

## Collective actions in the pension sector: storm in a teacup or calm before the storm?

The pension sector has been in transition for almost three years, but the 'surge in proceedings' anticipated by the Council of State and the Council for the Judiciary has not yet materialised. Various claims organisations are now active, but no collective actions have been instituted to date. In this follow-up article, we analyse the underlying reasons and explore whether this is the calm before the storm or whether the legal and financial thresholds for commercially driven mass claims in the pension sector are simply too high.

### Review: anticipated surge in proceedings has not yet materialised

In October 2024, we published an article in this journal, analysing the risks of collective actions in the pension sector and suggesting how pension funds could prepare for them.<sup>1</sup> At the time, we highlighted the phenomenon of entrepreneurial mass litigation, in which collective actions are initiated by commercial parties that earn income by funding the proceedings. The Dutch 'plaintiffs' bar', comprising lawyers who institute this type of proceedings, had grown considerably since the introduction of the Settling of Large-Scale Losses or Damage (Class Actions) Act (*Wet afwikkeling massaschade in collectieve actie*, or WAMCA) on 1 January 2020, and various claim firms established ties with foreign litigation funders. When the Future of Pensions Act (*Wet toekomst pensioenen*) was being drafted, the Council of State and the Council for the Judiciary warned emphatically of a surge in litigation, even if only a relatively small proportion of people were to bring individual proceedings.<sup>2</sup>

Today, almost three years after the Future of Pensions Act's entry into force, we may conclude that the expected deluge of proceedings has not arrived – at least for the time being. The number of published civil pension judgments was 242 in 2023 and 217 in 2024. In 2025, the figure dropped a little further to 198 published judgments. Although the Pension Funds Dispute Body (*Geschilleninstantie Pensioenfondsen*, or GIP) and the Dutch Institute for Financial Disputes (*Klachteninstituut Financiële Dienstverlening*) added another 50 decisions in 2025, this can hardly be described as a deluge of pension proceedings.<sup>3</sup>

The question arises why the floodgates seem to remain closed. The first reason is obvious: the pension transition is simply still in full swing. So far, only 30 pension funds (20%) out of approximately 150 pension funds in the Netherlands have actually switched to the new system. Around half of all pension fund

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1 For part 1 and the more detailed analysis, see *PensioenMagazine* 2024/114. The previous article was written by A.A. Boutens and D. van der Kooij.

2 In its letter of 28 October 2021, the Council for the Judiciary noted on page 2 that the Future of Pensions Act would have far-reaching consequences for a large part of the population. The Council therefore considered it likely that these people would not simply accept the changes imposed on them and would turn to the courts. Even a small percentage of all employees would be a considerable group in terms of actual numbers.

3 The figures in this paragraph have been taken from Mark Heemskerk, *Kroniek pensioenrechtspraak* 2025, PM 2026/BXXI.

members are now (wholly or partly) subject to the Future of Pensions Act, representing one third of invested assets.<sup>4</sup> In other words, much of the transition has yet to take place: around 17 further transfers are scheduled for 2026, 61 for 2027, and another 20 or so for 2028. However, even among those who are already subject to the new system, some have not yet examined the transition's specific consequences or been able to verify whether the transfer has been implemented correctly. The specific consequences for the various member groups will therefore actually only become clear in the coming years. In addition, mass disputes usually need time to evolve, especially as the first five years of WAMCA have taught claim vehicles that thorough preparation and bookbuilding are essential, as we will explain below.

## The pattern of previous mass disputes

We previously noted that, briefly put, the inception of many<sup>5</sup> disputes in the financial sector has almost always followed a similar pattern. The financial products that gave rise to the disputes, such as securities leases, unit-linked insurance and interest rate derivatives, were initially very popular in the economic situation in which they were offered. They thus became widespread in the economy. It was only years later – sometimes more than a decade after a product's initial popularity – that certain macroeconomic developments led to buyers being confronted with the product's drawbacks. Although these disputes concerned different products, the pattern in question remains relevant to the pension sector.

The effects of the pension transition will not become completely clear until current and former members and pension beneficiaries are actually faced with the consequences. Changing market conditions, such as a prolonged stock market downturn or a new period of high inflation, could trigger different transition effects than expected. A recent *PensioenPro* publication illustrates this risk: a severe market crash during the transition period might create a divide between transferred and not yet transferred members, which in itself could be a source of dispute.<sup>6</sup> Hindsight bias will inevitably affect the assessment of whether the pension transition has been balanced.

