HAUSFELD
FOR THE CHALLENGE

UK COMMERCIAL DISPUTES 2024 YEAR IN REVIEW

As 2024 ends, this newsletter reflects on the year's key developments in commercial disputes and scans the horizon for what we expect 2025 to bring. We also take this opportunity to look back on the highlights of another busy year for Hausfeld's Commercial Disputes group.

FINANCIAL SERVICES DISPUTES

Financial services disputes continue to be a mainstay of UK commercial disputes, and our own team's practice. Complex and market-wide financial disputes continue to have extended tails: in January 2024 our team settled a claim on the eve of trial involving allegations of pre 2010 LIBOR manipulation, and we are ending the year with the trial of a judicial review against the FCA arising out of the 2012 IRHP redress scheme. The car finance scandal has been long brewed and is now coming to the boil. However, present day economic pressures and new modes of banking services also drive more immediate disputes. Authorised Push Payment (APP) and other payment services frauds continue to keep litigators and judges busy. We survey some of the key judgments in this Year in Review.

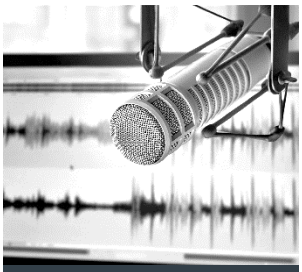
Duties owed by banks to customers

The law around the *Quincecare* duty and the scope of banks' duties to query instructions has continued to develop.

The recent High Court decision in *CCP Graduate School v NatWest and Santander* [2024] EWHC 581 (KB) is the first judgment discussing the *Quincecare* duty owed by banks since the Supreme Court's decision in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25. In *CCP v NatWest* and *Santander* the High Court considered the novel question of whether and to what extent the Defendant banks had a duty to retrieve funds which the Claimant alleged had been dissipated as a result of "Authorised Push Payment" (APP) fraud. Whilst certain elements of the claim were struck out, the High Court refused summarily to dismiss the claim against Santander.

However, to combat APP frauds, a mandatory reimbursement regime to reimburse victims of APP frauds came into force in the UK on 7 October 2024. Under the Payment Systems Regulator (PSR)'s new rules, payment service providers (PSPs) are required to reimburse customers who fall victim to APP fraud. The cost of reimbursement, which is capped at £85,000, will be shared equally between sending and receiving PSPs.

Whilst this cap is significantly lower than the £415,000 originally proposed, triggering criticism by Which? and other consume bodies, this does give customers some additional protection. Meanwhile, in *Terna Energy Trading v Revolut* [2024] EWHC 1419 (Comm) the Court refused to strike-out or grant a reverse summary judgment application in a claim for unjust enrichment against a receiving bank.



Podcast discussing Johnson v Firstrand

The recent Court of Appeal decision in *Johnson and Wrench v FirstRand Bank, and Hopcroft v Close Brothers* [2024] EWCA Civ 1282 discussed the legal requirements in establishing liability on the part of lenders who paid commission (secret, or with partial disclosure) to brokers who introduced the business to the former, when the latter acted on behalf of borrowers to secure suitable financing. The decision also considered the extent of disclosure to negate secrecy of commission payments, and to obtain informed consent of the borrower regarding such payments. The decision is however unlikely to be the final word in cases concerning secret commission/commission with partial disclosure, as the defendants have applied for permission to appeal with the Supreme Court, so stay tuned.

Crypto assets

In 2024, as in previous years, cryptocurrencies have continued to be the subject of numerous disputes in English Courts. In May 204, the High Court's decision in *Crypto Open Patent Alliance v Wright* [2024] EWHC 1198 (Ch) found that Dr Wright is not the individual who operates under the pseudonymous Satoshi Nakamoto, the author of the White Paper that created Bitcoin. The trial lasted 6 weeks and was high profile, with 1100 remote links provided to individuals all over the world. This decision will assist claimants who are seeking to protect their intellectual property rights held over digital assets. The decision can be considered a comfort to parties operating in the Bitcoin space, as it shows that injunctive relief is available when an individual's rights in this space are infringed.

In September 2024, the High Court in *D'Aloia v Persons Unknown, Bitkub and others* [2024] EWHC 2342 (Ch) confirmed that USD Tether (USDT), a cryptocurrency, constitutes property under English law. The judgment raised important questions around the traceability of cryptocurrencies. The judgment also set out the significance of asserting the complete claim in the statement of case particularly when the claimant is asserting fraudulent activity has taken place in the cryptocurrency space. The court gave a lengthy judgment, acknowledging that this was because the relevant legal points were "*novel, contentious or both*".

