



RHA Truck Cartel Claim

How to sign up to
the RHA's collective claim

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What is the RHA doing?

The RHA, as the dedicated trade body for road haulage in the UK, is bringing a claim for compensation for truck operators before the Competition Appeal Tribunal in London or alternatively the High Court of England and Wales. The claim in the Tribunal was launched on 17 July 2018.

The RHA will not profit from the collective claim. You will be able to “stand behind” the RHA, which will front the claim on your behalf.

The RHA is well aware that truck operators need to have business dealings with the manufacturers after the claim and therefore will conduct the proceedings in a measured and constructive manner.

There are economies of scale in the RHA bringing a large-scale action that will benefit you and other operators; in most cases it will also be too expensive to bring an individual claim.

Allowing non-members to join the claim will benefit RHA members.

This brochure tells you all you need to know so that you can formally sign up to the RHA's collective claim.

Truck Cartel



£3.4 billion fine

RHA bringing
collective claim

RHA claim is open to all road haulage operators
– members and non-members alike

EU truck manufacturers fined £3.4 billion

The European Commission has taken two decisions against the European truck manufacturers. On 19 July 2016, the European Commission fined DAF, Daimler/Mercedes, Iveco, MAN, and Volvo/Renault £2.6 billion after they acknowledged their involvement in cartel activities between 1997 and 2011. On 27 September 2017, the European Commission fined Scania almost £800 million for its involvement in the same cartel activities. The cartel members:

- At senior HQ management level, fixed gross (and sometimes net) list prices
- Aligned gross list prices across Europe (including the UK) at the start of the cartel
- Reduced rebates when the Euro was introduced
- Delayed introduction of more fuel-efficient Euro 3, 4, 5, and 6 emissions technologies
- Agreed the cost that operators should pay for Euro technologies

No cost or risk to you even if we lose

The RHA has structured its claim so that there should be no risk for you or other operators in joining the claim and nothing to pay even if the case is unsuccessful.

The RHA has put in place significant third-party litigation funding on very competitive terms. Based on conservative estimates, you should retain 91% or more of the compensation owed to you after the funder has received its return and any required insurance payment has been made.

The RHA has taken out significant insurance with A rated insurers so that neither the RHA nor you should be liable for any costs if the case is unsuccessful.

Who can join the RHA's claim?

Any company, firm, or individual that since January 1997 purchased or leased trucks registered in the UK for road haulage (hire and reward and own-account). Your company can also join if you purchased or leased trucks registered in European countries outside the UK provided your company belongs to a group of companies that purchased or leased trucks registered in the UK. You cannot join if your company buys trucks to then sell or lease the trucks to others.

What can you claim for?

- ✓ Trucks purchased or leased between 1997 and 2011
- ✓ Potentially trucks purchased or leased after 2011
- ✓ Trucks of 6 tonnes and over
- ✓ Trucks purchased outright
- ✓ Trucks purchased on finance
- ✓ Trucks leased
- ✓ Second-hand trucks

How much compensation might I get?

Based on conservative estimates, the RHA currently believes that you may be able to obtain on average at least £6,000 per new truck purchased or leased (including interest).

The RHA is nevertheless developing its case and working with expert economists to obtain a clearer picture. The RHA will also provide more clarity on the potential compensation claim for second-hand trucks.

How long will the case take?

While it could take several years for the case to conclude, there will be every opportunity as the RHA presents its case to the truck manufacturers for settlement to be earlier.



RHA claim summary

The Road Haulage Association (RHA) is working with Backhouse Jones (the Solicitors) to bring a claim for compensation on behalf of RHA members and non-members against the main European truck manufacturers who were involved in a 14-year price fixing cartel between 1997 and 2011. The collective claim, which was launched in the Competition Appeal Tribunal in London on 17 July 2018, is based on the Truck Cartel decision of the European Commission dated 19 July 2016 in which Daimler/Mercedes, DAF, Volvo/Renault, Iveco, and MAN were together fined £2.6 billion. The RHA is also bringing alternative proceedings in the High Court of England and Wales in case the collective claim before the Tribunal cannot proceed for some or all claimants. The RHA will not profit from bringing the claim and aims to bring the claim as efficiently as possible.

Everyone who wishes to benefit from the claim must agree to the same documents. These are:

- a Litigation Management Agreement (LMA);
- a Deed of Adherence, through which you will signal your agreement to a Litigation Funding Agreement (LFA);
- an Authority Document, enabling the RHA to conduct the litigation on your behalf.

You will also benefit from a Legal Expenses Insurance Policy covering the RHA and you against the risks of the costs of the litigation.

