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DISPUTES YEARBOOK 2025 THE VIEW FROM LONDON

From motor finance litigation and AI to legislative reform and international conventions, we pick out the key themes and cases from across the year

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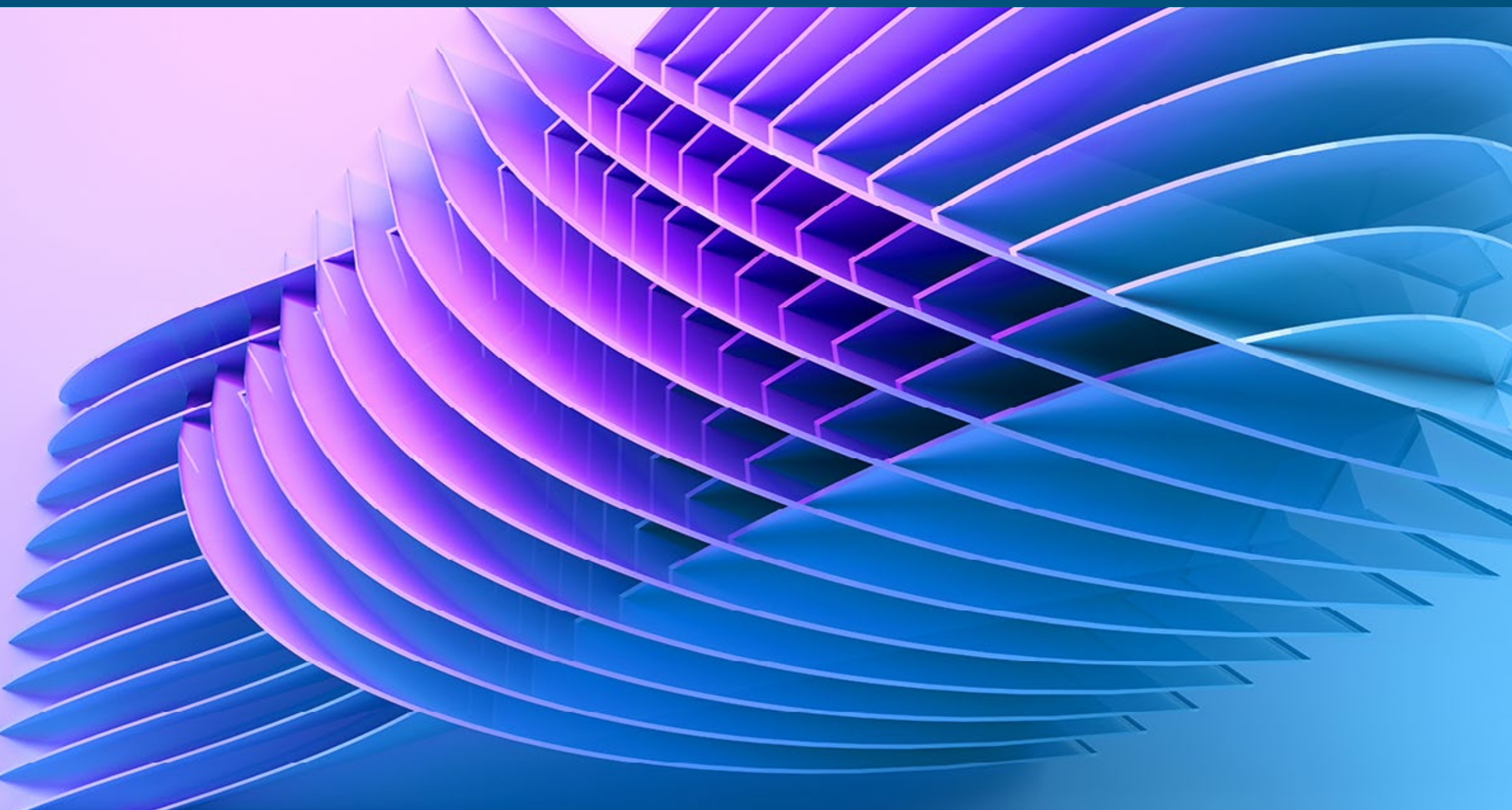

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Disputes Yearbook 2025 – The view from London

2025 has been another eventful year for commercial disputes. Class actions have continued to make the news, with some very large group actions progressing through the courts. The Supreme Court has given judgments relating to broker commissions in motor finance cases and the scope of the Building Safety Act. There have also been important decisions relating to Russian aviation insurance claims, the impact of sanctions, and environmental litigation. And, like the rest of society, the courts have had to grapple with challenges posed by the use of AI, including cases in which parties cited fake authorities.

On the legislative front, the Arbitration Act 2025 has brought in important changes, the new offence of failure to prevent fraud has come into force, and a Bill is before Parliament that would further expand corporate criminal liability. The government has proposed a package of regulatory changes for the financial services industry known as the Leeds Reforms, and the government's response is awaited to key recommendations from the Civil Justice Council for the regulation of litigation funding.

An important international convention for the enforcement of judgments, the Hague Judgments Convention 2019, has come into force for the UK and the government has consulted on implementing the Singapore Convention on Mediation.

This is just a snapshot of the major themes in disputes over the last year. You can read insights from our London disputes team on these topics as well as other major developments below.

Dispute resolution

From bet-the-farm disputes to courts of opinion

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Chapters

Alternative dispute resolution

Court exercises power to compel ADR and government takes steps toward implementing Singapore Convention

High Court orders parties to mediate

In October 2024, the Civil Procedure Rules were amended to confirm that the court's case management duties and powers extend not only to encouraging but also to ordering ADR where appropriate.

Since then, the courts have begun to exercise this power in practice. In *DKH Retail Ltd v City Football Group Ltd* [2024] EWHC 3231 (Ch) (dating from November 2024, but reported in January 2025), the High Court ordered the parties to mediate a trade mark dispute at a pre-trial review despite the defendant's objection that there was no real prospect of settlement and the parties needed a judicial determination. The court did not accept this position, noting that "mediation is capable of cracking even the hardest nuts" – a view which appears to be vindicated by a postscript to the judgment recording that the parties had indeed subsequently settled their dispute.

The decision illustrates the court's broad discretion to order parties to engage in ADR, and some of the factors it may consider when exercising such discretion.

> "The approach currently proposed by the Ministry of Justice includes the introduction of a new registration process for mediated settlement agreements, with all the powers ordinarily available to enforce a court order being available to enforce a mediated settlement once it has been registered."

Government consults on implementing Singapore Convention on Mediation

The Ministry of Justice launched a consultation on the implementation into UK law of the UN Convention on International Settlement Agreements Resulting from Mediation, better known as the Singapore Convention. The Singapore Convention requires member states to enforce settlement agreements that result from mediations resolving international commercial disputes. Refusal of recognition or enforcement is possible only on limited grounds. There are currently nearly 60 signatories to the Convention, with around a third of signatories having also ratified. The UK Government signed the Singapore Convention in May 2023.

Implementing and applying the Singapore Convention may prove more complicated than signing it. We have previously highlighted several areas where the Convention's provisions are ambiguous or else leave flexibility for enforcing courts to take different approaches. The approach currently proposed by the Ministry of Justice includes the introduction of a new registration process for mediated settlement agreements, with all the powers ordinarily available to enforce a court order being available to enforce a mediated settlement once it has been registered. In other respects, the proposals are lighter touch, with a number of areas to be left to the courts to consider in due course rather than being specifically provided for in implementing legislation. The outcome of the consultation is awaited.

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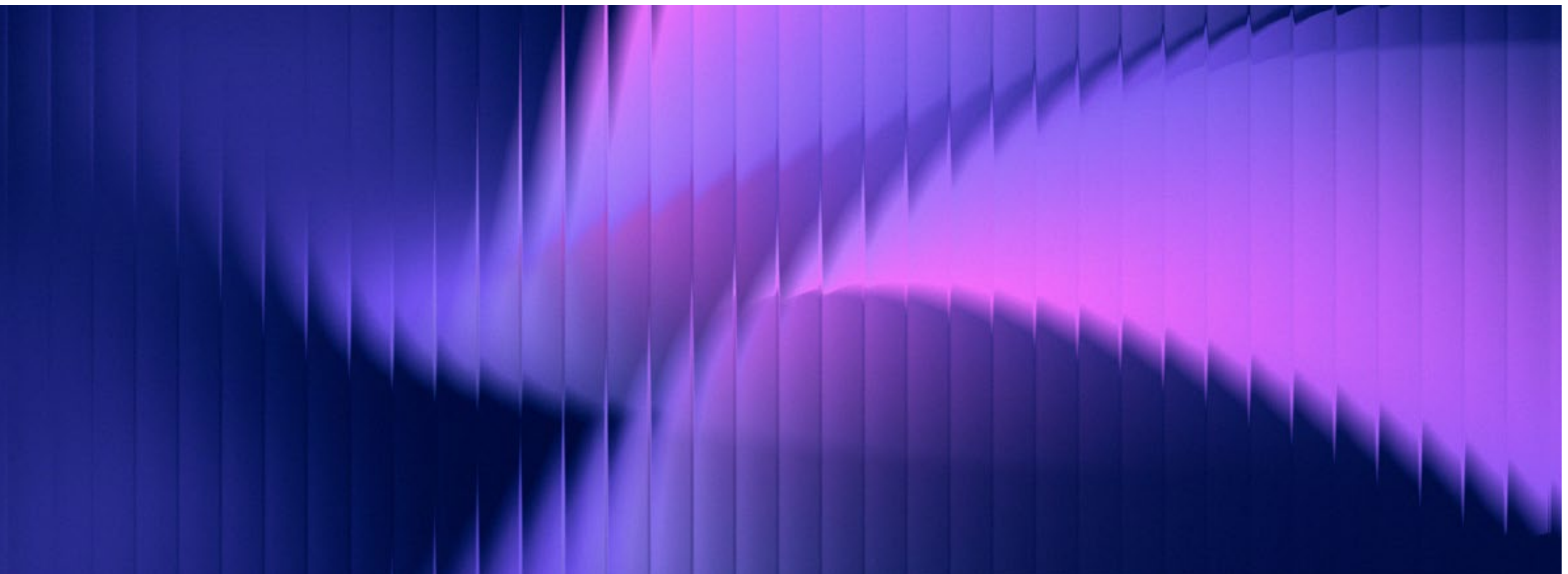

Arbitration

The Arbitration Act 2025 comes into force and the English courts grapple with the limits of the New York Convention and issues of sovereign immunity

Amendments to the English Arbitration Act 1996

On 1 August 2025, the Arbitration Act 2025 came into force, amending the English Arbitration Act 1996 (together referred to as "the Act"). The Act applies to arbitration proceedings (and associated court proceedings) commenced after 1 August 2025. It also applies retrospectively to arbitration agreements. These amendments followed a comprehensive review and consultation process by the Law Commission. Rather than a root and branch reform, the changes are intended to fine-tune and clarify the law, ensuring that the UK remains a leading destination for commercial arbitration.

Significant changes to the Act include:

- The codification of the arbitrator's duty of disclosure (section 23A), which requires prospective and sitting arbitrators to disclose any relevant circumstances of which they become aware that might reasonably give rise to justifiable doubts as to their impartiality in relation to the potential or ongoing proceedings.
- The strengthening of arbitrator immunity around resignation and removal (section 24(5A)).
- The introduction of a statutory power of summary disposal (section 39A), confirming the tribunal's power to make an award on a summary basis (upon an application made by a party) if it considers that a party has no real prospect of succeeding on the claim, defence, or issue.
- The improvement of the framework and procedure for jurisdictional challenges under section 67. The Act permits the creation of new court rules to prevent the court from re-hearing evidence that has already been heard by a tribunal and to restrict parties' ability to raise new grounds or evidence, subject to the court ruling otherwise in the interests of justice. As at today's date, those court rules have not yet been published.
- The introduction of a new default rule (section 6A) which provides that the governing law of an arbitration agreement shall be the seat of the arbitration unless the parties agree otherwise.
- Clarification of the court's powers in support of arbitral proceedings and in support of emergency arbitrators. Orders under section 44 of the Act (such as for the preservation of evidence) are now confirmed to be available against third parties. Emergency arbitrators are also empowered both to issue peremptory orders (which can result in court-ordered compliance under section 42 of the Act) and to give permission for applications to the court under section 44(4).

The full impact of these reforms is yet to unfold. It will be interesting to observe whether, in the coming year, the English courts encounter novel issues arising from these changes. For more information see our blogpost and podcast on the recent amendments to the Act.

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English Court of Appeal rules on the limits of the New York Convention

In *Star Hydro Power Limited v National Transmission and Despatch Company Limited* [2025] EWCA Civ 928, the Court of Appeal unanimously allowed an appeal granting an anti-suit injunction restraining the respondent from pursuing proceedings related to a London-seated arbitral award in Lahore, Pakistan.

