

Disputes Briefcase

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

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](#).



Richard Swallow
Co-Head of Disputes
and Investigations



Ewan Brown
Co-Head of Disputes
and Investigations

Content

01	Consumer class actions regime?	2
02	Intra-client privilege	3
03	Privilege and AI	4
04	CPO certification refused	5
05	Force majeure	6
06	Other recent developments and what to watch out for	7

Consumer class actions regime?

Law Commission considers whether to introduce a new consumer class actions regime

The Law Commission of England and Wales has [announced](#) a new project to examine whether a class actions regime should be introduced for consumer law claims. At present, collective proceedings can only be heard in the Competition Appeal Tribunal for breaches of competition law. The introduction of a consumer class actions regime would have significant ramifications for consumer-facing businesses.

Key points

1. *The project* has two core objectives: (1) assessing the benefits and risks of introducing such a regime, taking into account existing public enforcement and alternative dispute resolution (ADR) mechanisms; and (2) providing recommendations as to how any regime, if implemented, should be designed.
2. The *Terms of Reference* for the project provide further details of the matters that the Law Commission will consider from a design perspective, including how “consumer law claim” should be defined for these purposes (a key question); whether any such regime should cover opt-in as well as opt-out claims; the criteria and process for commencing and certifying a class action; the management of proceedings; and other issues such as damages, costs and settlement.
3. Substantive work on the project will begin in the Autumn. In the meantime, the Law Commission has released an *Initial Scoping Questionnaire*. This poses five questions covering the benefits and risks of an opt-out regime, design features to improve redress and ensure damages reach class members, as well as safeguards against speculative claims.
4. Once it has considered responses to the Questionnaire, the Law Commission will meet with stakeholders to help “formulate views and proposals for reform”. A consultation process will then follow.
5. The Law Commission has made it clear it will take into account any reforms stemming from the *Civil Justice Council's Review into litigation funding*, as well as the government's conclusions in its ongoing Review of the opt-out collective proceedings regime in the CAT. Further information on these Reviews can be found in the *July* and *November 2025* editions of Briefcase.

Further detail regarding the Law Commission's project on consumer law class actions can also be found in our [blog post](#).

Comment

It is early days and any new regime remains distant. The launch of the Law Commission's project does indicate, however, that there is real appetite to explore potential reform in this space. It will be important to understand the interplay between existing mechanisms and any proposed new regime, and developments will no doubt be watched closely by businesses and other stakeholders alike.

Next steps

The deadline for responses to the *Questionnaire* is 30 October. Given the potentially significant nature of the reforms under review by the Law Commission, we anticipate that a significant number will wish to engage with this project. Responses can be sent to consumerclassactions@lawcommission.gov.uk.

Intra-client privilege

Legal advice privilege can apply to communications between members of a 'client' group – *Aabar v Glencore*

The High Court has *held* that legal advice privilege can apply to communications or documents created by or passing between members of a 'client' group ('intra-client' documents) provided the dominant purpose is to seek or receive legal advice. The decision adds a welcome gloss to the test for legal advice privilege, potentially broadening the scope of documents it protects.

Legal advice privilege

Following the Court of Appeal's 2003 decision in *Three Rivers (No 5)*, legal advice privilege has been widely considered to apply to communications between a lawyer and their client. The 'client' for these purposes is limited to those individuals within the client organisation who are responsible for seeking or obtaining legal advice. Other communications or documents, unless they evidence the content of legal advice, have been considered to fall outside the ambit of legal advice privilege, even those between individuals in the 'client' group.

Background

In the high-profile securities litigation against Glencore and certain former directors, Glencore withheld documents and communications between members of the 'client' group (i.e. not between a lawyer and client) on the basis they were privileged. The claimants sought a court order requiring production of those documents.

The decision

Picken J declined to order production of the documents, holding that legal advice privilege applies to intra-client documents sent between or created by members of the 'client' group for the dominant purpose of seeking legal advice.

