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UK Commercial Litigation: Seven lessons from the first half of 2026

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1. Introduction

The first half of 2026 has produced several decisions with immediate practical implications for businesses litigating in London. The cases considered below address the management of privilege, proof of corporate fraud, historic shareholder claims, contractual termination and jurisdiction provisions, arbitral enforcement and challenges, collective proceedings, and court transparency.

Across those areas, these decisions have practical consequences for how businesses manage litigation risk. They show the importance of defining the client group for legal advice privilege purposes, controlling the circulation of confidential material, maintaining clear transaction and disclosure records, following contractual notice and pricing provisions carefully, and considering how funding, settlement, and court transparency issues may affect the conduct of proceedings. This round-up summarises some of the main developments from the year so far and draws out the points most likely to matter to boards, in-house legal teams, and disputes practitioners.

2. At a glance: practical takeaways

Issue	Cases / developments	Practical takeaway
Privilege and funding communications	Aabar; Serendipity; White v Uber	Privilege depends on structure, confidentiality, and controlled circulation. Businesses should define the client group carefully, preserve confidentiality, and not assume that communications with funders will attract litigation privilege merely because litigation is contemplated.
Fraud and corporate knowledge	Veranova	Contractual limitations under which warranty liability survives only for fraudulent breach impose an exacting evidential burden. Corporate fraud cannot be established by aggregating the innocent or incomplete knowledge of different individuals.
Historic shareholder claims	THG v Zedra	Unfair prejudice petitions are not subject to a fixed statutory limitation period, but delay, acquiescence and prejudice remain important discretionary arguments.
Contractual interpretation	Providence; Hellenic; Spec 1	Courts will ordinarily apply agreed mechanisms for termination, pricing and jurisdiction according to their wording rather than substitute a different commercial outcome.
Arbitration enforcement and challenges	OWH; Eagle Bulk; Indus Powertech	The court remains strongly supportive of enforcement and arbitral finality. Exceptionally, an award may be remitted where the tribunal has failed to decide an issue that was put to it, was essential to the outcome and caused substantial injustice.
Collective actions and funding	Waterside; Innsworth/ Merricks; PACCAR reform	Certification and settlement scrutiny increasingly focus on the economics and proportionality of the proceedings, including likely distribution, take-up, costs and class benefit. Separately, the legal and regulatory treatment of litigation funding remains unsettled.
Court transparency	PD 51ZH	Specified documents used or referred to at public hearings in the pilot courts must generally be filed for public access on CE-File, unless the court orders otherwise.

3. Privilege and funding communications: protecting privilege

The privilege cases in 2026 are helpful for corporate clients, but they emphasise the importance of structure and confidentiality. Privilege may protect internal work undertaken for the purpose of obtaining legal advice, but that protection will depend on how the workstream is organised, who is included, how material is circulated, and whether confidentiality is preserved.

Aabar Holdings S.A.R.L. and others v Glencore plc and others [2026] EWHC 877 (Comm)

Aabar is a significant and commercially important privilege decision. In FSMA securities litigation against Glencore, the claimants challenged Glencore's claim to legal advice privilege over internal communications between members of a defined client group which did not involve a lawyer. Picken J held that legal advice privilege may apply to intra-client documents created by, or passing between, members of the client group, provided the dominant purpose of the document or communication is to seek or obtain legal advice.

The decision is important because it treats legal advice privilege as capable of protecting the internal work needed to obtain advice in a large organisation. It should, however, be expressed carefully. As a first-instance judge, Picken J could not overrule *Three Rivers (No. 5).* He held instead that it had not decided the issue before him, because it concerned documents generated outside the client group rather than intra-client communications.

Aabar therefore arguably supports a more realistic approach to legal advice privilege in large corporate clients, but it is not a substitute for disciplined privilege management. Companies should identify the client group, record the legal purpose of the workstream, keep circulation tight, avoid mixing legal advice with general commercial discussion where possible, and mark documents accurately.

The Serendipity Centre Ltd v Tinson [2026] EWHC 349 (Ch)

Serendipity illustrates the limits of privilege where the dispute is between a company and a former director. The company sought to withhold parts of its former solicitors' file from a former sole director in litigation concerning an alleged director's loan. The High Court held that the company could not assert privilege against the former director in relation to legal advice which she had seen, or was lawfully privy to, while in office. The material was not confidential as against her, even if it remained confidential as against others.