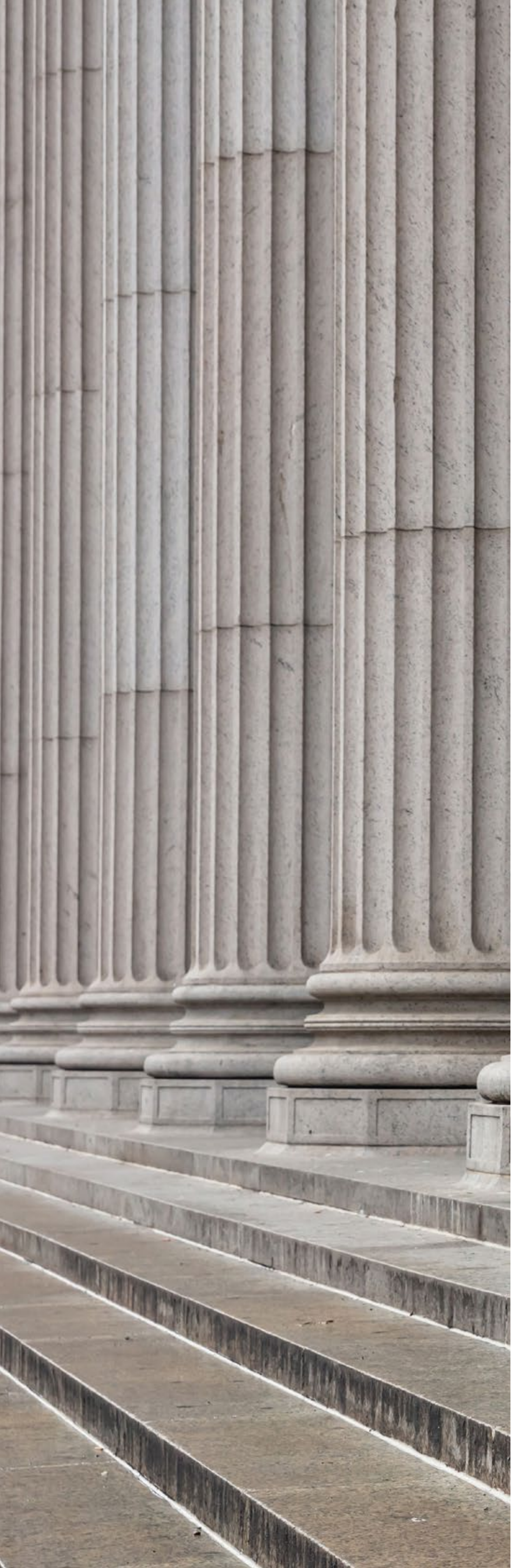
The court clarified that while the New York Convention governs the recognition and enforcement of foreign arbitral awards, it does not permit a party to bring pre-emptive challenges to a London-seated arbitral award in foreign jurisdictions. The English courts maintain exclusive supervisory jurisdiction over such challenges under the Act, with the New York Convention operating only as a shield in recognition and enforcement proceedings in other jurisdictions.

This judgment underscores the English courts' emphasis on respecting parties' choice of arbitral seats and preserving the curial court's role in regulating challenges to awards made under its supervision. The case is set to be considered by the Supreme Court in 2026. For more information, see our blog post here.

Sovereign immunity and arbitration

The intersection of arbitration and sovereign immunity under the UK State Immunity Act 1978 (SIA 1978) continues to generate significant case law:

- In *General Dynamics v Libya* [2025] EWCA Civ 134, the Court of Appeal considered whether Libya had waived immunity from execution under section 13(3) SIA 1978. Clause 32 of the contract provided for ICC arbitration and stated that any award would be "final, binding and *wholly enforceable*". The court held that Libya had waived its execution immunity, though the judges differed on reasoning. For further discussion of this case, see our podcast.
- In *Hulley Enterprises v Russia* [2025] EWCA Civ, the Court of Appeal held that a foreign court judgment can give rise to an issue estoppel conclusively precluding a state from re-litigating whether an exception to state immunity under the SIA 1978 applies. In this case, the courts of the Netherlands (the seat of arbitration) had decided that Russia had agreed in writing to submit the dispute to arbitration. The English courts were therefore entitled to treat that decision as giving rise to an issue estoppel. The court stressed caution in recognising foreign judgments but confirmed that procedural principles like estoppel operate alongside the SIA 1978 framework. However, the court also warned that caution is necessary in deciding whether a foreign court judgment has given rise to an issue estoppel, as it may be unclear precisely what the foreign court has decided or what the effect of its decision is. For more information see our blog post.



Arbitration continue.

- In *CC/Devas v Republic of India* [2025] EWHC Comm, the English Commercial Court considered whether India's ratification of the New York Convention amounted to a waiver of state immunity under section 2(2) SIA 1978. The court held that ratification of the New York Convention does not, in itself, constitute consent by "prior written agreement" to the English court's adjudicative jurisdiction. The court reaffirmed that any waiver of state immunity by treaty or convention must be express and unequivocal. This case is set to be considered by the Court of Appeal in March 2026 on the basis that it has implications for English law on state immunity beyond this dispute. The Court of Appeal judgment in *Infrastructure Services Luxembourg SARL and another v Kingdom of Spain* [2024] EWCA Civ is also of note given its determination that foreign states cannot rely on state immunity to oppose registration of adverse arbitration awards issued under the ICSID Convention. The decision was appealed to the Supreme Court which heard the case in early December. We now await its judgment. For more information see our blogposts here and here.
- See here for another case in which the English court grappled with the issue of sovereign immunity and found that a lender's claim against a sovereign state and central bank was not barred on sovereign immunity grounds.

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Banking litigation

A Supreme Court ruling on motor finance could impact broker commission claims in other sectors while financial services firms continue to face disputes relating to sanctions, securities and payment processing

Broker commission claims

Over the summer, the Supreme Court delivered a decision that marks a defining moment for broker commission disputes (see here). The Supreme Court held that dealer brokers in motor finance transactions do not owe fiduciary duties to their customers, overturning the Court of Appeal's earlier finding to the contrary. As a result, the court dismissed all claims against the lenders based on common law bribery and accessory liability. However, in one of the appeals, the Supreme Court found that the relationship between the consumer and their lender was unfair under section 140A of the Consumer Credit Act 1974 (CCA) and ordered the lender to pay the commission amount to the customer with interest. The judgment confirms that future broker commission claims are likely to be confined to the statutory route and provides helpful guidance on the factors relevant to unfairness. Our special edition podcast explores the practical implications of this decision and its wider impact on the industry (see here).

In parallel, the Financial Conduct Authority (FCA) has consulted on a proposed industry-wide redress scheme for motor finance customers and intends to launch the scheme in early 2026. The scheme will cover regulated motor finance agreements that lenders entered into between 6 April 2007 and 1 November 2024, where the lender paid commission to the broker. Our FSR colleagues have released a podcast discussing the scope of the scheme, what firms should be thinking about and what this means for the FCA's approach to redress more generally (see here).

In the past year, the courts have scrutinised other key aspects of claims based on breach of fiduciary duty. The Supreme Court confirmed that fiduciaries must account for profits they make from their position, even if they would have earned those profits without breaching their duty (see here). Meanwhile, the Court of Appeal confirmed that dishonesty is an essential element in any claim based on accessory liability for a broker's breach of fiduciary duty (see here). Fiduciary obligations is a complex area of the law and this appellate-level clarification is helpful for future claims.

The litigation landscape for broker commission cases continues to be shaped by procedural developments. The County Court confirmed that 5,800 motor finance claimants could use omnibus claim forms and did not need to issue separate claim forms (see here). In a separate decision, the County Court reviewed the limitation period for unfair relationship claims under s.140A CCA, highlighting that even if the limitation period in respect of a breach of fiduciary duty claim has expired, there may be a risk that the limitation period for an unfair relationship claim has not (particularly where the credit relationship is ongoing, has been assigned or has recently ended) (see here). These decisions could increase the volume of future broker commission claims.

> "The Court of Appeal confirmed that dishonesty is an essential element in any claim based on accessory liability for a broker's breach of fiduciary duty. Fiduciary obligations is a complex area of the law and this appellate-level clarification is helpful for future claims."

Impact of sanctions

Sanctions litigation continues to test the boundaries of contractual enforcement and jurisdictional strategy. During the summer, the High Court found in favour of several banks, ruling that Russian sanctions prohibited payment under on-demand bonds (see here). In its analysis, the court examined several complex issues, including what amounts to illegality in the place of performance, so that a contract will be prevented from being performed under the so-called *Ralli Bros* principle. The judgment also considers the role of national competent authorities and their determinations. Ultimately, the decision confirms that parties must comply with sanctions, even where contractual obligations exist.

The courts have also addressed the procedural consequences of sanctions. The High Court declined to vary an interim payment order (see here) and refused to set aside a statutory demand issued by a "designated person" (see here), reaffirming that sanctions do not automatically frustrate enforcement rights or encourage non-compliance with court orders. In parallel, both the Court of Appeal and the High Court granted banks' requests to revoke final anti-suit injunctions to avoid Russian court-imposed penalties, while preserving declarations on jurisdiction (see here and here). These decisions reflect a pragmatic judicial approach, as the courts balance the need to uphold English jurisdiction with the realities of international enforcement risk under sanctions regimes.

Authorised Push Payment (APP) fraud

The courts continue to refine the scope of duties owed by payment service providers (PSPs) to their customers when processing payments. The boundaries of these duties have been tested by claims brought by APP fraud victims, particularly since the Supreme Court's decision in *Philipp v Barclays Bank UK plc* [2023] UKSC 25 (see here), which effectively barred so-called Quincecare claims.

In the spring, the High Court considered the novel "retrieval" duty, requiring banks to take adequate steps after being alerted to a fraud to recover payments made (first recognised in *Philipp*). The court ruled that receiving PSPs do not owe a retrieval duty to non-customers, and rejected attempts to expand the so-called *Quincecare* duty to situations where no contractual relationship exists between a bank and the third-party victim (see here). However, the court accepted that the retrieval duty is a further potential application of the general duty of care owed by a sending bank to interpret, ascertain and act in accordance with its customer's instructions. This was reconfirmed in a subsequent High Court decision, finding that the retrieval duty was arguable in a claim by a customer against its sending bank (see here). It would be helpful for the financial services industry to see this point tested in a substantive trial judgment, as so far it has only considered to the strike-out standard.

Banking litigation continue.

In another notable development, the High Court permitted APP fraud victims to pursue a "derivative" *Quincecare* claim against a PSP, bringing the action in place of the PSP's corporate customer, which was the vehicle used for the fraud (see here). Separately, the High Court allowed a potential claimant to use documents obtained via a Norwich Pharmacal Order in proceedings against the disclosing bank, to evidence its conduct as a receiving bank in an APP fraud case (see here). These decisions signal that claimants continue to bring novel APP fraud claims against both sending and receiving banks, notwithstanding the UK's mandatory APP fraud reimbursement scheme which came into force on 7 October 2024.

Class actions against banks

The courts continue to scrutinise the procedural mechanisms used by claimants to bring collective claims against financial institutions. The Court of Appeal rejected an attempt to use CPR 19.8 representative proceedings for a securities class action, and confirmed that the courts will not allow this procedure to be used to gain tactical advantages (see here). The decision underlines that the court will exercise discretion when deciding whether to allow a representative action to proceed.

The court also reopened the key question of whether "passive" investors can meet the reliance requirement for a s.90A Financial Services and Markets Act 2000 (FSMA) claim based on alleged omissions or misstatements, and the requirements for a claim of dishonest delay. Last year, the High Court considered this question for the first time, ultimately dismissing claims brought by 241 funds who had not read or considered the published information alleged to contain misstatements or omissions when deciding to buy, hold or sell shares in the relevant issuer (see here). However, in a separate case this year, the High Court declined to restrict "passive" investors from bringing claims under section 90A (see here). The court preferred to defer decisions on the meaning of reliance and delay until trial, and accordingly declined to strike out the "passive" investor claims.

The courts also confirmed that shareholders generally have no entitlement to the production of a company's privileged material. The Privy Council abrogated the so-called "shareholder rule" – ie that a company cannot assert privilege against its shareholders save in relation to documents created for litigation against that shareholder – and confirmed that it forms no part of English law (see here). The Privy Council highlighted that the continued recognition of the shareholder principle would discourage directors from taking legal advice needed to make decisions for the benefit of the company, due to the risk of having to disclose that advice to shareholders later.

Finally, regulatory changes on the horizon may impact securities litigation. The FCA aims to attract and retain more listed companies in London and, as part of this drive, has published new UK prospectus rules that involve significant changes. The new rules include when companies need a prospectus for a secondary capital raising, and make it easier for companies to make forward-looking statements (see here). The new rules will come into force in January 2026. It is anticipated that the new rules will likely lead to fewer prospectuses being published, at least for secondary capital raises. While this may reduce the risk of s.90 FSMA claims, the change could magnify the importance of the information which is disclosed by issuers, driving claims under s.90A FSMA and common law claims. You can read more in our article published in *Butterworths Journal of International Banking and Financial Law* here.

