OUTER HOUSE, COURT OF SESSION

[2025] CSOH 77

GP14/24
GP15/24

OPINION OF LORD YOUNG

In the cause

MICHELLE DONNELLY

Applicant

against

JOHNSON & JOHNSON MEDICAL LIMITED

Defender

Applicant: R Milligan, KC; Jackson Boyd
Defender: K McBrearty KC, E Campbell; Clyde & Co (Scotland) LLP

13 August 2025

[1] These are two connected applications. The first application asks the court to authorise the applicant to be the representative party to bring group proceedings in terms of section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 ("the 2018 Act"). The second application asks the court for permission to bring group proceedings under section 20(5) of the 2018 Act. The claims for which group proceedings are sought arise out of hernia mesh products designed and supplied by the defender. I was told that these are hernia mesh products largely used in the treatment and repair of abdominal hernias. None of the individual claims relate to vaginal mesh products. Both applications are opposed by the defender.

[2] The summons lodged with these applications contains two conclusions. The first conclusion seeks decree of declarator that the defender was:

> "negligent in the design, development, testing, research, manufacturer, 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".

The second conclusion seeks payment of damages to the representative party for onward distribution to the group members named in the group register. At the time of the hearing before me, the amended group register contained seventeen named claimants. Two of those claimants are executry claims brought or continued after the death of the individual implanted with the mesh. One of the claimants has two intimated claims in relation to two products. The group register also identifies the particular product which the claimant had implanted. The breakdown of the products is that thirteen claimants had a "Proceed" mesh implant; two claimants had a "Vicryl" mesh implant; one claimant had a "Proceed Ventral Patch" mesh implant; one claimant had a "Ultrapro large mesh plug" implant; and one claimant had a "Physiomesh" implant.

[3] The summons contends that the defender is liable to compensate on two grounds. In the first place, it is averred that the defender has failed in its obligations under the Consumer Protection Act 1987 as these mesh products are defective in design and also as a result of inadequate warnings of the material risks associated with the use of these products. In the second place, it is averred that liability arises at common law for the defender's failure to take reasonable care in the manufacture and supply of these products and in providing information to physicians and patients of the material risks associated with the use of these medical products.

[4] As is to be expected at this stage of potential group proceedings, the terms of the summons are broad and general. The risks and defects in the defender's products are averred to be detailed in parts of a report by Vladimir Iakovlev, a pathologist, which is incorporated into the summons. The grounds of action are set out in articles of condescendence 15-28 and they can be summarised as alleging misrepresentation by the defender of the products' safety (articles 16, 17 and 26); marketing with little or no clinical data from randomised studies (article 18); failure to ensure that the products were safe during the course of their use and fit for their intended purpose (article 19); failure in testing (article 20); failure to conduct follow up studies or monitoring of adverse reports (articles 21, 22 and 24); and failure to give adequate warnings of the risks that the products presented including the difficulty of removal in the event of failure (articles 23 and 25). The injuries, conditions and complications said to have been suffered following the use of the defender's products include, but are not limited to:

> "hernia recurrence, chronic pain, mesh contraction, mesh shrinkage, mesh migration, mesh erosion into the bowel and other organs, fistula formation, scarring, adhesions, infection, abscess formation, bleeding, intestinal blockage, hematomas, seromas, perforations, allergic reactions, rashes and the need for further surgeries and procedures".

Submission for the applicant

[5] Senior counsel for the applicant set out the legislative background to the 2018 Act and the difficulties which had arisen in case managing multi-party litigation. The 2018 Act and the rules made under the Act provided a straightforward and flexible system in which only the essential procedural elements were set out. This provided a framework in which broad case management powers would operate.

[6] In relation to the allowance of group procedure in this case, I was reminded that Rule of Court 26A.11(5) sets out four circumstances in which permission to bring court proceedings can be refused. These circumstances required the application of a commonality test under rule 26A.11(5)(a); a merits assessment under rule 26A.11(5)(b) and (d); and a superiority test under rule 26A.11(5)(c).

