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Evans v Barclays Bank Plc and others[1]

Supreme Court Reframes Collective Proceedings Certification

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One of several significant cases[2] shaping the group litigation landscape was handed down on 18 December 2025. The UK Supreme Court in *Evans v Barclays Bank Plc and others* addressed key questions about when opt-out collective actions may be certified by the Competition Appeal Tribunal (CAT) under the Competition Act 1998 regime.

The Dispute

Mr Phillip Evans applied for certification of an "opt-out" claim in the CAT on behalf of a class of claimants. The claim was for damages arising from alleged anti-competitive conduct in foreign exchange spot markets, based on European Commission infringement decisions.

The CAT refused to certify Mr Evan's claim on an opt-out basis, taking into account the strength of his case. Mr Evans appealed the decision and was successful in the Court of Appeal, which held that the strength of the case was a "neutral factor". The Supreme Court has now clarified the correct approach:

Supreme Court's Key Rulings

1. CAT Rule 79(3)(a): Strength of the Claim

The Supreme Court held that the strength of the claim is expressly relevant under Rule 79(3)(b) of the CAT Rules, finding that the CAT was correct in seeing the lack of a plausible case on causation as weighing strongly against opt-out proceedings. The CAT did not strike out the claim but permitted Mr Evans to resubmit his application as an opt-in claim.

This approach aligns with the statutory purpose of protecting defendants from the potentially coercive leverage of opt-out proceedings where the merits of the claim may be weak. The Supreme Court emphasised that opt-out certification confers significant advantages on claimants (including collective settlement and litigation leverage) and therefore should not be adopted lightly where the Tribunal has insufficient confidence in a claim's prospects.

2. CAT Rule 79(3)(b): Practicability of Opt-In Proceedings

The court confirmed that, if it is practicable for the action to proceed on an opt-in basis, then generally the tribunal should lean towards that format rather than opt-out.

The Supreme Court recognised that the collective regime must accommodate a spectrum of cases, from small individual losses to large commercial claims. The fact that it might not be practical for smaller entities and individuals to opt-in was not, in the circumstances of this case, a sufficient reason to certify an opt-out claim.

3. Strict Approach to Admissibility of Prior Findings

Mr Evans tried to rely on findings of infringement made against a third-party. The Supreme Court made clear that the common law rule in *Hollington v F Hewthorn & Co Ltd*[3], which generally prevents courts from admitting findings of fact from other proceedings as evidence of those facts — applies in the CAT context unless Parliament says otherwise. As a result, claimants in collective proceedings will face greater difficulty relying on regulatory findings from separate decisions against parties who were not formally bound by those decisions.

Practical Impact for Defendants

The *Evans* judgment will shape collective proceedings in two important respects:

- **Higher bar for Opt-out certification** – Claimants will face greater scrutiny of the strength of their case at opt-out certification stage. This will act as a filter on speculative actions brought, and act to moderate the "leverage effect" that claimants can derive from the opt-out mechanism in weak claims.
- **Other regulatory findings** – The reaffirmation of the *Hollington* rule tightens evidential boundaries in collective litigation, meaning defendants can more confidently contest reliance on unrelated findings from regulatory or parallel proceedings, whether in the UK or international.

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1 [2025] UKSC 48

2 Reports on other recent cases: UK Government Announces Intention To Reverse *PACCAR* Supreme Court Ruling – Access to Litigation Funding and Group Actions Against Corporate Defendants Likely To Increase and Mariana Dam Collapse Group Action: English Court Judgment Has Important Implications For UK-based Companies With Overseas Operations

3 [1943] KB 587

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