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Civil fraud

Judgments from the UK's highest courts have clarified the law on fiduciary duties and the tort of deceit

Supreme Court clarifies scope of liability for directors and fiduciaries

The Supreme Court issued a number of judgments this year concerning liability for breach of fiduciary and/or directors' duties. Three are of particular note.

In the first case, the Supreme Court confirmed that a fiduciary, including a company director, is liable to account for all profits made out of their position as such. They cannot circumvent liability by arguing that "but for" the breach they would have made the profits in any event – for example because, if asked, the principal would have consented. The court may, however, award an equitable allowance to reduce the amount of accountable profits where the fiduciary has devoted hard work and skill, and potentially put their own capital at risk in obtaining such profits.

In so deciding, the Supreme Court unanimously declined to change the law governing a fiduciary's liability to account for profits. The decision confirms the strictness with which the equitable principles that attach to a fiduciary relationship are to be applied. The "no profit" rule requires a fiduciary who makes a profit out of their position (such as by exploiting a business opportunity they became aware of by virtue of being a fiduciary) to account for that profit unless the principal provides informed consent to the fiduciary keeping it. It is closely linked to the "no conflict rule", which prohibits fiduciaries from placing themselves in a position where their interest and duty may conflict. The essential purpose of both rules is to deter individuals who have undertaken an obligation of undivided loyalty to someone else from being tempted to fall short of that obligation for their own gain.

In the second case, the Supreme Court restored an order requiring a third party who dishonestly assisted a company director in making and then dissipating an unauthorised profit to pay equitable compensation equal to the amount of that unauthorised profit. In so doing, the Supreme Court confirmed that, in cases involving multiple breaches of duty, such as the making of unauthorised profits and the subsequent dissipation of those profits, the two breaches must be viewed as separate and distinct.

A dishonest assistant can therefore be liable, jointly with the defaulting fiduciary, for losses caused by the dissipation. In the Supreme Court's view, this does not contradict the established principle that a dishonest assistant can only be liable to account for profits they have themselves made (and not those made by the defaulting fiduciary). It is irrelevant that the compensation awarded against the dishonest assistant may be equal to the profit gained by the defaulting fiduciary.

In the final case, the Supreme Court clarified that anyone who assumes fiduciary powers can be held liable for breach of those duties, even without having formal authority. This liability extends to those who intermeddle with company assets, regardless of whether the wrongdoer personally receives the misappropriated property or channels it to another entity under their control.

The decision also confirms that equitable compensation aims to restore the value of misappropriated property, and that the date for valuing loss is not fixed by rigid rules. Instead, the courts will consider what is just and equitable in the circumstances, with regard to the substance and purpose of transactions. The Supreme Court further clarified that if a defaulting fiduciary is involved in, orchestrates, or benefits from subsequent events that destroy the value of the misappropriated property, they cannot rely on those events to avoid or reduce their liability for the original breach unless they can provide an innocent explanation.

> "The decision confirms the strictness with which the equitable principles that attach to a fiduciary relationship are to be applied."

Conscious awareness of representation is not a requirement for the tort of deceit

The Board of the Privy Council held that, for a claim in the tort of deceit, there is no legal requirement for a claimant to show that it was consciously aware of representations made by the defendant or understood them to have been made. The decision clarifies that claimants may be able to prove reliance on a representation where they have acted on an unconscious assumption. However, claimants will need to prove that: (i) the assumption was reasonable; and (ii) there was a causal link between the defendant's words or actions and the claimant's assumption.

As an opinion of the Privy Council this decision is not binding on the English courts. However, the judgment specifies that this represents the law of England and Wales as well as Bermuda, and it is likely to be persuasive in future cases before the English courts, given that the members of the Board of the Privy Council also sit in the Supreme Court.

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Class actions

Class actions continue to dominate the litigation landscape while a review of opt-out competition collective actions is underway

High-profile group actions progressing through the courts

Group actions have continued to be a prominent feature of the litigation landscape, with a significant proportion of the major commercial cases in the English courts now being pursued on a collective basis – whether with or without a group litigation order (GLO).

One of the largest cases currently progressing through the courts is the diesel emissions litigation, in which claims by around a million and a half claimants are being litigated under 13 separate GLOs, all collectively managed under the umbrella of the *Pan NOx Emissions Group Litigation*. There are also significant claims being pursued against major international corporations relating, for example, to allegedly false or misleading statements to the market, defective products, or environmental damage in foreign jurisdictions.

Continued uncertainty on potential for opt-out representative actions

This year saw various decisions refusing permission for claims to be brought under the CPR 19.8 representative action procedure, which allows a claim to be brought on behalf of those who have the "same interest" in it. These included claims for misuse of private information (Data class actions: Court of Appeal upholds decision blocking "opt-out" representative action for misuse of private information) and copyright infringement (High Court refuses to allow representative action to be brought on behalf of copyright owners in IP case).

To date, however, there has not been a case looking at the key questions of whether, under CPR 19.8, compensation can be awarded on a collective basis and amounts deducted to pay claimant law firms and funders – which would have a significant impact on the commercial viability of representative actions for claimants and funders. Those questions were due to be considered at a preliminary issues hearing in January 2025, in a case relating to secret commissions, but the case settled late last year: Representative actions under CPR 19.8: Settlement means key questions on funding and damages will have to wait.

> "There are also significant claims being pursued against major international corporations relating, for example, to allegedly false or misleading statements to the market, defective products, or environmental damage in foreign jurisdictions."

English courts accept jurisdiction in transnational tort claims

Two cases over the past year have demonstrated that, while the English court has a discretion to decline jurisdiction over UK-based defendants on the basis that another forum is more appropriate (in contrast to the pre-Brexit position, when there was no such discretion), it will not exercise that discretion if the claimants establish a real risk that they would not obtain substantial justice in the alternative forum:

- The Court of Appeal rejected a jurisdiction challenge in relation to claims brought by migrant workers against English and Malaysian companies in the Dyson group regarding alleged abusive employment practices by one of Dyson's suppliers in Malaysia. The fact that there was a serious risk that the claimants would be unable to fund their claims in Malaysia, together with various factors connecting the dispute to England, meant that England was clearly the appropriate forum: Supply chain risk: Court of Appeal finds claims against Dyson relating to actions of Malaysian manufacturer should proceed in England.
- The High Court rejected a jurisdiction challenge by two UK-domiciled companies in relation to alleged damage as a result of pollution from a mine operated by their Brazilian subsidiary. The court held that, while Brazil had a closer connection to the case, there was a real risk that the claimants would not obtain substantial justice there due to funding difficulties: High Court allows case to proceed against defendant companies domiciled in England despite claims having more real and substantial connection with Brazil.

Significant decisions in collective proceedings in the Competition Appeal Tribunal

There have been some significant decisions under the collective proceedings order regime in the Competition Appeal Tribunal (CAT). In December last year, in the first opt-out collective competition claim to proceed to trial, the CAT unanimously dismissed a claim for over £1bn in damages on behalf of over 3.7 million BT customers, having concluded that there was no abuse of dominance: Competition class actions: First case to go to trial ends in failure. Permission to appeal was refused. Two other cases have since gone to trial and received a judgment on the merits. The first, against train operators relating to boundary fares, was dismissed. However, the second delivered the first substantive success for claimants under the regime, with the CAT awarding some £1.5 billion in damages to a class of some 36 million users of Apple devices.

Opt-out competition class actions under the spotlight

The Department for Business and Trade issued a call for evidence on the operation and impact of the opt-out collective actions regime in the Competition Appeal Tribunal, a decade on from its introduction. It asked a broad range of questions on issues such as access to the regime and how cases are funded, the scope of the regime and the threshold for certification, the use of ADR and how damages should be distributed. The consultation was open until mid-October and the government's response is awaited.

Separately, the Supreme Court is due to rule on whether the Court of Appeal was wrong to find that claims relating to foreign exchange spot trading should proceed on an opt-out basis, overturning the decision of the Competition Appeal Tribunal.

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Commercial litigation

Areas to watch include potential new regulation for litigation funding, expanded access to court documents and the use of AI in the courts

Proposals for the regulation of litigation funding

The Civil Justice Council (CJC) has published its final report in its review of the litigation funding sector. The review was set up in April 2024 in the light of the Supreme Court's high-profile decision in *Paccar* which held that litigation funding agreements based on a share of damages were Damages-Based Agreements (or DBAs) and were therefore unenforceable unless they complied with the restrictive regulatory regime for such agreements.

The CJC's report recommends reversing the effect of *Paccar* with retrospective effect, as well as introducing a new system of "light touch" statutory regulation for funders, with additional requirements applying to funding for consumers and class actions. The government's response to the report is still awaited.

In the meantime, the Court of Appeal has confirmed that litigation funding agreements in which the funder's fee is calculated as a multiple of the funding provided, rather than a percentage of damages, will not fall foul of *Paccar*.

Abrogation of the so-called Shareholder Rule for legal professional privilege

A Privy Council decision has established that the so-called Shareholder Rule – ie that a company cannot assert privilege against its shareholders save in relation to documents created for litigation against that shareholder – forms no part of English law (or Bermudian law). The decision means that companies can assert privilege against their shareholders, and is highly significant in the context of shareholder litigation, including securities class actions.

Commercial Court to pilot expanded public access to court documents

A two-year pilot scheme for public access to court documents will run in the Commercial Court and Financial List from 1 January 2026. The pilot will apply to the following documents, where they have been used or referred to at a public hearing taking place during the pilot period: skeleton arguments; written submissions; witness statements and affidavits (but not exhibits or appendices); expert reports (including annexes and appendices); any other documents critical to the understanding of the hearing as ordered by the judge at the hearing; and any other documents agreed by the parties.

Existing orders imposing confidentiality or anonymity regimes will not be affected, and it will be possible to seek a "Filing Modification Order" to exclude documents or sections of documents from the public CE-file where there are particular confidentiality concerns. If successful, the pilot will be extended to further courts, most likely starting with other Business and Property Courts jurisdictions (which include the Chancery Division and the Technology and Construction Court).

Courts grapple with the use of AI

In a number of cases, the courts have criticised parties and their legal representatives for citing fake authorities in court documents, apparently as a result of using AI. In one case, the legal representatives were summoned to attend court to consider what further steps might be appropriate. While the court decided against initiating proceedings for contempt of court, it did refer a number of the lawyers involved to the relevant regulators.

The court also suggested that practical and effective measures must be taken by leaders in the profession and by regulators to ensure that practitioners understand and comply with their professional and ethical obligations and their duties to the court if using AI. The Law Society and the Bar Council have since issued updated guidance. The Civil Justice Council has also set up a working group to examine the use of AI in the preparation of court documents and consider whether specific rules are needed.

> "While the court decided against initiating proceedings for contempt of court, it did refer a number of the lawyers involved to the relevant regulators."

Hague Judgments Convention 2019 in force for the UK

The Hague Judgments Convention 2019 came into force for the UK on 1 July 2025. Hague 2019 provides a uniform framework for the recognition and enforcement of judgments between the UK and the other contracting states where proceedings are commenced after that date. The contracting states currently comprise all EU member states (except Denmark), Uruguay and Ukraine, but more states are expected to join over time, including Albania, Montenegro and Andorra in 2026.

Asymmetric jurisdiction clauses in the spotlight

The Court of Justice of the European Union (CJEU) gave an important judgment on the validity of asymmetric jurisdiction clauses under EU law. The decision clarifies when an asymmetric clause in favour of an EU court will be found to be valid as a matter of EU law. The decision does not address the validity of asymmetric jurisdiction clauses in favour of non-EU courts, such as where a borrower is required to sue in the English court but the lender is permitted to sue either in that court or in any other competent court. However, it has led to concerns that such clauses may not be given effect by an EU court in some circumstances.

The decision means that commercial parties negotiating an English jurisdiction clause where there is an EU nexus should consider whether the potential advantages of an asymmetric clause outweigh the potential uncertainties. In some cases, parties may prefer the certainty afforded by an exclusive English jurisdiction clause, while recognising that such a clause will reduce flexibility.

English court jurisdiction in transnational tort claims

The courts have added to the line of authority which demonstrates that, while the English court has a discretion to decline jurisdiction over UK-based defendants on the basis that another forum is more appropriate (in contrast to the pre-Brexit position, when there was no such discretion), it will not exercise that discretion if the claimants establish a real risk that they would not obtain substantial justice in the alternative forum, including on the basis of funding difficulties.

In a claim against Dyson, the Court of Appeal overturned the High Court's decision and rejected a jurisdiction challenge in relation to claims brought by migrant workers against English and Malaysian companies in the Dyson group regarding alleged abusive employment practices by one of Dyson's suppliers in Malaysia. The fact that there was a serious risk that the claimants would be unable to fund their claims in Malaysia, together with the various factors connecting the dispute to England, meant that England was clearly the appropriate forum.

In a claim against Brazil Iron, the High Court rejected a jurisdiction challenge by two UK-domiciled companies in relation to alleged damage as a result of pollution from a mine operated by the defendants' Brazilian subsidiary. The court held that, while Brazil had a closer connection to the case, there was a real risk that the claimants would not obtain substantial justice there due to funding difficulties and therefore the case should proceed in England.

