

# TfL Travelcard holders who travelled on South Western or Southeastern could benefit from proposed claim

*This is a legal notice.*

- A proposed claim against the companies which run the South Western and Southeastern rail franchises<sup>1</sup> has been filed with the Competition Appeal Tribunal by Mr Justin Gutmann. Mr Gutmann proposes to act as the class representative, on behalf of a “class” of persons who it is alleged have each suffered losses due to South Western’s and Southeastern’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 the companies that operate the South Western and Southeastern franchises have breached competition laws by charging Travelcard holders too much for travel on their routes. Travelcard holders have in effect already paid for their travel within the relevant TfL zones, so a Travelcard holder would only need to purchase a (cheaper) ‘boundary’ fare or ‘extension’ fare to get to their destination. However, Mr Gutmann alleges that South Western and Southeastern do not make boundary fares sufficiently available for purchase.
- The class of persons who can bring a claim is:
  - all persons who, at any point during the period between 1 October 2015 and the date of final judgment or earlier settlement of the claims, purchased or paid for, for themselves and/or another person, a rail fare which was not a Boundary Fare, where:
    - (a) the person for whom the fare was purchased held a Travelcard valid for travel within one or several of TfL’s fare zones; and
    - (b) the rail fare was for travel in whole or in part on the services of the Proposed Defendant(s) from a station within (but not on the outer boundary of) those zones to a destination beyond the outer boundary of those zones (including fares for return journeys).
- 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 5 November 2018 at 10:30am to decide whether Mr Gutmann’s claim should proceed. The hearing will last for three days with one in reserve and will take place at the Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London WC1A 2EB.
- To learn more about Mr Gutmann’s claim, please visit [www.BoundaryFares.com](http://www.BoundaryFares.com) or [www.catribunal.org.uk](http://www.catribunal.org.uk).

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<sup>1</sup> First MTR South Western Trains Limited, Stagecoach South Western Trains Limited and London & South Eastern Railway Limited

Your legal rights and options now	
<b>OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE</b>	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 <b>4pm on 5 July 2019</b> . See Question 9 below.
<b>APPLY TO MAKE ORAL / WRITTEN SUBMISSIONS TO THE TRIBUNAL</b>	<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 5 November 2019. Any such application must be made in writing and received by the Tribunal by <b>4pm on 5 July 2019</b>.</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 5 November 2019. Any such application must be made in writing, supported by reasons, to be received by the Tribunal by <b>4pm on 5 July 2019</b>.</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](http://www.catribunal.org.uk).

### 3. Who is the claim against?

The proposed claim comprises claims against the following UK train operating companies:

- i. First MTR South Western Trains Limited
- ii. Stagecoach South Western Trains Limited
- iii. London & South Eastern Railway Limited

However, as it is hoped that each of these claims will be dealt with together, just one claim is referred to in this notice.

First MTR South Western Trains Limited is the train operating company currently operating all rail services under the South Western rail franchise. Stagecoach South Western Trains Limited previously operated the South Western rail network until 20 August 2017.

London & South Eastern Railway Limited is the train operating company currently operating all rail services under the Southeastern rail franchise.

Collectively, these companies are the “Proposed Defendants.”

#### **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 South Western and Southeastern for damages arising from their alleged abuse of their dominant position in breach of competition rules (section 18 of the Competition Act 1998).

Mr Gutmann alleges that South Western and Southeastern have breached competition laws by charging Travelcard holders too much for travel on their routes: specifically, it is alleged that South Western and Southeastern do not make (cheaper) ‘boundary’ fares or ‘extension’ fares available, or sufficiently available, for purchase on their services.

#### **5. Who is the proposed class representative?**

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

As the class representative, Mr Gutmann would conduct the claim against South Western and Southeastern 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.BoundaryFares.com](http://www.BoundaryFares.com), through the 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 consumers 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 1 October 2015 and the date of final judgment or earlier settlement of the claims purchased or paid for, for themselves and/or another person, a rail fare which was not a Boundary Fare, where:

1. the person for whom the fare was purchased held a Travelcard valid for travel within one or several of TfL’s fare zones; and
2. the rail fare was for travel in whole or in part on the services of the Proposed Defendant(s) from a station within (but not on the outer boundary of) those zones to a destination beyond the outer boundary of those zones (including fares for return journeys).

This Proposed Class would include only those domiciled in the United Kingdom as of [Day Month Year]. The Claim requests that other potential Class Members who are not domiciled in the United Kingdom as of [Day Month Year] may opt-in to the Proposed Proceedings if they choose.

The [http://www.projectmapping.co.uk/Reviews/Resources/London\\_South\\_East\\_Dec%2018.pdf](http://www.projectmapping.co.uk/Reviews/Resources/London_South_East_Dec%2018.pdf) website includes a map showing all the TfL zones and a map showing South Western’s and Southeastern’s routes.

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

- a. Members and staff of the 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.

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?**

Businesses are included in the proposed class. It is called an opt-out class because anyone, including businesses who meets the class definition will be included in the claim automatically and bound by the result, unless they ask to opt-out.

#### **8. How much money does the claim ask for?**

The proposed claim seeks compensation for all those who have been affected by the train operating companies’ allegedly anti-competitive behaviour. The total sought is around £93 million. 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.BoundaryFares.com](http://www.BoundaryFares.com) and [www.catribunal.org.uk](http://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 5 July 2019** 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 you must include the reference “*Boundary Fares Collective Action*” and Case No. 1304/7/7/19 and/or 1305/7/7/19.

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 5 November 2019. Any such application must be made in writing and received by the Tribunal by **4pm on 5 July 2019**.

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 5 November 2019. Any such application must be made in writing, supported by reasons, and received by the Tribunal by **4pm on 5 July 2019**.

### GETTING MORE INFORMATION

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

You can visit [www.BoundaryFares.com](http://www.BoundaryFares.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, 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.