

# Competition Appeal Tribunal Case No 1527/7/7/22 NOTICE OF COLLECTIVE PROCEEDINGS ORDER APPLICATION AND HEARING

**HEARING DATE: 7 June 2023 (time estimate of 3 days)**

*This is a legal notice that has been issued at the direction of the Competition Appeal Tribunal*

**If you are a UK domiciled PlayStation user who on or after 19 August 2016 made any purchase of digital games or add-on content via the PlayStation Store, you could benefit from a proposed claim**

- A proposed collective opt-out claim has been filed in the Competition Appeal Tribunal (the “**Tribunal**”) on behalf of all PlayStation users domiciled in the UK, or their UK domiciled personal representatives who, during the **Relevant Period**, made one or more **Relevant Purchases** (the “**Proposed Class**”).
  - The **Relevant Period** means: 19 August 2016 to the date of the final judgment of the claims or their earlier settlement.
  - **Relevant Purchases** means: any purchase of digital games or add-on content from the PlayStation Store which a PlayStation user pays a charge to access or download in the UK.
  - **PlayStation Store** means: Sony’s proprietary digital retail store/storefront which is pre-installed on all PlayStations and allows users to purchase: (i) digital copies of games to play on their console without the need to own any physical media; and (ii) add-on content for particular games.
- The claim seeks an opt-out collective proceedings order (“**CPO**”) on behalf of the estimated 8.9 million UK PlayStation users. Alex Neill Class Representative Limited is the Proposed Class Representative (“**PCR**”) to represent the Proposed Class.
- All persons who fall within the definition of the Proposed Class and who are domiciled in the UK on the date of domicile to be determined by the Tribunal are proposed to be included in the Proposed Class.
- All persons who fall within the definition of the Proposed Class and who are **not** domiciled in the UK on the date of domicile to be determined by the Tribunal are proposed to be permitted to opt into the proceedings.
- Alex Neill Class Representative Limited is led by Alex Neill, who is its sole director of the PCR. Alex is a consumer champion with nearly 20 years’ worth of experience leading consumer campaigns and achieving change for UK consumers. Further information about the PCR is available on the Claims Website at [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk).
- The claim is against (1) Sony Interactive Entertainment Europe Limited and (2) Sony Interactive Entertainment Network Europe Limited (the “**Proposed Defendants**”), who the PCR alleges have breached UK and EU competition law by abusing their dominant position. The PCR says that the Proposed Defendants have abused their dominant position by imposing unfair terms on developers/publishers of digital PlayStation games and add-on content which has, the PCR alleges,

meant that consumers are forced to make purchases of these products from the PlayStation Store, where the Proposed Defendants are able to charge commissions of 30%. As a result, the PCR alleges that Proposed Class members have been overcharged for these products.

- A hearing has now been scheduled for 7 June 2023 and will take place at the Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP. The hearing may also be followed via the Tribunal’s website <https://www.catribunal.org.uk/> (a “watch now” link to view the hearing will appear on the hearing date under the Diary list available here <https://www.catribunal.org.uk/diary>). At this hearing, the Tribunal will decide whether to authorise Alex Neill Class Representative Limited as class representative and to allow the claims to proceed as opt-out collective proceedings. If this approval is given, there will be further procedural steps and exchanges of evidence, before the proceedings go to trial to determine whether the Proposed Defendants have breached competition law and are liable to pay damages to the Proposed Class.

### **A Summary of Your Rights and Options:**

*Please read this notice carefully.*

Your legal rights may be affected by whether you act or you don’t act.

<b>YOU MAY:</b>	<b>LEGAL RIGHTS AND CHOICES EXPLAINED</b>	<b>DEADLINE:</b>
<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 Alex Neill Class Representative Limited as the class representative by writing to the Tribunal. For further information on how to do this, see section 11 below.	<b>7 March 2023 at 4p.m.</b>
<b>APPLY TO MAKE ORAL OR WRITTEN SUBMISSIONS TO THE TRIBUNAL (FOR PROPOSED CLASS MEMBERS)</b>	Any Proposed Class member may ask to make submissions to the Tribunal (either verbally or in writing) at the hearing. For further information on how to do this, see section 11 below.	<b>7 March 2023 at 4p.m.</b>
<b>APPLY TO MAKE ORAL OR WRITTEN SUBMISSIONS TO THE TRIBUNAL (FOR THIRD PARTIES WHO ARE NOT PROPOSED CLASS MEMBERS)</b>	Any third party with an interest may also ask to make submissions to the Tribunal (either verbally or in writing) at the hearing. For further information on how to do this, see section 11 below.	<b>7 March 2023 at 4p.m.</b>

Further details on how to sign up for updates, object or apply to make submissions are available at [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk).

## GENERAL INFORMATION

### 1. Why has this Notice been issued?

The Tribunal has directed that this notice be issued by Alex Neill Class Representative Limited following its application for a Collective Proceedings Order (“CPO”) dated 19 August 2022. The application requests this claim to proceed as collective proceedings on behalf of all eligible PlayStation users.

