

iPhone owners of iPhones 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus and X could benefit from proposed claim

This is a legal notice.

- A proposed claim against the companies Apple Inc., Apple Distribution International Limited, and Apple Retail UK Limited (together “**Apple**”) has been filed with the Competition Appeal Tribunal (“**Tribunal**”) by Mr Justin Gutmann who proposes to act as the class representative, on behalf of a “class” of persons who it is alleged have each suffered losses due to Apple’s conduct.
- Mr Gutmann has applied to the Tribunal for a collective proceedings order, which would allow his claim to proceed to a full trial. Mr Gutmann alleges that Apple has breached competition law by abusing its dominant position in the relevant iPhone and iOS markets 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. 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. Apple’s conduct was exploitative since Apple was not behaving in a fair and transparent manner that enhanced consumer benefits and welfare.
- The Proposed Class is comprised of nearly 26 million Apple customers who acquired Affected iPhones in the United Kingdom, which are divided into the following two- subclasses:

Consumer Class

The class of consumers (the “**Consumer Class**”) whose claims are certified for inclusion in the Collective Proceedings 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.

Business Entities Class

The class of business users (the “**Business Entities Class**”) whose claims are certified for inclusion in the Collective Proceedings includes:

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.

- If you fall within this definition, you will automatically be part of Mr Gutmann’s claim, unless

you opt-out.

- A hearing has been set for 2 – 4 May 2023 to decide whether Mr Gutmann’s claim should proceed. The hearing will take place at the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London, EC4Y 8AP.
- To learn more about Mr Gutmann’s claim, please visit www.theiphoneclaim.com or www.catribunal.org.uk.

Your legal rights and options now	
OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE	Any person with an interest (including any proposed class member) may object to the Collective Proceedings Order Application or the authorisation of the proposed class representative by stating their reasons for objecting in writing to be received by the Competition Appeal Tribunal by 4pm on 20 January 2023. See Question 9 below.
APPLY TO MAKE ORAL / WRITTEN SUBMISSIONS TO THE TRIBUNAL	<p>Any person with an interest (including any proposed class member) objecting to the Collective Proceedings Order Application or the authorisation of the proposed class representative may also apply to the Tribunal for permission to make oral submissions at the hearing on 2 – 4 May 2023. Any such application must be made in writing and received by the Tribunal by 4pm on 20 January 2023.</p> <p>Any third party with a legitimate interest (who is not a member of the proposed class) can also apply to the Tribunal for permission to make written and/or oral submissions at the hearing on 2 – 4 May 2023. Any such application must be made in writing, supported by reasons, to be received by the Tribunal by 4pm on 20 January 2023.</p>

GENERAL INFORMATION

1. Why has this notice been issued?

The Tribunal has directed that this notice be issued following Mr Gutmann's application for a Collective Proceedings Order. The Collective Proceedings Order Application asks the Tribunal to: (i) approve the claim as suitable to proceed as a collective claim on behalf of eligible UK class members; and (ii) approve Mr Gutmann as the class representative.

This notice has been issued to inform you of your right to object to the Collective Proceedings Application or the authorisation of the proposed class representative. This notice explains the proposed claim, who is covered by it, your right to object to it, how to object, and any related deadlines. Please read this notice carefully.

2. What is the Competition Appeal Tribunal?

The Competition Appeal Tribunal is a specialist court based in London that covers the whole of the UK and hears disputes such as these. The Tribunal publishes its Rules and Guidance, together with information about what it does, on its website www.catribunal.org.uk.

3. Who is the claim against?

This is a claim against Apple Inc., Apple Distribution International Limited and Apple Retail UK Limited (together "**Apple**").

4. What did the Proposed Defendants do wrong? What are the claims?

If Mr Gutmann is granted a Collective Proceedings Order, his claim would combine the individual claims of class members against Apple for damages arising from its alleged abuse of its dominant position(s) in breach of competition rules (section 18 of the Competition Act 1998 and/or Article 102 TFEU).

Mr Gutmann alleges that Apple has breached competition law by abusing its dominant position in the relevant iPhone and iOS markets by selling iPhones with defective batteries that were unable to deliver peak power, and by pushing automatic iOS updates to iPhones which incorporated a power management tool which slowed down the iPhones and compromised their performance and functionality. 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 proposed class representative is Mr Justin Gutmann. The Collective Proceedings Order Application requests that Mr Gutmann be authorised to act as the class representative.

Mr Gutmann has spent a large part of his professional life dedicated to public policy, market research and specifically to consumer welfare. His final post prior to retirement was as Head of Research and Insight at Consumer Focus, the UK's statutory consumer champion, and later Citizens Advice, during which time he gained experience in the mobile technology sector where his work focused on market dominance in both the handsets market and network provider's market.

