IN-DEPTH

# Banking Litigation

## UNITED KINGDOM

LEXOLOGY

# Banking Litigation

Contributing Editor

**Jonathan Clark**

Slaughter and May

In-Depth: Banking Litigation (formerly The Banking Litigation Law Review) provides a practical overview of the litigation landscape and framework for banking disputes in major jurisdictions worldwide. Focusing on recent developments and trends, it examines a wide range of issues – including significant recent cases and legislative changes; procedural considerations; legal privilege; conflicts of law; available remedies; exclusion of liability; and much more.

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# United Kingdom

**Melissa McFarlane** and **Jonathan Clark**
Slaughter and May

## Summary

# Introduction

The United Kingdom remains a central forum for banking and financial services litigation, reflecting the global prominence and continued calibre of English law and English judges.

The year 2025 has seen landmark judicial decisions, with the English Courts clarifying the rights and responsibilities of banks, including the boundaries of fiduciary duties in the motor finance industry and the tort of bribery, and a bank's duty to exercise reasonable skill and care. Changes to the regulatory landscape and procedural reform continue to affect banks and financial institutions, and shape the broader English litigation landscape, such as through the management of complex multi-claimant proceedings and litigation funding.

# Year in review

## Recent cases

### Motor finance and the scope of fiduciary duties

In October 2024, after the preparation of the previous edition, and to the surprise of the industry, the Court of Appeal held that motor dealers arranging finance for their customers owed fiduciary duties to those customers, such that commissions they received could constitute bribes or secret profits if not disclosed and lenders could be liable in bribery and/or dishonest assistance. This was overturned by the Supreme Court in the decision of *Hopcraft and another v. Close Brothers and FirstRand*.[1]

The case concerned three conjoined appeals by finance lenders regarding commissions they paid to motor dealers. The Supreme Court dismissed both tortious and equitable claims brought by the customers. It held that motor dealers acting as credit brokers do not owe fiduciary duties to their customers when arranging hire purchase agreements. They operate as independent sellers pursuing their own commercial interests. Mere reliance by a consumer on a dealer to propose finance products was insufficient to establish a fiduciary relationship.

The Supreme Court rejected the Court of Appeal's concept of a 'disinterested duty' owed by dealers to consumers and disapproved the earlier decision in Wood,[2] which had suggested that the tort of bribery could arise without an underlying fiduciary duty. It reaffirmed that liability for bribery requires a fiduciary relationship and that contractual obligations to provide suitable or impartial advice are insufficient.

One consumer's claim against FirstRand alleging an unfair credit relationship under Section 140A of the Consumer Credit Act 1974 was upheld. The Supreme Court held that the unfair relationship test is fact-sensitive, considering the size and nature of commissions, consumer characteristics, disclosure and regulatory compliance. The lender was ordered to repay the commission with interest at an appropriate commercial rate.

The Hopcraft decision is now the leading authority on fiduciary duties in consumer finance and the scope of civil bribery law and a welcome return to orthodoxy for lenders and credit brokers. It confirms that commercial actors rarely subordinate their interests to customers outside established fiduciary categories. Litigation risk remains, however, in relation to possible unfair credit relationship claims and the FCA is to consult on an industry-wide redress scheme, which would allow consumers to access compensation without a court process.[3]

Expansion of Quincecare duty

The Quincecare duty[4] arises from a bank's general duty to exercise reasonable skill and care in processing customer payment instructions. It provides that, if a bank is on notice that a payment instruction from a customer's agent may be fraudulent (or otherwise outside the scope of that agent's authority), executing that instruction may make the bank liable to the customer.

As previewed in last year's edition, the High Court has this year considered whether Santander, a receiving payment service provider (PSP), owed a duty directly to Advanced Push Payment (APP) fraud victims to take reasonable steps to retrieve or recover the sums paid out as a result of the fraud.[5] The Court confirmed that there is no novel 'retrieval' duty owed by receiving PSPs to third party victims of fraud with whom they have no contractual relationship. In striking out the claim for breach of retrieval duty, the Court confirmed that there is no freestanding duty for a receiving PSP to take steps to reverse harm caused to a third party when executing instructions from its own customer, recognising such a duty would impose an 'unacceptable burden' on receiving PSPs and conflict with their obligations to follow customer instructions.[6] It left open the possibility of such a duty arising where a contractual relationship exists between the PSP and the fraud victim. Consequently, victims of APP fraud may instead attempt to establish a duty of retrieval for sending PSPs, of which they are usually a customer.

