



Group and Class Actions





What are Group and Class Actions?

Group actions or class actions involve multiple claimants seeking redress for the same or similar wrongs they have suffered as a result of the actions of a defendant. They are frequently used in shareholder, employment, environmental, and product liability disputes, and bring numerous benefits:

- Creating economies of scale for obtaining protection against adverse costs, and ensuring the costs of litigating small individual claims do not outstrip the damages recovered;
- More efficient case management;
- Improved bargaining power when negotiating a settlement.

Is funding right for your claim?

We need to understand the details of your claim to ascertain whether it can be funded.

Answers to the following questions will help us to quickly assess your claim.

Merits	<ul style="list-style-type: none">• Are there good grounds for bringing a group or class action?• What is the value of the claim, and how is that substantiated?• What is the strategy and timetable relating to the formation/bookbuild of class? Will a litigation/steering committee be established in order to provide instructions to the legal team?• If a single representative claimant will lead the group pursuant to an opt-out regime requiring certification, what is your strategy for obtaining certification?• Do you expect competing claims? If so why are you confident that your claim will be preferred?
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Economics	<ul style="list-style-type: none">• What amount of funding do you require?• What is the likely cost of forming the group/bookbuild (if relevant), and any valuation or expert reports?• Is any payment likely to be required for security for costs?• What is the exposure to adverse costs likely to be? If there are multiple defendants, do you expect them to have separate or joint legal representation?• How long do you expect the case to reach a resolution?
Recoverability	<ul style="list-style-type: none">• Who is the claim against, and why are you confident that they can satisfy a judgment or award made against them?
Experience	<ul style="list-style-type: none">• Who is in the legal team, and what is their track record in managing group actions to success?• Who is in the wider team (economists, bookbuild agents, etc)?



What sets us apart?

Harbour is amongst the largest and most experienced funders in the world, having supported cases in 14 jurisdictions and 6 arbitral forums since 2007. Our experience of reviewing over 4,000 claims means we can quickly review the responses to the questions above and provide an indicative view on pricing, before guiding you through our due diligence process.

Our pricing

Harbour provides a flexible and tailored solution to suit your needs. We can cover all or part of your legal fees and disbursements, including potential adverse costs and funding for security for costs.

The pricing of our funding is bespoke and is informed by our view of the specific risks involved. We consider factors such as the claim value, the budget required, the merits, the jurisdiction of your claim, and any potential difficulties with enforcement.

A number of pricing options are available, with non-recourse funding being the most popular, where Harbour only receives a return when proceeds are recovered. Should the claim be unsuccessful, the risk is entirely ours, and you owe Harbour nothing. Pricing is generally structured as a return of invested capital plus the greater of a percentage of proceeds and a multiple of our invested capital.

Recourse funding is also available, which allows a claimant to maximise their return and free up capital. This financing is repayable at the end of the process, regardless of the outcome of the case.

We can also acquire interests in claims and judgments, providing immediate cash payments of an agreed percentage of the claim or judgment value, potentially with more to follow upon successful recoveries if the claimant wishes to remain involved.

We seek to agree pricing which fairly rewards the risk you and we are taking.

Pricing is agreed with our investment team at an early stage in our discussions, and before the case is presented to our investment committee you will know what the pricing is and how an agreement will be structured. More information on pricing and our processes is available on our website.



Group and class action case studies

Funding a group of institutional investors

In this example, we were able to assist institutional investors who had not previously thought about using funding. They were involved in a securities class action against a major bank, asserting that its prospectus for a rights issue contained false and misleading statements, and material omissions. As a result of relying on the prospectus to acquire shares, the claimants suffered losses arising from the subsequent decline in the share price.

For institutional investors, pursuing even a strong case is risky. Harbour was able to help them identify a conflict-free legal team, as well as source a suitably large After the Event insurance policy to protect against the risk of adverse costs. Harbour supported a proactive settlement strategy, which encouraged the defendant bank to engage in early settlement discussions. Ultimately, a favourable settlement was achieved not only for the institutional investors we funded, but consequently all the other claimant investors who followed behind. Our funding allowed the institutional investors to avoid having to commit their own legal budget to the case, instead enabling them to use that capital elsewhere in the business.

Funding a group to provide access to justice

In 2009 an oil rig in the Timor Sea failed, spilling some 300,000 litres of oil into the local environment. This is alleged to have had a devastating ecological impact, causing health problems for people living in Indonesia, as well as destroying the valuable crops of thousands of Indonesian seaweed farmers. The affected farmers (some 15,000 in number) simply did not have the means to take legal action against the oil company.

Harbour provided financing for their legal team (a leading Australian firm) as well as the many scientific and economic experts required to substantiate their claims. We were also able to source protection against adverse costs. The defendant oil company has sought to avoid compensating the farmers but with the benefit of our funding, the farmers were able to take the matter to trial in 2019. Judgment is currently awaited.



Providing fast and flexible funding arrangements including seed capital

The COVID-19 pandemic has led to wide-reaching financial challenges, particularly for small and medium-sized businesses. One example of this is insurers declining to pay claims made under business interruption insurance policies on the basis that those policies did not extend to providing cover for disruption caused by a new virus not specified in the relevant policy schedule. Many policyholders faced the closure of their business if they could not claim on insurance policies that they thought provided cover for exactly this kind of situation. A diverse consumer action group was formed, and it turned to a leading law firm for advice.

An initial analysis of the policies suggested a case could be brought, although more investigation would be required before a firm view could be reached. In addition, a sufficiently large number of claimants would need to join the action to make it economically viable. The law firm, which has a strong relationship with Harbour, approached us for funding to assist their clients. Given our positive experiences of working on other cases with the firm, and our high degree of confidence in their judgment, we made seed capital available to fund an advice from leading counsel on a novel point of law, as well as to fund further investigations. That seed capital was not repayable if the case was found to be unviable.

After counsel had advised, and investigations revealed the claim had good foundations, things needed to move quickly. Harbour's financial analysts helped inform the work on the claim's economic viability, and we were able to prepare and present a successful submission to our investment committee very quickly. The whole process (from the initial conversation to a signed investment agreement) took four weeks, which is exceptional quick for a case of this size and complexity (the industry standard would usually be at least three months). Harbour was also able to make funds available for the key ancillary expenses of the litigation – not just for legal and expert witness fees, but also for a press campaign to allow these small companies to tell their story in the media, and to mitigate against the huge budgets available to the very substantial and well-resourced defendant insurers.

Harbour's flexibility, and ability to make decisions quickly, was of real value to the claimants. As often happens in litigation, unexpected issues arose, and we were able to move as quickly as the law firm required. For example, during preparation of the claim, the Financial Conduct Authority (the regulator of the UK insurance industry) chose to bring a test case, asking the High Court to rule on whether SME-held business interruption insurance policies extend to cover disruption caused by the pandemic. It quickly became clear that it was necessary to seek to intervene in the case to protect the interests of the claimants, and Harbour was happy to reallocate its funding to support that important new workstream.

Harbour's funding is providing the claimants with full adverse costs indemnity, allowing them to pursue their claims at no risk or cost. We are pleased to be supporting small businesses through difficult economic times.



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