



Disputes Outlook 2026

Financial services

For what comes next
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Spot the risks. Plan ahead. Resolve with confidence.

Disputes aren’t always avoidable, but being prepared can make all the difference. By identifying potential risks early on, you can take control and shape an effective resolution strategy. Our team is here for what comes next.

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Live issues

Commission disclosures: Navigating the post-Johnson landscape

Last year's Disputes Outlook highlighted the evolving landscape of broker commission claims. Since then, the Supreme Court has handed down judgment in the landmark case of **Hopcraft and another v Close Brothers Ltd; Johnson v FirstRand Bank Ltd (London Branch) (t/a MotoNovo Finance); Wrench v FirstRand Bank Ltd; (London Branch) (t/a MotoNovo Finance)**.

In a welcome judgment, the Court rejected the claimants' position that a fiduciary duty had arisen (recognising that motor dealers act at arm's length in pursuit of commercial objectives). However, in Mr Johnson's case, it found that there was an unfair relationship under section 140A of the Consumer Credit Act 1974. The Supreme Court recognised the highly fact-specific assessment required under s140A but considered (a) the commission level, (b) inadequate disclosures, and (c) the existence of a commercial tie

which was not consistent with the information provided to the claimant.

Following the judgment, on 7 October 2025 the Financial Conduct Authority (FCA) published consultation paper **CP25/27: Motor finance consumer redress scheme**. Its proposed redress scheme extends beyond discretionary commission arrangements to cover inadequate disclosure of high commissions and tied arrangements taken out between 6 April 2007 to 1 November 2024.

Concerns have been expressed about aspects of the FCA's proposals, including by the House of Lords **Financial Services Regulation Committee**. Firms should prepare robust systems for potential scheme implementation in 2026. Although the judgment focused on motor finance, firms may wish to revisit commission disclosure and intermediary arrangements in other markets.

Key takeaway

- The Supreme Court ruling and FCA proposals signal heightened scrutiny of commission practices. Firms should review disclosure processes and intermediary arrangements across markets to mitigate risk and prepare for potential redress schemes in 2026.

Group litigation

Group litigation in its various forms continues to have a significant impact on the financial services sector, with key developments anticipated in 2026. Activity levels are expected to remain high, buoyed by the Civil Justice Council's **June 2025 final report** on litigation funding, recommending reversal of the Supreme Court's 2023 **PACCAR** decision through legislation, and a “light-touch” approach to regulation of the market.

In England and Wales, the Court of Appeal will consider the propriety of using ‘omnibus’ Claim Forms to advance thousands of motor finance commission disclosure claims against lenders (including highly fact-specific unfair relationship claims under the Consumer Credit Act 1974) in **Angel and Others v Black Horse Limited** on 22 April 2026.

Decisions in respect of applications for Group Litigation Orders (**GLOs**) remain an area to watch. Courts have refused to make GLOs on discretionary grounds (even though jurisdictional thresholds may have been met), in favour of the Court's ordinary case management powers (a

‘GLO Lite’ approach). Following **Morris**, the Civil Procedure Rules Committee **noted** that “developments in practice” in relation to GLOs “may necessitate a review” of the rules, with updates awaited.

The Courts are also refining their approach to ‘same interest’ representative actions, including the ‘bifurcation’ of such claims. While **Wirral Council's attempt** to use this mechanism in its securities claim under ss.90 - 90A / Schedule 10A of the Financial Services and Markets Act 2000 concluded **unsuccessfully**, its inherently ‘opt out’ nature and potential for separating common issues from individual issues mean further testing of the availability of this route for other claims is likely.

In Scotland, two Inner House decisions in 2025 gave guidance on the respective tests for appointing a representative and granting permission to bring group proceedings in the nascent regime there, finding they were met in **both cases**. The Scottish rules currently provide only for ‘opt in’ proceedings, however the Scottish Civil Justice Council is **consulting** on introducing an opt-out procedure as a priority for 2025/26. Developments

in the Scottish framework may inform developments in England and Wales and vice versa as they both continue to evolve.

Key takeaways

- Group litigation remains active and evolving. Key 2026 developments include Court of Appeal scrutiny of omnibus claims, potential GLO rule changes, and Scottish consultation on opt-out proceedings, underscoring the need for proactive monitoring and strategic planning.
- See also our Commercial Disputes and Competition Disputes reports.

Emerging trends

Mandatory reimbursement and Quincecare: Emerging risks for 2026

Authorised Push Payment (**APP**) fraud remains a priority for organisations processing payments, despite the mandatory reimbursement requirement being in force for over a year. Developments around the Quincecare Duty continue to shape risk.

