

M&A Trend Analysis

Sixth edition: 2026

fladgate



A low-angle, upward-looking photograph of several modern skyscrapers with glass facades. The buildings are dark and reflective, with some interior lights visible. They converge towards the top of the frame, creating a sense of height and scale. The sky is a pale, overcast blue-grey.

We are delighted to publish the sixth edition of our M&A trend analysis. This publication analyses data from a broad sample of M&A transactions on which Fladgate has advised over the last couple of years.

Introduction

This year's M&A trend analysis highlights some fascinating trends which are extrapolated from the deals our M&A team has advised on. The story this year is that we are advising on larger and more complex transactions, frequently involving a cross-border dimension and sophisticated clients and counter-parties.

As well as analysing various data points, there is a series of fascinating articles authored by our team on a wide range of topics; as well as an insightful Q&A on the current state of the M&A market with the corporate finance team at Gerald Edelman.

This publication will be of interest to anyone engaged in or considering M&A activity, including funds, High Net Worths (HNWs), entrepreneurs and corporates, as well as intermediaries including corporate finance advisers and reporting accountants. If you would like to discuss this publication further, please contact us or your usual Fladgate contact.



David Robinson
Partner
+44 (0) 7729 032 028
drobinson@fladgate.com



Anthony Shatz
Partner
+44 (0) 7855 516 365
ashatz@fladgate.com

Geographic and Sector Analysis

The location of buyers is broken down as follows:

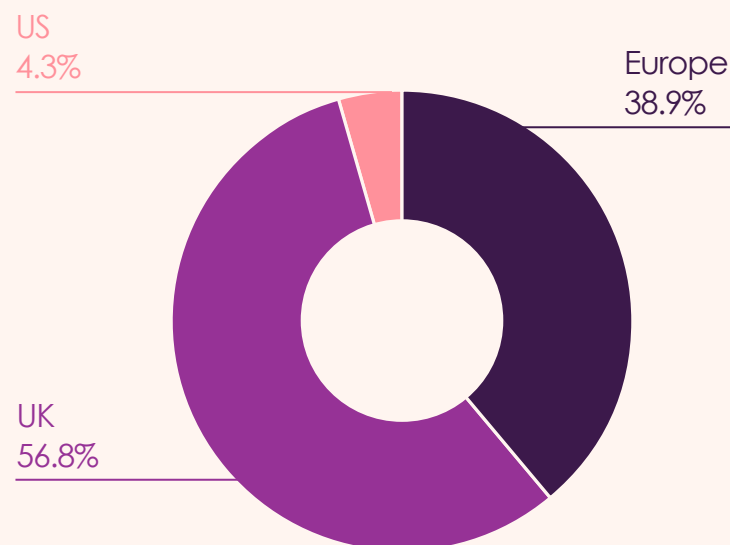
Deals featuring US buyers increased significantly in 2025, representing 31.7% by deal value compared to just 4.3% in 2024.

2025 also featured a number of transactions relating to a non-UK target; but where the acquisition agreement was governed by English law.

In terms of sector, both years saw deal activity across a broad range of sectors, including technology; consumer; business and professional services; real estate, hotels and infrastructure; and publishing.

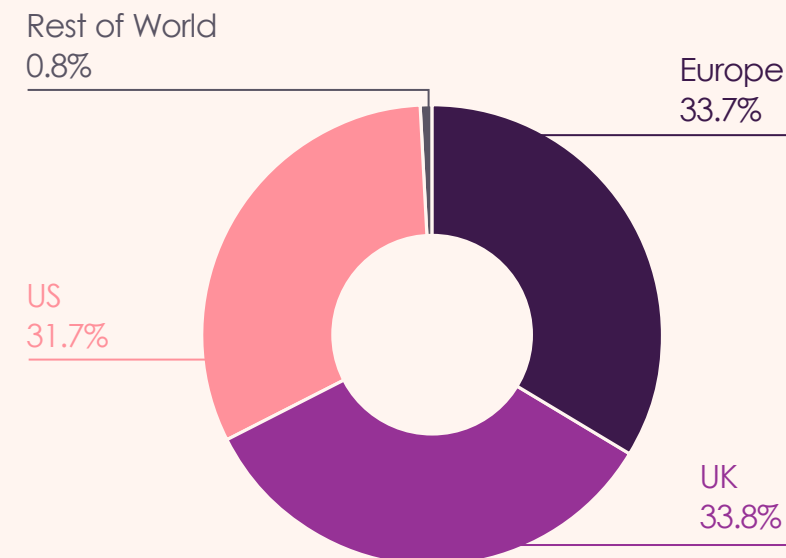
Location of buyer
(by deal value)

