IN-DEPTH

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Slaughter and May

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

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Summary

Introduction

London's position as a global leader in financial services, combined with the attractiveness of English law and English judges for commercial parties, means that the United Kingdom continues to represent a key jurisdiction for banking litigation. The year 2023 has seen a number of high-profile cases involving financial institutions proceeding before London courts and a series of important appellate decisions giving guidance on the rights and responsibilities of banks and other financial institutions, as well as shaping the broader litigation landscape particularly with respect to multi-claimant class actions and litigation funding. Geopolitical events continue to prompt legislative responses from the UK government, with increasingly restrictive economic sanctions being imposed on Russia and a long-heralded extension of corporate criminal liability due to become law.

Year in review

i Recent cases

The Quincecare duty and authority of a customer's agents

The *Quincecare*[2] duty, which is one element of the bank's general duty to exercise reasonable skill and care in processing customer payment instructions, has been addressed in previous editions of this *Review*, and over the past year the courts have provided further guidance on its scope. *Quincecare* established the proposition that, where a bank is on notice that a payment instruction from a customer's agent may be a fraudulent attempt to obtain the account holder's funds, but nonetheless executes that payment, the customer may seek redress from the bank for doing so.

In *Philipp v. Barclays Bank UK Plc*,[3] decided in July 2023, the Supreme Court provided further guidance on the scope of the *Quincecare* duty where the instruction has come not from an agent, but from the customer themselves. In *Philipp*, the victim of an authorised push payment (APP) fraud argued that the bank owed and had breached a *Quincecare* duty in failing to protect her from this form of fraud. This was denied by the bank, which applied to strike out the claim. Although the bank was initially successful, as covered in last year's edition of this *Review*, the Court of Appeal[4] found against the bank and held that the *Quincecare* duty was not limited to a situation where instructions had been given by an agent or authorised signatory and could, in principle, arise in circumstances where a customer was deceived by a fraudster to transfer money from their account into the fraudster's account. The Supreme Court overturned this decision.

The Supreme Court held that it is the 'basic duty' of a bank to make payments from the customer's account in compliance with instructions received from that customer and 'it is not for the bank to concern itself with the wisdom or risks of its customer's payment decisions'.[5] The Supreme Court recognised, in so deciding, that the steps banks should take to guard against APP frauds was a policy matter and an area where developments in the relevant regulatory architecture were a more appropriate response than an expansion of doctrines of common law. However, the Court accepted that where a bank is 'put on inquiry'[6] of having reasonable grounds for believing that a payment instruction given by an agent, purportedly on behalf of a customer, is an attempt to defraud the customer, the bank must refrain from executing the instruction without first making inquiries to verify the instruction has been authorised by the customer.

Although this narrowing of the *Quincecare* duty will come as a relief to financial institutions, the exact steps that institutions must take to comply with the duty are not clear-cut and remain a question of reasonableness on the facts of a particular case.[7] In applying this 'requirement of reasonable reliance',[8] it seems the courts are seeking to align the tests for apparent authority with a bank's duty to exercise reasonable skill and care. What is clear is that financial institutions must take all reasonable steps to investigate the instructing agent's authority where they have reasonable grounds to be 'put on inquiry' of suspicious activity or uncertain facts. For these reasons, what amounts to being 'put on inquiry' will remain the subject of continued litigation.

Relatedly, the Supreme Court also handed down its judgment in *Law Debenture Trust Corporation plc v. Ukraine*,[9] finding that once a state is formally recognised by the UK government, that state has unlimited capacity to contract under English law. The judgment gives comfort to financial institutions contracting with recognised foreign states, as the laws of those states cannot limit or impact the capacity of that state to contract with the institution. However, the actual authority of the individual executing the contract on behalf of the state remains a matter of fact, requiring analysis of that individual's authority from a foreign law perspective. If such an individual lacks actual authority under the laws of their state, they may still have apparent authority to bind the state, particularly if that state had represented to the counterparty that the individual had authority to bind it.

Class action certification

Previous editions of this *Review* reported on the landmark judgment of the Supreme Court in *MasterCard v. Merricks*.[10] That judgment provided long-awaited clarification as to the requirements for 'certification', the process by which the Competition Appeal Tribunal (CAT) grants permission for both stand-alone and follow-on competition law claims to proceed by issuing a collective proceedings order (CPO) in accordance with the Consumer Rights Act 2015, which introduced opt-out collective actions in the United Kingdom in competition cases only.

