PRACTICE NOTE

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Class, Collective, and Representative Actions: Overview (England and Wales)

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A Practice Note providing an overview of the key practical issues concerning class, collective, and representative actions in England and Wales, including claims arising from alleged breaches of competition law

Unlike a traditional legal action, where each party represents their own interests, a class, collective, or representative action refers to court proceedings where a single person or small group of individuals represent the interests of a larger group of similarly situated individuals or entities. It involves a procedural mechanism where multiple claimants can seek similar relief from the courts. Such actions are normally used in relation to certain types of claims, such as product liability and personal injury claims, competition law, data privacy and breach, financial services, and environmental law.

Some countries like the US have an established legal framework including case law precedents on class actions. That is not the case for many other countries where these kinds of cases are still not very common. The procedural framework and enforcement mechanisms can vary vastly from country to country.

This Note provides a high-level overview of the legal and regulatory framework for class, collective, or representative actions in England and Wales. It includes collective competition actions, which have been on the rise in the UK. This was enabled by the expansion in both the availability of third-party litigation funding and the competition collective proceedings regime by the Consumer Rights Act 2015 (CRA 2015), which introduced opt-out (US style) collective competition damages actions, significantly broadened opt-in collective competition damages claims, and allowed both to be brought on a standalone (in addition to a follow-on) basis.

The Note also covers current legal trends, and procedural aspects such as:

- Limitation periods.
- The rules for bringing an action, including:
  - jurisdiction;
  - methods of bringing an action;
  - authorisation of the representative;
  - the definition of the class; and
  - methodology to assess damages.
- Evidence.
- Funding and costs.
- Disclosure.
- Damages and relief.
- Settlement and alternative dispute resolution (ADR).
- Appeals and proposals for reform.

Overview of Class, Collective, and Representative Actions

Availability and Use

England and Wales has an established and flexible framework through which collective actions may be brought in courts and tribunals within the jurisdiction in a range of legal areas.

In the courts of England and Wales, there is no maximum legal limit on the number of claimants that may be included on a single claim form where those claims may "be conveniently disposed of in the same proceedings" (Civil Procedure Rules 1998 (CPR) 7.3).

Claim forms that cover large numbers of claimants are sometimes known as omnibus claim forms. Any number of claimants or defendants can be joined as parties to proceedings (CPR 19.1). For more information, see Practice note, Multi-party litigation: overview: Multiple joint claims.

The courts also have several specialist procedural mechanisms for constituting and managing collective actions, including through:

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- A group litigation order (GLO), pursuant to which similar claims which give rise to common or related issues of fact or law are case managed together (CPR 19.22). For more information, see Practice note, Group litigation and group litigation orders.
- The representative action mechanism, pursuant to which one "representative" claimant pursues the litigation on behalf of a defined class of persons with the same interest (CPR 19.8). For more information, see Practice note, Multi-party litigation: overview: Same interest representative claims.

Outside the courts, the UK's Competition Appeal Tribunal (CAT) has jurisdiction and specialist procedural mechanisms to determine collective claims arising from competition law infringements, which may be structured on an "opt-in" or "opt-out" basis. In an "opt-in" claim, the claimant class includes all parties that satisfy relevant criteria and pro-actively opt into the claim before the allotted deadline. In significantly broader "opt-out" claims, the class is defined by an agreed methodology (for example, all purchasers of a product in a certain time period), and all persons or undertakings that satisfy this criteria are automatically included in the class, unless they pro-actively opt out of the claim.

The CAT has become the primary forum for competition damages claims and is the only forum for the statutory collective competition claim regime under section 47B of the Competition Act 1998 (CA 1998), although individual competition damages actions (and competition damages actions under a GLO) may still be brought before the High Court.

In recent years, there has been a significant increase in the bringing of competition law collective actions following:

- The granting of expanded jurisdiction to the CAT, in particular:
  - adding jurisdiction for standalone and opt-out collective damages claims; and
  - materially expanding opt-in claims beyond the limited function of designated consumer representatives.
- The 2020 Supreme Court decision requiring the CAT to be more permissive in relation to suitability and methodologies of opt-out claim during the certification phase (Mastercard Inc and others v Merricks [2020] UKSC 51).
- The expansion and appetite of the litigation funding market.
- An increase in claimant law firms specialising in collective actions within this jurisdiction.

Regulatory Framework

Principal Institutions

The principal institutions overseeing collective actions in England and Wales are:

- The High Court. The High Court has case management powers under CPR 19 to make GLOs and to permit representative actions (amongst other mechanisms for the management of class actions). Whilst lower courts may technically hear collective actions, they cannot make GLOs. In practice, given the complexity of collective claims, they will be issued in or transferred to the High Court.
- The CAT. The CAT is the UK's specialist tribunal for competition law claims. The CAT has specific procedural mechanisms for collective actions (brought on both an opt-in and opt-out basis), which were introduced by the CRA 2015 and are governed by section 47B of the CA 1998. As part of its oversight of competition-related collective actions, the CAT has jurisdiction to:
  - certify collective actions by collective proceedings orders (CPOs);
  - determine whether claims should proceed on an opt-in or opt-out basis;
  - supervise the conduct of authorised representatives; and
  - consider and approve settlements.
- The Court of Appeal and Supreme Court. The Court of Appeal hears appeals from decisions of the High Court, including those made in respect of collective actions, as well as from the CAT. The Supreme Court hears appeals from decisions of the Court of Appeal.

Areas of Law

Product Liability

Although collective product liability claims have a long history in the courts, there is no dedicated procedural mechanism governing such claims. These claims are generally brought in the High Court and frequently involve the use of a GLO. See Practice note, Group litigation and group litigation orders.

Environmental Law

The courts do not have a dedicated procedural mechanism governing environmental collective action claims. These claims are likely to be brought in the High Court and may in some cases be managed through a GLO on an opt-in basis. There is an increasing trend for collective claims to be brought against English parent companies following the actions of their overseas domiciled subsidiaries. See Legal update, Parent companies liable for Brazil dam collapse under strict liability and fault-based principles (High Court).

