

PROFESSIONAL LIABILITY – LEGAL UPDATE

FEBRUARY 2026



CONTENTS

Wemimo Mercy Taiwo v Homelets of Bath Limited, Emmanuel Diamond and Abayomi Bamidele Odebode	3
Dishonest/Misuse of AI/Conduct	
Afan Valley Ltd (in administration) and Ors v Lupton Fawcett LLP	5
Solicitors/loss	
Shmuel Moller & Ors v One Touch Solution Limited & Ors	7
Recoverability of VAT	
Gary Elden v The Commissioners for HMRC	8
Misuse of AI/strike out	
Mr Ashley Hurst v SRA	10
SDT decision/reasoning	
Other developments/cases to watch	12

**WEMIMO MERCY TAIWO v HOMELETS OF
BATH LIMITED, EMMANUEL DIAMOND and
ABAYOMI BAMIDELE ODEBODE**

HIGH COURT – 3 DECEMBER 2025

**DISHONESTY /
MISUSE OF AI /
CONDUCT**

COMMENTS

- There can be a perception that litigants in person are offered more leniency by courts than those with legal representatives. This case demonstrates that courts will expect all parties, including LiPs, to conduct themselves properly with regards to deadlines and authorities in submissions. LiPs (and/or litigation friends) have an obligation to ensure that cases cited in their pleadings are accurate.
- This adds yet a further example to the growing body of case law regarding fake citations likely generated by AI.
- An allegation of dishonesty must be articulated and proved, although the Court acknowledged that it would consider the substance of any such pleading, not just the form.

FACTS

In 2018, HomeLets of Bath Limited (HBL) was found liable for harassment and assault following attempts to evict the Claimant.

At the quantum trial, the Claimant sought damages of around £2million. HBL argued that the Claimant had been "*fundamentally dishonest*" in respect of her claim. The judge, Judge Blohm KC, agreed the Claimant had been dishonest in respect of three matters. As the dishonesty went to the "*root of the claim*", it constituted fundamental dishonesty. Her entire claim was therefore dismissed.

This hearing concerned the oral renewal of the Claimant's application to appeal Judge Blohm KC's decision on dishonesty.

DECISION

In the High Court, Justice Constable dismissed the Claimant's application, finding that none of the grounds of appeal were reasonably arguable.

Permission to appeal may only be given where (1) the Court considers the appeal would have a real prospect of success; or (2) there is some other compelling reason for the appeal to be heard (CPR 52.6).

The Claimant's grounds of appeal included the argument that Judge Blohm erred in concluding she had been dishonest because the allegations of fundamental dishonesty had not been properly pleaded or put to the Claimant. She also submitted there was apparent bias in his findings. The High Court acknowledged that a claim of fraud or dishonesty must be distinctly alleged and proved but it was not necessary to use the term "*fundamentally dishonest*" as long as, by the time of trial, there was sufficient identification of the issues that the Claimant could not be said to have been ambushed. The Claimant could not reasonably argue the key elements of dishonesty had not been pleaded. The judge had put his mind to whether the case had been fairly pleaded and dealt with in evidence. His conclusion did not contain a serious procedural irregularity. The Claimant also argued that Judge Blohm had erroneously required her to prove her honesty, rather than requiring HBL to prove dishonesty. The High Court found that Judge

Blohm had applied the correct test (a two-stage test set out in the case of *Ivey v Genting Casinos*) as regards the burden of proof for proving dishonesty. He had identified that burden of proof in this case had lain with HBL, and had found that some aspects of HBL's allegations had not discharged the necessary burden. The judge's conclusions were supported by rational reasoning and justified. The Claimant's assertion that Judge Blohm had failed to apply the correct test was not remotely arguable.

The Judge identified that the Claimant's skeleton argument for the hearing had been filed late, referred to a witness statement which had not been filed or served, and contained an authority which was a "*bogus authority, no doubt falsely created by AI.*"

The Court emphasised that relying upon false citations is just as unsatisfactory when presented by a litigant in person or litigation friend as by a lawyer. The Court noted that it was "*at least possible*" that a lawyer had authored or reviewed the document which contained the false citation. It issued a reminder that doing so (regardless of whether this was for reward or pro-bono) could result in the lawyer upon identification being subject to sanctions for misconduct or potential contempt of Court.

