THE CLASS ACTIONS LAW REVIEW

SEVENTH EDITION

Editors
Camilla Sanger and Peter Wickham

THE LAWREVIEWS

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PREFACE

Class actions and major group litigation can be seismic events, not only for the parties involved but also for whole industries and parts of society. That potential impact means they are one of the few types of claim that have become truly global in both importance and scope, and this is reflected in this seventh edition of *The Class Actions Law Review*.

There are also a whole host of factors currently coalescing to increase the likelihood and magnitude of such actions. These factors include continuing geopolitical developments, particularly in Europe and North America, with moves towards protectionism and greater regulatory oversight. At the same time, further advances in (as well as greater recognition and experience of the limitations of) technology is giving rise to ever more stringent standards, with the potential for significant liability for those who fail to adhere to these protections. Finally, ever-growing consumer markets of increasing sophistication in Asia and Africa add to the expanding pool of potential claimants.

It should, therefore, come as no surprise that claimant law firms and third-party funders around the world are becoming ever more creative and active in promoting and pursuing class actions, and local laws are being updated to facilitate such actions before the courts.

As with previous editions of this *Law Review*, this updated publication aims to provide practitioners and clients with a single handbook to which they can turn for an overview of the key procedures, developments and factors in play in this area of law in a number of the world's most important jurisdictions.

Camilla Sanger and Peter Wickham
Slaughter and May
London
March 2023

Chapter 12

SCOTLAND

Colin Hutton, Graeme MacLeod and Kenny Henderson[1]

I INTRODUCTION TO THE CLASS ACTIONS FRAMEWORK

i Group procedure

Scotland's first formal class action mechanism, known as 'group procedure', was introduced on 31 July 2020.[2]

Primary legislation was required to introduce the new procedure. The Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (the 2018 Act) received royal assent on 5 June 2018. The 2018 Act introduced a framework that would enable both opt-in and opt-out procedures to be created by way of detailed court rules. In March 2020, the Scottish Civil Justice Committee[3] (SCJC) conducted a limited consultation to introduce an opt-in scheme. The SCJC indicated that further consideration would be given to introducing an opt-out scheme at a later date. Following that consultation, the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Group Proceedings) 2020[4] was laid before the Scottish Parliament in early July 2020 and came into force on 31 July 2020.

ii 2018 Act

The basic framework of group procedure is set out in Sections 20 and 21 of the 2018 Act. Since this framework is relatively short form, the SCJC had wide discretion as to how to design the new procedure and both it and the Court of Session will continue to enjoy considerable latitude in further development.

Section 20 of the 2018 Act sets out certain basic requirements that the procedure must include:

a group proceedings may only be brought with the permission of the Court;[5]

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1 Colin Hutton, Graeme MacLeod and Kenny Henderson are partners at CMS Cameron McKenna Nabarro Olswang LLP. The authors would like to acknowledge the assistance of Catriona Garcia-Alis (senior associate), Jessica Eaton (associate) and Joanna Clark (professional support lawyer) in the preparation of this chapter.

2 Prior to this, the Scottish courts used existing procedural tools to manage groups of similar or related claims. These tools did not provide the full functionality of a class action procedure but could be used, for example, to designate lead cases and effectively case manage the group.

3 The Scottish Civil Justice Committee (SCJC) is the body responsible for preparing draft rules of procedure for the civil courts in Scotland for approval by the Court of Session. The SCJC also has a wider role to advise and make recommendations on the civil justice system.

