

Corporate legal accountability for human rights abuses: Group claims in England and Wales

commentary by Martyn Day, lawyer/Senior Partner, [Leigh Day & Co Solicitors](#)

July 2008

[bio of Martyn Day](#)

Martyn Day has worked for plaintiffs on cases including: Anglo American (re South Africa); BP (re Colombia); Cape PLC & Gencor (re South Africa); Gallaher & Imperial Tobacco (on behalf of lung cancer victims); Thor Chemicals (re South Africa); Trafigura (re Côte d'Ivoire)

My area of the law is group damages claims. I believe that these claims play a crucial role in ensuring that multi-national companies are held to account and that there is a system that ensures that where groups of people are injured or suffer damage from a common cause, that they can readily obtain justice through the courts.

Our system in England is a pretty good one for dealing with group claims. We have an excellent process called Group Litigation Orders which enable hundreds and even thousands of named people to be joined in one action without difficulty. It usually ends up with the Judge considering a number of example cases (often 6-12) and the outcome of those cases then determining how the whole cohort is resolved. It is a pretty efficient system.

So, for example, we are currently running a claim where we have been instructed by residents of Abidjan, in the Ivory Coast who [allege they were injured by the dumping of toxic waste](#) in the capital city back in August 2006. My firm were instructed 18 months ago and since that time we have been able to take instructions from 20,000 people, and have progressed the case to the stage where the trial date has been fixed for 1 October 2009. To go from first taking instructions to trial in three years with so many clients is a scenario that most legal structures can only dream of.

A major issue for us has been the funding of such claims. In 2005 when our latest application for public funding for a group claim had been thrown out, in despair, I publicly stated that this seemed to me to be the end of group claims and that I would rather throw myself out of my office window than bang my head again against the wall that had been built around the Legal Services Commission's funds for group claims. Three years on, the future seems nothing like as bleak.

Over the last ten years we have seen the slow squeezing of the life out of the legal aid system and the impact that has had on the amount of money available to fund group claims led to those of us who specialise in representing the claimants in these cases to concluding that such claims were doomed. It also led to us moaning at every opportunity to politicians, and legal administrators that we were giving carte blanche to corporate Britain to do what they wanted with little if no chance of redress against them.

However, in fact what we have seen is that group claims have increasingly been brought under the no win no fee scheme. This has been a great surprise because it was felt that few if any law firms would be prepared to take the risk involved in running a group claim where payment depended on results. It was thought the downside would be far too great.

In recent times in my firm we have run some ten group claims, and in all but one of which we have run the cases under the no win no fee scheme. We have already had good successes with some of them and we have found considerable benefits to running the claims free of the bureaucracy imposed at whim by the guardians of the public funding. It has meant that we can always ensure that the interests of the injured people come first, rather than having to worry endlessly about how to overcome the next bureaucratic hurdle that has been put in our way.

Much of our work involves representing those injured or damaged who live in the developing world. The decision in the European Court case of [Owusu](#) has meant that we have had no real problems over the issue of jurisdiction since that time. This has meant that the judgment we obtained in the [Cape Asbestos](#) claims from the House of Lords, where jurisdiction was held to be here in England because the Court decided it was the only place that justice could be done, became superfluous, which is a shame as it was a cracking judgment.

Mediation has also increasingly entered our world, even for the foreign claims. So in a [case against BP on behalf of some 50 Colombian farmers](#) who claimed that their land had been damaged by the laying and use of a pipeline, we were able to successfully conclude the claims in a mediation that took place in Bogota. However, when we agreed to negotiate with the British Government in relation to the torture, abuse and murder of Iraqis surrounding the death of [Baha Mousa](#), the big problem has been in finding a venue where the mediation can actually take place. For a long while it was impossible for the mediation to actually take place because of the difficulties involved in getting the Iraqis out and into Britain, however, that was eventually overcome and we were able to hold a successful mediation in June 2008 when the Mousa group received nearly £3million.

The advantages of mediation are that it gives a chance for the injured to participate in the resolution of the claims and greatly speeds up the outcome. The downside is that it can mean the issues in the case do not become fully aired in public, which is often a major plus to the corporate Defendants and a major downside for the Claimants. Luckily in the Mousa claims, the Government has agreed to a public inquiry into the events surrounding his death, so this is not a problem with that group of cases. In the BP case, a confidentiality agreement meant that we and the clients were unable to talk about the terms of the settlement. However, a second group of claims coming forward looks likely to go through to trial which should ensure that the issues in the case are fully aired.

The importance of these claims should never be underestimated. In 2002 I represented a [Kenyan Masai called Kipise who had lost an arm and a leg as a result of coming across an unexploded mortar](#), left on a practice range in central Kenya used by the British Army. Following the successful mediation of his case, I travelled over to Dol Dol, where he lived. When I had first met him, Kipise was a beaten man - living in abject poverty - on handouts from his family. The loss of his arm and leg in a society dependent on herding for their livelihoods, meant that he was totally at the bottom of the food chain. However, as I walked through the main street of his village following the mediation, I found myself staring at a man with a Land Rover and driver, dressed in a fine Masai outfit and with a smile from ear to ear. Justice comes in many forms and for Kipise it was the knowledge that having been a burden on his family for many years, he could at last play his full part in ensuring the continuation and support of his family line.

Ensuring that cases like that of Kipise and the Masai, of the people of Abidjan, and of the Colombians can continue is essential to any developed democracy. I am only grateful that in England and Wales we have a system which enables these claims to be brought.