Press Summary

18 December 2025

Evans (Respondent) v Barclays Bank Plc and others (Appellants)

[2025] UKSC 48

On appeal from: [2023] EWCA Civ 876

Justices: Lord Sales, Lord Leggatt, Lord Burrows, Lady Rose and Lord Richards

Background to the Appeal

Collective proceedings are a form of class action that may be brought in the Competition Appeal Tribunal ("**the Tribunal**") under section 47B of the Competition Act 1998 ("**the 1998 Act**"). This appeal concerns when the Tribunal should direct that the collective proceedings are to be "opt-out" rather than "opt-in" proceedings.

Collective proceedings may be pursued only if the Tribunal makes a collective proceedings order. Any collective proceedings order must specify whether the proceedings are to be opt-in or opt-out. Where collective proceedings are brought on an opt-in basis, the class representative may pursue claims on behalf of every class member who decides to opt in to join the proceedings. Where collective proceedings are brought on an opt-out basis, the class representative may pursue claims on behalf of the whole class affected by the alleged breach of competition law except for any member who opts out by notifying the representative that their claim should not be included. Opt-out claims have procedural advantages for the claimant class and their representative and tend to result in claims which are larger and so represent more of a threat for defendants.

The respondent, Mr Evans, applied to act as class representative for collective proceedings to be brought on an opt-out basis. The claims that Mr Evans sought to combine were "follow-on" claims seeking damages for losses caused by infringements of competition law by the defendant banks, which were established by two decisions of the European Commission ("**the Commission**") dated 16 May 2019 (known as the "***Three Way Banana Split***" and "***Essex Express***" decisions). The decisions arose out of the use by individual traders employed by the defendant banks of chatrooms to exchange commercially sensitive information. Both decisions were settlement decisions, whereby the banks admitted their participation in the anti-competitive behaviour described in the decision in return for immunity from fine, or a reduced fine. In each decision, the Commission found that the banks in question had infringed article 101 of the Treaty on the Functioning of the European Union and article 53 of the Agreement

on the European Economic Area by colluding with the object of restricting or distorting competition **[9] – [23].**

Following the hearing of Mr Evans' application, the majority of the Tribunal decided that the collective proceedings should not be brought on an opt-out basis **[54] – [62]**. In doing so they relied on two factors identified in the legislative regime as relevant to a decision whether to allow opt-out proceedings: the merits of the claims, and whether it was practicable for them to be brought as opt-in proceedings. They found that the claims were weak, on the basis that no plausible case on causation had been articulated by Mr Evans, and they found that it was practicable for the main group of claimants to bring claims on an opt-in basis, even though they had chosen not to do so. Mr Evans appealed to the Court of Appeal.

On 5 July 2022, after the Tribunal had handed down its judgment but before the hearing of the appeals, the Commission published two further decisions. The first (the "***Sterling Lads* settlement decision**") was a settlement decision which was in similar form to and made similar findings to the *Three Way Banana Split* and *Essex Express* decisions. In the second (the "***Sterling Lads* ordinary decision**") the Commission found that Credit Suisse (the addressee of the decision) had participated in the infringements. Credit Suisse did not enter into a settlement with the Commission or admit liability, so the Commission had to make relevant findings of fact. The *Sterling Lads* ordinary decision therefore describes in far more detail than the settlement decisions the evidence on which the findings were based and the Commission's assessment of the arguments advanced by Credit Suisse in its defence [**63] – [68].**

The Court of Appeal set aside the Tribunal's decision on the opt-in/opt-out issue and held that the proceedings could proceed on an opt-out basis. The Court of Appeal remitted Mr Evans' application to the Tribunal for case management in accordance with the Court of Appeal's judgment **[69] – [70].** The defendant banks now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Sales, Lord Leggatt and Lady Rose give the judgment, with which Lord Burrows and Lord Richards agree.

Reasons for the Judgment

Issue 1: Was the Court of Appeal wrong to find that the Tribunal erred in relying on its view that the claims were weak as a factor weighing against opt-out proceedings?

The Supreme Court holds that the weakness of the claim as assessed by the Tribunal was properly regarded by the Tribunal as a factor weighing strongly against opt-out proceedings.

Rule 79(3)(a) of the Competition Appeal Tribunal Rules 2015 ("**the Tribunal Rules**") specifically identifies the strength of the claim as a factor relevant to the choice between opt-in and opt-out proceedings. Opt-out proceedings give the claimants legal and commercial advantages and expose defendants to additional burdens. Those advantages and burdens are capable of being exploited opportunistically (*Merricks v Mastercard Inc* [2020] UKSC 51; [2021] All ER 285, [98]). If the claim is weak, it is more difficult to justify resorting to the opt-out procedure as striking a fair procedural balance between the claimants and the defendant(s) or as providing a proportionate way to give access to the Tribunal to pursue that claim. Further, it is appropriate to treat the weakness of the claim as a factor pointing against opt-out proceedings even if it is not so weak as to be struck out **[73] – [109].**

There was no proper basis for the Court of Appeal to interfere with the Tribunal's assessment of the strength of the claim and with the weight that the Tribunal gave to that assessment as a factor in choosing between opt-in and opt-out proceedings **[110] – [111].**

Issue 2: Was the Court of Appeal wrong to find that the Tribunal erred in its assessment of the practicability of bringing opt-in proceedings?

