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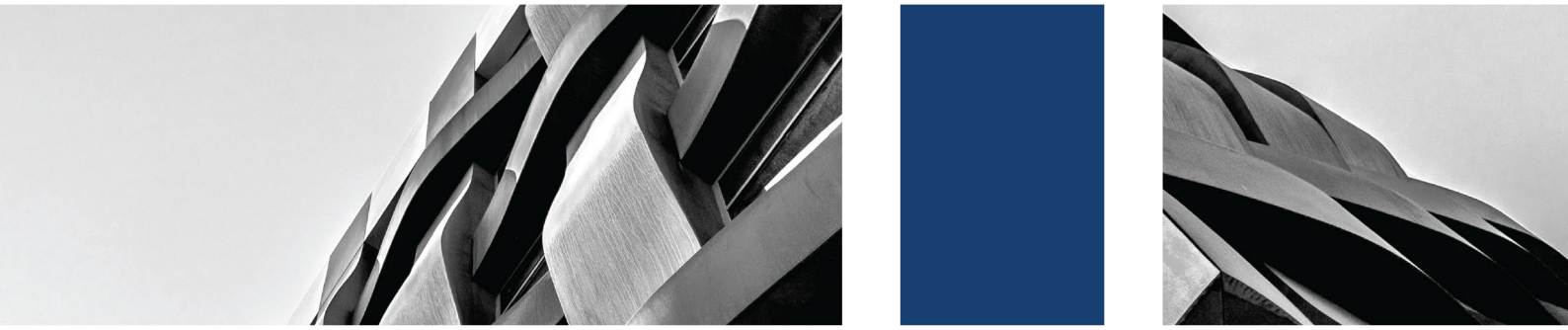

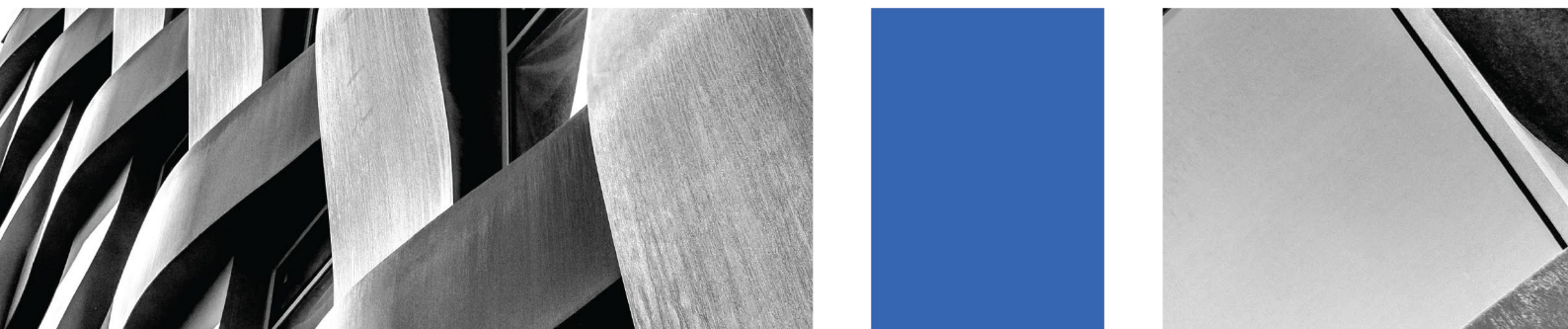

Overview

ESG and Parent Company Liability

Over recent years, the English courts have increasingly been seen as a key forum for cross-border ESG mass tort claims, including in conjunction with claimant-friendly procedural and funding mechanisms. Building on *Vedanta* and *Okpabi*, the courts have confirmed that liability of English parent companies turns on the substance of control or assumption of responsibility over group companies, rather than formal corporate structure. This article examines how those principles have been applied in the recent Mariana Dam litigation and considers the implications for UK-domiciled multinationals and investors.

Liability Management Exercises and Restructuring Challenges

The rise of non-pro rata liability management exercises ("**LMEs**") in Europe over the past couple of years has been accompanied by litigation challenges. Majority creditor groups are increasingly leveraging specific provisions within intercreditor agreements to restructure debtor liabilities at the expense of minority creditors, who in turn are contesting these out-of-court restructurings through proceedings on both sides of the Atlantic. Some key English law concepts are likely to be judicially examined in this context in the coming months. As litigation strategies become increasingly cross-jurisdictional, a new front has emerged through the deployment of competition law arguments to challenge the validity of majority creditors' cooperation agreements.

Competition Law Claims and Collective Proceedings

Public enforcement and private litigation in competition law are converging at pace. The collective proceedings regime before the CAT is entering a new era of judicial gatekeeping—at certification, and in terms of oversight of settlements and funding—while authorities across the UK and EU expand enforcement into labour markets. Companies managing collective claims or refining their employment and investment compliance efforts should be mindful of a regulatory and judicial environment that continues to develop and evolve.

National Security and Foreign Investment Screening

National security review has long been a live deal risk, with UK authorities able to scrutinise—and in some cases unwind—transactions long after completion. Through the LetterOne/Upp and FTDI cases, this section explores how the courts are approaching challenges to decisions under the National Security and Investment Act 2021 and why investors face a challenging path when seeking to overturn final orders or recover compensation. With the Supreme Court due to consider LetterOne's appeal later this year, the article explains why NSIA risk is becoming a boardroom issue and how public law principles are increasingly shaping the landscape for commercial transactions.

Cryptocurrency and Artificial Intelligence Litigation

Courts and regulators are racing to keep pace with crypto assets and the rise of artificial intelligence, as new rules and landmark cases reshape how these technologies are owned, regulated and enforced. This article covers the latest developments and their practical implications: from greater regulatory scrutiny of crypto businesses and stronger recognition of digital assets as property, to unresolved questions for fraud victims, AI developers and rights holders. For businesses, the message is clear: innovation may be fast-moving, but the litigation, regulatory and competition landscapes around them also continue to develop in real time—creating both new opportunities and evolving considerations for companies looking to harness those technologies responsibly and effectively.

Motor Finance and Consumer Mass Actions

The motor finance commission saga has produced one of the most consequential intersections of public regulatory frameworks and private law remedies in recent years. The Supreme Court's landmark August 2025 judgment, the FCA's £9.1 billion redress scheme and the practical fallout for lenders raise critical questions for any firm operating commission-based consumer credit models.

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Paul, Weiss European Litigation Group

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—Richard Hornshaw, Head of European Litigation

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01

ESG and Parent Company Liability

ESG and Parent Company Liability

As ESG-driven litigation continues to expand the scope of corporate risk, English courts are increasingly willing to scrutinise where real control lies within multinational groups.

An Evolving Jurisdictional Landscape

Over the past decade, English courts have made a series of significant decisions in the field of mass tort claims, particularly those arising from ESG-related failures occurring exclusively overseas. These judicial developments operate in conjunction with other attractive features for claimants in group claims in England, including the availability of tailored procedural mechanisms for managing group claims, the rapid growth of third-party litigation funding and ready access to ATE insurance. Taken together, these features have increased the economic viability of such claims and underscore the attractiveness of England as a forum for complex group litigation.

