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The Lila Lisbon: UK Supreme Court confirms loss-of-bargain damages recoverable under NSF 2012 Clause 14

The UK Supreme Court (the “UKSC”) upholds the Court of Appeal’s decision — but does this raise wider questions about termination and contractual damages under English law?

In our [previous update](#) on this case, we reported on the UK Court of Appeal’s decision in *The Lila Lisbon*, which held that buyers cancelling a ship sale agreement under Clause 14 of the Norwegian Saleform 2012 (“NSF 2012”) could recover loss of bargain damages even though the sellers’ breach was not repudiatory. The UKSC has now unanimously upheld that decision.

*In Great Asia Maritime Limited v Orion Shipping and Trading LLC*¹, the UKSC dismissed the sellers’ appeal and confirmed that, where buyers lawfully cancel under Clause 14 because the vessel is not delivered by the cancelling date as a result of the sellers’ proven negligence, the buyers may recover the difference between the contract price and the market value of the vessel, subject to ordinary principles of

causation, remoteness and mitigation. This is so even where there has been no repudiatory breach by the sellers.

The decision offers welcome certainty for parties contracting on the NSF 2012 terms. Its broader reasoning on the relationship between contractual termination rights, causation and loss-of-bargain damages under English law is, however, likely to generate further debate.

Background recap

The buyers, Great Asia Maritime Limited, agreed to purchase the *Lila Lisbon* from the sellers, Orion Shipping and Trading LLC, for US\$15 million under an amended NSF 2012 memorandum of agreement (the “MOA”). The sellers were required to exercise reasonable diligence to be ready to deliver the vessel by the cancelling date.

The original cancelling date of 20 August 2021 was extended to 15 October 2021. The vessel was not ready by that date. On 18 October 2021, the buyers applied to arrest the vessel and asserted an entitlement to withdraw from the MOA. In the arbitration, the arbitrators held that this constituted a purported cancellation.

¹ [2026] UKSC 23.

The arbitrators found that the sellers' failure resulted from proven negligence, involving an intervening voyage charter and inadequate arrangements to enable delivery. They awarded the buyers US\$1.85 million, representing the difference between the vessel's market value of US\$16.85 million and the contract price of US\$15 million.

On appeal from the Award, the UK Commercial Court set the Award aside. Dias J held that Clause 14 did not permit the recovery of post-cancellation loss of bargain damages in the absence of an accepted repudiatory or renunciatory breach. The UK Court of Appeal reversed Dias J's conclusion and restored the arbitrators' decision.

As explained in our previous update, the Court of Appeal treated the sellers' negligent failure to deliver the vessel, followed by the buyers' contractual cancellation, as equivalent to non-delivery and held that the reference to compensation for "loss" in Clause 14 was broad enough to include loss of bargain.

The UKSC's decision

The UKSC decided in the buyers' favour holding that "due compensation" means appropriate compensation assessed according to the ordinary English law principles of causation, remoteness and mitigation. It nevertheless concluded that the word "loss" in Clause 14 is general and unqualified and is wide enough to include the loss of bargain suffered by buyers following cancellation.

The Court explained that several features of the clause supported this conclusion, including the following:

- i. Clause 14 provides for compensation "whether or not" buyers cancel. The Court considered that the losses recoverable following cancellation would naturally differ from those recoverable where the contract remained in force. In the event of cancellation, loss of bargain was the most obvious form of loss likely to be suffered.
- ii. The Court relied on the symmetry between Clause 14, dealing with sellers' default, and

Clause 13, dealing with buyers' default, which is understood to allow sellers to claim loss of bargain damages.

- iii. The Court treated cancellation following the sellers' negligent failure to deliver analogous to non-delivery under a sale of goods contract, where section 51(3) of the Sale of Goods Act 1979 ordinarily measures loss in an available market by the difference between the contract price and the market price when the goods ought to have been delivered.
- iv. The Court relied considerably on the established market understanding of Clause 14. In *The Solholt*², loss-of-bargain damages had been held recoverable following cancellation by buyers under an earlier version of the Norwegian Saleform. The Court considered this particularly important because NSF 2012 is considered an industry-wide standard form.

Causation and termination

The sellers' arguments relied on the English Court of Appeal decision in *Financings Ltd v Baldock*³ ("*Financings*"). That case is understood as establishing that where a party terminates under an express contractual right in response to a non-repudiatory breach⁴, it cannot ordinarily recover damages for the future bargain.

The UKSC did not overrule *Financings*. Instead, it distinguished between a "bare" contractual termination clause and a contractual scheme containing both a termination right and an express compensation provision. Clause 14 contains the latter. The Court held that importing the *Financings* causation analysis into Clause 14 would risk defeating the purpose of the express compensation provision.