[7] This application related to a number of claims which had been sifted out of several hundred claims. The essence of these claims is that mesh, while a valuable medical product, carries a number of risks. In broad terms, the larger the implant, the greater the risk of adverse complications. The products identified as defective in these claims are unnecessarily complicated and the defender failed to warn of the additional risk that such products presented to patients. There will be evidence of the development of mesh for surgical repairs and how it works in the human body. Such evidence will be generic evidence for all the claims. There will be a saving of time and expense if such generic evidence can be led once only. Senior counsel envisaged that the issue of whether the mesh products were defective under the Consumer Protection Act 1987 or at common law would be determined as a generic issue before matters of causation and loss would be dealt with on an individualised basis.

[8] In relation to the merits assessment, I was referred to *Mackay* v *Nissan Motor Co Ltd* [2024] CSOH 68 at para [44] for the proposition that a *prima facie* case required no more than that a serious question had been identified for determination. This was not an appropriate stage to consider the relevancy or specification of the summons. The merits assessment test was a low one. On the superiority test, while the defender appeared to be suggesting that individual actions would be more appropriate, the practical difficulties made such an argument untenable. In terms of rule 26A.12(1), the court should make an

order authorising group proceedings. The applicant proposed that the group issues should be defined in the court interlocutor as "Claims arising in Scotland from the use of certain hernia mesh products manufactured by the defenders."

[9] In relation to the appointment of Michelle Donnelly to be the representative party, rule 26A.7(2) listed a number of factors to be considered by the court but these were not mandatory requirements. The only requirement is that the representative party is a "suitable person" which, it was submitted, means that the individual will prosecute the action efficiently and effectively. I was referred to a series of Scottish cases in which authorisation of a representative party had been in issue, (*Thompsons Solicitors Scotland* v *James Finlay (Kenya) Ltd* 2022 SLT 731; *Bridgehouse* v *BMW* 2024 SC 270 per Lord Ericht at paras [43] and [44]; *Mackay* v *Nissan Motor Co Ltd,* per Lord Sandison at para [50]). The bar was set at a low level for appointment as a representative party. The group procedure would be unworkable if the representative party required to demonstrate special qualifications or skills. The applicant had agreed to be the representative party and there were no factors which made her unsuitable for that role. I was told that in these multi-claim litigations, very few claimants tend to be willing to accept this role. The applicant has worked as a nurse so she has a degree of medical knowledge. The applicant would have the benefit of specialist legal advice at all stages. She, along with all group members, had the benefit of an indemnity dated 4 March 2025 from Quantum Claims in respect of any expenses awarded against them in the course of the group proceedings. In any event, these claims were likely to benefit from the qualified one way cost shifting provisions so liability for legal expenses was far less of a risk in these claims.

Submission for the defender

[10] Senior counsel for the defender did not take any issue with the aims and objectives of group proceedings or the benefits which could be gained for all parties through their use. However, those benefits would only be achieved if the particular application was one appropriate for group procedure. Section 20(6)(a) of the 2018 Act required the identification of common or similar issues between the various claims. These claims were said to relate to defective products but it was not said in what respect the products were defective or if the different products had the same alleged defect. This uncertainty created difficulties in defining the group and the issues in any final order. Further, it was submitted that group proceedings were not appropriate where there is a preliminary issue which requires to be dealt with on an individual basis before any generic issues are addressed. The claims under the Consumer Protection Act 1987 are subject to both a 10 year prescription period and a 3 year limitation period. Prescription and limitation issues are fact-specific to each claimant. The defender's Answers contained an appendix in which the majority of the claims on the group register can be seen to give rise to defences based on prescription and/or limitation. While senior counsel accepted that in other group proceedings such as the diesel emissions cases there would be a small fraction of the many thousands of cases in which prescription issues arose, the present case was different as the majority of claims appeared to face this preliminary hurdle.

[11] I was told that hernia mesh had been used extensively for decades. I was referred to a submission issued by the British Hernia Society on 10 January 2024 which declined to support a call to suspend the use of surgical mesh. The British Hernia Society described mesh implants as safe and the most effective way of dealing with abdominal wall hernias. The American Hernia Society made a similar public statement in October 2018. The support

of these professional bodies did not exclude a particular mesh product from being viewed as defective, but it was for the claimants to identify what are the common features of the particular products which are said to render these products defective. Neither the application for authorisation to proceed with group proceedings, nor the summons accompanying the application, clearly define the common issues. I was directed to the breadth of the declaratory conclusion which covered every stage of the development and supply of a number of products. The defender does not accept that the products listed in the first conclusion have common features but, more importantly, the claimants do not identify the common features beyond the fact that this is hernia mesh.

