

SLAUGHTER AND MAY/

DISPUTES BRIEFCASE

Need-to-know disputes updates for
General Counsel and their teams

NOVEMBER 2025

/ INTRODUCTION

Welcome to Slaughter and May's Disputes Briefcase, a regular digest of key developments in litigation and arbitration, produced by members of our market-leading disputes team. Previous editions of Disputes Briefcase are available [here](#). If you would like to receive future editions of Disputes Briefcase, and other insights from our Disputes and Investigations team, please email our [Editorial team](#).



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MOTOR FINANCE COMMISSIONS

Lenders not liable as bribers or dishonest assisters for commissions paid to motor dealers – Hopcraft, Wrench and Johnson

In August, the Supreme Court **ruled** that motor dealers acting as credit brokers do not owe fiduciary duties to their customers and that a fiduciary duty of loyalty is necessary for liability in bribery. As a result, lenders are not liable in the tort of bribery, or for assisting a breach of fiduciary duty, for paying commission to the motor dealers without consent.

BACKGROUND

The claimants purchased second-hand cars on finance through car dealers acting as credit brokers. Although the dealers received commission from the lenders for having arranged the finance, the fact and/or amount of the commission was not disclosed. The claimants commenced proceedings in the County Courts for bribery, dishonest assistance and under the unfair relationships regime in the Consumer Credit Act 1974. The lenders were successful at first instance and on first appeal.

In a decision that sent shockwaves through the industry, the Court of Appeal found that the lenders were liable (i) in the tort of bribery (in Hopcraft and Wrench) and (ii) for dishonestly assisting a breach of the dealers' fiduciary duties (in Johnson). The Court also upheld Mr Johnson's unfair relationship claim.

THE SUPREME COURT

The Supreme Court ruled that the car dealers did not owe a fiduciary duty to customers. Consequently, the lenders could not be held liable for bribery, or for assisting with a breach of that duty. However, the Supreme Court ruled that the relationship between Mr Johnson and his lender was unfair under the Act.

KEY TAKEAWAYS

- 1 The bar for fiduciary duties is high. Car dealers acting as credit brokers do not owe a fiduciary duty (a duty of "single-minded loyalty") to customers. Such a duty is at odds with the commercial reality of the transaction, where each party is focused on their own self-interest.

- 2 The existence of a fiduciary duty is a prerequisite for a claim in bribery. A lesser "disinterested" duty is not sufficient.
- 3 Lenders may still find themselves liable under the unfair relationship regime. Any assessment of unfairness will be highly fact-specific. However, the following factors are likely to be relevant:
 - the size of the commission relative to the size of the credit;
 - the nature of the commission;
 - the characteristics of the customer (including whether they are commercially sophisticated);
 - the extent and manner of any disclosure;
 - whether the customer read the documents; and
 - the dealer and lender's compliance with the applicable regulatory rules.

FCA REDRESS SCHEME

Following the judgment, the FCA launched a **consultation** on a consumer redress scheme. The scheme proposes that customers be entitled to compensation where one of the following was present and not disclosed: (1) a discretionary commission arrangement; (2) a high commission arrangement (35% of the total cost of credit and 10% of the amount financed, or more); or (3) an arrangement giving a lender a right of first refusal/exclusivity. The FCA estimates that the scheme will cost £11bn. The deadline for responses to the consultation has been extended to **12 December**.

Slaughter and May acted for Close Brothers Limited in the Supreme Court. Read more about the proposed redress scheme [here](#).

VICTORY FOR TRAIN OPERATORS IN THE CAT

The Competition Appeal Tribunal has dismissed a long-running class action against our client, First MTR, and other train operators – Gutmann v First MTR

In October, following a four-week trial the previous year, the CAT **found** that the train operators had not abused their alleged dominance in the way they sold and marketed a certain category of train tickets. In only its second judgment under the decade-old competition class action regime, the CAT clearly confirmed that “competition law is not a general law of consumer protection”.

BACKGROUND

The claim concerned so-called ‘boundary fare’ train tickets, which can be used by a London travelcard-holder to travel beyond the zone of validity of their travelcard. Class Representative Mr Gutmann argued that competition law required the defendant train operators to increase the ‘availability’ of boundary fares for sale and ensure general awareness of their existence among consumers. He claimed that the failure by the train operators to secure this outcome amounted to an abuse of their alleged dominance.

