

Competition Appeal Tribunal to hear preliminary issue in Home Energy Action back-to-back with separate direct purchaser action

20 May 2025, LONDON: On 20-23 May and 3-6 June, the Competition Appeal Tribunal (the “Tribunal”) will hear a preliminary issue relating to the landmark Home Energy Action collective proceedings being brought by class representative, Clare Spottiswood CBE.

This issue is common to one in separate proceedings being brought by London Array, a large windfarm in the Thames Estuary, which begin on 29 April (the “London Array Trial”). The Tribunal has therefore partially consolidated the two proceedings in respect of this issue in a joint trial back to back after the main London Array trial in what is referred to as the “ROC Issue Trial”.

The London Array Trial	29 April - 19 May 2025
The ROC Issue Trial	20 - 23 May and 3 - 6 June 2025

Ms Spottiswoode’s Home Energy Action claim will then progress to full trial, with a listing date yet to be announced by the Tribunal (currently expected to be in 2027).

Ms Spottiswoode’s claim

Ms Spottiswoode’s claim alleges that, as a result of the decade-long cartel of global cable suppliers fined by the European Commission in 2014, purchasers of high-voltage power cables paid increased prices for these products, a cost which was ultimately passed on to millions of UK electricity customers.

The “London Array” claim

The London Array claim alleges that the cartel’s activity impacted the Renewables Obligation scheme¹, a market support mechanism designed to encourage electricity suppliers to generate electricity from renewable sources. The scheme requires electricity suppliers to purchase a specified number of Renewable Obligation Certificates (“ROCs”), which are set according to “banding decisions” decided by the UK Government.

London Array alleges that by reason of the power cables cartel, the cables purchased for incorporation into the London Array windfarm were more expensive than they would have been if there had been no such cartel. It is alleged that the cartel caused an overcharge in the prices of power cable by around 18%, which is consistent with the range of overcharge estimated in Ms Spottiswoode’s claim.

Ms Spottiswoode has no direct involvement with the London Array claim.

¹ <https://www.ofgem.gov.uk/environmental-and-social-schemes/renewables-obligation-ro>

The preliminary issue joint trial

Both Ms Spottiswoode's claim and the London Array claim concern allegations that prices were increased because of the power cables cartel. An issue common to both claims is the extent to which the overcharge in cables prices caused by the cartel's activity affected the UK Government's approach to Renewable Obligations Order (ROO) banding decisions in 2010 and resulting Renewables Obligation Certificates ("ROC").

The Tribunal therefore decided, by way of an order dated 22 May 2024, that this issue, the "ROC Issue", would be jointly heard as a common issue between the Ms Spottiswoode claim and the London Array Claim² in the ROC Issue Trial to be heard back to back after the main London Array Trial.

ENDS

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NOTES TO EDITORS

Background to the Spottiswoode claim

On 2 April 2014, the European Commission (EC) ruled that a number of companies (including the Defendants of this claim) operated almost-worldwide a cartel between 18 February 1999 - 28 January 2009, in the market for the supply of various high voltage and submarine power cables.

As a result of the cartel's activity, British energy suppliers purchased high voltage power cables at an artificially inflated price. As this capital expenditure was passed onto consumers through Ofgem's price control regime, domestic electricity customers in Great Britain paid higher electricity bills than they otherwise would have done.

² <https://www.catribunal.org.uk/cases/15185722-london-array-limited-others>

This claim is based on the findings of the 2014 EC Decision, and as such will be a so-called “follow-on” action. This means that the liability of the defendants has already been conclusively established. Consequently, the focus of the Claim will be on proving that the cartel caused higher prices for high voltage cables, and that these costs were in principle passed on to consumers which constitutes the loss suffered by the Proposed Class as a result of the Cartel.

The class representative, Clare Spottiswoode CBE, has a long and distinguished career defending consumer interests and holds a deep expertise in legal and regulatory issues within the energy sector.

The class

All people alive who directly paid for domestic consumption of electricity supplied via the distribution network in Great Britain on or after 1 April 2021.

The claim is brought on an “opt-out” basis, meaning that consumers will be automatically included in the class and eligible for compensation awarded, unless they specifically choose to opt-out. Damages sought for consumers are in the hundreds of millions of pounds overall.

For class members to register their interest, find out more information about the claim and to receive updates on its progress, please visit <https://www.homeenergyaction.co.uk/>.

The Competition Appeal Tribunal (CAT)

The CAT is a specialist UK court which deals with competition law issues. It has a critical role to provide a route for affected consumers to secure redress from a cartel whose illegal price manipulation, at the expense of electricity customers in Great Britain, has already been proven.

To certify a claim as eligible for collective proceedings, the tribunal must be satisfied that the proposed class are an identifiable group of people who have faced similar issues and that its proposed representative is appropriately qualified to lead its cause. On 11 April 2024, the Tribunal granted a collective proceedings order (CPO) in favour of Ms Spottiswoode.

Clare Spottiswoode CBE

Clare Spottiswoode CBE has an extensive background in energy regulation and consumer redress.

From 1993-1998, she served as Director General of Ofgas, the UK gas regulator which would later merge into Ofgem. In this position she was the architect and leader of the liberalisation of the UK gas market and was awarded a CBE for its successful implementation. She is also a former member of the Independent Commission on Banking, a former member of the Payments Council and has acted as a senior adviser to HM Treasury.

DRD PARTNERSHIP

Her role as class representative is to conduct the claim against the cable manufacturers on behalf of all class members, instructing the lawyers and experts, and deciding whether to consider any offer of settlement that the cable manufacturers may make. She is also responsible for keeping the class updated on the status and progress of the claim.

The team

Scott+Scott has significant experience in prosecuting major securities, antitrust, arbitration, data privacy, and consumer actions throughout the United States and Europe. The firm represents pension funds, corporations, foundations, businesses, individuals, and other entities worldwide with eight offices in the U.S. as well as in London, Amsterdam, and Berlin. For more information, visit www.scott-scott.com

Ben Lask KC of Monckton Chambers is acting as lead counsel for the ROC Issue Trial. Regulatory expert economist Richard Druce of NERA Economic Consulting and industry expert Antony Badger of Cornwall Insight have also been engaged to provide expert reports to inform the case.

The action is funded by Burford Capital, the largest provider of commercial legal finance in the world. Burford is publicly traded on the New York Stock Exchange and the London Stock Exchange, and works with companies and law firms around the world from its principal offices in New York, London, Chicago, Washington, DC, Singapore, Sydney and Hong Kong. For more information, please visit www.burfordcapital.com.