The CAT has recently rejected a proposed environmental class action (brought as a breach of competition law due to alleged unfair pricing) against six water companies (who allegedly failed to accurately report on their pollution levels), on the basis that the CAT did not have jurisdiction to hear such claims due to exclusions in the underlying statutory provisions governing the water industry. See Legal update, Judgment refusing application by Professor Carolyn Roberts to bring collective damages actions against water companies (CAT).

Competition Law

Competition law claims can be brought before the CAT on either:

- A standalone basis (that is, where the claimants must prove the competition law infringement and resulting harm) (see Standalone Claims).
- A follow-on basis (that is, where the claimants seek damages following a prior infringement decision by a competition law authority, such as the Competition and Markets Authority (CMA)) (see Follow-On Claims).

The CAT procedures are set out primarily in the CAT Rules 2015 (CATR 2015) and the CAT Guide to Proceedings (CAT Guide).

Whilst the CAT remains the primary venue for competition-related collective claims, the High Court continues to have jurisdiction over individual competition law claims, which can be brought on a standalone or follow-on basis. The High Court can also hear collective competition claims brought through a GLO, although such claims are now unlikely given the evolution and maturity of the CRA 2015 collective damages regime, and exclusive availability of larger, more valuable opt-out damages claims.

Competition damages claims begun in the High Court can be transferred to the CAT for specialist assessment, although a class action GLO claim before the High Court cannot be transferred to the CAT under section 47B of the CA 1998 without being resubmitted as a new collective claim.

Pensions Disputes

Collective claims involving pensions matters may be brought using the High Court's procedural mechanisms (see Principal Institutions), although GLOs are rarely used in a pensions context.

In addition, there is a procedure to appoint representatives under CPR 19.9, which applies to claims:

- Concerned with property that is subject to a trust.
- About the meaning of a document, including a statute.

This is the most commonly used procedural mechanism in pensions litigation.

For more information, see Practice notes, Pension schemes: multi-party litigation: overview and Pensions disputes: Part 8 claims and the role of representative beneficiaries.

Financial Services: Consumer Redress

There is no specific collective claim mechanism for financial services claims by consumers. Such claims are likely to be brought in the High Court (see Availability and Use) and may arise following adverse Financial Conduct Authority (FCA) regulatory findings.

Other Areas of Law/Policy

Aside from competition law claims brought in the CAT, collective actions in other areas are usually brought in the courts (and in some cases, specialist tribunals) using the applicable case management frameworks. In recent years, collective actions have been brought in the following areas:

- Data privacy.
- Human rights and civil liberties.
- Employment and equality law.
- Shareholder and securities litigation.
- Technology.
- Personal injury.

Limitation

General Framework / High Court

There is no standalone limitation regime governing collective claims. Limitation periods in collective claims are generally governed by the same rules that apply to the individual claims comprising the claimant class or group, with the applicable limitation period depending on the underlying cause of action.

English civil law claims are generally governed by the Limitation Act 1980 (LA 1980) (see Practice note, Limitation periods: an overview). This broadly provides for a limitation period of six years in breach of contract claims, most tort cases, and several other types of cases from the relevant date, which is often the date of accrual of the cause of action.

In addition, the limitation period is:

- Three years, for personal injury claims and actions under the Consumer Protection Act 1987.
- One year, for defamation claims.
- Two years, for contribution actions.

(See Checklist, Length of limitation periods.)

Unlike some jurisdictions, the filing of a collective claim does not automatically suspend or "toll" the limitation period for claimants who may join the claim in future. Individual claimants must file their claim before the expiry of the relevant limitation period. If not, the court will only add a party after the end of the limitation period if the relevant limitation period was current when the proceedings started and the addition is necessary (for example, if the original party has died or been made bankrupt and their interest or liability has passed to the new party) (CPR 19.6).

For opt-in High Court cases where a GLO has been made, claimants must join the GLO Group Register before the expiry of their individual limitation period.

CAT

Due to multiple reforms to competition limitation periods, the applicable limitation period for claims brought in the CAT depends on the nature of the claim being brought and the date on which the cause of action accrued:

- For causes of action arising on or after the implementation of the EU's Damages Directive (Directive 2014/104/EU) on 9 March 2017, the same limitation rules apply to stand-alone and follow-on competition claims.
- For older claims, the limitation period can depend on:
  - the date of accrual;
  - if the claims are based on an infringement decision; and
  - if the claim was transferred from the High Court.

Prior to 1 October 2015, the CAT could only hear follow-on competition claims with a limitation period of two years from the date of the final decision or appeal. From 1 October 2015, the CRA 2015 enabled the CAT to hear both follow-on and standalone claims.

For causes of action arising between 1 October 2015 and up to and including 8 March 2017, such claims are subject to the laws on limitation periods which apply in the part of the UK in which the proceedings arise (section 47E, CA 1998). In respect of England and Wales, the LA 1980 will therefore apply. The ordinary rule of six-year limitation begins when a cause of action accrues, but does not start until any concealed relevant fact has been discovered or could have reasonably been discovered.

By nature, concealment and long-running authority investigations can be common in competition matters. This has resulted in extensive case law on the start date of the limitation clock in this limitation time period:

- In BCL Old Co Ltd v BASF SE [2012] UKSC 45, it was suggested the start date where there were concealed facts may be the date of a regulator decision, which may be significantly later than the end of the infringement due to the length of competition investigations. The court ultimately found that the limitation period starts to run when the infringement (as opposed to the penalty) decision becomes final (that is, when the time limit for any appeal of the infringement element expires, or an appeal of the infringement element is determined).
- In Granville Technology Group Ltd (In Liquidation) v Infineon Technologies AG [2020] EWHC 415 (Comm) and Gemalto Holding BV v Infineon Technologies AG [2022] EWCA Civ 782, the UK courts held limitation could start running before a competition authority decision or in the early stages of an investigation (such as a statement of objections). The courts ruled there should be a common sense approach to claimant knowledge, and limitation begins where a reasonable person could have reasonable belief there had been a cartel infringement.

For claims concerning competition infringements which occurred on or after 9 March 2017, the provisions of Part 5 of Schedule 8A of the CA 1998 (incorporating provisions of the Damages Directive) apply. Broadly, under Part 5, the prescribed limitation period is six years (paragraph 18(1)), but this is subject to various further provisions.

