SLAUGHTER AND MAY/

DISPUTES BRIEFCASE

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

JULY 2024

/ 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 Briefcase are available **here**. The **Disputes Briefcase team** would welcome any thoughts and feedback.

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DISPUTE RESOLUTION UNDER A LABOUR GOVERNMENT

THE KING'S SPEECH ON 17 JULY SET OUT THE NEW GOVERNMENT'S LEGISLATIVE AGENDA FOR THE NEXT YEAR. WE SET OUT BELOW THE KEY POINTS OF INTEREST FROM A DISPUTES PERSPECTIVE.

The Government will reintroduce a Bill to reform the Arbitration Act 1996 in line with proposals made by the Law Commission last year. The Bill was originally put before Parliament last year, as reported in our **January edition of Disputes Briefcase**, but was still pending when Parliament was dissolved ahead of the general election earlier this summer. We will report on any differences in the text of the promised new version when it is published.

Two other significant measures were enacted in a last-minute rush of activity before the end of the last Parliament:

- The **Digital Markets, Competition and Consumers Act 2024**. This landmark piece of legislation has wide-ranging implications for consumer protection and competition law in the UK. It creates a new digital marketing regime and bolsters the CMA's ability to tackle anti-competitive conduct by giving it wider investigatory and enforcement powers. It also changes the rules on merger control so that the CMA can focus its attention on 'killer acquisitions'. Importantly, it gives the **CMA new powers to enforce breaches of consumer protection laws** directly, including the ability to impose fines of up to 10% of global turnover. For a detailed overview of the Act, which is expected to come into force this Autumn, see our **briefing**.

- The **2019 Hague Judgments Convention**, which was ratified after a statutory instrument to give it effect in UK law was passed. When the Convention comes into force next year, it will make it significantly easier to enforce a wide range of English court judgments in 29 countries – including all bar one of the EU's member states – and vice versa. UK participation in the Convention will restore a level of reciprocal enforcement with the EU not known since the end of the Brexit transition period. It will come into effect for the UK on 1 July 2025. It will apply to judgments in cases started after that date. Read our **briefing** for more detail on how the Convention will work.

Two other Bills introduced by the previous Government ran out of time and were abandoned. Neither featured in the King's Speech, but both have broad cross-party support and it would not be surprising if one or both are revived in due course:

- The **Litigation Funding Agreements (Enforceability) Bill**, which was intended to reverse the effect of the Supreme Court's decision in PACCAR (reported in our **January edition of Disputes Briefcase**) and ensure the continued validity of agreements between litigation funders and claimants. A broader review of the third party litigation funding market is currently underway (see our **April edition of Disputes Briefcase**) and it may be that the Government wants to awaits its conclusions before proposing new legislation.

- The **Criminal Justice Bill**. It had proposed reforms to various aspects of criminal law, including a **further expansion of the identification doctrine** to allow criminal liability to be attributed to companies and partnerships whose senior managers commit any criminal offences while actually or apparently authorised to do so. The Bill was also supported by the Law Commission as they confirmed in their recent **annual report**.

FORCE MAJEURE AND REASONABLE ENDEAVOURS

UK SUPREME COURT CONFIRMS NO REQUIREMENT TO ACCEPT NON-CONTRACTUAL PERFORMANCE TO OVERCOME FORCE MAJEURE EVENT – *RTI V MUR SHIPPING*

The UK Supreme Court has **held** that the requirement on a non-defaulting party to use 'reasonable endeavours' to overcome a force majeure event does not require the non-defaulting party to accept an offer of non-contractual performance absent clear wording to that effect. The UKSC has also provided important guidance on the interpretation and operation of force majeure provisions in commercial contracts.

A shipowner (MUR) and a charterer (RTI) entered a contract which required contractual payments to be paid in US dollars. RTI became affected by US sanctions which would delay it making payment in US dollars. MUR invoked the force majeure provisions in the contract which were subject to a reasonable endeavours proviso on the invoking party. RTI rejected the force majeure notice, offering instead to pay in euros and to bear any additional costs or exchange rate losses suffered by MUR in converting euros to US dollars. RTI commenced arbitration claiming damages for costs incurred during MUR's period of suspended performance. MUR argued it had been entitled to suspend performance under the force majeure clause.