The landmark decisions in *Vedanta*[1] and *Okpabi*[2] laid the foundations for the liability of parent companies for cross-border mass torts. In both cases, the Supreme Court confirmed that a parent company may directly owe a duty of care to individuals harmed by the operations of its overseas subsidiaries, not as a result of corporate ownership, but where the parent company has assumed responsibility for the relevant operations or has exercised a sufficient degree of control over them.

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Though each case will turn on its own facts, the focus of the court is therefore one of substance, not form: while subsidiaries remain separate legal entities in law, what matters is the degree of control the parent company exercises in practice, whether through group-wide policies, corporate governance procedures, sign-off rights or direct involvement in operational activities.

The Mariana Dam litigation[3] is the latest and most significant application of these principles. Over 600,000 claimants issued claims in England against the UK-domiciled parent entity of BHP Brasil for catastrophic damage caused by the collapse of the Fundão tailings dam in Brazil, said to be the worst environmental disaster in the country's history. The dam was constructed and operated by Samarco, a Brazilian mining company jointly owned by BHP and Vale, another Brazilian mining entity.

The proceedings were initially struck out by the High Court in 2020 on grounds of procedural impracticality, with Mr Justice Turner citing the complexity of the proposed trial in light of the size of the claimant group and the fact that the relevant events took place exclusively overseas. However, the Court of Appeal took a different view and overturned that decision, such that the High Court case proceeded to a trial on liability issues in 2025, with Mrs Justice O'Farrell ultimately finding on the evidence that BHP was liable both as a "polluter" under Brazilian environmental law and under Brazil's fault-based regime for its failure to address the dam's known structural issues, despite ownership and operational control resting exclusively with Samarco.

BHP (together with Vale) - though not the direct owner of the dam - was held to be the "directing mind" of Samarco and was involved in Samarco "*at every level, from strategic decisions and dividend shares to detailed operational matters*". The judgment points to evidence of BHP exercising significant oversight of Samarco's operations, including matters relating to dam safety. This included financial and technical audits of Samarco's activities, the results of which were reported to and considered by BHP's senior management team and were therefore subject to ongoing monitoring. BHP sought permission from the Court of Appeal to appeal the High Court's findings on liability, arguing, among other things, that the court had erred in attributing excessive weight to the evidence of governance and audit functions and that such evidence was insufficient to establish BHP's responsibility for Samarco's activities under Brazilian law. However, the Court of Appeal rejected BHP's application, marking another significant victory for the claimants. The parties will now proceed to the next stage of the proceedings, due to commence in Spring 2027, to determine issues of causation, loss and damages.

The willingness of the courts to treat group-wide corporate governance procedures as a basis for establishing parent company liability has since been extended to failures occurring within supply chains. In the recent Court of Appeal decision in *Limbu*[4], England was held to be the appropriate forum for claims against Dyson arising from alleged forced labour practices by a Malaysian supplier engaged by Dyson's Malaysian subsidiary. Central to the Court's reasoning was the fact that Dyson UK implemented and enforced corporate governance practices and ESG policies throughout the group's supply chains, which the Court held was sufficient to establish the necessary nexus for the claims to proceed.

Implications for UK-Based Multinationals and Investors

From *Okpabi* to *Limbu*, the overarching lessons for UK-domiciled parent companies include the following:

Formal corporate separation no longer provides reliable protection from parent liability	Group-wide ESG policies and centralised corporate governance may now serve as evidence of control or an assumed responsibility by parent companies in respect of subsidiary operations, thereby widening the scope of potential liability. Risk management frameworks should therefore be reviewed carefully in light of recent decisions.
Accountability will be determined by control	English courts are increasingly looking behind the corporate veil, not to disregard it, but to interrogate where the real decision-making authority lies. The more a parent company involves itself in setting standards, conducting audits or directing the operations of a subsidiary, the greater the risk that courts will find a duty of care was owed to victims of the subsidiary's operational failures. Multinationals should ensure, as far as practicable, that genuine operational autonomy is retained by subsidiaries and that written policies clearly delineate responsibilities as between group entities.
Shareholder focus	Investors will also be taking stock in light of recent court decisions. As ESG litigation continues to rise, investors are increasingly focused on identifying risk exposure, and closer interrogation of the operations of subsidiaries will surely follow. Corporate groups operating complex, cross-border supply chains in particular will warrant heightened scrutiny.

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—Nupur Upadhyay, Counsel

02

Liability Management Exercises and Restructuring Challenges

Liability Management Exercises and Restructuring Challenges

In the years immediately following the introduction of the Restructuring Plan into English law in 2020, there was an unprecedented uptick in related litigation brought by disaffected minority creditors principally focused on the process of exploring the concepts within, and testing the boundaries of, the Restructuring Plan. This led to a flurry of English High Court and Court of Appeal decisions (as well as related decisions in other jurisdictions, e.g., the Netherlands and Germany). Those decisions provided some welcome clarity on the applicable principles, albeit the application of those principles to different fact patterns remains somewhat in its infancy. In part as a reaction to this experience, the past year or so has been marked by greater focus on out-of-court liability management exercises ("**LMEs**"), as a result of which we have now seen in Europe some early examples of the non-pro rata LMEs (and associated challenges) which have been a feature of the U.S. landscape since at least the *J. Crew* decision in 2017.[5]

LMEs in Europe

LMEs are not new to European financial markets,[6] but a number of factors have meant that they were less common in Europe: simpler capital structures, a more relationship-driven lender base, stricter directors' duties, higher consent thresholds in English law-governed intercreditor agreements ("**ICAs**") and the availability of relatively flexible and inexpensive court-supervised restructuring tools (in comparison with their Chapter 11 counterparts).

However, one aspect of ICAs has proven to be fertile ground for this type of LME, the "distressed disposal" provision. This provision empowers an Instructing Group of creditors (typically the senior secured creditors holding more than 50%, or two-thirds, of the total senior secured debt) to instruct the Security Agent, following a distress event such as an Event of Default, to dispose of the debtor's assets (e.g., shares) and/or release Transaction Security and liabilities, enabling the sale of the borrower group free of existing liabilities. The appeal of the mechanism to certain creditors lies in the Instructing Group's capacity to restructure the debtor's liabilities without needing to satisfy the heightened consent thresholds—typically 90% and, in some cases, unanimity—ordinarily required to amend "sacred rights" under the finance documents.

Whilst the proceeds of a distressed disposal must be distributed in accordance with the priority waterfall set out in the ICA, nothing prevents an ad hoc group of majority creditors from being exclusively offered a non-pro rata uptier exchange immediately after the pro rata distribution of the replacement debt through the waterfall. In *Selecta*[7], for example, the shares of Selecta Group B.V. were acquired by a creditor-owned Bidco through a court-sanctioned Dutch share pledge enforcement as part of a distressed disposal recapitalisation, resulting in the allocation of most of the post-restructuring group's equity to the new money providers. To comply with the pari passu treatment requirement under the ICA, all first lien holders' notes were exchanged into lower-ranking third-out debt issued by Bidco at 85% of par value. Subsequently, the former first lien noteholders were offered the opportunity to exchange their third-out debt and equity into first-out debt at par, thereby recouping the 15% haircut. However, the new first out tranche provided that sacred rights could be amended by a simple majority.