CLARIFYING THE LIMITS OF COMPETITION LAW CLASS ACTIONS

When it was filed in 2019, the boundary fares claim was at the vanguard of what has now become a wider trend of using competition law class actions to expand the conventional boundaries of competition law. However, the CAT has clearly signalled in its judgment that the class action regime has its limits, emphasising that “competition law is not a general law of consumer protection”.

The CAT made it clear that examples of difficulties faced by some consumers will not be enough to establish abuse of dominance and helpfully clarified that there is no “obligation on the dominant company to organise or conduct its business so as to achieve the best outcome for its customers”.

THE CAT'S ROLE IN SCRUTINISING BUSINESSES

The CAT made a holistic assessment of the train operators’ sales practices and acknowledged the

competing commercial priorities, particularly in a highly regulated industry. Whilst observing that the “selling systems of each of the Defendants could have been improved”, the CAT did not consider that any issues highlighted by Mr Gutmann could be considered abusive.

The CAT also held that, so long as a dominant company makes a product sufficiently available to customers and does not conceal its existence, it is not additionally required to “promote or advertise a product that will benefit some of its customers so as to increase their awareness”.

WIDER IMPLICATIONS FOR THE REGIME – GREATER SCRUTINY AT CERTIFICATION?

The final outcome of this case can be contrasted with the **certification** stage, when the CAT and the Court of Appeal considered that Mr Gutmann’s claim was an arguable (albeit novel) form of abuse. The opposite conclusion after nearly seven years of litigation might suggest a regime that requires more intensive scrutiny of the merits at the certification stage.

It is also notable that the CAT initially certified the action despite noting the risk of low take-up of any damages by class members, and the anticipated costs of the proceedings. In parallel to the main litigation, just c. £200,000 of the £25m settlement agreed by one of the train operators shortly before trial was ultimately claimed by class members. It could be suggested that the cost-benefit analysis should play a greater role in the CAT’s analysis at the certification stage.

Read more about the CAT’s decision in our **briefing**. Slaughter and May acted for First MTR in the proceedings.

Mr Gutmann has stated in an **interview with Global Competition Review** that he does not intend to appeal the judgment.



FIRST CLAIMANT WIN IN COMPETITION CLASS ACTION

Competition Appeal Tribunal rules that Apple abused its dominance in app market and makes first ever damages award in collective proceedings – Kent v Apple

In a case brought on behalf of 36 million users of Apple devices, the CAT has **ruled** that Apple abused its dominant position in markets for iOS app-related services and must pay as much as £1.5 billion in damages to class members. The judgment is a landmark: the first successful claim under the UK's collective proceedings regime (after the first two to reach trial were dismissed). It is a shot in the arm for the funded claims market after a turbulent period.

The litigation related to the terms imposed by Apple on developers who wished to distribute apps to users of Apple devices. The class representative, Dr Rachael Kent, alleged that Apple abused its dominant position by imposing exclusionary practices on app developers and by charging developers an excessive and unfair level of commission (generally, 30%) on app-related payments made by users. Dr Kent argued that this resulted in Apple users paying more than they should have done: in aggregate, up to £2.2 billion including interest.

Following a 28-day hearing earlier this year, the CAT's judgment represents a comprehensive victory for the class representative.

On market definition and dominance, the CAT agreed with Dr Kent's proposed definitions of the relevant markets: one for iOS app distribution services – which facilitate the purchase of apps to users, whether those apps are free or paid-for – and one for iOS in-app payment services – which include mechanisms for processing payments made by users who have already downloaded apps and associated support services. The Tribunal then had no difficulty finding that Apple – which had a 100% market share by virtue of its App Store – was dominant. Apple's closed app ecosystem meant that the prospect of users switching to non-Apple devices was not a material constraint on its ability to set commission at a level of its choosing.