Following contrasting decisions from the arbitral tribunal and the lower courts, the UKSC unanimously found in favour of MUR. The UKSC found that the following principles supported MUR's case:

1 **The object of reasonable endeavours provisos:** The object of a reasonable endeavours proviso is to maintain contractual performance, not to substitute a different performance. Here, the contractual performance was payment in US dollars. The question was whether the exercise of reasonable endeavours by MUR would have enabled the payment of US dollars to be made without delay. Accepting non-contractual payment in euros would not enable the contract to be performed.

2 **Freedom of contract:** Under fundamental principles of English contract law, parties are generally free to contract on terms of their choosing. This includes freedom not to contract and not to accept an offer of non-contractual performance.

3 **Clear words needed to forego valuable contractual rights:** A party should not be required to forego valuable rights (here, a right to insist on payment in US dollars) unless the contract makes clear, either expressly or by necessary implication.

4 **Importance of certainty in commercial contracts:** Parties need to know with reasonable confidence whether a force majeure clause can be relied upon at the relevant time, "not after some retrospective inquiry". Whilst MUR's position was "straightforward," RTI's position was not anchored to the contract and begged various questions giving rise to considerable legal and factual uncertainty, including whether accepting non-contractual performance would involve no detriment to the party invoking force majeure, and whether it would achieve the same result as contractual performance.

The UKSC's decision provides timely guidance on the operation of force majeure clause against a backdrop of increasing reliance on such provisions in recent years, including in the aftermath of Covid-19 and the changeable sanctions landscape. The UKSC noted that reasonable endeavours provisos, whether express or implied, are a "very common feature" of force majeure clauses. Even if in the absence of the wording, the UKSC would have interpreted the clause as including a reasonable endeavours proviso to similar effect. The UKSC's findings therefore have wider implications for force majeure provisions generally.

Read more in our **briefing**.

INSOLVENCY AND CHOICE OF FORUM AGREEMENTS

A WINDING-UP PETITION SHOULD NOT BE STAYED OR DISMISSED SIMPLY BECAUSE THE DEBT IS SUBJECT TO A GENERALLY WORDED ARBITRATION AGREEMENT – *SIAN PARTICIPATION V HALIMEDA*

The Privy Council in ***Sian Participation v Halimeda*** has handed down an important decision on the ability of creditors to obtain a winding-up order from the courts on the basis that the debtor cannot pay its debts, where the debt in question arises from a contract containing an arbitration agreement. Although the case relates to an appeal from the BVI courts, the Privy Council declared that the previous leading English authority on this issue was wrongly decided and directed that its decision should prevail in English law.

The dispute related to an unpaid term loan under a facility agreement containing a widely drafted arbitration agreement, which provided that: "any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement" shall be referred to LCIA arbitration. The respondent creditor applied to appoint liquidators over the appellant debtor. The debtor disputed that the debt was due and payable based on a cross claim and/or set-off.

THE TEST: A GENUINE DISPUTE ON SUBSTANTIAL GROUNDS

The Privy Council held that the correct test to be applied when deciding whether to dismiss or stay a winding-up petition (or liquidation application in the BVI) in favour of an arbitration agreement is whether the debt is subject to a "genuine dispute on substantial grounds". The Privy Council considered that a winding-up petition does not trigger the statutory mandatory stay provided for in arbitration laws (e.g. **s9 English Arbitration Act 1996**). This is because a winding-up petition is not a type of claim that is caught by those provisions. Arbitration agreements relate to the resolution of disputes, and provide for them to be resolved by arbitration, not litigation. Insolvency is of a different nature to dispute resolution and a winding-up petition does not seek to resolve disputes. Further, the Privy Council held that pro-arbitration policies are not offended by one party seeking liquidation of another which fails to pay a debt. The Privy Council also held that its findings apply to exclusive jurisdiction clauses.

APPLICATION TO ENGLISH LAW

Following the leading English case of ***Salford Estates***, and reflective of the English courts' pro-arbitration policy, the English courts apply a low threshold to the question of whether a debt is disputed. The English courts may order a discretionary stay of creditors' winding-up petitions where an insubstantial dispute about the creditors' debt is raised between parties to an arbitration agreement.

