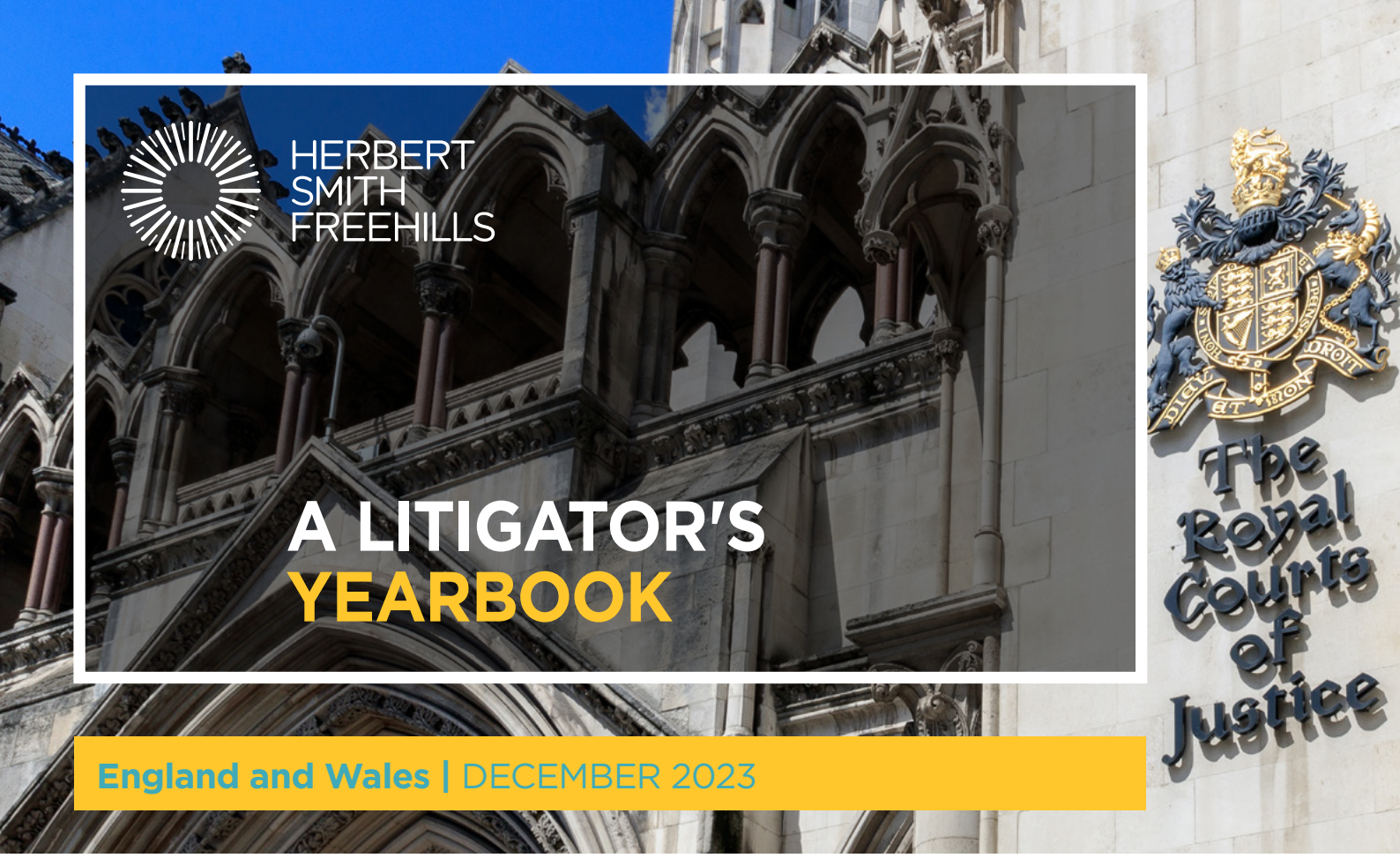

HERBERT SMITH FREEHILLS

A LITIGATOR'S YEARBOOK

England and Wales | DECEMBER 2023

As 2023 draws to a close, we look back at what the past year has had in store from the perspective of the commercial litigator, and outline key developments relating to the topics listed below:

LITIGATION FUNDING

The biggest news in relation to funding has been the fallout from the Supreme Court's surprise decision in the *Paccar* case in July, which held that agreements which provide for a litigation funder to be paid a share of damages are "damages-based agreements" (or DBAs) and therefore unenforceable unless they comply with the restrictive regulatory regime for such agreements. Since participants in the litigation funding market had generally assumed that their agreements were not DBAs, and therefore did not need to comply, the effect of the decision was to render most litigation funding agreements unenforceable: Supreme Court decision today means most existing UK litigation funding agreements likely to be unenforceable.