The purpose of this booklet is to help you understand what the above-mentioned documents say.

Running the case

1. You agree to opt into collective proceedings when the Competition Appeal Tribunal opens the window for doing so. The RHA will let you know when you need to take this action and how to do it. In case collective proceedings before the Competition Appeal Tribunal are not permitted generally or in relation to your claim, alternative legal proceedings are also being commenced in the High Court of England and Wales on a failsafe basis, although these proceedings will be put on hold and will only be used if necessary.
2. The claim is being run as a collective claim, meaning that many claimants will claim together at the same time. This brings with it a number of advantages for the claimants, including costs savings and a stronger position from which to conduct negotiations.
3. Agreeing to opt into the claim is a commitment to the RHA, the claim and to the other claimants. You agree to use the RHA as your exclusive representative in this matter. There may be financial implications for you if you drop out of the claim early. These costs will not be covered by funding or insurance.
4. We will only advise you about specific claims arising from the European Commission's Truck Cartel decision. We will not advise you about other claims you may have against the truck manufacturers or anyone else.
5. The RHA will take day-to-day decisions about the case and conduct the legal proceedings on your behalf. The RHA's duties will include overseeing the legal team, approving invoices, directing how the case should be run, and making settlement decisions on your behalf.
6. The RHA, Backhouse Jones, and other professional advisors must run the case in a cost-effective way for it to be successful. This extends to the way in which settlement proceeds may be distributed. The RHA will be aiming to win the optimum level of damages for you and the other claimants. If the RHA Board accepts a global settlement for all of the claimants, the level of damages owed to you will likely be linked to the number of trucks you purchased or leased during the cartel period (and potentially during a period after the cartel ended), although the RHA will have discretion in deciding how to divide the pot and need not look closely at how good individual claimant's claims are (because that may be too expensive and time-consuming). The cost of distributing the claim proceeds will be paid from the claim proceeds (and this has already been budgeted for in the overall costs of the case) and will be supervised by the funder.
7. If the Competition Appeal Tribunal determines the level of compensation owed to you and other claimants, the Tribunal may make an overall assessment of compensation which means that it will not necessarily make a detailed assessment of the individual merits of each individual claim.

RHA claim summary

8. You have duties toward us and the court. You must promptly and at your expense respond to requests for information (which we will keep to a minimum). You should keep and not destroy any documents which might be relevant to the case (for example, documents relating to your truck purchases, as well as finance and lease documents). You must ensure that all documents and information you provide are accurate, true, and complete. You must follow the advice of the legal team working for the RHA and comply with any orders of the court. If you have any concerns about any information you are providing, you must inform the RHA about this. You will also allow the RHA to seek relevant information from your accountants or other professional advisors in order to bring your claim.
9. The RHA will run the case in the best interests of the claimants. In the unlikely event the RHA causes you any loss, the RHA's liability will be limited to an aggregate amount of £20 million.
10. We will only charge you if you win the claim. This fee will be taken directly from any settlement monies or monies awarded.
11. The RHA will, however, need some working capital as the case progresses. That money will be made available by a litigation funding company.
12. The funder will also pay for other costs, such as the fees of Backhouse Jones and Addleshaw Goddard, as well as barristers' and experts' fees.
13. If the case is lost, you will not owe any money to either the RHA's professional advisors or the funder.
14. If you win the case, the funder will be entitled to recover an amount based on the overall level of monies won by all operators opting into the RHA's claim. The total amount will never exceed the amount of compensation won collectively. Based on conservative assumptions in relation to the level of damages per truck and the overall number of trucks that are in the RHA's claim, the level of return to the funder will be at most 9% and may be as low as 5%. If the case settles early, these percentages will be reduced by a third, thereby returning even more of the compensation to operators. Further details on this are provided on page 10.
15. Usually in litigation the losing party is ordered to pay the winning party's costs. As the RHA is bringing this matter on your behalf, any such order would generally be made against the RHA. There are limited circumstances in which you might be ordered to pay costs where issues arising in the litigation apply only to you. However, the RHA is taking out insurance to insure against this risk both in relation to itself and in relation to you. You agree to be bound by the insurance policy wording. Your obligations under the insurance policy are discussed on page 14 providing information on risk.
16. The purpose of the funding and insurance arrangements is to ensure you do not need to pay anything to participate in the claim.

