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After Pan-NOx: will the UK and Europe take separate roads on consumer protection?

Cécile Burgess, Addleshaw Goddard LLP

The High Court’s decision in the Pan-NOx Emissions Group Litigation, part of the wider so-called Dieselgate scandal, is not a conventional product liability ruling (*Various Claimants v Mercedes Benz Group AG and others* [2026] EWHC 1753 (KB)). The claims are framed mainly in contract and under the emissions regime, and this first liability judgment did not determine individual compensation. But it may still become an important marker for the future of product liability and mass consumer claims on both sides of the Channel.

Read alongside the EU’s new Product Liability Directive (2024/2853/EU) (the Directive), the decision brings into focus a broader practical consequence for consumer claims. This is because *Pan-NOx* sits at the intersection of three live issues. The first is how courts deal with technically complex consumer claims involving software, calibration, regulatory standards and dense expert evidence. The second is how willing English courts are to depart from EU case law in areas with obvious consumer protection parallels. The third is what happens as the EU modernises its product liability regime just as the UK is considering whether its own framework still strikes the right balance.

Why Pan-NOx matters beyond emissions litigation

Pan-NOx is remarkable in scale. It involves around 1.6 million claimants, multiple manufacturers and allegations concerning about 40 alleged defeat devices (see box “Dieselgate”). This first High Court decision is the first substantive liability trial. It would be easy to treat the case as a special chapter in the Dieselgate story. But that would understate its significance. The litigation exposes a set of issues that are increasingly common in modern product disputes:

Dieselgate

In September 2015, it was discovered that Volkswagen had installed illegal “defeat device” software in millions of diesel-powered vehicles. The software was designed to detect when a car was undergoing official emissions testing and temporarily reduce the engine’s nitrogen oxide (NOx) emissions to meet regulatory standards. However, outside of a test environment, the nitrogen oxide emissions far exceeded the relevant legal limits.

Litigation has since been brought by owners of diesel vehicles that were manufactured between 2012 and 2017 that were fitted with prohibited defeat devices (PDDs) (*Various Claimants v Mercedes Benz Group AG and others* [2026] EWHC 1753 (KB)). The owners claimed that the PDDs reduce the effectiveness of a vehicle’s emissions control system in real-world driving, while performing better in official tests used for regulatory approval. The car manufacturers denied liability and argued that their emissions strategies complied with the EU regulatory framework at the time.

- Consumers start with an information gap. The manufacturer holds most of the material on product design, testing, software behaviour and internal decision making.
- The products in issue are rarely uniform. Liability and causation may need to be assessed across different models, generations and technical configurations.

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- The key questions increasingly concern software logic, updates and the interaction between digital systems and physical components.
- The costs of litigating at scale are high, with heavy reliance on experts, disclosure and funding.

Those features are not unique to prohibited defeat devices (PDDs). They are increasingly common in disputes involving connected products, medical devices, batteries, smart consumer goods and products that evolve through software updates after sale. In that sense, *Pan-NOx* is not just about emissions regulation, it is about how the legal system copes when product risk is embedded in complex technology.

What the judgment says about UK-EU divergence

At the centre of the trial was a question of statutory interpretation as to what counts as a PDD under the Regulation on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (715/2007/EU) (2007 Regulation).

The court largely accepted the car manufacturers' argument on this point. Broadly, it held that a PDD must sense one or more parameters of the regulatory emissions test, including its boundary conditions, and operate so as to make the emissions control system function more effectively in the test cycle than in real-world driving. The court rejected the claimants' broader interpretation of what a PDD is as too uncertain and likely to treat routine calibrations as presumptively unlawful.

The court's approach departs from the post-Brexit European Court of Justice (ECJ) decision in *GSMB Invest GmbH & Co KG v Auto Krainer GesmbH*, which has been influential in EU courts and regulatory thinking (C-128/20). That case looked at diesel engine emission control "temperature windows" under the 2007 Regulation and the ECJ held that a system which limits nitrogen oxide reduction based on ambient temperature is a PDD. The court held that ECJ decisions, such as *Auto Krainer*, that were handed down after the end of the Brexit transition period are not binding in England and Wales, while recognising that it could still have regard to them where relevant.

That is the most striking feature of *Pan-NOx* from a broader legal perspective. It is a concrete example of an English court taking its own path on the interpretation of an EU-derived regime in a field that is closely connected to consumer protection and product risk.

The significance of the decision is not that the court broke with EU law across the board; it did not. The court still drew on ECJ reasoning where it found it persuasive and it kept a strict approach to the exceptions in Article 5(2) of the 2007

Regulation. But on the meaning of a PDD, it departed from the ECJ line. That is the real significance of *Pan-NOx*: not wholesale separation from EU law, but a concrete example of selective divergence.

