

PROFESSIONAL LIABILITY – LEGAL UPDATE

NOVEMBER 2025



CONTENTS

AHMED & ORS v WHITE & COMPANY (UK) LIMITED AND ALLIANZ GLOBAL CORPORATE & SPECIALITY SE	3
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Policy wording, notification, aggregation

MANAGED LEGAL SOLUTIONS LIMITED v DARREN HANISON (TRADING AS FORTITUDE LAW) AND HDI GLOBAL SPECIALTY SE	5
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Adding a party to a claim, limitation period for Third Party Rights Against Insurers Act claims

GROSVENOR PROPERTY DEVELOPERS LIMITED (IN LIQUIDATION) v PORTNER LAW LIMITED	7
---	----------

Dishonesty

(1) THE CHIEF CONSTABLE OF SUSSEX POLICE AND (2) THE CROWN PROSECUTION SERVICE V XGY and THE BAR COUNCIL OF ENGLAND AND WALES	9
--	----------

Immunity for Advocates

AHMED AND OTHERS v (1) WHITE AND COMPANY (UK) LIMITED (2) ALLIANZ GLOBAL CORPORATE & SPECIALITY SE

COMMERCIAL COURT – 22 SEPTEMBER 2025

POLICY WORDING, NOTIFICATION, AGGREGATION

COMMENTS

- A case considering the validity and ambit of notifications made, and the extent to which a third party may be a notification agent.
- Claim which are "*very similar*" will not aggregate where the policy wording requires the "*same*" facts.

FACTS

The Claimants issued a claim against the First Defendant, White & Company (UK) Limited (White & Co) in May 2021. The claim alleged that White & Co had provided negligent advice, breached its fiduciary duties and made misrepresentations in respect of advice on accountancy, investment and/or tax matters. The advice had been given by either White & Co or through McKenzie Knight & Partners (MKP), which White & Co had acquired in 2017. The Claimants alleged that in reliance upon the negligence advice, they had suffered substantial loss.

Allianz was White & Co's professional indemnity insurer from 2016 – 2017. The claim was brought against Allianz under the 2010 Third Parties (Rights against Insurers) Act 2010 following White & Co entering into insolvency.

The policy required notification of "*any circumstance...reasonably expected to give rise to a Claim*" and included a "Tax Mitigation Endorsement" aggregating and limiting liability in respect of tax mitigation schemes.

The limit of liability was £2 million "*for any one claim*", which also applied to the Tax Mitigation Endorsement.

Finally, the "*Related Claims*" provision of the policy aggregated "*Claims alleging, arising out of, based upon or attributable to the same facts or alleged facts, or circumstance or the same Wrongful Act, or a continuous repeated or related Wrongful Act.*"

The Court was required to determine issues of (i) notification; (ii) the Tax Mitigation Endorsement; (iii) aggregation

DECISION

The claim was dismissed.

(i) Notification

The Court held that none of the claims made by the Claimants in these proceedings arose from matters notified to Allianz.

Letters sent in 2017 which named individual claimants ("the Akbar claimants") were interpreted narrowly, with the judge finding that the correspondence amounted to notification of a claim, but only for the named claimants and investment schemes. Those claims did not form part of the current proceedings.

Instructions to Kennedys (solicitors for Allianz and White & Co) to investigate and defend the claim by the Akbar claimants did not mean that Kennedys was the agent of White & Co for the purpose of giving notification to Allianz. There was no suggestion that an agent engaged under a joint retainer is an agent for each of the principals in dealing with each other. The purported notification was therefore not given by the insured/policyholder and, consequently, the relevant condition precedent had not been met.

The judge did, however, comment that if the Kennedys communications had been capable of amounting to notification, they would have notified circumstances which might give rise to a claim against White & Co within the ambit of a "*hornet's nest notification*".

(ii) Tax Mitigation Endorsement

The judge was satisfied that the investments fell within the Tax Mitigation Endorsement and that the Tax Mitigation Endorsement was capable of applying to both an individual loan/investment and combinations of loans and/or investments.