Greater clarity for defendants where claims not validly served in time

The Court of Appeal has clarified that if a claim form has not been properly served – whether because service was attempted by an invalid method or because service was out of time – the proceedings cannot be pursued unless the defendant accepts the court's jurisdiction. A defendant faced with an invalidly served claim form is therefore not required to take any further steps, though in many cases filing an acknowledgment of service indicating an intention to dispute the court's jurisdiction and then making an application to challenge jurisdiction under CPR 11 might be the most convenient route to end the claim.

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Construction disputes

A landmark judgment on building safety and contribution claims, further guidance on Building Safety Act remedies and new standard forms are among the key developments

Landmark Supreme Court judgment on building safety and contribution claims

In the long-anticipated judgment of *URS Corporation Ltd v BDW Trading Ltd* [2025] UKSC 21, the Supreme Court confirmed the expansive scope of the Building Safety Act 2022 (BSA) and the Defective Premises Act 1972 (DPA), as well as the basis on which a party can make contribution claims under the Civil Liability (Contribution) Act 1978 (CLCA).

The Supreme Court's key findings include the following:

1. There is no "voluntariness principle" that operates as a rule of law rendering voluntarily incurred losses automatically too remote to be recoverable in negligence. Specifically, the Supreme Court found that a developer's decision to remediate structural defects (discovered during investigations it carried out following the Grenfell Tower fire) was not truly voluntary due to the existence of legal/contractual liability to incur the cost of repairs, reputational risk, and general public interest.
2. The retrospective 30-year limitation period introduced by s.135 BSA applies to claims made directly under as well as by virtue of s.1 DPA, including in negligence and for contribution.
3. A developer can be owed a duty under s.1(1)(a) DPA, while also owing a duty to homeowners.
4. Undertaking remedial works would satisfy the requirement of having "paid" (or been ordered or agreed to pay) compensation for the purpose of the CLCA, allowing a developer to seek contribution from other parties who are or could be liable for the same damage. A contribution claim does not require the amount of compensation to be established by a judgment, admission or settlement agreement. The limitation period for contribution claims commences when remediation works are carried out.

This judgment is likely to be welcomed by developers seeking to recover the costs of remediating buildings from their contractors and consultants in similar circumstances. Conversely, contractors and consultants are expected to reassess their risk exposure, particularly in relation to defects arising from workmanship which typically fall outside the scope of professional indemnity insurance cover.

For more information, please see our blog post on the case.

> "This judgment is likely to be welcomed by developers seeking to recover the costs of remediating buildings from their contractors and consultants in similar circumstances."

Other building/fire safety cases demonstrating the practical application of the BSA

In addition to *URS v BDW*, the Technology and Construction Court (TCC) handed down important decisions regarding Building Liability Orders and Information Orders. Meanwhile, the Court of Appeal (CA) and First-tier Tribunal (Property Chamber) (FTT) have provided further useful guidance on Remediation Contribution Orders and Remediation Orders.

Building Liability Orders

The TCC made its first Building Liability Order (BLO) in *381 Southwark Park Road RTM Company Ltd v Click St Andrews Ltd* [2024] EWHC 3179 (TCC) (the judgment became available at the end of 2024). The BLO was sought against a holding company of the original developer (in liquidation) on the basis that the former was an "associated company" as defined by s.131 BSA. Whilst a claim under the DPA was not available in this case, the judge concluded that there was a "relevant liability" for the purpose of s.130 BSA, and it would be "just and equitable" to make an order against the holding company.

Notably, the holding company and original developer were held to be "associates" despite there being another company between them in the corporate structure. The holding company owned 100% of the shares in a subsidiary that owned the developer and was therefore held to have the ability to control the affairs of the latter. The judge also found that it was the original developer's solvency which was relevant to satisfying the "just and equitable" consideration under s.130 BSA, rather than the associated parent company's resources.

Information Orders

BDW Trading Ltd v Ardmore Construction Ltd & Ors [2025] EWHC 434 (TCC) was the first TCC case to consider an application for Information Orders (IOs), which were sought by a developer against a contractor and its related companies. The contractor had previously been engaged on five developments in which fire safety and structural defects were found. An adjudicator had ruled in the developer's favour on one of the developments for which the contractor had fully paid, while disputes over the remaining four were ongoing. The developer sought IOs to support its BLO application against companies related to the contractor, due to concerns about the latter's ability to meet its liabilities.

The TCC refused the developer's application on several grounds. Among others, the TCC held that, unlike BLOs, an IO can be made only against the party with the relevant liability under the BSA and where the court is satisfied that such party is subject to a relevant liability. No order could be made against the contractor's associated group companies because they were not the parties with the relevant liability. The contractor was also not subject to a relevant liability as its liability in relation to one of the developments had already been discharged, and its liability in relation to the remaining four developments had not yet been established. The TCC also noted that it would not support requests for commercially intrusive information without sufficient justification.

It has been widely noted that this decision is inconsistent with the government's explanatory notes on the BSA that envisage an IO being made against an associated company. This decision suggests that, in practice, IOs will be available on much narrower grounds, potentially impacting claimants' applications for BLOs.

Remediation Contribution Orders and Remediation Orders

Several key decisions in relation to RCOs were handed down by the FTT and CA in 2025.

In *Vista Tower, Stevenage SG1 1AR* (CAM/26UH/HYI/2023/0003), the FTT considered multiple issues, including the definition of a "relevant defect" and thresholds for determining a "building safety risk" for the purpose of s.120 BSA. The tribunal also carried out a forensic analysis of each of the 96 respondents to determine whether it was "just and equitable" to make an order in each case. In doing so, it clarified that there was no automatic presumption that any associated company must be made liable, particularly where they were associated only by common directorship. Regard would be had to "additional linking factors" to justify making an RCO.

In *Triathlon Homes LLP v Stratford Village Development Partnership* [2025] EWCA Civ 846 and *Adriatic Land 5 Limited v Long Leaseholders of Hippersley Point and Secretary of State for Housing, Communities and Local Government* [2025] EWCA Civ 856, the CA confirmed that an RCO could be made in respect of costs incurred before the relevant provisions of the BSA took effect, and dismissed an appeal against some of the first RCOs to have been made under the BSA. In November 2025, permission to appeal *Triathlon Homes* was granted in part, with the Supreme Court due to consider whether RCOs can extend to pre-BSA costs. For more information on the CA decisions, please see our blog post.

In relation to ROs, the FTT has continued to hear applications, providing further guidance on its general approach when exercising its discretion to grant such remedy. Cases such as *The Central, 163-165 Iverson Road, London, NW6 2RB* (LON/00AG/BSA/2024/0008) show the FTT continuing to take a consumer-protective approach, requiring landlords to promptly remedy defective buildings. For more information on 2025 FTT cases relating to ROs (and RCOs), a more detailed briefing note can be obtained here.

Continued release of 2024 JCT forms including a new Target Cost Contract

The Joint Contracts Tribunal (JCT) continued to release new forms in 2025. Notably, on 25 June 2025 the JCT released its new Target Cost Contract 2024 family of contracts (TCC 2024), including a main contract, sub-contract and guides. TCC 2024 is designed for target cost and difference sharing arrangements. In line with other 2024 JCT forms, TCC 2024 reflects several recent developments in construction law, including the following:

- The Supreme Court's decision in *Triple Point Technology Inc v PTT Public Co Ltd* [2021] UKSC 29 in response to which TCC 2024 expressly provides for the employer's right to claim delay liquidated damages where the contractor's employment is terminated before practical completion.
- New s.2A DPA, which was introduced by BSA 2022 and extended the scope of the DPA to apply not only to the provision of a dwelling, but also to work carried out in relation to an existing dwelling. TCC 2024 provides that, in both circumstances, the contractor's contractual duty to use reasonable skill and care is subject to its liability under the DPA to ensure that a dwelling is fit for habitation.

TCC 2024 also reflects other drafting changes incorporated into the main 2024 JCT forms, including those which place more onerous requirements on the employer when assessing a contractor's delay claim. In particular, TCC 2024 sets a time limit of 14 days for the employer to require the contractor to provide further information in support of its delay claim (there was no time limit in the equivalent provisions under the 2016 editions). Further, the employer has only eight weeks to notify the contractor of its decision regarding a delay claim (the equivalent provisions of the 2016 editions allowed for 12 weeks).

NEC conflict avoidance clauses

In March 2025, the NEC published a new practice note, providing guidance on the conflict avoidance clauses and process for NEC4 contracts. These clauses set out a procedure for resolving disputes at an early stage by using a Conflict Avoidance Panel (CAP). The practice note includes different versions, depending on whether the contract uses dispute resolution Option W1 (where the contract is not subject to the Housing Grants, Construction and Regeneration Act 1996 (HGCRA)) or Option W2 (where the contract is subject to the HGCRA). The clauses can be used in any of the main NEC4 forms of contract or sub-contract.

The clauses provide a fast-track procedure for the appointment of and referral of a disagreement to the CAP, and a subsequent documents-based process for the CAP to address the disagreement. The outcome is a reasoned "recommendation" by the CAP, which becomes legally binding only if the parties are satisfied with it and it is implemented. If a party does not accept the CAP's recommendation:

- Where Option W1 applies to the underlying contract, the dispute must be referred to senior representatives within two weeks of receiving the recommendation.
- Where Option W2 applies, the parties can agree to refer a dispute over the CAP's recommendation to senior representatives.

The release of this practice note reflects the broader dispute avoidance trend in the construction industry, and the ongoing focus on early intervention and preventing issues from escalating into formal disputes.

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Corporate crime and investigations

Reform remains on the agenda for 2025 and beyond with new mechanisms to support law enforcement's efforts to tackle fraud and sanctions breaches and initiatives to address existing court backlogs a particular priority, alongside an increasing use of criminal mechanisms by private actors

Companies can be liable for failing to prevent fraud from September 2025

We reported last year that the new offence of failure to prevent fraud would come into force on 1 September 2025. Companies within scope of the offence should therefore now be aware that they may face criminal liability for fraud committed by their "associated persons" unless they can demonstrate that they have in place "reasonable prevention procedures". The Serious Fraud Office (the SFO) regards the new offence as a "landmark moment which will widen the reach and breadth of prosecutions" and so will be looking for appropriate cases in which to deploy this new tool in 2026 and beyond.

A summary of the offence and guidance on reasonable procedures can be found here.

Further expansion of corporate criminal liability

In December 2023, under the Economic Crime and Corporate Transparency Act 2023 (ECCTA), the UK introduced a significant change to the way in which criminal liability may be attributed to corporate entities. Prior to that time, a company could only commit a criminal offence requiring a particular mental state (knowledge, recklessness etc.) if the mental state of a senior person representing the company's "directing mind and will" would be attributed to the company. This had typically been considered to require one or more members of the board to hold the requisite mental state.

ECCTA broadened the scope of the so-called "identification doctrine" by providing that companies could also be liable for acts of "senior managers" in respect of "relevant offences". "Relevant offences", listed in a schedule to ECCTA, are focused on economic crimes such as bribery, money laundering etc. However, a new Crime and Policing Bill would expand this rule to all offences. The Bill is currently passing through Parliament and so the provisions remain subject to change but, if enacted, there is scope for this to further expand the potential scope of corporate criminal liability by dramatically increasing the range of offences for which an organisation can be liable, subject to the requirement that the relevant senior manager was acting within the actual or apparent scope of their authority when they committed the offence thereby making it more difficult to see how some offences (such as offences against the person) could engage corporate criminal liability.

Please see here for further detail.

The role of the SFO in the fight against fraud

Last year's update covered the new five-year strategy from the SFO highlighting the need for the agency to play a greater role in the national effort to tackle fraud. 2025 has seen continued steps to implement that strategy by the SFO, including a renewed focus on international collaboration (discussed in more detail here and here), new guidance on cooperation and enforcement (see here), and updated guidance on corporate compliance programmes (see here). The SFO's business plan for 2025/6 provided an update on the SFO's successes following the launch of its five-year strategy (see here) and, importantly, stated that "both scrutiny and expectations of companies will increase" in the current national and international landscape.

Companies should therefore continue to monitor the position closely; in the event that fraud or corruption issues arise internally, understanding of the SFO's position and stated approach can prove critical when considering how such issues should be addressed.

> "Companies should continue to monitor the position closely; in the event that fraud or corruption issues arise internally, understanding of the SFO's position and stated approach can prove critical when considering how such issues should be addressed. "

Criminal justice reform – a move to judge-only trials?

Crown Court backlogs now exceed 75,000 cases, with fraud trials among the most affected due to the scale of disclosure and complexity of evidence. The average time to resolve fraud cases in the Crown Court has nearly doubled since 2019 and delays in cases coming to trial are now measured in years, not months.