MasterCard v. Merricks involved claims by individual consumers, whereas in July 2023, the Court of Appeal in *Evans v. Barclays*[11] opened the gateway for opt-out claims from businesses, such as banks and financial institutions. As noted in last year's edition, in *Evans v. Barclays*, the CAT decided in March 2022 on two competing CPO applications arising from the European Commission's 2019 FX cartel decisions and refused to grant an order for collective proceedings against various banking groups on an opt-out basis and imposed a stay to permit the applicants to consider whether to apply for a CPO on an opt-in basis.[12]

The Court of Appeal overturned this decision of the CAT and ruled that a class representative seeking damages from banks that were part of an FX cartel can pursue collective proceedings in the CAT on an opt-out basis. One of the key issues was whether the CAT had erred in law by deferring a decision on whether to strike-out the claims. The Court of Appeal held that it had not, but there was inconsistency in the CAT deferring a decision on strike-out to allow reformulation of the claims while simultaneously treating its provisional view on the merits as definitive for the purposes of ruling out opt-out proceedings. On this question, and the practicality of the opt-in versus opt-out, the CAT had erred.

As noted in last year's edition, the emphasis of promoting access to justice remains a key pillar for CPOs on an opt-out basis. However, the Court of Appeal has noted that this 'is not the only lodestar which guides this issue',[13] and two other principles must be considered: (1) facilitating the vindication of rights; and (2) the need for compliance with the law. A total of 36 applications for opt-out actions have now been issued in the United Kingdom, and the decision in *Evans v. Barclays* is likely to prompt further actions against UK corporates, including financial institutions and banks.

Further to the certification matters raised above, the litigation of other preliminary issues has continued in the collective proceedings regime as matters progress to the merits phase. In the *Merchant Interchange Umbrella Proceedings*,[14] corporate claimants argue that multilateral interchange fees, payable where a transaction takes place using a Mastercard or Visa payment card and set by Mastercard and Visa, are unlawful, and have brought CPOs on both opt-in and opt-out bases. The *Merchant Interchange Umbrella Proceedings* has also produced an important decision on limitation to the effect that the six-year statute of limitations period applies and cannot be extended in cases brought in England and Wales prior to 9 March 2017, when the EU Damages Directive[15] (the Directive) was transposed into English law.

Relatedly, the first ever CPO settlement has been lodged with the CAT for determination in December 2023. The proposed settlement is between Mark McLaren, a litigation funded class representative in the car delivery charges action, and CSAV, the smallest member of the shipping group.[16] A settlement of an opt-out class action, because it is brought by a representative on behalf of class members, must first be approved by the CAT on the basis of whether it is 'just and reasonable' for the class members.

Litigation funding

Litigation funding has been considered by a number of recent court decisions.

A July 2023 Supreme Court decision has limited the scope for certain funding arrangements that had been used in the opt-out collective regime (addressed above). In *R (on the application of PACCAR Inc and others) v. Competition Appeal Tribunal and others*,-[17] the Supreme Court ruled that class action litigation-funding agreements (LFAs), which entitle a funder to recover a percentage of any damages recovered, are damages-based agreements (DBAs) that are unenforceable unless they comply with the regulatory regime for DBAs and cannot be used in opt-out collective competition law proceedings. However, recent extra-judicial comments by Marcus Smith J, President of the CAT, suggest that the decision in *PACCAR*, which he is reported to have stated had impacted 'access to justice' and 'derailed' legislative policy,[18] may lead to further dispute as to what types of funding and funding structures are necessary to ensure access to all. Further, in *Ecu Group plc v. HSBC Bank plc and others*,[19] the High Court held that one of Ecu Group's multiple funders may be jointly and severally liable for the costs of the bank from the date that the funder agreed to retrospectively fund the case. This was decided on the basis that: (1) the funder in question had a substantial financial interest in the case and was the 'but for' cause of all the funding; (2) the bank had no choice in defending the proceedings; and (3) the funder had substantial control over the litigation and the LFA.[20]

Creditor-debtor relationships

The 2023 Supreme Court decision in *Smith and others v. Royal Bank of Scotland*[21] has increased the period in which certain claims may be brought against financial institutions under the Consumer Credit Act 1974 (CCA) to remedy unfairness in a creditor and debtor relationship.

