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In-Depth: Class Actions (formerly The Class Actions Law Review) provides practitioners and clients with a guide to class and collective actions regimes worldwide, with a particular focus on key procedures and recent developments. It offers crucial insights into the law and practice in each jurisdiction, from preliminary filing considerations to settlement, costs and funding, cross-border issues and much more.

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United Kingdom - England & Wales

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Summary

Introduction

Group litigation (also known as class or collective redress actions) is, in theory, available whenever it is alleged that a wrong has caused losses to a group in a similar manner. It has been available in the English[1] courts for over a century and is an established part of modern English civil procedure, with large numbers of significant cases passing through the courts each year.[2]

The group litigation sector has undergone rapid development and expansion in recent years. One of the catalysts for this growth has been the introduction of true opt-out class actions, as lawyers from the United States would recognise them, in the context of certain competition law claims.

The Supreme Court's landmark decision in *Mastercard Incorporated and others v. Walter Hugh Merricks CBE* (*Merricks*)[3] continues to spur the development of collective actions, and 2024 represented another year of exponential growth for England's still relatively young class actions regime. Despite continued uncertainty surrounding third-party funding arrangements in the aftermath of the Supreme Court's decision in *R (on the application of PACCAR Inc and Ors) v. Competition Appeal Tribunal and Ors* (*PACCAR*),[4] and its potential ramifications for third-party funding arrangements, England continues to develop as one of the most attractive jurisdictions in which to commence group litigation.

Developments have not been limited to the competition sphere. England remains a popular choice both for cross-border mass tort claims and securities litigation, and claimant law firms and funders continue to push boundaries with novel claims, particularly in the data protection and environmental, social and governance (ESG) sphere. Class actions continue to represent a significant litigation risk for large companies, but particularly for companies that are dominant in their respective markets.

However, 2024 has also highlighted the inherent uncertainty and complexity of group litigation. In particular, in the first judgment handed down in opt-out collective proceedings, *Justin Le Patourel v. BT Group PLC (Le Patourel)*,[5] the Competition Appeal Tribunal (CAT) dismissed the claim, finding that while BT's prices were excessive, they were not unfair.

While much of the commentary on the collective proceedings regime to date has focused on the claimant-friendly certification threshold, the rigorous legal assessment and high evidentiary standard applied by the CAT in *Le Patourel* will serve as a reminder that certification does not guarantee the success of the claim. It remains to be seen what impact (if any) this will have on the appetite of funders to fund collective proceedings, particularly more speculative stand-alone claims where, unlike follow-on claims, the claimant must prove that a breach of competition law has occurred.

The regimes available for English class or group actions broadly fall into two categories: (1) the opt-in regime, where the claim is brought on behalf of only those claimants who are identified in the proceedings and authorise the claim to be brought on their behalf; and (2) the opt-out regime, where the claim is brought on behalf of all those who fall within a defined class of claimants (unless they take positive steps to opt out) and there is no need for the individual class members to be identified or to authorise the claim to be brought on their behalf.

Opt-in regime: GLOs

A group litigation order (GLO) may be sought under Section III of Part 19 of the Civil Procedure Rules (CPRs). A GLO provides for the case management of claims that give rise to common or related issues of fact or law (the GLO issues). GLOs are opt-in actions, which means that individual claimants are not included in the action unless they take positive steps to join.

At the time of writing, since the regime was introduced in May 2000, 125 GLOs have been made across a wide variety of cases, including environmental claims, product liability claims, tax disputes, claims relating to financial services, claims relating to data breaches, gross negligence claims and shareholder claims.[6] GLOs are comparatively popular among claimants, as compared with representative actions (considered further below), not least because of the simpler procedure and lower standard of commonality between class members required. Nonetheless, their number has remained relatively modest. Of the 11 GLOs ordered in 2024, two were new claims, with the other nine adding additional defendants to the ongoing *Pan NOx Emissions Litigations* (*Pan NOx*) claims.[7]

This low volume of new GLOs could be attributed to the fact that they are opt-in, potentially limiting their attractiveness to claimant law firms and litigation funders. That is not to say that the GLO space is not active; the court made various case management orders in existing GLO cases in 2024, including highlighting the importance of proportionality and efficiency in costs budgeting in group litigation.[8]

Opt-out regimes: representative actions and collective proceedings orders

There are two types of opt-out actions available in England: (1) representative actions and (2) collective proceedings orders (CPOs).

A claim may be commenced or continued by or against one or more persons as representatives of any others who have the 'same interest' in the claim.[9] The representative action proceeds on an opt-out basis as there is no need for the represented class to be joined as parties to the action or even to be identified on an individual basis; instead, they are automatically added by virtue of qualifying as a member of the represented class. However, the court's permission is needed to enforce a judgment or order by or against anyone who is not a party to the action. Although the representative action procedure can be used for any type of action (unlike the CPO procedure), the regime has historically not been widely used, in large part because of the restrictive manner in which the same-interest requirement has been interpreted by the courts.[10]

Representative actions have proven less popular since the Supreme Court's judgment in *Lloyd v. Google LLC* (*Lloyd*), in which the Supreme Court refused to allow Mr Lloyd's claim (which was brought on behalf of 4.4 million iPhone users) to proceed under CPR 19.6 (now CPR 19.8).[11] Nonetheless, the Court indicated that there was no reason to interpret the regime restrictively and suggested that representative actions should be used provided that no individualised assessment of damages is necessary. It, therefore, did not rule out bifurcated actions, in which a representative is used to establish liability before an opt-in GLO is used to address quantum of damages (which requires individualised assessment). The subsequent case of *Commission Recovery Ltd v. Marks and Clerk LLP (Marks)* in early

2024 adopted a permissive reading of *Lloyd* and indicated that such bifurcated actions would be possible.[12]

However, a series of more recent judgments relating to representative actions in 2024 and early 2025 (e.g., *Wirral Council v. Indivior plc and Anor* (*Wirral*)[13])have shown that even when claims are brought on a bifurcated basis, the threshold for claimants to show that they have the same interest remains very high. These judgments are likely to make it more difficult for claimants to bring representative actions in the future.

The other opt-out mechanism available to litigants in England is the collective proceedings regime. The regime is relatively new, having been introduced by the Consumer Rights Act 2015 (CRA), by way of amendment to Section 47B of the Competition Act 1998 (CA). The CRA established a US-style class action regime in English law for the first time, albeit only for private competition litigation.[14] Under a private competition action, a CPO is sought from the CAT, which, if granted, then determines the scope of the class that will be bound by any subsequent judgment.

Despite its limited application, the CPO regime remains of particular interest. First, since *Merricks*, a significant number of CPO claims have been issued, including 10 in 2024 alone.[15] The regime is attractive to claimant firms and litigation funders because of the low bar to certification and the lucrative potential returns owing to the very substantial losses that are often claimed. This has led to increasingly inventive claims being brought, which push the boundaries of what might traditionally be considered competition law claims.

Second, the CPO regime may be a harbinger of future broader, or sector-specific, class actions in England. Efforts have been made to introduce collective redress mechanisms in sectors beyond the competition sphere, such as proposals in the Digital Markets Competition and Consumer Bill (the DMCC Bill) to expand the collective regime to include consumer claims for data breaches. These proposals were not implemented, and there is no suggestion that the current government plans to introduce such changes imminently.

However, in light of the decisions in *Lloyd* and other more recent CPR 19.8 claims, and the restrictive impact that they appear to have had on the use of representative actions, there have been growing calls by claimant law firms, funders and consumer action groups for a generic opt-out regime akin to the CPO regime that would apply to non-competition claims. Until such a regime is introduced, claimants are likely to continue framing consumer law claims into competition causes of action.

Consolidated claims and the court's case management powers

The courts are also able to consolidate proceedings and manage claims by multiple claimants together, if it is felt that it would be convenient to do so, by using ordinary case management powers.[16] Although this inherent jurisdiction is not novel, some of the largest claims in the English courts are managed through the court's ordinary case management powers.

Year in review

The past 12 months have seen several significant developments in relation to class and group actions.

Opt-out proceedings

New claims in the past 12 months

The influx of opt-out collective claims in the CAT has shown no sign of stopping. In 2024, 10 new applications for CPOs were launched, taking the total number to 42 since the inception of the regime.[17] Of the 10 new claims, nine alleged abuse of dominance, and the majority of the claims were brought on behalf of businesses against Big Tech defendants.

The largest claim, *Which? v. Apple Inc and Others*, seeks approximately £3 billion in damages against Apple for alleged abuse of its dominant position in the digital storage market.[18] It is the fifth collective action brought against Apple entities. Similarly, Google entities are the target of a fourth collective action, *Barry Rodger v. Alphabet Inc and Others*-, which alleges that Google abused its position of dominance by charging excessive commissions to UK-based Android app developers.[19]

The year 2024 also saw two additional claims brought against Amazon entities on behalf of third-party sellers, both alleging abuse of Amazon's dominant position in the e-commerce marketplace through a variety of unfair practices (*BIRA Trading Limited v. Amazon.com Inc and Others (BIRA)*[20] and *Professor Andreas Stephan v. Amazon.com, Inc and Others* (*Stephan*)[21]). In the final Big Tech claim of 2024, *Dr Maria Luisa Stasi v. Microsoft*, the proposed class representative (PCR) alleges that Microsoft has abused its dominant position by engaging in unlawful licensing practices in the cloud computing market.[22]

Bulk Mail Claim Limited v. International Distribution Services Plc was the only pure follow-on collective action brought in 2024. The claim is based on an Ofcom decision from 2018 which found that Royal Mail had abused its dominant position by imposing discriminatory prices in the 'Bulk Mail' delivery service market.[23] While the low bar to certification in recent years has encouraged novel, stand-alone claims, the judgment in *Le Patourel* could lead to a resurgence of follow-on claims, as the fact that an infringement has already been established means they are generally lower risk for claimants.