[12] The number of claimants on the group register had reduced to seventeen. It had previously contained twenty-one claimants. The group register identified five products. It was inherently likely that a finding of whether a product was defective or not would be specific to that product alone, (*Hastings* v *Finsbury Orthopaedics Ltd* [2022] UKSC 19 at paras [15] and [21]). I was referred to the metal-on-metal prosthetic hip replacement litigations which demonstrated that determination of the safety or otherwise of one product may not resolve that issue for a different product. Thus, after *Hastings* v *Finsbury Orthopaedics Ltd*, there remained a number of actions which were litigated in *Gilchrist* v *DePuy International* [2023] CSIH 47. In *Gilchrist*, the Inner House observed at para [39] that the product implanted in the selected lead case differed from the products in other cases and there was no obvious read-across from the lead case to those other cases.

[13] The only common issues identified by the applicant was that each claimant had been implanted with hernia mesh produced by the defender. The application and pleadings do not provide any further explanation of what is said to be defective about the product. The summons refers to the report from Dr Iakovlev who is a pathologist rather than a surgeon.

The report dated 27 March 2022 discussed a large number of products which were not produced by the defender. The defender's position in this application could be illustrated by focussing on the defender's Vicryl product. Vicryl is a fully absorbable mesh which is utilised as a temporary support during healing. It has been on the market in the USA since 1981 and in the European Union since 1994. Dr Iakovlev's report dated 27 March 2002 at page 3 excludes fully resorbable meshes from the report's discussions. His supplementary report dated February 2025 has a short passage on Vicryl. It confirms that it is a fully resorbable mesh and notes that there is little published information regarding its use for hernia repair. Senior counsel observed that it was very difficult to see from the terms of the two reports that Vicryl had the same properties as other products. It is designed for absorption. Averments of mesh shrinkage or contraction cannot be relevant to Vicryl. Vicryl would need to be considered separately from other products.

[14] If the applicant proposes that group proceedings are the most effective method to case manage these claims then it is incumbent upon the claimants to identify which common issues can be dealt with more expeditiously. The applicant had failed to satisfy the test set out in section 20(6)(a) of the 2018 Act and rule 26A.11(5)(a).

[15] In relation to the merits assessment tests in rule 26A.11(5)(b) and (d), it was accepted that the pleadings should not be viewed in the same way as they would at the closed record stage. However, the summons alleges that the defender's failed at each stage from the development through to the marketing of and follow up studies for each product without any real attempt to focus in on what went wrong. The reports from Dr Iakovlev did not fill in the gap as can be seen from his brief discussion of Vicryl.

[16] The issues of prescription and limitation were relevant to whether the claims had real prospects of success as well as the efficient administration of these claims. Section 22A

of the Prescription & Limitation (Scotland) Act 1973 applies a 10 year prescriptive period to an obligation arising from liability under section 2 of the Consumer Protection Act 1987. The prescriptive period commenced running from the "relevant time" as defined in section 4(2) of the 1987 Act by reference to the time of the supply of the product. The defender's analysis of the claimants' medical records indicates that the product implantation date for eleven of the claimants would mean that those claims have all prescribed under the 10 year prescriptive period. Of the remaining claimants, the 3 year limitation period may be in play for their claims as more than 3 years had passed since implantation. It was accepted that issues of awareness and discretion under section 22B(2) and (6) could arise. The defender was bound to contend that issues of prescription and limitation should be resolved as a preliminary point. This would inevitably mean that claims would be investigated in detail on an individualised basis before any common features of liability were considered.

[17] The applicant had not demonstrated that group proceedings were a more efficient forum. This was a very different situation to the vehicle emissions cases in which thousands of claims were raised. The current application related to seventeen claimants. Raising and processing individual proceedings for that number of claimants was not likely to be problematic for either the claimants' legal advisers or for Scottish Courts Administration.

[18] As a fallback position, if the court was minded to grant the application for group proceedings, it should do so subject to conditions. Those conditions were set out in Answer 6.19 for the defender.

