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The Economic Impact of Mass Litigation in Scotland

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The analysis in this report has been conducted by the Fraser of Allander Institute (FAI) at the University of Strathclyde. The FAI is a leading academic research centre focused on the Scottish economy.

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The analysis and writing-up of the results was undertaken independently by the FAI. The FAI is committed to providing the highest quality analytical advice and analysis. We are therefore happy to respond to requests for technical advice and analysis. Any technical errors or omissions are those of the FAI.

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Executive Summary

Scotland is considering a significant reform to its mass litigation regime through a potential shift from an opt-in to an opt-out model for Group Proceedings. The motivation for this review is the possibility that opt-out mechanisms may improve access to justice for large groups of affected individuals. But there is a concern that such a change could materially increase litigation volumes, costs to businesses and wider economic risk. There is also a question mark over the purported advantage: it is not clear that these mechanisms actually deliver access to justice.

Scotland's Courts have no experience of opt-out mass litigation. The most relevant comparative evidence comes from the United Kingdom–wide Competition Appeal Tribunal (CAT), which has operated an opt-out collective proceedings regime for competition law claims since 2015. Experience in the CAT therefore provides the clearest available indication of how the Scottish Courts might operate an opt-out regime.

This report seeks to reassess earlier estimates of the economic impact of mass litigation and considers how appropriate they remain given developments in the CAT since 2015. In doing so, it revisits the assumptions underpinning the 2013 impact assessment produced by the former Department for Business, Innovation and Skills ((the "**BIS Impact Assessment**"), reviews more recent third-party studies and examines how far UK-wide evidence can be translated into a Scottish context.

Evidence from the CAT indicates that opt-out collective proceedings have been associated with a far greater volume and intensity of litigation than was anticipated in the BIS Impact Assessment. Whereas the 2013 BIS Impact Assessment assumed that around **2.2 collective cases per year** would be brought, experience over the past five years suggests that an average of **around 10.6 cases per year** have been lodged.

Just as importantly, the case mix has been very different from that originally assumed. Rather than being dominated by follow-on claims relying on prior regulatory findings, **approximately 88 per cent of CAT cases are stand-alone actions** in which liability must be established from first principles. This shift matters because stand-alone claims are typically more complex and more expensive to litigate than follow-on cases. Unlike follow-on claims in which liability is established by the regulator, a key feature is that for stand-alone claims the defendant may not be liable. Filing a claim does not equate to corporate wrongdoing: liability can only be established at Trial.

Observed CAT experience also suggests that litigation costs per case are substantially higher than those assumed in the BIS Impact Assessment. Publicly available information from a small number of concluded or advanced cases shows that

participant costs commonly run into tens of millions of pounds. While costs at early settlement can be in the region of several million pounds, cases that proceed to trial can involve costs of **£25m or more on a single side**, with litigation funders' outlays in some cases **exceeding £40m**. Taking a view across the available data implies **average participant costs of around £22m to £32m per stand-alone case**, compared with the **£7.5m to £10.5m** range assumed in the BIS Impact Assessment in 2013. These figures only relate to the claimants' costs. Defendant costs are often likely to be higher.

Using the structure of the 2013 BIS Impact Assessment but updating it to reflect observed CAT case volumes, the predominance of stand-alone actions and higher participant costs produces very different estimates of costs to business. On this updated basis, **annual legal and associated costs are estimated to lie between £231 million and £268 million**, compared with the original estimate of **£13.9 million**.

The appraisal also included estimates of the redress paid out by businesses as part of the cost to businesses. The report underlines the uncertainty of coming up with a definitive estimate of an annual average payout, but we have calculated a reasonable range of between **£1.5bn – £4.5bn**.

This would suggest that the total cost to businesses, if the appraisal on the impact of changes to the CAT was updated, would be in the region of **£1.7bn - £4.8bn**, with **a central estimate of £3.2bn**. This is more than 100 times the estimated economic impact at the time the appraisal was produced (£30.8m). The estimate is very sensitive to the number of cases and the costs per case, so the costs to businesses will continue to evolve as these two indicators move around.

An additional consideration is that the CAT represents only part of the mass litigation landscape. CAT cases account for **around half of the total stated value of mass litigation claims filed in the UK**, with the remainder arising through Scottish Group Proceedings and other mechanisms such as Group Litigation Orders in England and Wales. If non-CAT cases involve costs and redress on a similar scale to CAT cases, the overall economic impact of mass litigation across the UK could be substantially higher than CAT-only estimates suggest. However, the absence of consistent data outside the CAT means that any such scaling exercise remains highly uncertain.

The report also considers alternative estimates that have sought to quantify the economic impact of mass litigation using broader, economy-wide approaches. Some studies have suggested figures running into many billions of pounds per year. One report by the European Centre for International Political Economy estimates a cost to the UK economy of £18bn. That calculation used U.S. data from 2022 and UK GDP data to approximate litigation costs in the UK.

This paper discusses the illustrative nature of the ECIPE approach and suggests a different approach using research on the UK economy. Using 2011 research based on

litigation insurance across different economies to estimate litigation costs suggests that this could represent around **£30bn in the UK economy in 2024, equivalent to 1.05%**. If costs in the UK since 2011 have grown at a similar rate to the US over the past decade, this could be as high as **£38bn**. Applying a Scottish GVA share to this would suggest a figure of **£2.8bn** for Scotland**.**

Turning back to the methodology of updating the BIS Impact Assessment and applying Scotland's share of GVA, adjusting for lower average legal costs in Scotland, suggests a **current Scottish share of CAT-related impacts in the region of £119 million to £347 million per year**, with a **midpoint of around £233 million**.

Any move to an opt-out model for Scottish Group Proceedings would be expected to increase case volumes and associated participant costs, although the precise incremental impact is difficult to quantify on current evidence. What can be said with confidence is that the direction of travel indicated by CAT experience is towards **higher volumes and non-trivial costs**.

The overall conclusion is that mass litigation can play an important role in providing access to justice and deterring harmful conduct, but that the economic consequences of opt-out regimes are potentially significant. Experience in the CAT demonstrates that relatively small changes in procedural design can have very large effects on litigation behaviour and costs.

If Scotland were to move towards an opt-out model, the scale of the economic impact would depend critically on how the regime is designed, including certification thresholds, early scrutiny of claims, rules governing funding and disclosure, expenses and cost-shifting, and the interaction with regulatory and alternative dispute resolution mechanisms. Careful design is therefore central to balancing access-to-justice objectives with the management of wider economic risk.

