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# MARKET INSIGHTS

# UNITED KINGDOM

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### Motor finance commissions

On 1 August 2025, the Supreme Court of the United Kingdom (UKSC) delivered its long-awaited judgment in the conjoined appeals of *Hopcroft*, *Johnson* and *Wrench* ([2025] UKSC 33). The appeals addressed whether undisclosed or partially disclosed commission payments made by motor-finance lenders to car dealers — who acted as intermediaries in arranging credit for used-car purchases — amounted to bribes or secret profits recoverable in equity. The claimants contended that such payments constituted either common-law bribes or fiduciary gains improperly retained.

In a unanimous decision, the UKSC rejected all tort and equitable claims. The court held that the dealer-brokers had not undertaken, and could not be said to owe, a fiduciary duty to their customers. Without such a duty, the essential foundation for a common-law bribery claim or accessory liability for breach of fiduciary duty was absent. Reaffirming established principle, the court stressed that fiduciary obligations arise only where a party undertakes to act solely in another's interests. In commercial arrangements where intermediaries have an evident financial incentive to secure transactions, such an undertaking will not readily be implied.

The court, however, upheld Mr Johnson's separate claim under section 140A of the Consumer Credit Act 1974 (CCA), finding that the lender–borrower relationship was unfair on the facts. The lender was ordered to repay the commission — 25% of the credit advanced — plus interest. The decision illustrates the highly fact-specific nature of the CCA unfair-relationship test. Relevant factors included the significant size of the undisclosed commission, the absence of clear disclosure of the dealer–lender relationship, and Mr Johnson's limited commercial experience, compounded by documentation that did not draw adequate attention to key information.

The judgment has significant consequences for the motor-finance sector. It brings clarity and some comfort to lenders and dealers by confirming the narrow circumstances in which undisclosed commissions may ground fiduciary or bribery claims. While the court acknowledged that a fiduciary relationship could theoretically arise on different facts, the tripartite dealer–lender–consumer model makes this unlikely. Consequently, the industry is expected to focus on reducing CCA-related risks through improved transparency, clearer contractual materials, and more effective communication with customers.

Regulatory implications also follow. The Financial Conduct Authority is continuing work on an industry-wide redress scheme for customers potentially treated unfairly between 2007 and 2024, with final rules expected in spring 2026 as part of a broader review of historic commission practices.

The judgment also provides an important doctrinal restatement. The court reaffirmed that fiduciary duties will not be imposed lightly in commercial settings and that commission-based intermediation seldom involves the undivided loyalty required to establish such obligations. This clarification aligns equitable doctrine with commercial reality and offers welcome certainty to market participants.

### Changing landscape of group litigation

Group litigation remains a prominent and expanding feature of the commercial disputes landscape. Three areas illustrate this growth: securities litigation under the Financial Services and Markets Act 2000 (FSMA), opt-out collective actions before the Competition Appeal Tribunal (CAT), and large-scale mass tort claims. The English courts are increasingly adept at managing complex, multi-party disputes, and although progress has sometimes been slowed by pre-trial settlements, the maturing of legal frameworks and procedure is now producing clearer returns for claimants and funders.

In securities litigation, the first case to reach a full liability and quantum judgment under s.90A FSMA — concerning untrue or misleading statements in published information — was *Autonomy Corporation and others v. Lynch and Hussain* [2025] EWHC 1877 (Ch), decided in July 2025. As the claim arose from an unusual fact pattern involving a single purchaser of a company taken private, the judgment leaves unresolved key issues regarding the scope of s.90A/Schedule 10 and s.90 FSMA. Questions that remain include the degree of reliance required for s.90A claims and the proper assessment of loss in a typical stock-drop context. These foundational matters are expected to receive greater judicial scrutiny as further securities actions reach trial, providing the market with much-needed certainty.

Opt-out collective actions — currently limited to competition law breaches — were introduced by the Consumer Rights Act 2015. On 23 October 2025, the CAT delivered its first successful merits judgment for a class representative, finding in favour of Dr. Rachel Kent on behalf of roughly 36 million consumers in proceedings against Apple. The Tribunal found that Apple abused its dominant position through exclusionary practices affecting app developers. Damages were claimed at approximately GBP 1.5 billion. This landmark decision is likely to accelerate the growth of collective competition claims.