The CAT found that Apple had unlawfully foreclosed competition in both relevant markets by giving developers no choice but to distribute apps through the App Store and to process in-app purchases using Apple's systems; and by tying in-app purchase services to the App Store. The Tribunal rejected Apple's case that the competition Dr Kent contended for would breach its IP rights: Apple was not seeking to reserve to itself the exclusive use of its IP infrastructure (quite the opposite – it wanted developers to make use of it to create and distribute apps); rather it was seeking to apply contractual restrictions on developers to limit competition.

The CAT held that Apple had abused its dominant position by charging excessive and unfair prices in the form of the 30% commission levied on app developers. The Tribunal adopted the usual two-limb test set out in *United Brands*: first, it concluded that a significant and persistent difference existed during the relevant period between the price of the services and the cost of providing them. That meant the commission was excessive. Second, the level of commission was unfair both on its own terms and by reference to relevant comparator services.

The CAT rejected Apple's argument that its conduct was objectively justified on the basis that it was efficient (not so, the CAT found, because its effect was to eliminate competition entirely) and objectively necessary (because the restrictions were not necessary or proportionate).

On quantum, the CAT assessed the overcharge by reference to counterfactuals and decided that, but for its infringing conduct, Apple would have charged a commission of 17.5% for app distribution services (meaning an overcharge of 12.5%) and 10% for in-app payment services (i.e. an overcharge of 20%). Applying the "broad axe" principle, the CAT considered that 50% of this overcharge had been passed on to consumers. It said that interest should be applied at a simple rate of 8%.

The CAT **denied** Apple permission to appeal; Apple now has until 5 December to ask the Court of Appeal for permission. An order on the amount of damages to be paid will be made in due course.



NO DEEMED FULFILMENT OF CONDITIONS PRECEDENT

Supreme Court holds there is no deemed fulfilment of a condition precedent to a debt and the appropriate remedy is damages – King Crude Carriers & Ors v Ridgebury November & Ors

The Supreme Court has **overturned** the Court of Appeal and settled a long-debated point in English contract law, finding that the principle of ‘deemed fulfilment’ is not part of English law. The principle is derived from the Scottish case of *Mackay v Dick* in which Lord Watson held that where a party wrongfully prevents the fulfilment of a condition precedent to a debt, the condition is treated as having been fulfilled. Instead, the Supreme Court found that English law focuses on the terms of the contract, and their proper interpretation, as the appropriate means by which to determine whether a debt has accrued. Unless the parties have agreed otherwise, damages are the appropriate remedy for non-fulfilment of a condition precedent due to the debtor’s breach of contract.

BACKGROUND

The appeal arose in relation to the sale of three second-hand oil tankers. The contracts provided that the buyers would pay deposits into third party escrow accounts shortly after the accounts were opened and they would provide all necessary documentation for this purpose. The buyers breached the contracts by failing to provide the documentation, meaning that the accounts could not be opened, and the deposits could not be paid into them.

The sellers terminated the contracts and argued they were entitled to claim the deposit amounts in debt, relying on *Mackay v Dick*. In contrast, the buyers argued that the sellers were entitled only to damages and that they had suffered no loss as the market price for the vessels at termination was higher than their purchase price.

Whilst the sellers were successful in arbitration, the Commercial Court found for the buyers on appeal, but the Court of Appeal unanimously overturned that decision in favour of the sellers.

SUPREME COURT – KEY TAKEAWAYS

The Supreme Court unanimously allowed the buyers’ appeal.

The Court found that the *Mackay v Dick* principle is not part of English law because:

- 1 The principle was drawn from civil law rather than English case law.
- 2 English authorities are inconsistent on whether the principle exists.
- 3 The principle would fundamentally undermine the law on contracts for the sale of goods (among others) and limiting its ambit by way of exceptions would lead to uncertainty in a way that does not make for a robust principle of law.
- 4 The principle is based on a legal fiction of deeming a condition precedent as fulfilled or waived which undermines legal reasoning and should be avoided where possible.
- 5 English contract law proceeds on the basis of the terms of the contract (express and implied) and their proper interpretation.
- 6 No injustice results from rejecting the principle – where a condition precedent has not been fulfilled because of the debtor’s breach of contract, the breach is appropriately and adequately remedied by damages.