2024



Location of buyer
(by deal value)

2025



Buyside v Sell-side: Buyer and Seller Profile - Deal Size

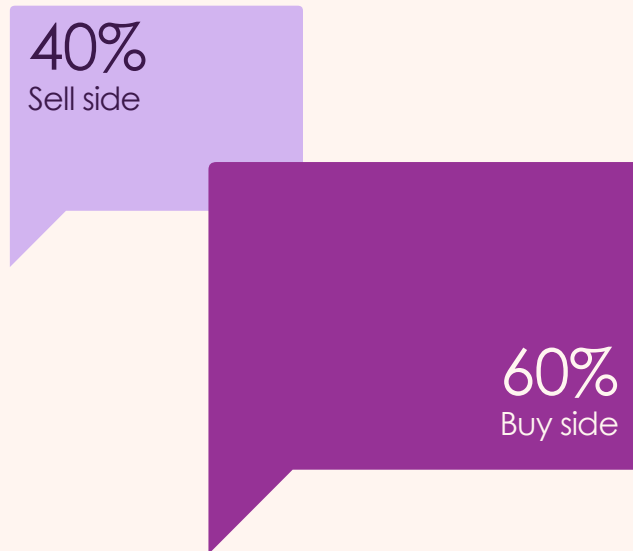
2025 saw a marginal increase in buyside activity versus sell-side (by number of deals), increasing from 60% to 70%.

In relation to buyer profile (by number of deals), in both 2024 and 2025 a majority of deals featured trading corporates as buyers; with the remainder being a mix of funds and family offices.

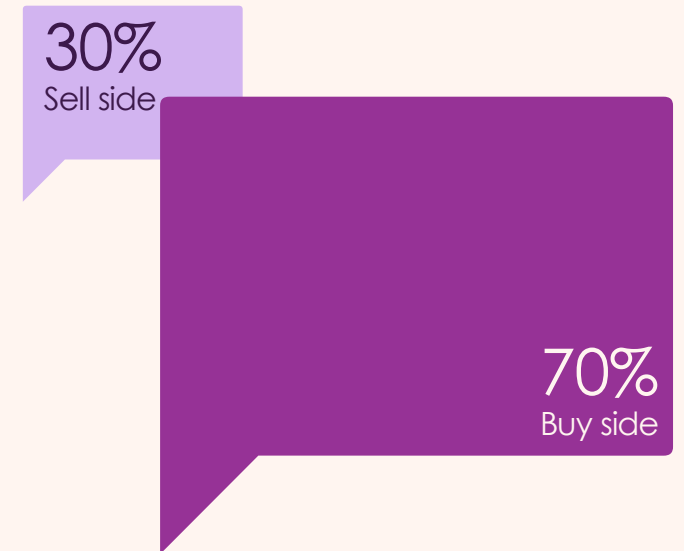
However, in relation to seller profile (by number of deals), 2025 saw trading corporates feature to a much greater extent, with those deals accounting for 60% of deals in 2025 compared to 15% of deals in 2024.

2025 also saw deal size increase notably; with deals over £100 million representing 25% of deals in 2025 compared to 5% in 2024.

2024
(by number of deals)



2025
(by number of deals)



Deploying AI to assist board decision-making

Anthony Shatz

AI tools are increasingly being used by boards of companies (both at a board level and on an ad hoc basis by individual directors) to analyse financial and accounting data, market trends, the competitor landscape and various other issues with a view to gaining a deeper understanding of the performance of the business and to make (hopefully) more informed decisions.

However, as AI tools become more embedded in board-decision making processes, the line between human and machine decision making becomes increasingly blurred. The deployment of those AI tools to support the decision-making of a board of directors of an English

company engages several overlapping directors' duties under the Companies Act 2006 (CA 2006). While there is no prohibition on boards using AI as an aid, the statutory framework imposes constraints that create meaningful legal exposure if AI is adopted without proper governance.

