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Navigating the Modern Class Action Landscape

What was once seen as a largely US phenomenon, collective litigation has expanded globally to become a fixture in the UK and European legal system and a core business risk. 2026 is set to be a pivotal year in determining how that growth continues, with cross-border regulatory regimes maturing or being overhauled and new frameworks being introduced. These developments will continue to drive a fundamental shift in the litigation landscape, amplifying financial exposure, redefining risk management, and demanding new strategic approaches from insurers and legal professionals.

The UK group action market has developed into a major institutional asset class, with the number of claims before specialist tribunals, the complexity of funding structures, and the breadth of sectors now exposed to collective risk attesting to its growth and attracting increasing interest among the public and press.

Third-party litigation funding is a key factor in underpinning, and sometimes driving, this growth, with the potential for high returns seeing funders bankrolling UK claims in areas including competition, securities, employment, environmental and data privacy claims. Without funding, many claims of this scale would not be commercially viable to bring, with the rapid expansion in mass claims and growing influence of funders giving rise to calls for greater regulation and oversight.

The UK's Evolving Toolkit

The legal system in England and Wales offers Group Litigation Orders (GLOs) for mass claims in areas such as financial mis-selling, product liability, or environmental damage, but they operate strict opt-in protocols and require a substantial number of claimants to be viable. In Scotland, group proceedings also operate on an opt-in basis and require court approval for both the representative party and the claim itself.

The Competition Appeal Tribunal (CAT) has jurisdiction across the UK and handles damages claims for anti-competitive behaviour under the Collective Proceedings Order (CPO) regime with the power to certify claims on an opt-out basis. Each regime has carved out distinct niches suited to specific types of claims, often with narrower frameworks than those seen in the US, which features a significantly broader, more mature, and expansive system than the UK, and where opt-out is the norm.

CAT collective proceedings for competition claims have seen a rapid increase since the landmark Supreme Court ruling in *Merricks v Mastercard* in 2021, where the CAT officially granted its first CPO to enable millions of claimants to pursue a multibillion-pound claim for multilateral interchange fees alleged to be unlawful. Currently, there are more than fifty collective actions and GLOs, primarily driven by the CAT, progressing against corporations operating across technology, financial services, transport, energy and digital assets.

Although litigation funding has been central to this growth, the Supreme Court's 2023 PACCAR decision held that certain litigation funding arrangements amounted to unenforceable damages-based agreements. This created significant uncertainty and dampened the appetite for collective actions among funders, which contributed to a slowdown in 2025.

The market has since adapted, with funders shifting towards agreements calculating returns as multiples of committed funds rather than as a percentage of damages, and the Court of Appeal confirmed this in the ongoing claim in *Gutmann v Apple* in upholding that the CAT can order funders' returns to be paid before damages are distributed to class members, giving greater confidence to the funding market.

Any remaining uncertainty looks set to be removed by government intervention, with the Civil Justice Council's (CJC) June 2025 report recommending legislation to retrospectively overturn PACCAR, alongside a light-touch statutory regulatory model for litigation funding and a framework for preventing funder control over settlement decisions. The Government has committed to implement legislation that reverses PACCAR "*as soon as parliamentary time allows*," which should give funders further confidence.

From Competition to Consumer Claims

A significant potential development for insurers is the prospect of class actions extending beyond competition law into other areas. The current opt-out regime applies only to breaches of competition law, but in April 2026 the Business and Trade Secretary indicated the Government's intention to "*examine and recalibrate the UK's consumer protection system*," prompting the Law Commission to launch a review into whether a dedicated consumer class action regime should be introduced.

The Commission will look at what should constitute a consumer law claim, whether opt-out mechanisms should also be available, and how damages, costs, and funding should be managed, taking into account the CJC's funding review and the outstanding Department for Business and Trade review of the CAT's opt-out regime, which proposes to introduce stricter criteria for certifying claims and a potential lift of the ban on damages-based agreements (DBAs) to lower funding rates and provide better returns for claimants.

