

“
PCB Byrne is a high-quality practice regularly instructed on high-profile fraud disputes, many of which are international. The firm also displays significant expertise in asset freezing and tracing and acts for both individual and corporate clients, often on cases that involve parallel criminal proceedings. It is particularly strong in matters concerning Europe, Asia, the Middle East and offshore jurisdictions.”

Chambers & Partners, 2023



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Welcome to the seminal edition of PCB Byrne Quarterly – Q3 2022. This Quarterly series is a round-up of news and analysis of key market developments and court judgments in the last quarter, as well as internal firm insights.

This series will bring you up to speed with all the key developments in commercial litigation, international arbitration, fraud, insolvency, investigations and more.



PCB BYRNE ANNOUNCEMENT

Legal Directory Recognitions for PCB BYRNE
Please find all our recent recognitions on the next page.

International Arbitration for Chinese parties: overview, trends and predictions

Partner [Uliana Cooke](#) has co-authored the article "International Arbitration for Chinese parties: overview, trends and predictions" with Jean Zhu, a partner at Merits & Tree based in Beijing. The authors provide insight into the development of international arbitration in China, discuss the increasing confidence by Chinese parties in utilising investment arbitration as a means of protection of their investment abroad and map out some predictions.

The article is published in the Romanian Arbitration Journal, Issue No.2/2022

Waiving the right to a Ferrari: Contract Law Revisited

DD Classics Ltd v Chen [2022]]EWHC 1404 (comm)

Senior Associate [Alice Roberts](#) and Associate [Jack Beevers](#) discuss a recent decision in which the court reaffirmed key contract law principles relating to waiver and affirmation in the event of a purported election to terminate a contract. The court ruled that exercising a contractual right to terminate must be done within a reasonable time frame. Delay in exercising that right may be interpreted as unreasonable, especially when the decision is simple. Furthermore, knowledge of the facts of a repudiatory breach and one's own right to terminate as a result of that repudiatory breach may give rise to affirmation where the innocent party fails to exercise its right to terminate in a timely manner.

This article was first published on Lexis®PSL on 8 July 2022

[Please read text of the judgment >>](#)

Update on Independent Reviews into SFO Disclosure Failing

"A bleak forecast for the SFO" Senior Associate [Emmeline Coerkamp](#) considers the potential future of the SFO in light of the recently published reviews of the SFO by Sir David Calvert-Smith and Brian Altman KC. In the wake of the Serious Fraud Office ("SFO") disclosure failings identified in the Unaoil case, earlier this year the Attorney General, Suella Braverman KC, appointed the former Director of Public Prosecutions and High Court Judge Sir David Calvert-Smith to lead a review into the workings of the SFO.



WHO'S WHO LEGAL 2022

We are pleased to announce that [Nicola Boulton](#), [Sara Teasdale](#), [Matthew Frankland](#) and [Anthony Riem](#) have all been listed as leaders in the field of Investigations by Who's Who Legal 2022.

LEGAL 500 2023

We are delighted to share that PCB Byrne has received top recognition in Legal 500 2023 rankings in the following categories:

FRAUD: CIVIL – TIER 1

"The practice is unique. It is not a large firm but its lawyers have the intellectual ability, experience and sheer grit to hold their own against any rival. Their standing in the fraud market is second to none. You would not get a better service elsewhere."

FRAUD: WHITE-COLLAR CRIME (ADVICE TO INDIVIDUALS) – TIER 2

"The white-collar fraud team provides outstanding levels of service in both pre and post charge matters."

COMMERCIAL LITIGATION: MID-MARKET – TIER 2

"The 2021 merger of Byrne & Partners LLP and PCB Litigation has given the combined team at PCB Byrne 'a critical mass capable of handling the largest of commercial disputes'."

BANKING LITIGATION: INVESTMENT AND RETAIL – TIER 5

"A well-drilled and effective team who know how to win big banking cases."

INTERNATIONAL ARBITRATION

PCB Byrne has been recognised as "a firm to watch".

Practitioners who received a special mention: [Anthony Riem](#), [Trevor Mascarenhas](#), [Nicola Boulton](#), [Ben Davies](#), [Nick Ractliff](#), [Elizabeth Seborg](#), [Uliana Cooke](#), [Charlotte Bhanja](#), [Sara Teasdale](#), [Michael Potts](#), [Matthew Frankland](#) and [Emma Brooks](#).