The court also considered when a scheme might be considered artificial, determining that would be evaluated by comparing the scheme in question to a "*normal transaction of an ostensibly similar type*". Factors to be taken into account would be the purpose of the scheme, the investors, the proposer / advisor and the characteristics of the scheme.

(iii) Aggregation

"Related" Wrongful Acts do not need to be identical. In this case, there were three categories of investments and resulting claims that fell within the category of "related" Wrongful Act, as the advice was the same in each case. The Related Claims Provision therefore aggregated those claims.

Claims relating to four other types of investments were found not to aggregate under the Related Claims Provision. Although there were similarities, the Court did not consider they had enough in common to go beyond being "*very similar*" and therefore fell outside of the ambit of the Related Claims provision which required the "*same*" facts.

The judge commented that whether notification of a circumstance had been given is not determinative of whether future claim(s) are Related Claims.

**MANAGED LEGAL SOLUTIONS LIMITED v
DARREN HANISON (TRADING AS FORTITUDE
LAW) and HDI GLOBAL SPECIALTY SE**

**KINGS' BENCH DIVISION – 16 OCTOBER
2025**

**ADDING A
PARTY TO A
CLAIM/
LIMITATION
PERIOD**

COMMENTS

- This decision is highly fact specific, but nonetheless provides important guidance for insurers who may be seeking to join proceedings pursuant to CPR Rule 19.2.
- The decision provides helpful guidance on determining potential limitation issues arise in the context of CPR Rules 19.2 and 19.6, and how the courts will determine issues of "desirability" to add an insurer as a defendant party.

FACTS

Managed Legal Solutions (**MLS**), a litigation funder, brought a claim against Darren Hanison, trading as Fortitude Law (**Fortitude**). In 2023, Fortitude was the subject of an intervention by the SRA and in May 2025, the SRA published its decision to prosecute Mr Hanison. HDI Global Specialty SE (**HDI**) had insured Fortitude Law and applied to be added as the Second Defendant in the claim.

The first issue to be decided was whether HDI's application was brought under CPR Rule 19.2 (where a party is to be added or substituted in proceedings, except where the case falls within rule 19.6), as HDI contended, or under Rule 19.6 (where the application has been made after the end of the limitation period) as MLS submitted. MLS argued that the limitation period for the relevant claim had, by the date of HDI's application, expired. HDI contended that the relevant claim as far as HDI was concerned was the potential claim by MLS (as a transferee pursuant to the Third Parties (Rights Against Insurers) Act 2010 ("**TPRAI**") of Mr Hanison's rights) against HDI. HDI argued that, pursuant to s.12 of TPRAI, MLS's claim against HDI would arise only if and when MLS established Mr Hanison's liability and, accordingly, the limitation period had not expired.

The second issue was whether the application satisfied the requirements of Rule 19.2. It was common ground that HDI had an interest in the outcome of the proceedings. HDI wished to be joined to the proceedings to make representations in circumstances where Mr Hanison had been debarred from defending. MLS argued that it was not desirable to join a third party who would only be indirectly affected. HDI argued that, if there was a conflict of interest between the insurer and the insured, the insurer cannot protect its interests by exercising its contractual right to control the insured's defence of liability proceedings brought by a third party; the insurer in those circumstances was therefore directly affected by the liability proceedings. There was such a conflict of interest between HDI and Mr Hanison with respect to Mr Hanison's liability regarding a particular issue (the "Freestanding Tortious Duty" issue): it would be in Mr Hanison/Fortitude's interest for determination of liability to include the Freestanding Tortious Duty issue, because they were then likely to be entitled to an indemnity under the insurance policy. It was however in HDI's interest for MLS to fail on the Freestanding Tortious Duty issue, because HDI would then be unlikely to have to indemnify Mr Hanison/Fortitude; that issue could only be determined if HDI was added as a party (given Mr Hanison's debarment from defending).

In considering whether it was "*desirable*" (per Rule 19.2(2)) to add HDI to the proceedings, MLS made eight points to suggest it was not, including the purported delay in HDI's making the application. HDI submitted that the relevant trigger for making the application had been Mr Hanison's debarment from defending and as such there had been no delay. MLS also submitted (inter alia) that HDI should be in no better position than its insured, and by being joined it would avoid the adverse consequences of the debarment of Mr Hanison.