In response, the Ministry of Justice appointed Sir Brian Leveson to conduct an independent review of the criminal courts. The first part of this review sets out a blueprint for reform which is bold and pragmatic and in some respects controversial. Of particular note is the recommendation that serious and complex fraud cases be tried by a judge alone, with eligibility defined by the case's hidden dishonesty or complexity that is outside the understanding of the general public. At the time of publication, the Ministry of Justice had just announced a modernisation plan in response to this recommendation, adopting judge-only trials for "particularly technical and lengthy fraud and financial offences" (together with other categories of offence less relevant to corporate defendants). The proposed changes will require the passage of legislation and have generated a strong response, such that it remains to be seen when and how the reforms will be implemented. However, if adopted, this change this would mark a significant departure from current practice, demanding a recalibration of trial strategy, case preparation and advocacy for corporate defendants.

See here for more on the Leveson review and its recommendations and here in relation to a separate review of the criminal disclosure regime by Jonathan Fisher KC.

The rise in activism and weaponisation of the criminal law

Action groups and NGOs are finding novel ways to use the criminal law, both in the UK and overseas. We have experience of assisting clients responding to allegations brought by action groups, which are often unfounded and intended to raise publicity in respect of a specific cause or against an organisation/its senior executives, but require a quick response to minimise potential exposure. Even unfounded allegations can create criminal and regulatory exposure, reputational risk and significant cost.

Recent examples in the UK include:

- our recent representation of the former CFO of Hibu plc in a shareholder-led private prosecution (the first of its kind);
- trends in NGOs seeking to exert pressure on exchanges in order to prevent the listing, or encourage the de-listing, of listed companies in the UK; and
- attempted "citizens' arrests" of senior executives of energy and water companies alleging that they were under "arrest" and dossiers of "evidence" including draft indictments were handed to the police.

Potential reforms to UK sanctions enforcement

The UK Government has carried out a cross-government review of sanctions implementation and enforcement with three key aims: (i) to improve and facilitate compliance; (ii) to increase the deterrent effect of enforcement; and (iii) to invigorate the cross-government toolkit.

In addition to enhancements around the accessibility and organisation of sanctions guidance, a key development arising from the review was a public consultation on financial sanctions enforcement. Various new initiatives are under consideration, including a settlement scheme for the resolution of enforcement cases, implementation of a fixed penalty scheme for certain sanctions breaches such as non-compliance with reporting obligations and breach of licensing conditions and an increase to the statutory maximum penalties for financial sanctions breaches. The consultation has now closed and we await the Government's response and potential next steps, which may support the continued move towards civil (as opposed to criminal) settlement of financial sanctions breaches through various mechanisms designed to prioritise speed and certainty of outcome.

See our previous briefings on the review and the consultation for further detail.

Snapback of sanctions against Iran

While the UK and other jurisdictions have continued their incremental escalation of sanctions against Russia, companies will also need to be cognisant of the recent re-imposition of sanctions against Iran and to ensure that these measures are also reflected in their sanctions compliance controls.

The UN lifted various sanctions measures imposed in relation to Iran's nuclear programme in connection with the Joint Comprehensive Plan of Action or Iran Nuclear Agreement in 2015. Following the US withdrawal from the agreement and Iran ceasing to implement its commitments in relation to the nuclear programme, the "snapback" mechanism within the agreement was triggered by the UK, France and Germany, resulting in the re-imposition of the previously suspended UN measures which include asset freezes and trade sanctions measures.

The EU and UK have implemented those measures in local legislation, and the EU has introduced autonomous sanctions to reflect the suite of EU measures in force prior to the Iran Nuclear Agreement. Further detail can be found here.

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Financial services regulatory

With the Chancellor's Leeds Reforms agenda landing in July, 2025 was another very busy year for financial services firms and the regulators

FCA Enforcement – Streamlining and Greater Disclosure

On 3 June 2025, the FCA published its streamlined and updated Enforcement Guide, and formally confirmed that it would not proceed with proposals to disclose the names of firms subject to enforcement investigations. The publication paused the very public debate between the FCA and relevant stakeholders in relation to particular aspects of transparency and efficiency in enforcement.

It would not be unexpected for the FCA to return to the role of transparency as a regulatory tool. Not least, as a recent High Court ruling, *CIT v FCA*, underlined that firms need to be alive to the risk of regulatory publicity where a matter presents a serious consumer protection issue.

On its enforcement approach more broadly, 2025 has seen the continued efforts under Joint Executive Directors of Enforcement and Market Oversight Therese Chambers and Steve Smart to increase the pace of enforcement investigations and reduce the backlog of cases. There has been progress on both fronts.

Whilst some long-running cases remain open, the FCA advised the House of Lords Financial Services Regulation Committee in June that five recent investigations had achieved a public outcome in less than 16 months, compared to an average length of 42 months for investigations closed in 2023/24. The FCA has also reduced the number of open enforcement cases. In 2025, they had 130 open cases at the end of March, compared to 188 open cases at the same time in 2024; we expect 2026 to see a similar – if not greater – reduction.

As the threshold for enforcement rose, there has been a noticeable increase in the use of other supervisory tools by the FCA, including variations of permissions, directions, and imposition of requirements. That the bulk of these are "voluntary" may be read as indicative of efforts at constructive rather than adversarial engagement between the regulator and the regulated. However, failure to successfully navigate supervisory intervention has led firms into enforcement, with the results of supervisory engagement cited in Final Notices and increasing the severity of the findings. Alongside these tools, there has also been an uptick in the number of senior manager attestations, underscoring the continuing importance of individual accountability in the regulatory regime even while the Senior Managers and Certification Regime is being recalibrated (see more below).

> "As the threshold for enforcement rose, there has been a noticeable increase in the use of other supervisory tools by the FCA, including variations of permissions, directions, and imposition of requirements"

Long awaited proposals on non-financial misconduct

In July 2025, alongside publishing a new rule which defines, for the first time, non-financial misconduct (NFM) within the Code of Conduct Sourcebook (COCON), the FCA launched further consultation on some NFM guidance to potentially be included in COCON and the Fit and Proper Test for Employees and Senior Personnel Sourcebook (FIT).

The new FCA COCON rule is for non-banks only and will come into effect in Sept 2026; if introduced, the proposed guidance is intended to come into effect at the same time. The decision to include the definition of NFM in a rule for non-banks only complicates rather than simplifies the attempt to embed NFM within the FCA handbook, and the limited scope of the guidance means that firms will continue to need to apply judgement as they tackle NFM in practice. Rather than assisting, recent FCA enforcement has largely ducked the issue, focusing on failure to inform the regulator and governance issues rather than tackling any underlying conduct.

The consultation period closed in early September, and final text is awaited.

The Leeds Reforms – Continued focus on economic growth and international competitiveness

The continuing emphasis on economic growth and international competitiveness was evident as Chancellor Rachel Reeves delivered her second Mansion House speech in July. She set the wheels in motion with a package of regulatory changes known collectively as the "Leeds Reforms". This package has engaged the financial services industry (and related sectors) in the latter half of 2025 and will continue to do so into next year.

The central document in the Mansion House collection was the Government's Financial Services Growth and Competitiveness Strategy. It is a first-of-a-kind 10-year plan which articulates the Government's ambition that, "By 2035, the UK will once again be the global location of choice for financial services firms to invest, innovate, grow, and sell their services throughout the UK and to the world."

The Strategy is organised across five areas of focus: delivering a competitive regulatory environment; harnessing the UK's global leadership in financial services; embracing innovation and leveraging the UK's Fintech leadership; building a retail investment culture and delivering prosperity through UK capital markets; and setting the UK's financial services sector up with the skills and talent it needs.

We expect that the Strategy document will be a key reference for the industry in engagement with regulators, policy makers and other stakeholders over the next few years.

Legislative changes required to deliver some of the Leeds Reforms, including those covered in more detail below, are likely to be included in a new Financial Services (and Markets) Bill in the next session of Parliament.

The Leeds Reforms – Reforming redress

Part of the Leeds Reforms package which was broadly welcomed by industry and other stakeholders was the launch, by HM Treasury, of a consultation on long-awaited reforms to the Financial Ombudsman Service (FOS). The FCA and the FOS published a complementary consultation paper on modernising the redress system alongside. The closing deadline for responses to both was 8 October 2025.

The impetus for reform may be linked, in part, to the motor finance commission matter, but concerns about the FOS's quasi-regulatory role have existed for some time. Among the matters being considered as part of a reform which aims to deliver greater operational certainty for firms and consumers are:

- the "fair and reasonableness" test which is the standard which the FOS applies in making its determinations;
- the introduction of a mechanism for referrals to the FCA on issues of regulatory interpretation or where there may be wider implications; and
- introducing a 10-year long-stop limit beyond which the FCA will not be able to consider a complaint (subject to exceptions for long term products, the details of which are yet to be announced).

These are meaningful changes, but it remains to be seen whether they go far enough to combat the issues faced by firms and whether the greater involvement of the FCA is a positive or negative factor (especially with the increased flexibility seemingly available to the FCA to impose redress without satisfying the tests baked into relevant sections of FSMA, following the settlement of Bluecrest which leaves the 2024 Court of Appeal decision and its wide interpretation of the FCA's wide powers intact).

The Leeds Reforms – Recalibrating the Senior Managers and Certification Regime

As part of the Leeds Reforms, HM Treasury launched a consultation on streamlining the Senior Managers and Certification Regime (SMCR). The consultation includes proposals to:

- remove the Certification Regime from legislation (when parliamentary time allows), allowing the FCA and PRA to "use their rule-making powers to develop a more flexible and proportionate regime";
- reform the approach to pre-approval under the Senior Managers Regime (SMR); and
- allow the regulators greater flexibility in how they define Senior Manager Functions (SMFs).

In addition to those proposals, HM Treasury also asked about other reforms which it could make, including the Conduct Rules, that would further "ease the burden".

Alongside HM Treasury's consultation, the PRA and FCA issued proposals on reforms to the SMCR to make the regime less onerous which would not require legislation. Their proposals focused on changes to make to their processes (including approvals) more flexible, removing duplication and providing more guidance on expectations under the regime.

Responses to the consultations were requested by 7 October 2025; for its proposals, the PRA has indicated a likely implementation timing of mid-2026.

The Leeds Reforms – Clarifying the Consumer Duty

The Consumer Duty has been a flagship initiative for the FCA as it shifts to a "more outcomes-focused approach". The Duty has been in place for new products since July 2023, and since July 2024 for "back book" products (ie those sold before the Duty's 2023 application date).

As the Duty continues to embed in the financial services sector, the lack of clarity around its application to wholesale activities – and the costs and complexity associated with that application – increasingly came to feature in policy discussions on competitiveness and growth. The Chancellor has tasked the FCA with addressing this issue, and the regulator has committed to "amend the Duty's rules to remove disproportionate burdens from wholesale firms and give them confidence to act proportionately".

In addition to changes to the Duty's application, the FCA also plans to update the client categorisation framework. These changes are expected to come in during 2026.

The Leeds Reforms – Revising ring-fencing

In the aftermath of the global financial crisis of 2007/08, the UK introduced a "ring-fencing" regime – essentially, this requires UK banks to separate their retail banking services from investment banking activities. The UK was the only major market to initiate this kind of structural separation as a response to the crisis.

Some changes were made to the regime in early 2025. However, in the new Financial Services and Growth Strategy, the Government confirmed that it would conduct a short review of both legislation and the Prudential Regulation Authority's rules. The review will assess options for: allowing ring-fenced banks to provide more products and services to UK business; addressing inefficiencies; and allowing banks to share resources and services more flexibly across the ring-fence.

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Insolvency litigation

Decisions from the higher courts have clarified various aspects of the law relating to insolvency

Bankruptcy petitions based on foreign judgments

A Court of Appeal decision has established that a bankruptcy petition cannot be presented on the basis of a foreign judgment which has not been recognised in England. The decision means that, before a creditor under a foreign judgment can petition for bankruptcy against the judgment debtor in this jurisdiction, it will need to either register the judgment under a relevant statutory scheme or (if those schemes don't apply) bring an action on the judgment at common law.

The judgment does not directly address winding up petitions against a company, as opposed to bankruptcy petitions against an individual, but the court's conclusion that an unrecognised and unregistered foreign judgment does not constitute a debt that can be pursued in England seems likely to be read across to the winding up context. Unlike a bankruptcy petition, however, a winding up petition can also be presented where the creditor proves that the value of the company's assets is less than its liabilities "taking into account its contingent and prospective liabilities" – which may include the liability represented by an unregistered and unrecognised foreign judgment.

For more information see our blog post here: Court of Appeal finds bankruptcy petition cannot be presented on basis of unrecognised foreign judgment.

Broad application of law on transactions defrauding creditors

The Supreme Court has confirmed that s.423 of the Insolvency Act 1986, which provides for the avoidance of certain transactions where they have been entered into for the purpose of defrauding creditors, has a broad application. It covers not only transactions entered into by the debtor personally, but also those entered into via the debtor's company.

The decision is welcome confirmation for creditors who are looking to enforce judgments against debtors with complex corporate structures, as it shows that a claim under s.423 cannot be thwarted by the introduction of a company structure between the debtor and the assets which are the subject of enforcement.