Moving forward to 2025, we expect that these disputes will continue to increase and it will be interesting to observe how the court decides to deal with the different (and often novel) issues that arise in this space.

INSOLVENCY

In June 2024, company insolvencies in England & Wales were 16% higher than in May 2024, 17% higher than in June 2023, and higher than the Covid-19 period. According to a report released by Allianz Trade, by October 2024 the number of business insolvencies worldwide has increased by 9%. The withdrawal of previously available support to businesses during the COVID-19 pandemic and subsequent energy crisis is considered a primary reason for the increase. In this context, we are increasingly seeing non-UK creditors having to pursue UK debtors for payment and working with insolvency practitioners and litigation funders to help clients find practicable solutions to get value for debts. Useful information on how to enforce judgments in the UK.

GROUP LITIGATION

Group litigation in the UK continues to grow, particularly under the competition collective action regime with its bespoke opt-out regime, which has taken off in the UK since the 2020 Supreme Court decision in *Merricks*. Several factors, including legislative changes and increased third-party litigation funding, have contributed to these developments and we expect to see this trend continue into 2025 and beyond.

Significant developments took place in Hausfeld's landmark FX collective action in 2024. In February, Mr Evans expanded the claim to include the Sterling Lads chatroom conduct, adding HSBC and Credit Suisse as defendants. This strategic expansion means the claims now incorporate all four European Commission decisions arising from anticompetitive conduct in the FX market.

Meanwhile away from the Competition Appeal Tribunal, the High Court has had to take a novel approach to case management in managing multiple group claims arising from the diesel gate scandal. Hausfeld acts on behalf of thousands of claimants in the Mercedes Group Litigation and is one of five firms appointed to the Steering Committee under the Group Litigation Order. In a landmark hearing in March 2024, the court gave directions for joint case management of the Mercedes Group Litigation with similar emissions claims against 12 other car manufacturers, in effect a "GLO of GLOs" with a tight timetable involving 3 trials over the next 3 years in relation to:(a) the bindingness of regulatory decisions of the German Transport Authority (b) whether vehicles manufactured by four manufacturers identified as lead GLOs contained "defeat devices" in breach of emissions regulations and (c) issues relating to quantum. On 14th November 2024, the Court handed down a judgment in the Claimants' favour finding: (i) that the mandatory recall decisions which establish the presence of defeat devices in certain vehicles are binding on English consumers and courts; but (ii) that otherwise, the English courts are not bound by findings of the KBA or subsequent German court appeals. The claims will now proceed to the trial on the presence of defeat devices in October 2025.

ARBITRATION

Arbitrator independence

Significant arbitration-related cases continued to come before the English courts this year. In February 2024, the English High Court removed an arbitrator for apparent bias following a successful application under s24 of the Arbitration Act 1996 in relation to comments made about expert evidence. The case concerned, *H1 & Anor v W & Ors* [2024] EWHC 382 (Comm), is a rare example of a successful application under this provision. The English courts maintain a non-interventionist approach to arbitration proceedings and the threshold for removal of an arbitrator is not easily overcome. This said, while successful applications under s24 are rare, the Court's decision in this case serves as a reminder that the English courts will not permit "extraneous, illegitimate factors" to prejudge a case. Where there is apparent bias and it is appropriate to remove an arbitrator, the Court will do so.

Anti-suit injunctions in support of arbitration

In the significant recent case of *Investcom Global Limited v PLC Investments Limited* [2024] EWHC 2505 (Comm), the English High Court partially discharged anti-suit and anti-enforcement injunctions, while upholding others. This judgment highlights the English courts' willingness to protect arbitration agreements from abuse where the English courts are deemed to have supervisory jurisdiction whilst also providing an important precedent in the context of the availability of anti-suit relief from the English courts in relation to arbitration agreements.

