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Update: Law Commission Considering a New Consumer Class Actions Regime

What You Need To Know

UK – May 2026

The Law Commission of England and Wales, at the request of the government, has launched a project to consider the benefits and risks of introducing a consumer class actions regime, with the questions being asked making clear it is looking at a potential US-style opt-out regime.

While group claims have been on the rise in England and Wales over the last decade through existing mechanisms, if a new opt-out consumer class actions regime is introduced, this could be a game changer for the English litigation landscape, where opt-out claims are currently only really available in the Competition Appeal Tribunal (CAT) for breaches of competition law.

Such a regime would bring potential benefits for consumers, but the risk of increased high-value claims for defendant consumer businesses.

What Does This Mean?

While we have long had mechanisms for bringing group claims in England and Wales (group litigation orders (GLOs), representative actions under Civil Procedure Rule 19.8, multiparty or "omnibus" claim forms, and through the court's own case management powers), opt-out claims – where all those within the defined class are included in the claim, unless they actively take steps to opt out – have largely been confined to the CAT for breaches of competition law (there have been attempts to use the representative actions regime to get opt-out claims off the ground, but the tight "same interest" test has curtailed this).

The CAT's collective proceedings regime – introduced by the Consumer Rights Act in 2015, but which only really took off following the Supreme Court's certification decision in *Merricks v. Mastercard* in 2020 – is itself currently under review, but this latest announcement suggests class actions may be opened up, rather than restricted, in England and Wales.

By their nature, opt-out claims are typically brought on behalf of a large defined class, and the individual sums claimed are therefore multiplied a thousand- or millionfold. In *Merricks v. Mastercard*, the class size was approximately 44 million UK consumers, with the claim initially valued at £14 billion, though it settled for £200 million.

Who Does This Impact?

Consumers would obviously be impacted by any such proposals: damages claims that individually are not large enough to make it viable for them to be pursued through the courts could be brought on a collective basis on their behalf. However, the reality is that, in many existing opt-out competition claims, a large proportion of the class may have no idea the claim is even happening, unless and until there is a damages award or settlement. Even then, depending on the individual claim value, and based on the limited data available on CAT claims to date (given the length of time it takes for such claims to reach trial and the limited number of settlements so far), the takeup of any damages may be small, leading to questions over who should keep unclaimed damages – should it be the defendant, the lawyers, the funders, or charity?

The real impact could therefore be on defendant consumer businesses. There have been over 50 applications for collective proceedings orders (CPOs), both opt-out and opt-in, since the CAT regime really took off in the early 2020s. We have also seen novel attempts to class nontraditional competition law claims, e.g. environmental-related claims, as breaches of competition law such that they could be pursued as opt-out claims in the CAT. Outside of the competition space, we have also seen existing mechanisms used to bring opt-in group claims and increased willingness by the High Court to accommodate these through its existing case management powers. As a result, the English claimant-firm and funding landscape has matured significantly over the last 10 years, so it is likely that any extended class actions regime would swiftly be utilised.

With appropriate safeguards in place (e.g. a certification stage or initial hurdle to rule out weak claims, tighter rules around funding and costs recovery, and clarity as to what should happen to unclaimed damages) a single consumer class actions regime may actually have benefits to consumer businesses – it would provide certainty as to the route to such claims, would weed out spurious claims, and should avoid multiple claims being brought by different groups in relation to the same issue, as we currently see.

However, without sufficient safeguards in place, it risks defendant businesses facing increased high-value claims, with a question mark over whether this really benefits underlying consumers as intended.

What Sort of Claims Will It Cover?

This is one of the questions the Law Commission is considering through this process. Product pricing claims are often competition law-related so are already permissible under the CAT's existing regime. Other types of consumer claims may include product liability/product defect claims, mis-selling claims or secret commission claims. It is not yet clear whether it would extend to data breach claims by consumers, which have, to date, been restricted by the representative actions regime.

Given the current focus on "consumer" claims, businesses are unlikely to be able to join forces to bring business vs. business claims on a group basis under any new regime, as they can in the CAT.

What Comparisons Can Be Drawn?

The Law Commission's initial questionnaire suggests it is interested in learning from other regimes, either in this jurisdiction or elsewhere.

Learnings can and will certainly be taken from the CAT, though the operation of its CPO regime is still being developed through case law of the CAT and the appeal courts.

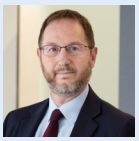
Looking overseas, the US has a long established class actions landscape, which can inform the approach, as does Australia. The EU Representative Actions Directive 2020/1828, which requires all member states to have at least one mechanism for collective consumer redress, has now been implemented, albeit in varying ways across Europe, so will also inform this debate, though still in its own early stages.

Next Steps

This is not a formal consultation, and no firm proposals have yet been made. The suggestion is that, after taking initial soundings on the idea, the Law Commission will go out to consult on a proposal. That being said, given the importance to businesses of ensuring proper safeguards are in place, we plan to respond to the initial questionnaire with our thoughts based on our combined experience in this area. The initial questionnaire remains open until 30 October 2026 and can be found on the Law Commission website. Please do get in touch if you would like to discuss with us.

Contacts

Deborah Polden
Partner, Leeds
T +44 113 284 7227
E deborah.polden@squirepb.com



Miles Robinson
Partner, London
T +44 207 655 1315
E miles.robinson@squirepb.com