For more information see our blog post here: Supreme Court confirms broad interpretation of section 423 Insolvency Act 1986 relating to transactions defrauding creditors.

> "The decision is welcome confirmation for creditors who are looking to enforce judgments against debtors with complex corporate structures."

Liability for fraudulent trading not limited to company managers

The Supreme Court has confirmed that liability for fraudulent trading under s.213 of the Insolvency Act 1986 is not limited solely to persons responsible for company management and control. Any persons knowingly involved in the company's fraudulent business activities can be liable. The judgment means that third parties who know that a company's business is being run in a manner intended to defraud creditors and then participate in, facilitate, or assist with fraudulent transactions may be liable under the Insolvency Act 1986.

The Supreme Court separately considered whether limitation should be postponed under section 32 of the Limitation Act 1980 on the basis that, in the period for which a company had been dissolved, it could not with reasonable diligence have discovered a fraud. The Supreme Court's decision shows that this will not necessarily follow.

For more information see our blog post here: Supreme Court confirms the types of defendant who can be liable for fraudulent trading.

Scope of court's power to wind up unregistered companies

The Court of Appeal has upheld a decision refusing to wind up a Luxembourg sub-fund under sections 220 and 221 of the Insolvency Act 1986, which provide for the winding up of an "unregistered company" including an association or a foreign company.

This decision provides important clarity for UK creditors seeking to enforce their rights against foreign corporate structures (especially those whose corporate form does not have an analogy in English law, as is common in an investment funds context) and demonstrates the limits of the English court's winding up jurisdiction. It suggests that the IA does not permit the winding up in England of foreign investment fund compartments that lack separate legal personality, even if they are treated as separate entities for investment purposes.

For more information see our blog post here: Court of Appeal confirms "dedicated fund" of Luxembourg investment company is not an unregistered company for the purpose of winding up under the Insolvency Act 1986.

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Insurance disputes

A landmark judgment in the Court of Appeal and the first substantive decision in the Russian aviation litigation

Landmark Construction All Risks judgment in Sky case

In December 2024 (and so missing the publication of last year's Disputes Yearbook), the Court of Appeal handed down its judgment in the landmark insurance case *Sky UK Ltd v Riverstone Managing Agency & Ors* in which Herbert Smith Freehills Kramer acted for the successful policyholder, Sky. This was a major Construction All Risks insurance claim brought by Sky in respect of damage arising out of the construction of its flagship building in 2014. Sky's appeal was successful on all grounds.

The case considered key principles relevant to property policies including: (i) the meaning of damage; (ii) the period of damage; (iii) aggregation; and (iv) investigation costs: Court of Appeal delivers landmark judgment in Sky's insurance claim.

Russian aviation litigation

This year was a crucial year for the insurance industry as it contends with the fallout from Russia's invasion of Ukraine. Following the invasion, global litigation was launched against insurers and reinsurers to mitigate the loss of approximately 500 Western-owned aircraft which had been on lease to Russian airlines and were stranded in Russia.

In June 2025, the High Court handed down judgment in the Russian Aircraft Lessor Insurance Policy Claims following the "mega trial" which combined the claims of multiple lessors against their insurers before Mr Justice Butcher. Herbert Smith Freehills Kramer represented the lead claimant, AerCap, the world's largest aircraft leasing company, who claimed from its insurers the loss of 116 aircraft and 23 engines. The High Court found that all AerCap assets were lost and covered under the War Risks section of its insurance policy. Factoring in prior settlements, AerCap is entitled to USD 1.035 billion from War Risk insurers: High Court finds in favour of Lessors in Russian Aircraft Lessor Policy Claims: Full Analysis. In addition, the High Court awarded AerCap over USD 240 million in interest and made interim costs orders.

The majority of War Risk Insurers have now applied to the Court of Appeal for permission to appeal elements of the High Court judgment and the consequential judgment addressing interest. The appeals do not include Mr Justice Butcher's findings on causation/peril such that there is no prospect that All Risks Insurers will be found liable in England for these losses under the lessors' policies. The Court of Appeal's decision on both sets of applications for permission to appeal is awaited: Russian Aircraft Policy Claims: Update on appeal and costs.

There are many other parallel claims on foot in the Commercial Court involving aircraft in Russia under (re)insurance policies taken out by the Russian airline lessees (Operator Policies) with trial scheduled for October 2026.

> "Policyholders should continue to be mindful, particularly when negotiating policy wordings, to ensure that conditions precedent and warranties are kept to a minimum and are clearly drafted and labelled"

Insurance Act 2015

2025 year marks the 10-year anniversary of the Insurance Act 2015 (the Act) receiving royal assent, which paved the way for the most significant reform in insurance law in the UK in over 100 years. To mark the anniversary and to see what impact the Act has had on both the placement of policies and the handling of claims from the policyholder perspective, we worked with Airmic (the UK Association of Risk Managers) on a survey of risk managers to see what impact the Act has had on policyholders. Herbert Smith Freehills Kramer is the first and only law firm to this year become an Airmic Senior Partner.

The key findings of the survey were that the Act appears to have had a largely positive impact. However, policyholders should continue to be mindful, particularly when negotiating policy wordings, to ensure that conditions precedent and warranties are kept to a minimum and are clearly drafted and labelled: 10 years of the Insurance Act 2015: Airmic survey report published in association with HSF Kramer.

This year, a number of cases have reached the courts on various issues relevant to the Act, including these two Court of Appeal decisions:

- *Scotbeef Ltd v D&S Storage Ltd* (in liquidation) [2025] EWCA Civ 203 which is a reminder of how significant the effect of breach of a condition precedent can be on a policyholder's ability to claim under a policy. The Court of Appeal considered the proper categorisation of representations and warranties relating to information provided by the insured to the insurer prior to inception of the policy. The Court of Appeal found that the relevant clauses were future warranties (a promise by the insured that something will or will not be done) as well as being conditions precedent (because they were expressly labelled as such). As the insured was in breach of those warranties (which were also conditions precedent), the insurer had no liability. On the facts of this particular case, the various policyholder protections introduced by the Act (such as proportionate remedies for breach of the Duty of Fair Presentation, making warranties into suspensive conditions and the introduction of section 11) did not assist the insured.
- *Delos Shipholding SA & Ors v Allianz* [2025] EWCA Civ 1019 in which the Court of Appeal considered the duty of fair presentation under the Act and is one of the first cases to consider the requirements for a reasonable search of information held by the insured as part of that duty: Court of Appeal considers duty of fair presentation under the Insurance Act.

Dispute resolution provisions in insurance policies

A popular method for resolving insurance disputes is arbitration. Policyholders, brokers and insurers should therefore take note of recent changes brought in by the Arbitration Act 2025. The Act, in force from 1 August 2025, has important implications for dispute resolution under your policies – both existing policies and those to be placed in the future: New UK Arbitration Act 2025: Coming into force on 1 August 2025.

One key development from an insurance and reinsurance perspective is that arbitration agreements will now be governed by the law of the seat, unless the parties expressly agree otherwise. A governing law clause that applies to the policy generally will not be sufficient. The changes will not apply to arbitral proceedings (or court proceedings in connection with arbitral proceedings) that are already on foot before 1 August 2025. However, the changes will otherwise apply in relation to arbitration agreements whenever made which means the changes will apply to arbitration clauses in existing insurance or reinsurance policies: Insurance disputes and the new Arbitration Act 2025: check your policies.

The coming into force of the Arbitration Act 2025 is a timely reminder to take stock and review regularly the dispute resolution provisions in policies (whatever form of dispute resolution procedure they provide for) to check they work in the way that the parties intend. Two recent decisions concerning the same claimant highlight the costly jurisdiction disputes that can arise when dispute resolution provisions are not given the attention they deserve at the point of placement. These decisions also provide an important reminder to the insurance market to be cautious when issuing and executing market standard contracts: Signed, Sealed, Superseded? Court considers conflicting dispute resolution provisions in reinsurance contracts.

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Intellectual property disputes

In a busy year for intellectual property (IP) disputes in the UK, we look at cross-border trade secrets disputes; issues of copyright infringement by AI engines; the UK court's interim licensing solutions in FRAND disputes; account of profits and double recovery; the UPC's long-arm jurisdiction over the UK; and the Court of Appeal's use of the "patent bargain" to determine patentability

Cross-Border Trade Secrets Disputes: Playtech v Realtime: No "Direct Damage" in the UK

The Court of Appeal in *Playtech Software Ltd v Realtime SIA & Anor* [2025] EWCA Civ 1472 addressed the application of Article 4(1) of the Rome II Regulation in a cross-border trade secrets dispute. The key issue was whether Playtech could establish that "direct damage" occurred in the UK, enabling reliance on Gateway 21 to serve proceedings out of the jurisdiction on Latvian-domiciled defendants. Overturning the first instance decision of Thompsell J, the Court of Appeal held that, on Playtech's pleaded case, no direct damage from the alleged misuse of trade secrets could have occurred in the UK. Consequently, English law did not apply, and permission to serve out was refused.

The dispute arose from allegations that a former employee of a Playtech's group company accessed Playtech's confidential information via its Horizon platform and used it in developing games for Realtime. Playtech argued that the alleged misuse caused loss of licensing revenue in the UK and sought to rely on Gateway 21, which requires detriment suffered within the jurisdiction or that the obligation of confidence is governed by English law (it was common ground that it was not necessary to distinguish between these two aspects of Gateway 21 because both depend on there being "direct damage" in England and Wales). The Court of Appeal rejected Playtech's arguments, finding that the acts complained of occurred in Latvia and that any UK revenue loss was an indirect consequence, not direct damage. The court emphasised the lack of any pleaded case or evidence showing that Realtime's games were accessed in the UK.

Applying the Rome II Regulation, the court confirmed that the governing law was that of the country where the damage occurs. Here, to the extent any damage had occurred at all, it would have occurred in Latvia. The judgment aligns with principles set out in *Celgard v Senior*, reaffirming that mere allegations of financial loss in the UK do not establish direct damage for governing law purposes. The Court also held that England was not the appropriate forum for the related copyright claim, as its centre of gravity was Latvia.

This decision underscores the importance of precise pleadings and evidence in cross-border trade secrets cases, particularly when seeking permission to serve out. Claimants must demonstrate where direct damage occurs, not merely where financial consequences are felt. For UK-based companies, misappropriation abroad may mean that foreign law applies and that England may not be the appropriate forum to hear a dispute.

Herbert Smith Freehills Kramer LLP acted for Realtime SIA. For more details on the decision see here and our IP blog post here).

For more information on trade secrets and their protection and enforcement see the series of articles on our Trade Secrets page here.

AI & copyright (& trade mark) infringement in the UK – Getty v Stability AI

In November, the High Court found that the use of an image generating AI system (that had been trained outside the jurisdiction) was not infringing since the AI did not carry a copy of the allegedly infringed images within it. The impact of the case was lessened by the withdrawal of initial claims of primary copyright infringement in the use of images to train the AI, since there appeared to be no evidence produced during the trial that any training of the AI involved (Stable Diffusion) had been conducted within the UK. Getty Images, which alleged its images had been used to train the AI and were being infringed by its operation (specifically by its importation into the UK by its use in the UK – importation of an article containing an infringing copy of a copyright work being a secondary infringement under UK copyright law) claimed that the legislative provisions governing such secondary infringement should be interpreted to cover the AI model "which Stability knew or had reason to believe was an infringing copy of [the copyright works alleged infringed]". The court however considered that the way the AI functioned meant that at no time was any "copy" of the works incorporated into it, so it could not fulfil the requirements for secondary infringement (although it did hold that an "article" could include an intangible such as the software here).

Getty Images did succeed on some of its trade mark infringement claims – Getty watermarks had appeared in whole or in part in some of the images generated by Stable Diffusion – but since this was resolved by Stability AI during the course of the proceedings, the findings had mainly historical impact.

Heather Newton, Of Counsel, commented (on the day of the decision):

> *"Whilst this is not the complete answer to the AI/IP conundrum that it originally promised to be, the judgment nevertheless helps inform what won't work for a claim in copyright infringement. The court has found that the Stability AI diffusion models do not retain or carry copies of training materials in a traditional copyright infringement sense and therefore cannot be an infringing article. The key infringement (not decided in this case) is the reproduction of the copyright material for the act of training itself, but this did not take place in the UK and was dropped by Getty at trial. It is a difficult outcome for Getty, but helpful for those involved in the AI and copyright industries to focus the complex debate around the use of copyright material to train AI."*

See our IP blog post issued on the day of the judgment (4 November 2025) for more details.

The decision also gave Mrs Justice Smith the opportunity to review the law on the determination of exclusivity in IP licences. The nature of the licences Getty had in relation to the copyright works being asserted was challenged by Stability AI, an exclusive licence to Getty being a pre-requisite for it to have the locus to bring the copyright infringement action. For a summary of the points made see our IP blog post Exclusive Licences – Key Takeaways from Getty Images v Stability AI.

