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MULTI-PARTY LITIGATION IN ENGLAND

ABSTRACT
In England ‘multi-party’ litigation can take various forms, of which the most important are (a) the opt-in system of Group Litigation Orders and (b) the opt-out system of Representative Proceedings. Category (b) can yield damages to be distributed amongst the represented class, as recent case law shows. However, Group Litigation Order litigation is currently the main means of handling claims for compensation involving large groups of similarly affected ‘victims’. Group Litigation Orders involve high levels of case management.

KEY WORDS
Multi-party litigation; class actions; representative proceedings; group litigation

INTRODUCTION
English ‘multi-party’ litigation can take one of four forms: (I) test case litigation, supported by the staying of related individual actions; (II) consolidated litigation or joinder, so that claims are coupled together into a single but long snake of a case; (III) representative proceedings; (IV) numerous claims under a ‘Group Litigation Order’.

1 For massive citation of other literature, Andrews on Civil Processes (Intersentia, Cambridge, 2013), vol 1, Court Proceedings, 22.01 n 1.
4 CPR 19, Section III; and Practice Direction 19B.
The scheme of this paper is as follows: after brief explanations of I and II, detailed discussion will turn to III and IV.

Representative proceedings (mode III above) in England differ from modes I, II, and IV (see above) because the representative claimant brings an action on behalf of himself and others (the represented class). He is the only claimant. Members of that represented class are not parties to the action. However, Group Litigation Order litigation has become the main, but not the exclusive, means of handling claims for compensation involving large groups of similarly affected persons or entities. Group Litigation Orders are characterised by high levels of case management at all stages of the proceedings. The GLO procedure is an opt-in system.

I

TEST CASES

Large numbers of related claims might be stayed (placed in suspense, but not dismissed) pending the outcome of a test case to be decided by the High Court.

For example, in the bank charges litigation the English courts were asked to pronounce on a point of law. The huge financial importance of the issue, and the banks’ determination to defeat the challenge to their charges, led to successive appeals from the High Court to the Court of Appeal and the Supreme Court. In this test case a governmental agency, which is responsible for consumer protection and regulation of trading practices, invoked its statutory powers to seek a judicial declaration. It was hoped (although this hope proved to be misplaced) that this declaration would provide the legal basis for a vast number of bank customers to obtain relief in respect of alleged over-charging on their bank accounts. These charges, onerous and harsh, are imposed under contract when the customer exceeds a specified credit limit on her current banking account. But the test case failed when the Supreme Court held that the alleged over-charging could not be struck down under the relevant contractual regulations. This was because the contractual conditions fell within the prohibited zone of contractual freedom, as defined by the relevant legislation.

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Although unsuccessful in the bank charges litigation, the test case technique remains available whenever public bodies have legal power disinterestedly to seek legal declarations (or other relief) on behalf of the community or segments of it.

II

CONSOLIDATION AND JOINDER

Consolidation and joinder of co-claimants are established means of accommodating multi-party actions. There is no limit on the number of co-claimants who can use this form of procedure. For example, in *Weir v. Secretary of State for Transport (No 1)*, the ‘Railtrack’ case, a group of claimants, formed an ‘action committee’. This committee brought a single action in which a very large group of co-claimants (nearly 50,000 shareholders in that case) were *full parties to the proceedings*. These claimants sought monetary redress against a defendant company. Consolidated procedure is an opt-in system of multi-party litigation.

III

REPRESENTATIVE PROCEEDINGS (‘OPT OUT’)

In these proceedings, the representative claimant brings an action on behalf of himself and others (the represented class). He is the only claimant. Members of that represented class are not parties to the action. Nevertheless, those class members will receive the benefits of a *res judicata* decision (or be subject to that decision), for example the benefit of a favourable declaration of legal entitlement. This form of proceeding is, therefore, an opt-out system. Representative proceedings are relatively uncommon in England.

The current English rule (CPR 19.6) provides:

(1) Where more than one person has the same interest in a claim—a. the claim may be begun; or b. the court may order that the claim be continued, by or against any one or more of the persons who have the same interest as

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7 [2005] EWHC 812 (Ch).
8 CPR 19.6.
representatives of any other persons who have that interest…(4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule—a. is binding on all persons represented in the claim; but b. may only be enforced by or against a person who is not a party to the claim with the permission of the court.

