LITIGATION

COMMERCIAL LITIGATION CASE UPDATE

EDITION 2 / 2026

HFW LITIGATION

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We are delighted to present the latest edition of the HFW English Commercial Litigation Case Update, a summary of relevant recent key cases. HFW is a global, sector-focused law firm, with over 700 lawyers working across the Americas, Europe, the Middle East, Asia, and Australia.

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If you are interested in receiving a bespoke training session on the cases referred to in this Update, or on any other cases or topics of interest, please contact your usual contact at HFW or the editors Andrew Williams and Nicola Gare.

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The Commercial Litigation Case Update – Edition 2 / 2026

1.The United Kingdom Hydrographic Office v Samyung Enc Co Limited [2026] EWHC 206 (Ch)

Court: The High Court (Chancery Division)

Date: 4 February 2026

Summary

The English High Court considered the consequences of a defendant's persistent failure to comply with disclosure orders in ongoing proceedings. The court held that continued non-compliance would justify striking out the defendant's defence and judgment entered in favour of the claimant, even where the claim is for unliquidated damages.

The judgment highlights the court's willingness to impose severe sanctions where a party's non-compliance threatens the fairness and efficient conduct of litigation.

Background

In this case, which arose from United Kingdom Hydrographic Office (**UKHO**'s) claim that Samyung Enc Co Limited (**Samyung**) had breached its obligations under various licensing agreements, UKHO brought two applications against Samyung. First, UKHO sought an order that unless Samyung complied with various previous disclosure orders by 13 February 2026, its defence would be struck out and judgment entered for UKHO. Second, UKHO sought permission for alternative service if Samyung ceased to be legally represented and failed to provide an address for service within the jurisdiction.

In November 2022, Sir Paul Morgan struck out parts of Samyung's defence and granted summary judgment to UKHO on liability, finding that Samyung had no realistic prospect of defending the claim due to its admitted misuse of the data under the terms of its licence with UKHO. An inquiry into damages and disclosure was ordered so that UKHO could quantify its losses. Samyung failed to comply with the disclosure order on time, and UKHO contended that the information it eventually received was unclear and unsatisfactory.

At a Costs and Case Management Conference in January 2025, disclosure was ordered to assess quantum and progress the claim. Again, Samyung failed to provide disclosure, leading UKHO to obtain an order requiring compliance by 14 March 2025 and permission to seek an unless order should there be non-compliance. Samyung failed to comply with the disclosure order, resulting in an unless order being granted in April 2025.

Simultaneously, Samyung's legal representatives applied to come off the record after Samyung advised them to stop working on the matter. Samyung then entered Rehabilitation proceedings, and an administrator was appointed in South Korea. Samyung failed to provide an alternative address for service in the jurisdiction.

In June 2025, UKHO successfully served the order on the administrator. However, Samyung contended that service was not compliant with the Hague Service Convention and had still not provided the required disclosure.

The High Court (Chancery Division) Judgment

In granting the first application for an unless order (requiring disclosure by 13 February 2026), the court considered whether striking out parts of Samyung's defence was an appropriate sanction. The court referenced its powers under CPR 3.4(2) which allows a court to strike out a statement of case and CPR 3.4(3) to make any consequential order it considers appropriate. The court then applied the three-stage test in *Denton v TH White Ltd* [2014] EWCA Civ 906, and considered whether:

1. Samyung's breaches were significant or serious?

The court assessed the facts and held that Samyung's breaches were significant and serious. First, Samyung had committed multiple breaches by failing to provide disclosure despite repeated court-ordered deadlines. Second, the breaches remained unremedied for a prolonged period without explanation as to the progress of disclosure. Third, the breaches jeopardised UKHO's case, as it could not properly assess its losses without disclosure of the evidence.

2. there was a good reason for Samyung's breaches?

The court held there was no good reason for Samyung's breaches since it provided no evidence justifying them. The court inferred Samyung's non-compliance was deliberate as there was no attempt to provide disclosure or to comply with the deadlines. Samyung was aware that the applications stemmed from its disclosure defaults but continued to delay proceedings rather than seeking relief.

3. the sanctions were proportionate in the circumstances?

The court held it was appropriate to prevent Samyung from continuing to advance its defence and that further delay would compromise trial preparations and the progress of the proceedings.

The court then examined whether judgment should be entered for the amounts sought by UKHO if disclosure did not occur. It considered whether it could enter judgment for a specified sum where UKHO's claim involved unquantified damages. The court followed the findings in *Workman v Forrester* [2017] EWCA Civ 73 and held that the court's powers under CPR 3.1(3) permitted judgment to be entered following non-compliance with an order, even in respect of an unquantified claim. The court found that Samyung's failure to provide disclosure prevented a fair assessment of UKHO's losses and justified judgment for UKHO. It accepted UKHO's expert's calculations, finding them reasonable and conservative, and concluded that an award of approximately £61,716,516.09 plus interest of £28,858,502.96 and costs was proportionate.

HFW Comment

The judgment demonstrates that deliberate and persistent non-compliance with court orders may lead to severe sanctions for the defaulting party. It exemplifies the court's willingness to use its powers under the CPR when a party seeks to frustrate and delay proceedings through persistent non-compliance with court orders.

Additionally, the judgment highlights the importance of disclosure in litigation, including the quantification of damages. Consequently, persistent non-compliance with disclosure orders may justify not only striking out a defence, but also the entry of a monetary judgment, even where the quantum of damages was not assessed at trial.

Please read the judgment here

2. THG Plc (Respondent) v Zedra Trust Company (Jersey) Ltd (Appellant)

Court: The UK Supreme Court

Date: 25 February 2026

Summary

On an appeal brought by Zedra Trust Company (Jersey) Ltd (**Zedra**), who sought to amend its unfair prejudice petition against THG plc (**THG**) to add allegations concerning its exclusion from a bonus share issue more than six years earlier, the UK Supreme Court was required to determine whether there is a statutory limitation period applicable to an unfair prejudice petition under section 994 of the Companies Act 2006, and if so, what that period is.

Reversing the Court of Appeal judgment and restoring the High Court's approach, the Supreme Court held that such petitions are discretionary statutory remedies rather than ordinary claims subject to fixed limitation periods.

Facts

Zedra was a minority shareholder in THG, having acquired a 13.2% stake in the company in 2013. In 2019, Zedra brought an unfair prejudice petition under section 994 of the Companies Act 2006, alleging that THG's affairs had been conducted in a manner unfairly prejudicial to its interests, including by reason of alleged breaches by THG's directors of their duties to act lawfully, in good faith and for proper purposes.

In 2022, Zedra sought to amend its petition to include a July 2016 share bonus, alleging that it had been unfairly excluded from the bonus while shares were allotted to other shareholders, and sought compensation for the resulting loss. THG opposed the amendment on the basis that it was time-barred under the Limitation Act 1980.

Supreme Court Judgment

The High Court allowed the amendment and the petition. The Court of Appeal reversed that decision, and Zedra appealed to the Supreme Court.

The central issue for the Supreme Court was whether an unfair prejudice petition under sections 994–996 of the Companies Act 2006 is subject to a statutory limitation period under the Limitation Act 1980 and, if so, what that period is.

THG argued that Zedra's proposed amendment was time-barred because it sought monetary compensation for matters arising more than six years earlier. Zedra argued that unfair prejudice petitions are not ordinary causes of action subject to fixed limitation periods, but subject to the court's discretionary jurisdiction.

By a majority of four to one (Lord Burrows dissented), the Supreme Court allowed Zedra's appeal and held that no statutory limitation period applies to unfair prejudice petitions. The court rejected the argument that such petitions are "*actions upon a specialty*" within section 8 of the Limitation Act 1980, and also rejected the argument that petitions seeking monetary relief are "*actions to recover any sum recoverable by virtue of any enactment*" within section 9.

