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Research Report

The impact of increased mass litigation in the UK

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OCCASIONAL PAPER – No. 06/2025

The Impact of Increased Mass Litigation in the UK

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FOREWORD BY RT HON BARONESS BOWLES OF BERKHAMSTED

This report by ECIPE is a vital and timely contribution to the policy debate surrounding collective litigation in the UK. It makes for a sobering read – and rightly so. It presents rigorous evidence that the unchecked rise in mass litigation is not only distorting our legal system but increasingly jeopardising the UK's economic competitiveness, regulatory clarity, and investment climate.

For those of us with experience in financial regulation and public policymaking, the warning signs are familiar. Legal frameworks designed to support justice and accountability are now being repurposed, in some cases quite deliberately, to create a parallel economy where litigation becomes a commercial enterprise in its own right. We should be gravely concerned when the fastest-growing part of a sector is not its product or innovation pipeline, but its litigation risk profile.

The UK economy, already navigating the complex terrain of post-Brexit realignment, productivity challenges, and global investment competition, cannot afford this. As this report details, the collective actions regime as currently structured is generating unintended consequences for some of our most strategically important sectors. Advanced manufacturing, digital technologies, life sciences, and clean energy: these are industries defined by long-term investment horizons, high R&D intensity, and the need for stable regulatory frameworks. The growth of collective litigation, especially in areas only loosely tied to competition or consumer protection law, introduces legal uncertainty at the very moment when investment certainty is most needed.

The financial implications are striking. The report models that the costs of mass litigation could rise to nearly £18 billion – a figure that dwarfs many sector-specific public investment programmes. It also estimates a potential loss of more than £11 billion in market capitalisation across innovative UK companies, undermining investor confidence and weakening our capital markets just when we are seeking to make them more dynamic and internationally attractive.

What is particularly galling is that these economic costs are not matched by proportional gains for claimants. In too many cases, legal fees and funder profits consume the majority of settlement sums, with claimants receiving far less than is justifiable. This raises uncomfortable questions about alignment of interest, value for money, and the effectiveness of redress mechanisms.

There is no dispute that collective actions have their place in a fair and functioning economy. They can deliver justice, deter misconduct, and offer a necessary route to accountability when other mechanisms fail. But scale and structure matter. A legal framework that was once the preserve of serious systemic claims is now being tested, and stretched, by an increasingly aggressive litigation ecosystem, often backed by third-party funders whose incentives are purely commercial.

From a regulatory perspective, this calls for urgent reflection. If we fail to act, we risk undermining the UK's carefully cultivated reputation as a stable and proportionate rule-of-law environment, a cornerstone of our attractiveness to global investors. Legal certainty, like macroeconomic stability or tax competitiveness, is foundational to investment decisions. The erosion of that certainty has consequences far beyond the courtroom.

Reform of the current system is not about denying access to justice, but about ensuring that justice does not come at the expense of economic integrity. Policymakers must ask whether current litigation funding models, certification thresholds, and procedural rules are delivering the right balance, and whether they remain fit for a globally competitive economy.

ECIPE's report does what good economic analysis should: it identifies systemic risk, provides evidence, and lays out options for reform. In doing so, it provides a service not just to legal scholars or policy experts, but to the wider public interest. If we want a modern, innovation-led, and globally competitive UK economy, we must ensure our legal system is a support – not a drag – on that ambition.

Rt Hon Baroness Bowles of Berkhamsted



EXECUTIVE SUMMARY

Over the past decade, the United Kingdom has seen a marked rise in collective litigation, transforming what was once a niche legal, rarely employed, tool into a fast-growing business model with wide-ranging economic implications. At a time when the country seeks to boost investment, support innovation and attract global business, the proliferation of mass litigation risks undermining these ambitions. This study takes a closer look at how mass litigation is reshaping the UK's legal, business and regulatory landscape – and asks whether the balance between justice and economic efficiency is tipping too far.

The UK stands out among European countries for the ease with which mass claims can be launched. It has long provided a favourable environment for consumer representation and dispute resolution, with a strong culture of accountability. But recent years have seen the emergence of a new ecosystem: law firms specialising in group actions; litigation funders offering upfront capital in exchange for a share of awards; and Claims Management Companies (CMCs) that recruit claimants en masse and process high volumes of cases. The business model has proved highly successful, making group litigation an asset class in its own right and pushing collective actions far beyond traditional sectors such as banking and pharmaceuticals. Today, a growing portion of the UK economy is in the firing line – with potentially damaging consequences.

This shift has been rapid and striking. From fewer than 10 mass litigation cases in the late 2010s, the UK saw 47 such actions in 2024 alone, more than any other European country. On a per capita basis, the UK ranks as one of the most litigious jurisdictions in Europe, well ahead of comparable economies such as France or Germany.

The implications for the UK economy are far-reaching: many of the companies targeted by these actions operate in sectors that were included in the UK Government's latest industrial strategy as critical to the country's future economic growth. Whereas previously limited to financial and professional services, mass litigation cases are now rising in UK companies working in life sciences, advanced manufacturing and digital services. These are industries where risk-taking, long product development cycles and data-driven innovation are the norm. The threat of mass litigation introduces uncertainty and cost at exactly the moment when these businesses need regulatory clarity and investment stability. Moreover, claims against public sector entities involve a direct transfer of capital from the tax payer to hedge fund litigation funders.

The financial burden is also considerable. Legal fees and returns to funders often consume a large share of total settlements, reducing the compensation that actually reaches affected individuals. In the Post Office Horizon scandal, for example, £46 million in legal fees and funders payments were deducted from a £57 million settlement, leaving a paltry sum of just over £20,000 per claimant. In the recent judgment of *Merricks v. Mastercard*, £100 million have been allocated to compensate consumers. Affected individuals could receive up to £70 each if only 5 percent claim, but as little as £2.5 if the full class of 44 million comes forward. These figures raise questions about who really benefits from mass litigation.

The limited benefits for individual consumers stand in stark contrast to the substantial costs that mass litigation imposes on the UK economy as a whole. Our scenario modelling shows that, under a scenario where the costs of mass litigation are just 30 percent of the current costs in the US, litigation costs in the UK could reach more than half of the claim value; the cost of mass litigation for the UK economy could reach close to £18 billion, and the market capitalisation of the UK's most innovative companies could fall by £11.2 billion, more than half the announced public investment into R&D in the 2025 Autumn Budget.

These financial pressures affect the whole country. While many large companies are headquartered in Greater London, their operations, and the jobs they support, are often spread across the wider regions. This means that the impact of a legal challenge is not just a concern for a corporate boardroom in London, but it impacts local economies and communities across the UK.

As the Civil Justice Council reviews the framework for litigation funding, this study provides evidence to inform the debate. It does not argue against collective actions per se but urges a careful weighing of their benefits against broader economic costs. If the UK wants to remain an attractive destination for business, investment, and innovation, it must ensure that its legal infrastructure supports rather than stifles those ambitions.

LIST OF ACRONYMS

ADR – Alternative Dispute Resolution

ATE – After-the-Event

CA – Competition Act

CAT – Competition Appellate Tribunal

CAT Guide – CAT's Guide to Proceedings

CAT Rules – CAT's Rules of Procedure

CFA – Conditional Fee Arrangements

COPD – Chronic Obstructive Pulmonary Disease

CMC – Claim Management Companies

CPO – Collective Proceedings Order

CPP – Card Protection Plan

CPR – Civil Procedure Rules

CRA – Consumer Rights Act

DBA – Damages-based Agreement

FCA – Financial Conduct Authority

FDI – Foreign Direct Investment

FOS – Financial Ombudsman Services

FSA – Financial Services Authority

FSMA – Financial Services and Markets Act

GDP – Gross Domestic Product

GLOs – Group Litigation Orders

IFML – Institutional Framework for Mass Litigation

LFA – Litigation Funding Arrangement

NGOs – Non-Governmental Organisations

OECD – Organisation for Economic Co-operation and Development

OIAHE – Office of the Independent Adjudicator for Higher Education

PACCAR – R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others (referred as PACCAR Ruling)

PPI – Payment Protection Insurance

RCJ – Rules of the Court of Judicature

R&D – Research and Development

RDI – Research, Development and Innovation

TPLF – Third-Party Litigation Funding

TSB – Trustee Savings Bank

VWF – Vibration White Finger

WASPI – Women Against State Pension Inequality

1. INTRODUCTION

The UK's legal and institutional framework has proven to be particularly conducive to collective actions. The country boasts a well-established infrastructure for consumer representation and a strong litigation culture. Consumer organisations, alongside trade unions and environmental campaigners, have long used collective litigation to challenge government actions and influence public policy. The rise of Claims Management Companies (CMCs) has further embedded consumer redress into the fabric of everyday life in Britain.

UK policymakers should be concerned about the growth of the legal industry around collective action. The development of a significant ecosystem, including law firms, litigation funders and insurers, has undoubtedly fuelled the increase in collective actions. CMCs have moved from Payment Protection Insurance (PPI) to new areas such as holiday sickness claims or whiplash injuries. Additionally, US-based firms have entered the UK market, bringing with them established business models that have been successful in the United States. Furthermore, the UK stands out among European countries for its high concentration of litigation funders and sophisticated insurance companies that offer ancillary services to mitigate the risks associated with this type of litigation. This ecosystem of companies, with its inherent incentives to pursue mass claims and identify grounds for redress, is poised to continue expanding its reach.

The increasing prevalence of collective actions is particularly challenging for the private sector. UK companies across various industries are now facing mass litigation, which extends beyond traditional sectors like banking and pharmaceuticals to areas such as technology, automotive and any other sector working with data. This trend is not only a challenge for businesses but also for the UK Government, whose industrial strategy aims to foster growth in sectors that are increasingly vulnerable to mass claims. These sectors, deemed critical to the UK's economic future, could find their ability to innovate and drive productivity undermined by the rising tide of collective litigation.

While collective litigation should have some positive aspects, such as improving access to justice and consumer redress – as well as acting as a vehicle for removing flawed products and practices from the market – its overall economic impact is less benign. The benefits to consumers, in terms of compensation, are often much lower than expected, particularly after accounting for the substantial legal fees and payments to funders and insurers. Moreover, the sheer scale of collective action has increased to such an extent that its costs may now outweigh its benefits. This study focuses on the often underappreciated and under-researched costs of collective action on the UK economy.

As the Civil Justice Council reviews the rules surrounding litigation funding in England and Wales, there is a clear need for the UK to avoid the pitfalls seen in the US, where mass litigation has sometimes evolved into a tool for profit rather than justice. The evidence is compelling: the easier it is to initiate mass litigation cases, the greater the number of cases that emerge, and not always for the most principled reasons. It is therefore crucial that UK policymakers remain fully aware of the broader economic implications of the increasing prevalence of mass litigation.

To explore these issues in depth, Chapter Two of this study examines the two primary models of regulatory enforcement in the UK: private enforcement, with a focus on mass litigation, and public enforcement, including the role of the ombudsman and consumer redress schemes. Chapter Three provides a quantitative analysis of the rise of mass litigation in the UK, identifying key drivers and comparing them with trends in other European countries. Chapter Four examines the economic impact of collective actions on the UK economy, including an analysis of how UK businesses have responded to the increasing threat of litigation. It also presents three scenarios modelling the impact of mass litigation on the UK economy and its potential effects on UK R&D spending by companies and regions. Finally, Chapter Five concludes by summarising the study's key findings.

2. PRIVATE AND PUBLIC REGULATORY ENFORCEMENT IN THE UK

This chapter explores the evolving landscape of collective actions in the UK, examining their role in regulatory enforcement and public accountability. It highlights the interplay between private and public enforcement mechanisms, focusing on how collective actions, while serving as a tool for redress, also impact traditional regulatory frameworks. The chapter also discusses the complexities of compensation schemes and the role of CMCs in driving mass claims, which, while helping individuals seek redress, have raised concerns about the strain on established dispute resolution systems.

2.1 Private Enforcement: UK Collective Actions

2.1.1 A Very Short Introduction to the History of UK Collective Actions

Although collective litigation is often associated with the US legal system, its origins lie in Britain, where laws permitted claimants to represent groups in specific situations. Lord Macnaghten, a prominent British judge of the late 19th and early 20th centuries, outlined the conditions for what was then considered a representative action: "Given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent."¹ In other words, the goal of this type of litigation was to improve the court's efficiency by reducing 'duplicative litigation'. However, the expansion of mass litigation halted after the English courts' decision in *Markt & Co Ltd v Knight Steamship Co Ltd* (1910),² which significantly narrowed the scope of collective actions in the UK.

More recently, the most prominent users of modern collective actions in the UK have been campaign groups, as well as civil institutions such as trade unions and NGOs, which have actively used collective litigation to drive their agendas.

¹ [1901] AC 1 (HL) [Duke of Bedford]

² The scope of mass actions, particularly representative actions, expanded significantly from the 18th through the 19th centuries—first through judicial decisions and later through legislative reforms. During this period, Courts adapted to societal changes by adopting a progressive and flexible approach to class actions. Eizenga, M. A., & Davis, E. (2011). A history of class actions: modern lessons from deep roots. *Canadian Class Action Review*, 7(1), 3-5.

In many of these cases, collective litigation often began with actions brought by a relatively small number of claimants. Following adverse court decisions, campaigns would typically emerge, leading to the establishment of redress schemes (see 2.3.2 Collective Redress Schemes). Examples of this approach include the Thalidomide claims³ and Coal Health Cases⁴, where trade unions played a pivotal role in organising claims and ultimately securing compensation for a large number of affected individuals.

Lately, the deliberate use of litigation as a campaigning tool has become even more prominent. For instance, ClientEarth, an environmental NGO, has used litigation against energy companies, extractive industries and the food sector to push for greater regulatory oversight and policy change,⁵ especially when they perceive inaction from companies or public bodies. This marks a shift towards using the legal system not only to seek redress but also to influence public policy and corporate behaviour, making mass litigation a key tool in campaigners' broader strategies.

Since the primary aim of many collective actions is to change public policy, public bodies have often been the target of mass litigation in the UK. Historical examples include the Thalidomide claims and the Coal Health Cases⁶ previously mentioned, as well as the infected blood scandal⁷ and Equitable Life⁸ where the government was ultimately responsible for compensating victims and resolving mass claims. In more recent years, collective actions have continued to target public bodies. Notable examples include the Equal Pay Litigation against Birmingham City Council,⁹ cases against health boards in medical product liability¹⁰ and the Women Against State Pension Inequality (WASPI)¹¹ pre-action letters, which threatened litigation after the government refused to act on a Parliamentary Health Service Ombudsman ruling regarding changes in the state pension age.

While the government has historically been the defendant in collective actions, there has been a notable shift, with more mass claims now directed towards private entities. Some of these actions are driven by campaign groups seeking to change corporate behaviour, but many other

³ Leigh Day. (2014, June 10). Legal action to begin against Thalidomide manufacturer by alleged victims of the drug. Available at: <https://www.leighday.co.uk/news/news/2014-news/legal-action-to-begin-against-thalidomide-manufacturer-by-alleged-victims-of-the-drug/>

⁴ Coal Health Compensation Schemes. Report by the Comptroller and Auditor General, HC 608 Session 2006--2007, 18 July 2007, available at: www.nao.org.uk/wp-content/uploads/2007/07/0607608es.pdf in Macleod, S. (2017). Miners' Compensation Schemes in Macleod, S., & Hodges, C. (2017). Redress schemes for personal injuries. Hart Publication

⁵ ClientEarth v. Secretary of State for the Environment, Food and Rural Affairs [2015] UKSC 28; ClientEarth v. Board of Directors of Shell [2023] EWHC 1137 (Ch)

⁶ Macleod, S. (2017). (see note: 4)

⁷ Reed, J. (2025, February 13). What is the infected blood scandal and how much compensation will victims get? BBC. Available at: <https://www.bbc.com/news/health-48596605>; Two companies were established, the Skipton Fund in 2004 and the MacFarlane and Eileen Trust in 2010 to provide payments to Hepatitis C and HIV infected claimants respectively. The Caxton foundation (a charity) was established in 2011 for those with Hepatitis C, who were HIV negative; Webster and others v Treloars Trust [2025] EWHC 516 (KB)

⁸ Parliamentary and Health Services Ombudsman. (2008). Equitable Life: a decade of regulatory failure HC 815-1. Available at: <https://assets.publishing.service.gov.uk/media/5a74ff91e5274a3cb2868db4/0815.pdf>

⁹ Birmingham City Council. (2023, June 28). Birmingham City Council statement on Equal Pay update. Available at: https://www.birmingham.gov.uk/news/article/1353/birmingham_city_council_statement_on_equal_pay_update; Birmingham City Council v Abdulla and others [2012] UKSC 47

¹⁰ Corin Metal on Metal Hip; DePuy Pinnacle Metal on Metal Hip; NHS South East London Integrated Care Board v JP & Ors [2025] EWCOP 4 (T3) (not a class action, but a legal challenge against ICB)

¹¹ Women Against State Pension Inequality Limited v Parliamentary Health Service Ombudsman and others. Claim No: CO/793/2023. Available at: <https://www.bindmans.com/wp-content/uploads/2023/04/WASPI-settlement-papers.pdf>; Adu, A. (2025, February 24). Waspi campaigners threaten government with legal action over compensation. Guardian. Available at: <https://www.theguardian.com/money/2025/feb/24/waspi-campaigners-threaten-government-legal-action-compensation>

cases address entirely different issues, such as consumer protection, competition and data protection, which will be discussed further in Chapter Three.

These developments have been accompanied by changes to the rules governing collective action in the UK. For example, the introduction of the Civil Procedure Rules (CPR) in 1998 and the implementation of Group Litigation Orders (GLOs) in May 2000 – described in the next section – provided a more structured framework for handling collective claims, further supporting the re-emergence of collective litigation.

2.1.2 Types of Collective Actions in the UK

Given the relative size of England and Wales within the UK population and economy – representing 89.1 percent of the UK population, while Northern Ireland and Scotland represent 2.8 percent and 8.1 percent, respectively¹² – most collective action cases follow English law. There are four principal forms of mass litigation in England and Wales: (1) Group Litigation Orders (GLOs), (2) informal group proceedings, (3) representative actions, and (4) Collective Proceedings Orders (CPOs).

1. **Group Litigation Orders (GLOs)**, established under Civil Procedure Rules 19.11, operate on an opt-in basis. Proceedings begin with the issuance of a claim form, either on behalf of multiple claimants or via individual claim forms for each claimant. The claimant firm must seek approval from the High Court to manage the claims under a GLO. If granted, the court identifies common legal or factual issues across the claims and adjudicates them collectively.
2. **Informal group proceedings** arise when claimant law firms initiate multiple claim forms, either for individual claimants or groups within a single claim. These claims may be managed jointly upon application to the court or pursued separately. Informal group proceedings are an opt-in mechanism, albeit they do not operate within the formal structure of GLOs and rely on the flexible case management powers of the court.
3. **Representative actions**, governed by Civil Procedure Rules 19.8, can in appropriate cases seek damages on an opt-out basis. They can also be used on a bifurcated basis with liability or other issues resolved on an opt-out basis with further issues, including damages, resolved on an opt-in basis. However, their practical application has been limited, and they have not been widely used as a procedural mechanism for collective redress.

¹² Office for National Statistics. (2024, March 26). Population estimates for the UK, England, Wales, Scotland, and Northern Ireland: mid-2022. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/bulletins/annualmidyearpopulationestimates/mid2022>; also note that in economic terms, England and Wales account for 89.6 percent of UK value-added, while Northern Ireland and Scotland represent 2.3 percent and 7.5 percent, respectively. Office of National statistics. (2024, April 24). Regional gross value added (balanced) per head and income components. Available at: <https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalregionalgrossvalueaddedbalancedperheadandincomecomponents>

4. Collective Proceedings Orders (CPOs) in the Competition Appeal Tribunal (CAT), introduced under Section 47B of the Competition Act 1998, provide a framework for collective redress in competition law breaches. These claims may proceed on either an opt-in or opt-out basis, depending on the circumstances of the case.

For competition cases, which apply UK-wide, the Competition Act 1998 ("CA 1998") and the Consumer Rights Act 2015 establish collective proceedings for certain infringements. These rules are outlined in the Rules of Procedure of the CAT ("CAT Rules"), supplemented by the CAT's Guide to Proceedings ("CAT Guide").

In Northern Ireland, mass actions follow procedures outlined in the Rules of the Court of Judicature (Northern Ireland) (RCJ), which allow for the consolidation of claims that share common legal or factual issues.¹³ However, unlike England and Wales, Northern Ireland does not have an equivalent to the formal Group Litigation Order (GLO) regime.

In Scotland, the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 established a framework for group proceedings, which came into effect in 2020. The procedural details are set out in the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Group Proceedings) 2020. Under this system, claimants seeking to bring a collective action must obtain permission to proceed before the Court of Session in Edinburgh, which is Scotland's equivalent to the High Court in England and Wales. Claims must share the same, similar, or related issues of law or fact, and a representative party is responsible for managing the group register. Prior to this legislation, Scottish Courts relied on case-management measures to coordinate multiple claims. The new mechanism has been implemented on an opt-in only basis, but in March 2025 the Scottish Civil Justice Council announced formation of a Working Group to consider expanding the mechanism to operate on an opt-out basis.

In addition to differences in the rules governing collective action, Scotland and England and Wales differ in the types of cases and the likelihood of reaching a settlement. Scotland has seen successful mass claims in areas where similar actions have struggled in England and Wales. For example, the pelvic mesh claims were settled in Scotland in 2020, while the same claims in England and Wales did not result in a settlement until 2024.¹⁴ This difference is partly due to the smaller size of Scotland, which makes it less financially worthwhile for defendants to mount extensive legal defences, compared to the much larger and more financially significant jurisdiction of England and Wales.

While not strictly mass collective actions, data on clinical negligence claims highlights significant differences between Scotland and England and Wales, providing some quantitative context for the broader differences in litigation volume and cost mentioned earlier. In these

¹³ Specifically, these rules permit the grouping of claims arising from the same transactions (RCJ O15 r4), joint case management, and representative actions where parties share a "same interest" (RCJ O15 r12).

