

Hearing date set for legal claim against Apple for abusing market dominance by secretly 'throttling' iPhones

- Consumer champion Justin Gutmann's multi-million-pound claim on behalf of 25 million people in the UK against tech giant moves forward to a hearing
- Claim alleges Apple, in an abuse of its market dominance, misled customers about a power management tool that slowed devices, resulting in some users upgrading early or paying for a replacement battery
- A hearing has been set by Competition Appeal Tribunal to commence on **Tuesday 2 May 2023 – Thursday 4 May 2023**
- Members of the proposed class have until **20 January 2023** to write to the Competition Appeal Tribunal if they wish to object to the case proceeding

LONDON, UK: Consumer rights champion Justin Gutmann's unprecedented lawsuit against Apple is moving forward. The hearing has now been set by the Competition Appeal Tribunal (CAT) to commence from Tuesday 2 May 2023 until Thursday 4 May 2023 to determine whether the case should be certified as a collective action and proceed to a full trial.

Following a case management conference which took place on 22 November 2022, the CAT has confirmed that the CPO Hearing will take place to consider:

- If Mr Gutmann is suitable to act on behalf of the proposed class and if he should be certified to bring the claim.
- If the claim itself is eligible to be brought as a collective action and should proceed to a full trial.

If Mr Gutmann is successful, around 25million UK customers who bought an iPhone 6, 6 Plus, 6S, 6S Plus, SE, 7, 7 Plus, 8, 8 Plus and X models would be entitled to approximately £768 million collectively in compensation for each model owned. As an opt-out claim, members of the class will not need to actively join the case to seek damages. Instead, they will be part of the claim unless they decide to opt out.

Members of the proposed class have until **20th January 2023** to object to Mr Gutmann as a class representative or object to the claim itself. Anyone with an interest in the claim going ahead can make oral and/or written submissions to the Tribunal.

Justin Gutmann says: *"I am pleased to announce that the Competition Appeals Tribunal (CAT) has listed a hearing for my application for a Collective Proceedings Order (CPO) for 2nd - 4th May 2023. This is the first important stage in the case affecting millions of iPhone users in the UK who have had poor phone performance as a result of Apple's abusive conduct. I will now be working with my legal team to prepare for the hearing to ensure our claim is certified so that we can move this claim forward."*

The CPO Hearing is in respect of a claim launched on 17 June 2022 by Justin Gutmann, formerly of Citizens Advice, on behalf of millions of iPhone users who have allegedly

suffered loss due to being misled by iOS updates - claiming they would improve their iPhone's performance when in fact it reduced it by up to 58% in some cases.

Apple sold iPhones with batteries that were unable to cope with new iOS processing demands, which caused sudden shutdowns. Rather than undertaking a product recall and repair process to replace the batteries, Apple instead encouraged users to install iOS updates which had a power management tool concealed within them.

Affected iPhone users can receive more information on the legal proceedings by visiting [The iPhone Claim - The iPhone Throttling Claim](#). The hearing can be attended or viewed via livestream at <https://www.catribunal.org.uk>.

-ENDS-

Notes to Editors

For more information and media interviews with Justin Gutmann please contact:

enquiries@theiphoneclaim.com

About Justin Gutmann

Justin Gutmann seeks to be certified by the Competition Appeal Tribunal as suitable to represent the interests of millions of iPhone purchasers who have suffered alleged harm as a result of harmful practices engaged in by Apple. He is aiming to ensure that Apple will have to pay back the money they earned from selling iPhones with defective batteries and pushing automatic iOS updates which slowed down and compromised the performance and functionality of iPhones.

Mr Gutmann has a wealth of experience working in the consumer rights sphere and has spent a large part of his professional life dedicated to consumer welfare, public policy and market research. Mr Gutmann's job prior to retirement was as Head of Research and Insight at Citizens Advice, during which time he gained experience in the mobile technology sector where his work focussed on market dominance in both the handsets market and network provider's market.

Justin Gutmann is represented by Charles Lyndon and his claim is funded by Balance Legal Capital, a specialist litigation funder.