[19] Turning to the issue of the representative party, senior counsel submitted that the defender had no difficulty with a group member fulfilling that role. However, an important part of their role will be to abandon or settle claims. The applicant has no experience in handling litigation claims and will rely heavily on the legal team advising her. It was

submitted that the problem with the applicant's application is that there is nothing to indicate that she can properly question or explore the terms of any advice given to her. If she will effectively have to accept the advice of the legal team, the question arises as to what value she will add to the process. This, it was submitted, was similar to Lord Weir's concern in *Thompsons Solicitors Scotland* v *James Finlay (Kenya) Ltd* at paras [25] - [27] where the proposed appointment of a solicitor as the representative party blurred the distinction between solicitor and client. In the absence of information to show that the applicant had the ability to act for the group members as a whole in her dealings with the legal team, she is little more than a cipher. It was accepted that Lord Sandison in *Mackay* v *Nissan Motor Co Ltd* referred to the courts taking a benign view on issues of suitability but it was still for the applicant to offer an explanation for her selection based on her own skills and competence.

[20] In terms of funding, the applicant was supported by a commercial operation. An indemnity had been provided by Quantum Claims as it had done in other group litigation. This gave rise to the question of the potential exposure to expenses across other litigations and the assets which Quantum Claims had. The defender had asked for financial information on Quantum Claims.

Discussion

[21] At the time of these applications, there are seventeen claimants with claims relating to five different hernia mesh devices manufactured by the defender. The summons does not disclose whether the mode of the alleged failure of the respective devices is similar across the range of devices, nor whether there is a common form of injury sustained by these claimants. Although I was advised in submissions that the number of claimants had been distilled from a much larger number of potential claimants, I was not informed, beyond a

general reference to the size and complexity of the mesh implants, what specific criteria were utilised to identify claimants suitable for the proposed group proceedings. On the face of the summons, the claimants do not identify any modes of failure or particular forms of injury which are excluded from the proposed group proceedings on the basis of being more likely caused by clinical negligence.

[22] The expert report produced by the applicant and incorporated into the draft summons observes that all surgical implants present risks of complications as the human body produces an inflammatory response to the presence of the medical device. The design of the device can amplify or minimise those complications and, for each individual patient, a risk/benefit analysis is required to consider whether the proposed implant is in the best interests of that patient. The report notes that each additional component or modification to the basic polypropylene mesh structure will alter the risk of complications to some extent. The supplementary expert report describes the basic elements of the particular devices referred to in the draft summons. There are significant differences between each of the devices. The absorbable coating used on Physiomesh and Ultrapro mesh plug differs from that used on Proceed and Proceed Ventral Patches. Proceed and Physiomesh are for intraperitoneal placement but Ultra Mesh Plug is expressly excluded for intraperitoneal placement. Vicryl appears to have been used for breast and non-hernia reconstructions. Vicryl is a fully absorbable mesh without polypropylene whereas the other devices are only partially absorbable. The supplementary report notes that the Ultra Mesh plug has rarely featured in published literature and had not been the subject of studies while Vicryl mesh is describes as having a very narrow potential application niche without a sufficiently studied risk profile. On the face of the applicant's expert reports, there appear to be very significant differences between the different devices and their applications.

[23] Since the hearing of these applications before me, the Inner House has issued decisions in *Mackay* v *Nissan Motor Co Ltd* 2025 CSIH 14 and *Milligan* v *Jaguar Land Rover Automotive plc* 2025 CSIH 16 which confirm the sequential approach which the court should take in determining such applications. The application for approval of the representative party falls to be considered before the application for permission to raise group proceedings.

[24] Rule 26A.7(1) provides that the court must be satisfied that the applicant is a suitable person to act in the capacity of the representative party. Rule 26A.7(2) identifies a number of factors which are to be considered by the court in determining suitability. Those factors are:

> "(a) the special abilities and relevant expertise of the applicant;
> (b) the applicant's own interest in the proceedings;
> (c) whether there would be any potential benefit to the applicant, financial or otherwise, should the application be authorised;
> (d) confirmation that the applicant is independent from the defender;
> (e) demonstration that the applicant would act fairly and adequately in the interests of the group members as a whole, and that the applicant's own interests do not conflict with those of the group whom the applicant seeks to represent; and
> (f) the demonstration of sufficient competence by the applicant to litigate the claims properly, including financial resources to meet any expenses awards (the details of funding arrangements do not require to be disclosed)."