The High Court also made a Civil Restraint Order pursuant to Practice Direction 3C (whereby a limited civil restraint order can be made where a party has made 2 or more applications which are totally without permission). The Claimant had brought numerous previous applications and the Court described her general conduct (and that of her litigation friend) as demonstrating "*a complete lack of discipline*". It therefore issued a limited Civil Restraint Order against them and held that it was in the interests of justice to make a costs order against her, amounting to 75% of the Respondent's costs.

AFAN VALLEY LTD (IN ADMINISTRATION) AND ORS v LUPTON FAWCETT LLP COURT OF APPEAL – 5 JANUARY 2026	SOLICITORS - LOSS
--	------------------------------

COMMENTS

- Establishing causation between breach of duty and loss is imperative. If a defendant is in breach of a duty of care, they are not necessarily liable for all losses which the claimant suffers from relying upon their advice. There must be a "*sufficient nexus*" between the scope of the duty of care and any consequential loss for it to be recoverable.
- The Court of Appeal reminded of the importance of articulating and committing to a case from the outset. LJ Nugee commented that "*it is incumbent on a person who is facing an application to strike out their statement of case, or an application for summary judgment, to give careful consideration to how they are going to answer the application, whether by way of pleading or evidence, before the application is heard by the judge hearing it, and not after it has been decided against them.*"

FACTS

The claimants were companies in liquidation which had been used as vehicles for a Ponzi fraud. The claimants had promoted and managed a series of investment schemes which ultimately failed, putting the companies into liquidation. The lead companies in the scheme had engaged Lupton Fawcett LLP (**Lupton Fawcett**) to undertake a review and advise on whether or not the schemes were "collective investment schemes" (**CIS**) for the purposes of the Financial Services and Markets Act 2000 (**FSMA**). CIS are heavily regulated and can only be lawfully promoted. None of the entities involved had the necessary authorisation from the Financial Conduct Authority.

The claimants alleged that Lupton Fawcett had failed to advise that the schemes were CIS and claimed damages of over £68 million. They argued that if Lupton Fawcett had advised that the schemes were CIS, the schemes would not have been promoted, the claimants would not have lost their investor receipts and the secured loans would not have been entered into. The companies alleged that each scheme contravened FSMA and resulted in the investment agreements being unenforceable (and the investors being entitled to recover their investments.)

Lupton Fawcett argued that the claimants had suffered no loss. The money from investments and loans which the companies were liable to repay were of equal value to the money they had received (the "**£ in £ out argument**"). Further the losses arose because of the use to which the investment money had been put (not because of Lupton Fawcett's alleged negligence).

In April 2024, the High Court held that the claim should be struck out/summarily dismissed, finding that the claimants had failed to establish that any loss resulted from Lupton Fawcett's alleged negligence.

The claimants appealed the High Court's decision. Their grounds of appeal included challenging the High Court's finding that:

- i. the claimants had suffered no loss as a result of Lupton Fawcett's alleged

negligence (i.e., the £ in £ out argument). The claimants argued that they had been required to pay sales agents' commission, legal and professional fees associated with the investments and had to pay compensation under s.26 FSMA, which they argued should all be recoverable from Lupton Fawcett ("**Ground 1**"); and

- ii. the losses were not attributable to Lupton Fawcett's alleged negligence (the scope of duty argument). The claimants asserted that the schemes had been intended to make a profit in the long term, but initially the value would "*inevitably*" be less than the amount received and invested. The Claimants' loss arising from "*the balance*" of any expenditure was attributable to Lupton Fawcett (who would have known the schemes were intended to operate this way, having advised upon them.) The argument was described as Nugee LJ as "*not quite so easy to follow*" ("**Ground 2**").

DECISION

Nugee LJ conducted an analysis of the scope of Lupton Fawcett's duty. His starting point was that a defendant found to be in breach of a duty of care is only liable for those losses which fall within the scope of their duty. The question that Lupton Fawcett had been asked to advise upon was whether the schemes were CIS. Their duty of care was in respect of that question, not any wider questions about the viability of the schemes, commercial wisdom, risks of fraud/misappropriation, etc. The risk that the Schemes would not be profitable for a number of years also had nothing to do with whether they were CIS. The risk of harm to the claimants arising from Lupton Fawcett's duty of care were the implications of the schemes, in fact, being CIS (i.e., the claimants being exposed to risks under FSMA.)