4 SSI 2020/208.

5 Section 20(5) 2018 Act.

b permission to raise group proceedings may only be given if the Court (1) considers that all the claims made in the proceedings raise issues (whether of fact or law) that are the same as, or similar or related to, each other,[6] and (2) is satisfied that the representative party has made all reasonable efforts to identify and notify all potential members of the group about the proceedings;[7] and

c group proceedings are to be brought by a representative party who has been authorised as such by the Court.[8]

Section 21 of the 2018 Act sets out a broad scope of more detailed issues that the court rules may deal with. These include who may be authorised as a representative party,[9] the circumstances in which permission to raise group proceedings may be refused[10] and appeals against permission decisions.[11]

One fundamental point that the 2018 Act deals with specifically is the type of class action mechanism that may be developed in the court rules. The 2018 Act takes a broad approach to this, specifying that the court rules may make provision for group proceedings to be brought as '(a) opt-in proceedings, (b) opt-out proceedings, or (c) either opt-in proceedings or opt-out proceedings'.[12] The express provision within the 2018 Act for the introduction of an opt-out mechanism is the most radical feature of the legislation and although the group procedure currently in force does not include any opt-out mechanism, this could be introduced in the future, potentially at quite short notice.

iii The group procedure rules and related guidance

The Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Group Proceedings) 2020[13] introduced a new Chapter 26A into the Rules of the Court of Session (the Rules). The Court of Session also issued Practice Note No. 2 of 2020 on Group Proceedings under Chapter 26A (the Practice Note), which expands on a number of practical procedural matters affecting group proceedings.[14]

The 2018 Act provides that group proceedings will only be available in the Court of Session.[15] The lower courts will not have jurisdiction to hear group proceedings.

6 Section 20(6)(a) 2018 Act.

7 Section 20(6)(b) 2018 Act.

8 Section 20(3)(b) 2018 Act.

9 Section 21(2)(a) 2018 Act.

10 Section 21(2)(e) 2018 Act.

11 Section 21(2)(f) 2018 Act.

12 Section 20(7) 2018 Act. Note that 'opt-in proceedings' and 'opt-out proceedings' are defined terms in the 2018 Act – see Section 20(8) 2018 Act.

13 SSI 2020/208.

14 Court of Session Practice Note No. 2 of 2020 on Group Proceedings under Chapter 26A (https://www.scotcourts.gov.uk/rules-and-practice/practice-notes/court-of-session-practice-notes).

15 Section 20(1) 2018 Act.

II THE YEAR IN REVIEW

A number of group proceedings have been raised since the coming into force of Chapter 26A.[16] At the time of writing, this has given rise to a limited number of reported decisions dealing with group procedure issues. However, it is likely to take some time for a comprehensive body of case law to develop to assist with the interpretation of the Rules.

In the case of *Thompsons Solicitors Scotland v. James Finlay (Kenya) Limited*,[17] the Court had regard to Canadian case law, as well as the reports recommending the introduction of group procedure,[18] to assist it in reaching a determination on the issue in that case.[19] It is to be expected that practitioners will seek to draw assistance from case law pertaining to other class action regimes to assist with discussion of analogous issues that arise with group proceedings. An obvious comparator would be the collective proceedings order (CPO) group proceedings regime introduced for competition claims by the Competition Act 1998, as amended by Schedule 8 to the Consumer Rights Act 2015, given that this is a UK-wide regime and not solely an English device. Although the CPO regime permits both opt-in and opt-out claims and the group procedure regime, as currently implemented, only permits opt-in claims, the two regimes are similar in structure.

III PROCEDURE

i Types of action available

There is no restriction on the types of action that may be the subject of group proceedings, provided that these meet the certification requirements set out below. Furthermore, claimants may be either natural or legal persons. Significantly, unlike with some collective redress procedures in other jurisdictions, this means that group procedure is not restricted to consumer claims and so could also be used, for example, on behalf of small and medium-sized enterprises.

ii Commencing proceedings

As with most class action mechanisms, group proceedings in Scotland provide for a 'certification stage', which serves an important purpose in rejecting unsuitable claims early in the process rather than allowing them to proceed to proof (trial). To date, the Court of Session has taken a fairly permissive approach to certification.

There are two phases to the certification process, namely authorisation of the proposed representative party and granting of permission to bring group proceedings.

16 Examples include damages claims arising out of the emissions issue affecting certain diesel engines, historical abuse claims relating to Celtic Boys Club and claims relating to working conditions at a Kenyan tea farm by Kenyan tea pickers against a Scottish company.