The UK implementation of the Damages Directive takes a more prescriptive approach to limitation periods and concealment for infringements post 9 March 2017, with limitation both:

- Starting on the day an infringement ends and when the claimant either knew or could reasonably have known the relevant facts and damage.
- Suspended during any competition authority investigation for the duration of the investigation plus one year.

(Schedule 8A, paragraphs 19 and 21, CA 1998.)

For more information on competition damages limitation, see Practice note, Damages actions in the Competition Appeal Tribunal.

Procedural Framework for Bringing an Action

Test for Bringing Different Types of Collective Actions

At its most basic, the test for bringing multiple joint claims using one claim form is whether all of those claims can be "conveniently" disposed of in the same proceedings (CPR 7.3). Case law offers some guidance on what this means. The courts are likely to allow multiple claims to proceed where it can be shown that a case can be disposed of expeditiously in a cost-effective manner by joining parties or claims in a single action. For more information on this test and on key procedural points when bringing multiple joint claims, see Practice note, Multi-party litigation: overview: Multiple joint claims.

The test for determining whether to grant a GLO was summarised in Abernethy and others v Barclays Bank UK Plc and others [2025] EWCC 1 (Abernethy) as being a three-stage test:

- Do the claims have "common or related issues of law or fact."
- Are there, or are there likely to be, a number of claims giving rise to those common or related issues of law or fact.
- If those two tests above are met, whether to exercise the court's discretionary power to make a GLO.

(Abernethy, at paragraph 27.)

For more information on the circumstances in which the court may make a GLO and on the procedure for GLOs, see Practice note, Group litigation and group litigation orders.

The test for bringing a representative claim is set out in Lloyd v Google LLC [2021] UKSC 50 (Lloyd v Google) and involves showing that the representative has the same interest as the other class members, such that the representative can be relied on to conduct the litigation in a way which will effectively promote and protect the interests of all the members of the represented class. For more information on this test and on key procedural points when bringing a representative claim, see Practice note, Multi-party litigation: overview: Purpose and test for bringing same interest claims and Key procedural points.

Follow-On and Standalone Basis

The terms "follow-on claims" and "standalone claims" only arise in the context of competition law claims, and they distinguish between:

- Claims which are wholly or partially founded on a binding previous decision of a competition law authority as proof that the infringement(s) of competition law occurred (see Follow-On Claims).
- Claims in which the claimant(s) are required to prove the infringement(s) of competition law within the claim being brought (see Standalone Claims).

In England and Wales, both standalone and follow-on competition law claims may be brought in either the High Court or the CAT.

Follow-On Claims

In claims brought in both the High Court and the CAT, final infringement decisions of the CMA, or other designated authorities, are considered binding as to the breaches which have occurred (that is, there has been a finding of liability) "once [the decision] has become final" (section 58A(2)-(3), CA 1998). Causation and loss, however, must be proven by the claimant(s) in the ordinary way. The High Court will apply standard tortious principles (for example, foreseeability and remoteness). The CAT will apply broadly similar principles.

In the context of infringement decisions issued by overseas authorities, whether such decisions can form the basis of a follow-on action depends on the status of the particular overseas competition law authority:

- Infringement decisions of the European Commission (EC) made before 31 December 2020 (that is, before the end of the Brexit transition period) are in principle binding on the courts and the CAT for the purposes of follow-on claims.
- For EC decisions issued after that period, such decisions are not binding but the UK courts and the CAT may still "have regard" to EC decisions and EU court judgments.
- Infringement decisions by other overseas authorities are not binding on either the CAT or the courts but may be presented as evidence of infringements.

Standalone Claims

In standalone claims brought in both the CAT and the High Court, the claimant(s) must prove the infringement to the civil standard of proof (that is, on the balance of probabilities). In both forms, the claimant(s) are required to establish liability, causation, and loss in the ordinary way.

Opt-In and Opt-Out Claims

An "opt-in" claim is one in which a claimant must actively join (or consent to) the collective claim. An "opt-out" claim automatically encompasses all claimants within the specifically defined class, save for those claimants who expressly opt out of the claim. Opt-out claims are allowed in the CAT, but they are only allowed in representative actions under CPR 19.8 in the High Court.

A recent Supreme Court decision (Evans v Barclays Bank [2025] UKSC 48) is the first of its kind to consider the factors relevant to the CAT's exercise of discretion in determining whether a claim should be certified as an opt-in or opt-out. The court ruled that proceedings should not be allowed to continue on an opt-out basis where the merits are weak.

Circumstances may arise where multiple competition collective damages claims are lodged in relation to the same facts, either proposing different "opt-in" or "opt-out" bases, or even competing to propose very similar "opt-in" or "opt-out" claims. The CAT refers to competing applications brought by different proposed class representatives as a "carriage dispute" (that is, who should have control or carriage of proceedings), and its usual approach is to evaluate which class representative would be the most suitable, assessing factors such as:

- The nature of each claim.
- Suitability of class representatives and class definitions.
- Experience of experts and legal advisors.

- Nature of litigation funding.
- Quality of damages and distribution methodologies.

The CAT has not considered "first to file" a factor, unless a claim is filed much later.

The CAT has also taken a flexible approach to carriage disputes, consolidating aspects of claims or coordinating overlapping but distinct claims (Ad Tech Collective Action v Google) and allowing simultaneous opt-in and opt-out elements within a single claim based on the location of the defendant (Consumers' Association v Qualcomm Incorporated; Elizabeth Helen Coll v Alphabet).

Given the requirement for claimants to actively join the group, opt-in claims are typically significantly smaller classes. The class is usually identified and constructed through a bookbuilding process.

In the CAT, the opt-in and opt-out registration process, and general management of the class, is the responsibility of an approved class representative.

Opt-in claims can include both UK and non-UK domiciled persons. In opt-out claims, all UK-domiciled persons who fall within the scope of the class are automatically included (save where they expressly opt out). Non-UK domiciled persons must opt in to the class to be included (section 47B(11), CA 1998). By their nature, opt-out claims are typically larger, and can include millions of UK consumers.

Third-party funding is permissible (and widely used) in both opt-in and opt-out claims for the purposes of funding:

- Legal costs.
- Expert fees.
- After-the-event (ATE) insurance (which is widely used to protect against adverse costs risks).

For other funding options for opt-in and opt-out claims, see Lawyer Fees and Litigation Funding.

