

Compass Chambers



# Brave Heart: Class Actions in Scotland

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# Objectives

- Recap over the development of Group Procedure in Scotland to date
- Examine the pre-group procedure cases which led us here
- Review the introduction of the Group Procedure Rules and highlight the difference of approach from England & Wales
- Discuss the advantages of group proceedings
- Consider when to bring group proceedings
- Discuss the issues which have arisen in cases so far



# How did we get here?

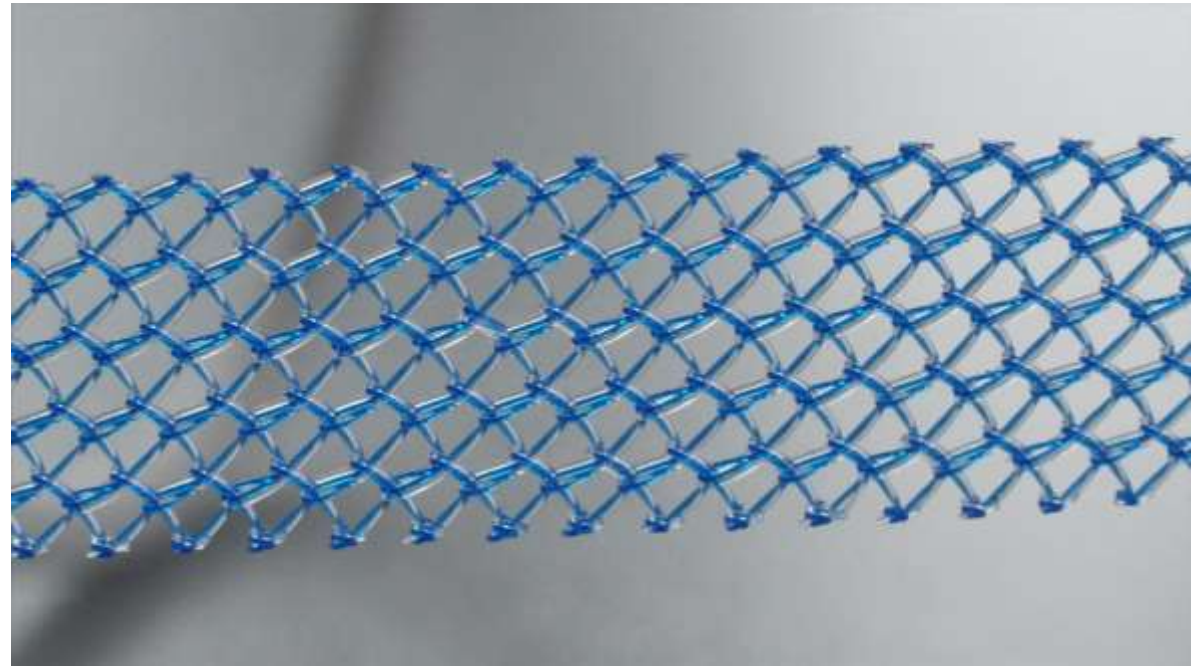
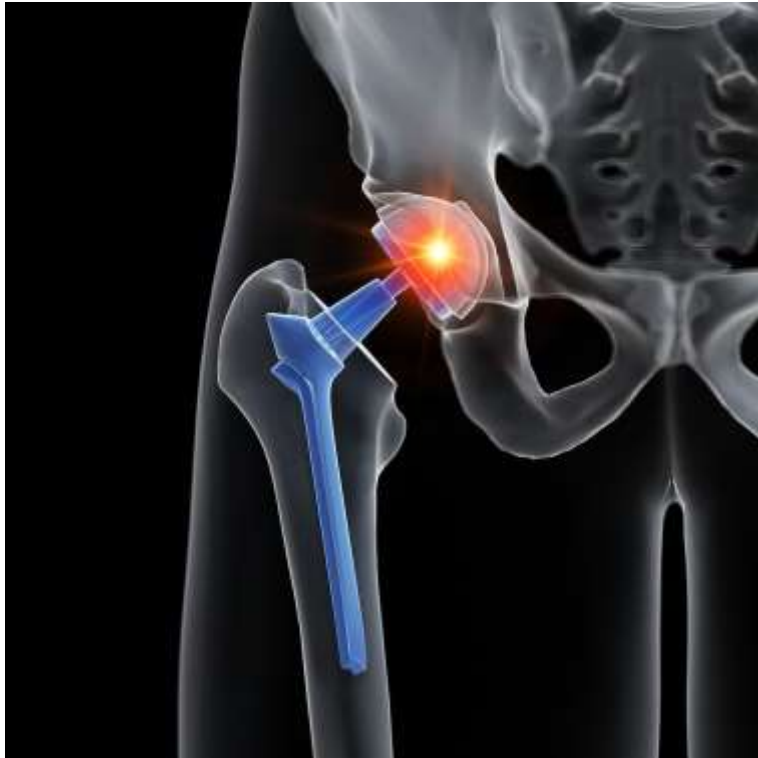
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- Scottish Law Commission Report on Multi-Party Actions (No 154) in July 1996 recommended the creation of a new multi-party procedure
- The Gill Review 2009



# Pre-Group Procedure Cases

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# Introduction of Group Procedure in Scotland

The SCJC Working Group: Consultation on Group Procedure (April 2020)



“10. The rules will be designed to encourage the expeditious progress of group proceedings cases and make the most efficient use of time spent in court.

