HERBERT SMITH
FREEHILLS
KRAMER

# INSURANCE & PROFESSIONAL RISKS

## ENGLAND & WALES

### ANNUAL REVIEW 2025





# Contents


Introduction . . . . . 03

Insurance & reinsurance cases . . . . . 04

- Damage, defects and delay: the interplay between insurance and construction claims 10
- W&I being tested in claims – coming of age or growing pains? A global perspective 13

Professional liability . . . . . 16

Product liability . . . . . 20

Health & Safety . . . . . 22

Insurance regulation . . . . . 24

General interest . . . . . 28

The Year in Cases at a Glance . . . . . 32

Key Contacts . . . . . 35


The contents of this publication are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

# Introduction

I am delighted to introduce the latest edition of our Insurance & Professional Risks Annual Review which explores the key decisions and developments impacting the insurance sector from 2025. The Review provides an overview of the most relevant cases and developments and, as always, there are links to our more detailed analysis on our insurance blog: **HSF Insurance Notes**. If you subscribe to the blog, you can keep up to date with our articles as they are published, as well as episodes of our podcast series: **Insurance Bites**.

In **Insurance & Reinsurance cases,** we explore the plethora of decisions coming out of the English courts in 2025. A key judgment of the year was that of Mr Justice Butcher in the Russian aviation litigation following the "mega trial" which combined the claims of multiple aircraft lessors against their insurers for aircraft lost in Russia after the invasion of Ukraine. This firm represented the lead claimant, AerCap, the world's largest aircraft leasing company, who was awarded over US$1 billion from its War Risk insurers by the court. In the year which marked the 10th anniversary of the Insurance Act 2015, a number of decisions were handed down on issues relevant to the Act including two Court of Appeal decisions: one on the duty of fair presentation and the requirement for a reasonable search, the other on the categorisation of representations and warranties of information provided by the insured and how they interface with the obligations and remedies under the Act. The Court of Appeal also handed down a significant decision on the "red hand rule", now to be referred to as the "onerous clause doctrine", as well as the latest decision in the series of cases relating to Covid-19 business interruption claims following the FCA Test Case in 2020. The High Court was also busy with cases considering the construction of policy terms, the Third Parties (Rights Against Insurers) Act 2010 and a rare decision on the operation of follow the settlements and claims co-operation clauses in reinsurance policies.

Still on the topic of insurance, this year's Review also includes two spotlight articles. One on the complex interaction in a construction context between claims between the principal and contractor and claims with insurers: **Damage, Defects and Delay – the interplay between insurance and construction claims**; the other on Warranty & Indemnity (W&I insurance) and what reported cases and market experience tell us about the performance of this product: **W&I being tested in claims - coming of age or growing pains? A global perspective**.

The **Professional liability** section considers a number of judgments which have been handed down in 2025 including on loss of a chance and the misuse of AI in court proceedings. It also explores proposals to amend the pensions legislation and the potentially significant overhaul of solicitors' regulation.

Our **Product Liability** section looks at the new Product Regulation and Metrology Act 2025 and the topical issues of autonomous vehicles and PFAS or 'forever chemicals'.

In **Health & Safety,** we explore a number of important cases from 2025 involving prosecutions for health and safety offences and corporate manslaughter, as well as enforcement of the Building Safety Act 2022.

Our **General Interest** section looks at key developments in the areas of class actions, litigation funding, access to court documents, privilege and the use of AI among others – important developments to be aware of for those litigating in the English courts or funding or insuring such litigation.

Finally, in **Insurance Regulation**, we give an overview of the evolving regulatory landscape for the UK insurance sector.

A huge thanks to the team here at HSF Kramer for their contributions in putting this Review together. We have had another busy and successful year and it is privilege to be working on cases which are making the law in this area. Thank you also to our clients and contacts for your continued support and for entrusting us with your most significant matters.



Alexander J Oddy
**Head of Insurance & Professional Risks**
alexander.oddy@hsfkramer.com

# Insurance & reinsurance cases

Insurance disputes have continued to keep the English courts busy in 2025 with the first significant decision in the Russian aviation litigation together with a range of judgments covering issues under the Insurance Act 2015, the Third Parties (Rights Against Insurers) Act 2010 plus a rare reinsurance decision.



## Russian Aviation Litigation

2025 was a crucial year for the insurance industry as it contended with the fallout from Russia's invasion of Ukraine. Following the invasion, global litigation was launched against insurers and reinsurers to mitigate the loss of approximately 500 Western-owned aircraft which had been on lease to Russian airlines and were stranded in Russia.

In June 2025, the High Court handed down judgment in the Russian Aircraft Lessor Insurance Policy Claim following the "mega trial" which combined the claims of multiple lessors against their insurers before Mr Justice Butcher. Herbert Smith Freehills Kramer represented the lead claimant, AerCap, the world's largest aircraft leasing company, who claimed from its insurers the loss of 116 aircraft and 23 engines. The High Court found that all AerCap assets were lost and covered under the War Risks section of its insurance policy. Factoring in prior settlements, AerCap was awarded USD 1.035 billion from War Risk insurers: High Court finds in favour of Lessors in Russian Aircraft Lessor Policy Claims. In addition, the High Court awarded AerCap over USD 240 million in interest and made interim costs orders.

The majority of War Risk Insurers have now applied to the Court of Appeal for permission to appeal elements of the High Court judgment and the consequential judgment addressing interest. The appeals do not include Mr Justice Butcher's findings on causation/peril such that there is no prospect that All Risks Insurers will be found liable in England for these losses under the lessors' policies. At the time of writing, the Court of Appeal's decision on both sets of applications for permission to appeal is awaited: Russian Aircraft Policy Claims: Update on appeal and costs.

There are many other parallel claims on foot in the Commercial Court involving aircraft in Russia under (re)insurance policies taken out by the Russian airline lessees (Operator Policies) with trial scheduled for October 2026.

## Insurance Act

2025 marked the 10-year anniversary of the Insurance Act 2015 (**the Act**) receiving royal assent, which paved the way for the most significant reform in insurance law in the UK in over 100 years.

To mark the 10th anniversary of the Insurance Act 2015 and to see what impact it has had on both the placement of policies and the handling of claims from the policyholder perspective, we worked with Airmic (the UK Association of Risk Managers) on a survey of risk managers. Herbert Smith Freehills Kramer also became the first and only law firm to be an Airmic Senior Partner.

The key findings of the survey were:

- The Act appears to have had a largely positive impact. 64% of survey respondents thought that the impact of the Act had been positive, and 85% reported no change in the number of disputes with insurers since the introduction of the Act.
- However, policyholders should continue to be mindful, particularly when negotiating policy wordings, to ensure that conditions precedent and warranties are kept to a minimum and are clearly drafted and labelled.

For more detail see our article which includes a link to the full survey results: 10 years of the Insurance Act 2015: Airmic survey report published in association with HSF Kramer.

This year, a number of cases have reached the courts on various issues relevant to the Act, including two Court of Appeal decisions.

- *Scotbeef Ltd v D&S Storage Ltd (in liquidation)* [2025] EWCA Civ 203 is a reminder of how significant the effect of breach of a condition precedent can be on a policyholder's ability to claim under a policy. The Court of Appeal considered the proper categorisation of representations and warranties relating to information provided by the insured to the insurer prior to inception of the policy. The Court of Appeal found that the relevant clauses were future warranties (a promise by the insured that something will or will not be done) as well as being conditions precedent (because they were expressly labelled as such). As the insured was in breach of those warranties (which were also conditions precedent), the insurer had no liability. On the facts of this particular case, the various policyholder protections introduced by the Act (such as proportionate remedies for breach of the Duty of Fair Presentation, making warranties into suspensive conditions and the introduction of section 11) did not assist the insured: Breach of warranty and condition precedent means no liability for insurer.
- In *Delos Shipholding SA & Ors v Allianz* [2025] EWCA Civ the Court of Appeal considered the duty of fair presentation under the Act and is one of the first cases to consider the requirements for a reasonable search of information held by the insured as part of that duty. The Court of Appeal also had to consider who formed part of the "senior management" of the company for the purposes of the duty of fair presentation under the Act. In this case, a sole nominee director, who exercised his powers as a director in accordance with instructions received from the company's beneficial owners and who exercised no independent judgement and made no decisions, was found not to be "senior management". The case shows that this will ultimately depend on the factual circumstances to determine if the statutory test under Section 4(8)(c) of the Act has been met: Court of Appeal considers duty of fair presentation under the Insurance Act.

The duty of fair presentation was also considered in *Clarendon Dental Spa LLP v Aviva Insurance Ltd & Zurich Insurance Limited* [2025] EWHC 267 (Comm) which is yet another judgment concerning the adequacy of disclosure by the insured of previous matters connected to insolvency. Insurers denied cover and argued that the insured was in breach of the duty of fair presentation for failing to disclose the insolvency of companies that shared a common director with the insured entities. Insurers had asked insolvency questions relating to directors or partners of the policyholder only. The Court found that the insured had answered these questions accurately and the questions did not have the wider interpretation that insurers had argued for (which would have meant that the insolvency of the other companies should have been disclosed). Further, the insurers had waived any right to disclosure of information about the insolvencies of other companies by asking the insolvency questions in the terms they had. This case is another reminder that insureds and their brokers should take great care in providing information about insolvency matters to insurers prior to inception. Insurers that are concerned to know about insolvency matters concerning companies unrelated to the insured must ask questions clearly stating that is the information they seek: The duty of fair presentation and the disclosure of matters connected to insolvency (again)

There was also a decision from the Singapore High Court in April 2025 (*Oversea-Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82) which will be of interest to readers of this Review for its consideration of the application of section 11 of the Act and what constitutes a term "defining the risk as a whole": Singapore High Court considers section 11 of the Insurance Act 2015

Section 11 of the Act prevents the insurer from relying on breach of a term by the insured if the breach could not have increased the risk of loss in the circumstances in which that loss occurred. This applies to breaches of warranties and other terms which would tend to reduce the risk of loss of a particular kind or loss at a particular location or time but not to terms which define the risk as a whole.

The Singapore High Court accepted the insured's argument that terms defining the risk as a whole were those which were "so fundamental and extensive that they delimit the very risk that the insurer is underwriting", such as for example geographical and usage restrictions. The Court did not accept the broader interpretation contended for by insurers that other than "blatantly irrelevant warranties", all other warranties define the risk as a whole.

## Policy terms

### Conditions precedent

In addition to the decision in *Scotbeef* mentioned above, two other decisions this year (involving the Third Parties (Rights Against Insurers) Act 2010 (**2010 Act**), were further reminders of the draconian effect the breach of a condition precedent can have on

an insured's ability to recover under a policy: *Makin v Protec Security Group Limited* [2025] EWHC 895 (KB) and *Archer v R 'N' F Catering Ltd (t/a Biplob Restaurant)* [2025] EWHC 1342 (KB): The importance of strict compliance with notification provisions.

Both cases involved claimants who had suffered personal injury and sought recovery under the 2010 Act from the public liability insurers of insolvent defendants. In both cases the Court found that the insurer was not liable to provide an indemnity under the relevant policies because of breach of notification obligations in the policies by the insolvent insureds, which obligations were held to be conditions precedent to the insurers' liability. This was despite the fact that the third party claimants lacked awareness of the terms of the notification obligations and had no involvement in the insureds' breaches.

Both cases serve as a reminder to policyholders to pay close attention to the wording of notification requirements and comply strictly. They also illustrate the fundamental unfairness to insureds (and thus third party claimants) inherent in many conditions precedent to liability where breaches of condition, often trivial and inadvertent, cause no prejudice to the insurer in investigating or defending the claim.

### Onerous clauses

The Court of Appeal in *MS Amlin Marine NV v King Trader Ltd & others (Solomon Trader)* [2025] EWCA Civ 1387 upheld the enforceability of a "pay first" clause in a marine insurance policy, allowing the insurer of an insolvent insured to rely on the provision to avoid liability to third parties seeking to bring a direct claim against the insurer under the 2010 Act: Court of Appeal recasts "red hand doctrine" as the "onerous clause doctrine".

The decision provides authoritative guidance on the "red hand rule", now to be referred to as the "onerous clause doctrine", highlighting that the Court will be reluctant to interfere with unambiguous wording in commercial contracts between parties of equal bargaining power. Notably, the judgment also shines a light on the established duties of insurance brokers to bring onerous or unusual clauses to their clients' attention. The Court of Appeal stated that it would be unlikely that the red hand doctrine would ever be applied where an insured was represented by specialist insurance brokers. While the ruling therefore reinforces the importance of clear contract drafting and the role of brokers in advising clients on onerous policy terms, there will likely be situations involving bespoke wordings and multiple intermediaries where there might be some scope for a more nuanced approach as to whether a clause is to be regarded as onerous. Brokers may wish to reflect on how policy terms said to be onerous are identified, drawn to the insured's attention, and such explanations recorded.

### Documents relevant for policy construction

In *AmTrust Specialty Ltd v Endurance Worldwide Insurance* Ltd [2025] EWCA Civ 755 the Court of Appeal considered whether a judge at first instance had erred in a decision to refuse Extended Disclosure of a particular category of documents potentially relevant to the construction of a professional indemnity policy: Court of Appeal considers request for Extended Disclosure to aid policy construction.

The Court of Appeal allowed the appeal and ordered the disclosure of correspondence between the insurer and two insured firms of solicitors prior to the inception of their professional indemnity policies. The Court rejected the argument that the pre-contractual correspondence between the insurer and its insureds could not be relevant to the construction of a policy. The question of whether the placement correspondence could be relevant to construction was a question for the trial judge to decide. The Court of Appeal concluded that while it was possible that the further documentation might not affect the proper construction of the clauses, the question of construction could not be pre-determined without having sight of the documentation itself.

The Court of Appeal also rejected the insurer's argument that because the insuring clause was a market standard wording, written to accord with the SRA minimum terms, its construction could not be affected by pre-contractual communications. Even if the insuring clause and the exclusion clauses are in standard form and modelled on the SRA minimum terms, "that cannot be determinative of the proper construction of the Policies".

## Covid-19 business interruption cases continue

The Court of Appeal's decision in *Liberty Mutual Insurance Europe SE v Bath Racecourse Company Ltd* [2025] EWCA Civ 153 was the latest in the series of claims relating to lost revenue suffered by businesses during the Covid-19 pandemic: Composite insurance and savings clauses: latest Court of Appeal guidance.

This series of cases started with the Supreme Court's judgment in the Covid-19 business interruption test case in 2020 in which this firm acted for the UK regulator, the FCA, on behalf of policyholders (the FCA Test Case): Supreme Court hands down judgment in FCA's Covid-19 Business Interruption Test Case.

In *Liberty Mutual*, the Court of Appeal made the following findings:

- **Composite policies:** A composite policy is a single document comprising "a series of contracts of insurance with each policyholder insured separately". Each insured is entitled to individually access the policy sub-limits unless there is clear wording to the effect that limits are intended to apply in the aggregate across all insureds.
- **Furlough payments:** The policyholder's entitlement to cover is reduced to the extent they received payments under the UK Government's Coronavirus Job Retention Scheme. The savings clause in the relevant policies stated that insureds must account for any cessation or reduction in the charges incurred by their business, "in consequence of" the insured peril. The restrictions were a sufficient cause of the furlough scheme, and the prevention or hindrance of access to the insured's premises flowed from the restrictions imposed by the Government.

  Note that the Supreme Court granted permission to appeal this issue and the appeal is listed to be heard in February 2026.
- **Amendments to aggregation wording:** In one of the policies, the denial of access clause had been amended to increase the limit from £1 million "any one loss" to £2.5 million, with a 3-month maximum indemnity period. The amended version of the clause omitted the words "any one loss". The Court held that the increased limit could be accessed per loss and the amendment did not have the effect of imposing an aggregate cap of £2.5 million across all losses in the policy period. Changing the basis of cover for an insured peril from "any one loss", applicable separately to each loss suffered by each insured, to an aggregate limit (for that particular insured

peril) applicable to all insureds, was a fundamental change. If the parties intended to change the basis of cover so significantly, that would have been made clear in the policy wording. This meant that each policyholder was therefore entitled to access the £2.5 million limit per "any one loss".

## Reinsurance

It is rare for reinsurance disputes to come before the courts as many reinsurance policies provide for disputes to be resolved in confidential arbitrations. However, the case of *RSA Insurance Group v Equitas Insurance Ltd* [2025] EWHC 2704 (Comm) has provided an opportunity for the Court to consider a number of issues, in particular the operation of follow the settlements and claims co-operation clauses: Rare decision on the operation of Follow the Settlements and Claims Co-operation clauses in reinsurance policies.

The Court distinguished the Court of Appeal decision in *The Insurance Co. of Africa v Scor (UK) Reinsurance Co. Ltd* [1985] 1 Lloyd's Rep. 312 in which the claims co-operation and follow the settlements clauses were found to conflict which meant that the reinsurer in that case only had to follow the settlements clause where the reinsurers had approved the settlement in question. In *RSA*, the claims co-operation clause was in different terms to *Scor* and could be read consistently with the follow the settlements clause. This highlights the importance of looking at the particular wording of the relevant clauses in the reinsurance policy under consideration.

