

Portland's second annual Class Action Report provides a unique insight into public attitudes towards group litigation in the UK, along with their perceptions of – and behaviour towards – companies, institutions and organisations that have broken the law.

The Class Action Report 2021 polled a cross-section of the UK population. Portland's analysis reveals that:

- 1 The UK continues to have a low awareness and knowledge of class actions.
- 2 Despite low awareness and knowledge, the majority of people would join a class action if provided the opportunity.
- 3 People are likely to consider boycotting, never working for, or quitting their jobs at companies, institutions or organisations that have broken the law.

1 THE UK CONTINUES TO HAVE A LOW AWARENESS AND KNOWLEDGE OF CLASS ACTIONS

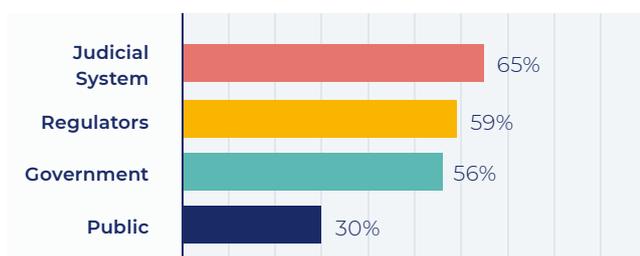
Portland's analysis revealed that 38% of the UK public has a low awareness of class actions. Although awareness has improved (low awareness was 47.5% in last year's polling), less than one in ten UK adults expressed a 'very high' awareness of class actions.

Polling also identified a degree of doubt in the power of class actions to have a real impact. The number of people who believe they can hold organisations to account only narrowly surpassed those who do not. Likewise, the number of people who believe class actions are an effective means of securing compensation only outnumbered doubters by a 4% margin. This scepticism may be driven by a low belief in the power of people to seek justice.

Although a marginal increase from last year's polling, less than a third of people believe the public can hold employers, organisations, institutions or companies to account in the event they break the law.

By comparison, over half of the respondents believe the Government, Regulators and the Judicial System have the power to hold corporate entities to account (Chart A).

A: Who do respondents think has the power to hold companies acting unlawfully to account?



The continued low level of awareness and knowledge may be due to a similarly low level of trust in information about class actions, as over half of respondents do not trust media coverage around cases.

As outlined in Chart B, trust is especially low in radio (22%) and social media (19%). Respondents put greater trust in television (48%) and newspapers (35%) for information about class actions.

B: What sources do respondents trust to get information about a class action?

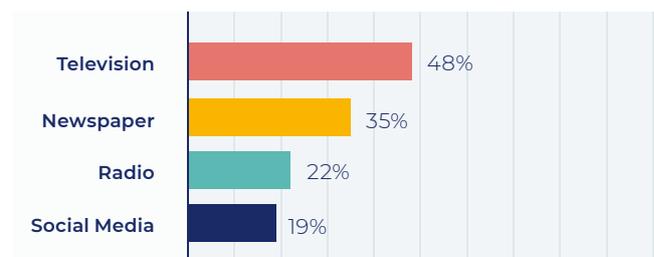
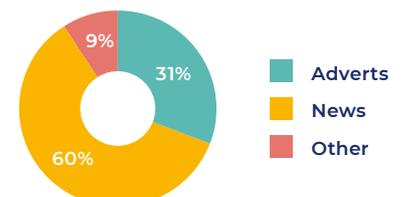


Chart C also shows that there continues to be a level of distrust towards paid advertisements and a greater preference for organic news coverage, with the latter seen as adding greater legitimacy to claims.

C: Paid advertisements or independent coverage: what do claimants trust?



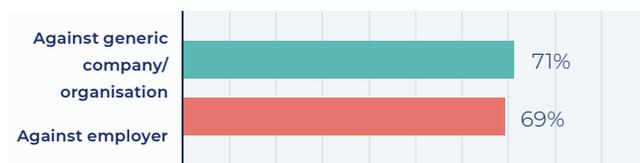
There is work to be done by claimant law firms, funders and litigation support firms to build trust and raise awareness among potential class members, not just for specific cases, but in the class action regime as a whole.

2 DESPITE LOW AWARENESS AND KNOWLEDGE, THE MAJORITY OF PEOPLE WOULD JOIN A CLASS ACTION IF PROVIDED THE OPPORTUNITY

Portland’s polling has also revealed that the general public’s willingness to join a claim is not necessarily reliant on a solid understanding of class actions.

