

Bulk Mail Collective Action Claim Information

June 2024





Introduction

Bulk Mail Claim Limited has filed an application to bring collective proceedings against International Distribution Services Plc (formerly Royal Mail Plc) (“**Royal Mail**”). The application has been filed with the UK Competition Appeal Tribunal (the “**Tribunal**”).

The application to bring collective proceedings is made in respect of losses caused by Royal Mail’s unlawful conduct in relation to the supply of bulk mail delivery services in the UK (the “**Proposed Claim**”).

Misconduct

The Proposed Claim against Royal Mail arises out of Ofcom’s 14 August 2018 decision titled “Discriminatory pricing in relation to the supply of bulk mail delivery services in the UK” (“[Ofcom Decision](#)”), a copy of which can be found [here](#).

The Ofcom Decision concluded that Royal Mail abused its dominant position in the market for bulk mail delivery services in the UK by attempting to introduce discriminatory prices via “Contract Change Notices” on 10 January 2014, contrary to both EU and UK competition law (“the **Infringement**”). The discriminatory prices penalised any party that sought to roll out bulk mail delivery services that were in competition with Royal Mail.

The Proposed Claim alleges that the Infringement:

- ▶ prevented competition for bulk mail delivery services; and
- ▶ led to higher prices for end-customers of services such as the collection, sortation and delivery of bulk mail.

Affected?

The purpose of the Proposed Claim is to secure compensation for losses caused by the Infringement. The Proposed Claim is currently estimated to be worth £878m.

If you or your organisation purchased bulk mail services at any time after 10 January 2014, you may be eligible to participate in the proposed collective action and benefit from any future award of damages.

Further information about who is included in the proposed Claim is set out below

Jonathan Oxley, Ofcom’s Competition Group Director, said:

“Royal Mail broke the law by abusing its dominant position in bulk mail delivery. All companies must play by the rules. Royal Mail’s behaviour was unacceptable, and it denied postal users the potential benefits that come from effective competition.”



What happened?

Royal Mail, formerly the state-owned monopoly provider of mail services in the UK, was at all material times (and still is) the designated provider of the universal postal service throughout the UK.

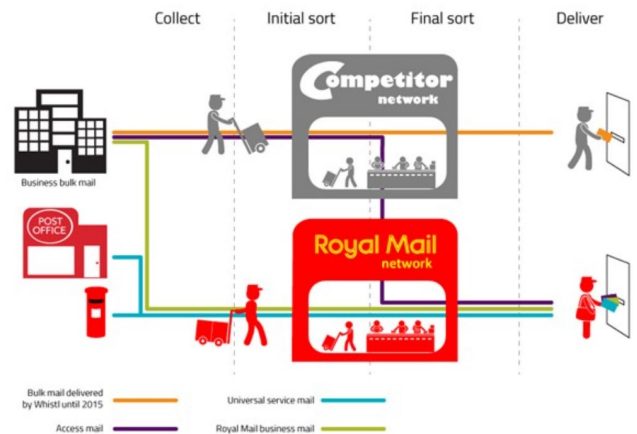
Prior to the Postal Services Act 2000, Royal Mail held a statutory monopoly in the handling and delivery of the great majority of letters.

In 2006, relevant restrictions on the activities of postal competitors were removed and the market was fully liberalised, with the result that a postal competitor could bypass Royal Mail's network and deliver post on an "end-to-end" basis.

"End-to-end" letter competition is where an operator other than Royal Mail collects, processes and delivers mail directly to the recipient in direct competition with Royal Mail, without the need to use Royal Mail's network. End-to-end letter competition is also sometimes referred to as direct delivery competition.

The main form of competition to date has been "access" competition, where the operator collects mail from the customer, carries out an initial sortation and transports it to Royal Mail, but relies upon Royal Mail's delivery network in order for it to reach the recipient.

The diagram opposite illustrates the differences between end-to-end and access competition.



A competitor network engaged in end-to-end delivery could bypass Royal Mail's network in areas where it had set up its own delivery network and, in respect of the letter volumes delivered in this way, the postal operator could retain the entire revenue for each item, rather than having to pay Royal Mail's delivery, or access, charges.