The duty to exercise independent judgment (Section 173)

Under s 173(1) CA 2006, each director must exercise independent judgment. The purpose of this duty is to preclude directors from placing themselves in a position where they are unable to, or do not, exercise any discretion in carrying out their duties.

A director who simply follows the output of an AI model without applying critical thinking risks breaching this duty. While case law establishes that a director may legitimately accord weight to the views of those with greater expertise, this is subject to the director having "weighed that fact critically, according to his own level of skill, expertise and general intelligent common sense."

The same reasoning would apply to AI-generated recommendations: a director must engage with the substance of the output and not treat it as determinative. A director who effectively cedes judgment to the output of an AI tool or other algorithm

may arguably then be in breach of this statutory duty.

The duty of care, skill and diligence (Section 174)

Section 174 CA 2006 requires directors to exercise the care, skill and diligence that would be exercised by a reasonably diligent person with both the general knowledge, skill and experience reasonably expected of a person carrying out the director's functions and the actual knowledge, skill and experience that the director has. This dual objective-subjective standard creates several risks in relation to AI.

First, a director cannot simply delegate responsibility for a decision to an AI system and treat the matter as concluded.

The duty of supervision requires directors, both collectively and individually, to maintain a sufficient knowledge and understanding of the company's business and to supervise delegated functions. While directors are entitled to delegate particular functions and to trust the competence of those below them, the exercise of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.

If an AI system produces flawed analysis that results in loss to the company, a director who failed to interrogate or verify that analysis would potentially be exposed to a claim for breach of section 174. In *Re Westmid Packing Services Ltd (No. 2)*, Lord Woolf MR stated that "each individual director owes duties to the company to inform himself about its affairs and to join with his co-directors in supervising and controlling them."

Second, the question of reasonable reliance is critical. By analogy with professional advice, reliance on AI output will only be defensible where the reliance is reasonable. Relevant factors drawn from the case law on reliance on advisers include whether the director had any reason to doubt the correctness of the output, whether the adviser was fit for purpose, whether the director asked all reasonable questions, and whether the issue was one on which the director could not reasonably have been expected to form a view personally.

An AI tool that is not designed for the specific decision in question, or that is known to produce unreliable outputs, would not provide a reasonable basis for reliance; much as advice from an adviser not competent to advise on the issue will not protect a director.

Third, directors may be equally liable for inaction as for action under Section 174. A board that adopts AI without implementing adequate oversight mechanisms, for example by failing to establish processes for

validating AI outputs or testing for bias, may be found to have failed in its supervisory duty.

As was stated in *Australian Securities and Investments Commission v Healey*, "a director is not an ornament, but an essential component of corporate governance" who must "take a diligent and intelligent interest in the information available to him or her, to understand that information, and apply an enquiring mind to the responsibilities placed upon him or her."

Collective decision-making and the risk of groupthink

Directors must exercise their powers collectively as a board.

Where an AI tool generates a single recommendation that all directors accept without challenge, the board risks falling into the kind of "groupthink" that the UK Corporate Governance Code 2024 identifies as a threat to effective decision-making.

The Financial Reporting Council considers that factors that might limit effective decision-making include insufficient knowledge and ability to test assumptions, a lack of openness, and inadequate information or analysis. An over-reliance on AI-generated outputs could create precisely these conditions.

The UKCG Code Guidance emphasises that the board should invest time in its decision-making, including obtaining input from key stakeholders and experts, and reserving adequate time to consider all issues. If a board uses AI to short-circuit a specific decision-making process, this could expose directors to a breach of directors' duties.

D&O insurance considerations

Directors should also be mindful of the evolving landscape in relation to (D&O) insurance coverage, with some insurers now seeking to include exclusions and carve outs for "any actual or alleged use, deployment or development of AI"; whilst other

insurers are choosing to underwrite and price AI risks for an additional premium as opposed to excluding those risks entirely.

As happened with cyber insurance coverage, the market is rapidly responding to the risks posed to business operations by the deployment of AI. It is therefore important for companies to discuss this specific issue with their insurance broker to understand the scope of existing cover and ensure on renewal that coverage is as broad as possible and confronts this issue robustly.

