to trial; (e) any opinion by an independent expert and any legal representative of the applicants; (f) the views of any represented person in a case to which paragraph (11) applies, or of any class member in a case to which paragraph (12) applies; and (g) 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.

(10) A collective settlement approval order may specify the time and manner by which— (a) a represented person or class member, as the case may be, who is domiciled in the United Kingdom on the domicile date may opt out of the collective settlement; and (b) a represented person or class member, as the case may be, who is not domiciled in the United Kingdom on the domicile date may opt in to the collective settlement.

(11) Where the Tribunal approves the collective settlement after the expiry of the period specified in the collective proceedings order in accordance with rule 80(1)(h)(ii) or (iii) within which persons may opt out or (if not domiciled in the United Kingdom) opt in to the collective proceedings, the collective settlement approval order binds all represented persons except— (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order; and (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order.

(12) Where the Tribunal approves the collective settlement before the expiry of the period referred to in paragraph (11), the collective settlement approval order binds all class members except— (a) a person who opts out of the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order; and (b) a person who is not domiciled in the United Kingdom on the domicile date and does not opt in to the collective settlement by notifying the class representative in a manner and by a time specified in the collective settlement approval order.

(13) If the Tribunal approves the proposed collective settlement, the class representative shall give notice of the terms of the settlement and its approval, in a form and manner approved by the Tribunal, to the represented persons in a case to which paragraph (11) applies, or to the class members in a case to which paragraph (12) applies, and to any other persons as the Tribunal may direct.

(14) If one or more of the represented persons or class members are to be omitted from the collective settlement, the Tribunal may permit the proceedings to continue as one or more claims between different parties and for that purpose— (a) order the

addition, removal or substitution of parties; (b) order the amendment of the collective proceedings claim form; or (c) make any other order that it considers appropriate.

(15) If the Tribunal does not approve the proposed collective settlement, the application for a collective settlement approval order and the terms of the proposed collective settlement may not be relied on at the trial of the collective proceedings, unless all the parties to that application agree in writing.

Question 11 - Do you have any views on how unclaimed damages awards or settlement sums should be distributed?

7. The Foundation's view is, as above, that unclaimed damages awards and/ or settlement sums should be distributed in a way which improves access to justice for people in Scotland. The Foundation further suggests that the recipient of such sums should be a charity nominated by order, to avoid the court having to decide on a case-by-case basis which charity should perform this function. An opt out group procedure regime in Scotland should align with the approach taken by the CAT in relation to undistributed damages and settlement sums, especially given that it is a UK wide regime.
8. The Foundation would invite the Scottish Government to designate it as the nominated charity for that purpose. 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 in Scotland.
9. The Foundation was established in 2008 as 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 CAT across the UK pursuant to the Consumer Rights Act 2015.
10. For some time, the Foundation has also been working to introduce Pro Bono Costs in Scotland, to align with the position in England and Wales, and we are supported by both the Law Society of Scotland and the Faculty of Advocates in this endeavour.
11. 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.

12. The Foundation 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.
13. 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.
14. Over the past fifteen years, the Foundation has provided significant support to organisations working in Scotland, awarding 39 Scotland-only grants to 16 partners across 10 programmes between 2017 and 2022, totalling just over £912,000. In addition, Scotland has benefited from our UK-wide funding which has awarded more than £4.36 million to 32 partners through 81 grants and 25 programmes since 2009. Together, this reflects our long-standing and growing commitment to strengthening access to justice in Scotland through both dedicated and UK-wide investment.
15. 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).
16. The Foundation suggests that, as in the Competition Act 2015, it should be prescribed that (subject to any contrary order of the court for the benefit of the class representative or funder) any unclaimed damages following a decision should be paid to a nominated charity which advances access to justice. 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 programmes to ensure that funds are deployed in the manner which is most efficient and impactful. We would respectfully suggest that the same approach be adopted to any collective redress regime developed in Scotland, with any funds from Scottish cases to be ringfenced for access to justice in Scotland.
17. The Foundation suggests that, on settlement, it should ordinarily be required that a proportion of any unclaimed funds from settlement should be paid to a charity enabling access to justice, rather than reverting in full to the defendants, or being paid in full to lawyers or funders. The Foundation suggests that the rules should therefore provide that, unless the court otherwise permits, a settlement must provide for a reasonable proportion of unclaimed funds from settlement (to be approved by the court) to be paid to a charity.

