

December 2018

Legal and Financial Risk newsletter on legal developments impacting corporates and financial institutions. The December 2018 edition includes articles on recent court decisions and case reports.

Disclosure of privileged documents to a regulator by a client of a regulated person does not amount to an infringement of legal advice privilege

The recent case of **Financial Reporting Council Ltd v Sports Direct International Plc** (2018) considered three aspects of legal advice privilege. Most significantly, it was held that compelling Sports Direct International Plc (SDI) to disclose privileged documents to the Financial Reporting Council Ltd (FRC) as part of a confidential regulatory investigation into its auditor did not infringe SDI's legal professional privilege. SDI also argued successfully that disclosing certain privileged documents to its auditors for audit purposes did not amount to a wider waiver of legal professional privilege. It was further held that pre-existing documents do not attract privilege solely by virtue of being attached to correspondence. [Read more.](#)

Dutch and European legislative initiatives on collective redress: clash or co-existence?

Collective redress is a hot topic. It is not only on the agenda of the European legislator, but also on the agenda of several legislators of the individual EU Member States, including the Netherlands. Within Europe, the Netherlands has always been a leader in terms of effective and innovative systems of collective redress. A unique feature of all existing – and future – Dutch collective redress mechanisms is that the use is not limited to a certain type of claim or certain type of damages. [Read more.](#)

High Court rules that bank cannot refuse inspection of suspicious activity reports (SARs) on grounds of confidentiality

In the recent case of **Lonsdale v National Westminster Bank Plc** (2018), the High Court allowed inspection of suspicious activity reports (SARs) by the claimant following a request under CPR 31.14 (which requires disclosure of documents referred to in statements of case or witness statements). [Read more.](#)

Vicarious liability – two recent decisions imposing vicarious liability on an employer

In two recent decisions, the Court of Appeal has addressed issues relating to the vicarious liability of an employer for employee actions, and in the first, gave a helpful reminder of the "two stage" test to establish liability currently adopted by the courts: field of activity and close connection. *Bellman v Northampton Recruitment Ltd (2018)*; *WM Morrison Supermarkets PLC v Various Claimants*. [Read more](#).

High Court turns up the heat on hackers by allowing service by WhatsApp and freezing orders against "persons unknown"

In **CMOC Sales & Marketing Ltd v Person Unknown & Ors [2018] EWHC 2230 (Comm)** the High Court considered how to deal with semi-anonymous hackers without identifiable addresses in the country where the crime took place. Confronted by a typical case of modern, international cyber-fraud, the High Court granted, for the first time, a freezing injunction against "persons unknown" and allowed service by Facebook Messenger and WhatsApp. [Read more](#).

Court of Appeal has jurisdiction to hear appeals on the CAT's refusal to certify class actions

In the case of **Walter Hugh Merricks CBE v Mastercard Incorporated and Others** the Court of Appeal confirmed that it has jurisdiction to hear an appeal in relation to the Competition Appeals Tribunal's (CAT) refusal to grant a Collective Proceedings Order (CPO) to a group of claimants hoping to bring a class action in the CAT. This was the first time that the Court of Appeal has considered whether it has jurisdiction in relation to CPOs under the new class actions regime which was introduced by the 2015 Consumer Rights Act. [Read more](#).

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