Practical tips

Boards seeking to mitigate these risks should ensure that: AI is treated as one input among several in the decision-making process, rather than a substitute for board deliberation; directors are able to understand the basis on which the AI system has generated its output, so that they can genuinely exercise independent judgment; the board establishes governance processes around the use of AI, including

policies on validation, human oversight and escalation (analogous to the supervisory structures it would adopt when delegating to management); and board minutes record the extent to which AI was used and how directors satisfied themselves as to the reliability of its outputs.

A final thought

English law does not prohibit boards from using AI tools, and properly deployed AI may in fact assist directors in fulfilling their duty to ensure they are adequately informed. However, the statutory duties under sections 173 and 174 CA 2006 require directors to remain the decision-makers and not to rely on AI tools without adequate scrutiny.



Anthony Shatz
Partner
+44 (0) 7855 516 365
ashatz@fladgate.com

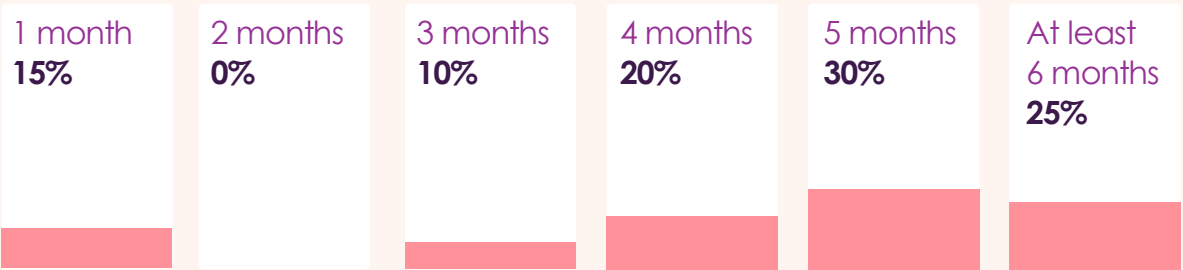
Time to Closing

2024 and 2025 were broadly consistent, with approximately 85% of deals in both years (by number) taking three months or more to close.

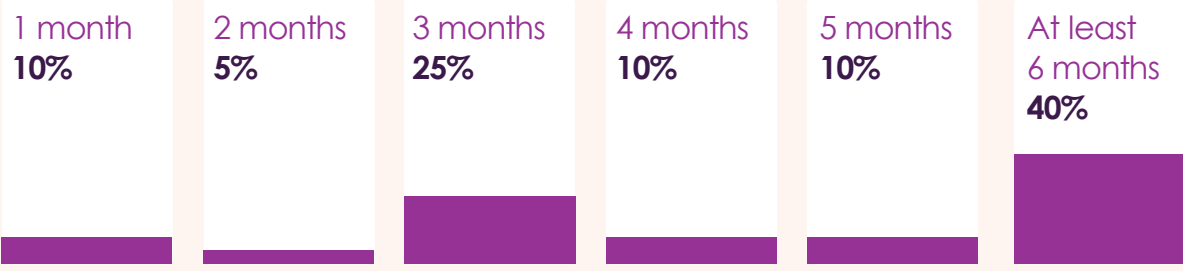
This contrasts with 2023, when there was a trend towards deals taking a shorter time to close. In last year's publication, we thought that trend was an outlier and this year's data appears to support that conclusion.

Our M&A team continues to observe how many of the deals we advise on are becoming more complex for a variety of reasons, in particular, having to satisfy a variety of closing conditions in the period between exchange and completion.

Time from initial instruction to closing in 2024
(by number of deals)



Time from initial instruction to closing in 2025
(by number of deals)



