SLAUGHTER AND MAY/

DISPUTES BRIEFCASE

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

FEBRUARY 2026

/ 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
Head of Disputes and Investigations

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CLASS ACTIONS IN 2026

Group litigation continues to play prominent role in English legal landscape with no let-up likely in 2026

A decade on from the introduction of the UK's specialist collective proceedings regime for competition law claims, it is beginning to yield its first settlements and substantive judgments. While certification remains a relatively low hurdle, 2025 saw the CAT take a more critical approach. Claims were refused certification on grounds including concerns about representative independence (**Riefa**), statutory preclusion of a novel environmental competition claim (**Roberts** – currently on appeal), issues with class definition and methodology (**PRS**), and limitation problems (**Gutmann Handsets**). Following the Supreme Court's recent **FX judgment** endorsing the CAT's refusal to certify the proposed follow-on claims on an opt-out basis, opt-in v opt-out is likely to become a key certification battleground inviting early merits assessment by the CAT. Whilst the CAT is continuing to certify opt-out claims, it is taking a proactive and interventionist approach (see e.g. Shotbolt discussed **below**).

Settlement outcomes have so far been mixed. The collective settlement approved in **Merricks** was just £200 million against the original £14 billion claim value (see **below**), and less than 1% was claimed by class members in the first £25 million settlement distribution in Boundary Fares. Substantive judgments have varied: while **Le Patourel** and **Boundary Fares** were dismissed for failing to show unfair pricing and abuse respectively, the **Kent judgment**, finding Apple liable for abuse of dominance, demonstrates that significant claimant wins remain achievable. Several further judgments are awaited and will help shape the regime's trajectory. Against this backdrop, the UK government is looking at making changes to the collective proceedings regime (see **below**), questioning whether it strikes the right balance between access to justice and business burden. Early indications suggest a focus on improving efficiency rather than expansion into new sectors.

Securities litigation continues its upward trajectory. Two English High Court claims (against **Barclays** and **Standard Chartered**) came to opposite conclusions regarding the unresolved issue of whether passive investors can bring claims for misleading statements in published information, even if they did not read or consider the information. Standard Chartered acknowledged the possibility of passive investors establishing "price/market reliance". Meanwhile the Privy Council's decision in **Ivanishvili**, covered **elsewhere** in this edition, will further encourage passive investors and those supporting their potential claims. The 2025 decision of the Court of Appeal in **Wirral v Indivior** firmly closed the door on investors' attempts to use "representative claimant" procedures to establish an "opt-out" mechanism, with the Supreme Court declining permission to appeal. Meanwhile, the abolition of the shareholder rule in 2025 means companies can now assert privilege against shareholders, reducing claimants' ability to access early disclosures in securities litigation.

ESG-related class actions remain a prominent feature of the English courts, particularly mass tort claims involving overseas environmental harm or labour issues (including those against Dyson, Shell and Brazil Iron). Recent failed jurisdiction challenges demonstrate the courts' willingness to accept jurisdiction over claims with strong cross-border connections, especially where the parent company is UK domiciled. These claims remain "opt-in" requiring active claimant participation. Climate based claims may also become more prevalent. A new action issued in December 2025 by individuals in the Philippines against Shell, alleges liability for intensifying the effects of Typhoon Odette. It is yet to be seen to what extent landmark international judgments, such as **Verein KlimaSeniorinnen** and Luciano Lliuya, may influence climate litigation in England and Wales. Increased UK regulatory attention to greenwashing, particularly under the DMCCA, may also spur investor and consumer claims.

Read more in our **Horizon Scanning article**.

SUPREME COURT PROVIDES CLARITY ON OPT-OUT PROCEEDINGS IN THE CAT

Supreme Court clarifies the test for deciding whether to certify collective actions on an opt-out or opt-in basis – Evans v Barclays

In a landmark judgment in the long-running foreign exchange (FX) collective proceedings (**Evans v Barclays**), the Supreme Court has clarified the test to be applied when deciding whether to certify collective actions on an opt-out or opt-in basis.