The court then considered whether there was a "*sufficient nexus*" between the harm and damages/losses claimed by the claimant and the subject matter of the defendant's duty of care.

On Ground 1, Nugee LJ found that payment of commissions and fees were "*unconnected*" to whether the schemes were CIS or not. Had Lupton Fawcett's advice been correct the Schemes would still have been a Ponzi fraud and would still have collapsed at the same time and in the same way. The claimants would still have lost all the money invested, and the investors would still have been left with nothing except the returns they had already had, and the right to prove in insolvent liquidations. Nugee LJ considered that the only difference in the counterfactual world was that the investors would not have had the option of claiming their money back under s. 26 FSMA; but that they still would have had claims. Accordingly, the Claimants would still have paid exactly the same commissions to sales agents, and exactly the same legal and professional fees, as they did in the actual world. The expenditure of those monies was not something which turned on whether the Schemes were CISs or not. Those sums did not arise as a consequence of Lupton Fawcett's advice and the loss was not within the risk of harm that its duty of care was intended to prevent.

The court gave Ground 2 little credit. Nugee LJ raised doubts about whether this argument was adequately pleaded but summarised it as attempting to "*lay at Lupton Fawcett's door all the consequences of the way the schemes were operated*". However, the losses were not attributable to the schemes being CISs. The way the schemes were operated (and resulting loss of the investors' money) was not something which Lupton Fawcett bore any responsibility for.

None of the grounds of appeal were successful. The claimants' appeal was therefore dismissed.

SHMUEL MOLLER & ORS v ONE TOUCH SOLUTION LIMITED & ORS	
COMMERCIAL COURT – 6 JANUARY 2026	RECOVERABILITY OF VAT

COMMENTS

- Guidance on the recoverability of VAT on legal fees incurred by insurers joined to proceedings under the Third Parties (Rights Against Insurers) Act 2010.
- In such cases, the VAT component of legal fees cannot be recovered from the Claimants if the estate of the insolvent insured is able to recover VAT from the HMRC.
- In the case of an insured in liquidation, the insured's liquidators should be able to recover VAT under the Value Added Tax Regulations 1995, r 111(5).

FACTS

In July 2024, the Claimants to this action received permission to amend their Particulars of Claim on the condition that they pay the reasonable costs of the Defendants' amended defence, which were later assessed to be £25,000 net of VAT. The parties disputed the recoverability of the VAT component of those costs.

The First Defendant is an insured company in liquidation. The Second Defendant is the First Defendant's insurer and is joined pursuant to the Third Parties (Rights Against Insurers) Act 2010. The Defendants therefore contended that the First Defendant could not pay or recover VAT and the Second Defendant could not recover the VAT paid because the tax relates to a legal service provided to the insured party (i.e. the insured First Defendant).

The Claimants submitted that the First Defendant's liquidation did not prevent its estate from claiming the recovery of VAT. They relied upon regulation 111(5) of the Value Added Tax Regulations 1995, which allows someone who has been (but is no longer) registered for VAT to reclaim VAT relating to any taxable supply made as part of a business they carried on whilst they were VAT registered.

DECISION

The Court found that Regulation 111(5) gave clear support for the recovery of VAT by the First Defendant's liquidators. Since the First Defendant's estate could recover VAT, neither Defendant had suffered a loss that could be included in their costs statement.

COMMENTS

- Another example of the growing body of cases which make clear that professionals have a duty to verify the accuracy of material sourced from AI before submitting that material to a decision-making body.

FACTS

The underlying case concerned an appeal by Mr Gary Elden of closure notices issued by HMRC for the tax years 2013/14 and 2014/15. HMRC applied to strike-out Mr Elden's appeal due to numerous procedural defaults. The strike-out application was ultimately refused.

