

## COMMERCIAL DISPUTES WEEKLY – ISSUE 51

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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.

"In a case such as the present, the costs were incurred because the defendant could have, but did not, accept the claimant's offers, deciding instead to fight the case but failing to do better than the offers."

Telefónica UK Ltd v  
Office of  
Communications

#### Anti-suit injunctions

In an unusual case, the English court has confirmed that an anti-suit injunction will not generally be granted in respect of foreign court proceedings solely intended to seek interim protective measures in support of an arbitral claim, but that if the foreign proceedings go beyond the seeking of protective measures, an anti-suit injunction may be granted to protect the parties' contractual agreement to arbitrate.

SRS Middle East FZE v Chemie Tech DMCC

#### Illegality defence

The Supreme Court has provided clarity on the application of the illegality defence in *Patel v Mirza* (2016), holding that a firm of solicitors was not entitled to rely on the defence in relation to a claim against it for professional negligence brought by an individual who had committed mortgage fraud. The essential question was whether it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system, and in this case permitting the claim

would not undermine the public policies underlying the criminalisation of mortgage fraud.

Stoffel & Co v Grondona

#### Part 36 offers

Emphasising the importance of giving proper consideration to Part 36 offers, the Court of Appeal has found that it would be unusual for the circumstances of a case to entitle a claimant to only some of the additional benefits available under CPR 36.17(4) where they have obtained a judgment at least as advantageous as an offer they have made.

Telefónica UK Ltd v Office of Communications

## Requests for further information

In a dispute concerning the copyright in the hit song “Shape of You”, the High Court has highlighted that a respondent to an order for further information under Part 18 should not simply provide a response stating the applicant is “not entitled” to the information sought. Instead the respondent should have applied to vary or set aside the order.

Sheeran & Ors v Chokri & Ors

## Service

The Court of Appeal has helpfully clarified that the “Signed for 1st class” service offered by the Royal Mail falls within the deeming provisions for service in the CPR, as either being a version of first class post, or another service providing delivery on the next business day. A reply was therefore deemed served the second day after it was posted.

Diriye v Bojaj & Anr

## Third party costs orders

In a decision which warns against speculative applications for third party costs orders, the Court of Appeal has found that a judge was wrong to make no order as to costs where he considered that he was not in a position to determine such an application proportionately – such applications should only be made if they can be determined proportionately.

Deepchand & Anr v Sooben

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:

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