The Court's findings on the insurer's claim for interest are also worth noting. The Court elected not to divert from the usual position that interest runs from the time of the loss. In the reinsurance context, that means the "date of the loss" is the date of payment by the insurer of the underlying claims. The Court declined to award compound interest and awarded simple interest at a rate of 2% above base rate.

## Dispute Resolution provisions

A popular method for resolving insurance disputes is arbitration. Policyholders, brokers and (re)insurers should therefore take note of recent changes brought in by the Arbitration Act 2025. The Act, in force from 1 August 2025, has important implications for dispute resolution under your policies – both existing policies and those to be placed in the future: New UK Arbitration Act 2025: Coming into force on 1 August 2025.

One key development from an insurance and reinsurance perspective is that arbitration agreements will now be governed by the law of the seat, unless the parties expressly agree otherwise. A governing law clause that applies to the policy generally will not be sufficient. The changes will not apply to arbitral proceedings (or court proceedings in connection with arbitral proceedings) that are already on foot before 1 August 2025. However, the changes will otherwise apply in relation to arbitration agreements whenever made which means the changes will apply to arbitration clauses in existing insurance or reinsurance policies: Insurance disputes and the new Arbitration Act 2025: check your policies.

The coming into force of the Arbitration Act 2025 is a timely reminder to take stock and review regularly the dispute resolution provisions in policies (whatever form of dispute resolution procedure they provide for) to check they work in the way that the parties intend. Two recent decisions concerning the same claimant highlight the costly jurisdiction disputes that can arise when dispute resolution provisions are not given the attention they deserve at the point of placement. These decisions also provide an important reminder to the insurance market to be cautious when issuing and executing market standard contracts: Signed, Sealed, Superseded? Court considers conflicting dispute resolution provisions in reinsurance contracts.

## Liability insurance

There have been a number of interesting decisions this year concerning liability insurance.

### Notification and aggregation

The High Court handed down a detailed judgment in *Ahmed v White & Co* [2025] EWHC 2399 (Comm) in which the Court had to consider two key issues which regularly arise in liability policies: Notification and aggregation in professional indemnity policies: insights from Ahmed v White & Co.

- **Notification** – the Court explored whether a notification of certain initial claims, including a block notification, and the provision of information to insurers by jointly retained defence solicitors, amounted to a "Hornet's Nest" notification which had also validly notified the insurer of "circumstances" from which later, contested claims arose. The Court revisited established principles on notification, drawing on authorities such as *Euro Pools plc v RSA* [2019] EWCA Civ 808 and *HLB Kidsons v Lloyd's Underwriters* [2007] EWHC 1951 (Comm), as well as *Kajima UK Engineering Ltd v The Underwriter Insurance Company Ltd* [2008] EWHC 83 (TCC).

  While the Court found that no Hornet's Nest notification had been given to the insurer on the facts of this particular case, it is a useful reminder that where policyholders have a basis upon which to notify circumstances as well as claims, and even to make a Hornet's Nest notification, they should consider doing so and make it clear that they are doing so. Simply forwarding correspondence to insurers may not achieve that effect.

- **Aggregation** – the Court considered whether multiple claims brought by different investors against an allegedly negligent firm of accountants were deemed to be a single claim under a professional indemnity policy which provided for the aggregation of claims "*arising out of, based upon or attributable to the same facts or alleged facts, or circumstances or the same Wrongful Act, or a continuous repeated or related Wrongful Act*".

  The Court found that the word "same" in the wording "significantly qualifies" its effect. Mere similarity was insufficient and, on the facts, the claims related to advice to different investors (or advice given to the same investor in different tax years). While the advice had common themes, it differed in that the advice was given separately to each particular investor and in relation to their particular investments. However, the phrase "related Wrongful Act" did not necessarily require identical acts and the Court found that there was a sufficient degree of connection between the claims on the facts so as to aggregate them.

### Insurer joins liability trial involving its insured

In *Managed Legal Solutions v Mr Darren Hanson (trading as Fortitude Law) and HDI Global Specialty SE* [2025] EWHC 2645 (Comm), a professional indemnity insurer succeeded in being joined to a liability trial involving its insured to allow it to be

heard on a particular issue affecting coverage. The insured was debarred from defending the claim and so the Court allowed the insurer's application to be joined to the proceedings under CPR 19.2 on the basis that the insurer had an interest in the outcome of the proceedings which would not be advanced unless it was joined. This firm acted for the successful professional indemnity insurer in this case: Court decides insurer can be joined to a liability trial involving its insured.

### Novation of professional indemnity policies

The High Court judgment in *Roger Leggett & 40 Others v American International Group UK Limited* [2025] EWHC 278 (Comm) provides a useful reminder on the scope of cover afforded by solicitors' professional indemnity policies as well as the implications of the successor practice rules. It also underscores the complex coverage issues that can arise for both policyholders and claimants following a business restructure and serves as a reminder to policyholders on the importance of ensuring risks arising from business transfer arrangements are adequately mapped onto professional indemnity insurance policies: Transfer troubles: from novation to no-cover.

## Fraudulent insurance claims

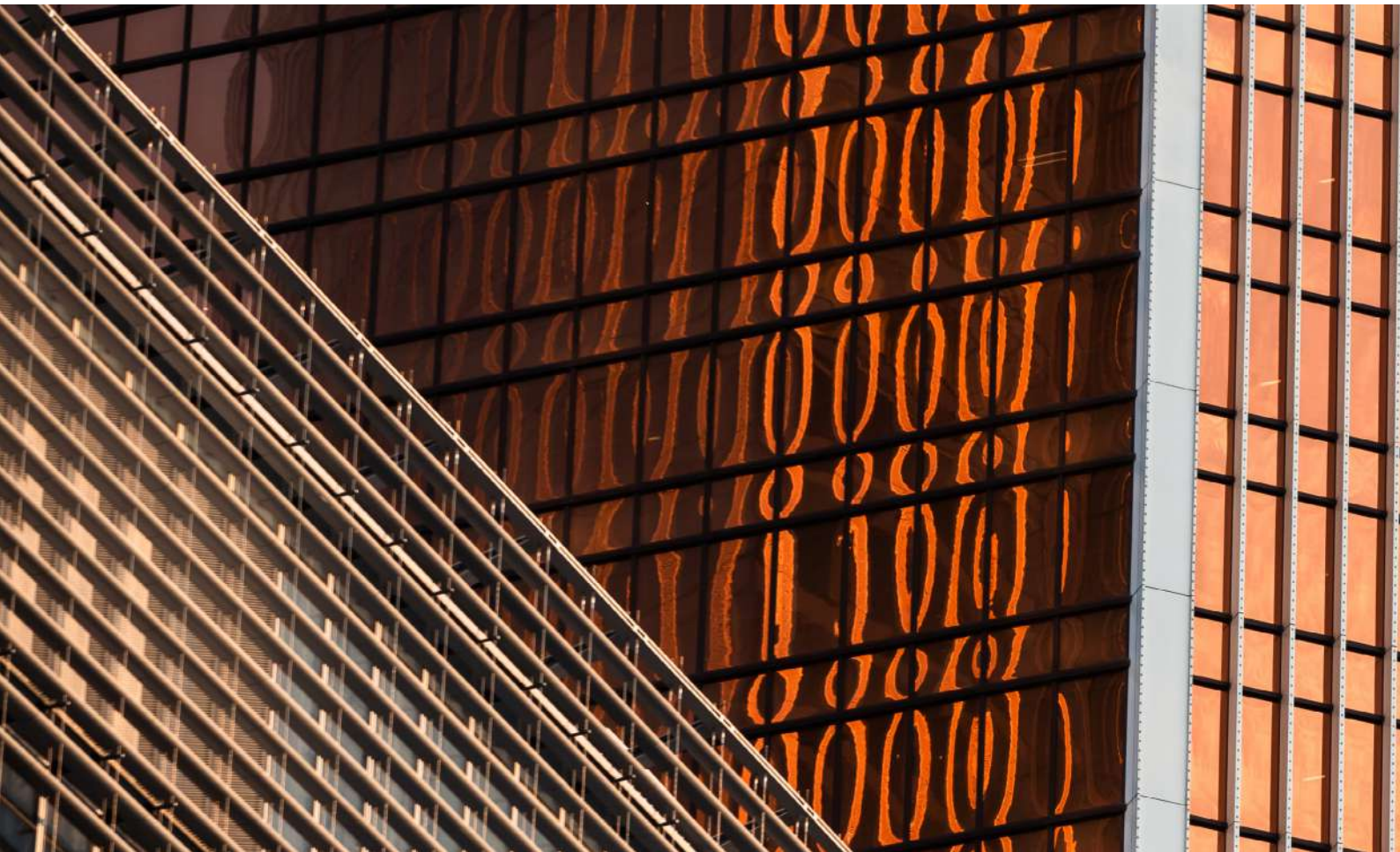
The case of *Malhotra Leisure Ltd v Aviva Insurance Ltd* [2025] EWHC 1090 (Comm) stands as a helpful example of the courts' approach to fraud allegations in the making and pursuing of insurance claims. The case concerned an insurance claim relating to water damage at a hotel. The insurer denied the claim citing a breach of the policy's fraud condition, alleging deliberate damage and false evidence/statements by the claimant insured: Fraudulent insurance claim under consideration.

The judgment provides a useful reminder of the courts' approach when an allegedly fraudulent loss is presented as fortuitous by an insured:

- the insurer must prove its case on the balance of probabilities;
- in assessing the balance of probabilities, the inherent unlikelihood of an insured deliberately damaging its own property (and the gravity of a fraud allegation on the point) must be borne in mind. In particular, for a case of fraud to be made out, "the cogency of the evidence must eliminate any other plausible explanation" for the event having happened fortuitously/innocently;
- factors which are not conclusive but may assist the court include evidence of any plausible motive for the insured to damage its own property, and evidence of other wrong-doing by the insured.

The Court ultimately found the evidence insufficient to support the insurer's fraud allegations, emphasising the need for cogent evidence to eliminate other plausible and innocent explanations.

The judgment also includes obiter commentary on the proper approach to the construction of fraud conditions following the Supreme Court's ruling in *Versloot Dredging BV v HDI Gerling Industrie Versicherung* [2017] 1 AC 1 by which the doctrine of fraudulent devices/collateral lies was effectively abolished at common law: Supreme Court rules that a "Collateral Lie" is immaterial to the Insurance Claim. However, in *Malhotra Leisure v Aviva*, the policy's Fraud Condition sought to allow the insurer to decline claims based on a 'fraudulent device' or 'collateral lie', in addition to circumstances where the claim itself is fraudulent.



The Court observed that for an insurer to decline a claim under a relevant fraud condition, the relevant fraudulent device/ collateral lie must:

- directly relate to the claim;
- be intended to improve the insured's prospects in its claim; and
- be objectively capable (if believed) of yielding a significant improvement in the insured's prospects.

## Double insurance

The decision in *Watford Community Housing Trust v Arthur J. Gallagher Insurance Brokers Limited* [2025] EWHC 743 (Comm) provides a useful summary of the law regarding double insurance and the operation of 'other insurance clauses' when a policyholder has similar clauses in more than one policy covering the same risk. This was a preliminary issues hearing concerning multiple insurance policies taken out by the insured which might respond to cyber security risk: High Court confirms an insured's entitlement to recovery when there is double insurance.

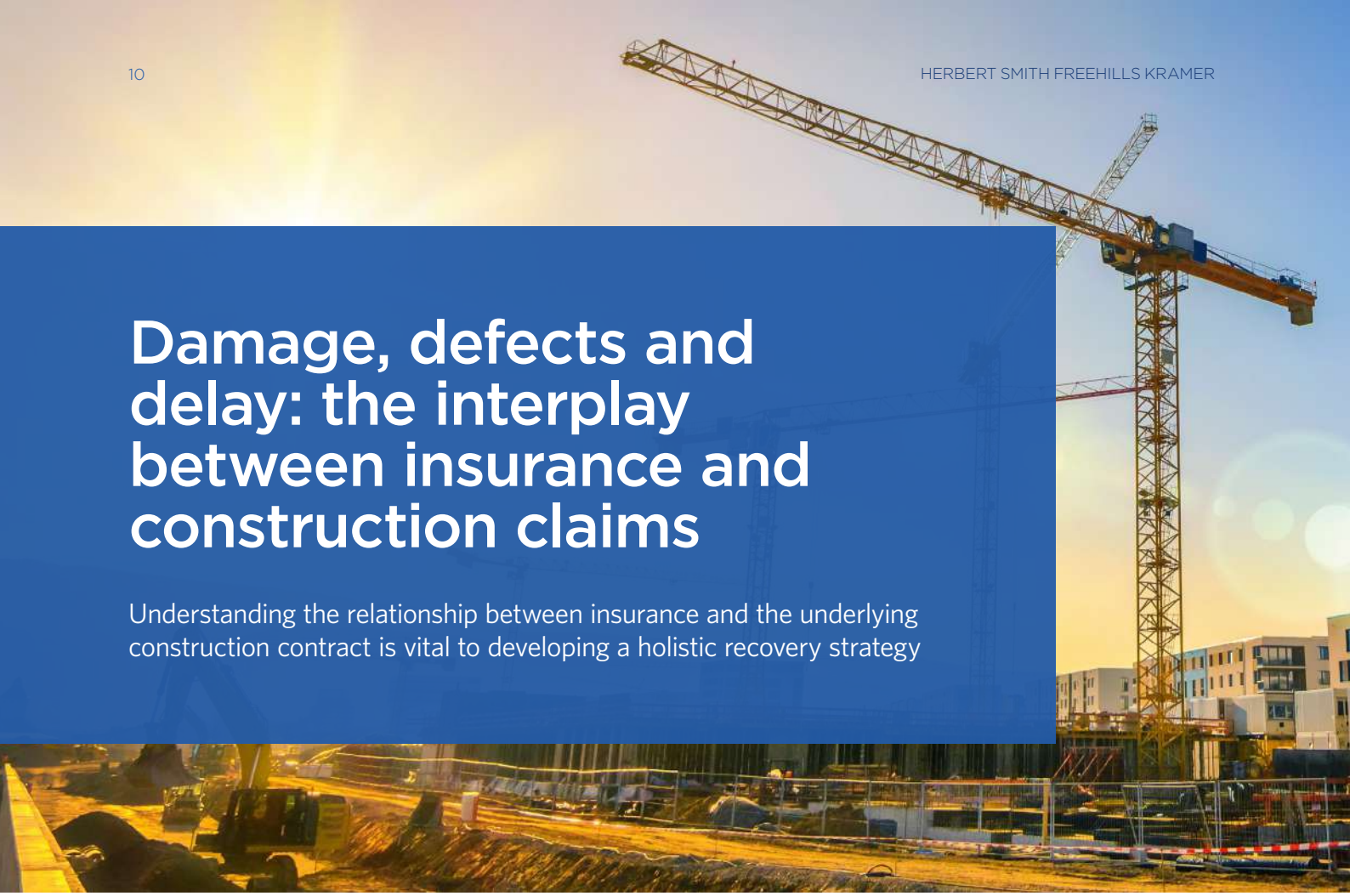
The key points coming out of the judgment are:

- In the case of double or multiple insurance, an insured is at liberty to claim against its insurers in whichever order it wishes, and the balance can be recovered from the other insurers if it is not recovered from just one.
- 'Other insurance clauses' – which provide that the insurance provided under a policy applies in excess of any other valid and collectible insurance available to the insured – should be construed so as to exclude from their scope any other policy that contains a similar provision, ie the clauses cancel each other out.

## Limitation

In *Mode Management Ltd and another v AXA Insurance UK plc* [2025] EWHC 2035 (Comm), the Court granted the insurer's application for summary judgment based on a limitation defence in circumstances where proceedings were commenced by the insured more than 6 years after a fire giving rise to a claim for property damage (the cause of action accrues when the insured damage occurs). The insured raised a number of different arguments as to why the claim was in time, all of which were unsuccessful and so the insured was not able to circumvent the limitation issues inherent to their claim. The decision is interesting as the Court analysed the 'hold harmless principle', recently examined by the Court of Appeal in *Sky v Riverstone*, and its application to the insured's claim for specific performance of the insurer's secondary liability to put a policyholder back in its pre-loss position: Limitation for first party damage runs from date of fire even where insurer had option to reinstate.





# Damage, defects and delay: the interplay between insurance and construction claims

Understanding the relationship between insurance and the underlying construction contract is vital to developing a holistic recovery strategy

When disputes arise in the context of a construction project (which they commonly do) and the principal seeks recourse for damage and delays, a complex interplay can arise between claims between principal and contractor, and claims with insurers. Focusing on one to the exclusion of the other can inadvertently create a gap in recovery, leaving money 'on the table'.

