

Media FAQs

1. What is the claim about?

An application for a collective proceeding order was filed in the Competition Appeal Tribunal (Tribunal) 27 February 2019 by Justin Gutmann on behalf of rail passengers who have double-paid for rail journeys due to the limited availability and an apparent lack of customer awareness of boundary fares. Mr Gutmann aims to get back for passengers what they are due and to stop this unfairness continuing.

Boundary fares allow rail passengers who own a Travelcard to travel beyond the zones covered by their Travelcard without paying twice for parts of their journey. Independent research has shown that boundary fares are not readily available through online platforms or over the telephone from South Western or Southeastern and are rarely offered at ticket counters unless expressly requested by passengers. Further, very little is done to make rail users aware of boundary fares. The rail companies' failures have left customers with little option but to buy a higher fare than they would have needed because their Travelcard already entitled them to travel for part of their journey.

Passengers travelling on routes which are part of the Southeastern and South Western rail franchises are intended to be party to the claim. It is possible that further train operating companies also use similar practices but Mr Gutmann's claim is against the operators of the South Western and Southeastern franchises only.

It is alleged that the effective imposition of an unfair price for fares is an abuse of the rail companies' dominant position and is in breach of UK competition law.

2. Who is this claim against?

This claim is against three train operating companies that have operated the South Western and Southeastern franchise networks since 1 October 2015.¹

These three train operating companies are:

- i. First MTR South Western Trains Limited: the train operating company currently operating all rail services under the South Western rail franchise.
- ii. Stagecoach South Western Trains Limited: the train operating company that previously operated the South Western rail network until 20 August 2017.
- iii. London & South Eastern Railway Limited: the train operating company currently operating all rail services under the Southeastern rail franchise.

3. What is a boundary fare?

Boundary fares allow rail passengers who own Travelcards to travel beyond the zones covered by their Travelcard to their destination of choice without paying twice for the part of their journey within their Travelcard's eligible zones.

¹ Mr Gutmann's claim includes purchases of affected fares from 1 October 2015 onwards as this is the date on which the UK's legislation allowing opt-out, collective actions to be brought came into force.

For example, if a rail passenger owned a zones 1-4 Travelcard, but needed to travel from Waterloo to Reading they should be able to purchase a fare from the edge of zone 4 to Reading. However, owing to the difficulty in purchasing boundary fares and the apparent lack of consumer awareness of their existence, rail passengers end up paying for the full journey from Waterloo to Reading and, in doing so, pay twice for the part of the journey between Waterloo and the boundary of zone 4.

4. What do you mean by failed 'to make readily available'?

We believe that the rail companies did not make it sufficiently possible for rail passengers to purchase boundary fares, nor make rail passengers aware these fares were a more cost-effective option.

For example, boundary fares are not readily available through online platforms or over the telephone for both South Western and Southeastern. These fares are also not readily available for purchase from ticket vending machines at all London terminals and must be bought from a member of staff. If a member of staff is not available, a rail passenger would be unable to buy the boundary fares. They would be left with little option but to buy a higher fare and therefore be compelled to pay twice for the travel their Travelcard covered.

5. How much did the train operating companies make from consumers paying twice?

Expert economists engaged by Mr Gutmann have estimated that the South Western franchise and Southeastern franchise networks made a combined total of around £93 million from UK rail passengers, who effectively paid twice for parts of their travel. It is estimated the companies made a further £4.5 million from rail passengers based outside the UK.

6. How many people have been affected by the rail companies' behaviour?

We estimate that millions of UK rail passengers have been affected by the rail companies' behaviour since 1 October 2015. Mr Gutmann's expert economists have estimated that approximately 168 million rail journeys could have been affected, and as the conduct is ongoing, this number will continue to rise.

7. Which laws did the train operating companies break?

By not making boundary fares sufficiently available for purchase and failing to ensure (UK) rail passengers are aware of their existence, South Western and Southeastern customers effectively had little option but to pay twice for parts of their journeys. This effective imposition of an unfair price for fares is alleged to be an abuse of the companies' dominant position in breach of the prohibition in Chapter II of the UK's Competition Act 1998.

8. What do potential Class Members need to do?

At this stage Class Members do not need to do anything. The Tribunal will now determine whether or not Mr Gutmann's claim is allowed to proceed. If the claim is permitted to go forward then those affected will not have to pay any legal fees, nor contact lawyers.

Affected passengers who live in the UK will be automatically included in the claim although they can choose to opt-out in due course. Affected passengers who do not live in the UK will also be eligible to join the claim but must proactively opt-in. As the case progresses, we will provide more detail as to what rail users will be required to do to either opt-in, or opt-out.

Anyone who would like to receive further information about the claim, can visit the claim website, BoundaryFares.com, to sign up for updates.

9. Who is Justin Gutmann (the Class Representative)?

Justin Gutmann is the proposed Class Representative.

He has spent a large part of his professional life dedicated to consumer welfare, public policy and market research.

His final post prior to retirement was as Head of Research and Insight at Citizens Advice.

Mr Gutmann also spent eight years working for London Underground as a Market Planning Manager.

