GROUP LITIGATION:

ABBOTT V. MINISTRY OF DEFENCE

[2023] EWHC 1475 (KB)

Divisional Court permits thousands of claimants to use a single claim form

1. On 16 June 2023 the Divisional Court (Dingemans LJ and Andrew Baker J) handed down judgment in *Abbott v. MoD*. The court set aside the order of Master Davison requiring 3,500-odd claimants to issue individual claim forms or be struck out. The court clarified the meaning of CPR 7.3 and held that it is not an abuse of process for multiple claimants to join together in an action with a single claim form (an "omnibus" claim form).

Background

2. Hugh James represents current and former military personnel who claim damages from the MoD for noise-induced hearing loss. The claimants are drawn from all parts of the Services and various locations. While the facts of the individual cases vary, there are significant common issues. Thousands of claimants are waiting in the wings.

3. The claimants and the MoD had agreed that there should be a trial of lead cases and common issues. Before the CMC and in the light of decisions in other actions, the Master asked to be addressed on the question whether an omnibus claim form was an abuse of process. He so held and required separate claim forms to be issued in all cases within 6 months, failing which individual claims would be struck out. The costs of compliance ran into hundreds of thousands of pounds.

Judgment

4. The Divisional Court allowed the claimants' appeal for the following reasons:

5. The Master applied an analogy from group litigation in Section III of CPR Part 19. He thought that in such cases, paragraph 6.1A of CPR PD19B required "one claimant per claim form". There is no such requirement and no true analogy.

6. The Master was influenced by his perception of the demands of omnibus claim forms upon the court and the CE system. Those considerations were irrelevant and misplaced: the demands of 3,500 individual claim forms were greater.

7. The heart of the judgment concerns CPR 7.3, which provides that "*a claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings*".

i. Being "disposed of" means finally determined, not merely case-managed together.

ii. Common disposal must be convenient, but it need not be the only possible or reasonable way of determining the claims.

iii. "Convenient" is an ordinary word which means possible and helpful or useful, nothing more.

iv. The Master's error was to equate "disposed of in the same proceedings" with "disposed of in a single trial", which is not what CPR 7.3 requires. "Proceedings" refers to "the action" and does not connote a single trial.

v. At §71 (iv) Andrew Baker J agreed with the claimants' submission:

"The governing principle, therefore, is not whether there is a large number of claimants and/ or causes of action. Rather, it is the convenience of disposing of the issues arising between the parties in a single set of proceedings. The degree of commonality between the causes of action, including as part of that the significance for each individual claim of any common issues of fact or law, will generally be the most important factor in determining whether it would, or would not, be convenient to dispose of them all in a single set of proceedings."

vi. CPR 7.3 neither states nor implies that the determination of a small number of lead cases must resolve everything else. It could be enough that deciding common issues would make real progress towards the determination of each individual claim.

vii. The court was not sympathetic to the MoD's submission that judgment in the lead cases would not be binding on the rest – a submission often made by defendants in group actions. The court did not need to decide this question, but noted that lead cases selected well may produce findings with binding effect, not just a persuasive impact.

Conclusion

8. The Divisional Court's judgment is welcome. Our system of civil justice remains prohibitively expensive for many individual litigants. Joining together in an omnibus claim form provides access to justice. Such cases are often conducted on CFA terms, or with litigation funding, and ATE insurance. The court manages them as though they were subject to Group Litigation Orders. The court does not normally conduct a series of trials, but will expect common issues to bind all parties, the decision on other issues to apply in accordance with the normal rules of estoppel, and the outcome of the lead cases to apply in other cases unless they raise distinct issues. Forcing claimants to issue their own claim forms would inundate the court system. Myriad claims arising in the same context might well be consolidated or case-managed and tried together, depriving the Master's approach of practical utility. An omnibus claim form in an appropriate group action is not an abuse of process.

About the author

Simon Johnson represents both claimants and defendants in group actions in the High Court. His clients include the successful claimants in the *Alpha Panareti* litigation, the third defendant and related entities in *4VVV Ltd. v. Spence & Kewley & Ors*, and numerous claimant groups suing solicitors and insurers.

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