In this style of procedure, only the ‘representative’ is a ‘party’ in the full sense. Section 151(1) of the Senior Courts Act 1981 defines a ‘party’ to civil proceedings as including any person who pursuant to or by virtue of rules of court or any other statutory provision has been served with notice of, or has intervened in, those proceedings, and this indicates that a represented person is not a ‘party’, unless a rule requires him to be notified of proceedings (no such rule presently exists). In fact the represented party occupies a hybrid position. He is neither fully a party (and thus not automatically liable for costs,9 nor is he able to demand—nor liable to provide—disclosure of documents),10 nor is he a mere bystander uninterested in the fate of the case. Indeed, he is bound by its result: Unless the court otherwise directs, any judgment or order given in a claim in which a party is acting as a representative under this rule (a) is binding on all persons represented in the claim…11

Representative proceedings can be commenced without the court’s permission (conversely, however, the court can order that pending proceedings should be continued in representative form).12 Furthermore, the court does not approve settlements of representative proceedings, unless the represented persons are either under a mental disability or are minors.13

It is unnecessary for the representative to have been appointed or elected by the relevant group. In short, he can be a self-appointed general. However, ‘the court may direct that a person may not act as a representative’.14 This allows the court to bar an unsuitable representative. The rule provides that ‘Any party may apply to

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9 Price v. Rhondda UDC [1923] WN 228; (1923) 130 LT 156, Eve J; on which, contending that the matter should be re-considered, Waller J in Bank of America National Trust and Savings Association v. John Taylor [1992] 1 Lloyd’s Rep 484, 495.
10 Ventouris v. Mountain [1990] 1 WLR 1370, Saville J.
11 CPR 19.6(4).
12 CPR 19.6(1)(b).
13 CPR 21.10(1) (proceedings by or on behalf of a child or patient). cf the US practice where the need to obtain judicial approval for class action settlements is standard, although it has not escaped criticism: N Andrews, English Civil Procedure (Oxford University Press, 2003), 41.90 to 41.109.
14 CPR 19.6(2).
the court for [such] an order’, a provision which rather begs the question whether a represented person is a ‘party’ to the action.\(^{15}\) In *Moon v. Atherton* (1972) a represented person was treated as a ‘party’ under the pre-CPR rules,\(^ {16}\) but only for the limited purpose of enabling a person to take over the role of representative when the earlier representative discontinued his claim.

Represented persons need not be informed of the representative party’s intention to bring the action nor need they be informed of its progress. Furthermore, the representative claimant or defendant is *dominus litis* (Latin for ‘the one who calls the procedural shots’) and so it follows that the representative can compromise the claim or defence. Such a settlement will not bind represented persons unless they specifically assent and become parties to it. But a settlement which is constituted as a judgment by consent would appear to bind represented persons because: … *any judgment or order given in a claim in which a party is acting as a representative under this rule (a) is binding on all persons represented in the claim*… However, if they are discontent with the manner in which the proceedings are being conducted by the head representative, a segment of the represented group can secede from the main group and become co-defendants.\(^ {17}\)

Representative proceedings can provide an efficient means of gaining ‘closure’ of a dispute affecting a host of persons. A good example is the *Equitable Life* case (2002), where a defendant life insurance company sponsored a representative action. Ultimately, the House of Lords issued a declaration in this action.\(^ {18}\) That declaration established the true interpretation of a clause in the defendant company’s life assurance policy. Ninety thousand policy-holders were bound by this decision.

The representative mechanism has been used to try to obtain effective injunctive relief against a disruptive unincorporated association (a ‘protest group’), but the Court of Appeal in *Astellas Pharma Ltd v. Stop Huntingdon Animal Cruelty* (2011) held that the lower court had over-stretched itself by attempting to render unidentified persons subject to immediate enforcement of the injunction.\(^ {19}\)

\(^ {15}\) CPR 19.6(4).

\(^ {16}\) [1972] 2 QB 435, CA.


\(^ {18}\) *Equitable Life Assurance Society v. Hyman* [2002] 1 AC 408, HL.

\(^ {19}\) [2011] EWCA Civ 752.
Apart from declarations and injunctive relief, representative proceedings are relatively uncommon in England. Representative proceedings for pecuniary relief remain distinctly marginal in England. This is so for two reasons: first, costs; secondly, a tradition (now receding, or even about to end) of restrictive judicial interpretation of the relevant rule. These points will now be developed.