The Quincecare duty, which historically applied to banks, has been applied to other financial institutions, including electronic money institutions (EMIs).[7] APP fraud victims brought a claim against an EMI PSP that provided the false account in a company name into which the victims paid funds, which were subsequently transferred to fraudsters. The victims' claim was brought as a derivative action on behalf of the company (of which the victims were creditors). The High Court held that, due to issues with the credibility of the documentation provided by the fraudsters, the PSP was put on inquiry. Consequently, it should not have debited the (fraudulent) company's account without satisfying itself that the payment instructions were not fraudulent.

This decision marks the first successful use of a derivative action by APP fraud victims to recover funds, providing a potential workaround for claimants where a direct claim might otherwise fail. An appeal is pending.

Legacy product liabilities

In *AXA France v. Santander Cards UK*,[8] the High Court (Dias J) was required to construe the scope and effect of an indemnity provision in an agency agreement, in the context

of legacy liabilities arising from the alleged mis-selling of store card payment protection insurance (PPI) policies to over 650,000 customers prior to January 2005.

The historic PPI policies were issued by insurance entities that, through acquisition, are now within the Axa group, and sold by GE Capital Bank (at the time an affiliate of the insurers), the business of which had since been acquired by Santander. Under applicable FCA rules, Axa, as insurer (rather than GE Capital Bank, which as credit lender marketed and sold the policies), was responsible for paying redress to customers during the relevant period. In its claim, Axa sought to recover the redress payments and related regulatory fees from Santander under the terms of an indemnity contained in an Agency Agreement entered into in 2000.

One of the key issues was whether the indemnity encompassed historic liabilities arising from GE Capital Bank's conduct in the years prior to the agency agreement being entered into. The Court held that it did, notwithstanding the absence of express contractual wording to this effect. The Court also had to determine whether the payments in issue were 'liabilities' for the purpose of the indemnity contained in the Agency Agreement (which covered 'any liability which [the insurers] may incur by reason of any act or omission by [GE Capital Bank] (including negligence) while performing their duties under the agreement'). The Court held that 'liabilities' included regulatory liabilities such as the requirement under the FCA's DISP rules to pay redress, and that GE Capital Bank's conduct had been the proximate and effective cause of the regulatory liabilities. In this regard, the judge referred to the redress payments as being 'precisely the type of regulatory consequence which would have been in contemplation at the date of the Agency Agreement, even if the precise regulatory machinery could not itself have been foreseen'.

The Court awarded Axa approximately £675 million. In October, Santander was granted permission to appeal to the Court of Appeal.

Group actions

As noted in previous editions, group actions against financial institutions continue to grow in the UK, as the infrastructure and procedure for managing class actions evolve. In May, the Competition Appeal Tribunal (CAT) approved the £200 million settlement in *Merricks v. Mastercard*,[9] the UK's first large-scale opt-out class action, signalling a pragmatic approach to collective redress. In contrast, the class action in *Le Patourel v. BT*[10] ended unsuccessfully, with the CAT dismissing abuse of dominance claims and ordering £14 million in costs against the claimants, highlighting the risks for funders and claimants.

The Department for Business & Trade has launched a review of the collective actions regime to ensure it achieves redress for consumers while 'limiting the burden on business.' The UK government has said it is committed to reform in consumer enforcement 'which delivers justice for consumers without incentivising speculative competition claims'.[11]

Litigation funding

Courts continue to address the implications of PACCAR. In the last year, the Court of Appeal confirmed the enforceability of funding arrangements in separate cases where: (1) fees were multiples of expenditure rather than a percentage of damages; and (2) funders and

lawyers were paid before damages were distributed.[12] The latter case has been appealed to the Supreme Court.