The judge accepted Glencore's argument that *Three Rivers (No 5)* related only to 'non-client' documents – i.e. those created by individuals outside the 'client' group – and was not concerned with intra-client documents. Although the disclosure order in *Three Rivers (No 5)* included some intra-client documents, Picken J found there had been no argument on

this category and considered it wrong to treat the decision (and subsequent authorities) as authority on the point.

As a matter of principle, the judge decided there was no justification for treating intra-client documents, whose dominant purpose is to identify an issue on which the client proposes to seek legal advice or to identify facts to communicate to their lawyer for that purpose, but where the document itself is not intended to be sent to the lawyer, as not attracting privilege. Picken J considered that, given a lawyer's working papers are "obviously" privileged, it is difficult to see why a client's working papers should not also receive similar protection. As the judge noted:

"An example might be a client, the day before he or she is due to meet his lawyer for the first time, writing himself or herself a memorandum with notes for the meeting. Another example might be one member of the client group, who will not be attending the meeting with the lawyer, emailing another member of the client group with information or thoughts in preparation for the meeting."

The judge considered that both documents would be privileged even if they were not intended to be sent to the lawyer.

Takeaways

This is a welcome decision that broadens the range of documents potentially protected by legal advice privilege. However, as a High Court decision, it has limited precedent value, and the claimants have sought permission to appeal. Those within the 'client' group obtaining legal advice should continue to exercise caution when creating documents that do not meet the traditional lawyer-client communication test.

The judgment is the second landmark decision on privilege by Picken J in the proceedings. Previously, the judge *held* that the 'shareholder rule' had no principled justification and should no longer apply (see our *briefing*), a position which was later approved by the Privy Council in *Jardine Strategic v Oasis Investments* (see our *July 2025 Briefcase*). Securities litigation is a material and increasing risk for UK listed companies. Read more in our *securities claims guide*.

Privilege and AI

Use of public AI tools for legal tasks waives confidentiality and privilege – UK v SoS for the Home Department

In what appears to be the first reported English decision on the issue, the Upper Tribunal of the Immigration and Asylum Chamber has [highlighted](#) the potential risks for legal privilege when using public AI tools for legal tasks. This decision can be seen as part of a broader trend of similar cases coming before the courts of different jurisdictions, including in the US.

The decision in [UK v Secretary of State for the Home Department](#) related to two consolidated cases about the citation of false or inaccurate legal authorities before the Tribunal. In one of those cases, a solicitor uploaded confidential and privileged client emails and Home Office decision letters to a public AI tool, ChatGPT, to generate summaries for clients. The Tribunal said that doing so waived privilege because public AI tools waived confidentiality, a fundamental requirement for both legal advice privilege and litigation privilege. The Tribunal noted that:

“Uploading confidential documents into an open-source AI tool, such as ChatGPT, is to place this information on the internet in the public domain, and thus to breach client confidentiality and waive legal privilege, and any such conduct might itself warrant referral to the regulatory office and should, in any event, be referred to the Information Commissioner’s Office.”

The Tribunal distinguished between public AI tools and ‘[c]losed source AI tools’ which do not have the same risks as they do not place information in the public domain. However, the judgment provides limited reasoning for the Tribunal’s decision and does not consider the AI tool’s terms nor how the information was used by the tool.

AI and privilege in the US

Courts elsewhere, including the United States, have been grappling with similar issues. For example, the US District Court for the Southern District of New York in [US v Heppner](#) held that documents generated by a defendant using an

AI tool, Claude, and then sent to their attorney in the context of criminal proceedings were not protected by attorney-client privilege. The court held that the US law test for attorney-client privilege was not met as Claude is not a lawyer, the defendant had no reasonable expectation of confidentiality in his communications, and the court was not satisfied the defendant had communicated with Claude for the purpose of obtaining legal advice. In contrast, in two other cases, the Michigan and Colorado district courts in [Warner v Gilbarco](#) and [Morgan v V2X](#) respectively held that litigants without legal representation were entitled to claim privilege under the US work product doctrine in relation to their interactions with public AI tools. Whilst these decisions are based on US law and therefore have limited read across to English law, they offer an important reminder of the potential risks when using public AI tools.

