

Joint Oireachtas Committee; Enterprise, Trade and Employment

Meeting on: pre-legislative scrutiny of the Representative Actions for the Protection of the Collective Interests of Consumers Bill, 2022

14 September, 2022

Good morning, Chair and members of the Committee. My colleagues and I welcome the opportunity to provide our views on the General Scheme for the Representative Actions for the Protection of the Collective Interests of Consumers Bill 2022. I am Jeremy Godfrey, the Chairperson of the CCPC, and I am joined by Síona Ryan, Director of our Policy and International Division.

The CCPC welcomes the General Scheme which will establish a system for representative actions in Ireland and will ultimately lead to the improvement of consumer access to justice and redress.

Redress is a very important aspect of consumer protection. When things go wrong, consumers must be confident that traders will provide them with appropriate remedies such as compensation, repair, replacement, price reduction, contract termination or refund of the price paid. The CCPC therefore strongly believes that all consumers should have access to fair and timely dispute resolution and redress mechanisms.

One mechanism for achieving redress is enforcement action taken by public bodies. Another is legal action taken by consumers themselves.

Where consumers have suffered as a result of a trader failing to uphold their rights, a public body such as the CCPC or a sector regulator may take enforcement action, using its legal powers to investigate and seek sanctions. Enforcement action can result in penalties, orders to come into compliance and, in some cases, compensation for affected consumers.

Individual consumers can take legal action against a trader in the small claims court for amounts under €2,000 and in the higher courts for larger amounts. In some cases, individual consumers may also be able to avail of alternative dispute resolution, e.g. by making a complaint to a sector ombudsman or a sector regulator.

This Bill will introduce another mechanism for consumers to take legal action. It allows for representative actions to be taken on behalf of multiple affected consumers. This will apply when a trader has failed to uphold rights derived from EU consumer law – both general consumer law and a range of other laws that protect consumer interests. The Bill will allow both for injunctions and for compensation. And it will apply both to domestic and to cross-border actions – so Irish consumers will be able to join representative actions taken in other Member States and vice versa.

This Bill transposes the EU Representative Actions Directive, and the General Scheme of the Bill closely follows the requirements of the Directive. We have only a few comments on the detail of the General Scheme.

First, we welcome the criteria for designation of Qualified Entities who can take representative actions on behalf of affected consumers. These criteria follow the Directive and will ensure that consumers' interests are at the heart of all representative actions.

Second, we consider that Qualified Entities should be free to make independent decisions about which cases to pursue, based on their own criteria, such as the prospects of success, the scale of consumer detriment and whether they have the resources and expertise needed. This is implicit in the General Scheme and it will be important that the final legislation does not constrain the independence of Qualified Entities in this regard.

Third, we welcome the provision for the Minister to facilitate cooperation and sharing of best practice amongst Qualified Entities. We consider that it will also be useful for there to be cooperation amongst entities interested in becoming Qualified Entities prior to designation, and that public bodies such as the CCPC may also have a role in sharing experience with Qualified Entities or bodies seeking designation. However, we consider that this does not necessarily need to be explicitly referenced in the Bill.

While the Bill will enable representative actions to be taken, there are a number of complementary measures that will determine how the mechanisms in the Bill operate in practice.

For example, the General Scheme contemplates that Courts could make rules on matters such as admissibility, evidence and the means of appeal. Any such rules could set important criteria for representative actions, such as the minimum number of consumers affected, and how similar their claims must be.

The CCPC also considers that it would be useful if the Courts provided for "fast-tracking" of representative actions, both to provide faster redress when an action succeeds and to minimise the costs that are inevitably incurred when an action is prolonged.

The availability of funding for Qualified Entities will be crucial to their success. The CCPC welcomes the possibility of removing court fees payable by Qualified Entities taking a representative action, but we note that such fees are not likely to be material in the overall cost of a representative action. The ancient prohibitions on champerty and maintenance remain in place in Ireland, despite having been abolished in most other common law jurisdictions. These prohibitions will severely limit the ability of Qualified Entities to fund representative actions. The CCPC therefore welcomes the recommendation in the 2020 Review of the Administration of Civil Justice, led by Justice Peter Kelly, that the rules on funding of litigation should be modernised.

At the Committee's previous hearing on the Bill, there was some discussion on which types of body might become Qualified Entities. The CCPC's view is that the interests of consumers are best served if they have the option of civil society bodies taking representative actions on their behalf, in addition to public bodies taking enforcement action against traders who breach consumer law.

Having these two options available will mean that consumers can take matters into their own hands if a public body decides not to pursue a particular case for any reason.

I might end with some remarks on the CCPC's role in helping consumers secure redress.

First, we will use the enhanced enforcement powers contained in the Consumer Rights Bill to secure redress for consumers in cases where there is substantial or widespread consumer detriment. These new enforcement powers mean we will be able to require traders to provide refunds, price reductions or similar remedies, if they fail to deliver goods or services or if they are faulty or otherwise do not conform with the consumer contract.

Second, we will continue to advocate for improvements in the small claims court procedures and for the ceiling for claims to be raised. Last year there were only 2,134 claims submitted through the small claims procedure, indicating that most consumers find the process does not meet their needs.

Third, we will share expertise and collaborate with civil society bodies that are interested in becoming Qualified Entities, to help them develop the capacity to take on this role.

And fourth, we will consider how the CCPC's role in securing redress for consumers could evolve in the light of experience using our new enforcement powers, and once we know whether other bodies have secured designation as Qualified Entities.

In conclusion, the CCPC welcomes the General Scheme and the introduction of representative actions in Ireland. The CCPC believes that representative actions for the protection of collective interests of consumers will complement the soon to be expanded role of the CCPC in securing redress for consumers, allow for more efficient cross-European redress in cases of mass harm and provide a further incentive for traders to comply with consumer protection law.