DAC BEACHCROFT

PROFESSIONAL LIABILITY – LEGAL UPDATE

JANUARY 2026



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Top 5 cases of 2025

London Trocadero (2015) LLP v (1) Picturehouse Cinemas Limited (2) Gallery Cinemas Limited and (3) Cineworld Cinemas Limited – 23 May 2025 – Landlord's commission

- This case concerned the recoverability of a "Landlord's Commission". The High Court held that there was no contractual basis for this commission and ordered the landlord repay sums paid by the tenants.
- This decision could result in other tenants seeking to recover commission payments paid to landlords. Whether those claims are successful will depend on the terms of the lease.
- Landlords may seek to bring claims against professionals involved in the drafting of the leases and the practice of passing commission payments on to clients. Affected professions may be solicitors, brokers, managing agents and property agents.
- The question of commissions, secret commissions, and conflicts of interest in various industries has been raised this year with the Court, including the Supreme Court in the cases of *Hopcraft, Johnson & Wrench*.

The King on the Application of Frederick Ayinde v The London Borough of Haringey and Hamad Ah-Haroun v (1) Qatar National Bank QPSC and (2) QNB Capital LLC - 6 June 2025 – AI, Regulatory - Contempt of Court

- The Divisional Court considered the "*competence and conduct*" of the lawyers involved in both of these cases. In *Ayinde*, a pupil barrister had cited five authorities in submissions to the Court which were non-existent. In the case of *Al-Haround v Qatar*, a solicitor relied upon legal research provided by his client which was sourced using AI and was incorrect. Ultimately, the Court decided not to initiate contempt of court proceedings, but indicated that in future cases, admonishment is unlikely to be sufficient.
- The judgment was sent to the Bar Council, the Law Society and the Council of the Inns of Court. They were invited to consider what steps they should take.
- Various guidance has been published/updated by the regulators over the course of the year on the topic of the use of AI. Most recently, in November 2025, the Bar Council provided guidance on the use of generative AI and the Law Society updated its "AI and Lawtech" policy.
- The Court emphasised that qualified lawyers must satisfy themselves of the accuracy of submissions put to the Court and ensure the relevant duties have been discharged. It also commented on the importance of leaders (e.g. heads of chambers and partners in law firms) taking steps to ensure individuals comply with the guidance and discharge their obligations to the Court in respect of AI. The Court noted that "*the profession can expect the court to inquire whether those leadership responsibilities have been fulfilled*".

(1) Julia Mazur (2) Jerome Stuart v Charles Russell Speechlys LLP and (1) The Solicitors Regulation Authority (2) The Law Society of England and Wales - 16 September 2025 – Conduct of litigation

- The key legal question for the High Court was can a non-authorised person conduct litigation under supervision or within an authorised firm?
- The High Court ruled that only authorised persons (or those falling within an exempt category under section 19 of the Lega Services Act) may conduct

litigation. Employment by an authorised firm or supervision by an authorised person is not sufficient to allow non authorised individuals to conduct litigation.

- The Law Society issued a practice note providing advice on how solicitors, law firms and legal businesses can make sure that only those authorised to do so carry on the conduct of litigation. It provided practical guidance on what constitutes "conducting litigation" and cautioned against using this decision as a "tactic in litigation". This note has been updated on numerous occasions - we are currently on the fifth version of the guidance.
- The SRA stated that in its view, the judgment did not change the position in law. Nonetheless, it summarised some of the steps which may be taken to ensure that only authorised persons conduct litigation.
- The Legal Services Board announced a review into the impact of this decision and approved a fast-track application from CILEx Regulation to allow legal executives to obtain standalone litigation practice rights.
- On 24 November, CILEX was granted permission to appeal the judgment. It is understood that the appeal will focus on whether the Legal Services Act inadvertently failed to codify pre-existing custom and practice. The appeal has been listed for 24 February 2026. The Law Society has permission to be a party to that appeal.

Ahmed and others v (1) White and Company (UK) Limited (2) Allianz Global Corporate & Speciality SE – 22 September 2025 – Policy wording, notification, aggregation

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

(1) Royal & Sun Alliance Insurance Limited, (2) Royal Sun Insurance (UK) Limited (in liquidation), (3) Royal & Sun Alliance Reinsurance Limited (formerly Royal Reinsurance Company) v Equitas Insurance Limited - 21 October 2025 – Reinsurance

- This judgment dealt with the interpretation of reinsurance contracts. The Court considered what the excess was eroded by; whether the reinsurers were bound to follow settlement agreements between the reinsured and reinsurers; consideration of what constituted "proper and businesslike steps" and the interest awarded.
- It is rare for a reinsurance dispute to reach Court - most are arbitrated.
- This case provides further guidance on the application of the "*proper and businesslike manner*" test from *The Insurance Co. of Africa v Scor (UK) Reinsurance Co. Ltd [1985] 1 Lloyd's Rep. 312* with the Court commenting that it is akin to an allegation in negligence.[1]
- This case supports the view that reinsurers are liable for interest from the date of the earliest date of a reinsured's loss. While RSA was not awarded compound interest, the Court accepted that compound interest may be appropriate if there is a sufficient basis to show compound interest reflects the claimant's actual loss.

