

Neutral Citation Number: [2022] EWHC 3344 (Ch)

Case No: Claim Nos. FL-2022-000011  
FL-2022-000012

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**FINANCIAL LIST (ChD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 21 December 2022

Before :

**The Honourable Mr Justice Trower**

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Between :

**Edward Moon and Ors; Claimants**  
**Anthony Etkind and Ors**

- and -

**Link Fund Solutions Defendants**

- and -

**Sarah Louisa Spice and Ors RGL Claimants/Interested Parties**

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**Nichoas Vineall KC and James Hatt (instructed by Marcus Parker Limited) for the**  
**Claimants in FL-2022-000011**

**Derrick Dale KC and Teniola Onabanjo (instructed by Leigh Day) for the Claimants in FL-**  
**2022-000012**

**Alain Choo Choy KC, Mehdi Baiou and Simon Gilson (instructed by Wallace LLP) for the**  
**RGL Claimants**

**Richard Handyside KC, Rupert Allen and Gillian Hughes (instructed by Clifford Chance**  
**LLP) for the Defendants**

Hearing dates: 19<sup>th</sup> and 20<sup>th</sup> December 2022  
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**APPROVED JUDGMENT**

**The Honourable Mr Justice Trower**  
**(10:30am)**

**Wednesday, 21 December 2022**

**Judgment by THE HONOURABLE MR JUSTICE TROWER**

1. This is an application issued on 15 June 2022 by two groups of claimants represented by Leigh Day and Marcus Parker Limited for a group litigation order pursuant to CPR 19.11, on the basis that their claims and those of other intended and potential claimants against Link Fund Solutions Limited ("Link") give rise to common or related issues of fact or law.
2. Leigh Day issued a claim form on behalf of 100 of their clients on 27 September 2021. Marcus Parker first issued a claim form on behalf of their then clients on 3 June 2022. I shall use the phrase "PLS Claimants" to describe the Leigh Day claimants and the Marcus Parker claimants together. Both claims are now proceeding in the Financial List.
3. The claim forms have not yet been served, but time for serving the Leigh Day claim form has been extended until after the determination of this application.
4. The issued and prospective claims against Link arise out of investments in the LF Equity Income Fund ("the Fund"), previously known as the LF Woodford Equity Income Fund, and before that the CF Woodford Equity Income Fund, the only sub-fund of the LF Investment Fund ("the Company"). The Company is an umbrella open-ended investment company with variable capital, of which Link is the authorised corporate director ("ACD").
5. As ACD of the Company, Link is responsible for the management and operation of the Fund and is required to comply with the rules of the FCA Handbook and, in particular, the Collective Investment Scheme Sourcebook ("COLL"). The company is an authorised fund within the meaning of the FCA Handbook.
6. The Fund was launched in June 2014 with a prospectus that provided for the Company to issue shares relating to the Fund. The investment structure is a familiar one, in the sense that the value of each share is calculated by reference to the Fund's net asset value from time to time. The Fund

attracted a significant number of UK retail investors who either subscribed for shares directly or invested through intermediaries, such as providers of online investment platforms, with their shares held by trustees or nominees on their behalf.

7. Link appointed Woodford Investment Management LLP, and later Woodford Investment Management Limited ("Woodford") as investment manager. These two entities were controlled by Mr Neil Woodford, a well-known investment manager who had built a significant reputation at Invesco Perpetual over many years, and Mr Craig Newman. They continued to act as investment managers of the Fund until 15 October 2019, when their appointment was terminated and an announcement was made that the Fund would be wound up.
8. The PLS Claimants have served draft generic particulars of claim ("GPOC") foreshadowed by letters before action sent by Marcus Parker on 24 July 2020 and Leigh Day on 5 March 2021. They set out in some detail the terms of the prospectus, the purpose and objective of which was to provide information to investors in relation to the Fund. The GPOC also set out in full those provisions of COLL which are said to be the key provisions relating to Link's obligations as ACD of the Company.
9. The PLS Claimants' GPOC plead that the investment objective of the Fund was to provide a reasonable level of income, together with capital growth to be achieved by investing primarily in UK listed companies. They contend that, from early 2017, there were marked changes in the investment style of the fund, although there were no changes in its investment objective. In very brief summary, it is alleged that Woodford started replacing large FTSE 100 holdings with smaller stocks. This is said to have amounted to a clear move towards speculative and unlisted holdings, an increasing number of which were described as early-stage, healthcare, technology and financial stocks.
10. These developments are said to have led to increasingly poor performance by the Fund and a rapid increase in redemptions by investors, causing a significant reduction in its assets under management

from some £9.59 billion at the end of 2016 to £8.24 billion at the end of 2017, and accelerating to £4.7 billion at the end of 2018.

11. Dealings in the Fund were suspended on 3 June 2019 on the grounds that it was unable to meet redemption requests, including in particular a very substantial one from Kent County Council Pension Fund. It was announced that those requests had reached a level whereby the Fund would no longer be able to continue to meet them without prejudicing the interests of both remaining and redeeming investors. One of the PLS Claimants' criticisms of Link is that, based on the terms of the prospectus, the Fund should have had a portfolio with sufficient liquidity to satisfy the KCC amongst other redemption requests made at the same time.
12. The winding up of the Fund commenced on 18 January 2020 with the approval of the FCA. The PLS Claimants' present understanding of the position is that there will be a very substantial realisation shortfall as a percentage of the share price immediately prior to the time of suspension.
13. The case pleaded against Link is a claim for damages under section 138D of the Financial Services and Markets Act 2000 ("FSMA") for losses sustained by the PLS Claimants as a result of identified breaches of the rules applicable to the management of the fund, including in particular COLL. They are based on what is said to have been inappropriate levels of investment in illiquid stocks, an inappropriate overall investment strategy, overvaluation of the Fund and untrue and misleading statements in the prospectus.
14. So far as the allegations based on illiquidity are concerned, it is contended that Link was obliged to ensure that the Fund was not inappropriately invested in hard to value, illiquid or speculative stocks, and that its liquidity profile was appropriate having regard to the Fund's redemption policy and a number of other factors.
15. The PLS Claimants rely on a number of particularised breaches, including breaches by Link of the provisions of COLL which restrict the extent to which the Fund was entitled to invest in transferable securities by reference to identified criteria; breaches by the Fund in relation to the securities said to