The decision does not give former directors a general right to inspect the company's privileged files. The narrower point is that advice communicated to, or lawfully shared with, a director while in office may not be confidential as against that individual. In later litigation between the company and the former director, privilege cannot ordinarily be used to recreate confidentiality that did not previously exist. It is worth noting for completeness that in other cases, the courts have held that privilege could be maintained against an opponent who had previously seen the material in question. The position therefore appears to be more nuanced than this case suggests.

***White & Ors v Uber London Ltd & Ors* [2026] EWHC 1610 (Comm)**

The recent judgment in *White* raises a privilege issue for parties seeking litigation funding. In advance of a preliminary issue trial on limitation, Uber sought disclosure of communications between Mishcon de Reya, Harbour Litigation Funding and the Licensed Taxi Drivers' Association from the period before Mishcon had been instructed by the claimants, when it was advising Harbour on the potential funding of the claims. The claimants resisted disclosure on several grounds, including litigation privilege.

Birt J accepted that legal advice privilege would apply where the relevant test was met but held that the communications were not protected by litigation privilege. Many of the documents concerned contemplated litigation, but the dominant purpose for which they were created was to enable Harbour to decide whether to fund the claims, rather than to conduct the litigation. Citing Popplewell LJ in *Al Sadeq*, Birt J recognised that litigation funders may, in some instances, play a significant role in the conduct of proceedings and might therefore be able to claim litigation privilege. However, that did not mean that they would always be able to do so: the dominant purpose element must be met. The court differentiated between an individual claimant and a litigation funder, each of which makes decisions about funding, stating that the individual claimant's funding decision is part of the conduct of their own litigation because it is a decision whether to start it. On the other hand, the funder's decision is merely the decision to fund someone else's litigation: it is the choice of the actual claimant rather than the funder to commence proceedings once a funding decision has been made.

The effect of this decision should not be overstated. The judgment is nuanced and arose in unusual circumstances. Legal advice privilege will still apply where the relevant test is met, and the court accepted that litigation privilege could still apply to funders. It did not do so on the facts of this case. However, *White* is a reminder that parties seeking funding should give careful thought to the materials shared with funders, to the purpose for which documents are created, and to whether that material may later become disclosable.

4. Corporate and shareholder disputes: fraud, knowledge, and limitation

Veranova and *THG* are concerned with different areas of corporate litigation, but both are important for businesses, shareholders and transactional parties. In *Veranova*, the buyer established breach of warranty, but the claim failed because the SPA permitted liability only for fraudulent breach and the buyer could not establish dishonesty on the part of any relevant individual. In *THG*, the Supreme Court held that unfair prejudice petitions under section 994 of the Companies Act 2006 are not subject to a fixed statutory limitation period, although delay remains relevant to the court's discretion.

***Veranova Bidco LP v Johnson Matthey plc* [2026] EWHC 1021 (Comm)**

Veranova involved an M&A warranty claim arising from the sale of Johnson Matthey's health business. The buyer alleged that Johnson Matthey had breached a warranty because the terms of a key customer contract were being renegotiated before signing and this had not been adequately disclosed. The court found a breach of warranty and inadequate disclosure. The claim nevertheless failed because the SPA permitted liability only for fraudulent breach of warranty, which the buyer could not prove.

Dias J rejected the attempt to prove corporate dishonesty by aggregating different individuals' states of mind. For conscious fraud in this context, the claimant needed to identify at least one individual with the necessary knowledge of the facts, sufficient knowledge of the warranty, and knowledge that the warranty was false, or recklessness as to whether it was false. Innocent states of mind could not be combined to create corporate fraud.

Where the SPA leaves only fraudulent warranty claims available, proving that the warranty was false is not enough. The buyer must identify the individual whose knowledge and conduct are attributable to the seller and establish that person’s dishonesty or recklessness. Sellers should therefore preserve a clear record of disclosure decisions, internal escalation and the individuals responsible for warranty sign-off.

***THG plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6**

THG is a significant decision on unfair prejudice remedies. The Supreme Court held, by a 4-1 majority, that unfair prejudice petitions under section 994 of the Companies Act 2006 are not subject to a statutory limitation period under either section 8 or section 9 of the Limitation Act 1980. The petition concerned alleged exclusion from an allotment of bonus shares that had taken place more than six years before the petition was presented.

The judgment does not mean that historic unfair prejudice claims will always be allowed to proceed to relief. Delay remains relevant to the court's discretion, and respondents may still rely on arguments about acquiescence, prejudice, laches and the fairness of granting relief after time has passed. But respondents should therefore no longer assume that older petitions can be disposed of by a fixed limitation defence alone.