It is striking in this regard that the media and claims organisations focus relatively heavily on 'catch-up indexation'. Pensioners point out that their pensions have hardly been indexed for years, if at all, despite pension funds having had substantial buffers. Stichting PensioenVoldoen. NL's call for an interruption action, urging current and former members and pension beneficiaries to secure their entitlements to catch-up indexation, fits this picture. While all sorts of legal reservations can be raised about this proposed claim and its feasibility, the focus on overdue indexation illustrates that all the ingredients for dissatisfaction are present: a years-long period in which pensions lagged behind inflation, followed by a transition that has sparked fears among a large group of people that the indexation they missed out on will be lost permanently.

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<sup>4</sup> See also: *Toezicht Pensioentransitie 2026, De Nederlandsche Bank*.

<sup>5</sup> In addition, there are also one-off instances of mass claims for (alleged or established) financial loss, for example securities class actions after problems at individual companies, initiated on behalf of securities holders to recover losses incurred due to price drops (see the mass claims against companies including Ahold, Shell, Converium, Petrobras, BP, Airbus and Stellantis).

<sup>6</sup> See in more detail: *PensioenPro*, 26 February 2026: 'Wat als de beurs crasht, halverwege de Wtp-transitie?'

## A brief overview of possible pension claim parties and initiatives

Meanwhile, a broad spectrum of claims organisations and interest organisations has emerged that are involved in pension claims in one way or another. An online assessment conducted earlier this year shows that the following organisations are now active, among others.

Stichting PensioenVoldoen.NL has abandoned its originally proposed mass claim to focus (according to its website) on individual liability claims against pension funds and employers for losses incurred due to non-indexed amounts for the period from 2008 to 2021. Stichting Onderzoek Bedrijfs Informatie SOBI (a foundation of the well-known claim initiator Pieter Lakeman), together with ABP pensioners, filed charges of misappropriation of funds against management board members of five transferred pension funds last year. The Public Prosecution Service indicated that it did not find grounds for reasonable suspicion of a criminal offence, and decided not to prosecute.<sup>7</sup> It also indicated that criminal law 'must not be used to influence political decisions'. Nevertheless, the fact that even criminal law is being deployed testifies to the hardening of the pension debate. The move probably also served as a stepping stone: the foundation states on its website Pensioenherstel.nl that it is preparing claims (including mass claims).

Two other active players are Stichting Pensioenclaim and Stichting Pensioenbehoud. In its December 2025 newsletter, the latter called on members to initiate application proceedings to obtain personal data, including calculations, relying on the General Data Protection Act. The courts have dismissed such applications to date, partly because calculations are considered the result of standardised calculation methods that cannot be traced to any natural persons.<sup>8</sup> This foundation also aims to "*litigate before the Supreme Court in our common interest*" in order to "*save the pension indexation*", and people can now donate directly online to fund the proceedings. Cultuur onder Vuur, part of Stichting Civitas Cristiana, published a book in 2025 entitled *Pensioen in de uitverkoop*, which "*reveals the full scope of the pension robbery*". Although the 'claimuwpensioenverlies.nl' service (a partnership between two law firms, a pension consultancy firm and a litigation funder) terminated its service early, there are still various other pension lawyers proactively advertising the options for a 'mass pension claim', whether or not in collaboration with litigation funders.

Despite this activity, it is striking that none of these organisations have yet initiated formal collective proceedings under the WAMCA. This raises the question: is the threshold for doing so too high, or is the current calm a sign of thorough preparations for what is to come?

## Possible barriers to collective pension proceedings

The introduction of the WAMCA – which, unlike the previous system of collective actions, also enables collective damages – tightened the admissibility rules for claims organisations. Two reports by Research and Data Centre WODC, about the funding of WAMCA actions (2023)<sup>9</sup> and an overall evaluation of the

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7 See also: PensioenPro, 9 December 2025: '*OM doet niets met aangiften tegen ingevaren fondsen*'.

8 See, for example: ECLI:NL:RBZWB:2025:8926, ECLI:NL:RBMNE:2025:6857, ECLI:NL:RBZWB:2025:9603 and ECLI:NL:RBNHO:2026:132.