² [1981] 2 Lloyd's Rep 574

³ [1963] 2 QB 104.

⁴ Under English law, a 'breach' of contract is any failure to comply with the contract, whether such failure is minor or serious. A 'repudiatory breach' is a serious breach that entitles the innocent party to terminate the contract either because it goes to the root of the contract, deprives the innocent party of substantially the whole benefit of the contract or because the defaulting party has demonstrated (by words or conduct) an intention not to perform its contractual obligations when due (i.e. anticipatory repudiatory breach).

Were clear words required?

The sellers also argued that clear words were needed before Clause 14 could confer a right to loss of bargain damages that would not otherwise arise under English common law.

The UKSC rejected that argument and distinguished the principle that clear words are required to exclude valuable common-law rights.

The Court accepted that clear language may be required if a damages clause is said to award compensation where no loss has been suffered, thereby overriding the compensatory principle. However, in this case the buyers had suffered an actual loss and the issue the Court considered was whether that loss fell within the scope of the compensation regime established by Clause 14.

Commentary

The UKSC's decision brings commercial clarity and, in the ship-sale context, is supported by the longstanding market understanding of Clause 14. It prevents sellers from retaining the benefit of an increase in the vessel's value where their own negligent failure to meet the cancelling date caused buyers to cancel. The UKSC noted that the contrary interpretation could create a perverse incentive for sellers to delay in a rising market.

That said, some commentators may regard the Court's reasoning as sitting somewhat uneasily with the traditional English law proposition that loss of the future bargain is not ordinarily recoverable following termination for a non-repudiatory breach. The conceptual difficulty lies not in whether the buyers suffered economic loss, but in attributing that post-cancellation loss to the sellers' non-repudiatory breach rather than to the buyers' election to cancel. Viewed from another perspective, it may also be questioned whether the language of Clause 14 would have put a reasonable seller on notice that it was assuming liability for loss-of-bargain damages in circumstances where its conduct did not amount to a repudiatory breach.

In that context, the UKSC's decision is best understood not as abolishing that general proposition, but as holding that it can be displaced by the interpretation of an express compensation clause.

Practical takeaways

For buyers, the decision confirms that Clause 14 provides meaningful protection at least where the sellers' negligent delay leads to cancellation in a rising market.

For sellers, failure to exercise reasonable diligence to meet the cancelling date may expose them to substantial market-difference claims even where the delay is not sufficiently serious to amount to a repudiatory breach.

Parties contracting on the NSF 2012 may, therefore, wish to consider stating expressly:

- whether loss of bargain or market-difference damages are recoverable;
- whether compensation differs depending on whether buyers cancel or affirm; and,
- whether particular heads of consequential loss are excluded.

The UKSC has decided this case based on the existing standard wording of the NSF 2012⁵. Given that established meaning, parties seeking a different outcome should consider amending the clause accordingly.



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⁵ The new Norwegian Saleform 2025, recently adopted by BIMCO, states expressly in Clause 14 that if buyers elect to terminate the agreement pursuant to its express contractual right, then their right to compensation shall include loss of bargain damages.



UK Emissions Trading Scheme

As Members will be aware, on 1 July 2026 the UK Emissions Trading Scheme 2021 (UK ETS) was extended to include maritime transport. The governing legislation is the Greenhouse Gas Emissions Trading Scheme Order 2020 ("the Order").

Scope

The scheme currently applies to domestic voyages between UK ports. Importantly, and by way of clarification of the article in our February '26 Circular, it also applies to all emissions generated whilst a vessel is in a UK port, regardless of whether the emissions from the voyage to or from that port are themselves within the scope.

This is an important point members should be aware of, since it brings a significantly wider pool of vessels within the scope of UK ETS, including those engaged in international voyages that call at a UK port.

The surrender obligations can be summarised as follows:

Voyage	Voyage emissions	Port-stay emissions
Domestic voyage between UK ports	100%	100% at both UK ports
Voyage between Northern Ireland and Great Britain	50%	100% at both ports
International voyage to or from the UK	None	100% during the UK port-stay

Compliance

Allowances must be surrendered by **30th April** each year. The first surrender deadline is 30 April 2028, which includes both the 2026 and 2027 reporting periods.

Responsibility for Compliance

The default responsible entity is the registered owner. As under EU ETS, responsibility for compliance may be transferred from the registered owner to the vessel's ISM Company. The requirements for doing so are however specific to the UK ETS.

The registered owner and ISM company must have *"agreed in writing"* that the ISM company is responsible for compliance with UK ETS¹. Environment Agency guidance states that the registered owner may delegate its compliance obligations to the ISM company under a *"legally binding written agreement"*².

