



EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 32

GP14/24

GP15/24

Lord Tyre
Lord Clark
Lord Ericht

OPINION OF THE COURT

delivered by LORD ERICHT

in the cause

by

MICHELLE DONNELLY

Applicant and Reclaimer

against

JOHNSON AND JOHNSON MEDICAL LIMITED

Defender and Respondent

Applicant and reclaimer: Milligan KC, Black; Jackson Boyd LLP

Defender and respondent: McBrearty KC, E Campbell; Clyde & Co (Scotland) LLP

23 June 2026

Introduction

[1] The applicant applied for authorisation to be a representative party, and permission to bring group proceedings, for a group of 17 claimants in respect of five different hernia mesh devices designed, manufactured and supplied by the defender. The Lord Ordinary found that there was a *prima facie* case with real prospects of success and that there were common factual issues ([2025] CSOH 77). However, he refused permission to bring the

group proceedings on the sole ground that it had not been demonstrated that it was a more efficient administration of justice for the claims to be brought as group proceedings rather than by separate individual proceedings. Consequentially upon that refusal, he also refused authorisation of the applicant as representative party. The applicant reclaims (appeals) against both refusals.

The claims being made in the proposed group proceedings

[2] In accordance with Chapter 26A of the Rules of the Court of Session, the summons by which it was proposed to institute proceedings was lodged and served at the same time as the applications for authorisation and permission.

[3] The proposed summons had two conclusions. The first conclusion related to liability and applied to all the claimants. The applicant sought:

“... [D]ecree of declarator that the Defender was negligent in the design, development, testing, research, manufacture, licensing, labelling, warning, marketing, distribution and sale of their Proceed Products, Proceed ventral Patch Products, Ultrapro Mesh Plug Products, Physiomesh Products and Vicryl Products and that said products were not as safe as persons generally are entitled to expect.”

[4] In the second conclusion, the applicant sought damages for the losses suffered by each individual group member. The total sum due to all claimants would be paid to the group representative who would then distribute to the individual claimants. The calculation of the total sum and of the individual distributions would require, in due course, particularisation of the loss suffered by each member.

[5] The legal basis of the proposed summons was set out in the pleas-in-law as being (1) fault and negligence and (2) breach of statutory duty (Part 1 of the Consumer Protection Act 1987).

The test for permission to bring group proceedings

[6] The statutory test for permission to bring group proceedings is set out in section 20(6) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 as follows:

- “(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...”

[7] The statutory test is elaborated upon in court rules made in an Act of Sederunt.

[8] Rule 26A.11 of the Rules of the Court of Session provides:

- “(5) The circumstances in which permission to bring proceedings to which this Chapter applies may be refused by the Lord Ordinary are as follows—
- (a) the criteria set out in section 20(6)(a) or (b) (or both (a) and (b)) of the [2018] Act have not been met;
 - (b) it has not been demonstrated that there is a *prima facie* case;
 - (c) it has not been demonstrated that it is a more efficient administration of justice for the claims to be brought as group proceedings rather than by separate individual proceedings;
 - (d) it has not been demonstrated that the proposed proceedings have any real prospects of success.”

The Lord Ordinary’s decision on permission to bring group proceedings

[9] The Lord Ordinary considered the proposed summons and noted that it did not disclose whether the mode of alleged failure of the devices was similar, nor whether there was a common form of injury sustained by the claimants. He considered the expert report produced by the group representative and noted that there appeared to be very significant differences between the devices and their applications. He was satisfied that the applicant had demonstrated that the claimants had *prima facie* claims with real prospects of success.

He also accepted that there were common factual issues present in the claims under consideration.