The third out minority noteholders are now challenging the share pledge enforcement before the Dutch and New York Courts. In the Netherlands, the Dutch Court of Appeal recently heard argument as to whether the minority creditors have standing to challenge the early approval of the share pledge enforcement.

In *Hunkemöller*, an ad hoc group of minority Senior Secured Noteholders is also challenging—this time before the English High Court[8]—the use of the distressed disposal mechanism. The minority noteholders claim that (i) the majority creditor's uptiered notes did not constitute valid senior secured credit participations capable of instructing the Security Agent; (ii) the Security Agent was on notice of, or turned a blind eye to, the invalidity of those instructions; and (iii) the majority creditor's exercise of its majority vote under the ICA was in bad faith and breached the "class voting principle" (which we discuss below).

The English Courts' Approach to LMEs

Given the historic absence of non-pro rata LMEs in England/Europe, directly relevant case law is limited.[9] In particular, the market has, for more than two decades, been asking itself how the English Courts will apply the class voting/minority protection principle, which was the subject of the English Court's decision in *Redwood Master Fund Ltd v TD Bank Europe Ltd* in 2002.[10] This principle provides that majority members of a class are required to exercise their powers in good faith in the interests of the class as a whole and in a way that is not oppressive or unfair to the minority. The principle was given a further lease of life in the 2012 decision of *Assenagon Asset Management SA v Irish Bank Resolution Corp Ltd*, which related to the validity of exit consents in the context of bond restructurings.[11]

The English Courts' approach to these challenges remains largely untested, a reflection of the fact that, as noted, LMEs are yet to have their "J. Crew" epiphany in Europe. Whether the present lack of judicial guidance will galvanise, or deter, the appetite for daring LMEs remains unclear. In any event, the English Courts will carefully scrutinise the construction arguments that are central to the operation of LMEs. By resorting to the broader overarching, extra-contractual concepts of "fairness" or "abuse" as part of their analysis, the English Courts have the potential to constrain certain LME designs. "Fairness" has proved to be a particularly relevant consideration in the courts' assessment of restructuring plans to date. The Court of Appeal in *Thames Water*[12] concluded that there was no "*hard-edged rule*" to suggest that the views of out-of-the-money creditors should be disregarded in assessing the fairness of a plan. The Court of Appeal in *Petrofac*[13] endorsed this approach[14] and clarified that an equal opportunity to participate in new money could not independently justify an unfairness in the allocation of restructuring benefits, particularly so when out-of-the-money creditors may have legitimate reasons to refrain from committing additional capital.[15]

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There remains real uncertainty as to the application of these principles in different contexts: as Mr. Justice Briggs (as he then was) noted, the extent and content of the minority protection principle "*inevitably depend[s] on the context in which it is alleged to operate*".[16] For example, it may be that LMEs that do not involve amending debt documents but rely on existing baskets would not offend the *Assenagon* principle. The coercive nature of an exit consent would, on the other hand, be heightened in circumstances where information exchanges between noteholders are unduly restricted, forcing them into accepting an exchange offer out of fear that a sufficient number of other noteholders would do so, at their expense. The intersection of these dynamics with rising competition law challenges to creditor cooperation agreements, which we discuss below, will be an area to monitor. One might anticipate that the concept of fairness, as discussed in the Court of Appeal's decisions in relation to the Restructuring Plans of both *Thames Water* and *Petrofac*, will also come into play in this adjacent LME context.

Cross-Border Litigation and Jurisdictional Challenges

The international nature of financing documentation (e.g., New York law-governed indentures, English law-governed ICAs, Dutch share pledges, etc.) and of the parties means that restructuring disputes usually involve cross-border, multi-jurisdictional strategies. As noted above, the minority noteholders in both *Hunkemöller* and *Selecta* commenced parallel proceedings in the U.S. and the Netherlands, as well as in England in the case of *Hunkemöller*. The prevalence of Dutch holding and group companies in international corporate structures and the consequent frequency with which key liability management steps engage Dutch law and the Dutch Courts (e.g., share pledge enforcements) mark out the Netherlands as a key forum for LME-related litigation in Europe. The English Courts will likely continue also to be a busy forum given, amongst other things, the prevalence of English law-governed finance documents and their experienced approach to COMI shifts. This jurisdictional interplay was part of the context of challenges to the recognition of Part 26A Restructuring Plans post-Brexit, including in the context of the Adler and McDermott restructuring plans (in Germany/Luxembourg and the Netherlands respectively). [17]

Can Cooperation be Characterised as Collusion?

Cross-border litigation provides minority creditors with a broader range of substantive legal frameworks, and applicable case theories, in support of their claims, thus widening the scope of legal issues in play. Most recently, some stakeholders have sought to deploy competition law arguments in LME-related litigation. In their U.S. lawsuit, Selecta's minority noteholders allege that the majority noteholders' cooperation agreement restrained trade in the first lien debt market, stripping the minority holders' notes of their economic value.[18] In contrast, Optimum's complaint[19] alleges that the cooperation agreement between the company's lenders (the "**Coop Group**") constitutes (i) a boycott of Optimum given the Coop Group's agreement not to restructure Optimum's debt absent supermajority approval from the Coop Group; and (ii) an unlawful price-fixing scheme that prevents Optimum from negotiating individual discounts with each of its lenders. Optimum further alleges that the Coop Group's control of 88% of the entire leveraged finance market and 99% of Optimum's outstanding debt (i) made it impossible to restructure its debt; and (ii) led to the resignation of Optimum's legal counsel.[20]

In response, the amicus curiae[21] filed in support of the Coop Group advances that (i) cooperation agreements protect creditors against borrowers' attempts to implement "*coercive LMEs*"[22] by pitting creditors against one another and are economically efficient insofar as they enhance uptake and protect minority creditors from value destruction; and (ii) antitrust/competition law is not aimed at preventing creditor cooperation that seeks to maximise the debtor's repayment prospects. The amicus further refers to the fact that *"nearly all anti-cooperation provisions have failed to clear the market"* as evidence that restricting cooperation agreements would impair borrowing availability. In parallel, anti-cooperation language has become more frequent as the spontaneous contractual response to the rise of cooperation agreements, encompassing express bans on cooperation agreements, voting and concentration caps, disenfranchisement provisions and disqualified counsel provisions. Whilst the vast majority of these provisions have, to date, failed to clear the market, increased competition in private markets has led lenders to make limited concessions. Their novelty also means that a number of legal issues remain untested. It is, for example, unclear whether a borrower could effectively nullify ab initio a cooperation agreement to which it is not party.[23] It is also theoretically possible—albeit less likely—that restricting lenders from cooperating post-debt issuance could itself be deemed to restrict competition by preventing horizontal competitors from engaging in pro-competitive coordination.