17 [2022] CSOH 12 (this case was subsequently renamed *Campbell v. James Finlay (Kenya) Limited)*.

18 The Scottish Civil Courts Review (2009) and the Taylor Review of Expenses and Funding of Litigation in Scotland (2014).

19 Authorisation of the proposed representative party. This decision is discussed below.

Certification: authorisation of proposed representative party

With regard to the first phase, there may only be one representative party to the proceedings.[20] A group, for the purposes of the 2018 Act and the Rules, comprises two or more 'persons' who each have a separate claim in the subject matter of the group proceedings.[21]

The Court will authorise a proposed representative 'only where the applicant has satisfied [the Court] that the applicant is a suitable person who can act in that capacity should such authorisation be given'.[22]

The matters that the Rules direct the Court to consider in determining an applicant's suitability are helpfully listed in the Rules: the special abilities and relevant expertise of the applicant; the applicant's own interest in the proceedings; whether there would be any potential benefit to the applicant, financial or otherwise; confirmation that the applicant is independent from the defender; whether it has been demonstrated that the applicant would act fairly and adequately in the interests of the group members as a whole and that the applicant's own interests do not conflict with those of the group; and whether it has been demonstrated that the applicant has sufficient competence to litigate the claims properly.[23] This last factor will include considering whether the applicant has the financial resources to meet any expenses awards. However, the Rules expressly state that the details of funding arrangements do not require to be disclosed. This raises questions. How is the Court to be satisfied on the applicant's ability to meet adverse expenses without full disclosure of funding arrangements?[24] It is likely that case law will be required to settle this and other questions.

In the *Thompsons Solicitors Scotland* case,[25] the original proposed representative party was the law firm instructed to act for the group. The Court noted that the 2018 Act permitted the representative party to be a person that was not itself a member of the group,[26] and that the reports that had recommended the introduction of group procedure had envisaged that 'representative bodies' could take on the role. However, the Court was of the view that the authors of those reports did not expect instructed lawyers to take on that role. Having considered a number of Canadian authorities on the point, the Court refused the application. There was clear potential for conflict of interest and the appearance of impropriety arising out of the possibility that the proposed representative party's decisions might be influenced by their financial interest as the firm acting in the group proceedings.[27]

20 Section 20(4) 2018 Act.

21 Section 20(2) 2018 Act.

22 Chapter 26A.7(1) of the Rules of the Court of Session (RCS).

23 RCS 26A.7(2).

24 It is worth noting here that Section 10(2) of the 2018 Act (which does not specifically relate to group procedure and which, at the time of writing, has not yet been brought into force) will require litigants receiving financial assistance from a third party in respect of proceedings to notify that fact to the court. The litigant will be required to disclose both the identity of the third party and the nature of the assistance provided.

25 *Thompsons Solicitors Scotland*, supra.

26 Section 20(3)(a) 2018 Act.

27 An alternative representative party, a retired King's Counsel with expertise in the subject matter of the claims and with no financial interest, was subsequently authorised by the Court and permission granted to raise group proceedings. That decision was not reported.

Certification: permission to bring group proceedings

With regard to the second phase of the certification process, permission must be granted by the Court before group proceedings can be brought.[28] The Rules set out four situations in which the Court may refuse permission.[29] These circumstances collectively require the application of a commonality test, merits assessments and a superiority test.

The first situation in which the Court may refuse to permit group proceedings to be brought is where either of two key requirements of Section 20 of the 2018 Act have not been met, namely that 'all of the claims made in the proceedings raise issues (whether of fact or law) which are the same as, or similar or related to, each other' (the commonality test), and that 'the representative party has made all reasonable efforts to identify and notify all potential members of the group about the proceedings'.[30]

The commonality test is a typical feature of class action mechanisms. The notification obligation, however, is not a criterion commonly imposed in opt-in regimes and may present significant logistical challenges for coalescing groups, depending on how strictly the courts interpret this provision.