The majority emphasised that the remedy under section 996 is not recoverable as of right: it depends on the court first finding unfair prejudice and then deciding, in its discretion, what relief is appropriate.

However, the court also confirmed that its finding would not give petitioners an unlimited right to pursue stale claims. Delay remains highly relevant as it is one of the discretionary factors the court will take into account when deciding whether to grant relief and, if so, on what terms.

The Supreme Court restored the High Court's decision permitting Zedra's amendment and overturned the Court of Appeal's conclusion that the claim was time-barred. However, this was not unanimous, and of note is that Lord Burrows dissented and took the view that limitation periods should apply, and in this case would have allowed a six-year limit, to protect defendants from aged claims and avoid issues over evidence becoming lost or mis-remembered and encourage a timely approach.

HFW Comment

The judgment is significant because it confirms that unfair prejudice petitions occupy a distinct procedural and remedial space: they are not ordinary civil claims with a cause of action that is automatically barred after a fixed period, but are rather applications for discretionary statutory relief. That distinction matters in practice.

Minority shareholders are not precluded from relying on historic conduct simply because the relevant events occurred more than six or 12 years earlier, particularly where the alleged unfairness only becomes apparent over time or forms part of a broader course of conduct.

For respondents, however, the decision does not remove delay as a defence, but brings determination under the court's discretion.

The focus will be on whether prejudice was caused by the delay, whether the evidence has been impacted, has there been acquiescence or affirmation, and whether the relief sought would be unjust in all the circumstances, as opposed to relying on an automatic statutory time bar.

This decision may see a rise in claims previously thought to have been barred under the Limitation Act 1980.

Please read the judgment here.

3.The Kingdom of Spain v Infrastructure Services Luxembourg S.À.R.L.; and the Republic of Zimbabwe v Border Timbers Ltd [2026] UKSC 9

Court: The UK Supreme Court

Date: 4 March 2026

Summary

On 4 March 2026, a unanimous UK Supreme Court decision (which applies to all UK jurisdictions) settled a question on which the courts in several common law jurisdictions have reached differing conclusions, namely: whether a state that is party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the **ICSID Convention**), and has been the subject of an adverse arbitral award under that convention, can rely on sovereign immunity to resist the registration and enforcement of the investment treaty (**ICSID**) award in the domestic courts of a fellow contracting state.

The Supreme Court held that it cannot. The ruling provides investors with a clear and authoritative basis on which to pursue recognition and enforcement of ICSID awards in England and Wales.

Facts

The two linked appeals before the Supreme Court each raised the same fundamental question of immunity, albeit in the context of different underlying disputes.

In the first, The Kingdom of Spain v Infrastructure Services Luxembourg S.À.R.L, Infrastructure Services Luxembourg S.A.R.L. (**Infrastructure**) had invested in renewable energy infrastructure in Spain. It commenced arbitral proceedings against Spain under Article 26 of the Energy Charter Treaty 1994 (the **ECT**), alleging that Spain's subsequent changes to the regulatory framework governing its energy market had caused loss to its investments in breach of the fair and equitable treatment standard in Article 10(1) of the ECT. In 2018, an ICSID tribunal awarded Infrastructure €112 million in compensation, together with interest and costs. The principal sum was later reduced by €11 million following rectification. Spain's application to have the award annulled was dismissed in 2021.

In the second, Republic of Zimbabwe v Border Timbers Ltd, Border Timbers held land in Zimbabwe that was expropriated without compensation. It brought proceedings under the Switzerland–Zimbabwe bilateral investment treaty and obtained an ICSID award of over US$124 million in 2015. Zimbabwe's annulment application also failed.

Both Infrastructure and Border Timbers applied to have their respective awards registered as judgments of the English High Court under section 1 of the Arbitration (International Investment Disputes) Act 1966. In each case, registration was granted. Spain and Zimbabwe subsequently sought to set aside the respective recognition orders, contending that they were immune from the jurisdiction of the English courts by virtue of sovereign immunity.

Section 1 of the State Immunity Act 1978 (the **1978 Act**) grants foreign states a general immunity from the jurisdiction of United Kingdom courts, subject to the exceptions in sections 2 to 11. Section 2 provides that a state is not immune where it has submitted to the jurisdiction, including by a prior written agreement. By virtue of section 17(2), a treaty or international convention may constitute such an agreement.

Both Spain and Zimbabwe relied substantially on the dissenting judgment of Lord Goff in *R v Bow Street Magistrate, ex parte Pinochet (No 3)*[1], arguing that a treaty can only constitute a waiver of sovereign immunity where it uses language explicitly directed at waiver or submission words such as

[1] R v Bow Street Magistrate, ex parte Pinochet (No 3) [2000] 1 AC 147

"waiver" or "immunity" themselves. Anything short of that amounts to an implied term only, which is insufficient.

The Supreme Court Judgment

The Supreme Court accepted that any waiver must be clear and unequivocal, but rejected Lord Goff's approach as "unnecessarily narrow". The Supreme Court held that consent need not be in explicit terms; rather, that the meaning of a treaty provision extends beyond its express wording to encompass what is inherently conveyed by the language used and the consequences that inescapably follow from it. The determinative question, the court explained, is whether the terms employed lead to the conclusion that the state has submitted to the jurisdiction.

The interpretation of Article 54(1)

Having established the domestic legal test, the Supreme Court turned to Article 54(1) of the ICSID Convention, and whether that amounts to a waiver of sovereign immunity in enforcement of ICSID award proceedings.

Article 54(1) obliges every contracting state to recognise any ICSID award as binding and to enforce its obligations as though it were a final judgment of that state's own courts. The Supreme Court's conclusion was that a state which has consented to every other contracting state being under a duty to treat an award against it as a binding domestic judgment cannot at the same time assert immunity from the judicial process by which that duty is fulfilled. The waiver of immunity is not read into the treaty by implication; it is consequential of the express and reciprocal obligations that each contracting state has assumed.

The structure of Articles 53 to 55 reinforces this conclusion. Article 55 expressly reserves state immunity against execution, the coercive recovery of assets, but contains no corresponding reservation in respect of recognition and enforcement proceedings. As the Supreme Court observed, this omission is entirely consistent with the nature of the obligation in Article 54(1): because recognising and enforcing an award as binding is itself an exercise of adjudicative jurisdiction, the preservation of immunity at that stage would be irreconcilable with the duty that each contracting state has undertaken.

The Supreme Court's conclusion also aligns UK law with the broad international consensus. Courts in Australia, New Zealand, Malaysia, and the United States have each held that Article 54(1) carries with it a waiver of judicial immunity. In Australian proceedings involving the same parties in the UK Supreme Court case of Infrastructure, the High Court of Australia rejected Spain's reading of Articles 53 to 55 as being "contorted", concluding that the language of Article 54(1) amounted to a waiver of jurisdictional immunity in the context of recognition and enforcement.[2]

HFW Comment

The decision provides clarity and removes a significant obstacle to enforcement of ICSID awards in the UK.

It reasserts the standard for waiver under section 2(2) of the 1978 Act, rejecting the narrow approach advanced by Lord Goff in *Pinochet (No 3)*, in favour of a contextual, purposive analysis of treaty language.

For states, this judgment means they cannot agree to be bound by the ICSID Convention and to guarantee the binding force of arbitral awards and then invoke immunity to frustrate the very mechanism they have endorsed.