It is worth noting that, despite the temptation to generalise, cooperation agreements remain highly bespoke. As a result, any competition law-related issues cannot be considered in the abstract and will invariably involve fact-specific questions, such as the definition of, and impact of the relevant cooperation agreement on, the relevant market(s) in play in the situation concerned. The English Courts have not yet been invited to adjudicate in depth on the boundary between cooperation and collusion insofar as it relates to cooperation agreements specifically.[24] However, and notwithstanding the differences in applicable legal principles, the U.S. Courts' jurisprudence should also prove instructive. Until then, cooperation agreements will continue to adapt to changes in market dynamics. Tiered cooperation agreements now provide for multiple tiers of treatment between creditors, in contrast with the usual uniform pro rata treatment, subject to the steering committee's standard entitlement to a carve-out premium. By replacing exclusionary, winner-takes-all LME structures with inclusive—albeit unequal—participation frameworks, these more flexible types of cooperation agreements seek to enhance uptake and, by implication, minimise the related prospects of adversarial litigation on competition law grounds.

03

Competition Law Claims and Collective Proceedings

Competition Law Claims and Collective Proceedings

The past year has seen a striking convergence of public enforcement and private litigation in competition law. The collective proceedings regime before the Competition Appeal Tribunal ("**CAT**") is receiving enhanced judicial scrutiny—at certification, in settlement oversight and in the management of litigation funding—while competition authorities in both the UK and the EU are expanding enforcement into new areas, most notably labour markets. At the same time, the regime has shown its capacity to deliver significant outcomes for consumers: the CAT's award of approximately £1.5 billion in *Kent v Apple*[25], though now subject to appeal, marks the first successful collective damages award to be obtained at a first instance trial.

Collective Proceedings: A New Era of Judicial Gatekeeping

The FX Collective Proceedings – A Landmark from the Supreme Court

The Supreme Court's judgment in *Evans v Barclays Bank plc*[26] (December 2025) is a landmark for the collective proceedings regime.

Arising from foreign exchange spot trading claims brought on behalf of sophisticated institutional investors, the decision recalibrates the certification framework in several key respects. The merits of the underlying claims now matter: weak claims may be refused opt-out certification, even where they clear the strike-out threshold. Additionally, where the proposed class comprises sophisticated institutions capable of pursuing claims individually, opt-in proceedings may be regarded as "practicable" regardless of whether those claims would actually be brought.

The Court rejected any presumption in favour of opt-out, requiring the CAT to balance access to justice considerations against protecting defendants from oppressive litigation, with appellate courts deferring to the CAT's evaluative judgment absent legal error. Finally, the Court confirmed that the *Hollington v Hewthorn* rule applies: findings of other decision-makers are inadmissible in subsequent proceedings as evidence of the facts found,[27] with significant implications for the evidential foundation of follow-on collective proceedings.

The Supreme Court upheld the CAT's decision to refuse certification, but noted the CAT had stayed the proceedings to allow the proposed class representative time to issue revised opt-in proceedings. That re-launch is now underway and will be a key early indicator of how the gatekeeping framework plays out in practice post-*Evans*.

"The Court rejected any presumption in favour of opt-out, requiring the CAT to balance access to justice considerations against protecting defendants from oppressive litigation"

The CAT's subsequent decision in *Shotbolt v Valve*[28] (January 2026) reinforced this interventionist approach. While certifying the claim on an opt-out basis, the Tribunal required changes to the advisory committee, imposed conditions on funding arrangements and indicated it would revisit the funder's priority agreement at the distribution stage. More recently, in *Waterside Class Limited v Mowi ASA*[29], the CAT refused to certify an opt-out collective action alleging a salmon producers' cartel, determining the proposed litigation costs of over £20 million as disproportionate to the likely benefits to class members—estimated at less than £10 per person—and criticising the proposed class representative and her legal team for failing to disclose contingent success fees, for the class representative's self-authorised remuneration of £300 per hour, and for not exploring cost synergies with parallel supermarket proceedings.[30] The Tribunal stopped short of striking

out the claim, but the decision underscores the CAT's increasingly rigorous approach to cost-benefit scrutiny during certification.

Settlement Oversight – *Merricks v Mastercard*[31]

In May 2025, the CAT approved the £200 million settlement in *Merricks v Mastercard*—the first major settlement in the collective proceedings regime—providing critical guidance on settlement oversight and funder returns. Under the "just and reasonable" test in Rule 94 of the Competition Appeal Tribunal Rules 2015, the CAT assesses the proposed settlement from the perspective of class members, not the funder. The Tribunal determined a 1.5x return on investment was appropriate, far below the funder's contractual entitlement of approximately £179 million, signalling that it will not rubber-stamp funding terms which disproportionately divert proceeds from the class. The judgment also raised the possibility of independent assessment of legal fees, further indicating the CAT's intention to meaningfully oversee the costs of collective litigation.

Regarding future settlement application procedure, the CAT now expects full and frank disclosure, comprehensive King's Counsel opinions on the merits of settlement terms, and will likely adjourn where applications are made close to trial—reinforcing its role as a gatekeeper of class-wide compromises.

Funding Economics and the Recalibration of Risk and Reward

The implications of recent rulings for litigation funding are undoubtedly significant. Where a funding agreement is subject to CAT oversight, as in all Collective Proceedings Order ("**CPO**") claims, funders cannot treat contractual returns as guaranteed. Rather, the CAT will examine funder portfolio economics, benchmarked against market data, and constrain returns where outcomes for class members are poor relative to original estimated claim values. Funders must therefore now price in potential judicial moderation, which may dampen appetite for more speculative funded claims.

The tension between funders and the CAT's supervisory jurisdiction remains evident. In February 2026, the High Court granted Innsworth Capital, the funder in *Merricks*, permission to bring a judicial review challenging aspects of the CAT's distribution plan. A Divisional Court hearing is expected later in 2026, and the distribution of settlement proceeds to class members has been stayed pending the outcome.

CPO Consultation and Reform

In August 2025, the Government launched a call for evidence on the collective proceedings regime, focusing on funding, take-up rates and distribution of proceeds. That process closed in October 2025 and is expected to be followed by a formal consultation on reforms to the current regime, sometime in 2026.

In parallel, the Law Commission—backed by the Department for Business and Trade—has launched a new project to consider the potential introduction of a broader, consumer class actions regime which would operate beyond the realms of competition law. If taken forward, this could represent a further structural shift in the UK's consumer redress architecture, alongside the existing CAT collective proceedings regime. This may prove a boon for claimant-side lawyers, while disruptive for consumer-facing businesses.

" In August 2025, the Government launched a call for evidence on the collective proceedings regime, focusing on funding, take-up rates, and distribution of proceeds. It appears, following that call for evidence, that potentially material changes to the CPO regime are afoot. "

—Leo Kitchen, Partner

CAT Practice Directions (2025)

The CAT issued three new Practice Directions in 2025, signalling greater procedural rigour to a CPO regime renowned by some as being unmanageable. Practice Direction 2/2025 imposes reduced skeleton argument page limits (20 pages for most applications, 25 for CPO applications, 50 for trials) and caps on expert reports for certification applications. Practice Direction 3/2025 addresses expert evidence, requiring Tribunal approval of precise expert questions, early methodology disclosure, structured joint expert meetings without lawyers present, and "teach-in" and "hot tub" sessions. It also limits

lawyers' involvement in preparing expert reports, reinforcing the expectation of genuine independence already codified by the CPR.