These recent cases highlight the commercial pressures arising from PACCAR, reinforcing the need for reform to give funders certainty while protecting claimants. In June, the Civil Justice Council (CJC) published its final report on funding, recommending:[13]

1. immediate reform: legislation reversing PACCAR retrospectively, confirming litigation funding agreements (LFAs) are not damaged-based agreements (DBAs) and clarifying that litigation funding is not a claims management service; and
2. broader reforms: Light-touch regulation of litigation funding, including regulatory oversight, conflict of interest safeguards, consumer protections (including through the disclosure of funding terms to the Court), mandatory independent legal advice and standardised LFA terms to promote transparency.

The CJC also proposes modernising conditional fee arrangements and DBAs by permitting hybrid arrangements, removing caps for commercial clients and allowing DBAs in opt-out proceedings.

Securities litigation

Claims under Sections 90–90A and Schedule 10A FSMA continue to test the boundaries of reliance. In *Various Claimants v. Standard Chartered PLC*,[14] in March 2025, claimants representing approximately 1,391 funds alleged £1.5 billion for losses arising out of alleged misleading statements and omissions in published information. The central question was whether investors relying on market prices, rather than reading disclosures, could satisfy the statutory reliance requirement.

Standard Chartered sought to strike out the claims, relying on Barclays,[15] where similar claims failed on the basis that reliance required direct engagement with the statements. The High Court, however, emphasised that the common law test for deceit was not determinative under FSMA, particularly where omissions were alleged, and found the facts distinguishable from Barclays. The ruling signals a potential shift towards recognising 'market-based' reliance under FSMA. The claims will proceed to trial in October 2026, with the strike-out decision listed for appeal in January 2026.

In January, the Court of Appeal in *Wirral Council v. Indivior PLC / Reckitt Benckiser Group plc*[16] upheld the strike-out of representative proceedings brought by Wirral Council on behalf of multiple shareholders in *Indivior* and *Reckitt* respectively. The claims related to alleged misleading statements and omissions and were made under Sections 90 and 90A FSMA.

The Court rejected this approach, stressing its wide discretion under CPR 19.8(2) to assess whether representative proceedings are suitable. It criticised attempts to use the procedure tactically to avoid upfront work, pursue speculative claims or pressure settlement, and dismissed arguments that retail investors would otherwise be denied access to justice as 'funder-driven'.

These decisions highlight the unsettled law on reliance under Schedule 10A FSMA, the limits of representative procedure and the English Courts' preference for resolving complex securities claims through full trials.

Russian sanctions

As in previous editions, the English Courts continue to uphold EU sanctions in financial disputes. In July, the High Court dismissed claims by Russian fertiliser company EuroChem against Société Générale and ING Bank under on-demand performance bonds worth over €280 million, linked to the construction of an ammonia plant in Kingisepp.[17]

The banks refused to make payment under the bonds, issued to secure EuroChem's performance obligations under the contract, due to EU sanctions. EuroChem argued it was no longer controlled by sanctioned oligarch Andrey Melnichenko, who had purportedly resigned as sole discretionary beneficiary of the trust structure owning the group. The Court rejected this, holding that he retained effective control, finding the bonds unenforceable both under the Ralli Bros rule[18] (as payment would be illegal in the place of performance) and on public policy grounds. In September, EuroChem was granted permission to appeal to the Court of Appeal.

Recent legislative developments

Failure to prevent fraud

The new 'failure to prevent fraud' offence came into effect on 1 September 2025 under the Economic Crime and Corporate Transparency Act 2023.[19] The offence holds organisations (being large, incorporated bodies and partnerships) criminally liable if an 'associated person' - including employees, agents or subsidiaries - commits fraud on their behalf, subject to a defence of having reasonable prevention procedures in place to prevent fraud or demonstrating that it was not reasonable in the circumstances to expect the organisation to have any such procedures in place. The UK government published guidance on reasonable prevention procedures, outlining key principles for relevant organisations to consider, including senior-level oversight, risk assessment, due diligence, staff training and effective enforcement measures.[20]

Naming companies under investigation: FCA's Enforcement Guide

Following objections to the FCA's earlier proposal to name companies under investigation,[21] in June it confirmed a more limited approach: firms will be named only if the investigation is already public or involves suspected unauthorised activity or criminal offences.[22] The FCA may also issue anonymised statements to promote compliance.