Contents

1. Introduction

This report reviews the evidence to understand the economic impact of mass litigation in the UK and discusses how relevant previous measures of economic impact are in a Scottish context.

1.1 The purpose of mass litigation

Mass litigation is used when many people have been harmed in similar ways and the ordinary, one-case-at-a-time model becomes inefficient or unrealistic. Aggregating or coordinating claims spreads the fixed costs of investigation, experts, and legal work across many claimants, making it economically viable to pursue claims that would otherwise be too small, complex, or risky to bring individually. It can also improve access to justice by reducing duplication, creating a shared evidentiary record, and giving courts practical tools to manage volume—often through common pre-trial processes and a small number of representative "bellwether" trials that help value the rest. By increasing efficiency and allowing more claims to be filed, mass litigation *should* be a means to increase access to justice. However, in assessing access to justice, it is important to focus on the outcome of litigation: are claimants vindicated? What proportion of the damages award/settlement do they receive?

There have been increases in mass litigation both at the UK and Scottish level over the last decade, following legislative and rule changes for both competition-related claims and mass litigation more broadly. As well as providing access to justice for consumers and others who have been harmed, a well-functioning regime can provide a deterrent effect for anti-competitive behaviour and other regulatory breaches (e.g. environmental regulation). However, there should be other routes to redress available, such as through ombudsmen and alternative dispute mechanisms, as part of a well-functioning regulatory system.

The economic impact of mass litigation is complex and can be related to the extent to which a regime encourages unmeritorious claims to be filed which result in costs to businesses with little benefit in redress to consumers or other class participants. There are certainly concerns that this may be happening in the UK, and further rule changes may be made to the regime to tackle this.

Box 1: Opt-out and Opt-in in mass litigation

In mass litigation, "opt-in" and "opt-out" describe how someone becomes part of a large group case, or how they avoid being included. Opt-in is the traditional approach in the UK and in Europe where you are not part of the case unless you take a clear step to join it, such as signing up or submitting a form. If you do nothing in an opt-in system, you generally remain outside the case and usually keep the ability to bring your own claim later, because you never agreed to be represented in the group proceeding.

Opt-out mechanisms are associated with the U.S. class action system and works the other way around. If you fit the definition of the group—say, people who bought a particular product in a certain time period—you are treated as included automatically unless you take action to remove yourself. If you do nothing in an opt-out system, you are normally bound by the outcome of the case, whether that is a settlement or a judgment. Being "bound" typically means you are entitled to whatever relief the case provides (regardless of whether you in fact receive it), but you also usually give up the right to sue separately over the same issue later. If you want to keep your separate right to sue, you have to opt-out by a deadline, usually by sending a notice. Because opt-out mechanisms automatically aggregate the class they are incredibly powerful in building huge claims; some of the claims before the CAT comprise tens of millions of class members seeking multi-billion-pound sums.

1.2 The proposal for Scotland

The Scottish Civil Justice Council has launched a call for evidence on changing Group Proceedings in Scotland from Opt-in to Opt-out.

Given the UK-wide Competition Appeal Tribunal has operated with an opt-out regime for 10 years, the experience in that regime is instructive to examine what could happen in a Scottish context if this change is made.

2. The Context

The mass litigation environment in the UK and Scotland is complicated and has evolved considerably over the last few years:

- **UK wide** - Since 2015, the Competition Appeal Tribunal has had a regime to enable mass litigation relating to potential competition breaches in the UK to be brought on an "opt-out" (or "opt-in") basis. So, although all other forms of mass litigation in English courts will be less relevant to Scotland and the Scottish legal system, the CAT has jurisdiction for the whole of the UK, including Scotland.
- **Scotland - Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018**. This included a provision for Group Proceedings, which enable a representative party to bring group proceedings on behalf of two or more persons in respect of claims which raise issues which are the same, similar or related. These operate on an "opt-in" basis at the moment. So, essentially, if it is not a competition-related matter, this is the route through which a mass litigation claim is likely to be brought in Scotland.

Box 2: Stand-alone vs Follow-on

In litigation, "stand-alone" and "follow-on" describe whether a civil damages claim relies on an earlier decision by a regulator or court about the underlying wrongdoing. A follow-on claim is built on top of an earlier infringement finding by an authority or court. The classic example is competition law: a regulator issues a decision that a company infringed the rules, and then people who were harmed sue for compensation afterwards. In a follow-on case, the earlier decision is used to establish, or at least strongly support, that the wrongdoing happened. That usually means the civil case can focus more on questions like whether harm was caused, who falls within the affected group, and how damages should be calculated, rather than re-litigating whether there was a breach in the first place.

A stand-alone claim is brought "from scratch." The people suing have to prove the key ingredients of their case themselves, including that the defendant broke the law (for example, by abusing a dominant position, running a cartel, or misleading consumers), and that this caused them loss. There might be investigations, rumours, or press coverage in the background, but there isn't a prior official decision that the court can simply take as already established. Because everything has to be proved in the civil case, stand-alone claims can involve more dispute about liability and more work up front, and the outcomes of these claims are harder to predict.

2.1 Cases in the UK Competition Appeal Tribunal

There has been a huge increase in cases with the Competition Appeal Tribunal, particularly since 2020. There are now almost 50 cases in the CAT, the majority of which are stand-alone (see Box 2 for details).

Table 1: Selected cases in the CAT

CAT case	Information
1266/7/7/16 — Walter Hugh Merricks CBE v Mastercard Incorporated and Others	Opt-out collective proceedings seeking follow-on damages based on the European Commission's 19 Dec 2007 decision on MasterCard interchange fees.
1289/7/7/18 — Road Haulage Association Limited v MAN SE and Others (Trucks)	Collective proceedings seeking follow-on damages arising from the European Commission's 19 Jul 2016 decision in Case AT.39824 (Trucks cartel).
1381/7/7/21 — Justin Le Patourel v BT Group PLC	Opt-out collective proceedings alleging BT abused a dominant position by charging unfair/excessive prices (trial ran Jan–Mar 2024; main judgment issued 19 Dec 2024).
1329/7/7/19 — Michael O'Higgins FX Class Representative Ltd v Barclays Bank PLC and Others	Proposed opt-out collective proceedings combining follow-on claims for damages arising from the European Commission's 16 May 2019 FOREX decisions ("Three Way Banana Split" and "Essex Express").
1304/7/7/19 — Justin Gutmann v First MTR South Western Trains Ltd and Another	Collective proceedings relating to alleged overcharging/double-charging for part of rail journeys; includes a collective settlement approved in May 2024 in respect of one defendant (Stagecoach SSWT).
1433/7/7/22 — Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others	Collective proceedings alleging abuse of dominance by Meta/Facebook, including alleged "off-Facebook data" related conduct.
1595/7/7/23 — Robert Hammond v Amazon.com, Inc. & Others	Proposed collective proceedings alleging Amazon abused a dominant position in the market for online marketplace intermediation services.