¹⁴ Pennington Manches Cooper. (2020, June 5). Vaginal mesh injury compensation: UK claimants receive settlement from Johnson & Johnson. Available at: <https://www.penningtonslaw.com/news-publications/latest-news/2020/vaginal-mesh-injury-compensation-uk-claimants-receive-settlement-from-johnson-johnson>; also see: Devlin, H. (2024, August 19). 140 women in England receive payout for vaginal mesh implant complications. The Guardian. Available at: <https://www.theguardian.com/society/article/2024/aug/19/140-women-in-england-receive-compensation-for-vaginal-mesh-implant-complications#:~:text=More%20than%20100%20women%20who,Johnson%2C%20Bard%20and%20Boston%20Scientific>

cases, the volume of litigation is lower in Scotland compared to England and Wales, with Scotland reporting nine claims per 100,000 population in 2018-19, compared to 19 in England. The cost per capita for clinical negligence claims is also significantly lower in Scotland (£6.9) than in England (£42.1).¹⁵

2.1.3 Funding of Collective Actions in the UK

A crucial aspect in order to understand collective actions in the UK is the funding of these lawsuits. The three primary funding models¹⁶ for mass litigation are as follows:

1. Conditional fee arrangement (CFA): sometimes known as 'no win, no fee', is an agreement between a claimant and their solicitor where legal fees are only payable upon success. However, CFAs are more nuanced than the label suggests. The solicitor may agree to reduce or waive their hourly rate during the proceedings, and if the case succeeds, a success fee – capped at 100 percent of the base costs – may be charged. Not all CFAs involve a complete waiver of fees during the case, and some may involve reduced-rate billing throughout, depending on the agreement between the parties.

However, there are also circumstances where, despite the 'no win, no fee' label, claimants may still be liable for legal costs, including, in some cases, the defendant's costs and even those of their own legal team. This can occur if the claim fails or if the claimant breaches the terms of the CFA.

2. Damages-based agreement (DBA): in this arrangement, the client agrees to pay their solicitor a percentage of the damages or settlement recovered. This payment is contingent upon a successful outcome and is irrespective of the actual fees incurred during the litigation.

3. Litigation funding agreement (LFA): where a third party, unconnected to the litigation, agrees to finance some or all of the legal costs. In return, the funder receives a fee payable from any recovery made by the litigant.

In July 2023, the UK Supreme Court ruling,¹⁷ also known as the PACCAR ruling, found that litigation funders were providing "claims management services" because they offered financial support. As a result, their funding agreements could be unenforceable DBAs under the 1990 Act, depending on how the DBA is structured. The judgment held that, in substance, many litigation funding agreements (LFAs) fall within the definition of damages-based agreements

¹⁵ House of Commons. (2022). NHS Litigation Reform. Available at: <https://committees.parliament.uk/publications/22039/documents/163739/default/>

¹⁶ Other funding models include portfolio funding for high volume commoditised cases and direct funding to claimant law firms.

¹⁷ R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents) [2023] UKSC 28

(DBAs) for the purposes of section 58AA of the Courts and Legal Services Act 1990.¹⁸ In 2024, the Litigation Funding Agreements (Enforceability) Bill was introduced to modify the PACCAR ruling, although it failed to pass before Parliament and was dissolved ahead of the election. However, many funders have already revised their LFAs to avoid being classified as DBAs¹⁹ and their returns being calculated as a percentage of damages.

Another key aspect of collective action is that it allows claimants to pool their per capita litigation costs for individual claimants by pooling resources. However, the funding arrangements for collective action set out in the preceding paragraphs (i.e., CFA; DBA; LFA) mean that a significant portion of any award will go to funders, lawyers and other intermediaries, substantially reducing the amount received by consumers. An example of this is the Horizon case (*Bates v Post Office*), where 555 claimants received only £11.7 million (around £22,000 per person) from a £57.75 million settlement while £46 million was spent on legal fees and payments for litigation funders. The funder later defended this return, saying the case involved high risk and required significant funding, and that the 41 percent profit was within the legal cap for similar funding agreements.²⁰

Recent developments also show growing tensions between funders and the judiciary over profit allocation. In the Mastercard case, litigation funder Innsworth²¹ argued that the CAT's decision to award only £23 million on a £46 million investment was "unreasonable" and risked discouraging future opt-out funding. Innsworth had sought £179 million, equivalent to nearly 90 percent of the post-costs award, but this was rejected on the grounds that the claim yielded only £200 million from an original £14 billion.²² Yet, the £100 million allocated to compensate consumers would represent £70 for each affected individual if only 5 percent claim and as little as £2.5 if the full class of 44 million comes forward.²³

However, if a claim fails, claimants, or the class representative may have to pay the defendant's costs, which could be substantial.²⁴ To guard against this risk, litigants buy After-The-Event (ATE) insurance. As explained, under a CFA, the lawyer's fees are contingent upon success, meaning if the case is won, the lawyer is paid; if the case fails, they receive nothing. Therefore, ATE provides cover for the claimant in the event of losing the case, covering the risk of having to pay the other side's legal costs if the case is unsuccessful.

Despite the size of the insurance, legal costs could be larger than the ATE coverage, which could leave claimants potentially still exposed to large liabilities, despite the insurance. An

¹⁸ CMS. (2023). The Supreme Court deals blow to litigation funding and collective proceedings regimes in the UK. Available at: <https://cms-lawnow.com/en/ealerts/2023/07/the-supreme-court-deals-blow-to-litigation-funding-and-collective-proceedings-regimes-in-the-uk>

¹⁹ Ashurst. (2025). Class actions: key developments in 2024 and what to look out for in 2025. Available at: <https://www.ashurst.com/en/insights/class-actions-key-developments-in-2024-and-what-to-look-out-for-in-2025/>

²⁰ Mulheron, R. (2024). A Review of Litigation Funding in England and Wales a Legal Literature and Empirical Study. Available at: <https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf>

²¹ Innsworth Capital Management is owned and financed by Elliott Management Corporation, a U.S. hedge fund founded by Paul Singer and widely recognised for its activist and confrontational investment style.

²² Legal Futures. (2025, May 22). Merricks funder: £23m profit on £46m investment "not reasonable". <https://www.legalfutures.co.uk/latest-news/merricks-funder-23m-profit-on-46m-investment-not-reasonable>

²³ Law Society Gazette. (2025, May 23). In depth: Mastercard – how will the £200m be distributed? <https://www.lawgazette.co.uk/news-focus/in-depth-mastercard-how-will-the-200m-be-distributed/5123384.article>

²⁴ Crowell. (2010). Class Actions: "Class Actions in the UK ... Surely Not!" Available at: <https://www.crowell.com/en/insights/client-alerts/class-actions-class-actions-in-the-uk-surely-not>

example that highlights the risks involved is the Sharp vs. Blank case, where a group of Lloyds TSB shareholders sought £385 million in damages. Despite having ATE insurance worth £6.5 million and additional cover from a litigation funder, the defendants' legal costs exceeded £30 million. The judge noted that some claimants could still be personally liable for the difference, as the ATE insurance and indemnities were insufficient to cover all costs.²⁵ Moreover, after the Jackson Review of Litigation Costs and Funding,²⁶ the defendants are no longer required to pay claimants' success fees (under the CFA) and the premium for ATE insurance but have these amounts reduced from the damages or settlement.

Finally, ATE providers hold significant power in the litigation process, influencing which cases proceed.²⁷ As ATE providers typically invest in law firms with proven success rates, their involvement can create a bias towards cases with higher financial stakes or those more likely to generate returns. This dynamic could result in cases with lower financial backing, or those seen as riskier, being excluded from the litigation process altogether. This raises concerns about selective justice, where only certain cases, often with stronger financial backing, move forward.

2.1.4 Claim Management Companies (CMCs)

In addition to collective actions, Claims Management Companies (CMCs) deserve a specific mention when explaining the UK landscape of mass claims. CMCs are commercial entities managing claims on behalf of individuals in exchange for a percentage of any compensation awarded. Similarly to collective actions, payments to CMCs follow the CFAs model or are direct claims through the ombudsman to secure redress, typically earning a fee for their services. And while both aim to provide redress for multiple individuals affected by similar issues, CMCs handle individual claims, rather than aggregating individual cases into one legal proceeding as collective actions do.

The history of CMCs in the UK is closely tied to the PPI scandal, where they played a central role in managing millions of claims, contributing to a significant increase in consumer redress. CMCs facilitated PPI claims on behalf of customers, often for a fee or a percentage of the compensation awarded.²⁸ PPI was a type of insurance product designed to cover loan, credit card or mortgage payments if the borrower was unable to meet them due to certain circumstances such as illness, injury, redundancy or death. However, many consumers were sold PPI policies without fully understanding what the product was or whether it was suitable for their needs. The mis-selling of PPI led to widespread complaints, and in 2011, the UK's Financial Services Authority (FSA; later replaced by the Financial Conduct Authority, FCA) intervened, ordering banks and financial institutions to compensate affected customers.

²⁵ FCJ. Claimant law firm advertising in the United Kingdom. Available at: <https://fairciviljustice.org/wp-content/uploads/2024/12/BROC-Claimant-law-firm-advertising.pdf>

²⁶ Mulheron, R. (2024). A Review of Litigation Funding in England and Wales a Legal Literature and Empirical Study. Available at: <https://legalservicesboard.org.uk/wp-content/uploads/2024/05/A-review-of-litigation-funding.pdf>

²⁷ It has been estimated that 95-97 percent of applications are rejected by funders. Source: Sentry Funding. (2022, February 11). Benefits of litigation funding. <https://sentryfunding.co.uk/insights/benefits-of-litigation-funding/>

²⁸ Eversheds Sutherland. (2013). Financial institutions e-briefing: Retail Finance update: Ministry of Justice publishes report on malpractice in the PPI claims market. Available at: <https://www.lexology.com/library/detail.aspx?g=d23f3059-640b-40a6-af59-56e9c584dbbf>

The substantial amounts paid out from PPI claims, estimated to be around £40bn,²⁹ fuelled the growth of an industry specifically devoted to sourcing claimants and submitting their claims, often through the Financial Ombudsman Service (FOS). To continue their activities, CMCs have actively sought out and shifted their focus towards new areas of potential mass claims such as holiday sickness claims, car emissions and whiplash injuries.³⁰ Moreover, some US claims management firms such as Angeion, Epiq and Ankura have set up operations in the UK.³¹

As explained in 2.3.1 concerns have also been raised about the impact of CMCs on ombudsmen and other alternative redress mechanisms. For instance, the sheer volume of claims generated by CMCs, particularly in the PPI scandal, put great pressure on the FOS, creating delays and increasing costs. Moreover, it has diverted the FOS attention away from more systemic issues that these bodies were originally designed to address. This has raised concerns about the effectiveness of traditional dispute resolution mechanisms, as CMCs, driven by profit, bypass or overwhelm them, potentially distorting the overall compensation landscape.

2.2 Public Enforcement

2.2.1 Public Enforcement and the Quality of UK Rules and Regulations

In a public enforcement model, norms and regulations are specific and prescriptive, defining what companies and public bodies can and cannot do, as well as the steps required for regulatory compliance. Incomplete or inadequate regulation, on the other hand, can create the conditions for collective action as a form of enforcement. When regulatory frameworks fail to adequately address risks or protect consumers, it can result in harms that drive individuals to seek redress through collective litigation.

In principle, public enforcement may also entail slow regulatory decisions, which could hinder innovation compared to potentially faster product development in countries where private enforcement is the norm. However, ex-ante compliance and collaboration between companies and regulatory agencies may result in a more predictable compliance framework, reduced ambiguity and, consequently, lower liability risks for market players, fostering greater innovation.

Public enforcement not only covers private companies but also extends to goods and services provided by public bodies. Poor performance by these bodies can lead to private enforcement through collective actions if it is not addressed by the public sector. Examples such as the bin

²⁹ FT Adviser. (2019, August 22). PPI scandal costs industry £50bn. Available at: <https://www.ftadviser.com/your-industry/2019/08/22/ppi-scandal-costs-industry-50bn/>

³⁰ AM1 Claims Management. Emissions Claims Lead Generation. Available at: <https://www.am1claimsmanagement.co.uk/claims-lead-generation/>; Bottonline. Whiplash Claims – How Much Compensation Can I Claim? Available at: <https://www.bottonline.co.uk/road-traffic-accident-claims/guides/how-much-compensation-claim-for-whiplash>; Irwinmitchell. Holiday Sickness Claims & Illness Compensation. Available at: <https://www.irwinmitchell.com/personal/personal-injury-compensation/holiday-accidents-illness-claims/holiday-sickness-claims>

³¹ London offices - Angeion Group International. Available at: <https://www.angeiongroup.com/class-action/claims-administration>; Epiq Global. Available at: <https://www.epiqglobal.com/en-us/about-us/locations>; Ankura. Available at: <https://ankura.com/locations>

strike in Birmingham,³² the recent case against University College London,³³ or the previously cited examples involving health boards, reflect the increasing accountability of public service providers through collective actions rather than public enforcement.³⁴ Looking ahead, water companies are likely to be the next in line for such claims, particularly in relation to environmental issues.³⁵

Yet, despite the rise of mass litigation as a tool for regulatory enforcement, public enforcement has remained the prevailing policy instrument in the UK to ensure regulatory compliance. Despite the outlined limitations, the quality of UK regulation is frequently cited as a key relative advantage for the UK economy, making it an attractive location for companies to establish themselves and test their products.

For example, BioNTech – the company behind the innovations that produced the COVID-19 vaccine – praised the UK's regulatory framework as a reason for choosing the UK as the location for a research facility to develop new cancer treatments.³⁶ Eli Lilly, one of the world's largest pharmaceutical companies, expressed its intent to invest in the UK's life sciences sector, with the UK's regulatory infrastructure being a key factor in securing this investment.³⁷ In financial services, a supportive regulatory framework has been crucial in promoting growth in the UK's fintech sector, which includes seven companies in Europe's Top 20 Fastest-Growing Companies list.³⁸

This qualitative evidence is corroborated by quantitative analysis. The Blavatnik Index of Public Administration, which evaluates public administrations in 120 countries, ranks the UK sixth in the world. Figure 1, which presents the index's results for Western countries, shows the UK as the top-performing country, alongside other European nations such as Denmark, Norway and Finland, all recognised for their high governance standards and institutional quality, and ahead of other large European economies, such as Germany and France. Similar assessments, such as the World Bank's Government Effectiveness Index, also position the UK as a top performer. In particular, the UK excels in the quality of its regulation, achieving 13th place out of 193 countries, ahead of Germany, Japan, the United States and France.

³² Khan, S. (2025, April 23). Talks to resume as bin strike continues. BBC. Available at: <https://www.bbc.com/news/articles/c80718v2dgmo>

³³ Foster, P. and Gray, A. (2023, July 25). Students are suing UK universities over Covid disruption. Do they have a case? Financial Times. Available at: <https://www.ft.com/content/f70e8b04-58b2-420d-9395-c696cb7f637b>

³⁴ NHS South East London Legal Action. (See note: 10)

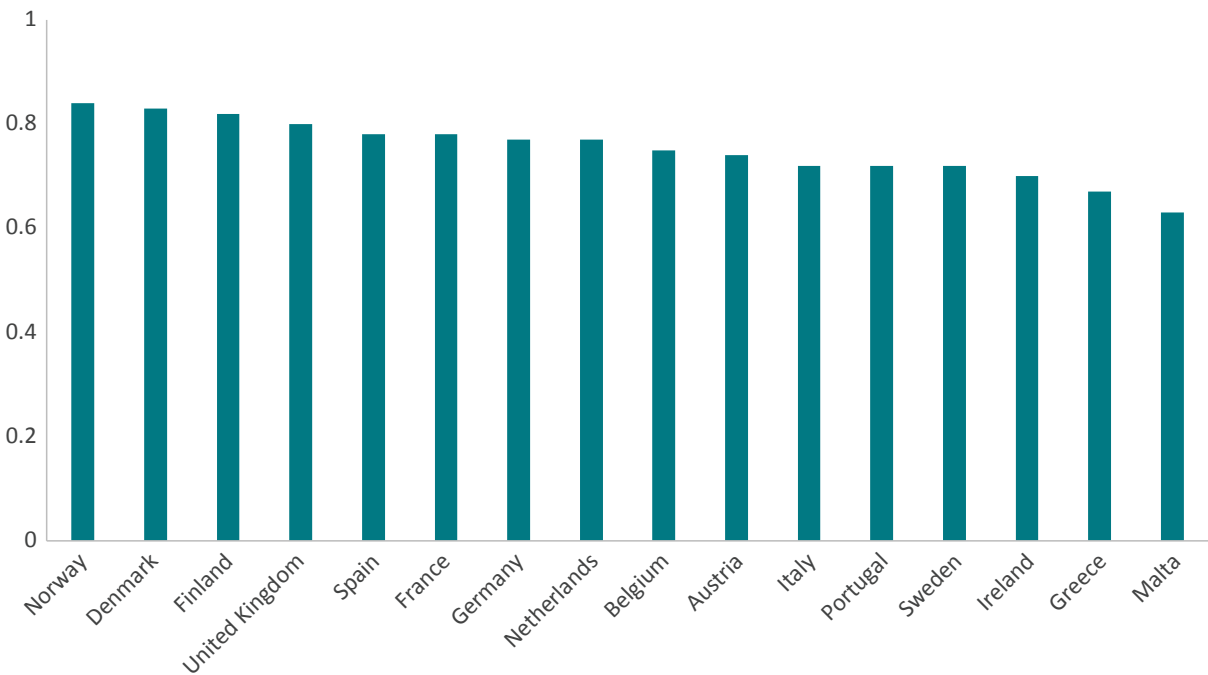
³⁵ Professor Carolyn Roberts v (1) Severn Trent Water Limited and (2) Severn Trent PLC 1603/7/7/23

³⁶ BioNTech (2023, January 5). Press Release. BioNTech Announces Strategic Partnership with UK Government to Provide up to 10,000 Patients with Personalized mRNA Cancer Immunotherapies by 2030. BioNTech, Retrieved from <https://investors.biontech.de/news-releases/news-release-details/biontech-announces-strategic-partnershipuk-government-provide>

³⁷ Hickey, S. (2025, March 27). UK fintech investors sharpen focus on likely 'winners'. Financial Times. Available at: <https://www.ft.com/content/bbe56713-864d-41f4-99c5-b85e0bb845a5>

³⁸ *ibid*

FIGURE 1: BLAVATNIK INDEX OF PUBLIC ADMINISTRATION 2024 FOR WESTERN EUROPE



Source: Blavatnik Index of Public Administration 2024, Blavatnik School of Government, University of Oxford, <https://index.bsg.ox.ac.uk>.

Efforts to continue improving the quality of UK regulation and regulators are ongoing. In its first year in office, the UK Government launched a wide-ranging overhaul of the regulatory framework to drive economic growth and enhance competitiveness. Central to this effort is the creation of the new Regulatory Innovation Office (RIO), tasked with modernising outdated rules, streamlining approval processes and strengthening coordination between key regulators, including the Competition and Markets Authority (CMA), Financial Conduct Authority (FCA), and Prudential Regulation Authority (PRA).³⁹

³⁹ Specific initiatives include: simplifying the FCA's 10,000-page rulebook and reducing bureaucratic duplication across agencies; narrowing the CMA's remit over mergers by tightening the "share of supply" and "material influence" tests to create a more efficient and predictable regulatory environment; and a comprehensive review of water sector regulation, led by Sir Jon Cunliffe, former Deputy Governor of the Bank of England.

2.3 The Third Way: The Ombudsman and Redress Mechanisms

2.3.1 The Ombudsman

The role of protecting consumers extends beyond the Government and public regulators to include the ombudsman. The UK operates an 'ombudsman scheme' that is free to use and impartial, ensuring decisions are based on fairness and provide redress to individuals. Moreover, UK ombudsmen increasingly serve as centralised information and guidance hubs, offering advice and acting as a one-stop shop for various consumer issues.⁴⁰

It can be argued that UK ombudsmen provide a middle ground between the private and public approaches to enforcement. It leverages the deterrent power of public enforcement, while also enabling consumers and businesses to seek redress for specific grievances. These benefits have been recognised by the Organisation for Economic Co-operation and Development (OECD)⁴¹. Moreover, studies have found that ombudsmen provide access to consumer redress at a lower cost than collective actions, reducing the need to litigate.⁴²

The UK has a variety of ombudsmen with varying powers.⁴³ While all ombudsmen can investigate and make decisions on complaints, their powers differ, including the ability to make recommendations for process changes or award compensation for inconvenience. Table 1 provides an overview of key UK ombudsmen along with a brief description of their main responsibilities.

⁴⁰ A Guide to Ombudsman Offices in the UK. Available at: https://www.ombudsmanassociation.org/sites/default/files/2024-10/Guide%20to%20Ombudsman%20Offices%20in%20UK%202024%20_4%20%28final%29.pdf ; There are different ombudsman schemes: Communication Ombudsman, Energy Ombudsman, Financial Ombudsman Service, Furniture and Home Improvement, Housing Ombudsman Service, Legal Ombudsman, Local Government and Social Care Ombudsman, The Motor Ombudsman, New Homes Ombudsman, Office of Independent Adjudicator, Parliamentary and Health Services Ombudsman, the Property Ombudsman.

⁴¹ Andrews, S. (2005). OECD Workshop on Consumer Dispute Resolution and Redress in the Global Marketplace: Background Report OECD Digital Economy Papers, No. 92, OECD Publishing, 15.