[25] The application for the applicant to be authorised as the representative party does not cause me any difficulty. The applicant has her own claim and is independent of the defender. While she does not profess any particular skill or expertise relevant to this role beyond some experience working as a nurse, the authorities are clear that an applicant need not possess any particular skill or expertise. Nor does the applicant require to produce vouching of her suitability, (*Milligan* v *Jaguar Land Rover Automotive plc* 2025 CSIH 16 at para [47]). The test for appointment has been identified as a relatively low one. I accept senior counsel for the applicant's observation that in these cases, claimants are not normally "queuing up" to so act. There is nothing to suggest that the applicant will not be able to ask

sensible and practical questions from the legal team. She will be able to properly represent the other claimants. No doubt, she will rely heavily on her legal team but that is no different from most complex litigations. In the circumstances, I consider that she is a suitable person to be authorised as the representative party under rule 26A.7(1).

[26] The application for permission to bring group proceedings presents a more difficult hurdle for this applicant. Rule of Court 26A.11(4) and (5) provides :

> "(4) At a hearing fixed under paragraph (1)(c), the Lord Ordinary may—
> (a) grant the application (including the giving of permission subject to conditions or only on particular grounds); or
> (b) refuse the application.
> (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 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."

Section 20(6)(a) and (b) of the 2018 Act referred to in rule 26A.11(5)(a) above, provides that:

> "(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…."

[27] I am satisfied that the applicant has demonstrated that, at this stage, these claimants have *prima facie* claims with real prospects of success. At this stage, the court's ability to critically assess the merits of the claims is limited to the draft summons and the reports. The court does not assess the embryonic action by reference to the tests of relevancy or

specification which would apply when the record closes. It is a low test which amounts to asking whether the claimants have raised serious issues to be tried.

[28] In my opinion, the critical criteria for this application are rule 26A.11(5)(a) and (c), and, in particular the interrelationship between those criteria. It is for the applicant to show that "all of the claims made within the proceedings" raise issues which are the same as, or identical or related, to each other. The issues of fact and law do not need to be identical in each claim. All that is required is that all the claims share at least one common issue. The applicant points out that all of these claims arise from a similar factual background, namely the implantation of hernia mesh produced by the defender which are said to have resulted in injury to the individual claimants. There is likely to be a degree of medical evidence common to all of these claims. For example, the Iakovlev reports produced by the claimants, although not referred to by them in any detail during the hearing of this application, indicate that the human body reacts in a number of common ways to the implantation of any foreign material. The same report explains how the mesh designs, under consideration in these proceedings, evolved in an attempt to minimise some of the adverse consequences to patients from earlier mesh designs. All of the claims are said to proceed under both the 1987 Act and at common law. I accept that these are common factual issues present in the claims under consideration.

[29] Rule 26A.11(5)(c) directs attention to the need for the applicant to demonstrate that group proceedings are likely to be more efficient than a series of individual actions. The applicant's approach to this factor was broad and general. In submissions, I was told that it was obvious that group proceedings presented a more efficient approach. There were two reasons put forward in terms of efficiency. The first reason was that the group register avoided the need for a large number of separate court processes. The second reason was

that there would be a saving in court time as the generic medical evidence would only be heard on one occasion.

[30] I am not persuaded that the applicant has demonstrated that group proceedings will be more efficient than the alternative in respect of these claims. This application currently comprises eighteen claims by seventeen claimants. One of the main benefits of the group proceedings rules, and the impetus for the primary legislation, is the clear advantage that the group proceedings rules have in relation to the commencement of proceedings. Where many thousands of claims are being brought, such as in the diesel emissions cases, there is a huge benefit if each claim can be commenced by entering the claimant in the group register without the need for serving a separate summons on the defender and the court creating a separate process. Where the number of claims is far lower, the relative advantage of the group register over individual processes is reduced. In some group litigations, there may never be a need to articulate the detail of the vast majority of claims beyond the basic details set out in the group register. However, that does not seem to be the likely position for these claims. All, or at least a significant number of the current claims, are likely to require further elaboration in relation to the alleged defects in the particular device; the mechanism of failure and injury suffered by the individual claimant; and a response to any prescription and/or limitation plea taken by the defender. Whatever route these proceedings ultimately take, it seems likely that individual claims will need more individualised articulation whether by formal pleadings or an equivalent process.