[10] However, the Lord Ordinary was not persuaded that the applicant had demonstrated that group proceedings would be more efficient than the alternative in respect of these claims. Where there were thousands of claims, there was a benefit in the commencement of claims without the need for individual summonses, but where the number of claims was far lower, the advantage of the group register over individual processes was reduced. A significant number of the claims would require individualised articulation. If the claims proceeded as ordinary actions, they would be case managed. Prior to the introduction of group proceedings, the Scottish courts had developed various procedures for the management of connected court actions which raised common issues. The failure of the applicant to set out a more developed route map of the claims made it difficult for the court to be satisfied that case management within group proceedings would generate greater efficiencies than if those claims proceeded as individual court processes. The common background medical evidence was not likely to be lengthy or controversial. The expert reports emphasised the risk/benefit analysis required for each patient. The evidence of suitability or otherwise of one device did not have an obvious read across to a different device. Matters of individual causation and quantum would be claimant specific. The likely pleading of a prescription or limitation defence did not automatically make the claims unsuitable to group proceedings but broadly weighed in favour of proceedings by the individual actions because such a defence was fact specific to the individual and if successful would further reduce the number of claims within the group proceedings. Individual court actions had certain advantages for claimants. An individual action was advantageous in that it could be progressed more quickly without waiting for a preliminary

issue to be determined in other claims. The Lord Ordinary was not persuaded that the applicant had brought before the court a sufficiently developed proposal to demonstrate the practical benefits likely to flow from group procedure for these claims.

Grounds of appeal on refusal of permission to bring group proceedings

[11] The applicant sought recall of the interlocutor refusing authorisation on four grounds:

1. The Lord Ordinary's delay in issuing the opinion (5 months) was unreasonable and inordinate for what was supposed to be a summary application.
2. The Lord Ordinary erred in fact and law in holding that 18 individual actions would be a more efficient way of litigating these claims, without any explanation of why that would be the case.
3. The Lord Ordinary erred in fact and law in holding that the application should be dismissed, having taken into account irrelevant factors: (i) that there was a historical, inefficient alternative means of managing multiple claims that should be preferred here; (ii) an unfounded finding that the generic expert evidence in the actions would not be "particularly lengthy or controversial"; (iii) the possibility that some injuries might be caused by medical negligence as opposed to a defective product; (iv) that there were only 18 claims by 17 claimants and not "many thousands of claims"; (v) that the individual cases would be case managed and the powers of case management would be as effective as under group procedure; (vi) that further specification of individual cases would be required in due course; (vii) that limitation might be a factor in some of the cases; (viii) that the cases could in due course be conjoined; and

(ix) that the applicant should be required to set out a “route map” at this preliminary stage of the litigation.

4. The Lord Ordinary erred in fact and law in holding that the application should be dismissed, having failed to take into account the following relevant factors:
 - (i) that case management powers under the group procedure were far more extensive and effective than individual case management powers for unrelated cases; (ii) that the individual actions would not be of sufficient value to be raised in the Court of Session with the case management powers that the Lord Ordinary envisaged; that (iii) as a result of the delay in issuing the opinion, a number of individual claims would now be time barred and so could not proceed as individual actions; and (iv) that the group procedure was specifically designed to cope with multiple related cases.

Submissions for the applicant on refusal of permission to bring group proceedings

[12] In relation to the first ground of appeal, while counsel accepted that this was a discretionary decision, it was inherent that the decision was a summary one that should be made expeditiously and as a matter of impression. A delay of 5 months was wholly inappropriate: it had significant practical consequences in relation to prescription and limitation, and eliminated the rationale for an appellate court’s reluctance to interfere.

[13] In relation to the second ground of appeal, counsel submitted that the whole point of introducing group procedure was to avoid the difficulties raised by trying to case manage numerous individual actions (eg *Gilchrist v DePuy International* [2023] CSIH 4; 2024 SC 229). The Lord Ordinary had failed to appreciate the task of the court at the very early stage of proceedings and consistently underestimated the significance of new group procedures.

At best, his conclusion was that individual actions can replicate some (but not all) of the advantages of group procedure, which was not a sufficient basis to exercise his discretion against allowing group proceedings.

[14] As regards the third ground of appeal, counsel submitted that encouraging parties to agree matters was a poor substitute for the court's powers under group proceedings.