## Changes to court procedure

English Courts are continuing to modernise, while ensuring transparency and efficiency.

The Supreme Court introduced new Rules and Practice Directions (for cases filed from 2 December 2024) requiring use of the digital portal, parts of which are public, and publishing Statements of Facts and Issues at least seven days before hearings.[23]

A Public Domain Documents Pilot, applicable to parts of the High Court, including the Commercial Court and Financial List, will run from 1 January 2026 until 31 December 2027 under the new Practice Direction 51ZH. Unless applications are made to withhold or redact documents for genuinely confidential material, documents entering the public domain via a public hearing (e.g., witness statements, expert reports and written submissions) must be made accessible to the public on the court filing system.

These reforms represent a step towards increased transparency and public access, and may influence how litigants approach and prepare their court documents.

## Privilege and professional secrecy

Following the High Court's decision in *Aabar Holdings SARL v. Glencore Plc*,[24] which rejected the long-standing 'shareholder rule' in English law, the Privy Council in July confirmed that the rule was abolished.[25] Previously, the rule prevented a company from asserting privilege against its own shareholders, except where documents were created for the dominant purpose of hostile litigation against them. Although the appeal arose from the Bermudian courts, the Privy Council confirmed the rule 'ought not to continue to be recognised in England and Wales'. This judgment represents a significant shift in modern company law, clarifying the scope of legal advice privilege and allowing financial institutions and banks to better protect privileged information amid rising shareholder activism.

## Jurisdiction and conflicts of law

The 2019 Hague Judgments Convention entered into force in the UK on 1 July 2025, creating a framework for recognition and enforcement of certain civil and commercial judgments across contracting states.[26] It facilitates enforcement of English Court judgments (from proceedings commenced after 1 July 2025) in 30 countries, including nearly all EU Member States, complementing the 2005 Hague Convention on Choice of Court Agreements.

## Sources of litigation

Banks and other financial institutions remain at risk of litigation arising from continued geo-political change and regulatory enforcement action.

The rapid adoption of AI in banking – including credit scoring, fraud detection, and customer service – potentially creates litigation risk. The UK is also experiencing a rapid expansion of AI infrastructure, with tech companies investing in computing and data centre capacity. With this development comes enhanced regulatory scrutiny around the use and

responsibility of AI through instruments such as the UK Digital Markets, Competition and Consumers Act. As AI becomes more embedded in core banking functions and regulatory requirements, the use and ownership of AI is likely to be tested by consumers and investors, giving rise to potential claims.

As addressed in last year's Review, environmental, social and governance (ESG) remains a focus area. The UK government's June consultation on mandatory climate transition plan disclosures for financial institutions and FTSE 100 companies highlights potential liability if firms fail to implement credible, net-zero-aligned plans or make misleading targets or disclosures, giving rise to litigation.[27] However, English Courts remain cautious as to the scope of private ESG litigation.[28]

Trade relations are also increasingly volatile, with escalating tariffs and ongoing uncertainty over trade potentially leading to an increase in corporate distress and insolvencies. Such unpredictability could heighten litigation risk for banks and financial institutions, including disputes over contractual performance, guarantees, allocation of tariff liability, and investor claims.

## Outlook and conclusions

The evolving litigation funding and regulatory frameworks confirm the UK's continued role as a leading jurisdiction for financial services disputes. English Courts have shown their expertise in managing multi-party, cross-border and complex claims, providing clear guidance on emerging issues such as market-based reliance and responsibility for APP fraud. Recent cases underscore the evolving scope of duties and responsibilities owed by banks to their customers and counterparties, which continues to shape the contours of liability and risk in financial services litigation.