Prior to the strike-out hearing, however, HMRC raised concerns about the use of AI in the Mr Elden's skeleton argument, and inaccurate summaries of authorities within it. The Tribunal advised that these matters should be brought to the attention of the Tribunal at the hearing.

During the hearing, Mr Elden advised that he did not contribute to the preparation of the Skeleton Argument. Mr Elden's representatives, chartered accountants Strauss Philips & Co ("**SPC**"), neither confirmed nor denied the use of AI, but stated that they stood by everything in the document save where Mr Elden had himself contradicted it.

In further submissions SPC stated *"The suggestion that citing a published authority amounts to providing false material is misconceived. A court decision is a matter of public record. Whether a case applies is a matter of legal argument and opinion, not misrepresentation. It is entirely proper for parties to put forward different interpretations for the Tribunal to consider. To characterise this as "false material" is both unfounded and inappropriate."*

In correspondence following the hearing, however, SPC admitted that it used AI and that errors *"arose from human editing and document-control at the final stage under acute time pressure, resulting in misattribution of text to the wrong case headings."*

DECISION

The Tribunal agreed, to a limited extent, that whether or not AI was used is not directly relevant. It stated, however, that *"AI is a powerful tool that can be used to great effect, but the human who relies on its use bears the responsibility for the accuracy"*. The Tribunal therefore evaluated the accuracy of the summaries in Mr Elden's submissions and found that they were inaccurate to the extent of being misleading.

The Tribunal ordered that, for the substantive appeal, Mr Elden was to file his skeleton argument with either a statement of truth stating that he has produced the skeleton argument entirely himself, with or without the help of AI, and has personally checked each statement of fact or case summary and reference contained within it, OR a statement of truth from any other person who has contributed to the skeleton argument, confirming

which of the statements of fact or case summaries that person has checked. Every person other than Mr Elden must include their professional qualifications, if any, and the professional body that regulates their employer, if any.

The later requirement was so that the Tribunal could consider referring any person to their professional body who submits to the Tribunal any item which *"falls below the professional and ethical standards the Tribunal has a right to expect."*

MR ASHLEY HURST v SOLICITORS REGULATION AUTHORITY

ADMINISTRATIVE COURT – 20 JANUARY 2026

SDT DECISIONS/ REASONING

COMMENTS

- There has been increased regulatory scrutiny in recent years over strategic lawsuits being taken to silence public criticism. In turn, this has led to concerns over the SRA's heavy-handed approach to enforcing anti-SLAPP (strategic litigation against public participation) regulations. This case is the third failed anti-SLAPP prosecution by the SRA over the last year. The question is where the SRA's anti-SLAPP agenda will go from here.
- Clarification on the use of "without prejudice" and "confidential" labels on legal correspondence, particularly by lawyers engaged in reputation management.
- While the SRA's decision was overturned on appeal, care should be taken to ensure that such labels are used for a proper purpose and on correspondence that is, at least *arguably*, properly "without prejudice" and "confidential".

FACTS

In 2022, tax commentator and journalist Dan Neidle published articles alleging former Chancellor Nadhim Zahawi had lied about his tax affairs. Mr Zahawi instructed Mr Ashley Hurst of Osborne Clark to respond.

On 16 July 2022, Mr Hurst emailed Mr Neidle seeking the retraction of the allegations. This email was headed "*Confidential & Without Prejudice*" and stated that Mr Neidle was not entitled to publish or refer to the email (other than for the purposes of seeking legal advice). Mr Neidle published the email online and complained to the SRA.

The SRA charged Mr Hurst with professional misconduct in that he had improperly tried to restrict Mr Neidle's right to publish or discuss the contents of the email. The SRA referred him to the Solicitors Disciplinary Tribunal (**SDT**). The SDT fined Mr Hurst £50,000 and ordered payment of £260,000 in costs. Mr Hurst appealed the decision.

DECISION

The Court allowed the appeal, finding that the SDT had erred in law.

The Court found that the SDT had approached the case from the wrong starting point. The "*appropriate legal and professional starting point*" was that Mr Hurst was entitled to challenge Mr Neidle's right to publish accusations (and did so via email following Mr Neidle refusing to discuss the matter over the telephone).