The past year also saw the commencement of the first government-funded collective proceedings. In *Clare Mary Joan Spottiswoode CBE v. Airwave Solutions Limited and Ors (Motorola*), the PCR alleges that Motorola abused its dominant position by charging excessive and unfair prices for the provision of land mobile radio network services.[24] While this is a stand-alone claim, it is loosely based on a Competition and Markets Authority (CMA) investigation that found that the emergency services were overpaying for network services because Motorola 'held all the cards' in pricing negotiations with the Home Office; however, the claim may face challenges in the aftermath of the decision in *Le Patourel* .[25]

Key trials in collective proceedings

The year 2024 was a significant year with the first liability judgment in an opt-out collective action claim in *Le Patourel*.[26] The class representative alleged that BT had abused its dominant position by imposing unfair prices on customers supplied with certain residential

landline services. The CAT dismissed the claim, finding that although BT held a dominant position in the landline telephone market and charged excessive prices, those prices were not unfair.

Although the claim failed (and Le Patourel's subsequent appeal was dismissed), the CAT's judgment considered the parties' arguments on quantum. Defendants to excessive pricing claims will be interested to note that the CAT held that if the claim had succeeded, individual loss would have been calculated as the difference between the price charged for any given month and the relevant competitive benchmark (rather than the highest lawful price above that benchmark).

The judgment serves as a reminder that stand-alone claims, which now represent a significant proportion of the claims brought under the CPO regime, can be more difficult to bring successfully because of the need to prove a breach of competition law. Interestingly, in the *Le Patourel* judgment, the CAT did not give material weight to Ofcom's 2017 Provisional Conclusions reached in its review of the market, in which it found that BT was overcharging customers. The CAT observed that, as Ofcom was acting under its duty to protect vulnerable customers, many of its considerations were not relevant to the competition law test for abuse. Rather than relying on the findings of the regulator, the CAT preferred to use the extensive expert evidence before it to grapple with the question of abuse; however, it did note that the weight ascribed to regulatory findings would depend on the individual case (and whether the findings were provisional or final) – a point that is likely to be relevant to other stand-alone claims that seek to rely on regulatory findings.

On 13 January 2025, trial commenced in *Dr Rachael Kent v. Apple Inc and Another* (*Kent*).[27] This is the first opt-out collective action against a global technology company to reach trial in the United Kingdom. The claim alleges that Apple abused its dominant position by imposing restrictive terms and charging excessive commission fees to individual customers who use its App Store. At trial, the CAT will apply the principles set out in *Le Patourel*, considering whether the commission charged was excessive and, if so, whether it was unfair given the economic value provided by Apple. The *Kent* judgment is likely to set an important precedent for future collective consumer protection style competition claims in the digital sector, particularly for the liability trial of the claim against Google regarding its dominant position in relation to the Play Store (*Elizabeth Helen Coll v. Alphabet Inc and Others*), which is scheduled to commence in October 2025.[28]

Another notable ongoing trial is *Mark McLaren Class Representative Limited v. MOL (Europe Africa) Ltd and Others* (*McLaren*), which began on 13 January 2025.[29] Three collective settlements were approved by the CAT in the *McLaren* proceedings in 2023 and 2024, so McLaren will face just two defendant car carriers, MOL and NYK, who, according to an EU Commission decision, participated in a cartel in the market for the sea transport of vehicles.[30] This is the first substantive trial of follow-on collective proceedings.

Finally, *Justin Gutmann v. First MTR South Western Trains Limited and Another* (*Trains*)- concerns alleged overcharging by train operating companies.[31] While the CAT approved a settlement between the PCR and one of the defendants , proceedings against the remaining defendants continue. The first trial on abuse took place in the summer of 2024, with judgment pending. The second trial, concerning causation and quantification, has been stayed pending judgment and could be followed by a third trial on issues of market definition and dominance.

Funding and costs: PACCAR and subsequent regulatory developments

In 2024, the litigation funding market continued to experience uncertainty in the aftermath of the Supreme Court's landmark judgment in *PACCAR*.[32] The Supreme Court ruled that litigation funding agreements that entitle litigation funders to a return based on the amount of damages eventually recovered are damages-based agreements (DBAs). By virtue of the CRA, DBAs are not enforceable if entered into for the purpose of funding opt-out collective proceedings. Since adequate funding is a prerequisite to fulfilling the authorisation criteria for certification of collective proceedings, PCRs and funders faced an immediate procedural challenge in both claims that were yet to be filed and those already before the CAT.

Although the previous government pledged to reverse the 'damaging effects' of *PACCAR* at the first legislative opportunity,[33] legislative proposals stalled in the aftermath of the general election in 2024, and it appears unlikely that the current government will address the issue[34] until the Civil Justice Council has completed its review of litigation funding in the summer of 2025.[35] In response to *PACCAR* and ongoing uncertainty, a large number of PCRs updated their funding arrangements to remove language that provides for a funder's return calculable as a percentage of damages. The CAT first considered the implications of *PACCAR* when reviewing Sony's revised litigation funding agreement in *Alex Neill Class Representative Limited v. Sony Interactive Entertainment Europe Limited and Anor* (*Sony*).[36] It adopted a facilitative approach and held that a clause in a litigation funding agreement allowing the funders to recover 'only to the extent enforceable and permitted by applicable law, a percentage of [damages]' does not render the agreement a DBA.

In 2024, the CAT considered revised litigation funding agreements in the *Commercial and Interregional Card Claims Limited v. Mastercard Incorporated & Others (CICC*),[37] *Kent, Justin Gutmann v. Apple Inc, and Others* (*Gutmann v. Apple*)[38] and *McLaren* proceedings.[39] It found that the relevant provisions were materially similar to those in *Sony* and followed the same approach; however, it granted the defendants in *Sony, CICC, Kent* and*Gutmann v. Apple* permission to appeal its findings regarding litigation funding. These appeals will be heard in May and July 2025 and are expected to give long-awaited clarity on the issue. In the meantime, another important appeal is listed for *Gutmann v. Apple* in April 2025 to address another question raised by *PACCAR* of whether funders can be paid from a damages award before class members.

The question of carriage

A 'carriage dispute' takes place where more than one PCR brings a claim against the same defendants on broadly the same grounds. Carriage disputes have become increasingly common, and the CAT's approach to carriage disputes evolved in 2024. Previously, the CAT decided the issue of carriage at the same time as certification in 'rolled-up' hearings;[40] however, the CAT has since pivoted away from bundling the question of carriage with certification, instead determining carriage disputes as preliminary issues in advance of certification to save time and money.[41]

The same approach was followed in *Robert Hammond v. Amazon.com, Inc and Others* (*Hammond*). Consumer advocates Julie Hunter and Robert Hammond brought separate claims against Amazon,[42] alleging that Amazon's 'Buy Box' online shopping function

amounted to an abuse of its market power. The CAT handed down its judgment on carriage on 5 February 2024, choosing Hammond's claim to proceed to the next stage over Hunter's.[43] The CAT's preference for Hammond stemmed from its preference for the approach to expert methodology.

The latest carriage dispute, which concerned a claim against Amazon – *BIRA* and *Stephan* – was heard in November 2024.[44] The CAT found in favour of Professor Stephan's claim. The first determinative factor was the broader scope of Professor Stephan's claim, which the CAT felt was more consistent with the regulatory findings and 'the goals of access to justice by capturing more viable claims'.[45] The second was the superior quality of his expert methodology. The CAT also noted that the fact that the expert in *Stephan* took a similar approach to that in *Hammond* was a factor in favour of Professor Stephan's claim, as it was desirable for these proceedings to be heard together. *Stephan* and *Hammond* will proceed to a joint certification hearing in May 2025.

Clarification on certification standard

In 2024, the CAT continued to focus on the arguability and triability of the proposed expert methodology for the purposes of assessing the suitability of proposed claims and adhered to the low threshold for certification established in previous years.[46] At the same time, it has also demonstrated that it will not 'rubber stamp' collective claims and has continued to exercise its 'gatekeeping role over the pursuit of collective proceedings' (as proposed by Lord Briggs in *Merricks*),[47] reviewing the methodologies put forward by PCRs in detail and requiring them to revise the formulation of their claims where necessary

In 2024, two revised CPO applications were certified.[48] In *CICC*, a CPO was granted after the PCR had the opportunity to submit revised proposals.[49] On appeal in March 2024, the Court of Appeal upheld the CPO, stating that it would be reluctant to interfere with the CAT's broad discretion and rejecting the defendants' arguments that the size and sophistication of the proposed business class members made their claims unsuitable for collective action. In*Clare Mary Joan Spottiswoode CBE v. Nexans France SAS & Others*- , the CAT certified the claim despite its doubts about the PCR's distribution methodology (although it required a new distribution proposal to be produced within three months).[50] Overall, these cases demonstrate the CAT's willingness to give PCRs a second chance to formulate their proposals.

However, in January 2025 the CAT refused to grant a CPO in *Christine Riefa Class Representative Limited v. Apple Inc & Others* (*Riefa*)[51] on the basis that the authorisation condition was not met. It concluded that the PCR could not independently represent the interests of the proposed class as she was overly reliant on her solicitors. It also had significant concerns about the litigation funding agreement, the terms of which the PCR had agreed to keep confidential from class members (including a term that imposed an unqualified obligation on the PCR to seek payment to the funders and solicitors out of any damages award, in priority to any payment to the class members). In addition, the CAT was concerned that the PCR did not appear to understand the provisions of the funding arrangement and 'would not want to take a position contrary that of her funder'.[52] This is the first time the CAT has refused certification and not offered the PCR the opportunity to revise their claim. It did, however, note that the eligibility condition was likely met, opening the possibility for the claim to be revived by a more suitable class representative.