Foreign mass torts have also gained prominence. On 14 November 2025, the High Court held BHP Plc and BHP Limited liable under Brazilian law for losses arising from the 2015 collapse of the Fundão dam in Brazil, operated by their partly owned subsidiary. With damages asserted at GBP 36 billion — subject to a separate quantum trial — the case exemplifies the English courts' ability to handle exceptionally large international disputes. Over 600,000 claimants were based abroad, the harm occurred entirely in Brazil, and the applicable law was foreign, yet the proceedings were managed effectively in England.

Collectively, these developments reinforce London's status as a leading forum for high-value, multi-party litigation. The courts' growing expertise across securities actions, competition collective proceedings, and transnational mass torts continues to strengthen the UK's position in global commercial dispute resolution.

### Use of generative AI

On 4 November 2025, the High Court handed down judgment in *Getty Images v. Stability AI* [2025] EWHC 2863, one of the most closely watched intellectual property (IP) cases in recent years. In broad terms, the case concerned Getty's allegation that Stability AI had infringed its IP rights in the development, training and use of Stability AI's Stable Diffusion image-generation model.

The court ultimately rejected most of Getty's infringement allegations (many of which were abandoned prior to trial). Most significantly, it rejected the contention that the Stable Diffusion model could be characterised as an "infringing copy" of Getty's IP under the Copyright, Designs and Patents Act 1988 (CDPA). In doing so, the court aligned itself with the prevailing consensus that contemporary generative models do not incorporate literal reproductions of the training data fed into the model and therefore cannot be said to "contain copies" of the underlying protected works. Undoubtedly this aspect of the decision will represent a blow to creative industries in the UK which have been increasingly pushing for greater protections for their artistic works to be enacted into the law.

The judgment also advanced the view that the concept of an "article" in UK copyright law (i.e. a protected work) may extend to intangible subject matter, which interpretation sits uneasily with the existing parameters of the EU distribution right. The court did not confront this tension, raising questions about whether it possessed the authority to adopt such an interpretation absent direction from an appellate court.

Although some have dismissed the decision as underwhelming (crucially, it does not determine the question of whether UK-based web scraping and model training would infringe the CDPA given the narrowed contours of the case), it still delivers meaningful guidance, especially on the trademark issues, and emphasises the importance of ensuring an appropriate balance between AI innovation and the rights of creative industries. For AI developers, the decision highlights the importance of effective safeguards to prevent problematic results. It also illustrates how heavily these disputes turn on evidence, given the challenges of replicating AI-generated content.

This, however, will not be the last word as the case is subject to appeal, to be heard by the Court of Appeal in December 2026.

### Litigation funding

On 2 June 2025, the Civil Justice Council (CJC) released its final report, "Review of Litigation Funding", calling for wide-ranging reform to the litigation funding industry in the UK.

The CJC makes a number of recommendations which fall within four broad categories:

- Parliament reverses the effect of the Supreme Court's 2023 judgment in the case of *PACCAR*, confirming that litigation funding agreements are distinct from damages-based agreements and restoring the enforceability of percentage-based returns, with both retrospective and prospective effect.
- A "light-touch" regulatory regime covering all forms of litigation funding and crowdfunding.
- Bespoke rules for collective and group claims. Funders would owe a Consumer Duty, funded parties would obtain independent advice from King's Counsel before signing agreements, and standardised terms for litigation funding agreements would be developed. Courts would also receive the funding agreement for approval.

- Cost reform, including establishing a pre-action protocol for group claims, mandatory costs budgeting for funded collective actions, limited recoverability of funding costs, and no default presumption that security for costs should be ordered against a funder or funded party.

On 17 December 2025, the UK Justice Minister Sarah Sackman K.C. confirmed that the Government intended to accept the CJC's two primary recommendations (with the CJC's further recommendations to be considered in due course) by firstly introducing legislation to clarify on a prospective basis that litigation funding agreements are not damages-based agreements (i.e. mitigating the impact of the *PACCAR* judgment), and secondly, introducing proportionate regulation of litigation funding agreements. Legislation will be implemented "when the parliamentary time allows" (according to the Justice Minister), although a specific timetable on the proposals remains unclear.

