



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

#### CASE NO. 1600/7/7/23

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 21 July 2023 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Doug Taylor Class Representative Limited (the “Applicant/Proposed Class Representative/PCR”) against (1) Santander Consumer (UK) plc (“SCUKP”); (2) Santander UK plc (“SUKP”); (3) Santander UK Group Holdings plc (“SUGHP”); and (4) Banco Santander, S.A., First Branch (“BSSA”) (together, “the Respondents/Proposed Defendants/PDs”). The PCR is represented by Scott+Scott UK LLP, St Bartholomew House, 90-94 Fleet Street, London (Reference: Belinda Hollway).

The PCR makes an application for a collective proceedings order to commence opt out collective proceedings under section 47B of the Act and Rule 75 of the Rules (the “Application”). The PCR is a special purpose vehicle, incorporated for the specific purpose of acting as the PCR in the proceedings.

The claims which the PCR seeks to combine (the “Claims”) are for loss and damage caused by the Proposed Defendants’ breach of the statutory prohibition under Chapter I of the Act. The Proposed Defendants are part of the same corporate group.

The Proposed Class Members (“PCMs”) are consumers who funded their acquisition of used motor vehicles in the period from 1 October 2015 to 27 January 2021 (the “Relevant Period”) using point-of-sale motor vehicle products pursuant to point-of-sale agreements (“Finance Agreements”) with one or more companies in the Proposed Defendants’ corporate group. The PCR contends that credit brokerage “operating” agreements (“Operating Agreements”) between the dealers from which PCMs purchased vehicles (“Dealers”) and the relevant company in the Proposed Defendant’s corporate group (each part of an undertaking referred to by the PCR as the “Defendant Undertaking”) included discretionary commission arrangements (the relevant commission arrangements – “RCAs”), which incentivised the dealers to broker the Finance Agreements at interest rates significantly higher than the Proposed Class Member would otherwise have paid.

According to the PCR, under the RCAs, the Dealer had the discretion to decide the interest rate which the PCM would pay to the Defendant Undertaking. The commission rate payable by the Defendant Undertaking to the Dealer varied depending on that interest rate – the higher the PCM’s interest rate, the higher the Dealer’s commission rate. The PCR submits that the RCAs in Operating Agreements between Dealers and the Defendant Undertaking were materially the same as, or similar to, the RCAs in Operating Agreements between Dealers and other undertakings competing with the Defendant Undertaking, and that together those undertakings accounted for the majority of lending in the motor vehicle finance sector.

The PCR contends that the object and effect of the RCAs was to prevent, restrict and/or distort effective competition among undertakings operating in the motor vehicle finance sector using point-of-sale motor vehicle finance products, in breach of the Chapter I prohibition. The PCMs are said to have suffered loss as a result of these anticompetitive RCAs.

The PCR seeks an award of damages reflecting the difference between (i) the interest rates which the PCMs would have paid under their respective Finance Agreements in the absence of the RCAs and (ii) the interest rates which the PCMs in fact have paid and/or will pay under their respective Finance Agreements. The PCR's preliminary estimate is that the aggregate losses suffered by the 178,000 PCMs in these proceedings in respect of around 306,000 used motor vehicles are around £156 million.

The Claims are standalone claims. However, the Application refers to an investigation carried out by the Financial Conduct Authority into the use of discretionary commission arrangements in the motor vehicle finance sector, and a consequent ban on such arrangements with effect from 28 January 2021. The FCA stated that this ban would "foster price competition between lenders" and would "lead to alternative remuneration models where lenders and brokers are incentivised to create and sell competitively priced loans."

The Application states that it would be just and reasonable for the PCR to act as the class representative in the proposed collective proceedings. In summary:

- a. The PCR is a body corporate, which has been incorporated for the sole purpose of acting as the class representative in these Collective Proceedings. The PCR's sole director, Mr Doug Taylor, has extensive professional experience as a consumer advocate and an elected councillor (and twice former leader) of Enfield Council. The Application states that Mr Taylor's professional experience will allow him to manage the Collective Proceedings effectively and efficiently.
- b. The PCR is not a member of the proposed class, and has no material interest that is in conflict with the interests of the PCMs.
- c. The PCR is not aware of any other applicant proposed to be the representative in respect of the same claims.
- d. Further:
  - i. The PCR has funding for the claim and will be able to pay the PDs' recoverable costs if ordered to do so. The PCR has entered into a litigation funding agreement with a third-party funder to enable it to pay the costs of the proceedings.
  - ii. The PCR has developed a Litigation Plan for the proceedings.
  - iii. Alongside its experienced legal team, the PCR has assistance from Angeion Group International, a claims administrator with extensive experience handling class actions.

The PCR contends that the claims are eligible for inclusion in collective proceedings:

- a. The PCMs are readily identifiable, being persons who entered into a Finance Agreement with one of the Proposed Defendants (or another company in the same corporate group) in order to acquire a used motor vehicle in the UK in the Relevant Period.
- b. The Claims raise common issues of fact or law in respect of each PCM, including: (i) how the relevant product and geographic markets, including primary and secondary markets, are defined; (ii) whether the relevant Operating Agreements, and their RCAs in particular, had the object and/or effect of preventing, restricting or distorting competition in the UK; (iii) whether the relevant Operating Agreements, and their RCAs in particular, caused and/or continue to cause PCMs loss; (iv) how much loss the relevant Operating Agreements, and their RCAs in particular, caused and/or continue to cause PCMs; (v) whether the Proposed Class Members

are entitled to compound interest; and (vi) what the rate and duration of the Proposed Class Members' entitlement to prejudgment compound, alternatively simple, interest should be.

- c. The Claims are suitable to be brought in collective proceedings; the collective proceedings are an appropriate means of fairly and efficiently resolving the common issues, when compared with the determination of those issues through more expensive and procedurally burdensome individual claims. It would be impractical and wasteful of court resources for individual PCMs to bring their own individual claims against the Proposed Defendants, and the costs of bringing the Claims by way of collective proceedings are outweighed by the benefits of doing so.

The relief sought in these proceedings is:

1. Damages on behalf of the Proposed Class (to be assessed on an aggregate basis) reflecting the difference between the interest rates which the PCMs would have paid under their respective finance agreements in the absence of the RCAs and the interest rates which the PCMs in fact have paid and/or will pay under their respective finance agreements. The award should further reflect the past losses suffered by the PCMs as at the date of trial and future losses to be suffered by the PCMs after the date of trial due to their finance agreements not having been paid off by that time (alternatively, a declaration in respect of future losses).
2. Compound interest thereon, or alternatively simple interest (from such date(s) and at such rate(s) as the Tribunal may consider appropriate).
3. The PCR's costs.
4. Such further or other relief as the Tribunal considers appropriate.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*

Registrar

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