



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

Case No: 1381/7/7/21

BETWEEN:

**JUSTIN LE PATOUREL**

Class Representative

- v -

**(1) BT GROUP PLC**  
**(2) BRITISH TELECOMMUNICATIONS PLC**

Defendants

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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 (“**section 47B**”) and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “**Tribunal Rules**”)

**AND UPON** receipt of a collective proceedings claim form on 15 January 2021 (the “**CPO Claim Form**”)

**AND UPON** permission being granted for the Class Representative’s application, dated 28 May 2021, to re-amend the CPO Application (the “**Re-Amended CPO Claim Form**”)

**AND UPON** the Defendants’ application to strike out the Class Representative’s claims and/or for summary judgment, dated 30 April 2021 (the “**Defendants’ Strike Out Application**”)

**AND UPON** hearing counsel for the parties on 24-25 June 2021 (the “**CPO Hearing**”)

**AND UPON** the Tribunal handing down judgment on the CPO Application on 27 September 2021 (the “**Judgment**”)

**AND UPON** the Tribunal considering that it is just and reasonable for Mr Justin Le Patourel to act as the representative of the Class (as defined below) in these proceedings

**AND UPON** hearing counsel for the parties on 19 October 2021 in respect of consequential matters (the “**Consequentials Hearing**”)

**IT IS ORDERED THAT:**

**Forum**

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

**Authorisation of Class Representative**

2. Pursuant to section 47B and Rules 77 and 80 of the Tribunal Rules, Mr Justin Le Patourel is authorised to act as the Class Representative to continue collective proceedings on an opt-out basis claiming damages for loss suffered by the Class (as defined below).
3. The remedy sought is an award of aggregate damages for the Class pursuant to section 47C(2) of the Competition Act 1998 together with interest, costs and any further or other relief as the Tribunal may think fit.
4. The Class Representative’s address for service is Mishcon de Reya LLP, Africa House, 70 Kingsway, Holborn, London WC2B 6AH (for the attention of Rob Murray).

## **Class definition**

5. The Class shall be defined as: “all persons domiciled in any part of the United Kingdom (except in the **Hull Area**) – or their UK-domiciled personal representatives – who, during the **Claim Period**, bought a **BT Standalone Fixed Voice Service** except for the **Excluded Services** (referred to below as “**the Class Members**”)”, whereby:

- (a) **BT Standalone Fixed Voice Service** means any residential landline calling plan service provided by BT, except for the Excluded Services, which (i) includes landline line rental and (ii) has not been sold as part of a bundle with broadband. For these purposes, a bundle refers to a contract, or two or more closely related, linked or interdependent contracts which, individually or together, include and require the purchase of broadband as well as the landline calling plan service.
- (b) **Excluded Services** means BT Basic and BT Home Phone Saver.
- (c) **Hull Area** means the area defined as the Licence Area in the licence granted on 30 November 1987 by the Secretary of State under Section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc.
- (d) The **Claim Period** means:
  - (i) for residential BT Voice Only Customers, between 1 October 2015 and 1 April 2018 inclusive;
  - (ii) for business BT Voice Only Customers, between 1 October 2015 and the date of the Tribunal’s final determination of the Claims made by the Sub-class of BT Voice Only Customers or their earlier settlement (or settlement of any part thereof); and
  - (iii) for BT Split Purchase Customers, between 1 October 2015 and the date of the Tribunal’s final determination of the Claims

made by the Subclass of BT Split Purchase Customer or their earlier settlement (or settlement of any part thereof).

6. The following categories of persons (as constituted from time to time) shall be excluded from the class and accordingly not be Class Members:
  - (a) officers, directors or employees of the Respondents;
  - (b) officers, directors or employees of any entities in which the Respondents have a controlling interest;
  - (c) all members of the Respondents' legal team;
  - (d) all experts instructed on behalf of the Respondents;
  - (e) all members of the Applicant's legal team;
  - (f) all experts instructed on behalf of the Applicant;
  - (g) all employees of [the claims administrator] engaged in advising and assisting the Applicant and any other professional adviser who may be engaged by the Applicant for the purposes of these proceedings; and
  - (h) all members of the Tribunal panel assigned to these proceedings.
  