The long-anticipated legislative reversal of *PACCAR* would provide welcome certainty to litigating parties, particularly operating in collective proceedings and group actions. Disputes as to the terms and enforceability over existing (revised) litigation funding agreements may persist in the medium term, albeit the English Courts appear to have responded firmly to unmeritorious challenges to enforceability, as demonstrated by the Court of Appeal's observations in *Sony Interactive Entertainment Europe Ltd v. Alex Neill Class Representative* [2025] EWCA Civ 841.

While the CJC characterises its proposed regulatory framework as "light touch", and the government has trailed that any regulation would be "proportionate", the impact of implementing the CJC's recommended regulatory regime would be anything but. If adopted by Parliament, the reforms would significantly reshape the UK litigation funding market and replace the current self-regulatory structure. It is not clear how closely aligned any proposed legislation would follow the CJC's recommendations, but it is anticipated as the first step framework for statutory regime, with detail following secondary legislation (and possibly upon further consultation of stakeholders).

Many of the CJC's proposals would simply formalise existing practice, particularly in the CAT, by giving statutory force to established procedural safeguards and the familiar architecture of collective proceedings. However, several recommendations mark a clear departure from the current model.

Most notably, the CJC proposes that funders and solicitors certify that they did not initiate contact with the claimant. In practice, funders and law firms often identify potential claims and approach prospective representatives — a pattern the CAT has openly acknowledged in certifying multiple collective actions. The CJC's suggestion that funders or law firms could instead act as class representatives raises obvious conflict-of-interest concerns.

The report also recommends that courts, including the CAT, assess whether a funder's return under a funding agreement is "fair, just and reasonable", a task the CAT has historically reserved for the distribution stage rather than certification.

Additional proposals include standardised funding terms and mandatory independent advice on funding agreements — illustrating that, despite the "light touch" label, considerable regulatory development lies ahead.

## AUTHOR BIOGRAPHIES

**Fiona Huntriss**
Focusing on litigation and broader disputes strategies, Fiona's portfolio encompasses high-profile finance litigation, restructuring and insolvency-related litigation, commercial litigation, shareholder disputes and sovereign debt disputes. She frequently litigates both before the English courts and other fora, in complex, multi-jurisdictional and novel situations. Fiona also has a strong advisory practice working with clients to understand litigation risk and develop litigation strategies ahead of time. Fiona's expert litigation skills combined with commercial nous has resulted in a proven track record in her cases. She has successfully represented numerous bondholder and lender groups in English litigation, as well as in contentious restructurings where she is able to contribute authoritative technical knowledge with litigation savvy. Fiona has a prolific record in commercial litigations before the English High Court, Court of Appeal and Supreme Court. Her quality and work are recognised by longstanding rankings in the major directories, including Chambers and Partners and Legal 500.

**Kimmie Fearnside**
Dual qualified in both England and New York, Kimmie maintains a broad commercial and financial litigation practice, focusing on high-value court disputes where she frequently litigates before the High Court and on appeals. Kimmie also has experience in complex international arbitration matters, with expertise in London Court of International Arbitration (LCIA) and International Chamber of Commerce (ICC) rules, as well as acting investor-side in an investment treaty challenge. Kimmie is adept in acting on matters relating to allegations of fraud, misrepresentation and breach of warranty claims, and a range of corporate disputes including breaches of director duties, shareholder disputes, and securities-related actions. She is recognised as a key lawyer for commercial litigation in Legal 500. Kimmie also leads the firm's award-winning *pro bono* practice, spearheading the strategic direction for the firm's *pro bono* and broader community investment initiatives. As a solicitor advocate, Kimmie represents litigants on a *pro bono* basis in the Chancery Division of the High Court.

**Rekha Rogers**
Rekha is a Solicitor Advocate who advises in complex, high-value commercial litigation and arbitration, often involving allegations of substantial international fraud, and has practical experience in the conduct of disputes under the major arbitral institutions, including the LCIA, ICC and UNCITRAL. Her work to date has predominantly focused on the banking and financial services, securities, energy and infrastructure industries in Europe, the United States, Africa and Latin America, as well as on environmental, social and governance (ESG) issues. She has been recognised as a key lawyer for Banking Litigation and Commercial Litigation in Legal 500. More generally, Rekha is developing a broad ESG litigation practice, with particular emphasis on her interest in environmental issues, climate change law and international human rights.