CHAMBERS AND PARTNERS 2023

We are also pleased to share that PCB Byrne LLP has maintained its rankings in [Chambers & Partners 2023 as a Band 1](#) law firm in the UK for Civil Fraud. Please see the ranking table [here](#)

Has the troublesome issue of determining jurisdiction for claims which relate to economic loss finally been resolved?

Kwok Ho Wan and others v UBS AG (London Branch)
[2022] EWHC 245 (Comm)

Associate [Joshua Oxley](#) reviews a recent judgment which confirmed that the place where economic loss manifested is the crucial factor for the English courts when determining whether they have jurisdiction for such claims.

This article was first published in Issue 9 of ThoughtLeaders4 FIRE Magazine

[Please read text of the judgment >>](#)



Limitation and Quincecare claims

Senior Associate [David Johnson](#) considers limitation issues arising in Quincecare claims and how they may be overcome.

The article was first published in ThoughtLeaders4 Magazine

CPR and PD Updates

Three significant changes for litigators that came into force on 1 October 2022

SERVICE OUT OF JURISDICTION

Pursuant to Practice Direction 6B “Service out of the jurisdiction” in para 3.1, if a document other than a claim form is required to be served in proceedings, the claimant may serve that document on the defendant without the court’s permission from 1 October 2022 if either of the following conditions are met:

- The claim form has been previously served on the defendant outside of the jurisdiction with the court’s permission; or
- The court’s permission is not required to serve the claim form.

PERMANENT INCORPORATION OF THE DISCLOSURE PILOT

The disclosure pilot scheme, which began on January 1, 2019 was permanently incorporated into the CPR under Practice Direction 57AD (PD57AD) on 1 October 2022. PD57AD replaces Practice Direction 51U, with some significant differences. These modifications include the following:

- According to the new rule in paragraph 1.12, a party seeking an order for disclosure in a Part 8 claim must file and serve a List of Issues for Disclosure outlining the issues for which disclosure is sought as well as the Models to be used for each issue;
- Additional guidance for the approach to formulating issues for disclosure;
- Clarification in paragraph 3.1(2) that the duty to disclose known adverse documents exists regardless of any disclosure order;
- That a party may address Model C requests not only to the other party or parties, but also suggest using Model C regarding documents it proposes searching and disclosing itself;
- A change to paragraph 10.8 states that a Certificate of Compliance is no longer required if the Disclosure Review Document has been omitted in accordance with the relevant rule;



- Confirmation that a legal representative may sign the Disclosure Certificate on behalf of a client under paragraph 12.6, provided the legal representative has been given authority to do so and has first explained the significance of the certificate to the client. In such cases, a representative’s signature binds the client just as much as if the client had signed the Disclosure Certificate itself;
- The value under which a claim will be treated as a Less Complex Claim has been increased from £500,000 to £1,000,000, unless the claim would benefit from the full procedure of PD57AD due to the nature, complexity, or likely volume of Extended Disclosure.

SIMPLIFICATION OF PD16: STATEMENTS OF CASE

On 1 October 2022, PD16 relating to Statements of Case was replaced as part of the CPRC’s project to simplify the CPR.

The terminology in PD16 is more precise, but the content remains largely unchanged. Redundant clauses are being eliminated, and gender-neutral language is replacing the use of masculine words (for example, references to “the defendant” rather than “he” throughout the text). All of these changes are beneficial to both lawyers and litigants. Although the lawyers are not required to learn a new system, the PD16’s streamlined terminology and format can be extremely helpful.

Case Round-up

A selection of cases on the new witness statement practice direction

Practice Direction ('PD') 57AC, provides detailed guidance on how to prepare trial witness statements.

In accordance with [paragraph 5.2](#), the court may, upon application by any other party or on its own motion, impose the following sanctions if a party fails to comply with any part of PD 57AC:

- (1) refuse to give or withdraw permission to rely on, or strike out, part or all of a trial witness statement;
- (2) order that a trial witness statement be re-drafted in accordance with this Practice Direction or as may be directed by the court;
- (3) make an adverse costs order against the non-complying party; and
- (4) order a witness to give some or all of their evidence in chief orally.

A number of recent authorities indicate that the Court's priority when considering applications under paragraph 5.2 is to save the trial judge's time, as opposed to a strategic mechanism for parties to strike out evidence. Even where there has been a significant failure to comply with PD 57AC, the Court has been hesitant to impose the most severe sanctions.

