# COMMODITIES CASE UPDATE 20th edition

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We are delighted to present the twentieth edition of the Commodities Case Update, with a summary of key recent cases relevant to the commodities sector.

With a market leading commodities team, we have over 100 lawyers who provide a full service internationally. The group is led by a team of over 25 partners based around the world, including in the major trading hubs of London, Paris, Geneva, Dubai, Singapore, Hong Kong and Sydney. If you would be interested in receiving a bespoke training session about the cases covered in this update or any other cases of interest, please contact your usual contact at HFW or the authors of this update, Andrew Williams and Damian Honey. As well as being of general interest for those working in commodities, our intention is that for lawyers working in-house, a bespoke training session tailored to your specific needs will allow you to meet CPD requirements.

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## African Distribution Company SaRL v AA Star Trading Pte Ltd [2025] EWHC 2428 (Comm)

Court: Commercial Court

Date: 24 September 2025

### Summary

African Distribution Company's (**ADC**) application to set aside a GAFTA arbitration award in favour of AA Star Trading Pte Ltd (**AA Star**) on grounds of lack of jurisdiction and procedural irregularity under sections 67 and 68 of the Arbitration Act 1996 (**the Act**) was refused. The Court held that the application was time barred and applied the "Kalmneft" factors[1] to decline a time extension. However, the Court allowed ADC's challenge under section 72(1) of the Act to proceed, finding that such post-award relief is not subject to the 28-day time limit under section 70(3).

### Facts

ADC, an Ivorian company, and AA Star, a Singaporean trader, entered into 16 contracts for the supply of rice, each incorporating GAFTA arbitration clauses. Disputes arose over alleged quality issues and unpaid sums due. AA Star initiated GAFTA arbitration on 20 July 2023, on which date it served the Notice of Arbitration via email to two generic addresses previously used by ADC. ADC did not participate in the arbitration and claimed it was unaware of the proceedings until receiving the award on 8 July 2024, during enforcement proceedings brought by AA Star in Côte d'Ivoire. ADC challenged the award under sections 67 and 68 of the Act, alleging non-service and serious procedural irregularity. It also applied for an extension of time under section 80(5). AA Star opposed the application, arguing that service via the generic emails was valid and that ADC had received the award more than 28 days before issuing its challenge. It also issued a challenge under section 72(1) of the Act, alleging that the tribunal was not properly constituted.

### Findings

The Court held that service was valid and that ADC had failed to act promptly upon receiving the award.

In relation to service, the Court found that ADC had used the generic email addresses for substantive communications with AA Star, including contract amendments and letters of indemnity. It had never instructed AA Star not to use those addresses.

In relation to the delay, the Court applied the Kalmneft factors. These include the length of the delay (relative to the 28 day time limit for appeal in s70(3) of the Act); the reasonableness of ADC's conduct; any contribution to the delay by the tribunal or AA Star; any prejudice caused to AA Star by granting an extension; any impact on the arbitration caused by an extension; the merits of ADC's application; and fairness. Based on these factors, the Court concluded that ADC's delay was unjustified and that its section 67 and 68 challenges lacked sufficient merit to warrant an extension. However, it held that ADC's section 72(1) challenge was arguable and not subject to the 28-day time limit. Noting a divergence in judicial opinion, the Court favoured the interpretation that section 72(1) allows post award relief for non-participating parties.

### HFW Comment

Parties should ensure their agreements are clear about appropriate communication channels and should act promptly when challenging arbitral awards. This case provides a helpful illustration of the way the Kalmneft factors operate where parties apply out of time. It also clarifies that section 72(1) offers a route for post award relief to non-participating parties, even outside the usual time limits.

[1] Laid out in *AOOT Kalmneft v Glencore* [2001] 2 All ER Comm (59)

## Kulkarni v. Gwent Holdings Ltd [2025] EWCA Civ 1206

Court: Court of Appeal

Date: 26 September 2025

### Summary

This case considered the important question of whether a repudiatory breach is capable of being cured for the purposes of a contractual provision.

### Facts

The dispute arose out of a shareholders' agreement (**SHA**) between Mr Rohit Kulkarni, Gwent Holdings Ltd (**Gwent**) and St Joseph's Independent Hospital Ltd (**NewCo**). The SHA set out the parties' rights and obligations, including provisions for compulsory share transfers in the event of "material or persistent" breaches. Disputes arose in which Mr Kulkarni claimed that Gwent had committed breaches entitling him to force a transfer of Gwent's shares under clause 7.1(d) of the SHA, which read:

"*the Shareholder committing a material or persistent breach of this agreement which, if capable of remedy, has not been so remedied within 10 Business Days of notice to remedy the breach being served by the Board (acting with Shareholder Consent)*".

No notice was served. Gwent argued that a notice was required to trigger the clause but Mr Kulkarni contended that no notice to remedy was required because the breaches were repudiatory and a repudiatory breach is inherently irremediable,

It was common ground between the parties that the relevant breaches were repudiatory. The appeal focused on three main issues. First, on the construction of the clause 7.1(d), did a material or persistent breach automatically trigger a compulsory share transfer, or was a formal notice to remedy required first? Second, are repudiatory breaches (those so serious as to justify termination) always incapable of remedy? Lastly, could the breaches in question be remedied and if so, were they in fact remedied?

### Findings

The Court of Appeal upheld the earlier decision of the High Court, finding that although Gwent had committed material and persistent breaches of the SHA, those breaches were capable of remedy and had in fact been remedied. Whilst the position at common law is that a repudiatory breach is not capable of cure and the innocent party has the right to terminate or affirm the contract, the position was not the same where there is a repudiatory breach but there is a clause in the contract which provides that the innocent party has a right of termination (or some other remedy) if such breach is not cured by the guilty party within a set period.

Under clause 7.1(d) of the SHA, a compulsory transfer of shares could only be triggered if a material or persistent breach was not remedied within 10 business days of a notice to remedy being served. The Court of Appeal held that question of remediability in these circumstances was a practical rather than technical one, in which common law rules as to repudiation have no place. The breaches in this case were all capable of remedy. Since no notice was served, the condition for a deemed transfer notice was not satisfied and Mr Kulkarni's claim failed.

### HFW Comment

Issues relating to repudiatory breach often lead to litigation. This guidance offered in this decision of the Court of Appeal is therefore helpful. In addition, it is another example of the importance of strict adherence to contractual notice provisions.

## The Secretary of State for Health and Social Care v PPE Medpro Limited [2025] EWHC 2486 (Comm)

Court: Commercial Court

Date: 1 October 2025

### Summary

In a COVID-19 related dispute, whilst the Department of Health and Social Care (**DHSC**) had failed to reject in a timely manner non-compliant goods supplied to them under a contract with PPE Medpro Limited (**Medpro**), they were still able to recover the purchase price because Medpro had failed to adduce evidence of an available market or other options for mitigation.

### Facts

Medpro had access to the so-called 'VIP lane' of PPE supply during the COVID-19 pandemic. Through this, in June 2020, they agreed a contract with the DHSC to supply 25 million sterile gowns for a total cost of around £122 million. Between 8 July 2020 and 28 August 2020, the DHSC paid the purchase price for the gowns, which were delivered ex works China between July and early September 2020. They arrived in the UK in tranches between mid-August and October 2020. The gowns were inspected in September and October 2020, some time after arriving in the UK. On 23 December 2020, the DHSC sent a rejection notice to Medpro, alleging that the gowns were not contractually compliant and thus could not be used as sterile surgical gowns in the NHS. The DHSC subsequently commenced proceedings against Medpro, claiming the full value paid for the gowns under the contract because they did not meet the required Sterility Assurance Level (**SAL**), had not undergone a validated sterilisation process, were not compliant with EN 556-1 regulations, and did not contain a CE marking with a notified body (**NB**) number. They also claimed around £8.6m in storage costs for the non-compliant gowns. Medpro argued that the DHSC had lost their right to reject the gowns and that in any event, the DHSC should be estopped from relying on relevant clauses imposing obligations because they had approved documents evidencing the gowns' sterility during the procurement process. Medpro also counterclaimed for rectification of the contract based on common mistake and/or damages for negligent misstatement.