1606/7/7/23 — Nikki Stopford v Alphabet Inc; Google LLC; Google Ireland Ltd; and Google UK Ltd	Collective proceedings concerning alleged abusive conduct by Google in online search and adjacent markets (including certain mobile device functionality).
1673/7/7/24 — Professor Barry Rodger v Alphabet Inc; Google LLC; Google Ireland Ltd; and Others	Collective proceedings alleging abusive conduct in Android app distribution / licensable mobile OS markets, including alleged exclusionary conduct and allegedly excessive/unfair commissions.
1403/7/7/21 — Dr Rachael Kent v Apple Inc. and Apple Distribution International Ltd	Collective proceedings concerning Apple's App Store (including commission / fees and related practices); trial took place Jan–Feb 2025 and judgment issued 23 Oct 2025.

The opt-out nature of this means many of us are part of CAT proceedings without realising it. For example, if you are a UK resident and fall within any of the following groups at the relevant time:

- Anyone who used Facebook between 2015–2019.
- Anyone who bought apps on Apple's App Store or Google Play Store.
- Anyone who used a PlayStation console and bought digital content.
- Anyone who bought a new car from most mainstream brands between 2006–2015.

Then you are part of a CAT collective action that is currently underway.

2.2 Cases in Scottish Group Proceedings

Since the change in the legislation in Scotland in 2018, 13 cases have been lodged as Scottish Group Proceedings. These are shown in the table below. We can see that a number of these cases are related to Emissions cases against motor manufacturers.

Table 2: Group Proceedings in Scotland

Group proceeding	**Information**
EasyJet GDPR Group Proceedings	Claims arising from a cyber-attack on EasyJet Airline Company Limited between 17 October 2019 and 4 March 2020 which resulted in certain customer data being accessible to the attacker.
Peugeot, Citroën, DS Automobiles NOx Emissions Group Proceedings	Claims arising in Scotland from the NOx emissions issues affecting certain Peugeot and Citroën Group branded vehicles with diesel engines manufactured

	to Euro 5 or Euro 6 emissions standards (excluding Euro 6d and Euro 6d Temp).
The BMW Group NOx Emissions Group Proceedings	Claims arising from BMW vehicles with diesel engines governed by either Euro 5 or Euro 6 emissions standards.
The Celtic PLC Group Proceedings	All of the claims made in the proceedings raise issues (whether of fact or law) that are the same as or are similar or related to each other. In particular, all of the individuals named in the Group Register were subject to sexual assault/abuse by James Torbett or Frank Cairney, while those men were officials of Celtic Boys Club, and managers or coaches of youth football teams there, and each individual was a young boy playing for Celtic Boys Club.
The James Finlay (Kenya) Ltd Group Proceedings	Claims arise out of unsafe working practices, conditions and systems of work imposed on workers at Kenyan tea plantations operated by the James Finlay (Kenya) Ltd over several decades which have caused musculoskeletal injuries.
The Mercedes-Benz Group NOx Emissions Group Proceedings	Claims arising in Scotland from the NOx emissions issue affecting certain Mercedes-Benz Group diesel engines manufactured to Euro 5 or Euro 6 emissions standards.
Vauxhall & Opel NOx Emissions Group Proceedings	Claims arising from NOx emissions issues affecting Vauxhall & Opel Group diesel engines manufactured to Euro 5 or Euro 6 emissions standards.
The Jaguar Land Rover NOx Emissions Group Proceedings	Claims arising from NOx emissions issues affecting Jaguar Land Rover diesel engines manufactured to Euro 5 or Euro 6 emissions standards.
The Fiat / Chrysler NOx Emissions Group Proceedings	Claims arising from Fiat / Chrysler vehicles with diesel engines governed by either Euro 5 or Euro 6 emissions standards.
The Krishna Singh Group Proceedings	Claims arising from the historic abuse of patients by the former General Practitioner, Krishna Ballabh Prassad Singh.

The VW2 NOx Emissions Group Proceedings	Claims arising from Volkswagen, Audi, Skoda and Seat branded vehicles with diesel engines approved to the light passenger and commercial vehicles Euro 5 or Euro 6 emissions standards (excluding vehicles certified to the EU6d-TEMP (RDE) standard or any later standard), and excluding (for the avoidance of doubt) vehicles containing EA189 engines.
The Ford NOx Emissions Group Proceedings	Claims arising in Scotland from the diesel NOx emissions issues affecting certain Ford vehicles with diesel engines manufactured to Euro 5 or Euro 6 emissions standards (excluding Euro 6d and Euro 6d Temp).
Nissan / Renault Diesel NOx Emissions Group Proceedings	Claims arising in Scotland from the diesel NOx emissions issues affecting certain Nissan and Renault vehicles with diesel engines manufactured to Euro 5 or Euro 6 emissions standards (excluding Euro 6d and Euro 6d Temp).

Non-CAT Group proceedings in England and Wales are often brought as Group Litigation Orders (GLOs). There is no up-to-date register of these, although the last publication in February 2025 (UKG, 2025) suggested that around 125 of these had been filed since the early 2000s. It is likely that a handful of these are currently live, including cases that have the same topic and defendants as the cases above. There are other mechanisms for bringing mass claims in England and Wales such as naming multiple persons on a single Claim Form (tens of thousands plus) and/or consolidating multiple claims. There is no central register for these other mechanisms.

2.3 Litigation funding

We cannot discuss mass litigation in the UK without discussing the mechanisms through which litigation is funded. In Scotland, the three main ways to fund litigation are speculative fee agreements, damages-based agreements, and third-party funding.

A speculative fee agreement is the Scottish equivalent of a conditional fee agreement in England and Wales. Under this model, the solicitor's fee depends on the outcome of the case. If the client loses, they usually pay no fee or a reduced fee. If the case is successful, the solicitor can charge an additional "success fee" on top of their normal charges. The level of success fee is capped by regulation.

A damages-based agreement (DBA) is another form of "success fee agreement" where the solicitor's remuneration is calculated as a percentage of the damages recovered, rather than by reference to time spent. The percentage is limited by statutory caps, which vary depending on the type of case. The solicitor only receives payment if the client recovers damages.

