SLAUGHTER AND MAY/

DISPUTES BRIEFCASE

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

OCTOBER 2024

/ INTRODUCTION

Welcome to Slaughter and May's Disputes Briefcase, a regular digest of key developments in litigation and arbitration, produced by members of our market-leading disputes team. Previous editions of Briefcase are available **here**. The **Disputes Briefcase team** would welcome any thoughts and feedback.

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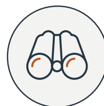

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ARBITRATION AND ANTI-SUITS – UNICREDIT v RUSCHEMALLIANCE

UK Supreme Court confirms power to grant anti-suit injunctions in support of foreign-seated arbitration agreements where the arbitration agreement is governed by English law.

The UK Supreme Court has issued its reasoned judgment for its unanimous decision in April to uphold an anti-suit injunction granted by the Court of Appeal requiring a party to cease Russian court proceedings brought in breach of a Paris-seated arbitration agreement. The judgment confirms that the English courts can issue injunctive relief in support of foreign-seated arbitration agreements where the arbitration agreement is governed by English law.

UniCredit brought a claim against RCA in the English courts for an injunction and other remedies to stop RCA from continuing court proceedings it had issued in Russia, which UniCredit argued breached Paris-seated ICC arbitration agreements between the parties. The contracts underlying the dispute were governed by English law, but there was no express provision on the law governing the arbitration agreements contained within those contracts.

GOVERNING LAW

The Supreme Court held that it had jurisdiction to hear the claim because it found that the parties' arbitration agreement was governed by English law. Applying the Enka v Chubb principles, the Supreme Court held that the general rule in *Enka* applied, namely that where parties have not chosen a governing law for the arbitration agreement, the parties' choice of governing law for the main contract (here, English law) shall extend to the arbitration agreement.

The Supreme Court rejected RCA's reading of an exception in *Enka* which RCA argued provided that the arbitration agreements should be governed by the law of the seat because French law (as the law of the seat) would treat the arbitration agreements as governed by French law. The Supreme Court considered that RCA had focussed on dissecting permissive (not prescriptive) and obiter phrasing used in *Enka* without taking account of the underlying reasoning. The key question was whether, on a proper interpretation of the contracts, the parties intended that the law of the seat should determine the law governing the arbitration agreement. The Supreme Court considered there was no valid basis for imputing an intention that the approach taken by the French courts should apply wherever the matter is looked at, and doing so would introduce "significant complication" requiring expert evidence on foreign law whenever parties choose a foreign seat.

PROPER PLACE

The Supreme Court held that England was the proper place for UniCredit to bring its claim in line with procedural rules on service out of the jurisdiction. As the parties had contractually agreed to arbitration, it was not necessary to show that the English courts were a more appropriate forum to grant relief. The starting point is that, in principle, "[i]t is desirable that parties should be held to their contractual bargain by any court before whom they have been or can properly be brought." Service out of the jurisdiction should in principle be permitted, unless the court considers that the fact the arbitration has a foreign seat makes it inappropriate to exercise the court's jurisdiction. The Supreme Court also clarified that the English courts' power to grant anti-suit relief is not part of its supervisory or supporting jurisdiction where nominated as the courts of the seat of arbitration and instead derives from its equitable jurisdiction under the Senior Courts Act 1981. In this case, on the evidence, substantial justice could not be delivered before the French courts or Paris-seated arbitration.

The Supreme Court's decision provides welcome reassurance for commercial parties who choose English law to govern their arbitration agreements that the English courts are prepared to step-in to uphold parties' contractual bargains to arbitrate, even where they have chosen a foreign seat. However, the planned overhaul of the *Enka* governing law test in the Arbitration Bill will change how the English courts approach the question of governing law in cases when the arbitration agreement is silent. For certainty, parties who wish to have recourse to injunctive relief from the English courts in support of foreign-seated arbitration agreements should expressly specify that their arbitration agreements are governed by English law. Read more in our briefing.