Comment

As legal teams increasingly integrate AI tools into their processes, these cases highlight the need to use caution when using AI tools and ensure that private and confidential AI tools are used for tasks involving confidential and privileged information. More broadly, the English courts are increasingly focused on the opportunities and risks AI brings with it, with cases such as [Ayinde v Haringey](#) highlighting the risks of fake citations, for example. The judiciary [updated its own guidance](#) on the use of AI at the end of last year and in April the Civil Justice Council closed its consultation on [Use of AI for Preparing Court Documents](#).

CPO certification refused

CAT refuses to certify salmon collective action – *Waterside v Mowi & Ors*

In *Waterside v Mowi and Others*, the Competition Appeal Tribunal refused to certify a claim brought by Ms Heal as Proposed Class Representative (PCR) on behalf of consumers against salmon producers. This is one of only a handful of cases where certification has been refused. Although this decision turned on the facts, there are a number of potentially broader takeaways.

Background

Various salmon producers have been accused of overcharging retailers for Atlantic salmon. This overcharge was allegedly passed on to consumers in the form of increased prices. Several retailers have already commenced proceedings against the salmon producers involved. The question before the CAT in the present case was whether the claim on behalf of consumers should be certified.

Outcome

The CAT concluded that the cost-benefit analysis in this case (where the small sums returned to consumers would be “dwarfed” by the “inexplicably high” cost of the proceedings) was such that it would not be appropriate to certify the proceedings. The litigation would have principally benefited the lawyers and funders, rather than the class. Further, the PCR’s proposed charge-out rate of £300 an hour gave the appearance of a motivation beyond pursuing the interests of the class.

Rather than strike the claim out altogether, the CAT has invited the PCR to reformulate it, to see whether she can address the CAT’s concerns.

Takeaways

The reasons for the CAT’s decision are fact-specific. However, there are several potentially broader takeaways.

1. **The cost-benefit analysis:** The CAT will consider the potential sums available to the class, versus the potential returns available to funders and lawyers. Collective actions considered to be predominantly for the benefit of lawyers and litigation funders are unlikely to be certified.
2. **Evidence:** The CAT will typically expect to see evidence regarding predicted levels of take-up by the class, as well as a plan for distribution, at the certification stage.
3. **Cost control:** PCRs need to consider the most cost-efficient means of pursuing litigation. Where there is ongoing litigation regarding the same subject matter, the PCR should consider whether they can work with the other claimants to reduce costs. This may include sharing counsel, experts and disclosure.
4. **Transparency:** PCRs must include detail on success fees and other contingent fees in the cost budget. Failure to include these sums alongside other legal costs is “wrong” and potentially misleading.
5. **Hourly rate for the PCR:** A fee of £300 per hour is unacceptably high and could give rise to a conflict of interest. The CAT expects remuneration to be in line with levels paid for work in the public sector.

Comment

As noted in the *February edition of Briefcase*, the CAT is adopting an increasingly robust approach to certification. This case continues that trend. It remains to be seen whether the PCR will take up the CAT’s invitation to reformulate the claim, and what impact the Tribunal’s comments on remuneration will have on the willingness of individuals to act as PCRs in future cases.

Force majeure

Invoking or responding to force majeure in times of instability

Recent geopolitical instability, including conflict across the Middle East and the effective closure of the Strait of Hormuz, has brought uncertainty and a heightened risk of supply chain disruption. In times of crisis, force majeure comes to the fore.

In recent months, a number of companies have invoked force majeure in their contracts. While force majeure clauses may offer contracting parties relief in response to an unexpected turn of events, it is crucial that parties carefully consider the terms of their contracts when invoking or responding to force majeure.