The year 2024 also saw the first certification hearing of an ESG-related collective action, *Professor Carolyn Roberts v. United Utilities Water Limited and Another* (*Roberts-*), which was brought against six water and sewerage companies. It is alleged that their respective household customers were overcharged on their water bills as a result of the water companies under-reporting the number of pollution incidents that occurred on their wastewater treatment networks.[53] The defendants brought jurisdictional arguments challenging certification.[54] The CPO judgment is expected in early 2025.

Another significant certification judgment expected in 2025 is the Supreme Court's decision on the appeal of the CPO in *Michael O'Higgins FX Class Representative Ltd v. Barclays Banks PLC and* Ors[55] and *Phillip Evans v. Barclays Bank Plc and Others*.[56] The opt-out follow-on damages claims arose out of the European Commission's decisions adopted on 16 May 2019, which found that six banks had engaged in anticompetitive conduct in the spot foreign exchange market. The Supreme Court will consider the factors that the CAT should take into account when deciding whether to certify proceedings on an opt-in or opt-out basis (including, in particular, strength and practicability), and the admissibility of regulatory decisions against non-defendants. The decision on these issues could be instrumental in shaping the future development of the United Kingdom's collective action regime.

Settlement of collective proceedings: CSAO

Before 2024, only one collective settlement approval order (CSAO) application had been heard and approved by the CAT, in the *McLaren* proceedings.[57] In 2024, the CAT approved three further settlements.[58] Although to date the CAT has approved all proposed settlements, its approach has been more interventionist than expected.

The *Trains* CSAO, granted in May 2024, was the first collective settlement of substantial value ('up to' £25 million).[59] The settlement was granted on an up-to basis, allowing Stagecoach to retain any unclaimed damages. The *Trains* settlement also marked the first time that the CAT has approved a settlement distribution plan. The CAT noted that the distribution plan should be designed to encourage claims and should not discriminate against class members who are unable to evidence their eligibility. This indicates that the CAT will scrutinise proposed settlements thoroughly to ensure that the class members' best interests are protected, because there is an inherent conflict of interest between class members and claimant firms and funderswhen it comes to distribution, as the lower the uptake, the higher the sum remaining for them.

The role of litigation funders in collective settlements is a live issue that has been considered most recently in *Merricks*, the UK's largest collective action claim.[60] In December 2024, the parties reached an agreement to settle the case for £200 million, a small fraction of the £14 billion originally sought by the PCR. The funder did not consent to this settlement, asserting that the settlement amount was 'too low'. It has also commenced arbitration proceedings against Merricks (whom Mastercard has agreed to support financially in the arbitration). On 21 February 2025, the settlement application was approved by the CAT, and the funder's challenge was rejected (although, at the time of writing, the final distribution proportions are yet to be decided).[61] Although the approval of the settlement marks a significant milestone, it will be interesting to see the effect that this disagreement has on the relationship between other claimants and their funders,

as well as the broader impact on the perceived effectiveness of the regime in achieving compensation for consumers.

ESG litigation

The past few years have seen a substantial rise in the number of legal claims brought in relation to ESG issues. This rise has been fuelled by intensifying regulation and increased public attention regarding such issues. The targets of these claims are also shifting to include corporations, rather than just governments, and for more than simply environmental claims. A growing trend is consumers basing their claims on consumer protection regulations and regulatory standards, as well as greenwashing claims, resulting in developments towards ESG mass actions.

Perhaps the most notable ongoing ESG case is *Município de Mariana and Ors v. BHP Group plc and Anor* (*BHP*), a case that will have significant implications on whether UK-domiciled parent companies can resist claims brought against them for the activities of their foreign subsidiaries.[62] The proceedings were brought against BHP Group (UK) Ltd and BHP Group Limited, respectively English and Australian companies that sat at the head of the BHP Group, over the Samarco dam failure. The dam was owned and operated by a Brazilian-incorporated joint venture between Vale SA and a Brazilian subsidiary of BHP Group (UK) Ltd. The action for claims with an estimated value of £36 billion was initially brought on behalf of over 200,000 claimants but was amended in 2023 to add several hundred thousand more claimants, with the number of claimants now standing at approximately 620,000,[63] making it one of the largest claims in English legal history.

Following a series of jurisdictional challenges, on 8 July 2022 the Court of Appeal allowed the claimants' appeals and allowed the claims to proceed in this jurisdiction (while making no findings on the defendants' liability). The claim proceeded to a first-stage liability trial in October 2024, and judgment is expected later in 2025.

The year 2024 also saw the Court of Appeal hand down its judgment in *Limbu v. Dyson Technology Ltd* (*Limbu v. Dyson*).[64] At the first instance, the High Court held that England was not the appropriate forum for the claims brought by migrant workers against companies domiciled in England and Malaysia relating to alleged forced labour at Malaysian factories run by a supplier to the defendant. The Court of Appeal unanimously allowed the appeal and found that England was the appropriate place for the case to be tried for a number of reasons, such as the practical convenience of bringing the claims in England and the financial difficulties the claimants would face in bringing the claims in Malaysia. As in *BHP*, this case demonstrates that the courts are reluctant to turn away large ESG claims on jurisdictional grounds. Barring any further appeal, it will continue in the English courts. While we have seen claimants hold companies responsible for the actions of their subsidiaries, this is one of the first claims to test whether they can be held liable for the actions of their overseas suppliers.

In 2024, the Court of Appeal also gave the green light for a full trial of Nigerian communities' oil pollution claims against Shell, in *Alame & Ors v. Shell PLC & Anor* (*Shell*).[65]The defendants argued that the claimants' case on causation was not properly particularised and that they should plead on a global 'all- or- nothing' basis. This would require showing that loss was caused by multiple incidents, for which the defendant was responsible, and would mean that causation would not be established if there were other factors that

made a material contribution to the damage. The claimants argued that they wished to prove causation in the conventional way, as proceeding on a global all- or- nothing basis would require them to link Shell's Nigerian subsidiary to every incident of chronic pollution in the area. Unlike the High Court, the Court of Appeal found for the claimants, holding that litigants are free to decide how they want to prove a claim. It also overturned the High Court's decision to refuse to make an order for further disclosure requested by the claimants, emphasising that it is the role of the court to ensure that parties are on equal footing and to allow group litigation to proceed efficiently by way of lead claimants. This claimant-friendly decision is likely to have significant implications for similar ESG class actions.

Representative actions

In January 2024, judgment was handed down in *Marks*.[66] The Court of Appeal refused to strike out the representative action on the basis that some issues would need to be determined on an individual basis. It held that it would be possible for the claim to proceed on a bifurcated basis as contemplated in *Lloyd v. Google*, with common issues dealt with on a representative basis, and any remaining individual issues determined at a subsequent stage.

However, questions regarding the viability of bringing claims on a bifurcated basis were left unanswered: the Court of Appeal acknowledged that it was not clear how claimant law firms and funders would be paid, given that a finding on common issues would be unlikely to result in an award of damages. The Supreme Court dismissed the defendants' appeal in *Marks* in April 2024, but a settlement was agreed in November 2024, which meant that the claims were not progressed on a bifurcated basis and the questions remained unanswered.

A series of judgments later in 2024 and early 2025 have indicated that the threshold for claimants to show that they have the same interest remains a high one, and that bifurcation is not necessarily a solution in cases with individualised elements. In *Andrew Prismall v. Google UK Limited and Others* (*Prismall*),[67] the Court of Appeal made it clear that data protection claims in the tort of misuse of private information are likely to be too individualised to suit representative actions. Similarly, in *Wirral*,[68] the courts emphasised that representative actions are unlikely to be appropriate for securities actions, where the case for individual investors is likely to be different.

In *Smyth v. British Airways Plc* (*Smyth*), the High Court held that representative claims require common issues of which resolution would benefit the entire class equally and that the same-interest test had to be met at the time of the application.[69] It also noted that it will exercise its discretion and examine the motivation for bringing a claim even where the test under CPR 19.8 is met, showing that it is prepared to strike out cases that disproportionately compensate funders over class members and where there are easily accessible alternatives for members to receive compensation without such deductions.

In January 2025, the High Court disallowed a representative action in the case of *Getty Images (US) Inc and others v. Stability AI Ltd*.[70] It considered the proposed class definition problematic as it depended on the determination of infringement, which would require a case-by-case assessment at trial.[71] It also found that the sixth claimant did not have the

same interest in those claims as other class members. As with *Prismall*, *Wirral* and *Smyth*, this case reinforces the difficulties of bringing representative actions.