[2] Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l. [2023] HCA 11

For investors, the ruling provides welcome certainty that the UK will remain a viable and effective forum for the recognition and enforcement of ICSID awards against sovereign states.

Link to the judgment can be found here

4. UAB Business Enterprise & Anor v Oneta Limited & Ors [2026] EWHC 543 (Ch)

Court: The High Court (Chancery Division)

Date: 11 March 2026

Summary

The English High Court considered a dispute over ownership and control of a property development company, Oneta Ltd, including allegations of fraudulent alteration of Companies House records and document forgery.

However, the case is notable for the court’s treatment of witness evidence in the context of emerging technology, including the use of smart glasses during trial, and is a reminder that witness evidence can be rejected due to the witness' behaviour.

Facts

Mr Bubnelis, the then sole director and sole shareholder of Oneta Limited (the **First Defendant**), approached Mr Prusinskis (the **Third Defendant**) and orally agreed to use Oneta as a vehicle for property acquisition & development, and that the Third Defendant would carry out various building work in return for shares in Oneta.

Mr Bubnelis decided to sell his sole share in Oneta to UAB Business Enterprise (the **First Claimant**), appointing Mr Jakstys (the **Second Claimant**) as a director on Companies House. A meeting was arranged at which a settlement agreement was drafted recording the Second Claimant as the "outgoing Director & Shareholder" and the Third Defendant as the "incoming Director & Shareholder", providing that the existing shares were to be transferred to him and noting the Companies House log-in details. Using those codes, the Claimants alleged that the Third Defendant made a series of changes to the Companies House register, the legitimacy of which formed the central dispute in these proceedings.

The First and Second Claimant sought rectification of the Companies Register and a declaration pursuant to section 125 of the Companies Act 2006 that they were the owners of Oneta. The Second Claimant also sought reinstatement as a director of Oneta; both Claimants asserted that Mr Prusinskis had wrongly filed his details as director and wrongly and fraudulently registered himself as the shareholder of Oneta at Companies House.

Leave was given for a video link to the proceedings, which was used by Dr Paulius Miliauskas, a Lithuanian lawyer, living in Lithuania, and who acted for the First Defendant and the Second Claimant.

The Witness Evidence Issue

The court rejected the Second Claimant’s evidence, finding that:

- he was fundamentally unreliable and untruthful, after it emerged that he had worn smart glasses connected to his mobile phone while giving evidence;
- call logs showed that he had made numerous calls to a contact immediately before entering the witness box, and his explanation that the contact was a taxi driver was not credible;
- he appeared to be receiving assistance or coaching during cross-examination until the court intervened; and
- there were inconsistencies in his signing of English-language documents, despite his claim to have limited English.

The judge rejected his evidence in its entirety, also noting his blatant disregard of the disclosure obligations under the CPR, including CPR 32 and PD 32.

HFW Comment

The recently published judicial guidance 'Guidance for Judicial Office Holders on the use of AI', makes it clear that the use of technology, including AI, must not impact the integrity of the proceedings, or the credibility of the evidence, or reduce public confidence in the judicial system.

The Guidance does not expressly refer to the use of wearable technology, but this case shows that whilst the law and practice around the use of technology in court hearings is developing, the courts will uphold the long-established principles governing the use of evidence, including that a witness must not receive assistance during the giving of their evidence, and evidence which is externally influenced undermines its reliability and may be rejected.

Please read the judgment here

5. UniCredit Bank GmbH, London Branch (Respondent) v Celestial Aviation Services Ltd (Appellant) [2026] UKSC 10

Court: The UK Supreme Court

Date: 25 March 2026

On 25 March 2026, the UK Supreme Court upheld the Court of Appeal's decision in UniCredit v Celestial, and allowed the Bank's cross-appeals, and confirmed the broad interpretation that the courts are taking regarding the Russian sanctions regime.

Facts

The case concerns 12 standby letters of credit (**LOCs**) issued by Russian bank, Sberbank, and confirmed by the London branch of UniCredit. The LOCs were issued between 2017 and 2020 to secure aircraft lease payment obligations owed by Russian carriers (the **Lessees**) to three Irish incorporated lessors (the **Lessors**). The leases were entered into between 2005 and 2014. At the time of both the leases and LOCs being entered, the sanctions regime did not prohibit them.

After Russia's invasion of Ukraine, on 1 March 2022 the UK government amended Regulation 28(3)(c) of the Russian (Sanctions) (EU Exit) Regulations 2019 (the **Regulation)**. The amendment broadened the scope of the Regulation so that along with prohibiting the provision of financial services or funds in pursuance of or in connection with military goods (as was the case before), it also applied to "restricted goods", including civilian aircraft.

Following the amendment, the Lessors terminated the leases and made payment demands on UniCredit under the terms of the LOCs. UniCredit refused to make payment until it had obtained a licence from the UK government on the grounds that the Regulation prohibited it from doing so. Upon being granted licences in October 2022, UniCredit paid the Lessors what was owed under the LOCs.

However, in the interim, between making the demands under the LOCs and eventually receiving payment, the Lessors had commenced proceedings against UniCredit on the following two grounds, namely that:

1. the Regulation did not prohibit UniCredit from making payment under the LOCs; and
2. UniCredit could not rely on section 44(2) of the Sanctions and Anti-Money Laundering Act 2018 (**S44 SAMLA**) to protect it from an action to recover a debt, and therefore the Lessors were entitled to recover interest and the costs of recovery.

As UniCredit paid out on the LOCs upon receiving licences, the residual dispute was in relation to interest on the principal sum and legal costs.

Lower Court Judgments

The High Court ruled against UniCredit, holding that the standby LOCs were independent obligations, which arose before the sanctions came into effect, and therefore payment to the Lessors was not prohibited under the Regulation. As a result, it held that UniCredit could not rely on S44 SAMLA as its belief was not reasonable, and so ordered interest and costs to the Lessors.

The Court of Appeal upheld UniCredit's appeal and overturned the High Court's decision, holding that the Regulation did prohibit UniCredit from making payment on the basis that the LOCs were "in connection with" aircraft leases, the object of which was to make aircraft available to persons in Russia, or connected with Russia.

In *obiter*, the Court of Appeal said that UniCredit's belief was reasonable under S44 SAMLA. However, it held that S44 SAMLA did not protect UniCredit from having to pay a pre-existing debt or the associated interest and costs to the Lessors.

UK Supreme Court Judgment

In rejecting the appeal, and upholding UniCredit's cross-appeal, the Supreme Court's decision addressed the interpretation of the Regulation and the scope of S44 SAMLA, as set out below:

1. Is a factual connection enough?

The Supreme Court held that the Regulation is engaged wherever there is a factual link between the payment and the underlying arrangement. A causal connection is not required.

Payment under the LOCs fell within its scope.

The Supreme Court drew a distinction between the two phrases “in pursuance of” and “in connection with” in the Regulation, noting that “in connection with” is far broader.

The Supreme Court held that legally distinct obligations (such as standby LOCs) can be restricted if there is a factual connection with arrangements that fall within the Regulation. In this case, UniCredit was able to pay out under the LOCs once a licence had been obtained, which it did.

2. Were the leases “arrangements”?

The Supreme Court held that the term “arrangement” was very broad and not time limited; it did not matter that the aircraft had been leased before the Regulation applied, or that the arrangement had since been terminated.

3. Did Section 44 SAMLA offer a defence?

Although, it was not necessary to determine the issue in view of the finding on the Regulation, the Supreme Court, in obiter, and in contrast to the Court of Appeal's judgment, held that S44 SAMLA gave protection to UniCredit against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs whilst it held the reasonable belief that the omission to pay was in compliance with the Regulation.

