



Class wars

Group actions will establish themselves in Europe – but only in limited areas.

While class actions have failed to take off in Europe as many expected, there are clear signs in a number of areas of group actions becoming established – notably with claims focused on privacy, consumer-protection and competition issues. Reforms over the past decade have eased the path of group claims in the UK, Italy, France and Belgium, while the European Parliament in November 2020 endorsed the new Collective Redress Directive, aimed at bolstering consumer rights in member states.

Matt Wilson, associate GC for EMEA and APAC at Uber, comments: “When you look at some of the consumer laws that have come in the EU recently and the ability of group associations to bring actions on behalf of consumers, I would expect that to become much more lively in the years to come.”

The growth of litigation funding will further stoke such trends. “There are lots out there,” says Nick Rowles-Davies, executive vice chairman of LCM Finance. “You’ll see funders adopting a more pan-European approach, because even if they can’t pick up work on collective actions in the UK, they can in the Netherlands, Belgium and Germany.”

Standard Life Aberdeen head of litigation Gavin Davis agrees: “These things take a while to get a critical mass of investors to make it worthwhile for the law firms and to that end there’s a huge amount of book builders out there.”

The impact of these developments will remain uneven and largely determined by companies’ regulatory and consumer exposure. But with the Supreme Court in December 2020 dismissing a challenge to the pioneering £14bn group claim against Mastercard – the first mass consumer claim to be brought under the new ‘opt-out’ collective action regime in the 2015 Consumer Rights Act – group actions have taken another major step forward. The presence of other large group claims before the English courts, including the trucks cartel action, the privacy dispute between Morrisons and a group of its staff, and the opt-out claim *Lloyd vs Google* makes it clear that collective actions will carve out a bigger slice of Europe’s disputes market in the years ahead.

This is an excerpt from an HFW report on the future of dispute resolution. To read the rest of the report, which includes a series of 30 interviews with senior in-house counsel and other leading figures from across the global disputes industry, as well as insights from our expert litigators, visit: www.hfw.com/litigation

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