Securities actions

Section 90A of the Financial Services and Markets Act 2000 (FSMA) (and its successor, Schedule 10A of the FSMA) is the statutory regime imposing civil liability for inaccurate statements in information disclosed by listed issuers to the market. It imposes liability on the issuers of securities for misleading statements or omissions in certain publications but only in circumstances where a person discharging managerial responsibilities at the issuer knew that, or was reckless as to whether, the statement was untrue or misleading, or knew the omission to be a dishonest concealment of a material fact (the subjective test). The claimant must also satisfy the objective test, the criteria being that the relevant information must be 'untrue or misleading', and the objective meaning of the disputed statement is 'the meaning which would be ascribed to it by the intended readership, having regard to the circumstances at that time'.[72]

Another key requirement to establish liability under Schedule 10A of the FSMA is to show reliance on the company's statements. The High Court's November 2024 decision to strike out the claims of 241 claimants in *Allianz Funds Multi-Strategy Trust & Others v. Barclays Plc* (*Barclays*) serves as a reminder of the difficulty that passive investors face in proving that they relied on company statements when making investment decisions.[73] The Court found that 'the test for reliance as it applies to express representations . . . requires the claimant to prove that they read or heard the representation'.[74] Given that the vast majority of securities claims include passive investors, it is likely that this decision will trigger further strike out applications in other cases (as has already been the case in *Various Claimants v. Standard Chartered plc* (*Standard Chartered*)).[75]

In *Wirral,* an attempt was made to bring a bifurcated shareholder claim in the form of a representative action under Sections 90 and 90A of the FSMA, seeking a representative finding on liability, with individual issues to be heard separately.[76] Wirral Council argued that this would allow the represented claimants to obtain the benefit of the first-stage finding without having to expend time and money pleading their cases.

However, the claim was struck out. Although the High Court acknowledged that Lord Leggatt had advocated for more flexible use of representative actions in*Lloyd v. Google,* it rejected the proposal for a bifurcated trial and held that the claims should proceed as multi-party proceedings (which were already underway), as this would be 'in accordance with the overriding objective' and would help facilitate settlement. The High Court's decision stated that claimants needed to be engaged in litigation throughout, with claimant-specific issues considered at every stage, suggesting that representative actions will rarely be considered appropriate for securities actions, which will almost always give rise to many individual issues. Wirral Council's appeal was denied by the Court of Appeal in January 2025, which is likely to have a negative impact on similar representative claims against listed companies.[77]

The Commercial Court's landmark decision in *Aabar Holdings SARL v. Glencore Plc & Others* (*Glencore*)may further dampen enthusiasm for securities actions.[78] The Court found that companies can claim privilege against their shareholders, a decision which will be welcomed by companies defending securities claims. The judge found that there was

no legal basis for the 'shareholder rule' that gave shareholders wide access to company documents after *Salomon v. Salomon* established that companies had separate legal personality in 1897.[79] A leapfrog application for permission to appeal directly to the Supreme Court was rejected: it is expected an application will be made to the Court of Appeal.

The long-anticipated boom in shareholder actions is yet to arrive and may be further delayed following the decisions in *Barclays, Wirral* and *Glencore*. As the *Barclays* claim went on to settle, it may not be until 2026 that further direction is provided from the courts on the future of the regime.

ESG-related claims may also develop in the sphere of shareholder litigation. One notable example from 2024 is the case of *California State Teachers' Retirement System & Ors v. Boohoo Group PLC*,[80] in which a group of institutional investors are claiming that Boohoo's alleged failure to disclose information relating to the daily wages paid to workers at supplier factories in Leicester caused a significant decline in Boohoo's share price (and losses to investors) when the information became publicly available. Given the rise of litigation funding, shareholder activism and ESG-related disclosure requirements, it is expected that securities actions will increasingly be used for ESG-related claims.

Finally, the new UK Listing Rules came into force on 29 July 2024. Under the new rules, the scope of information required to be disclosed about companies is reduced, and the requirement for shareholder votes is removed for Class 1 transactions. This will heighten the importance of disclosures that are made by issuers, which will be more closely scrutinised by investors. The potential for common law claims against directors (e.g., for breach of duty or negligence) is reduced by the shift away from a rules-based regime. This shift may generate impetus for shareholder actions brought under Sections 90 and 90A of the FSMA (either on the basis that misleading material was disclosed, or that material information was not disclosed), but the full impact of the new rules on such actions remains to be seen.

Data and technology claims

In *Prismall*,[81] the claimant sought to bring a representative action on behalf of approximately 1.6 million individuals, alleging that the transfer of patients' medical records to DeepMind, a Google group company, without specific patient consent, was a misuse of private information. Google applied for strike out, and, in the alternative, summary judgment, arguing that the claimant could not show that members of the class had the same interest since their interests were varied (and some members of the class had no viable claim). Google was successful and the claim was struck out.

In December 2024, the Court of Appeal upheld the High Court's decision, stating that 'a representative class claim for misuse of private information is always going to be very difficult to bring' as the wide range of circumstances that affects whether there is a reasonable expectation of privacy makes it difficult to establish a common threshold in satisfaction of the same-interest test.[82]

Prismall confirms the principle in *Lloyd v. Google,* that where a claim involves individualised elements for each individual claimant, it is very difficult to pass the same-interest test. As data protection claims nearly always require an individualised assessment of harm,

they are very unlikely to succeed as representative claims unless they are brought on a bifurcated basis. *Wirral* has cast doubt on the prospects of using bifurcation in this way.

However, the blow to data privacy representative actions in *Lloyd* and *Prismall* has not stopped the boom of claims against big technology companies under the collective opt-out proceedings regime in the CAT, with what are in effect consumer protection actions framed as allegations of anticompetitive conduct. It is likely that we will continue to see an increasing number of novel data and technology claims commenced in the CAT in 2025, making use of the claimant-friendly approach to certification.

Artificial intelligence (AI) litigation, for example, is an increasing risk for businesses that develop and use AI. With greater regulatory focus on issues such as 'AI washing', there is a possibility of more collective claims based on regulatory findings in this area. It is easy to see how group claims could arise in the AI sphere; given the speed at which AI systems operate, errors could affect large numbers of individuals before they are even noticed. Even if individual losses are minimal, aggregated damages across such a large group could be substantial.

Finally, 2024 saw the Digital Markets Competition and Consumer Act (the DMCC Act) receive royal assent. The DMCC Bill was introduced to regulate competition in the digital industry. The Act enables the CMA to intervene and maintain competition in the digital market by imposing individualised conduct requirements on the large technology companies that are designated as having 'strategic market status' (SMS).

With the enactment of the DMCC Act, there is likely to be more enforcement action and a corresponding increase in information publicised about the practices of SMS companies, which could provide the basis of individual or collective claims. Significantly, the Act provides that SMS firms owe a duty to any person who may be affected by a breach of a 'relevant requirement', meaning that claimants would only need to prove breach, loss and damage to bring a successful claim. Even non-SMS firms face an increased risk, as claimants could argue that the fact that certain conduct is banned for SMS firms supports an argument that such conduct is abusive.

GLOs

In *Hamon v. University College London* (*Hamon*), the High Court refused a GLO for claims brought on behalf of university students, who alleged that University College London breached its contractual obligation to provide tuition during strike action and the covid-19 period.[83] Although the Court was satisfied that the case gave rise to common issues and so met the GLO threshold, it considered that a GLO would 'not be appropriate' as the litigation was 'best resolved by the creative use of the court's existing case management powers'.[84] In particular, it noted that 'technological and computing developments have revolutionised the way in which lawyers and judges work and manage cases'[85] and that, in this case, making a GLO would be more administratively burdensome than allowing the case to be managed in the usual way. This decision raises questions regarding when GLOs will be considered an appropriate case management mechanism, making it more difficult for parties seeking GLOs to justify their use.

One factor that would be in favour of making a GLO is where (as in *Pan NOx*) there is more than one claimant law firm acting. Where only one claimant law firm is acting (or two law firms acting jointly and pooling resources, as in *Hamon*), and in the absence of any

other compelling requirement for a GLO, the courts will often not order a GLO, preferring to manage the claimant cohort using its usual case management powers.

Procedure

Types of action available

The regimes available for English class or group actions broadly fall into two categories: opt-in procedures and opt-out procedures.

Commencing proceedings

Representative actions

Representative actions can be used for any type of claim, and there are no requirements pertaining to the number of representees. Under CPR 19.8, the principal requirements for a representative action are that (1) the representative is a party to the proceedings and (2) the representative and the represented parties all have the same interest in the claim. The representee need not authorise the representative to act on their behalf, as long as the same-interest requirement is met.[86]

This means that the class must have a common interest and seek relief that will benefit the entire class. It does not matter if the class fluctuates, as long as it is always possible to determine who falls within the class.[87]

If a court orders that a representative action may proceed, the court's judgment will bind everyone the representative party purports to represent. However, it may only be forced by or against a non-party with the court's permission.[88]

There have been a number of representative actions in recent years (e.g., *Lloyd*, *Jalla and Anor v. Shell International Trading and Anor*[89] and, more recently, *Prismall* and *Wirral*) that have shown that the bar for claimants to show that they have the same interest in a claim remains high and that the suitability of representative actions is very fact-specific.

GLOs

GLOs are an opt-in mechanism that require an individual to have brought their own claim first to be entered in the group register.[90] Like other forms of collective action, the GLO procedure is based on the notion that where there are similar facts and issues to be resolved, it is more efficient to deal with these collectively. Given the costs inherent in litigation, these efficiencies have enabled claimants to recover losses through claims that they would not have been able to bring individually.

It is important to distinguish between instances where the determination of a single issue is common to all the claims, and instances where a defendant is liable to numerous claimants, but questions of liability and quantum are individualised. Where there are

no generic issues, 'nor generic issues of such materiality as to save costs in their determination',[91] a GLO will not be granted, and the individual must litigate separately.

