

Swifter and simpler competition redress, regulatory appeals and competition enforcement

Overview

Consumer Scotland welcomes the opportunity to provide a response to the UK Government's consultation on competition redress, regulatory appeals and competition enforcement.

We have not responded to all of the questions in the consultation document. We provide specific feedback a number of matters considered within the consultation. Our response is structured as follows:

- Reform of opt-out collective actions
- Undistributed damages
- Changes to the regulatory appeals process
- Implications for water consumers in Scotland in the transfer of appeals from the Competition and Markets Authority (CMA) to the Competition Appeals Tribunal (CAT)

About us

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act defines consumers as individuals and small businesses that purchase, use or receive in Scotland goods or services supplied by a business, profession, not for profit enterprise, or public body.

Our purpose is to improve outcomes for current and future consumers, and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.

Reform of opt-out collective actions

Consumer Scotland has previously [submitted evidence](#) on the introduction of opt-out group proceedings in Scotland and has engaged with stakeholders in Scotland on the consumer benefits and risks associated with such proceedings.

We provide a summary here of the consumer considerations that we identify in relation to opt-out collective actions, to help inform the government's decision-making on these matters.

Access to justice is increasingly important for consumers

Access to redress is an internationally recognised principle for consumer protection. This is fundamental principle, as the interests of individual consumers are generally dispersed and consumers can face significant asymmetries of power, information, knowledge and resources in many markets when compared to large businesses.

Consumers in Scotland today face a number of very challenging circumstances and require access to robust, effective redress more than ever:

- The latest Consumer Detriment Survey shows that around seven in ten consumers in Scotland reported experiencing at least one detriment incident in the previous 12-month period, at a collective cost of almost £4 billion¹.
- Consumers are enduring the ongoing pressures of the continuing cost of living crisis:
 - Data from the Financial Conduct Authority and abrdn Financial Fairness Trust indicates that household financial resilience remains weak and has not fully recovered since the onset of the cost of living crisis in 2022²

¹ [Consumer Detriment Survey 2024 - Consumer Scotland Insight Paper \(HTML\) | Consumer Scotland](#)

² [Financial Lives 2024 survey | FCA, W12 Financial Fairness Tracker](#)

- More than half of low-income households have savings worth less than two weeks of income³
- One in five Scottish households was in energy debt in early 2026⁴
- Higher inflation in recent years has disproportionately affected lower-income households, who spend a higher share of their budget on items most affected by energy-driven price rises, including energy and food⁵

In these circumstances, if consumers have experienced detriment as a result of poor business practice, resulting in what may appear to be even a relatively small financial loss, then all options to rectify this should be properly considered.

The role of opt-out collective actions

There is no single redress mechanism that is appropriate across all parts of the economy to support consumers to secure redress. Different tools, routes and resources are required in different circumstances.

Ideally all businesses would deliver redress proactively, swiftly and voluntarily. Unfortunately this is not a universal experience and consumers often lack the time, resources or technical knowledge to negotiate directly with companies when detriment has occurred. Advice organisations play a vital role in helping to bridge this gap, but they do not have the scope or resources to provide support in all instances of consumer detriment.

Similarly, interventions by market regulators and alternative dispute resolution processes through ombudsmen are a critical part of the system, but neither of these mechanisms have the remit or resources to cover every eventuality of consumer harm that occurs across the economy.

The court system is a central part of the redress landscape. But it is very often not economically or practically viable for individual consumers to take court action against large businesses for loss or harm they may have experienced. Opt-in collective action is a valuable part of the consumer redress system, but not all consumers have the awareness or capacity to enable them to participate in such actions.