In *Gilchrist* the defenders were not prepared to enter into a joint minute of agreement and there was nothing that the court could do about it. The whole point of group procedure was to enable superior case management of numerous cases. It was simply wrong to say that case management powers under rule 42A were comparable to the case management powers under rule 26A. If that were correct there would have been no point in introducing group procedure. There was no basis for the Lord Ordinary's assertion that the generic expert evidence would not be particularly lengthy or controversial. Although it was correct that the benefits of group procedure are even more obvious when dealing with hundreds or thousands of claims, group procedure was available to any group of two or more (section 20(2) of the 2018 Act). There was no recognition of the duplication of time, costs and court resources in, for example, enrolling numerous identical motions at the same time. Further specification of individual cases would be required whether the actions were raised individually or as a group, but there were options in group procedure that were not available in individual actions, such as setting of generic questions (*Bridgehouse v Bayerische Motoren Werke* [2024] CSOH 2; 2024 SC 270 at paras [95] – [96]). Group procedure could not only deal with limitation and prescription problems but solve them more efficiently. Conjunction of cases was not a popular option because of the logistics involved and was precisely the sort of unsatisfactory compromise that group procedure was designed to avoid. To require the group representatives to set out a "route map" at this preliminary

stage fundamentally misunderstood the process to be adopted at this stage (*Bridgehouse v BMW*, *supra*, at para [69]).

[15] In relation to the fourth ground of appeal, counsel submitted that the case management powers under group procedure were far more extensive and effective than individual case management powers. The individual actions would not be of sufficient value to be raised in the Court of Session with the case management powers that the Lord Ordinary envisaged. As a result of his decision, the actions would have to be raised and sisted. In each case they had to be raised in the sheriff court due to the privative jurisdiction of the Court of Session. As a result of the delay in issuing the opinion, a number of individual claims will be time barred and so cannot proceed as individual actions. Group procedure was specifically designed to cope with multiple related cases. The mere fact that there were historical alternatives, which have been found wanting, did not justify ignoring the benefits of group procedure.

Submissions for the defenders on refusal of permission to bring group proceedings

[16] The Lord Ordinary's decision was discretionary. The court could interfere only if he misdirected himself in law or otherwise transgressed the limits of discretion imposed on him. The court should not lightly interfere with the exercise of the Lord Ordinary's discretion and should not do so merely because it would have exercised it differently (*Mackay v Nissan Motor* [2025] CSIH 14; 2025 SLT 629 at para [76]).

[17] In respect of the first ground of appeal, counsel submitted that the time taken by the Lord Ordinary to issue his opinion was not a ground of appeal. In any event, the time period did not undermine his ability to determine the application or his reasoning. Similar issues concerning the grant of permission in group proceedings were being heard by the

court in *Mackay* and in *Milligan v Jaguar Land Rover* [2025] CSIH 16; 2025 SC 388. The Lord Ordinary's opinion was issued within 3 months of *Mackay* and *Milligan*.

[18] In relation to grounds 2 and 3, counsel submitted that the Lord Ordinary was entitled to hold, in the exercise of his discretion, that the applicant failed to demonstrate that the proposed group proceedings would be a more efficient administration of justice than individual actions. There was no error of law; this was an attempt to review the merits of a discretionary decision. The Lord Ordinary was correct to note that the wide declarator sought by the group representative gave rise to numerous issues which were individual to the products and the group members, and that there was no obvious read across from a finding relating to one mesh product to another (*Gilchrist*, *supra*, at paragraph 39). The five products were all distinct products with distinct regulatory histories and product development timelines and were materially different in respect to their development design, materials, place of manufacture, primary uses, method of placement, labelling and instructions for use. The individual nature of the claims was relevant to the consideration of efficiency. The Lord Ordinary was correct to consider the alternative means of managing multiple claims, as part of his exercise of discretion. Individual actions can be managed together, whether in the Court of Session or sheriff court (eg *McCallum v Morrison* [2023] SAC (Civ) 23; 2023 SLT (SAC) 119). The Lord Ordinary was entitled to take the view that generic expert evidence was unlikely to be particularly lengthy or controversial. The truly generic expert evidence was likely to be very limited and high level. Background and generic medical evidence had been agreed in comparable claims (eg *Hastings v Finsbury Orthopaedics* [2022] UKSC 19; 2022 SC (UKSC) 43). Product specific expert evidence was much more likely to be lengthy and controversial and would not be generic to the group. Causation and quantum evidence will be individual to each group member. The number of

