

Across the Board

Risk without borders: the changing face of corporate liability



Group claims targeting UK-based parent companies for the overseas activities of their subsidiaries and conduct of their supply chain partners are on the rise.

This article cuts through the legal complexity to highlight what is driving these claims, the risks for UK-headquartered multinational groups, and the practical steps GCs should be taking now.

At a glance: key risk areas

- 1** **Increased risk to UK-headquartered parent companies:** UK parent companies are being sued in England & Wales for alleged harms linked to activities of their overseas subsidiaries, joint venture companies and supply chains. These claims can run into the billions of pounds.
- 2** **English courts are showing a growing willingness to accept jurisdiction,** even where the alleged harm and claimants are overseas and where foreign laws apply to the claims. For example, the English courts have heard claims under Malaysian health and safety legislation.
- 3** **The UK's booming litigation funding market is a key driver,** making it commercially viable for large groups of foreign claimants to pursue UK parent companies regardless of the high costs of litigation.
- 4** **As a result, boards face a governance paradox:** They must balance the need for good governance and regulatory demands for oversight of foreign operations and supply chains, with the risks and consequences of potentially assuming legal responsibility for the activities of overseas third parties.
- 5** **There is a further risk of investor claims for listed companies:** Even absent a judicial finding of liability, there may be litigation in the form of 'stock drop' claims, which are frequently backed by litigation funders.

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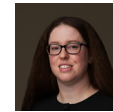
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Key considerations

1

Group claims against UK-headquartered parent companies are on the increase

There has been a marked increase in group claims against UK-headquartered companies, with claimants seeking to hold parent companies liable for alleged wrongdoing by subsidiaries in foreign jurisdictions.

Recent UK Supreme Court decisions in *Vedanta* and *Okpabi* have confirmed that whether a parent company is found liable in negligence is fact-specific, depending on whether the parent has assumed a duty of care to the claimants through its governance, oversight, policies, or public statements, rather than by virtue of its corporate structure alone and whether that duty has in fact been breached.

The key challenge for companies is therefore to design governance frameworks that provide meaningful assurance and effective management of risks, particularly around adverse human rights and environmental impacts, while preserving the benefits of legal separation between parent and subsidiary.

Consideration should be given to:

- When to use high-level principles in group policies and when to explain operational requirements in detail.
- How to establish robust escalation protocols for situations where parent company intervention is necessary.
- Clear documentation of decision-making processes, risk assessments, and the rationale for any parent-level involvement.
- Regular review of governance arrangements to reflect legal developments and the practical reality of a group's operations.

Does the Parent have a Duty of Care?

- **Factors that may give rise to the assumption of responsibility:**
 - **Joint or substituted management:** Where a parent company effectively takes control of operational decision-making at subsidiary level. Although relatively uncommon, this presents the clearest risk of liability.
 - **Group-wide policies and standards:** If a parent mandates group-wide policies, claimants may argue that it has assumed responsibility for any harm resulting from local implementation. The risk increases where such policies are prescriptive rather than limited to high-level principles.
 - **Active enforcement and supervision:** This includes activities such as training, audits, compliance monitoring, and direct involvement in operational matters. Claimants often argue that, by supervising implementation, the parent shifted from oversight to operational control.
- **Substance over form:** Formal statements of autonomy or contractual allocations of responsibility will carry limited weight if the factual evidence suggests that the parent was, in practice, directing or controlling the relevant activities.
- **Public statements:** Assertions by parent companies regarding oversight, standards or controls (whether in annual reports, sustainability disclosures or other publications) are frequently relied upon to support allegations that responsibility was assumed. Parent company policies, board papers and press releases are often quoted in pleaded cases.

Key considerations

2

Supply chains are the new battleground

Those recent Supreme Court decisions have emboldened claimant groups to seek compensation for harms allegedly caused, not by a subsidiary of the defendant company, but by joint venture partners or business partners in supply chains.

Limbu v Dyson (see *Case in focus*) is a recent example of attempts to assert liability against a company for harms caused by a supplier's conduct.