The case concerned the limitation period applicable to unfair relationship claims under Section 140A to C of the CCA. The claims were brought more than six years after the customers'/debtors' payment protection insurance (PPI) policies ended but less than six years after their credit card agreements ended. The Court of Appeal had found that the claims were both time-barred, insofar as the 'unfair relationship' ended when the PPI policy ended, which meant the claim was out of time.[22]

The Supreme Court unanimously overturned the Court of Appeal decision. It held that time runs for limitation purposes from the end of the parties' relationship, even if the borrower has stopped paying for PPI at some earlier date. The Supreme Court stated that unfairness continues if the commission is not repaid or the borrowers remained in ignorance, or both. However, the court reaffirmed that, in judging unfairness, it must consider the whole history of the relationship and have regard to any matter that it thinks relevant, going back not only to the making of the credit agreement, but to any relevant act or omission of the creditor before the making of that agreement or any related agreement. The Supreme Court also explicitly agreed with the Court of Appeal that an unfair relationship can be made fair by subsequent actions. As such, independent actions by lenders can reverse unfairness before a claim is brought.

The Supreme Court did reiterate that the legislation gives the court 'the broadest possible remedial discretion in deciding what order, if any, to make'. However, the Supreme Court also reiterated that the purpose of any remedy must be to remove the cause of unfairness and also to reverse any financial consequences of that unfairness to the debtor. The Supreme Court's decision widens the net for previously considered time-barred claims alleging an unfair credit relationship against financial institutions, and further litigation is likely to follow.

ISDA Master Agreement

The English Courts have decided cases on key terms found within the ISDA Master Agreement.

In *Grant & Ors v. FR Acquisitions Corporation (Europe) Ltd & Anor*,[23] the High Court considered the meaning of the word 'continuing' within Section 2(a)(iii) of the ISDA Master Agreement.[24] *Grant* is the latest in a number of cases relating to the ISDA Master Agreement arising out of the administration of Lehman Brothers International (Europe) (LBIE), which amounted to an Event of Default. FR Acquisitions relied on Section 2(a)(iii) as a basis for non-payment to LBIE. LBIE's administrators brought an application that the Event of Default would cease upon the termination of their appointments, meaning Section 2(a)(iii) would no longer apply and FR Acquisitions would be liable for the non-payment. The

Court agreed with the administrators, and held that an Event of Default ceased 'continuing' with the cessation of the Event, as opposed to any 'continuing' impact on the rights of creditors resulting from the Event.

The Commercial Court also clarified the requirements for a notice of Failure to Pay under Section 5(a)(i) of the 2002 ISDA Master Agreement in *Macquarie Bank Ltd v. Phelan Energy Group Ltd*.[25] The bank sent Phelan a notice that it was terminating all remaining transactions, as both parties in a foreign exchange swap disputed what strike price was agreed. The bank then brought a claim for the payment of the Early Termination Amount. The Court, in confirming the notice of Failure to Pay was valid, clarified that a valid notice under Section 5(a)(i) must be such as to: (1) communicate clearly, readily and unambiguously to the reasonable recipient in the context in which it is received the failure to pay or deliver in question; and (2) thereby enable the reasonable recipient to identify what the relevant trade requires it to do to cure any failure to pay or deliver within the applicable grace period.[26] The Court went on to clarify that a notice can still be effective even if there are some inaccuracies in its statements, as otherwise something trivial such as a typing error could potentially invalidate the notice.[27]

Cryptocurrency and digital assets

The past year has seen significant developments in relation to digital assets. In June 2023, the Law Commission published its final report on digital assets. This report makes minimal recommendations for law reform, asserting that the common law is sufficiently flexible to accommodate digital assets. Indeed, a number of cases in 2023 demonstrate the court's ability to accommodate legal issues that arise in respect of disputes over the possession and control of cryptocurrency. In *Joseph Keen Shing Law v. Persons Unknown & Huobi Global Limited*,[28] the High Court ordered the cryptocurrency exchange Huobi to transfer crypto-assets into the jurisdiction of England and Wales following an application by a victim of fraud against unknown parties, who allegedly held the proceeds of the fraud in accounts maintained by Huobi. The funds were already subject to a worldwide freezing injunction, but pursuant to the transfer order, the cryptocurrency was first to be converted into fiat currency, and then transferred to the Court Funds Office in England. In *Piroozzadeh v. Persons Unknown Category A & Others*,[29] the cryptocurrency exchange Binance challenged the grant of an interim proprietary injunction which required it to preserve certain cryptocurrency that Piroozzadeh, who was an alleged victim of fraud, claimed to be able to trace to the exchange. Usually, the injunction should be obtained against the owner of the cryptocurrency account and served on the exchange as a third party. If an injunction is inappropriately obtained against the exchange itself and later discharged, the claimant may be left with significant adverse costs.