The Tribunal is being asked to:

- (1) Approve the claim as suitable to proceed as opt-out collective proceedings on behalf of all eligible PlayStation users; **and**
- (2) Approve Alex Neill Class Representative Limited to act as the class representative.

To read the Tribunal’s summary of this application for a Collective Proceedings Order please visit [www.catribunal.org.uk](http://www.catribunal.org.uk).

The purpose of this notice is to inform you of important legal rights you have related to Alex Neill Class Representative Limited’s application – in particular, the right to object to the CPO or object to Alex Neill Class Representative Limited acting as the class representative. This notice explains what the claim is about, who is included, your right to object, and what action you need to take at this stage (if any).

Please read this notice carefully.

### 2. What are Collective Proceedings?

Collective Proceedings is an avenue through which a single person, known as a “Class Representative” may advance proceedings on behalf of a set of individual claimants who qualify as a “class”.

In the UK, the Consumer Rights Act 2015 introduced a collective action regime which makes it possible for collective proceedings to be brought in respect of alleged breaches of competition law. Under the Act, a Class Representative can pursue collective proceedings for an alleged infringement of competition law, bringing together individual claims that raise the same, similar, or related issues of fact or law (“common issues”).

The first step in bringing collective proceedings is to apply for authorisation from the Competition Appeal Tribunal. This is achieved by filing an application for a CPO. This Order of the Tribunal authorises the Class Representative to act on behalf of the class and certifies the individual claims for inclusion in the collective proceedings.

Collective proceedings are categorised as “opt-in” or “opt-out”, according to the way in which claimants are admitted to the class(es). Opt-in collective proceedings require Class Members to sign up to participate in the claim, while opt-out proceedings include everyone who falls within the class definition approved by the Tribunal in the claim, allowing individuals who prefer not to be included in the proceedings to opt out.

This claim is brought on an opt-out basis.

### **3. Who are the Proposed Collective Proceedings against?**

This Claim is against (1) Sony Interactive Entertainment Europe Limited and (2) Sony Interactive Entertainment Network Europe Limited (together the “Proposed Defendants”).

The two Proposed Defendants are members of the Sony corporate group. Sony is a large electronics manufacturer, distributor and technology platform operator.

The Proposed Defendants are each involved in and/or responsible for the operation of PlayStation.com, the PlayStation Network and the PlayStation Store in the UK. They are also responsible for developing and publishing PlayStation-related products and services (including games), and the marketing and distribution of PlayStation products (including video game hardware and software) in the UK.

### **4. What are the Proposed Collective Proceedings about?**

The claim is a proposed collective action against the Proposed Defendants who the PCR alleges have breached UK and EU competition law by abusing their dominant position. The PCR says that the Proposed Defendants have abused their dominant position by imposing unfair terms on developers/publishers of digital PlayStation games and add-on content which has, the PCR alleges, meant that consumers are forced to make purchases of these products from the PlayStation Store, where the Proposed Defendants are able to charge commissions of 30%. As a result, the PCR alleges that the Proposed Class Members have been overcharged for these products. This claim alleges that this conduct constitutes an anti-competitive practice prohibited by competition law.

### **5. Who is the Proposed Class Representative?**

The Proposed Class Representative is Alex Neill Class Representative Limited, which is a private company limited by guarantee incorporated in England (company number 14206838). The company has been established especially for the purpose of bringing these proceedings.

The sole director of Alex Neill Class Representative Limited is Alex Neill, who is a consumer champion with nearly 20 years’ worth of experience leading consumer campaigns and achieving change for UK consumers. She is passionate about helping consumers to make the right choices, access support when things go wrong and get redress when things can’t be fixed.

Alex was the CEO of the Resolver Group from December 2019 until October 2022, leading the UK’s largest consumer complaints website providing around a million consumers with free help. Prior to Resolver Alex spent more than a decade at consumer champion Which? in senior roles such as Managing Director of Home Products and Services and Director of Policy, Campaigns and Communications. Alex is currently an independent consultant, focusing on consumer rights and redress.

She has held leadership roles in consumer-focused businesses and has expertise in understanding consumers and building strong, purpose-driven brands, products and services that deliver the right resolutions for all.

Ms Neill has full control of the decisions and conduct of Alex Neill Class Representative Limited. For more information visit [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk).

## **6. Who are the Proposed Class in this claim?**

The Proposed Class consists of all PlayStation users domiciled in the UK, or their UK domiciled personal representatives who, between 19 August 2016 to the date of the final judgment of the Claims or their earlier settlement, purchased digital games or add-on content made in the UK from the PlayStation Store which a PlayStation user pays a charge to access or download.

All persons who fall within the definition of the Proposed Class and who are domiciled in the UK on the date of domicile to be determined by the Tribunal are proposed to be included in the Proposed Class.