Turning to questions of contractual interpretation, the Court noted that the buyers were not relying on their breach to treat the contracts as at an end or to claim a benefit under them. Therefore, the principle that a contract will be interpreted so as not to permit a party to take advantage of their own wrong did not apply. The Court held that the interpretation proposed by the sellers would rewrite the contracts. Similarly, the sellers’ proposed implied terms would render performance impossible or rewrite the contracts and contradict their express terms.

The Court also dismissed the sellers’ secondary argument. It held that the contractual terms for setting up the escrow accounts were conditions precedent to accrual of the debt and not (as the sellers argued) simply “machinery for payment” for debt that had already accrued when the contracts were concluded. Read more in our briefing.

DATA PROTECTION CLAIMS

Court of Appeal lowers threshold for damage in data protection claims – *Farley & Ors v Paymaster (t/a Equiniti)*

The Court of Appeal has **lowered** the threshold for claimants seeking compensation for breaches of their data protection rights. The Court held that to bring a data protection claim it is not necessary to prove that data had been disclosed and there is “no threshold of seriousness” for data protection claims. The decision lowers the threshold for data protection claims and brings the English courts’ approach into line with that of the CJEU. Even so, the Court’s emphasis that claims for non-material damage must be “well-founded” highlights the continued practical hurdles faced by claimants seeking to bring low-value data protection claims.

THE CLAIMS

Pensions administrator, Equiniti, mistakenly posted the annual benefit statements of a group of police officers to out-of-date addresses. Over 400 police officers collectively brought claims for breaches of their rights under the UK GDPR and Data Protection Act 2018. The officers argued that Equiniti had breached their data protection rights and caused the officers “anxiety, alarm, distress and embarrassment” for fear that their personal data “may have” passed to unknown third parties.

The High Court struck out all but 14 claims holding that to have a viable claim for breach of data protection laws and/or misuse of private information (the latter claim was later dropped) the claimants needed to show they had a real prospect of establishing that the benefits statements had been opened and read by unauthorised third parties. The judge held that most of the claims could not do so and therefore had no reasonable basis. The officers appealed.

THE COURT OF APPEAL'S DECISION

The Court of Appeal allowed the officers’ appeal finding that:

- **Proof that data was disclosed is not an essential ingredient of an allegation of processing or infringement of data privacy law.** The Court considered that the judge had

been wrong to strike out the claims on the basis that a third party had not opened and read the benefit statements.

- **There is no “threshold of seriousness” for data privacy claims under the UK GDPR and DPA 2018.** The Court held that while a “threshold of seriousness” applies to claims for misuse of private information (***Prismall v Google and DeepMind***), it did not consider that such a threshold should apply to data protection claims which are part of a separate regime. The Court distinguished the Supreme Court’s decision in ***Lloyd v Google***, which held there was a “threshold of seriousness” for claims under the pre-GDPR regime in the UK Data Protection Act 1998. Instead, the Court aligned with the EU position. The Court can have regard to post-Brexit CJEU rulings where relevant and here it saw no strong reason for departing from settled CJEU case law which had found that there is no “threshold of seriousness” test under the GDPR.
- **Compensation for fear or anxiety about possible misuse of data is recoverable, but only if the fears are objectively “well-founded”.** The Court held that compensation for emotional responses other than distress can be recoverable under English data protection law, but claims cannot be “purely hypothetical or speculative”. The Court directed the lower courts to determine whether each individual claim meets this test.
- **The claims as a class should not be struck out as an abuse of process simply because the costs of defending the claims might exceed the potential damages.** The Court held that the modest amount of likely damages could not of itself be sufficient to justify dismissal of an otherwise valid claim, but the question of whether an individual case is abusive could be considered by the lower courts.

However, this may not be the last word as Equiniti has **sought permission to appeal** the decision before the Supreme Court. See also our **blog post** on the decision.

PUBLIC ACCESS TO COURT DOCUMENTS

Open justice: new pilot to provide greater default public access to documents filed by parties in court proceedings

New rules are soon to be piloted that will make it significantly easier for members of the public and the press to obtain access to documents filed by parties in court proceedings in the Commercial Court (including the London Circuit Commercial Court) and the Financial List. Under a two-year pilot, from 1 January 2026, on payment of a small fee, anyone will by default be able to obtain copies of a broader range of court documents directly from CE-File, the courts' electronic online filing and case management system. The pilot follows on from the Supreme Court's landmark decision in **Cape v Dring** and, as reported in **earlier editions of Briefcase**, forms part of a wider push towards greater transparency in court proceedings.