Defining force majeure

Force majeure is related to, but distinct from, the common law doctrine of frustration, which provides that a contract may be discharged when events following its formation make performance of the contract physically or commercially impossible or radically transform the obligation to perform. Frustration is narrowly construed and rarely applies in practice. Where parties expressly allocate risk, it is likely that the contract (not the common law doctrine) will determine the consequences of an unexpected event.

A 'force majeure' clause sets out contractual rights and remedies arising in certain circumstances; the scope, triggers and consequences of which depend on its drafting.

Force majeure events are often defined by reference to events or circumstances that are beyond the parties' control and could not have been foreseen when entering the contract. Clauses may be limited to (or exclude) specified events or circumstances. Where a particular event (e.g. war) is expressly identified, it may need to satisfy other criteria to constitute force majeure.

The impact of force majeure

Force majeure clauses typically require a causal connection between the force majeure event and the effect on a contracting party's performance. The words used to identify the relevant impact are crucial: a clause that applies only where force majeure has prevented a party from performing sets a considerably higher bar for relief than a

clause that applies where performance has been hindered or delayed.

Overcoming force majeure

Force majeure clauses commonly contain a proviso requiring the affected party to exercise reasonable endeavours to avoid or overcome force majeure, although the UK Supreme Court has confirmed that the requirement on a party to use reasonable endeavours to overcome a force majeure event does not require a party to accept an offer of non-contractual performance (see our [briefing](#)).

Consequences of force majeure

The consequences of force majeure depend on the clause's drafting. Although a force majeure clause may give rise to a contractual termination right (usually after a specified period), it is common for force majeure to suspend or vary the contract while the force majeure event continues, and the contract may provide for extensions of time. The obligations do not generally fall away and are, instead, reactivated once the force majeure event ceases.

Parties should, however, consider how any force majeure clause interacts with other provisions of the contract. As well as termination rights, consider any sole and exclusive remedies, price adjustment, cost allocation or cumulative rights provisions, for example.

Invoking or responding to force majeure

Parties seeking to rely on force majeure, or in receipt of a force majeure notice, should carefully consider the requirements of their contract.

Notice provisions may operate as a condition precedent to relief. If, as is often the case, the contract requires force majeure events to be causative of a party's default for it to be entitled to relief, that party will need to prove that it was able and willing to perform its contractual obligations but for the claimed event of force majeure. It may also need to evidence the steps it took to avoid or overcome the impact of that force majeure event.

Read more in our [briefing](#).

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:

Contract law update

In our [April Contract Law Update](#) we provide a round-up of recent key developments in contract law. Our Update covers:

- The High Court in [Baltimore Wharf v Ballymore](#) held that where negotiations begin under a “subject to contract” umbrella, that reservation is only removed by express agreement or necessary implication. An email merely “accepting” the terms of a subject to contract agreement was insufficient to create a binding contract. The decision is a reminder that the court will not lightly hold that a “subject to contract” reservation has been removed, even where parties are close to a fully executed agreement.
- The High Court in [Visa v Luxottica](#) held that a widely drafted definition of “settled claims” in a settlement agreement extended to future claims by companies that became associated with the claimant only after the agreement was executed. The decision underscores the importance of clearly defining the scope of releases. The court also rejected a “sharp practice” argument, holding that the principle is unlikely to apply where parties are professionally advised and have clearly considered the draft terms.
- The Court of Appeal in [Tyson v GIC Re](#) construed a “confusion clause” as a hierarchy clause, giving precedence to the terms of an earlier contract. The court held that where there is inconsistency between separate but related contracts and a hierarchy clause applies, the court will usually apply that clause rather than strain to reconcile the two. The decision highlights the importance of hierarchy clauses and of considering which terms prevail in the case of inconsistency.
- The High Court in [SLB v PAK](#) held that an obligation to provide letters of guarantee within 120 days was an innominate term and not a condition. If time is “of the essence”, the provision stipulating the time for performance is treated as a condition; otherwise, the default position is generally that a term is innominate. The decision highlights the importance of clear drafting where parties intend that a stipulation as to time be a condition, including considering the interaction between that stipulation and other contractual terms.
- The Court of Appeal in [Zaha Hadid v Zaha Hadid Foundation](#) held that an “indefinite” agreement could be terminated by either party on reasonable notice, even though the contract gave only one party express rights to terminate. The decision draws a distinction between perpetual contracts (that bind parties forever) and indefinite contracts (that may be brought to an end). Absent express terms, there is no room for an inference that a perpetual contract could be terminated on reasonable notice; by contrast, an indefinite contract necessarily empowers parties to terminate on reasonable notice.
- The Privy Council in [Anheuser-Busch International v Commonwealth Brewery](#) provided guidance on how to determine what amounts to reasonable notice for termination in the absence of an express term. The Board held that the purpose of reasonable notice is not to protect the recipient from all loss of profit resulting from termination but rather to enable the parties to achieve an orderly end to their relationship. Where a requirement of reasonable notice is implied, the length of notice that is reasonable depends on the circumstances in which notice is given, assessed by reference to a non-exhaustive list of relevant factors.