The Court may refuse permission in two situations that relate to the substantive merits of the proposed proceedings. The Rules state that the Court may refuse permission where it has not been demonstrated by the applicant either that there is a prima facie case[31] or that the proposed proceedings have any real prospects of success.[32] This potentially provides any defenders with an opportunity to attack the merits of the proposed claims on multiple fronts at an early stage.

The final situation in which the Court may refuse permission is where it has not been demonstrated by the applicant that it will be a more efficient administration of justice for the claims to be brought as group proceedings than by separate individual proceedings.[33] This is essentially a superiority test, obliging the applicant to demonstrate that group procedure is more suitable for the proposed claims than individual actions.

In the case of *Campbell v. James Finlay (Kenya) Limited*,[34] the defender appealed against the (unreported) decision of the first instance judge to grant permission to raise group proceedings on commonality grounds.[35] In that case, the claims related to alleged musculoskeletal injuries sustained by employees over several decades at Kenyan tea plantations operated by the defender. The defender argued that the claims of the employees, which raised individual issues of fact and law, were not sufficiently similar or related to justify the granting of permission. The mere fact that the claimants were all employed by the defender did not mean that the claims were appropriate for group procedure. The Inner House (the Scottish appeal court) rejected that argument, upholding the decision to grant permission. The court noted that the claimants' pleadings identified generic issues of fact and law that related

28 Section 20(5) 2018 Act.

29 RCS 26A.11(5) and Section 20(6) 2018 Act.

30 RCS26A.11(5)(a).

31 RCS26A.11(5)(b).

32 RCS26A.11(5)(d).

33 RCS26A.11(5)(c).

34 [2022] CSIH 29 (this is the same case as *Thompsons Solicitors Scotland* mentioned above, renamed following the authorisation of the alternative proposed representative party).

35 See footnote 27 above. The first instance judge had, however, set out his thoughts on whether permission should be granted in his earlier reported decision to refuse to authorise the solicitors acting for the claimant group as the representative party, reported at [2022] CSOH 22.

to the defender's working practices and to whether these were negligent. If those generic issues were resolved in favour of the claimants, this would leave the issues in individual cases for determination.

iii Procedural rules

Joining and withdrawing from the group

The Rules set out default processes for joining and withdrawing from the group; however, the Court has broad case management powers that will enable it to take a different approach from the default position in individual cases.

To join the group, a potential member must send the representative party a prescribed form[36] with details including their name, address, date of birth and contact details. Most significantly a 'full and detailed summary' of the claim and 'evidence in support of [the] claim' must also be supplied. The requirements for full and detailed information and evidence could prove burdensome. The cost of collecting, collating and presenting this information for each and every group member initially falls on the claimant law firm, which is likely to be supported by a litigation funder. For any given opt-in group procedure, the more burdensome the joining requirements, the more participation rates will be depressed – particularly in circumstances where individualised losses are fairly low and there is already a limited incentive to join a group.

There are ambiguities in the Rules concerning the deadline for joining a group. When the permission application is granted, the Court will make an order specifying, among other things, 'the period of time in which claims may be brought by persons in the group proceedings'.[37] This suggests the Court will fix a cut-off date for joining a group. A cut-off date assists claimant law firms because it encourages potential group members to make a decision on joining the group without having to wait (potentially a lot longer) for the risk of time-bar (limitation) to have the same impact. However, the Rules also suggest that potential group members are entitled to join the group by right at any point prior to the Court setting the date for proof (trial on the evidence), which will normally be after pleadings are closed. The mandated entitlement to join the group at any stage prior to trial being set appears to circumscribe the Court's ability to set a cut-off date. Finally, the Rules also provide that persons can potentially join the group after a date for proof has been set but only with the permission of the Court and 'on cause shown'.[38] In at least one case, the Court has been prepared to extend the cut-off date, subject to appropriate qualifications.[39]

The members of the group are identified in the 'group register', which is filed with the Court.[40] The Court has signalled the importance it places on the group register and its being

36 Form 26A.14-A.

37 RCS 26A.12(1)(e).

38 RCS 26A.16.

39 *Campbell v. James Finlay (Kenya) Limited* [2022] CSOH 95, paragraphs 41–44. In that decision, the Court extended the cut-off date by one year subject to the qualification that the extension would expire if a proof (trial) was set down prior to the new cut-off date, subject to the Court's power to add claimants in terms of RCS 26A.16.