In [McKinney Plant & Safety Ltd v. The Construction Industry Training Board \[2022\] EWHC 2361 \(Ch\)](#) the witness statement, a supplementary statement served on behalf of the claimant, failed to adhere to PD 57AC in nearly every way. While arguably one of the most obvious examples before the Court for the harshest sanctions available under paragraph 5.2, such as withdrawing permission to rely on it or striking it out entirely, the court did not appear to consider the imposition of a sanction greater than adverse costs. While the court acknowledged that encouraging compliance is necessary to ensure trial judges' time is not wasted, the focus was instead on avoiding potentially wasteful and costly satellite litigation.

This issue was similarly considered in [Curtiss & Others v. Zurich Insurance plc & Another \[2022\] EWHC 1514 \(TCC\)](#). Despite the fact that the defendants' request to have several of the claimants' witness statements struck out was partially successful, an indemnity costs award was made against the defendants for making the application. The judge warned that PD57AC should not be used as a "weapon with which to fillet from a witness statement either two or three words at various points or essentially insignificant failures to comply".

In [Lifestyle Equities CV v Royal County of Berkshire Polo Club Ltd \[2022\] EWHC 1244 \(Ch\)](#), the claimant admitted material non-compliance with PD57AC, and provided the amended witness statement with only seven of the one hundred and two original paragraphs remaining. Again, the court did not even appear to consider a more significant sanction than adverse costs.



MDW Holdings Ltd v Norvill [2022] EWCA (Civ) 883

The case shows an alternative approach taken by English courts when faced with the question of how a buyer should be compensated when some of the warranties that it relied on under a share purchase agreement turn out to be false, such that it has paid over and above the true value. It involved the purchase of shares in GDE, a waste management company that (unbeknownst to the buyers) had been operating in violation of environmental law and repeatedly lying to its regulators. MDW, the buyer, filed a claim for damages for deception and breach of warranty. The warranties given to the sellers were extensive and included that it had been operating in accordance with the applicable law, had acquired all consents (and was not in breach of them), and that the business had complied with all environmental laws and permits.

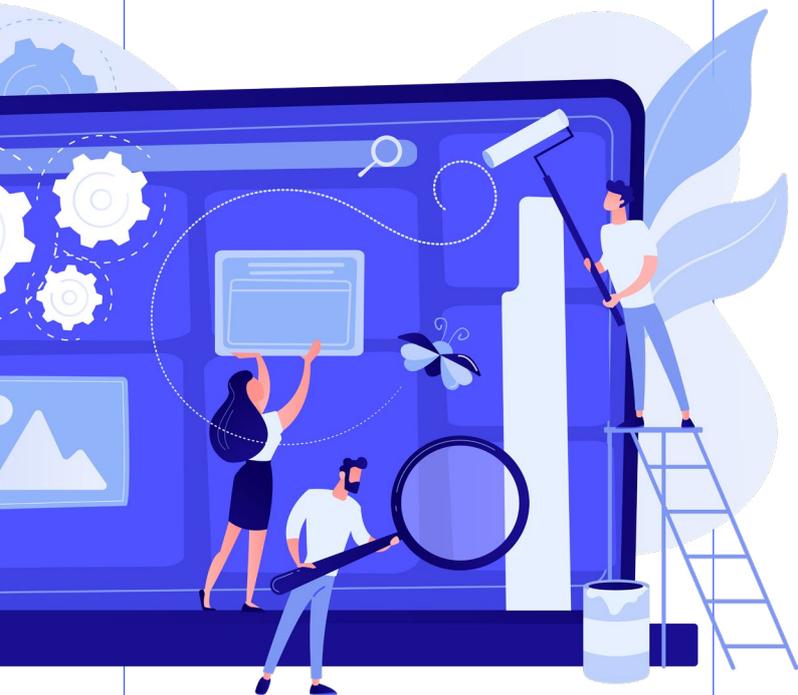
MDW was successful in both causes of action before the High Court ([MDW Holdings Ltd v Norvill & Ors I \[2021\] EWHC 1135 \(Ch\)](#)). The judge assessed the damages in the usual way for a breach of warranty case, as the difference between the true value of the company if the warranties were true, and the actual value given the warranties were false.

