

UK & EU CLASS ACTIONS

OVERVIEW

The last decade has seen a rapid rise in class actions in the UK, and they now form a significant part of the legal landscape.

In an increasingly litigious society, class action and mass claims procedures have become an ever-more common way of initiating claims.

BCLP has in-depth experience of working on a wide range of cases in the UK and EU and are particularly well placed to understand the strategic decisions made by both claimants and defendants when pursuing or defending such claims and to chart the best route forwards on the facts of each case. We are at the forefront of collective actions in the UK and EU. BCLP draws on the heavyweight US class action practice where class actions has been a core practice for more than 30 years.

We are proud of the UK defence work we have undertaken in environmental class claims, our cutting-edge antitrust class action defence work in France and our work in the antitrust collective action space in the UK. In the regulatory enforcement context, we have supported clients before the UK FCA in implementing and designing extensive formal consumer redress schemes.

Read our regular series of updates on the world of class actions and mass claims, in which we take a look at some of the key areas of focus, including environmental claims, securities disputes, and competition litigation in the UK and other jurisdictions.

THE GROWTH OF CLASS ACTIONS: WHAT'S NEXT?

We explore the rapidly changing legal landscape

OUR CLIENTS BENEFIT FROM

- Acting and deploying winning strategies for both claimants and defendants.
- Track record in both Court success and settlement negotiations.
- Our knowledge of effectively using third party funding in these cases.

- Innovative technology that we deploy to create fast and efficient solutions.
- In-house Forensic Services team to examine the quantum aspects of a claim, at a very early stage, before instructing independent experts if required.

MEET THE TEAM



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EXPERIENCE

- Assisting a major French bank faced with criminal and civil charges of commercial malpractice (duty of information, duty to warn, duty of advice, unfair term, legality of escalator clause) in the context of a class action, brought by consumer associations and hundreds of individuals, relating to a portfolio of real estate loans which were granted to individuals in a foreign currency. Proceedings are under criminal investigations and pending before the civil

and commercial courts. As well as legal advice on regulatory issues connected with the charges legal issues arising from this case were also examined at a European level before the ECJ.

- Defended the operator in a multi-party odour nuisance claim relating to its landfill site. Several years' worth of nuisance were claimed, with an extremely large number of claimants in the class. The claim was handled in parallel with enforcement action by the Environment Agency, also in connection with odour.
- Acted for a large class of individual clients under a Group Litigation Order in both tranche one and tranche two of the UK phone hacking litigation against News Group Newspapers including having acted for one of the five lead claimant cases in the first phone hacking litigation. One of our Partners gave evidence before the Leveson Inquiry both as a witness of fact and as one of only three claimant side expert lawyers.
- Our French Competition and Distribution Team advised on one of the first class actions lodged by a consumer association. This was one of the first-ever class actions launched in France. The Paris Court of First Instance ruled in favor of our client.
- Advised an international insurance company, as part of defence of FCA regulatory enforcement actions, in the design and implementation of comprehensive remediation programme (following mis-selling concerns), which included: extensive "past business review" and associated compensation; changes to product design and policy documentation; and strengthened governance, oversight and compliance generally in respect of outsourced customer services functions.
- Having acted for a Japanese wire harness producer in the European Commission's cartel investigation (and a parallel UK criminal investigation), our London team acted as co-counsel in defence of a series of "indirect" class action claims from car purchasers in the US and Canada, including advising on factual aspects key to certification and on the extent of disclosure.

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Can multiple claimants use the same claim form in group actions?

A recent decision in the Birmingham County Court has added to the body of case law growing around the test for listing multiple claimants on the same claim form. In *Angel and others v Black Horse Limited*, unreported, 8 September 2023, County Court at Birmingham, a case involving over 5,000 claimants bringing claims against 8 finance companies, the claimants had issued proceedings using 8 claim forms (one against each defendant). HHJ Worster held that in this case it was impermissible under CPR 7.3 to use a single claim form for all the claims against the same defendant. The judge therefore ordered the claimants to sever their claims from the common claim forms. HHJ Worster relied heavily on the guidance given by the High Court in *Abbott v Ministry of Defence* [2023] EWHC 1475 (KB) on the CPR 7.3 "convenience test", which concerns whether multiple claimants may use a single claim form. These cases emphasise the need for a sufficient commonality of significant issues between the claims brought on the same claim form that will then be useful in determining those issues within one set of proceedings.

Insights
Sep 14, 2023

Raising the stakes in activist shareholder claims

The High Court has ordered that ClientEarth pay Shell's costs in connection with all aspects of ClientEarth's unsuccessful application for permission to continue a derivative claim against Shell and its directors. This is a departure from the default position in derivative proceedings. Usually, the company will not be awarded any costs incurred in making submissions in opposition to, or attending any hearing of, a shareholder's application at the permission stage. This judgment therefore raises the stakes for activist shareholders who are considering bringing a derivative claim.

Insights
Sep 12, 2023

New Group Litigation Order issued together with the potential development of a new "GLO Lite" procedure for the collective case management of claims

The High Court has made a Group Litigation Order (GLO) in the class action proceedings of *Tongue & Ors v Bayer Public Ltd Company & Ors* [2023] EWHC 1792 (KB). This appears to be only the second GLO made by the High Court in 2023. In its judgment, the Court made a number of important comments about the factors it took into account when exercising its discretion to make a GLO. It also referred to a form of collective case management it named "GLO Lite", which indicates that a new informal practice for managing class actions is developing in the High Court.

Insights

Aug 30, 2023

Município de Mariana v BHP Group: the English High Court casts its jurisdictional net wider in the Fundão Dam class action proceedings

In the High Court's recent judgment in *Município de Mariana & Ors v BHP Group (UK) Limited & Anor* the Court found that England was "clearly the appropriate forum" to determine whether Vale SA, a Brazilian company, should share liability with the BHP Group in a class action claim being brought in the English High Court as the result of the 2015 Brazilian Fundão Dam disaster. The claim was brought as a CPR Part 7 High Court action, with a large number of claimants listed on one claim form, and is not a representative action or subject to a Group Litigation Order.