Those who fall within this definition but are domiciled outside the UK but wish to participate in the claim will have the opportunity to opt-in to the claim. For more details on this please visit [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk)

## **7. Who is excluded from the class?**

- (a) Officers, directors or employees of the Proposed Defendants at any time.
- (b) Officers, directors, or employees of Alex Neill Class Representative Limited.
- (c) All members of the Proposed Defendants' and Proposed Class Representative's legal teams and all experts or professional advisors instructed by them in these proceedings.
- (d) All members of the Tribunal panel assigned to these proceedings and any judge hearing any appeal in these proceedings.

## **8. Do I need to do anything to be part of the claim?**

Since this is an opt-out claim, Proposed Class Members are not required to do anything for the time being. If the claim results in a distribution to Proposed Class Members, it will be necessary for Proposed Class Members to identify themselves to Alex Neill Class Representative Limited and register their claim to a share of the damages.

You may register your interest on the Claims Website, [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk), to receive regular updates regarding the progress of this claim.

## **9. How is this Proposed Collective Action being paid for?**

The PCR has secured litigation funding from Woodsford Litigation Funding 15 LLP ("Woodsford"). In addition, members of the legal team are working on conditional fee agreements ("CFA"), which means only part of their standard fees are being paid (by Woodsford), the remaining fees being subject to the success of the claim. This is common where class representatives are not able to fund a claim of this size and public importance on their own. Furthermore, to protect against the risk of having to pay the Proposed Defendants' costs (if the claim is not successful), After-the-Event ('ATE') insurance (up to a limit of £14 million) has been procured to fortify an indemnity against the Proposed Defendants' costs that has been provided by Woodsford.

ATE insurance is a type of insurance which protects against the risk of the PCR having to pay the Proposed Defendants' reasonably incurred legal costs.

As is common in all cases funded by third-party funders, insurers and via CFAs, subject to the approval of the Tribunal, Woodsford, the ATE insurer(s) and the legal team will, in the event of a successful outcome, become entitled to a fee or uplift in exchange for taking on the risk of funding the claim. The fees and uplifts are generally calculated depending on the stage the case reaches and how much the PCR has spent. If the claim is not successful, Woodsford will not receive anything and the legal team will only receive their discounted fees as paid by Woodsford. The Tribunal has powers to order payment of the fees, uplift or other legal expenses or disbursements (to the extent these are not recovered from the Proposed Defendants), including any aforementioned fees and uplifts, to be taken from any award of damages, either prior to or following distribution to Proposed Class Members.

Given that Woodsford, the legal team, any ATE insurers, and any other similar 'stakeholder' with a financial interest in the outcome of the proceedings, are all dependent on the Tribunal exercising these powers to receive a return on their respective investments, the PCR has agreed, in return for the funding to be provided to it, to apply for an Order from the Tribunal, at appropriate juncture(s) in the proceedings, that the costs, fees and disbursements of the proceedings be 'defrayed' (or deducted) from any aggregate damages award or settlement sum before the balance is distributed to Proposed Class members. The PCR considers that this is consistent with the best interests of Proposed Class members, as the funding has enabled the claim to be brought and means that certain stakeholders' return would be lower if paid prior to (rather than after) distribution of the balance to Proposed Class members. The granting of any such order would be, in any event, wholly in the discretion of the Tribunal. Proposed Class members do not need to pay anything even if the claim is unsuccessful.

## 10. What is the Competition Appeal Tribunal?

The Tribunal is a specialist court created by Section 12 and Schedule 2 to the Enterprise Act 2002 which came into force on 1 April 2003. It specialises in resolving competition law disputes and has a purpose-built framework for collective actions. 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). A summary of this claim can be found on the Tribunal's website.

## HOW TO OBJECT TO THE APPLICATION OR THE CLASS REPRESENTATIVE

### 11. Can I object and what can I object to?

Any person with an interest (including any Proposed Class member) may object to the Collective Proceedings Order application or the authorisation of Alex Neill Class Representative Limited as the class representative.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it **by email** to [registry@catribunal.org.uk](mailto:registry@catribunal.org.uk) or **by post** to The Registrar, Competition Appeal Tribunal, Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, **so it is received by no later than 4p.m. on 7 March 2023.**

When writing to the Tribunal you must include reference to “**Case No. 1527/7/7/22**”.

**DEADLINE TO OBJECT: 7 March at 4p.m.**

Any Proposed Class member may ask to make submissions to the Tribunal (either verbally or in writing) at the hearing of the application for a Collective Proceedings Order, in addition to making written objections.

Additionally, any third party with an interest who is not a Proposed Class member may also ask to make submissions to the Tribunal (either verbally or in writing) at the hearing of the application for a Collective Proceedings Order, in addition to making written objections.

Any such request to make submissions must be sent to the Tribunal in writing, supported by reasons.

**DEADLINE TO REQUEST TO MAKE SUBMISSIONS AT THE HEARING: 7 March 2023 at 4p.m.**

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

You can visit [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk) for periodic updates and to register your interest.

**13. How can I get more information?**

This notice summarises the Application for a Collective Proceedings Order. To read other information about the claim, visit [www.playstationyouoweus.co.uk](http://www.playstationyouoweus.co.uk) or <https://www.catribunal.org.uk/cases/15277722-alex-neill-class-representative-limited>.