Since the decision was handed down, funders have been renegotiating their agreements with claimants to seek to ensure that they either fall outside the definition of a DBA or comply with the relevant DBA regulations. The former is the only option for opt-out collective proceedings in the Competition Appeal Tribunal (CAT), since DBAs are currently prohibited in that context, although the government has recently introduced an amendment to the Digital Markets, Competition and Consumers Bill to allow the use of DBAs with litigation funders (but not with solicitors or barristers) in such cases: Government proposes legislation to permit funder DBAs in opt-out competition class actions.

The effectiveness of such efforts is already being tested in ongoing cases in the CAT since the ability to fund the proceedings, and any adverse costs order, is a pre-requisite for a claim to be certified as collective proceedings in the CAT. In one case the CAT has held that an agreement where the funder was to be paid a multiple of the funding provided, rather than a share of damages, was not a DBA: Revised litigation funding agreement approved for opt-out competition claim: fee based on multiple of funding was not a DBA.

The *Paccar* decision has also given rise to disputes between claimants and funders in concluded cases, as to whether a funder can enforce some elements of a funding agreement (such as those which require the funder to be paid a multiple of funding committed) even though any provision for payment of a percentage of damages is unenforceable following the Supreme Court's decision: Litigation funding agreement may be enforceable in part despite Paccar decision: High Court finds there is "serious issue to be tried".

CLASS ACTIONS

In the past year there has been much debate about the proper boundaries of the CPR 19.8 representative action procedure, which allows a claimant to bring a claim on behalf of others who have the "same interest" in the claim. The Supreme Court's 2021 decision in *Lloyd v Google* opened the door for a "bifurcated process", where claimants have the same interest in some but not all issues in a case. In such cases CPR 19.8 could be used to determine genuinely common issues, with any individual issues dealt with subsequently. It has not, however, been clear whether this would be economically viable for claimant firms and litigation funders.

In February, the High Court allowed a claim in respect of secret commissions for IP renewal referrals to proceed as a representative action, despite significant differences in class members' individual circumstances: High Court allows claim in respect of secret commissions to proceed as "opt-out" representative action under CPR 19.6. An appeal against that decision was heard in November, and the Court of Appeal's decision is awaited, but it is clear from the discussion at the hearing that (if the claim is allowed to proceed under CPR 19.8) the case will be tried using a bifurcated process, with only common issues being determined in an initial trial and individual issues being dealt with separately. Precisely how that would work, and whether it would result in the representative claimant being awarded damages for distribution to class members, or separate judgments in favour of those class members, is currently unclear.

In a decision in May, the High Court took a more orthodox approach to the use of CPR 19.8. It dismissed an attempt to bring a claim for misuse of private information using the procedure, where the representative claimant was seeking damages based on a "lowest common denominator" of the claimant class. The court declined to distinguish the Supreme Court's decision in *Lloyd v Google* on the basis that, unlike a claim under the Data Protection Act 1998, damages for MPI can be awarded for the loss of control of data, without proof of separate damage: Data class actions: claim for misuse of private information could not be brought as "opt-out" representative action. An appeal is pending.

In a decision in December, the High Court refused to allow a securities class action to proceed as a bifurcated representative action under CPR 19.8, finding that any claims should be pursued as ordinary multi-party proceedings with the investors as claimants. Unusually, the claimants were not seeking to use CPR 19.8 to bring an opt-out claim and avoid the need to join individual investors. Instead, the aim was to enable the claimants to dictate how the claims would be managed, to put the initial focus solely on defendant-side issues. The court rejected the claimants' attempt to tie its hands in that way: High Court strikes out novel bid to bring securities class action using CPR 19.8 representative action as "opt-in" procedure.

In another use of the CPR 19.8 procedure, in a decision in October the High Court allowed a bifurcated process to be used in a claim by a bank against a representative defendant: CPR 19.8 representative action: "bifurcated process" adopted in claim by bank against representative defendant.

We have also continued to see class actions brought in the UK and elsewhere based on alleged environmental and human rights-based failings by large multinational corporations. This is addressed in the ESG litigation section below.