### Findings

The Court held that on a true construction of the contract, there was a requirement for the gowns to be compliant with EN 556-1, have a SAL level of $10^{-6}$ and have CE markings including NB numbers. Medpro were found to be in breach of contract in relation to all three of these requirements.

However, the Court held that the DHSC had lost the right to reject the goods because they did not perform an inspection and communicate rejection within a reasonable time. An inspection could have been performed by the DHSC's agent on delivery in China to look for CE markings. There was no need to wait until the goods arrived in the UK. Nevertheless, the Court awarded damages equivalent to the full contractual prices because Medpro failed to adduce evidence showing that there was an available market for the non-sterile gowns, or that there were steps the DHSC could have taken to mitigate their losses to reduce the damages. The DHSC were not allowed to recover storage costs because this value was not proven on the evidence they adduced at trial.

Medpro's estoppel case failed because contractual estoppel did not apply and other forms of estoppel failed due to a lack of clear representation, reliance and detriment. Further, in this case, the contract expressly excluded reliance on pre-contractual representations. The counterclaim for negligent misstatement failed as no duty of care was found to be owed by the DHSC and there was also no reliance or causation. The counterclaim for rectification following common mistake also failed due to a lack of evidence that the parties' shared intentions were 'at odds' with the terms of the contract.

### HFW Comment

This case underscores the need for timely inspection of goods and exercise of the right to reject non-compliant goods. The circumstances of this case, which gave rise to a lack of an available market or other options for mitigation, are relatively unusual. The case also highlights the need for robust, relevant and specific evidence in support of claims brought to at trial.

### Advanced Multi-Technology for Medical Industry (trading as Hitex) v Uniserve [2025] EWCA Civ 1212

Court: Court of Appeal

Date: 2 October 2025

## Summary

A buyer was entitled to terminate its supply contract because the seller had breached its delivery obligations by failing to maintain sufficient stock to meet cumulative quantities under the agreed delivery schedule. The seller's damages claim failed as it never had the full quantity available and could not "retender" undelivered stock, given the contract was not severable.

## Facts

During the COVID-19 pandemic in 2020, the first Claimant, Advanced Multi-Technology for Medical Industry (trading as Hitex) (**Hitex**), entered into a contract with Uniserve Limited (**Uniserve**), for the supply of 80 million face masks to be delivered in shipments on expressly agreed dates between April and July 2020 (the **Delivery Schedule**), thereby making delivery "*time of the essence*" (the **Supply Contract**). The third claimant, Mr Popeck was the sole shareholder and director of the second claimant, Caramel Sales Ltd (**Caramel**), and had introduced Hitex to Uniserve. A parallel commission agreement was made between Uniserve, Caramel and Mr Popeck under which Uniserve agreed to pay a commission on each shipment of masks, calculated by reference to the date that each shipment arrived in the UK and was cleared by customs (the **Commission Contract**).

Hitex encountered challenges in meeting the requirements of the Delivery Schedule, ultimately resulting in Uniserve's purported termination of the Supply Contract. However, Hitex contended that this action was unlawful, with the consequence that the Supply Contract remained alive. Hitex later claimed Uniserve was in breach of contract by failing to collect and pay for 77 million masks (i.e. 80 million minus 3 million that had been delivered), seeking damages of US$23.1 million. In parallel, Caramel and Mr Popeck pursued £19.25 million in unpaid commission against Uniserve. Uniserve argued it was entitled to terminate the contract, or alternatively, to rescind it because it was induced into the Supply Contract on the basis of false representation made by an individual employed by Hitex. Uniserve contended that in any event, Hitex was unable to perform the contract and consequently was not entitled to damages.

At first instance, the Commercial Court found that Uniserve had no right to terminate, holding that Hitex had fulfilled its delivery obligations and that Uniserve's termination constituted an anticipatory breach. Hitex responded by ceasing production in July 2020, which the Court interpreted as acceptance of Uniserve's repudiation, thereby bringing the contract to an end. The Court found that there was an available market for the masks and awarded Hitex US$16.94 million in damages. Claims for commission under the parallel Commission Contract failed, as commission was only due on masks delivered to the UK. Notably, the judge's reasoning partly rested on grounds not advanced by either party, including the finding that Hitex had accepted the repudiation by conduct, which was contrary to Hitex's position that it had remained ready and willing to perform.

The case went to the Court of Appeal, where the issues which fell to be decided were:

(1) Was Uniserve entitled to rescind the supply contract for misrepresentation? (**Issue 1**) If not:
(2) Was Uniserve entitled to terminate the supply contract? (**Issue 2**) If not:
(3) Was Hitex entitled to damages for non-acceptance of the goods? (**Issue 3**) If so:
(4) Was the judge wrong to assess damages as he did? (**Issue 4**)

## Findings

On Issue 1, the Court of Appeal found against Uniserve, concluding that it did not simply rely on information provided by Hitex's representative. Instead, Uniserve had commissioned its own due diligence into the Hitex factory's production capabilities. However, in relation to Issue 2, the Court of Appeal held that Uniserve was entitled to terminate the supply contract. This was due to Hitex's breach of delivery obligations: Hitex failed to have sufficient masks available to meet the Delivery Schedule and did not tender performance according to the revised versions of the Schedule. As to Issue 3, the Court found Hitex was not entitled to damages for non-acceptance because even if the contract had remained in force, it failed to accumulate the cumulative quantities required under the revised Delivery Schedule and could not rely on "*retender*[ing]" the same masks because the Supply Contract was not severable. Additionally, Hitex's own evidence showed that 15% of its stock was reserved for the Jordanian government, meaning it never had the 77 million masks available for delivery that its claim assumed. Given these findings, Issue 4 did not arise.

Hitex's last minute attempt to claim entitlement to damages for specific shipments (where it did have sufficient masks) was too late, as the Claimants had never pleaded nor raised this point in the Court of First Instance or in their Respondent's Notice. Given that Uniserve was entitled to terminate the Supply Contract, the Court of Appeal dismissed the cross-appeal on the alleged unpaid commission.

## HFW Comment

Several key points arise from this decision. First, the Court of Appeal emphasised that judges must decide cases strictly within the parties' pleadings, even if an alternative theory seems preferable, describing the first instance judge's approach as a *"mistake"*. Second, parties should plead all aspects of their case clearly and fully or risk losing the opportunity to do so: Hitex's failure to plead fallback claims or estoppel arguments meant these could not be raised on appeal. Third, the judgment illustrated the Court of Appeal's commercial common sense in rejecting Hitex's attempt to *"retender"* masks for successive deliveries, noting that loss of bargain damages require the claimant to be able to perform.

HFW (Andrew Williams, Gordon Rieck and Nicole Yeung) acted for Uniserve in this case.

## JSC “Kazan Oil Plant” v Avez Trade DMCC [2025] EWHC 2713

Court: Commercial Court

Date: 21 October 2025

### Summary

This case concerned an arbitration appeal under section 69 of the Arbitration Act 1996 (**the Act**) following a FOSFA arbitration. The Court had to decide two conflicting applications: 1) whether the appeal was filed within the statutory 28-day limit under section 70(3) and if not, 2) whether the court should grant an extension under section 80(5). The Court held that it is well-established that time runs from the date of the appeal award, not from the date of receipt and refused to grant an extension. The claim was struck out.