First, there is the claimant’s personal ‘costs risk’. A representative must bear the entire cost of the litigation if the case is lost. He will then be required to pay the defendant’s costs. Even if the representative wins the case, there is the risk that he might not succeed in recovering all his costs from the losing opponent. For these reasons, prospective representative claimants will be apprehensive about their personal liability for costs.

The second impediment to damages litigation in representative proceedings has been the courts’ traditionally narrow interpretation of the statutory phrase, where more than one person has the same interest in a claim.20 Until recently, the major obstruction to the award of damages in representative proceedings was the Court of Appeal’s (majority) analysis in Markt & Co Ltd v. Knight SS Co Ltd (1910).21 In this case a ship had been sunk by the Russian navy. The reason for this attack was that it was believed to be carrying contraband goods. A representative action was brought in respect of the 44 cargo-owners against the carrier, on the basis that it had been culpable in exposing the ship to this risk of Russian naval intervention. Joinder in the Markt case (1910) would have required recommencement of proceedings by a consolidated claim for 44 cargo-owners. The court thought that this was practicable (all 44 could be contacted). Furthermore, it would be desirable, because the court considered that it might facilitate more effective discovery. Despite the manifest procedural unattractiveness of the decision (and even the possibility that claims might have become statute-barred), the court suggested that it is not enough that the suggested class of claimants is suing in respect of the same cause of action (for example, in contract or in the tort of negligence); nor that their claims raise strikingly similar factual issues, perhaps arising from the same incident.
presence, or even the possible presence, of different defences (for example, individual contractual clauses imposing limitations upon liability or, in the case of negligence claims in tort, the possible presence of different degrees of contributory negligence), would preclude a representative claim. It is now apparent that the post-CPR law has removed the long shadow first cast in 1910 by the dicta of the Markt case.

The new flexibility is illustrated by Millharbour Management Ltd v. Weston Homes (2011), where Akenhead J held that representative claimants can validly seek damages for their own personal loss and for the loss suffered by other members of the class, using for this purpose the English system of representative proceedings. In that case numerous purchasers of flats, and sub-purchasers of flats, each of whom had bought leasehold interests in these dwellings, complained that the defendant builder had failed to construct satisfactory accommodation. Because of these defects, expensive repair work would be required. At first the cost of this work would be incurred by the management company responsible for maintaining the accommodation on behalf of leaseholders. That cost would then be passed on to individual tenants as increased ‘service charges’ in accordance with the contracts between the management company and the leaseholders. The present representative action would operate to enable the representatives of these different cohorts of leaseholders to obtain compensation. That compensation would be the amount of the extra service charges payable by the leaseholders to the management company as a result of the repair costs.

According to this decision, therefore, a representative claim for damages is available if (i) the court at the time of judgment will be able to determine the total amount of damages to be awarded in favour of the represented class and (ii) the

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22 Vaughan-Williams LJ, at 1030, emphasised the possibly heterogeneous nature of the set of (contractual) bills of lading applicable between the cargo-owners and the carrier. Fletcher-Moulton LJ, at 1035, took the severe view that an individual claim for damages (whether or not founded on breach of contract) is by definition not a claim for common relief, and therefore incompatible with the spirit of representative proceedings, as earlier expressed by Lord Macnaghten in Duke of Bedford v. Ellis [1901] AC 1, 8, HL, who said: ‘Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent.’ The dissentient on the representative action point in the Markt case, Buckley LJ, [1910] 2 KB 1021, 1048, considered that a representative action could proceed on the basis of a declaration of liability for breach of contract; Buckley LJ’s suggestion foreshadowed Vinelott J’s decision in the Prudential case [1981] Ch 229, on which see 00.00 below.

23 [2011] EWHC 661 (TCC); [2011] 3 All ER 1027.
court will also be able at judgment to determine the value of an individual represented person’s entitlement to damages. The same judgment emphasises the procedural efficiency which can be derived from pursuing representative proceedings. Such a claim avoids the procedural cost of each alleged victim being joined in name as a full party to the relevant proceedings. The court acknowledged in this case that procedural economies can be achieved by a representative claim. The court was keen in this litigation to facilitate such economies by rejecting the defendant’s challenge to the representative proceedings.

