

BIANNUAL BANKING LITIGATION UPDATE (AUTUMN 2022)

17 October 2022
Legal Briefings

Welcome to the Autumn 2022 edition of our biannual Banking Litigation Update, in which we highlight the most important cases and developments affecting UK financial institutions over the past six months.

Read the full [Banking Litigation Update](#) here.

We have also recorded a short video to provide a high level overview of developments during this period, which you can access here:

The content of this edition of our Banking Litigation Update is as follows:

Contractual Construction

- [High Court considers termination and enforcement of security rights in context of default on loan agreement](#)
- [Court of Appeal finds claim for wasted expenditure not excluded by clause excluding consequential losses](#)
- [High Court grants bank access to customer documentation relating to receivables in securitisation transaction](#)
- [Court of Appeal interprets settlement agreement as releasing party's own affiliates, including former administrators and their solicitors](#)
- [High Court considers application of COBS and Braganza duty to close out of trading account](#)

Duties in Financial Services

- [Privy Council confirms that Quincecare duty is limited to protecting customers and does not extend to third parties](#)
- [Privy Council considers presumption of undue influence in context of bank's security rights](#)
- [High Court dismisses Quincecare duty claim giving guidance on the scope and nature of the duty](#)
- [High Court considers receiving bank's liability in context of APP fraud](#)
- [High Court finds no unfairness in bank's restructuring of loan arrangements](#)
- [Court of Appeal considers when director liable as accessory to a tort committed by a company.](#)
- [Administrative Court dismisses judicial review challenge of FOS "mortgage prisoner" decision](#)

Mis-selling and Misrepresentation

- [High Court dismisses IRHP mis-selling and unlawful means conspiracy claims against bank](#)
- [Court of Appeal considers approach to damages for deceit claims](#)

Securities Litigation / Class Actions

- [High Court clarifies meaning of "PDMR" in s.90A FSMA claims](#)
- [How to navigate the Autonomy judgment: guidance for corporate issuers defending Section 90A / Schedule 10A FSMA shareholder claims](#)
- [Chapter published in The Securities Litigation Review \(8th Edition\): England and Wales](#)
- [Latest split trial decision in securities class action under s.90A FSMA](#)
- [Court of Appeal overturns decision striking out class action despite parallel claims overseas](#)

Cryptoassets

- [Article published in Butterworths Journal of International Banking and Financial Law: Cryptocurrency, proprietary injunctions, freezing orders, and trusts: the law is not cryptic.](#)
- [Freezing orders brought onto the blockchain and service of proceedings via NFT](#)
- [High Court grants freezing injunction in relation to stolen non-fungible tokens \(NFTs\)](#)
- [Data Objects: Law Commission of England and Wales proposes new category of personal property](#)

Procedural Developments

- [Commercial Court Report 2020-2021: court remains very busy with significant international and complex domestic disputes](#)
- [Article published on Practical Law's Dispute Resolution blog: Compulsory ADR: a commercial litigation perspective](#)
- [High Court hands down judgment despite the proceedings having settled before circulation of the draft judgment](#)
- [Another decision showing what parties can—and cannot—do when they receive a draft judgment under embargo](#)
- [New edition of Chancery Guide in force](#)
- [Court of Appeal confirms Damages-Based Agreements \(DBAs\) are not for defendants](#)

Disclosure and Privilege

- [High Court finds identity of those giving instructions to lawyers not protected by litigation privilege](#)
- [Competition Appeal Tribunal considers when there is a dispute sufficient to give rise to without prejudice privilege](#)
- [Disclosure Pilot Scheme to take effect as new Practice Direction from 1 October 2022, with no substantial changes](#)

Factual and Expert Evidence

- [High Court decision suggests party alleging witness statement fails to comply with PD 57AC must identify specific failures](#)
- [Party penalised in costs for disproportionate application to strike out witness evidence for non-compliance with PD 57AC](#)
- [Indemnity costs awarded against party who dismissed complaints about witness](#)

[statement non-compliance as “nit-picking”](#)

Covid-19

- [Force majeure and Covid-19: High Court decision turns on specific wording of FM clause](#)
- [Court of Appeal upholds summary judgment for rent accrued during Covid closures of commercial premises, rejecting arguments based on implied terms and "failure of basis"](#)

Jurisdiction

- [High Court orders stay of English proceedings brought by bank on grounds of forum non conveniens](#)
- [English court judgment enforced in China for the first time following landmark policy announcement](#)
- [Article published on Practical Law's Dispute Resolution blog: Expansion of jurisdiction gateways coming soon](#)
- [High Court considers when recast Brussels Regulation continues to apply in transitional cases](#)

Other Significant Developments

- [ESG updates—The Bank of England Climate Biennial Exploratory Scenario](#)
- [The Financial Services and Markets Bill—a new vision for future UK financial services](#)
- [Article published in Bloomberg Law: Global LIBOR legislative solutions](#)
- [FCA confirms final rules for new Consumer Duty](#)
- [Navigating UK sanctions against Russian persons in English court proceedings](#)

- [Russian sovereign debt defaults: A disputes perspective](#)
- [ESG for financial institutions—Top five trends in UK and EU Regulation for 2023](#)

We hope you find our update useful and, as ever, please feel free to contact your usual Herbert Smith Freehills contact if there are any topics that you would like to discuss further.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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