When deciding whether a collective action should be allowed to proceed, the Competition Appeal Tribunal must decide whether the claim should be certified on an "opt-out" or an "opt-in" basis. Opt-out proceedings (in which class members are automatically included in the claim without needing to take any active steps) have long been preferred by claimant lawyers and funders because they significantly maximise the number of potential claimants and therefore the overall value of the claim. This can put significant pressure on defendants to settle even weak claims. Opt-in proceedings (where class members must actively choose to participate) generally have fewer claimants and lower damages.

In this case, the CAT held that the claim should not be certified on an opt-out basis, but that Mr Evans should be given permission to file a revised application for certification on an opt-in basis - though this was subsequently overturned by the Court of Appeal. The Supreme Court's landmark ruling (which reinstated the CAT's decision on opt-in) provides much-needed clarity on the test for determining whether to certify on an opt-out basis, and will likely lead to greater scrutiny of opt-out claims.

KEY TAKEAWAYS

1. There is no presumption in favour of opt-out. This represents a significant shift from previous case law which suggested that opt-out will be appropriate in most cases.

2. Access to justice cannot be viewed solely from the perspective of the claimants. The CAT must strike a balance between facilitating access to justice for claimants and protecting defendants from unmeritorious or oppressive litigation.

3. The strength of the claim is highly relevant to the assessment of opt-out versus opt-in.

    a) Opt-out claims confer significant "leveraging" advantages on claimants, given the risk that if the claim proceeds to judgment, aggregate damages will be awarded to the whole class. This can result in defendants feeling pressured to settle even weak claims for more than nuisance value. The weaker the claim, the harder it will be to justify certification on an opt-out basis.

    b) When assessing the strength of the claim, findings of fact by another decision-maker regarding the conduct of third parties are irrelevant and inadmissible.

4. The CAT was entitled to conclude that opt-in proceedings were practicable in this case: If the class consists primarily of large commercial organisations claiming large sums, this will likely point more towards certification on an opt-in basis. Conversely, where the class consists of many individuals with small claims (as seen in Shotbolt **below**), opt-out may be the only practicable way of bringing proceedings. Where the class is a mix of claimants with different profiles, the CAT should look at the practicability of opt-in for each group separately, before standing back and making an overall assessment.

5. The CAT is the gatekeeper of the collective actions regime: Appellate courts should only interfere with its decision in cases of legal error (and not merely where they might have reached a different conclusion).

Slaughter and May act for JP Morgan in the proceedings and led the appeal. Read more in our **briefing**.

CAT AFFIRMS GATEKEEPER ROLE

CAT takes interventionist approach when deciding to grant CPO in PC gaming market abuse of dominance claim – Shotbolt v Valve

Hot on the heels of Evans v Barclays (above), the Competition Appeal Tribunal has affirmed its role as gatekeeper by taking an interventionist and proactive approach when considering whether to certify collective proceedings in Shotbolt v Valve. Parties seeking to bring collective actions should be prepared for increased scrutiny and intervention from the CAT, and defendants should think broadly about issues they may wish to raise in opposing an application for a Collective Proceedings Order.

BACKGROUND

Ms Shotbolt, acting through an SPV, sought to bring a standalone abuse of dominance claim against Valve on behalf of 14 million UK consumers. The crux of the claim is that purchasers (largely made up of teenage consumers and/or their parents) have paid more than they should have for video games and add-ons. Ms Shotbolt alleges that Valve charged game developers excessive commissions to distribute their products via its platform and that these costs were then passed to purchasers.

INTERVENTION

Although the CAT allowed the claim to proceed on an opt-out basis (describing it as the "paradigm" example of when opt-out would be appropriate, given the large numbers of purchasers with low value claims), it only did so after intense scrutiny and assurances that Ms Shotbolt/her legal team would:

1. Make changes to the advisory committee. Ms Shotbolt had already assembled the type of advisory committee endorsed by the CAT in Riefa (covered previously in Briefcase). However, the CAT wanted confirmation that a "senior lawyer" would be appointed to the Committee, given the number of minors potentially included in the class.
2. File a witness statement confirming that she believed the funding arrangements were appropriate and in the interests of the class. This was notwithstanding the fact that (1) funding arrangements were negotiated before Ms Shotbolt came on board and (2) the tribunal already had a witness statement from her legal team covering these points. The CAT expects the class representative to take "responsibility personally" for the suitability of funding arrangements.
3. Give the tribunal regular updates on communications with, and level of engagement from, the class. This will enable the tribunal to give directions on "active measures" to be taken to improve communications if necessary.
4. Produce quarterly reports on the progress of litigation costs against the litigation budget.
5. Ensure that any requests from the legal team for payment from the funder are only submitted after they have been reviewed and approved by cost counsel/a cost draughtsperson.