We have also continued our podcast series on Class Actions in England and Wales, following on from the publication of the second edition of our leading textbook of that name in the autumn of 2022. We released episodes discussing competition claims, ESG group actions, data class actions, shareholder class actions, product liability group actions, insurance, employment and finally an episode looking forward at how we see things developing in the next few years.

ESG LITIGATION

In two separate cases this year, the High Court and Court of Appeal have refused applicants permission to continue derivative actions against company directors regarding their climate change strategies and decision making. The first was an application by ClientEarth relating to Shell PLC's directors' handling of the company's strategy in relation to climate risk. The High Court refused permission: High Court confirms refusal of permission for ClientEarth derivative action against Shell directors, and the Court of Appeal has since refused permission to appeal. The second was an application by members of a pension scheme in respect of decisions by directors of the scheme's trustee company, which the High Court and Court of Appeal both dismissed: Court of Appeal rejects second major attempt at a climate-related derivative action.

These decisions show how difficult it is likely to be for environmental and other campaign groups to use the derivative action procedure to challenge directors' strategic or long-term decision making. That is in part because the court will not generally interfere in company management decisions, particularly where they require directors to balance competing considerations – including decisions as to how a strategy should be implemented as well as what strategy should be adopted. The judgments also show that the court is unlikely to grant permission for a derivative action where it considers that the action has been brought for an ulterior purpose – which may be a ready inference where the applicant is a campaign group with a small shareholding.

We have continued to see actions brought in the UK and elsewhere based on alleged environmental and human rights-based failings by large multinational corporations. As these claims have developed in the English courts, the typical model is for groups of foreign claimants to allege that a UK-domiciled company owes them a duty of care in relation to environmental or other impacts of the acts (or omissions) of another company in another country, eg a foreign subsidiary, or even an unrelated business partner in the company's supply chain. An article published in November as part of our series on climate disputes looks at the increasing risks for businesses of climate-related litigation arising out of this trend, and how those risks can be mitigated: Climate disputes – Parent company and supply chain risk. To follow the rest of this series, you can subscribe to our ESG Notes blog or see our Climate Disputes Hub.

In an example of a case of this sort relating to acts of a supply chain company, an action was brought by migrant workers against English and Malaysian companies in the Dyson group regarding alleged abusive employment practices by one of Dyson's suppliers in Malaysia. In a decision in October, the High Court declined to exercise jurisdiction over the claims on the basis that the appropriate forum was Malaysia, with the defendants giving extensive undertakings designed to help persuade the court that the claimants would be able to obtain access to justice in Malaysia: Supply chain risk: England not appropriate forum for ESG-related claims against Dyson relating to actions of Malaysian manufacturer.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

In the biggest news for the ADR community for some time, a landmark Court of Appeal decision in late November held that courts can order parties to engage in ADR, or stay proceedings to enable them to do so, so long as the order does not impair the claimant's right to a fair trial and is proportionate to achieving a legitimate aim. The court declined to lay down fixed principles as to when the power should be exercised, noting that many factors may be relevant. The decision overturns what was thought to be an English law prohibition on courts compelling ADR. The court held that comments to that effect in the twenty-year old *Halsey* judgment were not in fact a necessary part of the court's reasoning and do not have to be followed: Courts can compel parties to engage in ADR: Court of Appeal finds comments to the contrary in Halsey not binding.

The Court of Appeal's decision is consistent with other efforts on the part of the government and the judiciary to promote ADR, such as the announcement of new powers to compel ADR in County Court Small Claims and the Employment Tribunals, as well as a Civil Justice Council working report on pre-action protocols which proposed an express obligation to undertake a pre-action mediation or some other dispute resolution process, with a default requirement of an inter-party meeting. The working group will, however, consider in the second phase of its review whether a more flexible bespoke pre-action protocol should be created for complex commercial cases in the Business and Property Courts: Pre-action protocols: Civil Justice Council recommends mandatory pre-action ADR but will consider a more flexible bespoke protocol for commercial cases.

Also significant this year was the UK's signing of the UN Convention on International Settlement Agreements Resulting from Mediation (commonly referred to as the "Singapore Convention"). The Convention aims to establish a global framework under which member states' courts will enforce mediated agreements to settle cross-border commercial disputes, regardless of where in the world the mediation took place. The domestic implementing legislation and court rules now need to be put in place before the UK ratifies the Convention, and it will come into force in the UK six months later: The UK has signed the Singapore Convention.

