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If there’s one thing litigators aren’t disputing, it’s that workflow is not likely to drop as we settle into 2025.

Activity in the UK dispute resolution market ‘is showing no signs of abating’, says Paul Lewis, joint managing partner of Herbert Smith Freehills’ global disputes practice. He maintains that with litigation remaining one of the country’s top exports, the market is set to stay busy. ‘The reputation of the English Courts continues to be at an absolute high’, he says, making the UK an attractive place for both claimants and litigation funders.

Investor-related disputes are a key driver for the steady uptick in claims, suggests Oliver Middleton, chair of the London litigation and trial department at Latham & Watkins. He points out that the increasing sophistication of investors has resulted in ‘a lean towards a US-style approach to litigation, which involves parties using it as a tool rather than as something to avoid.’

Creative cases

With claims on the rise, claimants are becoming more creative. 'One of the interesting trends is how claimants are looking to use different procedural mechanisms to improve the prospects of getting to some form of finding sooner rather than later,' says Lewis.

Partners predict that this creativity will also apply to class actions, with Middleton expecting to see increasing examples of 'innovative ways of bringing class actions or fitting claims within existing class action structures.'

The competition space is one that has already seen its fair share of creativity, a trend that looks set to continue apace over the coming year.

'CAT proceedings for infringements of competition law look set to continue to be a popular route for collective actions, with a number of cases set to go to trial in 2025 (and beyond),' says Alex Sciannaca, commercial litigation partner at Hogan Lovells.

He continues: 'We imagine litigation funders will also be waiting to see how the Courts and Tribunals Judiciary (CJC) report may affect their plans to invest in CAT proceedings, but the forum itself remains a popular one for claimants, in particular given the opt-out regime.'

Funding questions

The CJC's review of litigation funding is due in mid-2025, with further legislation expected to follow. The legislation will bring a welcome end to uncertainty to funders, claimants and litigators, after the initial disappointment of the Supreme Court's 2023 PACCAR decision, which caused ripples of uncertainty across the market when it threw the enforceability of many litigation funding agreements into question by ruling that they are in fact damages-based agreements (DBAs). Uncertainty increased further when the July 2024 King's Speech did not include a litigation funding bill.

Sciannaca believes that despite the ongoing uncertainty there's unlikely to be any dip in funding activity ahead of the new legislation being introduced. He argues that 'the market has already had to adapt and the fact that there hasn't been a major collapse of collective proceedings up until now suggests that funders will continue to take on what they consider to be viable cases, on PACCAR-compliant terms, while they await a possible return to greater flexibility in their funding agreements – if and when the Government decides to take action.'

Funders faced another potential setback following the decision in Justin Le Patourel v BT Group plc. At the end of December 2024, the CAT dismissed the £1.3bn class action claim against BT, which argued that the company had unfairly charged landline customers.

'For many, it will be deeply regrettable that the first full opt-out trial to be heard in the CAT has failed. However, this should not detract from the fact that there have been several recent high-profile settlements in favour of consumers', said Mohsin Patel, director and co-founder at litigation finance broker Factor Risk Management.

And Lewis is confident that funders will bounce back: 'Time will tell whether this outcome will decrease funders' appetite to invest. However, litigation funders are portfolio players who are alive to the risks involved and price accordingly.'

Big tech

Looking to the sectors likely to drive activity in 2025 and beyond, partners predict that it will be technology firms replacing banks in the courts, as fallout litigation from the financial crisis continues to abate. Middleton says: 'Some of the big tech companies have almost become the new banks. They're in the press, and people are looking to sue and demonise them in a way that, a few years ago, parties were trying to demonise the banks.'

Sciannaca agrees that 'Big Tech companies are already subject to significant public scrutiny, particularly around data privacy and the use of AI'. He points to the new Digital Markets, Competition and Consumers Act, passed in May 2024 and suggests that the new code of conduct may draw further attention to the tech sector, which 'will likely increase the scope for private (as well as public) enforcement of consumer rights and competition law.'

But as disputes in the tech space ramp up, litigators face technical difficulties of their own. Lewis maintains that there is an 'essential need for all big-ticket litigators to stay on top of the technology'. As automation software and data analytics improve billing, workflow, and even the collection and analysis of evidence, 'clients are going to rightly demand that their service providers for big-ticket litigation are using the available tech', he says.

AI

Hand-in-hand with any conversation around new technology come the inevitable questions about the use of artificial intelligence. And, while claims are starting to trickle in, the dispute resolution market faces its own battles with AI. 'We're anticipating a continued rise in mass consumer claims and collective actions in both the High Court and the CAT... particularly around data privacy and the use of AI,' says Sciannaca. But, as he also points out: 'like AI itself, risks associated with the use of AI are now being discussed across the board,' including in relation to the use of AI in litigation.

And although 'AI-washing' may be a buzzword in the same way as 'green-washing', Sciannaca suggests that, 'although published data suggests there's been a significant rise in ESG-related litigation over the last five years, we haven't yet seen the proliferation of claims in certain areas that some had anticipated'. As Middleton points out, 'people talk about ESG litigation as if that's a specific thing. But you can't bring an "ESG claim" – that's not a thing'.

But ESG still remains a perennial topic for clients according to partners, as companies are increasingly held to account in relation to their ESG obligations. As Middleton comments: 'I think that trend will only continue, as it's incredibly important and it is an agenda that rightly should be pushed.'

Cases to watch

Several key cases from 2024 also look set to have a lasting impact on the disputes sector over the next year.

The judgment in Aabar Holdings SARL v Glencore PLC & Ors overturned shareholder rule, holding that companies can assert privilege against their own shareholders. As such it could have wider ramifications, with Sciannaca describing it as 'a significant development in the law on privilege'.

Lewis agrees, pointing out that: 'If a company can assert privilege against its own shareholders, then obviously that could bring quite significant change to the previously understood position.'

Sciannaca warns that the ruling could affect securities class actions brought by shareholders. 'It may have an impact on shareholder litigation and securities class actions going forward, with companies now able to assert privilege over legal advice and communications against claimant shareholders.'

Meanwhile, at the beginning of December, Mastercard reached an 'agreement in principle' in the first mass consumer action approved in the UK.

The claim, first filed in 2016 by former financial services ombudsman Walter Merricks, was brought on behalf of around 46 million consumers. The case stemmed from the European Commission's decision that Mastercard had infringed competition law and overcharged UK consumers through its use of interchange fees on cross-border transactions.

Mastercard reportedly reached a settlement of £200 million. In a statement, Merricks said: 'I am very pleased that after nearly nine years of litigation with Mastercard, I have agreed a settlement that I believe will deliver meaningful compensation to class members who chose to come forward to participate in the distribution of the damages.'

According to Patel, the result is 'excellent news for UK consumers, claimant lawyers, litigation funders and after-the-event (ATE) insurers in this case and for collective actions more generally'.

But not everyone is happy with the settlement. A spokesperson for Innsworth Advisors, a consultancy representing the litigation funders for the case, said: 'We strongly oppose this reported settlement, which was struck without our agreement. It is both too low and premature.'

'The position on the MasterCard settlement and how the Court approaches the application to approve the settlement will help potentially shape the competition litigation market,' says Middleton.

The decision brings further attention to an already highly scrutinised market. As Middleton concludes: 'everyone will be watching.'

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