Class Actions: The evolving landscape

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White & Case has renowned experience in managing and mitigating the risks of class actions, and has represented clients in defending some of the largest, most complex international claims. With the UK collective action regime rapidly developing, our experts share insights on recent key decisions and pinpoint developing trends.

Sector Snapshot: Cases to watch

ESG

- **Município de Mariana & others v BHP Group Ltd. & another.** More than 600,000 individuals, municipalities and businesses have joined the largest group action to come before the English courts, seeking more than £36 billion in damages from BHP and Vale **(Vale defended by White & Case)** for the collapse of the Fundão dam in Brazil in 2015. Ahead of the trial (which concluded in March 2025), BHP and Vale agreed to share equally the cost of any damages awarded to the claimants in the English proceedings, and related proceedings against Vale in the Netherlands, without admitting to liability for the dam collapse.
- **The "Bille and Ogale" Group Litigation.** A large group of individuals from Nigerian communities are pursuing a group litigation against Shell plc for alleged loss and damage arising from pollution from oil spills caused by Shell's Nigerian subsidiary. After a Group Litigation Order (GLO) was granted in 2022, the High Court decided in March 2024 that the Bille claims were to be addressed first and separately from the Ogale claims at a preliminary issues trial in January – February 2025. A factual trial will now follow, to address what the parties summarised as the '3Cs': contamination, consequences and causes.
- **Professor Carolyn Roberts v Anglian Water, Severn Trent Water, United Utilities, Northumbrian Water, Thames Water and Yorkshire Water.** Six proposed opt-out class actions were brought in the Competition Appeal Tribunal (CAT) by Professor Carolyn Roberts against the largest water companies on abuse of dominance grounds, specifically alleging under-reporting of pollution to their regulator (Ofwat) and consequent over-charging of services to their customers. In March 2025, the CAT refused to certify these proposed actions, which would have essentially been the first ever UK environmental class actions in the CAT, concluding that the cases were excluded by legislation governing the water business.
- Whilst the CAT's decision to exclude the claims was based on its interpretation of the regulations governing water companies, the CAT did consider the water companies argument that these were not competition claims, and therefore not subject to the CAT's jurisdiction. Notably, the CAT concluded that the alleged conduct *could* fall within the scope of competition law, indicating the CAT's receptiveness to the use of competition law as a means of effecting environmental change. Nonetheless, the CAT's judgment is significant as only the second outright refusal to certify the claims to proceed.
- **49 institutional investors v Boohoo Group Plc.** In May 2024, a group of institutional investors filed a claim seeking £100 million from Boohoo Group Plc, for publishing ESG-related disclosures which allegedly were misleading and resulted in financial loss for the company's shareholders. The claim is brought under sections 90 and 90A of the Financial Services and Markets Act 2000, and is a first-of-its-kind ESG-focused securities dispute.

> **Increased scrutiny and awareness of the impact on the environment, shareholder activism and availability of funding is expected to lead to a continuing expansion in class actions against corporates. This can already be seen in the group action brought in relation to the collapse of the Fundão Dam, as well as the proposed opt-out actions against major water suppliers for alleged under-reporting of sewage spills, and we may see an expansion of greenwashing-based class actions in the near future.**
>
> ***Stephanie Stocker***

Technology

- **Ad Tech Collective Action LLP v Alphabet Inc. & Others.** In June 2024, the CAT granted permission for Ad Tech Collective Action LLP (on behalf of a group of website publishers which run online ads) to bring collective proceedings against Google, and its parent, Alphabet. The CAT refused an application by Google for permission to appeal. The £13.6 billion class action alleges that Google unlawfully restricts competition by favoring its own ads services.
- **Professor Barry Rodger v Alphabet Inc. & Others.** In March 2025, the CAT granted a £1 billion class action against Google on behalf of software developers alleging that Google has excluded competition in the market for app distribution, allowing it to impose prices on app developers (in the form of commission on sales made via the Play Store) that are uncompetitive, excessive, and unfair.

The technology and digital markets have been particular hotspots for collective redress, and we have seen a surge in claims in recent years. While only a few claims to date have been certified, the breadth of claims being brought before the CAT has transformed the UK class action landscape.