9 X. Kramer and others, *Nut, noodzaak, vormgeving en kosten van een (revolverend) processenfonds voor collectieve acties*, The Hague: WODC 2023.

WAMCA (2025)<sup>10</sup>, show that funding a collective action can be complicated and that five years of WAMCA have not yet led to any payment of collective damages. The 2025 evaluation report concludes that, of all WAMCA objectives, the least successful has been the "*coordinated, efficient and effective 305a action*", particularly on the point of efficiency and effectiveness. In addition, while the evaluation report outlines a generally positive picture of, in particular, the stricter "*governance, funding and representativeness requirements*", it specifically criticises certain aspects, especially regarding the lack of clarity on the control requirement (how much control is a litigation funder allowed to have?) and on the quantitative or qualitative details of the representativeness requirement (is it about the number of people represented or primarily about the organisation's suitability to represent them?).<sup>11</sup>

Incidentally, some of the lack of clarity on representativeness might soon be resolved by the Supreme Court. In *Privacy Collective v. Oracle-Salesforce*, Attorney General De Bock presented a very comprehensive Opinion on 30 January 2026, in which she seems to advocate a lowering of thresholds for WAMCA cases: "*admissibility requirements should be assessed against the background of the WAMCA's purpose, specifically the promotion of efficient and effective settlement of large-scale losses. **It is therefore undesirable to maintain overly high thresholds for litigation by interest organisations.** Further, the admissibility requirements should not be construed in such a way as to actually prevent ad hoc organisations from initiating collective actions*" (emphasis added).<sup>12</sup> If the Supreme Court adopts this view in June 2026, when it is expected to give judgment,<sup>13</sup> this will also lower the thresholds for mass claims in pension cases.

Even if the Supreme Court's interpretation of those thresholds proves lower than in many lower-court cases to date, that does not mean that requirements such as representativeness and similarity will disappear altogether or that every action can be commercially financed. In two recent articles,<sup>14</sup> Den Boer highlights these obstacles for pension actions in particular. As regards representativeness, we agree with Den Boer that a mass pension claim will be difficult to assert if an ad hoc claim entity does not receive any support from other organisations (including interest organisations). This probably also explains why mass claim initiators try to garner support by generating publicity, for example by turning to the prosecution services or publishing books with loaded titles such as 'pension sell-out' or 'where did my pension go?'

However, especially if the Supreme Court adopts Attorney General De Bock's Opinion, we doubt whether stakeholder opposition to a mass claim (for example, by trade unions or associations consulted before the transfer) would negatively affect representativeness as Den Boer suggests.<sup>15</sup> To us, this aspect would only become relevant in the substantive phase, especially if the stakeholders in question were to join the side of the pension funds being sued (such as when Mens & Milieu joined Shell in Milieudefensie's climate

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10 R. Rijnhout, T. Arons and others, *Vijf jaar WAMCA: Evaluatie Wet afwikkeling massaschade in collectieve actie (2020-2025)*, WODC, September 2025.

11 The report quotes in this paragraph have been taken from R. Rijnhout, T. Arons and others, *Vijf jaar WAMCA: Evaluatie Wet afwikkeling massaschade in collectieve actie (2020-2025)*, WODC, September 2025, pp. 10-11 and 12-13.

12 Attorney General De Bock's Opinion of 30 January 2026, ECLI:NL:PHR:2026:129, no. 1.4.

13 According to the Supreme Court in a LinkedIn message on the Opinion.

14 R. den Boer, '*De collectieve behandeling van invaargeschillen: grote beloftes, geringe betekenis?*', TPV 2025/37, and R. den Boer, '*De commerciële financierbaarheid van collectieve acties over pensioenrechten en -aanspraken*', TPV 2025/45.

15 R. den Boer, '*De collectieve behandeling van invaargeschillen: grote beloftes, geringe betekenis?*', TPV 2025/37, para. 3.2.

case<sup>16</sup>). Nevertheless, only pension claims with sufficient demonstrable support will reach the threshold, and probably only in cases involving relatively controversial issues and many interested parties (and possibly also with polarisation between members).

The same is true of similarity. In his first article, Den Boer rightly points out the major differences among individuals in transfer discussions. Differences can, to some extent, be resolved – also outside transfer disputes – by means of categorisation and damage scheduling of groups of members and/or formulas that include certain individual factors as variables to calculate damages per member. However, there are limits to this approach; which may introduce too much complexity into discussions and calculations, making it more efficient to settle disputes individually rather than collectively.

