

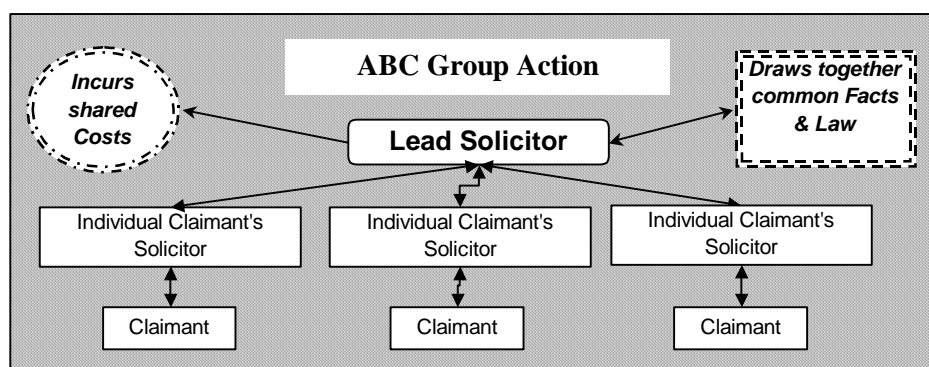
Group Actions Leaflet.

This leaflet is designed to explain to Claimants in clear terms the rules about costs in group actions (sometimes called “class actions” or “multi-party actions”).

What is a Group Action?

It is a **form of legal action where a group of individuals who share common issues of fact or law get together to fight their case**. Inevitably costs and resources must be shared. Co-operation within the group is important.

The following diagram attempts to explain how group actions work



What do the different words mean?

Lead Solicitor (Also referred to as the “co-ordinating solicitor”) - He/She is in charge of the group. It is his/her job to decide in which direction the group should be steered. He/she incurs costs, which are shared between all members of the group (see [below](#) for more detail). He keeps the group solicitors informed what is going on and advised group members what they must do with their individual cases.

Solicitor for individual Claimant Takes instructions from claimants and prepares their case. Passes information to the Lead Solicitor and follows the lead solicitor's guidance.

Costs – this is a lawyer's word for their **professional charges, either before or after, VAT**.

Disbursements- The **expenses** inclusive of VAT charged by **third party suppliers** such as the court, experts, travelling expenses etc., but not barristers.

Counsel - These are **Barristers** used by your solicitor in your case. Protocol dictates that claimants communicate with barristers through solicitors. They are drafted in at appropriate points in your case to give advice or draft documents. Their expenses are part of your costs.

Generic Work- Another word for **the work of the Lead Solicitor**. It relates to the **common issues of fact or law** referred to above. The Lead solicitor is also referred to as the co-ordinating solicitor or group solicitor. He/she is responsible for the group case and advises the solicitors acting for the individual claimants. He/she will investigate common issues of fact or law

What are the advantages and disadvantages?

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The advantages are:-

- Claimants can **act together** more forcibly against Defendants
- It is only necessary to **try common issues**, which can benefit the whole group, **once**.
- Any good **evidence** in one case can be used **in other cases**
- **Links** between cases can benefit the whole group.
- **Some cases**, which are of too low value, or for some other reason cannot be brought alone, **can succeed** in a group
- It is **cheaper** to share the cost of investigating common issues

The disadvantages are:-

- The group moves at the **speed** of the last person to join. Those who come forward early sometimes have to wait for late joiners to catch up.
- These types of case can **take much longer** than individual cases for many reasons.
- Claimants who settle part way through usually have to **wait until the end** of the group action before they get all their money (see [below](#))
- Because costs are shared **Claimants can be asked to contribute** towards expenses. This does **not** usually apply if the Legal Services Commission (“**LSC**”) is supporting the case **BUT** see below.
- Because there are two levels of costs (see [below](#)) each Claimant is **more exposed to** the risk of paying **loser’s costs**. Once again this risk is reduced if the LSC are involved.