MANDATORY ADR

New court rules confirm the English courts' compulsive power to order parties to use ADR.

At the start of October, changes were made to the Civil Procedure Rules confirming the English courts' powers to order (not simply encourage) parties to engage in alternative dispute resolution (ADR).

The changes follow a **consultation** by the Civil Procedure Rule Committee and aim to give effect to the Court of Appeal's decision in **Churchill v Merthyr Tydfil Borough Council**. In that case, it was held that the English courts could order parties to engage in non-court dispute resolution processes (and stay court proceedings for that to happen), provided that the order would not impair the claimant's right to a judicial hearing and is proportionate to achieve the aim of settling the dispute fairly, quickly and at reasonable cost. Significantly, this decision overturned what had been widely considered a decades old prohibition on the English courts compelling parties to undertake ADR under **Halsey v Milton Keynes General NHS Trust**.

The rule changes include:

- adding "promoting or using [ADR]" to the 'overriding objective' of dealing with cases justly and at proportionate cost (**CPR 1.1**);
- expressly stating that the courts' general case management duties and powers include "ordering" the parties to use ADR (**CPR 1.4** and **CPR 3.1**) and confirming that ordering ADR is among the matters courts should consider when making case management directions (**CPR 28.7**, **CPR 29.2**); and
- confirming that "whether a party failed to comply with an order for [ADR], or unreasonably failed to engage in [ADR]" may be taken into account by the courts when exercising their discretion to award costs (**CPR 44.2**).

The rules do not define what 'ADR' means, which affords the courts and the parties significant discretion to decide on the most suitable ADR mechanism for the particular dispute.

The rule changes are also limited to confirming the courts' power to order ADR. The rules do not attempt to spell out when or how the court may exercise its compulsive power. This mirrors the approach taken by the Court of Appeal in *Churchill* who "[did] not believe that the court can or should lay down fixed principles as to what will be relevant to determining those questions".

In May, **new rules were introduced** to make mediation mandatory in the majority of small money claims worth up to £10,000. Both sets of rule changes, alongside the Court of Appeal's decision in *Churchill*, signal an important policy shift in the courts' approach to ADR. The courts now have a clear framework and mandate to consider and utilise ADR mechanisms throughout proceedings, and the rule changes send a clear message that parties should carefully consider (and not unreasonably refuse offers for) ADR in their disputes. It remains to be seen how and when the courts will use their powers of compulsion in practice. For complex commercial disputes, however, it seems likely that the courts will use their compulsive powers sparingly and only where other avenues have failed.

CRYPTO DISPUTES – D'ALOIA v PERSONS UNKNOWN

High Court confirms for first time following trial that cryptocurrency (USD Tether) constitutes property under English law.

The English courts are continuing to grapple with an increasing number of disputes over cryptoassets which, to borrow observations from the recent decision of **D'Aloia v Persons Unknown**, give rise to "legally complex" points that are often "novel, contentious or both". The High Court in this case has, for the first time, found following trial that USD Tether stablecoins, a form of cryptocurrency, constitute property under English law.

The claimant was the victim of a scam which led to him transferring approximately £2.5 million in cryptocurrency (some of which were USD Tether stablecoins) to unknown fraudsters posing as a regulated US investment brokerage. The claimant, relying on evidence from a blockchain forensic expert, argued that a portion of his identifiable stablecoins were transferred to the wallet of a Thai customer of Bitkub, a crypto exchange. The claimant brought claims against Bitkub, arguing that it had been unjustly enriched and was a constructive trustee of the misappropriated funds. It was not alleged that Bitkub had knowledge of the fraud.

The High Court held that the claimant's claim failed as he was unable to prove that any of the missing USD Tether could be traced back to the crypto-wallet controlled by Bitkub. The High Court decided it was unable to rely on the evidence of the claimant's expert, as it was apparent the expert had not used the tracing methodology advanced in his expert report and could not properly evidence an alternative methodology.