Significantly, the Privy Council (which comprised a bench of UK Supreme Court judges) found that the test in Salford Estates was wrongly decided. The Privy Council directed (under the ***Willers v Joyce*** principle) that the English courts should no longer follow Salford Estates and instead treat its decision in this case as representing English law. As a result, the English courts will no longer exercise a discretion to stay or dismiss winding-up petitions where the debt arises out of a contract subject to a generally worded arbitration agreement or exclusive jurisdiction clause, unless the debtor can show the debt is genuinely disputed on substantial grounds. The Supreme Court noted, however, that different considerations may arise if the arbitration clause was drafted to apply to a creditor's winding up petition.

The Privy Council's decision highlights the interplay in public policy considerations underlying arbitration and insolvency. The decision is likely to be of wider interest in other jurisdictions, such as Hong Kong which has considered similar issues in the cases of ***Re Guy Kwok-Hung Lam*** and ***Re Simplicity & Vogue***.

JURISDICTION AND SANCTIONS

ENGLISH COURTS THWART ATTEMPT TO USE RUSSIAN LAWS TO EXCLUDE POSSIBILITY OF LITIGATION IN ENGLAND, AND UPHOLD DISPUTE RESOLUTION CLAUSES IN DISPUTES LINKED TO RUSSIA AND UKRAINE

Disputes over which country's courts should hear a case are a feature of international litigation, even where the parties have included a jurisdiction or arbitration clause in their contract. Several recent cases shed light on the English court's approach to enforcing dispute resolution agreements and to prohibiting parties from attempting to litigate outside England.

Magomedov and others v Transneft and others is a rare example of an anti-anti-suit injunction (AASI): in other words, an order of the English court to restrain a party from pursuing an anti-suit injunction in a foreign court that was itself aimed at preventing the pursuit of a claim in England. The factual context of the case gives it a broader market relevance: the AASI application was precipitated by the defendants' recourse to new Russian laws which purport to prevent foreign courts hearing disputes involving Russian companies targeted by Western sanctions.

Mr Magmedov, a Russian citizen, sued Transneft, a Russian state-controlled company, in the English courts, alleging it and other defendants had conspired to injure him and fellow claimants by unlawful means. The claimants were given permission to serve the defendants in Russia and the defendants indicated they would seek to challenge the jurisdiction of the English court to hear the case. But before the English court could reach a verdict on that question, Transneft persuaded a Moscow court to injunct the claimants from continuing their claim in England. They relied on new Russian procedural laws which grant the Russian courts the exclusive right to hear disputes involving Russian entities subject to sanctions imposed in the wake of Russia's full-scale invasion of Ukraine. They are backed up by heavy financial penalties for companies that continue litigation outside Russia.

The claimants asked the English court to grant injunctions preventing Transneft from enforcing the Russian anti-suit injunctions until the English court had reached a view on whether it had jurisdiction. In a judgment handed down in May, the Commercial Court agreed.

In a measured decision that sought to balance respect for different countries' legal systems and the rights of litigants to access justice, Bright J summarised the test for AASIs. He noted that, as a general rule, the English court would only grant relief where England was the proper forum for the dispute and the pursuit of foreign proceedings would be vexatious and oppressive or unconscionable. The issue in this case was that the effect of the Russian court's anti-suit injunction would be to deprive the English court of the opportunity of deciding for itself whether it was the proper forum. The judge decided that this would be unconscionable: the proper course was to make injunctions that effectively paused the defendants' enforcement of the Russian injunction until the English court had decided whether it should hear the substantive claim.

In *Aercap Ireland and others v PJSC Insurance Company Universalna and others*, the Commercial Court stayed claims brought in England against the reinsurers of aircraft leased to Ukrainian airlines seeking recovery of losses incurred by the grounding of the aircraft following Russia's invasion. Some of the relevant leases were governed by English law but all contained exclusive jurisdiction clauses in favour of the Ukrainian courts.

In a detailed judgment that considered competing expert evidence on the current status and functioning of the Ukrainian court system, Henshaw J concluded that there were not sufficiently strong reasons for the English court to disregard the parties' agreement to bring claims only in Ukraine. The decision is a useful reminder of the English court's strong support for exclusive jurisdiction clauses, regardless of which court the parties may have nominated.

Similar issues have been considered in the context of arbitration agreements, including by the UK Supreme Court in *UniCredit v RusChemAlliance* and more recently in the High Court in *Barclays v VEB*. In both cases, the English courts granted injunctions to restrain Russian court proceedings brought by sanctioned Russian entities in breach of arbitration clauses.

