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# 60 SECONDS Q&A WITH > CHARLES BALMAIN WHITE & CASE

Funding of group actions in the UK and across the globe has increased significantly in recent years. The most dramatic increases that Vannin has witnessed, is in the context of competition claims and shareholder actions.

In the US and, increasingly, in the UK and other European jurisdictions, the bringing of competition group claims is a well-trodden path. Claims are generally brought as 'follow-on' actions, following-on from a regulatory decision. Conversely, certainly in the UK at least, until recently, the bringing of shareholder group claims is not something that has had the same traction. This seems to have changed, with a number of high profile shareholder claims recently hitting the headlines.

But, is there real substance behind the growth of these claims? What is driving this growth? Our London based Investment Director Rosie Ioannou asks Charles Balmain, a Partner at White & Case London and head of the Firm's EMEA Disputes Section for Commercial Litigation and White-Collar matters.

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**RI:** There has been a lot of discussion about an increase in shareholder actions in the UK in recent years. Has this increase materialised?

**CB:** Shareholder activism has undoubtedly found its footing in the UK in the past three or four years. A number of the biggest cases coming before the Commercial Court this year featured large groups of shareholder-claimants, with listed companies as defendants, among the most high-profile being the Lloyds and Tesco actions. These cases reinforce our view that securities claims are not a passing fad in the UK, but are here to stay.

**RI:** What is driving the growth?

**CB:** There are multiple drivers. The introduction of statutory causes of action (contained in Sections 90 and 90A of FMSA) created the potential for securities actions in the UK. That potential has been realised in large part due to the availability of litigation funding and after the event (ATE) insurance.

In the past, when a claimant firm approached institutional investors, such as a UK pension fund or asset manager, with an opportunity to join a group action, they may well have been reluctant to take part due to the high barriers to entry for such claims: specifically, the high costs of bringing the claim in the first place, and the adverse costs exposure should they be unsuccessful. With the greater availability of litigation funding and ATE cover, the financial risks of joining a shareholder action are significantly diminished.

In terms of other factors, one could also point to the enforcement priorities of regulators like the FCA and SFO which have increasingly brought to the fore any shortcomings in listed entities' systems and controls, which may ultimately form the basis of a claim.

Finally, while in previous years there may have been negative reputational implications for institutional investors in pursing claims against the companies in which they had invested, such considerations appear to have given way to the need for accountability in the post-financial crisis world.

**RI:** A number of high profile claims are being brought by large shareholders – institutions, pension funds etc. – by means of group action. What impact does this have on the claims being brought?

**CB:** Claimant lawyers operating on the London market have unquestionably developed the know-how to manage and act for groups of institutional investors. The fact of acting for large shareholders means that a degree of rigour is present when the claim is initially conceived. As a result, while the number of claims brought in the UK may be modest in comparison to the US, those that are launched must be taken seriously by the defendant. Further, by seeking to assemble a group of major shareholders, lawyers and funders aim to achieve a high degree of alignment amongst the group, facilitating the conduct of the claim.

**RI:** What distinguishes the UK system for bringing securities actions from that in the US?

**CB:** In the US securities litigation, in particular, class actions are ubiquitous. By contrast, in the UK there have only been a handful of large group actions to date, and they are not class actions in the strictest sense. Rather they are substantial pieces of multiparty litigation, brought on an opt-in basis.

In the US it's common for securities claims to be launched very quickly after a disruption event—sometimes even in a matter of hours.

In the UK, the existing legislative framework and procedural regime (notably, the unavailability of opt-out class actions in securities cases and adverse costs exposure) means that claimants and their lawyers will be inherently more cautious in commencing an action as compared to the US.

**RI:** Do you think that there is scope for the English system developing in the way the US system has?

**CB:** We're currently not seeing, nor do we expect, anything like the volume of securities claims that our colleagues in the US see, barring radical legislative changes in the UK. However, we do believe that the market in the UK has matured to the point that, in the future, meritorious securities claim against issuers in the UK are highly likely to be pursued.