The emphasis will be placed on judicial case management and the rules will provide broad powers to enable the court to tailor the procedure in response to the circumstances and complexity of individual cases.

11. In taking forward its remit and in designing the new procedure, the Working Group’s intention is to produce straightforward rules encompassing only the essential procedural elements required to enable group proceedings to operate effectively in the court. It is intended that the rules should be easily understood and create an efficient, flexible and accessible system regulating group proceedings.”

# Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 Part 4

- Requirements of section 20
- Power of COS to create rules by Act of Sederunt

## 20 Group proceedings

- (1) There is to be a form of procedure in the Court of Session known as “group procedure”, and proceedings subject to that procedure are to be known as “group proceedings”.
- (2) A person (a “representative party”) may bring group proceedings on behalf of two or more persons (a “group”) each of whom has a separate claim which may be the subject of civil proceedings.
- (3) A person may be a representative party in group proceedings—
  - (a) whether or not the person is a member of the group on whose behalf the proceedings are brought,
  - (b) only if so authorised by the Court.
- (4) There is to be no more than one representative party in group proceedings.
- (5) Group proceedings may be brought only with the permission of the Court.
- (6) The Court may give permission—
  - (a) only if it considers that all of the claims made in the proceedings raise issues (whether of fact or law) which are the same as, or similar or related to, each other,
  - (b) only if it is satisfied that the representative party has made all reasonable efforts to identify and notify all potential members of the group about the proceedings, and
  - (c) in accordance with provision made in an act of sederunt under section 21(1).

## 21 Group procedure: rules

- (1) The Court of Session may make provision by act of sederunt about group procedure.



# The Group Procedure Rules: Chapter 26A Court of Session Rules

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- Selection of Representative Party
- Application to Bring Group Proceedings
- Group Register
- Summons
- Service
- Hearing on RP and Permission
- Case Management thereafter





# Difference of Approach from E&W

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- Lord Erich's first interlocutor in VW



The court made the following observations about the approach it intended to adopt in the management of these Group Proceedings, unless at the Preliminary Hearing or any Case Management Hearing parties persuade the court that a different approach would be more suitable.

In English group litigation and mass litigation under and mass litigation under the ordinary Court of Session Rules, the court has proceeded by identifying and progressing lead cases.

There is a significant difference between on the one hand English group litigation and on the other hand group proceedings under the new rules. The difference is that under the new rules the representative party brings the proceedings on behalf of the group members, each of whom has a separate claim. The summons is not the separate personal claim of Ms Cameron but is brought on behalf of all group members.

The approach of the court will be to identify the issues which require to be determined by the court and resolve these issues. There are various methods in which the issues might be resolved. For example,

- (1) the court might grant a declarator in the summons, or uphold pleas in law in the defences to the summons.
- (2) The parties might identify a question and the court would answer that question.
- (3) The court might appoint lead cases.

All that will be a matter for discussion at the Preliminary and Case Management hearings, but the preference for the court will be to proceed by (1) or (2) rather than appointing lead cases, albeit the court recognises that there might be some issues on which it might be appropriate to proceed by way of lead cases.

# When to consider Group Proceedings?

2 or more pursuers

Common issues in fact and law

Examples: Consumer Protection issues;  
Data breaches; Competition Claims;  
Environmental Claims; Personal Injury  
from common cause;



"Remember, the customers are always right because class action suits are very expensive."



# Currently Active Claims

- The Celtic PLC Group Proceedings
- James Finlay (Kenya) Ltd Group Proceedings
- BMW Group NOx Emissions Group Proceedings (and others to come)



*"Ah...the new pocket plaque's arrived."*

# Advantages of Group Proceedings

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- Access to justice
- Efficiency
- Comparative Cost







## Issues in current cases

- Who should be the representative party – Kenya & BMW
- Funding & Disclosure – The Rules, BMW, and Undertakings
- Valuing the claims



Any  
Questions?

# Asking a Question

Raise your hand

Wait patiently  
and quietly

## Question Starters

Who  
What  
When  
Where  
Why  
How



Winged One

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