### Facts

A dispute arose under a contract for the sale and purchase of 48,000 mt of crude sunflower oil and was referred to FOSFA arbitration. The tribunal found in favour of Aves Trade DMCC (**Aves**) and JSC “Kazan Oil Plant” (**Kazan**) appealed. The appeal was dismissed by the FOSFA Board of Appeal. Kazan challenged the Board of Appeal's award in the English High Court under section 69 of the Act, issuing its claim form on 8 May 2025, some 43 days after the Appeal Award was issued and 28 days after receiving it. Aves applied to strike out the claim under section 70(3) of the Act because it was issued out of time. Kazan argued that time ran from receipt of the award, or alternatively sought an extension under section 80(5) of the Act.

### Findings

The Court held that under section 70(3) of the Act, time runs from the date of the award, not from the date of receipt. The Court noted that the interpretation of section 70(3) is now well-settled following *UR Power GmbH v Kuok Oils* and *PEC Ltd v Asia Golden Rice [2012] EWHC 846 Comm* and that professional understanding has become entrenched over the past 15 years. Kazan’s reliance on receipt date was not forgivable given the availability of clear authority and commentary. It also refused to grant an extension under section 80(5) of the Act. In relation to the delay, the Court applied the Kalmneft factors[2]. These include the length of the delay (relative to the 28 day time limit for appeal in s70(3) of the Act); the reasonableness of Kazan's conduct; any contribution to the delay by the tribunal or Aves; any prejudice caused to Aves by granting an extension; any impact on the arbitration caused by an extension; the merits of Kazan's application; and fairness. Most of these factors did not assist either party. While acknowledging that sanctions delayed Kazan's ability to pay for and receive the award, the Court considered the subsequent 15-day delay after payment, at more than 50% of the 28 day period, "*not enormous, but nor trifling*". Although Kazan did not have English lawyers until 22 April 2025, there was no excuse for those lawyers not acting quickly once they had been instructed. The claim was struck out.

### HFW Comment

This decision reinforces the Courts' strict approach to time limits under section 70(3) of the Act. It confirms that time runs from the date of the award, not receipt, and that extensions will only be granted in exceptional circumstances.

[2] Laid out in *AOOT Kalmneft v Glencore* [2001] 2 All ER Comm (59)

## Alta v Bosworth [2025] EWHC 2724

Court: Commercial Court

Date: 21 October 2025

### Summary

This judgment concerned applications in an ongoing inquiry into damages following the discharge of a worldwide freezing order (**WFO**). The Claimants sought to strike out dishonesty allegations made by the Defendants, while the Defendants applied for permission to amend their pleadings to include arguments based on those allegations.

### Facts

The Claimants previously alleged a substantial and sustained fraud by the Defendants in connection with 144 crude oil purchase and sale transactions between April 2007 and May 2013 relating to oil originating in West Africa. Those fraud claims were dismissed. In connection with this claim, a WFO had been in place since February 2015. This was discharged in February 2025 and an order for Inquiry into damages ("the Inquiry") was made. The Defendants argued that the WFO caused various heads of loss for which they should be compensated. The Claimants applied to strike out allegations, made by the Defendants in the Inquiry, that the Claimants had obtained and maintained the WFO dishonestly. The Defendants applied for permission to amend their replies to the Claimants' defences to the Defendants' claims in the Inquiry to rely on the allegations of dishonesty.

### Findings

The Court granted permission for most of the disputed amendments and dismissed the strike-out application. While acknowledging that the proposed amendments would expand the scope of the Inquiry, the Court held that they had a realistic prospect of success and raised issues of law that should not be summarily excluded in a developing area. The Court emphasised that the “own wrong” principle and related counterfactual arguments were at least arguable and could not be struck out at this stage. Although the amendments would increase disclosure and evidential burdens, this was outweighed by the need for a fair determination of causation and liability. Permission was also granted for amendments asserting that dishonesty should be treated as the sole cause of loss, albeit with reservations as to their ultimate merit. However, amendments based on hypothetical scenarios, in which the WFO was never granted or set aside early, were refused as lacking realistic prospect of success. The Court declined to stay the dishonesty allegations, noting their close connection to the issues in the Inquiry. Overall, the balancing exercise favoured allowing the amendments to proceed, subject to limited exclusions.

### HFW Comment

The latest judgment in this high profile case illustrates a number of interesting procedural points. It is an example of the balancing exercise undertaken by the Court when dealing with applications to amend. The Court is willing to permit amendments where they raise arguable points of law. However, the parties must demonstrate a realistic prospect of success and that amendments can be accommodated without derailing case management. Allegations of dishonesty carry a high evidential burden but, if properly pleaded and linked to causation, may survive strike-out even at a late stage; speculative or hypothetical points will not. It is also a reminder, both of the serious commitment shouldered by a party seeking a WFO when it provides a cross-undertaking in damages; and of the Court's recognition of the gravity of the consequences of a WFO for the party whose assets are frozen.

## RMK Maritime (Europe) Ltd & Anor v CMB.Tech NV [2025] EWHC 2739 Comm

Court: Commercial Court

Date: 23 October 2025

### Summary

A claim in restitution for advisory services allegedly beyond the scope of a written Advisory Agreement during Euronav's 2018 merger with Gener8 Maritime were dismissed. The Court held that all services fell within the Advisory Agreement and that the contract precluded any unjust enrichment claim.

### Facts

The Claimants (**RMK**) sought US$11.68 million in restitution (quantum meruit) for advisory services allegedly provided beyond the scope of an Advisory Agreement dated July 2016. The agreement related to the Defendant's (now **CMB**, formerly Euronav) proposed acquisition of Gener8 Maritime and provided for staged fees totaling US$2 million. RMK argued that it performed extensive M&A advisory work outside the contract (including deal structuring, valuation advice, due diligence coordination, and negotiation support) on the basis of a shared understanding that further remuneration would be paid. CMB denied this, contending that all services fell within the Advisory Agreement and that any additional payment was discretionary. CMB also argued that even if some services were outside the contractual scope, RMK's claim in unjust enrichment must fail as a matter of law, due to the contract's "no oral modification" (**NOM**) clause and express provision for variation by agreement to be in writing.

### Findings

The Court held that RMK's claim failed. It found that all services provided by RMK during the merger with fell within the scope of the Advisory Agreement signed in July 2016.

The Court interpreted the term "Project" in the Agreement as covering the entire acquisition process, not merely a preliminary study. Clause 1.1(v) ("other advisory related work deemed appropriate") was construed broadly, encompassing tasks such as deal structuring advice, valuation advice and debt rollover modelling. The success-fee structure and termination provisions reinforced that RMK's role was intended to continue through to completion.

On unjust enrichment, the Court ruled that the Advisory Agreement displaced any restitutionary claim. The contract expressly required written variation for additional services and contained a NOM clause. The Court found no joint basis or shared understanding that RMK was entitled to extra payment; fee discussions reflected only CMB's willingness to consider a discretionary bonus. Finally, the Court concluded RMK's claim could not succeed under failure of basis or free acceptance principles.

### HFW Comment

This decision shows that restitutionary claims cannot override a clear contractual framework and that unjust enrichment claims require a shared conditional basis; informal assurances or expectations are insufficient. It is also a reminder of the importance of giving thought to all express contractual provisions because the Court will hold the parties clauses such as NOM and variation clauses.