actions that would be required to be raised was clearly a relevant factor. The Lord Ordinary correctly identified that case management of cases can and does occur outwith group proceedings. It was very unlikely that a claim concerning Ultrapro Plug could be case managed alongside a claim concerning Proceed, or one involving Vicryl alongside Proceed Ventral Patch, standing the vast and various differences between the products. It was unlikely that an action concerning Physiomesh which required prescription and limitation to be dealt with as a preliminary issue would be case managed with reference to an action concerning a different product in which no prescription or limitation issues arose. The Lord Ordinary was entitled to have regard to the individual nature of the group members' claims, and the need for specification in individual claims. It was relevant to recognise the potential for any claims not subject to limitation pleas to be inefficiently held up if forming part of group proceedings. The Lord Ordinary did not require the applicant to set out a route map, but identified the current test and provided the applicant with the opportunity to demonstrate how group proceedings could be used efficiently in relation to the proposed claims. The failure of the applicant to provide guidance to the court on how the proposed group proceedings could be managed efficiently was a relevant factor for the Lord Ordinary to take into account.

[19] In relation to ground of appeal 4 counsel submitted that there was no basis to consider that the Lord Ordinary was unaware of the extent and potential efficiency of the case management powers available in group proceedings. Certification was no mere formality (*Mackay* at para [21]). There was no assumption that where there existed more than one case, group proceedings would be more efficient: were that the position, rule 26A.11(5)(c) would be redundant. The applicant did not identify any case management power in group proceedings which would be unavailable in the event that individual cases

were raised. The Lord Ordinary was not informed of the value of the individual claims.

The sheriff court is able to case manage claims. The Lord Ordinary was not informed that the applicant considered there to be imminent prescription or limitation deadlines in any of the proposed claims. This was not a relevant factor in determination of the application.

Group members were able to protect their position by raising individual proceedings. There was no presumption that where there were two or more claims with a related issue of fact or law, group proceedings were the most efficient method of administering justice. That was a factor which required to be demonstrated.

Decision on preliminary issue: leave to reclaim

[20] Rule 38.3(3) of the Rules of the Court of Session provides:

- “(3) An interlocutor, other than an interlocutor—
 (a) deciding whether to give permission (including the giving of permission either subject to conditions or only on particular grounds) for group proceedings to be brought under Chapter 26A (group procedure); ...
 may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.”

[21] Taking that rule in isolation, leave to reclaim is required in respect of an authorisation decision. In *Bridgehouse v Bayerische Motoren Werke* [2024] CSOH 16 leave to reclaim against grant of authorisation was sought and refused on that basis: neither party argued that leave to reclaim was not required.

[22] However, in subsequent Inner House cases it has become apparent that the position is more complicated than rule 38.3(3) would suggest.

[23] The rules provide that an application for permission or authorisation is made by motion in the relevant form (rules 26A.5(1) and 26A.9(1)). However, that motion is not treated as a simple motion before calling of the proposed summons. Instead each

application constitutes a separate proceeding before the court and is treated as a stand-alone proceeding with its own individual case number. If an application is refused, the stand-alone proceeding comes to an end. If both applications are granted, the stand-alone proceedings both come to an end and a new process, with a different case number, is commenced for the summons. Treating each application as a stand-alone proceeding has important consequences. One consequence is that a reclaiming motion in the permission application does not have the effect of opening up for review any of the interlocutors pronounced in the different proceeding for appointment of the representative party (*Mackay v Nissan* [2025] CSIH 14; 2025 SC 349 paras [94] - [95], *Milligan v Jaguar* [2025] CSIH 16; 2025 SC 388 at paras [58] - [59]). Another consequence is that an authorisation decision is a final interlocutor in a stand-alone proceeding. An interlocutor which disposes of the whole subject matter of a cause may be reclaimed against without leave (rule 38.2(1)). It follows that a decision on an application for authorisation disposes of the whole subject matter of that stand-alone proceeding, and leave is not required.

[24] Accordingly, in the current case, the reclaiming motion in respect of authorisation is competent notwithstanding that there has been no grant of, nor even application for, leave.

Refusal of permission to bring group proceedings

The superiority requirement

[25] In this case, the Lord Ordinary found that all of the requirements for granting permission to bring group proceedings were satisfied with one exception. That exception was the requirement under rule 26A.11(5)(c) to demonstrate that it was a more efficient administration of justice with the claims to be brought as group proceedings rather than by separate individual proceedings.