Unfortunately, this is a situation that arises all too often, particularly where the respective claims are handled by different teams within their organisation, without coordination. Developing a holistic recovery strategy, addressing claims against both the contractor and insurers, allows principals to assess the relative strengths and priority of the claims, make informed decisions when conducting both claims, and maximise overall recovery.

Below we explore some of the key aspects of the interplay and the tensions that arise when a principal has both an insurance claim and a claim under the construction contract.

## Overview of the parallel avenues for recovery

In relation to claims against a contractor, most construction contracts incorporate various mechanisms that allow the principal to require the contractor to rectify quality or performance issues or pay for the rectification of the identified issue. For example, construction contracts often contain express defects liability periods within which a contractor is required to rectify defects, as well as express indemnities for the costs of repairing physical damage to the project. A principal may also be able to claim general damages for breach of contract, where such claims are not excluded by a 'sole remedy' regime. For delay-related losses, construction contracts often provide a right to liquidated damages, being a specific (daily) amount to be paid by the contractor to the principal for delays to project completion.

Insurance cover for damage and delay will typically be addressed by a 'Construction All Risks' (**CAR**) policy. A CAR policy provides cover for repairing damage to the project under construction. The policy may also include delay in start-up (**DSU**) cover for loss of revenue due to delays to project completion as a result of the insured damage. This policy will typically be taken out by the principal or head contractor but will name as insured others involved in the project such as contractors, subcontractors, suppliers, and financiers. For the purposes of the remaining sections of this article, we assume a scenario in which the policy is taken out by the principal.

Although construction contracts and insurance provide separate avenues for recovery, neither should be considered in isolation of the other.

## Interplay 1 – Damage v defects

A critical difference between claims brought under a construction contract and insurance claims is the treatment of defects. A contractual claim against the contractor can cover both defects in their work and any damage caused by the defect. In contrast, the touchstone of CAR claims is that there has been *damage*, but specific exclusions apply in relation to *defects*.

For CAR cover to be triggered, there must be damage to the insured property. Damage in this context is a "*change to the physical nature of tangible property which impaired its value or usefulness*" (*SkyUK Ltd v Riverstone Managing Agency* [2024] EWCA Civ 1567, [107]). A relevant change in nature can range from patent, catastrophic damage to microscopic changes invisible to the naked eye. In contrast, a defect is a static state of affairs where the condition of property does not meet specifications. This means there can be both a defect and damage and still be cover, but without damage there will be no cover.

Where both a defect and damage are present, the insurance claim will normally be subject to clauses expressly addressing the extent of cover for defects. The 'LEG' clauses are a series of standard defects clauses commonly used in CAR policies. They provide a range of options that can be included in the policy which differ in the precise exclusions they impose:

- LEG1 excludes damage due to defects. This is the broadest of the exclusions contained in the three clauses;
- LEG2 excludes costs which would have been incurred had the defect been rectified immediately prior to the damage occurring; and
- LEG3 excludes costs incurred to improve the original design or workmanship.

When considering contractor and insurer claims together, there is a tension for the principal in advocating its position. On the one hand, the principal may seek to emphasise damage in its insurance claim, while the insurer will focus on the defect (to minimise cover). On the other hand, the focus of the principal's claim against the contractor will be on proving that the contractor's work is defective, having failed to meet the required standards, and the principal has therefore suffered loss due to the contractor's defective work.

A principal who makes detailed arguments that a contractor's work is defective may find itself having those same arguments used against it by the insurer to minimise the insurance claim. Further, a principal who settles its claim against the contractor, and then seeks to recover further from an insurer, might find itself lacking sufficient information about the alleged defects, having lost the opportunity to obtain information from the now disinterested contractor.

## Interplay 2 – Subrogation and recoveries

Another key interplay is between the insurer's rights of subrogation and rights to recoveries.

Once an insurer has paid a claim, it commonly has a right to subrogate, ie to step into the shoes of the insured and exercise the insured's rights of recovery against third parties. Similarly, if the insured makes a recovery from a third party, the insurer may be entitled to some of those recoveries to reduce its exposure to the insurance claim. While both rights exist at law, they can be modified by express wording in the insurance policy.

For example, it is not unusual for an insurer to expressly waive rights of subrogation against other insureds. Further, some policies may specify a particular priority for the application of recoveries, specifying that recoveries reduce either the insured or insurer's exposure first (which is a modification of the usual recovery waterfall of uninsured losses first, then making whole the insurer, and last the deductible). This is particularly the case in relation to DSU cover which, under some policies, will be reduced by reference to the amount of liquidated damages recovered from the contractor.

In pursuing a claim against the contractor, it is therefore important to understand the scope of, and not to prejudice, the insurer's recovery and/or subrogation rights, to avoid adversely impacting the insurance claim.

## Interplay 3 – Co-insurance

There is also an interplay between terms of the underlying construction contract requiring the principal to obtain CAR insurance for the contractor, and the policy taken out.

First, where the construction contract requires that a party be insured, the question arises as to whether the principal and contractor intended to create an insurance fund which would be the sole avenue for making good the relevant damage, or whether that fund was intended to co-exist with an independent right of action against the contractor (see eg, *FM Conway Ltd v The Rugby Football Union* [2023] EWCA Civ 418, [49]). If, reading the various provisions of the contract as a whole, a court or arbitrator considers that the parties intended the insurance to be the sole avenue for redress, then the contractor may have a defence against liability to the principal.

Second, the construction contract can affect the contractor's rights under the policy. If the policy was taken out by the principal, with the contractor as a named insured, the contractor will only be entitled to cover to the extent that the principal intended and was authorised to take out cover for the insured. In most cases the best evidence of that intention and authorisation will be the construction contract (though this may not always provide a complete answer) (*FM Conway Ltd v The Rugby Football Union* [2023] EWCA Civ 418, [53]).

A court or arbitral tribunal will need to analyse the underlying provisions of the construction contract allocating risk between the principal and the contractor to determine any limits in the scope of what insurance was intended and/or authorised to cover. The existence of any limitations can result in the contractor having less cover than may otherwise be assumed on the face of the policy.

While this does not prevent the principal from claiming under its insurance, it may prevent the contractor from being able to claim against the insurer. It may also mean that the insurer is able to subrogate against the contractor once it has paid the principal.

## Interplay 4 – Different dispute resolution mechanisms

Tensions can also arise in relation to dispute resolution mechanisms. International construction contracts are often subject to arbitration, and it is not uncommon for the policy to also be subject to arbitration.

Where this occurs, there is a risk that the principal will need to conduct multiple separate proceedings against the contractor and against the insurer. While there can be advantages to keeping the proceedings separate, there can also be advantages to consolidating them into one proceeding (the most obvious of which is cost). However, it is not always straightforward to consolidate proceedings, particularly in the (very common) situation where the arbitration clauses do not align, including for example where they specify different arbitration rules. While some arbitration rules allow consolidation, a principal will generally only be able to consolidate proceedings if all parties agree to do so (which is unlikely in the case of contentious claims that have evolved into arbitration).

Another practical risk is that the outcome of one arbitration will not be binding on the other. In the worst case, the principal may find itself involved in a lengthy arbitration with its contractor, only to then have to commence an equally lengthy arbitration on similar issues with its insurer.

## Managing the Interplays

Managing these interplays to maximise recoveries is therefore critical. Importantly, principals need to progress claims – whether under the construction contract or insurance – based on a holistic strategy incorporating both:

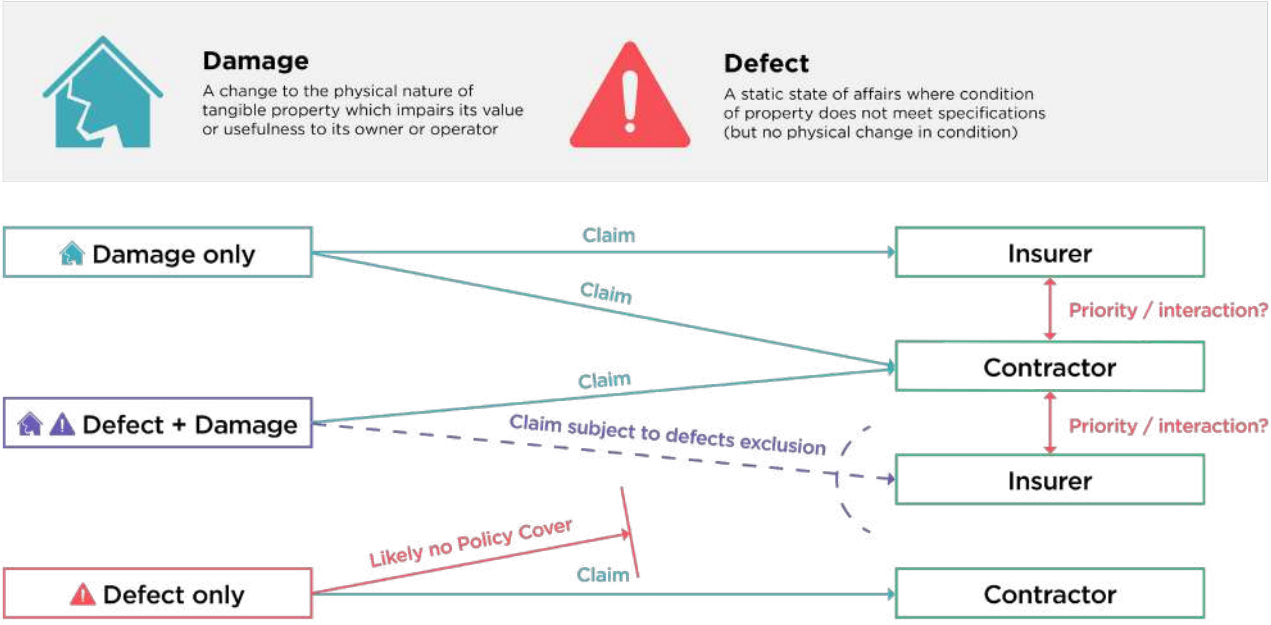
- expert advice on the nature and cause of defects and damage affecting the property; and
- legal advice on the relative strengths of, and interaction between, the two avenues for recovery.

Each claim can then proceed in parallel and in a way which avoids needlessly prejudicing the other. Ideally, the principal can leverage the contractor's interest in arguing against there being defects to reinforce the principal's position in the insurance claim (and do the same in reverse). This can often lead to an overall settlement with all parties.

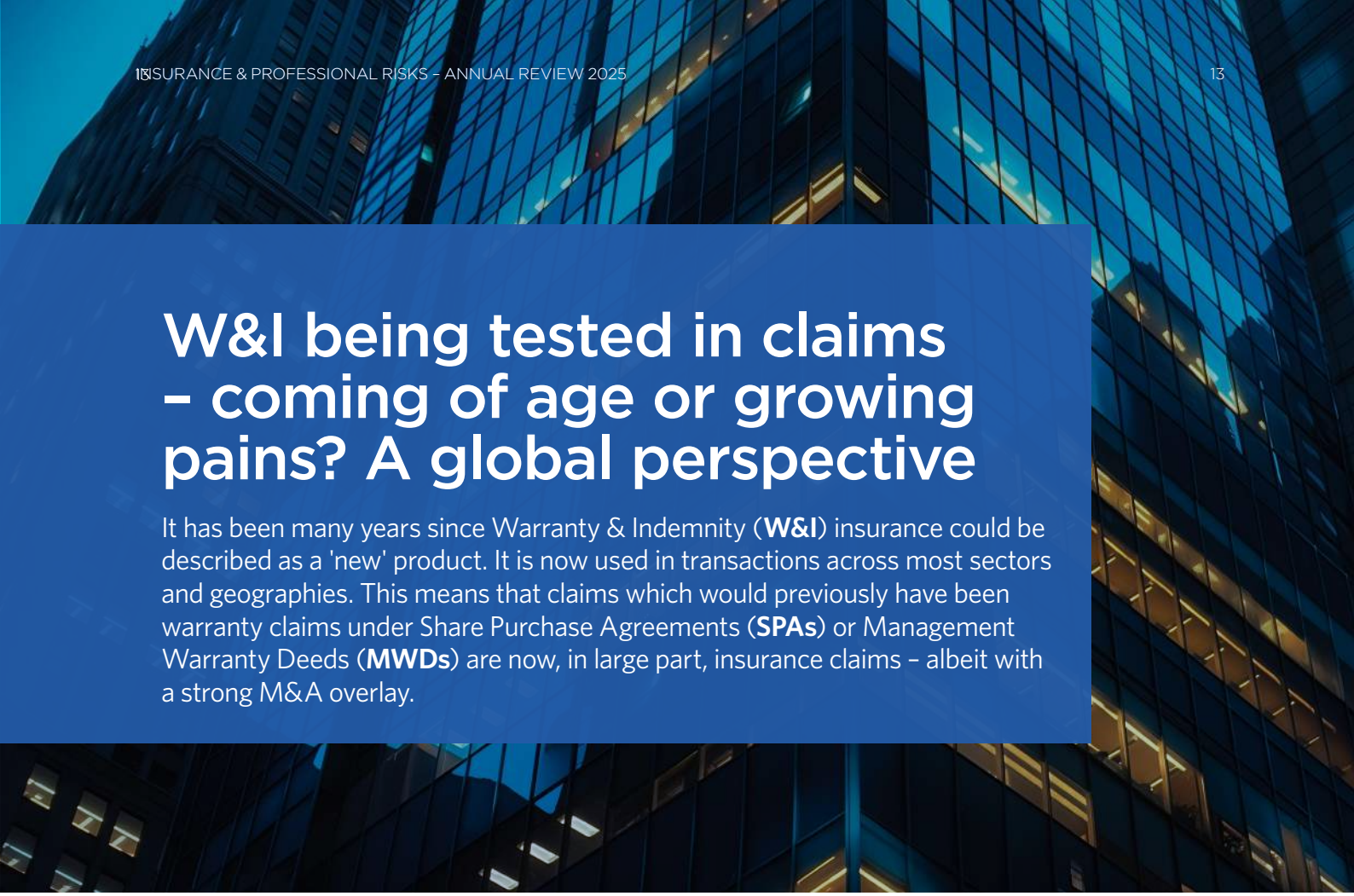
Absent any agreement, proceedings against the contractor and the insurer may be necessary. However, a principal may ultimately need to prioritise one avenue of recourse over another. This decision will normally be based on an assessment of the strength of evidence, the likelihood of financial recovery and other commercial factors.

Another key practical takeaway is that when a construction dispute involving some form of physical damage arises, it is important for both principals and contractors to seek the expertise not only of their legal teams in managing the disputes, but also of their insurance team in managing insurance claims. This approach ensures that a fully integrated recovery strategy is formulated that effectively harnesses the relevant internal experience and expertise.

## Damage, defects and available claims




*Note: The definition of the terms 'Claim' and 'Defect' under the EPC Contract may differ from their interpretation under the Insurance Policy.*



# W&I being tested in claims – coming of age or growing pains? A global perspective

It has been many years since Warranty & Indemnity (**W&I**) insurance could be described as a 'new' product. It is now used in transactions across most sectors and geographies. This means that claims which would previously have been warranty claims under Share Purchase Agreements (**SPAs**) or Management Warranty Deeds (**MWDs**) are now, in large part, insurance claims – albeit with a strong M&A overlay.

Briefly, the buyer will generally now claim from its W&I Insurers the damages which it would have previously recovered from the seller or warrantors. To achieve the usual objective of a clean exit the seller/warrantor will have limited its/their liability to a nominal amount (say $1) and that limitation will be disapplied for the purposes of the insurance claim. In addition, Insurers may impose additional exclusions/restrictions in the Policy which were not present in the SPA or MWD.

Most of the large brokers and Insurers publish claims data. Although there is variability in this it is not uncommon to see suggestions that around 20% of transactions result in a notification, so a significant number.

## Applicable law and quantum of damages

The insuring clause usually provides that the buyer can recover under the Policy the damages it would have been able to recover under the SPA or MWD if the key restrictions (defined usually as "Limitation Provisions") had been disapplied. Therefore, how damages are usually assessed under the applicable laws of the SPA or MWD is key.

Recent decisions in both England and Australia have confirmed the compensatory principle and that damages should reflect the diminution in value (**DIV**) of the target. In doing so, these decisions have engaged in a detailed analysis of the difference in the valuation of the business on the basis that the warranty was true compared to the warranty being false, assuming an arm's length and objective but willing buyer and seller. These valuations can be approached in different ways (the most appropriate depending on the nature of the business), but the key point is that a breach can impact a number of variables in a valuation. For example, if the appropriate method of valuation is an estimate of EBITDA to which a multiple is applied, both the English and Australian authorities demonstrate that breaches of warranties can affect both of those inputs – compounding the effect on quantum and leading to significant claims. In Australia, the cases of *UDP* and *DTZ* (discussed further below) provide a contrast. In the former the Court accepted the effect of the warranty breach on both inputs of the calculation such that the claim easily exceeded the limit of the Policy (making other valuation issues with lesser effects moot), whereas in *DTZ* the Court closely analysed and rejected the evidence relied on by the Insured to conclude that the alleged breaches did not justify any change to the different inputs to the valuation of the business.