In hearing an application for a CPO, the CAT will scrutinise the proposed funding arrangements for the collective proceedings. The CAT may refuse certification of a claim where it has concerns regarding the funding arrangements in place. In UK Trucks Claim Ltd v Fiat Chrysler Automobiles NV and others [2019] CAT 26, the CAT was concerned that the funding arrangements in place for the proposed opt-out claim were not sufficiently transparent. The CAT had further concerns regarding the level of control that the funder was apparently able to exert over the conduct of the litigation. See Legal update, Funding arrangements in two collective damages actions based on trucks cartel are not damages-based agreements (Court of Appeal).

Jurisdiction

The High Court has jurisdiction to hear collective claims in relation to any subject matter, including cross-border claims. The jurisdiction to hear these claims is governed by:

- The Hague Convention on Choice of Court Agreements 2005 (The Hague Convention).
- The Civil Jurisdiction and Judgments Act 1982.
- Common law rules.

Following the end of the Brexit transition period, which ended on 30 December 2020, the CAT's jurisdiction is primarily over domestic "competition law claims" (that is, breaches of the CA 1998) as opposed to breaches of the Treaty on the Functioning of the European Union (TFEU) prohibitions. However, the CAT may hear cases which involve foreign conduct affecting UK competition laws. The CAT may still hear any alleged breaches of EU competition law:

- Which took place prior to the end of the transition period.
- In respect of retained EU law.

The High Court may transfer proceedings which fall under the remit of section 47A of the CA 1998 to the CAT either:

- On its own initiative.
- Following an application of a party.

(Section 16(4), Enterprise Act 2002 (EA 2002); CPR 30; Practice Direction (PD) 30.)

The High Court may transfer the entire relevant proceedings to the CAT, or just certain competition aspects that would benefit from specialist review. For example, in Agents' Mutual v Gascoigne, the High Court transferred the competition parts (online portal membership rules) of a contractual claim to the CAT.

As the CAT's collective claims regime has no equivalent in the CPR, the CAT's ordinary powers to transfer proceedings to the High Court do not apply to collective proceedings brought in the CAT (rule 74(3)(e), CATR 2015).

Remedy/Relief

Damages (High Court)

The principles underpinning the calculation of damages in High Court claims will depend on the nature of the claim being brought. A comprehensive description of these principles is outside the scope of this Note. However, it should be noted that, in general, and in contrast to collective proceedings in the CAT, claimants in collective claims in the High Court must prove their individual loss, and the court cannot award damages on an aggregate basis. This general principle applies in both GLOs and representative actions.

In the representative action context under CPR 19.8, where claimants are required to satisfy the "same interest" test, the Supreme Court in Lloyd v Google confirmed that, even where the "same interest" test is satisfied, damages must reflect the individual loss of each claimant. This means that a representative action is not a suitable vehicle for calculating the damages of the individual class members (save where damages can be calculated on a basis which is common to all class members, or where an approach can reliably be used to calculate damages suffered by the class as a whole) (see Lloyd v Google, at paragraph 80).

In cases where damages would require individualised assessment, there may nevertheless be advantages in terms of justice and efficiency in adopting a bifurcated process whereby a declaration from the court is sought on common issues of law or fact through a representative claim, leaving any issues which require individual determination for the individuals themselves to bring before the courts at a subsequent stage of the proceedings. For more information, see Practice note, Multi-party litigation: overview: Purpose and test for bringing same interest claims.

Similarly, the one aspect of a claim being conducted under a GLO which is likely to require individual consideration is as to quantum of any damages, which will be dependent on the claimants' individual factual circumstances. For more information, see Practice note, Group litigation and group litigation orders: Effect of judgment on parties to the GLO.

Damages (CAT)

In collective proceedings, the CAT has the power to order an aggregate award of damages (that is, a determination of the amount to which the class as a whole is entitled) (section 47C(2), CA 1998). The CAT is not required to assess the damages recoverable by each represented person.

Where the CAT makes an aggregate award of damages, it must give directions for assessment of the amount that may be claimed by individual represented persons out of that award (rule 92(1), CATR 2015), including:

- The quantification methodology.
- Payment provisions.
- Third party involvement in quantification.
- General approval of awards.

(Rule 92(2), CATR 2015.)

Notice of any hearing in relation to damages must be given to represented persons by the class representative, for the purposes of allowing any represented person to make submissions (rule 92(3), CATR 2015).

Declaratory Relief

The High Court has inherent jurisdiction to grant declaratory relief (that is, to declare the legal position or obligations of a party), and this extends to collective claims. The court's jurisdiction is derived from section 19 of the Senior Courts Act 1981. CPR 25.1(1)(b) confirms that a court may grant an interim declaration as a remedy. For more information, see Practice note, Declarations.

The CAT's jurisdiction to grant declaratory relief arguably applies in a more restricted context to High Court declaratory relief. The CATR 2015 provide that a defendant who wishes to dispute the CAT's jurisdiction to hear a claim or argue that the CAT should not exercise its jurisdiction, may apply to the CAT for an order declaring that the tribunal either:

- Has no such jurisdiction.
- Should not exercise any jurisdiction that it may have.

(Rule 34(1), CATR 2015.)

Representation of Claimants/Class members

In the High Court, the representative must satisfy the court that they have the "same interest" as all members of the represented class (Lloyd v Google; see Damages (High Court)).

In the CAT, collective proceedings may not go forward unless or until the CAT makes a CPO. The CAT's consideration of whether to make a CPO under rule 75 of the CATR 2015, falls broadly into two stages:

- Whether or not the tribunal considers that it is just and reasonable for the proposed class representative (PCR) to act as the class representative in the collective proceedings (rule 78, CATR 2015). See Legal update, Judgment refusing to grant CPO in Christine Riefa collective damages action against Apple and Amazon for alleged restriction of Apple product online reselling, for discussion of a case which illustrates the CAT's scrutiny of the suitability of class representatives.
- The tribunal must then certify claims as eligible for inclusion in the collective proceedings where, having regard to all the circumstances, it is satisfied by the PCR that the claims sought to be included in the proceedings:
  - are brought on behalf of an identifiable class of persons;
  - raise common issues; and
  - are suitable to be brought in collective proceedings.
- In determining "suitability," the CAT must consider all matters that it thinks fit, including those set out in rule 79(2) of the CATR 2015. At this stage, the tribunal must also consider and determine whether the proceedings

should be brought on an opt-in or opt-out basis (rule 79(3), CATR 2015).