This year has seen a number of important decisions in relation to anti-suit injunctions in the arbitration sphere. It had previously been unclear whether English courts could grant anti-suit injunctions (ASIs) in support of arbitral proceedings seated outside England & Wales. In *UniCredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30 the Supreme Court clarified the law in this area, providing an initial decision in April 2024 and then detailed reasons for that decision in October 2024. The Supreme Court upheld a final anti-suit injunction, restraining RusChemAlliance LLC from continuing Russian court proceedings which had been brought in breach of the arbitration agreements. The arbitration agreements in question provided for disputes to be resolved by ICC arbitration in Paris. The Supreme Court considered whether the English court could grant the ASI in the context of a foreign-seated arbitration. The Supreme Court highlighted the role of the English courts in ensuring that parties agreeing to determine their disputes in arbitration are not permitted to evade their contractual obligations. This decision will be reassuring to parties involved in international arbitration, including others looking to the English courts to block court proceedings commenced in breach of arbitration agreements.

MEDIATION

Following the Court of Appeal's decision in *James Churchill v Merthyr Tydfil Borough Council* [2023] EWCA Civ 1416, which allows courts to mandate ADR, the direction of travel has continued towards mandatory ADR, with the aim of streamlining dispute resolution and reducing costs. Mandatory mediation was introduced this year in small claims in a ground-breaking development for the civil justice system in England and Wales. Since 22 May 2024, parties in money claims up to the value of £10,000 must take part in a free one-hour mediation appointment provided by the courts' Small Claims Mediation Service.

In a further development, while the government's consultation report of last year confirmed that statutory regulation of the mediation sector was unnecessary, the Civil Mediation Council (CMC) announced a new mediation standards board. This new board is responsible for advising on and developing standards for mediators and trainers, and it will take over the complaints process.

It remains to be seen whether the new mandatory mediation approach for small claims will be considered for higher value claims, which the consultation report of last year signalled as a possibility.

REDRESS SCHEMES

This is an area that forms a key part of Hausfeld's commercial disputes practice. In October 2024, King's College London (KLC) published its Reforming Redress Schemes Roundtable Report. Led by the Director of KCL's Legal Clinic, Shaila Pal, victim advocates, lawyers and researchers with expertise relating to the Windrush Compensation Scheme, Horizon Shortfall Scheme, the Lambeth's Children's Home Redress Scheme and the Infected Blood Compensation Scheme, as well as representatives of the National Audit Office were invited around the table in June 2024 to explore critical problems around current redress schemes and the need for reform. Co-Head of Commercial Disputes and Partner Ned Beale was represented the APPG on Fair Banking at this event.

The Dame Linda Dobbs Review was commissioned in 2017 to investigate Lloyds Banking Group's handling of the £1 billion fraud at the HBOS Reading branch, which Lloyd's acquired in 2009. The fraud consisted of bankers and consultants exploiting reckless lending practices, to steal from the bank. This fraud significantly impacted SMEs. In 2018 Lloyds committed to sharing the findings arising out of the Review, and in November 2024 it restated its commitment to doing this. Lloyds has not, however, confirmed that it will make the full report arising out of the Review available to the public, and is facing mounting pressure to do so.

In June 2023 the All-Party Parliamentary Group on Fair Banking (APPG), represented by Hausfeld, won permission to proceed with its judicial review of the FCA's decision not to act on the findings of independent reviewer John Swift KC in respect of the exclusion of customers from the IRHP redress scheme. The FCA commissioned an independent review of the IRHP redress scheme, led by John Swift KC, in 2019. The review was extensive: it took two and a half years to complete, at a cost of over £8 million. In 2021, the review concluded that the exclusion of those customers was wrong. Having had to adjourn a trial listed for July because of the dissolution of Parliament (and so the APPG), the final hearing will now take place in December 2024.

ENFORCEMENT OF JUDGMENTS POST-BREXIT

In June 2024, the UK ratified the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention) which is good news for the enforcement of judgments post-Brexit. The 2019 Judgments Convention requires contracting parties to recognise and enforce civil and commercial judgments given by a court of a contracting state (the state of origin) in another contracting state (the requested state) and without there being any review of the merits of the judgment in the requested state.

30 HCCH Members are either bound by the 2019 Judgments Convention or a Contracting Party for which the Convention has not entered into force yet (UK and Uruguay). The 2019 Judgments Convention will enter into force for the UK 12 months after ratification, on 1 July 2025 and will apply to judgments where proceedings are commenced after that date.

Procedural developments

Recent years have continued to see a steady stream of cases on the Practice Direction on Trial Witness Statements (PD 57AC). While this has been in effect for over three years, courts are continuing to remind parties – in no uncertain terms – of the importance of adherence to its requirements. The decision from the High Court earlier this year in *Fulstow & Anor v Francis* [2024] EWHC 2122 (Ch) makes this abundantly clear. PD 57AC was introduced to address the increasing problem of trial witness statements being over-long and over-lawyered and this case provides a warning for both lawyers and their clients on the degree of independence needed to adhere to PD 57AC.