Charles Balmain

Sector Snapshot: Cases to watch *(continued)*

Retail/Commerce

- **Clare Mary Joan Spottiswoode CBE v Nexans France S.A.S. & Others.** These follow-on proceedings from the European Commission's finding of power cables sector cartel, allege that the defendants shared markets and allocated customers, thereby distorting the competitive process, to the detriment of consumers of electricity. The claim was certified on 3 May 2024 to proceed as a collective action (opt-out proceedings for UK residents plus opt-in proceedings for non-UK residents) and is one of the largest collective proceedings cases to have been brought in the CAT, alleging damages over a very significant period. **White & Case represent Nexans.**
- **Walter Hugh Merricks CBE v Mastercard Incorporated & others.** Opt-out proceedings before the CAT brought on behalf of consumers based on the European Commission's finding that Mastercard's EEA multilateral interchange fees (MIFs) breached Article 101(1) TFEU, allegedly seeking £10 billion of damages. The parties reached a provisional agreement to settle the collective proceedings for £200 million in December 2024 and sought an order for the CAT's approval in January 2025 (as required). That settlement sparked a public spat between the Class Representative, Mr Merricks and the funder, Innsworth which registered its objection to the settlement and its intention to contest it, highlighting the tension between the objectives of the Class Representative and their funder. Innsworth was granted permission to intervene in the collective settlement approval hearing. After a three-day hearing in February 2025, the CAT approved the provisional settlement. The judgment was handed down on 20 May 2025, which shed light on the Tribunal's approach to distribution and the funder's return on investment. Of the £200 million settlement figure, the Tribunal ringfenced half for paying out to class members. How much each class member will get depends on how many individuals sign up – which is unknown at this stage. If the expected 5% of beneficiaries come forward, each would receive £45. If the majority of the class come forward, the amount could be as low as £2.50. The amount per person is capped at £70. Of the other £100 million, c. £45.5 million is ringfenced as a minimum return to Innsworth, with Innsworth's return capped at £68 million (1.5x its investment). Innsworth had been seeking £179 million. Innsworth has said that this is not a "*reasonable division of the proceeds, or one that will do anything to encourage investors to fund other opt-out collective actions in the future*". Any unclaimed sums go to the Access to Justice Foundation. The outcome of this distribution process will no doubt lead to further debate as to whether the current collective proceedings regime adequately serves the interests of consumers relative to law firms and funders.
- **Justin Le Patourel v BT Group PLC.** New legal ground was tested in January 2024, in the first full opt-out trial before the CAT stemming from the UK's collective actions regime. BT was accused of abusing its dominant market position to overcharge around three million landline customers by £1.3 billion. It was the first case to have been brought before the CAT without the support of an enforcement decision to proceed to trial. In its December 2024 judgment, the CAT unanimously rejected Mr Le Patourel's excessive pricing claim against BT. Whilst Mr Le Patourel overcame the first hurdle of establishing that BT was dominant in the relevant market, the CAT considered that BT's prices were not so excessive as to constitute an abuse of its dominant position. The judgment underscores the case-specific considerations to determine whether excessive prices are unfair, and the relatively high bar to establishing abuse.
- **Christine Riefa Class Representative Limited v Apple Inc. & Others.** In January 2025, the CAT refused to certify a claim bought by Ms Riefa on behalf of an estimated 36 million consumers. The claim alleged that Apple and Amazon reached a secret deal in 2018 to cull independent merchants selling Apple-made goods on Amazon.com Inc. The judgment marks the first time the CAT has refused to grant a CPO based solely on the grounds of the suitability of the Proposed Class Representative (PCR). The judgment is likely to encourage proposed Defendants to test the suitability of the PCR at the certification stage, particularly for complex cases with complex funding arrangements.

The CAT has a healthy caseload of collective actions with very substantial damages being sought. The *BT* judgment and limited *Merricks* settlement may however temper the appetite of funders to invest in future class actions. At a minimum, we would expect to see greater scrutiny by funders of the prospective claims available to them to avoid failure in the case of *BT* or underwhelming returns (in the case of *Merricks)*.

Raif Hassan

Funding consequences of PACCAR

Developments in funding and costs management

- On 2 June 2025, the Civil Justice Council (CJC) published its final report of its review of litigation funding. As well as making recommendations for wider reform of litigation funding, the report advocates for legislation to reverse the effect of the Supreme Court's decision in *PACCAR*. That decision in 2023 had the effect of classifying litigation funding agreements (LFA) as damages-based agreements (DBA), meaning they were unenforceable in opt-out collective proceedings before the CAT.
- The CJC's report recommends that legislation should be introduced to make clear that litigation funding is not a form of DBA; it is a distinct form of funding from that provided by a party's legal representative. It states that this reversal should be implemented as soon as possible.
- There have been several court decisions on the validity of LFAs pending the CJC's report, including consideration of LFAs based on a multiple of the sum invested, and whether/when litigation funders are permitted take their fee before damages are distributed to the class. Now the report has been published, we await the government's response to see which of its recommendations will be implemented and when.