In practice, however, any end-to-end operator active on the retail market across the UK would still need to rely heavily on access to Royal Mail's network for delivery of its customers' items as for economic reasons it would not be able to roll out its own network across the whole of the UK.

Whistl UK Limited (**Whistl**), before 2014 known as TNT Post UK Limited, is a postal services company that distributes addressed mail (including bulk mail and parcels) in various forms throughout the UK. In 2004, Whistl entered the business of bulk mail access with the intention in due course of developing its own end-to-end bulk mail capability. Pending the development of its own end-to-end business Whistl collected and sorted customer mail and passed such "access mail" to Royal Mail for final delivery. Whistl paid Royal Mail access charges for its delivery service.

Between 2012 and 2014, Whistl entered and started to expand its own Bulk Mail delivery network in competition with Royal Mail.

In January 2014, Royal Mail announced plans to introduce differential prices for bulk mail operators for access to its final delivery service, without which they could not operate. The price differential depended on the extent to which the bulk mail providers matched Royal Mail's own delivery patterns. In essence, Royal Mail proposed to charge bulk mail operators higher access charges if the operator competed with Royal Mail in the end-to-end bulk mail delivery market. Non-competitor operators were to be charged lower access prices.

Whistl, which planned to set up its own final delivery service and establish an end-to-end bulk mail service in competition with Royal Mail, complained to Ofcom, the relevant regulatory authority. Whistl's complaint was that the new differential access prices made its end-to-end operations and future plans uneconomic.

The planned new prices were suspended by Royal Mail when Ofcom announced its decision to open an investigation in February 2014, and were formally withdrawn the following year. Whistl's plans to roll out an end-to-end bulk mail service, however, did not come to fruition. Nor did end-to-end competition in this market take root.

Ofcom's investigation led to a decision in August 2018, in which it found that Royal Mail had abused its dominant position contrary to Article 102 TFEU and Chapter II of the Competition Act 1998. Despite the limited temporal scope of the infringement finding, Ofcom concluded that the pricing announcement was "reasonably likely" to have continuing effects after the date of suspension. It imposed a penalty of £50 million.

Royal Mail appealed to the Competition Appeal Tribunal, the Court of Appeal and eventually sought permission to appeal to the Supreme Court. Royal Mail's appeals failed and there has been an official finding that Royal Mail's activities in the bulk mail market breached competition law.

More information is available at www.bulkmailclaim.co.uk

*"...Royal Mail's conduct reflected a deliberate strategy to limit delivery competition from its first and only significant competitor, Whistl."
(Ofcom Decision at §1.24(d))*

*"...In summary, we believe the evidence supports the view that Royal Mail planned and intended to take actions which it either knew would harm Whistl's direct delivery plans or was reckless as to whether they would. Royal Mail knew about Whistl's intentions in sufficient detail to plan against them and clearly had Whistl in mind when preparing its plans."
(CAT judgment at §281(15))*

*"Royal Mail's attempt to reserve to itself all or most of the relevant market through a modulation of the price plans and the other changes announced in the CCNs was therefore intended to reduce competition and not to enhance it."
(CAT judgment at §§366-367)*



The Claim and the Class

Bulk Mail Claim Limited has applied to bring a claim on behalf of persons (including companies, LLPs, public bodies and charities) who were affected by Royal Mail's unlawful conduct. It will be argued that these persons paid more when buying bulk mail services after 10 January 2014, as a result of Royal Mail's unlawful conduct.

Who can participate in the claim?

The proposed class comprises all persons who purchased or paid for Bulk Mail Retail Services ("Bulk Mail Retail Customers") after 10 January 2014.

For these purposes:

"Persons" includes companies, LLPs, public bodies and charities.

"Bulk Mail Retail Services" means any services consisting of any of the following activities: (i) collection and initial sortation activities, including the direct or indirect collection of Bulk Mail, geographically sorting the mail by delivery location and transportation to that area; and (ii) delivery services, consisting of the inward processing, local distribution and delivery of Bulk Mail to the addressee ("Bulk Mail Delivery Services").

"Bulk Mail" means high volume mailings of often similar or identical mailing items being sent to addresses across the whole of UK or at least a substantial part of it, by a company or other organisation, such as a public body or charity. Bulk Mail includes, for example, financial or transactional mail produced by banks, government bodies and utility companies, and addressed advertising mail.