ARBITRATION APPEALS AND DAMAGES

UK SUPREME COURT GIVES GUIDANCE ON LIMITS OF COURTS' POWERS OF REVIEW IN ARBITRATION ACT APPEALS AND FINDS THAT MITIGATION OF LOSS IS FUNDAMENTAL TO DAMAGES CLAIMS – *SHARP V VITERRA*

In a rare example of a successful appeal of an arbitration award under **s69 Arbitration Act 1996**, the UKSC has **clarified** the jurisdiction of the English court when deciding such appeals and the principles to be applied in awarding damages. Whilst the dispute concerned Grain and Free Trade Association (GAFTA) contracts, the UKSC's findings have wider application to arbitration appeals and damages claims.

LIMITS ON COURT'S REVIEW IN S69 ARBITRATION ACT APPEALS

- the "safeguards" in s69 must be respected and applied consistently with the general principle in **s1 Arbitration Act** that "the court should not intervene except as provided" in the Act;
- the court may amend the question of law being appealed provided that the substantive question remains the same;
- the question of law appealed need not have been raised before the tribunal with the utmost precision, but it must have been "fairly and squarely before the arbitration tribunal for determination";
- when determining whether the tribunal made an error in law, the court must accept the facts found by the tribunal; the court has no jurisdiction over errors of fact and cannot make its own findings of fact; and
- the court may infer that the tribunal has made implicit findings of fact, but only where that inference "inevitably follows" from the tribunal's express findings.

Applying these principles, the UKSC held that the Court of Appeal, by finding that damages should be assessed by reference to amended sale contracts, had exceeded its powers of review as the tribunal had not been asked to decide and not made findings of fact on whether the contracts had in fact been varied. Commercial parties in English-seated arbitrations often contract out of the right to appeal awards to the English courts (including by agreeing to most leading institutional rules). However, the UKSC's decision is a helpful reminder of the need to ensure that all relevant issues are before the tribunal for determination.

DAMAGES

The UKSC held that the compensatory principle, i.e. that damages are awarded to compensate for loss, and the principle of mitigation, which requires the innocent party to take steps to reduce its loss and avoid unreasonable steps that increase its loss, are two fundamental principles of the law of damages. This marks a departure from earlier cases which focused on the compensatory principle. Applying both principles, in the case of a buyer's default, the UKSC held that the appropriate market to determine the value of unaccepted goods is the market where "it is reasonable for the seller to dispose of the goods". In this case, the seller was left with goods that had been landed, customs cleared and stored in a warehouse in Mundra where their value had significantly increased because of new import tariffs. The UKSC held that the obvious and reasonable market in which to sell the goods was the local "ex warehouse Mundra" market, not the international market which would have incurred re-exportation costs and lost the increase in value from the new import tariffs. Although the decision relates to GAFTA contracts, the UKSC's guidance is relevant to the assessment of contract damages more widely, including under the **Sale of Goods Act 1979** (which the UKSC referred to in its decision). Innocent parties should remember their duty to mitigate losses when faced with a breach of contract as a failure to do so will limit the damages recoverable.

CLIMATE LITIGATION – DOWNSTREAM EMISSIONS IN SCOPE

UK SUPREME COURT FINDS DOWNSTREAM GREENHOUSE GAS EMISSIONS SHOULD BE INCLUDED IN ENVIRONMENTAL IMPACT ASSESSMENT FOR ONSHORE OIL PROJECT – *R(FINCH) V SURREY COUNTY COUNCIL*

In a **landmark decision**, the UK Supreme Court has found that downstream greenhouse gas (GHG) emissions (also known as Scope 3 emissions) that result from the combustion of refined oil products should have been considered in the environmental impact assessment (EIA) for an oil production project.

A local resident applied for judicial review of a decision by Surrey County Council, which granted planning permission to a developer, enabling the developer to expand oil production from an onshore oil well site in Surrey. The council had to carry out an EIA in line with the **Town and Country Planning (Environmental Impact Assessment) Regulations 2017** to "identify, describe and assess in an appropriate manner…the direct and indirect significant effects" of the project on the climate, among other factors. The EIA for the planning process considered only the direct releases of GHGs from within the boundary of the oil well site during the lifetime of the project.

The High Court and the Court of Appeal rejected the claimant's application.

UKSC DECISION

The UKSC allowed the appeal by a 3:2 majority, finding that combustion emissions from burning the extracted oil were "direct and indirect significant effects of a project" for the purposes of the EIA legislation. As the EIA failed to assess combustion emissions, the council's decision to grant planning permission for the project was unlawful and set aside.