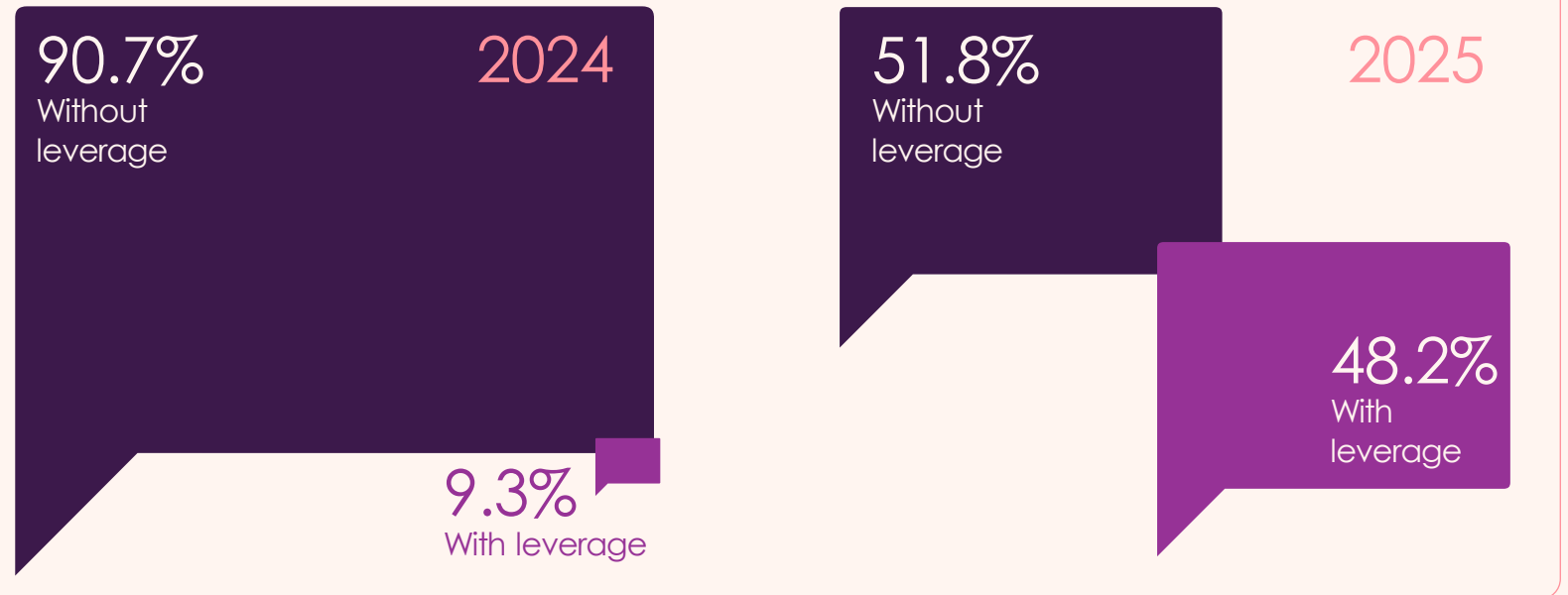
Use of Leverage

2025 saw a notable increase in transactions deploying the use of leverage, with 48.2% of deals (by value) featuring debt in the buy-side capital structure compared to 9.3% (by deal value) in 2024.

This increase may be due to our M&A practice acting for an increasing number of private equity firms and other financial sponsors on mid-market transactions.

Deals with third party leverage (by deal value)

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2024 v 2025



The UK's "quantum bet on sovereignty" AI fund

Tim Wright

In March 2026, the UK Government set out a record £2.5 billion package across artificial intelligence and quantum technologies. The 17 March announcement, delivered alongside the Chancellor's Mais Lecture, comprised a quantum investment envelope of £2 billion to upgrade national capabilities, including a first-of-its-kind public procurement programme worth up to £1 billion to bring commercial scale quantum computers online, and a £500 million Sovereign AI Fund - since launched in April - to back the most promising British AI companies with capital, compute and other support. The package anchors a wider strategy to achieve the fastest adoption of AI in the G7 and to position the UK as the

first country to commit to rolling out quantum computers at scale.

Quantum as a strategic asset

Quantum computing has become a high-stakes frontier in technological and economic competition. The UK has been an early mover, launching a national quantum programme in 2014 and building a strong base of firms and research institutions. The March measures sought to deepen that trajectory by positioning the state as an anchor customer in the early commercial market.

Within the £2 billion quantum allocation, the government committed to a procurement

programme worth up to £1 billion for commercial-scale quantum computers, intended to help UK-based firms prove demand, raise capital and scale. Additional injections include £13.8 million for the UK's five National Quantum Research Hubs and £12 million for a dedicated commercialisation skills centre, underscoring the focus on translating science into deployable systems.

By procuring systems at scale, the UK is seeking to build durable domestic capability. While official materials have not specified hardware modalities, the industrial landscape suggests a diverse cohort spanning trapped-ion, photonic and superconducting approaches.

