

The Next Wave of Mass Claims: Future Trends in Group Litigation

On Thursday 6 June 2024, Baker McKenzie, Ankura, Henderson Chambers, Fladgate LLP and Shieldpay hosted the panel, "**The Next Wave of Mass Claims: Future Trends in Group Litigation**" as part of London International Disputes Week 2024.

Mark Banks (of Baker McKenzie), Nadia Osborne (of Fladgate), Adam Heppinstall KC (of Henderson Chambers), Robert Jones (of Ankura) and Claire Van der Zant (of Sheildpay) spoke at the event and provided their insights into the themes shaping the mass claims space. Here we discuss the key takeaways from their discussion.



Exploring the Litigation Landscape

Group actions are, undoubtedly, becoming increasingly popular. They are driven by an appetite for activism in the public, proactive and agile lawyers and access to third-party funding – to name but a few reasons. Cases that offer strong odds for good economic returns, perhaps bolstered by success in other jurisdictions, will be a staple diet of the Courts, with innovative or novel claims emerging in parallel.

Climate litigation is certainly one space where we can expect to see the number of mass claims rise. In *KlimaSeniorinnen v Switzerland* – where a group of older Swiss women won the first ever climate case victory in the European Court of Human Rights – the Court held that the Swiss state violated Article 8 of the European Convention of Human Rights (i.e., the right to respect for private and family life). A "**gamechanger**" for the industry, this sets a precedent for further climate lawsuits against states and companies.



Claimant Strategies in the Spotlight

Group claims increasingly require new tools. Building a class for the purpose of a claim tends to be a scientific and detailed process – and, as the number of claims continues to rise, it is likely that these processes will need to become even more sophisticated and granular. This will be where artificial intelligence (**AI**) comes into play. AI can be used to perform data analytics, in particular identifying common characteristics and patterns in claims. This will be especially useful to help establish commonality, a key issue in group actions, at the very outset of a claim. Also, AI can be used to boost market intelligence. Cognitive algorithms are increasingly being used to improve engagement with potential claimants and, in doing so, reduce advertising costs. Finally, and certainly not a point to be underestimated, is the use of AI to deal with the administration of a claim. From language tools used to connect claimants from across the globe, to reporting software that maintains client data – AI will make it easier and cheaper to run these types of claims.



Proactive Defendants

Defendants may need to apply creative solutions to respond to the growing threat of class actions. We live in an increasingly globalised and digitalised world – and this offers both risks and opportunities to defendants. Social media, in particular, is often used by potential claimants to voice their complaints and come together with their concerns. Defendants with the right systems can harness these public platforms so as to identify the beginnings of a group claim long before any formal action is taken. By spotting issues early, they can devise the right strategy to protect their business.



Looking at Litigation Funding

Litigation finance is a growing alternative asset class, noted for very high returns. As more, and increasingly varied players operate in the litigation funding market – from established firms to newer niche entrants – more claims will receive the financial support needed to go ahead. In particular, newer entrants to the funding market may be more agile and willing to take bigger risks, which could lead to an overall rise in the number of claims filed. However, as Mrs. Justice Cockerill spoke about recently, third party funding runs the risk of precluding claims that cannot be easily 'commoditised' from being litigated. This poses a risk to access to justice and, as we have seen with the recent Litigation Funding Agreements Bill, is certainly an area in the spotlight for increased regulation.



Modernizing Court Procedures

Group Litigation Orders (**GLOs**) have been the main way to bring multi-party claims in the High Court for nearly 25 years. In comparison, new procedures in Scotland and the Netherlands appear to offer benefits in terms of speed and time. We may be approaching a natural point for a review in England and Wales to finetune the practical aspects of how a claim is put together, based on what has been learned from all jurisdictions in which group or class litigation is managed.



Practicalities of Payment

There has been a substantial growth in the number of cases and claimants, and the value of settlements, in the group claims space. Any industry facing such growth has to go through a transformation and cannot simply scale up using the same tools. One of the more challenging aspects of mass claims is setting up a distribution mechanism to deliver payments to claimants. Those advising on mass claims should get expert advice early on regarding what payment solution may be needed to effect a successful delivery of payment, taking into account the specifics of a case. Technology will also play a part in the successful delivery of payments – specialist software can be used to efficiently collect payment details, process same-day payments and produce progress reports. Payment providers are also likely to look to expert cybersecurity tools, to protect funds and personal data.

Looking to the future, it is clear that group litigation will become increasingly frequent and specialised. Claimants, and their advisors, will continue to harness technology, adopt new legal pathways and leverage partnerships with funders to bring claims against a wide range of defendants. Defendants will, as a result, need to stay alive to the risks such litigation poses.

Should you have any follow up questions on any of the topics covered here, please do reach out to our panel.

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