

# Banking cases to watch in 2018

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Coming up in 2018 – A number of judgments expected

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Coming in January 2018...

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Coming in March 2018...

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Coming in May 2018...

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Coming in June 2018...

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Coming in July 2018...

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Coming in October 2018...

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Also coming in 2018...

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## Banking cases to watch in 2018

There are a number of high profile banking cases coming to the High Court and appellate courts later this year and we have summarised a few of these as ‘ones to watch’.

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### Coming up in 2018 – A number of judgments expected

#### *Dunbar Assets plc v Julie Anne Davey – High Court decision*

This claim, which concerns Dunbar’s responsibilities as a secured lender, led to a trial in the summer of 2016. The decision is now expected in early 2018 and should provide guidance on the responsibilities and duties of a bank when it appoints administrators over a borrower and its assets.

#### *Bank Mellat v HM Treasury – High Court decision on quantum*

Bank Mellat, an Iranian private bank, seeks £2.3 billion of damages from HM Treasury. The claim arises from a long running dispute concerning a financial restrictions order imposed on Bank Mellat under the financial sanctions regime, which prevented people from doing business with the bank. The UK Supreme Court ultimately quashed the order on the basis that it was irrational, disproportionate and procedurally defective. The High Court hearing on Bank Mellat’s damages claim, brought under section 8 of the Human Rights Act 1998, for loss of profit took place in November 2017 and judgment is expected early in 2018.

#### *Singularis Holdings Ltd v Daiwa Capital Markets Europe Ltd – awaiting Court of Appeal decision (hearing 18/19 December 2017)*

This case gives the Court of Appeal the opportunity to consider the scope of a duty of an institution that holds client accounts to check the origin of and authority for payment instructions in the context of the potential for financial crime.

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### Coming in January 2018...

#### *Property Alliance Group v RBS – Court of Appeal hearing starts on 29 January*

The Court of Appeal will hear PAG’s appeal of the High Court decision dismissing its claims that RBS mis-sold products to it, breached implied contractual terms, and made misrepresentations regarding RBS’ participation and knowledge of LIBOR manipulation. The High Court’s judgment is the first concerning LIBOR manipulation, and demonstrates the value

of accurate contract terms to define a relationship, particularly as evidence against any claims for an alleged duty of good faith, or advisory duty, towards a client.

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### *Coming in March 2018...*

#### *UBS AG (London Branch) and another v Kommunale Wasserwerke Leipzig GmbH (KWL) and others – decision on permission to Supreme Court expected*

Following the Court of Appeal decision last October, the Supreme Court is expected to determine UBS's application for permission to appeal in March. The High Court and Court of Appeal decisions entitled KWL, a German municipal water company, to rescind various derivatives and avoid liability for close-out amounts amounting to over \$300 million. The Court of Appeal held that there was no agency relationship but, nevertheless, UBS was liable in equity for the bribes in the absence of direct or Nelsonian knowledge. An appeal to the Supreme Court will provide important guidance on the responsibility of a bank for the actions of its intermediary agents.

#### *JSC BTA Bank and BTA Securities JSC v Türkiye Vakıflar Bankası (Vakıfbank) – Jurisdiction application*

JSC BTA Bank and BTA Securities JSC have brought a claim in the High Court against Vakıfbank for breach of an alleged English law contractual duty not to sue, in connection with Turkish proceedings allegedly brought in breach of the terms of a Kazakh restructuring. Vakıfbank's challenge to the jurisdiction of the English courts will be heard in March.

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### *Coming in May 2018...*

#### *R (on the application of Holmcroft Properties) v KPMG – Court of Appeal hearing*

The Court of Appeal will consider whether decisions of an independent reviewer's decision in the context of a customer redress scheme are susceptible to judicial review. At first instance, the court held that the reviewer's decision to approve a firm's assessment of customer redress was not susceptible to judicial review.

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### *Coming in June 2018...*

#### *Deutsche Bank AG v (1) Sebastian Holdings, Inc. and (2) Alexander Vik – Court of Appeal hearing listed for 26 or 27 June*

The appeal by Mr Vik concerns an application for committal made by Deutsche Bank under CPR Part 81 in relation to a previous order against Mr Vik that he provide documents and testimony to the Court. This appeal will give the Court of Appeal the opportunity to consider the scope and interplay of committal powers under the Civil Procedure Rules, as well as questions of extraterritorial jurisdiction.

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### *Coming in July 2018...*

#### *SFO v ENRC – Court of Appeal hearing listed for 3 July*

This case, which is likely to be one of the most significant of 2018, will give the Court of Appeal the opportunity to consider the circumstances in which legal professional privilege arises in the context of a criminal investigation in the UK.

#### *Deutsche Bank AG v Comune di Savona – Court of Appeal hearing listed for 10 July*

This case is another in the line of cases concerning swaps and other financial products purchased by Italian governmental authorities. The Court of Appeal will have the opportunity to consider the first instance finding that the Italian Court, and not the English one, had jurisdiction to hear a dispute about the role of the bank as advisor, which the court determined

fell more naturally under an Italian jurisdiction clause in an advisory agreement rather than under ISDA documentation containing an English jurisdiction clause.

*The Joint Administrators of Lehman Brothers International (Europe) (In Administration) (LBIE) v Burlington Loan Management Limited and others (Waterfall II, Tranche C) – Court of Appeal hearing*

This case concerns the amount of interest payable to ISDA master agreement and other counterparties following close out of derivative contracts after commencement of the administration. In particular, the Court of Appeal will consider the High Court's decision that default interest is based on the non-defaulting party's cost of borrowing, rather than on a wider basis capable of including, for example costs associated with equity funding.

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*Coming in October 2018...*

*National Bank Trust v Ilya Yurov and others – High Court trial listed for 1 October*

This \$830 million fraud claim is pursued by the new owners of one of Russia's largest banks, which had previously been the recipient of a \$1 billion bailout, against three former shareholders and directors and their wives. It is alleged that the shareholders used the bank's money to fund loans to their own business ventures, and deliberately concealed the loans from the bank.

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*Also coming in 2018...*

*Walter Hugh Merricks CBE v Mastercard Incorporated and others – permission to appeal to the Court of Appeal*

In January 2017, the Competition Appeal Tribunal rejected an application for a collective proceedings order against Mastercard, which would have allowed MR Merricks to act as the representative for a potentially vast class of consumers in a claim valued at £14 billion. Mr Merricks has brought an appeal against that decision. These proceedings follow a wave of litigation brought by retailers against Mastercard over interchange fees relating to credit and debit card transactions, which allegedly were anti-competitive and resulted in overcharging of consumers. Permission to appeal to the Court of Appeal will be considered on the written papers initially.

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