IV

GROUP LITIGATION ORDERS (‘OPT IN’)?

Such orders (‘GLOs’) were intended to become the mainstay of the English system’s treatment of multi-party litigation (an ‘opt-in’ system). But it is possible that relaxation of representative proceedings, to accommodate some pecuniary claims, might cause GLOs to become less important during the next decade. A GLO is a special form of joinder, by listing of claims on a group register. The Senior Master and the Law Society maintain a list of GLOs.

The GLO system attractively expanded multi-party litigation beyond the ‘same interest’ constraint of representative proceedings. CPR 19.10 states that:

A Group Litigation Order (“GLO”) means an order... to provide for the case management of claims which give rise to common or related issues of fact or law (the “GLO issues”). By contrast, CPR Rule 19.6 provides as follows for representative parties with same interest: (1) Where more than one person has the same interest in a claim—(a) the claim may be begun; or (b) the court may order that the claim be continued, by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.

In Taylor v. Nugent Care Society (2004) Lord Woolf CJ explained the need for the GLO system: ‘[the new procedure] provided the courts with very wide powers to manage the

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25 PD(19B), para 11.
proceedings...[and] in a more efficient and economic manner [in order] to provide more expeditious justice.’ As for the relative speediness of GLO actions, the Senior Master of the Queen’s Bench Division has stated: ‘in the Group Litigation Orders with which I have been involved we have achieved settlement or decisions in half or a third of the time that normal litigation might have taken.’

However, ‘funding’ is a fundamental problem in the field of multi-party litigation. In English civil litigation in general, ‘economic access to justice’ is no longer significantly supported by public expenditure on legal aid (see for example, comments in AB v. Ministry of Defence, 2012). There is a general shift within English modern civil litigation towards the ‘privatised’ conditional fee system (‘CFA’) or damages-based agreements (‘damages-based agreements: introduced under the Legal Aid, Sentencing, and Punishment of Offenders Act 2012’). This shift has also affected multi-party litigation. Formally, the rules and guidance permit public financial support of unusually deserving group litigation. In fact public funding for group litigation is seldom granted.

There are six main components of the GLO system. First, the court must approve a group litigation order, a two-stage procedure: first there must be an (i) application to a specified judge, or (ii) the court can itself make such an order of its own initiative (on the related topic of consolidation); secondly, both in situations (i) and (ii), ratification is necessary (the ‘making’ of the GLO), at a very senior level. Secondly, group litigation involves ‘opting-in’ by each individual. Thirdly, a group member enjoys both membership of the group and the general status of a fully-fledged ‘party to civil proceedings’. Fourthly, during the progress of the GLO, the court will exercise extensive case management and issue directions.

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28 The distinction between formal and economic or ‘effective’ access to justice was acknowledged in Hamilton v. Fayed (No 2) [2002] 3 All ER 641, CA, at [65], by Chadwick LJ, and [81], by Hale LJ.
30 For details, Andrews on Civil Processes (Intersentia, Cambridge, 2013), vol 1, Court Proceedings, ch 20.
32 Mulheron Report (2008), ch 11, at p 74 (on which see below).
33 See also the summary by Lord Walker in Autologic Holdings plc v. Commissioners of Inland Revenue [2005] UKHL 54; [2006] 1 AC 118, at [86].
34 PD(19B), para 3.3.
35 PD(19B), para 4.
36 PD(19B), para’s 3.5 to 3.9.
Fifthly, if the group loses the case, each group member is liable to the victorious party both for that member’s share of the common costs of the proceedings and for any individual costs specifically incurred with respect to his claim; but if the group is victorious, the defeated party is liable to pay costs attributable both to the ‘common costs’ and the ‘individual costs’.\(^{37}\) \textit{Barr v. Biffa Waste Services} (2009)\(^{38}\) concerned a Group Litigation Order for damages worth c £1 million, but involving a very much larger measure of potential costs liability. In that case, Coulson J (as mentioned) held that he could not make a cost-capping order tied to the value of the claimant’s ATE (‘After-the-Event’ legal expenses insurance) cover. But, with the claimants’ consent, he made a cost-capping order based on the claimants’ revised costs estimate.\(^{39}\) Another major decision on the costs aspects of a GLO action is \textit{Motto v. Trafigura Ltd} (2011).\(^{40}\)

Finally, decisions on ‘common’ issues are binding on, and in favour of, the group. A party who is adversely affected by a judgment or order can seek permission to appeal.\(^{41}\) Such a ‘common’ issue will normally concern questions of liability or the availability of a particular head of loss.