CURRENT POSITION

Currently, on payment of a fee, a non-party may as of right obtain from court records (e.g. via CE-File) copies of statements of case (e.g. claim documents, defence) and judgments and orders made in public (**CPR 5.4C**). Following **Cape v Dring**, non-parties may also obtain access to documents placed before a court and referred to at an open hearing where they can show that disclosure is in the interest of open justice and outweighs any risk of harm to the judicial process or legitimate interests of others. However, the process is burdensome as non-parties must apply to court to obtain access to such documents.

THE PILOT: NEW DEFAULT ACCESS TO 'PUBLIC DOMAIN DOCUMENTS'

Under the new scheme, members of the public will by default be able to access a wider range of documents known as "Public Domain Documents" which a party's solicitor will need to file on CE-File at or around the start of a public hearing. Members of the public will then be able to obtain copies of these documents via CE-File on payment of a fee, without needing permission from the court.

The following documents will be classed as Public Domain Documents and therefore captured by the pilot:

- skeleton arguments
- written submissions, including written openings and closings
- witness statements (not exhibits)
- expert reports (including annexes and appendices)
- any other document designated by a judge as "critical to the understanding of the hearing" or as agreed between the parties

The pilot will apply to new and existing proceedings, but only to documents used in public hearings which take place on or after 1 January 2026. It will therefore apply to documents that are created for court proceedings before 1 January, if they are used in hearings after this date. The court will have the power to make an order on its own initiative, at the request of a party, or on the application of a non-party to withhold a Public Domain Document from filing or to redact it. The onus will therefore be shifted from those seeking disclosure to those seeking to withhold documents from disclosure.

Although the pilot is slated to last for two years, it will be reviewed after six months and, if successful, extended to other parts of the Business and Property Courts.

The pilot represents an important change for parties, although it is perhaps more tempered than proposals last year (see our **April 2024 edition of Briefcase**) that would have enabled public access to documents irrespective of whether they had been used in proceedings and a hearing had taken place. The pilot highlights the difficult balance to be struck between open justice and protecting information in English litigation. This issue was also recently considered by the Court of Appeal in **Optis v Apple** in relation to the redaction of confidential information in a patent dispute, although the Court's approach is relevant for all litigation.

OTHER RECENT DEVELOPMENTS AND WHAT TO WATCH OUT FOR

Here is a round-up of other recent noteworthy developments in litigation and arbitration, and what to watch out for in the coming months:

OPT-OUT COLLECTIVE ACTIONS REGIME CALL FOR EVIDENCE

Hot on the heels of the Civil Justice Council's report recommending reforms to the litigation funding market (see our [July 2025 edition of Disputes Briefcase](#)), the UK government issued a [call for evidence](#) on the operation of the opt-out collective proceedings regime in the CAT (these kinds of cases are only ever brought with the backing of litigation funders). Ten years after the regime's advent, the review seeks to balance consumer redress with the avoidance of undue burdens on business.

Among its key questions are whether funding agreements are fair and transparent, whether litigation costs influence competition among funders, and how the secondary market in litigation funding has developed in relation to transparency and confidentiality. The Department for Business and Trade explicitly acknowledges the overlap between its review and the CJC's recommendations and has confirmed that it will consider the CJC's findings as part of its own review. Together, these initiatives signal continuing scrutiny of litigation funding, with further reforms likely in 2026.

COPYRIGHT CLAIM AGAINST AI DEVELOPER FAILS

The High Court has handed down its highly anticipated decision in [Getty Images v Stability AI](#), finding that Getty's claim for secondary copyright infringement failed, but Stability AI was liable (in part) for trademark infringement. The case concerned Stability AI's generative AI tool known as 'Stable Diffusion' which creates synthetic images in response to user prompts. Getty argued that Stable Diffusion had been trained using copyright-protected images scraped from its websites without permission. The case is one of the first such claims against an AI developer to reach trial and has therefore attracted significant interest. Many of the big questions around primary copyright infringement fell away after Getty narrowed its claims at trial. Even so, the fact that Getty's claim for secondary copyright infringement failed will be a

relief to generative AI developers, but a blow to UK copyright holders. Read more in our [blog post on Getty](#) and our [briefing on copyright infringement risks in training Generative AI](#).