Other developments of note include:

- The High Court in [Veranova Bidco v Johnson Matthey](#) construed a clause in a SPA that limited liability for warranty breaches to claims arising from the seller’s fraud, affirming that this required the claimant to show that one or more individuals at the seller knew of matters that rendered a warranty false; that such individual(s) appreciated this knowledge was relevant; and knew (or were reckless as to whether) the

warranty was falsified by this knowledge. It was not permissible to aggregate the knowledge of different individuals to fix the corporate entity with liability. Even though one of the relevant warranties was false, the claimant failed to show fraud and the claim was dismissed.

- The Court of Appeal in *Logix Aero Ireland v Siam Aero Repair Company* held that a third party's fraudulent acts had broken the chain of causation between any breach of duty by the defendant and a loss suffered by a claimant. Fraudsters had intercepted and interposed themselves in emails between a buyer and seller and diverted payment to an account under control. The buyer argued that the seller's unwitting disclosure of contractual documents to the fraudsters breached a confidentiality clause and caused its loss, but the Court held that the fraud — not any breach — was the effective cause, and that the seller's actions merely provided the opportunity for, rather than caused, the loss.

Plans to simplify disclosure in the Business and Property Courts?

As reported in the *February edition* of Briefcase, the Disclosure Review Working Group conducted a survey on the effectiveness of the disclosure process in the Business and Property Courts, which underwent significant reform in 2019. The survey results indicate that although some of the changes introduced by *Practice Direction 57AD* have been well received (e.g. the obligations regarding known adverse documents and initial disclosure), the majority of respondents did not consider the reforms have been a success. Respondents were particularly concerned about increased costs, burden on the courts and a lack of co-operation between parties. The preliminary view of the Working Group is that the regime should be simplified. An expanded Working Group has been assembled to look at how best to achieve this. There will be a consultation process before any changes are made.

Arbitration round-up

The recently published *Commercial Court Annual Report 2024-2025* highlights that matters arising from arbitration continue to make up a significant proportion (c. 30%) of claims before the Commercial Court. Of those, the majority comprised appeals on a point of law (*section 69 Arbitration Act 1996*) and challenges for

procedural irregularity (section 68 Arbitration Act 1996), both of which have seen a steady increase in recent years. For more, see our *recent article* on key practical takeaways based on our experience of section 69 appeals.