Third-party funding involves an external funder (not the solicitor) agreeing to finance some or all of the legal costs in exchange for a share of any damages recovered. If the case fails, the funder generally receives nothing and loses their investment. Scottish legislation requires parties who receive such funding to disclose the funder's identity and the nature of the funding to the court: but this part of the legislation has not always been operating as intended.

Third party litigation funding has become increasingly important and is certainly dominating the cases in the Competition Appeal Tribunal (it is essentially a pre-requisite for opt-out claims in the CAT). This form of funding cases has become an asset class in itself and is also a feature of the Group Proceedings instituted in Scotland in recent years.

3. Estimating Economic Impact

Estimating the economic impact of mass litigation is very tricky, with much of the academic research that has been done over the years focussed on the US system, which is still, despite recent changes, very different to the UK one.

Economic impact can be in the form of different costs and benefits:

- Costs
    - Legal costs for businesses
    - Redress payments from businesses to claimants
    - Insurance costs for businesses
- Benefits
    - Deterrence effects in general (e.g. to improve consumer information or environmental standards as a result of a ruling within a sector)
    - Reduction of cartel behaviour and other anti-competitive practices, in competition related claims, which in theory will reduce prices for consumers and ensure a more efficient allocation of resources

The above cost/benefit balance is only applicable to meritorious claims. Unmeritorious claims, on the other hand, impose costs but may not bring societal benefits.

In light of the Department of Business and Trade choosing to review the CAT regime through a consultation, there have been many reports that have sought to comment on the economic impact of the current approach to mass litigation in the UK.

Before getting into the details of some of them and commenting on whether they may be instructive in a Scottish context, it is important to acknowledge that a review of these reports, and responses to the DBT's consultation that have been published, display in general quite a polarised view of the current and likely economic effect of the CAT regime.

An area of agreement is that the current CAT regime is not working effectively: the prescription for solution from many organisations is radically different depending on their point of view, with some thinking the solution is expansion and liberalisation of the scheme, while others suggest it needs to be tightened up or removed altogether, including the question of its opt-out nature.

This demonstrates the likely balance that needs to be struck. Appropriate mass litigation must be available and accessible. But it should not be a substitute for a strong regulatory environment. Alternative dispute mechanisms should be available and strong, and it must be acknowledged that unmeritorious claims are likely to be economically damaging.

3.1 Estimates by European Centre for International Political Economy

A paper by the European Centre for International Political Economy (ECIPE, 2025) seeks to estimate the economic impact of mass litigation in the UK. There is an extensive discussion in this paper about the nature of the CAT regime in the UK, and a number of international comparisons of different regimes in different countries, arguing, in short, that the UK is becoming increasingly litigious and this poses economic risk.

This paper presents three estimates as a proxy to estimate the economic impact mass litigation claims could have on the economy. These examine:

- The costs of litigation as a percentage of claim value;
- The percentage of UK GDP represented by liability costs; and
- The impact on the market capitalisation of innovative companies.

For the first two of these, a paper from the US Chamber of Legal Reform is cited (McKnight & Hinton, 2024). This paper estimates US tort costs as a proportion of GDP, which, according to this analysis, has increased from 1.88% of GDP in 2016 to 2.1% of GDP in 2022.

This follows on from a 2013 paper from the same authors (McKnight & Hinton, 2013), which compares a similar metric across countries. In the earlier editions, "Liability cost" is a phrase used instead of "tort costs" to describe the costs of claims, whether resolved through litigation or other claims resolution processes. The authors add that

"The direct costs of litigated claims represent only a fraction of all liability costs, but litigation risk influences the cost of resolving claims even if they are resolved without recourse to litigation".

In these studies, liability insurance data are used to proxy for increased litigation risk and the extra business costs that result from increased litigation claims. As far as we have been able to tell, the 2013 study and the 2024 study are essentially measuring the same thing.

The ECIPE paper cites that tort costs in the US increased by 51% between 2016 and 2022. This is the nominal increase in the tort costs figures in the McKnight & Hinton 2024 paper, without accounting for inflation. This figure is then used in the paper in the following three scenarios (quoted from ECIPE paper):

1. Low Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 10 percent of the economic effects observed in empirical studies in the US.
2. Medium Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 20 percent of the economic effects observed in empirical studies in the US.

3. High Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 30 percent of the economic effects observed in empirical studies in the US.

The ECIPE authors say that these percentages are informed by discussions with legal experts.

One figure that is not used in the ECIPE analysis is a UK figure from an earlier version of the study in 2013 (McKnight & Hinton, 2013), which produced comparable figures across different countries, including the UK, for 2011. We come back to how this figure could be used below.

3.1.1 Measure 1 - The costs of litigation as a proportion of claim value

This analysis in the ECIPE paper uses a figure from a 2020 World Bank report (which is actually focussed on Greece, Ireland, and Italy) (World Bank, 2020), which uses the Cost of Business Database (World Bank, 2019) to compare costs of litigation as a percentage of claim value to show that the UK is the highest in the EU, with costs at 45.7% of claim value.

The ECIPE report applies an increase to this using the low, medium and high scenarios above, using the 51% figure to generate a 5.1%, 10.2% and 15.3% increase in costs as a proportion of claim value, as below. The ECIPE authors say:

"litigation costs could reach 48, 50.4, and 52.7 percent of the claim value in the respective scenarios".

The table from the ECIPE report is reproduced below.

Table 3: Illustrative changes in litigation costs as a percentage of claim value from the ECIPE report

Country	Actual	Low Growth Scenario	Medium Growth Scenario	High Growth Scenario
UK	45.7	48	50.4	52.7

Source: ECIPE (2025)

We would not have taken this approach. Firstly, the World Bank database has not been updated since 2019, and there is little information about the source of the figures.

Secondly, the 51% figure is the growth in a nominal value of tort costs that is then applied to costs as a proportion of claim value, which does not necessarily have a relationship with an increase in costs.

Thirdly, and most importantly, when going past the source report and examining the actual database (World Bank, 2019), there are US figures that have been estimated by the World Bank. These show (on this measure) that costs as a proportion of claim value are lower in the US (30.5% for 2019) than in the UK.

So, it does not seem reasonable to use growth in tort costs in the US to increase this particular UK figure.

3.1.2 Measure 2 – The costs of private enforcement

The ECIPE authors then use the 2024 McKnight & Hinton study to estimate the costs of private enforcement to the UK economy.