Finally, we believe that commercial sustainability will indeed lead to significant selection, with only scalable actions involving many members and sufficient financial interest – not just 'catch-up indexation' matters, but for example also cases of genuinely widespread criticism of decision-making or execution (or any carelessness that has come to light in that respect) – ultimately coming to fruition. Although Den Boer rightly highlights various protective provisions of the Pensions Act (*Pensioenwet*), such as the prohibition on commutation (Article 65) and the prohibition on disposal (Article 64), in the light of investment and collection risks,<sup>17</sup> damages are also regularly sought in collective pension disputes in our experience, whether or not as an alternative claim. The suggestion that damages only have practical relevance to pensioners is too bold, in our view. Whether, and to what extent, awarded damages are immediately due and payable depends on the modality of the award and the approach of the claim (including in respect of current and former members): losses already incurred can, in some cases, also be established for groups other than pensioners without this conflicting with the prohibition on commutation. For funders, practical collectibility ultimately hinges on the claim strategy adopted and the funding arrangements made outside the Pensions Act's protective provisions on joining or registration of the claim. The court can also fashion a remedy here in the award of the claim (or modalities thereof) and in the cost order of Article 6:96 of the Dutch Civil Code (DCC) and Article 1018I of the Dutch Code of Civil Procedure (which also provides scope for 'other costs'). Collective settlements offer even more flexibility.

### Individual test cases as a prelude to subsequent collective actions?

The fact that entrepreneurial mass litigation in the pension sector has so far remained limited does not mean that pension providers and employers can sit back and relax. Nor do the legal and financial barriers to collective actions under the WAMCA completely prevent proceedings from being initiated. Claim vehicles faced with the strict admissibility requirements or insufficient interest from litigation funders may also decide to conduct individual test cases first, or to let other parties do so, either by managing cases in the background with individuals litigating in their own name, or by acquiring claims of this type through assignment. This is a tested strategy in mass disputes: using one or several carefully selected cases to try to obtain a landmark decision that can then serve as a template for the assessment of similar cases. The

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<sup>16</sup> Supreme Court 10 October 2025, ECLI:NL:HR:2025:1534.

<sup>17</sup> R. den Boer, '*De commerciële financierbaarheid van collectieve acties over pensioenrechten en -aanspraken*', TPV 2025/45, paras. 3.2 and 3.3.

'diesel cases' provide one such example. Two claims organisations<sup>18</sup> conducted collective proceedings against Volkswagen group entities, while a third organisation<sup>19</sup> initiated various individual cases across the Netherlands. In the end, the three organisations reached an agreement with Volkswagen, as evident from a press release of 10 September 2025,<sup>20</sup> which means that individual proceedings can also be a way to bring parties to the table. It should be noted, however, that the two collective actions in this diesel example were brought under the old system of Article 3:305a (old) DCC, whereas under the current WAMCA, based on Article 1018m of the Dutch Code of Civil Procedure, individual proceedings can be more readily suspended if WAMCA proceedings have been instituted against the same defendant about the same facts. Accordingly, the risk of using the test case method is that WAMCA actions may get priority, but this convergence will probably not be a frequent occurrence.

In fact, the pension sector has long been familiar with the phenomenon of test cases: for example, in the current trend in pension indexation disputes, it is often the case that proceedings are conducted on behalf of a few employees and subsequently have a wider impact on all employers. That is not to say that there is necessarily a larger organisation behind every individual pension action. However, these individual actions could in any event serve as a precedent for a larger group of current and former members and/or pension beneficiaries. In addition, recent case law about indexation, in which some employers were ordered to pay damages because former employees' indexation prospects had deteriorated, also illustrates that other risks may arise outside the formal collective action. General standards, such as good employment practices and reasonableness and fairness, can become a popular independent basis for claims, even if pension regulations are being formally complied with. This could open up a relatively new area of judgments.