The CAT also made it clear that while it would not presently "adjust" the Priorities Agreement (which provided for the funders, insurers and legal team to be paid in priority to the class), it would not shy away from revisiting this if necessary, depending on the outcome of the claim. Ultimately the CAT would ensure that the interests of the class were "properly respected" in any distribution.

COMMENT

It is clear from previous decisions in Riefa, Merricks and Gutmann (covered in the January, July and November 2025 editions of Briefcase) that the CAT has become increasingly concerned about the extent to which class representatives engage with funding arrangements, control costs, and take steps to maximise the success of distribution. In Shotbolt, we see the CAT address these concerns head-on and propose innovative solutions, notwithstanding the fact that none of the interventions were requested by the parties. We expect to see more of this approach as the regime continues to evolve (and potentially changes). To read more about potential changes, see below.

NO AWARENESS REQUIREMENT IN DECEIT CLAIMS

Privy Council holds that claimants need not show awareness of false representation to bring deceit claim – Credit Suisse Life v Ivanishvili

The judgment overrules a string of cases where courts held it wasn't enough that a claimant prove they were induced to act by a false representation: they also needed to show contemporaneous awareness of the representation. This had been problematic for many claimants, particularly in cases of alleged reliance on implied representations. As a result, the decision lowers the bar for claimants bringing deceit claims and, potentially, securities litigation claims against UK listed companies under s.90A/sch.10A, FSMA 2000.

THE TORT OF DECEIT

To bring a deceit claim, the traditional understanding was that a claimant needed to prove that a defendant knowingly made false representations that were intended to induce, and did in fact induce, reliance by the claimant, so causing loss. Fifteen years ago, the High Court discerned an additional requirement: that the claimant understood the representation was being made to it. Later cases cemented this requirement. By 2021, in Leeds City Council v Barclays, proof of understanding of a representation had become the "critical boundary" between an actionable claim in deceit (or fraudulent misrepresentation, its close relation) and a mere non-disclosure, actionable only in limited circumstances.

THE DECISION IN IVANISHVILI

Mr Ivanishvili transferred assets to Credit Suisse Life as premia for life insurance policies. He later discovered that his relationship manager at the bank was defrauding him and began proceedings in Bermuda. Ivanishvili's deceit claim was based on implied representations made by his relationship manager that neither he nor the bank were acting fraudulently. It was not disputed that these representations were knowingly false and were intended to and did induce Ivanishvili to buy the policies. But the Bermuda Court of Appeal dismissed the claim because Ivanishvili had not pleaded or proved he had any conscious awareness of the representations.

On appeal to the Privy Council, Lord Leggatt explained that people often form and act on beliefs without giving them conscious thought, and a claimant does not need to be aware that a representation has been made to have been deceived. Reliance or inducement was an essential element of the tort, but this had two aspects: first, the representation must cause the claimant to hold a false belief; second, the claimant must, because of this belief, act to suffer a loss. Both aspects require the representation to operate on the claimant's mind, but neither requires conscious awareness at the relevant time. The Privy Council concluded that under both English and Bermudan law it was not a requirement of a claim for deceit that a claimant was aware of the representation or understood it to have been made.

POTENTIAL IMPACT ON SECURITIES LITIGATION

Sch.10A imposes liability on an issuer where a person deals in or holds securities in reliance on published information and suffers loss because of misrepresentations or omissions in that information. What does reliance mean here? In Allianz v Barclays, the court held that it meant the same as in the tort of deceit. Because at the time this was assumed to include a requirement of awareness it created a hurdle that passive investors, by their nature, could not meet and their claims were struck out. In Standard Chartered, the judge was sceptical of this analysis; he distinguished Allianz and declined to follow it. (See the May 2025 Disputes Briefcase.)

If Standard Chartered gave passive investors a glimmer of hope, Ivanishvili adds fuel to the fire. But important questions remain. First, under sch.10A, a claimant must show its reliance was "reasonable", a requirement absent from the test for deceit. Second, the evidential burden remains significant: a claimant must prove a representation caused them to hold a false belief. In complex financial transactions, discharging that obligation will be challenging.