In England, the *Ageas* case (discussed further below), also demonstrates the importance of the underlying risk allocation between the parties. That is, the Insurers sought to reduce the claim by reference to the subsequent performance of the business after the breach (ie a benefit of hindsight adjustment). The Court rejected this on the basis of the compensatory principle and that generally damages are assessed at the time of the loss unless a departure from that principle can be justified. Here the underlying sale allocated the risk of the subsequent performance of the business onto the buyer and the parties had not agreed any price adjustment mechanism to account for subsequent performance, and so it was not to be taken into account to reduce the Insured's claim.

More recently in *Care Tree Invest 2 Ltd v Bell* [2023] EWHC 1151 (Comm), when considering a breach of warranty claim relating to residential care homes which had their ratings downgraded shortly after the acquisition, the judge was "careful not to rely on what happened subsequently" but considered it to be "*instructive*", noting that one of the care homes had been loss-making within 12 months of the SPA and had closed within two years of the sale.

Further, the authorities also demonstrate (as expected) that clauses that extinguish the seller's liability under the SPA (even if unrelated to the substance of the insurance claim) can also extinguish the insurance claim. For example, in the Australian case of *Aftermarket* (discussed further below), a clause in the SPA which extinguished the seller's liability in the event of the buyer on-selling the company to a third party also precluded an insurance claim.

The parties can however agree that, instead of applying the DIV calculation, damages should be on an indemnity basis.

Indeed, in contrast to the position in England and Australia (and the US), in certain civil law jurisdictions such as Spain, the starting position is very often on an indemnity basis, unless the SPA or MWD provides otherwise.

The calculation of damages on an indemnity basis can be more straightforward for the Insured. In some scenarios the indemnity basis will provide for a lower payment than that assessed by DIV, and in some scenarios the position will be reversed.

## Court or arbitration

Many of the early W&I policies contained jurisdiction clauses providing for matters to be referred to the relevant courts, as a result of which we have some reported cases in England and Australia. However, at least in England, Insurers have tended more recently to provide for disputes to be resolved by confidential arbitration – which unfortunately means that there may not be many further English judgments.

For larger-sized transactions, W&I coverage will generally be syndicated or layered into different insurance contracts with different Insurers. Consistency in dispute resolution across layers is essential to avoid the cost and risk of multiple, inconsistent proceedings against different Insurers. Also important is ensuring that the Insurers across the layers agree to consolidate proceedings (including where necessary with the other transacting party under the acquisition agreements) where there is one claim through the layers or common issues to be decided.

Legislation in Australia makes arbitration clauses contained in insurance policies void. As such, we anticipate that we will continue to see judgments arising in the Australian context. For that reason, it is worth bearing in mind that (while there are minor differences) it is worthwhile for those in England to keep an eye on the approaches of the Australian Courts

## Disclosure always matters

Insurers will not be looking to cover known matters. They may achieve this effect through exclusions for matters known to the Insured in the SPA and/or the Policy and exclusions for what is Disclosed (as defined) under the SPA and/or Policy. What is Disclosed may well include information in the data room and diligence reports. The Policy may supersede, improve or worsen the test under the SPA.

The standard for disclosure will be set out and defined in the SPA or W&I Policy but for example where matters must be 'fairly disclosed' there is English court authority that this requires "*some positive statement of the true position*" (*Daniel Reeds Ltd v EM ESS Chemists Ltd* [1995] CLC 1405) such that it will not be met if the matter constituting the breach of warranty is simply omitted from a list or buried in a document which is cross-referred to in the disclosure letter. This case law (and the definitions of Disclosed) are important because it is not unusual for there to be some passing reference in the data room or disclosure letter to the subject of any claim.

On this same point, a disclosure "scrape" can be money well spent – this is when the Insurers agree that the data room and/or due diligence reports will be deemed not Disclosed for the purposes of the W&I Policy and results in a position more aligned to that under US Reps and Warranties policies. This scrape can be worth purchasing since, as above, it can prevent Insurers from asserting that passing or oblique references in the data room or diligence reports are "Disclosed". However, it is important to make sure that the effect is not undermined by representations in the No Claims Declaration as to what the Deal Team have read/considered.

## Knowledge of the sellers requires careful consideration

In a claim under an SPA or MWD then the representing party will likely be the counterparty to the claim or dispute. However, the Insurers under a W&I policy will have had only limited involvement in the transaction, and the sellers or warrantors will likely play no part in the claim or dispute. The fact that the sellers/warrantors may play no part can mean that breach of seller awareness qualified warranties can be harder to establish – a point worth thinking about at the placement stage. Again a seller awareness knowledge "scrape" can sometimes be purchased for additional premium, to neutralise that problem.

## The judgments so far

There are a plethora of judgments on the proper basis for the valuation of damages under an SPA or MWD. However those that have specifically considered claims under W&I policies include the following:

- In *Ageas (UK) Limited v Kwik-Fit (GB) Limited and AIG Europe Limited* [2014] EWHC 2178 (QB), the High Court addressed the correct measure of damages for breach of warranty at English law. The Court held that damages should reflect the diminution in value of the target in light of the breach of warranty. Insurers had argued that this diminution in value should be offset by the fact that assumptions as to future bad debts used in the purchaser's model for valuing the target turned out to be overly pessimistic such that not doing so would generate a windfall for the buyer. However, the Court rejected this argument and affirmed the compensatory principle, namely that damages for breach of contract should, so far as is possible, put the claimant in the position he would have been in had the breach not occurred.
- In *Finsbury Foods Plc v Axis Corporate Capital Ltd & Ors* [2023] EWHC 1559 (Comm), the Commercial Court dismissed a W&I insurance claim after finding that the warranties (relating to material adverse change and price reductions) had not in fact been breached on their proper interpretation, as the changes in question had in fact occurred before the relevant date and did not meet the applicable materiality threshold. In addition, the Court reaffirmed the high bar set by the W&I Policy's exclusion for issues in the Insured's "actual knowledge" but found that this was met in this instance given the number of contemporaneous documents establishing that relevant individuals were aware of the relevant facts. Finally the Court also found that even if a breach had been established, no recoverable loss arose on these (unusual) facts since the seller would not have accepted any less for the target even had the buyer known of and raised the breach of warranty.

- In *Project Angel Bidco Ltd v Axis Managing Agency Ltd* [2023] EWHC 2649 (Comm) and [2024] EWCA Civ 446, both the High Court and Court of Appeal held that a claim for breach of ABC warranties were excluded on the basis of the W&I Policy's Anti-Bribery & Corruption exclusion. The Insured argued that the wording of the exclusion should be corrected to make it more restrictive, in part relying on the fact that the ABC warranties were marked as 'covered' in the W&I Policy's cover spreadsheet. However, the Courts found that the high bar to establish this mistake/rectification argument was not met and that the warranty spreadsheet was subject to the general exclusions in the W&I Policy.

Australian judgments:

- In *Aftermarket Network Australia Pty Ltd v Certain underwriters at Lloyd's subscribing to Policy No 6482/13(c)-13087* [2016] FCA 1402, the Federal Court considered an insurance claim in circumstances where the purchaser of the business had on sold the business and thereby engaged a clause in the share sale agreement extinguishing liability of the original seller. The Insurer successfully argued that the extinguishment of the underlying liability also extinguished liability under the Policy.
- In *UDP Holdings Pty Ltd v Ironshore Corporate Capital (No 2) [2019] VSC 645*, the Victorian Supreme Court considered a claim relating to breaches of accounting warranties in relation to the sale of a milk distribution business. The main focus of the judgment was on quantification of damages, with the Court considering in detail various valuation methodologies and ultimately judging the appropriate basis to be the difference between price actually paid and the real or fair value approached on the basis of capitalisation of future maintainable earnings. The Court explained that the price actually paid was not necessarily the correct measure of the warranty true position, but noted that in these circumstances it made no difference (the loss clearly exceeded the Policy limit). Insurers also argued that there had been no 'loss' on the basis that the definition of 'loss' was what would have been recovered from the sellers less third party recoveries. As avenues for third party recoveries remained open, the Insurers argued that no loss had yet been ascertained to which the Policy could respond. The Court gave this short shrift holding that the Policy ought to respond and then Insurers would be entitled to third party recoveries once received.
- In *DTZ Worldwide Limited v AIG Australia Limited* [2025] NSWSC 12, the New South Wales Supreme Court considered a claim relating to various breaches of certain accounting warranties in relation to the sale of a property services company. The Court ultimately concluded that only breaches of warranties had been relatively minor breaches involving the failure to disclose certain cleaning costs relating to an important contract of the business. The Court nonetheless considered in detail the valuation considerations which would have arisen had it found breaches of the accounting warranties. In doing so the Court accepted the correct measure was a comparison of the warranty true and warranty false position and accepted it was appropriate to value the company by reference to a discounted cash flow analysis. However, the Court rejected the Insured's expert valuation evidence and concluded that a breach of the warranties would not have changed the valuation of the business. Interestingly, the Insured also had an alternative argument that, had it been told of certain matters in compliance with the warranties, it would have made further enquiries and learnt of other issues (not subject to the warranties) affecting the value of the business. The Court rejected this concluding that the assessment involved only the facts that were warranted, not the further enquiries.

## Strategies to maximise claims

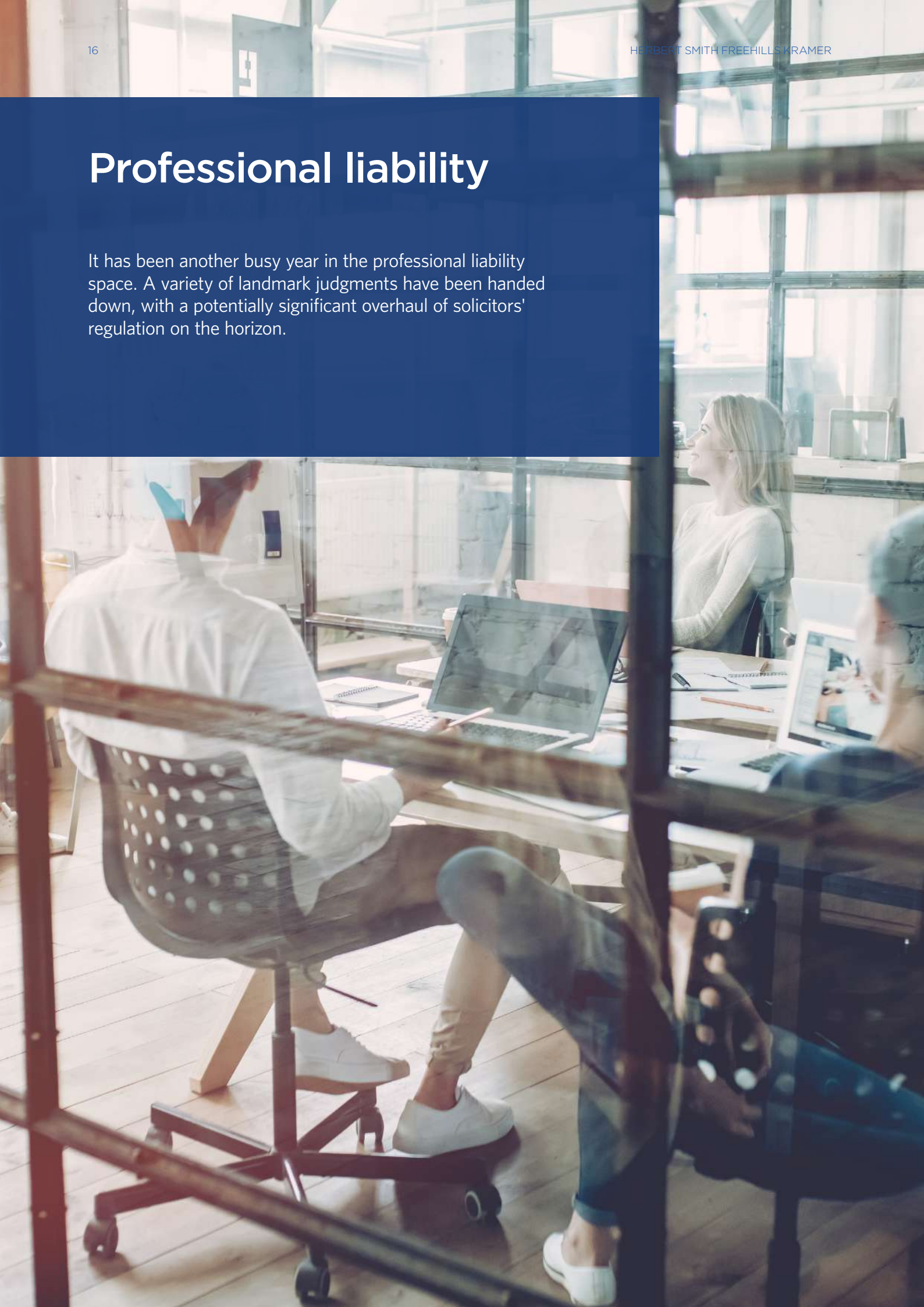
The value of these policies can only really be assessed by the claims under them.

Our top tips, as borne out by the cases so far, are:

- Procure the best Policy you can – it is best not to have to rely on the court being willing to rectify the Policy or correct it for mistake – and ensure that all provisions that need to be disapplied for the Policy to function effectively are indeed disapplied.
- Ensure that claims reporting systems are in place – each Insured should make sure that key individuals in the business know what constitutes a breach of warranty, who potential breaches should be notified to and that they should do so as soon as possible.
- Diarise time limits for notification of claims – in many cases there are absolute deadlines. On top of that there will be applicable limitation periods for bringing court/arbitral proceedings under the governing law.
- Spend time on drafting the notification – Insurers' first impression of the claim counts.
- Be aware of your obligations to Insurers under the Policy as regards conduct of third party claims and any requirements to claiming defence costs (such as obtaining insurers' prior written consent).
- Expect to have to invest time and money – just like a seller or warrantor would test any claim, so will Insurers. An Insured may well need to speak to personnel, collect emails and possibly engage an expert on any technical points of breach or valuation and provide information to Insurers and their advisors. They will likely need a legal team that is experienced in W&I claims as well as their broker. All of this will have some financial cost and time attached – but this investment would also be needed if the claim was direct against the sellers or warrantors.
- Be ready to deploy all leverage – commercial and legal. Most claims are resolved through negotiation.
- Make sure that in case you do have to advance a formal claim your dispute resolution clause is fit for purpose.

# Professional liability

It has been another busy year in the professional liability space. A variety of landmark judgments have been handed down, with a potentially significant overhaul of solicitors' regulation on the horizon.



## Claims against pension advisers

In last year's Review we reported on the Court of Appeal decision in *Virgin Media v NTL Pension Trustees II Ltd* [2024] EWCA Civ 843, dismissing the appeal and confirming that actuarial confirmation was required for certain historic amendments to pension deeds. If no such confirmation was obtained, then the amendment would be void. The decision had potentially wide-ranging implications for pensions schemes and pension advisers.

In September 2025, the Government proposed amendments to the Pension Schemes Bill to address issues arising from the case. The proposed legislation includes provisions to facilitate retrospective actuarial confirmation, even where there may be gaps in the relevant historic data. Whilst obtaining retrospective actuarial confirmation may not always be straightforward, the proposed legislation has been broadly welcomed by the pensions industry: see Virgin Media: draft legislation published for a more detailed explanation.

## Loss of Chance

In February 2025, the Court of Appeal handed down judgment in *Barrowfen v Patel* [2025] EWCA 39 which grappled with a number of the complexities which can arise in calculating damages for a loss of a chance where the claimant's loss depends on matters which were not within its control – such as, in this case, whether the company would have been able to complete the relevant property development sooner if it had not been for the breaches of duty. Importantly, the Court of Appeal upheld the High Court's decision that the benefit obtained by the claimant (the increased capital value of the revised development) should be deducted from the lost revenue that resulted from the breaches before (rather than after) applying the percentage discount to reflect the lost chance: Court of Appeal upholds decision to reduce damages to reflect benefit claimant received as a result of steps taken to mitigate its loss.

Endorsing the approach taken by the first instance judge (Leech J), Snowden LJ provided a helpful overview of the general principles in relation to compensation, mitigation and accounting for benefits received as a result of mitigating steps as established in the leading contract law cases *British Westinghouse v Underground Electric* [1912] AC 673 and *The New Flamenco (Fulton Shipping v Globalia)* [2017] UKSC 43. While those were breach of contract cases, Snowden LJ noted that the same approach should be taken in cases of breach of fiduciary duty and professional negligence, as here.

Snowden LJ agreed with the judge that the key question is one of causation. Summarising the principle, he said:

> "the benefits that must be taken into account are those which are caused by the breaches of duty or negligence for which compensation is sought, or which are caused by the actions reasonably taken to mitigate the losses caused by those breaches of duty or negligence."

In this case, the primary claim for damages was for loss of the chance of receiving income from the development of a property owned by the Claimant. Leech J found that, as a result of the delays caused by the breach, the Claimant had reasonably taken the view that the original development plan was no longer commercially desirable and it was appropriate for the Claimant to incur costs in formulating and implementing a revised development plan.