Minimum/Maximum Number of Claimants

High Court

CPR 19.1 provides that any number of claimants or defendants may be joined as parties to a claim.

CPR 19.8 provides that, where more than one person has the same interest in a claim, the claim can be begun or continued by or against one or more of the persons who have the same interest as those being represented.

There is no minimum or maximum number of claims needed for a GLO to be ordered, although the Court of Appeal has made it clear that "far more than two claimants are necessary to constitute a viable group action" (Austin and others v Miller Argent (South Wales) Ltd [2011] EWCA Civ 928). The number of claimants can vary widely, and GLOs can accommodate and adapt to meet the demands of tens of claimants to many hundreds or thousands of claimants.

CAT

The CA 1998 defines "collective proceedings" as a combination of two or more claims to which section 47A applies (section 47B(1), CA 1998).

Lawyer Fees and Litigation Funding

The options for a solicitor or client retainer in litigation matters include:

- A retainer based on an hourly rate calculated in accordance with the time spent on the matter by the legal representatives.
- A retainer based on an agreed fixed fee.
- A conditional fee agreement (CFA), namely, an agreement pursuant to which a solicitor requires payment of fees (often including a success fee), in certain specified circumstances. Generally, if the client loses the case, the client will not be liable to pay for the fees and any expenses that are subject to the CFA (the conditional fees). If the client wins the case, the client will be liable to pay all fees and expenses, including the conditional fees, and the success fee, if a success fee is provided for in the CFA. See Practice note, Conditional fee agreements entered into from 1 April 2013: an overview.
- A damages-based agreement (DBA) which provides, broadly, that the client is required to pay its solicitors upon receipt of a specified financial benefit in connection with the matter (usually damages paid by the losing side). The amount of the payment will be determined as a percentage of the compensation received by the client.

The use of CFAs or DBAs may help with the funding of a collective action. In addition, a commercial funder who has no connection to the dispute (that is, a third party) may finance the costs of legal fees and expenses in return for a multiple of the funding given or a share of the damages awarded where the claim is successful. Third-party litigation funding is being increasingly used to bring collection actions.

For more information on third-party funding generally, see Practice note, Third party litigation funding in England and Wales: an overview.

The scope of DBAs was thrown into considerable uncertainty in July 2023 following the Supreme Court decision in R (PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28 (see Practice note, Third party litigation funding in England and Wales: an overview: Implications of Supreme Court finding that some litigation funding agreements are damages-based agreements). In summary, the Supreme Court held that litigation funding agreements (LFAs) can in principle be DBAs which, as a result, can be rendered unenforceable if they do not comply with the Damages-Based Agreements Regulations 2013 (DBA Regulations).

Following the PACCAR case, LFAs which are deemed to be DBAs (primarily those LFAs which determine a litigation funder's return on the basis of a percentage of recovered damages) are unenforceable. Given the prevalence of litigation funding in the collective claims market (and, in particular, funding arrangements which calculated a funder's return by reference to a proportion of damages recovered), the PACCAR decision has arguably had a significant cooling effect on the litigation funding market in the UK. There have been calls for PACCAR to be overturned by legislation, though whether this will happen is yet to be seen (see Proposals for Reform).

The CAT has the power to refuse a collective proceedings order application where it considers that the costs and funding arrangements are disproportionate to the benefits of the claim (see Legal update, Judgment refusing to grant CPO in Waterside collective damages action alleging unlawful collusion by salmon producers (CAT)).

Practitioners should be aware that communications between legal teams and litigation funders to arrange funding may not be privileged (see upcoming judgement for Garry White & Ors v Uber & Ors).

Costs of Litigation

High Court

The courts have a broad discretion to award costs between the parties both at the conclusion of a claim and following interim applications. The general rule is that the unsuccessful party will be ordered to pay the successful party's costs, but the court may make a different order, having regard to all the circumstances (CPR 44.2). In general terms, this discretion also applies to collective claims.

As the persons represented in same interest claims will not normally have been joined as parties to the claim, they will not ordinarily be liable to pay any costs incurred by the representative. However, that does not prevent the court from making an order requiring a represented person to pay or contribute to costs. For more information, see Practice note, Multi-party litigation: overview: Costs and funding in same interest claims.

Where a GLO has been made, certain specific rules apply in respect of costs. These rules, set out in CPR 46.6, distinguish between:

- Individual costs (that is, costs incurred in relation to an individual claim on the group register).
- Common costs (that is, costs incurred in relation to the GLO issues, individual costs incurred in a claim that is a test claim, and costs incurred by the lead legal representative in administering the group litigation).

(CPR 46.6(2).)

Unless the court orders otherwise, when making an order for common costs, each group litigant will be severally liable for an equal proportion of the common costs under CPR 46.6(3). For more information, see Practice note, Group litigation and group litigation orders: Costs in GLO cases.

Despite the general rules set out in CPR 44.2 and CPR 44.6, the court retains discretion to depart from the usual starting points (see, for example, RBS Rights Issue Litigation [2014] EWHC 226 (Ch), in which the court directed that the claimants' liability for common costs should be determined in proportion to the value of each claimant's shares).

For multi-track cases initiated after 1 April 2013, the courts introduced a "costs management" regime (otherwise known as "costs budgeting"), pursuant to which, at an early stage in the proceedings, parties must file and exchange costs budgets (in the form referred to as "Precedent H") detailing both the costs:

- They have incurred to date.
- That they expect to incur at each stage of the proceedings.

In the context of class actions, the court has recently ordered the parties in Garry White & Ors v Uber [2025] EWHC 2971 (Comm) to engage in costs budgeting, despite the costs management regime not being automatically applicable, in part to allow the claimants to perform an ongoing assessment of the costs and benefits of pursuing the proceedings, and of whether their ATE insurance remains adequate.

For more information on the costs management regime in the courts, see Practice note, Costs management: overview.

CAT

The costs regime in the CAT is provided for in rule 104 of the CATR 2015, and it applies in a broadly similar manner to the regime in place under the CPR. It expressly includes costs in respect of collective proceedings (rule 104(1), CATR 2015).