have been recently issued within the meaning of one of the provisions of COLL, when they were in substance securities re-issued on cancellation of a predecessor stock; and breaches by the Fund in relation to a transaction with an investment trust called Woodford Patient Capital Trust, of which Woodford was the portfolio manager. This was also said to have been a possible breach of the Fund's best execution obligations under rule 11.2B of the FCA's Conduct of Business Sourcebook ("COBS").

16. The PLS Claimants contend that Link continued to maintain an unsuitable portfolio composition, and that such steps as it took were inadequate and failed to address the extreme illiquidity of the Fund's portfolio. They say that the suspension of the Fund would not have occurred if Link had performed its obligations in respect of the Fund properly. The GPOC plead a lengthy list of provisions of COLL, the details of which do not matter for present purposes, of which the PLS Claimants allege that Link was in breach.
17. As to the allegation based on an inappropriate overall investment strategy, the PLS Claimants rely on a radical shift in the nature and distribution of the Fund's investments that was never notified to investors, and which was in stark contrast to all of the other funds in what has been described as an illustrative peer group.
18. In relation to these first two categories of breach, the PLS Claimants also relied on a failure by Link to monitor the Fund adequately and effectively, and a breach of its obligations to ensure a high degree of diligence in the selection and ongoing monitoring of the Fund's assets.
19. There is also an allegation of substantial overvaluation, which included a consequential allegation that, to the extent that the Fund was materially overvalued during the period from 2017, the funding of cash payments to redeeming investors resulted in a disproportionate reduction to the disadvantage of continuing investors. This was exacerbated by the increasing illiquidity of the Fund as redemptions increased.

20. As to the allegations arising out of the prospectus, the PLS Claimants plead breaches by Link of a duty of care in making statements in relation to liquidity and redemption, the limits and restrictions on permissible transferable securities and valuation which are said to have been untrue or misleading. This is said to give rise to an obligation on Link to pay compensation to the claimants pursuant to COLL 4.2.4R(1).
21. The PLS Claimants contend that if the breaches they allege had not been committed by Link, and there had therefore been proper performance of Link's duties as ACD, their interests in the Fund would have been worth very much more than has now turned out to be the case. The difference in value of the individual investments is the loss they claim to be able to recover in these proceedings.
22. Link denies all allegations. It contends that it has complied with all of its statutory duties in relation to its role as ACD of the Fund, and that at all times the Fund was invested in accordance with its investment objective and policy and the terms of the prospectus. It says that the redemption requests immediately prior to suspension were unexpected and unprecedented.
23. For present purposes, nobody has suggested that I should not deal with this application on the grounds that the claims made by the PLS Claimants are unsustainable. Link has made clear, however, that it considers that the claims are misconceived.
24. Each PLS Claimant is an investor holding shares in the Fund at the time of its suspension in June 2019, with a typical investment of £10,000 to £25,000, but some invested several hundred thousand pounds. The latest version of the Leigh Day claim form schedules a thousand named individual claimants, but Leigh Day say that they represent approximately 13,200 investors in total. The latest version of the Harcus Parker claim form schedules 1,917 individual claimants, but Harcus Parker say that they represent approximately 7,400 investors in total. They say that they therefore intend to issue claims against Link on behalf of thousands of further clients who intend to bring the claims set out in the draft GPOC.

25. In addition to the claimant groups represented by Leigh Day and Marcus Parker, two further claimant groups have been identified by the applicants.
26. The first is a group which I shall call "the RGL Claimants", represented by Wallace LLP, who themselves have been instructed by RGL Management Limited, an entity described as a developer and manager of large commercial legal actions authorised to act on behalf of groups of investors. They originally issued a claim form on 14 October 2022 naming 3,215 claimants, and were represented at the hearing of this application. There is evidence that RGL and Wallace are working with a further 3,300 potential claimants.
27. The second group is a small group of 25 to 30 claimants represented by Hugh James, who have indicated to Leigh Day that they are considering a claim which will be similar to the claims brought by the PLS Claimants. However, they have not had any pre-action correspondence with Link and, according to Leigh Day, have not expressed any interest in taking part in this application.
28. Initially there had also been a group represented by Slater & Gordon but, by the time of the PLS Claimants' reply evidence adduced in November, they had dropped out of the picture.
29. The provisions of the CPR governing GLOs are contained in the group litigation section of CPR Part 19. CPR Part 19.10 provides that a GLO is an order made to provide for the case management of claims which give rise to common or related issues of fact or law. These are described as "the GLO issues", and the jurisdiction to make a GLO arises under CPR 19.11(1), where there "are or are likely to be a number of claims giving rise to the GLO issues". A GLO must establish a group register and, pursuant to CPR 19.11(2)(b), must "specify the GLO issues which will identify the claims to be managed as a group under [it]".
30. The formulation of the GLO issues is important, because they operate for the purpose of identifying the issues which, when determined, will be binding on the parties. They also serve to define and identify the claims which may be transferred to or started in the management court, may be stayed and must be entered on the group register as the case may be. CPR 19.13 and 19.15 then give the

court specific case management powers in relation to claims on the group register, including for the trial of test cases.