Court consent is required for a GLO, which may be obtained if the claimant can show that there are 'common or related issues of fact or law'.[92] Nonetheless, the court has discretion in granting the order.[93] There is no guidance on how this discretion is to be exercised,[94] although the overriding objective is applicable.[95]

This was illustrated in the High Court judgment in *Lungowe v. Vedanta Resources Plc and Ors* (*Vedanta*).[96] The first defendant sought a GLO in respect of three separate sets of proceedings, two represented by one firm and the third by another. The two claimant firms submitted that, if a GLO were made, the High Court should keep the two 'strands' separate. The judge, however, noted that the claims shared common facts and issues and were therefore ideally suited to a GLO. He observed that claimants' submissions were focused on the commercial advantages of keeping the proceedings separate. This was contrary to the ethos of group litigation and the parties' express duty to assist the court in line with the overriding objective.

Broadly speaking, the requirements for a GLO are not difficult to meet.[97] The standard of commonality is lower, for example, than it is for representative actions in the High Court. Furthermore, in recent years, the courts have been increasingly willing to make creative use of their general case management powers to manage multiple overlapping claims.

There are no special requirements for a GLO application,[98] although the applicant should consider the preliminary steps[99] and ensure that their application defines the 'GLO issues' carefully.[100] This is important because judgments made in relation to the GLO issues will bind the parties on the claim's group register, unless the court orders otherwise – a power that it will rarely use.[101] The court may also give directions on the extent to which that judgment is binding on parties that are subsequently added to the group register.[102]

Generally, parties to litigation are entitled to be represented by solicitors of their choice. In GLO proceedings, however, the lead solicitor applies for the GLO and acts as a point of contact between the court and the parties. Claimants are only entitled to instruct one counsel team. Once a GLO is granted, a deadline is set for claimants to be added to the group register.

While there have been some notable GLOs granted, for example, the mass data breach claim against Morrisons and the unsuccessful claim brought by 5,800 shareholders against Lloyds Banking Group and its former directors concerning alleged breaches of duty in acquiring HBOS plc in 2008, it is notable that since the introduction of the GLO procedure in 2000, only 125 GLOs have been handed down.[103] Whether the increased availability of funding for these types of claims will lead to an increase in GLO applications remains to be seen.

Joint case management

The courts are able to use ordinary case management powers under the CPRs to manage claims brought by multiple claimants. The courts can consolidate or jointly try claims.[104] These powers afford judges significant control and flexibility over the management of claims, and the decision to use this mechanism in *BHP* indicates that this flexibility can also be attractive to claimants.

The experience of the English courts in managing multiple claims is another attraction: claimants have pointed to the resources and expertise of the English courts in managing large claims as reasons for litigating in England. The readiness of the courts to use these powers to manage large cases indicates growing judicial enthusiasm for facilitating class actions and ensuring the efficient progress of such cases.

The CAT has taken a creative and flexible approach to case management, for example, in the granting of umbrella proceedings orders. It can order that issues arising in one set of proceedings may be determined together with the same or similar issues, matters or features arising in other, unrelated proceedings.[105] These 'ubiquitous matters' can then be dealt with together in 'umbrella proceedings'. The cases carry on separately towards trial in relation to issues that are not ubiquitous or are not included in the umbrella proceedings. By managing cases arising from the same or similar fact patterns, often at different levels of the supply chain, jointly, the CAT mitigates the risk of inconsistent judgments and approaches.

CPOs

The most significant change to the English class action regime in the past decade resulted from the CRA, which came into effect in full in October 2015. Schedule 8 introduced changes to the competition law class actions regime under Section 47A of the CA.

Collective proceedings are proceedings that are brought by multiple claimants or by a specified body on behalf of claimants sharing certain characteristics (i.e., a class action as ordinarily understood). While collective proceedings are limited solely to competition actions before the CAT, the regime is notable for two reasons. First, it is currently the only true opt-out class action regime in England. Second, it is a possible indicator of further future expansion of the English class action regime.

There are three sources that set out the procedure for obtaining a CPO: CRA Schedule 8, the Competition Appeal Tribunal Rules 2015 (the CAT Rules) and the CAT Guide to Proceedings 2015. Notwithstanding the fact that CPOs were introduced under the CRA, both individuals and businesses can apply for a CPO. The reforms also widened the types of claims that the CAT could hear. The CAT had previously been restricted to hearing follow-on claims: under the new regime, collective proceedings can be brought on either a follow-on or stand-alone basis. Follow-on claims are based on a decision by the CMA, the European Commission or another regulatory authority that competition law has been breached. As breach has already been established, the claimants need only prove causation and loss. In contrast, in a stand-alone claim, the claimant must prove all the elements of a claim.

Proposed collective proceedings must be certified by the CAT to proceed to trial. This mechanism is intended to remove frivolous or unmeritorious claims and enable the CAT to determine the class definition and whether the proceedings should continue on an opt-in or opt-out basis. Section 47B of the CA and Rule 79 of the CAT Rules detail the requirements that must be met for the CAT to make a CPO. The CAT must determine that it is just and reasonable for the PCR to act as the class representative (the authorisation condition), and the claims must be eligible for inclusion in collective proceedings (the eligibility condition).[106]

If a claim is certified on an opt-out basis, all UK-domiciled members falling within the class definition will automatically become part of the action unless they opt out before the end of the designated period. Non-UK-domiciled claimants will have to opt in before the end of the specified period.

Procedural rules

Management

Given the differing group and class action procedures that can be used under English law, the process of determining the class differs between them too. In a representative action, the court can order that an individual is, or is not, a representative of a particular person. While the representee need not authorise the representative to bring an action (or even be aware that it is being brought), a representative claimant cannot assume an unfettered right to control the litigation, because any party to the proceeding can apply for such an order. For a GLO, the court may give directions stipulating a deadline after which further claims cannot be added to the group register without the court's permission;[107] however, failure to meet the deadline does not necessarily mean that the claim cannot be added to the group.[108]

In contrast, under the collective proceedings regime, the CAT has a broad discretion to determine how a CPO is to be conducted.[109] In considering the suitability of a claim to be brought collectively, the CAT may limit the CPO to just some of the issues to which the claim relates.[110] If a CPO is granted, it must describe the class and any subclasses along with the provisions for opting in and out of the proceedings.[111] The CAT may also vary the order, including by altering the description or identification of class members, at any time on its own initiative or following an application by the class representative, defendant or any represented person.[112]

The Court of Appeal has confirmed the CAT's broad case management powers, noting that it will be reluctant to interfere and overturn the CAT's decisions given its highly specialised experience managing complex multiparty litigation.[113] Following certification, the CAT can consolidate claims by ordering that they be jointly managed or ordering that evidence heard in one set of proceedings should stand in another, and vice versa.[114]

Process

Given the breadth of the class action mechanisms in England, generalities regarding the process of these actions are difficult to discern. For example, in some claims, liability and quantum may be split and heard at separate trials, whereas in follow-on claims, breach need not even be assessed.

Similarly, it is difficult to draw any general conclusions about the speed at which class actions progress in the United Kingdom. As the collective proceedings regime in the CAT is still fairly new, and only a few cases have reached trial, it is difficult at present to draw any firm conclusions on the rate at which cases will progress.[115] Nonetheless, the fact that *Le Patourel* was rushed through and certified in less than a year suggests that the CAT wants to ensure that claims are progressed efficiently.

The timings for GLOs and representative actions depend on the context of the particular claim. As GLOs have often been used for notable complex securities claims, some of which have seen significant settlements,[116] they may not provide a good benchmark from which to assess the speed and efficiency of the GLO mechanism.

Disclosure

Disclosure in group litigation is often logistically challenging because the number of parties and contested issues results in a large number of potentially disclosable documents. The significant amount of time required for disclosure is one of the reasons why a trial of GLO issues may take place a considerable time after the GLO order is made.-[117]

Furthermore, the disclosure provisions vary between the different class or group action regimes. For example, in representative claims, because the representees are not parties to the claim, they are not subject to the ordinary disclosure standards; instead, they must meet only the requirements that a non-party is held to. In contrast, in collective proceedings, the CAT has broad case management powers and can therefore order any person to disclose documents that are likely to support the case of the applicant, or adversely affect another parties' case, irrespective of whether they are a party to the proceeding, as long as it is necessary to save costs or dispose of the claim fairly.[118]

Nevertheless, the CAT's refusal to order the disclosure of known adverse documents in *Elizabeth Helen Coll v. Alphabet Inc & Ors* shows that claimants seeking broad disclosure to assist them in the preparation of their expert methodologies will still face difficulties.[119] Claimants should endeavour to ensure that proposed disclosure orders are not drafted too widely, although this may be challenging given the information asymmetries present in such cases.

Damages and costs

Costs

The general rules on costs are detailed at CPR 44 and provide discretion on the award, amount and timing of payment for costs. Given that the unsuccessful party will ordinarily be ordered to pay the other side's costs, class actions that are without merit have traditionally been restrained, particularly in light of the significant costs inherent in large and complex class actions.

However, parties should be mindful of the fact that the judiciary has shown willingness to depart from the typical 'loser pays' costs order.[120] For example, in *BritNed Development Ltd v. ABB AB*, the High Court ordered both parties to pay their own multimillion-pound costs, in light of the fact that the claimant was awarded damages significantly lower than those claimed.[121] Although the case was not brought as a group claim or class action, it demonstrates the willingness of the English courts to exercise their discretion and limit the extent of recoverable costs. In *Greenwood and Ors v. Goodwin and Others*,[122] it was held that the rules in CPR 46.6 are just the starting point, and the courts have a wide discretion to determine costs.

In the context of group claims, which are often funded by third-parties, the likelihood of recovering costs can be a key factor in deciding whether to pursue a claim. The potential for a winning party to be barred from recovering their costs may deter litigation funders and claimant firms who would normally be interested in pursuing large-scale class actions. However, the courts have also made clear that there must be cogent grounds to justify departure from the general rule.