For further information please contact:

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Background to the Proposed Claim

Mr Gutmann alleges that Apple has breached competition law by selling iPhones with defective batteries that were unable to deliver peak power and pushing automatic iOS updates to iPhones which incorporated a power management tool which slowed down the iPhones and compromised their performance and functionality.

Mr Gutmann alleges that Apple has abused its dominant position in the relevant iPhone and iOS markets whereby purchasers of these iPhones had to pay high premium prices for their iPhone yet suffered substandard performance and/or were forced to upgrade early, paying early termination fees, or purchase a new battery for an additional fee. The claim is estimated to be worth around £768 million in damages.

For more information please visit: www.theiphoneclaim.com

Who is eligible?

The class of consumers (the “**Consumer Class**”) who may be eligible includes all consumers who:

- (a) Acquired one or more Affected iPhones in the United Kingdom for use wholly or mainly outside their business;
- (b) Entered into standard iOS software licence terms with the First Proposed Defendant and/or were registered as an Apple ID account holder, in connection with their Affected iPhone(s); and
- (c) During the Relevant Period, used one or more of the Affected iPhones, incorporating any Apple iOS update from iOS 10.0 (issued on 13 September 2016) onwards, whether such updates were Pre-Installed or Subsequently Downloaded.

The class of business users (the “**Business Entities Class**”) who may be eligible include all business entities who:

- (a) Acquired one or more Affected iPhones in the United Kingdom for use, whether for themselves or by their employees, in the course of business;
- (b) Entered into (or employed an individual who entered into) standard iOS software licence terms with the First Proposed Defendant and/or were registered (or employed an individual who was registered) as an Apple ID account holder, in connection with their Affected iPhone(s); and
- (c) During the Relevant Period, used one or more of the Affected iPhones, incorporating any Apple iOS update, from iOS 10.0 (issued in September 2016) onwards, whether such updates were Pre-Installed or Subsequently Downloaded.

Whereby:

“**Acquired**” includes:

- (a) Paying, or incurring a liability to pay, or providing reimbursement for, or incurring a liability to provide reimbursement for, all or part of the purchase price of an Affected iPhone. For the avoidance of doubt, this:
 - (i) includes both payments for an Affected iPhone made or liable to be made in one single amount or by instalments, and payments made or liable to be made in respect of a bundled or split mobile

communications contract including the supply of voice and/or data telecommunications services with an Affected iPhone;

(ii) excludes purchases of used and refurbished Affected iPhones; and

(iii) excludes purchases where the Affected iPhones were delivered outside the United Kingdom.

(b) Receiving an Affected iPhone by way of a gift.

For the avoidance of doubt, where a purchaser pays for and uses an Affected iPhone for a certain period of time and then transfers it to another family member by way of a temporary transfer of ownership, for example where an adult who is a member of the Consumer Class subsequently gives their Affected iPhone to a child or other relative, the claim shall only be actionable by the initial purchaser.

"Affected iPhones" shall mean models iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7, iPhone 7 Plus, iPhone 8, iPhone 8 Plus and iPhone X.

"Business Entity" means a legal or natural person carrying out a trade, business, craft or profession, including self-employed contractors and sole traders.

"Consumers" shall mean natural persons habitually resident in the United Kingdom acting wholly or mainly other than in the course of business and includes children, represented by their legal guardian, and deceased persons, represented by their personal representative.

"Relevant Period" shall mean the period from 13 September 2016 to the date of final judgment or earlier settlement of the Collective Proceedings;

iOS Updates were: (i) **"Pre-Installed"** where one of the Relevant iOS Updates was already installed on the Affected iPhone at the point it was acquired; and (ii)

"Subsequently Downloaded" where a user downloaded and installed one of the Relevant iOS Updates to the Affected iPhone after it was acquired.

What next?

The CAT will now determine whether or not Mr Gutmann's claim is allowed to proceed to trial. If the claim is permitted to go forward, then those affected will not have to pay any legal fees, nor contact lawyers.

Affected iPhone purchasers who **live in the UK** will automatically be included in the claim, although they can choose to opt-out in due course.

Affected iPhone purchasers who **do not live in the UK** will also be eligible to join the claim but must proactively opt-in in due course.

As the case progresses, we will provide more detail as to what iPhone purchasers will be required to do to either opt-in or opt-out.