Recent arbitration-related decisions from the English courts include:

- The Supreme Court in *Spain v Infrastructure Services and Zimbabwe v Border Timbers* held that foreign states party to the ICSID Convention cannot rely on state immunity to avoid recognition of ICSID awards against them. The Supreme Court found that *Article 54 ICSID Convention* constitutes a waiver of state immunity from adjudication in proceedings for enforcement of ICSID awards and the states had therefore submitted to the jurisdiction of the English courts for the purposes of *section 2(2) State Immunity Act 1978*.
- In the ongoing *Yukos dispute*, the High Court granted permission to enforce UNCITRAL arbitration awards totalling US\$50bn (plus compound interest) against Russia. The decision illustrates the English courts' pro-enforcement approach to New York Convention awards and the high bar for public policy objections to enforcement under *section 103(3) Arbitration Act 1996*.
- The Court of Appeal in *JP Morgan Securities & Ors v VTB Bank* has upheld anti-suit injunctions restraining VTB from bringing Russian proceedings in breach of London-seated LCIA arbitration agreements, finding that proceedings against a Russian JP Morgan entity sought to circumvent the application of English law, the arbitration agreements and the UK sanctions regime.
- In contrast, the Court of Appeal in *FH Holding Moscow v AO UniCredit Bank & Anr* has upheld a decision by the Commercial Court declining to grant an anti-suit injunction restricting banks from pursuing Russian court proceedings. The Russian proceedings concerned enforcement against assets provided as security under a mortgage agreement governed by Russian law and did not breach an Austrian VIAC arbitration agreement in a related English law facility agreement.
- In *K1 v B* the Court of Appeal found it lacked jurisdiction to grant permission to appeal a decision by the High Court rejecting an

application to amend an existing challenge to include a ground that a party was out of time under [section 68\(2\)\(g\) Arbitration Act 1996](#). The decision highlights the limits on appeals in section 68 challenges.

- In [Gluck v Endzweig](#), the Court of Appeal held that notwithstanding the principle of party autonomy, a tribunal cannot be granted an open-ended power to revise its awards “at any time” as this is incompatible with the Arbitration Act 1996 and the requirement of finality of awards. Consistent with the English courts’ pro-arbitration approach, the Court of Appeal struck out the offending provisions of the clause to give effect to the parties’ agreement to arbitrate and reinstate enforcement of the award.

In institutional updates, the ICC has [announced](#) that updated ICC Arbitration Rules will enter into force on 1 June 2026. The changes “aim to enhance efficiency, clarity and usability” and ensure that ICC arbitration continues to meet user needs. The LCIA is also [consulting](#) on revisions to the LCIA Arbitration Rules and LCIA Mediation Rules. The LCIA has trailed that forthcoming revisions will focus on practical provisions to improve cost management, reduce procedural friction and give tribunals enhanced tools to deliver efficient and enforceable outcomes for parties. Stage 1 of the consultation closed earlier this month, and drafts of the revised rules will be published for a second round of consultation later in 2026.

No litigation funding news in King’s speech

Reforms to litigation funding were missing from the Government’s legislative programme for this session of Parliament, set out in the King’s Speech on 13 May. As we reported in the [February 2026 Disputes Briefcase](#), the Ministry of Justice said last December that it would bring forward legislation to reverse the Supreme Court’s decision in [PACCAR](#) (allowing litigation funders once again to recover a percentage of claimants’ damages), and to introduce a new regulatory framework for litigation funding agreements. This followed the Civil Justice Council’s June 2025 report on the litigation funding sector which made far-reaching proposals for reform. The absence of any proposals in the King’s Speech may reflect the range of separate but related consultations and reviews still ongoing into class actions and to the rules governing the way solicitors bill their clients.

Competition litigation round-up

Since [Evans v Barclays](#) (covered in the [February edition of Briefcase](#)), there has been a rise in defendants seeking to have claims certified on an opt-in rather than an opt-out basis and, in some instances, asking the Competition Appeal Tribunal to reconsider previous rulings on certification. The class representative in [Evans v Barclays](#) is [attempting to revive the claim](#) on an opt-in basis. In [Stasi v Microsoft](#) (handed down in April), the defendants argued that the class should be bifurcated, with larger, sophisticated organisations proceeding on an opt-in basis and smaller organisations on an opt-out basis. The CAT rejected this argument on the basis that bifurcation could lead to a collapse in the funding arrangements, which would have adverse implications for access to justice. It will be interesting to see whether defendants in other collective actions have more success. The defendants in [Ennis v Apple](#) have asked the CAT to decertify the opt-out proceedings in the wake of [Evans v Barclays](#). A hearing took place on 22 April, though a decision has not yet been handed down. Similarly, in [Rodger v Alphabet](#), the defendants have asked the CAT to vary the collective proceedings order previously granted on an opt-out basis. A hearing has been scheduled for 4-5 June.