31. CPR 46.6 provides for a bespoke costs regime in relation to individual costs and common costs where the court has made a GLO. Individual costs are costs incurred in relation to an individual claim on the group register. Common costs are costs incurred in relation to the GLO issues and individual costs incurred in a claim while it is proceeding as a test claim. There are, in substance, two general rules in CPR 46.6, both of which can be disapplied, but they are an important starting point. The first is that common costs impose several liability on claimants whose claims are entered on the group register. The second is that any such claimant will also be liable for their own individual costs and an equal proportion of the common costs.
32. As to the jurisdiction to grant a GLO, it is clear from the number of claims that have already been issued, and indeed is common ground, that the numerosity requirement is satisfied. It is more obviously so than in many other cases in which a GLO has been made.
33. It is also not in issue that these claims give rise to common or related issues of fact or law which are capable of being GLO issues within the meaning of CPR 19.10. However, one of the issues -- and, indeed, one of the principal issues -- which arises on this application is whether, in the light of those GLO issues as formulated by the PLS Claimants, and indeed the facts of the case more generally, the court should exercise its discretion to exercise the jurisdiction which undoubtedly exists.
34. It is the applicants' position that the PLS Claimants' claims would be most conveniently managed by a GLO. Indeed, they submitted that the case is a paradigm for the order they seek. They rely on the benefit of establishing a group register, and the setting of what they call minimum standards for joining the group. They also point to the desirability of an assignment of a managing judge to oversee the litigation; the ability to give directions which are binding on all parties on the group register, including those who may be added in due course; and a division of liability for the common costs of the litigation between claimants pursuant to CPR 46.6. They also submitted that, in the



absence of a GLO, cost sharing will be more difficult to achieve in respect of any future claimants who may join the group register in due course. It is also desirable for future claimants to have clarity as to their costs obligation if and when they do so.

35. Mr Dale KC, instructed by Leigh Day, but who, in the unavoidable absence of Mr Vineall KC, bore the burden of making submissions on behalf of all the PLS Claimants, pointed out that one of the categories of claim which the July 1996 Final Access to Justice report identified as being particularly suitable for a GLO is a claim for financial loss arising from the mishandling of investments and publishing misleading financial information. He submitted that the present proceedings are just such a case, and that making a GLO would be in accordance with the overriding objective in all respects. It would assist in dealing with the case justly at proportionate cost, having regard to its importance and the complexity of the issues with which it is concerned. It would assist in putting the parties on an equal footing.
36. Mr Dale also said that the court may be faced with further claims. He accepted that there are only two groups of claimants at present, but referred to the possibility of two more, the Hugh James and the RGL Claimants, both of which may also proceed. He also drew attention to the evidence in relation to an investigation that was being carried out by the FCA but in relation to which the PLS Claimants had little visibility. He said that this may have caused many potential claimants -- and there were more than 100,000 retail investors in the Fund altogether -- to sit on their hands, anticipating that they may achieve compensation as a result of that investigation.
37. It follows that, although the suspension of the Fund occurred over three years ago, and there has been a great deal of publicity in relation to potential redress amongst other things, there is sufficient evidence to demonstrate that there is a large pool of potential claimants who have not yet commenced proceedings, but whom the court cannot assume are not interested in making a claim. They are retail investors, many of whom are elderly.

38. Mr Dale says it is in the public interest to ensure that these investors are given the information they require and, more importantly, that the procedures which the law provides to assist them in deciding whether to make a claim, and if so providing them with the mechanism to do so in a proportionate and cost-effective manner, are invoked. He said that there has already been a sharing of resources between Leigh Day and Harcus Parker with the development of working arrangements appropriate for the conduct of the litigation. He said that this was more likely to continue to happen within the confines of a GLO, more particularly if further claimant groups represented by different firms of solicitors were to emerge. Mr Dale also submitted that there is nothing to be gained in this case by kicking the can down the road, as he put it, and deferring a decision to a stage in the proceedings in which pleadings are complete.
39. In his short supporting submissions, Mr Hatt, instructed by Harcus Parker, stressed that this is a case in which what might be characterised as the defendant-side issues predominate. By that he was referring to the issues which are concerned with the mismanagement of the Fund, potential liability of the defendants for breaches of COLL and causation, in the sense of the consequences of the breaches alleged on the value of the Fund. He said -- and I think he is correct -- that what might be described as the claimants' side individual focused issues are less relevant anyway for present purposes. This means not just that the scope of the GLO issues should be broadly defined, a point to which I will come next, but it also reinforces the appropriateness of a GLO for these proceedings more generally.
40. As to the GLO issues, the PLS Claimants base their drafting on a form of words adopted in another case, the CF Arch Cru GLO, the terms of which I was shown on the Government's GLO website. The formulation they included in the schedule to their draft order was as follows:
- "The matters set out below for the purposes of CPR 19.11 are intended to identify the high level GLO issues to assist in the management of the GLO, and are not intended as a substitute for particularised pleadings. These GLO issues will be likely to require revision and review as the

litigation progresses, including when pleadings are finalised. Accordingly, no party makes or is deemed to make any admission or concession by reason of the matters set out below.

(1) Whether, by the acts and/or omissions of the Defendant in carrying out or purporting to carry out its role as ACD of the Fund, the Defendant was in breach of the COLL (that is, the Collective Investment Schemes sourcebook of the Financial Conduct Authority's Handbook) rules relied on in the claims.

(2) Whether any breach of any COLL rule that may be established was capable of causing loss(es) of the kind alleged by the Claimants.

(3) The correct approach to the assessment of quantum."

