NO GLO FOR WOODFORD INVESTORS

In Moon & Ors and Etkind & Ors v Link Fund Solutions Limited [2022] EWHC 3344 (Ch), Mr Justice Trower rejected an application by investors in the Woodford Equity Income Fund for a Group Litigation Order in respect of their claims against Link Fund Solutions Limited.

LFSL denies the claims in full, but it was common ground between the parties that a GLO might be suitable in this case, as proceedings have been issued against LFSL by thousands of investors in the WEIF, and those claims are likely to give rise to common or related issues of fact and law. However, the question for the Court was whether a GLO was necessary for the proceedings to be managed justly and at proportionate cost, or whether an alternative form of case management order would be more appropriate.

Where a GLO is ordered, it will usually provide for: (i) the establishment of a group register (which enables future claimants to join the proceedings in a structured way); (ii) the assignment of a managing judge to oversee the litigation; (iii) directions which are binding across the entire claimant group; and (iv) costs sharing. The Claimants argued that this was a paradigm case for a GLO, as claims for financial loss arising from the mishandling of investments are particularly suitable for a GLO.

LFSL contested the application, submitting that a GLO would not be the most efficient mechanism for managing the claims. The perceived benefits of the GLO regime could be achieved by the Court using its standard case management powers, without the additional administrative burden of a GLO.

In rejecting the application, Trower J recognised that that the purpose of making a GLO is not to encourage prospective claimants to bring claims (citing Asplin J in Manning & Napier Fund v Tesco [2017] EWHC 2203 (Ch)). In this case, there were only two groups of Claimants ready to proceed with their claims, and they were effectively working together as a single group already. Also, given that the claims against LFSL had already been widely publicised, it was likely that those investors who wish to sue LFSL had already instructed solicitors to do so.

Trower J concluded that, rather than make a GLO, he would order the parties to exchange generic pleadings, which would be of assistance to the Court in devising appropriate, bespoke case management processes to organise the case going forward.

Clifford Chance acts for LFSL. The full judgment is available **here**.

Comment

This decision is illustrative of the careful scrutiny that the Court will give to GLO applications. Before committing the parties, and the Court, to the allocation of substantial resource to the conduct of group litigation, the Court will consider whether there are other means of achieving the case management advantages that a GLO might offer.

It will not be enough for applicants to show that a GLO could be an appropriate mechanism for managing multi-party litigation. The Court will need to be convinced that, in the circumstances of the particular case, a GLO would offer additional advantages and efficiencies beyond those provided by the Court's usual case management powers.

This decision also suggests that many claimants bringing similar claims against the same defendant is not enough, on its own, to justify making a GLO, particularly where: (i) there are only a small number of Claimant groups; (ii) those groups are already co-ordinating as to the conduct of those claims; and (iii) the claims have already been heavily publicised, meaning it is unlikely that the number of Claimants (or Claimant groups) will increase significantly.

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