18. The Foundation suggests that it would also be desirable that any rules provide that the recipient of any payment from unclaimed damages from settlement should be the same nominated charity as would receive unclaimed damages following a decision on the merits. This achieves parity between the position following decision and on settlement; avoids the court having to make decisions about the appropriateness of charities when approving settlements; and ensures that funds go to a charity which has been identified as best placed to distribute funds most effectively to further access to justice.
19. The distribution of unclaimed damages or settlement sums was included in the UK Government's consultation in 2012-13, which occurred in advance of setting the present statutory regime and CAT Rules, 1 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"*;
 - 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."*²
20. The Foundation suggests that these conclusions remain appropriate and can be applied equally to an opt out regime in the Scottish courts.

¹ Department for Business, Innovation & Skills, *"Private Actions in Competition Law: A consultation on options for reform – government response"*, January 2013, pp. 41-43.

² Department for Business, Innovation & Skills, *"Private Actions in Competition Law: A consultation on options for reform – government response"*, January 2013, pp. 41-43.

21. 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 SCJC is invited to consider it in full.
22. 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.
23. 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).
24. Approving the CSAO Application in *Merricks*, the Tribunal commented at [202], in approving the selection of the Foundation to receive unclaimed funds (from settlement sums) in that case:

"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."

25. 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 with the SCJC or to put you in touch with the research team directly.

Question 17 - Are there any other points which you feel are relevant to: • The procedures relating to the current opt-in regime; or • May inform and shape a potential opt-out regime in Scotland

1. Beyond its role in distributing unclaimed damages, the Foundation seeks to promote the success of opt-out collective actions regime given that it provides an important means of providing .³ The Foundation wishes to see the highest possible take up of damages in opt out collective proceedings, both so that victims of wrongs are compensated and because it is important for the standing of the regime with the public that it is seen to be benefitting the public. The Foundation is also concerned that those with vulnerabilities may be particularly at risk of not claiming damages to which they are entitled.
2. The Foundation has formed a Collective Actions Advisory Group, which includes members from across legal services, litigation funding, and class representative organisations, providing different perspectives across the regime.
3. 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. The Foundation also notes 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.⁴ A first and relatively simple practical step would be the establishment of a portal to enable access to unclaimed damages or funds from settlements would do much to increase take up. We invite the SCJC to recommend that there be an official

³ For example, the parties’ recent experiences in *Gutmann (Trains)*.

⁴ 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).

source of information and portal for members of the public to claim damages in collective proceedings.

4. The Foundation also respectfully suggests that consideration of other jurisdictions' collective actions regimes is likely to be of value to the SCJC, considering 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.
5. The need for increased investment for access to justice in Scotland is pressing and increasing. Across Scotland, people's capacity to exercise their legal rights is severely compromised by lack of access to legal help. Legal aid deserts mean thousands lack local advice on housing, immigration, welfare benefits, domestic abuse, and discrimination⁵. This crisis affects rural areas acutely but is evident throughout Scotland⁶.
6. The main barrier is extremely low availability of legal aid practitioners as the work becomes less commercially viable⁷. The 139 most deprived communities (roughly 100,000 people) are served by just 29 civil legal aid firms and 122 communities have no firm at all⁸. This drives unmet legal need, increases demand on free advice services, and forces people to navigate the legal system alone⁹.
7. 96% of Scottish AdviceUK members cite funding and resource challenges as their primary concern with 46% of organisations reporting charitable trusts and foundations as their primary source of funding¹⁰. 59% report that limited capacity, increased demand, and resource shortages are severely impacting service delivery. Citizens Advice Scotland supported almost 200,000 people in 2024/25, securing £169.4 million¹¹ but demand continues to outstrip support.