40 Court of Session Practice Note No. 2 of 2020, paragraph 26: the Court's stated preference is for the group register to be lodged in electronic form, with the representative party's solicitor applying data protection measures, such as using a secure email address or at least password-protecting or encrypting the group register.

properly maintained in the Practice Note, in which it is stated that 'the group register, a key component central to the procedure, is considered by the court at every hearing'.[41] The Rules state that the representative party is to lodge and re-serve on the defender updated versions of the group register when new members join the group or existing members leave.[42] This is relevant to when the group proceedings are 'commenced' for particular members of the group,[43] which will in turn be relevant to questions of time bar (limitation).

The solicitor signing the group register must certify that each group member's claim is 'brought within the statutory limitation period' and that the Court of Session 'is the appropriate forum' for each claim.[44] While the claimants' solicitor should consider those issues in any event, the requirement to do so establishes what may be a fairly onerous obligation given that the position on time bar and jurisdiction could vary widely depending on the personal circumstances of each group member.

As regards withdrawal, subject to any bespoke requirements that the Court may specify at the time of certification, if a group member wishes to withdraw from a group, the member must send the prescribed form to the representative party.[45] Withdrawal is then effective from when the updated group register is lodged with the Court.[46] The Rules also provide that a group member may withdraw without the permission of the Court, provided that withdrawal is made 'either (or both)': (1) before any trial on the evidence commences; or (2) where withdrawal would not reduce the group composition below two members.[47]

Defended cases and case management

Once a group claim has been certified and served, the procedure for ongoing management of the case is broadly similar to that of litigation in the Commercial Court of the Court of Session. The same judge will preside at all hearings of particular group proceedings, 'save in exceptional circumstances'.[48] The expectation is that the summons (claim) and defences will be in abbreviated form, always ensuring that fair notice of the claim has been given and that the extent of the dispute is reasonably well identified.[49] The rationale for only requiring abbreviated pleadings is that 'parties are expected to be aware of each other's position before proceedings are commenced'.[50] The Court also expects documents relied upon in a party's summons or defences to be lodged simultaneously with the summons or defences.[51]

Once written defences have been lodged, an initial preliminary hearing will take place[52] at which the judge will have the power to make a wide range of orders concerning development of written pleadings and preparation and lodging of documents, affidavits or

41 Court of Session Practice Note No. 2 of 2020, paragraph 9.
42 RCS 26A.15.
43 RCS26A.18.
44 Form 26A.15.
45 RCS 26A.14(2).
46 RCS 26A.26.
47 RCS 26A.17.
48 Court of Session Practice Note No. 2 of 2020, paragraph 5.
49 Court of Session Practice Note No. 2 of 2020, paragraphs 19 and 21.
50 Court of Session Practice Note No. 2 of 2020, paragraph 19.
51 Court of Session Practice Note No. 2 of 2020, paragraphs 20 and 22.
52 RCS 26A.21.

witness statements, and expert evidence. The Practice Note makes clear the Court's preference that parties should discuss how the issues can be most efficiently litigated, signalling the importance placed by the Court on achieving efficiency though professional cooperation.[53]

The preliminary hearing will be followed by a case management hearing[54] at which parties will be required to submit further documents such as proposals for disposal of the case and summaries of any legal arguments they wish to take.

The Court may fix a debate on legal arguments or a proof on evidence to determine one or more common issues.[55] The Rules and the Practice Note say very little, however, regarding what procedure may follow once the common issues have been dealt with.[56]

iv Damages and costs

Damages

Damages will be determined according to the usual legal principles for the type of claim in question.