HAUSFELD COMMERCIAL DISPUTES TEAM - OUR 2024 HIGHLIGHTS

Growth and recognition

Over 2024 Hausfeld's Commercial Disputes team continued to develop and grow. In June Lucy Pert and Ned Beale became Co-Heads of the Commercial Disputes Team. In July Hana Tawfik, Alex Cooper and Shahrina Quader were promoted to Senior Associate. In September, Greg Lascelles joined the Hausfeld London partnership. Greg is recognised by The Legal 500 in the commercial litigation, international arbitration and banking litigation categories. His cases have been featured by The Lawyer in their annual litigation feature 'Top 20 Cases' for three years in 2019, 2020 and 2023.

We were meanwhile delighted to be awarded 'Dispute Resolution Team of the Year' at LexisNexis Legal Awards 2024 and to be commended as 'Litigation Boutique Firm of the Year' category at The Lawyer Awards 2024. 23 Hausfeld lawyers featured in the 2024 'Lawdragon 500 Global Plaintiff Lawyers' guide and 15 Hausfeld lawyers named in 2024 'Lawdragon 500 Leading Global Litigators'. Legal500 UK 2025 recognised 28 Hausfeld lawyers across 7 practice areas.

Personal perspectives

Hausfeld continues to strive for diversity, inclusivity and collegiality and we, work continually to learn and improve in order to produce the best results for not just our clients but also the communities we represent. This has been recognised by Chambers this year, when Hausfeld won 'DEI Outstanding Firm' in Chambers Europe Awards 2024.

We explored key themes and developed our understanding of DE&I with a variety of events and publications in 2024, with highlights including:

- The firm has joined the Law Firm Anti-Racism Alliance (LFAA), a group changing the way institutions deal with racial inequality.
- In March 2024 the Hausfeld "Women's Alliance Working Group" hosted a roundtable discussion at our office to tackle key issues such as unconscious bias and parental leave.

- In June 2024 the Disability Working Group hosted author Pete Wharmby for an inspiring seminar focused on neurodiversity in the workplace and also distributed his books to the London office.
- During Summer 2024, we hired interns from the King's College Springboard Scheme which includes students from a range of backgrounds that are underrepresented in law.
- In October 2024 we held a book club to mark Black History Month, with a focus on reclaiming narratives.
- In November 2024 we marked International Day of Persons with Disabilities with a panel event at the firm fielding speakers from both Europe and the US to mark the importance of inclusion in the workplace.

WHAT'S ON THE HORIZON FOR 2025?

We expect 2025 to be as significant for commercial disputes as 2024, with a variety of further high-profile cases and legislative changes on their way.

Insolvency

In 2025 the Supreme Court will determine whether the Court of Appeal correctly interpreted s423 of the Insolvency Act 1986 in *El-Husseiny and another v Invest Bank PSC* [2023] EWCA Civ 555. S423 relates to transactions entered into at an undervalue and forms part of the Insolvency Act's general provisions against debt avoidance. S423 has a wider application (i.e., it is not limited to insolvency). The Court of Appeal determined that: (i) a person can 'enter into' a transaction where they act on behalf of a company; and (ii) there can be a 'transaction' for the purposes of s423 where the asset which is alleged to have been disposed of at an undervalue was not beneficially owned by the 'debtor'. We expect the Supreme Court will make its determination in 2025, so watch this space.

Securities litigation

The UK is an active jurisdiction for securities litigation. Claimants are increasingly looking to utilise the statutory claims provided in the Financial Services and Markets Act 2000 (FSMA) and the cases currently afoot are breaking new ground. In what have been regarded as positive developments for claimants, in 2022, the court ordered a split trial for liability and standing issues first and reliance issues thereafter in two separate securities claims against G4S and RSA. G4S settled in December 2023, shortly before the first six-week trial was due to commence in January 2024.

Two additional high-profile securities claims were filed in 2023 against Glencore and Petrofac on behalf of institutional investors claiming for share price losses, both of which followed Serious Fraud Office bribery convictions.

