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## John Astill examines how the BT ruling could shape how future class action cases unfold, in The Times

Lucy Glyn · Friday, November 15th, 2024

Ahead of the judgment in *BT v Patourel*, Partner John Astill examines how the ruling could shape how future class action cases unfold.

Almost a decade since US-style class actions were first introduced into UK courts, judgment will soon be handed down in one of the most important cases to be heard by the Competition Appeal Tribunal (CAT): Le Patourel v BT Group PLC. The abuse of dominance claim, brought by consumer champion and former Ofcom official Justin Le Patourel, involved an eight-week hearing that ended in March.

Le Patourel is seeking £1.3 billion in compensation on behalf of around 3 million customers – many of whom are either elderly, vulnerable, or both – over claims that BT overcharged them for broadband and landline services. If successful, they could potentially receive up to £400 each. At the start of the trial in January, Le Patourel said: “Time really is of the essence. More than 40 percent of our claimants are aged over 70, and over 150 of them are dying every day.”

Notably, this claim is the UK’s first opt-out group action tried under the Competition Act 1998. The CAT’s judgment is imminent. If successful, the claim will have significant implications for how damages are distributed in CAT opt-out claims, providing guidance for future collective proceedings.

Arguably, the CAT’s decision in Le Patourel will be the most important since last July’s Supreme Court judgment in the PACCAR case. It was game changing for litigation funding as it prohibited widely used remuneration models forcing the industry to find workarounds. Le Patourel would potentially mark a critical inflection point, both for the legal ecosystem that has evolved around class actions at the CAT and for third-party funding.

Distribution matters. If, collectively, the CAT, case management companies, funders and law firms fail to achieve the appropriate distribution of damages to claimants, the entire system of class action redress could potentially be called into question. Should distribution be less than the costs incurred in bringing a claim or rates as low as 9-10% of claimants – as has recently been the case in the US – credibility in the process could be lost.

Given the complex issues that will inevitably arise on the first occasion that the CAT has to deal with the issue post-judgment, the distribution of potential damages to the claimants against BT will

be far from straightforward. Similar complexity will apply in dealing with the different, sometimes competing interests of the parties – the class representative, class members, lawyers, funders, and insurers – and how these will be managed by the CAT in a post-PACCAR landscape.

Ultimately, BT will hold the distribution cards since they manage the data of the 3 million class action members. The same issue will apply in more than a dozen future cases including those faced by Amazon, Apple and Google.

John's article was published in The Times, 7 November 2024, and can be found [here](#).

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