JURISDICTION AND ENFORCEMENT

In an important move to streamline the enforcement of UK judgments abroad post-Brexit, the UK government has announced that the UK will sign the Hague Judgments Convention 2019 as soon as possible and then ratify it once the necessary implementing legislation and rules have been put in place. The Convention will enter into force for the UK 12 months after ratification, which is likely to mean sometime in the second half of 2025. It will then apply to the enforcement of judgments between the UK and the other contracting states (which by that time will include at least Ukraine, Uruguay, and all EU member states except Denmark) in proceedings issued after that date: Good news for enforcement of English judgments: UK to join Hague Judgments Convention 2019.

This year saw an interesting development relating to asymmetric, or unilateral, jurisdiction clauses, which are commonly used in finance transactions and give one party greater flexibility than the other as to the forum in which they can bring proceedings. In recent decades the courts of some countries, including some EU member states, have questioned their validity or refused to give effect to them – although the English courts have consistently found that they are valid. So it is significant that, in April, the French court referred to the CJEU various questions relating to the validity of such clauses: Asymmetric jurisdiction clauses: French court refers questions of validity to CJEU.

This year the courts have continued to grapple with various issues in litigation involving Russian-sanctioned parties. In this context, anti-suit injunctions have become particularly important because of a Russian law which allows the Russian courts to take exclusive jurisdiction over cases involving sanctions. Accordingly, there have been a number of cases in which parties have sought anti-suit injunctions from the English courts to restrain parties pursuing proceedings in Russia in breach of dispute resolution clauses in their agreements. In one case the court granted both an anti-suit injunction and an anti-anti-suit injunction, where there was a London seated LCIA arbitration clause: High Court grants anti-suit and anti-anti-suit injunctions to restrain Russian proceedings brought by sanctioned parties. In other cases, the courts have considered whether it is appropriate to grant an anti-suit injunction in support of foreign-seated arbitrations, granting the injunction in two recent cases and refusing it in one: Trilogy of decisions shows English courts' approach to granting anti-suit injunctions in support of foreign-seated arbitrations.

There have also been a couple of interesting decisions on jurisdiction and enforcement relating to consumer and employee protection provisions:

- In the first, the High Court granted an anti-suit injunction to prevent a US employer continuing New York proceedings against an English-domiciled employee in a dispute about entitlement to bonus payments. The decision confirms that an English court will ordinarily grant an anti-suit injunction to protect a UK-domiciled employee's right to be sued by their employer only in the UK, regardless of where the employer is domiciled, similar to the position under the EU-wide jurisdiction regime that applied to the UK pre-Brexit: Anti-suit injunction granted to protect English-domiciled employee's right to be sued only in English court and prevent US employer suing in New York.
- In the second, the High Court refused to enforce a foreign-seated arbitration award on the grounds that to do so would be contrary to public policy, including because it was contrary to certain protections provided under the Consumer Rights Act 2015 (CRA) which the judge held were an expression of UK public policy. The case suggests that businesses may have difficulties enforcing foreign judgments or arbitral awards against consumers in the UK where the underlying contract had a close connection to the UK and the decision applied a (contractually agreed) foreign governing law without reference to the CRA: Commercial Court takes rare decision to refuse enforcement of arbitration award on public policy grounds in crypto case.

PRIVILEGE

As ever, this year has provided a number of interesting court decisions clarifying aspects of legal professional privilege, although none of these cases make significant changes to the law.