The ISM Company must complete a declaration of delegated responsibility in METS (the UK Emissions Trading Scheme reporting service). The declaration must include the prescribed confirmations that the ISM company:

- Has assumed responsibility for operation of the ship;
- Has agreed to take over responsibility for ISM; and
- Has entered into a legally binding written agreement with the registered owner of the ship to comply with the obligation of the maritime operator under the Order in respect of that ship; and
- Accepts full legal liability under the Order arising from any failure to comply with the obligations of the maritime operator under the Order in respect of the ship.

The Environment Agency guidance further clarifies that the delegation can only take effect on or after the date the legally binding written agreement is completed. It is not permissible to back date the delegation of UK ETS responsibility.

¹ Greenhouse Gas Emissions Trading Scheme Order 2020 Schedule 2A, para.3.(2)

² UK Emissions Trading Scheme for maritime: how to comply, issued by Environment Agency, 22 July 2026

Any changes to, or termination of, the written agreement must be notified to the regulator within 14 days.

The regulator may require production of the written agreement and related documents to verify the existence and nature of the agreement.

Members should therefore ensure that any proposed delegation is documented properly, and the required declaration submitted through METS.

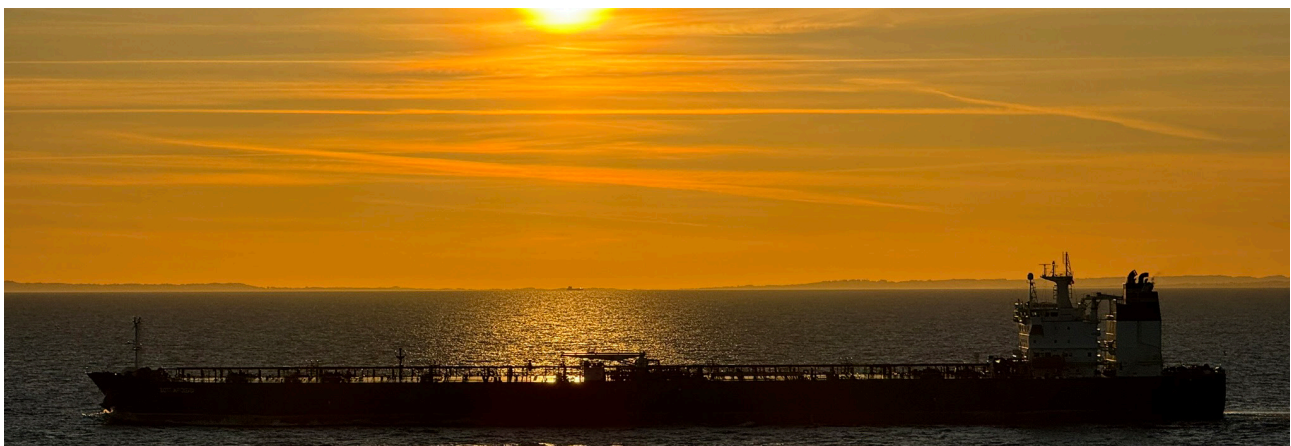
Contractual considerations

Members should review the ETS clauses in their contracts to ensure that they cover the UK ETS and require allowances to be transferred sufficiently early to enable the responsible entity to meet the 30 April surrender deadline. This is particularly important where the ETS clause provides for allowances to be transferred annually, since the surrender deadlines under EU ETS and UK ETS are not aligned.

Nordisk is available to assist its Members on these issues.



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New BIMCO Biofuel Clause for Time Charter Parties 2026

In response to the industry's growing focus on alternative fuels, BIMCO has recently published its new biofuels clause for time charterparties.

The clause regulates the respective rights and obligations of Owners and Charterers where Charterers wish to supply biofuels to the vessel. It permits Charterers to supply biofuels that meet pre-agreed specifications, whilst including safeguards intended to protect the Owners.

Charterers are responsible for the time and cost of any tank cleaning required to enable the vessel to receive the biofuels. The clause also provides a 90-day backstop within which the biofuels must be consumed.

Recognizing that the use of biofuels may affect a vessel's performance, the clause adjusts the applicable speed and performance warranties while the vessel is burning biofuels.

The clause has various sections where figures need to be inserted, failing which a default value will be applied and sub-clause (I) which provides for Owners to take over any biofuels ROB on redelivery is an optional provision which must be completed to be invoked.

Members should carefully review the clause, both from a technical perspective – taking into account the particular characteristics and requirements of the vessel – and in the context of the charterparty as a whole.

The clause can be downloaded [here](#) from BIMCO.



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Photos: source: BW Group (page 1), Courtesy of Stena Bulk (page 6)