



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1404/7/7/21

BETWEEN:

**DAVID COURTNEY BOYLE**

Class Representative

- v -

- (1) **GOVIA THAMESLINK LIMITED**
- (2) **THE GO-AHEAD GROUP PLC**
- (3) **KEOLIS (UK) LIMITED**

Defendants

- and -

**SECRETARY OF STATE FOR TRANSPORT**

Prospective Intervener

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**COLLECTIVE PROCEEDINGS ORDER**

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**UPON** the Class Representative’s application for a collective proceedings order (the “**CPO Application**”) pursuant to section 47B of the Competition Act 1998 (“**CA98**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “**Tribunal Rules**” and each a “**Rule**”)

**AND UPON** receipt of a collective proceedings claim form on 10 June 2021 (amended pursuant to the Tribunal’s in-hearing direction of 13 July 2022) (the “**Amended Collective Proceedings Claim Form**”)

**AND UPON** hearing Counsel for the Class Representative and Defendants at the hearing of the CPO Application on 13 July to 15 July 2022

**AND UPON** the Tribunal having granted the CPO Application on 25 July 2022

**AND UPON** there being no objection to the Secretary of State for Transport being added as an intervener in the proceedings

**IT IS ORDERED THAT:**

**Forum**

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, these collective proceedings shall be treated as taking place in England.

**Intervention**

2. The Secretary of State for Transport be granted permission to intervene in support of the Defendants, the extent of such intervention to be determined at the case management conference listed for 14 October 2022.

**Authorisation of class representative and certification of claims**

3. Pursuant to section 47B CA98 and Rules 77 and 80, Mr David Boyle shall be authorised to act as class representative to continue collective proceedings on an opt-out basis (the “**Class Representative**”).
4. The Class Representative’s address for service shall be Maitland Walker LLP, 22 The Parks, Somerset, TA24 8BT (attention: Julian Maitland-Walker / Adrian Render).
5. The claims certified for inclusion in these collective proceedings, pursuant to section 47B CA98 and Rules 79 and 80, are those set out in the Amended Collective Proceedings Claim Form. They are claims on behalf of the class (as defined below) for loss and damage which it is claimed result from the pricing and other practices of the First Defendant (“**GTR**”) on the London-Brighton mainline in violation of Chapter II of the Competition Act 1998.

**Class**

6. The class (“**Class**” and “**Class Definition**”) comprises any person (or in the event such a person has died on or after 13 July 2016, the personal or authorised representative of his or her estate) who between 1 October 2015 and the date of final judgment or earlier settlement of the claims purchased or paid for, for themselves or another person:

- (a) Any Permitted fares (tickets) issued by GTR for travel in either direction between stations on the London-Brighton mainline (including fares covering travel on London Underground) but excluding fares for travel exclusively within Travelcard Zones;
- (b) Not Gatwick Express fares issued by GTR for travel in either direction between stations on the London-Brighton mainline (including fares covering travel on London Underground) but excluding fares for travel exclusively within Travelcard Zones;
- (c) Train travel where a passenger taps in or out at platforms 13 and 14 at London Victoria with Oyster Pay As You Go or other contactless payment cards when travelling to or from another station on the GTR train network (including stations north of London); and/or
- (d) Penalty fares or excess fares when travelling on the London-Brighton mainline imposed exclusively because the person was travelling on a GTR train brand excluded by the relevant fares originally purchased by the person.

## **Exclusions**

- 7. Excluded from the Class shall be the following categories:
  - 7.1. The officers, directors, or employees of the Defendants, their subsidiaries, holding companies, any other subsidiaries of those holding companies, and any other entity which: (a) has a controlling interest in a Defendant; and (b) in which a Defendant has a controlling interest;
  - 7.2. All members of the legal teams, experts, and professional advisers involved in these proceedings (including, for the avoidance of doubt, Mr David Boyle);
  - 7.3. All members of the Tribunal panel and any judge hearing any appeal in these proceedings;
  - 7.4. Penalty and/or excess fares which have been cancelled or reimbursed;

- 7.5. Fares ultimately purchased or paid for by a legal person on behalf of an employee where the original fare purchase occurred before 13 July 2016;
- 7.6. Fares purchased by self-employed persons before 13 July 2016 and whose cost was included on a specific disbursement to a customer of the purchaser;
- 7.7. Any legal person that was recorded as dissolved on the register of companies kept by Companies House before 13 July 2016; and
- 7.8. Any natural person who died before 13 July 2016.

## **Definitions**

8. Defined terms within the Class have the following meanings:
  - 8.1. “Any person who... purchased or paid for, for themselves or another person” means any person who directly purchased the applicable fare unless (a) the person had the cost of the fare reimbursed by another person or (b) the person included the cost of the fare on a specific disbursement to that person’s customer. Where (a) or (b) is applicable, the person who “purchased or paid for” the applicable fare will not be the person directly purchasing the applicable fare but rather the person reimbursing the cost of the fare (unless that person included the cost of the applicable fare in a specific disbursement to a customer, in which case the customer will be the person who “purchased or paid for” the applicable fare) or the person paying for the specific disbursement.
  - 8.2. “Excess fares” means fares costing the difference in price between the amount originally paid for the fare and the lowest price fare available for immediate travel that would have entitled the rail passenger to travel by that route.
  - 8.3. “Penalty fares” means penalty fares charged in accordance with a scheme under the Railway (Penalty Fares) Regulations 2018 (as amended from time to time).

### **Opting out and Opting in**

9. Any person satisfying the Class Definition who is domiciled in the United Kingdom on 5 October 2022 may opt out of the proceedings by writing to GTR Opt-Out Collective Action, PO Box 114, Minehead, TA24 9DN. Instructions are available at [www.gtrclaim.co.uk](http://www.gtrclaim.co.uk). Notice of an intention to opt out must be received by 1 November 2022 to be effective.
10. Any person satisfying the Class Definition who is domiciled outside the United Kingdom on 5 October 2022 may opt in to the proceedings by completing the form available at [www.gtrclaim.co.uk](http://www.gtrclaim.co.uk) by 1 November 2022.

### **Publicity**

11. The Class Representative shall publicise this Order in accordance with Rule 81. It shall be publicised using the Notice approved by the Tribunal and in accordance with the following proposals:
  - 11.1. The proposal set out in paragraphs 70 to 73 of the Litigation Plan exhibited at Exhibit EV2 to the Witness Statement of Mr Edward Vermeer dated 9 June 2021; and
  - 11.2. The proposal set out in the Kinsella Media/Rust Consulting Plan at Annex 1 of the Litigation Plan.

### **Further directions**

12. The Defendants shall file and serve their Defences by 5pm on 7 October 2022.
13. The Intervener shall file and serve its Statement of Intervention by 5pm on 11 October 2022.
14. The Class Representative shall file and serve a Reply, if so advised, by 5pm on 1 December 2022.

### **General**

15. There be liberty to apply.

**Sir Marcus Smith**  
President of the Competition Appeal Tribunal

Made: 5 October 2022  
Drawn: 5 October 2022