

RHA PRESS RELEASE

Title: Comprehensive win for RHA in next stage of collective claim against Trucks Cartel

The Road Haulage Association has seen off an attempt by DAF to overturn part of the 28 October 2019 decision by the Competition Appeal Tribunal which found in the RHA's favour and confirmed that its agreement with a third-party litigation funder (which deals with funding the RHA's costs of its collective proceedings claim against the Trucks Cartel) was perfectly legal.

From a technical perspective, DAF was unsure whether it had a right of appeal to the Court of Appeal against the Tribunal's decision (the RHA did not think so) or needed to challenge the decision by way of judicial review before the Divisional Court of the Queen's Bench Division. A three-member panel of the Court of Appeal, also sitting as the Divisional Court, heard DAF's challenge. The Court of Appeal agreed with the RHA that DAF did not have a right of appeal and that therefore the challenge would need to be heard by the Divisional Court by way of judicial review.

On the substance, DAF argued that the RHA's litigation funding agreement is a so-called damages-based agreement (DBA) within the meaning of legislation regulating DBAs and fell foul of the requirements for DBAs.

The basis of the challenge related to whether the litigation funding agreement between the RHA and its litigation funder amounted to "claims management services", which is one element of the definition of DBAs. The Divisional Court agreed with the RHA that the 2006 legislation in which "claims management services" is defined was aimed at protecting consumers from "claims farmers" who were contributing to a "have a go culture" in the area of personal injury, housing, and financial services claims and was not aimed at third-party litigation funding. Moreover, Parliament had separately enacted a provision to regulate litigation funders in 1999 which, although not brought into force, remained on the statute book and could be used to regulate litigation funders if so desired by Parliament.

Richard Burnett, the RHA's CEO, commenting on the judgment of the Divisional Court said: "I am delighted with this comprehensive win for the RHA particularly in the face of attempts by DAF to derail the process. Although we are several years off our collective claim concluding, we are a further step towards winning compensation for the road haulage industry as a result of the Trucks Cartel."

Steven Meyerhoff, director at Backhouse Jones, said: "Following this successful outcome, the next step in the RHA's collective claim against the Trucks Cartel will be a court hearing before the Competition Appeal Tribunal towards the end of April this year at which the Tribunal will confirm whether the RHA can proceed with the collective claim. This element of the RHA's application for a collective proceedings order (CPO) had been put on hold pending the judgment of the Supreme Court's judgment in the consumer collective proceedings against Mastercard which was handed down in December 2020 and which set a relatively low bar for CPO applicants at the certification stage."

The RHA now has over 14,500 truck operators signed up to its legal action and another 1,400 are in the process of signing up. There is still time to join the RHA's claim and the RHA would encourage operators to do so in advance of the next hearing in April 2021.