In those circumstances, the implementation and completion of the revised development plan formed part of the same continuous course of conduct to deal with the situation caused by the breaches. It followed that credit must be given for the benefit received as a result, ie the increased capital value of the revised development plan as compared to the original development plan.

The Court of Appeal agreed with Leech J that, in this case, credit for the increased capital value should be applied before the loss of chance multiplier. This was because, in cases such as this, where there were multiple counterfactuals, to do otherwise would in effect give credit for the benefit even in circumstances where it was not caused by the breach.

## Developments in Solicitors Regulatory Authority (SRA) investigations and enforcement powers

There were a couple of notable developments in October 2025 concerning the breadth of the SRA's investigation and enforcement powers.

First, HM Treasury announced its intention to transfer the SRA's anti-money laundering (**AML**) enforcement powers to the Financial Conduct Authority (**FCA**). Whilst this will herald a significant shift in the regulatory environment, it has been on the cards for some time: it was an option shortlisted in the Government's 2022 review of the AML regulatory and supervisory regime. The Government launched a consultation (which closed on 24 December 2025) which sought responses on specific aspects of the proposal.

If the proposal goes ahead, it will give rise to a range of complex considerations. For instance:

- Will regulated firms and individuals be expected to contribute towards the FCA's budget?
- How will matters be investigated which fall within the purview of both the SRA and FCA (eg where the allegations involve both AML and conduct allegations, or breaches of the Solicitors Accounts Rules)? Could there be separate investigations conducted in parallel, and will there be a risk of the SRA and FCA issuing separate/stacking sanctions in relation to the same conduct (possibly in addition to any criminal sanctions)?
- The announcement applies to "firms", which is defined to include "*individuals who carry out regulated activity.*" It will be interesting to see the range of sanctions which may be open to the FCA in relation to individuals. For instance, will the FCA have an obligation, in appropriate cases, to commence proceedings before the Solicitors Disciplinary Tribunal seeking to strike off an individual solicitor for the most serious breaches of AML requirements?
- Privilege issues: as it stands, the FCA does not consider itself able to require the production of privileged material during an investigation. Indeed, Regulation 72 of the 2017 Money Laundering Regulations specifically permits a professional to refuse the production of privileged material during an AML investigation. That is a far cry from the SRA's stated position – said to be based on the 1967 Court of

Appeal decision in *Parry-Jones v Law Society* – that it can "*see information even if it is confidential or subject to a client's legal professional privilege.*" Assuming that the FCA's planned powers are limited by Regulation 72, the proposal may affect access by the regulator to legal advice provided to firms and by firms to clients.

That brings us to a second and related development: Carter-Ruck, a law firm specialising in libel claims, has, along with its client (Mohamed Amersi), recently issued a Part 8 claim against the SRA seeking a declaration that the SRA is not permitted to inspect privileged material in connection with a regulatory investigation under the Solicitors Act 1974. The background to the investigation apparently concerns Mr Amersi's unsuccessful defamation claim against a Conservative Party MP. If Carter-Ruck successfully obtains the declaration sought, absent future statutory intervention, the SRA's approach to investigations is likely to align more closely with that of the Bar Standards Board, which considers that it can only inspect privileged material in the event of waiver or a court order, and indeed other regulators such as the ICAEW.

## Conduct of litigation

In May 2025, the High Court handed down a judgment in *Mazur & Anor v CRS LLP* [2025] EWHC 2341 (KB) which clarified that the requirement for authorisation to conduct litigation under the Legal Services Act 2007 (**LSA**) is personal in nature, so a non-authorised individual cannot conduct litigation (even under supervision) simply because their firm is authorised: High Court confirms that non-authorised fee earners cannot conduct litigation.

The dispute arose from fees allegedly owed by the appellants to the respondent, their former firm of solicitors. Proceedings were commenced in the fee dispute by the respondent's new solicitors, with the particulars of claim signed by that firm's Head of Commercial Litigation, Mr Middleton, who was a solicitor without a current practising certificate. The appellants objected to Mr Middleton's involvement in the matter, asserting that he was not authorised to conduct litigation. They applied for directions, including an order requiring his replacement by a qualified solicitor. Acting of his own motion, Deputy District Judge Campbell ordered a stay of the proceedings, citing evidence that Mr Middleton had engaged in one of the six reserved legal activities in the LSA – namely, the conduct of litigation – without authorisation.

The respondent made an application to lift the stay, which came before His Honour Judge Simpkiss. In the interim, Mr Middleton was replaced by a qualified solicitor, and his firm submitted a self-report to the SRA. Interestingly, the SRA decided not to investigate the matter, on the basis that, in their view at that time, Mr Middleton was entitled to conduct litigation in reliance on the firm's authorisation.

In view of the SRA's letter, HH Judge Simpkiss found that there was no breach of the LSA. He therefore lifted the stay and ordered the appellants to pay the respondent's costs. The appellants appealed to the High Court and also invited the Court to consider referring Mr Middleton and his supervising director to the SRA for further investigation, notwithstanding the SRA's earlier decision not to pursue the matter.

The High Court (Sheldon J) invited submissions from the Law Society and the SRA on the circumstances in which a non-admitted person may conduct litigation. Both bodies were aligned in their interpretation: whilst non-admitted individuals may assist an authorised person in the conduct of litigation, they are not permitted to conduct it, even under supervision.

Sheldon J agreed and allowed the appeal. He referred to section 15(2) of the LSA, which makes it clear that an employee who carries out a reserved legal activity is treated as personally undertaking that activity, regardless of whether their employer is authorised. Indeed, section 16 of the LSA states that an employer commits an offence if a reserved legal activity is carried on by one of their employees, in their capacity as such, without that employee being appropriately authorised.

The Court held that Mr Middleton was not entitled to conduct litigation, because he was not personally authorised, and he could not rely on his firm's authorisation. He found that HH Judge Simpkiss was mistaken in relying on the SRA's earlier letter. Despite this finding, Sheldon J declined to make a referral to the SRA, on the basis that the SRA was already aware of the judgment, having been involved as an intervening party.

Unfortunately, Sheldon J did not need to consider whether Mr Middleton had in fact conducted litigation. Therefore, although the judgment provides some clarity on the type of litigation work that may be undertaken by, for example, trainee solicitors, paralegals, some employed barristers and some foreign-qualified lawyers, it leaves an important question unanswered: what test should be applied in assessing whether a fee earner has gone beyond assisting in litigation? The SRA submitted that the question is one of fact and degree, relying on an earlier decision of Cavanagh J in *Baxter v Doble* [2023] EWHC 486 (KB), and the key consideration is whether the individual has assumed responsibility for the conduct of litigation and exercises professional judgement in respect of it.

We understand that CILEX has obtained permission (as a third party) to appeal the decision to the Court of Appeal.

## Misuse of AI in Court Proceedings

The High Court raised serious concerns regarding the misuse of generative AI in pleadings in its decision in *Ayinde v London Borough of Haringey* [2025] EWHC 1040 (Admin) and a joint decision in *Ayinde* and *Al-Haroun v Qatar National Bank* [2025] EWHC 1383 (Admin).

In *Ayinde*, the Court considered whether the inclusion by a barrister of fictitious case citations in pleadings justified a wasted costs order against the barrister and her instructing solicitors under Practice Direction 46: Professional Misconduct and AI: Insights from Ayinde v London Borough of Haringey.

At the costs hearing, the barrister attempted to explain the errors as "minor citation mistakes," but this explanation was firmly rejected and Ritchie J stated:

> "...if she had dropped it into an important court pleading, for which she bears professional responsibility because she puts her name on it, she should not have been making the submission to a High Court Judge that this case actually ever existed, because it does not exist."

Although the Court declined to make a factual finding on whether AI was used, Ritchie J observed that reliance on AI generated material without verification would, on the balance of probabilities, constitute negligence. He stressed that professional responsibility for accuracy cannot be delegated to technology and that the legal team, including solicitors, bears ultimate responsibility for ensuring pleadings are correct. The Court concluded that the use of non-existent authorities and subsequent attempts to minimise the issue warranted a wasted costs order. The matter was also referred to the Bar Standards Board and SRA.

The President of the King's Bench Division listed a further hearing to consider whether contempt proceedings were warranted, although they were ultimately not pursued as the Court accepted that there was no deliberate wrongdoing and that the solicitors had no reason to suspect that the barrister would cite fictitious cases.

The *Al-Haroun* case, although joined with these proceedings for these purposes due to similar concerns, arose in a different context. It involved witness statements incorporating fabricated or misquoted authorities, partly sourced from AI research undertaken by the litigant and adopted by the solicitor without adequate checks. The Court described this as a "lamentable failure" and referred the solicitor to the SRA for investigation.

These decisions seem to form part of a broader trend. For instance, in *Bandla v SRA* [2025] EWHC 1167 (Admin), the Court struck out grounds of appeal relying on fabricated authorities, citing the need for decisive action to protect the integrity of judicial processes. In a separate case, Arnold LJ imposed a costs award exceeding £225,000 against a litigant, Craig Wright, which seems to have been informed (at least in part) by him having made submissions containing AI 'hallucinations'.

These cases underscore the judiciary's clear expectation that, while AI tools may assist in preparing legal submissions, they do not diminish the professional duty to ensure the accuracy and integrity of all submissions.

## Tort of causing loss by unlawful means

*In Vanquis Bank Limited v TMS Legal Limited* [2025] EWHC 1599 (KB), the High Court dismissed applications by a defendant law firm to strike out and/or obtain summary judgment against a lender's claim alleging the tort of causing loss by unlawful means. The unlawful means relied on is the submission by the law firm of tens of thousands of irresponsible lending complaints, allegedly without proper investigation and in breach of the law firm's obligations to its clients: High Court refuses to strike out lender's claim against law firm for tort of unlawful interference in respect of irresponsible lending claims they advanced on behalf of the lender's customers.

In deciding that the claim can proceed to trial, the Court found that each essential element of the tort of causing loss by unlawful means was met on the basis of the facts as alleged. The decision confirms that the tort of causing loss by unlawful means is a flexible remedy capable of addressing novel forms of economic harm. While the judge recognised that a claim of this sort had not been pursued previously, he noted that this might be because it could only succeed on egregious facts and that, if the allegations were correct, it "would be an example of egregious conduct" by the law firm. This highlights the potential exposure of law firms operating high-volume complaint models to claims from third parties affected by their conduct.



# Product liability

## UK product liability and safety regulation

The Product Regulation and Metrology Bill – which we discussed in last year's Review – came into force in July 2025. Only minor changes were implemented as the Bill passed through the parliamentary process, which meant that it remained an intentionally high-level piece of enabling legislation which provides that the Secretary of State may introduce regulations to reduce or mitigate the risks presented by products, ensure that products operate efficiently or effectively, and ensure that products for weighing or measuring operate accurately. We now await secondary legislation which will confirm the precise approach the UK government intends to take in relation to these matters, albeit government publications have indicated that online marketplaces will receive specific attention.

Soon after the Product Regulation and Metrology Act received Royal Assent, the Law Commission announced that it was conducting a full scale review of the UK's product liability regime. The review, which is expected to result in a public consultation on their proposals in the second half of 2026, aims to consider the operation of the existing product liability regime, particularly in relation to digital products and emerging technologies (such as AI), to determine what law reform might be required to ensure that the product liability regime is "fit for purpose". Concerns have also been expressed by the Law Commission that the legislation has not provided a straightforward route to claiming compensation and that it has proven difficult to bring successful claims under it.

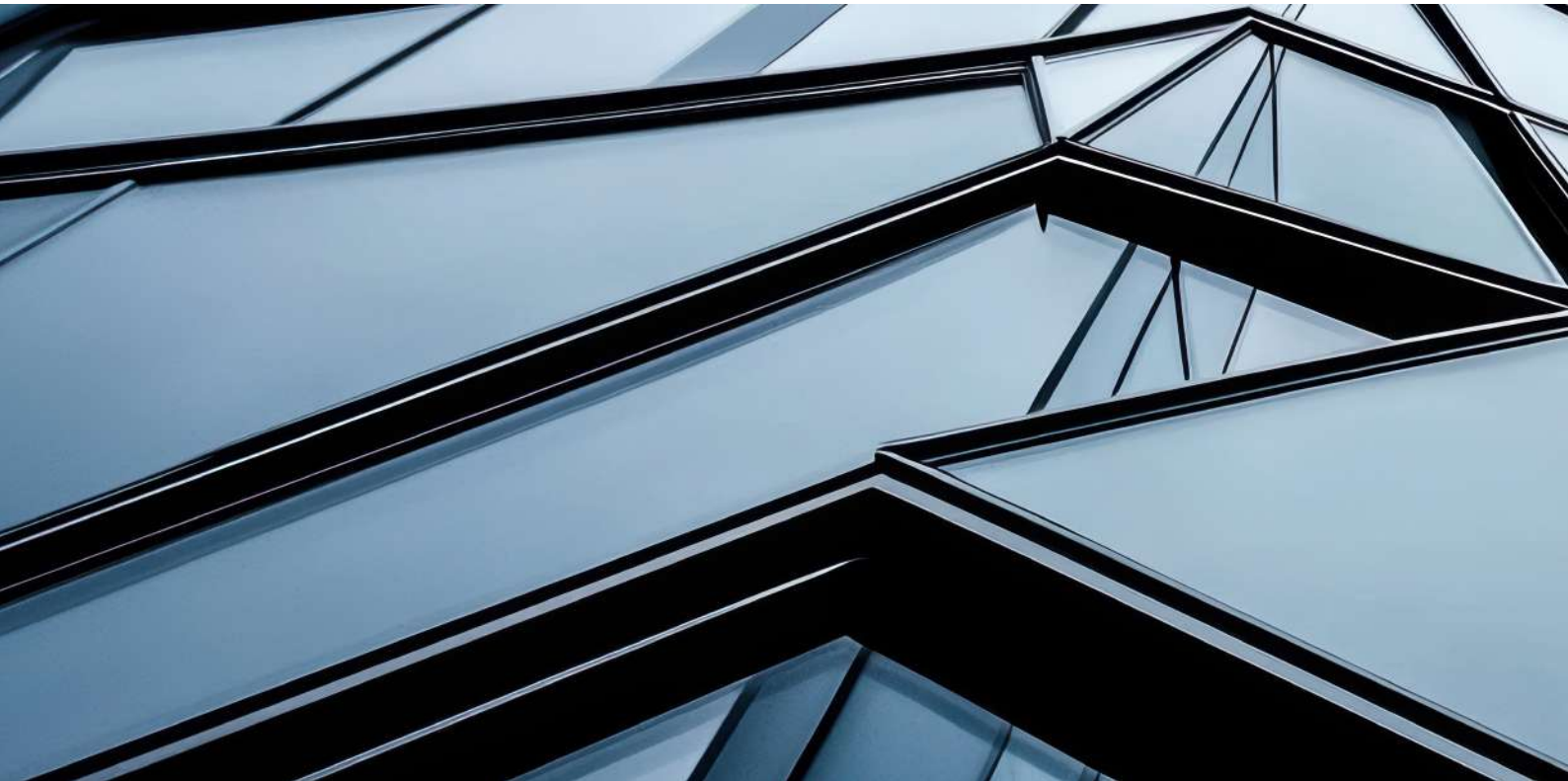
The outcome of the review may well lead to material changes in the existing law as well as the potential for divergence from the recently updated European Union regime which will pose challenges, in particular for producers of consumer products who sell into both the UK and EU markets.

## Autonomous vehicles

With early-stage trials underway and commercial operations planned by 2027, the Automated Vehicles Act (the **AV Act**) (which received royal assent in 2024) establishes the regulatory framework for the deployment of autonomous vehicles (**AVs**) in Great Britain.

Whilst various implementing measures and statutory guidance are still to be published, the AV Act includes provisions relating to the authorisation of AVs, new regulated bodies, driver immunity and marketing restrictions. The safety principles which underpin the Act are aimed at ensuring that the safety of automated vehicles is equivalent to, or higher than, careful and competent human drivers, and that road safety in Great Britain will be better as a result of use of automated vehicles than it would otherwise be.

There are myriad details which are to be confirmed in subsequent legislation, but a summary of the framework can be found in our article here: Robotaxis, ADAS and the regulatory framework for self-driving vehicles in Great Britain.



## PFAS

Per- and polyfluoroalkyl substances (**PFAS**) continue to attract heightened regulatory, political and litigation attention internationally. While the UK has not yet seen the volume of claims brought in the US, where settlements relating to alleged PFAS contamination have already exceeded USD 18 billion, momentum is building. Press reports indicate that prospective group actions have been threatened against manufacturers and users of PFAS containing products in the UK, and judicial developments overseas, such as the 2023 Swedish Supreme Court decision recognising elevated PFAS blood levels as a compensable personal injury, may further encourage claimant interest.