Using the low, medium and high scenarios described above, they set out that

"10, 20 and 30 percent of 2.1 is equal to 0.21, 0.42, and 0.63 percent. Since UK GDP amounted to £2.8 trillion in 2024, the cost of private enforcement for each of the three scenarios would be equal to £5.9 billion, £11.9 billion, and £17.9 billion respectively."

This is the source of the much quoted £18 billion figure from this report. It is important to note immediately that this is not benchmarked to the costs in the UK system and is not grounded in research about the actual costs currently in the UK. Therefore we would regard these as quite illustrative.

An alternative approach would have been to use the 2013 McKnight & Hinton study as a source of information for the UK, which would allow for the quantification of the equivalent of "tort costs" for the UK economy.

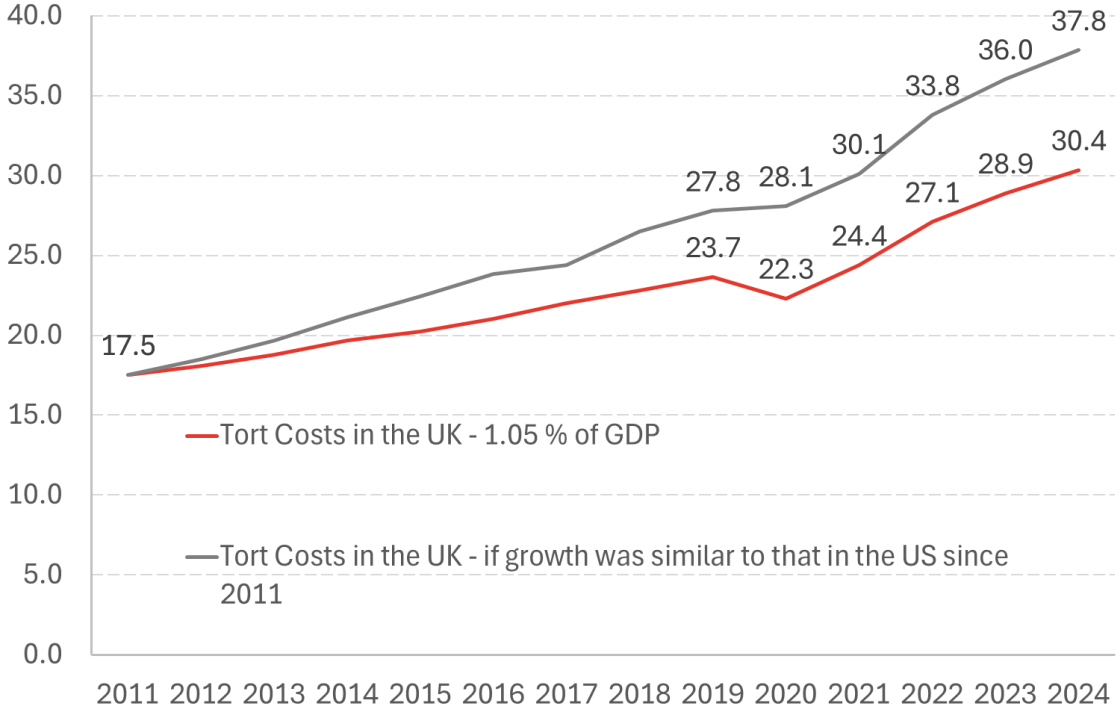
The 2013 study estimated that the tort costs figure for the UK is 1.05% of GDP in 2011. Using this as a baseline, we can estimate the value this represents in 2011, and how this changes over the years as GDP increases, assuming:

- that the percentage stays at 1.05%; or
- that the percentage increases at a similar rate to increases seen in the US between 2011 and 2022.

We can see from Chart 1 below the additional tort costs will be roughly £7 billion higher if this occurs.

However, no up-to-date analysis is available for the UK from the 2024 paper, therefore the numbers in the chart below are extrapolated from 2011– but at least there is a starting point which seeks to estimate this for the UK.

Chart 1: Tort Costs in the UK (£ billion)



Source: Authors calcs based on McKnight & Hinton (2013) and McKnight & Hinton (2024)

There are some who do not agree with the premise of the McKnight & Hinton study (and also question the use of US data to shine a light on the UK). For example, Beverly Robertson, with the class representative network (Robertson, 2025), said of the underlying tort cost analysis:

"A cost to the economy is something which reduces the overall economic output, efficiency or resources available in society. Thus, whilst obviously a cost to the person paying them, settlements are not a cost to the economy. They just transfer money from one party to another. Similarly, insurance is not a cost to the economy. This too, is mostly a transfer of money from the person paying the premium to the person receiving the pay out."

A key concept here is opportunity cost. Let us consider the argument about insurance premiums.

For an individual or a firm, rising insurance premiums ***are*** an economic cost. They are an explicit money outlay, just like wages or rent, and they carry an opportunity cost: every extra pound spent on insurance is a pound that can't be spent on investment, wages, or other purchases. So higher insurance costs reduce profit for firms and disposable income for households, and they influence decisions about production, prices, and spending.

From the perspective of the whole economy, it's a bit more nuanced. Part of what we call "insurance costs" reflects real use of resources – people working in insurance, IT systems, legal services, claims handling and so on. Those are genuine economic costs. But a large part of insurance is also a transfer of money between groups: policyholders pay premiums, insurers pay out claims. That transfer on its own doesn't increase or decrease the total amount of resources in society, it just redistributes them. So: for individuals and firms, higher insurance premiums are clearly an economic cost; for society as a whole, only the part that uses real resources is a true economic cost, while the rest is mainly redistribution.

A key policy consideration on the redistribution element of the claims themselves is "who are sums distributed to". The first and only CAT competition claim to go through the distribution process distributed just 0.8% of the potential £25 settlement sum to the class members, although a significant sum of money (£3.78m, or 15% of the settlement) was paid to the Access to Justice Foundation. The Access to Justice Foundation is a grant making body which aims to increase money available for free legal advice.

The costs to businesses from higher insurance premiums, defending claims, and pay outs **do** represent real economic costs which mean there is less money to spend on investment or paying shareholders. This is why these costs are considered in economic appraisals of any regulatory changes, such as the appraisals by the Department for Business, Innovation and Skills (BIS, 2013) regarding changes to the Competition Appeal Tribunal (CAT). These appraisal estimates are discussed more in section 3.4 below.