As shown in Chart D, despite low knowledge and awareness, 71% of respondents noted they would join a class action against a company, organisation, or institution that had broken the law, with 69% of respondents also willing to join a class action against their employer.

D: Percentage of UK public who would join a class action if they were directly affected by wrongdoing.



Claimant firms may seek to capitalise on this willingness by emphasising points that resonate with the general public. For instance, 32% of people would be more likely to join a class action led by a trustworthy spokesperson, and 22% would be more likely persuaded if the potential compensation was ‘high’.

On the other hand, 37% of people would be reluctant to join a class action if the information available was unclear, and 38%

of people would be less likely to sign up if there was any risk that they could be expected to pay legal fees, or lose money, if the case is unsuccessful.

Twenty six percent of the general public would be discouraged from signing-up if they found the process complicated. Over half of people would be unwilling to spend more than three hours on a class action, including putting together documentation and responding to lawyers.

While our polling indicates that members of the public are in theory keen to sign up to class actions given the opportunity, the lived experience of claimant law firms may differ.

In the *Lloyd v Google* (November 2021) decision, the Supreme Court observed that in a group action against Morrisons, brought on behalf of 100,000 employees affected by a data breach, fewer than 10,000 opted to join the claim. The court stated that an opt-in rate of less than ten percent is notably low.

The key phrase here may be ‘given the opportunity’. It may be that the Morrisons claim simply did not reach enough people with information about the case. But if other class actions are to bridge the gap between willingness and reality, they may need to better understand the people they are trying to reach.

THE ROLE OF LITIGATION FUNDING

Mishcon de Reya’s £150 million litigation financing deal with Harbour Litigation Funding in September 2021 underscored the increasingly close relationship between law firms and funders, who often underwrite the costs of class actions.

Although funded cases are often the only way to bring group claims in the UK, the general public are somewhat sceptical of the role that litigation funders play.

For the second year running respondents thought that lawyers and litigation funders were the most likely beneficiaries of class actions in the UK.

Nevertheless, while litigation funders may have a perception problem for funded class actions in the UK, the general public do see the benefits of not having to pay their way.



90% think funder taking more than 10% damages is unfair.



31% would be less likely to sign up if funder takes large percentage.



52% would still sign up if they did not have to pay anything.

“If it’s going to change things for the better, and it’s going to push the society towards being fair and better and more just – then I’d be inclined to participate”

– Female, 37, focus group participant

3 PEOPLE ARE LIKELY TO CONSIDER BOYCOTTING, NEVER WORKING FOR, OR QUITTING THEIR JOBS AT COMPANIES, INSTITUTIONS OR ORGANISATIONS THAT HAVE BROKEN THE LAW

The potential damages owed by a company to its consumers, customers, employees or shareholders are only one part of the problem for those defending a potential class action.

Beyond the damages, a company's reputation may take a serious hit, and those that matter to businesses, institutions or organisations might take action that goes even further than the legal proceedings.

As shown in Chart E, if they were directly affected by the actions of a company, organisation, or institution that broke the law, members of the UK general public would also consider boycotting products or services, never working for or quitting their jobs at, or raising awareness about organisations who have broken the law.

E: Actions the general public would consider taking against companies and organisations if they had broken the law



Although the class action itself might not worry lawyers and in-house counsel, the repercussions could be significant if customers, employees or consumers feel they have been impacted by perceived illegal actions.

What's more, as also shown in Chart E, 42% of the the UK general public would consider taking action against a company, institution or organisation even if they weren't directly affected by what had happened.

While compensation or personal gain may motivate some potential class members, a larger sense of what people perceive to be right and wrong could have a significant impact on how customers, employees and consumers act.

Boycotting services or products, and shunning companies as current or potential employers, can have a practical and troubling impact on businesses, including to their bottom line. But beyond these repercussions lies potential damage to reputation.

Although reputation can often feel intangible or abstract, 7% of the UK general public would be less likely to sign up to a class action against a company that they like. For some people, reputation could be the deciding factor in whether to join a claim.

There are steps organisations can take to reduce the risk of group legal claims. Although tricky in terms of an admission

of liability, 42% of respondents would be less likely to join a class action if the company, organisation or institution responsible issued a full apology.

51% also said they would be less likely to sign up if they were contacted by those responsible straight after the incident to let them know what was being done.