Third-party disclosure orders

The English courts continue to manage and adapt to the global nature of banking, raising the complexity of navigating foreign laws, while balancing the competing obligations of confidentiality of customer accounts and access to justice.

In April 2023, the English High Court set aside Bankers Trust disclosure orders[30] made against two Australian banks at a without notice hearing,[31] which required the banks to disclose certain information regarding two of their Australian customers. In doing so, the judge reiterated that the English court should only make disclosure orders against foreign banks in exceptional circumstances, because of the strong likelihood that compliance with such an order would put the foreign bank at risk of being in breach of local laws or regulations.

ii Recent legislative developments

Russian sanctions

Russia's invasion of Ukraine in February 2022 and the legal consequences of this were discussed in detail in last year's version of the Review. Over the past year, the UK has continued to deploy ever more onerous financial sanctions against Russia and Russian citizens and businesses in response to the ongoing conflict in Ukraine. The relevant legislative instrument, the Russia (Sanctions) (EU Exit) Regulations 2019[32] (the Regulations), has seen a number of amendments, both in terms of the number of individuals and firms designated under the Regulations, but also in relation to the provision of legal services. Following the EU's ban on the provision of legal advisory services to the government of Russia and businesses incorporated in Russia, the UK introduced its own ban in June 2023. As a result, no UK national or UK business can, directly or indirectly, provide legal advisory services in relation to, or in connection with, any activity which, if carried out by a UK person or undertaken in the UK, would be prohibited under the Regulations.

The impact of the Regulations continues to be the subject of litigation: in October 2023, the Court of Appeal in *PJSC National Bank Trust & anor v. Mints & ors*[33] declined to stay the litigation on the basis of the effect of sanctions on the ability of a sanctioned Russian bank, a designated person, to pursue litigation as a claimant before the English courts. Among other matters, the Court found that a judgment, a prime judicial function, could be lawfully issued on a designated person. The High Court has also heard and rejected the first challenge of a decision to 'designate' a British citizen under the Regulations.[34]

Failure to prevent fraud

The year 2023 saw a long-anticipated series of reforms to the law of corporate criminal liability come into force, which will affect banks and financial institutions: the Economic Crime and Corporate Transparency Act (the ECCT Act).

The ECCT Act creates a new offence of failure to prevent fraud by large corporate entities.[35] A corporate commits an offence if a person associated with it – such as an employee, agent, or subsidiary – commits a fraud offence and the corporate does not have reasonable procedures in place to prevent fraud. This offence adopts the approach taken some 13 years ago in Section 10 of the UK Bribery Act 2010. Although most financial services firms will be regulated by the Financial Conduct Authority and therefore be required to have systems and controls in place to prevent fraud (and other financial crime), this expansion of the criminal jurisdiction into an area that previously was only regulated presents a material risk for firms and significant work is under way in the financial services sector and in firms more widely to understand what 'reasonable procedures' means in the context of the ECCT Act (guidance from the government is pending).

The ECCT Act also extends the 'identification principle', pursuant to which the *mens rea* of one or more persons is identified as the 'directing mind' of a corporation and can be attributed to that corporation for the purpose of considering whether the corporate itself has committed an offence. Previously, only a statutory director could be considered to be the 'directing mind' of a corporate; the ECCT Act expands this principle to include 'senior managers'[36] in cases of fraud, money laundering, bribery and other economic offences (albeit the ECCT Act provides limited guidance on how to identify a senior manager within an organisation – and particularly large, complex organisations with diffuse management structures such as financial institutions).

Jurisdiction and conflicts of law

As discussed in last year's edition of the *Review*, the UK government is continuing to make the case for the UK's accession to the 2007 Lugano Convention, a multilateral treaty regulating enforcement of judgments between the European Union, Switzerland, Norway and Iceland.[37]