⁴² Hodges, C. (2019) Collective Redress: The Need for New Technologies. *Journal of Consumer Policy*, 42, 59-60. <https://doi.org/10.1007/s10603-018-9388-x>

⁴³ Ombudsman Association. A Guide to Ombudsman Offices in the UK. Available at: <https://www.ombudsmanassociation.org/find-ombudsman>

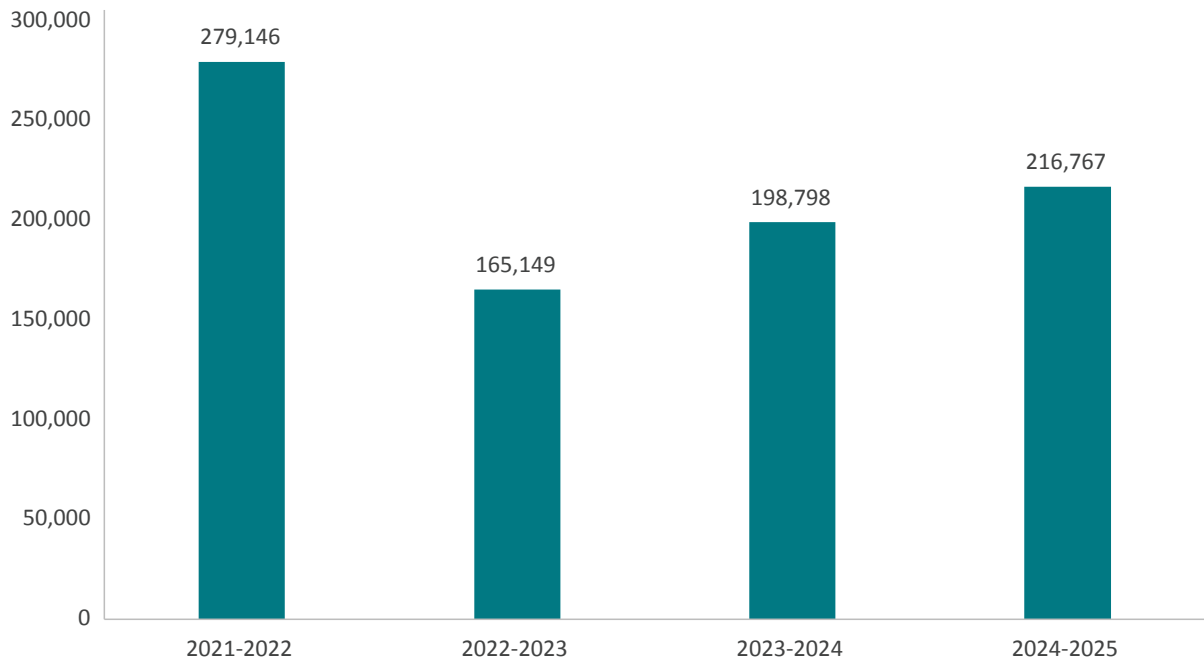
TABLE 1: OVERVIEW OF UK OMBUDSMAN BODIES BY SECTOR AND ROLE

Name	Main Feature
Communication Ombudsman	Largest Alternative Dispute Resolution (ADR) scheme approved by Ofcom; resolves disputes in the communications sector.
Energy Ombudsman	Resolves disputes between energy suppliers and consumers.
Financial Ombudsman Service	Settles disputes involving banking, credit, insurance, fraud, scams, and mortgages.
Legal Ombudsman	Investigates consumer complaints about legal service providers; common issues include delays, and costs.
Motor Ombudsman	Resolves disputes related to car sales, repairs, and servicing.
Office of the Independent Adjudicator for Higher Education (OIAHE)	Deals with student complaints against universities and other higher education institutions.
Rail Ombudsman	Handles complaints about rail services and specific transport-related schemes.
Housing Ombudsman	Resolves disputes between tenants, leaseholders and housing associations.
Property Ombudsman	Covers estate agents, managing agents, landlords, property sourcing agents and international agents.
New Homes Ombudsman	Investigates complaints about defects and issues in new-build homes.
Furniture and Home Improvement Ombudsman	Provides ADR services for furniture, home improvement, renewable energy and domestic retrofit installations.
Parliamentary and Health Ombudsman	Investigates complaints against UK Government departments and public organisations.
Local Government and Social Care Ombudsman	Handles complaints about councils, public services and social care.
Pensions Ombudsman	Handles complaints about workplace and personal pension schemes.
Service Complaints Ombudsman for the Armed Forces	Addresses complaints from service personnel regarding military service and related issues.

Source: Ombuds Guide.

In the UK, ombudsmen do not handle collective actions.⁴⁴ However, some of them have functioned as a clearing house for mass complaints, which arise when a common issue generates a large number of grievances. FOS stands out as a primary example of a UK ombudsman that has dealt with a large number of such complaints.⁴⁵ According to its Annual Report, between 2021 and 2024, the FOS received an average of more than 210,000 complaints annually.

FIGURE 2: TOTAL NUMBER OF COMPLAINTS RECEIVED BY THE FINANCIAL OMBUDSMAN SERVICE (2021-2024)



Source: Financial Ombudsman Service

Yet, and as discussed earlier, the FOS's primary role is not as a mechanism for collective redress, as it is designed to resolve complaints based on what is fair and reasonable in each individual case. However, the influx of cases from CMCs and other aggregators has turned the FOS into an unintended venue for what resembles collective-action-like activity.

This has prompted discussions about reform due to concerns over frivolous or poorly evidenced claims, which have undermined the FOS's capacity to resolve cases in a timely manner. For example, between April and December 2024, nearly half of the 220,000 complaints received by the FOS (around 103,000) were submitted by CMCs and other aggregators, although only 26 percent of these cases were successful. The FOS has acknowledged this issue, noting in

⁴⁴ Other European ombudsmen such as the one in Sweden has the authority to initiate collective actions and can represent consumers in Court. Source: Erixon, F., Guinea, O., Pandya, D., Sharma, V., Sisto, E., du Roy, O., Zilli, R., & Lamprecht, P. (2025). The Impact of Increased Mass Litigation in Europe. ECIPE, Brussels, occ. paper 3/2025, 108 p.

⁴⁵ A prominent example of mass claims is the Payment Protection Insurance (PPI) scandal. The PPI scandal involved widespread mis-selling of 64 million policies between 1990 and 2010, leading to over £38 billion in compensation. It became one of the UK's most costly consumer redress episodes, with the FOS resolving millions of claims. Sources: <https://www.theguardian.com/business/2016/aug/02/ppi-claims-all-you-need-to-know-about-the-mis-selling-scandal#:~:text=Estimates%20by%20New%20City%20Agenda.in%20anticipation%20of%20more%20payouts> Financial Conduct Authority. (2021, March). PPI complaints. Financial Conduct Authority. <https://www.fca.org.uk/consumers/ppi-complaints#:~:text=PPI%20complaints%20deadline,-We%20introduced%20rules&text=By%20April%202021%2C%20most%20of,handled%2C%20with%20some%20paid%20redress>

its 2023-24 annual complaints data that 25 percent of cases were brought by professional representatives, up from 18 percent the previous year.⁴⁶

This potential abuse has compelled the UK Government to address this situation. A key development is the FOS's new policy, effective from April 1, 2025, which will charge professional representatives £250 per case after their first 10 free submissions per year. This change aims to discourage frivolous or unmeritorious claims by shifting some of the financial burden onto CMCs, incentivising them to pursue only the cases with the stronger evidence.

2.3.2 Collective Redress Schemes

Collective redress schemes, also known as compensation or settlement schemes, are mechanisms for resolving group claims outside of traditional litigation. They are often triggered by the risk of litigation or the outcome of regulatory investigations that suggest a degree of legal liability.⁴⁷ The schemes offer a more structured alternative to individual court actions and reflect a broader trend toward non-adversarial approaches to mass harm. They can be an adjunct to the court process, a replacement for the court process, or the result of the court process.

The UK has developed numerous individual redress schemes often targeted at specific harms or affected populations.⁴⁸ A well-known example is the compensation schemes for miners, including schemes for pneumoconiosis, chronic obstructive pulmonary disease (COPD) and vibration white finger (VWF).⁴⁹

Compensation schemes can be established by a range of actors, depending on the nature of harm. Public bodies often lead schemes in response to findings of systemic failings or public liability.⁵⁰ Regulators may also drive or oversee schemes, especially where there is evidence of widespread consumer harm or regulatory breaches. In other cases, businesses and other organisations voluntarily initiate schemes to manage reputational risks, avoid costly litigation or reduce the threat of sanctions.⁵¹

⁴⁶ Pinsent Masons. (2024, January 29). Financial Ombudsman to charge claims management companies for complaints. Pinsent Masons. <https://www.pinsentmasons.com/out-law/news/financial-ombudsman-charge-claims-management-companies-complaints#:~:text=Increasingly%2C%20complaints%20referred%20to%20the,FOS%20termed%20%E2%80%9Cprofessional%20representatives%E2%80%9D>

⁴⁷ Pinsent Masons. (2023, October 20). Setting up a collective redress scheme in the UK. Available at: <https://www.pinsentmasons.com/out-law/guides/an-introduction-to-collective-redress-schemes>

⁴⁸ Few examples include: Industrial Injuries Disablement Benefit, see: Gov.UK. Industrial Injuries Disablement Benefit. Available at: <https://www.gov.uk/industrial-injuries-disablement-benefit>; Armed Forces Compensation Scheme. Gov.UK. Armed Forces Compensation Scheme (AFCS). Available at: <https://www.gov.uk/guidance/armed-forces-compensation-scheme-afcs>

⁴⁹ Coal Workers' Pneumoconiosis Scheme and the Coal Health Compensation Schemes were established as a no-fault compensation scheme, following an agreement between the National Coal Board, the National Union of Mineworkers, the National Association of Colliery Overmen, Deputies and Shotfirers, and the British Association of Colliery Management. It provided compensation to mineworkers suffering from respiratory illnesses, primarily pneumoconiosis, and also extended to cover other medical conditions. see: Report by the Comptroller and Auditor General, HC 608 Session 2006–07, 18 July 2007, available at: www.nao.org.uk/wpcontent/uploads/2007/07/0607608es.pdf in Macleod, S. (2017). (see note: 4)

⁵⁰ Ibid, but also worthwhile to consider is the Infected Blood Schemes, Equitable Life Compensation Schemes, the Pandemrix Settlement Scheme and the Pelvic Mesh Schemes.

⁵¹ For instance, the Consumer Rights Act 2015 allows companies to create voluntary/ad hoc redress schemes for competition law breaches, subject to CMA approval.

These schemes vary in form. Some, like the construction workers' scheme or voicemail interception scheme, are ad hoc. Others are statutory-supported, such as those under Section 895 of the Companies Act, which involve court-approved arrangements between companies and their creditors. Additionally, regulator-supervised schemes, like those mandated by the FCA under Section 404 of the Financial Services and Markets Act (FSMA), address systemic issues such as the previously described PPI mis-selling, Interest Rate Hedging Products, and breaches of competition law.

A key feature of UK compensation schemes is that they are based on predefined criteria, and the focus is on quantifying compensation rather than establishing liability. For instance, in the CPP Card Protection, AI Scheme for Card Protection or PPI schemes, liability has already been accepted, and the scheme provides a more efficient alternative to ongoing legal processes. In comparison, ombudsman schemes are designed to assess individual complaints and determine whether poor service or maladministration has occurred, making decisions based on what is 'fair and reasonable' in the specific circumstances.⁵²

The success of a compensation scheme largely hinges on its design, something especially difficult for newer industries lacking resources. Industries that are still developing and making riskier decisions may find it harder to 'design out conflict' with consumers, potentially leading to more litigation against private entities in those sectors. For the public sector, a further challenge is balancing quick pay-outs with protecting public funds, a trade-off that varies by scheme type and claimant needs. Transparency about where policymakers stand on this balance is essential. It is important to note that law firms can potentially derive significant financial benefit from compensation schemes, particularly when those schemes are not carefully designed. Poorly structured schemes may create inefficiencies, encourage unnecessary litigation, or fail to adequately resolve disputes, leaving room for legal firms to step in through protracted legal processes.⁵³

However, if designed properly, the advantages of collective compensation schemes are clear. This type of redress can keep claims out of court, offering a quicker and more cost-effective alternative to litigation for a potentially large volume of claims. Moreover, the schemes include the flexibility to include non-monetary redress, such as formal apologies or corrective measures, which litigation rarely provides. These advantages have contributed to the FCA and FOS' call for the use of collective redress schemes as an alternative to court-based group actions.⁵⁴

⁵² Parliamentary and Health Service Ombudsman may recommend compensation, but its recommendations are non-binding, as seen in the WASPI case involving changes to women's state pension age, where the government declined to act despite strong public pressure; see: Mortan, B. (2024, December 21). WASPI women refused payouts - but what other compensation bills are looming? Available at: <https://www.bbc.com/news/articles/c36ejg2jk450>

⁵³ The National Audit Office highlights the need to clearly communicate a scheme's purpose and limits from the outset, helping manage expectations and reduce disputes while understanding what it is designed to achieve and what it is not. See National Audit Office. (2024). Lessons Learned: Government Compensation Schemes. Available at: <https://www.nao.org.uk/wp-content/uploads/2024/07/lessons-learned-government-compensation-schemes-summary.pdf>

⁵⁴ The FCA approved a redress scheme involving Link Financial, and Parliament held a debate on the broader use of redress schemes, following reports such as the February 2023 publication by the All-Party Parliamentary Group on Fair Business Banking, 'Building a Framework for Compensation and Redress. FCA. (2024). Call for Input: Modernising the Redress System. Available at: <https://www.fca.org.uk/publications/calls-input/modernising-redress-system>

3. THE RISE OF COLLECTIVE LITIGATION IN THE UK

This chapter explores the rise of collective litigation in the UK, examining the factors behind its growth. It compares the UK's experience with other European countries and quantifies the role of institutions and rules as factors influencing mass litigation.

3.1 An Analysis of the Rise of Collective Action in the UK

3.1.1 Methodology

Several reports from law firms and other sources have highlighted the rise in collective actions in England and Wales since 2020.⁵⁵ However, the quality of the available data varies significantly. For instance, while a registry exists for GLOs, it is not regularly updated. On the other hand, a registry also exists for CPOs, and claims are consistently documented. However, as the regime is still in its early stages, the number of recorded cases is gradually increasing. For other categories of collective actions, no publicly available data on filed claims exists.

Despite these limitations, the study compiled its own database of collective actions in the UK, incorporating cases from the two public registries and information maintained by law firms, law associations and consumer associations. It includes variables such as the claim name, the year the order was passed⁵⁶ and the economic sector to which the industry affected by the lawsuit belongs. Annex 1 provides a comprehensive list of data sources, while Annex 2 details the database structure, including the number of observations for each variable, and data collection limitations.

Our dataset does not capture every mass litigation case in the UK, as some cases may have been filed but have not been publicly disclosed. This introduces the issue of sample selection bias, which occurs when the available data is not representative of the entire population. As a result, the cases included may distort the findings, leading to an overrepresentation of certain types of cases or economic sectors, as the data on these cases is publicly available. This problem is not unique to this study; it also affects similar research. However, the analytical findings presented in the next section align with those from other reports written by law firms and academics.⁵⁷

⁵⁵ Crowell. (2025). United Kingdom: Nearly a Decade After U.S.-Style Collective Actions Emerged, Opt-Out Lawsuits Are on the Rise. Available at: <https://www.crowell.com/en/insights/publications/united-kingdom-nearly-a-decade-after-us-style-collective-actions-emerged-opt-out-lawsuits-are-on-the-rise>; Slaughter and May. (2024). Class Actions: UK-England and Wales. Available at: https://www.slaughterandmay.com/media/2cdngugw/in_depth___class_actions___8th_edition___england_and_wales_5049pdf.pdf; Hausfeld. (2023). UK Collective Redress 2023 Year in Review. Available at: <https://www.hausfeld.com/media/jckcpwan/year-in-review-2023-collectives.pdf>

⁵⁶ The reason for choosing this variable was because it allows us to identify the rate at which mass actions have been recognised; by looking at the orders, we can see courts have allowed mass actions

⁵⁷ Morgan Lewis. (2025). Collective Actions on the Rise in the UK – A Competition Perspective, The Global Legal Post. Available at: <https://www.morganlewis.com/pubs/2025/03/collective-actions-on-the-rise-in-the-uk-a-competition-perspective-the-global-legal-post>; Arnold & Peter. (2024). Breaking New Ground: The Growth of UK Collective Actions. Available at: <https://www.arnoldporter.com/en/perspectives/advisories/2024/10/the-growth-of-uk-collective-actions>; Winston & Strawn. Class Actions: An introduction to UK collective actions. Available at: <https://www.winston.com/print/v2/content/1080752/class-actions-101-an-introduction-to-uk-collective-actions-and-how-they-differ-from-us-class-actions.pdf> CMS (2023) European Class Action Report 2023. Available at: <https://cms.law/en/media/international/files/publications/publications/european-class-action-report-2023?v=1> and Tillema, I. (2019). Entrepreneurial Mass Litigation: Balancing the building blocks.

3.1.2 Collective Actions in the UK and Comparison with Other European Countries

Figure 3 illustrates a significant rise in mass litigation cases in the UK over time, particularly in the last few years. While the number of cases remained relatively low and stable between 1999 and 2020, fluctuating between one and 15 cases per year, a sharp increase began in 2021, with cases nearly doubling from nine in 2020 to 17 in 2021. This upward trend continued, reaching 32 cases in 2022, 30 in 2023 and a record high of 47 in 2024 – a nearly 60 percent increase from the previous year.

FIGURE 3: TOTAL NUMBER OF COLLECTIVE ACTION LAWSUITS IN THE DATABASE (1999-2024)



Source: ECIPE's database of collective action lawsuits.

One of the main drivers behind the increase in mass litigation in the UK is the expansion of collective actions from a relatively narrow focus to the entire economy. An example of this is the previously mentioned *Merricks v. Mastercard* case.⁵⁸ The 2020 UK Supreme Court judgment in the case significantly lowered the threshold for class action certifications, setting a legal precedent that enabled the certification of many cases in 2021, following the introduction of CPOs. This decision allowed the claimant, Merricks, to return to the CAT for certification and proceed to trial, effectively paving the way for similar mass actions. At the same time, there

⁵⁸ *Mastercard Incorporated and others (Appellants) v Walter Hugh Merricks CBE (Respondent)* [2020] UKSC 51

has been a significant rise in competition claims⁵⁹ targeting major technology companies, with collective claims against firms such as Motorola, Microsoft, Apple, Google and Sony. Moreover, during 2023 and 2024, there has been a marked rise in product liability GLOs targeting vehicle manufacturers over allegations of cheating emissions tests.⁶⁰

Table 2 highlights that the UK is the European country with the highest number of mass litigation cases. To perform this comparison, the study narrows the number of years so the figures are comparable with the previous analysis of mass litigation in the EU.⁶¹ Between 2008 and 2023, the UK recorded 156 cases, far surpassing any other country in Europe. This figure is much larger than the number of cases in the Netherlands (93), which is the second most active jurisdiction, more than three times higher than Germany (45) and significantly above France (28).

In the more recent period from 2020 to 2023 – a subset of the broader 2008–2023 timeframe – the UK continued to lead in absolute terms with 88 cases, again matching the highest number recorded in Europe alongside the Netherlands. When adjusting for population size, the UK remains one of the most litigation-intensive jurisdictions in Europe, recording 2.3 cases per million people over this shorter four-year period.⁶² This figure is naturally smaller than for the full 15-year period due to the reduced timeframe, resulting in fewer total cases. However, focusing on this recent period is justified, as Figure 3 illustrates a significant increase in the number of cases in the UK during these years. During this period, the UK's litigation intensity remains considerably higher than that of other large European countries such as Germany (0.5), France (0.4), and Italy (0.2).

TABLE 2: COLLECTIVE ACTION LAWSUITS IN THE UK AND EU, CASE NUMBERS AND PER CAPITA RATES (2008-2023 AND 2020-2023)

TABLE	2008-2023		2020-2023	
	N	Number of cases per million population	N	Number of cases per million population
UK	156	2.3	88	1.3
Austria	11	1.2	5	0.6
Belgium	8	0.7	1	0.1
Bulgaria	11	1.6	0	
Croatia	4	1.0	0	
Cyprus	2	2.2	0	

⁵⁹ While this analysis includes all claims brought under the UK's collective competition regime, it should be noted that several of these cases rely on expansive or novel interpretations of competition law. The procedural power of the regime has incentivised some claimant law firms and funders to frame consumer-based grievances as competition infringements. It is therefore arguable whether all such claims genuinely fall within the substantive boundaries of competition law.

⁶⁰ The NOx emissions group litigation [2024] EWHC 2904 (kb)

⁶¹ Erixon, F., Guinea, O., Pandya, D., Sharma, V., Sisto, E., du Roy, O., Zilli, R., & Lamprecht, P. (2025)/(see note: 44), p.27

⁶² While the UK records 2.3 class action cases per million people, this metric does not necessarily capture the full scale of collective litigation in the UK. UK competition class actions encompassed over 500 million class members filed by the end of 2023. Given the UK's population of approximately 67 million, this equates to more than seven opt-out class actions for every person in the UK. CMS Legal. (2024). CMS European Class Action Report 2024. Retrieved from <https://cms.law/en/int/publication/cms-european-class-action-report-2024>

TABLE	2008-2023		2020-2023	
	N	Number of cases per million population	N	Number of cases per million population
Denmark	10	1.7	0	
Estonia	2	1.8	0	
Finland	3	0.5	0	
France	28	0.4	9	0.1
Germany	45	0.5	35	0.4
Greece	3	0.3	0	
Italy	12	0.2	0	
Latvia	5	2.7	1	0.5
Lithuania	8	2.9	0	
Malta	2	3.8	0	
Netherlands	93	5.3	88	5.0
Poland	31	0.8	1	0.0
Portugal	20	1.9	18	1.7
Slovenia	20	9.5	20	9.5
Spain	7	0.1	4	0.1
Sweden	3	0.3	1	0.1

Source: Erixon, F., et al. (2025). Note: Slovenia records a high number of cases per capita due to a combination of an above-average number of cases and its relatively small population size. Moreover, unlike other European countries, Slovenia provides comprehensive public data on the number of collective actions.

3.1.3 Collective Litigation in the UK across Economic Sectors

Across economic sectors, the evolution of collective actions can be broken down into three stages or trends.

The first trend (1999-2005) of mass litigation was dominated by cases addressing institutional and systemic harm, often rooted in social prejudice and historical injustices. This period marked the early use of GLOs. Key cases during this time included the Alder Hey organs scandal involving the unauthorised retention of children's organs, the South Wales Children's Homes abuse claims, and a series of health-related claims such as those concerning oral contraceptives, coal miners' chronic illnesses, Dexion deafness claims, and osteoarthritis-related 'miner's knee' litigation. These cases reflected a strong societal impulse to use litigation as a tool for acknowledging and addressing legacy harms. Table 3 below includes these cases under consumer protection.