41. As a result of a debate during the course of the hearing, the PLS Claimants reverted to a slightly different form of words which they had put forward in an earlier draft. Issue (1) was drafted in broadly the same terms, but deleted the words "relied on in the claims" and inserted the words "in respect of any loss caused by any such breaches pursuant to s.138D of FSMA". There was then a single further issue in place of issues (2) and (3):

"Whether any such breaches as may be established have caused loss to the Claimants or some of them (and if so which), and, if so, in what amounts; and what compensation, if any, is payable to the Claimants, or some of them (and if so which), pursuant to s.138D."

42. Link criticised the drafting of both formulations of the GLO issues. Subject to an important issue in relation to the role of the RGL Claimants to which I will revert, if I were otherwise minded to make a GLO, I think that these criticisms would have been capable of resolution at this hearing.

43. As to issue (1), Link said in its skeleton that each COLL relied on should be spelt out. I disagree. As Mr Justice Mann said in *Tew v BoS* [2010] EWHC 203 (Ch) at [16], the GLO issues are not intended to be a formulation of the specific questions to be determined in a trial, which may evolve as the litigation proceeds; they should reflect and encompass the actual issues which are to be adjudicated, without pre-judging the answer to the questions the court is required to resolve.

44. It follows from this that the important point is to identify in broad terms what is alleged to be the source of the duty. In the present case, that is the status of Link as an ACD and the body of regulations or contracts by which they were thereby bound and in respect of which the PLS Claimants assert that Link were in breach. If the formulation is too prescriptive, it may give rise to difficulties down the line if it later becomes apparent in the light of disclosure that there were arguable breaches of other COLLs or COBS in respect of which an amendment can quite properly be granted. This is already highlighted by the fact that some of the RGL Claimants' allegations focus on other rules.
45. What, however, seems to me to be more important relates to issue (2). Link says that the use of the word "capable" in issue (2) is designed to give the impression that there are issues of principle that may be common to multiple claims, which is said to be wrong because the issue of causation is individual to each separate claimant. I agree that the word "capable" is unsatisfactory, but I do not agree with the more general point that causation is an individual rather than a common issue. I think that there are elements of causation which are generic and common to all claimants. The most obvious one of those is given in the PLS Claimants' skeleton argument, namely the question of whether what they contend to be the poor performance of the Fund was caused by the breaches alleged to have been committed by Link. If that element of causation is established, the individual claimant's claim will then be determined in large part by the period for which they were exposed to that poor performance.
46. It is necessary for GLO issues to identify any generic or defendant-side consequence of the breach which is said to have caused loss to the PLS Claimants. By that I mean such questions as whether any such breach caused the Fund to have an imprudent spread of risk and/or be overvalued from no later than 2017, or to have been suspended or wound up when that would not otherwise have happened, or to have delivered lesser returns from investors than they did in fact receive. It follows from this that if the court were to make a GLO at this stage, some attention would need to be given

to the formulation of the GLO issues. I do not however consider that that of itself would give rise to an objection to a GLO as a matter of principle.

47. It is convenient to explain at this stage some of the other terms suggested by the PLS Claimants in their draft GLO. Some of these are required to be included, and others are usual but not mandatory. From Link's perspective, a number of them are controversial in any event and would not lead to the fair or efficient conduct of these proceedings.
48. The first of these relates to the proposal for joint lead solicitors. The rules envisage a single lead solicitor, but it is proposed by the PLS Claimants that Marcus Parker and Leigh Day act jointly. They submit that they are both very experienced in managing group litigation of this sort, which I accept, and have demonstrated co-operation to date. They say that there is no reason to think that they will not be able to continue to co-operate and to divide up the work in a proportionate manner. Link expressed concern that there will be duplication of work, increased costs and other inefficiencies, and with the best will in the world that will continue to be the case.
49. The appointment of joint lead solicitors is not commonplace and is not, on its face, contemplated by the wording of CPR 19.13(c) or PD 19B, paragraph 2.2, but a quick look at the Government website which lists GLOs demonstrates that a joint appointment is by no means unprecedented. Both firms in this case have already devoted a considerable amount of work to the case, and it is clear from the evidence that they and their counsel teams are able to work together in a co-operative manner, dividing up responsibility for particular tasks between them.
50. I am satisfied that, in the context of this particular litigation, the approach suggested by the claimants would be capable of working, but this is subject to an important proviso which I raised with Mr Dale during the course of the hearing. In my view, it would be important to make clear from the outset that for the purposes of any common costs, that is to say the costs incurred on issues which are not specific to any individual PLS Claimant, Leigh Day and Marcus Parker are to be treated as a single firm for assessment purposes. It follows that when the court is assessing costs at

a later stage, the costs of any duplicated work would not be recoverable as a cost reasonably incurred.

51. However, it does seem to me that the proposal for joint lead solicitors points up an issue as to whether it is necessary to have a GLO in the first place. As matters presently stand, the only two groups of claimants in a position to proceed are represented by the two firms proposed as joint lead solicitors. As they have made clear that they will continue to co-operate in the conduct of these proceedings, come what may, the need for a lead solicitor at all is thrown into some doubt. The position may have been different at an earlier stage in the development of this dispute, but given the level of continuing uncertainty some three and a half years after suspension that any further separately represented groups will emerge, this aspect of the panoply of a GLO is one indicator that a GLO may not be appropriate at this stage in any event.
52. A similar point can be made in relation to the proposal for a steering committee or a solicitors' group, a provision which, like the proposal for a lead solicitor, is contemplated by PD 19B, paragraph 2.2. Both of these provisions are useful and sensible where it can be anticipated that a number of different firms will be involved in proceedings in respect of which all of their clients are making substantially the same case against a common defendant. They may become less appropriate in a case such as the present where, although there is a significant pool of actual and potential claimants with claims in respect of which some common issues arise, the position continues to be that there are only two firms of solicitors in a position to proceed with their clients' claims, and no guarantee that any other groups are yet in a position, whether for funding reasons or otherwise, to advance their claims. This may be all the more so in a case such as the present, where complex commercial issues arise, and there may be fundamental differences between the claimant groups as to the way in which they wish their own cases to be put.
53. The final controversial provision that I should explain at this stage relates to publicity; that is the directions, if any, that the court should give for publicising the GLO in accordance with CPR