The class includes Bulk Mail Retail Customers who paid for Bulk Mail Retail Services from Royal Mail or from an Access Operator, whether directly or via an agent.



“Access Operator” means a Bulk Mail Retail Operator who procures Bulk Mail Delivery Services from Royal Mail.

“Bulk Mail Retail Operator” means a provider of Bulk Mail Retail Services.

The class includes Bulk Mail Retail Customers who paid for Royal Mail’s Bulk Mail Delivery Services separately, whether directly or via an agent.

The class excludes:

- ▶ Access Operators;

- ▶ Any person who opts out by notifying Bulk Mail Claim Limited in a manner and by a time specified by the Tribunal; or
- ▶ Any person who is not domiciled in the United Kingdom at a time specified by the Tribunal and does not, in the manner and by the time specified by the Tribunal, opt in by notifying Bulk Mail Claim Limited that their claim should be included in the collective proceedings.

For full information on the claim and the class, please consult the detailed claim documentation [here](#).

What is a collective action?

A competition collective action (sometimes called collective proceedings) involves a claim brought by a class representative on behalf of a group of persons who are alleged to have suffered loss as a result of a breach of competition law. The group is known as a “class” and all those within the group are “class members”.

In the UK, collective proceedings concerning competition law are heard in the Competition Appeal Tribunal, a specialist court based in London which hears and decides cases involving competition or economic regulatory issues. Collective proceedings can be “opt-in” (where each potential class member must sign up in order to be part of the claim) or “opt-out” (where each person that falls within the class or classes is automatically included in the proceedings unless they actively choose to opt out).

A Collective Proceedings Order

A person wishing to bring collective proceedings as a class representative must first obtain permission from the Competition Appeal Tribunal for the claim to proceed.

This is known as obtaining a Collective Proceedings Order (or CPO). The Competition Appeal Tribunal will decide whether to grant a CPO by considering whether: (a) the class representative is suitable to bring the claim; and (b) the claims are eligible to be included in collective proceedings.

Trial or Settlement

If a CPO is made, the claim will proceed to trial. If the claim is successful at trial or a settlement is reached, any damages are distributed amongst the class members using a distribution method approved by the Competition Appeal Tribunal.





Who is bringing the claim?

The claim is being brought by the proposed class representative, with the assistance of a team of lawyers, economists and a litigation funder.

Class Representative

Bulk Mail Claim Limited is the proposed class representative.

Bulk Mail Claim Limited was incorporated for the purpose of acting as the proposed class representative in these proceedings. The proposed class representative's duty is to act fairly and adequately in the interests of all members.

Mr Robin Aaronson is the sole director and sole member of Bulk Mail Claim Limited.

As the sole director and member of Bulk Mail Claim Limited, Mr Aaronson will have oversight of the Proposed Claim and will make decisions on behalf of the company.

Over the course of his career, Mr Aaronson has held senior roles (including in public bodies) in which he has promoted competitive markets and tackled anti-competitive conduct. In particular:

- ▶ in 2000, Mr Aaronson was appointed by the Secretary of State for Trade and Industry as a member of the Postal Services Commission (Postcomm, the regulator of the postal industry at that time), initially for a term of five years. In 2005, his term was extended by a further 18 months; and

- ▶ from 2009 to 2017, Mr Aaronson served as a Member of the Competition Commission (later the Competition and Markets Authority).

In these roles, Mr Aaronson was deeply involved in regulating and remedying market structures and conduct which prevented, restricted or distorted competition.

The Tribunal will assess Bulk Mail Claim Limited's suitability to act as the proposed class representative as part of a hearing which will be held in due course. If approved, Bulk Mail Claim Limited will regularly update proposed class members about the claim on this website and through the media.

Legal Team

Bulk Mail Claim Limited has instructed Lewis Silkin LLP, a leading law firm with a wealth of expertise in litigation. Bulk Mail Claim Limited has also instructed an experienced team of specialist competition law barristers at Monckton Chambers.

Litigation Funding

Bulk Mail Claim Limited is working with a specialist litigation funder to bring the claim.