Regulatory scrutiny has also intensified. Water companies are under particular pressure to assess and mitigate PFAS related risks mirroring a trend already seen in the US and Australia. Against this backdrop, increased investigative activity is anticipated, alongside potential claims against PFAS manufacturers and suppliers arising out of contamination and remediation costs. Although claimant interest is growing in the UK, PFAS claims continue to face significant scientific and legal hurdles, including uncertainty around causation, attribution to specific manufacturers or sites, and the foreseeability of harm from historic use.

From an insurance perspective, coverage for PFAS related liabilities is an emerging and complex issue which is attracting significant attention in the insurance market. The UK market has begun adopting PFAS specific exclusions in various policy classes, including the LMA's published standard wordings (LMA5595A and LMA5596A), with insurers also developing bespoke exclusions. How these wordings will operate in practice, and the extent to which they may be tested in the UK courts, remains uncertain. Many legacy PFAS exposures may implicate historical occurrence based policies dating back decades, with corresponding challenges around locating and reconstructing policy programmes, aggregation and allocation across policy years. The scope of pollution and PFAS specific exclusions are also expected to be key battlegrounds for coverage disputes.

Recent developments in US PFAS insurance coverage litigation provide some indication of where disputes may crystallise. US courts have reached varied conclusions on the application of pollution exclusions to PFAS contamination claims, with some rulings finding exclusions dispositive and others recognising exceptions sufficient to trigger a duty to defend. The growing volume of US PFAS litigation has also prompted disputes over allocation across long exposure periods, policy triggers and the classification of PFAS related harm, illustrating the range of issues that may arise as PFAS related claims become more prevalent in the UK.

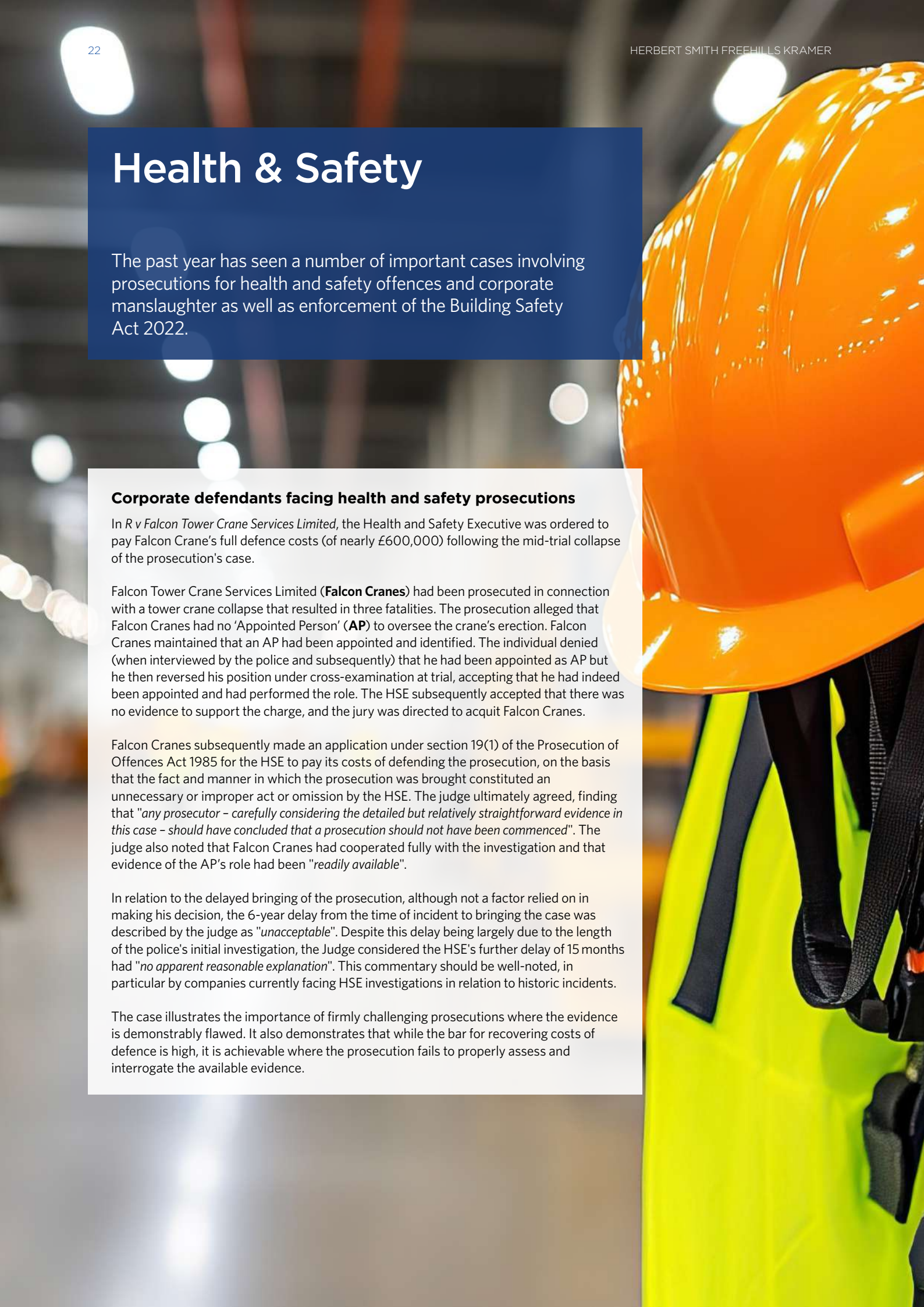
From a US regulatory perspective, the Environmental Protection Agency (**EPA**) is reviewing PFAS-related legislation that was set to take effect, including (i) the regulation for reporting and recordkeeping requirements for PFAS, (ii) maximum contaminant levels in drinking water, and (iii) which PFAS were to be considered "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act (**CERCLA**). While the final regulations on these fronts remain in flux, the EPA has made clear that it would focus on PFOA and PFOS for the purposes of drinking water contaminant levels and CERCLA. Additionally, the EPA has proposed to soften some of the most onerous PFAS reporting requirements, for example by reintroducing a de minimis exception. Finally, it is important to bear in mind that regulations in the US vary on a state-by-state basis, and individual states may continue to impose more stringent PFAS-related regulations, for example relating to biosolids.

We expect to see increased efforts by policyholders to recover defence costs and liabilities associated with PFAS related claims. As regulatory enforcement accelerates and litigation risk crystallises, PFAS is likely to remain a significant focus for insurers and insureds in 2026.



# Health & Safety

The past year has seen a number of important cases involving prosecutions for health and safety offences and corporate manslaughter as well as enforcement of the Building Safety Act 2022.



## Corporate defendants facing health and safety prosecutions

In *R v Falcon Tower Crane Services Limited*, the Health and Safety Executive was ordered to pay Falcon Crane's full defence costs (of nearly £600,000) following the mid-trial collapse of the prosecution's case.

Falcon Tower Crane Services Limited (**Falcon Cranes**) had been prosecuted in connection with a tower crane collapse that resulted in three fatalities. The prosecution alleged that Falcon Cranes had no 'Appointed Person' (**AP**) to oversee the crane's erection. Falcon Cranes maintained that an AP had been appointed and identified. The individual denied (when interviewed by the police and subsequently) that he had been appointed as AP but he then reversed his position under cross-examination at trial, accepting that he had indeed been appointed and had performed the role. The HSE subsequently accepted that there was no evidence to support the charge, and the jury was directed to acquit Falcon Cranes.

Falcon Cranes subsequently made an application under section 19(1) of the Prosecution of Offences Act 1985 for the HSE to pay its costs of defending the prosecution, on the basis that the fact and manner in which the prosecution was brought constituted an unnecessary or improper act or omission by the HSE. The judge ultimately agreed, finding that "*any prosecutor – carefully considering the detailed but relatively straightforward evidence in this case – should have concluded that a prosecution should not have been commenced*". The judge also noted that Falcon Cranes had cooperated fully with the investigation and that evidence of the AP's role had been "*readily available*".

In relation to the delayed bringing of the prosecution, although not a factor relied on in making his decision, the 6-year delay from the time of incident to bringing the case was described by the judge as "*unacceptable*". Despite this delay being largely due to the length of the police's initial investigation, the Judge considered the HSE's further delay of 15 months had "*no apparent reasonable explanation*". This commentary should be well-noted, in particular by companies currently facing HSE investigations in relation to historic incidents.

The case illustrates the importance of firmly challenging prosecutions where the evidence is demonstrably flawed. It also demonstrates that while the bar for recovering costs of defence is high, it is achievable where the prosecution fails to properly assess and interrogate the available evidence.

## Corporate manslaughter

The case of *R v North East London NHS Foundation Trust* (**NELFT**) was resolved following what is thought to be the longest trial yet seen for corporate manslaughter (or indeed for any health and safety offence).

Following the death of a patient detained in a psychiatric ward at Goodmayes Hospital in 2015, NELFT was charged with corporate manslaughter and an offence contrary to section 3 of the Health and Safety at Work Act 1974 (**HSWA**). Ultimately, NELFT was convicted of the health and safety offence but unanimously acquitted of corporate manslaughter. The ward manager was also prosecuted (in his personal capacity) and, in parallel with the company, as convicted for convicted of a health and safety offence under section 7 HSWA but acquitted of gross negligence manslaughter.

Ms Figeiredo had a long-standing history of acute mental illness and died by suicide in July 2015, after having made a significant number of previous attempts. Despite warnings and previous incidents, she was able to materials – used in multiple attempts – in communal areas of the hospital.

The evidence presented at trial was very complex and involved several expert witnesses. There were also numerous legal issues to be considered, concerning in particular the various matters which must be proved in order to secure a conviction for corporate manslaughter (for example the need to show failings by senior managers).

The final sentences passed by the judge (for breaches of the HSWA) were: 6 months' imprisonment for the ward manager; and a fine of £565,000 (plus £200,000 in costs) for NELFT. In relation to the ward manager, the judge was satisfied that he had actual foresight of the risks to Ms Figeiredo, that the risk of harm was of death or serious injury, but that mitigating factors (such as his previous good character and the significant delay in bringing the prosecution) were applicable. For NELFT, the judge was satisfied that there were both elements of medium and high culpability, that the harm level was of death or serious injury, and, again, that mitigating factors applied (namely the lack of previous convictions, cooperation with the investigation, and the delay in bringing prosecution).

It therefore remains the case that the NHS has never been convicted for corporate manslaughter; though the health and safety convictions and sentencing underscore the importance of proactive risk management and reporting within the healthcare system.

## Building Safety

The recent case of *Health and Safety Executive v Integritas Property Group (IPG) Ltd* [2025] EWHC 2613 (TCC) marks a significant development in building safety enforcement. For the first time, the Health and Safety Executive (HSE) sought and obtained an interim injunction to prevent occupation of a higher-risk building that lacked a building regulations completion certificate.

Acting in its capacity as the Building Safety Regulator under the Building Safety Act 2022 (**BSA 2022**), the HSE applied for the injunction after evidence revealed that, despite the regulator having issued a contravention notice, a cancellation notice, and a stop notice, the developer nonetheless continued marketing the property for student occupation. The HSE also presented evidence of serious safety concerns, underscoring the potential risks associated with premature occupation.

The Court was satisfied that the HSE, as the statutory regulator responsible for building safety, had sufficient standing to seek injunctive relief to prevent breaches of criminal law under the BSA 2022. The judgment is noteworthy for a number of reasons including because it represents the first instance of the HSE exercising such powers under the BSA 2022, despite the legislation not expressly granting authority to seek injunctions. This decision signals a proactive approach by the regulator and shows that it will take proactive steps to ensure compliance with obligations under the developing building safety regime.



# Insurance regulation

This section gives an overview of the evolving regulatory landscape for the UK insurance sector and explores a number of changes that align with the UK Government's ongoing commitment to fostering growth and competitiveness, together with other aspects of regulation that are likely to remain high on firms' agendas.

Originally published by Thomson Reuters © Thomson Reuters

## Growth and competitiveness – a continuing priority

The UK Government's growth agenda aims to reduce unnecessary friction in the regulatory system. Its Regulation Action Plan, published in March 2025, laid out cross-economy reforms to ensure that regulation enables innovation while maintaining accountability.

The Treasury's July 2025 Financial Services Growth and Competitiveness Strategy applied this blueprint to financial services. It drives a shift in regulatory philosophy, putting regulators under pressure to streamline rules and demonstrate measurable support for sector growth.

Targeted reforms of the regulatory system are designed to deliver:

- **Faster decisions:** cutting statutory deadlines for authorisations and senior manager approvals
- **Less red tape:** streamlining regulatory obligations and reporting requirements
- **Strategic clarity:** requiring regulators to publish long-term plans aligned with growth objectives
- **Efficient disputes handling:** fairer, quicker dispute resolution through reform of the Financial Ombudsman Service

In line with this agenda, the FCA has recently confirmed a number of changes that are aimed at simplifying its insurance rules. These include reducing the protections that are provided under the rules to larger commercial customers and giving firms greater flexibility over how product governance requirements are met. By recalibrating protections to ensure that retail-style rules apply where they are most needed, the intention is to reduce the burden on firms where they are not needed so much.

The FCA has signalled that, while it is prepared to support the UK Government's growth agenda, meaningful reductions in regulatory requirements cannot proceed responsibly without clear political guidance on what level of consumer harm is acceptable. It has warned that deregulation will inevitably lead to more failures and to customer harm and has asked the UK Government to articulate a durable risk appetite so the regulator is not later criticised for outcomes that stem directly from policy choices.

On 15 January 2026, the PRA also confirmed its commitment to supporting growth and competitiveness through both the development of policy and in its supervisory approach. Work that is currently being undertaken on a new captive regime and on alternative life capital options is highlighted, together driving inclusive growth through the use of mutuals. The PRA also announced adjustments in supervision, including faster authorisation times for new firms and changes to the frequency of firms' Periodic Summary Meetings.

### Captive insurance

In July 2025, HM Treasury confirmed its intention to establish the UK as a more attractive destination for captive insurers. Proposals for a new captive insurer regulatory regime include:

- Introducing tailored regulation that reflects captives' typically lower risk profiles, including reduced capital requirements, simplified reporting obligations, faster authorisation procedures, and lower fees compared with standard insurers.
- Introducing legislation to allow captives to operate through protected cell companies (PCCs), making it feasible for smaller businesses and enabling captive formation within multi-cell entities.
- Differentiating between direct-writing captives and reinsurance captives.

The FCA and PRA will set the detailed rules for the new regime, using their existing powers (no new legislation is thought to be needed). They are expected to consult on the new framework in summer 2026 with the aim of implementing it by mid-2027.

The UK Government argues that the success of a modern and competitive captive insurance framework should not depend on the availability of tax incentives. It will not, therefore, be providing any. It remains to be seen whether its approach will be sufficient to attract business from other jurisdictions with a more established captive offering.

### SMCR reform

The Senior Managers and Certification Regime (**SMCR**) is undergoing its most significant review since its inception. Responding to concerns that the current framework is unnecessarily burdensome on firms, HM Treasury's July 2025 consultation sets out structural changes designed to reduce the regulatory burden on firms by as much as 50%. These include:

- removing the Certification Regime from legislation so that regulators can set rules more flexibly;
- reducing the number of senior roles that require pre-approval; and
- simplifying the requirements for Statements of Responsibilities.

In parallel, the FCA and PRA published consultations focusing on relatively modest reforms that can be implemented without legislative change. Final rules are expected by mid-2026.

Once the new laws are in place, more radical changes can be made by the regulators, in line with the Treasury's aims. Firms should get involved at this stage to make sure the changes work well.

Firms have welcomed the effort to streamline a regime that is often seen as overly complex. The loosening of the regulatory reins will, however, increase the onus on firms to demonstrate oversight and compliance, which brings its own regulatory risks.

## Prudential Regulation

### Matching Adjustment

The PRA has continued to make tweaks to the new Solvency UK framework since its implementation in December 2024. Earlier in 2025, the PRA published its consultation on the 'Matching Adjustment Investment Accelerator' (**MAIA**). The purpose of the MAIA is to remove the requirement to obtain prior approval from the PRA before a firm can claim Matching Adjustment (**MA**) benefit on certain assets, thereby making it easier for insurers to take advantage of investment opportunities more quickly. This is expected to promote growth in the UK insurance sector and broader economy – by unlocking investment in sustainable and productive assets, including illiquid private assets.

Feedback on the proposed framework focused on practical issues – what assets could be invested in, to what value, how long would insurers have to claim MA relief on the assets and so forth. Following the consultation, the PRA published its policy statement in October. The rules have been refined to an extent. In particular, the PRA has removed some more prescriptive rules about what assets can be included, and instead provided that firms should apply a proportionate and risk-based approach to assessing asset eligibility. Other aspects of the new framework remain largely unchanged, including the MAIA exposure limit (the lower of 5% of the best estimate liabilities, net of reinsurance, of the MA portfolio and an amount proposed by the firm which is no greater than £2 billion). Firms will also need to have robust contingency plans dealing with a scenario where assets held using MAIA permission are determined by the PRA to be MA ineligible. Firms will need to regularly stress test these contingency plans.

