

Insights

CAN MULTIPLE CLAIMANTS USE THE SAME CLAIM FORM IN GROUP ACTIONS?

NEW GUIDANCE PROVIDED BY THE COURT ON THE CPR 7.3 “CONVENIENCE TEST”

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SUMMARY

A recent decision in the Birmingham County Court has added to the body of case law growing around the test for listing multiple claimants on the same claim form. In *Angel and others v Black Horse Limited, unreported, 8 September 2023, County Court at Birmingham*, a case involving over 5,000 claimants bringing claims against 8 finance companies, the claimants had issued proceedings using 8 claim forms (one against each defendant). HHJ Worster held that in this case it was impermissible under CPR 7.3 to use a single claim form for all the claims against the same defendant. The judge therefore ordered the claimants to sever their claims from the common claim forms.

HHJ Worster relied heavily on the guidance given by the High Court in *Abbott v Ministry of Defence [2023] EWHC 1475 (KB)* on the CPR 7.3 “convenience test”, which concerns whether multiple claimants may use a single claim form.

These cases emphasise the need for a sufficient commonality of significant issues between the claims brought on the same claim form that will then be useful in determining those issues within one set of proceedings.

THE ISSUED CLAIMS

The claims concerned challenges to credit agreements under s140A and 140B of the Consumer Credit Act 1974 on the basis that the relationship between the parties to the agreements were unfair due to an alleged failure to make sufficient disclosure in respect of commission agreements. The claimants filed generic particulars of claim so that there is no reference to the particular terms of the transaction in which an individual claimant was involved, or to the details of the particular commission arrangement.

The defendants challenged the claimants' attempt to group the 5,000 claimants into 8 claim forms. They argued that the claims are legally distinct, and that an unfair relationship claim is peculiarly fact-specific in nature. In response, the claimants accepted that each claim turns on its own facts but argued that the claims were based on "the single, simple premise". This was the relationship between the claimant as debtor and the defendant as creditor arising from the credit agreement between them, which was allegedly unfair because of the non-disclosure of the nature of the commission arrangements.

THE "CONVENIENCE" TEST

The CPR 7.3 test for convenience concerns the right for multiple claimants to use one claim form, and states that "*A claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings*". CPR 7.3 is read in line with CPR 19.1, which states that "*any number of claimants or defendants may be joined as parties to a claim*".

GUIDANCE IN *ABBOTT V MINISTRY OF DEFENCE*

A first-instance decision by Master Davison that 3,559 claimants could not bring claims against the Ministry of Defence using a single claim form was overturned in the High Court in June 2023. In that case, the claimants alleged that they were all either employees or members of the Armed Forces who had suffered hearing loss as a result of exposure to excessive noise during their employment or service. The High Court gave some general guidance on the CPR 7.3 test for convenience. The main question was not whether the 3,559 claims could be tried at a single trial hearing, but whether they had any sufficient commonality of significant issues of fact that would mean it would be useful and in the interests of justice that determination of those issues should be binding on the other claimants and defendants.

In that case, the claimants were permitted to proceed using a single claim form.

ANGEL AND OTHERS V BLACK HORSE LTD ON THE "CONVENIENCE" TEST

HHJ Worster, in determining how best CPR 7.3 should be interpreted, took the underlying point to be that the Court "*should have in mind the process by which a claim is disposed of, rather than simply the end result*" whilst emphasising that the CPR 7.3 "convenience test" is highly fact sensitive. The fact that claims can be case managed together does not mean that their common disposal would be convenient.

After setting out thirteen points of "general guidance" that he had identified from the High Court decision in *Abbott v Ministry of Defence*, HHJ Worster outlined that the issue he had to determine in order to decide whether the "convenience test" was met is whether there is "*a sufficient*

commonality of significant issues between the claims brought by the same Claim Form, that it would be useful or helpful to determine those issues within the one set of proceedings”.

In this case it was determined that there were no common issues of sufficient significance to “constitute real progress towards the final determination of each claim in a set of claims”, and accordingly that the “convenience test” was not satisfied. The question of unfairness that formed a key aspect of the claims will turn on a wide range of factors and the determination of common issues proposed by the claimants was found to be unlikely to provide a shortcut, or to use the language of *Abbott*, be useful or helpful. Severance of the claims was ordered and a formal sampling process was refused.

WIDER IMPLICATIONS

These two decisions are evidence of a standardised test emerging in case law for the determination of whether it is permissible for multiple claimants to be listed on the same claim form. The two cases currently provide good examples of the types of cases that will be permitted to proceed under one claim form and cases that will need to be issued separately. With the claimants in *Angel v Black Horse* making an application for permission to appeal, it remains to be seen how CPR 7.3 will be applied in the future.

There are a number of other ways in which group actions are being pursued in the Courts. Parties are seeking to use the representative action procedure under CPR 19.8 by seeking a representative to act on behalf of groups of claimants with the “same interest” in the proceedings. The Courts also have wide ranging case management powers, from Group Litigation Orders to the “GLO Lite” procedure, as explored in [our previous Insight](#), to manage claims brought by large groups of claimants.

Trainee Solicitor Alexander Shaw assisted with the drafting of this insight.

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