Whilst the claim failed, significantly, the High Court held that USD Tether is capable of attracting property rights under English law as a distinct form of property (not as a thing in action or a thing in possession). Those rights attach to the USD Tether itself, not the right to control it (e.g. the right to use the private key). The legal status of cryptoassets has previously been addressed at interim hearings and was the subject of a **Law Commission report on Digital Assets**, but this is the first time the point has been determined following a contested trial. The judge's findings are consistent with the approach proposed by the **Property (Digital Assets etc) Bill** introduced to the House of Lords in September (following Law Commission recommendations). Although the decision relates to USD Tether, the detailed reasoning in the decision is likely to have broader application to other cryptoassets in future. The judgment also explores the implications of USD Tether being legal property, including the application of the law of tracing, unjust enrichment and constructive trusts in this context.

The decision is one of a steady flow of crypto cases coming before the English courts. In another case, the High Court in **Crypto Open Patent Alliance (COPA) v Craig Steven Wright** granted injunctions preventing Dr Wright, who maintained he was Satoshi Nakamoto, the elusive creator of Bitcoin, from trying to re-litigate his claims to be Satoshi. This follows a scathing **decision** by the High Court earlier this year, which found that Dr Wright was not Satoshi and had "lied to the Court extensively and repeatedly" including by forging documents. Shortly after the High Court's decision in COPA, Dr Wright discontinued several other claims against crypto exchanges and developers that depended on the resolution of his claims to be Satoshi. See, for example, our blog post on the Court of Appeal's earlier decision in **Tulip Trading v Van der Laan & Ors**.

Outside the courts, the Law Commission is continuing to dedicate attention to the law relating to emerging technologies. On-going initiatives relevant to disputes include the Law Commission's **pre-consultation work on jurisdictional and governing law issues** arising out of the use of digital assets and electronic trade documents, which was launched earlier this year.

PPI SETTLEMENT AGREEMENTS – HARROP v SKIPTON AND SELF v SANTANDER

Court of Appeal rejects argument on consideration that would have paved the way for mass re-opening of PPI settlement agreements.

In a judgment that will be met with relief by financial institutions, the Court of Appeal has made it clear that settlement agreements concluded in accordance with Financial Conduct Authority rules and guidance are legally binding and do not fail for lack of consideration.

The facts leading to this joint appeal arise out of the PPI mis-selling scandal. Large numbers of lenders encouraged customers to take out Payment Protection Insurance, while failing to disclose that they retained the vast majority of premiums as commission. In response to the scandal, the FCA devised a redress scheme which encouraged financial institutions to settle complaints at an early stage and set out a proposed methodology for calculating reimbursement.

The claimants settled with the defendant banks for amounts that were "significantly less" than the premiums paid. Some years later, the claimants brought claims under the Consumer Credit Act 1974, which enables courts to remedy any unfairness between a creditor and debtor. The claimants sought full reimbursement of the premiums, plus interest. They argued that the defendants were legally obliged under the redress scheme to pay the sums that were paid (and that, accordingly, there was a lack of good consideration).

In the event that the settlement agreements were valid, the claimants alleged that the Court could re-open them, conclude that the unfairness had not been fully remedied, and make an award in the claimants' favour. The claimants were unsuccessful at first instance and on appeal. The Court of Appeal granted the claimants permission to appeal.

THE COURT OF APPEAL'S DECISION

The Court of Appeal dismissed the claimants' appeals:

1. The Court rejected the claimants' arguments regarding consideration. There was no legal obligation under the FCA redress scheme to pay a specific sum: the methodology was guidance only. A legal obligation arose only if/when a complainant agreed to accept a specific sum, at which point they obtained the benefit of an enforceable contract. This was good consideration.