This comes at a time when regulatory activity is intensifying; the Competition and Markets Authority (CMA) has expanded powers, which it has exercised by launching an unprecedented number of enforcement actions, including fourteen formal investigations in the year following the Digital Markets, Competition and Consumers Act 2024 (DMCC) coming into force, alongside 157 advisory and warning letters and 46 information notices. The presence of a more assertive regulator and a possible new avenue for consumer class action will heighten the litigation risk for consumer-facing businesses.

Procedural innovation is also helping to reshape things outside the CAT, with multiparty, or 'omnibus', claim forms increasingly used as a more flexible alternative to GLOs, allowing large numbers of claimants with similar grievances to sue a common defendant through a single proceeding, with courts capable of accommodating claim forms bearing as many as 5,000 claimants. There has also been a marked rise in data breach litigation driven by highly interconnected digital landscapes and the increased commercialisation of consumer data, leading to a steady growth of collective claims such as the medical, pharmaceutical, and financial services industries.

Key Cases Shaping the Landscape

Kent v Apple made history in 2025 as the CAT's first collective action to succeed at trial, finding the electronics multinational had abused its dominant position by charging excessive commissions on iOS app distribution and in-app payments. In the ESG space, the liability judgment in *Municipio de Mariana v BHP Group* favoured more than 600,000 Brazilian claimants, confirming that English courts are willing to hold UK parent companies accountable for harm caused overseas, with the determination on damages, potentially reaching £36 billion, due to begin in late 2027.

Other significant ESG and mass tort claims continue against Dyson, Shell, BAT/Imperial and Brazil Iron. These sit alongside 'Dieselgate' claims brought against car manufacturers over the alleged use of defeat devices to falsify emissions data. In all cases, English courts have shown a continued willingness to retain jurisdiction over foreign claims with strong territorial links despite defendants' challenges.

Gaps in effective regulation mechanisms are often themselves blamed for creating opportunities for class action, such as the FCA motor finance compensation scheme. Many point towards slow regulatory action and complex commission models as having incentivised certain interested parties to aggressively pursue collective litigation.

The Situation in Europe

In the EU, the Representative Actions Directive (RAD) has been the main legislative route for consumers to collectively seek compensation or injunctions against illegal corporate practices, providing all EU countries with a mechanism for representative actions. Directive (EU) 2020/1828 harmonises collective redress across member states and significantly strengthens the landscape for mass claims while allowing local governments to retain considerable flexibility in determining whether consumer participation requires an explicit opt-in or opt-out, and to set rules for funding and costs.

In practice, however, implementation has been uneven and the effects fragmented. Damage claims arising from competition law infringements have increased over the past decade, facilitated by broader availability of litigation funding, a more professional claimant bar, and an increasingly claimant-friendly environment. Despite this, the RAD is a 'minimum harmonisation' instrument and has left member states with considerable discretion. Some have extended collective redress to competition law, even though this falls outside the original scope, while other countries have strictly adhered to the RAD, creating a disjointed landscape across the EU.

Future Expectations

It is anticipated that securities, competition, ESG, and mass tort actions will continue gaining momentum through the remainder of 2026, as courts and government try to balance providing access to justice with protecting businesses from unmeritorious claims. Over a decade on from the opt-out regime's introduction, the outcome of the Department for Business and Trade's consultation, titled *Swifter and simpler competition redress*, and the Government's response could significantly shape the CAT's future direction, including the introduction of a stricter merits test for certification and greater scrutiny on the costs and benefits of claims. The increased powers granted to the CMA by the DMCC increase the risks of greenwashing, making it likely there might also be a rise in climate-based class actions as investors and consumers pursue claims against inaccurate or misleading environmental statements.

For insurers and law firms, the direction of travel is clear in that funding markets are stabilising following PACCAR, procedural innovation is lowering the barriers to bringing claims at scale, and government policy is moving towards greater access to collective redress. Whether the UK adopts a dedicated consumer class action regime or not, recent reviews and reforms will go a long way in shaping long-term underwriting, reserving, and defence strategies.