19.11(3)(c). It is not in dispute that, if the court were to make a GLO, notice should be put on the Leigh Day and Marcus Parker websites in the form set out in schedule 3 to the draft GLO. The PLS Claimants no longer contend that the cost of placing that notice should be common costs. The controversy relates to whether Link should be required to include an update about the making of any GLO in its next communication to shareholders in the Fund. The PLS Claimants contend that this is the most straightforward and proportionate way to ensure that the court's order, which is intended to capture future claims to ensure finality for the parties, reaches all relevant potential claimants.

54. Link says that it is not proposing to send out such an update in the course of the next few months, but in any event that it would not be appropriate or fair to the Fund's investors to advertise potential claims in this way when it considers the claims to be without merit. It points out that there has already been widespread publicity as to what is going on, and investors can be in no doubt, in relation to a collapse that occurred over three years ago, that there are groups seeking redress. It is not therefore necessary for further and more targeted efforts to be made to inform a large group of investors as to what their redress options might be or who they can contact to that end.

55. I agree with Link on this point. It does not seem to me that it would be appropriate for Link to be required to include in its next update to the shareholders of the Fund a notice in the form suggested by the PLS Claimants if a GLO were to be made. As Mr Dale accepted, it is not the purpose of a GLO to encourage claimants to make claims, nor should the court be ordering anyone to invite shareholders to join group litigation. It seems to me that informing shareholders in a notification from Link that the court has directed that notification be sent is likely to be read as an encouragement, even if the rather bland statement that Link denies all claims is included in the notification. The very fact that the notice comes from Link at the court's direction will leave the reader with the impression that the court has determined that the claims have real substance and ought to be pursued.

56. I am fortified in that conclusion by the views expressed by His Honour Judge Russen QC in *Mohammed Arif & Ors v Berkeley Burke SIPP Administration Ltd* [2017] EWHC 3108 (Comm), where a very similar point arose. He too was unpersuaded that it would be right to order the defendant in that case to contact its clients in accordance with the claimants' proposal, and at paragraph 39 of his judgment reached the following conclusion with which I agree:

"In my judgment, it is one thing for the court to make directions which enable the Claimants' legal team to stir further interest in the claim but quite another to require the Defendant to do so against its own interests as a litigant over disputed claims."

57. Mr Dale also said that once a GLO has been ordered, it is in the interests of justice for information as to its making to be given in the most effective and efficient way possible to those with potential claims to which it relates. He floated the possibility, which he said occurred in the Arch Cru case, that the defendants might be ordered to provide a shareholder list so that the PLS Claimants' solicitors could communicate with them in the most up-to-date and effective way. That is certainly an alternative possibility which would be less intrusive and would not suffer from some of the issues which arise in relation to the proposals set out in their present draft. Nonetheless, it seems to me that the proposal in its present form is illustrative of one of the reasons why principles of basic fairness require the court to scrutinise with considerable care the need for a GLO in the first place.

58. Mr Handyside KC for Link accepted that the PLS Claimants' claims give rise to common or related issues of fact or law, but he said that while there will be some common issues, each claim will turn to a significant extent on the resolution of individual issues which reduce the utility of a GLO.

59. If that were to be the only objection, I do not think that it would stand in the way of making an order. However, he went on to submit that other forms of case management are more appropriate for these claims. He also said that it is too early in any event to make a GLO now, because it is much more appropriate for statements of case to be served in the form of generic particulars of claim and defences, together with a schedule of information, before a decision on a GLO is made.



Link therefore asks the court to dismiss or adjourn the application until after these statements of case have been filed and served, for which it seeks directions.

60. The root of Mr Handyside's submission was, therefore, that the GLO would not be the most efficient mechanism for case managing these proceedings and is unnecessary. The essence of Link's position is that although a GLO is an available mechanism for managing the litigation, involving, as it does, multiple parties, it is no more than that. He said that the court is able to manage the proceedings using its existing case management powers, and that the PLS Claimants have not shown that a GLO would generate further efficiencies. He also relied on PD 19B, paragraph 2.3, which provides that applicants for a GLO should first consider whether any other order would be more appropriate, in particular whether it would be more appropriate for the claims to be consolidated or for the Part 19 representative parties provisions of the CPR to be invoked.

61. Mr Handyside said that all of the desirable aspects of a GLO can be achieved through conventional case management techniques, including directions for the service of generic pleadings, orders for costs sharing and a trial of test cases which will bind all of the claimants who are parties. He submitted that there was no need to establish a group register or introduce the remaining panoply of a GLO, including joint lead solicitors and a steering committee, all of which are included in the PLS Claimants' draft order. There is no reason to believe that there will be an avalanche of future claims, which means that there is no need to introduce the mechanism of a GLO in order to assist in corralling such claimants to sign up to a single GPOC, and nor is the imposition of a cut-off date for joining the group register a mechanism that is required or indeed appropriate for encouraging claimants to sue.

62. Mr Handyside also submitted that this is not a case in which there are dozens of claimant firms up and down the land for the control of which a proper structure is important. He pointed out that there are only a few firms so far involved, and Leigh Day and Harcus Parker have demonstrated the desire and ability to work together closely. He submitted that there is no reason to suppose that this co-

operation will not continue, or that, even if the co-operative attitude were to begin to fade, the court could not give appropriate directions as to the way that particular tasks could be divided up without a GLO being made.