2. Under the Act, courts retain the power to look behind settlement agreements and cure any residual unfairness. However, courts will conduct a "broad" assessment only, and will be "very slow" to go behind/reopen such agreements. On the facts, there was no residual unfairness. The claimants were informed of their right to complain to the Financial Ombudsman and/or litigate, had been advised by claims management companies, the amounts paid were in line with FCA guidance, and the wording regarding the scope and finality of the settlement was clear. The fact that the claimants did not receive legal advice (and were not told the exact percentage of the commission) did not render the agreements unfair.

SIGNIFICANCE

Had the Court agreed with the claimants that the FCA redress scheme imposed a legal obligation on the defendants to pay a specific sum, this would have paved the way for a mass reopening of PPI settlement agreements. This decision provides a degree of finality for financial institutions. However, financial institutions should be aware that courts retain the power to re-open settlement agreements, though this will be used sparingly.

NEW GUIDANCE ON LIBOR TRANSITION – STANDARD CHARTERED v GUARANTY NOMINEES

Decision in Financial Markets Test Case Scheme provides valuable guidance on the transition from LIBOR to alternative benchmark rates in "tough legacy" contracts.

In an important **judgment**, the High Court has determined the effect of the cessation of LIBOR on preference shares that provided payment of dividends by reference to three-month USD LIBOR. The Court held that there was an implied term that dividends would be calculated using a reasonable alternative rate and went on to specify that rate. Slaughter and May acted for the claimant, Standard Chartered.

Standard Chartered issued a series of perpetual preference shares in 2006 which were in turn issued to investors in the form of American Depositary Shares. Dividends on the preference shares were calculated by reference to a fixed rate until January 2017, when they reverted to a floating rate calculated by reference to three-month USD LIBOR – at the time, the prevailing floating rate in the market.

In March 2021, the FCA announced that all LIBOR settings would either cease to be provided by any administrator, or would no longer be representative of the underlying market, from certain specified dates – 30 June 2023, in the case of three-month USD LIBOR. A "synthetic" USD LIBOR rate continued to be published for a limited period from June 2023 to September 2024 to allow market participants further time to complete a transition to alternative benchmark rates.

Standard Chartered applied to the English courts for declarations on the use of an alternative benchmark. An expedited trial was held at the end of September in the Financial Markets Test Case Scheme, which is designed to allow the courts to deal with claims giving rise to issues of general importance to the market. This was only the second matter to be heard in the scheme.

Judgment was handed down on 15 October 2024. The Court agreed with Standard Chartered that there is an implied term that, if the relevant express term ceases to be capable of operation, dividends on the preference shares should be calculated using a reasonable alternative rate to three-month USD LIBOR. The Court concluded that, as matters stand, three-month CME Term SOFR plus a credit adjustment spread of 0.26161% per annum is the reasonable alternative rate, which was the rate proposed by Standard Chartered's expert in the proceedings. This is consistent with work done by regulators and market participants in both the US and the UK.

The Court rejected an argument from certain ADS holders that the preference shares contained an implied term that, subject to applicable laws and regulations and regulator consent, Standard Chartered was required to redeem the preference shares. The Court described this proposed implied term as "wholly untenable", including because it would bring the provision of capital and the payment of dividends to an end (when the preference shares were intended to be long-term instruments) and the express right of redemption in the shares' terms was intended to be exercisable only at Standard Chartered's option.

The Court noted that its conclusions are likely to apply equally to debt instruments which use LIBOR as a reference rate but do not expressly provide for what is to happen if the publication of LIBOR ceases. For these so-called "tough legacy" contracts, the judgment may permit the implication of a term regarding the use of a reasonable alternative rate. While the process for identifying the reasonable alternative rate is fact specific, the judgment provides a strong basis for an assessment that a Term SOFR-based rate and a spread adjustment (specifically that recommended by ISDA) is, at least at present, likely to be a reasonable alternative rate for USD LIBOR. Read more in our **briefing**.

