

ALERTER

Consumer Class Actions: comments on the Law Commission Consultation

Toby Riley-Smith KC
Thomas Samuels
Reanne MacKenzie



William Moody
Isha Shakir
Vishnu Patel



On 20 April 2026, the Law Commission of England and Wales launched a project to consider the introduction of a consumer class actions regime (the “Consultation”). It comes hot on the heels of the Scottish Civil Justice Council’s call for evidence on opt out group actions, published in January 2026.

This alerter is structured in four parts: (i) the current landscape of group proceedings in England and Wales; (ii) a brief comparison with other jurisdictions; (iii) the scope of the Consultation; and (iv) key arguments for and against a consumer class actions regime, before concluding observations.

LANDSCAPE OF GROUP PROCEEDINGS IN ENGLAND AND WALES

“Group” litigation in England and Wales, loosely defined, has been available for centuries, tracing its origins to at least the early 18th century in the High Court of Chancery. With the passing of the Supreme Court of Judicature Act 1873 in which the courts of common law and equity were combined, the hitherto equitable procedural basis for “representative” actions was codified in new Rules of Procedure annexed to the Act. By rule 10, “*numerous parties having the same interest in one action*” were permitted to sue or be sued “*on behalf of or for the benefit of all parties so interested*”.

Much of the development in the 20th century took place through case law that falls outside the scope

of this alerter. Fast forward to 2000 and the representative mechanism was updated by Part 19 of the Civil Procedure Rules (“**CPR**”), introduced as part of the Woolf Reforms. The current version of CPR Part 19 provides the civil courts of England and Wales with a broad procedural framework and ability to manage cases with common issues, now encompassing three distinct procedural mechanisms:

- a. r.19.1: any number of claimants (or defendants) may be joined to a claim through a Claim Form, if (per r.7.3) the claims can be conveniently disposed of in the same proceedings (“**Omnibus Claims**”);
- b. Section II: a representative may be appointed for persons who have the “same interest” as fellow claimants or defendants (as appropriate) (“**Representative Actions**”); or
- c. Section III: the parties can petition the court to

Consumer Class Actions: comments on the Law Commission Consultation

Toby Riley-Smith KC, Thomas Samuels, Reanne MacKenzie, William Moody, Isha Shakir & Vishnu Patel

make a Group Litigation Order, which allows the court to effectively case manage claims that give rise to common or related issues of facts or law (“GLOs”).

Out of the three, the GLO most closely resembles what a lay person might consider as a “class action”. The defining difference, however, is that a GLO requires potential claimants to “opt-in”, rather than “opt-out”, in order to form part of the claim.

The enactment of the Consumer Rights Act 2015 changed the landscape of group litigation in England and Wales further by introducing a novel regime for the Competition Appeal Tribunal (the “CAT”) in competition matters. Per s47B, a class representative (once certified) could bring (on an “opt-in” or “opt-out” basis) competition law claims on behalf of a group of affected parties under the banner of “collective proceedings”. Whilst these proceedings most closely resemble what is commonly understood as ‘class actions’, they are restricted to breaches of the Competition Act 1998. These generally involve abuse of a dominant position or anti-competitive cartel conduct, often arising from an existing regulatory finding.

Further and pursuant to Parts 3 and 4 of the Digital Markets, Competition and Consumer Act 2024 (“DMCCA”), the Competition and Markets Authority (“CMA”) has gained new powers to investigate, make findings in relation to, and enforce various aspects of consumer rights law. However, unlike with competition claims, there is no formal mechanism for pursuing collective proceedings in relation to infringements of consumer law beyond the existing procedural routes identified above. Importantly, this potentially creates a structural mismatch between collective opt-out procedures in competition law and the absence of equivalent mechanisms in consumer law.

THE OPPOSING SHORE: COMPARABLE JURISDICTIONAL APPROACHES

England and Wales is different to many other jurisdictions in not having a fully established consumer opt-out class actions regime. The existing procedural routes explained above impose significant up-front costs in book-building to assemble viable claimant groups.

In contrast, the Netherlands has a frequently used consumer opt-out and collective redress regime known as the “WAMCA”, developed in line with the

EU Representative Actions Directive. The regime applies to all consumer class actions as well as more general collective redress claims. The procedure firstly involves certification, focused on admissibility of the claim by showing sufficient representation, governance and control and financial soundness. Certification culminates in the appointment of an exclusive representative (similar to the “class representative” in domestic CAT proceedings). Only once certified will the matter move to the second order merits or liability phase.