HFW Comment

In essence, the Supreme Court found that the UK sanctions regulations are so widely drafted that they can cover even standby LOCs.

This has potentially significant consequences for companies with any form of exposure to Russia, and particularly those in the financial services sector. The emphasis of the judgment was on the breadth of the UK sanctions regulations and their purpose in putting pressure on Russia. Nevertheless, the effect of the judgment is arguably to undermine the autonomy principle and therefore the security offered by standby LOCs.

For beneficiaries, this could mean reconsidering reliance on standby LOCs as immediate security or at least building into their risk assessment the possibility of delay while licensing is sought. For beneficiaries and issuing and confirming banks, the decision underscores the need for careful sanctions analysis at every stage of a transaction.

Overall, while licensing provides an important release mechanism, the effect of the judgment is to reduce the certainty and immediacy traditionally associated with standby LOCs. It reaffirms that where sanctions apply, the autonomy principle must yield to regulatory objectives, even in longstanding, independently documented arrangements.

This summary incorporates the commentary in our earlier article on the UKSC judgment

Please read the judgment here

6. CILEX & Ors v Mazur & Ors [2026] EWCA Civ 369

Court: The Court of Appeal (Civil Division)

Date: 31 March 2026

Summary

The English Court of Appeal has provided important clarification on the meaning of "carrying on the conduct of litigation" under the Legal Services Act 2007 (the **LSA 2007**). The court held that unauthorised individuals can lawfully perform litigation tasks on behalf of and under the supervision of an authorised person, which category includes solicitors and legal executives qualified to carry out litigation, and provided that the authorised person retains responsibility for the litigation.

The decision overturns the earlier High Court ruling that had created significant uncertainty and raised concerns regarding the lawfulness of long-standing delegation and supervision practices across the legal sector.

Facts

This dispute arose from a claim for unpaid fees brought by Charles Russell Speechlys LLP against their clients, Mrs Mazur and Mr Stuart, who refused to pay fees of over £50,000. A second firm, Goldsmith Bowers Solicitors (**GBS**), was engaged to recover those fees and issued a claim using the Money Claims Online system, with the Particulars of Claim signed by Peter Middleton as "Head of Commercial Litigation" at GBS. Mrs Mazur and Mr Stuart, who represented themselves throughout, identified that Mr Middleton was an ex-solicitor who had been suspended from practice and did not hold a practising certificate. They applied to strike out the proceedings on the basis that he was unlawfully conducting litigation, a reserved legal activity under the LSA 2007.

Mr Ashall, a solicitor and director of GBS, provided evidence that he had direct conduct of the litigation and supervised Mr Middleton, who had taken a range of steps including drafting and submitting the claim form, serving statements of case, and instructing counsel. The High Court held that Mr Middleton was not entitled to conduct litigation under Mr Ashall's supervision, a decision which prompted the regulator to bring their guidance into line with that judgment.

The dispute raised a broader issue concerning whether unauthorised persons could undertake litigation-related tasks under the supervision of authorised lawyers without themselves carrying on the reserved legal activity of conducting litigation. The Chartered Institute of Legal Executives (**CILEX**) sought and obtained permission to appeal and intervene in the proceedings. The Solicitors Regulation Authority (**SRA)** and the Law Society participated as Respondents, while the Legal Services Board, the Law Centres Network and the Association of Personal Injury Lawyers (**APIL**) also intervened, each raising concerns about the decision's impact on the delivery of legal services.

The Court of Appeal Judgment

The Court of Appeal allowed the CILEX appeal and rejected the distinction adopted by the High Court between: (i) supporting an authorised solicitor; and (ii) conducting litigation under the supervision of an authorised solicitor. The Court of Appeal held that both activities can be lawful.

The Court of Appeal's analysis focused on the meaning of "carry on the conduct of litigation". Reviewing the historical development of legal services regulation, the Court of Appeal concluded that solicitors have long delegated significant aspects of litigation work to non-qualified staff whilst retaining professional responsibility. Nothing in the LSA 2007 indicated that Parliament intended to criminalise or restrict those established practices.

The Court of Appeal held that the words "conduct of litigation" refer to the litigation tasks themselves, whereas the words "carry on" denote responsibility, direction, and control of those tasks. Accordingly, where an authorised solicitor or authorised CILEX lawyer delegates litigation work to an unauthorised individual but retains responsibility for the matter and exercises appropriate supervisory oversight, it is the authorised lawyer who is carrying on the conduct of litigation. The unauthorised individual is not carrying on the reserved legal activity and does not commit an offence under section 14 of the LSA 2007.

The Court of Appeal further held that the degree of supervision required will vary depending on the nature of the work. The LSA 2007 does not require authorised lawyers to personally review or approve every step before it is taken. The adequacy of supervision is a matter for regulatory oversight and will depend upon the circumstances, the complexity of the work, and the experience of the individual performing it.

The court also confirmed that previous authorities concerning unauthorised persons acting for litigants in person, including *Ndole Assets Ltd v Designer M&E Services UK Ltd*[3] and *Baxter v Doble*[4], did not apply where an authorised lawyer remained responsible for the litigation, as those cases concerned situations where no authorised individual was supervising or assuming responsibility for the work.

HFW Comment

The Court of Appeal has firmly endorsed a practical and commercially realistic interpretation of the LSA 2007. Had the High Court's decision been upheld, many established litigation workflows would have been called into question. Routine litigation functions are frequently performed by experienced paralegals, trainee solicitors, and other non-qualified staff under the appropriate supervision of qualified lawyers. The High Court's approach risked exposing individuals and firms to allegations of unlawful conduct of litigation. The Court of Appeal has now removed that uncertainty.

The decision also reduces the risk of procedural challenges based solely on the involvement of non-authorised personnel. The Court of Appeal's focus on responsibility, rather than the physical performance of individual tasks, means that clients can continue to rely on modern litigation teams without concerns that routine delegation could jeopardise proceedings.

Importantly, however, the judgment should not be viewed as diminishing the responsibilities of authorised lawyers. The Court of Appeal repeatedly emphasised that responsibility cannot be delegated. Authorised solicitors and authorised CILEX practitioners must continue to exercise appropriate supervision, maintain effective governance arrangements and ensure that delegated work remains subject to meaningful oversight.

More broadly, the judgment signals a judicial willingness to interpret the LSA 2007 in a manner that reflects modern legal practice. As legal services evolve through technological innovation and alternative delivery models, the court's emphasis on professional responsibility rather than task allocation may have wider implications for future disputes concerning the regulation of legal services.

Finally, it is important to recognise the access to justice benefits of this decision. The ability to delegate litigation tasks helps reduce costs, improve access to justice and promote diversity within the legal profession by lowering barriers to entry for individuals who do not yet hold formal legal qualifications. A different outcome would have run counter to several express regulatory objectives of the LSA 2007 itself. This is a judgment that matters not just for individual law firms, but for the growth and inclusivity of the legal sector as a whole.

Please see the judgment here

[3] [2018] EWCA Civ 2865.
[4] [2023] EWHC 486.

7. Aabar Holdings SARL & Anors v Glencore PLC & Anors [2026] EWHC 877 (Comm)

Court: The High Court (Commercial Court)

Date: 16 April 2026

Summary

In a judgment handed down in the case of *Aabar Holdings SARL anors v Glencore PLC anors*[5] on 16 April 2026, Mr Justice Picken in the English Commercial Court held that Legal Advice Privilege (**LAP**) applies to intra-client documents and communications sent between, or created by, members of the "client group" for the dominant purpose of seeking legal advice. This represents a significant expansion of the previously accepted position that privileged communications needed to be between the client and its lawyer (for the dominant purpose of seeking legal advice).