What may start off as the General Counsel's problem can quickly become a difficult situation for the Chief Financial Officer and Director of Communications. Understanding the

overlap between these areas may be key to reducing legal and financial exposure.

"You vote with your wallet if there's lots of choice – whether it's drinks or food or anything else. Even if it doesn't make a lot of difference, you feel like you're not contributing to a company you don't agree with"

– Male, 30, focus group participant

F: Top 5 industries by how likely the general public would be to support a class action



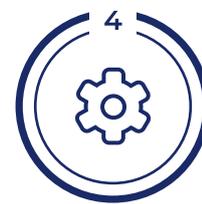
Finance



Energy



Healthcare



Manufacturing



Construction

4

EXPERT OPINIONS



Richard Leedham

Partner, Mishcon de Reya LLP, Led FCA Business Interruption test case

Portland's survey is always thought-provoking. I was interested in particular to see this comment:

"While compensation or personal gain may motivate some potential class members, a larger sense of what people perceive to be right and wrong could have a significant impact on how customers, employees and consumers act."

I would thoroughly endorse this as something we are seeing as practitioners.

Claimants are increasingly seeking ways to call large companies to account, not necessarily for their own financial gain, and often cannot do so on their own or in small groups. There is also a growing and compelling level of legal and regulatory pressure on companies to conduct their business in a way that is environmentally, socially and governmentally "better" for society.

The combination of these factors is fuelling group claims. We have seen this during the recent Hiscox Action Group claim we ran following the blanket denial by insurers of most business interruption claims during the Covid-19 lockdown in the UK. Policyholders, who were galvanised by a strong collective sense of injustice, could not have brought those claims without grouping together to hold Hiscox to account.

Litigation funding from Harbour and the group claim structure allowed those claimants a voice at a time when efforts from the regulator, the Financial Conduct Authority, were perceived as toothless.

As funders realise the potential of ESG claims and consider the benefits of being involved, the costs associated with such claims will continue to come down. This in turn may allow more claims to proceed.

For companies who feel they are too big to listen, this could be a virtuous circle that they would do well to pay heed to.



Maeve Hanna

Partner, Litigation & Investigations team, Allen & Overy LLP

While Portland's analysis shows that amongst the UK general public there is low (albeit increasing) awareness and knowledge of class actions, the same is certainly not true of the UK legal industry. In the past few years, there has been continued focus on the extent to which US-style class actions – or other forms of group litigation – have landed in the UK.

Enthusiasm for that development may have been dampened following *Lloyd v Google*. However, despite the blow to opt-out class actions for data breaches delivered by the Supreme Court, other forms of group litigation will likely remain the focus of claimant law firms and funders. Companies facing a group action must be vigilant in anticipating when it might arise and understanding drivers and characteristics of potential class members is a key aspect of this.

There are steps that a company facing group litigation can take to protect itself. The “defendant” company experience is consistent with the survey's findings: the initial steps taken following an incident can be key to avoid or reduce the risk of litigation. This includes engagement with potentially affected customers or employees, the wider public, and invariably their regulators too.

Not only can proactive but carefully considered early action limit potential legal exposure (for example, lessening the risk of a regulatory breach or sanction) but it can also help shape the attitude and litigation appetite of potential class members. This is borne out by the survey's findings highlighting the importance of early contact and engagement with potential class members.

DATA BREACHES ON THE RISE?

UK and EU class actions have experienced growth in recent years, with those involving data breaches being extensively covered in the press.

Though *Lloyd v Google* may impact the possibility of representative actions in relation to data privacy, our research found that 58% of people would sign up to an opt-in class action if they were affected by a data breach.

For businesses and data controllers looking to mitigate the risk of a class action, our research found that 42% of people would not sign-up if they were issued a full apology.

51% said that they would not sign up if the company contacted them directly shortly after the breach to tell them how they were resolving it. Combined with the legal obligation to report a data breach in the UK to the ICO within 72 hours, the first few days are critical.

Public knowledge and awareness of data breaches is also notably higher than class actions: over 80% of people say they understand what a data breach is. Respondents also feel entitled to compensation, and believe that they would suffer financially, if they were subject to a data breach.



47%

of people think

they would suffer financially as a result of a data breach.



71%

of people think

they would be entitled to compensation if their personal data was accessed or disclosed illegally.

.....
“It is not all about people getting money – a lot of it is about owning up and responsibility, about getting to the bottom of what the issue is.”