The MAIA rules are now in effect and it will be interesting to see how different sized firms use them.

### Alternative capital for life insurers

In November 2025, the PRA published a discussion paper exploring how the UK life insurance sector might access alternative forms of capital. In doing so, the PRA acknowledges that a number of firms are attempting to move to capital light business models, make more use of reinsurance and explore joint ventures with partners providing capital and/or investment expertise.

The PRA's entry into this debate is intriguing. It notes that it is not the PRA's role to direct market innovation, but it is trying to be proactive in exploring where there are regulatory barriers to fresh capital entering the sector.

The discussion paper serves two purposes. The first is to set out a number of questions for the sector to consider, which explore both what firms might want to achieve and also potential risks to the PRA's objectives. The second is to articulate a number of regulatory principles, which are intended to help frame the discussion. These are that:

- The quality and quantity of capital required to support insurance risks should not be lowered through the use of alternative life capital structures.
- The risk transferred to the capital markets through alternative life capital structures should be contractually-bounded and timelimited.
- Cedants will need to manage tail and residual risks resulting from their use of alternative life capital structures.
- Alternative life capital structures should predominantly result in capital relief, not balance sheet financing.
- A level of risk retention by the insurer is necessary in any such structures and the UK insurer should only make limited use of alternative life capital structures.
- The alternative life capital structures should not alter the control a UK cedant has over the management of its business.

When considering the discussion paper, it is worth being aware of the PRA's previous comments in the context of funded reinsurance. Some of the points the PRA made in its paper on that topic are consistent with these regulatory principles and so will provide insight into how the PRA thinks about some of the issues.

Given these principles, and the range of proven existing reinsurance and derivative solutions available to companies, it is likely that any changes that flow from the discussion paper will be evolutionary and not revolutionary. The PRA is not expecting alternative life capital structures to fundamentally change how firms originate new business, but the hope is that industry's feedback will give confidence that the initiative can lead to viable new approaches.

The deadline for responses is 6 February 2026.

## Conduct Regulation

### Advice Guidance Boundary Review and the introduction of Targeted Support

Hailed as a "once-in-a-generation change" to its advice rules, the FCA launched proposals on targeted support last year as part of its wider Advice Guidance Boundary Review. The review seeks to tackle mounting concerns that a large proportion of UK consumers are not getting the financial help they need when making (or not making!) investment decisions impacting their long-term financial health. The FCA's proposals aim to address this by offering a new form of regulated advice that provides "ready-made suggestions" designed for groups of consumers with common characteristics, referred to as "consumer segments". Targeted supported will be carved out as a new regulated activity at Article 55A of the RAO, with an accompanying regulatory framework that aims to achieve "better outcomes" for customers: Closing the advice gap – the introduction of "targeted support".

In December 2025, the FCA published its near final rules for the new targeted support regulatory framework, following feedback from the sector. Key changes include:

- Changing terminology from 'better outcomes' to 'better position' to more clearly state the policy intent and avoid potential confusion with 'good outcomes', which firms must act to deliver under the Consumer Duty.
- Updating rules and guidance on consumer segments.

The FCA expects the new rules to take effect from 6 April 2026. At the same time, the FCA published two joint statements with other regulatory bodies. The first, with the Financial Ombudsman Service, clarifies how the FCA and the Financial Ombudsman Service will work together in the event of future complaints relating to targeted support. The second, with the Information Commissioner's Office, addresses how firms can communicate with consumers in the context of existing direct marketing rules.

### Modernising the redress system

In acknowledgement of concerns that the FOS has turned into a "quasi-regulator", the Treasury published a consultation in 2025 with a view to ensuring that the FOS returns to its original purpose of being a simple, impartial dispute resolution service. The proposals include:

- clarifying the scope of the FOS's 'fair and reasonable' jurisdiction to require the FOS to
- find that a firm's conduct is 'fair and reasonable' where it has complied with relevant FCA rules;
- introducing a mechanism for the FOS to seek the FCA's views on rule interpretation in confirming compliance;
- imposing an absolute time limit of 10 years for bringing cases to the FOS; and
- making it easier for the FCA to intervene quickly on a mass redress event.

In parallel, the FCA and the FOS published a consultation paper on modernising the redress system, including introducing an updated framework for dealing with mass redress events and a new FOS case process to streamline case handling and ensure decisions are taken at the right level in the organisation: Modernising the redress system: Fair and reasonable changes?.

Overall, these proposals are to be welcomed and it is encouraging that both the UK Government and the regulators are making proposals which go beyond previous attempts at reform. Overall, the proposals represent a significant shift aimed at improving fairness, consistency, and efficiency across the system. However, they are in some respects quite high level and the devil will inevitably be in the implementation detail before we can conclude that they will indeed be effective.

### Other developments

- The proposed reforms in the **Pension Schemes Bill** will be of interest to the life sector. The changes this piece of legislation could usher in are significant, with many of the proposals looking to drive consolidation between pension schemes. Our pensions team prepared a briefing paper, and the impacts of this bill will be felt over the coming years.
- In 2024, the FCA launched a market study on how well the distribution of **pure protection insurance products** – including term assurance, critical illness, income protection and whole life insurance – is working for customers, particularly regarding fair value. The FCA has now published a market overview) and a summary of its quantitative customer research, and intends to publish an interim report with initial findings and proposed next steps in early 2026. As the ABI observes, the FCA has conducted 14 market studies to date, and only one has ended up with no remedy. Firms offering pure protection should therefore expect the FCA to act on the results of this review and prepare accordingly.
- The FCA also launched a review of the **premium protection market** in 2024, and published its update paper in July 2025. The paper revealed a wide variation in the rates firms charge for premium finance, with significant differences according to how the insurance is distributed. This is a concern for the FCA given that it is more vulnerable customers that typically rely on premium finance, and they intend to carry out further analysis of these trends in 2026. Firms should benchmark their products against the FCA's findings.
- In 2024, the UK Government set up a **Motor Insurance Taskforce** aimed at understanding why the cost of motor insurance continues to rise, and the impact of this on vulnerable customers. Its final report, published in December 2025, contains a list of actions for the FCA to take forward. Aside from its premium finance work, the FCA will be conducting further analysis on the cost of motor insurance for particular customer groups and will be partnering with the ABI to consider how claims can be better managed to ensure greater efficiency and cost control, without adversely affecting customer outcomes. It will also be continuing to try to combat fraudulent activity online, such as 'ghost broking', where scammers pose as insurance brokers and issue fake or invalid policies, and 'ad-spoofing', which involves posting fake adverts with the intent of illegally harvesting data and upselling unnecessary services.

## Key risk areas

### AI

The use and experimentation of AI within financial services will continue in 2026, creating both risks and exciting new opportunities for the market. In a recent update, the FCA confirmed that firms should apply existing regulatory frameworks when deploying AI (and that a separate AI-specific regulatory framework would not be created for now at least). In doing so, the FCA highlighted the importance of firms complying with the Consumer Duty in an AI context (eg that firms should be mindful of the risk that AI embeds or amplifies bias, that leads to outcomes that are unjustifiably worse for some groups of consumers). Likewise for SMCR: use of AI in relation to an activity, business area, or management function of a firm will fall within the scope of a SMF manager's responsibilities. In other words, AI is having an impact in many parts of insurers' business, just as other transformative tech has done in the past.

### Cyber

In October 2025, the Bank of England, PRA and FCA published Effective practices: Cyber response and recovery capabilities. This document outlines good practice with regard to responding to high severity cyber disruption, recovering from disruption, responding to disruption at a material third party and the scope for firms to work collectively to build resilience. Cyber risks will be front and centre of firms' thinking about operational resilience.

### Climate Change

In December 2025, the PRA published a policy statement, setting out the outcome of its consultation on revisions to its previous supervisory statement (SS3/19) on enhancing banks' and insurers' approaches to managing climate-related risks. SS3/19 has been replaced in its entirety and a new supervisory statement (SS5/25) took effect on 3 December 2025. The new supervisory statement provides an updated set of expectations that consolidates published PRA feedback, reflects new international standards and embeds improved understanding of climate-related risks. It aims to ensure firms build the capabilities to effectively manage climate related risks, in line with the PRA's primary objectives to promote the safety and soundness of the firms it regulates and secure an appropriate degree of protection for insurance policyholders. It is also intended to support firms in managing climate-related risks in a proportionate way, thereby furthering the PRA's secondary objective to facilitate effective competition in the financial markets for services provided by firms. Firms are required to conduct an internal review and gap analysis against the SS5/25 expectations by 3 June 2026.



# General interest

This section looks at the key legal and procedural developments that took place in 2025 from the perspective of those who litigate in the English courts or fund or insure such litigation. For more detail see our **Litigator's Yearbook 2025 (England and Wales)**. For those who arbitrate we have developments relating to arbitration in our **English Commercial Arbitration Round-Up**.

## Litigation funding

In December the Government announced plans to introduce legislation to reverse the effect of the Supreme Court's decision in Paccar in July 2023, which established that litigation funding agreements based on a share of damages are Damages-Based Agreements (or **DBAs**) and are therefore unenforceable unless they comply with the restrictive regulatory regime for such.

The new legislation is intended to clarify that litigation funding agreements are not DBAs and introduce a new framework to ensure that litigation funding agreements are fair and transparent. The timing is unclear, as the Government has merely said legislation will be introduced when parliamentary time allows.

The previous Government had introduced legislation to Parliament that would have reversed the effect of *Paccar*, but the relevant Bill fell in the pre-election wash-up: Litigation funding: Bill to reverse effect of Paccar falls in pre-election wash-up. The Labour Government then indicated that it would wait until after the Civil Justice Council (**CJC**) had released its report and recommendations on the litigation funding sector before making any policy decisions.

The CJC's report was published in June 2025. It recommended the immediate reversal of *Paccar* with retrospective effect, as well as a new system of "light touch" regulation for litigation funding and various other measures: Civil Justice Council's final report on litigation funding recommends "light touch" statutory regulation.

It is not yet clear whether the Government's planned legislation will have retrospective effect. However, the minister for courts and legal services who made the announcement in December, Sarah Sackman, indicated in a Westminster debate in October that it was "highly unlikely" that any legislation would be retrospective.

We understand that the government is still considering the CJC's broader recommendations.

There has also been a very public falling out between the class representative and the funder (Innsworth Capital) in the *Merricks v Mastercard* litigation. The CAT approved a £200 million settlement of the claims, despite the funder's intervention to object that the settlement was too low and should not be approved. The funder has reportedly commenced arbitration proceedings against the class representative and has also applied for a judicial review challenging the Tribunal's allocation of the settlement funds.

## Class actions

Class action litigation has continued to be a prominent feature of the litigation landscape over the past year, with numerous high profile actions progressing through the courts. These include claims by around a million and a half claimants relating to diesel emissions which are being litigated under 13 separate group litigation orders (**GLOs**), all collectively managed under the umbrella of the Pan NOx Emissions Group Litigation.

Also in the GLO context, the Supreme Court heard an appeal in November against a Court of Appeal decision which considered how the court should determine the effect of a decision in a test case on other claims pursued under the GLO, and when it might be appropriate to order that a judgment or order on a GLO issue should not bind other parties: Group litigation orders: Court of Appeal considers binding effect of decisions in test cases. The Supreme Court's judgment is awaited.

Over the past 12 months, there have been a number of interesting decisions on the CPR 19.8 representative action procedure, which allows a claim to be brought on behalf of those who have the "same interest" in it:

- The Court of Appeal held that a claim for misuse of private information should not be allowed to proceed under CPR 19.8. The decision illustrates that, in order to meet the "same interest" requirement, each member of the represented class must have a realistic prospect of establishing their claim, and that is likely to be a very difficult hurdle to meet in a claim for misuse of private information: Data class actions: Court of Appeal upholds decision blocking "opt-out" representative action for misuse of private information.
- The High Court refused to allow an opt-out representative action to be brought under CPR 19.8 in the IP context. The decision suggests that, for the purposes of the rule, it must be possible not only conceptually but in practical terms to determine whether a particular person falls within the class definition, and therefore has the "same interest" in the claim as the claimant bringing the action on their behalf: High Court refuses to allow representative action to be brought on behalf of copyright owners in IP case.
- The Court of Appeal refused to allow a novel bid to bring a securities class action as an "opt-in" representative action, confirming that such claims should be pursued as ordinary multi-party proceedings. The decision shows that the courts will not allow the CPR 19.8 procedure to be used to gain tactical advantages as to how a securities class action (or other action) will be managed: Court of Appeal rejects attempt to bring securities class action using CPR 19.8 representative action as an "opt-in" procedure. The Supreme Court refused permission to appeal.

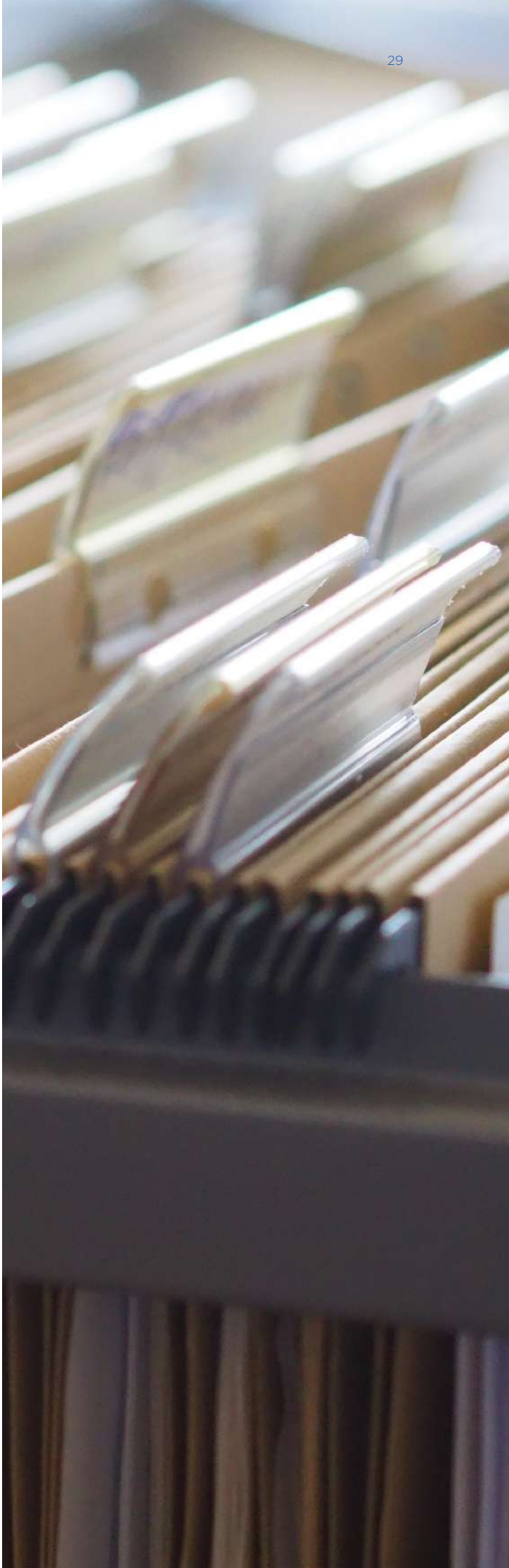
To date, however, there has not been a case looking at the key questions of whether, under CPR 19.8, compensation can be awarded on a collective basis and amounts deducted to pay claimant law firms and funders – which would have a significant impact on the commercial viability of representative actions for claimants and funders. Those questions were due to be considered at a preliminary issues hearing in January 2025, in a case relating to secret commissions, but the case settled late last year: Representative actions under CPR 19.8: Settlement means key questions on funding and damages will have to wait.

The question of when multiple claimants can bring claims using a single or "omnibus" claim form has continued to be tested. In March, the High Court overturned a district judge's decision which would have required 5,800 claimants to issue separate claim forms relating to discretionary commission arrangements in motor finance broker cases or have their claims struck out: High Court confirms 5,800 motor finance claimants can use omnibus claim forms and do not need to issue separate claim forms. The Court of Appeal has granted permission to appeal, with the appeal to be heard in April 2026.

There have also been some significant decisions under the collective proceedings order regime in the Competition Appeal Tribunal (CAT). In December last year, in the first opt-out collective competition claim to proceed to trial, the CAT unanimously dismissed a claim for over £1bn in damages on behalf of over 3.7 million BT customers, having concluded that there was no abuse of dominance: Competition class actions: First case to go to trial ends in failure. Permission to appeal was refused. Two other cases have since gone to trial and received a judgment on the merits. The first, against train operators relating to boundary fares, was dismissed. However, the second delivered the first substantive success for claimants under the regime, with the CAT awarding some £1.5 billion in damages to a class of some 36 million users of Apple devices.

In August, the Department for Business and Trade issued a call for evidence on the operation and impact of the opt-out collective actions regime in the CAT, a decade on from its introduction. It asked a broad range of questions on issues such as access to the regime and how cases are funded, the scope of the regime and the threshold for certification, the use of ADR and how damages should be distributed. The consultation was open until mid-October and the government's response is awaited.