3.2 Stephenson Harwood Estimates

Stephenson Harwood produced a report (Stephenson Harwood, 2025) which assesses the current state of play in the CAT regime, making a number of recommendations to (in their view) improve the regime. This was produced to feed into the DBT consultation (DBT, 2025).

The report covers many areas, but one which we will analyse is an attempt to estimate the economic benefit gained through flushing out and deterring anti-competitive practices in the economy.

The author identifies the sectors of the economy that competition proceedings have been brought against, and applies the following calculation:

EV (Economic Benefit) = GVA × OR × DR × A, where:

- GVA = size of the relevant economy (their table gives £1,360.2bn)

- OR (overcharge rate) = a weighted average harm rate from anti-competitive conduct (they use 18.1%, based on cartel overcharge literature, with sector adjustments)
- DR (deterrence rate) = the share of that potential harm that the *overall enforcement system* prevents via deterrence (they plug in ~24.5%)
- A (attribution) = the share of that deterrence they credit specifically to collective actions (they assume 20–40%, midpoint 30%)

Which estimates a median figure of £18bn for the economic impact of deterrence provided by the regime. This, like the ECIPE £18bn figure, has been much quoted.

In our view, there are a couple of issues with these figures;

- applying the overcharge to the value of the whole sector assumes that all businesses in a sector are engaging in anti-competitive behaviour, which does not seem reasonable; and
- the overcharge rate is applied to GVA rather than prices or turnover. The first of these is the most important limitation and therefore makes these figures problematic as an assessment of deterrence. The CMA and DBT tend to assume that stand-alone cases will provide a 5:1 deterrence effect, but this is applied to the pay outs that firms actually make after a case is resolved.

Overall, therefore, we do not think that this is a reasonable estimate of the "economic benefit gained through flushing out and deterring anti-competitive practices in the economy".

3.3 Flint Global Estimates

Flint Global recently produced a report (Flint Global, 2026) which sought to update the BIS Impact Assessment estimates, taking a different approach than BIS took in 2013.

The Flint approach assumes that compensation payments for harm are not a net cost to the economy but are transfers from companies who have infringed competition law to those who have been harmed. On that basis, the Flint report considers it a category error to include compensation as a cost to the economy, on the basis that it is neutralised by the compensation received by the damaged party.

That may be true if mass litigation was brought exclusively for meritorious claims where class members have suffered harm as a result of wrongdoing by businesses; all damages sums and settlements are distributed to the class; and class actions do not cause other harms to the economy.

Having treated compensation as neutral, the Flint report then looks at whether the costs are disproportionate to the benefits. We consider costs in section 3.4 below, also including seeking to update the estimates in the BIS Impact Assessment.

The Flint report fairly recognises that publicly available data is scarce, but analyses *BT*, *Merricks* and *Kent*. In respect of BT, it compares the recoverable costs (85% of the costs actually incurred) against the total damages sought (£1.3bn). This diverges from the approach that would be taken in an economic appraisal, as we discuss in section 3.4.

First, the cost to business would not just be the costs it recovers from the other side, but the total cost. Second, and more fundamentally, in circumstances where the claim recovered no damages for the class, it does not seem reasonable to use the stated value rather than actual value as a measure of proportionality. A more reasonable approach would be to compare legal costs of £26m to a recovery of £0. For the same reason, it seems incorrect to compare the costs in *Merricks* to the stated value rather than the ultimate settlement sums. The Flint report fairly acknowledges this but seeks to distinguish it from the norm, despite the scarcity of data on the issue.

Finally, the Flint report considers the role of private enforcement to drive productivity growth, innovation, and economic growth and seeks to carry out a cost-benefit analysis of the collective proceedings regime by updating the BIS Impact Assessment. The calculations used for this are unclear making it difficult to opine on the accuracy of the exercise.

We note that one of the inputs for the calculation is the Stephenson Harwood report which, for the reasons explained above, we think is not a reasonable estimate of the economic benefit from flushing out anti-competitive practices.

3.4 Economic Appraisal Estimates

After examining the approaches attempted by others in section 3.1, 3.2 and 3.3, we have chosen to try to approach the quantification of benefits and costs in the same way as would be done by economic advisors in the government.

The Department for Business, Innovation and Skills (BIS, as was) produced an economic appraisal in 2013 (BIS 2013) to support the change in the CAT regime.

In 2025, the Department for Business and Trade, in the already mentioned consultation (DBT, 2025), said:

"Since 2015, the opt-out caseload has grown significantly, with tens of billions of pounds in damages claimed and hundreds of millions of pounds spent on legal fees. This is far higher than estimated in the original impact assessment, which estimated the total cost to business to be £30.8 million per annum (taking into account legal and associated costs, and the paying out of redress)".

They have not produced new estimates to reflect this. Examining the 2013 BIS Impact Assessment (BIS, 2013) shows this figure is produced at paragraph 206:

"On this basis, we can estimate that the legal and associated costs to business of collective actions are around £13.9m. Our best estimate is that businesses pay out £16.9m in redress, for a total cost to business of £30.8m."

An examination of the original appraisal shows that three main areas were underestimated, given the experience of the CAT to date:

- The number of cases that have been lodged;
- The number of cases that are stand-alone, rather than follow-on cases; and
- The cost to businesses for each case (both for participant costs and the level of redress payouts).

All of these items will increase the costs to businesses (although, importantly, they also have the potential to increase the deterrent effect that would be costed as a benefit in an economic appraisal).

3.4.1 The original estimates

The high and low-cost scenarios included in the original appraisal are shown in the table below (BIS 2013, Table 16). A central scenario – based on 0.4 stand-alone and 1.8 follow-on cases a year – was used to calculate the 13.9m in the paragraph above (BIS, 2013, Table 14).

Table 4: High and low-cost limits for private collective actions

	Stand-alone				Follow-on				
	Cases	Court cost per case	Participant cost per case	Total cost	Cases	Court cost per case	Participant cost per case	Total cost	Overall cost
Low cost limit	0	£86,625	£7.5m	0	0.6	£23,100	£4.5m	£2.7m	**£2.7m**
High cost limit	0.6	£86,625	£10.5m	£6.4m	2.6	£23,100	£6.9m	£18m	**£24.4m**

Source: BIS (2013, Table 16)

Many of these figures were based, at the time the appraisal was produced, on the Canadian system alongside discussions with legal experts. This showed that there were around 2.2 cases per year in Canada, and also that around 75% of cases were follow-on rather than stand-alone (see Box 2 for an explanation of stand-alone vs follow-on).