During preparation of the GLO for trial, the court will exercise extensive case management and issue directions. The managing court’s\(^{42}\) orders are binding on all the cases on the register. Exercise of this power of decision is a weighty responsibility. The court’s directions can include the following:\(^{43}\) (i) providing for one or more claims on the group register to proceed as test claims\(^{44}\) (this occurred on the question of limitation of actions in \textit{AB v. Ministry of Defence} (2012), where nine slightly different lead cases were selected from a group consisting of 1011 claimants);\(^{45}\) (ii) appointing the solicitor of one or more parties to be the lead solicitor


\(^{39}\) ibid, at [53] ff.


\(^{41}\) CPR 19.12(2).

\(^{42}\) PD(19B), para 8.

\(^{43}\) For greater detail, C Hodges, \textit{Multi-Party Actions} (Oxford University Press, 2001) 5.06 and 5.07.

\(^{44}\) CPR 19.13(b).

for the claimants or defendants\textsuperscript{46} (appointment to be a lead solicitor can be lucrative); (iii) specifying the details to be included in a statement of case in order to show that the criteria for entry of the claim on the group register have been met;\textsuperscript{47} or (iv) fixing a date after which no claim may be added to the group register unless the court gives permission\textsuperscript{48} (there is a mechanism\textsuperscript{49} for transferring actions which should join the register and which are commenced prior to the cut-off date); or (v) considering applications for ‘costs-capping’ (discussed by Coulson J, in Barr v. Biffa Waste Services (2009)).\textsuperscript{50}

But what of late-comers, if they are not admitted to the register, or if the relevant claimant wholly fails to make an application to join the register? The short answer is that they cannot be barred or struck out. But they might become subject to special managerial orders, namely stays and costs decisions. These matters were examined by the Court of Appeal in Taylor v. Nugent Care Society (2004).\textsuperscript{51}

The GLO system is a versatile and wide-ranging procedure. There is no restriction on the subject-matter of the relevant claims capable of being framed as a GLO. All forms of civil wrongdoing and dishonest misconduct can form the basis of ‘common issues’ in a GLO. Thus the rules state (CPR 19.10): ‘A Group Litigation Order (“GLO”) means an order... to provide for the case management of claims which give rise to common or related issues of fact or law (the “GLO issues”).’ There has been a wide range of GLOs, including: (i) claims for personal injury arising from pharmaceutical drugs;\textsuperscript{52} (ii) corporation tax allegedly overpaid to the UK Revenue, for example, the Supreme Court’s decision on points of limitation of actions in Test Claimants in the FII Group Litigation v. Revenue and Customs Commissioners (2012);\textsuperscript{53} and (iii) loss of corporate ‘group tax relief’: some idea of the sophistication of this type of group litigation order is conveyed by this statement by Lord Nicholls in the House

\textsuperscript{46} CPR 19.13(c).
\textsuperscript{47} CPR 19.13(d); on this question, Lord Woolf in Boake Allen Ltd v. Revenue and Customs [2007] UKHL 25, at [33].
\textsuperscript{48} CPR 19.13(e); and PD(19B), para 13.
\textsuperscript{49} PD(19B), para 9.1.
\textsuperscript{50} [2009] EWHC 2444 (TCC); [2010] 3 Costs LR 317.
of Lords:54 ‘six groups of companies have been selected as test cases. They represent a large number of claimant companies in proceedings started in the Chancery Division against the Commissioners of Inland Revenue. This litigation is currently being managed under a group litigation order made by the Chief Chancery Master in May 2003.’ The former Senior Master Robert Turner, in a report sent to the author in 2007 (and amplified at a Cambridge seminar in 2012), stated that he had dealt with the following GLOs: a hotel in Spain to which tour operators sent parties long after they allegedly knew of the serious risk of food poisoning that existed; the Alder Hey hospital organ removal litigation involving hundreds of deceased young children and their grieving families; the (then) Senior Master of the Queen’s Bench Division sent this to mediation with huge success (as the author has explained elsewhere);55 the hot drinks claims against McDonalds; these claims failed (in England); long distance flight thrombosis claims;56 removal of indigenous inhabitants from the Chagos Islands in the Indian Ocean;57 the unexploded shells cases from the Army’s training areas in Kenya; pension cases where long-serving employees were allegedly cheated out of their final salary pension entitlements; Ivory Coast contamination claims, involving oil dumping: Motto v. Trafigura Ltd (2011);58 the Buncefield disaster (explosion at oil depot; devastation of vicinity; property claims; 3,400 claimants).59