Although the UK is no longer party to the Lugano Convention, its provisions still apply to proceedings instituted before 31 December 2020. The Court of Appeal shed light on the application of Article 5 of the Convention in *Kwok Ho Han and others v. UBS AG (London Branch)*.[38] Article 5 of the Lugano Convention sets out exceptions to the general rule that an entity should be sued in their state of domicile. Article 5(3) vests jurisdiction in 'the courts for the place where the harmful event occurred or may have occurred' and Article 5(5) vests it in the location in which a branch is situated where there is a dispute 'arising out of operations of a branch'. The claimant purchased shares in a Chinese financial institution in 2013, in partnership with UBS London and funding from Ace Decade. The claimant argued that they suffered losses after a fall in the Chinese stock market, issuing proceedings against UBS in London, alleging that it owed them a duty of care in tort and breached it through making false representations. UBS challenged the jurisdiction of the Court. It was held that Articles 5(3) and 5(5) were applicable and the English courts had jurisdiction for the following reasons. First, it was the location where the loss manifested that was relevant to jurisdiction, not the transaction itself. Second, it needed to be established that there were factors connecting the dispute to England and Wales so as to allow the specific jurisdictions in Article 5(3) to apply. For a dispute to be regarded as arising out of the operations of a branch under Article 5(5), that branch must have actively participated in some of the actions constituting the tort.

The Court of Appeal also held that the UK Civil Procedure Rules did not introduce a requirement to obtain court permission for service of CPR 20 claim forms outside the jurisdiction in cases where the Lugano Convention applies. Where the Lugano Convention applied to transitional claims, court permission was not required. Moreover, where the English court has jurisdiction when the Part 20 claim was issued, this is not affected or lost by the subsequent settlement of the main claim.[39]

Sources of litigation

Banks and other financial services firms are increasingly at risk of regulatory enforcement action, and associated litigation, in relation to greenwashing, and it is inevitable that civil claims arising from their activities in providing finance to the extractive industries, and their compliance with an ever more complex set of disclosure requirements in the UK and globally, will become ever more commonplace. This is particularly the case given that, notwithstanding recent decisions of the UK courts, litigation funding is and will remain a central feature of the UK litigation landscape, and one that incentivises funders, claimant lawyers and claimants to develop and pursue novel theories of liability.

In common with many jurisdictions around the world, the UK has seen a rapid growth in ESG (environmental, social and governance) claims being brought before the courts, both by individual claimants but also by non-governmental organisations. To date, these claims have primarily been brought against corporates whose businesses are perceived to present particular risks in relation to carbon emissions and global warming, and, in particular, the extractive industries. In July 2023,[40] Shell plc successfully resisted a derivative action brought by Client Earth, a shareholder in Shell, which had argued that the Shell Board's alleged failure to implement plans to more rapidly decarbonise its business was damaging to the long-term value of Client Earth's equity interest in Shell such that the court should intervene to protect that interest.

Relatedly, the intervention of funders has seen an increase in securities litigation (or 'stock drop' claims) in the UK. To date, financial institutions have been defendants in only a handful of claims but that is likely reflective of the low number of these kinds of actions generally, and may well change particularly if pending cases before the English courts adopt a claimant-friendly approach to questions of, for example, whether investors relied on statements made in publications made to the market. If the US experience is any guide, a growing market in securities litigation in London is likely to mean banks and other financial institutions facing an increasing number of these claims particularly where such claims are parasitic on prior enforcement decisions whether in the UK or elsewhere in the world.

Finally, economic conditions in the medium term – and in particular an environment of higher for longer interest rates – are likely to present ongoing challenges for firms, including financial services firms, as the UK and other key economies are expected to see a growing rate of corporate insolvencies.

Outlook and conclusions

Recent decisions on funding in particular suggest that there are limits to how friendly the English litigation process can or should be for claimants. Yet the growth of class actions and group actions, particularly in the securities litigation space, and the liquidity available in the market to fund these claims, combined with ever more onerous reporting and regulatory requirements, means that financial services firms operating in the UK continue to face an evolving landscape of litigation risk in which claims against banks and financial institutions are likely to increase. Firms may take some comfort, however, from the sophistication of the London litigation offering and the willingness of courts, as in *Philipp*,[41] to place the appropriate limits on the duties of financial institutions.