Competition Enforcement in Labour Markets

Alongside the evolution of the collective proceedings regime, 2025 saw a marked expansion of competition enforcement into labour markets—an area of increasing significance at the intersection of public regulation and commercial practice.

In June 2025, as we discussed in depth in a prior client alert,[32] the European Commission imposed fines totalling €329 million against Delivery Hero and its subsidiary Glovo—companies in the online food delivery sector—for what it determined were three interlinked anti-competitive practices: their engaging in a no-poach agreement (whereby the companies agreed not to hire or solicit one another's employees); their exchange of commercially sensitive information; and illegal market sharing. This constitutes the Commission's first standalone decision sanctioning no-poach agreements, which it states disadvantage workers by suppressing wages and reducing labour mobility and negatively impact the sector by hurting productivity and innovation. This is also the first time the Commission has imposed penalties for the anti-competitive use of a minority shareholding in a competing business. The Commission found that Delivery Hero influenced Glovo—both "*directly, by using or threatening to use its approval rights over specific decisions*", and *"indirectly, by influencing other Glovo shareholders"*[33]—to remove or avoid geographic overlaps in the European Economic Area's markets for online food delivery. Both companies admitted liability and settled, with Delivery Hero fined about €223 million and Glovo about €106 million.

National authorities are also escalating enforcement. To name a few examples:

France: Fines for "Gentlemen's Agreement" No-Poach Pacts	In June 2025, the French Competition Authority issued fines totalling €29.5 million for two no-poach agreements, between Alten and Ausy (now Randstad Digital), and between Expleo and Bertrandt; the Ausy was granted immunity from fines because of its status as a leniency applicant. These parties had agreed to general, open-ended "gentlemen's agreements"—with no time limits—not to solicit or hire each other's staff in the engineering, technology consulting and IT services sectors.
Italy: First Labour Market Cartel Investigation Launched	In January 2026, following a whistleblower complaint, the Italian Competition Authority opened up its "*first investigation into a restrictive agreement in the labour market*",[34] between seven companies that potentially coordinated to limit the hiring of automated machine validation specialists for the packaging of various consumer goods.
Netherlands: IT Sector Probe Signals Wage and Mobility Concerns	In February 2026, the Netherlands Authority for Consumers and Markets announced its investigation into an IT company for suspected no-poach agreements, remarking in its press release that, when employees find it more difficult to change jobs, this may lead to lower wages or worse employment conditions.
Portugal: First Court-Backed Fine for Anti-Competitive Labour Practices	In March 2026, Portugal's Competition, Regulation and Supervision Court issued Portugal's first judicial confirmation of a fine imposed for anti-competitive labour practices, exceeding over €3 million on three companies in the technology sector.

In the UK, the Competition and Markets Authority ("**CMA**") has published guidance for employers on no-poach, wage-fixing and information-sharing, commissioned research on labour-market competition and opened various investigations and enforcement actions. For example, on March 21, 2025, the CMA imposed fines totalling £4,240,356 on four of the UK's largest sports broadcast and production companies—BT, IMG, ITV and BBC—for their unlawful exchange of sensitive pay information, which they used to coordinate on pay rates for freelancers such as camera operators and sound technicians.

These cases indicate increased scrutiny of competition in labour markets, both in the UK and beyond. Against this backdrop, employers should refresh compliance programmes, review hiring practices and any cross-employer staffing covenants and audit minority investment relationships with competitors to identify potential channels for sensitive information exchanges.

Practical Considerations

For Defendants

The *FX* judgment supports defendants seeking to resist opt-out certification, particularly where claims are weak or the class comprises sophisticated entities capable of litigating individually. Settlement negotiations must account for the CAT's rigorous scrutiny of terms and the allocation between class members and funders. The *Merricks* judgment also gives defendants insight into funder dynamics and limits that the CAT may impose on returns. Defendants should further be prepared to challenge the admissibility of regulatory findings where decisions were not addressed to them.

For Claimants and Funders

Claimants and funders arguably face a more demanding environment than ever before. Merits now matter at certification, requiring robust claims, and class composition is a live issue, as predominantly sophisticated classes may be directed to opt-in proceedings. Funding arrangements should account for the CAT's oversight, as excessive contractual returns and bloated budgets are unlikely to survive scrutiny. Parties should also prepare to comply with detailed procedural requirements on settlement applications, including the independent evaluation of legal costs.

Looking Ahead

Public enforcement of competition law is both intensifying its scrutiny of traditional markets and targeting new areas of commercial activity, while the mechanisms for private enforcement are subject to increasing judicial oversight. Businesses navigating collective claims or ensuring compliance in their employment and investment practices should therefore adapt to a more exacting regulatory and judicial environment.

04

National Security and Foreign Investment Screening

National Security and Foreign Investment Screening

Following the news that the UK Supreme Court will hear LetterOne's judicial review challenge to its forced divestment of Upp Corporation under the National Security and Investment Act 2021 ("**NSIA**"), attention has returned to the courts for businesses engaged in cross-border mergers, acquisitions and investments.

The UK continues to be one of the most active investment screening regimes globally, with notifications increasing at a rapid rate (up 26% year-on-year, according to the government's latest report).[35] This reflects the NSIA's broad scope, and its mandatory notification requirements across what is soon to be 19 sensitive sectors.[36] Even where a notification (mandatory or otherwise) is not made, transactions remain vulnerable to a call-in by the government for a period of five years following a trigger event. Each of these notifications brings with it the chance of a final order which could see transactions ultimately unwound on national security grounds, with what appears to be limited transparency around the decision, limited compensation, and limited scope for judicial redress—a situation that sits uneasily alongside the expectations of investors operating in what remains, in other respects, one of the world's most open economies. The approach that the Supreme Court adopts in the forthcoming LetterOne appeal (discussed below) will therefore have important implications for investors.

2025 saw two key judgments in this space. The first of these came in July 2025, where the High Court upheld the government's order requiring FTDI Holding Limited (a UK holding company ultimately owned by five Chinese state-backed funds) to divest its 80.2 per cent stake in Future Technology Devices International, a UK semiconductor company.[37] The acquisition had completed in December 2021 and was called in under the NSIA in November 2023; the final order followed in November 2024. Despite finding that the government had failed to provide sufficient reasons for the final order, the Court ultimately concluded that the failure did not invalidate the order, since the evidence at trial demonstrated that the Secretary of State did in fact have adequate reasons, they simply had not been articulated in the order itself.

26%

UK investment screening notifications are up 26% year-on-year, making the UK one of the most active regimes globally.

19 Sectors

The NSIA applies broadly, with mandatory notifications soon covering 19 sensitive sectors.

5 Years

Even without a notification, transactions can be called in for review for up to five years after a trigger event.

Final Orders

Each notification carries the risk of a final order that may unwind transactions on national security grounds.

