

Apple customers who made purchases in the UK App Store since 1 October 2015 could benefit from proposed collective action

This notice has been issued at the direction of the Competition Appeal Tribunal

- Dr Rachael Kent (“**Dr Kent**”) has filed an application to bring collective proceedings as a class representative on an opt-out basis against Apple Inc. and Apple Distribution International Ltd. (collectively “**Apple**”). The claim has been filed with the Competition Appeal Tribunal (“**Tribunal**”) by Dr. Kent on behalf of a proposed class of individuals and businesses that she claims have suffered loss due to Apple’s conduct.
- The Consumer Rights Act 2015 allows collective proceedings to be brought on behalf of a group or groups of persons who are alleged to have suffered loss as a result of unlawful anticompetitive conduct. For collective proceedings to be brought, the Tribunal must first make a collective proceedings order (a “**CPO**”) authorising a person to act as a representative of the class and certifying the claims as eligible for inclusion in collective proceedings.
- Dr Kent has applied to the Tribunal for a CPO which, if granted, would allow her proposed claim to proceed to a full trial. Dr Kent alleges that Apple has breached competition law in respect of its app store in the UK (the “**App Store**”). Dr Kent alleges that you may have been overcharged by Apple when you bought apps or digital content, services or subscriptions within an app from an iPhone or iPad in the UK App Store in the period from 1 October 2015 onwards.
- At a hearing scheduled to commence on **3 May 2022 at 10:30am**, the Tribunal will hear arguments as to whether Dr Kent can be authorised to act as the class representative and whether the claims Dr Kent is bringing can proceed on behalf of the proposed class. The **proposed class** includes:
 - all persons who, at any point during the period between 1 October 2015 and the date of final judgment or earlier settlement of this claim, made for themselves and/or another person, one or more purchases of an app or digital content, services or subscriptions within an app (excluding Apple apps) from an iPhone or iPad device in the UK version of the App Store.
- If a claim were certified: those who are domiciled in the UK and fall within the class definition of the claim that the Tribunal certifies would automatically be included in that claim, and would be bound by any judgment or settlement, unless they choose to opt-out. Those who fall within this definition but are domiciled outside the UK but wish to participate in the claim would have the opportunity to opt-in to the claim. For more details on this please visit www.appstoreclaims.co.uk.
- The hearing, scheduled to commence on **3 May 2022 at 10:30am**, will last for three days (with one day in reserve) and will take place at the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP. However, if circumstances require, it will be held virtually, in accordance with the relevant protocols for conducting online hearings during the Covid-19 pandemic, as required at the time. In either case, the hearing may be followed via the Tribunal’s website (a “Watch now” link to view the hearing will appear on the hearing date under the Diary list on the following pages: <https://www.catribunal.org.uk/> and <https://www.catribunal.org.uk/diary>).
- To learn more about Dr Kent’s claim, please visit www.appstoreclaims.co.uk or www.catribunal.org.uk.

QUESTIONS? VISIT www.appstoreclaims.co.uk

YOUR LEGAL RIGHTS AND OPTIONS NOW	
OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE	Any person with an interest (including any proposed class member) may object to the application for a CPO, or the authorisation of the proposed class representative, by stating their reasons for objecting in writing to be received by the Tribunal by 4 February 2022 at 4pm . For further details, see Question 8 below.
APPLY TO MAKE ORAL / WRITTEN SUBMISSIONS TO THE TRIBUNAL	Any person with an interest (including any proposed class member) may apply to the Tribunal for permission to make written and/or oral submissions at the hearing commencing on 3 May 2022 . Any such application must be made in writing, supported by reasons, and received by the Tribunal by 4 February 2022 at 4pm .
CONTACT DETAILS	To learn more about the application to bring the proposed claim, visit www.appstoreclaims.co.uk and/or www.catribunal.org.uk/cases/14037721-dr-rachael-kent .