In these circumstances, opt-out collective actions offer the potential to:

- allow consumers who have suffered harm to access redress in a more efficient and affordable manner than if individual legal claims were to be brought
- make redress possible where individual claims alone would be too small to be economically viable to pursue
- act as a deterrent to poor practice by firms, preventing consumer harm from occurring

³ [Bank of England Monetary Policy Report - April 2026](#)

⁴ [Insights from the 2026 Energy Affordability Tracker | Consumer Scotland](#)

⁵ [Consumers still paying the price of high inflation | Consumer Scotland](#)

A consumer-focused approach to collective opt-out processes

For opt-out collective actions to deliver effectively for consumers, Consumer Scotland has identified that the following provisions are likely to be valuable:

- clear and accessible information for affected consumers
- simple claims processes designed to be easily understood by consumers and which minimise barriers to participation
- a strong oversight role for courts/tribunals in ensuring the fairness of settlements, expenses and damages
- protection against financial liability for individual group members who may not be aware they are part of collective actions

Practical steps that may support the realisation of these objectives might include:

- An appropriate process for opt-out collective actions to screen out claims that are speculative, not in the interests of group members as a whole, or do not have a reasonable chance of success. This may involve a court/tribunal determining whether the proposed representative party is a suitable person to take on that role, and whether the opt-out action is the appropriate mechanism for administering justice in a given case.
- The provision of additional guidance to require class representatives to detail the steps that should be taken to identify potential group members, how the action will be publicised via a multi-channel approach working with consumer organisations, how expenses will be dealt with, how eligible consumers can obtain their share of any settlement or damages, the likely take-up of settlement amounts by class members and how any damages may be distributed
- A requirement for representative parties to demonstrate that they can meet any liability to the defender for its recoverable expenses
- The court/tribunal approving the terms of any distribution of damages or agreed settlement, based on its assessment of whether these are just and reasonable
- Appropriate dispute resolution procedures being available in the event that funders and group representatives have differing views over strategy or expenses
- Close liaison with between UK mechanisms and developments regarding opt-out group proceedings in Scotland to ensure that any differences between the systems, and the implications for consumers are clearly understood

It is important that the agreed parameters are proportionate and that legitimate claims are not prevented from reaching trial, which could have a detrimental effect on consumers' access to justice.

Undistributed damages

Undistributed damages from collective opt-out actions are currently awarded to the Access to Justice Foundation. The role of the Foundation in this process is established through the Consumer Rights Act 2015 and has been endorsed by the Competition Appeals Tribunal.

The consultation seeks views on which organisation would best benefit from undistributed damages. Consumer Scotland considers that the core principle in determining the allocation of undistributed funds should be that these funds are used to benefit consumers directly. This means that the allocation of the funds should, as far as possible, support access to legal advice, representation and redress for consumers who may otherwise experience difficulties in accessing justice. This approach appropriately reflects the place of opt-out collective actions in the redress landscape, as set out above, in terms of widening access to redress for consumers through a range of different mechanisms. In that regard, we are supportive of the continued allocation of funds to the Access to Justice Foundation as an established grant funder in this field.

Changes to the regulatory appeals process

In deciding on any changes to the routes of appeal that regulated companies have, it will be important for Government to ensure that appropriate safeguards are in place to discourage speculative or ‘cherry-picked’ appeals. In particular, there should be a clear materiality threshold that appellants must satisfy before an appeal can proceed, ensuring that only issues of genuine significance to consumers or companies are considered. In addition, the appeal body, whoever that is, should take into account all relevant context when reaching its decision. This is particularly important in sectors such as energy, especially network price controls, which are made up of a large number of interconnected factors. An appeals process that allows individual elements of a wider decision to be considered in isolation risks encouraging cherry-picking of specific issues, without due regard to the overall balance of risk, reward and consumer protection embedded within the original regulatory settlement.

For network price controls in particular, it is essential that the interests of consumers are prominently and effectively represented within the appeals framework. Network price controls determine billions of pounds of consumer expenditure and have long-term implications for affordability, service quality and investment outcomes. Given this, it is important that consumer interests have a formal voice within any appeal process. One way of achieving this would be to provide designated consumer bodies, such as Citizens Advice, Consumer Scotland and the Consumer Council for Northern Ireland, with the ability to appeal regulatory decisions where they consider those decisions are not in the interests of consumers. This means not just ensuring that consumer bodies have the legal right to appeal, but that there are appropriate financial arrangements that enable them to do so in practice. This would help ensure that the appeals framework remains balanced and is not solely available to regulated companies, strengthening confidence that consumer interests are given equal weight alongside those of industry participants. For devolved jurisdictions, any such as arrangements would require the engagement, input and agreement of the appropriate devolved government.