10. Who is a Class Member? Who can join the legal action?

Class Members include rail passengers who at any point during the period since 1 October 2015 and the date of final judgment or earlier settlement of the claim:

- a) Held a Travelcard valid for travel within one or several of Transport for London's zones of travel, and;
- b) Bought a rail ticket for travel which was not a boundary fare from a station within (but not on the outer boundary of) those zones, to a destination outside of those zones, on either South Western or Southeastern routes.

Anyone who falls within this definition and lives in the UK is automatically part of the Class. Anyone who falls under this definition but lives outside of the UK can opt-in.

11. Can the proposed class members object to the collective action?

Any person with an interest (including any member of the proposed class) may object to the Collective Proceedings Order Application or the authorisation of Mr Gutmann as class representative by writing to the Tribunal stating their reason for objecting by 4pm on 5 July 2019.

Any member of the proposed class may also seek permission to make oral observations at the Collective Proceedings Order Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.

If any member of the proposed class wishes to file an objection, they must write to the Tribunal stating their reasons for objecting and send it by post, or fax, to the following address:

The Registrar
Competition Appeal Tribunal
Victoria House
Bloomsbury Place
London WC1A 2EB
Fax: 020 7979 7978

When writing to the Tribunal they must include the reference "*Boundary Fares Collective Action*" and Case No. 1304/7/7/19 and/or 1305/7/7/19.

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 Collective Proceedings Order Application hearing on 5 November 2019. Any such application must be made in writing, supported by reasons, and received by the Competition Appeal Tribunal by 4pm on 5 July 2019.

12. Is anyone excluded from the proposed class?

The only categories of persons that are excluded from the class are:

- a. Members and staff of the Competition Appeal Tribunal assigned to these proceedings;
- b. Officers, directors or employees of:
 - i. the Proposed Defendants;
 - ii. any entities which have a (direct or indirect) interest in any of the Proposed Defendants that give rise to significant control; and
 - iii. any entities in which any of the Proposed Defendants have such an interest;
- c. Mr. Gutmann’s and the Proposed Defendants’ legal representatives as well as any experts or other professional advisers instructed in these proceedings, including the professional staff assisting them.

To be part of the proposed class, class members not permanently resident in the UK will need to “opt in” to the claim, in writing. Information on how to do so will be available on this website at a later date. Please [register](#) to be kept up to date.

13. Why doesn’t the industry regulator compel train operating companies to make boundary fares readily available?

The Office of Rail and Road (ORR) is the independent economic and safety regulator for the UK’s railways.

The ORR’s role is to ensure fair access to the rail network and ensure that customers and taxpayers benefit from competitive railway markets.

Currently however, the ORR does not specify the terms and conditions under which South Western and Southeastern are required to make boundary fares readily available.

The responsibility to ensure boundary fares are readily available and that UK rail passengers are aware of their existence therefore sits with South Western and Southeastern.

14. How have you calculated the number of journeys affected in the claim?

An independent third-party expert provided an economic analysis and quantification of the number of journeys taken.

The expert adopted a comprehensive methodology, which utilised several rail industry data sources to estimate the number of affected journeys on the South Western and Southeastern networks.

15. Will rail passengers have to prove that they have been affected?

This is an opt-out legal action, therefore, at this point, rail passengers do not need to do anything.

If the case is allowed to proceed by the Tribunal, it is anticipated that affected rail passengers will have to provide evidence of their fare purchase and ownership of a Travelcard during the relevant period.

Details of what evidence Class Members will have to provide will be provided at a later date when agreed with the Tribunal.

16. What is a collective proceedings order and how does it work?

A collective proceedings order is a way of grouping individual claims together such that they can be dealt with by the Tribunal collectively.

The Tribunal then determines, as against the criteria set out in the UK's Competition Act 1998 as amended by Schedule 8 of the Consumer Rights Act 2015, whether the claim is eligible for collective proceedings. Among other things, the Tribunal must be satisfied that the claims are brought on behalf of an identifiable class of persons and raise common issues.

17. Who is paying for the claim?

Whilst Mr Gutmann is seeking to be the class representative and run this collective action 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, Woodsford Litigation Funding Limited, to bring the claim.

The non-confidential version of certain documents relevant to the funding of the claim, namely the Litigation Funding Agreement, the Adverse Cost Deed of Indemnity and the After-the-Event Insurance Policy can be provided upon request.

Mr Gutmann has also secured £10 million to cover for the Proposed Defendants' costs in the event that the claim is unsuccessful.

18. What is the next stage?

Mr Gutmann has filed an application for a collective proceedings order with the Tribunal to commence opt-out, collective proceedings.

The Tribunal will now consider whether the claim meets the relevant criteria and should be allowed to proceed. Among other things, Tribunal must be satisfied that the claims are brought on behalf of an identifiable class of persons and raise common issues.

19. How long will this take?

Legal proceedings can vary in how long they take depending on the necessary procedural steps and the court's timetable. A pre-hearing hearing review will be held at the Tribunal on 23 September 2019 at 2pm. The hearing to determine the suitability of the claim for collective proceedings will be held on 5 November 2019 at 10:30am and it will last for three or four days.

If the claim is allowed to proceed by the Tribunal, it will update Class Members as to the progress of the proceedings. Anyone who would like to receive further information about the claim, can visit the claim website: BoundaryFares.com.