7. The following categories of Class Members shall be designated as Sub-classes in the Collective Proceedings:
  - (a) **BT Voice Only Customers:** Class Members who, during the applicable Claim Period as defined above, have bought a BT Standalone Fixed Voice Service but did not, at the same time, buy a broadband service, either from BT or any other provider.
  - (b) **BT Split Purchase Customers:** Class Members who, during the applicable Claim Period as defined above, have bought at the same

time both (i) a BT Standalone Fixed Voice Service; and (ii) a broadband service, either from BT or any other provider.

### **Notification**

8. Subject to paragraph 22 below, the Class Representative shall publish a Notice of the Collective Proceedings in the form appended to this Order in accordance with Rule 81 of the Tribunal's Rules.

### **Opting-out**

9. Every Class Member who is domiciled in the United Kingdom on 27 September 2021 (“**the Domicile Date**”) shall be included in these collective proceedings subject to paragraph 10 below.
10. Subject to paragraph 22 below, any Class Member who is domiciled in the United Kingdom on the Domicile Date may opt out of the Collective Proceedings by giving the Class Representative notice in writing of their decision to opt out by 4pm on 14 April 2022, in accordance with the attached Notice.
11. Any notice to be given under paragraph 10 above, and any other document to be served on the Class Representative, shall be served in accordance with the attached Notice, including submission via the website ([www.callclaim.co.uk](http://www.callclaim.co.uk)) or being sent to: CALL Claim Opt-Outs, PO Box 13188, BRAINTREE, CM7 0PD.

### **BT's Strike Out Application**

12. The Defendants' Strike Out Application is dismissed.

### **Directions**

13. The Defendants shall file and serve a consolidated Defence to the Re-Amended CPO Claim Form (save for paragraphs 14-17; 82-83; 92-101; and

Parts V-VI of the Re-Amended CPO Claim Form) by 4pm on 3 December 2021.

14. The Class Representative shall file and serve a Reply, if so advised, by 4pm on 7 January 2022.
15. A Second CMC (time estimate: 1 day) shall be listed in February 2022, before Mr Justice Waksman, Eamonn Doran and Derek Ridyard.

### **Costs**

16. The Defendants shall pay the Class Representative his costs of, and occasioned by, the Defendants' Strike Out Application, to be assessed on the standard basis, if not agreed.
17. In respect of the CPO Application:
  - (a) The Class Representative's costs of, and occasioned by, the CPO Application up to 30 April 2021 shall be costs in the case.
  - (b) The Defendants shall pay 80% of the Class Representative's costs of, and occasioned by, the CPO Application from 30 April 2021 onwards (save for costs of and occasioned by the amendments and re-amendments to the CPO Claim Form, which shall be costs in the case), to be assessed on the standard basis, if not agreed. The balance of 20% of the Class Representative's aforementioned costs shall be costs in the case.
18. The costs of the Consequential Hearing on 19 October 2021 shall be costs in the case.
19. Within 14 days of the date of this Order, the Defendants shall make a payment on account of the Class Representative's costs, in the sum of £450,000.

## **General**

20. The Class Representative shall procure amendment of clauses 8.3 and 9.1 of the Litigation Funding Agreement filed with the CPO Claim Form in accordance with the Tribunal's comments in *Merricks v Mastercard* [2021] CAT 28 at paragraphs 24 – 27 within 7 days of the date of this Order, with liberty to apply, in writing, for an extension from the Tribunal if needed (such a request to be made at least 24 hours before the time would otherwise elapse).
21. The Defendants' application for permission to appeal against the Judgment is refused.
22. Paragraphs 8 and 10 above are stayed until the Court of Appeal's determination of any renewed application for permission to appeal made by the Defendants or, in the event that no such application is made, the expiry of time for the Defendants to make a renewed application for permission to appeal.
23. The parties have liberty to apply.

**The Hon Mr Justice Waksman**  
Chairman of the Competition Appeal Tribunal

Made: 19 October 2021  
Drawn: 22 October 2021