

Model case procedure: Frequently Asked Questions (FAQs)

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1. Why was the model case procedure introduced?

Reports of unfair charges and unlawfully increased prices are sadly commonplace today, and more and more consumers are asking how they can get redress.

Lengthy court cases, the high costs of bringing legal action and the uncertainty of knowing whether the law has actually been violated are often enough to deter an individual from pursuing a claim. Consequently, very few consumers ever seek legal redress and companies get to keep whatever gain they have made by violating the law.

It is particularly galling when a company's practices affect a large number of consumers. The model case procedure was introduced precisely for this type of mass harm event, in order to establish the key facts and answer the legal questions in one case which will then have effect for all consumers who have suffered loss.

The model case procedure makes obtaining legal redress in such cases more efficient and more cost-effective. Moreover, claims that would be too time-consuming and costly for an individual to pursue can be asserted more easily.

2. How does the model case procedure work?

The model case is brought not by individual consumers but by a consumer organisation. The court examines whether the arguments presented by the organisation have merit, and rules on the case.

Consumers can join the claim by enrolling in a claims register. This has the effect of **suspending the limitation period** for their claims while the court is hearing the model case. That is important because at present, consumers' claims frequently become time-barred before a court has ruled whether a company is in breach of applicable law. Once the case has been decided, the finding is binding for all registered consumers as if they had brought the claim themselves.

The model case procedure **saves consumers much** of the court case and the associated **effort and financial risk**. Once a model case has been won, it will be considerably easier for the consumers affected to enforce their claims.

A model case can also be (partially) rejected. It is important to note that a 'lost' case is also binding upon all registered consumers in the same way as if they had brought the claim themselves. That means that the registered consumers cannot go back to court on their own to ask for a ruling on the issues that have been settled in the model case.

A lost model case does not give rise to additional costs for the registered consumers. Generally, the losing party in a court case has to pay the other party's legal costs but in a model case procedure the organisation bringing the action bears this risk alone.

3. How does a model case proceeding differ from a 'normal' legal action'?

In a normal legal action, the plaintiff demands some kind of performance from the defendant. That is generally payment of a sum of money, but may sometimes be the recovery of a specific item or something else.

A model case is brought not by the individual consumers who have suffered harm, but by a consumer organisation. The purpose of this procedure is not to obtain individual relief, but to establish the **general prerequisites** for obtaining the relief, such as whether a certain fee has been unlawfully imposed. The aggrieved consumers can register in this procedure without having to bring an action themselves. The court's findings then also apply to them (declaratory judgment).

Important: Only general questions that affect a large number of consumers can be decided in a model case proceeding. The special features of each individual case cannot be addressed because that would make the court case too lengthy and complicated. Questions such as the amount of compensation or refund in an individual case will therefore not be calculated in the model case proceeding.

4. What benefits does the model case procedure offer to consumers?

If a mass damage event has occurred, the model case procedure makes it easier for the consumers concerned to enforce their payment claim against the responsible company or to defend themselves against an unjustified payment claim from a company.

At present, each individual consumer has to bring their own legal action in order to enforce their rights. The court case has to deal with all the issues in dispute, which may be complex legal questions or may require evidence to be provided that is expensive to obtain. Such proceedings can be very complex, time-consuming and expensive. If the consumer loses in court, he or she has to cover legal costs (court costs, lawyers' fees and the cost of obtaining expert evidence) themselves, unless such costs are covered by a legal protection insurance.

The model case procedure spares the consumer much of this effort and expense. Instead of bringing an individual action, the consumer merely has to sign up to the model case. This has the effect of suspending expiry of their claim. Furthermore, the entire court case is binding for registered consumers, who do not have to bring their own claim. The consumer organisation bringing the action pays the full legal costs if the court finds in favour of the defendant.

If the court finds that the law has been infringed and that the defendant company has a fundamental obligation to pay damages, consumers then **only have to provide evidence of the loss or damage they have personally suffered**. The other – general – matters in dispute have already been ruled upon.

If the court does not find that the law has been broken and dismisses the action, consumers know that they do not have a claim. Had they brought their own case, they would now have to pay the full legal costs. But in a model case proceeding, **the association bringing the action bears these costs alone**.

5. How does the model case procedure work?

The model case procedure is a **representative action** in which a consumer organisation entitled to bring such actions files a lawsuit against a company. This action is admissible only if the organisation bringing the action can name at least ten individual consumers who have relevant claims against the defendant company.

