
STATUTORY INSTRUMENTS

2015 No. 1648

The Competition Appeal Tribunal Rules 2015

PART 5

COLLECTIVE PROCEEDINGS AND COLLECTIVE SETTLEMENTS

COLLECTIVE PROCEEDINGS

Manner of commencing proceedings under section 47B of the 1998 Act

75.—(1) An application to commence collective proceedings shall be made by the proposed class representative filing a collective proceedings claim form.

(2) The collective proceedings claim form shall state—

- (a) the full name and address of the proposed class representative;
- (b) the full name and address of the proposed class representative's legal representative;
- (c) an address for service in the United Kingdom;
- (d) the name and address of each defendant to the proceedings;
- (e) that the proposed class representative is making an application for a collective proceedings order;
- (f) whether the application relates to proposed opt-in collective proceedings or opt-out collective proceedings;
- (g) whether the parties have used an alternative dispute resolution procedure; and
- (h) that the proposed class representative believes that the claims which it is sought to combine in the collective proceedings have a real prospect of success.

(3) The collective proceedings claim form shall contain—

- (a) description of the proposed class;
- (b) a description of any possible sub-class and how it is proposed that their interests may be represented;
- (c) an estimate of the number of class and any sub-class members and the basis for that estimate;
- (d) a summary of the basis on which the proposed class representative seeks to be authorised to act in that capacity in accordance with rule 78;
- (e) a summary of the basis on which it is contended that the criteria for certification and approval in rule 79 are satisfied;
- (f) a statement as to whether the claims are in respect of an infringement decision, and if so whether that decision has become final within the meaning of section 58A of the 1998 Act (infringement decisions)(1);

(1) Section 58A was substituted by paragraph 14 of Schedule 8 to the Consumer Rights Act 2015.

- (g) a concise statement of the relevant facts, identifying, where applicable, any relevant findings in an infringement decision;
 - (h) a concise statement of any contentions of law which are relied on;
 - (i) the relief sought in the proceedings including—
 - (i) where applicable, an estimate of the amount claimed in damages, including whether an aggregate award of damages is sought, supported by an explanation of how that amount has been calculated;
 - (ii) details of any other claim for a sum of money;
 - (iii) in proceedings in England and Wales or Northern Ireland, whether the proposed class representative is making an application for an injunction;
 - (j) observations on the question in which part of the United Kingdom the proceedings are to be treated as taking place under rule 18; and
- such other matters as may be specified by practice direction.

(4) The contents of the collective proceedings claim form shall be verified by a statement of truth signed and dated by the proposed class representative or on its behalf by its duly authorised officer or legal representative.

(5) There shall be annexed to the collective proceedings claim form—

- (a) a copy of any infringement decision referred to in paragraph (4)(f) and any other document referred to in the collective proceedings claim form;
- (b) a draft collective proceedings order; and
- (c) a draft of the notice referred to in rule 81.

(6) Unless the Tribunal otherwise directs, the signed original of the collective proceedings claim form shall be accompanied by five copies of the form and its annexes certified by the proposed class representative or its legal representative as conforming to the originals.

(7) When filing the collective proceedings claim form, the proposed class representative shall also indicate the method by which it proposes to effect service on the defendant and provide any other information with regard to service of the collective proceedings claim form as may be specified by practice direction.

Response to a collective proceedings claim form

76.—(1) On receiving a collective proceedings claim form, the Registrar shall send an acknowledgment of receipt to the proposed class representative and, except where paragraph (2) applies, direct that the proposed class representative serve the collective proceedings claim form on the defendant.

(2) Where service of the collective proceedings claim form outside the jurisdiction requires the permission of the Tribunal in accordance with rule 31, the collective proceedings claim form may be served on the defendant only if permission is granted.