The second trend (2005-2015) is marked by a diversification in the types of collective actions pursued under the GLOs. Rather than a straightforward expansion of consumer protection, this phase reflected an experimental broadening of mass litigation into more technically complex and sectoral varied disputes, across environmental harm, defective medical products and shareholder securities. This period saw growing public awareness of corporate accountability and the rise of complex claims tied to systemic failures. Notable examples include the Corin Metal-on-Metal Hip Group Litigation involving claims around defective medical implants; the Hafod Landfill GLO which dealt with allegations of environmental nuisance; and the Fleetwood GLO concerning land contamination. Securities litigation also gained traction, with investor actions brought under the Financial Services and Markets Act 2000, most notably, the RBS Rights Issue, the CF Arch cru Investment and Diversified funds (Arch cru) and the G4S securities issue, highlighting a new direction for collective redress in the financial sector. Although consumer protection remained an undercurrent, the more significant development was the increasing willingness of claimants and legal professionals to test GLO mechanisms in contexts beyond legacy health and institutional harm.

The third trend (2016-2024) sees a surge in competition law, which began to show early signs at the beginning of the century and carries on after the judgment of *Merricks v. Mastercard*. As a result, claimants increasingly pursued mass economic loss claims against major corporations such as Meta, Amazon, Google and Apple, among others, especially in the technology and digital sectors. Significant cases during this period include *Justin Le Patourel v BT Group* over alleged landline overcharges, *Kent v Apple* for excessive digital pricing and *Sony PlayStation Store* over a pricing claim. This period also reflects a shift in collective actions towards economic harm rather than personal injury or institutional accountability. By early 2025, consumer and environmental class actions had driven the total value of alleged damages in competition cases before the CAT to over £160 billion across 60 cases, with a quarter involving large U.S. tech firms.⁶³

Likewise, over the last decade, there has been a rise in data protection, as seen in *Lloyd v Google* and privacy litigation driven by stricter regulations such as the UK Data Protection Act of 2018 and the introduction of the UK Online Safety Act, but also from a more litigious environment. This trend also encompassed a wave of product liability actions, notably against car manufacturers such as Volkswagen (VW), Mercedes-Benz and BMW for alleged emissions cheating. The VW NOx Emissions case stands as one of the largest GLOs to date. Meanwhile, environmental class actions also continued to emerge including *Professor Carolyn Roberts v United Utilities*.

The next table highlights these trends by presenting the total number of collective actions across seven sectors and their popularity in each of the periods.

⁶³ Ames, J. (2025, February 28). Class action claims for 'competition law breaches' total £160bn. The Times. <https://www.thetimes.com/business-money/companies/article/class-action-claims-for-competition-law-breaches-total-160bn-fk5tqwvtp>

TABLE 3: NUMBER OF COLLECTIVE ACTION LAWSUITS ACROSS SECTORS

	1999-2004		2005-2014		2015-2024	
	Number of cases	%	Number of cases	%	Number of cases	%
Competition	5	10%	7	11%	77	45%
Consumer Protection	33	69%	26	41%	24	14%
Data Protection	0	0%	1	2%	9	5%
Environment	3	6%	13	21%	21	12%
Finance	3	6%	7	11%	12	7%
Product Liability	4	8%	5	8%	14	8%
Securities	0	0%	4	6%	15	9%

3.2 Factors Associated with the Rise of Collective Actions

3.2.1 Economic Size, Population and GDP per Capita

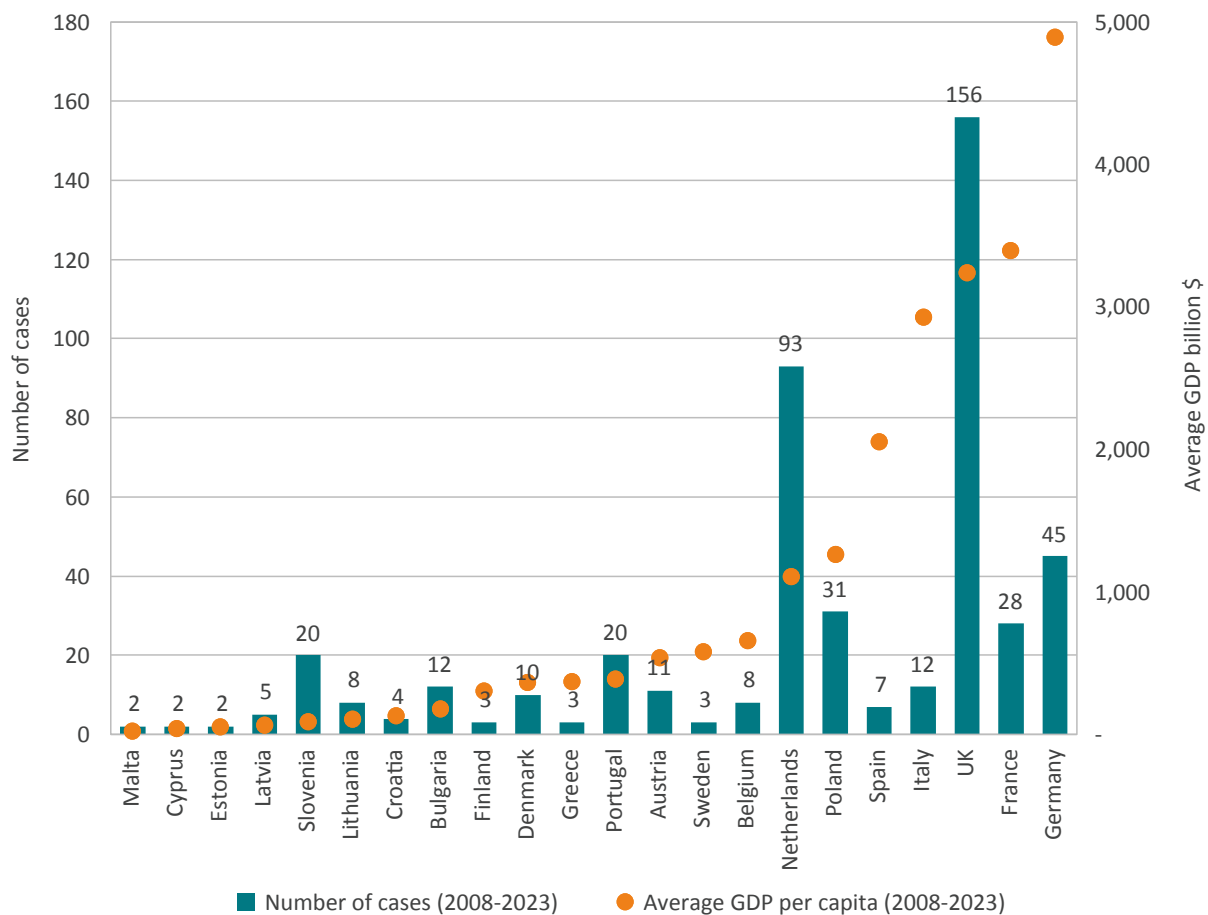
A natural assumption would be that larger economies, with higher GDP, would experience a higher number of collective action lawsuits. However, the data presented in Figure 4 suggests that the relationship between economic size and litigation volume is not strictly linear. While some large economies record a substantial number of cases, others report far fewer. At the same time, smaller economies such as the Netherlands, Slovenia, or Portugal display disproportionately high litigation volumes relative to their GDP. The correlation between the number of collective actions and GDP is only moderate at 0.5.⁶⁴

Another potential explanation behind the difference in mass litigation cases across countries would be that more populous nations would experience a higher number of collective action lawsuits, simply due to the greater number of potential claimants. However, as was the case with GDP, there is no clear linear relationship between population size and the number of mass litigation cases (see Figure 5). Similarly, it could be argued that wealthier countries, measured by GDP per capita, might experience a higher volume of collective actions due to greater economic activity and more developed financial market. However, also in this case, there is no clear relationship between a country's wealth and the number of mass litigation cases (see Figure 6). The correlation between the number of collective actions and population and the number of collective actions and GDP per capita was only 0.5 and 0.3 respectively.

⁶⁴ Correlation is a statistical measure that describes the strength and direction of a relationship between two variables. A correlation of 1 indicates a perfect positive relationship, meaning that as one variable increases, the other variable also increases in a perfectly linear manner. A correlation of -1 indicates a perfect negative relationship, meaning that as one variable increases, the other variable decreases in a perfectly linear manner. A correlation of 0 suggests no linear relationship between the variables. This correlation was calculated using 42 data points. Therefore, it should be regarded as a summary statistic, and it should be interpreted with caution.

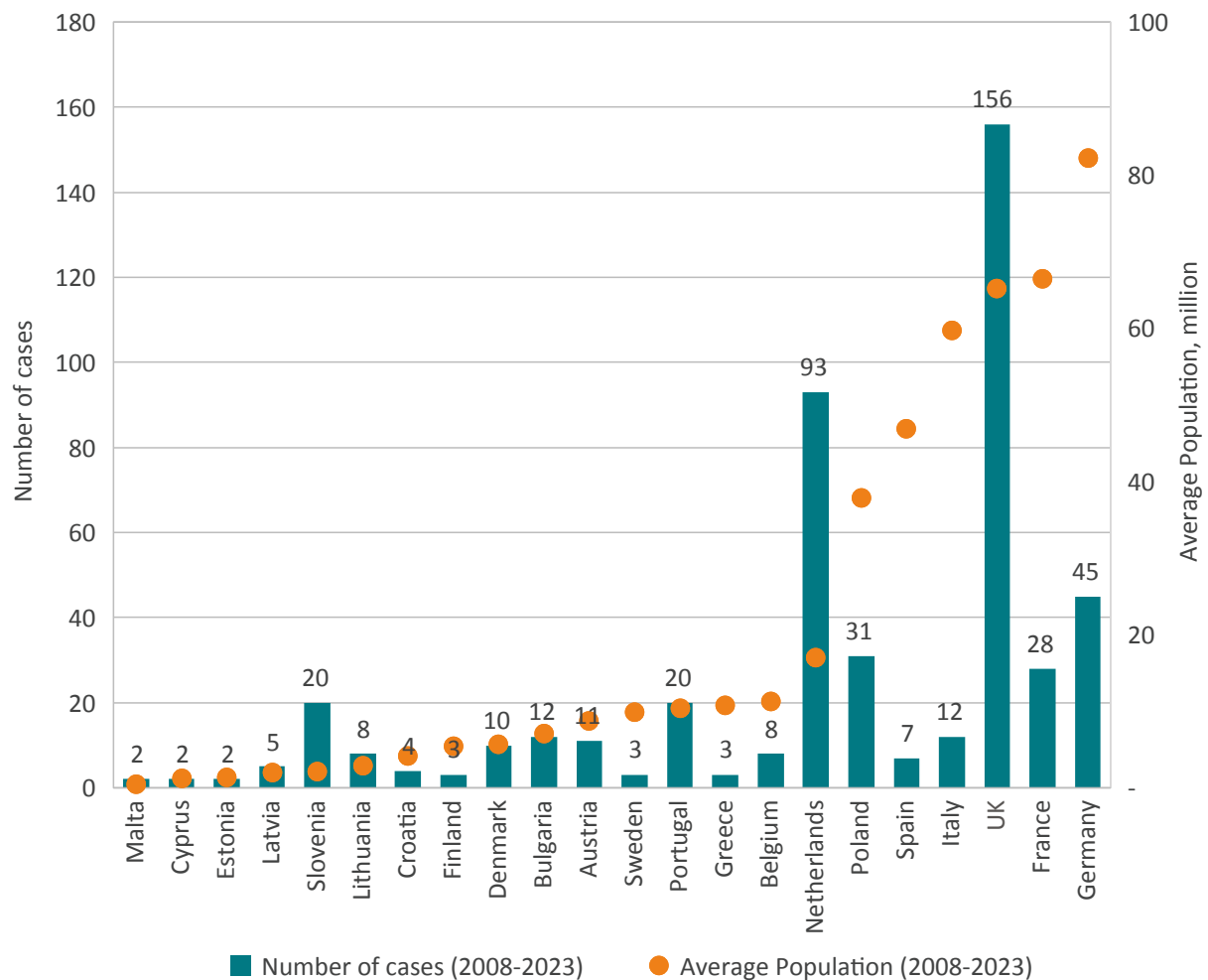
Importantly, and as mentioned previously, the next three figures also show that the UK stands out as the European country with the highest number of mass litigation cases, far surpassing other economies of similar economic and population size, as well as level of economic development.

FIGURE 4: NUMBER OF COLLECTIVE ACTION LAWSUITS (2008-2023) IN THE DATABASE AND AVERAGE GDP (2008-2023) IN THE UK AND EU MEMBER STATES



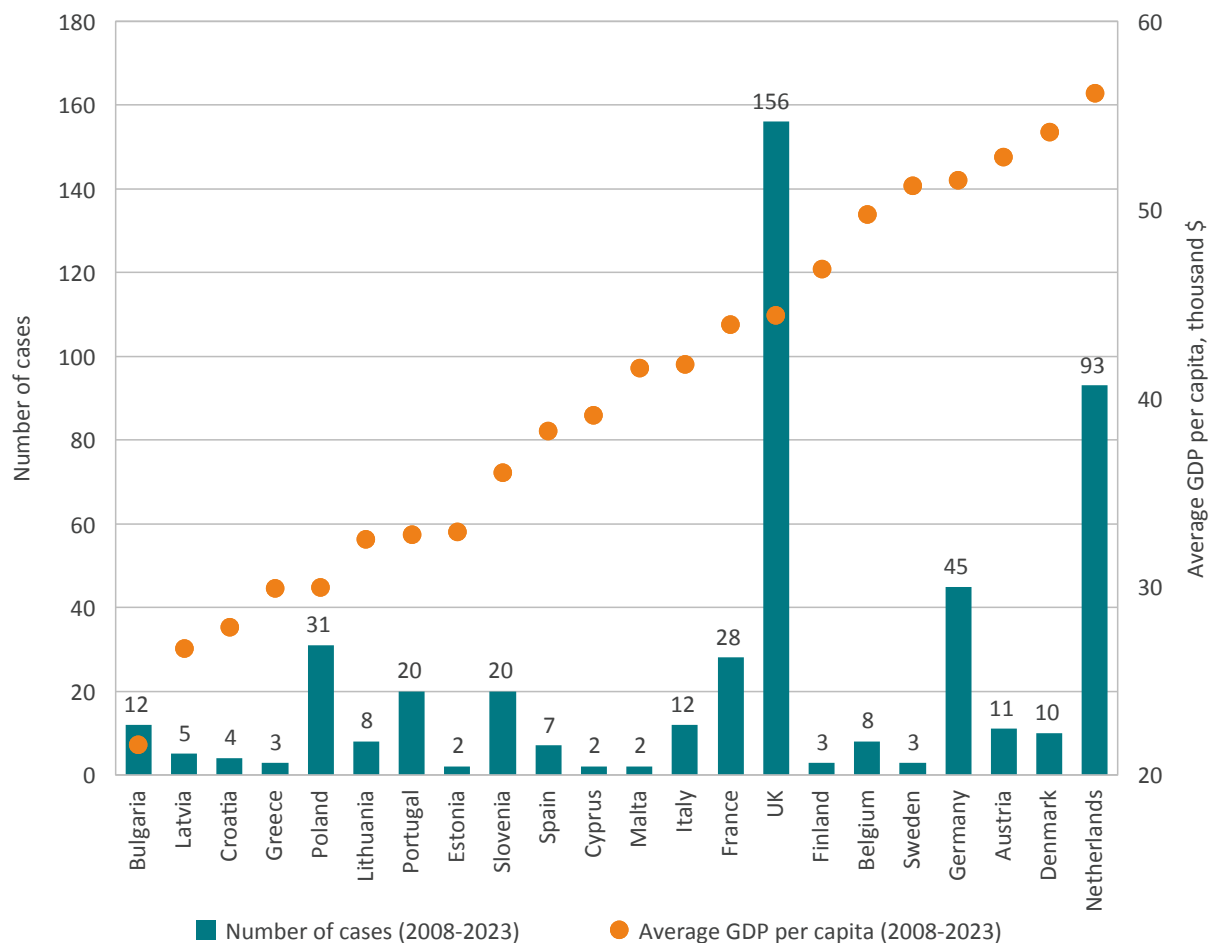
Source: Erixon, F., et al. (2025); World Bank, PPP (constant 2021 international bn \$)

FIGURE 5: NUMBER OF COLLECTIVE ACTION LAWSUITS (2008-2023) IN THE DATABASE AND AVERAGE POPULATION (2008-2023) IN THE UK AND EU MEMBER STATES



Source: Erixon, F., et al. (2025); World Bank (Population, total)

FIGURE 6: NUMBER OF COLLECTIVE ACTION LAWSUITS (2008-2023) IN THE DATABASE AND AVERAGE GDP PER CAPITA (2008-2023) IN THE UK AND EU MEMBER STATES



Source: Erixon, F., et al. (2025); World Bank, PPP (current international thousand \$)

3.2.2 Rules and Institutions

As previously described, the acceleration in the number of mass litigation cases in the UK between 2021 and 2024 coincided with changes in the rules and court decisions that facilitate the use of collective actions. In addition to these favourable rules and court decisions, there has been an emergence of an eco-system of consumer organisations, law firms and other intermediaries based in the UK, providing legal, financial, insurance and other services that have also contributed to the growth in collective actions.

The Institutional Framework for Mass Litigation (IFML) Index captures these elements. The index is the result of a conceptual model based on three dimensions: (1) existing collective action processes; (2) characteristics of the legal system governing mass litigation; and (3) institutional

factors outside the legal system. This index was previously used for EU countries and has been updated to include the UK.⁶⁵

This section presents the three variables and calculates the score of the IMFL for the UK and other European countries.

1. Existing collective action processes

This variable captures those countries where a legal system for collective action has been in place prior to 2020 and where there has been a significant number of collective action cases⁶⁶ (see Annex 3 for a full explanation of the variable and how it was calculated). The year 2020 was chosen because it was the year when EU countries had to establish a system of collective action following the EU Representative Action Directive.

- **Widely used mass litigation system already in place prior to 2020:** scores 1 if a country had a system of collective action prior to 2020 and the number of collective action cases between 2008 and 2023 was above the average.

As explained, the UK, whose legal system has had a form of mass litigation for more than a century, experienced a revitalisation of this kind of lawsuits after the introduction of the Civil Procedure Rules in 1999 and the implementation of Group Litigation Orders (GLOs) in May 2000. Over the analysed period, the UK registered the highest number of collective actions across Europe.

In addition to the UK, France, Germany, the Netherlands and Poland also meet the two criteria and they each score 1 in this variable.

2. Characteristics of the legal system that regulates mass litigation

Certain features of the legal system that regulates mass litigation have a direct impact on the likelihood of these cases being brought in a particular jurisdiction. The following four variables describe some of the features that support the emergence of mass litigation.

- **Opt-out system:** an opt-out system leads to a much higher number of included beneficiaries in collective action cases.⁶⁷ Conversely, an opt-in system requires proactive participation already during the court procedure, potentially limiting the number of future beneficiaries. A score of 1 for a country indicates that collective actions mostly followed the opt-out model.

⁶⁵ The scores for the EU countries in the Erixon, F., et al. and this one differ slightly for the following reasons: (1) The IFML including the UK does not include whether countries have a qualified entity since this concept only applies to EU countries and it is not part of English law; and (2) the variable 'Number of funders' is equal to 1 when countries are above the average. The introduction of the UK changes the average and the countries scoring 1 in this dimension.

⁶⁶ The selection of 2020 refers to the approval of the Representative Actions Directive (RAD), which established a harmonised framework for collective redress mechanisms across EU member states. See Annex 3 for more details about the calculation of this variable.

⁶⁷ An opt-out system results in a higher number of beneficiaries included in collective actions, though actual participation depends on how many claim their share. It's important to distinguish between claimants, who are active participants in court, and potential beneficiaries, who are not. While funders and claimant lawyers may argue that opt-out systems benefit consumers, many beneficiaries often do not claim their share.

In the UK, the opt-out system is available only through Representative Actions and Collective Proceedings Orders, the latter introduced under the Consumer Rights Act 2015 (CRA). However, Representative Actions have declined in popularity following the Supreme Court's decision in *Lloyd v Google LLC*, which set a high bar for claimants. As a result, opt-in mechanisms remain the dominant approach for mass litigation in England and Wales, with opt-out procedures largely confined to competition law.

Bulgaria, Hungary, the Netherlands, Portugal, Slovenia and Spain score 1 in this variable⁶⁸.

- **No requirement to disclose funding sources:** the emergence of third-party litigation funding (TPLF) incentivises mass litigation by providing financial backing to claimants. TPLF is a process which involves a third party otherwise unconnected to the dispute that funds the proceedings, usually on the claimant side, in exchange for a share of any resulting financial award.⁶⁹ If the funded party is not successful then the funder loses its investment.⁷⁰

Greece and Ireland have banned TPLF for the time being,⁷¹ and several other European countries have established procedural rules aimed at mitigating conflicts of interest between funders and claimants, such as an option for the court to request disclosure of the funding agreement. The TPLF variable scores as 1 when there is no systemic or compelling requirement for such disclosure. This means that more litigation may result because third-party funders are permitted to operate without needing to comply with transparency requirements.

In the UK, funding arrangements in collective proceedings before the CAT are subject to some disclosure requirements, particularly during certification applications. However, there is no general obligation to disclose funding arrangements in other types of proceedings.

The UK, Belgium, Bulgaria⁷², Czechia, Denmark, Finland, France, Italy, Latvia, Lithuania, Netherlands, Poland, Romania and Slovakia score 1 for this variable.

- **No loser pays principle:** unlike the US system where each party generally bears its own legal costs, European countries apply the 'loser pays' rule. This rule aims to deter frivolous lawsuits by placing a financial burden on the losing party that

⁶⁸ Laws on collective actions are currently under discussion in Bulgaria and Spain. In the latest draft of these regulations, both countries had chosen an opt-out system. However, the use of an opt-out approach may change in the final laws to be proposed in the future.

⁶⁹ Banerjee, S. (2022, March 6). Worldwide: Third-Party Funding in International Arbitration. Monday. Available at: <https://www.mondaq.com/india/arbitration--dispute-resolution/1162218/third-partyfunding-in-international-arbitration>

⁷⁰ Messina, V. (2019). Third-Party Funding: The Road to Compatibility in International Arbitration. *Brook Journal of International Law*, 45, 433.