Although the CATR 2015 do not contain an express "general rule" that costs follow the event (akin to CPR 44.2(2)), the CAT has a discretion at any stage of the proceedings to make any order that it thinks fit in relation to the payment of costs in respect of the whole or part of proceedings (rule 104(2), CATR 2015).

When deciding whether to make an order for costs, and in determining the amount of costs, the CAT may take account of a range of factors set out in rule 104(4) of the CATR 2015. The amount of costs to be paid under any costs order made by the CAT may be either:

- Assessed by the CAT President, a Chairperson, or the Registrar.
- Transferred for detailed assessment by the High Court.

(Rule 104(5), CATR 2015.)

Disclosure

High Court

For collective actions in the courts, in the same way as is generally the case in civil litigation, disclosure will proceed in accordance with the relevant rules.

Disclosure in proceedings in the Business and Property Courts of England and Wales will be subject to the regime set out in CPR PD 57AD. The PD 57AD regime is expressly applicable to multi-party cases. However, the court may order that the timetable and procedure is to be varied to provide a bespoke timetable and procedure to meet the needs of the individual multi-party case. Any application to the court in this connection should be made at an early stage (paragraph 1.11, CPR PD 57AD).

Cases proceeding outside of the Business and Property Courts will be subject to the rules set out in CPR Part 31.

For more information, see Practice note, Disclosure: an overview and Disclosure in the B&PCs Toolkit.

CAT

The CAT has broad jurisdiction on:

- Whether to order disclosure in any proceedings.
- The extent of any disclosure ordered.

Disclosure in CAT proceedings is not automatic (paragraph 5.86, CAT Guide). At the first case management conference, the CAT will decide whether and when the parties should file both:

- A disclosure report (conforming to the requirements of rule 60(1)(a)(b) of the CATR 2015).
- A completed Electronic Documents Questionnaire (in the form contained in the Schedule to CPR PD 31B).

(Rule 60(2)(a), CATR 2015.)

At a subsequent case management conference, the CAT must decide, having regard to the governing principles and the need to limit disclosure to that which is necessary to deal with the case justly, what orders to make in relation to disclosure (rule 60(2)(b), CATR 2015). If disclosure is ordered, the CAT has broad discretion to give directions on the process for disclosure (rule 60(3), CATR 2015).

Where disclosure is ordered, the party (or parties) ordered to give disclosure are subject to the duties set out in rule 60(4)-(7) of the CATR 2015. These duties are broadly analogous to the principles underpinning disclosure prescribed under the CPR regime in the courts.

A series of guiding principles for the CAT's approach to disclosure were set out in Ryder Ltd v MAN SE [2020] CAT 3, which has been referred to in several of the CAT's subsequent decisions.

Witness and Expert Evidence

High Court

The procedures for witness evidence (both fact and expert) in collective actions in the High Court, in general terms, follow the same rules and procedures as are applicable generally in English civil litigation (CPR 32 and 35; PD 32 and 35).

Trial witness statements in the Business and Property Courts must be prepared in accordance with CPR PD 57AC.

For further information, see Practice notes:

- Preparing effective witness statements.
- Requirements for trial witness statements in B&PCs under Practice Direction 57AC.
- Expert evidence: an overview.

CAT

The CAT has a broad discretion to determine the scope and delivery of fact and expert evidence (rule 55, CATR 2015). Further procedural discretion is afforded to the CAT on matters including:

- The hearing of evidence by video link.
- Limitation on cross-examination.

The CAT also has powers to summon witnesses to give evidence or produce documents in the proceedings (rule 56, CATR 2015).

An expert giving evidence in CAT proceedings is subject to analogous duties or provisions to those prescribed by CPR 35. These are set out in paragraph 2 of the CAT PD 3/2025 on Expert Evidence. This also sets out additional guidance on expert evidence in the CAT, including:

- The introduction of stricter page limits for expert submissions.
- Greater CAT scrutiny on expert advocacy.
- The necessity of individual over joint experts.

For a further explanation of these duties or provisions, see paragraphs 7.66 to 7.68 of the CAT Guide.

Defending the Action

Defences

Given the varied nature and subject matter of collective actions in England and Wales, it is not possible to generalise regarding defence strategies commonly deployed in the courts.

In the CAT, common defence strategies adopted in response to collective proceedings include (but are not limited to):

- **Opposition to CPO applications.** Defendants may seek to argue that the proposed class representative is unsuitable, for example, because they lack the resources, independence (for example, in relation to the funding agreement), or experience to perform the role. Likewise, defendants may argue that the proposed claims in collective proceedings do not raise issues suitable for collective determination. For example, see Legal update, Judgment deciding to grant CPO in Justin Gutmann collective damages action against mobile network operators alleging abuse of dominance through overcharging practices.
- **Strike-out or summary judgment.** Defendants may seek early determination on certain issues. A successful strike-out or summary judgment application can significantly disrupt the collective proceedings. For example, see Legal update, Judgment refusing to grant CPO in collective damages action against Performing Right Society for alleged underpayment of songwriter members (CAT).
- **Limitation defences.** Defendants may assert that the some or all of the claims within the class are time-barred, either under the LA 1980 or the CA 1998. For example, see Legal update, Judgment deciding to grant CPO in Justin Gutmann collective damages action against mobile network operators alleging abuse of dominance through overcharging practices.

- **Pass-on defences.** In overcharging cases, defendants may seek to argue that any established overcharging was not imposed on the claimant class, but was instead passed on down the supply chain. For example, see Legal update, Ruling on pass on issues in Merchant Interchange Fee Umbrella Proceedings and Merricks collective damages action (CAT).
- **Quantum challenges.** Defendants may seek to challenge the economic models and methodology underpinning the class representative's valuation. For an example, see Justin Le Patourel v BT Group PLC.
- **Liability defences.** In standalone cases, defendants may deny the alleged competition law breach or argue that the scope of the infringement was more limited than asserted by the claimants (see, for example, Boundary Fares [2025] CAT 64; Kent v Apple [2025] CAT 67).

Joining Other Defendants

High Court

Where a defendant seeks to join an additional party as a defendant to a claim, the defendant, or the prospective defendant, must seek the court's permission pursuant to CPR 19.4 (unless the claim form has not been served).