Read more in our briefing.

TERMINATION FOR REPEATED DEFAULT

Supreme Court holds that a contractual termination right was parasitic on a related clause and gives guidance on the interpretation of industry standard forms – Providence v Hexagon

The Supreme Court has **overturned** a decision of the Court of Appeal, holding that a contractual termination right in a construction contract was parasitic on a related clause and therefore accrued only where the related clause applied. As a result, a contractor could not terminate its employment for repeated late payment by the employer. Whilst the Supreme Court's decision is particularly significant for the construction industry, the judgment also provides guidance on the interpretation of industry standard forms more generally.

BACKGROUND

The parties entered a construction contract incorporating the JCT Design and Build Contract 2016. The JCT contract provides:

- if the employer is in default of certain obligations, the contractor may give notice specifying the default (clause 8.9.1);
- if the default continues beyond a specified cure period, the contractor may give further notice to terminate (clause 8.9.3);
- if the contractor does not give that further notice, but the employer repeats a specified default, the contractor may terminate by notice (clause 8.9.4).

In this case, the employer missed a payment. The contractor gave notice specifying the default under clause 8.9.1. The employer paid in full during the cure period and so the clause 8.9.3 termination right did not accrue. The employer missed a further payment and the contractor sought to terminate for repeated specified default under clause 8.9.4.

PARASITIC CLAUSES

The Supreme Court held that the contractor could not terminate for repeated default as its right to give further notice for the initial default had not accrued. The right to terminate for repeated default under clause 8.9.4 was parasitic on its right to terminate for continuing default under clause 8.9.3. The contractor could only terminate for the repeated default if the employer had failed to cure the earlier specified default within the cure period.

INTERPRETING INDUSTRY STANDARD FORMS

The Supreme Court gave guidance more generally on the interpretation of industry standard forms. The usual approach to interpretation of contracts applies, however:

- Explanatory notes, as well as previous judgments and practice relating to earlier versions of the standard form, may form part of the admissible background context. However, the "archaeology of the forms" should be discouraged and it is wrong to compare versions of a standard form on the assumption that parties consciously choose one over the other to achieve a particular result.
- Where parties choose an industry standard form, it is generally intended that their rights and obligations should be consistent with those of others using the same standard form and should reflect the intention of those who drafted the standard form. Standard forms should be interpreted consistently and, subject to bespoke amendments, are unlikely to be affected by the intentions of the parties to a particular contract.

The Supreme Court's decision provides helpful guidance on the approach to interpreting industry standard forms. It is also a useful reminder when drafting to consider the interaction between clauses and whether they should operate independently or, as in this case, for a clause to be parasitic on another. Read more about this decision and other recent contract law cases in our **Contract Law Update - January 2026**.

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:

GOVERNMENT TO LEGISLATE ON LITIGATION FUNDING

The Ministry of Justice announced on 17 December 2025 that it would bring forward legislation to reverse the Supreme Court's judgment in PACCAR, allowing litigation funders once again to enter into funding agreements that allow them to recover a percentage of claimants' damages. At the same time, the Government said it would introduce a new framework to "ensure that [funding] agreements are fair and transparent, so that third-party litigation funding actually works for all those involved". The announcement follows the Civil Justice Council's report on the sector published last summer (see the July 2025 edition of Disputes Briefcase). Until we see draft legislation, we cannot know the extent to which the Government has accepted the Council's far-reaching recommendations, but it seems likely this is just a first step: the MoJ said it would continue to study the report. As yet, there is no timetable for the new legislation. Read more about the outlook for litigation funding in our Horizon Scanning article.