⁷¹ AmCham EU. (2021). Regulating Third Party Litigation Funding. Available at: https://www.amchameu.eu/system/files/position_papers/tplf_final.pdf

⁷² The draft law on collective actions in Bulgaria does not include a systemic requirement to disclose sources of funding. However, this requirement may change in the final law.

is responsible for covering their own legal costs and potentially those of the opposing side as well. This can discourage claimants with weak cases⁷³ from pursuing litigation as the potential cost of losing may be substantial⁷⁴.

The degree to which claimants are discouraged from filing nuisance lawsuits will depend on the percentage of the winning party's costs for which the loser is required to pay. The loser pays rule serves as a deterrent against frivolous claims, thus the variable score is 1 for those countries where the loser-pays rule is not applied.

In the UK, English courts apply a strong loser pays rule, under which the winning party, whether claimant or defendant, is generally awarded its legal costs.

Austria, Belgium, Czechia, Finland, Latvia, Portugal, Slovakia and also Germany where the amount to be paid to a winning defendant is limited by law to only a negligible amount relative to the total costs incurred, score 1 for this variable.

3. Institutional factors outside the legal system

Other factors outside the legal systems can also explain the differences in the volume of collective actions between countries. For instance, the emergence of an ecosystem of legal firms and financial institutions to pursue these actions increases the likelihood of more cases in the future as the financial rewards attract new entrants into the market.

In the UK, these institutional factors are not only more varied but also stronger than in other European countries. As mentioned earlier, the UK has a well-developed infrastructure for consumer representation and a strong litigation culture, with early collective actions originating from consumer organisations. Moreover, the deliberate use of collective litigation as a campaigning tool by consumer activist and environmental groups has further strengthened these institutional factors. Finally, the existing infrastructure of law firms, funders and insurance, such as ATE, not only provides the tools to launch collective actions but also incentivises these companies to continue funding new cases to develop their business model.⁷⁵

However, most of these factors are specific to the UK and difficult to quantify on a comparative basis. Therefore, to measure an aspect of these institutional factors that can be compared across countries, we use the number of third-party litigation funders in each jurisdiction.

- **Number of funders:** litigation funding (especially if it is unregulated or only lightly regulated) supports the growth of mass litigation. Even though TPLF is not

⁷³ Gryphon, M. (2010). Assessing the Effects of a Loser Pays Rule on the American Legal System: An Economic Analysis and Proposal for Reform. *Rutgers Journal of Law and Public Policy*, 8, 567.

⁷⁴ Veljanovski, C. (2011). Third Party Litigation Funding in Europe. *Journal of Law and Economics Policy* 8, 405.

⁷⁵ Litigation funding is increasingly regarded by prominent investors as a viable and attractive asset class. Nicola Horlick, a veteran City fund manager, described the current wave of commission finance claims as "the biggest thing that is likely to happen in litigation funding in the next 15 years." She noted that her firm's priority was to support law firms in aggregating claims, citing the scale and potential returns of such activity. Ricketts, D. (2025, March 26). Nicola Horlick delays digital bank plans amid litigation finance push. *Financial News London*. Available at: <https://www.fn london.com/amp/articles/nicola-horlick-delays-digital-bank-plans-amid-litigation-finance-push-07cdabc9>

as developed as in the US, many litigation funders are active in many European markets, including the UK. Moreover, an increasing number of litigation funders in a particular country indicates that funders believe there will be a growing number of collective actions in the future. This variable scores 1 if a country has an above-average number of funders.

A report⁷⁶ estimates that 44 funders operate in England and Wales. However, the actual number might be higher as there is no obligation to disclose the use of third-party funding.⁷⁷ Nonetheless, the figure of 44 funders already cements the UK as one of the European countries with the largest number of litigation funders.

Based on desk research quantifying the number of funders for the other European countries, in addition to the UK, Germany and the Netherlands score 1 in this variable.

Each country's IFML score is calculated as the weighted sum of the above variables. The weights, decided in discussions with legal experts, reflect the perceived impact on the likelihood of collective actions being brought. The weights for each of the variables are the following:

- Pre-existing and widely used mass litigation systems have a weighting of 30 percent.
- Characteristics of the legal system governing collective action have a weighting of 50 percent. The three variables that make up this factor are: (1) the opt-out system, weighted at 20 percent; (2) no requirement to disclose funding sources, weighted at 15 percent; and (3) no 'loser pays' principle, weighted at 15 percent.
- Institutional factors outside the legal system have a weighting of 20 percent.

The equation used is the following:

$$IFML_i = (0.3 \times \text{Popular mass litigation prior to 2020}) + (0.2 \times \text{Opt out}) \\ + (0.15 \times \text{No funding disclosure}) + (0.15 \times \text{No loser pays}) \\ + (0.2 \times \text{Number of funders})$$

The next table and figure present the results for the UK and 22 European countries for which data was available. The UK, the Netherlands and Germany top the IFML Index due to their well-established mass litigation regimes that have been functioning for years. The UK achieves a high score of 0.7, largely due to the presence of an active collective action framework, multiple litigation funders, and a system that does not impose requirements to disclose funding sources. If the index were to have considered the UK as a country with an opt-out system, which is

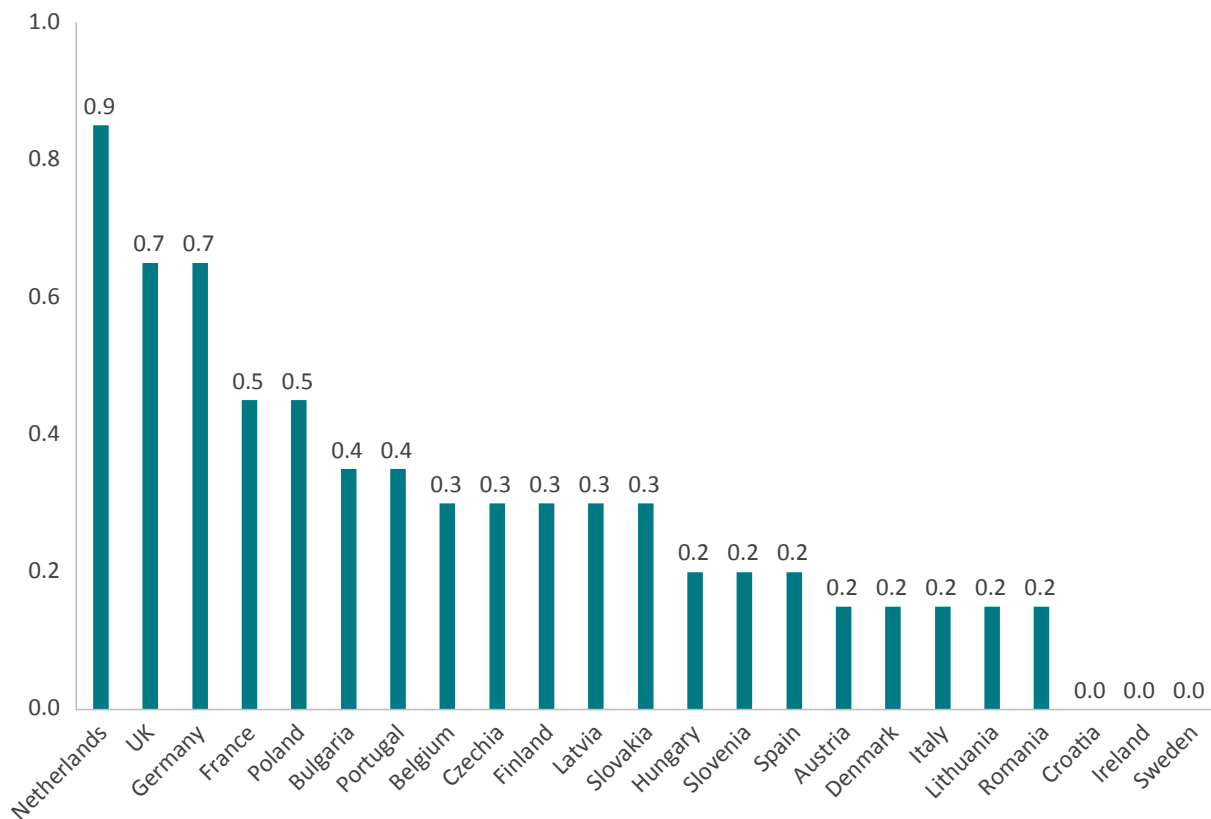
⁷⁶ Civil Justice Council. (2024). Review of litigation funding: Interim report and consultation. Available at: <https://www.judiciary.uk/wp-content/uploads/2024/10/CJC-Review-of-Litigation-Funding-Interim-Report.pdf>

⁷⁷ Other reports estimate the number of funders at 72. Hollingsworth, M. (2025, March 25). UK's biggest class action lawsuit could expose the perils of litigation funding. CityAm. Available at: <https://www.cityam.com/uks-biggest-class-action-lawsuit-could-expose-the-perils-of-litigation-funding/>; even using the more conservative Civil Justice Council figure, the UK hosts more litigation funders than the United States, where only 39 are currently active, according to a 2024 Reuters report. Merken, S. (2024, March 27). US litigation funding in state of flux as deal commitments dip, says report. Reuters. <https://www.reuters.com/legal/transactional/us-litigation-funding-state-flux-deal-commitments-dip-says-report-2024-03-27/>

allowed in certain types of collective actions, the UK ranking would have been equal to the Netherlands, the country with the highest score (0.9).

TABLE 4: INDEX OF INSTITUTIONAL FRAMEWORK FOR MASS LITIGATION (IFML)

	Existing collective action processes	Characteristics of the legal system governing mass litigation			Institutional factors outside the legal system	IFML Index (0-1)
	Widely used mass litigation prior to 2020	Opt-out system	No requirement to disclose funding sources	No loser pays principle	Number of funders	
<i>Weights</i>	0.3	0.2	0.1	0.1	0.2	
Netherlands	1	1	1	0	1	0.9
UK	1	0	1	0	1	0.7
Germany	1	0	0	1	1	0.7
France	1	0	1	0	0	0.5
Poland	1	0	1	0	0	0.5
Bulgaria	0	1	1	0	0	0.4
Portugal	0	1	0	1	0	0.4
Belgium	0	0	1	1	0	0.3
Czechia	0	0	1	1	0	0.3
Finland	0	0	1	1	0	0.3
Latvia	0	0	1	1	0	0.3
Slovakia	0	0	1	1	0	0.3
Hungary	0	1	0	0	0	0.2
Slovenia	0	1	0	0	0	0.2
Spain	0	1	0	0	0	0.2
Austria	0	0	0	1	0	0.2
Denmark	0	0	1	0	0	0.2
Italy	0	0	1	0	0	0.2
Lithuania	0	0	1	0	0	0.2
Romania	0	0	1	0	0	0.2
Croatia	0	0	0	0	0	0.0
Ireland	0	0	0	0	0	0.0
Sweden	0	0	0	0	0	0.0

FIGURE 7: INDEX OF INSTITUTIONAL FRAMEWORK FOR MASS LITIGATION (IFML)

Source: Author's calculations.

A correlation analysis between the IFML's scores and the number of collective action cases for the period 2008–2023 in Europe shows a close relationship. The IFML scores and the number of cases have a correlation of 0.8, indicating a positive relationship between the index results and the number of collective action cases per country. The findings of the IFML index show that the easier it is to bring mass litigation cases, the more cases appear.

The hypothesis that having an institutional framework that facilitates mass litigation will lead to a higher number of cases can also be tested by looking at the geographic spread of some collective action cases from the US to the UK and other European countries.

Mass litigation often originates in the US but, increasingly, claimant law firms are replicating or adapting these claims across suitable European jurisdictions. This internationalisation reflects a strategic effort to expand the geographic reach of litigation, often by targeting multiple jurisdictions simultaneously.⁷⁸ In this context, it is reasonable to assume that when deciding where to initiate proceedings in Europe, claimant lawyers will prioritise jurisdictions that

⁷⁸ Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others. Available at: <https://www.catribunal.org.uk/cases/14337722-dr-liza-lovdahl-gormsen> ; Mastercard Class Action. (see note: 3) ; Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd. Available at: <https://www.catribunal.org.uk/cases/14037721-dr-rachael-kent>

are procedurally advantageous and where the likelihood of winning the case or obtaining a settlement is higher.⁷⁹

Our database offers a limited number of cases but they are still illustrative, nonetheless (see Table 5). Of the 373 cases recorded for the EU countries and 317 recorded in the UK, 78 mass action lawsuits are related to cases that were also launched against the same companies in the US. Of those 78 cases, the highest number (30) were launched in the UK and 14 in the Netherlands, representing 56 percent of the total. These are also countries at the top of the IFML Index⁸⁰, meaning that they are countries whose institutional framework is the most attractive for mass litigation to prosper.

TABLE 5: NUMBER OF COLLECTIVE ACTION LAWSUITS AGAINST THE SAME COMPANY AS A US CASE

Country	Number of Cases	Percentage of all cases
UK	30	38%
Portugal	17	22%
Netherlands	14	18%
France	5	6%
Germany	5	6%
Belgium	4	5%
Spain	2	3%
CJEU case	1	1%

Source: Author's calculations.

4. THE ECONOMIC IMPACT OF COLLECTIVE LITIGATION

This chapter examines the economic implications of mass litigation on the UK economy. It explores how these actions affect UK-based companies, both domestically and internationally, and discusses the broader consequences for foreign direct investment (FDI). The chapter also includes a scenario analysis to assess the potential economic impact of rising mass litigation by examining low, medium and high-growth scenarios. Finally, the chapter highlights the intersection of mass litigation with the UK's industrial strategy, which seeks to foster growth in key sectors, and the extent to which the rise of collective actions undermines the UK Government's economic ambitions.

⁷⁹ Merken. (2022). U.S. trial lawyer Mark Lanier opens U.K. law firm as class actions spread. Available at: <https://www.reuters.com/legal/legalindustry/us-trial-lawyer-mark-lanier-opens-uk-law-firm-class-actions-spread-2022-10-20/>;

⁸⁰ IFML Index is higher for countries with opt-out system. However, in the case of forum shopping discussed here, opt-in systems may be more advantageous. This is because opt-out regimes generally only apply to individuals domiciled in the country where the claim is filed. For example, while the UK permits opt-out collective proceedings for competition claims, this mechanism cannot be applied on an EU-wide or global basis. Only UK-domiciled individuals fall within the opt-out class, though non-UK individuals may still participate on an opt-in basis. This territorial limitation constrains forum shopping under opt-out systems. In contrast, opt-in systems offer greater flexibility. Once a claimant firm has built a sufficient book of claimants, it can select and file in the forum most likely to assume jurisdiction and offer favourable conditions.

4.1 Implications for UK Firms and Foreign Investment

The cost of collective litigation can be felt beyond the courtroom. In fact, the most significant economic impacts are not related to settlement payments, but rather the extent to which mass litigation affects individual business decisions, which, when aggregated, have substantial effects on the overall investment and R&D spending. Moreover, the impact of mass litigation on the UK economy may be larger than in other economies, given the role that foreign companies play in the UK economy, either through investments in the UK market or by establishing their headquarters in the country.

The risk of mass litigation is likely to negatively affect levels of foreign investment, which is one of the UK Government's priorities in its industrial strategy (see Box 1). High levels of litigation risk can lead to increased legal costs and substantial compensation. These factors create a less stable and predictable business environment, which reduces the attractiveness of the UK as a destination for investment. This is important because of the close relationship between FDI and productivity, an economic variable by which the UK economy has been lagging for years.⁸¹

There are several factors making the UK an attractive destination for foreign companies: a business-friendly regulatory environment, a competitive tax system, a sophisticated funding environment – with London as a global financial hub – and an internationally recognised legal system. In 2022, the UK received £78.8 billion in greenfield FDI, more than the two top European countries, Spain and Germany, combined.⁸² However, the rapid rise and relative easiness to launch a collective action presented previously, undermines rather than supports the UK's attractiveness to foreign firms.

One of the key risks associated with mass litigation in the UK is cross-border litigation, particularly in cases where parent companies are sued for the actions of their subsidiaries abroad. This phenomenon, known as 'parent trap litigation', has led to high-profile cases where multinational corporations headquartered in the UK were held accountable in English courts for alleged human rights abuses, environmental damage and corporate negligence that occurred in foreign jurisdictions.⁸³ A notable case is *Municipio de Mariana & Ors v BHP Group*, involving a claimant pool of 600,000 plaintiffs allegedly affected by the 2015 Fundão Dam collapse.⁸⁴

The UK banking sector is another good example of an economic area harmed by mass litigation, both at home and abroad. Domestically, in addition to the Mastercard case described earlier,

⁸¹ Multinational enterprises (MNEs) tend to operate at the technological frontier, bringing advanced technology, know-how and management practices that improve the productivity of the host economy. See Javorcik, B. S. (2004). "Does Foreign Direct Investment Increase the Productivity of Domestic Firms? In Search of Spillovers Through Backward Linkages." *American Economic Review*, 94(3), 605–627. In addition, FDI can lead to productivity gains in local firms through spillover effects when domestic firms are capable of learning from MNEs. See Markusen, J. R., & Venables, A. J. (1999). "Foreign Direct Investment as a Catalyst for Industrial Development." *European Economic Review*, 43(2), 335–356.

⁸² US Department of State. (2024). 2024 Investment Climate Statements: United Kingdom. Available at: [https://www.state.gov/reports/2024-investment-climate-statements/united-kingdom/#:~:text=The%20United%20Kingdom%20\(UK\)%20is,economy%20with%20world%2Dclass%20talent](https://www.state.gov/reports/2024-investment-climate-statements/united-kingdom/#:~:text=The%20United%20Kingdom%20(UK)%20is,economy%20with%20world%2Dclass%20talent).

⁸³ *Lungowe v Vedanta Resources plc* [2019] UKSC 20 and *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; Plaintiffs sought to hold UK-based parent companies accountable in English courts for alleged damages caused by their subsidiaries abroad.

⁸⁴ *Municipio de Mariana v BHP Group (UK) Ltd (formerly BHP Group Plc)* [2022] EWCA Civ 951. The case includes claims against multi-jurisdictional parent companies, specifically BHP UK and BHP Australia. The outcome could set a landmark precedent for companies seeking to hold parent companies accountable for environmental harm caused by their subsidiaries.

the Royal Bank of Scotland,⁸⁵ the Lloyds Banking Group, Close Brothers and Santander have faced collective actions.⁸⁶ The case of Santander is particularly telling, as it appears that the collective actions faced by the bank have contributed to internal discussions about whether to exit the UK market.⁸⁷ Internationally, given the UK's economic integration with countries such as Australia and the US, where mass litigation is commonplace, the UK banking sector has also been exposed to several collective actions.⁸⁸

Another sector vital for UK economic growth that has faced a rise in collective actions is the digital technology sector. The statistics presented in Table 3 show the increasing number of mass litigation cases related to data protection. One of these cases was against DeepMind, a UK-based AI company (owned by Google). The collective action was brought by a hospital patient on behalf of 1.6 million people over medical records. The case arose after the Royal Free London NHS Trust transferred confidential patient data to DeepMind as part of an app development project. Although the case was dismissed, it signalled a shift in the legal system where companies could face mass litigation over data breaches or privacy violations.

Moreover, cases in the digital space related to data privacy, cybersecurity and artificial intelligence may become more popular with the introduction of Digital Markets, Competition and Consumers Act 2024. The Act allows the court to extend orders to all members of a corporate group. This could make other companies within the same corporate group liable, which may expose even further UK-based companies and non-UK subsidiaries operating in the UK to mass litigation.⁸⁹

The effects of increased litigation are not limited to large multinational corporations. Nearly three-quarters (72 percent) of UK firms have experienced a rise in litigation over the past five years, with the majority (60 percent) expecting further increases.⁹⁰ A multi-sector survey of 764 senior leaders attributes this trend to several factors, including the rising cost of living, ongoing economic instability, and a more litigious culture in the UK. Since 2019, more than two fifths (43 percent) of businesses have faced legal threats, many on multiple occasions, and more than a quarter (28 percent) reported that litigation cases have increased by over 40 percent.

⁸⁵ Royal Bank of Scotland (RBS) - Rights Issue Litigation (2008-2017). Shareholders sued RBS for £4 billion, alleging misleading statements about its financial health before a £12 billion rights issue in 2008, settled for £900 million.

⁸⁶ These three banks faced collective action cases for undisclosed commission payments between car dealers and lenders, leading to inflated interest rates for consumers. To cover for the potential settlement payments, Santander has set aside nearly £295 million to cover compensation costs; Close Brothers has made a provision of £165 million and Lloyds Banking Group has also allocated £450 million for similar exposures. See Kollwe, J. (2025, March 18). Car finance firm Close Brothers slumps to loss after taking £165m hit. *The Guardian*. <https://www.theguardian.com/business/2025/mar/18/car-finance-close-brothers-loss-shares-motor-and-london-stock-exchange>. (2024, November). 3rd Quarter Results. Available at: <https://www.londonstockexchange.com/news-article/95VC/3rd-quarter-results/16773085>

⁸⁷ Cinco Dias. (2025, March 19). Santander announces the closure of one in five branches in the United Kingdom, putting 750 jobs at risk. Available at: <https://cincodias.elpais.com/companias/2025-03-19/el-santander-anuncia-el-cierre-de-una-quinta-parte-de-sus-oficinas-en-reino-unido-y-peligran-750-empleos.html>

⁸⁸ RPC. (2023). UK's biggest banks facing 109 class action lawsuits. Available at: <https://www.rpclegal.com/press-and-media/uks-biggest-banks-facing-109-class-action-lawsuits/#:~:text=The%20UK's%20leading%20banks'%20are,international%20law%20firm%20RPC%20reveals.>

⁸⁹ Kwan, J. (2023). Parental Liability under the UK DMCC Bill. *Kluwer Competition blog*. Available at: <https://competitionlawblog.kluwercompetitionlaw.com/2023/12/13/parental-liability-under-the-uk-dmcc-bill/>; "Two bodies would be "interconnected" and therefore form part of a "group": (a) if one of them is a subsidiary of the other; or (b) if both of them are subsidiaries of the same body corporate."