The UKSC considered that the "effects of a project" is a question of causation. Determining whether a potential effect of a project is "likely" to have a significant effect on the environment (as required by the legislation) may involve evaluative judgment in which different decision-makers may rationally take different views. In this case, however, it was agreed that it was not merely likely, but "inevitable", that all the oil extracted would be refined and eventually undergo combustion, thereby releasing GHG emissions that would have a significant impact on the environment. Intervening steps between extraction and combustion away from the well site, such as refinement processes, did not break the causal chain.

TAKEAWAYS

Following the UKSC's decision, the UK Government has withdrawn its defence in judicial review challenges over its decisions to approve two new fossil fuel projects. As a result, the Government's decision to grant consent for an **oil drilling operation in Lincolnshire** has been quashed. A hearing concerning a challenge to a new **coalmine in Cumbria** went ahead on 16-18 July as the developer did not agree with the Government's change of position. It remains to be seen how the UKSC's decision will be interpreted in this and future cases. The decision will lead to greater scrutiny of EIA processes and expectations that downstream emissions will form part of EIAs for similar projects. Developers will need to work closely with public authorities to determine whether quantifiable downstream emissions fall within the scope of EIAs on a project-by-project basis and be prepared to justify their position where such emissions are not included. The UKSC's decision could also have wider implications for EIAs across Europe which are based on the same EU legislation.

However, the UKSC limited the reach of its findings by excluding its application to industries where the end use of products is not so readily quantifiable, such as iron and steel. The UKSC also emphasised that the purpose of EIAs is to ensure that planning authorities properly take account of environmental impacts in decision-making and are not concerned with the substantive decision whether to grant planning consent.

The UKSC's decision is one of an increasing number of judicial review cases concerning climate change, such as the High Court's recent **decision** that the UK Government's decarbonisation plan breached its duties under the Climate Change Act, and upcoming challenges over other proposed energy projects.

Read more in our **briefing**.

ROUND-UP OF OTHER DEVELOPMENTS AND WHAT TO WATCH OUT FOR

NEW POWER TO DEPART FROM ASSIMILATED EU CASE LAW COMING THIS AUTUMN

A new law that gives the higher courts greater scope to depart from pre-Brexit case law related to EU law will come into effect this October. Since the end of the Brexit transition period on 1 January 2021, when the bulk of EU law was transposed into domestic law subject to necessary amendments, UK courts have generally been required to construe that law in accordance with pre-Brexit CJEU and domestic case law. In England, only the Supreme Court and the Court of Appeal can depart from retained (now renamed "assimilated") CJEU case law, but only in the circumstances where the Supreme Court would depart from its own precedent. Historically that power has been used sparingly. So it is perhaps not surprising that, since it was extended to assimilated EU case law, it has hardly been used.

s6 Retained EU Law (Revocation and Reform) Act 2023 amends the existing position by loosening the test for overruling assimilated EU case law. (Competition law cases are outside the scope of s6; a test for departing from assimilated case law in that area is already set out in **s60A Competition Act 1998**.) In May it was announced that s6 will come into effect on 1 October 2024 and will not apply to appeals arising before that date. The Supreme Court and Court of Appeal will be directed to have regard to, among other things, the fact that decisions of a foreign court are not binding; any change of circumstances which is relevant to the assimilated EU case law; and the extent to which the assimilated EU case law restricts the proper development of domestic law. That is significantly more permissive than the current test, and the very recent decision of the Supreme Court in ***Lipton v BA Cityflyer*** confirms it applies no matter when the alleged breach of assimilated EU law occurred. But to what extent will judges accept what amounts to an invitation to make policy from the bench? The major reason for the Supreme Court's historic caution in overturning its own precedents has been the desire to preserve legal certainty and to avoid upsetting pre-existing legal relations. It remains to be seen how and in what degree the new law will affect this calculation.

RIGHT TO BRING NUISANCE CLAIMS FOR POLLUTING SEWAGE DISCHARGES

The Supreme Court has held in ***Manchester Ship Canal Company v United Utilities*** that owners of private watercourses can bring claims in private nuisance or trespass against water companies for discharges of untreated sewage from sewer overflows, even where there has been no negligence or deliberate misconduct. The Supreme Court found that sewerage companies do not have statutory authority to cause a nuisance by discharging untreated sewage into watercourses and that, in principle, owners of watercourses are not prevented by the relevant statutory regime from bringing common law private nuisance or trespass claims, notwithstanding the existence of statutory enforcement mechanisms.

