

Houthoff Class Action Survey: the United Kingdom

The Houthoff Class Action Survey 2024 provides an eye-opening journey into the future of class actions. It includes around 40 interviews with thought leaders from 12 different countries, preceded by an overview of the current class action regime in each jurisdiction. This is the overview for the United Kingdom.

In England and Wales, there are three different types of collective actions: group litigation orders (GLOs), representative actions and Competition Appeals Tribunal (CAT) proceedings. Due to Brexit, the Representative Actions Directive does not apply to UK class actions, but many of its features already form a part of existing class action procedures in England and Wales.

A GLO is a court-ordered procedure to efficiently case manage claims that raise common or related issues of fact or law. It is not a genuine 'collective' action. It is based on an opt-in system, and all claimants must enter their individual claim on the group register. A judgment in a GLO issue is binding on all other claims on the group register at the time the judgment is given. GLOs often proceed by way of preliminary issues or test cases. Which test cases are to be selected, and the method for doing so, can be discussed with the court and the other party. GLOs have certain technical and administrative requirements involving significant upfront costs. An increasingly common alternative to seeking a GLO is to bring a limited number of lead cases outside a formal GLO structure, which can then be used to inform the approach to other cases.

A representative action is a form of class action that allows one claimant to represent a group of unnamed persons who have the 'same interest' in an action. Those represented do not have to be named as parties to the proceedings, and the action is similar to an opt-out model.

Any relief can be sought through GLOs or representative actions, though representative actions are less well-suited to claims involving individualised loss. GLOs and representative actions are variously referred to as mass claims, group litigation/actions and, sometimes, class actions.

CAT claims are follow-on claims and independent damages claims related to competition law infringements. They are brought by a class representative, on an opt-in or opt-out basis, under the Consumer Rights Act 2015. To proceed as a class action, the case must be certified by the CAT by way of a collective proceedings order. No CAT class action proceedings have been finally concluded to date. Monetary damages and injunctive relief can be claimed, but exemplary damages cannot. In recent years there has been a significant increase in the number of CAT claims.

Class actions | GLOs/Representative actions (RA)/CAT proceedings

Scope	GLO: General; RA: General; CAT: Competition law infringements.
Access granted to	GLO: Individual claimants; RA: Representative claimant; CAT: Class representative.
Opt-in or opt-out	GLO: Opt-in; RA: Opt-out; CAT: Opt-in or opt-out; foreign class members must opt-in.
Declaratory relief or damages	GLO: Both; RA: Both; CAT: Both.
Frequently used	GLO: Yes; RA: Less frequently; CAT: Yes, increasingly.
Regulatory framework	Mainly Civil Procedure Rules (CPR), Practice Directions, CAT Rules, Competition Act 1998 and Other Enactments (Amendment) Regulations 2017.
Alternatives used in practice	Bringing a limited number of test cases; compensation schemes.

Class settlements

Binding class members after court approval	RA: yes; CAT approval required in opt-out proceedings, no approval required in opt-in proceedings.
Opt-in or opt-out	CAT-approved settlements: Opt-out, but opt-in for class members domiciled outside the UK.

Third party funding

Regulated by law	CAT Rules; Code of Conduct for litigation funders was published by the Civil Justice Council in November 2011, updated January 2018.
Frequently used	Yes.

Good to know

In *PACCAR v CAT* (26 July 2023) the Supreme Court precluded opt-out collective actions from being funded by third party litigation funding, which provides for a reward-based return. In opt-in proceedings, such agreements must comply with the formal requirements of the Damages-Based Agreements Regulations 2013 to be enforceable. In practice, parties have sought to avoid this issue by amending their agreements so that they are based on a multiple of the funder's investment. While this has been approved at first instance, at the time of writing, the legality of this approach remains under appeal.

In October we organise an interactive seminar where the main results of this research will be presented.

[Read more](#) on our website about this event and [pre-order the Houthoff Class Action Survey 2024](#).

CONTACT

If you have any questions about class actions or the survey, please feel free to contact Albert Knigge or Isabella Wijnberg.



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