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Costs and group litigation

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Overview

- Overview of different types of “group litigation” or “class actions”.
- Consideration of costs issues in England and Wales.
- Litigation funding.
- Retainers.
- ATE insurance
- Security for costs.
- Costs budgeting and capping.
- Costs orders
- Costs: detailed assessment.
- Common costs, apportionment and division.

Types of group litigation

- Group Litigation Orders (GLOs) under part 19 CPR.
- Representative action procedure.
- Collective proceedings Order (CAT)
- Informally constituted group actions and test cases.

Group Litigation Orders (GLO)s

- Helpful list:
- <https://www.gov.uk/government/publications/group-litigation-orders>
- Section III part 19 CPR.
- Rule 19.22 CPR: requirements of GLO.
- Rule 19.23 CPR: effect of the GLO.

Representative action procedure

- Section II part 19 CPR
- Rule 19.6 CPR
- Lloyd v Google LLC [2021]
UKSC 50
- Commission Recovery Ltd v
Marks & Clerk LLP and Long
Acre Renewals [2023]
EWHC 398: PTA sought.

Collective proceedings (CAT)

- Section 47B(1) of the Competition Act 1998.
- Requirement for a Collective Proceedings Order from the Competition Appeal Tribunal.
- **Mastercard Inc v Merricks**
[2020] UKSC 51

Informally constituted group actions/test cases

- **Abbott & Others v Ministry of Defence [2022] EWHC 1807**
- Consolidation/order that cases be managed and tried together.
- Test cases: see **OFT v Abbey National Plc [2009] UKSC 6**

Litigation funding

- What's it for? ATE insurance/disbursements/elements of discounted CFAs.
- How much its costs: 30% of the recovery or 3x the value of the funding
- Maintenance/champerty/control.
- **Paccar Inc and Others v Road Haulage Association Limited and Others [2021] EWCA Civ 299.**

Retainers

- Conditional fee agreements (CFAs).
- Damages based agreements (DBAs).
- Crowdfunding?
Securitisation of funding?
- Costs of funding not recoverable.

ATE insurance

- Important: what if you lose?
- Underpin disbursements.
- Amount.
- Absence can be reason for refusing GLO.
- **RBS Rights Issue Litigation**
[2017] EWHC 463 (Ch)

Costs budgeting and capping

- Part 3 CPR and Practice Directions 3D and 3E.
- **Sharp v Blank [2015] EWHC 2685** and **[2017] EWHC 141 (Ch)**
- **McAlpine [2015] EWHC 3543**

Security for costs

- See rule 25.13 CPR:
particularly useful where the claimants are corporate bodies. Eg financial misselling or expatriates.
- ATE insurance: see Premier Motorauctions v PricewaterhouseCoopers LLP [2017] EWCA Civ 1872

Costs orders

- Can be very complex.
- Departing from the “general rule”.
- Costs of particular issues.
- GLO costs.
- Non Party Costs Orders.

Costs considerations on detailed assessment

- Usual to be taken in stages.
- **Motto and others v Trafigura Ltd [2011] EWCA Civ 1150**
- Preliminary issues including points of principle.
- **Deutsche Bank AG v Sebastian Holdings Inc [2023] EWHC 9 (SCCO)**
- Not a group case, but useful for expert fees and time recording.

Implementing the costs order: Common costs, apportionment and division

- Baylis v Kelly [1997] 2 Costs LR 212
- Medway Oil & Storage Co v Continental Contractors [1929] AC 88
- Dyson Technology Ltd v Strutt [2007] EWHC 1756
- Haynes v Department for BIS [2014] EWHC 643 (QB)
- Ong v Ping [2015] EWHC 3258