(3) The Registrar's direction for service under paragraph (1) may specify any matter the Registrar may consider appropriate with regard to the service of the collective proceedings claim form, including—

- (a) the time within and the method by which service of the collective proceedings claim form is to be effected;
- (b) the documents that are to accompany the collective proceedings claim form including the acknowledgment of service in the form required by the Tribunal;

- (c) the information to be provided to the Registrar by the proposed class representative concerning the date of service and the calculation of the time limit for acknowledging service; and
 - (d) the provision of any other information that may be required by the Registrar (whether by way of certificate of service, verified by a statement of truth, witness statement or otherwise) regarding the service of the collective proceedings claim form and;
 - (e) the time within which any information required by the Registrar is to be provided.
- (4) Where the collective proceedings claim form is served on a defendant domiciled in the United Kingdom, the defendant shall within seven days of receipt of the copy of the collective proceedings claim form file an acknowledgment of service of the claim in the form provided by the Registrar.
- (5) Where the collective proceedings claim form is served on a foreign defendant, the period for acknowledging service set out in paragraph (4) shall be varied so as to accord with the period applicable under Part 6 of the CPR in relation to proceedings in England and Wales or the equivalent provisions in the equivalent procedural rules for Scotland or Northern Ireland in relation to proceedings taking place in Scotland or Northern Ireland respectively.
- (6) The proposed class representative shall send a copy of the collective proceedings claim form to the CMA at the same time as it is served on the other parties to the claim.
- (7) The Registrar shall as soon as practicable notify the proposed class representative of the receipt of an acknowledgment of service from the defendant.
- (8) The Registrar shall publish a summary of the collective proceedings claim form on the Tribunal website and in any other manner the President may direct.
- (9) As soon as practicable, the Tribunal shall hold a case management conference to give directions in relation to the application for a collective proceedings order.
- (10) The Tribunal may give directions—
- (a) as regards any question concerning service out of the jurisdiction;
 - (b) as to the time by which the defendant shall respond to the application for a collective proceedings order;
 - (c) as to the time by which any person with an interest (including any class member) may object to the application for a collective proceedings order or the authorisation of the proposed class representative;
 - (d) regarding the hearing of the application; or
 - (e) as to a stay of proceedings while the parties attempt to compromise the proceedings by alternative dispute resolution or other means.
- (11) Subject to any directions of the Tribunal, the defendant does not need to file a defence before the hearing of the application for a collective proceedings order.
- (12) A defendant who opposes an application for a collective proceedings order does not, by doing so, lose any right that the defendant may have to dispute the Tribunal's jurisdiction.

Determination of the application for a collective proceedings order

- 77.—(1) The Tribunal may make a collective proceedings order, after hearing the parties, only—
- (a) if it considers that the proposed class representative is a person who, if the order were made, the Tribunal could authorise to act as the class representative in those proceedings in accordance with rule 78; and
 - (b) in respect of claims or specified parts of claims which are eligible for inclusion in collective proceedings in accordance with rule 79.

(2) If the Tribunal makes a collective proceedings order it may attach such conditions to the order or give such directions as it thinks fit, including—

- (a) directions for filing and service of the order, pleadings and any other document in relation to the collective proceedings; and
- (b) directions regarding any class member who is a child or person who lacks capacity.

Authorisation of the class representative

78.—(1) The Tribunal may authorise an applicant to act as the class representative—

- (a) whether or not the applicant is a class member, but
- (b) only if the Tribunal considers that it is just and reasonable for the applicant to act as a class representative in the collective proceedings.

(2) In determining whether it is just and reasonable for the applicant to act as the class representative, the Tribunal shall consider whether that person—

- (a) would fairly and adequately act in the interests of the class members;
- (b) does not have, in relation to the common issues for the class members, a material interest that is in conflict with the interests of class members;
- (c) if there is more than one applicant seeking approval to act as the class representative in respect of the same claims, would be the most suitable;
- (d) will be able to pay the defendant's recoverable costs if ordered to do so; and
- (e) where an interim injunction is sought, will be able to satisfy any undertaking as to damages required by the Tribunal.

(3) In determining whether the proposed class representative would act fairly and adequately in the interests of the class members for the purposes of paragraph (2)(a), the Tribunal shall take into account all the circumstances, including—

- (a) whether the proposed class representative is a member of the class, and if so, its suitability to manage the proceedings;
- (b) if the proposed class representative is not a member of the class, whether it is a pre-existing body and the nature and functions of that body;
- (c) whether the proposed class representative has prepared a plan for the collective proceedings that satisfactorily includes—
 - (i) a method for bringing the proceedings on behalf of represented persons and for notifying represented persons of the progress of the proceedings; and
 - (ii) a procedure for governance and consultation which takes into account the size and nature of the class; and
 - (iii) any estimate of and details of arrangements as to costs, fees or disbursements which the Tribunal orders that the proposed class representative shall provide.