OTHER RECENT DEVELOPMENTS AND WHAT TO WATCH OUT FOR

Here is a round-up of other recent noteworthy developments in litigation and arbitration, and what to watch out for in the coming months:

ARBITRATION BILL PROGRESSING THROUGH THE LORDS

Following our update in the previous edition of Briefcase, in July the new Government reintroduced to the House of Lords an Arbitration Bill to reform the Arbitration Act 1996. The new Bill is almost identical to a previous Bill that fell in May after the general election was announced and Parliament was dissolved. However, the new Bill clarifies that the new governing law test, which will overhaul the test in Enka v Chubb, will not apply to arbitration agreements in investment treaty arbitration (and similar cases arising under foreign investment legislation).

In September, the Bill passed a line-by-line examination at Committee stage with only minor amendments made. Notably, the Committee rejected a proposed amendment to insert an express duty on the tribunal to "safeguard the arbitration proceedings against fraud and corruption" as it was considered unnecessary, duplicative and potentially problematic. Whilst the suggested amendment was rejected, the Government was urged to consider the possibility of empowering tribunals to alert relevant authorities about corruption findings. The Government also faced calls to publish the responses it had received to its consultation with leading arbitral institutions on the mitigations in place to protect against corruption in arbitration. The consultation was led by the previous Government following the High Court's decision in Nigeria v P&ID and other recent court decisions that have highlighted corruption in arbitration. The new Government confirmed in August that it did not consider any amendment was needed to the Bill as the Arbitration Act and common law already provide a "nuanced and flexible approach" to deal with corruption. The report stage, at which the whole of the House of Lords will review the amended Bill and can make further changes, is scheduled for 30 October.

COURT OF APPEAL CONFIRMS RECOVERABILITY OF COVID-19 BI LOSSES UNDER REINSURANCE POLICY

The Court of Appeal in UnipolSai Assicurazioni v Covéa Insurance has dismissed an appeal by a reinsurer under section 69 of the Arbitration Act 1996 from an arbitration award in favour of the insurer. The judgment confirms the recoverability of Covid-19 business interruption (BI) losses under Property Catastrophe XL Reinsurance.

The claimant insurer, Covéa, provided insurance to businesses operating nurseries and other childcare facilities. The insurer paid its policyholders for losses sustained due to the UK Government instructing early years facilities to close during the Covid-19 pandemic. The insurer sought recovery for its losses under its Property Catastrophe XL Reinsurance with reinsurer, UnipolSai.

The reinsurer objected to payment under the reinsurance policy. Upholding the findings of the tribunal and the High Court, the Court of Appeal unanimously rejected the reinsurer's further appeal. The Court of Appeal held that the High Court's conclusion (consistent with the tribunal's findings) that the Covid-19 outbreak was a 'catastrophe' within the meaning of the reinsurance policy was "plainly correct". The Court of Appeal also held that financial losses incurred outside of the duration specified in the 'Hours Clause' were indemnifiable, where they resulted from an individual loss which first occurs within the specified 'Loss Occurrence' window. Slaughter and May acted for the successful insurer in the arbitration and appeal proceedings.

CHANGES TO PUBLIC INQUIRIES?

In September, the Statutory Inquiries Committee published a report recommending changes to the work of statutory inquiries. The aim is to enhance public confidence by ensuring inquiry recommendations are followed up and implemented, improving decision making to expedite inquiry work and reduce costs, and improving the sharing of best practice in setting up and running an inquiry.

Key recommendations include:

- where appropriate, consulting victims and survivors regarding the terms of reference/ what will be covered by the inquiry;
- imposing an obligation on Chairs and Secretaries to produce papers outlining (i) what went well from a logistical perspective (and what could have been improved) and (ii) "lessons learned" in relation to legal and policy challenges;
- a new unit to ensure that best practice from inquiries is shared on an ongoing basis;
- a requirement for ministers to consider whether to set an indicative deadline for the inquiry to be completed; and
- a new, independent committee which would hold the Government to account by monitoring whether inquiry recommendations have been implemented (and reporting on progress/lack thereof).