Similarly, Canada has a mature consumer opt-out class actions system. While the exact procedure and ease of access varies across the provinces, like the Netherlands, the Canadian regimes generally follow a certification procedure with little consideration of the merits until common issue trials. Certification requires a representative plaintiff either as an individual or legal entity (such as a corporation or association) to demonstrate to the court a cause of action, an identifiable class, common issues, a workable plan, and that class action of the type sought is the preferred procedure.

In Australia there is also a sophisticated class action opt-out regime. From the early 1990s, Australia has developed its class action framework in tandem with pioneering the modern commercial litigation funding industry. Unlike the Dutch and Canadian regimes, there is no certification process. Instead the threshold requirements are that a claim must be brought by a lead applicant acting for at least seven other people with the same, similar or related claims against the same defendant. The lead applicant does not need to be appointed by the other group members, but must have a claim that is representative of the group. The class is defined by certain characteristics and is opt-out for all those members who have those shared characteristics.

Finally, there is the world-leading jurisdiction in class actions: the US. The US has a robust consumer opt-out class actions regime, largely governed by Federal Rule of Civil Procedure 23 dating from the late 1930s, with a vigorous certification process which requires claimants to demonstrate four prerequisites: (i) the class is too large for individual joinder (typically 40+ members); (ii) common questions of law or fact exist; (iii) the claims of representatives are typical of the class; (iv) representative parties adequately protect the class interest.

It is worth noting that the US also has other forms of collective redress outside of the formal auspices of a class action, including “multi district litigation” and mass arbitrations. Global modern mass tort claims

Consumer Class Actions: comments on the Law Commission Consultation

Toby Riley-Smith KC, Thomas Samuels, Reanne MacKenzie, William Moody, Isha Shakir & Vishnu Patel

can largely trace their origins back to American class actions and in particular the seminal Big Tobacco Group Litigation which resulted in a combined settlement of \$200bn following a suit brought by over 40 states. A distinctive feature of the American system is that individual states can and do bring claims on behalf of the citizens (see, for example, the recent *State of New Mexico v Meta* case).

THE LAW COMMISSION CONSULTATION

As part of the Consultation, the Law Commission published its Terms of Reference (the “**ToR**”) and Initial Scoping Questionnaire (the “**Questionnaire**”) on 20 April 2026. The work is expected to commence in autumn 2026.

The ToR identifies the overarching purpose of the consultation as being to “*set out the benefits and risks associated with the introduction of a collective class actions regime for consumer law claims...*” If, having done so, the Commission recommends that a consumer class actions regime should be implemented, it will also make recommendations as to the design of such a regime. However, the project is not concerned with the adequacy (or otherwise) of substantive consumer rights.

The cost-benefit analysis is to be undertaken against other available mechanisms such as “*public enforcement action*” (presumably being action by the CMA and other consumer law enforcers, identified above) and alternative dispute resolution. The stated objectives for any potential regime are two-fold: (1) to improve consumers’ access to redress, both by securing redress in court and ensuring damages are distributed to the affected class; and (2) promoting the efficient conduct of litigation at proportionate cost. The mention of distribution likely reflects recent decisions of the CAT regarding limited take-up of collective wins for claimants, set out in *Waterside Class Limited v Mowi and others* (Case No: 1643/7/7/24).

In considering the design of any potential regime, the Law Commission will examine a number of what can be classified as ‘jurisdictional’ and ‘procedural’ matters. For example: what would constitute a “*consumer law claim*”; how to define a “*class*” for such purposes; and how such actions should be commenced, managed and resolved.

A particular area of focus appears to be whether a consumer class actions regime should allow for “opt-in” as well as “opt-out” proceedings. All of the questions for consultation in the Questionnaire are

framed by reference to the issue. The ToR confirm that the Commission will have particular regard to the Government’s review of the approach and operation of the Competition Appeal Tribunal.

The concern appears to be that “opt-out” proceedings are more susceptible to misuse and are, therefore, more likely to result in speculative, inefficient and disproportionately expensive litigation leading to poorer outcomes for class members. Thus, opt-out collective proceedings may be particularly vulnerable to exploitation, thereby “*creating a litigation culture*” (ToR, [1.3(f)]).

ARGUMENTS FOR AND AGAINST

Some arguments for and against a consumer class actions regime can be found in two significant Supreme Court judgments regarding “opt-out” competition actions, *Merricks v Mastercard Inc* [2020] UKSC 51; [2021] Bus LR 25; [2021] 3 All ER 285 (“**Merricks**”) and *Evans v Barclays Bank Plc and Others* [2025] UKSC 48 (“**Evans**”).