Costs Sharing

One can see from the above diagram that there are 2 levels of costs

1. **Common/Generic Costs** (costs charged by the Lead Solicitor)

- Because these costs are earned by the Lead Solicitor on behalf of the group they are **shared by all members in equal shares** (see below under “[the register](#)”). If the case is funded by the LSC the lead solicitor is paid as the case goes along. If you are a private payer the lead solicitor may ask you for money on account of costs.
- In LSC cases, because of the rules of the **Statutory charge**, Claimants **cannot have** all their **compensation until all their costs are paid**. In other words any costs your solicitor does not recover must come out of your compensation. You will have received advice about the Statutory charge from your solicitor. This subject is outside the scope of this guide. Similar rules apply to the holding back of costs in private cases for the similar reasons.
- The usual rule is that **the loser pays the winner’s costs** . If the claimants win the other side will usually pay costs. Rarely, however, are all the winner’s costs paid by the loser. **Any unrecovered costs therefore may have to be paid out of compensation**.
- If the case is lost, the claimants may have to pay not only their own solicitors costs but also common costs of the lead solicitor and the opponent’s costs (unless, of course if there is a “No Win No Fee Agreement in force – see below). If the LSC are funding the case claimants to some extent are protected. The principles are explained in the diagram below.

2. **Individual Costs** (costs earned by each claimant’s solicitor)

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- These are **costs earned by your own solicitor** whilst acting for you. See above for [definitions](#)
- Your own solicitor will have given you specific advice about how much they are likely to amount to/have amounted to already.
- If you are publicly funded the rules of the **statutory charge** will apply to them. You will have received separate advice about this.
- If you **win**, your solicitor will negotiate **payment** of these costs with **your opponent** and there may be a **delay** whilst the claim for costs is made. This is completely separate from the work the lead solicitor does (see below "[what happens at the end of my case](#)").

3. Inter-Claimant's Agreement

All claimants in a group are bound together by an agreement, which says **what the lead solicitor and your solicitor must do**, and lays out **your duties as a group member**. It makes clear what the **rules on sharing costs** are. Before you can join the group you/your solicitor has to sign one of these agreements. Once again your solicitor will give you separate advice about this.

4. The Court Register or List of Group Members.

The ways in which it is decided who are members of the group varies from group to group. **The lead solicitor keeps a list or register**, which is not published, other than to the court and the other lawyers. For reasons of Data Protection, **you will not be entitled to see a list of all other members** of the group, unless the court so orders.

You are entitled to know however the **dates of your membership** and **how many other claimants there were/are on the register**. This will be important of course for costs sharing.

The register is usually published quarterly, but some other period may be chosen. The end of the quarter varies from group to group.

5. How is my share of the common costs worked out?

This is the **lead solicitor's responsibility**. Normally a **court order** decides how this is calculated. In most cases the figure is **calculated quarterly** (every 3 months). The usual rules (subject to variations in individual group actions) are:-

- When you **leave** the group you are liable for a **proportionate share** of the costs **from the beginning** of the group, no matter how late you joined. Obviously, it is fair that you should share the cost of all the work that has gone beforehand, whether it is to your advantage or disadvantage.
- The figure is **calculated** by adding up **all the costs** the lead solicitor has earned from the beginning of the group and **dividing it by** the number of **claimants on the register to the end of the quarter** or other period.
- The **calculation** is done **at the end of each quarter** or other period, so that leavers are only responsible for costs up to the end of the period they leave.
- If you **leave during a period** of account you are usually **responsible for all costs up to the end of that period**.
- If you leave the group before the end, the lead solicitor can only give you an **estimate** of your share. The exact amount always subject to **assessment** by the court or LSC **at the end** of the group action

6. Is my share of the common costs anything to do with anyone else?

This is a difficult question and the current state of the law does not presently provide a clear answer.