– Male, 37, focus group participant

Law firms may be looking for alternative routes to bring data-related class actions, and as indicated by Portland's polling, it would appear that the public appetite for such claims is there.

5 THE PORTLAND PERSPECTIVE

Portland's Senior Partner and Head of Litigation and Disputes, Philip Hall, on the key takeaways from the Class Action Report 2021.

Since the publication of our inaugural Class Action Report in 2020, class actions have continued to grow in the UK. As more claims are filed, awareness among the general public will continue to rise, as our polling has indicated this year.

The explosion of media coverage of class actions in the past year is further proof of the increasing prominence of group litigation. Class actions were reported on nearly ten times as often by the UK press in the past twelve months compared to the twelve months previous.

This increase presents a clear opportunity for claimant firms, and a risk to be managed as far as possible for firms specialising in defendant work. Our report indicates that:

1 Claimant firms should seek to build a detailed understanding of potential class members to maximise the likelihood of persuading them to join a claim.

2 Defendant firms should advise what steps can be taken by their clients to demonstrate to customers, employees, shareholders or consumers that they are taking alleged wrongdoing seriously, potentially reducing the risk of follow-on litigation.

3 General Counsels should always consider not just the legal exposure to class actions, but the significant reputational and commercial challenges that could potentially follow.

METHODOLOGY

Portland conducted two online focus groups in October 2021 on perceptions around class actions with the general public. There were eight participants in each group – with an even distribution of key demographics (gender, age and geographical location) across both groups.

Portland subsequently conducted a poll in November 2021 with members of the general public in the UK. Answers were collected from a sample of 1,000 participants, examining the level of trust and awareness in class actions, along with their perceptions of – and behaviour towards – companies, institutions and organisations that have broken the law.

The data was collected from a nationally representative sample of UK adults (with quotas on age, gender and region). Research from primary and secondary sources supplemented our analysis.

Portland is a British Polling Council accredited research agency. We therefore use a sample size of n=1,000 for our standard for nationwide polling, providing a margin of error of ±3% with a 95% confidence interval. This means that there is a 95% chance that the survey results will be within 3% of the true results in the whole population.

PORTLAND LITIGATION AND DISPUTES

Portland's Litigation and Disputes practice provides specialist advice and strategic communications support to help reinforce your legal strategy.

We ensure that every aspect of your client's concerns are managed, and every potential advantage explored. Our distinct practice has specialist training, skills and experience. Our work extends beyond the courtroom to encompass complex public and political considerations.

Portland applies its problem-solving abilities to provide bespoke communications solutions to legal issues across multiple jurisdictions, countries and languages.

We understand the realities of the modern media and digital landscape, the rigours of the law and the need to deliver results.

Contact us: disputes@portland-communications.com

CHAMBERS AND PARTNERS BAND 1: 2018, 2019, 2020 AND 2021

Portland's Litigation and Disputes practice was also ranked in the top four litigation communications firms around the globe. Our clients have said:



"Portland are a big firm - they are very global and they have the wow factor."

"...mind-blowingly good."

"They bring better ideas than you could have imagined and...actualise them on time and on budget. Our objective was to get as much publicity as possible: they got us into 315 publications internationally in 24 hours."

"They are very focused and supportive, and respectful of the legal market in which you are operating. They never overstep and are very mobile."

HOW WE CAN HELP



CLASS ACTIONS: Claimant and defendant-side campaigning | Book-building | Audience analysis | Representative actions | Drafting and delivery of notification plans



MEDIA: Journalist briefings | Media strategy | Media training | Crisis preparation and response | Courtroom media management



DIGITAL: Data-driven campaigns | Online reputation management | Deep web risk analysis | Digital and social media strategy | Open and closed networks | Website design and build



LITIGATION CONSULTING: Strategic litigation advice | Evidence gathering | Quantitative and qualitative evidence analysis | Expert witness selection | Notification plans



GEOPOLITICAL: Political insight | Stakeholder management | Capacity building



LEGAL EXPERIENCE: Litigation | Arbitration | Judicial review | Multi-jurisdictional | Regulatory charges | Media law | Worldwide freezing orders | Unexplained wealth orders



RESEARCH: Insight testing | Audience identification and segmentation | Primary qualitative and quantitative research | Polling



LANGUAGES: English | Russian | Arabic | Mandarin | French | Spanish | Dutch



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