⁵ [Report on the Equalities, Human Rights and Civil Justice Committee inquiry into Civil Legal Assistance in Scotland | Scottish Parliament](#)

⁶ [Equalities, Human Rights and Civil Justice Committee Official Report – 20 May 2025](#)

⁷ [Law Society of Scotland Written evidence](#)

⁸ [Legal aid crisis hitting Scotland's most deprived families | Law Society of Scotland](#)

⁹ [Law Society of Scotland Written evidence](#)

¹⁰ 2025 AdviceUK Annual Scottish Member Survey

¹¹ [CAS submission_EHRCJ Committee_Legal Aid Inquiry 15th April 2025](#)

8. For many, insecure income, rising housing costs, disability and inconsistent work combine to create a precarious household situation that can exacerbate legal problems. Advice agencies report surging housing and homelessness concerns (54.9%), debt needs (45.28%), and mental health challenges (52.94%)¹².
9. Meanwhile, civil legal assistance grants have declined 4%¹³, particularly in areas such as housing, homelessness, social security, immigration and human-rights law which are often the issues that disproportionately impact people in poverty¹⁴.
10. Poverty remains widespread and deepening with nearly one in five people in Scotland living in poverty¹⁵, including around 240,000 children¹⁶. Poverty rates are acute among disabled people, minority ethnic families, single parents, and renters¹⁷. Notably, 37% of advice clients are now employed or self-employed (up from 30% in 2019/20), with homeowners increasingly accessing free advice due to affordability issues¹⁸.
11. Those least able to pay for legal advice are most likely to need it¹⁹. Citizens Advice Scotland users face multiple, intersecting crises requiring hours to resolve²⁰.
12. The stark reality is that in many cases people can't access the legal advice that could keep them in their homes, protect them from abuse, or secure the benefits they're entitled to. As Scotland's communities face mounting financial pressures, real families face eviction, unmanageable debt, and psychological distress.

¹² 2025 AdviceUK Annual Scottish Member Survey

¹³ [Annual Report and Accounts - Scottish Legal Aid Board](#)

¹⁴ [JustRight Scotland Response to Legal Aid Inquiry - Scottish Parliament - Citizen Space](#)

¹⁵ [Poverty in Scotland 2025 | Joseph Rowntree Foundation](#)

¹⁶ [Poverty and Income Inequality in Scotland 2021-24](#)

¹⁷ [Poverty in Scotland 2025 | Joseph Rowntree Foundation](#)

¹⁸ [The-value-of-justice-for-all-a-report-for-the-Access-to-Justice-Foundation-and-the-Bar-Council-from-Pragmatix-Advisory.pdf](#)

¹⁹ [Ethnicity and Socioeconomic Status as Sources of Vulnerability in the Legal Services Market](#)

²⁰ [CAS submission_EHRCJ Committee_Legal Aid Inquiry 15th April 2025](#)

13. Long-term funding of community-based advice services is crucial to ensuring its continuity and expansion²¹. Given the restrictions currently being experienced in council budgets, and the limitations this imposes on funding advice, it is essential to explore other funding sources to ensure free legal advice services continue to reach those most in need.
14. Undistributed damages or funds from settlements from opt-out collective actions in Scotland could make a real difference to people currently unable to access justice in Scotland.

²¹ [Community-based Advice Provision in Scotland](#)

1. ANNEX A

IN THE COMPETITION APPEAL TRIBUNAL

Case no. 1266/7/7/16

BETWEEN: -

WALTER HUGH MERRICKS CBE

Class Representative

and

(1) MASTERCARD INCORPORATED

(2) MASTERCARD INTERNATIONAL INCORPORATED

(3) MASTERCARD EUROPE S.A.

Defendants

and

(1) INNSWORTH CAPITAL LIMITED

(2) THE ACCESS TO JUSTICE FOUNDATION

Interveners

FIRST WITNESS STATEMENT OF CLARE CARTER

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.”

...

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 years²² but over 14 million people living in poverty cannot access legal advice. This need 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

²² [Largest ever legal needs survey in England and Wales - The Legal Services Board](#)

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 £9,000²³. 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

²³ [The-value-of-justice-for-all-a-report-for-the-Access-to-Justice-Foundation-and-the-Bar-Council-from-Pragmatix-Advisory.pdf](#)

partners to develop a meaningful programme of grants, addressing areas of greatest need, which we would report back on.