Endnotes

1 Jonathan Clark is a partner and Nicholas Querée is a senior counsel at Slaughter and May. The authors would like to thank associate Melissa McFarlane for her input on the chapter. ^ Back to section

2 The *Quincecare* duty was established in *Barclays Bank plc v. Quincecare Ltd* [1992] 4 All ER 363. ^ Back to section

3 [2023] UKSC 25. ^ Back to section

4 [2022] EWCA Civ 318. ^ Back to section

5 [2023] UKSC 25 [3]. ^ Back to section

6 [27]. ^ Back to section

7 See also the Hong Kong chapter of this *Review* discussion of the decision in *PT Asuransi Tugu Pratama Indonesia TBK v. Citibank N.A.* [2023] HKCFA 3. ^ Back to section

8 [2023] UKSC 25 [94]. ^ Back to section

9 [2023] UKSC 11. ^ Back to section

10 [2020] UKSC 51. ^ Back to section

11 [2023] EWCA Civ 876. ^ Back to section

12 *Michael O'Higgins FX Class Representative Ltd v. Barclays Bank Plc and Others, Evans v. Barclays Bank Plc and Others* [2022] CAT 16. ^ Back to section

13 *Evans v. Barclays* [2023] EWCA Civ 876 [127]. ^ Back to section

14 *Commercial and Interregional Card Claims I Limited ("CICC I") v. Mastercard Incorporated & Others* (1441/7/7/22); *Commercial and Interregional Card Claims II Limited ("CICC II") v. Mastercard Incorporated & Others* (1442/7/7/22); *Commercial and Interregional Card Claims I Limited ("CICC I") v. Visa Inc. & Others* (1443/7/7/22); *Commercial and Interregional Card Claims II Limited ("CICC II") v. Visa Inc. & Others* (1444/7/7/22). ^ Back to section

15 Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. ^ Back to section

16 https://www.lawgazette.co.uk/news/major-milestone-cat-to-rule-on-collective-action-settlement/5117532.article. ^ Back to section

17 [2023] UKSC 28. ^ Back to section

18 https://content.mlex.com/#/content/1507457/uk-supreme-court-ruling-on-claims-funding-has-derailed- class-action-regime-top-judge-says. ^ Back to section

19 [2022] EWHC 1616 (Comm). ^ Back to section

20 [57]. See also the recent decision in*Therium Litigation Funding A IC v. Bugsby Property LLC* [2023] EWHC 2627 (Comm) in which the Commercial Court, on the claimant funder's application for an interim proprietary injunction, held that there was a serious issue to be tried post *PACCAR* in relation to whether a funding agreement including both a percentage of any damages awarded and a multiple of the funding sum provided was enforceable, at least in relation to the multiple of the funding sum provided. ^ Back to section

21 [2023] UKSC 34. ^ Back to section

22 *Smith v. Royal Bank of Scotland plc* [2021] EWCA Civ 1832. ^ Back to section

23 [2022] EWHC 2532 (11 October 2022) [168]. ^ Back to section

24 Section 2(a)(iii) of the ISDA Master Agreement 1992 and 2002 relieves a non-defaulting party of its obligations to a defaulting party if an Event of Default has occurred and is continuing. ^ Back to section

25 [2022] EWHC 2616 (Comm) (18 October 2022). ^ Back to section

26 [24]. ^ Back to section

27 [26-27]. ^ Back to section

28 [2023] 1 WLUK 577. ^ Back to section

29 [2023] EWHC 1024 (Ch). ^ Back to section

30 A Bankers Trust disclosure order compels a third party (in this case, the two Australian banks) to disclose specific information that has been requested by the applicant. ^ Back to section

31 *Scenna v. Persons Unknown and Others* [2023] EWHC 799 (Ch). ^ Back to section

32 (SI 2019/855). ^ Back to section

33 *PJSC National Bank Trust & anor v. Mints & ors* [2023] EWCA Civ 1132. ^ Back to section

34 (SI 2019/855), Regulation 5. ^ Back to section

35 'Large' for these purposes means a company meeting two out of three of the following criteria: (1) more than 250 employees; (2) more than £36 million turnover; and (3) more than £18 million in total assets. ^ Back to section

36 The proposed definition of senior manager (taken from the Corporate Manslaughter and Corporate Homicide Act 2007) is an individual who '(a) plays a significant role in (i) the making of decisions about how the entity's relevant activities are to be managed or organised, or (ii) the managing or organising of the entity's relevant activities, or (b) is the Chief Executive or Chief Financial Officer of the body corporate'. ^ Back to section

37 Letter from Dominic Raab to Daniel Eames, Alberto Perez Cedillo and Hannah Markham (20 July 2022). ^ Back to section

38 [2023] EWCA Civ 222. ^ Back to section

39 *Indosuez (Switzerland) SA v. Afriquia Gaz SA* [2023] EWCA Civ 1072. ^ Back to section

40 *ClientEarth v. Shell plc* [2023] EWHC 1897 (Ch). ^ Back to section

41 [2023] UKSC 25. ^ Back to section

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