The appraisal also included estimates of the redress paid out by businesses as part of the cost to businesses (BIS, 2013, Table 12). The high scenario here also assumed 2.2 cases per year, of which 0.4 were stand-alone.

Table 5: "Deterrence effect of collective actions"

Deterrence	Annual payout	Of which stand-alone	Of which follow-on	Deterrence effect
LOW scenario	£8.7m	0	£8.7m	0
Best estimate	**£16.9m**	**£4.2m**	**£12.7m**	**£33.8m**
HIGH scenario	£35.7m	£8.9m	£26.8m	£178.7m

Source: BIS (2013, Table 12)

In the following sections, we calculate new estimates for many of these variables using the experience in the CAT to date.

3.4.2 Number and nature of cases

The experience from the CAT shows:

- In the past 5 years, the average number of cases lodged has been 9.2 per year for stand-alone and 1.4 for follow-on; and
- In the past 5 years, 88% of cases have been standalone.

So, the overall number has been much larger than expected, and the nature of the cases has been very different than expected; instead of 75% of cases being follow-on, only 12% have been, which is likely to mean larger cost implications per case.

3.4.3 Participant cost per case

The CAT opt-out regime is still really in its infancy, so there is not always information in the public domain to inform these estimates. However, we have drawn on what public information there is to give a selection of participant costs in some of the cases in the CAT.

Table 6: Selection of Cases in the CAT that can inform participant cost estimates

Case title and number	Cost Estimate	Notes
1304/7/7/19 *Justin Gutmann v First MTR South Western Trains Limited and Another* ("*Boundary Fares*")	Class Representative's costs of **£6.1m** at the point of settlement (CAT 2025a)	This may be of limited use as it is one of three cases being jointly case managed and so the £6.1m figure likely only represents one third of the costs and only up to the point of settlement rather than to the end of trial.
Case 1381/7/7/21 *Justin Le Patourel v BT Group plc* ("***BT***")	Defendants' costs of **£26m** to trial (CAT 2025b, page 21, lines 15 to 17)	

Case 1266/7/7/16 *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* (“***Merricks***”)	Class Representative’s costs (funder’s outlay) of **£46m** at the point of settlement (CAT 2025c, paragraph 181)	
Case 1403/7/7/21 *Dr Rachel Kent v Apple Inc and Another* (“***Kent***”)	c**£24m** to the end of trial (CAT 2025d, page 107 lines 9-12)	
Case 1339/7/7/20 *Mark McLaren Class Representative Limited v MOL (Europe Africa) Limited and Others* (“***McLaren***”)	c **£17.05m** costs (CAT 2026a, paragraph 179)	

If we take the average of all of five of these cases, the average cost is **£24m**.

However, Boundary Fares is artificially low because it is only one of three parallel cases being jointly case managed. Therefore, if we exclude this, the average is **£28m**.

This compares to the original assumption of between **£7.5m - £10.5m** per case.

3.4.4 Redress payments

Given the complexity of using existing cases to calculate average annual redress payments to date, we take two different approaches to achieve this – the first more simple, using payments already made, and the second grounded in likely payouts given the cases currently in the CAT.

Redress Payments method A

The simpler approach, using payments already made in a given time period as a proxy for payments to come. From publicly available data, the table below sets out payments that have been made in the CAT to date.

Table 7: Redress Payments in the CAT to date

Case	**Recovery**
Boundary Fares	**£25m** (CAT, 2024a, paragraph 3(b)) (due to very low distribution, after payment of stakeholder returns (including Access to Justice) the settling defendant actually paid £15.48m) (CAT 2025f, paragraph 1)
BT	£0m (CAT, 2024a, paragraph 3(b))
Merricks	**£200m** (CAT 2025g, paragraph 2)

Kent	**£1,500m** (according to Class Representative's solicitors (Hausfeld, 2025)). At least **£1,200m** is common ground according to other sources (CAT 2025h, page 96, lines 2-6)
McLaren	**£92.75m** - Made up of three payments (£1.5m in December 2023 (CAT, 2023a), £37.25m in December 2024 (CAT 2024b, CAT 2024c) and £54m in Feb 2026 (CAT 2026b)

Source: CMS 2025

These payouts total £1,818m over the whole period. In order for this to inform our calculations, we should annualise this to reflect payouts in a particular period. In this case, we have decided to pick 2025, as the first full year of activity of cases coming out of the CAT. The McLaren case was settled at the end of 2025, so there is a judgement whether to assign the whole redress payment to 2025 or to spread it over the years. We also have the ambiguity over the redress in the Kent case.

So, for 2025, we exclude Boundary Fares and BT, and then calculate:

- A lower estimate, of £200m+£1,200m+£54m = **£1,454m**
- A higher estimate, of £200m +£1,500m+£92.75m = **£1,793m**

There is not enough data to say whether this is a typical 12-month period; these are the first actions to obtain payments. However, given these were among the first cases certified, it is reasonable to assume that 2025 is going to be fairly typical as cases work their way through the system, but future years may prove to have higher or lower payment levels.

Redress Payments Method B

The more complicated, alternative approach is to look at the percentage recovery in the concluded claims against the stated claim value at the outset of proceedings.

Table 8: Recovery in concluded claims vs stated claim value

Case	Recovery (£m)	Stated claim value (£m)	Recovery (%)	Time for resolution (from filing to judgment)
Boundary Fares	25	57	43.9	5 years 3 months
BT	0	1,278	0.0	3 years 11 months
Merricks	200	14,000	1.4	8 years 1 month
Kent	1,500	1,500	100.0	4 years 5 months

McLaren	92.75	147	63.1	5 years 11 months
		Average	41.7	5 years 6 months

Source: CMS, 2025

The total cumulative quantum of CAT collective actions filed up to the end of 2024 was £95bn (CMS, 2025, page 37). If we apply the average percentage recovery to the total stated quantum, the total cost of redress for those claims filed as at the end of 2024 will be £39.6bn. However, with so few data points, it is worth noting that the recovery rates are very variable, and the associated 95% confidence interval is (£7.9bn, £71.2bn), demonstrating the variability of the data to date.

This is then annualised by examining the stated value of cases filed annually over the last 6 years. Filings will be cyclical based on claimant-side capacity and availability of funding, so although the rate of filing has slowed recently, it is reasonable to look at a 6-year cycle, which is the limitation period within which claims must be brought.