## Special Metals Wiggin Ltd v Corrotherm International Ltd
## [2025] EWHC 2769 (TCC)

Court: King's Bench Division (Technology and Construction Court)

Date: 28 October 2025

### Summary

This dispute concerned a familiar scenario in a contract of sale: a product is supplied by a seller to a buyer, payment is to be made in instalments by way of periodic invoices, and the seller finds that some of those invoices have not been paid. The buyer alleges that the product was defective in some respect, including under s.14 of the Sale of Goods Act 1979.

### Facts

The Claimant, Special Metals Wiggin Limited, was the supplier of metal product to the Defendant, Corrotherm International Limited. The parties agreed that purchase orders were issued by the Defendant between July 2022 and September 2023 and that the Claimants' 2021 Terms and Conditions (**T&Cs**) applied to the orders. The Defendant claimed that the goods were defective and did not comply with the Defendant's required specification in that *(a)* the goods had not been manufactured following the Claimant's standard processes; *(b)* the goods did not comply with ISO 9001, and/or *(c)* the goods were not of satisfactory quality or fit for resale or fit for use. It withheld payment in relation to those claims. The Claimant brought a claim for the outstanding amounts it said were due. The Defendant argued it was entitled to withhold payment by way of set-off and/or counterclaim.

The Claimant then applied for summary judgment in relation to five issues (rather than for the sums it claimed were due), including (1) whether a valid trust had been created and if so, whether the Defendant had a real prospect of successfully arguing that it was not in breach of that trust; (2) the correct interpretation of Clauses 6 and 7(b) of the T&Cs and to what extent those clauses excluded the Defendant's defences and counterclaim; (3) the effect of non-compliance of the condition precedent within Clause 6 of the T&Cs; (4) whether Clause 7(b) of the T&Cs was reasonable having regard to the Unfair Contract Terms Act 1977 (**UCTA**); and (5), whether Clause 7(c) of the T&Cs excluded the Defendant's counterclaims.

### Findings

The Court struck out the Claimant's application. In doing so, it set out the principles which apply when determining summary judgment applications and identified the following as particularly relevant in this case: (1) whether the Defendant's defence had a realistic prospect of success, not one which is merely arguable; and (2) whether there was some other compelling reason not to enter summary judgment. It then dealt with the five issues as follows:

Issue 1: Although there was a valid bare express trust as contended for by the Claimant, summary judgment was not awarded.

Issue 2: Clauses 6 and 7(b) did not exclude any defences but did exclude certain counterclaims.

Issues 3 and 4: These were reasonably arguable issues and not suitable for summary judgment.

Issue 5: Clause 7(c) excluded any counterclaims in respect of goods delivered more than a year before the first notification of defects.

In reaching its conclusions, the Court noted that issues of fact are not appropriate for determination at the summary judgment stage. The reasonableness of an exclusion clause under UCTA is a factual issue and the appropriate forum to determine this was therefore at trial. It also reiterated the strict approach to be taken to interpreting an exclusion clause, against the party seeking to rely on it. Express words specifically referring to the relevant type of claim were needed for an exclusion clause to apply to that claim. This is particularly so when the party seeking to rely on the exclusion clause has contracted on their own T&Cs.

### HFW Comment

There are two key takeaways from this decision. First, summary judgment applications should be made only where appropriate. In particular, they are not suitable where determinations of fact are required. Second, the Court's strict approach to the interpretation of exclusion clauses should be noted.

## Allseeds Switzerland SA v Intergrain SA [2025] EWHC 2788 (Comm)

Court: Commercial Court

Date: 28 October 2025

### Summary

The Commercial Court considered an appeal under section 69 of the Arbitration Act 1996 (**the Act**) against a FOSFA arbitration award. The dispute concerned a CIF contract where the seller, Allseeds Switzerland SA (**Allseeds**), was found to have failed to provide an effective insurance policy. The Court upheld the tribunal's finding that Allseeds was in breach of its contractual obligations but remitted the award for reconsideration on the issue of whether the buyer, Intergrain SA (**Intergrain**), had sufficiently proved its loss.

### Facts

Allseeds agreed to sell 17,000 mt of Brazilian soya beans to Intergrain on CIF terms, with delivery at Aliaga, Turkey. Upon arrival, the cargo was found to be damaged. Intergrain claimed that Allseeds had failed to provide a valid insurance policy as required under the CIF terms. The matter was referred to FOSFA arbitration, where the tribunal found in favour of Intergrain, concluding that the insurance policy procured by Allseeds had been avoided by the insurers and was therefore ineffective. Allseeds appealed under section 69 of the Act, arguing that the tribunal had erred in law by failing properly to assess whether Intergrain had proved its loss. Intergrain argued that the insurance policy's ineffectiveness was sufficient to establish both breach and loss.

### Findings

The Court upheld the tribunal's conclusion that Allseeds had breached its contractual obligation to provide effective insurance under the CIF terms. It agreed that a policy which had been avoided by insurers could not be considered valid or effective for the purposes of the contract. However, the Court found that the tribunal had not adequately addressed whether Intergrain had proved its loss. Intergrain must establish that the insurance policy was void or voidable in law or fact, not merely that insurers had rejected the claim. The Court held that this distinction was material and that the tribunal had not sufficiently analysed the legal status of the policy or the causal link between its ineffectiveness and Intergrain's loss. The reward was remitted to the tribunal to reconsider this issue.

### HFW Comment

This case reinforces the importance of CIF sellers ensuring that insurance policies are not only issued but also legally effective. It also highlights the evidential burden on claimants to prove their loss. The judgment offers useful guidance on the scope of section 69 appeals under the Act and the limits of tribunal discretion.

## Hapag Lloyd AG v Skyros Maritime Corporation & Anor [2025] EWCA Civ 1529

Court: Court of Appeal

Date: 28 November 2025

### Summary

This dispute centred on whether the extent of damages to which owners were entitled for late redelivery of vessels under near identical charterparties was affected by the fact that a pre-existing sale agreement would have precluded them from rechartering the vessels had they been redelivered on time. The Court of Appeal ultimately held that the measure of damages recoverable was unaffected and that the normal rate would apply, being the difference between the contractual rate and the market rate. This judgment will be relevant to other types of claim for market loss, including sale of goods disputes.

### Facts

Skyros Maritime Corporation and Agios Minas Shipping Company (the **owners**) owned two vessels which were chartered to Hapag-Lloyd (the **charterers**) on near-identical terms. Before redelivery, the owners entered MOAs to sell the vessels, under which they agreed not to enter any further charter fixtures. The vessels were subsequently redelivered two and seven days late respectively. The market rate at the time for a short-term fixture was about three times the rate that the vessels would have earned on similar terms to the charterparty. It was common ground between the parties that even if the vessels had been redelivered on time, the owners would not have chartered them again and would not have earned any additional hire.

A dispute arose as to whether the damages due to the owners ought to reflect the substantial difference between the contract and market rates, or if they should receive only nominal damages, reflecting the agreed fact that they would not have earned further hire if the vessels had been redelivered on time. At arbitration, the owners argued that the MOAs should be disregarded and the normal measure of damages applied. The tribunal agreed, finding that there had been an implied request by the charterers for services outside the scope of the charterparty (namely, use of the vessels during the overrun), with an implied agreement to pay for this at the market rate ("*quantum meruit*"). Alternatively, they held that the owners were entitled to user damages or negotiating damages. The charterers appealed.

The Commercial Court overturned the tribunal's award, holding that the owners were entitled only to nominal damages. It held that the *quantum meruit* principle did not apply as the vessels' services were provided under the charterparties and hire was paid at the contract rate. It also rejected owners' claims for user damages or negotiating damages. Its decision focused on the compensatory principle in damages, including the principles of remoteness and collateral matters ("*res inter alios acta*"). The Court held that since the owners had lost the opportunity to benefit from higher market rates due to their sale commitments, only nominal damages were recoverable. The owners were granted leave to appeal, on whether the MOAs must be disregarded when assessing damages and on the principle of user damages.