- A High Court decision in January highlights that, where a party seeks to prevent the use of privileged material that it claims to have disclosed in error, the burden is on the disclosing party to establish both that the documents were provided by mistake and that the mistake was obvious, and the court may take a strict approach in deciding whether that burden has been met. The decision is also of interest in confirming that litigation privilege is not restricted to communications between a party or its lawyers and third parties – a point that is sometimes questioned: High Court decision shows need for clear evidence if trying to prevent use of privileged material disclosed in error.
- An Employment Appeal Tribunal decision in March considered difficult issues relating to the application of legal advice privilege to communications between a solicitor (instructed on behalf of an individual client) and a third party, some but not all of which were copied to the client. The decision is also of interest in suggesting that a document can be privileged on the basis that it evidences, or reveals, legal advice to be given in the future, as well as advice already given: Employment Appeal Tribunal considers when privilege applies to communications via an agent and to documents evidencing legal advice.
- A High Court decision in April shows that litigation privilege can, in some circumstances, be asserted by non-parties to litigation – contrary to some previous statements in the case law. The decision also suggests, helpfully, that legal advice privilege is likely to apply in most cases where lawyers are engaged to conduct an investigation: Litigation privilege not restricted to parties to litigation, and other helpful points regarding privilege. The Court of Appeal heard an appeal against this decision in December.
- A further High Court decision in April addressed the rather vexed question of whether an employer is entitled to use an employee's privileged material where that material is found on the employer's systems or a device belonging to the employer – in this case a work laptop that was handed over to the employer in the context of an investigation: Privilege not lost where email containing legal advice found on employee's work laptop.
- A High Court decision in October shows that the court will generally take a cautious approach to exercising its discretion to inspect documents to determine whether redactions had been properly applied and will not require the reason for a redaction to be explained in such detail that it would destroy the privilege claimed. It also shows that confidentiality – and therefore privilege – may not always be lost in an entire document where parts of it are referred to in open court: Redactions for privilege, irrelevance and public interest immunity, and waiver of privilege: High Court provides guidance.
- In a decision in November, the High Court refused an application by the claimants in a securities class action for disclosure of privileged documents by the defendant company. The decision considers the boundaries of the so-called "shareholder principle", ie that a company cannot assert privilege against its shareholders unless the documents were produced for the dominant purpose of litigation between the company and its shareholders: Company not ordered to disclose privileged documents to shareholders in context of late application in securities class action.

In relation to "without prejudice" privilege, or the WP rule, a High Court decision in September held that inter-solicitor correspondence about the possibility of engaging in ADR was not properly to be regarded as WP, despite being marked as such, and was therefore admissible in relation to costs. The decision is of interest in part for the court's comment that correspondence about the possibility of engaging in ADR is "more likely to be open than without prejudice", as the parties will often wish to be able to rely on it later: Correspondence about possibility of ADR was not "without prejudice" despite being marked as such.

DISCLOSURE

There have been no major developments relating to disclosure this year, following the incorporation in late 2022 of the former Disclosure Pilot rules into the CPR as a permanent new Practice Direction, PD 57AD.

One issue that the courts, and litigating parties, have continued to grapple with is how to deal with documents held on employees' personal devices, given the increase in the use of personal devices and email accounts to make business communications in recent years. A decision late last year illustrates the particular complications that can arise where the employment relationship is governed by foreign law, under which (in contrast to English law) the employer may not have control over such documents: Disclosure: High Court directs party to identify which current and ex-employees have been asked for/given consent to search for documents on their personal devices.

In another decision relating to control for the purposes of disclosure, in February the High Court held that the documents of a claimant's creditor were not in the claimant's control. Although two employees of the creditor acted as the claimant's agent in conducting the litigation, that did not mean that all the documents to which they had access in their capacity as the creditor's employees were in the claimant's control: High Court underlines need to consider scope of agency in considering whether documents to which agent has access are in principal's control.

And a Court of Appeal decision in March acts as a reminder of the US s.1782 procedure to obtain documentary evidence in support of foreign (non-US) proceedings. The English court refused to grant an anti-suit injunction to restrain a s.1782 discovery application seeking evidence to defend libel proceedings in the English court. It shows that, while the court can grant an injunction restraining a party from pursuing foreign proceedings where that party's conduct is (or would be) unconscionable, it will not generally do so merely to prevent a party seeking to obtain disclosure on a broader basis than an English court would order: Court of Appeal confirms refusal of anti-suit injunction to restrain US s.1782 discovery application in libel proceedings.

EXPERT EVIDENCE

In November the Supreme Court overturned a Court of Appeal decision which had found that the court was not bound to accept an expert's uncontroverted evidence. The Supreme Court's decision establishes that the general rule in civil cases is that a party who submits that the court should not accept an opponent's witness evidence on a material point must challenge that evidence by cross-examination – whether it is factual or expert evidence, and regardless of whether the challenge is based on dishonesty or some other defect: Supreme Court finds court must generally accept uncontroverted expert evidence.