63. Mr Handyside pointed to other examples in the financial world in which the court's general case management powers have been exercised in an effective manner, and in particular he referred me to the *Ingenious* litigation. Mr Handyside also took me through the decision of Mrs Justice Asplin in *Manning & Napier Fund v Tesco* [2017] EWHC 2203, a GLO decision made in the context of proceedings under section 90A and schedule 10A of FSMA. He emphasised paragraphs 49 to 50, in which the judge, referring to PD 19B, paragraph 2.3, made clear that before the parties and the court are committed to the allocation of substantial resource to the conduct of group litigation, it is necessary to consider whether there are other means of achieving the case management advantages that a GLO would offer, having regard to the overriding objective. This is consistent with the parts of the Access to Justice report, which referred to the need for a GLO regime as a mechanism for dealing with cases where the number of claimants and the nature of the issues meant that the cases cannot be managed satisfactorily in accordance with normal procedures.
64. In particular, Mr Handyside submitted that the possibility or likelihood that a GLO will lead to an increase in the number of claimants is not a legitimate reason for making one. This submission is supported by Mrs Justice Asplin's judgment in *Manning* at [55], and in broad terms I agree with what she says in that passage. GLOs are to facilitate the case management of existing and prospective claims through providing "access to justice where large numbers of people have been affected by the conduct of others, but individual loss is so small that it makes an individual action economically unviable": see the White Book, paragraph 19.10.0, citing the Access to Justice report. I have seen no support for any suggestion that the procedure is designed to encourage claims to be brought, and Mr Dale essentially eschewed any such submission.

65. Link also referred, in its skeleton argument, to *Hobson v Ashton Morton* [2006] EWHC 1134 (QB), in which Sir Michael Turner refused to make a GLO on the grounds that there were other procedures available which would have had the effect of leading to an early adjudication of the underlying merits of the claims at a mere fraction of the cost which had been incurred. The judge was highly critical of the application; he said it was an abuse and was misconceived. He also said it had been pursued in a manner that was both heavy-handed and inept, and made a robust attack on the claimants' failure to identify what was capable of being characterised as a GLO issue.
66. In the particular circumstances of that case, I think it is obvious why it was that Sir Michael Turner concluded that the determination of those small claims by means of test cases outside the GLO regime was a more appropriate way for the claims to be managed. There were about 100 claimants. There were a number of defendants, in the form of five firms of solicitors, a trade union and the claims handling organisation. The average value of each claim was £357.50, and the total recovery in respect of all existing claims would have been less than £25,000. I therefore agree with the PLS Claimants' submission that *Hobson* is not a comparable case on any level. It involved hundreds of claimants rather than thousands, and potentially tens of thousands of claimants, and there were multiple defendants. The sums of money at stake were very small, and a GLO would have been a wholly disproportionate response to the issues with which the proceedings were concerned. But *Hobson* and *Manning & Napier* do both illustrate why it is that a GLO application must be approached with a careful scrutiny of the reasons why the relief sought is said to be justified.
67. Link also relies on one aspect of the current litigation which means that a GLO is positively unsuitable anyway at this stage. This is the complication caused by the potential involvement of the RGL Claimants which, according to Link, means, amongst other things, that the application for a GLO is at best premature.
68. The RGL Claimants appeared at the hearing represented by Mr Choo Choy KC. The present state of play in relation to their claims is that funding issues, flowing in part from the imposition of

sanctions on financial institutions with Russian-owned connections, had delayed the issue of the proceedings. Those funding issues have not yet been fully resolved, but RGL is confident that the funding required will be in place by the end of January. The RGL Claimants have ATE insurance conditional on the funding. They have felt able to issue their claim form and a detailed draft GPOC has been prepared, although the impression they have given is that they had been bounced into doing so at a stage when they were not yet quite ready. Notwithstanding their confidence that they will be in a position to proceed shortly, there is quite a lot of evidence which indicates that there remain some real question marks over the ability of the RGL Claimants to pursue their claims. Nonetheless, I consider that the presence of Mr Choo Choy at this hearing, the service of evidence and the preparation of a draft GPOC all point to the fact that their future participation is at least a realistic prospect.

69. In broad terms, the nature of the RGL claims against Link is the same or similar to the nature of the PLS Claimants' claims against Link, in the sense that they rely on similar allegations of breach leading to sustained redemptions, a liquidity crisis and ultimately the Fund's suspension. They also rely on many of the same breaches of COLL but, as Mr Handyside pointed out, there are a number of COLL provisions which are not relied upon by the PLS Claimants. The primary basis on which they plead their loss is the same as the PLS Claimants, although they also rely on an alternative claim to the effect that if Link had disclosed the change in the Fund's investment approach and the other failings, the effect would have been that the claimants would have withdrawn their investments and reinvested profitably in an alternative investment.
70. There are, I think, three principal differences in the way the PLS Claimants and the RGL Claimants put their case. The first is that the PLS Claimants were all still invested in the Fund at the time of suspension in June 2019, whereas some 10% to 15% of the RGL Claimants had sold all of their investment prior to that time. The second is that 2,757 of the 3,216 RGL Claimants also bring claims against Hargreaves Lansdown Asset Management Limited ("HL"). They say that HL

operated a web-based platform for customers in relation to which it heavily promoted the Fund, retaining the Fund in its best buy list for investment at all times until suspension. The third is that the changes in the Fund's investment approach started in 2015 rather than 2017, as alleged by the PLS Claimants. This is an issue which may have significance for limitation purposes.