The value of test cases lies in the initial clarity and direction that a judgment may provide to both claimants and defendants. For claims organisations and litigation funders, obtaining a favourable judgment in a test case is crucial: it creates trust among a potentially larger group and provides a more accurate estimate of the likelihood of success of any subsequent action. For pension providers and employers, it is rather the opposite: an unfavourable test case is a potential warning sign. It could herald more and larger claims and encourage litigation funders to invest in collective actions. Past experience with previous mass disputes in the financial sector has taught us that a judgment favourable to claimants can fundamentally change the claims landscape. For example, the judgments in the securities lease cases triggered thousands of lawsuits.<sup>21</sup>

The recent strategy of Stichting PensioenVoldoen.NL, which has apparently abandoned the mass claim it initially intended and has switched to individual liability claims against pension funds and employers for losses due to non-indexed amounts, fits this picture.

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18 Stichting Car Claim and Stichting Diesel Emissions Justice.

19 Volkswagen Group Diesel Efficiency Stichting.

20 Available online at [dieselakkoord.nl](https://dieselakkoord.nl).

21 The Council for the Judiciary's letter of 28 October 2021 shows that, in the Dexia claims, the (upwards of) 24,000 victims who did not accept the 'Duisenberg arrangement' initiated thousands of lawsuits. In the period from 2003 to 2021, 13,667 actions were brought against Dexia at first instance, and 901 appeals.

In addition, it should be borne in mind that with effect from 1 January 2024, pension disputes may be submitted to the GIP via a low-threshold process. Although this body does not handle collective actions, new rulings on questions of principle could potentially have a wider impact. A recent example from a different sector is an August 2025 decision by the Netherlands Institute for Human Rights (the Institute) about equal pay for seafarers on ships sailing under the Dutch flag.<sup>22</sup> The Institute's decision is not binding, but Stichting Equal Justice Equal Pay has been actively preparing a mass claim action on the strength of this decision.<sup>23</sup> The potential claim touches on pay arrangements (including international ones) that have been used for decades, also based on collective labour agreements and international treaties. The case thus highlights the fact that even widely accepted practices can be subject to (potentially) substantial proceedings.

Pension providers and employers should be aware that unfavourable precedents may alter the claims landscape. It is important to be quick to take even smaller-scale proceedings seriously, rather than treating them as isolated incidents. After all, lost individual actions might spark an avalanche of subsequent claims. On top of that, the transition is still in full swing and the case law on the Future of Pensions Act is yet to take shape, so it seems likely that the number of cases will increase.

As argued in the previous article from 2024, preparing for what lies ahead remains essential. This means continuing to build support for the transition. Good communication is crucial in this respect and can eliminate the breeding ground for dissatisfaction. This point was recently reiterated by the Dutch Authority for the Financial Markets (the AFM) in its letter of 9 January 2026 to the Ministry of Social Affairs and Employment, which concluded in its observations that the pension transition "*will have failed if, while properly implemented in technical terms, pension fund members have not received adequate information and consequently have no confidence in the conversion of their pensions.*"<sup>24</sup> The AFM therefore considers communication a key process.

## Look ahead and conclusion

The question that presents itself is whether the current sense of relative quiet will persist or whether this is just the calm before the storm for the pension sector. The following three factors suggest that it is impossible to tell at this point.

- First, the majority of pension funds still have to complete the transition. All pension funds intending to switch in 2026, 2027 and 2028 will implement their own individual transition plans, with their own choices regarding compensation and asset shift. Each transition can trigger different disputes.
- Second, no substantive court judgments have been rendered yet on the Future of Pensions Act. The first actions, such as the one by the ABP member who unsuccessfully tried to obtain an order against transfer, failed on formal grounds. Once the courts start giving substantive rulings on the transition and the Future of Pensions Act, the case law may evolve in ways that will also change the claims landscape.

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<sup>22</sup> Netherlands Institute for Human Rights, decision number 2025-75.

<sup>23</sup> See, for example: FD, 10 November 2025, '*Reders en actiegroep opnieuw op ramkoers vanwege loondiscriminatie*'.

<sup>24</sup> AFM letter of 9 January to the Ministry of Social Affairs and Employment with observations regarding pension providers' transition to the new system.

- Third, claims organisations' focus may shift, temporarily or otherwise. Individual proceedings may serve as test cases and, if successful, lay the foundation for subsequent collective actions.

In short, while the surge has not yet materialised, earlier warnings by the Council for the Judiciary and other parties should not be dismissed out of hand. The thresholds for mass claims may be high, but they are not insurmountable. Time will tell whether this is the calm before the storm.

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