If the court allows the claim, it will be published in a **claims register**. Other consumers affected can then enrol in this register. After two months, the court checks whether at least 50 consumers have registered. If so, the court case will go ahead. Further consumers can join the action at any time until the first court hearing. If the minimum requirement of 50 consumers is not reached within two months, the model case will not go ahead. Additional registrations after the end of this two month period will not count for the necessary threshold of 50 registrations.

In the subsequent model case proceeding, the court then considers the matters in dispute between the organisation and the company. This may entail hearing witness testimony, for example, or obtaining expert reports. The registered consumers are not directly involved in these court proceedings. However, important events such as dates of court hearings, directions from the court and interim rulings are published in the claims register.

6. Possible outcomes of the model case proceeding

The model case proceeding ends either with a settlement or with a judgment.

If a **settlement** is agreed, it should also include payments to the registered consumers. The settlement is sent to the affected consumers who can decide whether to accept or reject it. If more than 70 percent of the registered consumers accept the settlement, the litigation ends for these consumers. If 30 percent or fewer of the registered consumers reject the settlement, they can then bring their own individual actions against the defendant company. If the settlement fails because it is rejected by too many consumers (30 percent or more), the court will issue a judgment.

If the model case proceeding ends with a **judgment**, this judgment will be binding upon the defendant company and the registered consumers. The consumers can then decide whether they wish to assert their own claims against the defendant company on the basis of this judgment. If the model case has been successful, the defendant company is well advised to settle these claims without further legal action. If the company does not pay, the model judgment makes it easier for individuals to enforce their rights.

However, the court may also dismiss the model case partially or in its entirety. In other words: the case may fail. In this case the registered consumers lose their claim because the model judgment is also effective against them.

7. How and when can consumers register for a model case proceeding?

Consumers can only register for a model case proceeding once the lawsuit has been filed and the court has issued an order opening the proceedings (*Eröffnungsbeschluss*).

Claims must be registered in writing, which includes e-mail and fax as well as letters sent by post. It is not possible, however, to register claims by phone or in person.

The register of claims is kept by the Federal Office of Justice in Bonn. The registration request must therefore be sent to the Federal Office of Justice. However, it is not yet clear whether or, if so, when, there will be a website with a claims form that will make it easier for consumers to register.

The registration data is not subject to any further checks before being entered in the claims register for model cases. Responsibility for ensuring that the data is correct thus rests solely with the consumer.

There is some mandatory information that must be included in any registration request. The name and address of the applicant must always be provided, along with the name of the court, the case number of the model case and the name of the defendant.

The registration request must also include a description of the case. This does not have to be very detailed but it must be clear that the loss or damage suffered by the applicant is relevant to the model case. The findings of the model case proceedings only apply to consumers whose own claim is directly related to the model case.

Consumers can register without the help of a lawyer. However, it may be advisable in some cases to seek legal advice before registering – perhaps from a consumer organisation or a lawyer of their choice. This may prevent a consumer from inadvertently registering for a model case proceeding that does not match the circumstances of their own claim. There may be costs involved in obtaining this type of – individual – legal advice.

Important: The registration request must always be sent to the **Federal Office of Justice**. It is not permissible to register claims with the consumer organisation and this would render any such registration invalid.

8. What does the model case procedure cost the affected consumers?

Consumers affected can register **free of charge**. They do not need to involve a lawyer for this.

However, it may be advisable in some cases to seek legal advice before registering – perhaps from a consumer organisation or a lawyer of their choice. This may prevent a consumer from inadvertently registering for a model case proceeding that does not match the circumstances of their own claim. There may be costs involved in obtaining this type of – individual – legal advice.

9. Until when do consumers have to register their claim?

The register is open for at least two months.

Consumers can still register a claim after the end of this two-month period, but only until the date of the first court hearing. This first hearing will be announced in the claims register at least one week in advance. The registration request must have been received by the Federal Office of Justice **on the day before the day of the hearing at the latest**.

10. Is it possible to de-register? What is the latest date for consumers to remove themselves from the register?

Yes. Registered consumers can withdraw their registration up to the date of the first court hearing. The notice of withdrawal must have been received by the Federal Office of Justice by the end of the first day on which the court hears the case, at the latest. The withdrawal period is thus one day longer than the period for registering claims.