The implication of rule 79(3)(b) is that, if it is practicable for proceedings to be brought as opt-in proceedings, then generally speaking they should be **[112]**. The Tribunal has a wide case management power of evaluation and discretion in making its assessment as to whether proceedings should be brought on an opt-in or opt-out basis, and has particular expertise and practical experience which mean that it is well placed to make that determination **[114]**.

The Tribunal was entitled to conclude that, looking at the matter overall, it was practicable to bring opt-in proceedings in circumstances where: (1) there was a group of sophisticated financial institutions as well as a group of individuals and smaller entities who stood to recover damages if the claims succeeded; (2) those in the former group had a viable claim which could be brought by way of opt-in proceedings, albeit they have not shown any interest in doing so; and (3) although it would not be practicable for those in the latter group to pursue opt-in proceedings as a separate group, the value of the claims of those in the latter group was a tiny fraction of the aggregate claim and did not justify authorising opt-out proceedings for the entire combined class. The Tribunal's determination that less weight should be given to the interests of such persons in the overall assessment because of the low financial value of their total claims did not involve any legal error and was a judgment which it was reasonably open to the Tribunal to make. There was no basis in law on which the Court of Appeal could properly interfere with the judgment about practicability made by the Tribunal **[112] – [136]**.

Issue 3: Was the Court of Appeal wrong to hold that the principles of facilitating the vindication of rights and deterring future wrongdoers are factors which weigh in favour of opt-out proceedings in general, or in the circumstances of this case?

The Supreme Court holds that the policies of facilitating the vindication of rights and deterring future wrongdoers are not strong factors which point in favour of opt-out proceedings as opposed to opt-in proceedings in every case. A comparison between the advantages and disadvantages for each side under each procedure is required in order to see if opt-out proceedings are justified. Under the statutory scheme the starting point is one of neutrality and there is no presumption in favour of either opt-in or opt-out proceedings. When deciding whether the claims should be brought on an opt-in or opt-out basis, the Tribunal is required to consider the competing interests of both parties and strike a balance between them **[139] – [141].**

Issue 4: Was the Court of Appeal wrong to treat the *Sterling Lads* ordinary decision against Credit Suisse as admissible evidence, relevant and providing strong support for Mr Evans' claim?

The *Sterling Lads* ordinary decision was not part of the material available to the Tribunal, was addressed to a third party (Credit Suisse), and concerned a different infringement from the infringements on which the claim considered by the Tribunal was based **[142]**.

The Court of Appeal was wrong to say that the *Sterling Lads* ordinary decision was admissible in English proceedings, against defendants who were not addressees of that decision, as evidence of facts found in the decision **[157]**. It is a general rule of the common law that findings made by another decision-maker are not admissible as evidence of the facts found (*Hollington v F Hewthorn & Co Ltd* [1943] KB 587; *Rogers v Hoyle* [2014] EWCA Civ 257;

[2015] QB 265). This is founded on a principle of fairness, which requires that a tribunal responsible for finding facts should base its findings on its own evaluation of the evidence and not on the evaluation made by someone else. The same principle applies in collective proceedings before the Tribunal (*Consumer Association v Qualcomm Inc* [2023] CAT 9), and the rule in *Hollington v Hewthorn* therefore applies to the Tribunal **[152]**. It would be particularly unfair to admit the findings made by the Commission in the *Sterling Lads* ordinary decision as evidence against the defendant banks in the present case because they were not parties to the procedure which led to that decision and therefore had no opportunity to challenge the evidence or influence the findings made in that decision **[142] – [157]**.

The Supreme Court accepts that at the interlocutory stage material inadmissible at trial can in principle assist the Tribunal in identifying the evidence which can reasonably be expected to be available at trial. This is not inconsistent with the rule in *Hollington v Hewthorn* and is therefore not strictly an exception to it **[159]**. But the *Sterling Lads* ordinary decision against Credit Suisse did not record any evidence relevant to the claims against the addressees of the *Three Way Banana Split* and *Essex Express* decisions, nor did it assist in identifying relevant evidence which could reasonably be expected to be available at trial. The decision was therefore irrelevant to the Tribunal's assessment of the merits of Mr Evans' claim **[160]-[167]**.

References in square brackets are to paragraphs in the judgment.