5. Commercial contracts: courts will apply the terms agreed

Providence, *Hellenic* and *Spec 1* concerned different contexts, but each turned on the effect of the parties’ agreed terms. Where parties have agreed a mechanism for termination, pricing, or jurisdiction, the court will generally hold them to it. Commercial inconvenience is not usually a reason to rewrite the bargain.

***Providence Building Services Ltd v Hexagon Housing Association Ltd* [2026] UKSC 1**

Providence concerned termination under an amended JCT Design and Build Contract 2016. Hexagon made one interim payment late but remedied that default within the contractual 28-day period. When Hexagon later failed to make another interim payment on time, Providence sought to terminate on the basis of repeated default. The Supreme Court held that Providence could not rely on the repeat-default provision unless the earlier termination right had first accrued. In practical terms, the first default needed to have continued unremedied for the relevant 28-day period. The repeat-default right was described as dependent on, or parasitic on, the earlier provision.

This matters beyond construction contracts. Parties seeking to terminate should check not only whether there has been a breach, but whether every contractual precondition has been satisfied and any required sequence followed. An invalid termination notice may itself expose the terminating party to an allegation of repudiatory breach. The decision is also important for users of the JCT Design and Build form, including the 2024 edition, where the relevant wording remains materially the same.

***The Hellenic Republic v Wilmington Trust (London) Ltd* [2026] EWHC 1049 (Comm)**

In *The Hellenic Republic*, “Market Price” was a defined contractual input calculated principally by reference to 30 trading days of bid and ask prices on the specified platform. Because qualifying prices existed, the court applied that formula; it was not open to substitute a different measure merely because it was said to reflect economic value more naturally. The practical point is one of drafting. Pricing provisions should identify the relevant data source, the order of any valuation waterfall and the trigger for each fallback. They should also address what happens if the primary source produces missing, distorted or commercially anomalous data.

***Spec 1 Ltd v The Export-Import Bank of China* [2026] EWHC 1162 (Comm)**

Spec 1 concerned ship finance arrangements containing an asymmetric jurisdiction clause. The borrowers were required to sue in England, while the lender retained the right to sue in any court of competent jurisdiction. The lender brought proceedings in Singapore, and the borrowers commenced English proceedings seeking to restrain the Singapore claim.

The Commercial Court refused the anti-suit injunction. On the construction of the clause, the lender's right to sue outside England was not lost merely because the borrowers had commenced English proceedings. The clause expressly contemplated the possibility of parallel proceedings.

The case should not be read as a rule that all asymmetric clauses will always permit parallel proceedings. It is a reminder that the wording remains critical. Parties who want to avoid parallel proceedings, or who want an option to sue elsewhere only in defined circumstances, should draft that expressly.

6. Arbitration: finality remains strong, but essential issues must be addressed

The arbitration cases from the first half of 2026 confirm the English court's pro-enforcement approach and the high threshold for challenges to arbitral awards. They also show that intervention remains possible in exceptional cases where the tribunal has failed to deal with essential issues capable of affecting the outcome.

***OWH SE i.L. v RTI Ltd and United Company Rusal* [2026] EWHC 1015 (Comm)**

In *OWH*, Rusal resisted enforcement of an LCIA award on public-policy grounds. Its case relied on a Jersey statutory immunity for a reasonable sanctions belief and on the contention that the Jersey courts had wrongly refused that immunity retrospective effect.

The Commercial Court permitted the argument to be advanced but rejected it. No actual illegality in satisfying the award had been identified; the point had not been put to the tribunal; and the public policy favouring finality and enforcement carried substantial weight. The decision does not establish that sanctions can never prevent enforcement. The analysis may be different where payment would itself be unlawful or the sanctions issue was properly raised and evidenced before the tribunal.

***Eagle Bulk PTE Ltd v Traxys North America LLC* [2026] EWHC 518 (Comm)**

Eagle Bulk is a useful reminder of the high threshold for challenges under section 68 of the Arbitration Act 1996. The claimant alleged serious irregularity, including that the tribunal had decided the matter on an issue not advanced by either party, and had failed to deal with issues put to it.

The Commercial Court dismissed the challenge. A section 68 application is not a route to reargue the merits or to challenge reasoning with which a party disagrees. The applicant must show serious irregularity that has caused or will cause substantial injustice.

***Indus Powertech Inc v Echjay Industries Private Limited* [2026] EWHC 827 (Comm)**

Indus Powertech illustrates the exception where an award was set aside due to serious irregularity causing substantial injustice to a party. The Commercial Court allowed a rare section 68(2)(d) challenge where the tribunal had failed to deal with two essential causation issues relevant to the damages awarded. Those issues had been put to the tribunal and were capable of affecting the outcome.