PART 36 OFFERS

In March the Court of Appeal construed a Part 36 offer to settle "the whole of the claim" as relating only to the pleaded claims and not the additional claims set out in the claimant's draft amended particulars of claim, and found that it would be an abuse of process for the claimant to bring new proceedings raising those additional claims. The decision highlights a potential trap for the unwary, as a party might assume that claims put forward in a draft amended pleading will be encompassed in a settlement resulting from the acceptance of a Part 36 offer to settle the whole of the claim: Part 36 offer to settle "the whole of the claim" did not include claims set out in draft amended pleadings.

And in a decision in June, the High Court held that a claimant who made a very high Part 36 offer should be deprived of the benefits that are ordinarily available to a claimant who beats their own offer, as the offer was not a genuine attempt to settle. The decision contrasts with a number of cases where the courts have upheld very high claimant offers, illustrating that the court's assessment will be highly fact-specific and an important question will be whether the level of the offer was justified by the perceived strength of the claim at the time of the offer: Part 36 offers to settle: very high claimant offer did not bring costs benefits as not a genuine attempt to settle.

SETTLEMENT

In a decision late last year, the Court of Appeal agreed that a release clause included unknown claims based on dishonesty and fraud, despite the release not expressly referring to such claims. The court noted the "cautionary principle" that, in the absence of express words, it will not readily conclude that a reasonable person would understand a release to encompass claims for fraud or dishonesty. However, where the court concludes that on ordinary principles of contractual construction fraud is included in the release, the court will give effect to that intention: Court of Appeal finds settlement agreement released unknown fraud claims despite lack of express words to that effect.

Another interesting Court of Appeal decision on settlement, in July, considered the circumstances in which a court may decline to accept undertakings agreed between the parties to a settlement agreement. While the decision confirms the court's discretion to do so, it emphasises that proper weight must be given to the public interest in encouraging parties to settle their disputes in the confidence that the settlement terms will be upheld: Court of Appeal provides guidance as to when court may refuse to accept party's undertakings as part of settlement.

COSTS

In May, the Civil Justice Council's Final Report in its Costs Review recommended: a pilot of a "lighter touch" approach to costs budgeting for cases in the Business and Property Courts and cases up to £1 million in other courts; a new band of guideline hourly rates for complex, high value, commercial work; and potential new powers for the courts to make costs orders where matters settle pre-issue but the parties have not agreed costs: Costs reforms: proposed changes to costs budgeting, guideline hourly rates and pre-action costs.

These recommendations are separate to the extension of fixed recoverable costs which came into effect on 1 October this year for cases up to £100,000. The regime applies only to claims allocated to the fast track (up to £25,000) and less complex claims between £25,000 and £100,000 which are allocated to a new "intermediate track". It will therefore not affect larger commercial cases: Regime of fixed recoverable costs now in force for claims up to £100,000.

CRYPTO ASSETS

Claims by the owners of cryptocurrency and other crypto assets seeking to recover their property, or compensation, following an alleged fraud have continued to occupy the courts in the past year.

In some cases the courts have been willing to grant information orders against cryptocurrency exchanges: Information orders granted against cryptocurrency exchanges to help trace stolen cryptocurrency. And to allow claims to be served out of the jurisdiction against various parties in claims related to alleged crypto fraud, relying in part on the expanded service gateways introduced in October 2022: High Court considers application of gateways for service out of the jurisdiction to cryptoassets removed from the jurisdiction.

In a significant decision in March, the High Court discharged an interim proprietary injunction against a cryptocurrency exchange which had required it to preserve allegedly stolen cryptocurrency, highlighting the distinction between obtaining an injunction against a cryptocurrency exchange vs an injunction against the account owner which is served on the exchange as a third party: High Court sets aside interim proprietary injunction against cryptocurrency exchange Binance.

In another decision, the High Court ordered a cryptocurrency exchange (who neither consented to nor opposed the order) to transfer a defendant's cryptocurrency into the jurisdiction to facilitate the claimant's efforts to enforce its judgment against those assets: English court orders crypto exchange to transfer assets into England and Wales to facilitate enforcement of judgment.