### Findings

The Court of Appeal allowed the owners' appeal and held that it "*has been clear for over a century*" that the measure of damages for late redelivery under a time charter is the difference between the market rate and the contract rate. The key authority on which the Court of Appeal relied, the *Achilleas*[3], recognised that this normal measure of damages will occasionally result in an owner being under or over compensated.

### HFW Comment

This ruling confirms the long-established principle that owners are entitled to the difference between the market and the contract price in the event of late redelivery and that collateral arrangements such as sales or future fixtures are irrelevant to the assessment of damages. A key reason for this is so as to ensure commercial certainty for contracting parties.

For commodities clients, this judgment will be of interest because the judicial approach to assessing loss using the prevailing market rate as the ordinary measure of loss is similar in sale of goods disputes. Whilst the Court of Appeal

[3] Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas) [2008] UKHL 48

declined to enter the debate about the assessment of loss in sale of goods contracts where there are sub-contracts in place, its emphasis on certainty and consistency in commercial dealings even where, on occasion, this leads to higher or lower levels of compensation, is instructive.

An appeal to the Supreme Court will be heard in November 2026.

## Mercuria Energy Trading SA v Onex DMCC [2026] EWHC 130 (Comm)

Court: Commercial Court

Date: 22 January 2026

### Summary

Oil sale contracts are typically concluded by reference to 'typicals' and 'guaranteed specifications' as a means of ensuring that the product supplied meets certain quality parameters. Here, the Court was asked to decide whether a seller was bound to supply product that complied with 'typicals' set out in a contract of sale incorporating the BP General Terms & Conditions for Sales and Purchases of Crude Oil and Petroleum Products 2015 (the **BP GTCs**). This was the first time the contractual status of such 'typicals' had been considered by the Court.

### Facts

Mercuria Energy Trading SA (**Mercuria**) agreed to buy a cargo of oil from Onex DMCC (**Onex**) on CIF terms. The oil was onsold to Valerio on terms that were not back-to-back. Following delivery, it was found to contain excessive levels of organic chloride (**OC**). Valerio rejected the cargo, which was eventually downgraded and sold "*as is*".

The contract was based on a recap and specially agreed terms and incorporated the BP GTCs *"except as specifically detailed above"*. The cargo description was of "SOMO Basrah pipeline high-sulphur straight-run fuel oil (**SRFO**) in line with the following typicals". The description clause included a table of agreed typicals, which referred to a maximum limit of 5 ppm for OCs. The contract also included a guarantee that the cargo would be 100% SOMO IRAQI High Sulphur Straight Run (**HSSR**).

Mercuria brought a claim against Onex seeking damages, based on three main grounds. The first ground was that the min/max parameter for OCs set out in the table of typicals constituted a guarantee that the cargo would contain OCs of no higher than 5 ppm. Mercuria claimed that there was an inconsistency or conflict between the specially agreed terms which, it argued, contained a promise as to the maximum level of OCs, and the BP GTCs. Section 57 of the BP GTCs provided that a typical was a characteristic "*often attributable to the 'Product' but given without guarantee and without any promise that the typical quality or attribute would in fact be present"*. The BP GTCs further provide at Section 59.1.1 that "*whether set out in these General Terms and Conditions or in the Special Provisions, neither typicals nor any stipulation as to time of delivery shall form part of the ... Product's description, quality or fitness for purpose*." Mercuria argued that the specially agreed terms must prevail in case of an inconsistency.

The second ground was that the presence of OCs constituted a breach of the guarantee that the cargo would be 100% Iraqi origin HSSR.

The third ground was that the OC levels were so high that the cargo no longer met its product description of "Somo Basrah high sulphur straight-run fuel oil" because it had lost its commercial identity as a result of the contamination.

### Findings

Mercuria's claim failed. The Court set out the following steps when dealing with contractual interpretation:

- establishing the parties' intentions from the language used against the commercial setting of the contract.
- adopting a practical approach, rather than a literal or mechanical one.
- if, upon a practical construction of the contract, the printed term effectively deprived the special term of any effect, then the two clauses were likely to be inconsistent.
- alternatively, if the two clauses could be read fairly and sensibly so as to give effect to both then the courts would likely construe the contract accordingly, and there was no predisposition to find inconsistency.

In relation to Mercuria's first ground, the Court held there was no inconsistency or conflict between the recap, the specially agreed terms and the BP GTCs. They could be read together such that the "typicals" identified were non-binding. On the second ground, the Court held that the wording of the guarantee related to origin, not quality in the way Mercuria proposed and that the cargo was of SOMO Iraqi origin. Some OCs would be naturally present in HSSR, even if it was in line with typicals. On the third ground, the Court held that there was no breach of the description clause. The cargo was marketable as SRFO and was onsold by Mercuria as Iraqi SRFO. It had not lost its commercial identity.

Although it had dismissed Mercuria's claim, the Court went on to consider quantum and the operation of Section 53 of the Sale of Goods Act 1979 (**SOGA**). Onex had argued that damages should be assessed by reference to prices for the sound cargo and the defective cargo on the same day. Mercuria argued that Section 53 SOGA is not prescriptive and that it should be entitled to claim the difference between sound value at the time of rejection and defective value at the time of actual resale, even if market price for sound value had changed. The Court confirmed that it agreed with Mercuria on this.

### HFW Comment

Although each case will turn on its own facts, this decision confirms that where the BP GTCs are incorporated, a buyer will face a considerable obstacle in seeking to establish a breach of contract based on a cargo's non-compliance with typical characteristics. If a characteristic is important to a buyer, it should seek specific contractual guarantees as opposed to relying on typicals. The case is also a reminder of the importance of being back-to-back in a contractual chain wherever possible.

## Trafigura Pte Ltd & Anor v Gupta & Ors [2026] EWHC 159 (Comm)

Court: Commercial Court

Date: 30 January 2026

### Summary

The Commercial Court found in favour of Trafigura in its claims against the First Defendant, Prateek Gupta, arising from a nickel cargo fraud. Trafigura was awarded proprietary relief of around US$500 million and substantial damages. Two former Trafigura employees were expressly cleared of any wrongdoing.

### Facts

Between 2021 and 2022, Trafigura Pte Ltd entered into 107 contracts made under nine master contracts with companies controlled by Mr Gupta, paying approximately US$500 million for cargoes purportedly comprising LME Grade Nickel (minimum 99.8% purity). The cargoes were subsequently found to contain materials such as rubble, stainless steel and iron briquettes rather than nickel. When the fraud came to light, Trafigura terminated the contracts and commenced proceedings against Mr Gupta and a number of companies associated with him (the **Second to Eighth Defendants**). Trafigura claimed it was the victim of a conspiracy to commit fraud, which Mr Gupta had devised and which had been brought about by the Second to Eighth Defendants. It brought a number of claims including for: (i) rescission of 91 of the trades (the **Main Trades**) on the grounds of fraudulent misrepresentation, the actual cargoes having realised just under US$10 million on resale against the approximately US$489 million paid; (ii) deceit; (iii) unlawful means conspiracy; and (iv), claims arising from duplicate bills of lading.

Mr Gupta's main defence was that Trafigura had knowingly agreed to a finance arrangement involving repo contracts (the **Arrangement**) under which it was known that the cargoes might not be nickel. The Arrangement was said to have been concluded at a meeting in Dubai in June 2019.

### Findings

The Court rejected Mr Gupta's account of the Dubai meeting as "wholly untrue," finding that the contemporaneous documents strongly contradicted the existence of the alleged Arrangement. It concluded that Mr Gupta was fundamentally dishonest and that his evidence could not be relied upon on any material issue.