Governance around overseas supply chains must therefore be a focus, and companies should ensure oversight is both effective and proportionate, with clear mechanisms for monitoring and intervention where necessary. Companies should map where group-wide oversight exists to understand how governance frameworks function day-to-day across supply chains. What matters is how this oversight operates in practice.

3

The governance paradox: oversight vs liability

Alongside a broader imperative to implement good governance procedures, boards face mounting pressure from regulators and investors to oversee subsidiaries and supply chains, particularly in light of new mandatory ESG reporting and due diligence frameworks such as the CSRD and CSDDD.

This enhanced ESG regulation and legislation, and increasing reliance on international frameworks for responsible business conduct have significantly raised expectations that parent companies will actively manage legal and social risks throughout their groups and supply chains.

Case in focus: Limbu v Dyson

The facts:

In *Limbu v Dyson*, 24 migrant workers from Nepal and Bangladesh brought claims in the English courts against Dyson group companies, alleging forced labour and human rights abuses while working in Malaysian factories supplying Dyson. The claimants were not employed by Dyson entities but by local suppliers.

Key points:

- The claim was allowed to proceed in England, despite the alleged harm occurring in Malaysia and the claimants being foreign nationals.
- The Court of Appeal found the 'centre of gravity' of the negligence allegations lay in England, where Dyson's corporate decision-making and policy-setting occurred.
- The court noted that the lack of viable litigation funding in Malaysia made England the only realistic forum for the claim, not because the claims could not be brought in Malaysia but because the commercial dynamics of group litigation meant that they were unlikely to proceed there.
- The case settled before trial, but it highlights the willingness of English courts to accept jurisdiction and scrutinise parent company oversight of overseas supply chains.

Key considerations

However, increased oversight and control by a parent company may heighten the risk that English courts find it has assumed a duty of care and therefore may be held liable to third party individuals harmed by the operations of its subsidiaries, JV partners or suppliers.

When preparing statements around sustainability and governance in the course of corporate reporting, companies should ensure these statements accurately reflect the level of control exercised in reality and avoid inadvertently or unknowingly assuming responsibility for matters beyond their direct oversight if not intended.

4

Why it matters for M&A

Parent company duty of care claims represent a hidden balance sheet risk in M&A transactions, sometimes crystallising long after completion. Even unsuccessful claims can result in significant costs, management distraction, and negative publicity.

For buyers, this means:

- Due diligence must go beneath the surface. Acquirors should review not only formal policies and agreements, but also how the business operates in practice, with particular attention to higher-risk jurisdictions and supply chains.
- Governance and oversight arrangements should be assessed to determine the extent of parent involvement and whether group-wide policies or ESG commitments could expose the ultimate parent to future claims.
- Post-acquisition integration should be carefully planned. Governance frameworks should be structured to balance effective oversight with clear legal separation, mitigating future exposure.

5

Litigation funders and the escalation to stock drop claims

The rapid growth of the UK litigation funding market is fundamentally altering the risk profile for UK-listed companies. Now valued at an estimated £3 billion, the funding market is second only to the US, with funders actively targeting mass torts, ESG and supply chain claims. This financial backing enables large, complex cases to proceed that would otherwise be commercially unviable, particularly for overseas claimants.

For listed companies, the risks do not end with the initial group claim. Even absent a final determination of liability, there is also a significant risk of 'stock drop' claims by shareholders. These claims typically allege that the company's disclosures, for example around ESG, human rights, or supply chain risks, were misleading or incomplete, and that investors suffered losses when the share price fell as a result. In some cases, these claims follow a judicial finding of liability, but they may also be brought in parallel with, or independently of, underlying related litigation, depending on the nature of the alleged failings.

The litigation funding industry is increasingly active in backing these claims, which can result in parallel, high-value proceedings and further reputational harm. This trend is accelerating in the UK. To mitigate this risk, listed companies should scrutinise carefully what they choose to disclose via the RNS and when they choose to delay disclosure.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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