The decision is a first instance judgment and permission to appeal has been granted by the Court of Appeal, with the hearing scheduled for August 2027. Accordingly, it should be considered with caution pending the outcome of that appeal.

Facts

The privilege dispute arose during the process of extended disclosure. On 17 November 2025, Glencore informed the claimants that it had been approaching its disclosure obligations since April 2025 on the basis that *Three Rivers (No 5)* was wrongly decided, treating LAP as applying to all communications made for the dominant purpose of seeking or receiving legal advice.

Following objections from the claimants, Glencore abandoned the contention that every employee should be treated as "the client" and produced 885 previously withheld documents and reproduced 290 others. However, it maintained that privilege applied to communications between members of the "client group" - even where no lawyer was party to those communications.

The claimants sought an order requiring Glencore to disclose those documents, save for those evidencing the substance of privileged communications.

The Established Framework

The Court of Appeal's 2003 decision in *Three Rivers District Council v Bank of England (No 5)*[6] has long been understood as establishing that LAP attaches only to communications passing between a lawyer and the client. The "client" in a corporate context is defined narrowly as those employees specifically tasked with seeking and receiving legal advice.

On that basis, purely internal communications - even between members of the "client group" - fell outside LAP unless they evidenced the substance of a privileged communication or were intended for the lawyer. This principle has been followed in subsequent authorities including *SFO v ENRC*[7], *Jet2.com*[8], *Rabobank*[9], and *RBS Rights Issue Litigation*[10].

The Commercial Court's Judgment

Three Rivers (No 5) Re-characterised

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[5] [2026] EWHC 877 (Comm).
[6] [2003] EWCA Civ 474
[7] [2019] 1 WLR 791
[8] [2020] QB 1027
[9] [2006] EWHC 2332
[10] [2017] 1 WLR 1991

Picken J held that *Three Rivers (No 5)* had never in fact been concerned with intra-client documents. The appeal concerned documents prepared by Bank of England employees outside the Bingham Inquiry Unit (BIU) - the narrow group treated as the client. All four categories of disputed documents were therefore "non-client" documents.

While some documents internal to the BIU may technically have fallen within the order made at first instance, no argument addressing intra-client documents was advanced before Tomlinson J or the Court of Appeal. It would therefore be wrong to treat *Three Rivers (No 5)* as authority on the point.

Approaching the matter as one of principle, Picken J considered the position to be clear, namely that there is no principled basis for denying LAP to intra-client documents whose dominant purpose is to identify issues for legal advice or to communicate relevant facts to lawyers.

The court drew a compelling analogy with lawyers' working papers, describing their privileged status as "obviously the case" and "not in dispute". If a lawyer's working papers attract LAP, it is difficult to see why, what are in effect a client's working papers, should not equally do so. This lends support to a broader reading of the working papers principle at a time when some uncertainty had arisen following *RBS Rights Issue Litigation*[11].

The court cited *Jet2.com*[12], where Hickinbottom LJ's reference to documents exchanged between "an employee and a co-employee" was taken by Picken J to address intra-client communications and to confirm that LAP can apply to such documents where the dominant purpose threshold is satisfied.

The court held that LAP can be asserted over intra-client documents created for the dominant purpose of seeking legal advice, notwithstanding that no lawyer (whether internal or external counsel) was a party to the communication itself. However, it is important to note what the decision does not do:

- The *Three Rivers (No 5)* restriction that the "client" comprises only those employees specifically tasked with seeking and receiving legal advice remains unaffected.
- The extension of LAP to intra-client documents is not unconditional, the dominant purpose test remains.
- The decision is first instance and so is not binding on other courts, and there is some tension with other judgments, albeit Picken J's answer is that those statements were directed at third-party communications rather than intra-client documents.

HFW Comment

The judgment is good news for corporates and organisations, especially those engaging in communications on a legal issue before having instructed a lawyer (whether internal or external), for example in internal investigations where fact-finding is required at an early stage, and where the dominant purpose can be said to be for the obtaining of legal advice.

As such, it is a welcome commercial approach to what can be a thorny issue for clients. However, it does not address the equally thorny issue of the "client" in the controversial Three Rivers (No 5) judgment, and so companies should still be cautious of circulating communications too widely.

This summary incorporates the commentary in our earlier article, please see here.

Please see the judgment here

[11] *Re The RBS Rights Issue Litigation* [2016] EWHC 3161 (Ch)
[12] *The CAA v Jet2.com* [2020] EWCA Civ 35

8. FH Holding Moscow Limited v AO UniCredit Bank & UniCredit S.p.A. [2026] EWCA Civ 468

Court: The Court of Appeal (Civil Division)

Date: 17 April 2026

On 17 April 2026, the English Court of Appeal handed down judgment in *FH Holding Moscow Limited v AO UniCredit Bank & UniCredit S.p.A.*[13]*,* dismissing an appeal against the refusal to grant an anti-suit injunction (**ASI**) restraining mortgage foreclosure proceedings before the Arbitrazh Court of the Moscow Region.

The case raised important questions about the construction of competing dispute resolution clauses across a suite of finance documents. It also flagged two wider issues with potentially significant practical consequences for anti-suit relief in support of arbitrations with a foreign seat.

Summary

The primary issue was whether proceedings brought in Moscow to levy execution against mortgaged property, pursuant to a Russian law mortgage agreement providing for Moscow court jurisdiction, were in breach of an arbitration clause in a separate English law facility agreement, which provided for arbitration in Vienna. The Court of Appeal held that they were not.

The court observed at the outset that it was not easy to determine why the dispute had anything to do with English law or the English courts, and that whether the bank was entitled to levy execution without first obtaining a Vienna award was a matter for the Moscow court to determine.

Background

FH Holding Moscow Limited (**FHM** or the **Appellant**) was a Cypriot company operating solely in Russia as part of the Fashion House group, with no business in, or connection with, England and Wales. The respondents were AO UniCredit Bank (**AO**), a Russian bank wholly owned by UniCredit S.p.A. (**SPA**), a major Italian bank with a branch in London (together, the **Respondents**).

FHM was the borrower under a term loan facility agreement (the **Facility Agreement**) comprising a Euro facility of approximately €25.9 million (split between AO and SPA) and a rouble facility of RUB 1.26 billion provided by AO. AO acted as lender but also as the security agent: the party solely entitled to enforce the lenders' rights under the Facility Agreement.

The Facility Agreement was governed by English law and contained an arbitration clause providing for any dispute to be referred to VIAC[14] arbitration, with the seat of arbitration in Vienna, Austria. Under English law, the effect of section 6A of the Arbitration Act 1996, inserted by the Arbitration Act 2025, was that the arbitration clause was governed by Austrian law, thereby reversing the previous default rule established in *Enka v Chubb*[15].

The Facility Agreement was entered into alongside a mortgage agreement (the **Mortgage Agreement**) by which FHM used various fashion retail properties in or near Moscow, valued at approximately €42 million, as security for the loans. The Mortgage Agreement was governed by Russian law and provided for any dispute to be referred to and finally settled by the Commercial Court of Moscow. Crucially, the Mortgage Agreement provided expressly that the mortgagee was not obliged, before exercising its right to levy execution, to obtain a decision of any court, arbitration court or state authority against the mortgagor.

[13] FH Holding Moscow Limited v AO UniCredit Bank & UniCredit S.p.A. [2026] EWCA Civ 468
[14] Vienna International Arbitration Centre
[15] Enka Insaat ve Sanayi AS v OOO Insurance Company Chubb [2020] UKSC 38

The Dispute and the English Proceedings

FHM maintained that it had made payments in full until Russian counter-sanctions rendered payment of the Euro debt to SPA unlawful under Russian law, and that the rouble debt had been rescheduled. This was disputed by the Respondents. On 24 March 2025, AO filed a claim in the Arbitrazh Court of the Moscow Region seeking foreclosure of the secured assets, contending that an Event of Default under the Facility Agreement had occurred.

