Joining the dots
Class Actions and Group Litigation in the UK - Four ways of bringing claims on behalf of multiple claimants
The landscape for group actions (also commonly referred to as class actions or collective actions) has in recent years seen a number of new developments, owing to a series of decisions by the senior courts. This evolution has been matched by steady increases in the number and value of group action claims in England and Wales. This has been driven in part by growth of an increasingly diverse third party litigation funding market in which funders are keen to invest ever-larger sums.
In England and Wales there are four main ways of bringing claims on behalf of multiple claimants:

**Representative Actions**

Representative actions have existed in English law for several hundreds of years, allowing a claim to be brought by a claimant as a representative on behalf of all parties which share the “same interest” as them. They are brought in the High Court under the procedure set out in Civil Procedure Rule 19.6 and follow an ‘opt-out’ procedure, making them one of the closest points of comparison to the US-style class-action.

This “same interest” test is tightly controlled by the courts, as demonstrated by the Supreme Court’s ruling in *Lloyd v Google LLC*1. Here the court emphasised that a strict interpretation was necessary to ensure that the representative could be relied on to conduct litigation in a way which promoted and protected the interest of all members of the represented class. Representative claims are rare due to claimants’ inability to meet this “same interest” test.

If the court is satisfied this test has been met, it then has discretion to order that the claim proceed as a representative action.

**Collective Actions in the Competition Appeals Tribunal (“CAT”)**

Since 1 October 2015, opt-out collective actions for breaches of Competition Law have been permitted before the CAT. In order to proceed with an opt-out action, a claimant (known as a proposed class representative) must apply and meet the test for a collective proceedings order (“CPO”). A CPO may only be granted where the CAT is satisfied that individual claims raise “the same, similar or related issues of fact or law” and are “suitable to be brought in collective proceedings”.

Whilst the CPO procedure was rarely used for several years, the 2020 decision of the Supreme Court in *Merricks v Mastercard*2 lowered the threshold test for a CPO and paved the way for approval of several CPOs in quick succession last year. Whilst there are now a number of CPOs, these remain in their infancy and none have yet reached a resolution either by trial or settlement

**Group Litigation Orders (“GLO”)**

A GLO is an order of the High Court, made where multiple claims give rise to common or related issues of fact or law. These are opt-in claims where a claimant must positively join the action. A GLO is publicised and has a cut-off date by which any claimant wishing to join the action should do so. Any judgment on the a GLO issue will bind all other claims listed on the GLO register.

GLOs can relate to any type of claim and have already been used to seek damages for data protection breaches (*The British Airways Data Event Group Litigation*), shareholder claims (*Lloyds/HBOS Litigation*) and breach of regulations and consumer protection legislation (*VW NOx Emissions Group Litigation*).

**Group Litigation**

The High Court also has case management powers which allow it to manage similar cases together on a bespoke basis. Such claims are made on an opt-in basis with various claimant law firms bringing claims for large numbers of claimants. Such claims may not be suitable for a GLO but involve close connections between the issues of fact and law in dispute. The claims are managed together often with a docketed judge who deals with case and costs management, interim applications and the trial itself. Various test claimants will be represented for trial to decide the common issues and to decide other factual and legal issues which will indicate how the remaining claims should be settled.

---

1 (2021) UKSC 50
2 (2020) UKSC 51