- If you **win** and are awarded **compensation** you should be able to take that money even if other group members lose or do not recover all their costs. However the **LSC** have brought in rules, which **might put your compensation at risk**.
- If some group members win and others lose then, unless there is a special court order, the Defendants are **unlikely to** be able to **claim** any of **your compensation** as the law currently stands.
- If the **whole group loses** then **each claimant** bears an **equal share** of the costs of both sides. If the **LSC** is **funding** the claim then you are **protected** against that risk in certain circumstances. The same may apply if other private funders such as insurance companies take on risk
- If there a “**No Win No Fee** agreement” in force then **you might have contracted out of some of the risk**, depending on the agreement you have reached.

What happens at the end of my Case?

1. If I win and get Compensation?

The best way to explain this is with an example.

Here **compensation** is **£20,000**, the **common costs share** is **£5000** and **your own solicitor’s costs** are **£10,000**. The case and the group are **publicly funded by the LSC**. What happens to the money is explained as follows:-

Compensation	£20,000	The money is received from the opponent by a cheque payable to us.
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The following deductions in this example are made:-

Individual Costs (to be paid by the opponent)	£10,000	A cheque for this sum will be sent to the Legal Services Commission and held in an interest bearing account. A bill must be drawn up by our costs draughtsman, which is likely to take about 2 months – this will then be sent to the other side. If we can settle by negotiation then this will take a further 2 months or thereabouts. If not the court assessment process could take a further 6 months or thereabouts. The other side then pay us what has been agreed or ordered by the court. Once costs have been finalised the LSC will pay back the £10,000 with interest less any monies not recovered from the other side.
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Common Costs share	£5000	The same rules apply to these costs as individual costs. The difference is, however, that they will not be assessed for some considerable time, and must await the end of the whole group action. You could be waiting several years for the money. During this time, however, the money will be invested by the LSC and earn interest for you.
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Balance payable to you	£5,000	We will send you a cheque for this money unless there is not enough left to pay you – see the next example
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We emphasise that we aim to be able to put you in a position, eventually, whereby **you receive all your compensation** with any interest that it has earned. For various reasons explained elsewhere in this leaflet, this is **not always possible**.

If the **compensation** awarded is **not enough to cover the costs** then we have to wait until the costs are sorted out before we can send you any money. The following is an example of this:-

Compensation	£10,000
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The following deductions in this example are made:-

Individual Costs (to be paid by the opponent)	£9,000
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Common Costs share	£3000
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Balance payable to you	<u>£NIL</u>
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Here the LSC will be able to pay you £7000 when individual costs settle. The remainder (£3000) will be held in an interest bearing account by the LSC until common costs settle at the end of the group action.

2. What happens if I lose?

There are 3 possibilities:-

- You are **publicly funded** by the **LSC**. In this case your costs will be usually be paid by the LSC In certain circumstances costs can be taken out of your compensation. This is a separate issue not covered by this leaflet.
- You are **privately funded** – in this case you will face a bill for costs not only from your own solicitor and the lead solicitor for a proportionate share of the common costs, but also from the opponent as well. Whilst this sounds worrying different orders are made in some cases, which can lessen the financial burden. If this happened then the financial effect of the result would be given serious consideration.
- You are subject to a **“No Win No Fee”** agreement. Once again this is outside the scope of this leaflet. In simple terms however these types of agreement can relieve you of the bill for your own solicitors costs (but not necessarily “disbursements”) The same can apply to the Lead solicitor’s costs if a separate agreement has been made with him/her. It does NOT relieve of the burden of the opponent’s cost unless you have insurance in force.

All the above is subject to variations and different agreements in individual cases, where circumstances can vary.

This leaflet is not intended to deal with every situation. It provides an overall view of the position at the time of the production of this leaflet. For accurate and definitive legal advice you must refer to your own solicitor. This leaflet is merely a guide and deals with the general situation in most cases.