The second was the Court of Appeal's judgment in LetterOne's judicial review claim arising out of its forced divestiture of Upp Corporation, a small fibre broadband provider in East Anglia which LetterOne had acquired in January 2021. Following Russia's invasion of Ukraine in February 2022, four of LetterOne's five ultimate beneficial owners ("**UBOs**") were sanctioned by the UK. The Investment Security Unit ("**ISU**") called in the acquisition in May 2022, and in December 2022 the Secretary of State issued a final order requiring full divestiture of Upp on national security grounds. Despite LetterOne's various proposals to ring fence the broadband provider from Russian influence, including removing the sanctioned UBOs from the board, these less onerous remedies were rejected and Upp was sold on the open market in September 2023 at a price which LetterOne contended was far below its true value. A detailed discussion of the Court of Appeal's judgment can be found in our Antitrust and Foreign Investment team's alert[38], but the two core takeaways were: (i) the Court's finding that the fact that the forced nature and timing of the sale may have depressed the price did not undermine the proportionality of the final order; and (ii) its rejection of investor entitlement to "fair value" compensation; that is, a top-up to reflect what the asset might have fetched absent the compulsion to sell. These conclusions represent a significant departure from conventional investor expectations around expropriation and fair value.

In both the LetterOne and FTDI cases, the courts considered that the executive is to be accorded a high degree of respect in its national security assessments. In *FTDI Holding Limited*, the Court quoted the LetterOne first instance judgment, agreeing with Farbey J's assertion that *"the court will treat as axiomatic that Parliament has entrusted the assessment of risk to national security to the executive and not to the judiciary. The court will acknowledge and adhere to the constitutional boundary between judicial and executive power"*. This is perhaps unsurprising as a matter of public law principles, but the practical reality for would-be challengers is sobering: the hurdles to a successful judicial review of an NSIA final order are formidable, and the closed material procedure (under which sensitive evidence may be disclosed only to a judge and a special advocate) adds a further layer of asymmetry between private parties and the Government.

Although relatively infrequent (to date there have only been three judicial review claims in respect of final orders made under the NSIA), these cases exemplify a significant trend in which public law principles are increasingly shaping the landscape for commercial transactions. Similar actions have been seen across Europe, with major players placing reliance on bilaterial investment treaties and public law actions to seek compensation for adverse national security-based decisions. Conventional takeover regulation primarily revolves around the interests of the company (whether the target or the acquirer), its shareholders and other stakeholders. By contrast, the proliferation of screening mechanisms globally pushes the regulation of cross-border takeovers firmly into the domain of public law, with limited, if any, emphasis on the interests of specific private stakeholders involved in the transaction that is the subject of such screening.

However, the Court of Appeal may not have the final word on the calculation of compensation. In March 2026, the UK Supreme Court granted permission to appeal on the question of the proper standard of compensation under the NSIA.[39] The hearing is expected to take place in November this year. It remains to be seen whether the Supreme Court's decision will serve to recalibrate investor expectations (and how NSIA risk is priced and allocated in deal documentation), but it is unlikely that its judgment will bring an end to judicial review challenges when tensions between commercial interests and public law come to a head.

"The court will treat as axiomatic that Parliament has entrusted the assessment of risk to national security to the executive and not to the judiciary. The court will acknowledge and adhere to the constitutional boundary between judicial and executive power."

05

Cryptocurrency and Artificial Intelligence Litigation

Cryptocurrency and Artificial Intelligence Litigation

Courts and regulators are racing to keep pace with advances in frontier technologies, which are otherwise overtaking traditional legal precedent, legislation and regulation. Cryptocurrency and artificial intelligence are prime examples of such technologies. Recent developments illustrate a rapidly evolving regulatory and legal landscape, but also one which presents novel questions and resulting potential legal uncertainty for businesses operating at the outer bounds of technological advancement.

Cryptocurrency

Regulatory evolution

The regulatory framework for crypto-assets in the UK is maturing. In particular, in 2027, the new regime under the Financial Services and Markets Act will bring crypto-assets within the FCA's regulatory remit through a new "Crypto Assets Order". Once in force, this will require FCA authorisation and the observance of conduct standards for firms dealing in crypto-assets, bringing the sector closer to parity with the regulatory framework for traditional financial services and instruments. In parallel, the UK is developing a bespoke framework for fiat-backed stablecoins used in payments; current proposals would see the FCA regulating issuance and custody and the Bank of England overseeing systemically important stablecoin payment systems—namely those large enough that failure or disruption could affect consumers, merchants or wider financial stability. The OECD's Crypto-Asset Reporting Framework also came into force in the UK on 1 January 2026, requiring crypto-asset service providers to collect and report detailed transaction data to HMRC, aligning crypto tax transparency with the standards applied to traditional financial services. Taken together, these developments reflect a move towards a more structured regulatory framework aimed at strengthening long term commercial confidence in the UK as a crypto hub. They also reflect a broader trend towards increasing regulation of cryptocurrencies across Europe, with most European countries now in the process of licensing crypto-asset service providers under the Markets in Crypto-Assets Regulation, the EU's first comprehensive legal framework for regulating crypto-assets and crypto-asset service providers.

"[T]he determination of property status by statute supports the general shift in the focus of crypto litigation: from establishing whether rights exist, to determining how they are best enforced…"

—Leo Kitchen, Partner

Statutory recognition of digital assets

The commencement of the Property (Digital Assets etc) Act 2025 on 2 December 2025 also marks a significant milestone in the cryptocurrency legislative framework, explicitly recognising the capability of digital assets (such as cryptocurrencies and non-fungible tokens) to constitute personal property under English law, following a string of cases which explored that issue. This statutory clarity strengthens the basis for ownership claims over crypto-assets and, critically, facilitates the use of proprietary remedies, including freezing injunctions, in fraud and asset recovery proceedings. It also means that digital assets like cryptocurrency can be passed through inheritance and recovered by creditors during bankruptcy, much like traditional assets.

Fraud and asset recovery

Notwithstanding these developments, the courts are still determining how traditional common law causes of action interact with this new category of personal property. In March this year, the High Court rejected an attempted claim in conversion for the alleged theft of approximately £180 million in bitcoin, on the basis that the law of conversion applies only to physical property and that Supreme Court precedent represents a "clear block" to its application to intangible digital assets. Importantly, however, the Court recognised that there may be circumstances in which the courts develop an analogous cause of action to address wrongful interferences with digital assets, a direction recently endorsed by the Law Commission in its 2023 Final Report. The decision lays bare an important gap: whilst the 2025 Act establishes that crypto-assets are property, victims of cryptocurrency fraud currently face a narrower set of tortious remedies than in disputes over tangible assets. Whether the courts will fill that gap through common law development, or whether statutory reform will be required, remains to be seen.

On the other hand, the determination of property status by statute supports the general shift in the focus of crypto litigation: from establishing whether rights exist, to determining how they are best enforced, including, in particular, how to approach questions of offshore tracing exercises and commingled assets. This trend aligns with observations from the OneCoin / "Cryptoqueen" and "BitQueen" fraud schemes, as well as the recent judgment in *Sachs v Snape*, which have underscored the courts' readiness to award powerful remedies in cases of large-scale alleged fraud, including worldwide freezing injunctions and disclosure orders against exchanges.