[26] Such a requirement is a common feature of class action regimes in different jurisdictions and is often referred to as a superiority requirement. The precise nature of the superiority requirement varies. Under the Scottish regime the superiority requirement does not feature in the primary legislation but has been added in court rules. It focusses on the efficient administration of justice and involves a comparison between the efficiency of bringing the claims as group proceedings and bringing them as separate individual proceedings.

[27] The comparison is made at an early stage in the proceedings as part of the preliminary application for permission to bring group proceedings.

[28] The guidance given by the Lord President (Pentland) in *Mackay* in relation to such preliminary applications applies to all aspects of the application, including the superiority requirement:

“[73] The exercise of such broad and discretionary case management powers requires a pragmatic and realistic approach to be adopted with a particular emphasis being given to ensuring that the underlying policy, aim and purpose of the 2018 Act [the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018] are given proper effect. The clear objective of the 2018 Act is to increase access to justice by creating a new procedure designed to enable similar claims to be grouped together so that they no longer had to be brought individually. The procedure is intended to be streamlined and efficient. The court is expected to handle group claims in a flexible and cost-efficient manner. Technical points should not be allowed to get in the way, particularly at the outset of proceedings.”

[29] The Lord President went on to emphasise the preliminary nature of the application for permission to bring group proceedings, and that matters such as protection of commercial confidentiality in disclosure, time-bar, and the state of the group register were not suitable for detailed exploration at this stage and should be left for determination later (para [90]). Another matter which should be left until later for determination is case management. The Rules of Court provide for detailed case management to take place at a

preliminary hearing (rule 26A.21) and a case management hearing (rule 26A.22). By the time of these hearings, defences will have been lodged and there will be more clarity as to precisely what is in dispute between the parties and what is common ground, and the court will have had the benefit of parties' proposals as to further procedure. It is only at that point that the court can fully consider what procedure would best resolve the issues in dispute.

[30] The question of whether the superiority requirement is satisfied in any particular case is a matter for the Lord Ordinary, in the exercise of a broad discretion and having balanced the various factors arising in the particular case.

[31] A low number of group members does not of itself mean that the requirement is not satisfied. Parliament has expressly provided that the minimum number of group members is two. If a particular claim would be suitable for group proceedings for a large group of members, it will not necessarily cease to be suitable just because the group of members is small in number.

[32] Although the superiority requirement must be considered separately from the other requirements of rule 26A.11, there is a close connection between the superiority requirement and the requirement in section 20(6)(a) of the 2018 Act and rule 26A.11(5)(a) 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." If there is commonality of issues, then it will normally be more efficient to resolve the claims together in one group proceeding than separately in individual actions. Having said that, there may be particular circumstances in which, despite there being sufficient commonality of issues to meet the requirements of section 20(6)(a), it would nonetheless be more efficient to proceed by way of individual actions. All of that is a matter for the discretion of the Lord Ordinary.

[33] The new group procedure brought in by the 2018 Act is designed to be more efficient than previous methods of dealing with multiple claims. Group proceedings do not require multiple summonses to be drafted and lodged, multiple motions to be lodged and hearings dealing with multiple individual cases, with all the attendant costs in respect of legal fees and court dues. They do not require the multiple claims to be spread amongst the sheriff court and the Court of Session if some of the individual cases fall within and some fall outwith the exclusive jurisdiction of the sheriff court in terms of section 39 of the Courts Reform (Scotland) Act 2014. They do not require multiple claims to be litigated in numerous sheriff courts throughout the country. Where the multiple claims are personal injuries cases and therefore can be brought in the National Personal Injury Court rather than separate sheriff courts, they do not require a remit to the Court of Session in order to be case managed alongside any similar actions raised in the Court of Session. Instead, all of the claims can be brought in one action in the Court of Session.