As collective shareholder actions under FSMA s90/90A have continued to grow during 2024, the Court has had to grapple with key issues (often with limited precedent). We expect this to continue into 2025, when an important appeal may well be heard. In a significant development for securities litigation in the UK, the High Court this year handed down a judgment in October 2024 in favour of the Defendant in the dark pools litigation: *Allianz v Barclays Plc* [2024] EWHC 2710 (Ch). The court agreed to strike out claims brought on behalf of "passive" institutional investors, applying a common law test of reliance to claims brought under s90A and schedule

10A of FSMA. The consideration of these issues by senior courts would likely have wide reaching implications for the continued development of securities litigation in the UK.

Geopolitical risk will drive litigation

The geopolitical landscape for 2024 has presented both long term and short-term trends and challenges. The US-China relationship continues to shift and impact the Indo-pacific region and beyond, and we expect this relationship to continue to impact geopolitics for the decades to come. There has been political change across the globe, with elections taking place in the United States, Taiwan, India and Mexico. The geopolitical risks affecting financial stability include mounting debt, higher interest rates, supply chain disruptions and armed conflicts in the Middle East and Ukraine.

These risks will continue to drive litigation in both the long term and the short term. A prime example are the total loss insurance claims being heard in London, Dublin and various US courts for aircraft lost in Russian and Ukraine as a result of the war between the countries. In two judgments this spring *Zephyrus Capital Avation Partners 1D Ltd & Ors v Fedelis Underwriting Ltd & Ors* [2024] EWHC 734 (Comm) and *Aercap Ireland Capital Designated Activity Company & Ors v PJSC Insurance Company Universalna & Ors* [2024] EWHC 1365 (Comm) (in which Hausfeld acted), Mr Justice Henshaw ruled that the claims for Russian claims can proceed in England, but those for Ukrainian claims must proceed in Ukraine. 2025 should see the first wave of substantive judgments in these market-wide claims.

Litigation funding

This year has seen continued developments in the wake of the Supreme Court's July 2023 decision in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal* (PACCAR). On 19 March 2024, the Litigation Funding Agreements (Enforceability) Bill was published and introduced to the House of Lords, addressing the impact of the Supreme Court's judgment which had held that litigation funding agreements including a return based upon a percentage of damages recovered were damages-based agreements and therefore unenforceable. The UK General Election led to the dissolution of parliament in May 2024, and consequently, this meant that the Bill was not passed.

The government has indicated that legislative reform will be considered further once the Civil Justice Council (CJC) has completed its review of the third-party funding landscape, instead of re-introducing the Bill. The CJC's final report is expected by mid-2025.

ESG litigation

Environmental and Social Governance-related litigation continues to increase.

In a recent-claimant friendly judgment, the Court of Appeal overturned the decision to manage an environmental group claim as a "global claim". Our Perspectives blog discussed the High Court's decision that group claims against Shell regarding oil contamination in the Niger Delta must proceed as "global claims", thereby significantly increasing the burden of proof on the claimants. The Court of Appeal has allowed the claimants' appeal against the High Court's decision. The Court of Appeal has not yet published its full written judgment, which will explain the Court's reasoning for allowing the appeal. In any event, this decision is likely to be welcomed by claimants. In cases of environmental contamination, it can often be difficult to particularise at an early stage which individual event has caused each individual loss. The

claimants highlighted that it would be unfair for them to have to particularise their case on causation at the very start of case, before any expert evidence or disclosure had been ordered. We await the Court of Appeal's reasoned judgment.

Given the developing regime for securities litigation generally (see above), an increasing number of ESG-related claims are being issued pursuant to the framework in FSMA. The rapidly changing arena of climate and other ESG reporting also intersects with potential liability for misstatements under the provisions of s90/90A FSMA. Most recently, in May 2024, a group litigation claim was filed against Boohoo Group plc, alleging breaches of FSMA in relation to the mistreatment of its workers and failures to disclose labour rights violations. Although there has been a lot of commentary, given that the growing number of securities litigation claims are at an early stage, there has been little discussion on how these issues might give rise to losses for investors and, ultimately, commercially viable litigation. We expect to see the current trend of increasing ESG litigation continue into 2025. Our Perspectives blog including a hypothetical case study providing key insights and expert opinions on quantifying securities litigation claims in an ESG context.

This Year in Review has been authored by Lucy Pert, Ned Beale, Rebecca Warder and Ellen Gracey.

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A commercial litigation department that is growing in size, stature and confidence. It is increasingly handling high-profile, high-value matters and achieving great results."
Legal 500 UK, 2025