GENERAL INFORMATION

1. Why has this notice been issued?

The Tribunal has issued directions for a hearing (see Order at Annex A), to determine whether a CPO should be made, which is scheduled to commence on **3 May 2022**. It has also directed that this notice be issued ahead of the hearing to seek the views of any interested persons.

The CPO application asks the Tribunal to: (i) approve the claim as suitable to proceed as a collective claim on behalf of eligible class members; and (ii) approve Dr Kent as the class representative.

This notice has been issued to inform you of your right to object to the CPO application or the authorisation of the proposed class representative. Please read this notice carefully.

2. What is the Competition Appeal Tribunal?

The Tribunal is a specialist court based in London that covers the whole of the UK and hears cases concerning the application of competition law, including by way of collective proceedings. The Tribunal publishes its Rules and Guidance, together with information about what it does and details of its on-going cases, on its website www.catribunal.org.uk.

3. Who is the claim against?

This claim is against Apple Inc. and Apple Distribution International Ltd. (together “**Apple**”). Apple is a technology company which manufactures consumer devices including iPhones and iPads. Apple also designs and operates related consumer services such as the App Store.

4. What is Apple alleged to have done wrong? What are the claims?

The claims that Dr Kent proposes to bring allege that Apple has breached competition law by abusing its dominant position. Dr Kent alleges that Apple has abused a powerful position and as a result there are no alternatives to the App Store on iPhones and iPads, and Apple has been able to charge a very high commission on certain purchases in the UK App Store; as much as 30%. As a result, you may have been overcharged.

Dr Kent alleges that if you have made a purchase in the UK App Store on your iPhone or iPad since 1 October 2015 you are likely to have suffered loss and may be entitled to compensation.

5. Who is the proposed class representative?

The CPO application requests that Dr Kent be authorised to act as the class representative for the proposed claim.

Dr Kent is currently a Lecturer in Digital Economy & Society at King's College London. She has dedicated her professional life to researching consumers' interaction with digital platforms and apps, including in relation to issues around the cost of paid apps and in-app purchases. Dr Kent's teaching and research focusses on how digital platforms impact on society and consumer behaviour and welfare.

As the proposed class representative, Dr Kent would conduct the claim against Apple on behalf of all class members (except for those who decide to opt-out of the class). Dr Kent would instruct the lawyers and experts, make decisions on the conduct of the claim and, in particular, decide whether to present any offer of settlement that Apple may make to the Tribunal for its approval. The Tribunal will assess Dr Kent's suitability to act as the proposed class representative.

During the case, Dr Kent would be responsible for communicating with and updating the class members on the conduct of the case and for issuing formal notices, such as this notice. If approved, Dr Kent would update the class about the claim on the website www.appstoreclaims.co.uk and through the media.

WHAT DOES THE COLLECTIVE PROCEEDINGS ORDER APPLICATION ASK FOR?

6. Who would be in the proposed class?

The Consumer Rights Act 2015 allows for a collective claim to be brought on behalf of a group of individuals. The group is the "class" and all individuals within the group are "class members." As a result of the 2015 Act, groups of persons who have suffered loss do not need to bring an individual claim to obtain compensation for their loss. Instead, these consumers may all receive compensation through a single, collective claim brought on their behalf by a representative.

The CPO application asks the Tribunal to allow the proposed claim to proceed on an "opt-out" basis on behalf of all persons (including both consumers and businesses) who, at any point during the period between 1 October 2015 and the date of final judgment or earlier settlement of this claim, made for themselves and/or another person, one or more purchases of an app or digital content, services or subscriptions within an app (excluding Apple apps) from an iPhone or iPad device in the UK version of the App Store.

To check whether you or your business fall within the proposed class, you may have regard to the following instructions. First, you should check if you have been using the UK version of the App Store. To check this, enter the App Store, click on your account (Apple refers to this as your ‘Apple ID’), click on ‘Country/Region’, and check whether the UK is ticked. If the UK is ticked, you are using the UK version of the App Store. Next, navigate to your ‘Purchase History’ and filter it by date (year and month) to determine whether you have paid Apple any money in the App Store at any point from 1 October 2015 onwards. If you have paid money to Apple in the UK version of the App Store from an iPhone or iPad device at any point since 1 October 2015, you are very likely to be a member of the proposed class.