Legislative and regulatory developments – including sanctions enforcement, ESG obligations and the Hague Judgments Convention – further strengthen the UK's dispute resolution framework. For banks and financial institutions, this combination of judicial sophistication, procedural flexibility and enforceable remedies reinforces London's status as a trusted and efficient venue for pursuing or defending high-value financial claims.

## Endnotes

1 Hopcraft and another (Respondents) v. Close Brothers Limited (Appellant); Johnson (Respondent) v. FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant); Wrench (Respondent) v. FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant) [2025] UKSC 33. ^ Back to section

2 Wood v. Commercial First Business Ltd [2021] EWCA Civ 471. ^ Back to section

3 https://www.fca.org.uk/news/press-releases/fca-launches-campaign-awareness-motor-finance-compensation-s
^ Back to section

**4** Barclays Bank plc v. Quincecare Ltd [1992] 4 All ER 363. ^ Back to section

**5** Santander UK plc v. CCP Graduate School Ltd [2025] EWHC 667 (KB). ^ Back to section

**6** Ibid. ^ Back to section

**7** Hamblin & Ors v. Moorwand & Ors [2025] EWHC 817 (Ch). ^ Back to section

**8** AXA France v. Santander Cards UK [2025] EWHC 1881. ^ Back to section

**9** Walter Hugh Merricks CBE v. Mastercard Incorporated and Others [2025] CAT 28. ^ Back to section

**10** Justin Le Patourel v. BT Group PLC [2024] CAT 76. ^ Back to section

**11** https://www.gov.uk/government/calls-for-evidence/opt-out-collective-actions-regime-review-call-for-evidence/op
^ Back to section

**12** Mastercard Incorporated and Others v. Commercial and Interregional Card Claims I Limited [2025] EWCA Civ 841 and Gutmann v. Apple [2025] EWCA Civ 459. ^ Back to section

**13** https://www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report-2.pdf.
^ Back to section

**14** Various Claimants v. Standard Chartered plc [2025] EWHC 698 (Ch). ^ Back to section

**15** Allianz Funds Multi-Strategy Trust v. Barclays PLC [2024] EWHC 2710 (Ch). ^ Back to section

**16** Wirral Council v. Indivior and Wirral Council v. Reckitt Benckiser [2025] EWCA Civ 40. ^ Back to section

**17** LLC EuroChem North-West-2 & Anor v. Société Générale SA & Ors [2025] EWHC 1938 (Comm). ^ Back to section

**18** Ralli Brothers v. Compania Naviera Sota y Aznar [1920] 2 KB 287. ^ Back to section

**19** https://www.legislation.gov.uk/ukpga/2023/56. ^ Back to section

**20** https://www.gov.uk/government/publications/offence-of-failure-to-prevent-fraud-introduced-by-eccta/economic-c
^ Back to section

**21** See the previous edition. ^ Back to section

**22** https://www.fca.org.uk/publication/policy/ps25-5.pdf. ^ Back to section

**23** https://supremecourt.uk/how-to-appeal/practice-directions. ^ Back to section

**24** Aabar Holdings S.à.r.l. v. Glencore Plc & Others [2024] EWHC 3046 (Comm). ^ Back to section

**25** Jardine Strategic Ltd v. Oasis Investments II Master Fund Ltd & Ors No 2 (Bermuda) [2025] UKPC 34. ^ Back to section

**26** https://www.gov.uk/government/speeches/statement-on-the-entry-into-force-of-the-2019-hague-convention. ^ Back to section

**27** https://www.gov.uk/government/consultations/climate-related-transition-plan-requirements. ^ Back to section

**28** For example, in *Professor Carolyn Roberts v. United Utilities Group Plc & Ors* [2025] CAT 17 the CAT rejected collective proceedings against water companies over alleged under-reporting of sewage discharges, holding that statutory oversight by Ofwat provided sufficient control. ^ Back to section

SLAUGHTER AND MAY/

**Melissa McFarlane** Melissa.McFarlane@SlaughterandMay.com
**Jonathan Clark** jonathan.clark@slaughterandmay.com

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