SNAPSHOT OF GLOBAL CLIMATE CHANGE LITIGATION TRENDS

The Grantham Research Institute on Climate Change and the Environment has published its **2024 annual snapshot report** on global trends in climate change litigation. The report observes that climate litigation has continued to spread and diversify over 2023, with 230 new climate cases filed in 2023 and cases now having been recorded in at least 55 countries since 2015. Outside the US, the UK had the highest number of recorded cases filed (24) over the year (although most cases were brought against government bodies). Strategic climate cases continue to be filed against companies across the world with around 230 such cases recorded since 2015. Among those cases, 'climate-washing' claims are gaining traction with over 70% of completed cases have decided in favour of the claimants.

The report notes that the number of new cases filed each year may be stabilising, which the authors suggest could be due to "a consolidation and concentration of strategic litigation efforts in areas anticipated to have high impact". However, the report cautions that any slowdown may be "temporary" as case strategies continue to evolve and while many pending novel claims against companies await determination. Read more in our **blog post**.

ARBITRATION AND CONSUMER RIGHTS

The Court of Appeal in ***Eternity Sky v Zhang*** has dismissed an appeal by an individual, Zhang, who sought to resist enforcement of a Hong Kong

arbitral award arguing it would infringe her rights under the **Consumer Rights Act 2015**. The underlying dispute related to a personal guarantee given by Zhang to secure a HK$500m bond issue for a company in which Zhang's husband was majority shareholder. The CRA provides that unfair terms in consumer contracts are not binding on consumers. Whilst reaching the same decision as the High Court, the Court of Appeal did so on different grounds, including finding that Zhang was not a consumer within the meaning of the CRA. Whilst the High Court found that Zhang had "acted for purposes of a private nature – fundamentally, her marriage," the Court of Appeal distinguished between Zhang's private motives and her business purpose, the latter of which was to be assessed by an objective test. Objectively, the personal guarantee was a contract of a business nature entered to facilitate the bond issue. Further, as "one half of the 'majority shareholder couple'" and because Zhang had a beneficial interest in her husband's shares, there was a "functional link" between Zhang and the company.

Businesses entering business-to-consumer contracts should pay close attention to the drafting of their arbitration agreements to ensure they do not fall foul of the consumer protection laws applicable to the arbitration or in the place(s) of likely enforcement.

NEW HKIAC ARBITRATION RULES

The Hong Kong International Arbitration Centre has published its new **2024 administered arbitration rules** which took effect on 1 June. The new rules are largely a refinement of the **2018 rules**, but include new provisions relating to: diversity in arbitrator appointments; information security; the environmental impact of arbitrations; and additional tools to ensure the efficiency and integrity of HKIAC arbitrations such as enhanced tribunal powers to determine preliminary issues and stricter time limits on tribunals when rendering awards.

DIRECTORS ONLY LIABLE AS AN ACCESSORY IF THEY HAVE KNOWLEDGE

In ***Lifestyle Equities v Ahmed***, the Supreme Court has clarified what claimants need to prove for directors to be held personally liable as an accessory to a tort committed by a company. Although companies can be held liable for certain torts on a 'strict liability' basis, when it comes to holding a director liable as an accessory, some mental element - namely, knowledge of the essential facts which make the act unlawful - is required. For these purposes, knowledge includes turning a blind eye.

The Supreme Court also indicated (obiter) that when a director is found liable as an accessory and ordered to account for profits, they will only need to return those profits that they made because of the infringement. Directors will not be required to account for profits made by the company, nor will salaries or loans typically count unless it can be shown that they were a way of extracting profits. Read more in our **briefing**.

NON-PARTY ACCESS TO COURT DOCUMENTS: CPRC PAUSES WORK ON NEW RULES

The Civil Procedure Rule Committee has "**temporarily paused**" work on proposals to give non-parties/members of the public an automatic entitlement to obtain a wider range of court documents (including witness statements/affidavits, expert reports and skeleton arguments). The CPRC has **said** that its proposals have generated a significant response which requires detailed consideration. The CPRC's planned roll-out of the new rules in October therefore looks set to be pushed back to a later date. See the **April edition of Briefcase** for more details.

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