The appeal focused on the calculation of damages. The Court of Appeal affirmed the application of the tortious measure of damages (which places the innocent buyer in the same position had the tort not occurred) and found that the deceit damages should not necessarily be calculated using the actual purchase price paid, but instead using the price that a purchaser would have paid had there been no deceit.

The Court of Appeal remitted the case back to the High Court to determine whether had it known the truth the buyer would not have proceeded with the purchase, or the buyer would still have proceeded with the purchase, albeit with a lower purchase price, and the price the buyer would have paid had it known the true position.

[Please read text of the judgment >>](#)

THE HUB The latest updates from the Firm



Highly recommended in Chambers and Partners High Net Worth for Financial Crime

We are delighted to once again be recognised as a firm for our expertise in the area of “Financial Crime: HNW Individuals”. We also have two of our Partners, [Matthew Frankland](#) and [Michael Potts](#), ranked for their expertise and experience in this area.

ADR - Online Dispute Resolution (ODR)

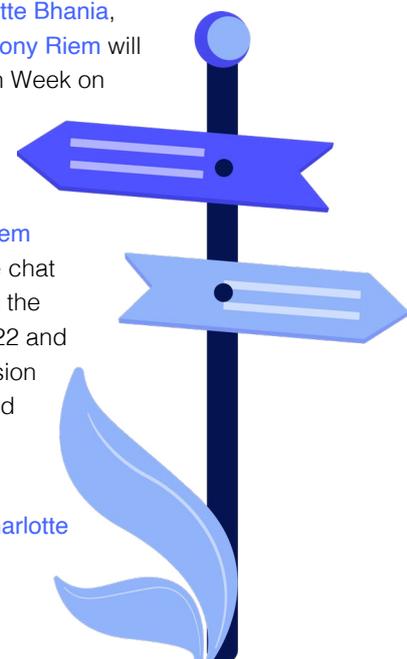
We would like to congratulate partner [Uliana Cooke](#) on becoming the Co-Head of the Silicon Valley Arbitration & Mediation Centre (SVAMC) Working Group on Online Dispute Resolution.

PAST SPEAKING ENGAGEMENTS

- Partner [Uliana Cooke](#) delivered a Webinar on Interim Relief in International Arbitration which was organised by Mediate Guru on **6 September 2022**.
- Partner [Nick Ractliff](#) was a member of the panel speaking on Shareholder Claims at the Thought Leaders 4 Disputes’ Financial Institution Litigation Conference on **15 September 2022**.
- Partner [Uliana Cooke](#) participated in the XXVth Congress of the International Council for Commercial Arbitration (ICCA) in Edinburgh on **18-21 September 2022**.
- Partner [Uliana Cooke](#) chaired the panel discussion on Shareholder and Joint Venture Agreements and participated in a hypothetical arbitration case study at the English Law Day as part of Uzbek Arbitration Week in Tashkent, Uzbekistan on **23 September 2022**.
- Partner [Uliana Cooke](#) attended the AIJA International Arbitration Annual Conference & Public Procurement Law/ Healthcare and Life Sciences Seminar in Berlin on **6-8 October 2022**.
- Partner [Uliana Cooke](#) participated in Istanbul Arbitration Week on **10-14 October 2022**.

FUTURE SPEAKING ENGAGEMENTS

- Partner [Uliana Cooke](#) will moderate the panel discussion “How Does a GC Drive ESG?” on **10 November 2022** as part of Legal Leaders Europe 2022 organised by Thomson Reuters.
- Partner [Charlotte Bhanja](#) will speak on a panel discussion at the Asset Recovery Middle East and North Africa Conference on the topic of “Fraud in high value family disputes” on **14 November 2022**.
- Partners [Uliana Cooke](#), [Charlotte Bhanja](#), [Trevor Mascarenhas](#) and [Anthony Riem](#) will participate in Dubai Arbitration Week on **14-18 November 2022**.
- During Dubai Arbitration Week, as part of FIRE Middle East 2022, partner [Anthony Riem](#) will participate in the FIRESide chat “What Issues Do Banks See in the Region?” on 14 November 2022 and will speak at the panel discussion “Sanctions - Where Are We and What Have We Learned” on **15 November 2022**.
- Partners [Uliana Cooke](#) and [Charlotte Bhanja](#) will attend GAR Live in Dubai on **16 November 2022**.





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Where case studies are included, results achieved do not guarantee similar outcomes for other clients.

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