[34] Group proceedings in the Court of Session will be actively case managed using powers which are broader and more flexible than the methods which have traditionally been used to manage multiple related actions in the Court of Session, sheriff court or National Personal Injury Court. As the Practice Note on Group Proceedings under Chapter 26A (No. 20 of 2020) explains, the procedural framework, based upon the commercial actions model, provides the court with flexibility about how best to manage group proceedings and allows for early intervention and case management by the court: the procedure in, and progress of, group proceedings is under the direct control of the Lord Ordinary, and the court will take a pro-active approach. Rule 26A.27 provides that at any time before final judgment, the Lord Ordinary may, at the Lord Ordinary's own instance or on the motion of any party, make such order as the Lord Ordinary thinks

necessary to secure the fair and efficient determination of the proceedings. The Lord Ordinary is not restricted to traditional commission and diligence procedure for the recovery of documents but can order documents to be disclosed, recovered and lodged in process (rule 26A.21(2)(b)(iv) and (v)). The Lord Ordinary's wide powers to make such orders as he or she thinks fit (rule 26A.22(2)(o)) can be used to shape the procedure in the most efficient way to resolve the particular case. So, for example, the Lord Ordinary might direct parties to focus initially on a declarator which deals with liability and postpone detailed work on the differing circumstances and losses of individual claimants until later in the proceedings. The Lord Ordinary can order pleadings or statements of facts to be restricted to particular issues (rule 26A.21(2)(i) and (ii)). Unlike traditional multiple claims procedure, there is no need to identify and run a test case or test cases. Another possible approach by the Lord Ordinary might be to identify a list of questions and appoint appropriate procedure to answer them. There is considerable flexibility to find the most efficient procedures to suit the circumstances of the particular case.

[35] Decisions to grant or refuse permission are discretionary and can only be reversed on appeal in strictly constrained circumstances (*Mackay*, para [72]). The test is whether the Lord Ordinary misdirected himself in law or otherwise transgressed the limits of discretion imposed on him so as to permit an appellate court to intervene and set aside its decision (*Mackay*, para [76], *Forsyth v AF Stoddard & Co Ltd* 1985 SLT 51, Lord Justice Clerk (Wheatley) p 53). An appellate court will not lightly interfere with the exercise of a discretion by a lower court. In particular, the Inner House will not overrule the discretion of the lower court merely because it might have exercised it differently (*Mackay* para [76], *Thomson v Corporation of Glasgow* 1962 SC (HL) 36, Lord Reid p 66).

[36] We are not satisfied that the high test for interfering with the discretionary decision of the Lord Ordinary is met in this case. The Lord Ordinary examined the issues arising in the particular claims, as identified in the proposed summons and the expert report, and gave reasons for his conclusions. As a result of that examination, he was not persuaded that the applicant had demonstrated that group proceedings would be more efficient than the alternative. He compared how the claims might be managed in group proceedings with how they might be managed in separate individual proceedings. An applicant should address the tests for permission (including the superiority requirement) in detail in averments in the application (Practice Note paragraph 17). The application in this case makes no mention of certain factors which the applicant now relies on in this appeal, such as the exclusive jurisdiction of the sheriff court and the risk of time bar. The Lord Ordinary cannot be expected to have taken into account factors not placed before him. He gave careful consideration to how the relatively low number of claims in this particular case would affect the way the particular issues in the claims would be dealt with. He referred (at para [30]) to the extent to which the claims would be likely to require individual elaboration in relation to the alleged defects of a particular device, the mechanism of failure and injury suffered, and a response to any plea of prescription or limitation. He noted (at para [32]) that individual actions had certain advantages in that a particular claim might be progressed more quickly without waiting for a preliminary issue such as limitation to be determined in other claims. It is not therefore the case, as submitted by the applicant, that the Lord Ordinary identified no potential disadvantage of group proceedings.

[37] The delay in issuing the opinion, part of which may be explained by waiting for the guidance supplied by the Inner House in *Mackay*, has no bearing on the question of whether, within that opinion, the Lord Ordinary has misdirected himself in law or transgressed the

limits of his discretion. In all the circumstances, there is no basis for us to interfere with the Lord Ordinary's exercise of his discretion.

Application for authorisation as group representative

[38] Authorisation as group representative is granted not in the abstract, but in respect of the particular group proceedings as set out in the proposed summons lodged with the application. In this case, the Lord Ordinary states that he would have authorised the applicant as group representative had he been satisfied that permission for group proceedings was appropriate (paras [25], [35]). As we have refused the reclaiming motion on permission, there will be no group proceedings. It follows that we must also refuse the reclaiming motion against refusal of authorisation.

Disposal

[39] For these reasons, we refuse both reclaiming motions.