DECISION

On the first issue (whether limitation had expired), Louise Hutton KC, sitting as Deputy Judge ("**DJ**") found that CPR 19.6 did not apply. Construing it in this way would fail to reflect the fact that HDI's interest had arisen because of its potential liability as an insurer. To interpret the application as falling under Rule 19.6 would fail to reflect the fact that the joinder of HDI is not because of the existence of any current claim by MLS against HDI, but because of the potential claim HDI may face in due course. Accordingly, the DJ concluded that the potential claim MLS had against HDI (pursuant to the TPRAI) was not time-barred, remaining contingent unless and until Mr Hanison/Fortitude's liability was established.

The DJ commented that this conclusion was consistent with HDI's supporting argument that adding it to the proceedings would not involve a new cause of action (CPR 19.6 does not apply when there is a new party added to proceedings but no new cause of action).

On the second issue, the DJ concluded that it was clear that the 'Freestanding Tortious Duty' issue would not be contested unless HDI was joined because Mr Hanison had been debarred from defending. Unless HDI was joined, MLS would only have to discharge the burden on it to prove its case at an uncontested hearing. It was therefore "*desirable*" to join HDI to enable it to be heard on the Freestanding Tortious Duty issue, unless there were other factors relevant to the overriding objective which sufficiently weighed against its joinder.

On the other facts, including delay and the position of HDI vis a vis the Insured, the DJ concluded that HDI had not delayed making its application.

The DJ also concluded that HDI was the "*real party interested*" in the claim because of the existence of the conflict of interest over the Freestanding Tortious Duty issue. The DJ noted that if HDI took no part in the proceedings, it would be in the interests of MLS and Mr Hanison for the Freestanding Tortious Duty issue to be decided against Mr Hanison if the claim generally was being decided against him. Furthermore, allowing HDI to be joined to the proceedings would not set a "*dangerous precedent*" or give rise to "*serious conceptual difficulties*" (as MLS submitted).

The DJ commented that in light of her decisions on the issues of limitation and desirability, it was appropriate for HDI to be permitted to plead a defence (which it had already provided in draft to MLS and filed in support of its application). Although allowing HDI to be joined to the claim would result in a hearing date being lost, the DJ noted that MLS had known for some time that HDI had an interest in the proceedings and the application should not be refused on this basis.

HDI's application to join the proceedings was therefore granted.

GROSVENOR PROPERTY DEVELOPERS LIMITED (IN LIQUIDATION) V PORTNER LAW LIMITED BUSINESS AND PROPERTY COURT – 24 SEPTEMBER 2025	DISHONESTY
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COMMENTS

- A solicitor who suspects wrongdoing by a client and assists the client without making further inquiries may have acted dishonestly.
- The test for dishonesty in that context is whether an honest solicitor with the knowledge, skills and experience of the solicitor in question would have acted in the same way.
- A solicitor's failure to comply with the relevant regulations (such as those relating to anti-money laundering), Law Society guidance and internal firm policies may be evidence that they have turned a 'blind eye' to their client's wrongdoing and therefore have themselves acted dishonestly.

FACTS

Grosvenor Property Developers Ltd (**GPD**) was established to convert a Bristol hotel into student accommodation, funded by investors. However, it went into liquidation following the fraudulent misappropriation of c. £7 million of investors' money by its statutory director Jonathan England and de facto director Sanjiv Varma. Both individuals were found liable for the misappropriation in other proceedings. Mr Varma was also found in contempt of court and fled the jurisdiction.

GPD, acting through its liquidators, brought a claim against law firm Portner Law Limited (**PLL**). PLL had acted for Mr Varma and his son on various London property transactions which resulted in £2,399,000 of funds passing through PLL's client account. GPD therefore alleged that PLL had dishonestly assisted in the directors' breaches of fiduciary duty through the actions of one of the partners at the firm, Mr Broughton.