SECURITIES LITIGATION CLAIMANTS MUST ENGAGE WITH RELIANCE ISSUES EARLIER

How a claimant can prove they relied on alleged misrepresentations in an issuer's market disclosures is a hot topic in securities litigation (see our article on deceit in this edition). A new decision from the Commercial Court says that questions of reliance should, in the ordinary course, be dealt with alongside questions of the issuer's liability. At a case management hearing in California State Teachers' Retirement System and others v Boohoo Group plc – a claim under s.90A/sch.10A, FSMA - the claimants asked for liability issues to be decided at a first trial with the question of the claimants' reliance, causation and quantum deferred to a later trial. Split trials have become standard practice in securities law claims, but deciding where to draw that split has been contentious: defendants argue that hiving off most claimant-side issues to a later trial places an unfair burden on them. In Boohoo, Michael Green J sought to redress the balance: "the more I see of these cases, the more I think it is important for the claimants to prepare and get on with their cases by individually engaging with the issues they need to prove […] Where reliance can be dealt with at Trial 1, and it is reasonable for the parties to be ready to do so, I think that should be the norm." The decision raises the prospect of an earlier resolution of the many live issues relating to reliance in s.90A claims.

ACCESS TO SHARE REGISTER TO MAKE MINI-TENDER OFFER NOT IMPROPER

In a judgment that will be of interest to UK-listed companies - and especially those with a large number of retail shareholders - the High Court has held that a request under s.116, Companies Act 2006 for a copy of a company's register of members for the purposes of making a "mini-tender offer" to its shareholders is a proper purpose.

Aviva plc sought a no-access order under s.117(3), Companies Act after Litani LLC, a Delaware entity, requested a copy of the register to make offers to retail shareholders to purchase their Aviva shares at a discount to their market value. The court dismissed the application, holding that a commercial purpose is not improper unless it is genuinely exploitative or unscrupulous. The proposed offer, though commercially disadvantageous, was within acceptable limits. The fact that there were alternative deals available on better terms did not render the purpose improper. Read more in our December 2025 Corporate Update Bulletin.

UK SUPREME COURT REJECTS 'AEROTEL' APPROACH TO PATENTABILITY

The UK Supreme Court has handed down its decision in Emotional Perception v Comptroller General of Patents, finding that an artificial neural network (ANN) is a computer program, but that Emotional Perception's ANN invention was not excluded from patentability as a computer program "as such". In a significant departure from nearly 20 years of English patent law, the Supreme Court unanimously rejected the traditional 'Aerotel' approach to applying the computer program exclusion, adopting instead the "any hardware"

approach of the European Patent Office. Under the new approach, an application will not be rejected under the computer program exclusion if the subject matter of the claim involves the use of any hardware, such as a computer – a significantly lower hurdle for patentability.

The decision brings the UK into closer alignment with the EPO's approach to exclusions from patentability and paves the way for increased patentability of ANNs and other computer-implemented inventions. The case has been remitted to the UK Intellectual Property Office to apply the "intermediate step" and determine whether the invention is patentable. It remains to be seen how the English courts will apply aspects of this decision in practice and whether the changes will ultimately lead to different outcomes on patentability. Read more in our **blog post**.

UK JURISDICTION TASKFORCE CONSULTS ON LIABILITY FOR AI HARMS

The UK Jurisdiction Taskforce, a Ministry of Justice initiative set up to consider how the common law deals with new technologies, has issued a consultation on its **draft Legal Statement on Liability for AI Harms under English Private Law**. The statement seeks to address "in what circumstances, and on what legal bases, English common law will impose liability for loss resulting from the use of AI" (defined as "a technology that is autonomous"). Starting from the premise that AI does not have legal personality and thus cannot itself be held legally liable, the statement focuses primarily on how the law of negligence applies to physical and economic harms caused by AI, whilst also addressing questions of vicarious liability, professional liability, strict liability, causation, and false statements made by AI chatbots.

RECENT DEVELOPMENTS IN COMPETITION COLLECTIVE ACTIONS

- **'Refining' the opt-out collective action regime:** Following a **call for evidence** last year (see the **November edition of Briefcase**), the UK government has **confirmed** that it will reform the opt-out collective proceedings regime in the CAT. It is not yet clear what form any changes will take. The government **will consult** on proposed changes in the coming months.

- **McLaren settlement approved by CAT:** In January, the **CAT approved a £54 million settlement** between McLaren and the four remaining defendants in the long-running collective action regarding the "roll-on roll-off" (ro-ro) car shipping cartel. This brings an end to these long-running proceedings. As the regime develops further, we will likely see more settlements, as well as an increased focus on distribution/the amount of money that makes its way into the hands of the class.