(4) If the represented persons include a sub-class of persons whose claims raise common issues that are not shared by all the represented persons, the Tribunal may authorise a person who satisfies the criteria for approval in paragraph (1) to act as the class representative for that sub-class.

Certification of the claims as eligible for inclusion in collective proceedings

79.—(1) The Tribunal may certify claims as eligible for inclusion in collective proceedings where, having regard to all the circumstances, it is satisfied by the proposed class representative that the claims sought to be included in the collective proceedings—

- (a) are brought on behalf of an identifiable class of persons;

- (b) raise common issues; and
 - (c) are suitable to be brought in collective proceedings.
- (2) In determining whether the claims are suitable to be brought in collective proceedings for the purposes of paragraph (1)(c), the Tribunal shall take into account all matters it thinks fit, including—
- (a) whether collective proceedings are an appropriate means for the fair and efficient resolution of the common issues;
 - (b) the costs and the benefits of continuing the collective proceedings;
 - (c) whether any separate proceedings making claims of the same or a similar nature have already been commenced by members of the class;
 - (d) the size and the nature of the class;
 - (e) whether it is possible to determine in respect of any person whether that person is or is not a member of the class;
 - (f) whether the claims are suitable for an aggregate award of damages; and
 - (g) the availability of alternative dispute resolution and any other means of resolving the dispute, including the availability of redress through voluntary schemes whether approved by the CMA under section 49C of the 1998 Act⁽²⁾ or otherwise.
- (3) In determining whether collective proceedings should be opt-in or opt-out proceedings, the Tribunal may take into account all matters it thinks fit, including the following matters additional to those set out in paragraph (2)—
- (a) the strength of the claims; and
 - (b) whether it is practicable for the proceedings to be brought as opt-in collective proceedings, having regard to all the circumstances, including the estimated amount of damages that individual class members may recover.
- (4) At the hearing of the application for a collective proceedings order, the Tribunal may hear any application by the defendant—
- (a) under rule 41(1), to strike out in whole or part any or all of the claims sought to be included in the collective proceedings; or
 - (b) under rule 43(1), for summary judgment.
- (5) Any member of the proposed class may apply to make submissions either in writing or orally at the hearing of the application for a collective proceedings order.

The collective proceedings order

80.—(1) A collective proceedings order shall authorise the class representative to act as such in continuing the collective proceedings and shall—

- (a) state the name and address for service of the class representative or, where there are sub-classes, representatives;
- (b) state the name of each defendant;
- (c) describe or otherwise identify the class and any sub-classes;
- (d) describe or otherwise identify the claims certified for inclusion in the collective proceedings;
- (e) state the remedy sought;
- (f) state whether the collective proceedings are opt-in or opt-out collective proceedings;

(2) [1998 c. 41](#); section 49C of the Competition Act 1998 was inserted by paragraph 12 of Schedule 8 to the Consumer Rights Act 2015 ([c. 15](#)).

- (g) specify the domicile date;
- (h) specify the time and the manner by which—
 - (i) in the case of opt-in collective proceedings, a class member may opt in;
 - (ii) in the case of opt-out collective proceedings, a class member who is domiciled in the United Kingdom on the domicile date may opt out; and
 - (iii) in the case of opt-out collective proceedings, a class member who is not domiciled in the United Kingdom on the domicile date may opt in;
- (i) order the publication of a notice to class members in accordance with rule 81; and
- (j) specify the part of the United Kingdom in which the collective proceedings are to be treated as taking place.

(2) In describing or otherwise identifying the class for the purposes of paragraph (1)(c), it is not necessary for the order to name or specify the number of the class members.

Notice of the collective proceedings order

81.—(1) The class representative shall give notice of the collective proceedings order to class members in a form and manner approved by the Tribunal.

(2) The notice referred to in paragraph (1) shall—

- (a) incorporate or have annexed to it the collective proceedings order;
- (b) identify each defendant;
- (c) contain a summary in easily understood language of the collective proceedings claim form and the common issues;
- (d) include a statement explaining that any judgment on the common issues for the class members or any sub-class will bind represented persons in the class, or those within the sub-class;
- (e) draw attention to the provisions of the order setting out what a class member is required to do and by what date so as to opt into or opt out of the collective proceedings and
- (f) give such other information as the Tribunal directs.