Why the new Directive is relevant

The timing of *Pan-NOx* is important because the EU has just undertaken the most substantial reform of its product liability rules in decades (see feature article "*New EU Product Liability Directive: businesses beware*"). The Directive, which must be implemented by EU member states by 9 December 2026, is designed to respond to many of the same practical difficulties that were exposed by *Pan-NOx*. The reform is important not just because it updates definitions, but because it changes the litigation environment in which product claims will be fought.

The Directive expands the concept of a "product" to cover software and certain digital manufacturing files. That change alone reflects a major shift in how product risk is understood. In many modern disputes, the key issue is not whether a physical component failed, but whether software was designed, calibrated or updated in a way that either created or concealed risk.

The Directive also broadens the pool of potentially liable businesses. More importantly for mass claims, it introduces tools that are aimed at reducing the information imbalance between claimants and product manufacturers. These include:

- A power for courts to order proportionate disclosure where the claimant can show sufficient facts and evidence to make the claim plausible.
- Rebuttable presumptions of defectiveness in certain circumstances, such as a failure to comply with a disclosure order, a breach of a mandatory safety requirement, or damage caused by an obvious malfunction in normal use.
- A presumption of causation where the type of damage is typically consistent with the established defect.
- Additional flexibility where technical or scientific complexity makes proving a defect or causation excessively difficult.

The Directive also removes the €500 threshold for property damage claims, extends recoverable harm to medically recognised psychological injury and certain data loss, and lengthens the longstop to 25 years in some latency cases. None of this creates an automatic path to recovery. But it does show a clear policy choice. The EU is moving towards a model that accepts that claimants in complex product cases may need more procedural support and more help with

proof. That is precisely the context in which *Pan-NOx* should be read.

The UK's approach remains more restrained

In England and Wales, product liability remains centred on the Consumer Protection Act 1987 (1987 Act). Claimants must still prove defect, damage and causation on the balance of probabilities, and the UK has not, at least for now, adopted the statutory presumptions introduced in the EU by the Directive.

The position on collective redress also remains more limited than in some other areas. Group litigation orders work on an opt-in basis (*see feature article "Group litigation orders: only part of the picture 25 years on"*). Representative actions under Civil Procedure Rule 19.8 remain constrained by the requirement for claimants or their representatives to have the "same interest" in the claim. The only established statutory opt-out collective regime is largely confined to competition claims in the Competition Appeal Tribunal (*see Briefings "Collective proceedings regime: CAT at the gate", and "Class actions in the CAT: a rising tide"*).

The more useful question is not whether the UK should copy the EU model wholesale. It is whether there are targeted reforms that would better reflect how modern products are designed and updated (*see Opinion "Product liability reform: the case for caution"*).

What does Pan-NOx mean for UK reform?

Pan-NOx shows that large-scale consumer claims can be brought in England and Wales, but also that they are demanding to run and defend. That is not necessarily a weakness in the system. In technical product cases, difficulties around evidence, product complexity and causation may reflect the nature of the issues rather than any defect in the legal framework itself. *Pan-NOx* sharpens the UK reform debate, but it does not point to one obvious answer.

That is why the UK is unlikely to embrace the EU model wholesale. For many defendant manufacturers, the Directive goes too far in easing the claimant's path, particularly through disclosure and presumptions that may fuel speculative mass claims. *Pan-NOx* points the other way, showing that English courts can handle highly

technical product disputes without relaxing orthodox requirements of proof. This supports the idea that the UK should pursue limited, targeted reform rather than a substantive shift towards the EU approach.

Moving in different directions

Taken together, the *Pan-NOx* decision and the Directive point to a practical, if provisional, conclusion: for now, consumers may find it easier to bring product liability-style claims in the EU than in the UK.

That is not because the *Pan-NOx* litigation itself was a conventional product liability case, nor because the English courts have closed the door to mass consumer claims. It is because the two systems are, at least for now, moving in different directions. In the EU, the Directive is expressly designed to reduce some of the obstacles that claimants face in complex product cases, particularly where key evidence sits with the manufacturer or where the product is shaped by software and technical complexity. In England and Wales, by contrast, claimants still operate within a more traditional framework, under which defect, damage and causation must be proved without statutory presumptions and within a more limited collective redress regime.

On that view, the emerging divide is less about headline legal principle than about practical access to redress. The EU is making a policy choice to ease certain evidential and procedural burdens for claimants, whereas the UK, at least for the time being, remains more cautious.

That position may yet change. Both the claimants and certain defendant manufacturers are considering potential appeals in *Pan-NOx*, and the Law Commission of England and Wales is reviewing the 1987 Act, with a consultation paper expected later in 2026 and a final report expected in 2027. But unless and until the courts or policymakers move the UK regime closer to the EU model, businesses operating across both markets may need to proceed on the basis that consumer product claims are likely to be easier to formulate, and potentially harder to defend, in the EU than in the UK.

Cécile Burgess is a partner at Addleshaw Goddard LLP.