Transfer of appeals from the CMA to the CAT: potential implications for water consumers in Scotland

Consumer Scotland is the statutory advocate for water consumers in Scotland, representing household customers and small businesses.

We recognise that the consultation on the regulatory appeals process does not propose any changes to the water sector appeals process in Scotland, given that responsibility for the sector sits with the Scottish Government. We also note that the proposed changes in relation to the water appeals system in England and Wales form part of a wider package of reforms to the water sector, emerging from the Cunliffe Review, for which there is no equivalent in Scotland.

We do not offer a definitive view of the merits of the proposed changes in relation to the water sector appeals process as it relates to England and Wales. However, we highlight three specific issues in terms of potential implications of these changes for consumers in Scotland.

Firstly, we note that the proposed changes will result in an appeals model which is focused more narrowly on specific aspects of a regulatory price control, where an appellant may put forward a case that the regulator has made an error. This is a shift from the previous appeals model where the CMA would effectively conduct a redetermination. While this may bring some benefits for consumers in terms of speed and efficiency in decision-making, it may also present risks. In particular, the change in model may provide greater incentives to companies to appeal specific elements of regulatory decisions that they are dissatisfied with, without the business risks that they may be exposed to in a full redetermination process.

There is risk that such ‘cherry picking’ could result in appeals that do not take sufficient account of the inherent trade-offs and interdependencies that exist across all the different aspects of a determination decision, and could lead to charges increasing for consumers in some circumstances. As noted above, it is important that the Government takes steps to ensure such risks are properly mitigated.

More specifically in relation to the water sector Scotland, we would wish to see careful monitoring of the impact of the changes that result from the revised system for water appeals in England and Wales, and a robust assessment of how effectively the new system delivers for consumers, before any consideration is given to bringing forward possible future changes to the appeals system for the water sector in Scotland.

Secondly, we note that following the conclusion of the consultation process, the CMA will continue to have a central role in the appeals process for the water sector in Scotland. Specifically, the CMA will retain its role in undertaking a ‘redetermination’ process, should Scottish Water opt to appeal the Water Industry Commission for Scotland’s final determination in future regulatory cycles. It is clear and emphasised in the consultation document that managing regulatory appeals and redeterminations on a continuous basis requires the CMA to marshal and retain substantial resource and expertise (para 167 in the consultation document).

If the CMA were to transfer the majority of its regulatory appeal responsibilities to the CAT, we identify a risk that its capability in handling appeals may naturally decline, if not actively managed. This issue may be heightened by the fact that, in comparison with the water sector in England as an example, Scottish Water and WICS have not yet made use of the redetermination process via the CMA.

However, it remains possible that a request for the CMA to conduct a redetermination in Scotland's review of charges process could occur in future regulatory cycles. It is self-evident that any such redetermination process would have the potential to create significant impacts for consumers in Scotland, both in terms of the cost they pay for services and the outcomes they receive.

With this in mind, Consumer Scotland would welcome assurance on the steps that will be undertaken to enable the CMA to retain appropriate capacity and expertise to respond to its retained appeal duties regarding the water sector in Scotland, following any decisions made at the conclusion of this consultation.

Finally, we note that the consultation highlights that the UK Government is engaging with the devolved governments in relation to the devolved sectors regulatory appeals. As we have set out, these processes are likely to create significant impacts for consumers in Scotland. Therefore, Consumer Scotland would emphasise that, if any changes are considered in future to the appeals process in relation to the devolved sectors appeals, then these should be consulted on transparently – by the relevant bodies - in a similar manner to this existing consultation.