71. There is also some evidence that some of Wallace's clients have an indirect interest in the Fund, ie through another fund, in this case the HL Multi-Manager Fund. These investors, though, are not currently claimants.
72. Wallace have sought to ensure that any GLO in respect of claims against Link encompasses the RGL Claimants' broader claims, in particular by those who sold their investments prior to suspension. They also wish to ensure that any case management decisions take into account the overlap between issues arising in the claims against Link and the claims they have recently issued against HL. There are common factual issues in relation to what all groups of claimants contend to be the mismanagement of the Fund, but the claims against HL raise many quite different issues on liability. There will, however, be further overlap at the quantum stage, where the arguments advanced by all claimants involve an assessment of a counterfactual in the form of what they say their investments would have been worth if they had been made in a properly managed fund.
73. Against this background, the RGL Claimants are what they described as "broadly supportive" of the GLO proposed by the PLS Claimants, recognising that it will cover their claims against Link, although not against HL, once the funding is in place. However, they seek an amendment to the proposed Link GLO to include the RGL Claimants' broader pre-suspension claims, and a deferral of the case management deadlines so that the GLO mechanism takes effect from the end of January, rather than the date of this hearing, ie approximately five weeks later from now.
74. Mr Handyside submitted that the differences in approach adopted by the PLS Claimants and the RGL Claimants causes real problems. The first is that there is no clear agreement amongst the claimant community on the scope of the GLO issues, with the consequence that the PLS Claimants'

form of GLO identifies claimants as being those holding shares at the time of suspension of the Fund, while the RGL Claimants' form of GLO introduces a contingency dependent on the obtaining of funding, and, on the occurrence of the contingency, identifies the claimants as being anyone holding shares in the Fund at any time between 2 June 2014 and suspension five years later.

75. The second is that there is a danger that one form of argument may lead to common costs being incurred in relation to the GLO issues to which both sets of claimants should contribute in accordance with CPR 46.6(3), even though that argument does not reflect points in the form reflected in the GPOC to which they will have subscribed.
76. I understood Mr Handyside to accept that this does not give rise to wholly insuperable problems because the court is able to adapt the general rule for which provision is made by CPR 46.6, and the extent of the divergence may well narrow if the RGL Claimants are able to proceed with their claims. However, he submitted that it remains a point of real concern, and indicates that the real problem is that, where a case is as complex as the current proceedings are likely to turn out to be, the court must be particularly cautious before jumping into a GLO too soon.
77. I agree with the PLS Claimants' starting point that there are some advantages in the dedicated case management procedures provided for by the GLO regime. Because these proceedings have been commenced in the Financial List, a GLO is not required to facilitate the assignment of a managing judge, but the mechanism for cost sharing and the binding nature of orders and directions is clearly capable of benefit. There are also anyway theoretical benefits in the establishment of the group register because it will enable future claimants to join the proceedings in a structured way.
78. Furthermore, I do not agree with Link's submission that the utility of any GLO will be reduced to a significant extent by the fact that each claim will turn on individual issues. This was not a point developed in oral submissions in any detail, and the relevance of individual issues is undoubtedly a matter of significance in relation to quantum, because each individual claimant will have held different stakes in the company and will have done so for different periods of time. The amount to

which they will be entitled if liability is established will therefore be dependent on the extent of their investment both before and after the time any breaches were committed. However, it seems to me that the determination of each allegation of breach will involve the determination of both common and related issues of fact and law that are applicable to all investors, depending only on the extent to which the methodology of any quantum calculation is affected by the nature and timing of any breach that is established. In reaching that conclusion, I bear in mind that the fact that there are some individual issues which need to be resolved does not of itself negate or diminish the utility of a GLO.

79. However, despite Mr Dale's submission that there is no justification for reinventing the wheel, I do not accept that the substance of these advantages cannot be achieved by reliance on the court's general case management powers, even where there are a number of firms of solicitors involved. They almost all can, and I do not agree that there is the difficulty which Mr Dale says flows from an inability to bind future claimants, either in relation to the common determination of GLO issues or the costs sharing operated pursuant to the provisions of CPR 46.6.
80. I can see no reason why the procedure of directing generic statements of case cannot be used outside the envelope of a GLO to the same extent and in the same context as they are used where a GLO has been made. They will facilitate the determination of common issues to the same extent as would be achieved where a GLO has been made, and in a matter such as the present, where there is considerable complexity in the different ways in which a case arising out of what is ultimately a common misfortune is and can be put, will have the additional benefit of ensuring that there is a focus on how those common issues could be further directed and determined with the benefit of pleadings from all parties.
81. I also agree with Link's submission that the binding effect of a trial of any issues to be resolved as a result of this procedure being adopted will be achieved in relation to claimants who have joined a claimant group and become a party to an issued claim form without a GLO having been made. This

is a direct equivalent to what occurs if a GLO is made because, even where that occurs, the binding effect is only achieved as against those who are on the group register. I do not see why the same result cannot therefore be achieved by way of bespoke case management directions without the introduction of a group register.

82. I also think that the uncertainties in relation to the position of the RGL Claimants militate against a GLO being made at this stage in any event. There is obvious complexity which arises in relation to the element of any claim that the RGL Claimants may wish or be able to pursue against HL. I understand that it may be HL's position that any claim against it should not be case managed with any claim by any of the claimants against Link, and that they may be suggesting that the claim against Link should be determined first. They have not, however, appeared on this application, and I am not in a position to form any view on whether that will be their position if the RGL Claimants' claim against them proceeds.
83. The RGL Claimants have also raised the spectre of a second GLO to cover their claim against HL, and then for directions to be given as to further case management in conjunction with possible directions to be given in these proceedings. That may be an appropriate course, but Mr Handyside cautioned against the court embarking on making a GLO in the proceedings against Link in circumstances in which there is a real prospect that an associated claim against HL is in prospect raising some common issues, without first knowing what they are and whether that will happen. I think that Mr Handyside's warning is justified, more particularly where, although the responsibility is said to be different, all of the PLS Claimants and the RGL Claimants have suffered from what is, in substance, the common misfortune of investing in what they assert to be a grossly mismanaged fund.
84. As to a comparison of the cases advanced against Link by the PLS Claimants and the RGL Claimants, Mr Handyside submitted that it was a gross oversimplification for the PLS Claimants to suggest that the two categories of claim only differed in two material respects. The precise nature of