Costs and funding

There are no specific rules on costs for group proceedings in the 2018 Act or the Rules and accordingly, the usual rules and legal principles will apply. However, a few points are worth noting in relation to group proceedings.

Success fees

Until recently, although solicitors in Scotland were able to enter into speculative fee arrangements, they were prohibited from entering into damages-based agreements (DBAs). This was reversed by Section 2 of the 2018 Act and the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Success Fee Agreements) Regulations 2020,[57] which brought in a new regime on success fee arrangements.

These changes have brought about a more favourable environment for, and therefore are likely to result in, an increase in class actions (and other claims) in the Scottish courts. Pursuers may be more willing to pursue group proceedings if they do not have to fund their own fees unless they are successful; and solicitors may well see the attraction of acting on the basis of a DBA for multiple clients in group proceedings.

Qualified one-way costs shifting for personal injury and death claims

The general rule on costs in Scotland is that 'expenses follow success'. In other words, a successful litigant, whether pursuing or defending, will be entitled to recover costs from the unsuccessful litigant, who bears both their own expenses and their opponent's.

53 See for example Practice Note, paragraphs 28, 29 and 31.

54 RCS 26A.22.

55 RCS 26A.22.

56 As noted above, in the case of *Campbell* (footnote 34), the Inner House indicated that once the generic issues in that case had been resolved, determinations on individualised issues could be dealt with separately. However, no comment was made on what the procedure for dealing with such individualised issues would be or, indeed, whether it would be part of the group proceedings.

57 SSI 2020/110.

However, the 2018 Act introduced a new qualified one-way costs shifting (QOCS) regime for personal injury and death claims,[58] which came into force on 30 June 2021.[59] The default position for cases involving such claims commenced after that date is that the court will not make an award of costs against an unsuccessful pursuer, provided that the case has been conducted in 'an appropriate manner'.[60]

Again, these changes have made the environment more favourable for class actions in personal injury matters, including clinical negligence claims, subject to the pursuers being able to establish a class at the certification stage.

v Settlement

The Practice Note on group proceedings makes it clear that, as part of the ongoing management of the case, the Court will be expecting regular updates on settlement efforts.[61]

If and when any settlement is reached, the Rules require the representative party to 'consult with the group members on the terms of any proposed settlement before any damages in connection with the proceedings may be distributed'.[62] This obligation to 'consult' does not, however, grant any group member express veto rights over a proposed settlement. As drafted, the rule merely requires consultation prior to distribution rather than prior to agreeing terms of settlement with the defender or defenders. It is accordingly questionable whether the obligation to consult will have any meaningful impact.

Leaving aside the requirements set out in the Rules, a robustly constituted group should have contractual obligations as between group members and the representative party, which govern agreement on settlement and other key decisions on the conduct of the litigation.

IV CROSS-BORDER ISSUES

It remains an open question whether an opt-out or hybrid regime will be established in Scotland in the future. Were that to happen, however, a question would arise over the territorial limits of such a regime.

The 2018 Act deals with this by defining opt-out proceedings as group proceedings brought on behalf of members who are either domiciled in Scotland and have not chosen to opt out or who are not domiciled in Scotland and have expressly opted in. It is, therefore, clear that if any opt-out procedure is brought into force, it will not automatically include non-Scottish domiciled claimants. Such claimants would be required to take active steps to be included.[63] This approach is unsurprising since a mechanism that automatically included non-UK domiciled individuals in the class would potentially offend against principles of comity.

As regards the recognition and enforcement in Scotland of judgments in foreign proceedings, there are no issues particular to group proceedings, as distinct from other

58 Section 8 2018 Act.

59 Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules and Sheriff Court Rules Amendment)(Qualified One-Way Costs Shifting) 2021 (SSI 2021/226).

