

Insights

NEW GROUP LITIGATION ORDER ISSUED TOGETHER WITH THE POTENTIAL DEVELOPMENT OF A NEW “GLO LITE” PROCEDURE FOR THE COLLECTIVE CASE MANAGEMENT OF CLAIMS

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SUMMARY

The High Court has made a Group Litigation Order (GLO) in the class action proceedings of [Tongue & Ors v Bayer Public Ltd Company & Ors \[2023\] EWHC 1792 \(KB\)](#). This appears to be only the second GLO made by the High Court in 2023. In its judgment, the Court made a number of important comments about the factors it took into account when exercising its discretion to make a GLO. It also referred to a form of collective case management it named “GLO Lite”, which indicates that a new informal practice for managing class actions is developing in the High Court.

The application for a GLO was made by the claimants and supported by the first and second defendants (referred to as the “Bayer defendants”). There are approximately 200 claimants who between them are represented by three firms of solicitors.

THRESHOLD TESTS

The procedure for applying for a GLO is set out in CPR 19.21 and 19.22. In order to make a GLO, the Court must be satisfied that (1) the claims give rise to common or related issues of fact or law, and (2) there are a sufficient number of claimants who seriously intend to proceed in their claims giving rise to those issues. If those threshold tests are met, the Court has a discretion to make a GLO.

The parties agreed, and the Court also concluded, that those threshold tests were met. The Court found that there were a sufficient number of claimants who seriously intended to proceed and whose claims raised common or related issues of fact or law. The Court did note the quantum of damages was likely to be an individual rather than common issue, but observed that this was not unusual in group litigation and there may be some quantum issues that could conveniently be managed collectively.

The Court also confirmed that there is no minimum number of claims for the proceedings to be suitable for a GLO.

DISCRETION

The Court then considered whether to exercise its discretion to order a GLO, and in particular whether a GLO would help conduct the cases justly and at proportionate cost. In making that assessment, the Court particularly considered costs and funding. The Court held that the value of the individual claims meant that claimants may have real difficulty funding individual actions, but funding was in place to bring and manage the claims on a group basis. In this claim, the costs of running the group register and advertising would be minimal. Expert evidence for claims on a collective basis was likely to be more cost-effective than for claims on an individual basis.

The Court also noted that collective case management of some sort was required for these claims, as dealing with them separately would create a risk of inconsistent judgments.

GLO LITE

For the first time the Court made reference to alternative forms of collective case management as including an approach it referred to as “GLO Lite”, which it said would “manage the cases in a similar way to a formal GLO but without making the order”. What distinguishes a GLO from GLO Lite is mainly the existence of a group register, a cut off date (or corraling period) for claimants to join, and the fact that findings on generic issues are binding on all of the parties. Where parties do not require orders to this effect, GLO Lite would appear to be sufficient in multi-party actions.

It is clear that in all class action claims, whether subject to a GLO, a representative action under CPR 19.8, or a group claim in which a GLO has not been applied for or has been refused by the Court, collective case management is necessary to ensure that the claims can be dealt with effectively and proportionately. In the absence of a formal collective case management procedure under the CPR outside of the GLO and representative action procedures, it appears that the Court has been developing its own “GLO Lite” procedure for the collective case management of claims. The Court does not go into detail about the features of GLO Lite procedure, but in our experience these include an early order that the claims should be case managed together, consolidated or joint pleadings, joint case management hearings, consolidated disclosure, witness and expert evidence, and a joint trial (or split trial). We have seen a number of cases in which orders for forms of joint case management have been made in the past and the use of the Court’s case management powers to jointly manage cases in which similar issues arise has become increasingly popular.

Although the phrase GLO Lite has not been used before, it is helpful to now have a term for what has been an ad hoc method of case management in multi-party actions. This should allow a body of case law and practice that will help the Courts and the parties in managing multi-party actions going forward.

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MEET THE TEAM



Ravi Nayer

London

ravi.nayer@bclplaw.com

[+44 \(0\) 20 3400 4796](tel:+442034004796)



Benjamin Blacklock

London

ben.blacklock@bclplaw.com

[+44 \(0\) 20 3400 3411](tel:+442034003411)



Georgia Henderson-Cleland

London

georgia.henderson-cleland@bclplaw.com

[+44 \(0\) 20 3400 3714](tel:+442034003714)

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