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Insights

LAW COMMISSION ANNOUNCES MAJOR NEW PROJECT ON COLLECTIVE CONSUMER CLASS ACTIONS REGIME

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SUMMARY

On 20 April 2026, the Law Commission of England and Wales announced a major new project on the introduction of a collective class action regime for consumer actions. The review will explore how a new regime could be designed, and the benefits and risks associated with a consumer class actions regime.

The review follows significant changes made to the consumer protection landscape with the entry into force of the Digital Markets, Competition and Consumers Act 2004 ("**DMCCA**") last year (which granted the CMA the power to directly enforce consumer protection law (without needing to go to court), issue infringement notices, impose fines of up to 10% of annual global turnover, order consumer redress and issue other directions.

The proposal to permit collective consumer actions is the latest in a series of steps targeted at bolstering the consumer law enforcement regime. As the CMA ratchets up its enforcement activity in the areas of drip pricing and fake reviews (discussed in our recent briefings here: CMA Imposes First Financial Penalty Under New Consumer Powers in Drip Pricing Crackdown; CMA Steps Up Enforcement on Fake and Misleading Reviews: What Businesses Need to Know), it is worth considering how rights to bring collective consumer actions will change the UK's consumer protection landscape.

The Law Commission has invited views on the project, providing a valuable opportunity for stakeholders to influence the scope and shape of any regime ultimately put in place.

BACKGROUND: THE EXISTING CLASS ACTIONS REGIME

The UK's current statutory opt-out collective actions regime was introduced on 1 October 2015 by the Consumer Rights Act 2015 (CRA)[1], and is only available for breaches of competition law.

Under that regime, a claimant may bring “opt out” proceedings to the Competition Appeal Tribunal (CAT) on behalf of an entire class of affected individuals. This can be on both a ‘standalone’ basis (in the absence of a CMA breach decision) and a “follow-on basis” (where the CMA has established liability). The class of affected individuals are then automatically included in the claim unless they take active steps to “opt out” of it. Importantly, under the CAT’s regime, claims are facilitated by rules enabling the CAT to award aggregated damages on a class-wide basis without requiring proof of individual loss for each claimant.

Outside of the CAT’s opt-out regime, it is possible to bring a form of opt-out class action in the High Court under CPR 19.8. However, such claims have frequently faced challenges in light of the requirement that class members have the “same interest” in the claim and in practice relatively few such claims have been brought.

In light of the substantial advantages afforded by the CAT’s opt-out regime, there has come a trend towards cases which push the limits of what could be described as a true competition law claim. Arguments from defendants that the claims brought against them are consumer protection law claims dressed up in competition law clothing have become a recurring theme in competition law class actions and such claims have been subject to scrutiny by the CAT. For example, in the CAT’s judgment in the Boundary Fares collective proceedings, the CAT noted that “*competition law is not a general law of consumer protection*”.[2]

Importantly, to date, the majority of consumer protection slanted competition claims in the CAT have been abuse of dominance claims. However, the CAT’s jurisdiction under the existing regime can only be stretched so far and competition claims often raise difficult economic issues, such as market definition and dominance, which must be grappled with and these claims cannot realistically be brought against companies which do not possess market power. In the Boundary Fares proceedings, the CAT noted that “*the fact that the dominant company could have carried out a particular aspect of its business better, on in a different way that would have benefited consumers, does not mean that this conduct crosses the line to constitute abuse”*.

Expansion of the CAT’s class actions regime to encompass consumer claims would therefore be likely to materially increase the risk that consumer facing businesses across a range of sectors face from class actions.

EVOLVING APPROACH OF THE UK GOVERNMENT

The Law Commission’s consultation is sponsored by the Department for Business and Trade (DBT), and highlights the government’s evolving approach to a consumer collective action regime. In 2013, during the consultation stages of the CRA, the government resisted calls to extend the regime more broadly, concluding that "*opt-out collective actions are novel, which is why the actions are limited to competition cases*." More recently in November 2023, as the DMCCA was being

debated in Parliament, an amendment to extend opt-out collective actions to consumer law claims was defeated due to a lack of government support.

A letter written by the Secretary of State for the DBT to the Rt Hon Liam Bryrne MP (Chair of the Business and Trade Committee) indicates that the government's renewed focus on this matter is driven by concerns over the cost of living crisis and a drive to give further voice to UK consumers.

INFLUENCE OF THE EXISTING CLASS ACTIONS REGIME ON ANY CONSUMER LAW REGIME

Since the passage of the CRA over a decade ago, competition law collective proceedings in the CAT have grown rapidly in scope and activity. The Law Commission's announcement follows on from the DBT's Call for Evidence on Competition Opt-Out Collective Actions in August 2025 in respect of which conclusions are expected to be published later this year.

Responses to DBT's Call for Evidence have ranged from those which champion the regime as an important complement to public enforcement and advocate its expansion to encompass consumer law actions to those which counsel caution, citing the burden that class actions place on businesses and advocating for tougher controls on them.

The terms of reference for the Law Commission's current project expressly require the Law Commission to consider the government's conclusions in its review of the current opt-out regime for competition claims in the CAT. This must include consideration of (amongst other issues) the effectiveness of distribution of damages, methods of financing collective proceedings, the role of certification and evidence of pent up demand for consumer protection claims – all of which have been key questions emerging from competition law class actions in recent years.

OTHER KEY ISSUES TO BE CONSIDERED BY THE LAW COMMISSION

Other key issues that the Law Commission is required to consider include: (i) what should constitute a "consumer law claim" for the purposes of any class action regime; (ii) whether the regime should allow for "opt-in" as well as "opt-out" claims; (iii) the criteria and process for commencing a class action; (iv) management of class action proceedings; and (v) damages, costs, settlement and funding issues.

Importantly, the project will not consider whether existing substantive consumer rights, and rights of redress are sufficient.

WHAT HAPPENS NEXT

Stakeholders have been asked to share their views via an Initial Scoping Questionnaire by **30 October 2026**. The Law Commission's questions focus on the benefits and risks of a consumer class actions regime and the manner in which a regime could be designed to promote access to

redress and the efficient and proportionate conduct of litigation whilst safeguarding consumer facing businesses from unmeritorious claims.

The Law Commission is expected to commence work on this project during the autumn, and plans to engage further with stakeholders to discuss their proposals.

The Law Commission's call for views on the project represents a valuable opportunity for businesses and other stakeholders to influence the scope and form of any regime ultimately put in place. Our Firm will be putting in a response and would welcome the opportunity to discuss the project with clients. If any clients are interested in discussing the project, please do get in touch.

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[1] At the same time the scope of the pre-existing regime for bringing "Opt-in" class actions in the Competition Appeal Tribunal was significantly expanded.

[2] 1304/7/7/19Justin Gutmann v First MTR South Western Trains Limited and Another

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