V
REJECTION (2009) OF GENERIC ‘OPT OUT’ CLASS ACTION

59 [2008] EWHC 1729 (Comm); [2008] 2 CLC 258.
Rachael Mulheron’s 2008 paper on ‘Reform of Collective Redress in England and Wales’, presented to the Civil Justice Council, noted that there have been relatively few (only 63) GLO since their introduction in 2000.\(^{60}\) She suggested that this figure is low, when comparison is made with Common Law jurisdictions (notably Ontario and Australia)\(^ {61}\) offering ‘opt-out’ systems. Certainly the English GLO figures (an ‘opt-in’ system) are perhaps disconcerting if one takes an absolutist approach to ‘access to justice’. But the figures are not surprising, because large-scale litigation will not be brought unless there is substantial private funding or public support. As for the private source, it would appear that the conditional fee system has not worked in this context. This seems to be attributable to the absence (in this especially risky context) of ATE legal expenses insurance to cover the claimants’ risk of liability for the defendant’s costs. As for the public source, Mulheron notes the sharp decline in public funding of such litigation since the pre-2000 peak.\(^{62}\)

Mulheron noted four main reasons why potential group litigation litigants are reluctant to join such collective litigation, that is, to ‘opt in’:\(^ {63}\) (i) economic anxiety that they will become liable for substantial costs; (ii) psychological considerations, that they will be exposed to a rough-and-tumble experience; (iii) fear of reprisals, notably by employers; and (iv) basic misunderstanding of the system of civil compensation.

Mulheron compared the ‘take up’ levels by victims of wrongdoing who are able to ‘follow on’ success on the question of liability in the class action (‘opt-out’) systems used in some Common Law jurisdictions (notably the USA, Ontario, and Australia).\(^ {64}\) And she noted the rise of the class action (‘opt-out’) mechanism in some European jurisdictions: Hodges has made a study of these European developments.\(^ {65}\)


\(^{61}\) ibidem, ch 12.

\(^{62}\) ibidem, ch 11, at p 74 she notes that the Legal Services Commission funded 133 multi-party actions in 2000; in 2002/3 this had fallen to 45; in 2006/7 it had fallen to 4; and of the 293 actions since 2000, 156 had concerned child abuse, 34 health matters including pharmaceutical problems, and 27 prisoner claims.

\(^{63}\) ibidem, ch 7.

\(^{64}\) ibidem, ch 20.

As a result of Mulheron’s suggestion that the English system of civil procedure had scored low in its delivery of effective access to justice in this context, the Civil Justice Council in 2008 issued a major document entitled ‘Improving Access to Justice Through Collective Actions’ (‘the CJC’s 2008 Final Report’). However, the Government in July 2009 opposed introduction of a generic opt-out class action in England for compensatory claims, etc. The (then Labour) 2009 Government had no stomach for collective big money litigation. It rejected the proposal for a generic opt-out class action mechanism. Mulheron (2011) remains unimpressed by this Governmental decision.

VI
CONCLUDING REMARKS

There are dangers in adopting an ‘opt out’ system: potentially aggressive attempts to bring collective litigation; the prospect of very large gains being made by law firms; the fear of commercial and public entities being exposed to expensive and protracted litigation; inevitable increases in the cost of potential defendants’ defensive measures; in particular, consumers and businesses paying more for insurance cover.

A generic opt-out class action for damages would have involved claimants’ rights being championed by the joint enterprise of law firms (including foreign firms fishing in England for work) and commercial funders (or syndicates of funders) interested in profiting from others’ litigation.

It remains to be seen whether contingency fee funding, now validated in England and Wales for civil litigation (following the Legal Aid, Sentencing, and Punishment

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of Offenders Act 2012),\textsuperscript{71} will inject dynamism into the representative proceedings style of litigation.

\textsuperscript{71} Andrews on Civil Processes (Intersentia, Cambridge, 2013), vol 1, Court Proceedings, ch 20.