Professional standards

17. Backhouse Jones are professionally required to confirm that you are who you say you are. We will aim to seek to check your identity electronically using public databases but might need further information from you.
18. The person in charge of the case at Backhouse Jones is Steven Meyerhoff.
19. The Solicitors are authorised and regulated by the Solicitors Regulation Authority. The rules of the Solicitors Regulations Authority can be accessed at:

www.sra.org.uk/solicitors/codE-of-conduct.page

20. If you are not happy with any aspect of the Solicitors' work, please contact the Solicitors and they will try to deal with any problem quickly through their internal complaints procedure. If, for any reason, at the conclusion of the complaints process you are not satisfied with the outcome then you can involve the Legal Ombudsman.

Alternatives to bringing this claim

21. Please bear in mind that there will be a large number of co-claimants also agreeing to the terms on which you will join the RHA's claim. The only basis on which the RHA is offering potential claimants the opportunity to join the claim is on the basis described under 'Funding' and elsewhere in the documents to which you will agree through the Deed of Adherence. There may be alternative ways of bringing and funding your claim through other solicitors who may offer other ways of funding your claim. Similarly, you could consider instructing solicitors personally.
22. You should consider that it is possible that one or more of the truck manufacturers may offer a settlement outside of the litigation so that you could be offered compensation if you do nothing and do not claim. In the Solicitors' view, this is highly unlikely.



Understanding costs

IF YOU WIN:

You should receive 91% or more of your award or settlement. If the case settles early, you should receive 94% or more of your award or settlement.

The funder will take a fee.

The fee will be either:

- Three times (or less than three times if the case settles early) what it has cost to bring the claim (Multiple);
- or
- A percentage of the money that the group wins, if that is more than the Multiple plus the return to the funder of the funder's outlay any required insurance payment, and any legal costs. The percentage starts at 30% and reduces to 5% at higher overall compensation levels. There is also a third reduction in the funder's fee if the case settles early.
- Based on conservative estimates of the level of damages and the number of trucks that will form part of the RHA's claim, you should receive between 91% and 95% of any award or settlement. If the case settles early, you would receive an even higher portion of your award or settlement. To some extent, the RHA's ability to deliver returns at this level will depend on the ultimate size of the claimant group.

- We think the fee will be 9% or less, but the fee might be more than that if we recover less than anticipated, if the group is smaller, or if the funder has to spend a substantial amount or more money than previously expected. The outcome will also depend on the quality of the legal arguments and the evidence in the case, although liability has already been established through the European Commission's decision in the Truck Cartel case.
- You will not need to pay anything if the amount you win is less than the fee.

IF YOU LOSE:

You pay nothing.

Neither the RHA nor the Solicitors will charge you for their time or the costs incurred on your behalf.

Usually in litigation the winning party will be entitled to recover their costs from the losing party. As the RHA will be bringing this claim in collective proceedings, the RHA will ordinarily be liable for the winning party's costs if the case is lost. The RHA has taken out insurance to cover this risk and also to cover you in the unlikely event that costs are awarded against you for any matters relating only to your own claim (and not also to others' claims).

WORKED EXAMPLE FOR NEW TRUCKS

THESE FIGURES ARE ILLUSTRATIVE ONLY AND YOU MAY RECOVER MORE OR LESS.

We cannot provide exact figures because they will depend on a number of variables (including the value of the claims, the number of claimants, and the timing of any settlement).

Based on a claim for one truck and assuming that there are 250,000 trucks in the RHA's claim:

If...
The compensation available for each truck: £6,000

The group compensation before costs is: £1.5bn

And...
If the funder has set aside this much for costs: £15m

Then...
Your share of the funder's fee less capital back (9% of £1bn divided by 250,000) is: £540

After costs, your compensation per truck is: £5,460



Practical points

About us

The RHA is the only UK trade association dedicated solely to the needs of UK road transport operators.

Backhouse Jones is the leading law firm for the road haulage sector. Backhouse Jones has teamed up with the law firm Addleshaw Goddard and barristers at Exchange Chambers and Brick Court Chambers. The RHA's legal team has extensive experience of undertaking large-scale and complex multi-party litigation, including competition law litigation. The legal team have worked on competition matters for organisations such as the FIA (regulatory body for Formula 1), FIFA, Google, GSK, Samsung, Sky, and UEFA.



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Websites

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- > www.backhousejones.co.uk

Your expectations

We do not yet have clear details as to the value of your claim per truck. The European truck manufacturers were nevertheless found liable for a serious breach of competition rules for operating a price-fixing cartel for 14 years. While we do not have clear details, our preliminary analysis suggests that the claim per truck will be worth at least £6,000 (including interest) and may be much higher. As with most large-scale litigation against corporate defendants, it is likely to be aggressively defended and take over a year to reach a conclusion. You should also be aware of the risks set out on page 14.