EUROPEAN COURT OF HUMAN RIGHTS CLIMATE DECISION ON LICENSING OF OIL AND GAS PROJECTS

The European Court of Human Rights has delivered its judgment in [Greenpeace Nordic & Ors v Norway](#) finding that a decision by Norway to license petroleum exploration and production in the Arctic Ocean had not breached Norway's obligations to protect individuals' rights to privacy under Article 8 of the European Convention on Human Rights. However, the Court's decision sets out important procedural standards that may influence how contracting states assess and approve similar projects in future. The Court held that authorities must carry out adequate, timely and comprehensive environmental impact assessments before approving new petroleum projects, based on the best available science. Authorities must assess each project's expected global downstream greenhouse gas emissions, including exported combustion emissions, and test the project's compatibility with domestic and international climate commitments. In reaching its decision, the Court considered recent advisory opinions on climate change from other international courts, including the [International Court of Justice](#), the [Inter-American Court of Human Rights](#), and comparative cases from domestic law, notably the UK Supreme Court's decision in [R\(Finch\) v Surrey County Council](#). In another case brought by Greenpeace Nordic, a Norwegian appeal court has found that three oil fields in the Norwegian North Sea are unlawful as the climate impacts from combustion emissions had not been sufficiently investigated or assessed. The decision follows an [advisory opinion from the European Free Trade Association Court](#) requested by the Norwegian courts.

MOJ CONSULTS ON IMPLEMENTATION OF SINGAPORE MEDIATION CONVENTION

The Ministry of Justice has consulted on how the Singapore Mediation Convention might be implemented in the UK. The Convention creates an international framework for the recognition and enforcement of cross-border commercial settlement agreements resulting from mediation. The UK



government signed the Convention in May 2023 but despite **plans to do so in 2024**, the UK has not yet ratified the Convention. The Convention is currently in force in 19 states but some commentators have suggested that the **Convention could become as significant** for mediation as the New York Convention (which has over 170 parties) is for international arbitration.

ARBITRATION ROUND-UP

Among recent developments in arbitration before the English courts:

The Supreme Court in **P&ID v Nigeria** has unanimously confirmed the proper approach for determining the currency of a costs order. The Court held that the general rule is that costs orders should be made in sterling or in the currency in which the solicitor billed its client and in which the client paid. The decision follows Nigeria's successful application to set aside two arbitral awards against it for fraud. P&ID was ordered to pay Nigeria's costs in sterling (the currency in which it had been billed by its solicitors and in which it had paid). P&ID argued that costs should be paid in Nigerian currency (naira), as payment in sterling would amount to a windfall for Nigeria at P&ID's expense because the naira had dropped significantly against sterling. The Supreme Court disagreed, holding that an order for costs is not intended to compensate loss in the same way as an award for damages in tort or contract. A costs award is a discretionary remedy and the court's task in making a costs award is to identify a reasonable amount which the paying party should pay as a contribution towards the receiving party's costs incurred in litigation.

The Court of Appeal has unanimously allowed an appeal in **Star Hydro Power v National Transmission and Despatch Company**. The Court found that the English courts can grant an anti-suit injunction to restrain a party's attempts ostensibly to 'partially enforce' a London-seated arbitral award in the Pakistan courts under the New York Convention where the Court found the foreign proceedings would effectively have amounted to a challenge to the award. In a case to watch, the Supreme Court has **granted** permission to appeal.

The Court of Appeal in **Eronat v CNPC** has upheld a decision of the High Court to refuse permission to appeal an arbitral award. In doing so, the Court confirmed that a timeline agreed between the parties for appealing an arbitral award "within thirty (30) days after the decision is rendered" in an arbitration clause runs from the date of the award, not the date the award was delivered to the parties.