In 2024, the High Court set out important guidance on cost management in multiparty litigation in the *Pan NOx* proceedings, which involves 13 GLOs under collective case management.[123] The Court emphasised that it was prepared to significantly reduce costs that it considered unreasonable and disproportionate, noting that a large number of claimants does not automatically justify very high estimated costs. In the *Pan NOx* costs judgment, the Court reduced the claimants' total estimated costs by almost 75 per cent. It also took an unconventional approach and asked the parties to authorise it to overturn the parties' previously agreed budgets, which it considered necessary given the circumstances and scale of this particular litigation.

The need to split costs between class members creates an additional complication. For representative actions, as the represented individuals are not parties to the action, they are not individually liable for costs. The court may nevertheless accept an application for costs to be paid by the representees.[124] The general costs position where the court has made a GLO is set out at CPR 46.6 and distinguishes between common and individual costs. The default position is that group litigants are severally, and not jointly, liable for an equal proportion of the common costs.[125] This is irrespective of when the claimants joined the group register, meaning that claimants' cost burden is equal regardless of when they joined the litigation: this is considered to be an important feature of GLO claims.

In *Re RBS (Rights Issue Litigation) In Claims Entered in the Group Register*, however, the court decided at a case management conference in December 2013 that adverse costs should be shared on a several basis in proportion to the size of the individual's subscription cost in the rights issue relative to the total subscription cost for all the claimants on the group register.[126] More recently, following the dismissal of a shareholder claim against Lloyds, the High Court ruled that the claimants' third-party litigation funder was jointly and severally liable for the defendants' costs, rejecting the funder's submission that it should be liable only to the extent that the claimants did not satisfy the adverse costs order.[127] The funder's submission that its liability should be limited to the extent of funding it had actually provided (in accordance with the '*Arkin* cap') was also rejected. The Court noted the recent Court of Appeal judgment in *Chapelgate Credit Opportunity Master Fund Ltd v. Money and Ors*, which had clarified that the *Arkin* cap is intended as guidance for judges, rather than as a binding rule.[128] Potential costs continue to be an important factor in determining whether and how a class action is brought and claimants should not assume that they are litigating risk-free, even when they are backed by third-party litigation funders and have after-the-event insurance in place.

In terms of certification costs under the competition collective action regime, in the *Trains* proceedings, the CAT held that the PCR was entitled to recover the costs he had incurred fighting the defendants' opposition to his certification application, except for deductions for costs that had been incurred in any event and additional issues that justified deductions (such as re-pleading following *Merricks* and amendments to the class definition).[129] In *Road Haulage Association Ltd v. Man SE and Others*, the CAT also discounted costs at

the certification stage 'to reflect significant or material issues on which the respondents succeeded'.[130]

Damages

One of the notable differences between civil actions in England and other jurisdictions, particularly the United States, is that there are no jury trials in English civil actions. This difference becomes apparent with quantum as English class action damages are typically much lower than in the United States.

With regard to damages for representative actions, the historical position was that the same-interest requirement excluded damages from being recoverable for the class;[131] however, there has been an incremental liberalisation such that it is established that damages can be claimed in a representative action.[132] The damages awarded in GLO proceedings or representative actions are dependent on the type of claim that is brought. Under English law, damages are generally compensatory.[133]

The provisions for damages in collective proceedings claims are more detailed. Damages are ordinarily compensatory; exemplary (i.e., punitive) damages have been excluded by statute.[134] Punitive damages may still be sought in relation to a competition law breach; however, the individual would need to opt out from the collective proceedings and bring an individual claim.

The CAT calculates damages on an aggregate basis for the class or subclass and does not undertake an assessment on the amount of damages recoverable by each represented person. Rules 92 and 93 of the CAT Rules stipulate that the CAT may give directions for how damages are to be assessed and distributed. Damages are ordinarily paid to the class representative for distribution,[135] and the CAT may order that unclaimed damages are paid to the representative 'in respect of all or part of the costs or expenses incurred by the representative in connection with the proceedings'.[136] Any remaining undistributed damages are to be paid to charity.[137]

The CPO applications that have been brought thus far indicate that significant damages may be sought through the collective proceedings regime. The estimated average claim value in the CAT is around £3.2 billion. The high sums at stake will likely provide a useful bargaining tool for claimants seeking to settle their claims instead of pursuing protracted litigation.

Settlement

As in other jurisdictions, the high costs and lengthy timelines involved in group litigation often provide a significant and mutual impetus for claimants and defendants to settle class actions out of court. In some instances, where the cause of action has not been frequently litigated, the absence of a clear precedent may encourage the parties to settle to avoid uncertainty. In follow-on actions, because the breach will have already been determined, the dispute is likely to focus on the issues of causation and quantum. Given that the determination of causation and quantum can still be a complex and expensive process, defendants may consider it more economical to settle out of court.

The CA contains provisions for the settlement of collective proceedings.[138] Once a CPO has been made on an opt-out basis, claims may be settled only by way of a collective settlement approved by the CAT. The CAT may approve the settlement only where it deems the terms to be 'just and reasonable'.[139] Once the time frame specified in the CSAO expires, the collective settlement will be binding on all class members.[140] Opt-in collective proceedings are not subject to these requirements, although they cannot be settled without the CAT's permission before the expiry of the deadline in the CPO for class members to opt in to the proceedings.

The CAT will continue to calibrate the principle that courts should encourage early settlement against the need to ensure that class members will receive their just compensation, while at the same time attempting to avoid settlement becoming an expensive and time-consuming exercise.

Cross-border issues

England is a popular forum for the resolution of disputes, both domestic and international, for reasons that include the sophistication and probity of English judges, the availability of lawyers and specialists in a range of fields and, perhaps above all, the pre-eminent place of English law in international commercial relations. While many claimants have traditionally looked to the United States to pursue relief through class actions, the US Supreme Court's decision in*Morrison v. National Australia Bank*,[141] which effectively barred securities actions without a US nexus,[142] has caused potential claimants, including institutional investors, to reappraise the situation. The advent of opt-out actions under the CA, which are open to claimants domiciled outside the United Kingdom, and the increasing availability of third-party litigation funding, in combination with the pre-existing attractions of England as a forum, are likely to continue to drive an increase in this kind of claim in the English courts. Furthermore, cases such as *BHP* and *Limbu v. Dyson* demonstrate that England remains an attractive forum for international ESG tort claims.

In July 2024, the government ratified the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, which will come into force in the United Kingdom on 1 July 2025. The Convention aims to provide a global framework of common rules to facilitate the recognition and enforcement of judgments from one jurisdiction to another by requiring contracting parties to recognise and enforce civil and commercial judgments. This avoids problems posed by domestic foreign judgment enforcement rules, such as the need to relitigate certain aspects of a case. In turn, the Convention also promotes legal certainty and reduces costs in the resolution of cross-border disputes.

Outlook and conclusions

The number of high-profile, high-value class and group actions brought in England has continued to increase in recent years. The developments in relation to opt-out proceedings demonstrate the determination of both the legislature and the courts to develop this area. Notwithstanding an increased level of scrutiny by the CAT in exercising

its 'gatekeeping role' in respect of collective proceedings, the threshold for certification remains low. Claimant law firms' and litigation funders' enthusiasm and confidence in the regime are evident from the large number of new claims filed in 2024, most of which are stand-alone claims, many in novel contexts. This enthusiasm persists despite the uncertainty surrounding funding arrangements after *PACCAR* (which practitioners hope will be clarified in 2025 by the Court of Appeal). It will be interesting to see the effect of the liability judgment in *Le Patourel* and the ongoing dispute regarding the *Merricks* settlement on claimant firms' and funders' willingness to take the risk of bringing high-value, stand-alone claims.

No opt-out claim has yet given rise to an award of damages, so guidance has yet to be released on how the CAT will approach the issue of distribution of damages to the class. The rate of distribution to class members will be a key test of the regime's effectiveness and success in facilitating access to justice, particularly when weighed against the significant costs of litigation and profits made by funders. The ongoing controversy regarding the *Merricks* settlement has highlighted questions about the merits of bringing such claims, with nine-year litigation resulting in a potentially very low return for class members, and has showcased the conflicts of interest that can arise between claimants, PCRs and funders.

The collective proceedings and group litigation regimes will undoubtedly continue to develop in 2025, and the coming year is expected to be as eventful as the previous year. In particular, the announcement of new collective proceedings is expected to continue, while the progress of existing claims will be closely monitored, especially the upcoming liability trials in *Kent* and *McLaren* and the anticipated certification decision in *Roberts*.

Given the clear appetite for bringing consumer protection claims under competition law causes of action, and the CAT's willingness to accept jurisdiction over novel claims, calls are likely to continue for an expansion of the opt-out regime to formally include a wider variety of claims, particularly in light of the difficulties faced by claimants in bringing such claims under the representative action regime under CPR 19.8.

Despite some setbacks in 2024, securities litigation remains an area to watch over the next few years, with trials listed for *Standard Chartered* and *Glencore* in 2026. The expected judgment for *BHP* in 2025 and the progression of *Limbu v. Dyson* and *Shell* in the English courts will also have wide implications on the future of mass tort claims. It is clear that 2025 is set to be an important year in the development of England’s class action landscape.