Further, the Court found that the SDT had adopted the wrong test. It purported to consider whether Mr Hurst's email was, in fact, without prejudice and confidential rather than whether it was *arguably* without prejudice and confidential.

The Court found the email in question to, at least arguably, be a without prejudice communication (it identified the legal dispute, contained some admissions and offered an alternative to litigation).

Similarly, the Court found it arguable that the email met the threshold of confidentiality. The email included personal and financial information about Mr Zahawai that was not public, this information was shared for the limited and specific purpose of challenging Mr Neidle's allegations, it was included to persuade Mr Neidle to retract his allegations and the purpose and limitations of the email were clear on its face.

The Court also rejected the SDT's findings that Mr Hurst's primary motivation was to stifle publication. In this regard the Court criticised the SDT's failure to give reasons for rejecting Mr Hurst's evidence to the contrary. Given the seriousness of the allegations, the Court found the SDT's approach unfair and irrational. The Court further criticised the SDT written decision which the Court found lacked proper explanation as to how the law applied or conclusions were reached.

Other developments

In the case of **Vehicle Control Services Ltd v Langley** (7 January 2026) the District Judge found that unqualified solicitors/advocacy agents do not have rights of audience to appear in Court. His consideration of what constitutes an "*exempt*" person under the Legal Services Act may be of interest given the recent case of Mazur (the appeal of which is due to be heard later this year). It will cause concern for agencies offering advocacy-only services by instructing unqualified individuals to attend hearings.

Expert Tooling and Automation Limited v Engie Power Limited. The facts of this case were reported in our May 2025 update and concerned commissions paid to an energy broker. Expert Tooling had appealed to the Supreme Court to determine, *inter alia*, whether the Court of Appeal was wrong to distinguish between a "half secret" and a "fully secret" commission to determine whether the commission should be treated as a bribe that attracts restitutionary liability. In light of the Supreme Court's judgment in *Hopcraft v Close Brothers Ltd* [2025] UKSC 33, which held that there was no difference between "half secret" and a "fully secret" commissions, the parties agreed that the appeal against the decision of the Court of Appeal should be allowed. On 9 January 2026, the Supreme Court therefore allowed the appeal. Where appeals are allowed by consent of the parties, no judgment or order is published.

Cases to watch

The appeal of **Julia Mazur and others v Charles Russell Speechlys** has been listed to take place on 24 February 2026 for one day. It is anticipated that a judgment will be handed down promptly given the significance of this case and possible consequences for the profession.

We have seen group actions becoming increasingly popular. In April, the Court of Appeal will consider the cases of **Angel and others v Black Horse** and **Green and others v Close Brothers** which have been described as "*omnibus*" claims, involving thousands of claimants. The Court's decision in respect of the correct procedure of such claims may therefore be of interest.

The appeal for the case of **London Trocadero v Picturehouse Cinemas** and others (as reported in our July 2025 update) has been listed to take place in June 2026.



AUTHORS

Sarah Crowther

Partner
London - Walbrook

T: +44 (0) 20 7894 6254
scrowther@dacbeachcroft.com

Matt Williams

Legal Director
London - Walbrook

T: +44 (0) 20 7894 6233
mtwilliams@dacbeachcroft.com

Imogen Allan

Senior Associate
London - Walbrook

T: +44 (0) 20 7894 6047
iallan@dacbeachcroft.com

Jessica Brain

Knowledge Lawyer
Leeds

T: +44 (0) 113 251 4921
jbrain@dacbeachcroft.com

PUBLISHED

FEBRUARY 2026

[dacbeachcroft.com](https://www.dacbeachcroft.com)



Connect with us: DAC Beachcroft LLP

DAC Beachcroft publications are created on a general basis for information only and do not constitute legal or other professional advice. No liability is accepted to users or third parties for the use of the contents or any errors or inaccuracies therein. Professional advice should always be obtained before applying the information to particular circumstances. For further details please go to www.dacbeachcroft.com/en/gb/about/legal-notice. Please also read our DAC Beachcroft Group privacy policy at www.dacbeachcroft.com/en/gb/about/privacy-policy. By reading this publication you accept that you have read, understood and agree to the terms of this disclaimer. The copyright in this communication is retained by DAC Beachcroft. © DAC Beachcroft.