On 7 August 2025, the Appellant applied to the English court for an ASI against both Respondents. The court dismissed the claim in its entirety, concluding that it was not persuaded to a high degree of probability that the Moscow proceedings were in breach of the arbitration agreement. The Appellant appealed.

ASIs are orders of the English court restraining a party from commencing or continuing proceedings in breach of the parties' agreed forum and jurisdiction. In this case the ASI was brought to stay foreign proceedings brought in breach of an arbitration agreement. The classical test requires a claimant to satisfy the court to a high degree of probability both that the respondent is bound by the agreement between the parties, in this case the arbitration agreement and that the foreign proceedings constitute a breach.

The Court of Appeal's Judgment

The Court of Appeal held that there was no breach of the Arbitration Agreement.

The central question was whether the competing dispute resolution clauses (the Vienna International Arbitration Centre (**VIAC**) arbitration clause in the Facility Agreement and the Moscow jurisdiction clause in the Mortgage Agreement), left room for the banks to bring execution proceedings in Moscow without first obtaining a VIAC arbitral award confirming an Event of Default.

The Court of Appeal applied the principles summarised in *BNP Paribas SA v Trattamento Rifiuti Metropolitani SPA*[16], namely that where a transaction contains competing jurisdiction clauses, the starting point is that a clause in one contract was probably not intended to capture disputes more naturally arising under a related contract. The presumption is that each clause deals exclusively with its own subject matter.

The Mortgage Agreement provided that execution could be levied "immediately after the occurrence of the Event of Default", subject to the Mortgage Agreement's own dispute resolution clause. This was consistent with an intention that any dispute, including one as to whether an Event of Default had occurred, was to be resolved by the Moscow Commercial Court as part of the execution proceedings, rather than by a two-stage process requiring an arbitration followed by court proceedings.

Accepting FHM's argument would have required the Court of Appeal to conclude, under English law, that the Moscow court's own interpretation of the Russian law on Mortgage Agreement was wrong - a conclusion Males LJ described as "ambitious". It would have substantially negated the lenders' ability to take prompt steps to enforce their security once a default arose.

Having dismissed the appeal on this ground, the Court of Appeal did not need to resolve the remaining grounds. However, it identified two questions of wider significance:

1. On the "contract gateway" question, the court declined to express a view on whether an application for an ASI could be regarded as being "in respect of" the underlying English law Facility Agreement, even where it was the arbitration clause, governed by Austrian law, that the proceedings sought to enforce. It noted that, if that argument was well-founded, the contract gateway would be available in cases where the real connection with this jurisdiction was minimal.

2. On the question of service out of the jurisdiction of an arbitration claim form, the court considered AO's argument that the CPR Part 6 jurisdictional gateways were not available because service of

[16] *BNP Paribas SA v Trattamento Rifiuti Metropolitani SPA* [2019] EWCA Civ 768

arbitration claim forms falls exclusively under CPR 62.5 to have considerable force, but noted it ran up against two Supreme Court decisions: *AES Ust-Kamenogorsk*[17] and *UniCredit v RusChemAlliance*[18], which had both proceeded on the basis that the general CPR Part 6 gateway was available. The Court of Appeal commented that the issue could usefully be considered by the Civil Procedure Rules Committee (**CPRC**), who would be best placed to answer the policy questions as to whether the Part 6 gateways should be available for service of arbitration claim forms out of the jurisdiction, and in what circumstances such service should be permitted in the case of arbitrations with a foreign seat.

HFW Comment

The case is a useful reminder that ASI relief is not readily available, especially where the dispute has a connection with the jurisdiction in question and the parties have agreed to proceedings in that jurisdiction or forum.

Where transactional documents contain multiple dispute resolution clauses, careful construction of each agreement in the context of the transaction as a whole is needed. Parties who place their security in one jurisdiction whilst agreeing to arbitrate disputes under the underlying facility elsewhere should be alert to the risk that their security enforcement rights may be governed by the former and not the latter.

The procedural questions left open by the Court of Appeal will continue to create uncertainty for claimants seeking ASI relief in support of arbitrations with a foreign seat, and on which it would be helpful to have clarity from the CPRC. In the meantime, parties may wish to obtain legal advice to protect their positions.

Please read the judgment here

[17] *AES Ust-Kamenogorsk* [2013] UKSC 35
[18] *UniCredit v RusChemAlliance* [2024] UKSC 30

9. Lux Films Ltd v Fowler and another [2026] EWHC 963 (KB)

Court: The High Court (King's Bench Division)

Date: 24 April 2026

Summary

This case concerned claims arising from a director's diversion of business opportunities and confidential information to a competing company under their control whilst remaining a director, shareholder, and employee of Lux Films Ltd (**Lux**). The English High Court found that the director had breached duties owed to Lux as both director and employee and, in doing so, provided important clarification on the scope of the tort of unlawful means conspiracy. Notably, the court confirmed that a sole director can be found to have conspired with his own "one-man company" for the purposes of the tort, resolving a point that had previously been subject to conflicting judicial authority.

Facts

Lux was a small UK media production company incorporated in 2016. Its shares were held equally by three shareholders, including Andrew Fowler (**Fowler**), all of whom also acted as directors and employees of the business. There was no shareholders' agreement or written employment contract in place. Following a deterioration in relations between the shareholders in 2023, Fowler expressed a desire to leave the business, but discussions regarding his departure did not result in an agreed exit or restructuring.

Whilst remaining a director, shareholder, and employee of Lux, Fowler established and operated a competing business through Andrew Fowler Media Ltd (**AFML**), a company of which he was the sole director and shareholder. Lux alleged that Fowler diverted corporate opportunities, clients, and confidential information from it to AFML, and used its resources and goodwill to benefit the competing business.

Lux commenced proceedings against Fowler and AFML (together **the Defendants**) alleging breaches of fiduciary and statutory duties, breach of confidence, misuse of confidential information, knowing receipt, and unlawful means conspiracy. Shortly before trial, each of the Defendants separately commenced insolvency proceedings. The court confirmed that the Lux proceedings could continue, as neither insolvency gave rise to an automatic stay and no application for a stay had been made.

The High Court Judgment

The court found in favour of Lux on all issues of liability. It accepted the evidence of Lux's witnesses and concluded that Fowler's account lacked credibility, finding it internally inconsistent and contradicted by contemporaneous documents. On the evidence, the court found that Fowler had engaged in a sustained course of conduct designed to divert business opportunities, clients, and confidential information from Lux to AFML whilst continuing to owe duties to Lux, as both a director and employee.

The court held that Fowler had breached his fiduciary, statutory, and employment duties by diverting corporate opportunities, pursuing competing activities, and exploiting Lux's assets, resources and confidential information for the benefit of AFML. The judgment emphasised that directors remain subject to continuing duties of loyalty and good faith and cannot place themselves in positions of conflict or profit from corporate opportunities that properly belong to the company.

A central issue in the case concerned the claim brought by Lux for unlawful means conspiracy. AFML argued that it was incapable of conspiring with Fowler because he was its sole director and shareholder and, in substance, they were one and the same person. In support of that argument, reliance was placed on authorities from a criminal law context, where courts have generally been reluctant to recognise a conspiracy between a sole controller and their company.