Artificial Intelligence

IP and copyright enforcement

Courts have also started to grapple with the legal implications of generative AI. In a landmark first-instance judgment in November 2025, the Munich Regional Court held in *GEMA v OpenAI* that ChatGPT had unlawfully "memorised" parts of certain German song lyrics, in breach of German and EU copyright rules. The Court found that the lyrics had been embedded in the chatbot in a manner that allowed them to be directly reproduced (rather than merely analysed, as would be permissible under lawful text-and-data mining), amounting to unlawful copying. Interestingly, the Court placed responsibility for this infringement squarely on OpenAI as the developer and operator of the system, rather than on end users, with the Court granting injunctive relief and ordering disclosure of use and revenue data as well as damages, to be assessed later. OpenAI's appeal is pending before the Higher Regional Court of Munich.

Closer to home, the English courts are also engaging with AI-related intellectual property questions. In February 2026, the Supreme Court handed down its long awaited judgment in *Emotional Perception AI v Comptroller General of Patents*, fundamentally revising the legal framework governing the patentability of artificial neural networks and aligning UK law with the European Patent Office. That decision overturned two decades of established UK case law; however, alignment with the EPO has provided much-needed legal certainty and created a more stable foundation for AI innovation and investment in the UK.

On the other hand, the decision in *Getty Images v Stability AI* has highlighted the challenges for content holders to prove direct, actionable copyright theft during the model training process itself. The Court emphasised the fact- and evidence-sensitive nature of generative AI disputes: unlike traditional IP infringement claims, each attempt to generate an output produces a different result, making reproducibility of alleged infringement almost impossible. Although Getty has been referred to amongst legal commentators as something of a 'damp squib', it still serves as a warning signal to AI developers, as stronger evidence of infringing outputs may see a different outcome on copyright analysis in future. The broader policy question of where to strike the balance between the AI industry and the creative sector now falls to Parliament, with the Government's consultation on copyright and generative AI still underway. This is complemented by the House of Lords' recently published report into AI, copyright and the creative industries.

European Commission Investigations into Google and Meta

Elsewhere, the European Commission opened investigations into both Google and Meta for potential competition law violations connected to AI. The Commission is examining claims that Google used web publishers' content to power AI features, and YouTube videos to train its generative AI models, without appropriate compensation or an effective opt out for publishers and creators. Meanwhile, the European Publishers Council filed an EU antitrust complaint against Google on 10 February 2026, alleging in part that Google's AI-generated summaries, called "AI Overviews", use journalistic content without consent. Separately, Meta is facing scrutiny over its October 2025 policy change to its WhatsApp Business Solution Terms that allegedly blocked third-party AI assistants from the platform, leaving Meta's own AI tool as the sole option. Meta had revised its policy in March to allow third-party AI assistance subject to a fee, following the Commission's issuance of a Statement of Objections in February 2026. Notwithstanding this, on 15 April 2026 the Commission issued a Supplementary Statement of Objections containing its preliminary finding that the revised policy is functionally equivalent to its predecessor and still violates EU competition rules. These kinds of developments only highlight the ongoing push and pull between technological innovation and regulatory oversight.

06

Motor Finance and Consumer Mass Actions

Motor Finance and Consumer Mass Actions

The motor finance commission saga has provided one of the most consequential illustrations of the intersection between public regulatory frameworks and private law remedies in recent years. What began as a review by the Financial Conduct Authority ("**FCA**") into discretionary commission arrangements evolved into a sweeping Court of Appeal judgment that threatened to rewrite the duties owed by commercial intermediaries, before the Supreme Court intervened to restore orthodox legal principles while nonetheless vindicating one consumer's claim through the statutory unfair relationship jurisdiction.

The Court of Appeal's judgment in October 2024[40] sent shockwaves through the motor finance industry by holding that it was unlawful for car dealers to receive a commission from a lender providing motor finance to a customer, unless it was properly disclosed to the customer and the customer gave informed consent to the payment. Absent informed consent, the lenders themselves were liable, either as primary wrongdoers, or as accessories to the dealer's breach of duty. The decision appeared to dramatically expand the ambit of circumstances in which fiduciary duties may arise in commercial contexts, potentially affecting any intermediated credit arrangement where commissions were not fully disclosed to and informed consent provided by, the customer.

The Supreme Court's judgment of 1 August 2025 substantially reversed this approach, providing important clarification of when fiduciary duties arise in commercial transactions. The Court emphasised that the existence of trust and confidence between parties to a commercial transaction is not itself sufficient for equity to impose fiduciary duties. Rather, what matters is whether the alleged fiduciary has assumed, expressly or by conduct, a duty of loyalty that requires them to subordinate their own interests. In the typical motor finance transaction, the dealer is pursuing its own commercial objective of selling the car throughout, and no reasonable observer would consider that by offering to find a suitable finance package the dealer was no longer pursuing that objective. The Court drew telling analogies to everyday commercial interactions—such as waiters recommending wine or sales assistants advising on garments—that involve assistance, but not the assumption of fiduciary obligations.

"The Court emphasised that the existence of trust and confidence between parties to a commercial transaction is not itself sufficient for equity to impose fiduciary duties; what matters is whether the alleged fiduciary has assumed, expressly or by conduct, a duty of loyalty that requires them to subordinate their own interests."

This clarification provides welcome certainty for intermediated distribution models: commercial parties dealing at arm's length will not ordinarily owe fiduciary duties merely because one provides information or assistance to the other, and consumer vulnerability is a consequence, not a cause, of such relationships.

However, the decision was not a complete victory for lenders. In one of the situations under review, the Court found that the lender-consumer relationship was "unfair" under section 140A of the Consumer Credit Act 1974 (the "**CCA**"),[41] given the high commission rate (55% of the total charge for credit), inadequate disclosureand concealment of the commercial tie requiring the dealer to offer FirstRand's products first. The Court emphasised that determining whether a relationship is unfair is a fact-sensitive exercise but endorsed the following five factors, which will normally be relevant:

Within 48 hours of the judgment being handed down, the FCA announced its intention to consult on an industry-wide redress scheme, initially estimating total industry liability between £9 billion and £18 billion. The FCA subsequently announced the finalised terms of the scheme on 30 March 2026, covering 12.1 million agreements with an estimated total value of £9.1 billion. The scheme uses the FCA's powers under section 404 of the Financial Services and Markets Act 2000 and amendments to the DISP rules to cover agreements potentially dating back to 2007. This represents a significant exercise of regulatory redress powers operating alongside, rather than displacing, private rights under the CCA.

Notably, FCA Chief Executive Nikhil Rathi has warned of the consequences of non-participation, stating that there was "no compelling evidence"[42] that consumers would receive better outcomes through the courts. Consumers who pursue litigation in parallel risk having their scheme complaints paused or excluded altogether, with no guarantee of a better outcome and potential legal fees of up to 30% of any compensation. An FCA spokeswoman described it as "contradictory" that firms who had called for certainty would now seek to challenge the scheme.[43] However, there is no doubt that a number of the lenders are concerned that the terms of the scheme reflect regulatory over-reach. Whilst Lloyds Bank has announced that it does not intend to challenge the terms of the scheme, FirstRand, another of the lender appellants in the Supreme Court proceedings, has described the scheme as "deeply flawed"[44], raised its motor finance provisions to £750 million and announced on 7 April 2026 that it will sell its UK consumer finance business. Although most lenders did not intend to challenge, the FCA has since faced four legal challenges to the redress scheme: three from lenders and a fourth from a consumer group. In response, the FCA has already been forced to adjust its proposed timetable, confirming on 8 May 2026 that it is engaging with the Tribunal on the possibility of suspending some elements of the scheme while retaining those relating to preparatory work and that the case is unlikely to be heard before October 2026.