In September, the Solicitors Regulation Authority launched a review of high-volume consumer claims, consulting on issues such as whether the term "no win, no fee" should be restricted or banned, whether enough is being done to accommodate the individual needs of consumers, and what information claimants need about funding arrangements: Solicitors Regulation Authority reviews high-volume consumer claims sector. Next steps are awaited.





## Commercial Court to pilot expanded public access to court documents

A two-year pilot scheme for public access to court documents began in the Commercial Court and Financial List from 1 January 2026. The pilot will apply in both new and existing proceedings where there is a public hearing taking place in the Commercial Court (including the Circuit Commercial Court) or Financial List during the pilot period. It will therefore apply to documents that have already been filed or served, or are filed or served before 1 January 2026, if they are to be used at a public hearing taking place after that date – which will include both trials and public hearings of interim applications.

The pilot will apply to the following documents, where they have been used or referred to at a public hearing taking place during the pilot period: skeleton arguments; written submissions; witness statements and affidavits (but not exhibits or appendices); expert reports (including annexes and appendices); any other documents critical to the understanding of the hearing as ordered by the judge at the hearing; and any other documents agreed by the parties. If successful, the pilot will be extended to further courts: UK Commercial Court pilot will mean many more court documents publicly available by default from 1 January 2026.

## Courts grapple with the use of AI

In an increasing number of cases, the courts have criticised parties and their legal representatives for citing fake authorities in court documents as a result of using AI. This has resulted in sanctions including public criticism, wasted costs orders and referral to the professional regulators for those involved.

In June, the legal representatives involved in one case were summoned to attend court to consider what further steps it might be appropriate to take against them. While the court decided against initiating proceedings for contempt of court, it did refer some of those involved to the relevant regulators. The court also suggested that practical and effective measures must be taken by leaders in the profession and by regulators to ensure that practitioners understand and comply with their professional and ethical obligations and their duties to the court if using AI: AI and fake citations: A challenge for lawyers, regulators and the courts.

The use of AI in the drafting of witness statements has also been reported, as has its use by judges in the drafting of judgments. In October, updated guidance for judicial office holders on the use of AI was published by the Courts and Tribunals Judiciary. The CJC has also set up a working group to examine the use of AI in the preparation of court documents and consider whether specific rules are needed. Their consultation paper is awaited.

## Hague Judgments Convention 2019 in force for the UK

The most significant development in this area is that, on 1 July, the Hague Judgments Convention 2019 came into force for the UK. Hague 2019 provides a uniform framework for the recognition and enforcement of judgments between the UK and the other contracting states where proceedings are commenced after that date. The contracting states currently comprise all EU Member States (except Denmark), Uruguay and Ukraine. More states are expected to join over time, including Albania, Montenegro and Andorra in 2026. Unlike the Hague 2005 Convention on Choice of Court Agreements, and the EU regime that applied to the UK before Brexit, the 2019 Convention deals only with the recognition and enforcement of judgments: it does not have any direct impact on when the courts of contracting states can exercise jurisdiction over a case.

## English court jurisdiction in transnational tort claims

The English courts added to the line of authority which demonstrates that, while the English court has a discretion to decline jurisdiction over UK-based defendants on the basis that another forum is more appropriate (in contrast to the pre-Brexit

position, when there was no such discretion), it will not exercise that discretion if the claimants establish a real risk that they would not obtain substantial justice in the alternative forum: Supply chain risk: Court of Appeal finds claims against Dyson relating to actions of Malaysian manufacturer should proceed in England; and High Court allows case to proceed against defendant companies domiciled in England despite claims having more real and substantial connection with Brazil.

## Greater clarity for defendants where claims not validly served in time

In October, the Court of Appeal held that where a claimant has not served a claim form in time, and no extension has been granted, the defendant is not subject to the court's jurisdiction. Consequently, the defendant is not required to file an acknowledgment of service or apply to challenge the court's jurisdiction under CPR 11. This is because a defendant's obligations to respond to a claim are only triggered by valid service of the claim form. If a claim form has not been properly served, either because an invalid method was used or service was out of time, the proceedings cannot be pursued unless the defendant accepts the court's jurisdiction: Court of Appeal confirms defendant not required to take any steps in proceedings unless claim form validly served in time.

## Disclosure

Changes to the rules governing disclosure in the Business and Property Courts could be on the cards, as a Disclosure Review Working Group has been set up to look at how Practice Direction 57AD is working in practice and whether changes are needed. The group is chaired by Mr Justice Butcher and launched a wide ranging survey seeking views on various aspects of the regime. The survey closed on 16 January: Disclosure Review Working Group seeks views on disclosure under PD 57AD.

In terms of case law, disclosure is often a hard-fought area, despite the courts' efforts to promote greater cooperation, and so there are always numerous judgments in this area. A couple of decisions that we found interesting in 2025 were:

- In February, the High Court partly overturned a Master's order for a defendant bank to disclose certain documents in the context of a jurisdiction dispute. The decision suggests that an order for disclosure may be more likely where there is significant information asymmetry between the parties, but emphasises that the desire for evidential equality should not overshadow the need for proportionality in disclosure: High Court partially overturns order for defendant to provide disclosure in jurisdiction dispute.
- In November, the High Court held that documents in the possession of third parties engaged by a group of claimants to assist in litigation were within the claimants' control and must therefore be searched for the purposes of disclosure. This decision adds to a growing line of authorities establishing that a party has control over a third party's documents for disclosure purposes not only where there is a legally enforceable right of access, but also where there is an arrangement or understanding which means that the documents are within the party's practical control as a matter of factual reality: High Court finds party has practical control over third parties' documents for disclosure purposes.

## Privilege

The most high profile development in 2025 relating to privilege came, rather unusually, from the Privy Council. In July, in an appeal from the Bermudian Court of Appeal, it held unanimously that the so-called Shareholder Rule – ie that a company cannot assert privilege against its shareholders save in relation to documents created for litigation against that shareholder – forms no part of English law (or Bermudian law). The decision means that companies can assert privilege against their shareholders, and is highly significant in the context of shareholder litigation, including securities class actions: Privy Council abrogates so-called "Shareholder Rule" under English law: companies can assert privilege against their shareholders.

Other interesting cases on legal professional privilege included:

- In January, the High Court upheld a claim to litigation privilege over a valuation report prepared for the potential sale of a company's trading subsidiaries in circumstances where that sale was motivated by the potential withdrawal of banking facilities to the company resulting from a dispute between two shareholders. The decision suggests that, in determining the question of purpose, the court must look beyond the immediate transaction for which a document was prepared and ask why that transaction was happening: Litigation privilege: High Court finds privilege applies to valuation report prepared for potential company sale.
- In May, the High Court granted claimants permission to rely on certain privileged documents that the defendant said had been disclosed in error, where it found that the error would not have been obvious to a reasonable solicitor carrying out a proper disclosure review. The decision confirms that whether there is an obvious mistake is an objective test. The subjective views of those reviewing the documents will be a relevant, and potentially important, factor in the court's assessment, but the weight given will depend on the status and experience of those conducting any particular level of review: High Court grants permission to rely on inadvertently disclosed privileged documents where the mistake was not obvious.

## Settlement and ADR

In a decision published in January 2025, the High Court made an order at a pre-trial review which required the parties to mediate their trademark dispute, despite the defendant's objection that there was no real prospect of settlement. The Civil Procedure Rules (CPR) were amended in 2024 to confirm the court's power to compel ADR, and this decision appears to be one of the first in which the High Court has exercised that power: High Court orders commercial parties to mediate shortly before trial.

In September, the Ministry of Justice opened a consultation on how the UN Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) might be implemented within the UK's domestic framework. The UK Government signed the Singapore Convention in 2023 but has yet to ratify it. Next steps are awaited: Ministry of Justice consults on implementation of Singapore Convention on international mediated settlements.

# The Year in Cases at a Glance

*Aercap Ireland Ltd v AIG Europe SA* [2025] EWHC 2529 (Comm)

High Court finds in favour of Lessors in Russian Aircraft Lessor Policy Claims

Russian Aircraft Policy Claims: Update on appeal and costs

*Ahmed v White & Co* [2025] EWHC 2399 (Comm)

Notification and aggregation in professional indemnity policies

*Alesayi v Bank Audi SAL* [2025] EWHC 440 (KB)

High Court partially overturns order for defendant to provide disclosure in jurisdiction dispute

*AmTrust Specialty Ltd v Endurance Worldwide Insurance Ltd* [2025] EWCA Civ 755

Court of Appeal considers request for Extended Disclosure to aid policy construction

*Angel v Black Horse Ltd* [2025] EWHC 490 (KB)

High Court confirms 5,800 motor finance claimants can use omnibus claim forms and do not need to issue separate claim forms

*Archer v R 'N' F Catering Ltd (t/a Biplob Restaurant)* [2025] EWHC 1342 (KB)

The importance of strict compliance with notification provisions

*Ayinde, R (On the Application of) v Qatar National Bank QPSC & Anor* [2025] EWHC 1383 (Admin)

AI and fake citations: A challenge for lawyers, regulators and the courts

*Ayinde v London Borough of Haringey* [2025] EWHC 1040 (Admin)

Professional Misconduct and AI: Insights from Ayinde v London Borough of Haringey

*Baroness Lawrence of Clarendon v Associated Newspapers Ltd* [2025] EWHC 2930 (KB)

High Court finds party has practical control over third parties' documents for disclosure purposes

*Barrowfen v Patel* [2025] EWCA 39

Court of Appeal upholds decision to reduce damages to reflect benefit claimant received as a result of steps taken to mitigate its loss

*Bellway Homes Ltd v The Occupiers of Samuel Garside House* [2025] EWCA Civ 1347

Court of Appeal confirms defendant not required to take any steps in proceedings unless claim form validly served in time

*Catarina Oliveira da Silva v Brazil Iron Ltd* [2025] EWHC 606 (KB)

High Court allows case to proceed against defendant companies domiciled in England despite claims having more real and substantial connection with Brazil

*Clarendon Dental Spa LLP v Aviva Insurance Ltd & Zurich Insurance Limited* [2025] EWHC 267 (Comm)

The duty of fair presentation and the disclosure of matters connected to insolvency (again)

*Delos Shipholding SA & Ors v Allianz* [2025] EWCA Civ

Court of Appeal considers duty of fair presentation under the Insurance Act

*Getty Images (US) Inc v Stability AI Ltd* [2025] EWHC 38 (Ch)

High Court refuses to allow representative action to be brought on behalf of copyright owners in IP case

*Jardine Strategic Limited v Oasis Investments II Master Fund Ltd* [2025] UKPC 34

Privy Council abrogates so called "Shareholder Rule" under English law: companies can assert privilege against their shareholders

*Krishna Holdco Ltd v Gowrie Holdings Ltd* [2025] EWHC 341 (Ch)

High Court finds privilege applies to valuation report prepared for potential company sale

*Liberty Mutual Insurance Europe SE v Bath Racecourse Company Ltd* [2025] EWCA Civ 153

Composite insurance and savings clauses: latest Court of Appeal guidance

*Makin v Protec Security Group Limited* [2025] EWHC 895 (KB)

The importance of strict compliance with notification provisions

*Malhotra Leisure Ltd v Aviva Insurance Ltd* [2025] EWHC 1090 (Comm)

Fraudulent insurance claim under consideration

*Managed Legal Solutions v Mr Darren Hanson (trading as Fortitude Law) and HDI Global Specialty SE* [2025] EWHC 2645 (Comm)

Court decides insurer can be joined to a liability trial involving its insured

*Mazur & Anor v CRS LLP* [2025] EWHC 2341 (KB)

High Court confirms that non authorised fee earners cannot conduct litigation

*Mode Management Ltd and another v AXA Insurance UK plc* [2025] EWHC 2035 (Comm)

Limitation for first party damage runs from date of fire even where insurer had option to reinstate

*MS Amlin Marine NV v King Trader Ltd & Others (Solomon Trader)* [2025] EWCA Civ 1387

Court of Appeal recasts "red hand doctrine" as the "onerous clause doctrine"

*Oversea Chinese Banking Corp Ltd v Argoglobal Underwriting Asia Pacific Pte Ltd* [2025] SGHC 82

Singapore High Court considers section 11 of the Insurance Act 2015

*Roger Leggett & 40 Others v American International Group UK Limited* [2025] EWHC 278 (Comm)

Transfer troubles: from novation to no cover

*RSA Insurance Group v Equitas Insurance Ltd* [2025] EWHC 2704 (Comm)

Rare decision on the operation of Follow the Settlements and Claims Co operation clauses in reinsurance policies

*Scotbeef Ltd v D&S Storage Ltd (in liquidation)* [2025] EWCA Civ 203

Breach of warranty and condition precedent means no liability for insurer

*The New Lottery Company Ltd v The Gambling Commission* [2025] EWHC 1058 (TCC)

High Court grants permission to rely on inadvertently disclosed privileged documents where the mistake was not obvious

*Tyson v GIC Re, India, Corporate Member Ltd* [2025] EWHC 77 (Comm)

Signed, Sealed, Superseded? Court considers conflicting dispute resolution provisions in reinsurance contracts

*Watford Community Housing Trust v Arthur J Gallagher Insurance Brokers Limited* [2025] EWHC 743 (Comm)

High Court confirms an insured's entitlement to recovery when there is double insurance

*Wirral Council (As Administering Authority of Merseyside Pension Fund) v Indivior plc* [2025] EWCA Civ 40

Court of Appeal rejects attempt to bring securities class action using CPR 19.8 representative action as an "opt in" procedure

# Key Contacts

**London**



Alexander Oddy
**Head of Insurance & Professional Risks team, London**
T +44 20 7466 2407
alexander.oddy@hsfkramer.com



Sarah McNally
**Global Practice Area Lead for Insurance Disputes, London**
T +44 20 7466 2872
sarah.mcnally@hsfkramer.com



Greig Anderson
**Partner**
**Insurance & Professional Risks, London**
T +44 20 7466 2229
greig.anderson@hsfkramer.com



Geoffrey Maddock
**Consultant**
**Corporate, London**
T +44 20 7466 2067
geoffrey.maddock@hsfkramer.com



David Bennett
**Partner**
**Health & Safety, London**
T +44 20 7466 6435
david.bennett@hsfkramer.com



Alison Matthews
**Consultant**
**Corporate/Regulatory, London**
T +44 20 7466 2765
alison.matthews@hsfkramer.com



Samantha Brown
**Partner**
**Pensions, London**
T +44 20 7466 2249
samantha.brown@hsfkramer.com



Grant Murtagh
**Partner**
**Corporate/Regulatory, London**
T +44 20 7466 2158
grant.murtagh@hsfkramer.com



Will Glassey
**Partner**
**Insurance & Professional Risks, London**
T +44 7466 2854
william.glassey@hsfkramer.com



Antonia Pegden
**Partner**
**Insurance & Professional Risks, London**
T +44 20 7466 2530
antonia.pegden@hsfkramer.com



Barnaby Hinnigan
**Partner**
**Corporate, London**
T +44 20 7466 2816
barnaby.hinnigan@hsfkramer.com



Fiona Treanor
**Partner**
**Insurance & Professional Risks, London**
T +44 7466 2307
fiona.treanor@hsfkramer.com



Sarah Irons
**Knowledge Counsel**
**Insurance & Professional Risks, London**
T +44 20 7466 2060
sarah.irons@hsfkramer.com



Nick Wright
**Partner**
**Employment, London**
T +44 20 7466 7524
nick.wright@hsfkramer.com



Hywel Jenkins
**Partner**
**Financial Services Regulatory, London**
T +44 20 7466 2510
hywel.jenkins@hsfkramer.com



Christine Young
**Partner**
**Employment, London**
T +44 20 7466 2845
christine.young@hsfkramer.com



Paul Lewis
**Partner**
**Insurance & Professional Risks, London**
T +44 20 7466 2138
paul.lewis@hsfkramer.com

**EMEA**



Alejandra Galdos
**Partner, Madrid**
T +34 91 423 4087
alejandra.galdos@hsfkramer.com



Nicolas Pol
**Partner, Paris**
T +33 1 5357 7408
nicolas.pol@hsfkramer.com



Stuart Paterson
**Partner, Dubai**
T +971 4428 6308
stuart.paterson@hsfkramer.com



Jonathan Ripley-Evans
**Partner, Johannesburg**
T +27 10 500 2690
jonathan.ripleyevans@hsfkramer.com

**Asia**



Daniel Chia
**Partner, Singapore**
T +65 68121363
daniel.chia@hsfkramer.com



Daniel Waldek
**Partner, Singapore**
T +65 6868 8068
daniel.waldek@hsfkramer.com

**Australia**



Anne Hoffmann
**Partner, Sydney**
T +61 2 9225 5561
anne.hoffmann@hsfkramer.com

For a full list of our global offices visit **HSFKRAMER.COM**

© Herbert Smith Freehills Kramer LLP 2026 DES0006620/280126