Collective actions continue to keep the Court of Appeal busy. In late February, the Court of Appeal [refused permission to appeal](#) in [Stephan and Hammond v Amazon](#). In March, the Court of Appeal [upheld](#) the CAT’s decision to refuse certification of Professor Roberts’ competition claim against six water companies, on the basis that its abuse of dominance claims were excluded by [section 18\(8\) of the Water Industry Act 1991](#). In other appeal news, [there will be a “rolled-up” hearing](#) to consider whether permission to appeal should be granted in [Kent v Apple](#). This case (covered in the [November edition of Briefcase](#)) marked the first win for claimants under the collective action regime. This rolled-up hearing will take place between November 2026 and March 2027.

Uptick in digital assets disputes

There has been a noticeable uptick in litigation concerning digital assets. The High Court in [Infiniti Innovations v OFMS Ltd](#) held that an interim injunction relating to alleged data scraping from a rival software platform should be continued, but in a modified and narrower form. In [Smithers & Anor v Persons Unknown](#),

the Commercial Court continued a freezing order against Persons Unknown in relation to cryptoassets. This case is notable for its pragmatic approach to the issue of jurisdiction, where the court took the view that there is a good arguable case that damage was sustained in the jurisdiction (one of the jurisdictional gateways for a tort claim) if the victim is resident in England and Wales. In *Yuen v Fun Yung Li & Anor*, handed down shortly after, the court confirmed that the tort of conversion does not apply to cryptoassets.

In recognition of the rise in disputes concerning digital assets, the UK Jurisdiction Taskforce has recently published a [report](#) on the Control of Digital Assets, which seeks to provide non-binding guidance on the evolving factual issues relating to control of digital assets. The Report has been drafted for a non-technical audience (“comprised of the judiciary and court users”) and will no doubt feature heavily in disputes where control of digital assets is in issue.

Supreme court rules on limits of “expenditure on the provision of plant”

The UK Supreme Court has delivered an important [judgment](#) for taxpayers in infrastructure projects on when capital expenditure is “on the provision of plant” for the purposes of [section 11 Capital Allowances Act 2001](#). The Supreme Court held that section 11 is to be construed narrowly with the result that expenditure on plant (in this case windfarms) did not include pre-construction expenditure by taxpayers on environmental surveys and studies, even though these were a necessary stage for preparing an environmental impact assessment to obtain the required consents prior to the windfarms being designed and built. The judgment will disappoint taxpayers involved in major infrastructure projects and adds urgency to the government’s long promised consultation on the tax treatment of pre development expenditure. The judgment is fact-specific, however, and leaves open the possibility of some pre-development costs qualifying in certain circumstances. Read more in our [blog post](#).

Supreme court considers impact of sanctions rules on bank’s payment obligations

In *Celestial Aviation Services Ltd v UniCredit Bank GmbH*, the Supreme Court considered the impact of sanctions legislation on a bank’s payment obligations under letters of credit. The dispute arose after aircraft lessors sought payment under letters of credit issued in connection with aircraft leases to Russian airlines. UniCredit declined to pay until it received a licence from OFSI. The Supreme Court held that payment under the letters of credit was sufficiently connected to the underlying aircraft leasing arrangements to fall within [Regulation 28 of the Russia Sanctions Regulations](#), which prohibits providing funds in connection with arrangements whose object or effect is the supply of aircraft to Russia, even though the leases pre-dated the sanctions and had already been terminated. The Supreme Court also concluded that [section 44 of the Sanctions and Anti-Money Laundering Act 2018](#) operates as a defence to civil liability where a person acts or refrains from acting in the reasonable belief that they are complying with sanctions, shielding the bank not only from liability for the principal payment but also for associated claims such as interest and costs. Read more in our [Global Investigations Bulletin - March 2026](#).