In *Evans*, the Supreme Court considered that opt-out proceedings “*confer substantial legal and commercial advantages on claimants*” [89]: claimants who can band together and share litigation risk will likely go further in their claims than claimants who cannot. The Supreme Court noted, however, that the ability to bring proceedings on behalf of a very large class of persons without obtaining their active consent, and to recover damages without the need to show individual loss, presents real risks, as well as giving rise to substantial administrative burdens and litigation costs.

Similar arguments had been aired in the minority judgment in *Merricks* a few years before. Lord Sales and Lord Leggatt had stated that opt-out classes with aggregate damages provide a “*potent means of achieving access to justice*” but at the same time create “*substantial administrative burdens and litigation costs*”, which can be leveraged oppressively or unfairly against defendants [98]. It is thought that these twin considerations will shape much of the debate relevant to the Consultation for a consumer class actions regime.

Additionally, it has been argued that the introduction of new regulatory powers for the CMA creates a structural gap in private enforcement of consumer law. Prior to the introduction of the DMCCA, consumer law did not necessarily stand apart from other areas of what might be termed “mass loss”, such as product liability or environmental claims. Large groups of

Consumer Class Actions: comments on the Law Commission Consultation

Toby Riley-Smith KC, Thomas Samuels, Reanne MacKenzie, William Moody, Isha Shakir & Vishnu Patel

claimants could, at least in principle, and often did in practice, band together to bring proceedings under one of the existing procedures. Now, however, the CMA can make regulatory findings that benefit a certain “class” of consumers (exemplified in the recent [decision on AA’s and BSM’s drip pricing for learner drivers](#)), without that class of consumers being able to take private action absent a costly book-building exercise.

As has been noted, the arguments against are that the CMA’s powers are deterrent enough. But the contrast with similarly placed jurisdictions, notably the common law jurisdictions with which domestic law already shares much, makes England and Wales seem an outlier in that regard. In addition, robust appropriate “controlling mechanisms” (to borrow Green J’s phrase in *Various Claimants v Standard Chartered Plc* [2024] EWHC 1108, a representative action claim) could guard against such risks. The question of an “opt-out” facility that informed the argument in

Merricks and Evans is still an open question when it comes to the consumer class action regime.

CONCLUDING THOUGHTS

The last fifty years has seen a steady rise in the rights of consumers. Not only has there been a plethora of substantive consumer protection legislation, but the English Courts have also steadily developed procedures that enable consumers to enforce those rights. The question for the Law Commission will be whether those procedures ought to be supplemented. As the Supreme Court recently noted in *Evans v Barclays*, collective proceedings – particularly if they are opt-out – provide a potent means of achieving access to justice for consumers. But they are also capable of being misused. The Commissioners’ difficult task will be to assess, and then to balance, the benefits and risks associated with the introduction of such a new regime.

ABOUT THE AUTHORS



Toby Riley-Smith KC

Toby Riley-Smith KC specialises in consumer law, product liability, group litigation, health & safety, inquests/inquiries, consumer finance and environmental law.

[View Toby’s profile here.](#)



Thomas Samuels

Thomas has a busy practice covering a range of common law, commercial and regulatory matters, with particular focus on consumer and financial services issues.

[View Thomas’s profile here.](#)



Reanne MacKenzie

Reanne MacKenzie has a busy practice as sole and junior counsel across a range of Chambers’ specialisms with a focus on commercial litigation and group actions.

[View Reanne’s profile here.](#)



William Moody

William has a busy practice spanning group and collective actions, commercial litigation, consumer and financial law, procurement and EU relations law.

[View William’s profile here.](#)



Isha Shakir

Isha has a broad commercial litigation practice, appearing regularly in the County Court, Winding Up Court, and High Court. She has frequently appeared unled in the High Court.

[View Isha’s profile here.](#)



Vishnu Patel

Vishnu accepts instructions across all of Chambers’ main practice areas, with a particular focus on commercial litigation, arbitration, and group actions. He is currently seconded part-time to the Competition & Markets Authority. [View Vishnu’s profile here.](#)

This content is provided free of charge for information purposes only. It does not constitute legal advice and should not be relied on as such. No responsibility for the accuracy and/or correctness of the information and commentary set out in the article, or for any consequences of relying on it, is assumed or accepted by any member of Chambers or by Chambers as a whole. If you are not a solicitor, you are strongly advised to obtain specific advice from a lawyer. The contents of this material must not be reproduced without the consent of the author.