Opting in and opting out of collective proceedings

82.—(1) A class member may on or before the time and in the manner specified in the collective proceedings order—

- (a) in the case of opt-in collective proceedings, opt into the collective proceedings; or
- (b) in the case of opt-out collective proceedings, either—
 - (i) opt out of the collective proceedings; or
 - (ii) if not domiciled in the United Kingdom at the domicile date, opt into the collective proceedings.

(2) A class member who does not opt in or opt out in accordance with paragraph (1) may not do so without the permission of the Tribunal.

(3) In considering whether to grant permission under paragraph (2), the Tribunal shall consider all of the circumstances, including in particular—

- (a) whether the delay was caused by the fault of that class member; and
- (b) whether the defendant would suffer substantial prejudice if permission were granted.

(4) A class member who has already brought a claim that raises one or more of the common issues set out in the collective proceedings order may not be a represented person unless the class member:

- (a) discontinues the claim, or;
- (b) for claims brought in England, Wales or Northern Ireland, applies to stay that claim, or;
- (c) for claims brought in Scotland, applies to sist that claim before the time specified in the collective proceedings order under rule 80(1)(h) to opt into or out of the collective proceedings.

Class records

83.—(1) After a collective proceedings order has been made, the class representative shall establish a register on which it shall record the names of those class members who, in accordance with rule 82, opt in to or opt out of the collective proceedings.

(2) The class representative shall, on request, make such register available for inspection by the Tribunal and any defendant and by such other person as the Tribunal may direct.

Scope of the collective proceedings

84. A class representative may not in collective proceedings bring different claims or bring claims against different defendants to those specified in the collective proceedings order.

Stay of proceedings and variation or revocation of the collective proceedings order

85.—(1) The Tribunal may at any time, either of its own initiative or on the application of the class representative, a represented person or a defendant, make an order for the variation or revocation of the collective proceedings order, or for the stay or sist of collective proceedings.

(2) In deciding whether to vary or revoke a collective proceedings order, the Tribunal shall take account of all the relevant circumstances, including in particular—

- (a) whether the criteria for certification of claims set out in rule 79 still apply or apply in the same way as when the order was made; and
- (b) whether the class representative continues to satisfy the criteria for authorisation set out in rule 78 and if not, whether a suitable alternative class representative can be authorised;
- (c) whether the Tribunal has granted the class representative permission to withdraw in accordance with rule 87 and it will not be substituted.

(3) If the Tribunal makes an order under paragraph (1), the order may also make further provision including—

- (a) that the proceedings should be discontinued in whole or in part or continue between different parties and, for that purpose, the Tribunal may—
 - (i) order the addition, removal or substitution of parties; or
 - (ii) order the amendment of the collective proceedings claim form;
- (b) that there be substituted as the class representative another person who satisfies the criteria for approval in rule 78;
- (c) as regards costs.

(4) If the Tribunal varies the collective proceedings order so as to alter the description or identification of class members, it may also make any other orders that it considers appropriate, including an order relating to the specified time for the purposes of rules 80 and 82.

Individual settlement by the class representative in opt-in proceedings

86. If the class representative in opt-in collective proceedings is a member of the class and settles in whole or part its personal claim included within the collective proceedings, it shall promptly give notice of that fact—

- (a) to all represented persons; and
- (b) to the Tribunal.

Applications for withdrawal by the class representative

87.—(1) A class representative may only withdraw from acting in that capacity in the collective proceedings if the Tribunal gives permission for the withdrawal.

- (2) The Tribunal may only give permission for the withdrawal under paragraph (1)—
 - (a) if it is satisfied that the class representative has given notice of the application to withdraw to represented persons in a form and manner approved by the Tribunal; and
 - (b) on conditions as to costs, if any, that the Tribunal considers just.

(3) If the Tribunal gives permission for the class representative to withdraw from acting in that capacity and no substitute class representative is approved, the Tribunal may give directions for the future conduct of the proceedings which may include provision that the proceedings should continue as one or more proceedings between different parties or be discontinued.

Case management of the collective proceedings

88.—(1) The Tribunal may, at any time, give any directions it thinks appropriate for the case management of the collective proceedings.

- (2) Without limitation to the generality of paragraph (1), such directions may order that—
 - (a) the common issues for the class be determined together;
 - (b) the common issues for a sub-class be determined together;
 - (c) issues that are relevant only to certain represented persons (“individual issues”) be determined in further hearings either separately or at the same time;
 - (d) the class representative give notice in such manner as the Tribunal directs to represented persons of any step taken by the class representative.