⁹⁰ Gallagher. (2024, May 13). UK businesses hit by rising levels of litigation, research finds. Available at: [https://www.ajg.com/uk/news-and-insights/uk-businesses-hit-by-rising-levels-of-litigation/#:~:text=Nearly%20three%20quarters%20\(72%25\),over%20the%20coming%2012%20months.](https://www.ajg.com/uk/news-and-insights/uk-businesses-hit-by-rising-levels-of-litigation/#:~:text=Nearly%20three%20quarters%20(72%25),over%20the%20coming%2012%20months.)

4.2 Potential Impact of Increased Private Enforcement in the UK

4.2.1 A Review of the Empirical Literature

There have been several empirical studies that attempt to estimate the costs of collective action. Most of these studies have been undertaken for companies operating in the US, yet they provide useful data that illustrates the impact of private enforcement on a variety of economic indicators.

For instance, several studies indicate that private enforcement in the US incurs significant costs, reaching an estimated 1.6 percent to 1.8 percent of US GDP.^{91 92} The 1.6 percent of the US GDP estimate comes from a 2013 study by the US Chamber's Institute for Legal Reform. In 2024, the researchers updated the study⁹³ with new estimates of the costs and compensation of the US tort system. The study found that the US incurs significant costs, reaching an estimated 2.1 percent of its GDP in 2022.

A substantial part of private enforcement costs relates to litigation costs. A 2009 survey of Fortune 200 companies found that average litigation costs (encompassing prosecution and defence) rose dramatically, reaching US\$ 140 million in 2008, a 112 percent increase from US\$ 66 million in 2000.⁹⁴ Another study conducted within the same timeframe indicates a 78 percent increase in average annual litigation costs as a percentage of revenue.⁹⁵ The 2024, US Chamber's Institute for Legal Reform study referenced above also provides us an estimate of the increase in total US tort costs (costs and compensation) over time of 51 percent between 2016 and 2022.⁹⁶

Private enforcement can also increase compliance costs for companies. These costs include ongoing expenses for adhering to regulations and one-off costs associated with implementing new regulations. A 2022 study by the National Bureau of Economic Research estimated that US companies, where private enforcement is the norm, spend between 1.3 percent and 3.3 percent of their total wage bill on compliance.⁹⁷

To cover for the risk of litigation, companies buy insurance. However, in the US, a trend of large legal awards to plaintiffs in areas like product liability and medical malpractice is leading to escalating insurance claim losses for defendants' insurers. These rising costs translate to

⁹¹ Towers Watson. (2010). Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System. US Counsel of Economic Advisors.

⁹² McKnight, D. L., & Hinton, P. J. (2013). International Comparisons of Litigation Costs: Europe, the United States and Canada. US Chamber Institute for Legal Reform.

⁹³ McKnight, D. L., & Hinton, P. J. (2024). Tort Costs in America: Third Edition. US Chambers of Commerce Institute for Legal Reform.

⁹⁴ McKnight, D. L., & Hinton, P. J. (2011). Creating conditions for economic growth: the role of the legal environment. NERA Economic Consulting.

⁹⁵ Lawyers for Civil Justice, Civil Justice Reform Group, and the U.S. Chamber Institute for Legal Reform (2010). Litigation Cost Survey of Major Companies. 2010 Conference on Civil Litigation, Duke Law School.

⁹⁶ McKnight, D. L., & Hinton, P. J. (2024), (see note: 93)

⁹⁷ Trebbi, F., & Zhang, M. B. (2022). The cost of regulatory compliance in the United States (No. w30691). National Bureau of Economic Research.

higher insurance premiums and potentially reduced availability of liability coverage, ultimately increasing uninsured legal liability risks for US businesses. A recent example is the 20 percent average rate increase observed for umbrella policies – particularly susceptible to large claims – in the first half of 2021.⁹⁸

Furthermore, the inherent uncertainty associated with private enforcement can divert valuable time and resources from core business activities. Senior management may be required to dedicate significant resources to navigating the complexities of potential litigation, leading to distorted business decision-making.⁹⁹ For example, a study examining US private companies found that the threat of lawsuits, including potentially frivolous or unfair claims, influenced the business decisions of 62 percent of respondents, leading them to prioritise avoiding litigation over other strategic considerations such as business growth.¹⁰⁰

The decision to pursue litigation for non-compliance can be influenced by various factors, including the size of the defendant. While SMEs generate a smaller share of commercial revenue (approximately 20 percent), they disproportionately bear the burden of tort liability costs, estimated at nearly half (48 percent) in the US.¹⁰¹ This disparity is further amplified by the impact of insurance premiums and legal penalties, with very small businesses (those making under \$1 million annually) facing significantly higher tort costs per dollar of revenue compared to larger firms.¹⁰²

Other studies have looked at the impact of private enforcement on innovation in the US. A study by Kempf & Spalt (2020) found that mass litigation in the US adversely impacts highly innovative companies more than less innovative ones. The study reported that within three days of being targeted by a collective action lawsuit, the market value of a highly innovative company drops by 2.8 percent.¹⁰³ Importantly, the company's market value did not recover to its prior level even if the lawsuit was subsequently dismissed.

Building on the findings regarding the impact on patent holders, other research suggests that private enforcement mechanisms, including class action lawsuits, can influence innovation across the entire value chain. For example, a study¹⁰⁴ examining medical malpractice liability found that a decrease in the perceived risk of lawsuits encourages doctors to adopt potentially riskier yet highly effective new technologies. Conversely, the same study found that a lower risk of lawsuits discourages doctors from using lower-risk technologies that might help them avoid litigation. These changes in physician behaviour have ripple effects upstream, impacting R&D investments in medical devices and the development of new technologies altogether.

⁹⁸ Fan, I., Finucane, J., Dr Grujovic-Vischer, A., Dr Holzheu, T., Predmore, D., & Uchil, A. (2021). US litigation funding and social inflation. Swiss Re Institute.

⁹⁹ McKnight, D. L., & Hinton, P. J. (2013). (see note: 92)

¹⁰⁰ McKnight, D. L., & Hinton, P. J. (2011). (see note: 94)

¹⁰¹ *ibid*

¹⁰² McKnight, D. L., & Hinton, P. J. (2023). Tort Costs for Small Businesses. US Chamber Institute for Legal Reform.

¹⁰³ Kempf, E., & Spalt, O. (2020). Attracting the sharks: Corporate innovation and securities class action lawsuits. *Management Science*, 69(3), 1805-1834.

¹⁰⁴ Galasso, A., & Luo, H. (2017). Tort reform and innovation. *The journal of law and economics*, 60(3), 385-412.

4.2.2 Scenario-Based Analysis: Methodology

Our methodology begins with a selection of variables based on the literature review presented above. These variables had to fulfil two conditions: first there had to be similar variables in the UK to those used in the US studies, and second there had to be reliable statistical data available for them. The variables we selected are: litigation costs, costs of private enforcement as a share of GDP, and market capitalisation.

The 2024 study by the US Chamber's Institute for Legal Reform, provides us with the most recent statistics for the litigation costs and the costs of private enforcement as a share of GDP.¹⁰⁵ The study defines tort costs as the aggregate amount of judgments, settlements, and legal and administrative costs to adjudicate private claims and enforcement actions. The costs of the tort system also include the portion of liability insurance premiums used to pay administrative expenses and overheads and contribute to the profits of insurers. The study uses data from liability insurance premiums to ensure that the estimates incorporate the impact of private settlements on tort costs.

The study by Kempf & Spalt (2020) provides us with an estimate on the impact on innovation through the effect of private enforcement on the market capitalisation of companies. It examined the impact of private enforcement on innovation output. Their research found that firm innovation that leads to more valuable outputs appears to be correlated with an increased likelihood of facing low-quality class action lawsuits, and potentially greater losses if such a lawsuit is successful. As a result, companies weigh the risk of class action litigation which impact the value and number of patents filed by firms.

The next table presents these variables, the corresponding empirical study, the definition of the variable in that study, and an estimation of that impact.

TABLE 6: VARIABLES IMPACTED BY MASS LITIGATION

US Study	US variable from literature review	UK variable to be estimated	Estimated impact in the US
McKnight, D. L., & Hinton, P. J. (2024)	Increase in total US tort costs (costs and compensations)	Increase in cost of litigation	51%
McKnight, D. L., & Hinton, P. J. (2024)	Cost and compensation of US tort system as share of GDP	Cost of private enforcement as share of GDP	2.1%
Kempf, E., & Spalt, O. (2020)	Market value of companies	Drop in market value of innovative companies after the filing of a collective action suit	2.8%

¹⁰⁵ McKnight, D. L., & Hinton, P. J. (2024), (see note: 93)

Having identified these variables, the scenarios analysis assumes that if the UK system of mass litigation were to resemble that of the US, the impact on the UK economy would be proportional to the effects found in the US studies. It is difficult to say how closely the UK mass litigation regime resembles its US counterpart. Even if legislation and court rulings have been passed promoting mass litigation, public enforcement still remains the overarching system of regulatory enforcement in the UK.

Based on a comparison of the legal and institutional frameworks in the UK and the US and on discussions with legal experts, we define three scenarios which describe how similar the US and UK systems of collective actions can become, and as a result, the proportional effect on costs for the UK.

1. Low Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 10 percent of the economic effects observed in empirical studies in the US.
2. Medium Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 20 percent of the economic effects observed in empirical studies in the US.
3. High Growth Scenario: assumes that the economic impact of mass litigation growth in the UK will be equivalent to 30 percent of the economic effects observed in empirical studies in the US.

4.2.3 Scenario-Based Analysis: Results

The results of the scenario-based analysis are divided into three kinds of costs: litigation costs, private enforcement costs for businesses and innovation costs. Annex 4 includes a detailed explanation of the methodology and the calculations behind the results.

Litigation Costs

The US variable is taken from the US Chamber's Institute for Legal Reform study from 2024. As explained in the literature review, the study found that tort costs in the US increased by 51 percent between 2016 and 2022.¹⁰⁶ For the UK, this variable is taken from the World Bank, Doing Business in Europe (2020) report.¹⁰⁷ It measures the average of attorney costs, court costs and enforcement costs as a share of claim value. The indicator focuses specifically on commercial litigation, including class actions and non-class actions. In 2020, it estimated that litigation costs in the UK amounted to 45.7 percent of the claim value.

However, the chosen variable includes a note of caution. The estimates for litigation costs from the McKnight & Hinton 2024 study, not only include the costs of the tort system, but also the compensations. Meanwhile, the UK estimate for this indicator only estimates the litigation costs and not the compensation values. Nonetheless, the estimates for the US are the most recent and

¹⁰⁶ *ibid*

¹⁰⁷ World Bank (2020), Doing Business in Europe.

the most similar estimates we were able to find through our literature review for the scenario-based analysis. Moreover, since the scenario-based analysis is only estimating an approximate impact of the increase in private litigation in the UK, the estimates for the US provide us with a viable answer. Using the US estimate, however, might lead to an overestimation of the increase in litigation costs for the UK for each of the three scenarios.

We apply the 51 percent increase in US tort costs over time to the three scenarios for the UK. The resulting estimates are 5.1, 10.2 and 15.3 percent (representing 10, 20, and 30 percent of the 51 percent figure respectively). Applying the projected growth rates of 5.1, 10.2, and 15.3 percent to the UK value of 45.7 percent, litigation costs could reach 48, 50.4, and 52.7 percent of the claim value in the respective scenarios. The table below shows litigation costs in the UK for each of the three scenarios (Low, Medium and High Growth).

It is also interesting to note that the UK's litigation costs as a share of the claim value are, nowadays, some of the highest in Europe. Compared to the average for the European Union, UK costs were more than twice of the EU.

TABLE 7: INCREASE IN LITIGATION COSTS BASED ON SCENARIO-BASED ANALYSIS (PERCENTAGE)

Country	Actual	Low Growth Scenario	Medium Growth Scenario	High Growth Scenario
UK	45.7	48	50.4	52.7

Source: Author's calculations based on World Bank, Doing Business in Europe (2020).

Private Enforcement Costs for Businesses

Table 8 estimates the cost of private enforcement as a share of the UK GDP. It builds on the empirical estimates of McKnight, D. L., & Hinton, P. J. (2024) mentioned earlier that found that in 2022 the costs and compensations of the US tort system as a share of GDP was 2.1 percent.¹⁰⁸ 10, 20 and 30 percent of 2.1 is equal to 0.21, 0.42, and 0.63 percent.¹⁰⁹ Since UK GDP amounted to £2.8 trillion in 2024, the cost of private enforcement for each of the three scenarios would be equal to £5.9 billion, £11.9 billion, and £17.9 billion respectively.

¹⁰⁸ Ibid.

¹⁰⁹ McKnight and Hinton's (2013) estimates pertain to 2011. These estimates are applied in each of the scenarios to UK GDP figures for 2024, which presents a limitation since the cost of private enforcement for businesses in the US in 2011 may differ from those in 2023. A more recent report by the US Chamber Institute for Legal Reform estimated the cost of the US tort system to be equivalent to 2.1 percent of US GDP.

TABLE 8: COST OF PRIVATE ENFORCEMENT AS A SHARE OF GDP BASED ON SCENARIO-BASED ANALYSIS

	Actual Value (£ trillion)	Low Growth Scenario (£ billion)	Medium Growth Scenario (£ billion)	High Growth Scenario (£ billion)
UK	2.8	5.9	11.9	17.9

Source: Author's calculations based on ONS data on GDP 2024.

To put these figures into perspective, in the financial year 2023/24, the UK's spending on tertiary education was £7.15 billion¹¹⁰. Therefore, the lower impact scenario would lead to costs that are higher than the UK's tertiary education spending.

Innovation

As described in the literature review, Kempf & Spalt (2020) identified a 2.8 percent negative impact of collective action lawsuits on highly innovative companies. The study found that such lawsuits disproportionately target successful innovators. They also have a direct and long-term negative effect on the companies' market valuations which can negatively impact their levels of innovation.

The EU's Joint Research Centre publishes an annual report¹¹¹ identifying the top 2,500 Research and Development (R&D) investors globally, which are considered the most innovative companies in the world. The report includes market capitalisation data for 95 UK-based companies.¹¹² We applied 10, 20, and 30 percent of Kempf & Spalt's 2.8 percent finding to the aggregate market capitalisation of the UK's 95 most innovative companies to produce estimates for the Low, Medium and High Growth Scenarios respectively. The results are shown in Table 9. The impact on the market capitalisation of those top 95 companies would reach £3.7 billion, £7.5 billion, and £11.2 billion respectively per scenario.

TABLE 9: REDUCTION IN MARKET CAPITALISATION FOR THE TOP 95 UK R&D INVESTORS

	Actual Market Capitalisation Value (£ billion)	Low Growth Scenario (£ billion)	Medium Growth Scenario (£ billion)	High Growth Scenario (£ billion)
UK	1,345	3.7	7.5	11.2

Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard.

¹¹⁰ Government of the United Kingdom (2024). Education and training statistics for the UK. Accessed at: <https://explore-education-statistics.service.gov.uk/find-statistics/education-and-training-statistics-for-the-uk>

¹¹¹ Nindl, E., Confraria, H., Rentocchini, F., Napolitano, L., Georgakaki, A., Ince, E., Fako, P., Tuebke, A., Gavigan, J., Hernandez Guevara, H., Pinero Mira, P., Rueda Cantuche, J., Banacloche Sanchez, S., De Prato, G. and Calza, E., The 2023 EU Industrial R&D Investment Scoreboard, Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/506189, JRC135576

¹¹² The market capitalisation of each firm in Table 9 (and similar calculations throughout the study) refers to the value at the time the data was gathered (during 2022), rather than the most recent figure. As a result, there will be differences between the market capitalisation presented in the study and the current market capitalisation.

These amounts are significant. In the Autumn Budget for the year 2025, the UK Chancellor announced a £20.4 billion in investments for UK R&D to drive economic growth¹¹³. Comparing this with the potential reduction in market capitalisation of the top 95 UK R&D investors in the highest impact scenario (£11.2 billion), highlights that mass litigation could lead to a decrease in market capitalisation for the top 95 R&D investors by more than half the announced public investment into R&D.

4.3 The Impact of Mass Litigation on the UK's Industrial Strategy

4.3.1 Impacts across Innovative Companies

The UK's industrial strategy, described in Box 1, focuses on leveraging the UK's strengths in R&D, innovation and skills to capitalise on emerging technologies, processes and ideas, helping firms scale up and commercialise across eight growth-driving sectors. The relationship between the rise of collective actions and the UK's economic ambitions is significant: as explained previously, an increase in mass litigation in the UK could have consequences for its capacity to innovate, which, in turn, could affect the ability of these highly innovative sectors to drive the UK's future economic growth.

The market capitalisation analysis from the previous section helps us better understand the potential impact of mass litigation on the eight growth-driving sectors. Using the JRC dataset of the world's top 2,500 R&D investors, we categorise the top 95 UK-based R&D investors across these sectors. We find that 59 of the 95 companies belong to one of the eight growth-driving sectors outlined in the UK industrial strategy.

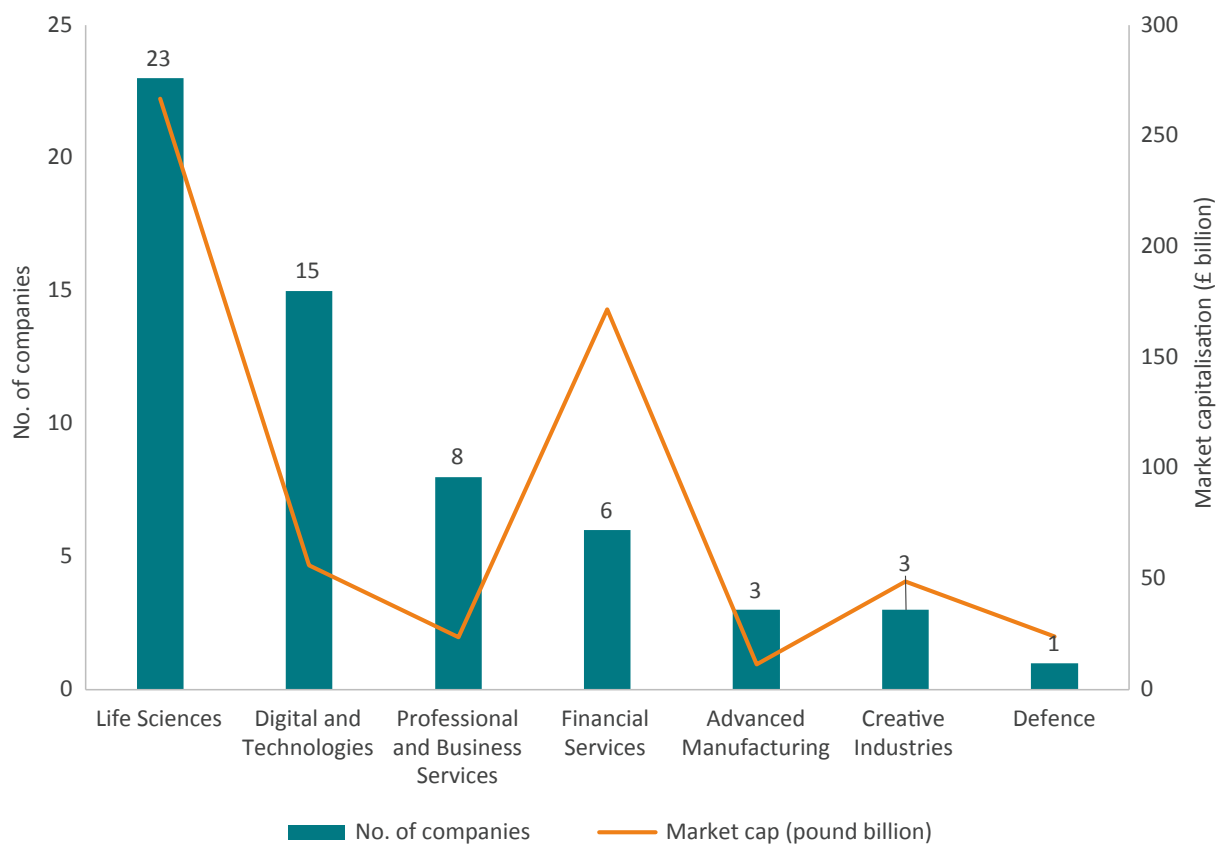
Of course, some of these companies operate in more than one growth-driving sector. For instance, the pharmaceutical company AstraZeneca operates in the life sciences sector but also in advanced manufacturing, while Rolls-Royce belongs to the advanced manufacturing sector and is also a major supplier of defence-related products and services. Therefore, to avoid double-counting, we matched each of the 59 companies to just one of the eight sectors. Annex 5 presents a table listing the 59 companies and their corresponding growth-driving sectors.

The 59 UK companies that are the top R&D investors had a market capitalisation of £603 billion, representing 45 percent of the total market capitalisation of the 95 UK companies. The life sciences and digital and technology sectors had the largest number of R&D intensive companies, accounting for 23 and 15 firms. This was followed by the professional and business services sector, with eight companies. Advanced manufacturing, creative industries, financial services, and defence collectively accounted for 13 companies.

¹¹³ Government of the United Kingdom (2024). Government backs UK R&D with record £20.4 billion investment at Autumn Budget. Available at: <https://www.gov.uk/government/news/government-backs-uk-rd-with-record-204-billion-investment-at-autumn-budget>

In terms of market capitalisation, the life sciences sector was also responsible for the largest value at £267 billion, comprising 44 percent of the total market capitalisation of the 59 companies. This was followed by the financial services sector, which despite comprising only six companies was responsible for 28 percent of the total market capitalisation. The market capitalisation of the digital and technology sector companies, valued at £56 billion, came in third place followed by the creative industries sector (£49 billion). The remaining three sectors accounted for 10 percent of the total market capitalisation.

FIGURE 8: MARKET CAPITALISATION ANALYSIS FOR TOP 59 UK R&D INVESTORS BELONGING TO GROWTH-DRIVING SECTORS



Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard. In the classification presented in Annex 5, none of the 59 UK companies belonged to the clean energy industry sector.