The decision does not weaken the general policy of arbitral finality. It shows the narrow circumstances in which the court may intervene under section 68. In this case, it was not because the tribunal's reasoning was inadequate or wrong, but because essential issues had not been addressed in a way that caused substantial injustice. Parties should ensure that issues lists, pleadings and post-hearing submissions clearly identify the points the tribunal must decide.

7. Collective actions and litigation funding: certification, settlement and funding

Collective actions remain central to the UK disputes market, but 2026 has reinforced that certification and settlement approval are not determined by legal merits alone. The CAT is increasingly focused on whether the proposed costs, funding, distribution arrangements and likely take-up will produce a meaningful and proportionate benefit for class members.

***Waterside Class Ltd v Mowi ASA and others* [2026] CAT 32**

Waterside concerned proposed opt-out collective proceedings alleging collusion by major Atlantic salmon producers. The proposed class was very large, individual recoveries were likely to be small, and the proposed litigation budget was substantial. The CAT refused certification because the proposed class representative had not demonstrated that the likely benefits to the class would be proportionate to the very substantial costs of the proceedings. It also declined to authorise the proposed class representative on the material then available, while leaving open the possibility of a reformulated application.

For defendants, *Waterside* provides useful support for testing whether a proposed claim is economically and procedurally coherent, including whether its costs, distribution model and likely take-up are proportionate to the benefit expected for class members. Proposed class representatives and funders will need to address the same matters when structuring an application.

Merricks v Mastercard* [2025] *CAT 28 and R (Innsworth Capital Ltd) v Competition Appeal Tribunal* [2026] EWHC 1393 (Admin) - *settlement approval

The 2026 development arising from *Merricks* is the Divisional Court's decision in *R (Innsworth Capital Ltd)*. The CAT had approved a £200 million settlement, reserved £100 million for class members and allowed the funder reimbursement of approximately £41–46 million, together with a profit equal to 50% of that expenditure. The Divisional Court dismissed the funder's challenge.

The judgment confirms the breadth of the CAT's supervisory role in an opt-out settlement. The funding agreement does not dictate the return that the CAT must approve. The Tribunal may consider the result achieved for the class, the degree of success, likely take-up, the risks assumed and whether the proposed return would be disproportionate. Funders and class representatives therefore need to design settlement and distribution arrangements on the assumption that the economic outcome will receive substantive judicial scrutiny.

8. Policy watch and procedural updates

Litigation funding and PACCAR reform

Litigation funding remains unsettled. PACCAR continues to create uncertainty for funding agreements calculated by reference to a percentage of damages. The previous government introduced legislation to reverse the effect of PACCAR, but the bill fell on the dissolution of Parliament before the 2024 general election. The Civil Justice Council's 2025 final report recommended legislation to reverse PACCAR and also suggested a regulatory framework for third-party funding.

The Government subsequently confirmed that it intended to legislate to clarify that litigation funding agreements are not damages-based agreements, but no litigation funding bill was included in the 2026 King's Speech. Until the timetable is clear, funders, claimants and defendants should assume that enforceability and regulatory uncertainty will remain a live issue in funded claims.

For businesses facing funded claims, this means funding arrangements, priority waterfalls, ATE cover, settlement approval issues, and funder returns should remain part of the litigation strategy from the outset.

Civil procedure and transparency: PD 51ZH

The Access to Public Domain Documents Pilot under Practice Direction 51ZH came into force on 1 January 2026 and runs until 31 December 2027. It applies in the Commercial Court, the London Circuit Commercial Court and the Financial List, and covers specified documents used or referred to at public hearings.

Unless the court orders otherwise, documents that have been used or referred to at a public hearing and fall within the defined categories become Public Domain Documents. Those categories include skeleton arguments, written opening and closing submissions, other written submissions provided to the judge and relied on at the hearing, witness statements and affidavits, and expert reports. The detail matters: witness statements and affidavits do not include appended or annexed documents, whereas expert reports do include annexes and appendices.

Other documents may become Public Domain Documents if the judge orders that they are critical to understanding the hearing, or if the parties agree that they should be treated as Public Domain Documents.

The pilot does not remove the court's ability to protect confidential or sensitive material. Parties can seek filing modification orders, including orders restricting access, allowing redactions, waiving or modifying filing obligations, or extending filing periods. Parties should therefore consider confidentiality before the hearing, and not only after the document has been used in open court.

This blog post is not offered, and should not be relied on, as legal advice. You should consult an attorney for advice in specific situations.

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