Costs management developments in the Pan-NOx emissions group litigation

- In the wake of the 2015 "*dieselgate*" emissions revelations, GLOs were granted and proceedings are ongoing against several car manufacturers. In July 2024, the High Court handed down its judgment on costs management, axing the legal teams' budgets by more than £250 million on the grounds that they were "out of all proportion".
- This underscores the English courts' renewed focus on ensuring that GLO structures in group actions should "*maximise efficiency*" and "*minimise potential duplication*". Furthermore, the judgment demonstrates that the courts are prepared to depart from usual limits on their authority, where appropriate, and "*will not sanction wholly unreasonable expenditure of costs*" even if already agreed between the parties.

> **A number of appeals are pending against CAT decisions that found that a funder's fee calculated by reference to a multiple of funding provided – rather than a percentage of damages recovered – would be enforceable. The outcomes of these appeals will be key in shaping the future UK collective actions funding regime.**
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> ***Lawson Caisley***

Further information:
Our disputes teams have the breadth of expertise and the resources to help guide clients on mitigating and managing the risk of collective actions, and to equip them to respond to any action effectively. We have substantial experience in collective redress mechanisms throughout the US, Asia-Pacific and EMEA, including class actions, group actions, representative actions, derivative actions and test cases, as well as collective ADR.
To read more visit our Class Actions Hub

Procedural framework for bringing multi-party claims in England

	Mechanism	Summary	Considerations
Opt-In	**Group Litigation Order ("GLO")**	GLOs enable the court to order the joint case management of multiple claims by different parties giving rise to common or related issues of fact or law.	Suitable where many people have a claim arising out of the same cause but the quantum of each individual claim is too low to be economically viable to proceed individually. Requires a large number of claimants to be commercially viable. Defining the common issues can be a lengthy and time-consuming process.
	Joint claims	Multiple claimants using a single claim form to bring their claims. Claimants will need to demonstrate to the court that all the claims can be conveniently disposed of in the same proceedings. There should not be any conflicting interests between the claimants.	There is little guidance on what "conveniently disposed of' means. The court will exercise its discretion to determine whether claims are suitable to be brought as joint claims, and will evaluate the degree of commonality between them. In so doing, the court will be mindful of the overriding objective of dealing with cases justly and at proportionate cost.

Opt-Out	**Collective Proceedings Order ("CPO")**	The proposed class representative may pursue a claim for an infringement of competition law on behalf of a class of persons, either as a "follow on" claim (i.e., a breach of competition law has already been ruled on) or a "stand alone" claim (where no such breach has already been established). The claim will be brought before the Competition Appeal Tribunal (CAT) and must be certified by the CAT before it can proceed. Proposed settlements are subject to the CAT's approval. For a claim to be certified, it must: ☐ be brought by an appropriate class representative with appropriate funding; ☐ be brought on behalf of an identifiable class of persons; ☐ raise common issues; and ☐ be "suitable" to be brought in collective proceedings.	This mechanism is only available for claims for damages arising out of breaches of competition law, although the breadth of claims being brought within it is expanding. However, claims need to be certified by the CAT before they can proceed, and certification can be withdrawn at any time before the trial of the action.
	Representative actions	An appointed representative may bring a claim on behalf of multiple parties who have the "same interest" in the claim. The appointed representative will then take decisions on how to run the claim on behalf of the class.	To satisfy the "same interest" requirement, the representative and the represented parties must have (i) a common interest, (ii) a common grievance, and (iii) a remedy beneficial to all. It is a high hurdle to satisfy and will be scrutinised carefully by the court. Even if satisfied, the court retains a discretion as to whether to allow the claim to proceed as a representative action.
Other	**Court case management**	Where different claim forms are used to commence litigation relating to the same issue(s), it is open to the court to exercise its wide case management powers and order that such claims be consolidated and managed together.	When considering consolidation, the court will consider whether it is a proportionate allocation of court resources, as well as the overriding objective. In particular, the court will consider whether consolidation would result in a quicker and more efficient resolution, e.g., avoiding wasted court time in processing and managing numerous claims separately, and consistency in avoiding different outcomes in cases involving the same issues.
	Derivative actions	While not traditionally seen as part of the "class action" framework, derivative claims may be brought either pursuant to the regime set out in the Companies Act 2006 or, in limited circumstances, under common law principles. This enables multiple shareholders in a company to—if the requirements are satisfied—bring a claim on behalf of the company, seeking relief for the company for actual/proposed alleged unlawful acts or omissions.	The hurdle to proceed with a derivative claim is high. While permission of the court is not needed to commence the claim, it is needed to continue the claim as a derivative action, with a two-stage permission process: first, the court will consider at an early stage whether the claim is appropriate to proceed (with only evidence from the applicant being considered) and if successful, there will be a second substantive hearing on notice to the defendant company, where all interested parties will be heard.

1 Opt-in class actions mean that the claim is brought on behalf of parties who actively opt-into and authorise the claim to be brought on their behalf.
2 Opt-out class actions mean parties who could recover are automatically included in the litigation, unless they affirmatively choose to opt-out.