SLAUGHTER AND MAY

Securities claims

What UK listed companies *need to know*

Securities litigation relating to misleading market disclosures is a material and increasing risk for any UK listed company. Recent claims against issuers illustrate how compliance or sustainability-related disclosures can lead to claims when business issues occur or regulatory or public scrutiny increases.

Owing to a sophisticated and well-funded claimant market, more claims are being brought and progressing closer to trial. This increases both financial exposure and the need for close involvement of current or former senior management.

At the same time, the introduction of the Public Offers and Admissions to Trading Regulations 2024 ("POATRs") in January 2026 has recast the disclosure regime alongside the existing provisions of the Financial Services and Markets Act 2000 ("FSMA").

This publication examines how liability to shareholders arises under FSMA and the POATRs, what is driving the current wave of securities claims, and key themes for boards and issuers to consider now to manage this risk.

How do companies become liable?

Liability for UK issuers arises under three main routes, as summarised in the table below. Claims relating to prospectuses and listing particulars are higher risk for issuers because they generally do not require the claimant to show either a particular mental state within the issuer or their own reliance on the relevant information.

Comparison of liability regimes

Topic	Regulation 30 POATRs	s.90 FSMA	s.90A and Schedule 10A FSMA
Scope	Prospectuses approved on or after 19 January 2026	Prospectuses and listing particulars approved between 1 December 2001 and 18 January 2026	Certain published information relating to the securities (such as RNS announcements or annual reports) made on or after 1 October 2010
Who can sue?	A person who has acquired securities to which the prospectus (or listing particulars) applies and suffered loss as a result of a misleading statement, or an omission of required information		A person who has acquired, continued to hold or disposed of securities to which the published information applies and suffered loss as a result of a misleading statement, or an omission or delay in publishing required information
Who may be liable?	Issuer and other "responsible" persons, including directors and, potentially, professional advisors who accept responsibility		Issuer only

Topic	Regulation 30 POATRs	s.90 FSMA	s.90A and Schedule 10A FSMA
Mental state within the issuer for claimant to prove	In relation to protected forward looking statements ("PFLSs") only: on the part of a director or other responsible person, knowledge or recklessness that statement was misleading, or dishonest omission No mental state required more generally	No mental state required	On the part of a director, knowledge or recklessness that statement was misleading, dishonest omission or dishonest delay
Reliance by the claimant	Not required		Claimant must have reasonably relied on the information in question

What is fuelling the rise in securities litigation?

There has been a notable rise in large, multi-party securities actions in recent years. This reflects a convergence of factors that has created a favourable environment for claims.

Increased regulatory and public scrutiny of corporate behaviour

In addition to the FCA's focus on the accuracy and specificity of issuers' market disclosures, investigations by government agencies (in the UK and elsewhere) and the results of investigative reporting have provided the basis for claims.

Expansion of disclosure scope

Issuers are making more extensive disclosures on ESG issues. Even where aspirational and forward-looking, these statements are increasingly relied upon by claimants and examined with the benefit of hindsight after a problem has emerged.

Improved litigation economics

The widespread availability of litigation funding and after-the-event insurance to cover the costs of unsuccessful claims has allowed claimants to run expensive multi-year actions with very limited downside risk.

Material damages exposure

Where corrective disclosures trigger sharp share-price falls, potential damages can be substantial, attracting interest from litigation funders and institutional investors. For example, in the first major s.90 case, RBS paid settlements reported to total around £900 million in addition to its reported defence costs of over £100 million.

Emergence of specialist claimant lawyers

Specialised claimant legal teams often run coordinated book-building exercises to build large investor cohorts and work with litigation funders to structure economically viable group claims.

The cumulative effect is striking: a sophisticated, well-funded claimant market. For issuers, this increases the risk of a claim and the need to be aware of developments in securities litigation.

Key points for boards and issuers

- **Assume disclosures will be scrutinised with hindsight.** Historic drafts, internal commentary and advisory material frequently become key. Claims often allege implied representations that have been shown to be false by subsequent events.
- **Apply the same rigour to compliance and ESG statements as financial disclosures.** Implicit statements that compliance or sustainability programmes are effective, aspirational statements and targets can all attract scrutiny where subsequent events undermine credibility.
- **Claims will directly engage senior management time and reputation.** Allegations about what directors knew and when are often an important battleground and require evidence from current or former board members.
- **Seek early legal input.** Robust verification, careful classification of forward-looking statements and clear disclosure governance can significantly narrow exposure if claims later arise.

Key trends in securities litigation

1. A developing area of law

Although these statutory regimes are not new, the case law under ss.90 and 90A FSMA remains limited. No multi-shareholder case has proceeded to a substantive judgment. The existing case law consists of interim decisions on strikeouts or procedural points, rather than judgments on the merits (save for one unusual s.90A case arising out of a corporate transaction).

Two recent procedural developments have favoured issuers:

- **Representative actions rejected.** The courts have refused attempts by claimants, and their funders, to have securities claims determined using the representative action procedure, which would have resulted in the determination of all "issuer side" issues (such as whether there was a misleading statement or omission and any required recklessness or dishonesty) in advance of any "claimant-side" issues (such as standing and any required reliance).
- **Privilege strengthened.** The courts have confirmed that companies may assert legal professional privilege against their own shareholders. Previously, shareholders had relied on a dated "shareholder rule" to seek access to the issuer's privileged documents surrounding the disclosures in question.

More substantively, and less helpfully for issuers, the court's approach to reliance has been in a state of flux. First instance judges at the strikeout stage have taken different approaches to whether passive investors unaware of the alleged misleading statement could show reliance based on an assumption that the market price reflected accurate information – referred to as "market reliance". Subsequently, the UK's highest court rejected a strict awareness requirement for reliance in the tort of deceit, a development that passive investors are likely to deploy in s.90A claims to support the concept of market reliance.

2. ESG and forward-looking disclosures under pressure

ESG-related statements are an increasingly prominent focus of claims. Litigation often alleges a disconnect between public statements – on sustainability, supply chains or governance – and subsequent events. As legal requirements, and consumer and investor expectations, continue to increase the amount that issuers say about their approach to ESG issues, so too does the risk of claims increase. Additionally, funders or claimant law firms may find it easier to build a book of institutional investors for a claim that can be marketed as addressing an ESG concern because of ESG commitments those investors themselves have made. While the PFLS concept offers some protection, it also highlights the need for disciplined, well-documented front-end processes.

Concluding thoughts

Securities litigation is a key risk area for issuers. Claims can involve significant financial exposure, senior management time and reputational impact. The key actions for issuers are to draft precise disclosures, employ robust verification and governance processes and engage legal input early. Issuers who take these steps will be better placed to reduce the likelihood of claims and to defend them more effectively if they do arise.

[i] A more limited regime under s.90A FSMA applied to information published between 8 November 2006 - 30 September 2010

[ii] Broadly, PFLSs contain specified financial or operational information, are verifiable only by reference to future events, include an estimated timeframe, and constitute information a reasonable investor would use in their decision-making

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