For more on AI & IP see our series of IP blog posts here.

The UK courts' orders for interim licensing of Standard Essential Patents – a FRANDly approach?

Over the last year the UK Court of Appeal has been developing a new line of case law in the FRAND space – creating, for the first time, "interim licences". The principle that these decisions establish is that an implementer can ask the UK court to declare interim licensing terms, pending a determination by the UK court of full FRAND licence terms. If the SEP holder refuses to enter into the interim licence they risk being declared an unwilling licensor.

Read more about these key decisions and the interplay between the European courts over FRAND determination here as well as our series of FRAND/SEPs related posts these Court of Appeal decisions and other FRAND/SEPs developments on our IP Notes blog.

Accounting for profits – interest and double recovery

Choosing to claim damages or an account of profits at the end of any intellectual property dispute is a difficult decision. It is typically driven by which the patentee thinks will lead to the higher recovery but that is often uncertain when it makes its decision.

In the UK, decisions relating to financial remedies are few and far between, as parties often simply settle once the main infringement action has been resolved (and in light of the final injunction awarded). Cases involving an assessment of an account of profits are even more rare, which is what makes the series of decisions in the *Lufthansa v Astronics* patent dispute, culminating in a final decision on quantum from the High Court in April this year, so interesting. Taken together, these decisions help to clarify the general principles that apply to an account of profits and provide guidance on the court's approach where there is a risk of overlapping recovery in other jurisdictions for the same infringement ("double recovery").

The latest ruling confirms that a patentee can receive a substantial recovery even when it opts for an account of profits and can also be granted interest on the award (US $6 million interest in this case, bringing the total recovered by Lufthansa on account of profits to over US$18 million). The court confirmed its jurisdiction to award interest on account of profits for patent infringement, on both an equitable and statutory basis, and demonstrated that it was prepared to exercise its discretion to do so. While the pro's and con's of choosing an account of profits over the usual award of damages will depend very much on the circumstances of the case and the available evidence prior to that election, this case provides a helpful positive example for future patentees considering doing so.

On the issue of double recovery, *Lufthansa* suggests that the English Courts are unwilling to grant provisional awards on account of profits, favouring finality. For patentees, there may be a strategic benefit to a particular sequencing of proceedings, for example to secure an early decision and finality in the UK.

Read our analysis of these proceedings and decisions and the approach to account of profits here: Accounting for profits – interest and double recovery in *Lufthansa v Astronics and Panasonic*. It should be noted that the most recent (April) Lufthansa decision, which came to this conclusion on interest and double recovery, has been appealed to the Court of Appeal, with a hearing scheduled for March 2026.

Extension of reach of the UPC and EU national patent courts to include UK patents (and UK defendants)

In February 2025, the CJEU gave judgment in *BSH Hausgeräte v Electrolux* (***BSH*** – see our blog post here), confirming that EU patent courts (in which category the UPC is included) had jurisdiction to decide infringement of both European Patents (EPs) and national patents of other EU states, without needing automatically to stay the action where invalidity arguments were raised in relation to those "other" EU patents. This had previously been an issue which had disrupted several sets of proceedings.

Prior to *BSH*, where, in cases before a national court involving infringement of EPs from that state plus other EU state patents, counterclaims of invalidity of those other state patents were raised, the courts held that although it could hear the infringement claims, only the national court of any particular patent could make a decision on validity and therefore the infringement proceedings needed to be stayed and the validity issued transferred back to the states of the "nationality" of each patent.

The CJEU's decision in *BSH* also covered infringement of non-EU patents which it considered could also be heard by EU national patent courts, but in their case the court *could* consider validity when analysing infringement, but only on an *inter partes* basis.

A robust illustration of the impact of this CJEU decision is the recent Munich Regional Court's award to Regeneron of an injunction over Formycon's aflibercept formulation in 22 countries, applying the CJEU's *BSH* reasoning (although here all the EPs involved were from within the EU). This has been followed by Onesta (an NPE) bringing three infringement actions against BMW in the same court in relation to automobile technology concerning manufacture in Germany but also sales in the US which Onesta claims infringe its US patents. The infringement of UK patents could be determined by EU national patent courts in the same way.

The new Unified Patents Court (UPC) has absorbed the *BSH* principles into its jurisdictional assessments and this has added to the "long-arm" jurisdictional confidence of this new court for one-stop-shop patent litigation over European patents (EPs). Prior to the *BSH* decision, the UPC was taking more tentative steps in this regard, although having already fully embraced its ability to draw in defendants which are in a commercial relationship with each other and involved in the same infringement.

There has been a marked increase in instances of the UPC taking "long-arm" jurisdiction to grant injunctions in respect of EPs for activities in states that are not members of the UPC, including the UK. This has a significant impact on patent enforcement across Europe, since any EP could be within the UPC's jurisdiction (EPs can be awarded by the EPO for any EU members state but also for several non-EU states such as Switzerland, the UK, Norway and Turkey). UK based businesses not already familiar with the UPC should gain an understanding of how the UPC works as the long-arm jurisdiction could mean they may be drawn into its enforcement system as a defendant if accused of infringing a UK EP. Equally, UK businesses may wish to use the new court to enforce their EPs across the full extent of the territories over which the EPO has granted them patent rights (the EPC states which comprise the EU states, Albania, Iceland, Liechtenstein, Monaco, Montenegro, North Macedonia, Norway, San Marino, Serbia, Switzerland, Turkey, and the United Kingdom). Similarly non-UK entities holding UK EPs should consider the UPC's jurisdiction over those as an alternative or additional forum for their patent disputes.

Read our briefing The UPC Two Years On and other UPC updates for more on the impact of *BSH* and the use of long-arm jurisdiction by the UPC. For background on the UPC including its member states and procedural approach visit our UPC and unitary patent hub.

Plausibility, implausibility and arbitrary selections – the patent bargain as the guiding light under UK law

The "patent bargain" is the foundation of patent law – in exchange for a 20 year monopoly, the inventor discloses their invention to the world. Inherent in this is a *quid pro quo*, that the disclosure must be commensurate with the reward. Under UK/EU patent law, this is tested under the related concepts of sufficiency, enablement and plausibility. But what does this mean in practice? In July 2025, the UK Court of Appeal recently opined on the topic in the case of *Generics UK and others v AstraZeneca*.

You can read in detail about the Court of Appeal's decision in our IP blog post here, but this case is a harsh reminder of what happens when a patent is filed without any data supporting the therapeutic use (the key is here is 'any', as the threshold for plausibility should not be an onerous one). Patents should always be filed with some kind of technical rationale, and this could possibly include *in silico* data if it is convincing enough (or eg reasoning by reference to the prior art, although care should be taken not to make it seem that the invention was obvious).

For more on patent disputes follow our series of blog posts on patent topics on our IP Notes blog.

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Professional Liability

It has been another busy year in the professional liability space. A variety of landmark judgments have been handed down, with a potentially significant overhaul of solicitors' regulation on the horizon

Claims against pension advisers

In last year's Yearbook we reported on the Court of Appeal decision in *Virgin Media v NTL Pension Trustees II Ltd* [2024] EWCA Civ 843, dismissing the appeal and confirming that actuarial confirmation was required for certain historic amendments to pension deeds. If no such confirmation was obtained, then the amendment would be void. The decision had potentially wide-ranging implications for pensions schemes and pension advisers.

In September 2025, the Government proposed amendments to the Pension Schemes Bill to address issues arising from the case. The proposed legislation includes provisions to facilitate retrospective actuarial confirmation, even where there may be gaps in the relevant historic data. Whilst obtaining retrospective actuarial confirmation may not always be straightforward, the proposed legislation has been broadly welcomed by the pensions industry.

Please see our blog post for a more detailed explanation of the proposed legislation.

Loss of Chance: Barrowfen v Patel [2025] EWCA 39

In February 2025, the Court of Appeal handed down judgment in *Barrowfen v Patel* [2025] EWCA 39 which grappled with a number of the complexities which can arise in calculating damages for a loss of a chance where the claimant's loss depends on matters which were not within its control – such as, in this case, whether the company would have been able to complete the relevant property development sooner if it had not been for the breaches of duty. Importantly, the Court of Appeal upheld the High Court's decision that the benefit obtained by the claimant (the increased capital value of the revised development) should be deducted from the lost revenue that resulted from the breaches before (rather than after) applying the percentage discount to reflect the lost chance.

Endorsing the approach taken by the first instance judge (Leech J), Snowden LJ provided a helpful overview of the general principles in relation to compensation, mitigation and accounting for benefits received as a result of mitigating steps as established in the leading contract law cases *British Westinghouse v Underground Electric* [1912] AC 673 and *The New Flamenco (Fulton Shipping v Globalia)* [2017] UKSC 43. While those were breach of contract cases, Snowden LJ noted that the same approach should be taken in cases of breach of fiduciary duty and professional negligence, as here.

Snowden LJ agreed with the judge that the key question is one of causation. Summarising the principle, he said: "the benefits that must be taken into accounts are those which are caused by the breaches of duty or negligence for which compensation is sought, or which are caused by the actions reasonably taken to mitigate the losses caused by those breaches of duty or negligence."

In this case, the primary claim for damages was for loss of the chance of receiving income from the development of a property owned by the claimant. Leech J found that, as a result of the delays caused by the breach, the claimant had reasonably taken the view that the original development plan was no longer commercially desirable and it was appropriate for the claimant to incur costs in formulating and implementing a revised development plan.

In those circumstances, the implementation and completion of the revised development plan formed part of the same continuous course of conduct to deal with the situation caused by the breaches. It followed that credit must be given for the benefit received as a result, ie the increased capital value of the revised development plan as compared to the original development plan.

The Court of Appeal agreed with Leech J that, in this case, credit for the increased capital value should be applied before the loss of chance multiplier. This was because, in cases such as this, where there were multiple counterfactuals, to do otherwise would in effect give credit for the benefit even in circumstances where it was not caused by the breach.

See our more detailed article on the case here. Note that an application for permission to appeal has been lodged with the Supreme Court.

> "Importantly, the Court of Appeal upheld the High Court's decision that the benefit obtained by the claimant (the increased capital value of the revised development) should be deducted from the lost revenue that resulted from the breaches before (rather than after) applying the percentage discount to reflect the lost chance."

Developments in SRA investigations and enforcement powers

There were a couple of notable developments in October concerning the breadth of the Solicitors Regulation Authority's (SRA's) investigation and enforcement powers.

First, HM Treasury announced its intention to transfer the SRA's anti-money laundering (AML) enforcement powers to the Financial Conduct Authority (FCA). Whilst this will herald a significant shift in the regulatory environment, it has been on the cards for some time: it was an option shortlisted in the Government's 2022 review of the AML regulatory and supervisory regime. The Government has since launched a consultation (closing on 24 December 2025) which seeks responses on specific aspects of the proposal.

If the proposal goes ahead, it will give rise to a range of complex considerations. For instance:

- Will regulated firms and individuals be expected to contribute towards the FCA's budget?
- How will matters be investigated which fall within the purview of both the SRA and FCA (eg where the allegations involve both AML and conduct allegations, or breaches of the Solicitors Accounts Rules)? Could there be separate investigations conducted in parallel, and will there be a risk of the SRA and FCA issuing separate/stacking sanctions in relation to the same conduct (possibly in addition to any criminal sanctions)?
- The announcement applies to "firms", which is defined to include "individuals who carry out regulated activity." It will be interesting to see the range of sanctions which may be open to the FCA in relation to individuals. For instance, will the FCA have an obligation, in appropriate cases, to commence proceedings before the Solicitors Disciplinary Tribunal seeking to strike off an individual solicitor for the most serious breaches of AML requirements?
- Privilege issues: as it stands, the FCA does not consider itself able to require the production of privileged material during an investigation. Indeed, Regulation 72 of the 2017 Money Laundering Regulations specifically permits a professional to refuse the production of privileged material during an AML investigation. That is a far cry from the SRA's stated position – said to be based on the 1967 Court of Appeal decision in *Parry-Jones v Law Society* – that it can "see information even if it is confidential or subject to a client's legal professional privilege." Assuming that the FCA's planned powers are limited by Regulation 72, the proposal may affect access by the regulator to legal advice provided to firms and by firms to clients.

That brings us to a second and related development: Carter-Ruck, a law firm specialising in libel claims, has, along with its client (Mohamed Amersi), recently issued a Part 8 claim against the SRA seeking a declaration that the SRA is not permitted to inspect privileged material in connection with a regulatory investigation under the Solicitors Act 1974. The background to the investigation apparently concerns Mr Amersi's unsuccessful defamation claim against a Conservative Party MP. If Carter-Ruck successfully obtains the declaration sought, absent future statutory intervention, the SRA's approach to investigations is likely to align more closely with that of the Bar Standards Board, which considers that it can only inspect privileged material in the event of waiver or a court order, and indeed other regulators such as the ICAEW.