Table 10 applies a similar analysis to that of the top 95 UK R&D investors, using Kempf & Spalt's 2.8 percent fall in the market capitalisation of innovative companies due to mass litigation. As outlined previously, a 10, 20, and 30 percent of the 2.8 percent decline in the market capitalisation of the UK's most innovative companies across each of the growth-driving sectors produces estimates for the Low, Medium, and High growth scenarios, respectively. Overall, for the 59 UK R&D investors belonging to the growth-advancing sectors, the impact on market capitalisation would reach £1.7 billion, £3.4 billion, and £5.1 billion, respectively, per scenario.

TABLE 10: REDUCTION IN MARKET CAPITALISATION FOR THE TOP 59 UK R&D INVESTORS BELONGING TO THE UK INDUSTRIAL STRATEGY'S GROWTH-ADVANCING SECTORS

UK top 59 R&D Investors	Actual Market Capitalisation Value (£ billion)	Low Growth Scenario (£ billion)	Medium Growth Scenario (£ billion)	High Growth Scenario (£ billion)
Total	603	1.69	3.37	5.06
Advanced Manufacturing	12	0.03	0.07	0.1
Digital and Technologies	46	0.13	0.26	0.39
Professional and Business Services	39	0.11	0.22	0.33
Life Sciences	255	0.71	1.43	2.14
Creative Industries	64	0.18	0.36	0.53
Financial Services	157	0.44	0.88	1.32
Defence	30	0.08	0.17	0.25

Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard.

These risks are tangible, as some of these 59 companies have been at the receiving end of mass litigation cases both in the UK and abroad. For instance, AstraZeneca is facing mass litigation due to injuries allegedly caused by the Vaxzevria AstraZeneca Covid-19 vaccine, manufactured by AstraZeneca UK Limited.¹¹⁴ Another British pharmaceutical company, GSK, faces a mass litigation case in the US from investors who allege that the company misled them about its knowledge of a potential cancer-causing compound in Zantac, a heartburn medication¹¹⁵. Similarly, mass litigation cases have been filed against UK banks such as HSBC and NatWest, which also feature on the list of the largest spenders on R&D. Finally, Rolls-Royce is facing mass litigation from investors seeking £350 million in compensation for losses incurred in a bribery and corruption scandal.¹¹⁶

¹¹⁴ Leigh Day. (2024). AstraZeneca formally admits that its COVID-19 vaccine can cause rare side effect. Available at: <https://www.leighday.co.uk/news/news/2024-news/astrazeneca-formally-admits-that-its-covid-19-vaccine-can-cause-rare-side-effect/>

¹¹⁵ Fierce Pharma. (2025). After \$2.2B Zantac settlement, GSK now faces investor lawsuit over the heartburn medication. Available at: <https://www.fiercepharma.com/pharma/after-22-zantac-settlement-gsk-now-faces-investor-lawsuit-over-heartburn-medication>

¹¹⁶ CDR. (2023). Shareholders to launch Rolls-Royce class action. Available at: <https://www.cdr-news.com/categories/litigation/19598-shareholders-to-launch-rolls-royce-class-action/>

BOX 1: INVEST 2035: THE UK'S MODERN INDUSTRIAL STRATEGY

In 2024, the UK launched its new industrial strategy, 'Invest 2035: the UK's modern industrial strategy'. The strategy aims to support the UK's long-term sustainable growth through investment in the UK's highest potential growth-driving sectors over 10 years.

The Industrial Strategy will take a targeted approach to growth-driving sectors and locations addressing barriers to growth. Eight sectors have been identified for this purpose, based on the UK's capabilities and emerging strengths: advanced manufacturing, clean energy, creative industries, defence, digital and technologies, financial services, life sciences and professional and business services. The Government will support and encourage competitive ecosystems in these sectors through different initiatives.

- **Investment facilitation:** the Industrial Strategy will focus on stimulating investment in these sectors to maximise their impact on the overall economy. For example, the Government will support funding and other financial instruments to unlock investment, including grant programmes to leverage private capital in innovative firms. In addition, the strategy will seek to reduce barriers to trade and investment by enabling efficient customs and border processes to reduce costs for international commercial transactions.
- **Improving business environment:** one crucial step is identifying barriers that hamper Research, Development and Innovation (RDI). The UK has policies such as the Made Smarter Programme and Innovate UK Catapult network, which supports RDI adoption in the manufacturing sector and its commercialisation. Building from these initiatives, the Industrial Strategy will seek to accelerate the rate of innovation and increase the adoption and diffusion of those ideas, technologies, and processes.
- **Regional empowerment:** another core aspect of the Industrial Strategy is to unlock the potential of cities and regions by attracting investment based on their regional endowments. A cornerstone policy to promote local development will be through Local Growth Plans, which involve identifying priorities for growth aligned with the Industrial Strategy.

4.3.2 Impacts across Innovative Regions

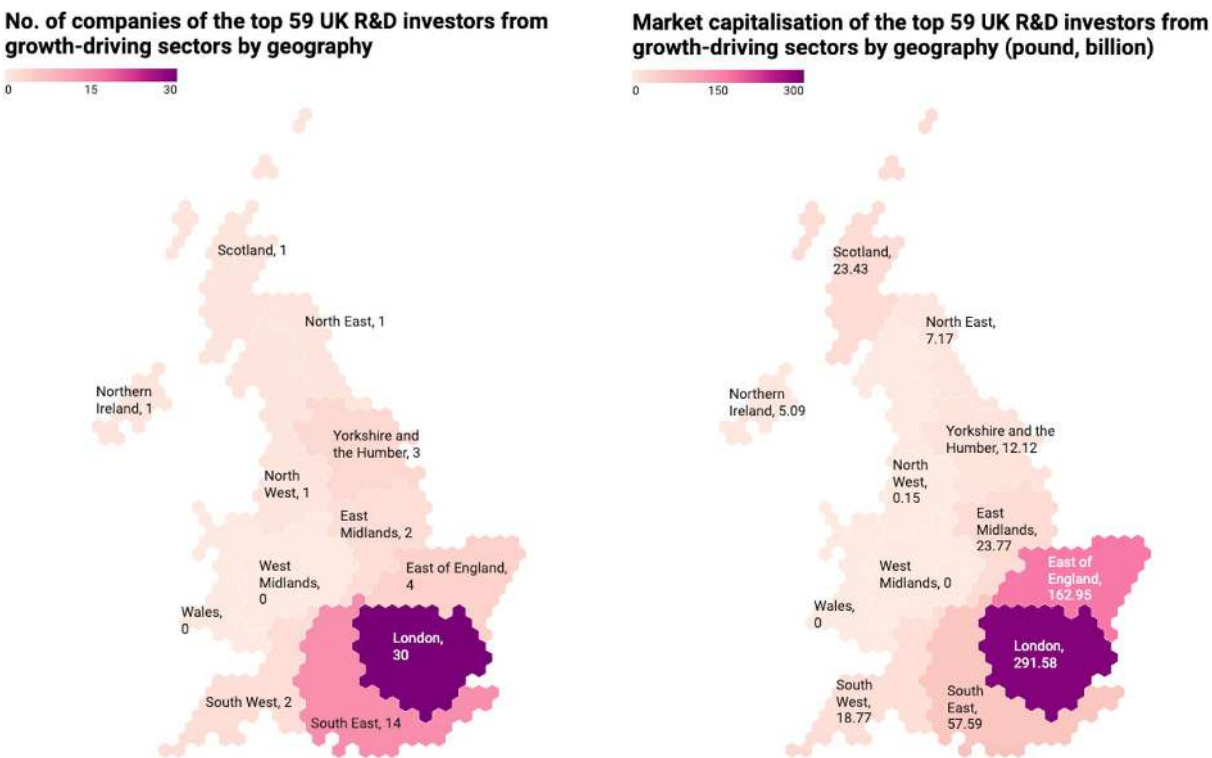
The UK industrial strategy also recognises the missed opportunities arising from the oversize role of Greater London in the UK's economic model and aims to empower cities and regions outside this area.¹¹⁷ To explore the impact of mass litigation across UK regions and countries, we identify the headquarters of the top 59 UK R&D investors from the growth-advancing sectors

¹¹⁷ Centre for Cities analysis shows that for the eight largest cities outside London, the combined gap between actual and potential productivity is £47 billion per year. When including the next 25 city regions outside the Greater South East (which also underperform), this increases to an estimated £66 billion per year. Source: Centre for Economic Performance (2024). A New Approach for Better Industrial Strategies.

outlined in the UK industrial strategy. To do so, we reviewed each company's website and consulted the UK registry of companies.¹¹⁸

Figure 9 illustrates the geographical distribution of the 59 companies. The two maps show that the economic concentration in London is reflected in the top 59 UK R&D investors from the high growth-driving sectors. Greater London accounts for 30 of the 59 companies, representing 48 percent of the total market capitalisation. The South East of England is home to 14 of the 59 companies, with a 10 percent share of the market capitalisation. The East of England, despite having only four companies, holds a 27 percent share of the market capitalisation, largely driven by AstraZeneca. The remaining regions of the UK have fewer companies: Yorkshire and the Humber has three, the South West and East Midlands have two each, and the North West and North East of England, Scotland, and Northern Ireland each have one company.

FIGURE 9: GEOGRAPHICAL COMPARISON OF THE TOP 59 UK R&D INVESTORS FROM GROWTH DRIVING SECTORS BY NUMBER OF COMPANIES AND MARKET CAPITALISATION



Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard and information from company websites on the location of its UK headquarters.

Despite this economic concentration, some clusters of activity outside Greater London are emerging. For instance, the highest number of companies in the life sciences sector was in the South East not in Greater London. Other regions stand out in other sectors: Scotland in financial

¹¹⁸ Playtech's headquarter, a digital and technology company from the UK, was reported in the Isle of Man, most likely for tax purposes, however they had an office in London as well. We have therefore, taken London as the headquarters for this company. Another interesting detail to note, is that none of the 60 companies were headquartered in Wales.

services and East Midlands in professional services.¹¹⁹ Table 11 presents the share of companies belonging to each of the sectors across geographies.

TABLE 11: PERCENTAGE OF COMPANIES BELONGING TO THE GROWTH-DRIVING SECTORS

	Ad- vanced Manufac- turing	Creative Indus- tries	Defence	Digital and Technol- ogies	Financial Services	Life Sciences	Profes- sional and Business Services	Total number of com- panies
Greater London	3%	10%	0%	30%	10%	27%	20%	30
East of England	0%	0%	0%	0%	25%	75%	0%	4
South East	7%	0%	7%	14%	0%	71%	0%	14
East Midlands	0%	0%	0%	0%	0%	0%	100%	2
Scotland	0%	0%	0%	0%	100%	0%	0%	1
South West	50%	0%	0%	0%	50%	0%	0%	2
Yorkshire and the Humber	0%	0%	0%	33%	0%	67%	0%	3
North East	0%	0%	0%	100%	0%	0%	0%	1
Northern Ireland	0%	0%	0%	100%	0%	0%	0%	1
North West	0%	0%	0%	100%	0%	0%	0%	1

Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard and information from company websites on the location of its UK headquarters.

Borrowing once again from the methodology used previously, the potential fall in market capitalisation of the top 59 UK R&D investors due to mass litigation can be presented across geographical areas. Naturally, the impacts are larger in areas with the highest number of companies. Table 12 shows that Greater London leads with the highest market capitalisation at £291.6 billion, with negative impacts on the market capitalisation of its innovative companies that could reach £2.5 billion. However, in relative terms and using ONS data on regional GDP¹²⁰ as the denominator, we find that, for the East of England, the High Growth Scenario of mass litigation

¹¹⁹ The UK's new industrial strategy emphasises the importance of sectoral and geographical clusters in promoting economic growth. The strategy highlights the potential of the following clusters: life sciences in Cambridge (Eastern) and the Liverpool (North West) region, financial services in Edinburgh (Scotland), Leeds (Yorkshire and the Humber) and London, advanced manufacturing in Broughton (North West) and Newport (Wales), Greater Manchester (North West), the West Midlands, the North East and South Yorkshire, digital industries in Bristol (South West) and Northern Ireland, and clean energy industries in Aberdeen (Scotland) and Derby (East Midlands).

¹²⁰ UK Office of National Statistics, Regional economic activity by gross domestic product, UK: 1998 to 2022, accessed at: <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/regionaleconomicactivitybygrossdomesticproductuk/1998to2022>

would have the highest impact, representing a loss of 0.64 percent of its GDP. Meanwhile, for the South East, East Midlands, and Scotland, the potential fall in market capitalisation of their corresponding 14, 2 and 1 companies would be equivalent to 0.13, 0.14, and 0.11 percent of their respective GDPs.

TABLE 12: REDUCTION IN MARKET CAPITALISATION FOR THE TOP 59 UK R&D INVESTORS BELONGING TO THE UK INDUSTRIAL STRATEGY'S GROWTH-ADVANCING SECTORS BY SECTOR AND GEOGRAPHY

	Actual Market Capitalisation Value (£ billion)	Low Growth Scenario (£ million)	Medium Growth Scenario (£ million)	High Growth Scenario (£ million)
Greater London	291	816	1633	2449
East of England	163	456	913	1369
South East	57	161	322	484
East Midlands	24	67	133	200
Scotland	23	66	131	197
South West	19	53	105	158
Yorkshire and the Humber	12	34	68	102
North East	7	20	40	60
Northern Ireland	5	14	29	43
North West	0.15	0.43	0.85	1.28

Source: Author's calculations based on European Commission (2023). The 2023 EU Industrial R&D Investment Scoreboard and information from company websites on the location of its UK headquarters.

Similar effects to those described regarding the potential losses in market capitalisation across UK regions could also be extended to employment. Many of these companies may have their main headquarters in Greater London, but their employees are based in regions outside of the capital. For example, AstraZeneca is based in the East of England, but it also operates manufacturing sites in that region, as well as in Greater London and the North West.¹²¹ Consequently, the negative impact of collective actions on a company's economic prospects and employment will be felt beyond its headquarters. In other words, although the data shows that Greater London concentrates the largest share of R&D-intensive companies in high-priority sectors, the negative impacts on employment resulting from collective actions will be distributed beyond that region.

¹²¹ AstraZeneca. (n.d.). AstraZeneca in the United Kingdom. Retrieved May 20, 2025, from <https://careers.astrazeneca.com/united-kingdom>

6. CONCLUSION

The rise in collective litigation within the UK has been striking, with a significant escalation in recent years. Data from this study reveals that, while the number of cases remained relatively stable between 1999 and 2020, a sharp increase began in 2021. Cases nearly doubled from nine in 2020 to 17 in 2021, and the upward trend continued, reaching 47 cases in 2024.

Several factors have contributed to this surge in collective action cases in the UK. UK court rules lowering the threshold for class action certification, the introduction of Collective Proceeding Orders, and the rise of Group Litigation Orders have all played a role. However, the UK already possessed fertile ground for collective actions to develop rapidly. This includes a well-established infrastructure for consumer representation and a strong litigation culture, with consumer organisations, trade unions, and environmental campaigners having long used collective litigation to challenge government actions and influence public policy. More recently, the rise of Claims Management Companies (CMCs) has embedded consumer redress into everyday life in Britain. This study captures some of this in its Institutional Framework for Mass Litigation (IFML) Index, which ranks the UK among the European countries where it is easiest to launch a collective action.

Importantly, the rise of collective action has increasingly impacted the private sector. Mass litigation, once a narrower aspect of UK law primarily used to challenge public bodies and services, now increasingly targets private companies. This is particularly concerning as it affects UK sectors at the forefront of technology. For instance, the study shows that for the period from 2016 to 2024 there has been a notable increase in cases against large companies relating to economic harm, rather than personal injury or institutional accountability.

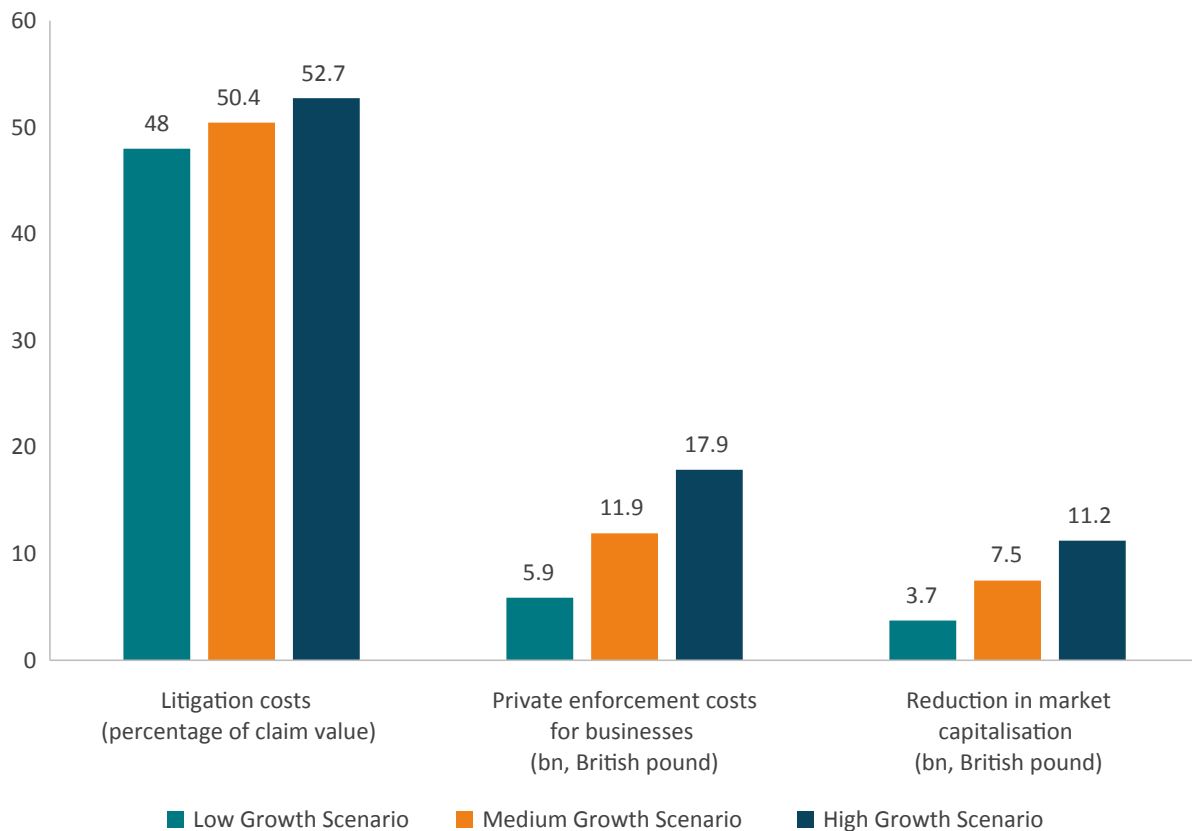
To better understand the implications of an ever more pervasive mass litigation system on the UK economy, this study has sought to shed light on the broader economic costs of collective action. These effects extend beyond direct awards to consumers or the legal costs incurred by companies defending themselves in court. Collective action influences companies' decisions and incentives, which, in aggregate, can have significant economic implications. This is particularly concerning for the UK, which prides itself on attracting foreign investment as a key driver of its economic model. This is because the ease with which mass litigation can be initiated risks undermining the UK's comparative advantage as a business destination.

To assess the broader economic impact, this study presents three scenarios – Low, Medium, and High Growth – based on the premise that if the number of collective actions in the UK continues to rise, the economic effects could mirror those observed in the US economy. These scenarios quantify the potential effects of increased mass litigation on overall litigation costs, private enforcement expenses, and the market capitalisation of the UK's most innovative companies.

The results show that, depending on the scenario, litigation costs could rise substantially, and the economic costs could reach several billion pounds. UK litigation costs, as a percentage of the claim value, could rise from 45.7 to 48, 50.4, and 52.7 percent, depending on the growth

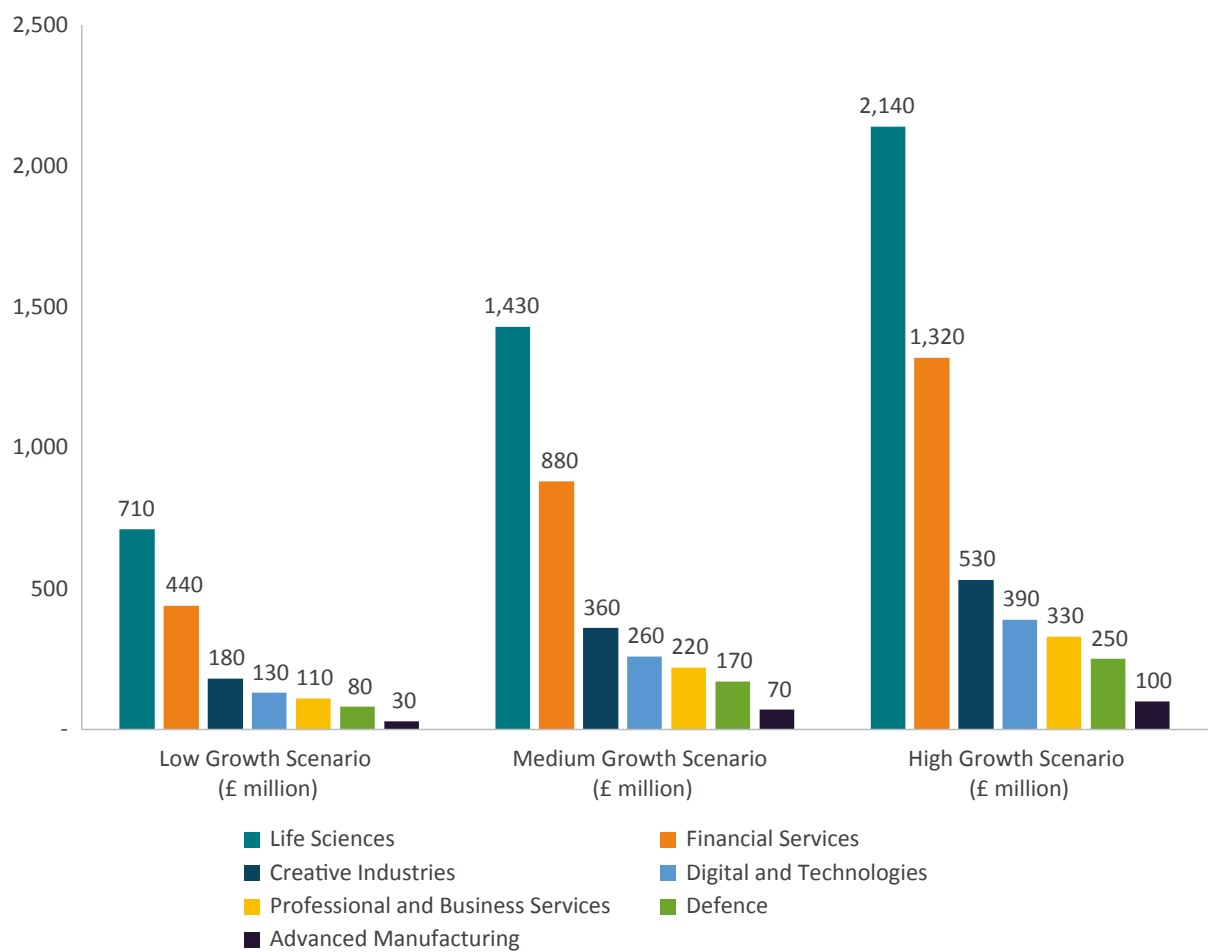
scenario. The cost of private enforcement could reach £5.9 billion, £11.9 billion and £17.9 billion, respectively. Moreover, the negative impact on the market capitalisation of the UK's most innovative companies could reach £3.7 billion, £7.5 billion or £11.2 billion.