The Government has not yet responded to the report. However, given the recent publicity regarding inquiries such as Grenfell and the Infected Blood Inquiry, we anticipate reform in this area.

APP FRAUD:

1. NEW MANDATORY REIMBURSEMENT SCHEMES AND

2. RECEIVING BANKS IN THE FIRING LINE FOR LITIGATION

APP fraud (a type of fraud in which a deceived customer directly authorises a bank to move funds towards a fraudster) continues to be a focal point for both regulators and claimants. Two new mandatory reimbursement schemes (which apply to payments made over the Faster Payments System and CHAPS) came into force on 7 October. Going forward, sending and receiving banks will need to reimburse victims of APP fraud on the basis of a 50/50 liability split, unless they can prove that the victim acted fraudulently or with gross negligence. Although the new schemes operate within relatively narrow parameters (e.g. they will not apply to international payments and are subject to a maximum reimbursement level), they will significantly increase the liability of financial institutions. The **recent confirmation** from the Payment Systems Regulator that the mandatory reimbursement limit has been set at £85,000 (rather than the £415,000 cap initially proposed) will be welcomed. So too will the news that financial institutions will be able to delay making a payment for up to four business days where they have reasonable grounds to suspect fraud or dishonesty. See the **Payment Services (Amendment) Regulations 2024**, which will come into force on 30 October.

Despite the new reimbursement schemes, litigation risk remains. Following **Philipp v Barclays Bank**, claimants have focused their attention on banks and electronic money providers (EMIs) that receive stolen funds, rather than those that send them (see **CCP Graduate School v National Westminster Bank**). In a continuation of that trend, the High Court has refused to strike-out claims against Revolut for dishonest assistance (in **Larsson v Revolut**) and unjust enrichment (in **Terna Energy Trading v Revolut**). We expect that receiving banks and EMIs will continue to be in the firing line for future litigation, particularly given the limits on the scope of the reimbursement schemes outlined above.

CLAIM FOR INJUNCTIVE RELIEF FOR CRITICAL SOFTWARE SUPPORT SERVICES

Although brought in the New York courts, customers around the globe using the ubiquitous VMware virtualisation software will be closely watching AT&T's ongoing dispute with Broadcom, and its claim for injunctive relief. AT&T claims that Broadcom is refusing to honour its right to renew support and maintenance services for this software, without which AT&T will not be able to provide critical telecoms services (such as emergency communications services and services to government agencies).

Broadcom, in reply, claims that it is entitled under its contract to cease providing services for end-of-life products, and notes that Broadcom is willing to provide support and maintenance services for the relevant software under its new products (though at an increased price), which makes an injunction unnecessary.

This case raises interesting points around the interpretation of renewal rights, end-of-life clauses, and duties of good faith, which for customers anticipating difficult renewal negotiations with Broadcom (or other major technology providers) may inform their negotiation strategy. Read more in our **blog post**.

NEW POWER TO DEPART FROM EU CASE LAW SHELVED AT LAST MINUTE

We reported in July that a new law intended to give courts greater flexibility to depart from legacy EU case law was due to come into force on 1 October 2024. In late September, the Government revoked the regulations which would have brought the law into effect (while still leaving the law itself on the statute book). In a letter to the Bar Council, the Government said it proposed to revisit the issue "in the wider context of its work to reset UK relations with the EU" while reserving the right to bring the law into force at a future date. The decision does not mean that English courts cannot depart from pre-Brexit EU case law - they have had this power since the end of the Brexit transition period - but the circumstances in which they may do so are narrowly drawn. The new law, set out in Section 6 of the Retained EU Law (Revocation and Reform) Act 2023, would have created a much broader power, allowing the Supreme Court and Court of Appeal to consider, among other things, whether the retention of assimilated EU case law "restrict[ed] the proper development of domestic law".