In the rescission claim, the Court found that the defendants had made implied fraudulent misrepresentations when negotiating each master contract, which had induced Trafigura to enter into the agreements. The master contracts were treated as severable, so that the Main Trades could be rescinded without undoing the master contracts or the other individual trades. All of the defences to the rescission claim, including time-bar arguments, were rejected and Trafigura was found not to have affirmed the Main Trades. Following the rescission, Trafigura was awarded an equitable proprietary interest of around US$489m (net of cargo sale proceeds). Tracing of those funds is to be addressed in a subsequent phase of proceedings.

Trafigura succeeded in its deceit claims and Mr Gupta was held personally liable as a joint tortfeasor for the deceit of all eight corporate defendants. The claim of unlawful means conspiracy was also established. Approximately US$6.6m was awarded in respect of the duplicate bills of lading claims. The Court awarded Trafigura indemnity costs on various elements of the claim, reflecting its findings on Mr Gupta's conduct.

### HFW Comment

This decision is the outcome of another, particularly high profile, fraud in a sector which continues to be susceptible. It is a reminder that parties should conduct thorough and regular due diligence and follow up any red flags, particularly in high value trades. It is also an example of the robust treatment fraudsters are likely to receive from the English courts, including the awarding of costs on an indemnity basis where appropriate.

## UK Global HealthCare Ltd v Secretary of State for Health and Social Care [2026] EWHC 561 (TCC)

Court: High Court (Technology and Construction Court)

Date: 12 March 2026

### Summary

The Defendant (**DHSC**) applied for summary judgment to recover advance payments made under contracts for the supply of medical gloves during the COVID-19 pandemic and to strike out the Claimant's (**UKGH**) claim. The Court dismissed the application, finding that UKGH had a real prospect of successfully arguing that DHSC had waived or was estopped from relying on contractual delivery deadlines, or had prevented performance, such that the termination and claim for repayment could not be summarily determined.

### Facts

In May and June 2020, DHSC entered into two contracts with UKGH for the supply of 320 million medical gloves, with delivery deadlines of 30 June and 31 July 2020 (the **Contracts**). In accordance with the Contracts' payment terms, DHSC made upfront payments totalling £15,350,000. However, no gloves were ever delivered. Shortly before the first delivery deadline, DHSC insisted on additional testing and certifications before allowing delivery, despite the fact that there was no contractual basis upon which it was entitled to the benefit of inspections or tests in relation to the gloves being supplied under the first contract or the first phase of the second contract. UKGH complied with these requests but asserted that they were extra-contractual and would delay delivery and sought a formal extension of time by way of a variation of the Contracts. DHSC responded that varying the delivery dates *"[made] total sense"* and suggested that amendments to the Contracts were being progressed. UKGH submitted that it remained and had generally remained ready, willing and able to supply the gloves. Testing commissioned by DHSC later suggested that certain gloves did not meet the standards tested against and DHSC indicated it would not accept them in a letter dated 28 October 2020. UKGH disputed the reliability of those tests and proposed alternative compliant products. DHSC argued that the Contracts had been lawfully terminated by the letter dated 28 October 2020. Although DHSC accepted that the grounds given under this letter were not valid, it submitted that the termination was lawful because valid grounds for termination existed at the time. DHSC also argued that the Contracts expired on 26 May 2021 and 7 December 2020 such that, as a result of either the termination or the expiry, DHSC summarily claimed the return of the advance payment.

UKGH resisted the application for summary judgment and argued that there was at least a triable issue that DHSC, in breach of contract, prevented delivery occurring in accordance with the terms of the Contracts by insisting on testing to which it had no contractual right, by wrongfully rejecting the goods and by failing to cooperate with UKGH as contractually required. In addition and in the alternative, UKGH argued that DHSC had waived compliance with the delivery dates and was now estopped from relying on either the delivery dates or the expiry dates such that its purported termination was unlawful.

### Findings

The Court refused DHSC's application for summary judgment and strike-out, holding that UKGH had a real prospect of succeeding on its claim and that the issues raised were not suitable for summary determination. In particular, there was a triable issue as to whether DHSC had, through its conduct, waived compliance with the contractual delivery dates, agreed to extend them, or was estopped from relying upon them. The Court also held that there was a realistic argument that DHSC's conduct engaged the prevention principle, in that its insistence on extra-contractual testing may have rendered performance within the contractual deadlines impossible, rendering time no longer of the essence and undermining reliance on contractual deadlines. Furthermore, UKGH had a real prospect of establishing that DHSC wrongfully rejected the goods, relying on testing which may have been flawed. In light of these findings, there was a realistic prospect that the termination of the Contracts was unlawful and capable of giving rise to damages. The Court also rejected DHSC's attempt to obtain summary judgment for repayment of the advance payments, finding that UKGH had a real prospect of arguing that the repayment provisions did not apply where non-delivery was caused by the Defendant's own breach.

### HFW Comment

This case raises a number of key issues in sale of goods contracts and the decision illustrates the difficulty of obtaining summary judgment in complex contractual disputes, particularly where the parties' conduct may have diverged from the strict terms of the contract.

## Celestial Aviation Services Ltd v UniCredit Bank GmbH (London Branch) [2026] UKSC 10

Court: Supreme Court

Date: 25 March 2026

### Summary

This case confirmed the wide reach of UK sanctions regulations (Russia (Sanctions) (EU Exit) Regulations 2019 (**UK Russia Regulations**) – even capturing obligations under letters of credit (**LCs**). It also demonstrates how s44 of the Sanctions and Anti-Money Laundering Act 2018 (**SAMLA**) seeks to protect entities against liabilities to which they would otherwise be subject, where they are acting in reasonable belief of compliance with regulations.

### Facts

The case concerned twelve irrevocable standby LCs issued by Sberbank and confirmed by UniCredit in connection with aircraft leases between Irish lessors and Russian airlines. The leases were entered into between 2005 and 2014 and the LCs were issued between 2017 and 2020. At the time, there was no prohibition under the UK sanctions regulations preventing the issuance or payment of these LCs. However, on 1 March 2022, Regulation 28(3)(c) of the UK Russia Regulations was amended so that it applied not only to military goods but also to "restricted goods," including aircraft. The amendment prohibited the provision of financial services "*in pursuance of or in connection with an arrangement*" whose object or effect is to make aircraft available to persons connected with Russia or for use in Russia. After the invasion of Ukraine, the Russian lessees failed to return the aircraft and many continued to be used in Russia without the lessors' consent. The beneficiaries, Celestial and Constitution, made compliant demands under the LCs, but UniCredit withheld payment until it had obtained the appropriate licences.

The beneficiaries brought claims seeking payment under the standby LCs following the Russian lessees' default. UniCredit argued that UK sanctions prohibited payment because it would amount to providing funds "in connection with" civilian aircraft, now classified as restricted goods. It also argued that if it was wrong about this, it had a defence under s44 SAMLA because it held the reasonable belief that it was acting in compliance with the UK Russia Regulations.

The High Court originally found against UniCredit, holding that the standby LCs were independent and not caught by Regulation 28(3)(c) and that it could not rely on s44 SAMLA because its belief was not reasonable. However, following UniCredit's appeal, the Court of Appeal overturned that decision, holding that on the ordinary meaning of the words used in the prohibition, Regulation 28(3)(c) would have prevented UniCredit from paying out under the standby LCs. Although it was therefore not required to deal with the issue relating to s44 SAMLA, nevertheless it held that it operated to provide a defence in relation to damages claims only. The beneficiaries appealed and UniCredit cross-appealed. The Supreme Court was required to decide:

1. Under Regulation 28(3)(c) is there a requirement for a causal connection between the provision of financial services or funds and the prohibited supply?
2. Are the aircraft leases "arrangements" within Regulation 28(3)(c)?
3. Does the protection under s44 SAMLA include protection against an action to recover a debt, an award of interest on the amount of the debt, and an award of associated costs?