However, this case raises important issues and the RHA is pleased to be able to offer to represent you on the basis of 100% funding, which means that the funder and insurers are taking significant risks in order to bring the claim. The RHA will be working hard to win while also trying to keep the administrative burden on you as light as possible. We hope and expect that we will be able to secure some compensation for your trouble and set a strong precedent for the truck manufacturers and other large companies which may be tempted to cheat the system.

Publicity

You should be aware that if you join the case, your name and address may appear on court documents and be a matter of public record. If the case goes to trial, any member of the public will be entitled to attend court to watch the case being heard.

Working with others

Once you have signed the relevant agreements, we would ask that you please refrain from registering as a client of another firm for the purposes of the truck cartel litigation, as this will inevitably create confusion and lead to costs associated with clarifying your position.

Confidentiality

The RHA's Solicitors are obliged to keep your affairs confidential. However, if the RHA is to run the case effectively, it may be necessary for us to disclose the facts underlying your claim to the RHA Board (and in limited circumstances to other claimants) and to the professional advisors (principally the solicitors, counsel, and experts) we or the Solicitors engage. The LMA allows us to do that.

The Solicitors and/or the RHA Board will report to you on a monthly basis as the case progresses. It is very important that you ensure that all communications and documents you receive from us (including the LMA and the document pack) remain confidential because it could damage the case if they were seen by any of the truck manufacturers. The LMA requires you to keep all the information you receive during the course of the case confidential, even after you cease to be our client.

About disclosure

As a party to the legal case you have a duty to disclose (that is, tell the other side about) documents which might be relevant to the claim regardless of whether they are harmful or helpful to your own case. This means that whilst you are a claimant you will have to keep such documents safe, and be prepared to produce them if required.

Practical points

Information about risk

In bringing the claim before the Competition Appeal Tribunal, the RHA is putting itself at risk of having to pay the defendants' costs if the case is lost. It is important to remember in this context, however, that liability has been established against the truck manufacturers by the European Commission's decision in the Truck Cartel case and this already significantly minimises the risk of the RHA being required to pay the defendants' costs.

In relation to factual and legal issues that affect all claimants or sub-groups of claimants, it is only the RHA in proceedings in the Competition Appeal Tribunal that can be liable to pay the defendants' costs if the case is lost. If any issues arise in the collective proceedings that affect only you and not any other claimants or if the High Court proceedings are used to progress your claim, there is a risk that the Tribunal or Court might require you to pay a portion of the defendants' costs if your claim or a part of your claim is lost. However, the insurance cover taken out by the RHA covers you just as it covers the RHA (subject to customary exclusions) so that, if the case is lost, it will be the insurers who will pay the other side's costs on your behalf up to the level of the amount insured.

In relation to factual and legal issues that affect all claimants or sub-groups of claimants, it is only the RHA that can be liable to pay the defendants' costs if the case is lost. If any issues arise in the litigation that affect only you and not any other claimants, there is a

small risk that the Competition Appeal Tribunal might require you to pay a portion of the defendants' costs if your part of the claim is lost. However, the insurance cover taken out by the RHA covers you just as it covers the RHA (subject to customary exclusions) so that, if the case is lost, it will be the insurers who will pay the other side's costs on your behalf up to the level of the amount insured.

In addition, the RHA at the outset of the case may seek an order from the Competition Appeal Tribunal so that the defendants' costs are capped at the level of the insurance cover, thereby removing the risk of the defendants' costs exceeding the insurance cover.

The RHA has sought to minimise the risk to you as far as possible. The insurance in place, coupled with careful management of the litigation process, should mean that the risk will be at most negligible.

These matters are described in more detail on the next page.

Insufficient insurance cover

One of the risks is that the defendants' costs are higher than the level of the insurance. It is the RHA's job together with the Solicitors to make sure that the level of the insurance cover is sufficient. The RHA has sought to minimise this risk as far as practicable. The RHA has taken out one of the largest ever litigation insurance policies for a case before the English courts. Moreover, the case management processes of the Competition Appeal Tribunal and High Court mean that the defendants will be obliged to update the RHA regularly about their costs, which will increase as the case progresses, so that we can take steps to increase the insurance cover if it is necessary and feasible to do so.

The insurer refuses to pay out

The insurer may deny or seek to withdraw cover, either:

- a. after the unsuccessful conclusion of the case; or
- b. while the case is continuing.

It is the Solicitors' responsibility to ensure that the insurers are fully informed about all aspects of the case so that it is not open to them to refuse to honour a claim if the case is lost. The funder has invested heavily in the case and they will be equally anxious as you and we to ensure that the insurers are fully informed and have no reason to refuse cover.