CONTRACT LAW DEVELOPMENTS

In **URE Energy v Notting Hill Genesis**, the Court of Appeal has provided guidance on the limits of the principle of 'waiver by election' – where a party has contractual rights to either continue or to end a contract that party must elect between those rights and the right that is chosen is then lost. The Court held that an energy supplier had not lost its right to terminate the contract, which had been triggered by a merger involving its counterparty, due to 'waiver by election' because the energy company did not know of its termination right and so there had been no binding election to continue the contract.

In our **November Contract Law Update** we provide a round-up of other recent key developments in contract law, including:

- The High Court in **Alaska Airlines v Virgin Aviation** held that where a contract concerns several rights, the question of whether a payment obligation relates to particular rights or the complete bundle of rights is a question of interpretation. A no-set-off clause can allow recovery of payments due notwithstanding the counterparty's other potential claims. Slaughter and May **successfully represented Virgin** in the proceedings.
- The Court of Appeal in **DAZN v Coupang Corp** held that an exchange of messages or emails can give rise to enforceable contractual obligations, even in the context of high-value commercial arrangements.
- The High Court in **Learning Curve v Lewis** held that a party's ability to bring a claim under a specific indemnity does not necessarily preclude a claim for breach of warranty under a share purchase agreement.
- The Court of Appeal in **Kulkarni v Gwent** held that whilst a repudiatory breach cannot be cured at common law, a material or persistent breach is not necessarily irremediable simply because it is also repudiatory.
- The Court of Appeal in **Orion Shipping and Trading v Great Asia Maritime** held that a contractual right to terminate does not necessarily entitle a party to recover damages for loss of bargain (such as profit that would have been received). But it is open to the parties to negotiate contractual termination rights, and the consequences of termination (including the damages available) depending on the clause agreed.
- The High Court in **J. P. Morgan International Finance v Werealize.com** granted an anti-suit injunction in support of a no-liability clause. The

High Court also held that the Contracts (Rights of Third Parties) Act 1999 was not intended to put a third party in a position to enforce and be subject to an exclusive jurisdiction clause, although these findings contrast with obiter comments in another recent case of **Campeau v Gottex Real Estate Asset Fund**.

OVERCHARGE IN POWER CABLES CARTEL

In October, the CAT ruled in **London Array v Nexans France** that power-cable manufacturer Nexans must pay damages to wind farm London Array for cartel conduct that resulted in overcharges in relation to export cables. Permission to appeal the judgment was **refused**. This is only the second judgment in this jurisdiction quantifying a cartel overcharge. Read more in our **Competition and Regulatory Newsletter**.

NOVEL ANTI-ENFORCEMENT INJUNCTION GRANTED

A new judgment demonstrates the breadth of the English court's jurisdiction to grant injunctions. In **Federal Government of Nigeria v Louis Williams**, the Commercial Court granted an application to restrain the respondent, Dr Williams, from seeking to enforce in New York an English judgment against Nigeria he had earlier obtained by default. This is the first time a court has granted an injunction preventing overseas enforcement of one of its own judgments.

Nigeria alleged that judgment was obtained fraudulently and began proceedings in England to have it set aside; it sought an injunction to prevent enforcement in the meantime which it argued would be vexatious and oppressive in the circumstances. Henshaw J's judgment provides a useful summary on an area that overlaps with the law on anti-suit injunctions, and its application in cases of alleged fraud.

OUR RECENT WORK

- **Close Brothers on successful appeal to the Supreme Court**
- **Virgin in the Commercial Court**
- **First MTR before the Competition Appeal Tribunal**

OUR OTHER RECENT CONTENT

- **Chambers and Partners Global Practice Guide – International Arbitration 2025 – England & Wales: Law and Practice**
- **Contract Law Update - November 2025**
- **UK Tax dispute risks**
- **Global Investigations Bulletin - July 2025**
- **Global Investigations Bulletin - October 2025**
- **Navigating the new cartel enforcement landscape**



CONTACTS

If you would like to discuss any of the above in more detail, please contact your relationship partner or email one of our Disputes team.

Trusted to advise on our clients' most complex and strategically significant litigation and arbitration, we are recognised in particular for our expertise in heavyweight commercial litigation, major class actions and group litigation, banking disputes and competition damages actions.



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