(3) If the Tribunal directs that the participation of any represented persons is necessary in order to determine individual issues, the class representative shall give notice of the further hearings to those persons in a form and manner approved by the Tribunal.

Disclosure

89.—(1) In addition to the Tribunal’s general powers under these Rules to order disclosure, the Tribunal may order, on any terms it thinks fit, disclosure to be given—

- (a) by any party to the collective proceedings to any other party;
- (b) by the class representative to any or all represented persons; and
- (c) by any represented person to any other represented person (including a person within a different sub-class), the class representative or the defendant.

Notices

90. If a class member or represented person does not receive, or fails to respond to, a notice, this does not affect a step taken, order made or judgment given, in the collective proceedings, unless the Tribunal orders otherwise.

Judgments and orders

91.—(1) A judgment or order of the Tribunal made in collective proceedings may specify the sub-class of represented persons or individual represented persons to whom it shall not apply.

(2) The class representative shall give notice of any judgment or order to all represented persons in a form and manner approved by the Tribunal.

(3) Unless ordered otherwise by the Tribunal, the notice referred to in paragraph (2) shall—

- (a) incorporate or have annexed to it the judgment or order;
- (b) if it relates to a judgment on common issues in favour of represented persons, include a statement in easily understood language—
 - (i) explaining that represented persons may be entitled to individual remedies;
 - (ii) stating the steps that shall be taken to claim that remedy; and
 - (iii) stating the consequences of failing to take those steps;
- (c) if it relates to a judgment on common issues against represented persons, include a statement—
 - (i) informing them that an appeal may be brought only by the class representative; and
 - (ii) stating the date by which the class representative would have to serve a notice of appeal or application for permission to appeal;
- (d) if the Tribunal has specified under paragraph (1) that some represented persons are not bound by the judgment or order, a statement to that effect; and
- (e) give such other information as the Tribunal directs.

Assessment of damages

92.—(1) Where the Tribunal makes an aggregate award of damages, it shall give directions for assessment of the amount that may be claimed by individual represented persons out of that award.

(2) Directions given may include—

- (a) a method or formula by which such amounts are to be quantified;
- (b) provision for making an interim payment before the final amount which a represented person may receive is determined;
- (c) the appointment of an independent third party to determine a claim or dispute by any represented person regarding the quantification of the amount which that person will receive, and provision for payment of the costs of that independent third party; and
- (d) a requirement that the apportionment of the aggregate award as between represented persons is approved by the Tribunal.

(3) The class representative shall give notice to represented persons, in such manner as the Tribunal directs, of any hearing to determine what directions should be given in accordance with paragraph (1), and any represented person may apply to the Tribunal to make submissions either in writing or orally at that hearing.

Distribution of award

93.—(1) Where the Tribunal makes an award of damages in opt-out collective proceedings, it shall make an order providing for the damages to be paid on behalf of the represented persons to—

- (a) the class representative; or
- (b) such person other than a represented person as the Tribunal thinks fit.

(2) Where the Tribunal makes an award of damages in opt-in collective proceedings, it may make an order as described in paragraph (1).

(3) An order made in collective proceedings in accordance with paragraphs (1) and (2), may specify—

- (a) the date by which represented persons shall claim their entitlement to a share of that aggregate award;
- (b) the date by which the class representative or person specified in accordance with paragraph (1)(b) shall notify the Tribunal of any undistributed damages which have not been claimed;
- (c) any other matters as the Tribunal thinks fit.

(4) Where the Tribunal is notified that there are undistributed damages in accordance with paragraph (3)(b), it may make an order directing that all or part of any undistributed damages is paid to the class representative in respect of all or part of any costs, fees or disbursements incurred by the class representative in connection with the collective proceedings.

(5) In exercising its discretion under paragraph (4), the Tribunal may itself determine the amounts to be paid in respect of costs, fees or disbursements or may direct that any such amounts be determined by a costs judge of the High Court or a taxing officer of the Supreme Court of Northern Ireland or the Auditor of the Court of Session.

(6) Subject to any order made under paragraph (4), the Tribunal shall order that all or part of any undistributed damages is paid to the charity designated in accordance with section 47C(5) of the 1998 Act⁽³⁾ and a copy of that order shall be sent to that charity.

(3) 1998 c.41; section 47C of the Competition Act 1989 was inserted by paragraph 6 of Schedule 8 to the Consumer Rights Act 2015 (c. 15).