- Funder obtains permission to judicially review Merricks v Mastercard settlement: In February, the High Court granted funder Innsworth permission to proceed with a judicial review of the CAT's decision on the distribution of a £200 million settlement in the Merricks v Mastercard collective action on interchange fees (see the **July 2025 edition of Briefcase**). This case will be watched with interest.

- Pass-on in the Interchange Umbrella Proceedings: Earlier this month, the CAT handed down an **important judgment** in the long-running dispute regarding multilateral interchange fees (MIFs). It held that most of the losses caused by MIFs were borne by retailers and were not passed on to consumers. The CAT's conclusion that there was "no direct causative link" between the overcharge and the prices paid by consumers in most cases has been hailed by Mr Merricks as a vindication of his decision (see above) to settle the Merricks v Mastercard consumer claim.

CONTRACT LAW UPDATES

In our **January Contract Law Update** we provide a round-up of recent key developments in contract law. In addition to the Supreme Court's recent decision on repeated default under industry standard forms (see Providence v Hexagon **above**), our Update covers:

- The Court of Appeal in **Amlin v King Trader** held that not every burdensome clause is sufficiently onerous to engage the "onerous clause doctrine" and the court will be slow to intervene in commercial contracts between parties of equal bargaining power.

- The High Court in **Tullow v Vallourec** held that in a battle-of-the-forms scenario, the last shot usually prevails, unless the evidence shows otherwise. The decision also reiterates that clear wording is required to exclude terms implied by law, and that references to "warranties" are insufficient to disapply the Sale of Goods Act implied "conditions".

- The High Court in **The Maltese Falcon** held that a term will not be implied where the contract expressly allocates risk. The test for implying terms in fact remains demanding: a term will be implied only where it is obvious or necessary for business efficacy, and courts will not rewrite a bad bargain.

- The Court of Appeal in **URE Energy v Notting Hill Genesis** held that a party could not be held to have elected to affirm a contract where it was unaware of its contractual right to terminate. Continued performance is not an election to affirm where the party is unaware of the termination right. URE highlights that, where a counterparty has rights triggered by amalgamation, a party looking to merge/ amalgamate should consider seeking consent in advance.

- The Court of Appeal in **The Skyros** applied the principle of "res inter alios acta" and restored the arbitral award. Whilst the High Court disagreed with the arbitral tribunal's decision that the owners were entitled to substantial damages, the Court of Appeal held that they were. The Supreme Court has granted permission to appeal. Also see Arbitration Updates below.

ARBITRATION UPDATES

In institutional developments, HKIAC has **expanded** the scope of its Expedited Procedures by increasing the maximum threshold for eligible claims from HK$25 million to HK$50 million (approximately US$6.4 million), as well as announcing fee increases and a new report on tribunal hourly rates. The ICC has also published guidance on its own **Expedited Procedure Provisions**. Both institutions have also released their 2025 case statistics, with **HKIAC** and the ICC reporting strong caseloads.

Among recent developments before the English courts:

- Peremptory orders: The Court of Appeal has provided guidance on the scope of an arbitral tribunal's power to grant peremptory orders (usually issued after a party fails to comply with a procedural order) and the English court's power under s42 Arbitration Act 1996 to enforce tribunal peremptory orders. The Court of Appeal decided that the anti-suit relief ordered by the tribunal was necessary for the proper and expeditious conduct of the arbitration proceedings and the Commercial Court had properly exercised its s42 powers to make an order enforcing the tribunal's orders. After the Court of Appeal's judgment, the Commercial Court granted a further application to enforce a peremptory order, this time in relation to an anti-enforcement injunction, on the basis that it fell within the scope of s42, but refused to grant additional relief that went beyond the tribunal's peremptory order, under s37 Senior Courts Act 1981, as the judge considered that doing so would have cut across the language and structure of the Arbitration Act (**LLC Eurochem North[1]West-2 v Tecnimont SPA and Tecnimont SPA v LLC Eurochem NorthWest-2**)

- Assignment and the conditional benefit principle: The Commercial Court has rejected a jurisdiction challenge to two LMAA awards under s67 Arbitration Act 1996. The judge held that the tribunal had correctly decided that a party was bound to arbitrate a dispute concerning whether exclusions to the scope of guarantees provided under a shipbuilding contract applied to tort claims under foreign law. The claimants were not signatories to the original contracts containing the arbitration clauses but had acquired the benefit of contractual rights later assigned to them. As the claimants sought to assert those assigned rights, they were bound to arbitrate by virtue of the 'conditional benefit principle,' i.e. an assignee seeking to exercise a contractual right must adhere to conditions attached to it (**MS "V1" and MV "V2" v SY Co**).

