

COMMERCIAL DISPUTES WEEKLY – ISSUE 31

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BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

We appreciate that our clients, partners and friends are currently facing unprecedented challenges as a result of the spread of the COVID-19 virus. Click [here](#) for a message from our Managing Partners, and [here](#) for all of our latest updates and articles on the subject. If you have any questions or require support, please do not hesitate to speak to your usual contact at WFW.

Appeals

The English court has emphasised the importance of parties giving prompt consideration to the prospect of an appeal, holding that it had no jurisdiction to determine an application to extend time for applying for permission to appeal once judgment had been handed down.

[De Sena & Anr v Notaro & Ors](#)

"A judgment which results from an unfair trial is written in water."

[Serafin v Malkiewicz & Ors](#)

Arbitration

Confirming the primacy of the freedom of contract principle, the High Court has refused to remove an arbitrator who was specifically named in an arbitration agreement. Although there was a possibility of the arbitrator, as a former employee of the parties' family business, being a witness in the dispute, that did not automatically mean he should be prohibited from acting on the grounds of apparent bias.

[B & Anr v J & Ors](#)

Disclosure

The TCC has provided helpful guidance on what is required in relation to the disclosure of "known adverse documents" under the Disclosure Pilot for the Business and Property Courts, commenting that a party should take reasonable and proportionate steps to check whether they have such documents, and if so, reasonable and proportionate steps to locate them.

[Castle Water Ltd v Thames Water Utilities Ltd](#)

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Pre-Action Disclosure

In a case which demonstrates that successful applications for pre-action disclosure in commercial cases remain rare and emphasises the importance of keeping such applications highly focussed and confined to what is strictly necessary, the Commercial Court has refused to order pre-action disclosure in relation to allegations of professional negligence.

[Carillion Plc v KPMG LLP & Anr](#)

Trial

In an extremely unusual case the Supreme Court has upheld a decision that a judge's conduct of a libel trial had been unfair to the claimant, holding that the hostility shown by the judge to the claimant and his case indicated that the judge had not allowed the claim to be properly presented and so there had to be a complete retrial of the matter. The decision also provides some welcome clarity on the availability of the public interest defence to publication of defamatory statements.

[Serafin v Malkiewicz & Ors](#)

FOR MORE INFORMATION

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

- [Andrew Ward](#)
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