CONTRACT

There have also been a number of interesting decisions on contract law, both from the High Court and the Court of Appeal:

- In a decision at the end of last year in a claim for payment of a debt in respect of the provision of services, the Court of Appeal held that time started to run from the date the work was done, not from the contractually agreed deadline for payment. The decision is a helpful reminder that time may start to run for limitation purposes as soon as the relevant services are provided and not merely when an invoice is issued, or payment is due: Court of Appeal finds limitation period may start to run before deadline for payment of debt.
- In January, the Supreme Court held that, by providing for payment to be made if a property was sold for a particular price and remaining silent as to what would happen if it was sold for less, the contract had excluded any obligation to pay the claimant in such a scenario: Supreme Court finds no entitlement to payment in circumstances not addressed by express contractual terms. The Court of Appeal applied that decision in April to find that a party was not entitled to payment of a success fee, or any lesser payment, where the trigger event set out in the contract had not occurred: Court of Appeal rejects claim for success fee where contractual trigger for payment had not happened. The decisions suggest that, where parties have agreed the circumstances in which a payment will be made, it may be difficult to persuade the court that payment is due in other circumstances.
- Force majeure cases continue to work their way through the courts, following the increased focus on such issues in light of Brexit and the Covid-19 pandemic. A High Court decision in April shows that, while such events may fall within the definition of force majeure in a particular case, whether the clause is triggered will depend on close analysis of the wording of the clause, and specific evidence as to the impact of the relevant events may be needed: Force majeure: general assertions as to impact of Covid-19 and Brexit not sufficient to defeat summary judgment application.
- In early July the Supreme Court handed down its seminal judgment in *Philipp v Barclays Bank UK plc* confirming that the so-called *Quincecare* duty on financial institutions arises specifically where an agent of the customer purports to give a payment instruction and the bank has reasonable grounds for believing that it is an attempt to defraud the customer. It therefore does not arise in the context of an "authorised push payment" fraud, in which the victim is induced to authorise their bank to send a payment to a bank account controlled by the fraudster: Supreme Court clarifies so-called Quincecare duty on financial institutions executing customer payments.
- There have also been a number of interesting High Court decisions illustrating how the courts will interpret contractual exclusion or limitation clauses and highlighting the importance of clear drafting. These include a decision in June which found that a contractual limitation clause imposed an aggregate cap rather than separate caps for each claim: Liability caps: importance of clear drafting; and a decision in October which found that the Unfair Contract Terms Act 1977 (UCTA) did not apply to an exclusion clause because negotiations had resulted in substantial amendments to the terms generally and therefore the parties had not dealt on written standard terms of business: Exclusion clauses: High Court grants summary judgment as losses fell within clear and unambiguous exclusion clause and UCTA reasonableness test did not apply.

OTHER

This year has also seen a number of significant developments in other areas relevant to litigation including:

- A Privy Council decision in May clarified the approach an appeal court is likely to take where there is a challenge to findings of foreign law (which are treated as findings of fact, as a matter of English law). The decision suggests that the less similar the relevant foreign system of law is to domestic law, the more hesitant an appeal court is likely to be to intervene: Appeals against findings of foreign law: Privy Council explains spectrum approach.
- A Court of Appeal decision in October confirmed that UK sanctions do not preclude the court entering judgment in favour of Russian sanctioned parties. The decision also held that the Office of Financial Sanctions Implementation (OFSI) is entitled to license a sanctioned party to pay an adverse costs order, security for costs or damages on a cross-undertaking in damages, and can also licence payment of a costs order in favour of a sanctioned party: Court of Appeal confirms judgments can be entered in favour of Russian sanctioned parties but leaves uncertainty in relation to the "ownership and control" test.
- Also in October, on the eve of a 13-week trial, the Insolvency Service (IS) discontinued disqualification proceedings against five former non-executive directors (NEDs) of Carillion plc. The IS had been seeking to disqualify the NEDs from being involved in the management of any company on grounds that they did not know the alleged true financial position of Carillion (in particular alleged fraudulent misstatements of group accounts) at all times ie strict liability for directors. If the claim had succeeded, it would have subjected directors, particularly those appointed to large and complex companies, to an almost impossible standard – akin to omniscience extending to every aspect of a company's business: Carillion director disqualification proceedings – Insolvency Service drops proceedings against non-executive directors in so-called "test case".
- The Retained EU Law (Revocation and Reform) Act 2023 received Royal Assent on 29 June and will make significant changes to the status and interpretation of retained EU law (to be known as "assimilated law") from the end of this year. The changes are not so sweeping as originally planned, however, as the government dropped plans to abolish all retained EU law that was not specifically saved before the end of the year. Still, the Act contains broad powers to amend, restate or revoke retained EU law, as well as changes to how retained EU law is to be interpreted (with the revocation of the principle of EU supremacy and other general principles of EU law) and provisions encouraging courts to depart from retained EU case law: Retained EU Law: no sweeping sunset at the end of the year.

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