The court rejected that argument. Distinguishing the objectives of criminal conspiracy from those of the civil tort of unlawful means conspiracy it held that the latter is concerned with concerted action causing loss through unlawful means rather than the criminalisation of an agreement itself. The existence of two separate legal persons was therefore sufficient, even where one individual controlled both entities. Accordingly, the Defendants could form the necessary combination for the purposes of the tort and could be held jointly liable.

The court also made findings in relation to the misuse of confidential information, goodwill and company resources, concluding that Fowler had deliberately advanced AFML's interests at the expense of Lux. In reaching that conclusion, the court attached significance to a message in which Fowler described his conduct as "a bit naughty" whilst suggesting that it would be difficult to prove. The court regarded this message as an acknowledgement that Fowler understood the impropriety of his actions.

The court found the Defendants liable for multiple breaches of fiduciary, statutory and employment duties, as well as unlawful means conspiracy. Liability was therefore established against both Fowler and AFML, notwithstanding their respective insolvency processes. The court also permitted amendments relating to proprietary and constructive trust claims arising from the alleged breaches of duty and misuse of confidential information.

Issues of quantum and the precise remedies available to Lux, including damages, an account of profits, restitutionary relief, and injunctive remedies, were left to be determined at a subsequent hearing. The judgment therefore preserved Lux' ability to pursue both financial and proprietary remedies against the Defendants.

HFW Comment

This decision serves as a timely reminder of the duties owed by directors, particularly in owner-managed businesses where personal and corporate interests can become intertwined. As a matter of general legal principles, whilst a director may take preparatory steps in anticipation of departure, the judgment reinforces the distinction between legitimate preparation and conduct that places the director in conflict with the interests of the company. The diversion of business opportunities, misuse of confidential information and exploitation of company resources are likely to give rise to significant liability.

The decision is also notable for clarifying that a sole director can conspire with his own "one-man company" for the purposes of the tort of unlawful means conspiracy. In making this finding, the court resolved a point of uncertainty and confirmed that individuals cannot avoid liability simply by acting through a corporate vehicle under their control.

The case further highlights the importance of ensuring that shareholders' agreements and employment contracts evolve alongside a growing business, reducing uncertainty when relationships between owner-managers break down.

Please read the judgment here

10. Logix Aero Ireland Ltd v Siam Aero Repair Company Ltd [2026] EWCA Civ 510

Court: The Court of Appeal (Civil Division)

Date: 29 April 2026

Summary

The English Court of Appeal dismissed the appeal and upheld the High Court's decision to strike out a claim for losses arising from a cyber fraud, confirming that standard confidentiality clauses do not impose a contractual duty to prevent fraud and that orthodox causation principles continue to apply even in complex, multi-stage fraud scenarios.

Facts

Logix Aero Ireland Limited (**Logix**) agreed to purchase two aircraft engines from Siam Aero Repair Company Limited (**Siam Aero**) under a Letter of Intent (**LOI**), with the transaction to be completed through sale and purchase agreements (**SPAs**). The parties conducted negotiations primarily by email.

In late July 2024, a third-party fraudster intervened in the email exchanges, having obtained access to a genuine Siam Aero email by unknown means. The fraudster used spoof email addresses with minor variations, intercepting, altering and relaying emails so that both parties believed they were communicating directly with each other. Through this process, draft and executed SPAs and invoices were manipulated. Siam Aero's genuine bank details were replaced with the fraudster's details, and Logix transferred the purchase price to a bank account controlled by the fraudster.

The fraud was only identified after payment had been made to and subsequently disbursed from the fraudster's account. Logix obtained without notice interim relief in France, seizing the engines and claiming it had acquired title to them.

Logix brought proceedings in England seeking to recover its loss from Siam Aero. Its claim was based on an alleged breach of the confidentiality clause in the LOI. Logix argued that Siam Aero had disclosed transactional documents and information to the fraudster (albeit unwittingly), thereby breaching its obligation not to disclose confidential information to third parties, and enabling the fraudster to manipulate the transactional documents and redirect payment.

The High Court struck out Logix's claim, finding that it had no real prospect of success. The court held that it was arguable that there had been a breach of the confidentiality clause, but the claim that Siam Aero had caused the loss was unsustainable. Logix was granted permission to appeal on the issue of causation only.

The Court of Appeal Judgment

The Court of Appeal dismissed the appeal for the following reasons:

Breaking the chain of causation

The Court of Appeal held that where a party owes a contractual duty to take care to ensure that an intervening and voluntary act is not permitted, it will be liable if it fails to take such care. However, the existence of such a contractual duty is not a freestanding answer to whether the chain of causation is broken. It requires: (a) that the breach of contract is the effective cause of the loss; (b) that the loss is within the scope of duty assumed (e.g. to prevent forgery or cyber fraud); and (c) that the loss is not too remote.

The Court of Appeal rejected Logix's contention that London Joint Stock Bank v Macmillan *[1918] AC 777* is authority for the proposition that the intervention of a third-party fraudster does not break the chain of causation. There needs to be a specific contractual duty to prevent the very fraud that was in fact perpetrated. In this case, there was no such duty in the confidentiality clause.

Effective cause of the loss

The Court of Appeal agreed with the court at first instance that the intervention of the fraudster occurred before any assumed breach of contract by Siam Aero (following an initial assumed breach by Logix in responding to the very first doctored email). The assumed breach by Siam Aero was part of the opportunity for the fraud rather than the cause of the fraud. The court also emphasised that the fraud depended on the conduct of both parties, each of whom had unwittingly provided information in the compromised email chain. Singling out Siam Aero's communications as causative of the loss was artificial.

The relevance of the confidentiality clause

The confidentiality clause was primarily aimed at protecting the parties from damage by reason of their documents falling into the hands of competitors. There was nothing in the clause which imposed a special duty to protect the other party from being deceived by fraudsters gaining sight of information and manipulating it. It would therefore also have been open to the court at first instance to have found that the loss was outside the scope of the duty assumed by Siam Aero in entering the LOI and that the loss was too remote.

The Court of Appeal also noted that Logix's claim faced other significant obstacles: it was far from clear that Siam Aero was in breach of the confidentiality clause by disclosing its own information, including its own bank account details, to a third party; and there might also have been a question whether Siam Aero could have claimed that its liability was caused by Logix's own breach of the confidentiality clause, giving rise to a defence by way of circuity of action.

HFW Comment

The legal arguments in this case were aimed at recovering loss from the contractual counterparty (who may be able to pay) rather than the fraudster (who had long since dissipated the stolen funds). The Court of Appeal settled those arguments by applying orthodox principles of causation and finding that standard confidentiality clauses do not carry any special obligation to prevent fraud.

The facts of this case are also a reminder of the importance of vigilance when dealing with high-value transactions, and the need to have robust systems and controls in place when transferring funds. They illustrate the increasingly subtle methods used by cyber fraudsters and the importance of providing regular training for staff to keep awareness high. Staff also need to be comfortable to report any suspicions, or even mistakes, quickly so as to minimise any potential losses.

[Please read the judgment here.]

11. Spec 1 Limited et al v The Export-Import Bank of China [2026] EWHC 1162 (Comm)

Court: The High Court (Commercial Court)

Date: 15 May 2026

Summary

In Spec 1 *Ltd v* Export-Import Bank *of* China *[2026]* EWHC 1162 *(*Comm*)*, the English High Court considered anti-suit injunctions (**ASI**) arising from an asymmetric jurisdiction clause. The court dismissed the defendant's application to stay English proceedings in favour of Singapore, as well as dismissing the claimants' applications for an ASI, on the basis that asymmetric jurisdiction clauses by definition provided for parallel proceedings in multiple jurisdictions.