Table 9: Total stated value of claims in the CAT

Year	**Stated total value of claims in the CAT (£)**
2019	2,319,349,609
2020	10,724,115,068
2021	2,424,781,905
2022	23,602,644,163
2023	16,616,518,717
2024	9,194,560,838
Average	**10,813,661,717**

CMS, 2025

Applying the average percentage recovery (41.7%) to the average stated claim value (£10.8bn), would assume an annual cost of redress of **£4.5bn** under the current opt-out regime in the CAT. Using our upper and lower bounds calculated as part of our confidence intervals above, this would give us a range of (**£0.9bn, £8.1bn**).

This gives us a range of possible estimates to use for an annual average payout to include in updated appraisal. To note, all estimates are several orders of magnitude above the estimates contained in the original BIS 2013 appraisal, which had a central estimate of £16.9m, and a high scenario of £35.7m (see Table 5).

3.4.5 New appraisal estimates

Using our estimates from sections 3.4.2 – 3.4.4 above, we update the appraisal estimates, producing calculations in the same way as the original appraisal in 2013 (BIS, 2013).

Using these estimates, we calculate new estimates of business costs as below. We have kept the cost of follow-on cases in line with the previous high scenario.

Table 10: New costs to business estimates – LOW scenario (£)

Stand-alone				Follow-on				
Cases	Court cost per case	Participant cost per case	Total Cost	Cases	Court cost per case	Participant cost per case	Total Cost	
9.2	£86,625	£24m	£221.6m	1.4	£23,100	£6.9m	£9.7m	**£231.3m**

Table 11: New costs to business estimates – HIGH scenario (£)

Stand-alone				Follow-on				
Cases	Court cost per case	Participant cost per case	Total Cost	Cases	Court cost per case	Participant cost per case	Total Cost	
9.2	£86,625	£28m	£258.3m	1.4	£23,100	£6.9m	£9.7m	**£268.1m**

From these updated numbers on case numbers, case type, and participant costs, we have a range of the cost to business of between **£231m - £268m**.

The appraisal also included estimates of the redress paid out by businesses as part of the cost to businesses. Our estimates in section 3.3.3 underlined the uncertainty of coming up with a definitive estimate of an annual average payout, but we have a reasonable range of between **£1.5bn – £4.5bn**.

This would suggest that the total cost to businesses, if the appraisal on the impact of changes to the CAT was updated, would be in the region of **£1.7bn - £4.8bn**, with **a central estimate of £3.2bn**. This is more than 100 times the estimated economic impact at the time the appraisal was produced. The estimate is very sensitive to the number of cases and the costs per case, so the costs to businesses will continue to evolve as these two indicators move around.

Importantly, if an economic appraisal about the impact of the changes to the CAT was updated, the **higher number of cases would also set out a larger benefit in terms of the reduction of cartel activity and deterrent effect estimates**.

3.4.6 Wider Group Proceedings/ Group Litigation Orders

As discussed in sections 1 and 2, the CAT only covers mass litigation claims UK wide that are related to competition issues. In Scotland, we have Group Proceedings, and in England and Wales, Group Litigation Orders. These are the home for many of the current emissions related mass litigation claims that have currently been filed, as you can see in table 2.

In the UK, 49.6% of the value of mass litigation claims filed are in the CAT (CMS, 2025). We do not have detailed data on the participant cost for the GLOs or GPs, or for the likely cost of annual redress for these other types of cases. However, if it is reasonable to assume that they will be similar, this will significantly increase the economic impact of mass litigation overall.

If these cases are likely to be similar in cost and redress, the economic impact on the UK could be **£3.4bn – £9.6bn**, with a central estimate of **£6.4bn**. However, as we do not have the detailed numbers underneath, this should be thought of as very illustrative.

3.5 Can we use these estimates for Scotland?

The analysis in this section shows that estimating the overall economic impact of mass litigation is complex and often based on scant information. The proposal for Scotland is potentially a large liberalisation in the ability of mass litigation to be brought in non-competition related matters, but it very much depends (if opt-out is brought in) in what way it is implemented and which safeguards are put in place to avoid vexatious or unmeritorious claims.

We can approach the use of the approaches in this paper to estimate:

- The litigation costs in Scotland as a proportion of GDP (in line with the approach used in section 3.3.1);
- The Scottish share of the likely impact on business of the current CAT regime in Scotland (recognising the lower costs that can be incurred in the legal profession in Scotland); and
- The Scottish share of the economic impact of mass litigation as a whole (drawing on the discussion in section 3.4.6).

3.5.1 Litigation costs as a whole in the Scottish Economy

In Chart 1, we show that tort costs in the UK are likely to be (for 2024):

- £30.4bn if the proportion of GDP represented by these costs has stayed the same as in 2011 (at 1.05%); and
- £37.8bn if the proportion has increased at a similar rate to the growth we have seen in the US over the period.

If we take a Scottish GVA share (7.4%) of these estimates, we get:

- £2.3bn if the proportion of GDP represented by these costs has stayed the same as in 2011; and
- £2.8bn if the proportion has increased at a similar rate to the growth we have seen in the US over the period.

However, in discussion with CMS, they flagged that there are differences in both the fee rates and structures that apply to legal work in Scotland. This is discussed more in the next section as we are directly talking about participant costs, and the concept in this section covers many other items including liability insurance. But there is a chance this could be a slight overestimate given the differences in approach in Scotland and England.

3.5.2 Economic impact of the CAT regime in Scotland

In section 3.4.5, we estimated that, in the UK:

- Annual participant costs are between **£231m - £268m**.
- Annual redress is between **£1.5bn – £4.5bn**.

There is no publicly available data for a direct comparison to measure the difference between legal costs in Scotland and England. Costs awards involve a significant amount of judicial discretion and are very case sensitive, depending on variables such as the parties' conduct and nature of proceedings. For the purposes of adjusting the costs for Scotland, we compare the median allowable rates in England, and the likely rates for Scotland in Group Proceedings. This suggests that costs are around 72% of the England rate in Scotland.

Applying the GVA share and this adjustment gives us the following figures:

- Annual participant costs of between **£12.3m - £14.3m**.
- Annual redress of between **£107m – £333m**.

Which gives us a range of **£119m - £347m** in Scotland, with a midpoint of **£233m.**

3.5.3 Economic impact of all mass litigation in Scotland

As in section 3.4.6, we can produce illustrative estimates given the figures that tell us around 49.6% of mass litigation cases are in the CAT.

If Group Proceedings cases are likely to be similar in cost and redress, the economic impact on the UK could be **£238m-£694m**, with a central estimate of **£466m**. However, again as we do not have the detailed numbers underneath, this should be thought of as very illustrative.

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