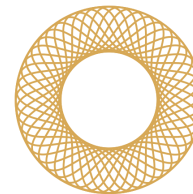


# Outer Temple

## Group Claims

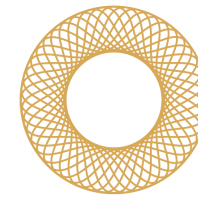
Will Young (OTC) & Jatinder Paul (Irwin Mitchell LLP)

1 June 2023



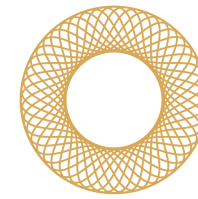
# Group claims vs Class Actions

- CPR 19.6 – Representative Claimants
  - Also some competition actions can be class actions.
  - Data breach claims
- Generally more common is Group Claims



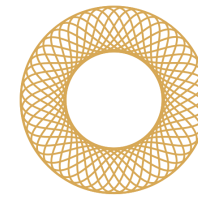
# Common types of group claim

- Product liability:
  - Pure product liability;
  - Clinical negligence (e.g. medications, medical devices)
- Illness outbreaks (contamination)
- Coach crashes



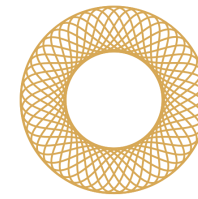
# Starting and growing a group claim

- The initial claimant and attracting others to join the group – strength in numbers, proportionality:
  - Marketing
  - PR
  - Client ambassador
  - Co-counsel arrangements
  - Co-claimant working arrangements



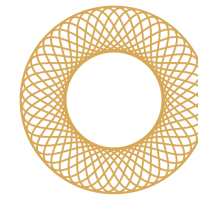
# Vetting of claims

- Size of Claimant cohort can be important and/or have knock-on effect (e.g. on progress of litigation and/or settlement).
- Depends on nature of breach/injuries – and hence number of potential claimants out there.



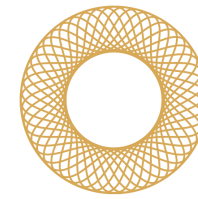
# Selection of Lead Cases

- C to select alone or input from D?
- C's strongest cases, or a representative sample (including some with particular problematic features)?



# Case Management – by Court

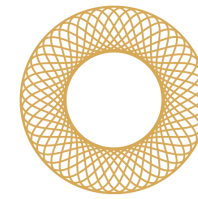
- GLO?
- Or just consolidate and manage together?
- Multiple Claimant cohorts?
  - Avoid inconsistent judgments
- Issuing protectively (and then staying?) – particularly if breach/injuries occurred over a long period (or are still going on).



# Case Management – by Court

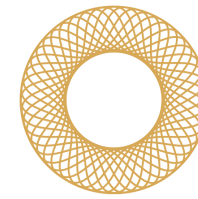
- What to try?
  - Is there a preliminary generic issue that can be hived off?
    - With or without lead cases?
    - Split trial
  - Or try lead cases (and if so how many – especially if there are multiple claimant groups)
    - Lead case selection





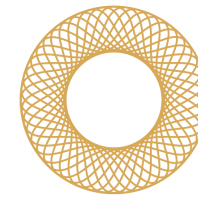
# Case Management – of clients

- Taking instructions;
- Working up cases – in stages:
  - Initial vetting;
  - Triaging to select lead cases;
  - Full work up with experts.
- Settling cases.



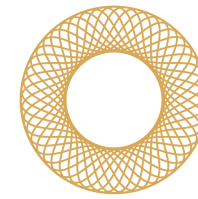
# Expert evidence

- Generic and individual expert evidence.
- When to obtain expert evidence on individual cases?
- Different experts for different cohorts (if represented by different firms)?



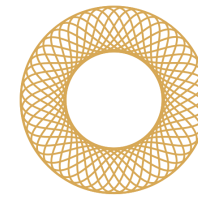
# ADR – settlement processes

- A) Processes
- Settlement process outside of/parallel to Court process (i.e. to resolve whole claim):
  - Parties keep control, of timetable etc.
  - Can agree that steps don't need to be duplicated if have to step back into Court process.
- Or processes for resolving individual claims after trial on lead cases.



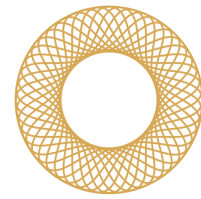
# **ADR – settlement processes**

- B) actual settlement of cases:
  - Individual offers;
    - What if offers are made on Lead Claimants' cases?
  - Global lump sum offers;
- Neutral arbitration of individual cases (e.g. after trial of lead claimants)



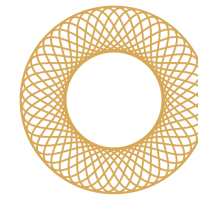
# **ADR – settlement processes**

- C) practicalities:
- Getting instructions:
  - Recommendations to clients rather than acceptance of offers;
  - Global lump sum offers – is a % level of acceptance required.
- What to do with non-settling cases/clients?



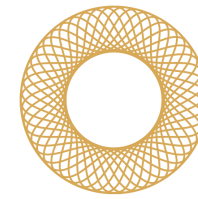
# **Trials**

- Lead Claimants vs Generic issues.
- Otherwise should in principle be fairly orthodox.
- If multiple experts – especially if different Claimant cohorts, each with own experts – then potentially ‘hot-tubbing’ experts?



# **Resolving remaining cases after trial**

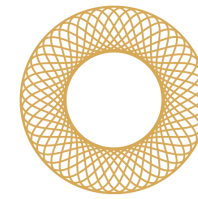
- Indicative guidance on lead cases should help with settlement process.
- Individual negotiations or a formal process?



# Costs

- Cost budgeting?
  - Costs protection orders;
  - Several liability for lead Claimants.
  - Sample billing – the generic file
- 
- Part 36 offers – including on generic issues (but see *Mundy v TUI* on liability Part 36 offers).





# Questions?

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