60 Section 8(2) 2018 Act.

61 Court of Session Practice Note No. 2 of 2020, paragraphs 34 and 54.

62 RCS 26A.30.

63 Section 20(8)(b)(ii) 2018 Act.

litigation proceedings, that would be taken into account by the Scottish courts. Accordingly, in the absence of material concerns over matters, such as fair notice or procedural fairness of the litigation, the Scottish courts are likely to recognise and enforce these judgments.

V OUTLOOK AND CONCLUSIONS

Although the Court of Session has, for the time being, chosen not to introduce the most radical feature of the 2018 Act, an opt-out mechanism, the SCJC has stated that consideration will be given to introducing this at a future point. The financial rewards that might be available from successful opt-out litigation are bound to attract the interest of litigation funders, not least when Scotland is generally a less expensive jurisdiction in which to litigate than its southern neighbour.

The 2018 Act makes express provision for the operation of group procedure to be reviewed five years after coming into force.[64] The introduction of an opt-out regime may, therefore, be considered part of that review process. However, it is possible that the SCJC may decide to look at the issue before then, particularly if case law developments in England and Wales allow litigants there to utilise opt-out procedures that are not available to litigants in Scotland.[65] Similarly, if a workable opt-out class action procedural device is implemented in Scotland, this may put pressure on the UK Parliament to introduce a new statutory mechanism.

In the meantime, there is a sense of anticipation around how opt-in group procedure will develop in Scotland and it is likely that both case law and additional guidance will emerge over the next few years to shape this. It will be interesting to see what types and size of claim are taken forward given that there are no limits on the types of claim that may seek to utilise the procedure.

64 Section 23(1) 2018 Act. For group proceedings, which come under Part 4 of the Act, this review must take place by 30 July 2025.

65 In particular, the Supreme Court decision in *Lloyd v. Google LLC* [2021] UKSC 50, which arguably expands the circumstances in which the representative action device in CR 19.6 can be used. See also https://www.cms-lawnow.com/ealerts/2021/11/google-defeats-lloyds-claim-but-supreme-court-breathes-new-life-into-class-action-mechanism?cc_lang=en.

Appendix 1

ABOUT THE AUTHORS

COLIN HUTTON

CMS Cameron McKenna Nabarro Olswang LLP

Colin Hutton has over 25 years' experience in dispute avoidance and resolution. He is dual-qualified and advises on both English and Scots matters, including litigation, arbitration and mediation. He has significant experience in working with energy and climate change and financial services sector clients. He also advises on shareholder disputes and disputes relating to corporate transactions, including misrepresentation, fraud and bribery issues.

Colin specialises in the project management of the dispute resolution process. He is a keen advocate of alternative dispute resolution and regularly uses mediation to resolve disputes effectively. He has a specific interest in developments in the field of collective redress and its increasing significance in relation to data protection and ESG issues.

GRAEME MACLEOD

CMS Cameron McKenna Nabarro Olswang LLP

Graeme MacLeod specialises in commercial litigation and professional negligence claims, and advises banks, corporates, public bodies and insurers about a variety of disputes across both fields. Graeme acts for clients in high-value commercial disputes, including class actions, in the UK Supreme Court and Scotland's Court of Session and sheriff courts, as well as in alternative dispute resolution processes such as mediation and arbitration. His wide-ranging practice also includes advising clients facing cyber and data breach claims.

KENNY HENDERSON

CMS Cameron McKenna Nabarro Olswang LLP

Kenny Henderson is an experienced litigator who represents sophisticated and blue-chip clients in high-stakes disputes, frequently with a multi-jurisdictional element. Kenny is active in the developing area of class and group actions, where he has acted on both the claimant and defendant side, giving him useful strategic insights.

CMS CAMERON MCKENNA NABARRO OLSWANG LLP

Saltire Court
20 Castle Terrace
Edinburgh EH1 2EN
United Kingdom
Tel: +44 131 200 7517
Fax: +44 131 228 8888
colin.hutton@cms-cmno.com
graeme.macleod@cms-cmno.com
kenny.henderson@cms-cmno.com
www.cms.law

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