- No court power to stay arbitration proceedings pending application: The Commercial Court has dismissed applications under CPR 3 (court's case management powers) to stay two London-seated LCIA arbitrations pending determination of applications under ss24 and 68 Arbitration Act 1996 to remove the sole arbitrator and set aside procedural orders made by the arbitrator. The judge held that the court had no jurisdiction to stay arbitration proceedings pending determination of the applications. The judge noted that CPR 3 applies to court proceedings only and emphasised the importance of autonomy in arbitration proceedings (**A v B**).

- Construction of inconsistent disputes clauses and hierarchy provision: The Court of Appeal has provided guidance on the interpretation of inconsistent dispute resolution provisions across different reinsurance contracts agreed at different times and governed by a hierarchy provision (or confusion clause). In this situation, the Court found that "a cool and objective approach" should be taken and if the disputes provisions are inconsistent, the court should apply the hierarchy provision. This approach contrasts with the interpretation of inconsistent dispute resolution clauses in a single document with no hierarchy clause, which the court will make every effort to read together to give effect to all the clauses of the contract. The judgment highlights the importance of clear and, where possible, consistent drafting of dispute resolution provisions or the use of express hierarchy provisions where provisions conflict (Tyson v GIC Re, India). provisions where provisions conflict (**Tyson v GIC Re, India**).

WHAT'S NEW IN COURT PROCEDURE

From 1 January, the Commercial Court (and London Circuit Commercial Court) and Financial List commenced a new pilot scheme enabling members of the public default access to a broader range of documents filed by parties in court proceedings. Read more in our **November 2025 edition of Briefcase**.

The Civil Justice Council has published an **interim report and consultation** on whether there is a need for rules to govern the use of AI for preparing court documents. The CJC proposes that legal representatives involved in the preparation of court documents should be required to make a declaration relating to its use. The consultation closes in April.

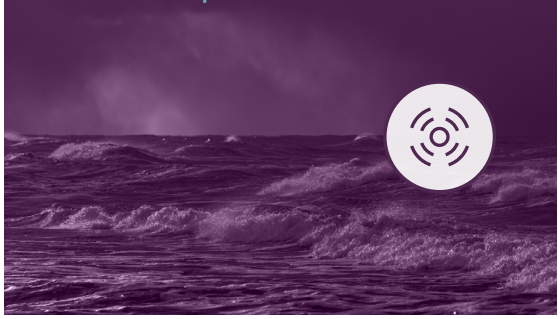
This month, the Disclosure Review Working Group concluded a survey on the effectiveness of the disclosure process in the Business and Property Courts. The disclosure regime was significantly overhauled in 2019 when new rules were piloted before becoming permanent in 2022 (as **PD 57AD**). The Working Group is now considering whether the regime is achieving its aims of reducing costs and time, encouraging co-operation between parties and improving the accuracy of disclosure, as well as the extent to which developments in technology (including AI) are impacting disclosure. The results of the survey have not yet been released.

NO LIMITATION PERIOD FOR UNFAIR PREJUDICE CLAIMS

The Supreme Court has held in **THG Plc v Zedra Trust Company** that there is no statutory limitation period (the period in which a claimant has a right to start proceedings) for unfair prejudice claims under ss994-996 Companies Act 2006. Zedra, a minority shareholder in THG Plc, brought a claim against THG for unfair prejudice alleging that THG had conducted its affairs in a way that was unfairly prejudicial to Zedra. Zedra later applied to amend its claim to include allegations that it had been excluded from a bonus issue of shares more than six years earlier. THG opposed the amendment arguing that the amendment was time-barred by s9 Limitation Act 1980, which provides that "an action to recover any sum recoverable by virtue of any enactment" is subject to a six-year limitation period. In a majority (4-1) judgment, the Supreme Court has reinstated the decision of the High Court, holding that no limitation period applies to unfair prejudice claims. As a result, Zedra's amendment was not time-barred. In such cases, delay is instead managed through equitable bars or limitations on relief.

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**.



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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.

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