Leaving this new law dormant (for now) is clearly intended to reduce the scope for departures from EU case law – or to send a signal to that effect. But this episode should not overshadow the impact of those elements of the Act which are already in force. In particular, the bar on courts using general principles of EU law as an interpretive aid may be expected to generate a number of creative legal arguments. That may well inject new life into the higher courts' existing powers to depart from assimilated case law.

LITIGATION FUNDING LATEST

As we reported in April, the Civil Justice Council has been undertaking a review of the third party litigation funding market. Its central aim is to consider whether the market as currently structured is delivering effective access to justice. Mooted reforms might include external regulation of funders (at the moment, certain funders subscribe to a voluntary code of conduct), mandatory caps on funder returns, greater transparency in funding terms, and the imposition of duties on funders to seek to mitigate any conflicts of interest that might arise between them and the claimants they fund.

We expect the CJC to publish their interim report imminently. That will form the basis of a public consultation before a final report is delivered to Ministers in summer 2025. In the meantime, a new report from the European Legal Institute on litigation funding may give an insight into the CJC's deliberations (the report team was led by Mrs Justice Cockerill, a Commercial Court judge, who is also on the CJC working group). The report sets out 12 principles "intended to constitute a blueprint for guidance, decisions or light-touch regulation" of third-party funding. The principles traverse many of the issues within the scope of the CJC review and include transparency, capital adequacy requirements for funders, fee caps and conflicts of interest. But they would only be capable of enforcement if and to the extent individual countries took steps to give them legal effect in their respective jurisdictions.

"OPT-OUT" SECURITIES LAW CLAIMS IN THE COURT OF APPEAL

In January, we reported that the High Court had thwarted a novel attempt to bring a securities litigation claim as a "representative action" – effectively, an opt-out class action. In December, the Court of Appeal will hear an appeal of that decision. The legal argument, and the court's ultimate decision, will be of keen interest to potential claimants, funders and London-listed companies.

The claimant, Wirral Council, is seeking to represent shareholders in two listed companies; it asks the court for declarations that the companies made misleading statements or omissions in market announcements. The intention, if the claimant secures those declarations, would be for individual shareholders to bring separate follow-on claims for compensation. This bifurcation of the traditional litigation process would be a radical departure in the context of claims by investors under section 90 and Schedule 10A FSMA 2000: it would reduce the up-front costs for potentially affected shareholders by allowing them to sit out the first stage of legal proceedings, taking action only if a finding of liability is established; conversely, it would front-load costs for listed company defendants while also depriving them of visibility of the class of potential claimants.

The High Court rejected this use of the venerable representative claim procedure, but a Court of Appeal decision earlier this year – building on the landmark 2021 Supreme Court decision in Lloyd v Google - took a more permissive approach in what the claimants are likely to say are analogous circumstances. A number of other representative claims against listed companies are currently stayed pending the Court of Appeal's decision.

OUR OTHER RECENT CONTENT

- Chambers and Partners Global Practice Guide – International Arbitration 2024 – England & Wales: Law and Practice
- Global Investigations Bulletin – September 2024
- CMA Consults on New Direct Consumer Enforcement Guidance
- Time is Money: Court of Appeal Confirms Interest is Payable on, and Limitation Periods do not Apply to, Past Royalties Due in FRAND Claims
- Ten Questions on the Apple Judgment
- Court of Appeal Decision in Virgin Media on Need for Actuarial Confirmation When Amending Reference Scheme Test Benefits

OUR RECENT WORK

- Slaughter and May former employee SFO on litigation ENRC
- Slaughter and May succeeds Standard Chartered LIBOR case

CONTACTS

If you would like to discuss any of the above in more detail, please contact your relationship partner or email one of our Disputes team.

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