11. Who checks the registration?

The information in the registration request will be entered into the claims register without being checked. It is therefore important that the consumer **does not make any mistakes in the request for registration**. If the request contains mistakes and is therefore invalid, the consumer concerned will not be able to participate in the model case. They will not derive any rights from the model case proceeding and their claim may even expire in the intervening period, meaning they will not be able to bring their own individual legal action either.

It may therefore be advisable in some cases to seek legal advice before registering – perhaps from a consumer organisation or a lawyer of their choice. This may prevent a consumer from inadvertently registering for a model case proceeding that does not match the circumstances of their own claim. There may be costs involved in obtaining this type of – individual – legal advice.

12. When does the law on the introduction of a model case procedure come into effect?

The law is scheduled to come into effect on **1 November 2018** so that the imminent danger of claims in connection with the Volkswagen scandal becoming time-barred can be averted.

13. Which organisations are authorised to bring claims?

The law makes it clear that German Consumer Associations and vzbv will be authorised to bring legal action.

The criteria set out in the legislation determine which other organisations are authorised to bring claims. One of the criteria is that an organisation must have already been authorised to bring injunction actions for at least four years. It must also have a certain number of members (350 natural persons or ten organisations) and it must not receive more than 5 percent of its funding from corporate donations. A check is carried out in each individual case to ensure that these criteria are met.

At present there is no regularly updated list of organisations that are authorised to bring claims.

14. Who decides whether a model case should be brought?

Organisations that are authorised to bring model case actions can initiate a model case action if they are made aware of a mass damage event. However, they are **required to have been made aware by or to have received complaints from aggrieved parties**. In the case of vzbv and the German consumer associations, affected consumers can contact the local branch of their regional consumer advice centre which will record such claims in a structured and systematic manner.

It is expected that bringing a model case will be costly in terms of both financial and staffing resources. The number of model cases dealt with each year by German Consumer Associations and vzbv will ultimately depend on the funding and manpower available to these organisations and the cost of the individual case. We will have a clearer idea once we have some experience of real cases.

15. Can consumers take the initiative and file their own lawsuit?

No. The model case procedure is designed to be a **representative action**. That means that firstly an organisation files a lawsuit and then a register is opened in which affected consumers can enrol.

16. Do consumer organisations have enough clout to launch a model case?

vzbv and the German Consumer Associations have a wealth of experience in bringing legal actions, acquired over many years. They have sued well-known banks, international internet service providers and major insurance companies, frequently winning their cases in the higher courts.

But the fact is that the model case procedure is something new. Organisations will be dealing with mass payment claims from consumers that have never or have only rarely come before the courts before. Added together, the sums involved could be enormous and responsibility for the enforcement of these claims lies at least partly with the organisation bringing the action. vzbv and the German Consumer Associations are aware that this presents a huge challenge and that appropriate financial resources will be required.

17. How will consumers find out about model case procedures?

Model cases accepted by the court will be announced in claims registers that are open to the public. It is likely that in many cases consumers will find out about legal actions through public appeals.

You can also find information about cases being pursued by vzbv and the Consumer Associations on our websites.

18. How does the model case procedure differ from ‘class actions’ in other countries?

There are various types of collective actions. There is a very wide-ranging system in the USA where it is possible to bring a class action on behalf of all aggrieved parties even without their consent, and compensation claims can be significantly above the actual loss or damage suffered.

Germany does not have this kind of far-reaching damages award that is intended to punish and discipline the company concerned, and the model case procedure will not change this. The model case procedure therefore cannot lead to the dreaded ‘American situation’ because it does not create new – excessive – types of damage claims. Nor will there be contingency fees for lawyers, which can create a financial incentive to bring legal action.

Even under the model case procedure, an affected consumer will not receive more than they **are already entitled to under currently available remedies**. The new procedure will just make it easier for consumers to enforce their claims.

19. In which sectors might model cases be brought?

There are many potential areas. The key criteria are that there is a sufficient number of injured parties and that a large number of consumers are affected by the same breach of the law by a company. For example:

1. Utilities contracts: invalid price-increase clauses in gas and electricity contracts, potentially also excessive district heating charges
2. Financial services: surrender of life insurance policies, unlawful credit processing fees, invalid cancellation of building and loan contracts
3. Travel: flight cancellations and delays, substandard holidays that affect large numbers of consumers in the same way
4. Product liability (unexpected loss or damage caused by design and manufacturing faults)