[1] Pursuant to *Scor*, for a reinsurer to be bound under a 'follow the settlements' clause to a settlement accepted by a reinsured, the settled claim must fall within the risks covered by the reinsurance policy and the reinsured must have acted honestly and taken proper and businesslike steps in settling the claim.

Top 5 themes of 2025

GEOPOLITICS – sanctions

The past year has seen a rise in disputes concerning sanctions regimes and decisions taken by insureds in this context. The courts are increasingly scrutinising the reasonableness of these decisions.

Cases have addressed businesses which have made decisions that breach sanctions, and decisions made not to act pursuant to sanctions concerns[2] (where this gives rise to a breach of contract).

Caselaw has also highlighted the potential commercial liabilities of advisors (e.g. solicitors holding funds on behalf of parties that subsequently become subject to sanctions) and the complexities of the (dis)application of the extraterritorial effect of sanctions regimes.

Further, recent decisions demonstrate an increasing willingness by the courts to find companies are liable for damages where cautious decisions are made (in an attempt to comply with sanctions regimes) but other evidence may undermine the basis for those decisions[3].

Insurers must be mindful of the sanctions implications at play in international trade and business. In deciding when to continue and when to hold back on the basis of sanctions breach concerns, they should ensure that their decisions are thorough, well-documented and reasonable.

ENVIRONMENTAL – The Law Society Climate Change and Conveyancers

On 12 May 2025, the Law Society published its "climate change and property" practice note (**Guidance**), which sets out good practice for its members who work in property in the context of climate change. The Guidance describes the risks connected to property transactions, whether they involve residential, commercial or mixed-use properties. It is a must read for firms of all sizes which practice in these areas.

The Law Society has emphasised that the Guidance is not legal advice (such that it would constitute a defence). However, following its suggestions will make it easier for professionals to justify their actions if called upon to do so. The Guidance is an important development and offers some certainty in an area facing risks. Climate risk is constantly evolving and it has the potential to have a significant effect on real estate and those investing in it.

The Law Society is not the only entity considering climate risk. Professional bodies for other related industries are also alive to this issue, and property lawyers may encounter other professionals they habitually work with changing their practice in light of new

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[2] E.g., *XTX Markets Technologies Ltd v Mazars LLP*, where the Claimant sought a declaration that Mazars had discriminated against it by refusing to provide services because its beneficial owner was Russian. The County Court dismissed the claim (on the basis that Mazars had not refused to provide payroll services in the UK because that was not what XTX had sought). However, it indicated that it would have been direct discrimination had the firm to refused to provide services because the Claimant's owner was Russian. Further, Mazars's argument that it had reasonably believed it was acting in compliance with the sanctions regime was rejected.
See also *LLC EuroChem North-West-2 and anr v. Société Générale S.A. and ors,* where the High Court found banks were prohibited from making payments under bonds to individuals who were listed in an EU Sanctions list due to public policy grounds.

[3] *Tonzip Maritime Ltd v 2Rivers Pte Ltd,* concerning the interpretation and application in a sanctions clause, which owners sought to rely on. The Court found that the Claimant had not made a reasonable objective decision. The case highlights the need for decisions to be made objectively and based on evidence, not speculation.

guidance (for example the Royal Institute of Chartered Surveyors' Global Standards which stipulate that valuations must include the potential impact of significant environmental, social and governance factors on value.)

REGULATORY – AML scrutiny/fraud cases

The legal profession is an important part of the UK's fight against economic crime. It is therefore not surprising that AML continues to be a key area of focus for the SRA and fraud cases remain on the Court's radar. The following cases show what can happen if companies, particularly law firms, fall short.

Fraud in conveyancing (leading to breaches of undertaking) was seen in two cases, *Social Money Limited v Attwells Solicitors LLP*; and *Ultimate Bridging Finance Limited v 4 Fairweather Close Ltd*. In *Ultimate Bridging Finance Limited v 4 Fairweather Close Ltd* and others the defendants issued Part 20 proceedings against their solicitors for breach of trust and breach of undertaking when they released completion sums to persons unknown.

In May, the Supreme Court handed down its decision in the case of *Bilta v Tradition Financial Services*, addressing issues of dishonest assistance, fraudulent training and limitation. Despite not controlling or directly managing the fraudulent companies, the Court held that Tradition could nonetheless be liable for fraudulent trading under s. 213 of the Insolvency Act 1986. This decision clarified that liability under section 213 extends to external parties who knowingly participate or facilitate fraudulent trading, even if not managing or controlling the company.