DECISION

PLL accepted the history of the transactions and that it was vicariously liable for Mr Broughton's actions but argued that Mr Broughton did not act dishonestly. There was no suggestion that he had actual knowledge of the underlying fraud. The question for the Court was therefore whether he had turned a "*blind eye*" to the dishonesty, i.e. did he have a suspicion that the transactions in which he was engaged might not be wholly proper, and deliberately failed to take steps to verify the position.

Deputy High Court Judge Saira Salimi reviewed the tests for dishonesty in *Royal Brunei Airlines v Tan*, *Ivey v Genting Casinos*, and *Gruppo Torras v Al-Sabah*. Drawing on this case law, HCJ Salimi stated that, although this was not a professional negligence claim, the appropriate test was whether an honest solicitor with the skills and experience of Mr Broughton would have acted as he did. Mr Broughton's professional framework was relevant to this test, this included: the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692 and their precursor regulations), the Law Society Anti-Money Laundering Practice Note 2013, and PLL's own policies on client care and money laundering from the relevant period.

Mr Broughton's treatment of funds was not compliant with his firm's internal policies or the Law Society's guidance on money laundering (despite him being the deputy anti-money laundering officer at his firm at the time). Mr Broughton did not complete anti-money-laundering-checks required by the firm or identify when discrepancies arose, or check that funds for the transactions had come from a legitimate source. There also had been email exchanges whereby Mr Varma had been described as "dodgy" and Mr Broughton had responded "*who knows but such a convoluted process makes me think something is not quite right*", showing that he was aware that the property transactions could be a cover for dishonest activities.

The judge did not accept Mr Broughton's assessment of his conduct as "sloppy", describing it as showing "*complete disregard for his professional obligations*". He also found there were no credible reasons to justify the failures. Mr Broughton's actions were therefore found to "*show a pattern of disregard for his obligations as a solicitor, and repeated turning of a blind eye to obvious causes for concern*". In some matters he was "*actively dishonest*" and made false representations.

Judge Saira Salimi found that Mr Broughton's conduct amounted to "blind-eye" dishonesty.

PLL was held vicariously liable for Mr Broughton's actions and had dishonestly assisted in the directors' breaches of fiduciary duty.

(1) THE CHIEF CONSTABLE OF SUSSEX POLICE AND (2) THE CROWN PROSECUTION SERVICE V XGY and THE BAR COUNCIL OF ENGLAND AND WALES

IMMUNITY FOR ADVOCATES

COURT OF APPEAL – 8 OCTOBER 2025

COMMENTS

- The Court of Appeal has affirmed that advocates have immunity for things done and said in a court hearing. This immunity may apply by extension to others involved in the court proceedings, such as the police.

FACTS

The Claimant, **XGY**, was a victim of domestic abuse by her former partner, **DYP**. DYP was subject to criminal proceedings. During a bail hearing, the CPS inadvertently disclosed XGY's address to DYP (XGY had provided her address to the police in confidence but the police had failed to mark the address as confidential when they passed the file to CPS). XGY brought claims against the Chief Constable and the CPS under the Human Rights Act 1998 and the Data Protection Act 2018 for breach of confidence and misuse of private information.

The County Court struck out the claims on the basis that they fell within a core immunity for things said and done by advocates in court and that this also applied by extension to the police for their role in preparing the court file.

XGY appealed to the High Court, where Ritchie J allowed her appeal. He considered that there was an immunity, but that recent case law meant that, at least arguably, it was limited, and had to be justified on a case by-case basis (and could not be justified here).

The Chief Constable and CPS appealed Justice Ritchie's decision, and the Bar Council was given permission to make submissions.

DECISION

The Court of Appeal reversed Justice Ritchie's decision, holding that both the CPS advocate and the police had immunity.

If the facts of a case fall within an existing core immunity (or an established extension of a core immunity) then there is no need for individual justification. Justification may be required for a novel *extension* to the core immunity.

The Court of Appeal noted that Justice Ritchie's suggested "*justificationism*" approach undermines the public policy underlying immunity, which serves the interests of justice in enabling those involved in the administration of justice to "*speak freely without fear of being sued*".

The Court confirmed that the core immunity is 'far wider in scope' and 'not limited to evidential matters' but also to 'statements (said or written) made in court'.



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