The **Hamblin v Moorwand** decision in April 2025 clarified that receiving payment service providers (**PSPs**) can be put on inquiry where payment instructions appear improper. The Court found Moorwand breached its Quincecare duty by failing to satisfy itself that instructions were not fraudulent. The decision is under appeal. Ambiguities remain around the 'gross negligence' standard for customer caution and the distinction between fraud and civil disputes, creating scope for contested claims and Financial Ombudsman Service (**FOS**) referrals.

The FCA expects PSPs to regularly review fraud prevention effectiveness and maintain appropriate customer due diligence controls.

Firms providing lower reimbursement for 'on us' payments must explain Consumer Duty compliance to the FCA. Enforcement action from the Regulator may be on the horizon.

Cryptocurrency remains outside the mandatory reimbursement scheme, despite 20% of fraud victims using crypto platforms and losses exceeding £350 million in 2024. The Payment Systems Regulator's (**PSR**) independent one-year review will assess market exits, moral hazard, fraud migration, and whether the £85,000 cap requires revision. More APP fraud disputes involving cryptocurrency are likely in 2026.

As this area evolves, payment firms should carefully document fraud prevention policies and record decision-making rationale for the operation of the mandatory reimbursement scheme, in anticipation of defending challenges from victims of fraud.

Key takeaway

- APP fraud and Quincecare risks persist despite mandatory reimbursement. Firms should strengthen fraud controls, monitor regulatory developments, and prepare for disputes - particularly around crypto and evolving standards for negligence and reimbursement.

Digital assets: Property rights, regulatory expansion and emerging disputes

Building on our Disputes Outlook 2025 report, the **Property (Digital Assets etc) Act 2025** clarifies the legal status of digital assets as personal property. The Act introduces a third category of property under English law, recognising digital assets such as crypto-tokens. The Act applies to England and Wales and Northern Ireland.

Scotland introduced its own **Digital Assets (Scotland) Bill** on 30 September 2025 defining digital assets as incorporeal moveables in Scots law. Critically, it presumes ownership lies with the person holding exclusive control of a digital asset, with good faith purchaser protection ensuring valid transfers despite defects in title.

The statutory recognition creates legal certainty that digital assets can be owned, transferred and protected like traditional property, enabling enforcement against them. Owners of cryptoassets will be better equipped to act in cases of fraud or theft,

including freezing injunctions (England and Wales) or arrestment on the dependence (Scotland). However, disputes could arise where exclusive control and legal ownership diverge, often linked to private keys being held by a third-party custodian. Financial services firms providing custody services could face ownership challenges, particularly in insolvency scenarios.

From a regulatory perspective, the draft **Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025**, published in April 2025, proposes bringing cryptoasset activities under FCA and PRA regulation, introducing new regulated activities including operating trading platforms, arranging deals and issuing stablecoins. Extending the FOS remit to cryptoasset activities could assist in cases where the FOS finds in favour of consumers seeking redress from their account-holding bank which is at least one step removed from the cryptoasset transaction.

Firms should monitor legislative and regulatory developments and prepare for disputes involving cryptoassets.

Key takeaway

- Legal and regulatory frameworks for digital assets are evolving. Statutory recognition and extended regulation will create certainty but also new disputes (particularly around custody and ownership) and could encourage cryptoasset firms out of the jurisdiction to avoid regulation. Firms should track developments and strengthen governance.

Media in the Northern Ireland Courts

NI Justice Minister Long has announced that news outlets will be permitted to broadcast Judges' sentencing remarks.

Under the plans, court proceedings including the handing down of a judgment in the Court of Appeal, the submissions of legal representatives and exchanges between them may be broadcast from 2027.

Only broadcasters who are permitted in writing by the NI Department of Justice will be allowed to record certain proceedings.

Key takeaways

- This change aims to increase transparency and public confidence in the justice system in NI, aligning it with other UK jurisdictions (England and Wales and Scotland).
- Organisations should note that more information may enter the public domain, and, in some cases, a communications strategy may be required.

Consultation on court fees 2026 to 2029 in Northern Ireland

In 2025, the Northern Ireland Courts and Tribunals Service launched a public consultation on proposed changes to court fees, including annual increases.

The consultation closed on 1 August 2025. Any agreed changes are intended to take effect from 1 April 2026, with annual general increases applied in the following two years.

Key takeaways

- Organisations should monitor developments to understand the scale and timing of any increases.
- Consider issuing proceedings before any changes take effect and review case strategy where appropriate.

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