For clients, several practical considerations emerge. Firms should ensure they have completed detailed portfolio segmentation to understand exposure across DCA and non-DCA arrangements, commission percentagesand disclosure practices. Data readiness is critical, as coverage of agreements from 2007 creates challenges where historical records may be incomplete. Firms should also validate the enhanced disclosure and consent practices they should already have implemented since October 2024. Finally, the judgment's implications extend beyond motor finance to any commission-based consumer credit model, and firms should consider whether similar practices in adjacent product lines require review.

The motor finance decision illustrates a recurring theme: regulatory standards inform private law obligations, and regulatory redress mechanisms may complement or supersede private claims. While the Supreme Court's rejection of expansive fiduciary duties is grounded in orthodox equitable principles, the unfair relationship jurisdiction under the CCA draws explicitly on regulatory standards and consumer protection policies.

Endnotes

[1] *Vedanta Resources Plc and Konkola Copper Mines Plc v Lungowe and Ors.* [2019] UKSC 20
[22] *Okpabi & Others v Royal Dutch Shell Plc & Another* [2021] UKSC 3
[3] *Municipio de Mariana & ors v BHP Plc & BHP Ltd* [2025] EWHC 3001 (TCC).
[4] *Limbu & Ors v Dyson Technology Ltd & Ors* [2024] EWCA Civ 1564
[5] *J. Crew Group, Inc., et al. v. Wilmington Savings Fund Society*, Index No. 650574/2017 (N.Y. Sup. Ct.) (2017).
[6] Starting with *Redwood Master Fund Ltd v TD Bank Europe Ltd [2002] EWHC 2703 (Ch)* in 2002.
[7] ECLI:NL:RBAMS:2025:4217 (13 May 2025).
[8] The minority creditors have also filed claims before the Supreme Court of the State of New York and the Amsterdam District Court. The Dutch court, however, stayed the Dutch proceedings against Hunkemöller's directors pending resolution of the New York and English litigation to avoid the risk of conflicting decisions.
[9] For two examples where the English Court has considered certain relevant issues in relation to Distressed Disposal provisions specifically, see *Saltri III Ltd v MD Mezzanine SA SICAR* [2012] EWHC 3025 (Comm) and *Galapagos Bidco S.A.R.L v Dr Frank Kebekus* [2023] EWHC 13931 (Ch).
[10] [2002] EWHC 2703 (Ch).
[11] [2012] EWHC 2090 (Ch).
[12] [2025] EWCA Civ 475.
[13] [2025] EWCA Civ 821.
[14] Ibid [114].
[15] Ibid [189].
[16] [46] in *Assenagon Asset Management SA v Irish Bank Resolution Corp Ltd* [2012] EWHC 2090 (Ch).
[17] See, in relation to *Adler*, LG Frankfurt am Main, 2-12 O 239/24 (August 22, 2025) where the Frankfurt Regional Court declined to recognise Aggregate's restructuring plan.
[18] *Deltroit Directional Opportunities et al. v. Selecta Group B.V. et al.* 1:25-cv-08956-LAK (S.D.N.Y. Oct. 28, 2025).
[19] *Optimum Communications Inc. v. Apollo Capital Management LP*, No. 25-cv-978 (S.D.N.Y. Nov. 25, 2025).
[20] [17] of *Optimum Communications, Inc v Apollo Capital Management, LP*, Amended Complaint, No 25-cv-9785 (S.D.N.Y. Feb. 25, 2026).
[21] Memorandum of Amici Curiae LSTA, Inc and others in Support of Defendants' Motion to Dismiss the Amended Complaint, *Optimum Communications, Inc v Apollo Capital Management*, LP, No 1:25-cv-9785 (S.D.N.Y. March 25, 2026).
[22] Ibid at I.A.
[23] See also Daniel Winick, Abigail Simon and Dana O'Shea, 'The Rise of Anti-Cooperation Provisions in US Credit Documents' (2026) 5 JIBFL 302.
[24] In *Re Thames Water Utilities Holdings Ltd* [2025] EWHC 338 (Ch), the Class B AHG argued that the Class A Creditors' June Release Condition – which provided that no additional super-senior-secured funding will be made available unless a lock-up agreement was entered into by at least 66.6% of the (new) super-senior lenders and 66.6% of the Class A creditors - infringed competition law by restricting access to alternative financing options, effectively giving Class A creditors veto rights over the recapitalisation of the group. Mr. Justice Leech dismissed these arguments, finding that the Class B AHG's evidence was "highly artificial" and did not satisfy the balance of probabilities. The point was not pursued on appeal.
[25] [2025] CAT 67
[26] [2025] UKSC 48
[27] Ibid, at [152]
[28] [2026] CAT 4
[29] *Waterside Class Limited v Mowi ASA and others* [2026] CAT 32
[30] [2026] CAT 32
[31] [2025] CAT 28
[32] https://www.paulweiss.com/insights/client-memos/eu-imposes-fines-for-market-sharing-no-poach-restrictions-and-information-sharing-facilitated-by-a-minority-stake
[33] European Commission, Press Release, *Remarks by Executive Vice-President Ribera on the adoption of a cartel settlement decision against Delivery Hero and Glovo* (2 June 2025), available here.
[34] Italian Competition and Market Authority, Press Release, *The Italian Competition Authority investigates Akkodis Italy, Coesia, G.D, I.E.M.A., I.M.A., S.I.A. and SPAIQ over possible cartel in the labour market* (26 January 2026), available here.
[35] See the Antitrust and Foreign Investment team's client alert here.
[36] For more detail on the changes to the NSIA notification sectors, see the recent alert published by the Antitrust team, available here.
[37] *FTDI Holding Ltd, R (On the Application Of)* v *Chancellor of the Duchy of Lancaster in the Cabinet Office* [2025] EWHC 1922 (Admin). In addition, see our Antitrust team's alert on the case here.
[38] https://www.paulweiss.com/insights/client-memos/uk-court-rules-no-right-to-fair-value-compensation-for-forced-business-sale-for-national-security-concerns
[39] Case number UKSC/2026/0012.
[40] (1) Johnson v FirstRand Bank Limited (London Branch) T/A Motonovo Finance (2) Wrench v FirstRand Bank Limited (3) Hopcraft v Close Brothers Ltd [2024] EWCA Civ 1282
[41] Ibid, at [174]
[42] See "*Go to Law and You're Out of Our Scheme, FCA Tells Motor Finance Claimants*", Law Gazette (30 March 2026), reporting remarks by Nikhil Rathi at an FCA media briefing on the motor finance consumer redress scheme: Here
[43] See "Car finance compensation scheme faces challenge and delay, BBC News (22 April 2026): Here
[44] See "*FirstRand jacks up UK car loan provision to $993 mln*", Reuters (7 April 2026): Here

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