Conduct of litigation: Mazur & Anor v CRS LLP [2025] EWHC 2341 (KB)

In May 2025, the High Court handed down a judgment which clarified that the requirement for authorisation to conduct litigation under the Legal Services Act 2007 (LSA) is personal in nature, so a non-authorised individual cannot conduct litigation (even under supervision) simply because their firm is authorised.

The dispute arose from fees allegedly owed by the appellants to the respondent, their former solicitors. Proceedings were commenced in the fee dispute by the respondent's new solicitors, with the particulars of claim signed by that firm's Head of Commercial Litigation, Mr Middleton, who was a solicitor without a current practising certificate. The appellants objected to Mr Middleton's involvement in the matter, asserting that he was not authorised to conduct litigation. They applied for directions, including an order requiring his replacement by a qualified solicitor. Acting of his own motion, Deputy District Judge Campbell ordered a stay of the proceedings, citing evidence that Mr Middleton had engaged in one of the six reserved legal activities in the LSA – namely, the conduct of litigation – without authorisation.

The respondent made an application to lift the stay, which came before His Honour Judge Simpkiss. In the interim, Mr Middleton was replaced by a qualified solicitor, and his firm submitted a self-report to the SRA. Interestingly, the SRA decided not to investigate the matter, on the basis that, in their view at that time, Mr Middleton was entitled to conduct litigation in reliance on the firm's authorisation.

In view of the SRA's letter, HH Judge Simpkiss found that there was no breach of the LSA. He therefore lifted the stay and ordered the appellants to pay the respondent's costs. The appellants appealed to the High Court and also invited the court to consider referring Mr Middleton and his supervising director to the SRA for further investigation, notwithstanding the SRA's earlier decision not to pursue the matter.

The High Court (Sheldon J) invited submissions from the Law Society and the SRA on the circumstances in which a non-admitted person may conduct litigation. Both bodies were aligned in their interpretation: whilst non-admitted individuals may assist an authorised person in the conduct of litigation, they are not permitted to conduct it, even under supervision.

Sheldon J agreed and allowed the appeal. He referred to section 15(2) of the LSA, which makes it clear that an employee who carries out a reserved legal activity is treated as personally undertaking that activity, regardless of whether their employer is authorised. Indeed, section 16 of the LSA states that an employer commits an offence if a reserved legal activity is carried on by one of their employees, in their capacity as such, without that employee being appropriately authorised.

The court held that Mr Middleton was not entitled to conduct litigation, because he was not personally authorised, and he could not rely on his firm's authorisation. He found that HH Judge Simpkiss was mistaken in relying on the SRA's earlier letter. Despite this finding, Sheldon J declined to make a referral to the SRA, on the basis that the SRA was already aware of the judgment, having been involved as an intervening party.

Unfortunately, Sheldon J did not need to consider whether Mr Middleton had in fact conducted litigation. Therefore, although the judgment provides some clarity on the type of litigation work that may be undertaken by, for example, trainee solicitors, paralegals, some employed barristers and some foreign-qualified lawyers, it leaves an important question unanswered: what test should be applied in assessing whether a fee earner has gone beyond assisting in litigation? The SRA submitted that the question is one of fact and degree, relying on an earlier decision of Cavanagh J in *Baxter v Doble* [2023] EWHC 486 (KB), and the key consideration is whether the individual has assumed responsibility for the conduct of litigation and exercises professional judgement in respect of it.

We understand that CILEX has obtained permission (as a third party) to appeal the decision to the Court of Appeal.

Misuse of AI in Court Proceedings

The High Court raised serious concerns regarding the misuse of generative AI in pleadings in its decision in *Ayinde v London Borough of Haringey* [2025] EWHC 1040 (Admin) and a joint decision in *Ayinde* and *Al-Haroun v Qatar National Bank* [2025] EWHC 1383 (Admin).

In *Ayinde*, the court considered whether the inclusion by a barrister of fictitious case citations in pleadings justified a wasted costs order against the barrister and her instructing solicitors under Practice Direction 46. At the costs hearing, the barrister attempted to explain the errors as "minor citation mistakes," but this explanation was firmly rejected and Ritchie J stated:

"…if she had dropped it into an important court pleading, for which she bears professional responsibility because she puts her name on it, she should not have been making the submission to a High Court Judge that this case actually ever existed, because it does not exist."

Although the court declined to make a factual finding on whether AI was used, Ritchie J observed that reliance on AI generated material without verification would, on the balance of probabilities, constitute negligence. He stressed that professional responsibility for accuracy cannot be delegated to technology and that the legal team, including solicitors, bears ultimate responsibility for ensuring pleadings are correct. The court concluded that the use of non-existent authorities and subsequent attempts to minimise the issue warranted a wasted costs order. The matter was also referred to the Bar Standards Board and SRA.

The President of the King's Bench Division listed a further hearing to consider whether contempt proceedings were warranted, although they were ultimately not pursued as the court accepted that there was no deliberate wrongdoing and that the solicitors had no reason to suspect that the barrister would cite fictitious cases.

The *Al-Haroun* case, although joined with these proceedings for these purposes due to similar concerns, arose in a different context. It involved witness statements incorporating fabricated or misquoted authorities, partly sourced from AI research undertaken by the litigant and adopted by the solicitor without adequate checks. The court described this as a "lamentable failure" and referred the solicitor to the SRA for investigation.

These decisions seem to form part of a broader trend. For instance, in *Bandla v SRA* [2025] EWHC 1167 (Admin), the court struck out grounds of appeal relying on fabricated authorities, citing the need for decisive action to protect the integrity of judicial processes. In a separate case, Arnold LJ imposed a costs award exceeding £225,000 against a litigant, Craig Wright, which seems to have been informed (at least in part) by him having made submissions containing AI "hallucinations".

These cases underscore the judiciary's clear expectation that, while AI tools may assist in preparing legal submissions, they do not diminish the professional duty to ensure the accuracy and integrity of all submissions.

Please see our more detailed article on the Ayinde case here.

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Public law

2025 has seen cases grappling with the role of judicial review in a contractual context, the impact of climate change on protected human rights, and the development of new regulatory regimes employing public law principles which will be of interest to commercial organisations

Intersection between public and private law

This year, several key cases explored the intersection of public and private law as the courts sought to clarify the extent to which the full range of public law protection is available where a contractual element is accompanied by a statutory regime or public function – albeit with mixed results.

Rydon Group Holdings is a notable example: despite being set against a statutory background and featuring a clear public interest objective, the contractual context limited the availability of judicial review to the grounds of fraud, corruption or bad faith. However, when compared against other recent case law on the availability of judicial review, the decision adds a layer of complexity to an already uncertain area of law.

The outcome in *Rydon* can be contrasted with *Sarcp*, where the court identified a "spectrum" of public and private law elements as opposed to watertight categories. In this case, contractual discretion was exercised in the context of public law and statutory duties, and there was found to be a sufficient public law element. However, the court noted that even where public law principles apply, a contractual context may narrow the scope of review.

Similarly, the Court of Appeal in *Shashikanth* determined that a contractual dispute resolution process linked to statutory powers and functions gave rise to a presumption of a public function amenable to judicial review. Significantly, the presumption was not rebutted by the fact that the adjudicator was determining issues involving private law rights. The court emphasised the need to look at the reality of a situation, including the broader context and source of power, rather than simply focusing on one aspect that may involve private law rights and obligations.

These divergences illustrate that outcomes in cases with elements of both private and public law may depend heavily on specific facts and contexts and require analysis at a granular level to appropriately differentiate between them.

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Environment and climate change litigation

Within the domain of environmental litigation, *Cannavacciuolo* marked the first time the European Court of Human Rights (ECtHR) found a violation of the right to life under Article 2 of the European Convention on Human Rights. The court recommended measures for the Italian authorities to address decades of large-scale environmental pollution, while clarifying that recognition of the standing and victim status of associations is restricted to the "specific context" of climate change. This decision demonstrates the ECtHR's growing inclination to encourage states to take effective environmental measures.

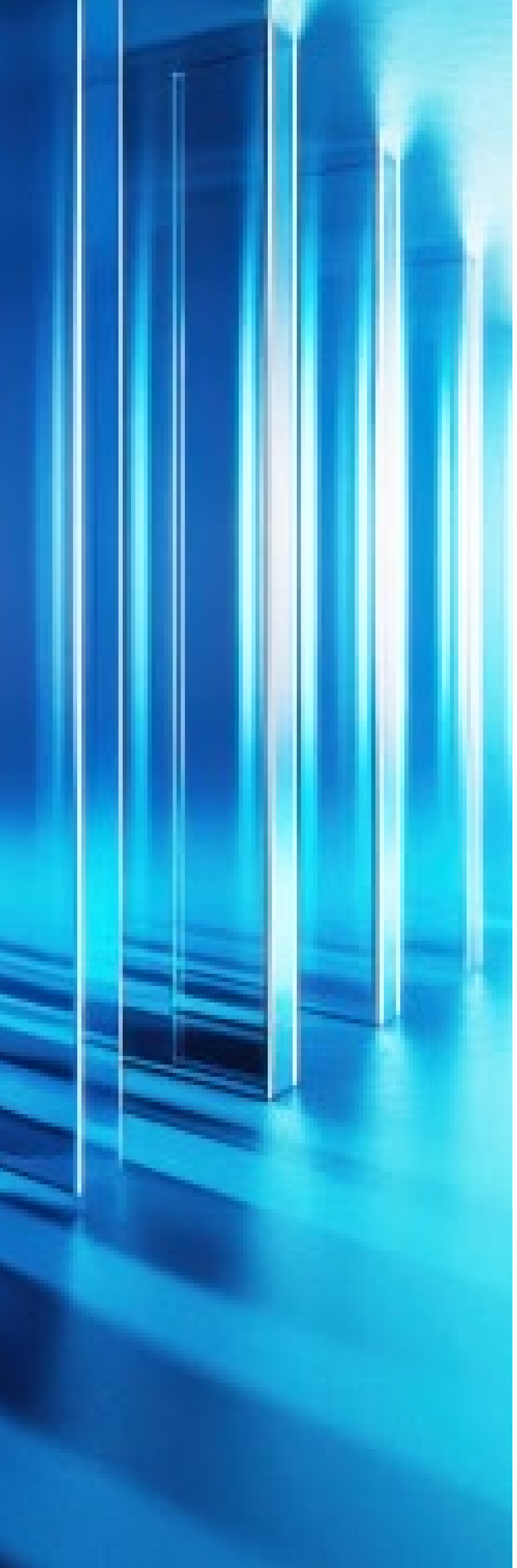
Shifting the focus to the UK, the Administrative Court in *Possible (The 10:10 Foundation)* considered the UK strategy for decarbonising the aviation sector and reiterated that climate policy is a matter for elected decision-makers, and not the courts. This broad discretion meant it was lawful for the Government to effectively conclude at the outset that measures to limit air travel would not form part of the Government's strategy without including that option in a consultation or undertaking further detailed analysis, despite advice suggesting it should be considered a last resort.

A year on from the landmark *Finch* judgment, the topic of environmental impact assessment (EIA) continues to keep the courts busy. In *Caffyn* the Administrative Court reaffirmed the broad obligations to fully assess the indirect effects of a proposed project for an EIA to be legally adequate. Applying *Finch*, this requires evaluating questions of causation and whether effects are "capable of meaningful assessment". Both elements involve evaluative judgment on the part of the decision-maker, but there needs to be evidence of an assessment and consideration process and reasoned conclusions rather than mere information about effects.

Most recently in Greenpeace v Norway the ECtHR has confirmed that, while states retain a wide margin of appreciation on how to comply with their human rights obligations in a climate change context, they are expected to ensure an adequate, timely and comprehensive EIA based on the best available science before potentially harmful activities are authorised. The ECtHR accepted that there was a sufficiently close causal link between the granting of exploration licences and climate impacts given the potential risk of extraction. For petroleum projects in particular the EIA must include a quantification of the GHG emissions anticipated to be produced, including combustion emissions both within the country and abroad, building on *Finch*.

Individual standing for human rights claims remains a high bar and requires detailed, particularised evidence of high intensity exposure and an immediate need for individual protection. This means relevant organisations are more likely to be able to establish standing in climate change cases.

In emphasising that climate protection should carry considerable weight in the balancing of competing considerations, an area traditionally left to states' own discretion, this decision adds to the growing pressure and sense of urgency from international legal institutions.



Emergence of new regimes subject to public law protection

Emerging regulatory frameworks founded on public law principles are redefining the legal landscape as novel case law expands the scope and relevance of public law.

In *Wikimedia Foundation*, the Administrative Court handed down its first judgment in a judicial review claim under the Online Safety Act 2023, dismissing a challenge to a regulation setting categorisation conditions for online services but leaving the door open to future human rights challenges under this regime.

Similarly, *Weis* saw the Competition Appeal Tribunal dismiss an application for review in only the second subsidy control case since the introduction of the Subsidy Control Act 2022.

Also of note is the Divisional Court's dismissal of a challenge to a divestment order under the National Security and Investment Act 2021 in *FTDI Holding*, providing guidance for organisations navigating this novel regime while serving as a valuable reference point as public law principles continue to evolve.

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