



LITIGATION AND DISPUTE RESOLUTION

Actions to Protect or Enforce the Collective Interests of Consumers

by **Heather Mahon, Jill Callanan**

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The Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 was brought into force on 30 April 2024.

The Act introduces a framework that enables representative actions to be taken on behalf of a group of consumers.

However, questions remain around how these actions will be funded.

Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers

The Act transposes Directive (EU) 2020/1828 into Irish law. The Directive is one part of the European Commission's [New Deal for Consumers](#), which followed on from a series of scandals concerning infringements of consumer rights.

The Directive goes hand in hand with other measures setting out stronger sanctioning powers for regulators where they detect these types of infringements. It aims to ensure that consumers can fully benefit from the rights that they are entitled to under EU law. Consumers in the EU enjoy significant protection, but experience has shown that it can be difficult to enforce these rights in practice.

The Directive seeks to enhance access to justice for consumers. It does so by providing that bodies designated by EU Member States should be able to seek injunctive or redress measures on behalf of groups of consumers through representative actions, which can also be cross-border.

Application of the Irish Act

The Act now allows a representative action to be brought in Ireland on behalf of a group of consumers where a “trader” has infringed a “relevant enactment”. It applies to areas that include financial services, travel and tourism, energy, health, telecommunications and data protection.

The Act applies to representative actions brought on or after 25 June 2023, in respect of infringements occurring on or after that date, that harm or may harm, the collective interests of consumers.

It applies to domestic and cross-border infringements, including where the infringement has ceased before the representative action is brought or where it ceases before that action is concluded.

Who may bring an action?

In contrast with a US style class action, a representative action may only be brought by a “qualified entity”. This will be a legal person established in the EU and who will need to fulfil certain criteria to obtain this

designation. These criteria include requirements around solvency, transparency, independence and non-profit status.

The entity should have had twelve months of actual public activity in the protection of consumer interests prior to the application. Its main purpose should demonstrate that it has a legitimate interest in protecting consumer interests provided for in a relevant enactment.

Designation can be in respect of domestic or cross-border representative actions or both. It will also be possible for qualified entities from different EU Member States to bring a joint action where an infringement affects consumers across the EU.

What types of relief can be sought?

A qualified entity will be able to seek an injunction or redress measures or both. For example, injunctive relief could be sought against a trader to halt a particular practice. However, if seeking more long-term injunctive relief, the qualified entity will need to show that it has sought to engage with the relevant trader before bringing the application before the court.

Consumers will need to opt in to be included in an action for redress.

Examples of redress measures will include compensation, repair, replacement, price reduction, contract termination and reimbursement of price paid.

How will consumer actions be funded?

In general, individual consumers will not be liable to pay the costs of redress proceedings, except where the proceedings were incurred as a result of the individual consumer's intentional or negligent conduct. This will only occur in "exceptional circumstances".

Instead, any consumer funding will be limited and front-loaded. A qualified entity will be able to charge a "modest fee" to a consumer to represent them in a redress action. The Act stipulates that the fee should "not discourage a consumer from seeking to be represented in a representative action". The maximum permissible fee is now set out in Regulations at €25. In practical terms, this could mean that there is a significant gap between the financial input from the consumers involved in a particular representative action and the actual costs of bringing that action.

This gap could potentially be bridged by third-party funding. The Act expressly envisages this type of funding, "insofar as permitted in accordance with law". However, as things stand, third-party litigation funding is very restricted in Ireland and the Act does little to assist consumers in this regard. This practical difficulty was recognised during the passage of the legislation through the Oireachtas and it was acknowledged by the Government Department sponsoring the legislation that the issue of funding would need to be revisited once the Law Reform Commission had reported on the area. That report is awaited.

If third-party funding does feature in any future redress action, this will be subject to certain safeguards. For example, the court will have to ensure that conflicts of interests are prevented and that funding by third parties who have an economic interest in the action does not divert that action from the protection of the collective consumer interests.

Thoughts

The Act is now in operation. However, questions remain around the funding of representative actions in Ireland. This may mean that the full impact of the Act will not be felt until these questions are resolved.

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