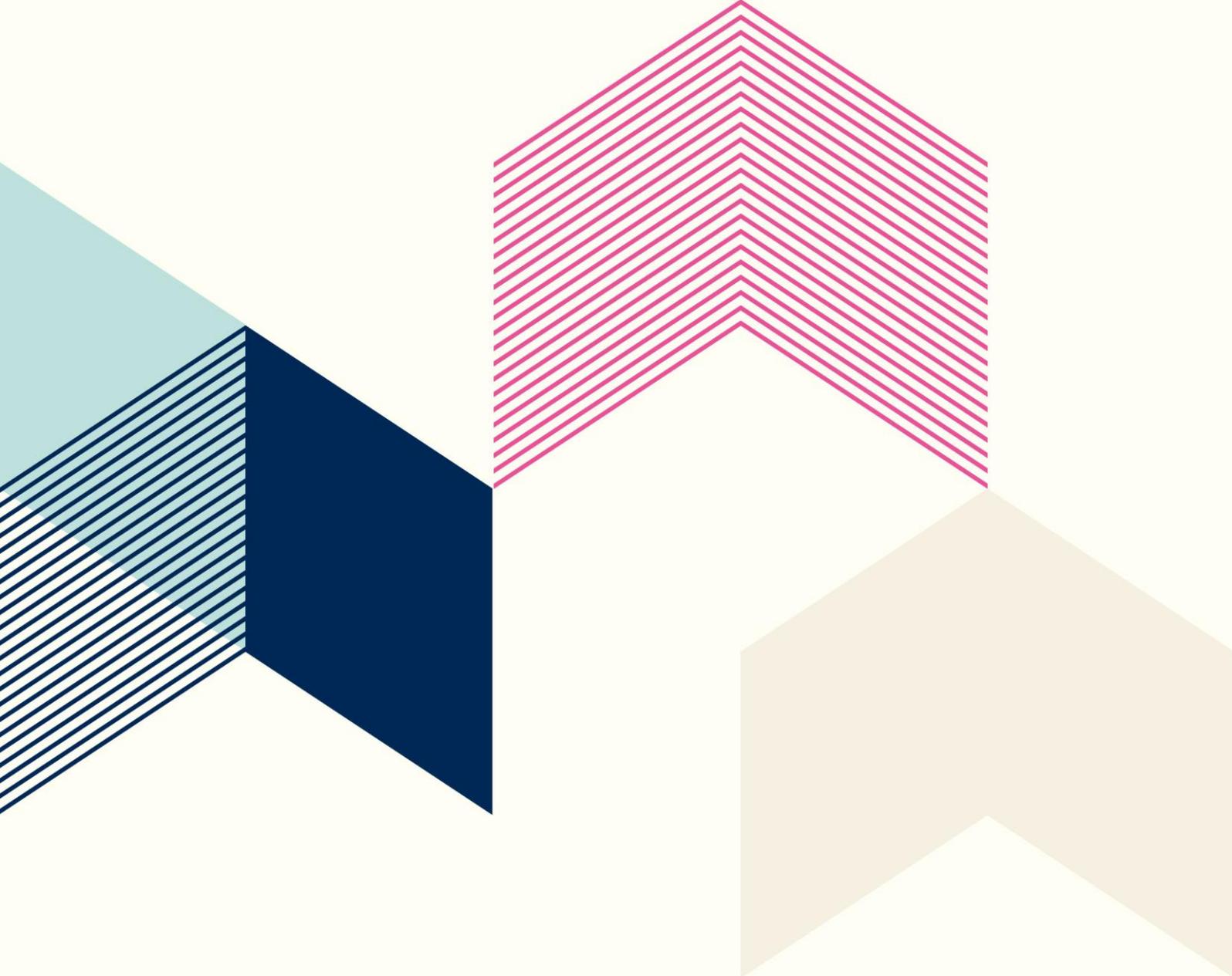
STATEMENT OF TRUTH

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

Signed: *Clare Carter*

Clare Carter

Dated: 7 February 2025



**The Access to Justice
Foundation**

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