More recently, in *Grosvenor Property Developers Limited v Portner Law Limited*, a partner at Portner Law was found to have acted dishonestly (for which the firm was vicariously liable.) He had failed to comply with the relevant regulations, Law Society guidance and his own firm's policies and had allowed over £2,000,000 to pass through the client account.

In December, the Solicitors Disciplinary Tribunal ordered a solicitor to pay a fine of £15,000 and costs of £35,386 after he failed to identify and act upon warning signs of fraud and/or money laundering.

It is therefore a matter of ongoing importance that due diligence is undertaken and firms and individuals comply with regulations in this area.

TECHNOLOGY – AI

Throughout the year, we have seen several cases that underline the need for lawyers to remain vigilant in regards to regulatory governance and risk management when using AI (including *Ayinde v The London Borough of Haringey and Hamad Al-Haroun v Qatar National Bank QPSC and QNB Capital LLP* and *MS (Bangladesh) v Secretary of State for the Home Department*). The misuse of AI can lead to negligence claims, regulatory issues and reputational damage. Lawyers who fail to comply with their duties in regards to AI (for example, by relying upon non-existent case citations) risk severe sanctions which will also impact on their firms from a financial and reputational perspective. Leaders of law firms must ensure that all their colleagues who provide legal services understand and comply with their duties when using AI tools.

The use of AI will only become more prevalent, including by the court. In *Evans & Ors v Revenue & Customs Commissioners* the Judge used AI to help produce his decision and Judicial Guidance on the use of AI was updated twice this year, in April and then October.

As AI technology advances, professionals have to keep pace with its developing capabilities. AI has the potential to enhance efficiencies and reduce the incidence of human error but whilst the advantages are obvious, they must be balanced against the risks. Recent cases have demonstrated the legal and regulatory risks inherent in using AI that will impact all professional services firms. These risks can be mitigated by firms establishing safeguards to check outputs and acting now to assess their risks, developing internal policies, issuing guidance and training to their staff and structuring methods to ensure compliance. It would also be prudent to consider any gaps in their professional indemnity insurance and how retainers address the use of AI and clients' data.

SOCIAL – fiduciary duties

Our updates in 2025 have included cases which have considered fiduciary duties in different sectors (including recovery agents, energy brokers and car finance).

In *Rukhadze v Recovery Partners GP Ltd*, decided in March, the Court of Appeal emphasised the requirement for fiduciaries to act with undivided loyalty towards their principle which led to the no-conflict rule and the no-profit rule.

Expert Tooling and Automation Limited v Engie Power, also heard by the Court of Appeal in March, dealt with issues relating to "half secret commissions" and restated key considerations (including the correct test for informed consent and that informed consent does not and cannot limit the scope of a fiduciary's duty).

The Supreme Court's judgment in *Hopcraft and another v Close Brothers Limited; Johnson v FirstRand Bank Limited and Wrench v FirstRand Bank Limited* was handed down in August. A fiduciary relationship was not found to exist between motor dealers and customers but it was emphasised that the court would be prepared to expand the types of relationships which are classified as fiduciary.

In November 2025, the Supreme Court handed down its decision in the case of *Mitchell v Sheikh Mohamed Bin Issa Al Jaber*, where it found that fiduciary duties can arise "ad hoc" and did so when a director purportedly exercised fiduciary powers. There did not need to be an express or implied undertaking to act as a fiduciary, if someone takes it upon themselves to act as a fiduciary in "*the custody and administration*" of property on behalf of others, they are subject to fiduciary obligations. It emphasised the explanation in *Hopcraft* that the relationship of trust and confidence is the consequence (not the cause) of a fiduciary duty. Another significant aspect of the Supreme Court's judgment concerned the correct approach to equitable compensation if the misappropriated property could not be returned and how its value would be assessed.

Cases to watch in 2026

- **NMC Health Plc (in administration) v Ernst & Young LLP – a negligence claim against auditors.**
- **Verity Trustees Limited v Wood, aka The Pensions Trust Litigation – which is expected to clarify issues arising from the Virgin Media pension case, particularly around s.37 of the Pension Schemes Act 1993.**
- **Mark Lee and (2) Kenilworth Claim Limited (in liquidation) v BDB Pitmans LLP (now known as Broadfield Law UK LLP) and Adcamp LLP (previously known as Pitmans LLP) – Substitution of a party after the expiry of the limitation period.**

- **Office Properties PL Limited (in liquidation) v Adcamp LLP – Substitution of a party.**
- **The appeal in the case of Mazur (listed to be heard on 24 February 2026)– conduct of litigation.**

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