### Findings

The Supreme Court dismissed the appeals, holding that:

<u>Issue 1:</u> Regulation 28(3)(c) contained no requirement for a causal connection between the provision of financial services or funds and the prohibited supply of aircraft. The only connection required was between the provision of financial services or funds and an arrangement. The use of "in connection with" and "in pursuance of" is wide and extends to anything which factually connects the provision of the financial services or funds to the arrangement. Although the LCs were described by the banks in the transaction as "creating primary obligations" and "independent from the lease," the Supreme Court held that even legally distinct obligations (such as standby LCs) can be restricted if there is a factual connection with arrangements that fall within the Regulation. The licensing system was the mechanism for mitigating the effect of Regulation 28(3)(c). In this case, UniCredit was ultimately able to pay out under the LCs once a licence had been obtained.

<u>Issue 2:</u> The leases were "arrangements". The meaning of "arrangement" is 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.

Issue 3: The Supreme Court, obiter, and in contrast to the Court of Appeal's opinion, held that s44 SAMLA did provide protection to the bank 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 Regulation 28(3)(c).

### HFW Comment

The Supreme Court's decision that the UK sanctions regulations are so widely drafted as to cover even standby LCs has potentially significant consequences. Its effect is arguably to undermine the autonomy principle and therefore the security offered by standby LCs. It also clarifies the extent of the protection offered by s44 SAMLA.

## Finco International AG v Integra Petrochemicals Europe AG [2026] EWHC 727 (Comm)

Court: Commercial Court

Date: 27 March 2026

### Summary

In this judgment, the Commercial Court applied the BP GTCs 2015 incorporated into a contract of sale. It found that where fixed delivery dates had been agreed on a DES basis, a change in delivery terms to CIF had the effect of rendering those dates indicative only under s11 of the BP GTCs. The Court also made findings on the application of the vessel nomination provisions under s14 of the BP GTCs.

### Facts

In October 2023, FinCo International AG (**Finco**) agreed to buy and Integra Petrochemicals Europe AG (**Integra**) agreed to sell a cargo of methyl tertbutyl ether (**MBTE**). The contract incorporated the BP GTCs. The delivery basis initially agreed was DES ARA (**DES**) but was subsequently changed to CIF ARA (**CIF**) following agreement between the parties that FinCo open a standby letter of credit (**LC**) for payment purposes.

The delivery dates were agreed in the parties' original deal recap as *"Delivery dates: 10–24 November 2023"* (**Delivery Dates Clause**). The parties agreed a change in the delivery basis from DES to CIF in an amended deal recap. In that amended recap, the wording of the Delivery Dates Clause remained unchanged, and concluded with the words *"all else is the same"*. Integra nominated a vessel to transport the MBTE to the discharge terminal. FinCo expressed concerns over the length of the vessel. Integra's vessel did not arrive at the discharge port until 27 November 2023. FinCo gave Integra notice of its intention to terminate once it became aware of the delay in delivery. Integra rejected FinCo's termination and called for payment under the LC. Integra sold the MBTE to a third party for a lower price than the contract price and paid FinCo the balance. FinCo commenced proceedings for restitution of the remaining price paid to Integra under the LC on the grounds of total failure of consideration. FinCo also claimed damages for Integra's breaches of contract.

The Commercial Court was required to determine whether termination of the contract by FinCo was justified on the grounds that Integra failed to deliver MBTE within the agreed contractual delivery dates and refused or failed to nominate a suitable vessel for delivery. Integra argued that, following the change in the delivery basis to CIF, the required date of delivery was either when the MBTE was shipped or alternatively, that the delivery dates were indicative only. Integra also argued that FinCo had not validly rejected its vessel nomination.

### Findings

The Court held that FinCo had not been entitled to terminate the contract with Integra. The effect of the change from DES to CIF was that different provisions of the BP GTCs applied from the date of the variation. The consequence was that the originally agreed delivery dates became indicative only, pursuant to section 11 of the BP GTCs, notwithstanding that the words of the Delivery Dates Clause had not changed. Integra was therefore not bound to deliver the MBTE at the discharge port by 24 November 2023. The Court concluded that the choice of CIF terms demonstrated an intention of the parties to contract on a CIF basis, inclusive of any associated and consequential change to the applicable BP GTCs.

It also held that FinCo's rejection of the vessel was not valid because FinCo had not given notice of its acceptance or rejection of the vessel within one business day of receipt of the nomination pursuant to section 14 of the BP GTCs. Specifically, the Court interpreted those provisions so as to render any failure to accept or reject a vessel nomination within that contractual timeframe as a deemed acceptance of the vessel. Whilst FinCo had expressed clear objections about the size of the nominated vessel, it did not explicitly reject it within one business day. FinCo's use of instant messaging as a means to communicate its response to the nomination was also held not to be a valid means of notice under section 14.

### HFW Comment

The decision raises substantive issues concerning the correct interpretation and construction of the BP GTCs, as well as the application of relevant delivery Incoterms. The decision is currently under appeal, with a hearing scheduled for November 2026.

HFW (Alistair Feeney and Clare Chyb) acted for FinCo.

## Socar Trading SA v City Trade and Investment SA [2026] EWHC 1240 (Comm)

Court: Commercial Court

Date: 26 May 2026

### Summary

Socar Trading SA (**Socar**), as Seller was awarded market loss damages from City Trade and Investment SA (**City**), as Buyer, arising from City's breach (through non-acceptance) of two contracts for the sale of ultra low sulphur diesel (**ULSD**).

### Facts

The parties agreed two contracts in the form of email recaps which were to act as test deliveries. City would take a quantity of ULSD owned by Socar from two different storage facilities in Turkey, +/- 10% at City's option. The contracts included delivery periods, pricing formulae based partly on Platts market averages and partly on buyer trigger pricing, and a "Special" provision stating that if City fell short of lifting the minimum required quantity, the unlifted quantity would roll into the next month, with additional costs for storage, finance and hedging to be borne by City.

Although City paid for the ULSD it took, it did not lift the required minimums under either contract. Socar brought a claim for breach of contract, claiming damages for non-acceptance under section 50 of the Sale of Goods Act 1979 (**SOGA**). City argued that the contracts were merely trial arrangements under which it was only obliged to pay for whatever quantity it actually managed to lift and that the rollover mechanism would apply only if the parties went on to conclude a longer-term arrangement. Socar argued that City had committed to buy a minimum under each contract, subject only to the 10% tolerance and the limited right to roll unlifted quantities into the following month.

Although City had been represented throughout the claim, their London solicitors came off the record in April 2026. City did not attend the hearing or participate in it.

### Findings

The Court found in Socar's favour. It held that the quantity, buyer's option and delivery period provisions in the contracts were clear and had to be given effect. The natural reading was that City had undertaken a minimum purchase obligation; the contracts were not open-ended tests allowing City to lift whatever it wished, if anything. The rollover clause reinforced that conclusion, because it expressly referred to the buyer's commitment to take the entire agreed quantity and to the "minimum required" quantity. The Court commented that, "*The fact that it appears the each of [the contracts] worked out badly for City is not a reason for departing from the natural language used in each Contract.*" It also rejected City's argument that a term should be implied to excuse further performance after the initial trial month, holding that this would contradict the express contractual wording and was neither obvious nor necessary for business efficacy.