Expert Economist

Bulk Mail Claim Limited has also instructed an expert competition economist. This expert will be responsible for providing evidence in relation to the losses that have been caused by Royal Mail's unlawful behaviour.



Key information

What should I do if I want to be in the class?

If you or your business are domiciled in the UK, then you are automatically included in the class and will be included in the claim if it is authorised to proceed. At this point you do not need to do anything, but you are encouraged to register your interest on this [webpage](#). Registering your interest will allow you to remain informed about case developments.

If you or your business are not domiciled in the UK and you wish to participate in the collective action, then you will have the opportunity to opt in to the claim.

Full details of how to opt in to the collective action will be posted on the [claim website](#) in the event that the Competition Appeal Tribunal approves the claim to proceed.

You can register your details [here](#) to be kept up to date with further developments in the proceedings.

What do I need to do now?

Nothing.

Class members domiciled in the UK do not need to do anything in order to be included in the claim (see above). However, if the claim is successful, class members will need to provide certain information in order to receive their compensation. We will update the [claim website](#) and make it publicly known if and how we require this information from class members.

If you would like further information about the legal process or how to claim if the case is successful, please click [here](#) to register and we will keep you up to date with what is happening. However, you do not need to register in order to be eligible for compensation.

Is registering interest on the claim website confidential?

We intend to keep the identities of those who register their interest confidential and they will only be shared with the class representative and those he has instructed, including his legal team and expert advisors, as is necessary to pursue the claim. In addition, it may be necessary to share the numbers of persons that have registered their interest, and their location(s), with the Competition Appeal Tribunal as part of the application for a Collective Proceedings Order.

In the unlikely event that you register and the Competition Appeal Tribunal orders the identities of those who register their interest to be disclosed to Royal Mail, we will endeavour to contact you to give you an opportunity to de-register before such disclosure is made.

How much money should I expect to receive and when?

There is no guarantee that any money will be received as, even if Bulk Mail Claim Limited's claim is permitted to proceed, it will still need to prove its case at trial (unless a settlement is reached beforehand).

In the event the claim is successful and damages are awarded, or a settlement is agreed with Royal Mail, the damages or settlement sum will be divided between the members of the class. The amount that each member receives may depend upon the volume of bulk mail services that it purchased. We recommend that you keep all records of bulk mail purchases after 10 January 2014, as this information may be needed as part of claiming your share of any damages or settlement sum.

How is the claim being paid for and what will it cost to join?

Bulk Mail Claim Limited, the proposed class representative, is working with a specialist litigation funder to bring the claim and has obtained funding to pay for the costs of the claim. Therefore, joining the claim costs nothing.

In return for providing funding, the funder will be paid a fee at the conclusion of the claim, after any award of damages is distributed to class members. The fee is payable out of the undistributed proceeds, meaning this fee is not payable out of any sums that would otherwise be paid to class members.

What are the risks of participating in the claim?

Unlike pursuing individual litigation, there is no cost to you and no risk that you will be liable to pay Royal Mail's costs in the event the claim is unsuccessful.

Under the collective action regime, Bulk Mail Claim Limited is responsible for those costs and he has put in place a comprehensive funding and insurance package to fund the costs of the action.



For further information, please visit the claim website:

www.bulkmailclaim.co.uk

The website contains responses to a number of frequently asked questions about the claim, as well as copies of key documents filed at the Competition Appeal Tribunal in support of the claim.

The claim website will also be updated with further information as the claim progresses. We recommend that you register your details on the website to receive updates and any future notices via email.

For general enquiries, please contact:



Andrew Wanambwa
Partner

+44 (0) 20 7074 8160
andrew.wanambwa@lewissilkin.com

For media enquiries please contact:

Ryan McSharry, Head of Professional Services, Crisis and Litigation (UK) at Infinite Global:

E: RyanM@infiniteglobal.com
T: +44 (0) 20 7269 1443

Tal Donahue, Director at Infinite Global:

E: TalD@infiniteglobal.com
T: +44 (0) 20 7269 1438

Follow us:

 [X.com/lewissilkin](https://x.com/lewissilkin)

 linkedin.com/company/lewis-silkin

lewissilkin.com