The insurer goes out of business

There is a possibility that an insurer fails so that they are unable to pay their portion of the insurance cover. However, the RHA is using only A rated insurers and so, while an A rated insurer might go out of business, it would be a rare event and does not appear to be a material risk. Even if an insurer did go out of business, the RHA would anticipate that there would be good prospects of finding replacement cover.

You do not comply with the terms of the insurance policy

There are certain circumstances in which you would lose the benefit of the insurance cover the RHA has put in place. The main situations in which this could happen are if you: (a) deliberately or recklessly provide misleading information in relation to your claim; (b) fail to follow the advice of or provide instructions to the RHA; (c) fail to comply with any court order; and (d) fail to cooperate with the legal case, including in the unlikely event you are asked to attend any meetings or court hearings. The RHA has much the same obligations, as well as other obligations and, in the unlikely event the RHA were not to comply with its obligations, you and other claimants could lose the benefit of the insurance cover.

Practical points

The funder goes out of business or withdraws from the claim

The risk that the funders may go out of business is mitigated in two ways. Funders typically commit funds to a particular case separately so that the funds are protected in the event that they fail. No funder commits irrevocably at the outset to fund a case to its conclusion. We always find out new facts as we progress, so it is inevitable that perceptions of risk will change. In these circumstances, an agreement to fund litigation is always subject to the funder's ability to withdraw if they no longer consider the risk to be one worth taking.

If the funder were to withdraw from funding the claim, the consequence for the funder in practice would be that it would lose all or most of the money that it had invested, up to the point of its withdrawal. The implication for you would be that you could then only carry on if you could find another funder or if collectively the claimants could fund the case themselves. It is, however, doubtful that the RHA or you would want to take a risk that commercial funders did not believe in. Indeed, if the RHA stops being satisfied with the merits of the claim or does not continue to believe it is commercially viable, it can stop representing you.

The funding agreements contain the termination provisions approved by the Association of Litigation Funders, which you can review on their website:

www.associationoflitigationfunders.com

The group does not attract enough claimants

There is a further risk: that the case is successful but any recoveries for the claimants are limited.

It is possible (but unlikely – indeed, thousands of claimants have already signed up) that the group will not attract enough claimants. If the total claim value is below a certain level, the damages that the claimants are awarded may not be sufficient for there to be very much to distribute to claimants after the payment of the funding costs. (Similarly, if there is a low settlement, the claimants may achieve only a limited recovery.)

The indication that the funder's return will be 9% or less of the compensation applies only if the group reaches critical mass. If the funder's return is based on a multiple of the funds that they have committed rather than a percentage of the compensation awarded to the claimants by the court, or compensation received in settlement, the claimants' recovery will be restricted. The funder's risk, by the same token, is that even if the claim is successful, they will not recover the sums they have invested, or will not receive a commercial return.

You succeed in your claim but other claimants fail in theirs

The insurance cover will be on the basis of the collective claim, so that the insurance will respond only if the claimants' claims as a whole fail. If some claimants succeed and others fail, the insurers will pay out only to the extent that the costs payable to the defendants in respect of failed claims cannot be paid from the amount recovered for successful claimants.

There is not enough value in truck manufacturers' groups to satisfy the claim

It is possible that the truck manufacturers might not have the funds to satisfy the claim. Given the size of the various groups, this seems unlikely. The RHA will nevertheless monitor this risk as the case progresses. Failed claims cannot be paid from the amount recovered for successful claimants.

The truck manufacturers make a global offer to all affected operators

The truck manufacturers individually or together might offer financial compensation to every operator who bought an affected truck. The risk that this entails for you is that you may not be able to participate in that offer until the group claim has been resolved (whether by settlement or final decision of the court). You will probably not be able to take the full benefit of that offer in the same way as a non-claimant, as your offer is likely to be subject to some deduction for the litigation funder's fees. While we have no control over whether the defendants decide to make a global offer, in our view this risk is justifiable on the basis that in the absence of any legal pressure the defendants are very unlikely to make a financial offer of any sort: we think that claimants are better off claiming than not, on the basis that it is better to get something than nothing.

Our advice on the risks

In view of what the RHA has done and intends to do to limit the risks, it is the Solicitors' advice to potential claimants that the risk of personal liability falling on any claimant is extremely low.



Now that you have read this brochure, you have all the information you need to officially sign up to the RHA's collective claim.

To sign up online, please go to **truckcartellegalaction.com** where you will be guided through the simple process. Please note, you will need to provide some information about your business during the sign-up process if you have not already registered your interest.

If you would like to speak to someone before signing up, please use the contact number or email at the end of this brochure.



How to get in touch

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EXCHANGE
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