

Summary

- The LGPS has become involved in recent high profile class action cases; the lucrative settlements potentially stimulating greater engagement in this kind of litigation.
- Class action cases favour the LGPS due to the schemes' sheer size and resources – other pension funds may get involved, but they must be big enough to do so.
- The nature of the US and UK legal systems mean class actions will likely remain a matter for the American courts.
- Class action cases are serious undertakings and pension funds have to take into consideration many factors such as cost, complexity and the chance of legal matters rumbling on for years before a conclusion is reached.



This year, the LGPS has been involved in two high profile – and successful – US class action suits. In March, the Norfolk Pension Fund (NPF) secured a £380 million recovery in a class action case against Apple over claims the tech

Presenting the case for pension class actions

➤ In recent months, the LGPS has been involved in high profile US class action cases with multi-million-pound settlements. Could these become more popular throughout the wider pension world?

giant had made false and misleading statements to investors. A few months later, the North East Scotland Pension Fund (NESPF) was a lead plaintiff in a similar case against Under Armour and recovered £338.9 million [see p66 for more information on this case]. This has led some to question why the LGPS is involved in these class actions and if this is part of a growing trend.

As to the why, this can be attributed to the size of these schemes. According to Gowling WLG dispute resolution partner, Emma Carr, the LGPS will have the requisite scale needed to consider engaging in a class action.

“In addition, LGPS funds will be keen to be seen to lead the way (and may indeed owe fiduciary duties to its members to pursue legal recourse) in matters of shareholder activism in all of its guises,” adds Carr. “A local government pension scheme is typically sponsored by employers, funded by taxpayers, so they may feel compelled to pursue claims to minimise the funding burden placed on employers and taxpayers.”

Due to their scale, both the NPF and NESPF had sizeable investments in the

companies they pursued class actions against. Burges Salmon partner, Michael Hayles, highlights that the LGPS is one of a reducing number of pension schemes that still have significant equity exposure.

“LGPS funds (and increasingly LGPS pools) will therefore have a significant interest in being involved in (or leading) class actions where they can recover losses in relation to equity investments,” argues Hayles. “There does seem to be a growing trend for LGPS funds to consider their opportunities to bring such claims and we do not expect that to change. In particular, LGPS funds arguably have a greater range of stakeholders than a typical scheme – from local councils, members, taxpayers, employers and central government – who will have an interest in LGPS funds making recoveries for losses.”

Not restricted to LGPS funds

LGPS funds may have the scale and resources to commit to class actions, but this is not unique to them.

“There is nothing stopping other large pension funds getting involved with class actions relevant to their investments and arguably they should be doing so



as a claim is an asset in the fund, which arguably the trustees should pursue,” says RPC partner, Rachael Healey. “Furthermore, the way in which the US fund class actions can be attractive to pension schemes given that they tend to be funded on contingency arrangements and there is less risk to adverse costs if proceedings fail.”

The eye-catching figures in the recent Under Armour and Apple rulings may garner greater attention from the wider pension community. Hayles says these sums may “stimulate interest” in class actions in all pension schemes, but that

this may stay restricted to schemes with larger equity allocations.

“We might expect the LGPS and the other large pension funds – such as the Universities Superannuation Scheme – to be very focused on these opportunities,” he says. “However, for legacy DB schemes in the UK, which are progressively de-risking, we may see a downturn – although collective DC (CDC) (when they come through to the market) and large-scale DC schemes may begin to take a greater interest in these claims – and the members of those schemes may expect appropriate action too.”

UK expansion unlikely

Regardless of the kind of pension schemes that will pursue class action litigation in the future, these are likely to remain US cases, according to Irwin Mitchell partner, Garon Anthony.

“There is a long history of class actions in the US – the US is therefore more experienced in dealing with them, while they are comparatively rare in the UK,” explains Anthony.

“The courts here impose quite high burdens that need to be satisfied before you even get one of these things off the ground. Funding is also a really



are absolutely no costs and no financial risks to serve as a lead plaintiff,” says Summerfield. “All costs are covered by the attorneys leading the case; they will ask the court to approve that a portion of assets received in a settlement are paid to them to cover fees and expenses.

“The US, unlike many other jurisdictions, does not have a ‘loser pays’ system. Win or lose, a lead plaintiff is not responsible for any costs.”

“Class actions may result in large recoveries, but experts warn about pursuing these actions purely for financial gain”

Cost and complexity considerations

The challenge of accessing UK funding for class actions speaks to the wider complexity of class actions in general. By their very nature, with a large number of plaintiffs, class actions are complex and therefore costly endeavours – factors that should not be overlooked from a risk management perspective, argues Healey.

“*[There are potentially extra risks]* if there are differences between the parties bringing the claim,” she says. “The way in which pension schemes invest (with advice from fiduciary managers for example) means that they are sophisticated investors. This may put them in a different position to a member of the public making the same investment.”

Lawyer selection is also vital. With UK pension schemes more likely to pursue class action-type litigation in the US than domestically, choosing the right law firm in the states is crucial. Here, a law firm having ‘hands on’ experience is important, Summerfield says.

“A scheme may also want to pursue claims against a company that might have particular resonance with its

members, for example, one with poor corporate governance or environmental standards or a company which has not responded appropriately to investors’ concerns,” he adds.

Class actions may result in large recoveries, but experts warn about pursuing these actions purely for financial gain. Looking at the wider context, Carr points to the other potential side effects pension funds such as negative publicity and a distraction from primary duties.

“Often participation can be seen as a way of protecting members’ interests, which is perceived positively, but there is always the risk of exposing the scheme to negative publicity if the case is controversial,” says Carr. “Also, does the decision to participate align with the scheme’s broader investment objectives and/or how the action may impact relationships with other companies or sectors which the scheme is invested in?”

This latter point speaks to the sheer amount of time class actions can take to resolve. The NPF’s case against Apple was resolved in 2024 but first filed in 2019, with the tech giant steadfastly defending itself throughout. Anthony says the risk of lengthy legal proceedings, before a matter even nears a courtroom, has to be considered.

“The companies that are defendants in these claims will fight very hard,” says Anthony, revealing that such companies will often make numerous applications to strike out and frustrate these claims throughout the process.

“On one hand you have a failed investment where you were misled, and on the other hand you are looking at a new investment to recoup your losses,” he adds. “The latter can be significant in terms of time and resources to devote to allow your US lawyers to do the best possible job they can.”

Written by Jon Yarker, a freelance journalist

big issue here; you have to be very well funded in the UK and justify the class action is a good use of the scheme’s money with legal fees being funded as you go. Some firms may agree to do these on a contingent basis but that is rare.”

In contrast, the situation is more attractive for plaintiffs on the other side of the Atlantic. Pomerantz director of ESG and UK client services, Daniel Summerfield, outlines how the risk/reward proposition is different for aggrieved parties.

“In cases litigated in the US, there