Only payments that show up in your ‘Purchase History’, and which do not relate to one of Apple’s own apps, are relevant to the proposed claim. Certain categories of payments, such as payments for taxi rides and food deliveries (i.e. any payment for a physical good or service) and payments for real-time person-to-person services (e.g. tutoring sessions), won’t show up in your ‘Purchase History’ and are not relevant to the proposed claim. In addition, payments for or within Apple apps (e.g. payments within the “Apple Books” app) are also excluded from the claim. Further details regarding the requirements for eligibility as class members (and any applicable exclusions from the class, which includes any members of Dr Kent or Apple’s legal teams, anyone assigned to determine the claim and deceased persons) can be found on the website set up by Dr Kent at www.appstoreclaims.co.uk.

“Opt-out” means that anyone who meets the proposed class definition will be included in the claim automatically and be bound by the result, unless they expressly ask to ‘opt-out’. If the Tribunal allows the proposed collective claim to proceed, it will also be possible for those who are not automatically included in the claim but meet certain criteria to ‘opt-in’ to the claim if they have suffered loss as a result of Apple’s conduct. More information can be found at www.appstoreclaims.co.uk.

7. How much money does the claim ask for?

The proposed claim seeks compensation for all those within the proposed class who have been affected by Apple’s allegedly anti-competitive behaviour. The total aggregate amount sought is between around £535 million - £1,459 million (excluding interest). If the claim is successful, all persons who have an eligible claim will be able to seek a payment of the damages awarded.

Visit www.appstoreclaims.co.uk for more details about the amount of compensation that you may receive in due course.

HOW TO OBJECT TO THE COLLECTIVE PROCEEDINGS ORDER APPLICATION OR TO THE CLASS REPRESENTATIVE

8. Who can object and what can I object to?

Any person with an interest (including anyone who would be a member of the proposed class) may object to the CPO application or the authorisation of the proposed class representative. You should review the information above and visit both www.appstoreclaims.co.uk and www.catribunal.org.uk for information.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it by post, or fax, so it is received **no later than 4 February 2022 at 4pm**, to the following address:

QUESTIONS? VISIT www.appstoreclaims.co.uk

The Registrar
Competition Appeal Tribunal
Salisbury Square House
8 Salisbury Square
London EC4Y 8AP
www.catribunal.org.uk

When writing to the Tribunal you must include the reference 'Kent v Apple, Case No. 1403/7/7/21'.

Any person with an interest (including any proposed class member) can apply to the Tribunal for permission to make written and/or oral submissions at the hearing commencing on 3 May 2022. Any such application must be made in writing supported by reasons, and sent by post **so it is received no later than 4 February 2022 at 4pm**, to the address above.

GETTING MORE INFORMATION

9. How can I stay updated on the progress of the claim?

You can visit www.appstoreclaims.co.uk for periodic updates on the claim.

10. Who is funding the claim?

The claim is being funded by litigation funders Vannin Capital, who are members of the Association of Litigation Funders and have a wealth of experience in funding cases similar to this one. More information can be found on the claim website: www.appstoreclaims.co.uk.

QUESTIONS? VISIT www.appstoreclaims.co.uk

Annex A



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1403/7/7/21

BETWEEN:

DR. RACHAEL KENT

Proposed Class Representative

and

(1) APPLE INC.

(2) APPLE DISTRIBUTION INTERNATIONAL LTD

Proposed Defendants

ORDER

UPON the Proposed Class Representative’s application dated 10 May 2021 for a collective proceedings order (the “**CPO Application**”) pursuant of section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules (S.I. 2015 No. 1648) (the “**Tribunal Rules**”).