Facts

The dispute arose out of interlocking ship-finance loan agreements for approximately US$61 million (the **Loan Agreements**) made by The Export-Import Bank of China (the **Lender**) to three ship-owning companies, Spec 1 Limited, Spec 2 Limited and Spec 3 Limited (the **Borrowers**). The Loan Agreements included asymmetric jurisdiction clauses under which, the Borrowers were required to bring claims against the Lender in England, while the Lender retained the right to bring proceedings against the Borrowers in England or in any other court of competent jurisdiction.

The Lender commenced Admiralty court proceedings in Singapore in April 2024 against Spec 3. The Borrowers issued proceedings in England in July 2025. The Lender brought further proceedings in Singapore against Spec 1 and Spec 2 in October 2025. As a result, the Lender applied for a stay of the English proceedings and the Borrowers sought an ASI restraining the later Singapore proceedings, alternatively an anti-anti-suit injunction.

Both sets of proceedings were based on the construction of clause 18 of the Loan Agreement: an asymmetric exclusive jurisdiction clause governed by English law.

Commercial Court Judgment

In dismissing the Lender's application that the English court decline jurisdiction or to stay the English proceedings, the court held that, under a proper interpretation, clause 18 of the Loan Agreement gave the Borrowers a contractual right to sue the Lender in England, while preserving the Lender's separate right to sue the Borrowers in any other court of competent jurisdiction. The asymmetric jurisdiction clause therefore contemplated the possibility of parallel proceedings as recognised in *Hipgnosis SFH* 1 *Ltd v Manilow [2025] EWCA Civ 486*.

Against that contractual background, the existence of proceedings in Singapore, and the associated risks of duplication, did not amount to a strong reason for the English court to refuse to give effect to the parties' agreement for the Borrowers to sue the Lender in England.

The court also dismissed the Borrowers' applications for an ASI, or alternatively anti-anti-suit relief, in respect of the Singapore proceedings. The Singapore proceedings were not brought in breach of the jurisdiction clause because the Lender was contractually entitled to pursue proceedings outside England.

The court also encouraged the parties to adopt a pragmatic approach and avoid legal proceedings over the English and Singapore proceedings.

HFW Comment

This judgment is a useful reminder that an asymmetric jurisdiction clause is not simply an exclusive English jurisdiction clause with a lender-friendly gloss. Its legal effect depends on the bargain actually struck: where the clause gives one party an English forum but preserves the other party's right to sue elsewhere, the court will generally treat the risk of parallel proceedings as part of the contractual architecture rather than as an unintended procedural anomaly. That has two important consequences. First, a party agreeing to such a clause will face a high hurdle in seeking a stay of English proceedings merely because related proceedings are commenced abroad. Secondly, ASI relief will not be available merely because foreign proceedings create duplication, cost or tactical pressure, if those proceedings are in fact provided by the agreement between the parties.

The decision reinforces the commercial utility of asymmetric clauses: they preserve the lender's ability to pursue assets where they are located, while anchoring borrower claims in the chosen forum.

The decision also reinforces the primacy of the parties' contractual agreement. Unless drafted otherwise, concurrent litigation may be permitted in an asymmetric jurisdiction clause. Parties will need to set out their intentions clearly in the contractual documentation if they wish to limit the ability to bring concurrent claims or risk the court viewing the clause as a conscious allocation of litigation risk.

Please read the judgment here.

12. Anthony Malcolm Cork & Anor v Mark Smith [2026] EWHC 1199 (Ch)

Court: The High Court (Insolvency and Companies List)

Date: 22 May 2026

Summary

The English High Court gave judgment concerning the proper use of generative artificial intelligence (**GenAI**) in the legal profession, specifically in the context of legal research and drafting conducted for use in court proceedings.

Facts

On 17 March 2026, Pinsent Masons LLP (the **Firm**) made a 'block transfer application' (the **Application**) pursuant to section 173 of the Insolvency (England and Wales) Rules 2016 (the **Rules**) for the removal of an insolvency practitioner from office. The Application was premised upon the argument that the Rules empowered the court to release or discharge an insolvency practitioner from their liability with respect to administrations and voluntary liquidation procedures.

ICC Judge Mullen wrote to the Firm on 20 March 2026, directing them to explain what precise power the court had to order release or discharge in such circumstances. On 30 March 2026, the Firm responded by letter (the **First Letter**), citing section 12.37 of the Rules (the **Purported Text**) as the relevant provision. Upon review, Judge Mullen discovered that the Purported Text, as stated, did not in fact exist. On 14 April 2026, the Firm was asked to identify the precise source of the Purported Text relied upon and cited in their First Letter. On 15 April 2026, the Firm sent a response (the **Second Letter**). The correspondence reiterated the applicability of the Rules, stating that the First Letter was a *"summary conclusion"* from the provisions of Rule 12.37.

The judge was not satisfied with the explanations provided by the Firm on the basis that the Purported Text did not exist within the Rules and appeared to be the unchecked product of GenAI. The matter was listed for a hearing, so that the court could consider the appropriate sanctions against the solicitors responsible for the production of the First Letter and Second Letter.

The High Court (Chancery Division) Judgment

The First Letter

The Purported Text had been presented as a direct quotation from statute and amounted to a misleading statement of the law. An unnamed junior associate (**Lawyer A**) had relied upon GenAI for drafting and research purposes. Lawyer A had omitted to verify the outputs, despite the numerous accuracy disclaimers given by the GenAI. Lawyer A also did not alert their supervisors that GenAI had been used. The failure of Lawyer A to carry out proper checks was described as an "inexcusable" omission. It was noted that neither of Lawyer A's supervising solicitors had done anything more than conduct a superficial review of the First Letter, nor had either individual verified the Purported Text cited.

The Second Letter

The Second Letter contained some GenAI hallucinations. It was a construction, after the event, of a rationale stating that the Purported Text was a "*summary*" of the Rules outlined in the First Letter. The Firm had been given an opportunity to set the record straight but had, in fact, provided further misleading information to the court. It was held that this response was "unjustifiable". It was noted that one supervising solicitor had approved the Second Letter but had not verified further iterations of the Purported Text. The second supervising solicitor had not been asked to review the Second Letter by the first supervising solicitor. It was held that the first supervising solicitor should have both identified and investigated the Purported Text outlined in the Second Letter.

Supervising Solicitors

Both supervising solicitors accepted that the First Letter and Second Letter were misleading. However, it was held that neither supervising solicitor intended to mislead the court, as they had been unaware that GenAI had been used and might reasonably have expected Lawyer A to refer to authoritative sources. There was no evidence to show that the supervising solicitors did not honestly believe the contents of both letters to be true. However, there had been a clear failure to adequately supervise Lawyer A and there was evidence of negligence and a lack of care and judgment.

In line with the framework set out in *Ayinde v London Borough of Haringey* and *Al-Haroun v Qatar National* Bank[19] , the court held that the Firm's self-referral to the Solicitors Regulation Authority (**SRA**) and the publication of the High Court judgment admonishing Lawyer A and the supervising solicitors were proportionate sanctions, and did not therefore consider contempt of court proceedings against the supervising solicitors.

HFW Comment

This judgment confirms that legal professionals, irrespective of seniority or experience, remain responsible for the accuracy of their work. Further, that GenAI cannot be treated as a substitute for thorough, authoritative legal research, and that its misuse may constitute serious professional misconduct and, in some circumstances, could expose practitioners to the risk of contempt of court.

The decision also highlights the importance of properly supervising junior lawyers and verifying GenAI outputs. Failure to do so may result in significant reputational, regulatory, and professional consequences for both individual lawyers and their firms.

Please read the judgment here.

[19] [2025] EWHC 1383 (Admin)

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