As the class representative, Mr Gutmann would conduct the claim against Apple on behalf of all class members, except for those who opt-out of the class. Mr Gutmann would instruct the lawyers and experts, make decisions on the conduct of the claim and, in particular, would decide whether to present any settlement proposal to the Tribunal for its approval.

During the case, Mr Gutmann would be responsible for communicating with the class and for issuing formal notices such as this notice. If approved, Mr Gutmann would update the class about the claim on the website www.theiphoneclaim.com, through mainstream media and on social media.

WHAT DOES THE CLAIM ASK FOR?

6. Who would be in the proposed class?

The Consumer Rights Act 2015 allows for a collective claim to be brought on behalf of a group of individuals who are alleged to have suffered a common loss. The group is the “class” and all individuals within the group are “class members.” As a result of the 2015 Act, groups of persons who have all lost out do not need to each bring an individual claim to obtain compensation for their loss. Instead, these individuals may all receive compensation through a single, collective claim brought on their behalf by a representative.

The Collective Proceedings Order Application asks the Tribunal to allow the proposed claim to proceed on an “opt-out” basis on behalf of all persons who, at any point during the period between 13 September 2016 and the date of final judgment or earlier settlement of the claims.

If you are a consumer or business who acquired and/or used one or more of the iPhones 6, 6 Plus, 6s, 6s Plus, SE, 7, 7 Plus, 8, 8 Plus and X, then you are likely within the class.

The Proposed Class is comprised of approximately 26 million Apple customers who acquired Affected iPhones in the United Kingdom, which are divided into the following two-subclasses:

Consumer Class

The class of consumers (the “**Consumer Class**”) whose claims are certified for inclusion in the Collective Proceedings 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.

Business Entities Class

The class of business users (the “**Business Entities Class**”) whose claims are certified for inclusion in the Collective Proceedings includes:

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.

This Proposed Class would include only those domiciled in the United Kingdom as of the domicile date which is to be determined by the Tribunal in due course. The Claim requests that other potential Class Members who are not domiciled in the United Kingdom as of the domicile date may opt-in to the Proposed Proceedings if they choose to. Please sign up for updates on the website for further information.

The Tribunal will assess the Collective Proceedings Order Application to determine that the claims sought to be included in the collective proceedings: (i) are brought on behalf of an identifiable class of persons; (ii) raise common issues; and (iii) are suitable to be brought in collective proceedings.

7. Are businesses included in the proposed class?

Business entities who acquired one or more of the models of the Affected iPhones in the UK for business use, either by themselves or an employee; entered into the standard iOS software licence terms and/or had an Apple ID registered to the iPhone(s); and used the iPhone(s) any Apple iOS update from iOS 10.0 onwards are included in the class.

See “Who is in the class?” above, for additional information.

8. How much money does the claim ask for?

The proposed claim seeks compensation for all UK consumers and businesses who have been affected by Apple allegedly anti-competitive behaviour. The total sought is around £768 million but may end up being higher or lower. If the claim is successful, all persons who have an eligible claim will be able to seek their share of the compensation.

HOW TO OBJECT TO THE COLLECTIVE PROCEEDINGS ORDER APPLICATION OR TO THE CLASS REPRESENTATIVE

9. Who can object and what can I object to?

Any person with an interest (including anyone who would be a member of the proposed class) may object to the Collective Proceedings Order Application or the authorisation of the proposed class representative. You should review the information above and visit both www.theiphoneclaim.com and www.catribunal.org.uk for information.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it by post, or fax, **so it is received no later than 4pm on 20 January 2023** to the following address:

The Registrar
Competition Appeal Tribunal
Salisbury Square House
8 Salisbury Square
London
EC4Y 8AP

Telephone: 020 7979 7979

When writing to the Tribunal you must include the reference “Gutmann v Apple Inc. & Ors” and case number “1468/7/7/22”.

Any person with an interest (including any proposed class member) objecting to the Collective Proceedings Order Application or the authorisation of the proposed class representative may also apply to the Tribunal for permission to make oral submissions at the hearing on 2 – 4 May 2023. Any such application must be made in writing and received by the Tribunal by 4pm on 20 January 2023.

Any third party with a legitimate interest (who is not a member of the proposed class) can also apply to the Tribunal for permission to make written and/or oral submissions at the hearing on 2 – 4 May 2023. Any such application must be made in writing, supported by reasons, to be received by the Tribunal by 4pm on 20 January 2023.

GETTING MORE INFORMATION

10. How can I stay updated on the progress of the claim?

You can visit www.theiphoneclaim.com for periodic updates on the claim.

11. Who is funding the claim?

Whilst Mr Gutmann is seeking to be the class representative and run this claim for the class, he is not able to fund a claim of this size and public importance on his own. Therefore, Mr Gutmann is working with a specialist litigation funder, Balance Legal Capital, to bring the claim.