Acknowledgements

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Endnotes

1 For convenience, 'England' and 'England and Wales' will be used interchangeably.
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2 Representative actions can be traced back to the practice of the Court of Chancery. It was a requirement that all interested parties were to be present to end a dispute, although, for the sake of convenience, certain of those individuals who held similar interests would be selected to represent the group. See *London Commissioners of Sewers v. Gellatly* (1876) 3 Ch. D. 610, at 615 per Jessel M R. ^ Back to section

3 *Mastercard Incorporated and others v. Walter Hugh Merricks CBE* [2020] UKSC 51. ^ Back to section

4 *R (on the application of PACCAR Inc and Ors) v. Competition Appeal Tribunal and Ors (PACCAR)* [2023] UKSC 28; [2023] 1 WLR 2594. ^ Back to section

5 *Justin Le Patourel v. BT Group PLC* [2024] CAT 76. ^ Back to section

6 Webpage, ' Transparency data: List of group litigation orders', HM Courts & Tribunals Service (updated 12 Feb 2025). ^ Back to section

7 In 2024, group litigation orders (GLOs) were granted in NOx Emissions claims against Jaguar Land Rover, Nissan/Renault diesel, Hyundai-Kia, Mazda, Peugeot-Citroën, Toyota, Vauxhall, The Volkswagen Group and Volvo. A GLO was also ordered in a separate claim against Jaguar Land Rover on 18 November 2024. ^ Back to section

8 *Pan NOx Emissions Litigations* [2024] EWHC 1728 (KB). ^ Back to section

9 Civil Procedure Rule (CPR) 19.8. ^ Back to section

10 See, e.g., the Court of Appeal's decision in *Emerald Supplies Ltd v. British Airways Plc* [2010] EWCA Civ 1284. ^ Back to section

11 *Lloyd v. Google LLC* [2021] UKSC 50. ^ Back to section

12 *Recovery Limited v. Marks and Clerk LLP* [2024] EWCA Civ 9. ^ Back to section

13 *Wirral Council v. Indivior plc and Anor* [2025] EWCA Civ 40. ^ Back to section

14 Consumer Rights Act 2015 (CRA), Schedule 8, Part 1. ^ Back to section

15 Webpage, ' Cases', Competition Appeal Tribunal (CAT). ^ Back to section

16 CPR 3.1, Paragraphs h and i. ^ Back to section

17 Webpage, ' Cases', CAT. ^ Back to section

18 *Which? v. Apple Inc and Others*, Case No. 1689/7/7/24. ^ Back to section

19 *Barry Rodger v. Alphabet Inc and Others* , Case No. 1673/7/7/24. ^ Back to section

20 *BIRA Trading Limited v. Amazon.com, Inc and Others* [2025] CAT 6. ^ Back to section

21 *Professor Andreas Stephan v. Amazon.com, Inc and Others* [2025] CAT 6. ^ Back to section

22 *Dr Maria Luisa Stasi v. Microsoft*, Case No. 1696/7/7/24. ^ Back to section

23 *Bulk Mail Claim Limited v. International Distribution Services Plc*, Case No. 1639/7/7/24. ^ Back to section

24 *Clare Mary Joan Spottiswoode CBE v. Airwave Solutions Limited and Ors* , Case No. 1698/7/7/24. ^ Back to section

25 [2024] CAT 76 (see footnote 5). ^ Back to section

26 Id. ^ Back to section

27 *Dr Rachael Kent v. Apple Inc and Another*, Case No. 1403/7/7/21. ^ Back to section

28 *Elizabeth Helen Coll v. Alphabet Inc and Ors*, Case No. 1408/7/7/21. ^ Back to section

29 *Mark McLaren Class Representative Limited v. MOL (Europe Africa) Ltd and Others*, Case No. 1339/7/7/20. ^ Back to section

30 Press release, ' Antitrust: Commission fines maritime car carriers and car parts suppliers a total of €546 million in three separate cartel settlements', European Commission (21 Feb 2018). ^ Back to section

31 *Justin Gutmann v. First MTR South Western Trains Limited and Another*, Case No. 1304/7/7/19; *Justin Gutmann v. London & South Eastern Railway Limited*, Case No. 1305/7/7/19; *Justin Gutmann v. Govia Thameslink Railway Limited & Others*, Case No. 1425/7/7/21. ^ Back to section

32 [2023] UKSC 28 (see footnote 4). ^ Back to section

33 Justice Secretary Alex Chalk speaking to the Financial Times: Lucy Fisher, Rafe Uddin and Alistair Gray, ' UK government vows to protect litigation funding that helped sub-postmasters', *Financial Times* (15 Jan 2024). ^ Back to section

34 Neil Purslow, chair of the International Legal Finance Association, speaking to *The Times* : Catherine Baksi, ' Legal services in London harmed by inaction on litigation funding', The Times (12 Dec 2024). ^ Back to section

35 According to the Courts and Tribunals Judiciary website: webpage, ' Litigation Funding', Courts and Tribunals Judiciary. ^ Back to section

36 *Alex Neill Class Representative Limited v. Sony Interactive Entertainment Europe Limited and Anor* [2023] CAT 73. ^ Back to section

37 *Commercial and Interregional Card Claims Limited v. Mastercard Incorporated & Others* [2024] CAT 3. ^ Back to section

38 *Justin Gutmann v. Apple Inc, and Others* [2024] CAT 18. ^ Back to section

39 *Mark McLaren Class Representative Limited v. MOL (Europe Africa) Ltd and Others* [2024] CAT 10. ^ Back to section

40 *Road Haulage Association Ltd v. Man SE and Others*, Case No. 1289/7/7/18; *Michael O'Higgins FX Class Representative Ltd v. Barclays Banks PLC and Ors*, Case No. 1329/7/7/19; *Phillip Evans v. Barclays Bank Plc and Others*, Case No. 1336/7/7/19. ^ Back to section

41 *Ad Tech Collective Action LLP v. Alphabet Inc and Ors* (formerly (1) *Charles Arthur v. Alphabet Inc and Ors* (Case No. 1582/7/7/23) and (2) *Claudio Pollack v. Alphabet Inc and Ors* (Case No. 1572/7/7/22)) [2023] CAT 65. ^ Back to section

42 *Robert Hammond v. Amazon Inc and Ors*, Case No. 1595/7/7/23; *Julie Hunter v. Amazon.com, Inc and Ors*, Case No. 1568/7/7/22. ^ Back to section

43 *Julie Hunter v. Amazon.com, Inc and Ors* [2024] CAT 8. ^ Back to section

44 [2025] CAT 6 (see footnotes 20 and 21). ^ Back to section

45 *Professor Andreas Stephan* [2025] CAT 6 (see footnote 21), Paragraph 88. ^ Back to section

46 See, e.g., *Ad Tech Collective Action LLP v. Alphabet Inc and Ors* [2024] CAT 38. ^ Back to section

47 [2020] UKSC 51 (see footnote 3). ^ Back to section

48 *Dr Liza Gormsen v. Meta Platforms, Inc and Ors* [2024] CAT 11; *Commercial and Interregional Card Claims I Limited v. Mastercard Incorporated and Ors* [2024] CAT 39. ^ Back to section

49 *Commercial and Interregional Card Claims Limited I v. Mastercard Incorporated and Ors; Commercial and Interregional Card Claims Limited II v. Mastercard Incorporated and Ors; Commercial and Interregional Card Claims Limited I v. Visa Incorporated and Ors; Commercial and Interregional Card Claims Limited II v. Visa Incorporated and Ors*, Case No. 1441/7/7/22. ^ Back to section

50 *Clare Mary Joan Spottiswoode CBE v. Nexans France SAS & Others* [2024] CAT 31. ^ Back to section

51 *Christine Riefa Class Representative Limited v. Apple Inc & Others*, Case No. 1602/7/7/23. ^ Back to section

52 *Christine Riefa Class Representative Limited v. Apple Inc & Others* [2025] CAT 5 at [89]. ^ Back to section

53 *Professor Carolyn Roberts v. United Utilities Water Limited and Another*, Case No. 1628/7/7/23; *Professor Carolyn v. Yorkshire Water Services limited and Another-* , Case No. 1629/7/7/23; *Professor Carolyn Roberts v. Northumbrian Water Limited and Another*, Case No. 1630/7/7/23; *Professor Carolyn Roberts v. Anglian Water Services Limited and Another*, Case No. 1631/7/7/23. ^ Back to section

54 The defendants argued that the proposed class representative's claims were excluded by Section 18(8) of the Water Industry Act 1991, which states that where a contravention of a water company's licence condition is an 'essential ingredient' of a cause of action, the only remedies available are those set out in Section 18(8). In the alternative, the defendants argued that the claims were excluded because there is no competition, nor scope for competition, in the supply of sewerage services to individual consumers, as water companies are regional monopolists. ^ Back to section

55 *Michael O'Higgins*, Case No. 1329/7/7/19 (see footnote 41). ^ Back to section

56 *Phillip Evans*, Case No. 1336/7/7/19 (see footnote 41). ^ Back to section

57 *Mark McLaren Class Representative Limited v. MOL (Europe Africa) Ltd and Others* [2023] CAT 75. ^ Back to section

58 *Mark McLaren Class Representative Limited v. MOL (Europe Africa) Ltd and Others* [2025] CAT 4 (approval of two applications); *Justin Gutmann v. First MTR South Western Trains Limited and Another* [2024] CAT 32. ^ Back to section

59 *Trains* [2024] CAT 32 (see footnote 59). ^ Back to section

60 *Walter Hugh Merricks CBE v. Mastercard Inc and others*, Case No. 1266/7/7/16. ^ Back to section

61 Rashid Baxter, ' CAT signs off on Merricks/Mastercard settlement sum', Global Competition Review (21 Feb 2025). ^ Back to section

62 *Município de Mariana and Ors v. BHP Group plc and Anor* [2020] EWHC 2930 (TCC). ^ Back to section