CAT

The CAT may grant permission to add parties to existing collective proceedings where either:

- It is desirable to add or substitute the new party so that the CAT can resolve the matters in dispute in the proceedings.
- There is an issue involving the new party and an existing party that is connected to the matters in dispute in the proceedings, and it is desirable to add the new party to resolve that issue.

(Rule 38(4), CATR 2015.)

Additionally, rule 39 of the CATR 2015 prescribes a process for the CAT to join new claims to existing proceedings (known as an "additional claim"), including a claim against a non-party for contribution, indemnity, or other remedy (rule 39(1)(b), CATR 2015). For example, in collective proceedings the CAT heard and granted, at the same application hearing, opt-out CPOs in the separate collective actions Robert Hammond and Professor Stephan v Amazon claim for alleged Amazon self-preferencing abuse of dominance. One case represented consumers as a class, while the second represented merchants as a class.

A defendant may make an additional claim (including for contribution against a third party) under section 47A of the CA 1998 without the CAT's permission, where that additional claim is filed with its defence, or with the CAT's permission at any other time. Where permission is required to bring an additional claim, the CAT has the power to either:

- Permit the additional claim to be made.
- Dismiss the application for an additional claim.
- Require the additional claim to be dealt with separately.

(Rule 40(1), CATR 2015.)

Recovering Damages from Other Liable Persons

Under the Civil Liability (Contribution) Act 1978 (CL(C)A 1978), a defendant held liable for damages may claim a contribution from a third party who is also liable in respect of the same damage (section 1(1), CL(C)A 1978).

Where a contribution is sought in respect of loss or damage suffered by a person as a result of an infringement of competition law, the amount of contribution that one person liable in respect of the loss or damage may recover from another must be determined in the light of their relative responsibility for the whole of the loss or damage caused by the infringement (paragraph 38(1)-(2), Schedule 8A, CA 1998).

Particular rules apply to cartels (paragraph 16, Schedule 8A, CA 1998).

Settlement

High Court

In collective actions in the High Court, there is no general requirement for the court to approve the terms of any settlement reached between some or all of the parties, unless a claim involves a child or protected party (CPR 21.10(1)).

If the settlement relates to the entire dispute, it puts an end to that dispute and any legal proceedings which have been commenced in relation to the dispute (unless the parties have agreed that the dispute can be resurrected in certain circumstances). Even where the terms of the settlement agreement include a stay of proceedings, this effectively puts an end to the proceedings in most cases. That is because the effect of the settlement is to prevent parties from taking any further steps without a further order of the court. If the settlement is not universal, the aspects of the litigation that have not settled will continue.

Any other party with a financial interest in the litigation, including a third-party litigation funder, legal adviser acting under the terms of a CFA or DBA, or ATE insurer, will need to be factored into settlement considerations or negotiations. Such entities will seek to ensure that there is sufficient room within any settlement award to accommodate their financial interests.

CAT

In collective claims before the CAT, the level of scrutiny applied to the proposed terms of, and the procedure for giving effect to, a settlement depend on whether a CPO has been made at the time of settlement and, if so, whether the CPO has authorised the claim to proceed on an opt-in or opt-out basis.

Where a CPO Has Been Made: Opt-Out Claims

Where a CPO has been made and the CAT has ordered that the claims are to proceed on an opt-out basis, the claims which are the subject of the proceedings may not be settled other than by a collective settlement approval order (CSAO) (rule 94(1), CATR 2015). To seek a CSAO, the class representative and the settling defendants must apply jointly to the CAT (rule 94(3), CATR 2015). Rule 94(4) of the CATR 2015 sets out various matters which must be included in an application for a CSAO.

In determining whether the proposed settlement terms are just and reasonable, the CAT will take account of all relevant circumstances, including various prescribed matters set out in that section (rule 94(9), CATR 2015).

When making a CPO on an opt-out basis, the CAT will specify a deadline (Participation Deadline) by which persons may either:

- Opt out of the collective claim.
- Opt in to the claim, if such persons are not domiciled in the UK.

Once the Participation Deadline passes, and subject to any further order of the CAT, the “represented persons” are the class members who either:

- Have not opted out of the proceedings.
- Are domiciled outside the UK and have opted into the proceedings.

Once approved, the settlement which is the subject of the CSAO will be binding on either:

- All class members (if the CSAO is made before the Participation Deadline).
- All represented persons (if the CSAO is made after the Participation Deadline), save in specific circumstances set out in rule 94(11)-(12) of the CATR 2015.

In the Which? v Qualcomm settlement approval hearing, the CAT approved, for the first time, a settlement without any money being paid to the class members, on a “drop-hands” basis. The CAT acknowledged that Which?‘s claim had only a 10 to 15% chance of succeeding and applied a holistic consideration of the impacts of the proposed settlement on all stakeholders.

For a discussion of a high-profile contested settlement approval proceedings in the CAT (subject to judicial review), see Legal update, Ruling on costs, distribution and form of order following approval of settlement of Merricks v Mastercard collective damages action (CAT).

Where a CPO Has Been Made: Opt-In Claims

In contrast to opt-out claims, where a CPO has been made and the CAT has specified that proceedings are opt-in proceedings, the CAT is not required to approve a proposed settlement. The class representative may not, without the CAT’s permission, settle the claims before the expiry of the time specified in the CPO by which a class member may (without the CAT’s permission) opt into the proceedings (rule 95, CATR 2015).

Where No CPO Has Been Made (Both Opt-In and Opt-Out Claims)

Where no CPO has been made, before the CAT will consider whether a CSAO will be made, the parties must obtain a collective settlement order (CSO) (rule 96, CATR 2015).

As there will be no authorised class representative (with a CPO having not been made), the CAT will need to approve a “settlement representative” to act on behalf of the parties for:

- The purposes of the CSAO application.
- The execution of the settlement pursuant to any CSAO.

The CAT must be satisfied that it is just and reasonable for the person to be authorised as settlement representative (rule 96(9), CATR 2015). The criteria for determining whether it is just and reasonable for a person to act as settlement representative are set out in rule 96(10)-(11) of the CATR 2015.

An application for a CSO must comply with the requirements set out in rule 96(2) of the CATR 2015.

