

Consumer Class Actions Project

Terms of Reference

- 1.1. The Law Commission is asked to:
 - (1) set out the benefits and risks associated with the introduction of a collective class actions regime for consumer law claims, taking into account other available mechanisms such as public enforcement action and alternative dispute resolution; and
 - (2) make recommendations as to the design of such a regime, were one to be introduced.
- 1.2. The objectives of any such regime would include:
 - (1) Improving consumers' access to redress, both by securing redress in court and by ensuring that damages are distributed to the affected class.
 - (2) Promoting the efficient conduct of litigation at proportionate cost.
- 1.3. When conducting the review, the Law Commission will consider:
 - (1) In terms of the design of any such regime:
 - (a) what should constitute a “consumer law claim” for the purposes of any class action regime;
 - (b) whether the regime should allow for “opt-in” as well as “opt-out” claims;
 - (c) the criteria and process for commencing a class action, including how a “class” should be defined;
 - (d) management of class action proceedings; and
 - (e) damages, costs and settlement, including the funding of claims, taking into account any reforms to litigation funding as a consequence of the Civil Justice Council’s review.
 - (2) The Government's conclusions in its review of the current opt-out regime for competition claims in the Competition Appeal Tribunal, including on the following issues:
 - (a) Methods of financing opt-out collective proceedings and how available mechanisms can affect the intended functioning of the regimes.
 - (b) Whether certain sectors are disproportionately targeted by litigants.
 - (c) The effectiveness of distribution of damages.
 - (d) Evidence of pent-up demand for opt-out consumer protection claims.
 - (e) The role of certification in an opt-out regime.

(f) How vulnerable opt-out collective proceedings are currently to being exploited and creating a litigation culture.

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