63 Daniel Boffey, ' BHP to face 620,000 claimants in Mariana dam collapse trial in London', *The Guardian* (13 Oct 2024). ^ Back to section

64 *Limbu v. Dyson Technology Ltd* [2024] EWCA Civ 1564. ^ Back to section

65 *Alame & Ors v. Shell PLC & Anor* [2024] EWCA Civ 1500. ^ Back to section

66 *Marks* [2024] EWCA Civ 9 (see footnote 12). ^ Back to section

67 *Andrew Prismall v. Google UK Limited and Others* [2024] EWCA Civ 1516. ^ Back to section

68 *Wirral* [2023] EWHC 3114 (Comm). ^ Back to section

69 *Smyth v. British Airways Plc & Ors* [2024] EWHC 2173 (KB). ^ Back to section

70 *Getty Images (US) Inc and others v. Stability AI Ltd* [2025] EWHC 38 (Ch). ^ Back to section

71 Id. ^ Back to section

72 *ACL Netherlands BV and Ors v. Lynch and Ors* [2022] EWHC 1178 (Ch), Paragraph 460, endorsing the guidance provided in *Raiffeisen Zentralbank Osterreich AG v. The Royal Bank of Scotland plc* [2010] EWHC 1392 (Comm). ^ Back to section

73 *Allianz Funds Multi-Strategy Trust & ors v. Barclays Plc* [2024] EWHC 2710 (Ch), Paragraph 109. ^ Back to section

74 Id. ^ Back to section

75 *Various Claimants v. Standard Chartered plc* (*Standard Chartered*) [2024] EWHC 1108 (Ch). ^ Back to section

76 *Wirral* [2023] EWHC 3114 (Comm). ^ Back to section

77 *Wirral* [2025] EWCA Civ 40 (See footnote 13). ^ Back to section

78 *Aabar Holdings SARL v. Glencore PLC & Ors* [2024] EWHC 3046 (Comm). ^ Back to section

79 *Salomon v. Salomon & Co Ltd* [1897] AC 22. ^ Back to section

80 *California State Teachers' Retirement System & Ors v. Boohoo Group PLC*, Case No. FL-2024-000017. ^ Back to section

81 *Andrew Prismall v. Google UK Limited and Others* [2023] EWHC 1169 (KB). ^ Back to section

82 *Prismall* [2024] EWCA Civ 1516 (see footnote 68). ^ Back to section

83 *David Hamon and other individuals identified in Schedule 1 to the Claim Forms v. University College London* [2024] EWHC 1744 (KB). ^ Back to section

84 Id., Paragraph 45. ^ Back to section

85 Id., Paragraph 44. ^ Back to section

86 See *Independiente Ltd v. Music Trading On-Line (HK) Ltd* [2003] EWHC 470 (Ch), where the defendant's application for a direction under CPR 19.6(2) (now CPR 19.8(2)) to prevent the claimant acting as a representative was dismissed in part on the grounds that a representative may act without the representee's authority as long as CPR 19.6(1) (now CPR 19.8(1)) was fulfilled. ^ Back to section

87 *Emerald Supplies* [2010] EWCA Civ 1284 (see footnote 10): the claimants were unsuccessful in obtaining a representative action as the class was so wide that it was impossible to identify members before and possibly after the judgment, too. ^ Back to section

88 CPR 19.8(4) ^ Back to section

89 *Jalla and Anor v. Shell International Trading and Anor* [2021] EWCA Civ 63. ^ Back to section

90 CPR 19.22, Practice Direction (PD) 19B, Paragraph 6.1A. ^ Back to section

91 *R v. The Number 8 Area Committee of the Legal Aid Board* [1994] PIQR 476 at p. 480, per Popplewell J. ^ Back to section

92 CPR 19.21. ^ Back to section

93 CPR 19.22(1). ^ Back to section

94 There is no guidance contained within CPR 19, nor the accompanying PDs, except for CPR 19.22(1), which states rather broadly that 'the court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues'. ^ Back to section

95 When considering the overriding objective, the court will pay 'particular regard to the other procedural means for achieving a similar or essentially similar result', in accordance with Paragraph 86 of Trower J's judgment in *Edward Moon and Ors v. Link Fund Solutions* [2022] EWHC 3344 (Ch). ^ Back to section

96 *Lungowe v. Vedanta Resources Plc and Ors* [2020] EWHC 749 (TCC). ^ Back to section

97 This can be seen particularly in the actions brought under Section 90A of FSMA in recent years. ^ Back to section

98 The normal application procedure under CPR 23 should be used according to PD 19B, Paragraph 3.1. ^ Back to section

99 The preliminary steps are detailed at PD 19B, Paragraph 2. ^ Back to section

100 This information is contained at PD 19B, Paragraph 3.2. ^ Back to section

101 CPR 19.23(1)(a). ^ Back to section

102 CPR 19.23(1)(b). ^ Back to section

103 Webpage, ' Transparency data: List of group litigation orders', HM Courts & Tribunals Service (updated 12 Feb 2025). ^ Back to section

104 CPR 3.1(2), Paragraphs h and i. ^ Back to section

105 CAT Practice Direction 2/2022: Umbrella Proceedings. ^ Back to section

106 Competition Act 1998 (CA), Section 47B; Competition Appeal Tribunal Rules 2015 (CAT Rules), Rule 79(2). ^ Back to section

107 CPR 19.24(e); PD 19B, Paragraph 13. ^ Back to section

108 *Taylor v. Nugent Care Society* [2004] EWCA Civ 51. ^ Back to section

109 CAT Rules, Rule 79(2). Rules 79(2), Paragraphs a to g give some guidance on the types of consideration that the CAT should have. ^ Back to section

110 CAT Rules, Rule 74(6); CAT Guide to Proceedings 2015, Paragraph 6.37. ^ Back to section

111 CAT Rules, Rules 80(1)(c) and 82. ^ Back to section

112 Id., Rule 85(4). ^ Back to section

113 *Mastercard Incorporated & Others v. Commercial and Interregional Card Claims Limited* [2024] EWCA Civ 218. ^ Back to section

114 *Elizabeth Helen Coll*, Case No. 1408/7/7/21 (see footnote 28); *Epic Games, Inc and Others v. Alphabet Inc, Google LLC and Others*, Case No. 1378/5/7/20. ^ Back to section

115 In relation to the timing of collective proceedings orders, the CRA implemented changes to the limitation period, extending it from two to six years to be on a par with the High Court. ^ Back to section

116 In *Re RBS (Rights Issue Litigation) In Claims entered in the Group Register* (HC-2013-000484), the trial was delayed for four months until April 2017 owing to the complexity of the disclosure process. Significant settlements were also reached in December 2016, January 2017 and June 2017. ^ Back to section

117 The introduction of PD 57AD in the business and property courts has assisted with mitigating the problem of lengthy disclosure periods. ^ Back to section

118 CAT Rules, Rule 63. Competition claims are carved out of PD 57AD by Paragraph 1.4. ^ Back to section

119 *Elizabeth Helen Coll v. Alphabet Inc & Ors* [2024] CAT 25. ^ Back to section

120 *BritNed Development Ltd v. ABB AB* [2018] EWHC 2616 (Ch). ^ Back to section

121 BritNed was awarded only £11.7 million (plus interest) of the £180 million claimed. ^ Back to section

122 *Greenwood and Ors v. Goodwin and Ors* [2014] EWHC 227 (Ch). ^ Back to section

123 *Pan NOx* [2024] EWHC 1728 (KB) (see footnote 8). ^ Back to section

124 *Howells v. Dominion Insurance Company Ltd* [2005] EWHC 552 (QB). ^ Back to section

125 CPR 46.6(3). Common costs are the costs incurred in relation to GLO issues, or individual costs in relation to a test claim. The individual will be liable for all their other individual costs in the claim. ^ Back to section

126 *Re RBS (Rights Issue Litigation)*, HC-2013-000484 (see footnote 117). ^ Back to section

127 *Sharp and Ors v. Blank and Ors* [2020] EWHC 1870 (Ch). ^ Back to section

128 *Chapelgate Credit Opportunity Master Fund Ltd v. Money and Ors* [2019] EWHC 997 (Ch); *Chapelgate Credit Opportunity Master Fund Ltd v. Money and Ors* [2020] EWCA Civ 246. ^ Back to section

129 *Trains* [2024] CAT 32 (see footnote 59). ^ Back to section

130 Road Haulage Association Ltd v. Man SE and Others (Case No. 1289/7/7/18). ^ Back to section

131 *Markt & Co Ltd v. Knight Steamship Co Ltd* [1910] 2 KB 1021. ^ Back to section

132 *Independiente* [2003] EWHC 470 (Ch) (see footnote 87). ^ Back to section

133 With regard to the measure of damage for claims brought under Section 90A of the FSMA, a claimant is entitled to compensation for damage to cover loss suffered as a result of the misstatement or omission. The FSMA, however, does not detail the measure of damage, nor is this subject to any direct authority. ^ Back to section

134 CA, Section 47C(1). ^ Back to section

135 CAT Rules, Rule 93(1)(a). ^ Back to section

136 CA, Section 47C(5). ^ Back to section

137 Id., Section 47C(5). ^ Back to section

138 Id., Section 49A. ^ Back to section

139 Id., Section 49A(5); CAR Rules, Rule 94(8). ^ Back to section

140 However, the likelihood that this covers all potential claimants is still limited. ^ Back to section

141 *Morrison v. National Australia Bank* 561 U.S. 247 (2010). ^ Back to section

142 'Foreign-cubed' claims, at issue in *Morrison*, were those made by non-US investors against non-US issuers to recover losses from purchases on non-US securities exchanges. ^ Back to section

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