The CAT may only make a CSO either:

- If the CAT is satisfied as to the suitability of the proposed settlement representative by reference to the conditions set out in rule 96(9)-(11) of the CATR 2015.
- In respect of the claims which, if collective proceedings were brought, would be eligible for inclusion in such proceedings under rule 79 (rule 96(6), CATR 2015).

If a CSO is made, the parties may then proceed to apply for a CSAO under a tailored procedure prescribed in rule 97 of the CATR 2015.

Appeals

High Court

Where no GLO is in place, the rules and procedure governing appeals follow the usual framework prescribed under CPR 52. For more information, see Practice note, Appeals: an overview.

Where a GLO is in place and a judgment or order has been made, unless CPR 19.23(3) applies, any party who is adversely affected by the judgment or order may seek permission to appeal the order (CPR 19.23(2)).

CPR 19.23(3) provides that a party to a claim which was entered onto the group register after a judgment or order which binds them was given or made may not:

- Apply for the judgment or order to be set aside, varied, or stayed.
- Appeal the order.

Such parties may, however, apply for an order that the judgment or order is not binding on them.

CAT

In collective claims in England and Wales, an appeal from a decision of the CAT is to be made to the Court of Appeal. Where an appeal is sought from a decision of the CAT, the prospective appellant must seek permission to appeal in writing to the CAT Registrar within three weeks of the notification of the relevant decision (rule 107(1), CATR 2015).

On receipt of a request for permission to appeal, the CAT may decide whether to grant permission to appeal without a hearing, although it may require a hearing to take place where it considers that there are special circumstances which render a hearing desirable (rule 108, CATR 2015). Where the CAT refuses permission to appeal, permission may be sought directly from the Court of Appeal (section 49(2), CA 1998).

An appeal from a decision of the CAT in respect of a claim included in a collective claim may only be brought by the class representative in those proceedings or by a defendant to that claim (section 49(2)(A), CA 1998).

Intervenors

If permission to appeal is granted in either the High Court or the CAT, a non-party with relevant expertise may apply to the Court of Appeal for permission to intervene, ideally having sought the parties' views and included them in the application, as specified by the Court of Appeal Guide 2025.

Alternative Dispute Resolution

The use of ADR is actively encouraged by both the courts and the CAT. In addition, the courts have power to order parties to engage in ADR and are showing an increasing willingness to do so.

High Court

In High Court claims, the "overriding objective" (that is, the rule requiring the court to deal with cases justly and at proportionate cost) expressly encompasses the promotion or use of ADR (CPR 1.1(2)(f) and 1.2). Parties to High Court proceedings are expressly required to help the court to further the overriding objective (CPR 1.3). The duties imposed on both the court and the parties to promote the use of ADR apply equally to collective actions as they do to other proceedings generally in the courts.

The duty imposed on parties to consider the use of ADR is triggered even before proceedings are issued. The PD on Pre-Action Conduct and Protocols (Pre-Action PD) requires parties to consider whether negotiation or some other form of ADR might enable them to settle the dispute without proceedings being issued (paragraphs 8-9, Pre-Action PD).

Where proceedings are issued, the court may require evidence that the parties have considered ADR. The Pre-Action PD also makes clear that a refusal to participate in ADR, or even silence in response to such an invitation, can lead to costs sanctions (paragraph 11, Pre-Action PD).

CPR 3.1(2)(o) provides the court with explicit power to order the parties to engage in ADR as part of its general case management powers. On the question of costs, the court may consider whether a party failed to comply with an order for ADR, or unreasonably failed to engage in ADR, when determining an appropriate costs order (CPR 44.2(5)(e)).

CAT

Rule 4 of the CATR 2015 sets out a series of "governing principles," one of which is that the CAT may encourage and facilitate the use of ADR if it considers that to be appropriate (rule 4(6)(a), CATR 2015).

In its collective proceedings claim form, a proposed class representative must state whether the parties have used an ADR procedure (rule 75(2)(g), CATR 2015). Additionally, prior to the hearing of an application for a CPO, the CAT is expressly permitted to give directions for a stay of proceedings whilst the parties attempt to settle the matter via ADR or other means (rule 76(10)(e), CATR 2015).

When considering whether to make a CPO, in determining whether the claims are suitable to be brought in collective proceedings, the CAT is required to consider the availability of ADR or any other means of resolving the dispute (which may include the availability of voluntary redress schemes, whether or not they have been approved by the CMA) (rule 79(2)(g), CATR 2015). Where parties agree to ADR, the CAT will seek for parties to maintain their commitment to both the ADR process and ongoing claim timetable (see Legal update, Reasoned order refusing to stay proceedings in relation to competition issues in dispute between Roadget / Shein and Whaleco (CAT)).

Proposals for Reform

In August 2025, the UK's Department for Business and Trade (DBT) issued a call for evidence to review the effectiveness of the collective action regime in the CAT. The DBT recognises the need to balance the importance of achieving a means through which consumers can achieve redress for competition law breaches, without opening the floodgates to burdensome litigation against businesses. See Legal update, DBT calls for evidence on opt-out collective actions regime.

The window for responses closed in October 2025. Currently, the DBT is reviewing and analysing all responses with a view to formulating its proposals for change, which themselves will then be subject to consultation, expected in 2026.

On the topic of consumer class actions outside of the CAT, in April 2026 the Law Commission launched a project to examine whether the enforcement of consumer law would benefit from a dedicated collective redress regime, including potential opt-in or opt-out mechanisms. The window for stakeholder input is open until October 2026.

In the context of litigation funding, in June 2025, the Civil Justice Council (CJC) published its Final Report on litigation funding, which included 58 recommendations for reform of the litigation funding market in England and Wales. In particular, the CJC:

- Recommended the reversal by legislation of PACCAR (see Lawyer Fees and Litigation Funding).
- Proposed a "light tough" regulatory regime for litigation funding.

As to the timing of any reversal, whilst the CJC's report stressed the urgency of reversing PACCAR, it is not certain when any reversing legislation might be implemented. Until then, it is likely that litigation funders and claimant groups will continue to find themselves in limbo. See Legal update, CJC Final Report on Litigation Funding published (June 2025) and Practice note, Third party litigation funding in England and Wales: an overview: Implications of Supreme Court finding that some litigation funding agreements are damages-based agreements.