The Court awarded Socar damages based on uncontested expert evidence on market loss, together with interest and costs. Given the rollover provisions and facts of the case, the Court had to consider the date for assessment of damages under s50(3) SOGA : "*Where there is an available market for the goods in question the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.*"

The Court noted that the date of assessment "*is designed to replicate the innocent seller's obligation to mitigate its loss. It therefore represents the date on which a reasonable seller in [Socar's] position would have gone into the market to sell the ULSD that had not been accepted*." The Court held that where, as here, the innocent seller has in effect postponed the time for acceptance, it would be reasonable for them to defer beginning consideration of the need to go to the market. Accordingly, on the facts of this case, that time would instead come after it had become clear that City's belated performance was at an end and unlikely to continue. The Court accepted a date for the assessment of damages on that basis, around ten days after City's last acceptance of goods under each contract.

### HFW Comment

This case is a reminder that the Court will hold parties to the agreements they make, even where they have become commercially unattractive. It is also a helpful indicator of how to identify the appropriate date for the assessment of market loss under s50(3) SOGA.

## Transatlantica Commodities Pte Ltd v Eurochem Trading GmbH [2026] EWHC 1494 (Comm)

Date: 18 June 2026

Court: Commercial Court

### Summary

This dispute concerned the measure of damages recoverable where an owner fails to provide a vessel for a shipment declared under a contract of affreightment (**COA**) and in particular, whether a later voyage of different cargo carried under revised arrangements could amount to delayed performance so as to reduce the charterers' loss.

### Facts

The dispute arose under a COA for the carriage of cargoes of fertiliser from Estonia to ports in Brazil/North America between May and November 2020. The COA provided for the carriage of three cargoes, or four at the charterers' option. The first two shipments went ahead as normal. A problem arose in the third. The charterers declared an October 2020 shipment in accordance with the contractual laycan mechanism. The owners responded that they had no vessel available within the required period and nominated a vessel with an ETA well outside the laycan. The charterers treated this as a refusal to perform and fixed a substitute vessel in the spot market at a higher freight rate. A later, separate shipment under the COA was eventually carried by the owners' vessel under adjusted arrangements. A tribunal awarded the charterers the difference between the COA freight and the higher market rate for the substitute fixture, together with associated costs. The owners appealed to the Commercial Court under s69 Arbitration Act 1996, arguing that the later voyage amounted to delayed performance of the October shipment and that the charterers had therefore received a windfall by also recovering damages based on the contractual measure.

### Findings

The Court dismissed the appeal. It held that the tribunal had correctly treated the October shipment as a non-performance rather than delayed performance. Each COA shipment was a separate and severable contractual adventure and the later voyage related to a different obligation rather than curing the earlier breach. The charterers had mitigated their loss by fixing the substitute vessel and the contractual measure of damages applied without any double recovery or windfall.

### HFW Comment

Commodities are regularly shipped under COAs and this case is a helpful clarification of the damages recoverable where there is a breach in relation to one or more shipments during the course of a COA.

## Great Asia Maritime Limited v Orion Shipping and Trading LLC [2026] UKSC 23

Court: Supreme Court

Date: 22 July 2026

### Summary

This case, in which the Supreme Court dismissed the sellers' appeal in relation to the buyers' claim for loss of bargain damages under Clause 14 of the Norwegian Saleform 2012 (**NSF**), has wider relevance to the recovery of loss of bargain damages.

### Facts

Great Asia Maritime (the **Buyers**) and Orion Shipping and Trading (the **Sellers**) concluded a memorandum of agreement (the **MOA**) on an amended NSF for the sale of the m.v. *LILA LISBON* (the **Vessel**). The Sellers failed to tender a valid notice of readiness (**NOR**) in time and the Buyers claimed damages at arbitration. The Tribunal was satisfied that the Sellers had breached Clause 14 of the MOA by reason of their "*proven negligence*" in failing to tender NOR in time or to be ready to complete the legal transfer of the Vessel. The Buyers were awarded loss of bargain and loss of use damages, reflecting the usual measure of damages for non-delivery under section 51 of the Sale of Goods Act 1979, namely the difference between the market price at the time of the breach and the contract price.

The Sellers appealed and the Commercial Court set aside the section of the Tribunal's Award dealing with loss of bargain damages. It held that without a repudiatory breach, the ordinary and natural meaning of Clause 14 did not give rise to a right to claim loss of bargain damages in the event of cancellation. The Court held that it must have been the parties' intentions that the right to cancel should confer no entitlement to loss of bargain damages without a repudiatory breach. The Buyers appealed to the Court of Appeal on the following two grounds: (1) the Court was wrong to conclude that there was no obligation on Sellers to tender NOR or to be ready to validly complete a legal transfer by the cancellation date; and (2) the Court was wrong to conclude that Clause 14 only allows Buyers to recover losses and expense which have accrued prior to cancellation. Clause 14 entitles Buyers to recover loss of bargain damages.

On the first issue, Court of Appeal considered the language used throughout the MOA and concluded the Sellers were under "*some contractual obligation*" to be ready before the cancellation date. Whilst there was no "*absolute obligation,*" the Sellers had an implied obligation to exercise reasonable diligence to deliver the Vessel by then. On the second issue, the Court of Appeal again considered the language of the MOA to arrive at the conclusion that the natural and ordinary meaning of "loss" extended to the Buyers' loss of bargain.

The Sellers appealed to the Supreme Court, relying on two main arguments. First, they argued that unless the Sellers' breach of contract was repudiatory in nature, the Buyers' loss of bargain was not caused by the breach. Instead, it was caused by the Buyers' decision to terminate under an express termination clause. This argument was referred to as the "causation principle". Second, they argued that since loss of bargain damages would not be recoverable at common law in the absence of a repudiatory breach of contract, "clear words" would be needed in Clause 14 to produce this result and these were absent. This argument was referred to as the "clear words principle".

### Findings

In dismissing the Sellers' appeal, the Supreme Court held that the language of Clause 14 supported the view that "loss" includes loss of bargain suffered by the Buyers due to the cancellation of the contract. In particular, the term "loss" is general and unqualified, loss of bargain is the most obvious form of loss which will be suffered by buyers in the event of cancellation and, unless "loss" covered loss of bargain, it was unclear what loss would be covered in such circumstances.

Given this strong initial conclusion, the Supreme Court then considered whether the causation principle or the clear words principle led to a different conclusion and held that they did not. The Sellers argued that based on the decision in *Financings Ltd v Baldock [1963] 2 QB 104* (**Financings**), where a party terminates under an express termination clause rather than at common law for a repudiatory breach, loss of bargain damages cannot be recovered. The Supreme Court held that this did not assist Sellers because in contrast to Financings, Clause 14 included a valid express compensation clause (setting out what the Buyers could recover for breach) and there was no good reason to interpret an express compensation clause as excluding damages for loss of bargain unless there are words to that effect. Further, if Financings applied, it would logically mean that there could here be no recovery for wasted expenses under Clause 14. However, the Sellers accept that wasted expenses were recoverable. As regards the clear words principle, the Supreme Court held that whilst there is a well-known principle of contractual interpretation that clear words are required to take away or exclude a party's common law rights or remedies, the situation is different where the contract is conferring additional rights or remedies on a party. There was no justification for requiring clear words in Clause 14 to enable a party to recover loss of bargain damages.

### HFW Comment

This case is a reminder to parties that where possible, the English courts will uphold the agreements they have made, based on the ordinary and natural meaning of the wording in their contracts. In addition, it confirms the circumstances in which loss of bargain damages are recoverable under an express compensation clause: whilst clear words are required to take away or exclude a party's common law rights or remedies, the situation is different where the contract is conferring additional rights or remedies on a party.

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