AND UPON the Proposed Class Representative’s requests that certain information in the Proposed Class Representative’s first witness statement, the Proposed Class Representative’s curriculum vitae, the Litigation Funding Agreement, the After-the-Event Insurance Policy, and the Litigation Budget be treated as confidential or be redacted (the “**Confidentiality Requests**”).

AND UPON the parties agreeing the terms of a confidentiality ring order (the “**Confidentiality Ring**”).

AND UPON hearing Leading Counsel for the Proposed Class Representative and Leading Counsel for the Proposed Defendants at a case management conference on 14 December 2021.

AND UPON the Tribunal reserving its decision in respect of the Confidentiality Requests insofar as not already agreed between the parties.

IT IS ORDERED THAT:

Forum

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, the CPO Application be treated as proceedings in England and Wales.

Publicity

2. The Proposed Class Representative shall publicise the CPO Application in accordance with the terms of a notice approved by the Tribunal by **24 December 2021**.
3. The Proposed Class Representative shall publicise, in accordance with paragraphs 2, 11 and 12 of this Order, the right under Rule 76(10)(c) of the Tribunal Rules of persons with an interest to object to the CPO Application or the authorisation of the Proposed Class Representative by **24 December 2021**.
4. The Proposed Class Representative shall publicise, in accordance with paragraphs 2 and 11 of this Order, the right under Rule 79(5) of the Tribunal Rules of members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application by **24 December 2021**.

Confidentiality ring

5. The Confidentiality Ring be established by separate order of, and in the form to be approved by, the Tribunal.

Amendment to the Claim Form

6. Pursuant to Rule 32(1)(a) of the Tribunal Rules, the Proposed Class Representative be permitted to amend the collective proceedings claim form to include a statement of truth in the form prescribed by the Civil Procedure Rules 1998 (S.I. 1998 No. 3132).

7. The Proposed Class Representative shall file and serve the amended collective proceedings claim form (excluding annexes) by **4pm on 17 December 2021**.

Further information

8. The Proposed Class Representative shall file and serve evidence from an individual at the Proposed Class Representative's funder addressing the issue of the assets available to Project Greve to fund the claims proposed to be brought by the Proposed Class Representative by **4pm on 7 January 2022**.

Responses and replies

9. The Proposed Defendants shall file and serve their response to the CPO Application, together with any economic expert evidence, and any application made pursuant to rule 79(4) of the Tribunal Rules, by **4pm on 12 January 2022**.
10. The Proposed Class Representative shall file and serve any reply to the Proposed Defendants' response, together with any economic expert evidence, and any response to any application made pursuant to rule 79(4) of the Tribunal Rules, by **4pm on 2 March 2022**.

Objections to the CPO Application and applications for permission to make observations

11. Any person with an interest (including any member of the proposed class) may object to the CPO Application or the authorisation of the Proposed Class Representative by writing to the Tribunal stating their reasons for objecting by **4pm on 4 February 2022**. Any member of the proposed class may also seek permission to make oral observations at the CPO Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.
12. Any third party with a legitimate interest (who is not a member of the proposed class) who seeks permission to make written and/or oral observations at the CPO Application hearing is to make such application, supported by reasons, to the Tribunal by **4pm on 4 February 2022**.

Skeleton arguments and bundles

13. The parties shall file and serve skeleton arguments by **4pm on 19 April 2022**.
14. The Proposed Class Representative shall file an electronic version and six hard copies of the agreed hearing bundle by **4pm on 26 April 2022**.
15. The Proposed Class Representative shall file an electronic version of the agreed authorities bundle by **4pm on 26 April 2022**.

Hearing

16. The hearing of the CPO Application be listed for **3 to 5 May 2022**, with 6 May 2022 in reserve.

General

17. Costs in the case.
18. There be liberty to apply.



The Hon. Mr Justice Morris
Chairman of the Competition Appeal Tribunal

Made: 14 December 2021
Drawn: 22 December 2021