the alleged breaches are different in a number of respects, and the time period in respect of which the losses are said to have been sustained are different. However, I think that there is some danger in overplaying this point. As Mr Choo Choy submitted, it is significant that both the PLS Claimants and the RGL Claimants allege inappropriate investment, inadequate management, imprudence and failings in valuation as the core of their complaints about the mismanagement of the Fund, and I think he is correct to submit that there is likely to be a demonstrable and significant level of overlap.

85. Mr Choo Choy also submitted that it is not surprising that there are some differences, because this case has not yet reached the stage of disclosure, and that, if anything, such differences as there are all reinforce the need for generic particulars of claim to be produced after a GLO has been made, rather than delaying matters in the manner suggested by Link. I do not agree with this last point. In my view, the broad ambit of this dispute means that generic statements of case from all parties, both in the claims against Link and the claims against HL, will assist the court in the appropriate case management processes to be adopted going forward to a much greater extent than would be the case by the simple making of a GLO at this stage.

86. Putting on one side the complexity which arises out of the position of the RGL Claimants, the most significant distinguishing characteristic between the position where a GLO is made and the position where one is not is, in summary, the establishment of the group register, with the consequential directions for publicity, the appointment of lead solicitors and a steering group of solicitors. In my view, a necessary question for the court to determine is whether, all other things being equal, that is or is not a structure that is required in furtherance of the overriding objective, having particular regard to the other procedural means for achieving a similar or essentially similar result.

87. I do not think that it is. It is common ground that it is no part of the GLO regime for the process to be used to encourage potential claimants to litigate. The events with which these proceedings are concerned reached their denouement with the suspension of the Fund three and a half years ago and there has been widespread publicity. In my view, there is a prospect -- but no more at present, on

the evidence, than a limited prospect -- that the operation of a group register is required or desirable for the purposes of managing claims by investors who are not already well aware of the possible options for obtaining redress. In other words, the likelihood is that those investors who wish to sue have already instructed solicitors, and if they have not done so, the reason is likely to be that they do not wish to participate.

88. It follows that I decline to make the GLO sought by the PLS Claimants on this application, but that does not mean that I should not give directions for the further conduct of these proceedings. To that end, Link has produced a form of directions on which the PLS Claimants did not comment in any detail, apart from to say that the production of generic pleadings at this stage was premature, in particular in the absence of the RGL Claimants. I do not think that is correct, although I do agree that the timetable set by Link is too ambitious and substantially so.
89. In my view, claim forms already issued should be served within 21 days. I shall make an order for the service of a GPOC by the PLS Claimants within 42 days. This was the time period sought in the original GLO. I consider that it is appropriate for the PLS Claimants to have an opportunity to consider whether to reformulate any part of their existing draft to take account of the way in which the case is put by the RGL Claimants in their draft GPOC.
90. Both parties considered that 12 weeks after service of the GPOC was an appropriate period for service of a generic defence by Link, and I agree. In the case of Link, this presupposed that, eight weeks before service, they would also have received a schedule of information containing the information in a schedule from each individual PLS Claimant.
91. With one important exception, the form of the information to be provided is largely agreed. The only point in issue between the parties is that Link considers that the schedules of information ("SOIs"), should contain particulars of the PLS Claimants' reliance on the Fund's prospectus for the purposes of that element of the claim. This is because one of the breaches alleged by the PLS Claimants relates to untrue and misleading statements in the prospectus.

92. The PLS Claimants contend that reliance is not a necessary part of their claim and, in any event, that it would be disproportionate for them to provide particulars of reliance at this stage in the level of detail proposed by Link. That level of detail includes how and when each claimant read statements in the prospectus, which statements influenced or were relied upon by each investor for each investment, and what other information, analysis or advice influenced each investor in each investment. Mr Dale submitted that this level of detail is disproportionate for a document that is designed to contain no more than summary information in tick-box form.
93. I think that if the case based on a misleading prospectus is to be pursued by the PLS Claimants, it is important that the SOIs include a reference to whether or not each individual relied on the prospectus or was influenced by it. However, I agree with the PLS Claimants that the particularisation sought by Link is disproportionate at this stage. In my judgment, the right level of detail is the simple statement of whether the claimant read and/or relied on and/or was influenced by the contents of the prospectus for the purpose of acquiring or retaining their investment in the Fund, together with the version of the prospectus which they saw. This will enable Link to understand the broad nature of the case it has to meet for the purpose of formulating any possible preliminary issues and identifying any possible test cases. In particular, it will enable them to identify the body of PLS Claimants, such as it may be, which would be able to plead direct reliance if -- which they do not admit -- such reliance has to form part of their case. It remains open to the PLS Claimants' solicitors to obtain more detail from their clients in order to avoid having to revert to them in the future with further questions, but in my view that is a matter for them and I do not think that this should be a requirement of the SOIs at this stage.
94. Finally, I will make an order for a CMC to be fixed and will discuss with counsel the timetabling of that. The parties will of course need to consider whether an application should also be made in the RGL Claimants' proceedings for a joint CMC to be held at the same time in their proceedings. It would, however, be premature for me to give any such direction today, not least because the RGL

Claimants do not yet have their funding, and further and in any event, HL will doubtless wish to make submissions on what they conceive to be the appropriate way forward, should the proceedings against them be activated.