[31] If these claims were to proceed as ordinary actions, it is likely that some or all of them would be case managed. Prior to the introduction of the group proceedings rules, the Scottish courts had developed various procedures for the management of connected court actions which raised common issues. Conjunction of court processes has a long pedigree

although formal conjunction into a single process on closure of the record was often rejected in favour of an informal agreement between parties. Appointment of a lead case under Rule of Court 22.3(6), or case management under a Rule of Court 2.2 direction from the Lord President, have been utilised in litigating multiple claims in recent years. Case management powers in terms of Rule of Court 42A are wide and comparable to the case management powers under rule 26A.

[32] The failure of the applicant to set out a more developed route map of these claims makes it difficult for the court to be satisfied that case management within group proceedings would generate greater efficiencies than those if these claims proceeded as individual court processes. While I accept that there is likely to be a degree of background medical evidence relating to the use of hernia mesh which is common to all claims, I am not persuaded that such background evidence is likely to be particularly lengthy or controversial. Based on the applicant's expert reports, it is apparent that there are significant differences in both the design and application of the five devices which the current claimants were implanted with. Those reports also emphasise the risk/benefit analysis required for each patient. The evidence of suitability or otherwise of one device does not have an obvious read across to a different device. Therefore, after some generic evidence, it seems that the technical evidence on the suitability of a device will be particular to that device. It is also accepted that matters of individual causation and quantum will be claimant specific. I do not agree with the defender's submission that the likely pleading of prescription or limitation defences automatically makes these claims unsuitable to group proceedings. A prescription or limitation defence may, in itself, give rise to a common issue across a large number of claims which is suitable to be determined within group proceedings, (see *AB & Others* v *Ministry of Defence* 2012 UKSC 9). However, I do accept that

the likely pleading of prescription or limitation defences in many of these claims is a factor which broadly weighs in favour of proceeding by way of individual actions for two reasons. In the first place, limitation and prescription is normally fact-specific to the individual. In the second place, where there is a risk that a small cohort of claims may be further reduced in number if some claims are time-barred, it calls into question whether group proceedings are appropriate for what may ultimately prove to be a very small number of claims. Further, there are certain advantages which individual court actions have for a claimant. An individual action is advantageous to a claimant whose claim can be progressed more quickly without waiting for a preliminary issue to be determined in other claims.

[33] I am not persuaded that the applicant has brought before the court a sufficiently developed proposal to demonstrate the practical benefits likely to flow from group procedure for these claims. If these claims were to proceed as individual court actions, the court would be highly likely to use existing case management powers to encourage parties to resolve common issues which span a series of cases in a cost-efficient manner. The court can encourage parties to enter into joint minutes agreeing that evidence on a common issue in one litigation binds parties in other cases. A lead case which determines a common issue will bind the parties in other cases which are sisted behind that lead case, (*McCluskey* v *Scott Wilson Scotland Ltd* 2025 CSIH 26 at para [40]). Identical case management orders can be replicated over a number of actions in relation to the instruction and disclosure of expert evidence.

[34] The proposed group issue set out by the applicant was in broad terms, namely "Claims arising in Scotland from the use of certain hernia mesh products manufactured by the defenders." Had I been minded to make an order permitting group proceedings, I would have required a more particularised formulation of the group issues. The judge

allocated to manage any group proceedings needs to be able to identify the proposed scope of the group proceedings to determine what case management orders are appropriate from the outset. While the group issues will almost inevitably be refined over the course of the group proceedings, the proceedings will run more efficiently if the issues are defined with as much detail as possible. I have a concern that if the claimants were to proceed with an underdeveloped proposal for group proceedings, there is a potential for inefficiency and wasted expense through the court's early case management orders. The importance of defining the common issues is also important for other litigants. It informs a defender of the likely scope of the claims it will face so that they can undertake appropriate inquiries and identify documentation likely to be relevant to those issues. A decerning definition of the group and group issues, also enables other potential claimants to judge, as best they can, whether they may be accepted as additional claimants into the group register or if their claim should proceed as a separate claim.

Decision

[35] I shall refuse the applicant's application for permission to bring group proceedings in respect of these claims under Rule of Court 26A. In those circumstances, I shall also refuse the application for authorisation of the applicant as a representative party although, as I have explained, I would have granted that authorisation had I been satisfied that permission for group proceedings was appropriate.