FIGURE 10: ECONOMIC EFFECTS OF COLLECTIVE ACTIONS IN THE UK



The analysis further explores how these economic costs could undermine the UK's competitiveness. In particular, the most significant impact could be felt in the sectors identified in the UK's industrial strategy. These sectors are vital for the country's long-term economic growth, and any erosion of their market capitalisation due to collective actions would weaken their ability to contribute to the UK's productivity. Sectors like life sciences and financial services, with their larger market capitalisation, are particularly vulnerable to the impacts of mass litigation.

FIGURE 11: REDUCTION IN MARKET CAPITALISATION FOR THE TOP 59 UK R&D INVESTORS BELONGING TO THE UK INDUSTRIAL STRATEGY’S GROWTH-ADVANCING SECTORS



Finally, it is important to note that these key sectors are located throughout the UK. While half are concentrated in Greater London, the other half are spread across various UK regions and nations. This is significant because the UK Government aims to leverage these sectors to drive economic growth in less prosperous areas and address the current imbalance of economic growth, which is heavily concentrated in Greater London. For example, the potential impact on the regional economy, measured by the fall in market capitalisation due to collective action against a publicly traded company with high R&D spending over the region's GDP, would be greater in the East of England than in Greater London.

In conclusion, while collective actions provide a tool for consumer redress, their rising frequency and associated economic costs are emerging as a significant challenge for the UK. UK policymakers must carefully consider these broader economic implications as they look to balance the benefits of collective action with the need to maintain the UK's competitive edge.

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ANNEX 1: DATA SOURCES OF THE STUDY'S DATABASE

TABLE 1: LEGAL SOURCES FOR ECIPE'S COLLECTIVE ACTION LAWSUIT DATABASE

Title	Year	Website Link
Clifford Chance	2025	https://www.cliffordchance.com/insights/resources/blogs/group-litigation-and-class-actions/2025/01/the-outlook-class-action-trends-in-2025-england-and-wales.html
Dentons	2025	https://www.dentons.com/en/insights/newsletters/2025/february/19/uk-group-actions-bulletin/uk-group-actions-bulletin-february-2025
Lexology IN-DEPTH Class Actions	2024	https://www.slaughterandmay.com/media/2cdngugw/in_depth___class_actions___8th_edition___england_and_wales_5049pdf.pdf
Global Competition Review	2024	https://globalcompetitionreview.com/hub/class-actions-hub/2024/article/unit-ed-kingdom-class-actions-litigation-policy-and-latest-developments
ICLG	2024	https://iclg.com/practice-areas/class-and-group-actions-laws-and-regulations/unit-ed-kingdom
Mayer Brown	2024	https://www.mayerbrown.com/en/insights/events/2024/04/emerging-trends-in-class-actions-mass-arbitrations-and-uk-eu-collective-actions
Osborne Clark	2024	https://www.osborneclarke.com/insights/what-status-class-actions-and-group-litigation-england
Ashurt	2023	https://www.ashurst.com/en/insights/court-likely-to-favour-union-proceedings-over-class-actions/
CMS European Class Actions Report	2023	https://cms.law/en/media/international/files/publications/publications/european-class-action-report-2023?v=1
Winston & Stawn LLP	2023	https://www.winston.com/
Jones Day	2023	https://www.jonesday.com/en/insights/2023/10/the-rise-of-usstyle-class-actions-in-the-uk-and-europe
Penningtons Mache Cooper	2023	https://www.penningtonslaw.com/news-publications/latest-news/2023/class-actions-in-england-and-wales-a-client-guide
Bird & Bird	2023	https://www.twobirds.com/en/insights/2023/uk/class-actions-in-the-uk-whats-the-latest
Covington	2023	https://www.cov.com/en/news-and-insights/insights/2023/12/class-actions-in-the-uk-2023-update
Leigh Day	nd	https://www.leighday.co.uk/our-services/group-claims/
Pinsent Masons	nd	https://www.pinsentmasons.com/out-law/guides/class-actions-in-england-and-wales
Herbert Smith Freehills	2020	https://www.herbertsmithfreehills.com/notes/litigation/2010-11/court-appeal-refuses-extend-boundaries-representative-action-procedure-create-english-class-action
Civil Justice Council	nd	https://www.judiciary.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/reform-of-collective-redress.pdf
Morgan Lewis	nd	https://www.morganlewis.com/-/media/files/publication/outside-publication/article/2024/collective-actions-in-the-uk-and-eu-three-years-in-opening-and-closing-doors.pdf?rev=d351de3a37bd4f07ac95d456794e371e&hash=D37A3DEAgB24F857C-g1093D88C8gEF08

TABLE 2: UK LAWSUIT PUBLIC REGISTRIES

Gov.UK	List of group litigation orders	https://www.gov.uk/government/publications/group-litigation-orders/list-of-group-litigation-orders
Competition Appellate Tribunal	Section 47B Competition Act 1998 (Collective Proceedings)	https://www.catribunal.org.uk/judgments?query=&neutral_citation_year=All&neutral_citation_number=&case_type%5B128%5D=128

ANNEX 2: DESCRIPTION OF THE DATABASE

Our database includes 317 cases, from the UK, between 1999 to 2025, and across the following three dimensions: (1) case name (2); year of order passed; and (3) economic sectors.

The database gathers cases from two main sources. The first source is public registries. The second source were case repositories in law firms, law associations and consumers associations' websites (see Annex 1).

As explained in the Methodological section of the study, our data collection exercise has certain limitations. First, the mass action repositories, such as the GLO registry, are not updated regularly, making it difficult to accurately determine the total number of cases. The CAT website, though still in its early stages, provides records of cases from 2017 onwards, offering some insights. Second, law firm and legal association websites tend to highlight high-profile cases or those with significant corporate impact, introducing a selection bias.

The following table details the number of recorded and missing observations for each variable.

TABLE 1: NUMBER OF VARIABLES, COMPLETE AND MISSING OBSERVATIONS

	Complete observations		Missing observations	
	N	%	N	%
Case name	317	100%	0	0%
Year (final order)	288	91%	29	9%
Economic sector	316	99.7%	1	0.3%

ANNEX 3: DESCRIPTION OF THE IFML VARIABLE “WIDELY USED MASS LITIGATION PRIOR TO 2020”

The variable scores 1 if a country had a system of collective action prior to the approval of the Representative Actions Directive (RAD) in 2020 and the number of collective action cases between 2008 and 2023 was above the average. Based on a report by the European Commission,¹²² the EU countries with a system of collective action or a similar mechanism prior to RAD are the following: Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Spain and Sweden. The total number of collective action cases recorded in the database between 2008 and 2023 is presented in Table 2: Collective action lawsuits in the UK and EU, case numbers and per capita rates (2008-2023 and 2020-2023).

The average number of cases between 2008 and 2023 was 15. The UK, France, Germany, Netherlands, Poland and Slovenia have more than 15 cases. However, because the European Commission report of 2018 did not include Slovenia among the EU countries with a system of collective action or a similar mechanism prior to RAD, only France, Germany, the Netherlands and Poland meet the two criteria and score 1 in this variable

Between 2008 and 2023, the UK recorded 156 collective redress cases, more than any other European country, making it the most active jurisdiction, ahead of the Netherlands and Germany.

¹²² European Commission (2018). COM(2018)40 final, p. 3. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0040>

ANNEX 4: SCENARIO-BASED ANALYSIS – METHODOLOGY

The methodology uses three scenarios to assess the impact of private enforcement in the UK. The scenarios depict three possibilities regarding the scale of private enforcement of regulation in the UK compared to the US.

TABLE 1: SCENARIOS FOR ECONOMIC MODELLING

Scenario	Proportion of the effects in the US economy found in empirical studies to be applied to the UK economy
Low Growth Scenario	10 percent
Medium Growth Scenario	20 percent
High Growth Scenario	30 percent

The scenarios provide an avenue to investigate the impact of private enforcement on the UK economy based on empirical studies carried out on the US economy. To assess the impact on the UK economy, a number of economic variables are chosen for which the impact of mass litigation in the US is available.

The impact of mass litigation in the UK is estimated for two kinds of variables: one is growth rates and the other is level estimates. Both use slightly different formulas to estimate the impact for the UK as illustrated below:

Growth rate estimates

Empirical literature on private enforcement in the US provides us with data related to the increase/decrease in a particular variable due to mass litigation. The US value is, therefore, a percentage increase or decrease. In order to estimate the increase/decrease of the same variable for the UK as a result of mass litigation, we employ the scenarios analysis.

For the three scenarios, we assume that the increase/decrease of the variable in the UK is 10 percent, 20 percent and 30 percent of the increase/decrease in the US. Assuming that because of mass litigation, variable Y has increased by X percent in the US, then, in the Low Growth Scenario, because of mass litigation in the UK, Y would increase by 10 percent of X. Or mathematically,

$$\Delta Y\%_{(UK) (low)} = \frac{10}{100} \times X$$

Similarly, for the Medium Growth Scenario,

$$\Delta Y\%_{(UK) (medium)} = \frac{20}{100} \times X$$

And for the High Growth Scenario,

$$\Delta Y\%_{(UK) (high)} = \frac{30}{100} \times X$$

UK data also provides us with the value of Y in the UK. Using this, we estimate the new increased value of the Y in the UK for the three scenarios because of mass litigation in the UK. For example, in the Low Growth Scenario, the increased value of Y would be:

$$Y_{(UK\ new)(low)} = \left(\frac{\frac{10}{100} \times X}{100} \times Y_{(UK)} \right) + Y_{(UK)}$$

Similarly, for the Medium Growth Scenario,

$$Y_{(UK\ new)(medium)} = \left(\frac{\frac{20}{100} \times X}{100} \times Y_{(UK)} \right) + Y_{(UK)}$$

And for the High Growth Scenario,

$$Y_{(UK\ new)(high)} = \left(\frac{\frac{30}{100} \times X}{100} \times Y_{(UK)} \right) + Y_{(UK)}$$

As an illustrative example, consider litigation costs. Empirical literature provides us with the impact of private enforcement on litigation costs in the US. Collective actions are associated with a 51 percent increase in litigation costs or $X = 51\%$. The increase in litigation costs (Y) in the UK based on the three scenarios will be as follows:

Low Growth Scenario,

$$\Delta Y\%_{(UK) (low)} = \frac{10}{100} \times 51 = 5.1\%$$

Medium Growth Scenario,

$$\Delta Y\%_{(UK) (medium)} = \frac{20}{100} \times 51 = 10.2\%$$

High Growth Scenario,

$$\Delta Y\%_{(UK) (high)} = \frac{30}{100} \times 51 = 15.3\%$$

We also have the value of litigation costs in the UK which was 45.7 percent of the claim value. Or, $Y_{(UK)} = 45.7$. Plugging this value into the formula to estimate the new value of litigation costs in the UK as a result of mass litigation gives us the following results:

Low Growth Scenario,

$$Y_{(UK\ new)(low)} = \left(\frac{\frac{10}{100} \times 51}{100} \times 45.7 \right) + 45.7 = 48$$

Medium Growth Scenario,

$$Y_{(UK\ new)(medium)} = \left(\frac{\frac{20}{100} \times 51}{100} \times 45.7 \right) + 45.7 = 50.4$$

High Growth Scenario,

$$Y_{(UK\ new)(high)} = \left(\frac{\frac{30}{100} \times 51}{100} \times 45.7 \right) + 45.7 = 52.7$$

Or, applying the scenario-based analysis, litigation costs in the UK increased by 5.1, 10.2, and 15.3 percent due to mass litigation. As a percentage of the claim value, litigation costs could increase by 48, 50.4, and 52.7 percent.

Level estimates

Empirical literature on private enforcement in the US provides us with data on the cost of mass litigation as a share of an economic variable in the US. The US value (X) is, therefore, a percentage share of an economic variable Y. In order to estimate the cost of mass litigation as a share of the same variable Y for the UK, we employ the scenarios analysis.

For the three scenarios, we assume that the cost of mass litigation as a share of Y in the UK is 10 percent, 20 percent and 30 percent of the share in the US (X). Or, for instance, in the Low Growth Scenario, cost of mass litigation as a share of Y would be 10 percent of the share in the US (X). Or mathematically,

$$\text{cost of mass litigation as a share of } Y_{(UK)(low)} = \frac{10}{100} \times X$$

Similarly, for the Medium Growth Scenario,

$$\text{cost of mass litigation as a share of } Y_{(UK)(medium)} = \frac{20}{100} \times X$$

And for the High Growth Scenario,

$$\text{cost of mass litigation as a share of } Y_{(UK)(high)} = \frac{30}{100} \times X$$

UK data also provides us with the value of Y in the UK. Using this, we estimate the actual cost of mass litigation in the UK. For example, in the Low Growth Scenario, the actual cost of mass litigation would be:

$$\text{Cost of mass litigation}_{(UK)(low)} = \left(\frac{\frac{10}{100} \times X}{100} \times Y_{(UK)} \right)$$

Similarly, for the Medium Growth Scenario,

$$\text{Cost of mass litigation}_{(UK)(low)} = \left(\frac{\frac{20}{100} \times X}{100} \times Y_{(UK)} \right)$$

And for the High Growth Scenario,

$$\text{Cost of mass litigation}_{(UK)(low)} = \left(\frac{\frac{30}{100} \times X}{100} \times Y_{(UK)} \right)$$

As an illustrative example, consider the cost of private enforcement as a share of GDP (Y). Empirical literature provides us with the value of cost of private enforcement as a share of the US GDP, which is 2.1 percent, or X = 2.1%. The cost of mass litigation as a share of the UK GDP in the three scenarios will then be 10 percent, 20 percent and 30 percent of 2.1. Or mathematically,

Low Growth Scenario,

$$\text{cost of mass litigation as a share of } Y_{(UK)(low)} = \frac{10}{100} \times 2.1$$

Medium Growth Scenario,

$$\text{cost of mass litigation as a share of } Y_{(UK)(medium)} = \frac{20}{100} \times 2.1$$

High Growth Scenario,

$$\text{cost of mass litigation as a share of } Y_{(UK)(high)} = \frac{30}{100} \times 2.1$$

We also have the value of UK GDP which was £ 2.8 trillion. Or, $Y_{(UK)} = £ 2.8 \text{ trillion}$. Plugging this value into the formula to estimate the actual cost of mass litigation in the UK gives us the following results:

Low Growth Scenario,

$$\text{Cost of mass litigation}_{(UK)(low)} = \left(\frac{\frac{10}{100} \times 2.1}{100} \times 2.8 \right) = \text{£ } 5.9 \text{ billion}$$

Medium Growth Scenario,

$$\text{Cost of mass litigation}_{(UK)(medium)} = \left(\frac{\frac{20}{100} \times 2.1}{100} \times 2.8 \right) = \text{£ } 11.9 \text{ billion}$$

High Growth Scenario,

$$\text{Cost of mass litigation}_{(UK)(high)} = \left(\frac{\frac{30}{100} \times 2.1}{100} \times 2.8 \right) = \text{£ } 17.9 \text{ billion}$$

Or, based on the scenario-based analysis, the cost of private enforcement in the UK is 0.21, 0.42 and 0.63 percent of the UK GDP respectively. This is equal to £6 billion, £12 billion, and £18 billion respectively.

Data sources

US values

US values for the scenario analysis were collected from empirical literature on the impact of mass litigation on economic variables in the US. The table below provides the source, modifications, and the final numbers used in the analysis for the US.

TABLE 2: US DATA SOURCES

Variable	US estimate from literature	Modification	Final US value	Source
Cost of private enforcement as share of GDP	Costs and compensations of the US tort system as a share of the GDP was 2.1%	Using 2.1% as the cost of mass litigation as a share of the US GDP	2.1 %	McKnight, D. L., & Hinton, P. J. (2024)
Increase in cost of litigation	Increase in total US tort costs between 2016 to 2022 was 51%	Using 51% as the increase in litigation costs over time	51%	McKnight, D. L., & Hinton, P. J. (2024)
Cost on innovation	Drop in market value of innovative companies in the short term after the filing of a class action suit was 2.8%	Using 2.8% as the decrease in market value of innovative companies due to mass litigation	2.8%	Kempf, E., & Spalt, O. (2020)

UK values

UK values for the scenario-based analysis were collected from international databases as well as ONS data. The exact sources of the UK values used in the analysis can be found in the table below.

TABLE 3: UK DATA SOURCES

Variable	Countries	Sectors	Source
GDP	UK	All	ONS 2024: GDP
Litigation costs	UK	All	World Bank: Doing Business in Europe 2020
Market value of innovative companies	UK	All High growth sectors highlighted by the UK industrial policy 2024.	EU JRC: The 2023 EU Industrial R&D Investment Scoreboard

ANNEX 5: TOP 59 UK R&D INVESTORS BELONGING TO GROWTH-ADVANCING SECTORS IDENTIFIED BY THE UK INDUSTRIAL STRATEGY BY GEOGRAPHICAL REGIONS

Methodology:

The classification of companies into specific industry sectors was based on a specific approach. We began by identifying the top UK-based companies featured in the 2023 EU Industrial R&D Investment Scoreboard, which ranks the top 2,500 R&D-investing companies globally. The JRC already includes a categorisation by country and sector. Using this existing categorisation, we filtered for companies headquartered in the UK, and identified the 95 companies from the UK. After this we gathered their corresponding industry classifications and headquarters information as provided in the dataset by the European Commission.

To align this company-level data with the industrial and economic priorities, we referred to the UK Government's Industrial Strategy 2035 and its eight high growth priority sectors: advanced manufacturing, clean energy industries, creative industries, defence, digital and technologies, financial services, life sciences and professional and business services. We cross references these sectors with the sectors in the JRC list and found that 59 top R&D companies belonged to the high growth sectors. Lastly, we classified each company's primary operations as accurately as possible within these strategic sectors.

TABLE 1: UK HIGHEST R&D INVESTING COMPANIES BELONGING TO ONE OF THE EIGHT HIGH GROWTH PRIORITY SECTORS OF THE UK GOVERNMENT'S INDUSTRIAL STRATEGY 2035

Company	UK priority sector	Area
AstraZeneca	Life Sciences	East of England
GSK	Life Sciences	Greater London
HSBC	Financial Services	Greater London
Lloyds Banking Group	Financial Services	Greater London
Rolls-Royce	Advanced Manufacturing	Greater London
NatWest	Financial Services	Scotland
Experian	Professional and Business Services	East Midlands
BT	Digital and Technologies	Greater London
RELX	Creative Industries	Greater London
SAGE	Digital and Technologies	North East
AMDOCS	Digital and Technologies	Greater London

Company	UK priority sector	Area
Smith & Nephew	Life Sciences	South East
BAE systems	Defence	South East
EYGS	Professional and Business Services	Greater London
Johnson Matthey	Life Sciences	Greater London
Novocure	Life Sciences	South East
Sensata Technologies Holding	Digital and Technologies	Northern Ireland
PlayTech	Digital and Technologies	Greater London
Royalty Pharma	Financial Services	South West
Triton	Financial Services	Greater London
Kaspersky Labs	Digital and Technologies	Greater London
Syneos Health UK	Life Sciences	South East
Livanova	Life Sciences	Greater London
Puretech Health	Life Sciences	Greater London
Hikma Pharmaceuticals	Life Sciences	Greater London
Autolus Therapeutics	Life Sciences	Greater London
Exscientia	Life Sciences	South East
LumiraDx	Digital and Technologies	Greater London
RSA insurance	Professional and Business Services	Greater London
Spectris	Digital and Technologies	Greater London
Halma	Digital and Technologies	South East
Spirent Communications	Digital and Technologies	South East
Smiths	Digital and Technologies	Greater London
Aldrin	Professional and Business Services	East Midlands
Pearson	Creative Industries	Greater London
Rockley Photonics	Digital and Technologies	North West
Oxford Nanopore Technologies	Life Sciences	South East
Adaptimmune Therapeutics	Life Sciences	South East
AI Perform Holdings	Creative Industries	Greater London

Company	UK priority sector	Area
Convatec Group	Life Sciences	Greater London
IQVIA	Life Sciences	Greater London
Croda International	Life Sciences	Yorkshire and the Humber
CBFI Investment	Financial Services	East of England
Renishaw	Advanced Manufacturing	South West
Immunocore	Life Sciences	South East
Genus	Life Sciences	South East
Indivior	Life Sciences	Yorkshire and the Humber
Infobip	Professional and Business Services	Greater London
Revolut	Digital and Technologies	Greater London
Wintermute	Digital and Technologies	Greater London
Alphawave	Digital and Technologies	Yorkshire and the Humber
Mace Finance	Professional and Business Services	Greater London
Bicycle Therapeutics	Life Sciences	East of England
Oxford Biomedica	Life Sciences	South East
Freeline	Life Sciences	South East
Ceres Power	Advanced Manufacturing	South East
BenevolentAI	Professional and Business Services	Greater London
ABCAN	Life Sciences	East of England
Towers Watson	Professional and Business Services	Greater London