Supreme court limits principal firm liability for appointed representatives

In *Kession Capital Ltd v KVB Consultants Ltd & Ors*, the Supreme Court held that an FCA-authorized principal firm was not liable under [section 39 Financial Services and Markets Act 2000](#) for the acts of its appointed representative where the authorised representative dealt with retail clients outside the scope of the appointed representative agreement. The decision provides helpful clarification for authorised firms and emphasises the importance of clear drafting in authorised representative agreements.

2026 Horizon scanning: Crisis management

As part of our **2026 Horizon Scanning programme**, we review the evolving risks and legal challenges that organisations may face in 2026. Our insights cover **enforcement priorities, expanding corporate liability, developments in litigation funding and trends in class actions**. Plus, we explore the **activist agenda** and the **shifting cyber risk landscape** - offering expert perspectives to help you to prevent a crisis and respond with confidence. Read our **Crisis Management collection** or listen to our **podcast**.



Our other recent content

- *Arbitration appeals under section 69 of Arbitration Act 1996*
- *ICO enforcement trends*
- *Global Investigations Bulletin - March 2026*
- *Directors beware: when non-disclosure of a conflict of interest becomes fraud*
- *Competition and Regulatory Newsletter: European Court of Justice rules on "no-poach" agreement between Portuguese football clubs*
- *Contract Law Update - April 2026*

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.



Richard Swallow

Partner and Co-Head of Disputes and Investigations
+44 (0)20 7090 4094
richard.swallow@slaughterandmay.com



Ewan Brown

Partner and Co-Head of Disputes and Investigations
+44 (0)20 7090 4480
ewan.brown@slaughterandmay.com



Tim Blanchard

Partner
+44 (0)20 7090 3931
tim.blanchard@slaughterandmay.com



Jonathan Clark

Partner
+44 (0)20 7090 4039
jonathan.clark@slaughterandmay.com



Jonathan Cotton

Partner
+44 (0)20 7090 4090
jonathan.cotton@slaughterandmay.com



Ross Francis-Pike

Partner
+44 (0)20 7090 3713
ross.francis-pike@slaughterandmay.com



Richard Jeens

Partner
+44 (0)20 7090 5281
richard.jeens@slaughterandmay.com



Gayathri Kamalanathan

Partner
+44 (0)20 7090 3032
gayathri.kamalanathan@slaughterandmay.com



Olga Ladrowska

Partner
+44 (0)20 7090 5896
olga.ladrowska@slaughterandmay.com



Efstathios Michael

Partner
+44 (0)20 7090 4313
efstathios.michael@slaughterandmay.com



Megan Sandler

Partner
+44 (0)20 7090 3500
megan.sandler@slaughterandmay.com



Camilla Sanger

Partner
+44 (0)20 7090 4295
camilla.sanger@slaughterandmay.com



Smriti Sriram

Partner
+44 (0)20 7090 3718
smriti.sriram@slaughterandmay.com



James Stacey

Partner
+44 (0)207 090 4124
james.stacey@slaughterandmay.com



Damian Taylor

Partner
+44 (0)20 7090 5309
damian.taylor@slaughterandmay.com



Holly Ware

Partner
+44 (0)20 7090 4414
holly.ware@slaughterandmay.com



Peter Wickham

Partner
+44 (0)20 7090 5112
peter.wickham@slaughterandmay.com

Editorial:

Damian Taylor,
Peter Wickham, Nick Ames,
Samantha Holland,
Rob Brittain, Orla Fox,
Angela Milner