The National Quantum Computing Centre (NQCC) and other public research assets are well-placed to support integration and early deployment, alongside users in health, energy, finance and national security where quantum capability carries both commercial and strategic implications.

Contextually, the UK quantum ecosystem has experienced consolidation and inward investment, including Maryland-headquartered IonQ's September 2025 acquisition of UK-based Oxford Ionics, which sharpened policymakers' interest in securing domestic capability.

Embedding quantum in the sovereign compute ecosystem

The UK strategy is to embed quantum within a wider sovereign compute fabric. The Department for Science, Innovation and Technology's Compute Roadmap, published in July 2025, is being realised through the AI Research Resource (AIRR), now fully operational across Isambard-AI in Bristol and Dawn in Cambridge, and through the designation of Edinburgh as the location of the first National Supercomputing Centre. The roadmap targets a twenty-fold expansion of public AI compute capacity by 2030 and envisages AI Growth Zones that combine accelerated planning with low-carbon energy integration.

The government has now confirmed five AI Growth Zone locations: Oxfordshire (centred at the Culham Campus as the initial pilot); North East England (including the Cambois Data Centre Campus in Blyth and Cobalt Park in North Tyneside); North and South Wales (spanning Prosperity Parc in Anglesey, Trawsfynydd and the

former Ford plant site in Bridgend); and Scotland (designated in Lanarkshire, anchored around data centre developments in Airdrie).

Against that backdrop, quantum systems are expected to link increasingly with high-performance and AI compute environments to enable hybrid applications in areas such as AI safety, climate simulation and advanced materials.

The Sovereign AI Fund: capital and capacity for scale

Alongside quantum procurement, the Chancellor confirmed a £500 million Sovereign AI Fund, which formally launched on 16 April at the London headquarters of autonomous driving tech firm Wayve, with James Wise, a partner at Balderton Capital, as its inaugural chair. The fund is designed to anchor the most promising AI companies in Britain by providing capital, access to compute and other support so they can start here, scale here and win globally. Its design signals a twin-track strategy: crowding in private co-investment

while offering strategic advantages such as access to national compute resources and routes into public procurement where appropriate. Eligibility criteria focus on the location of activities and workforce, including requirements to maintain a substantive UK operational presence and to support UK-based skills development, in line with the UK subsidy control regime.

Economic and policy context

The package landed against a macroeconomic backdrop of modest growth expectations and elevated global uncertainty. In her speech, the Chancellor framed technology-led investment as the most credible route to durable productivity growth and coupled the measures with a wider commitment to stability, investment and reform.

Implications for industry and investors

For companies operating in or supplying to the UK quantum and AI sectors, these measures create immediate and medium-term

opportunities. The quantum procurement programme is generating competitive routes to market across hardware, cryogenics, control systems and software orchestration, with published materials now clarifying modalities, milestones and evaluation criteria.

On the AI side, the Sovereign AI Fund presents a co-investment partner with privileged access to national infrastructure. Given the national security sensitivities of both quantum and frontier AI, transactions in these areas will continue to attract close scrutiny under the National Security and Investment Act 2021 ("NSIA"), including mandatory notification in relevant sectors. Export control considerations remain live where products interface with cryptography, secure communications or sensitive simulations. Across both domains, the sovereign compute agenda continues to drive demand for specialist data centre capacity, power and cooling, and rewards developers and operators that align with confirmed Growth Zone planning and low-carbon energy strategies.

Outlook

The UK's quantum commitment and the launch of the Sovereign AI Fund mark a decisive step in embedding digital sovereignty as a core economic principle. If delivered effectively, these measures can accelerate the transition from research excellence to scaled domestic capability. Companies and investors should engage with active procurement opportunities, the Sovereign AI Fund, and partnerships that leverage the public compute ecosystem as the UK translates ambition into deployment.

Timeline and milestones

The Sovereign AI Fund formally launched on 16 April 2026 with its first equity investment in Callosum. Since then, the fund has made four further equity investments, including Ineffable Intelligence, Isomorphic Labs and OLIX, and announced the £1.1 billion AI Hardware Plan at London Tech Week in June. DSIT has published procurement design and eligibility details, with an initial procurement

track valued at £80–96 million now open to UK-registered organisations.

The Strategic Assets Grants Programme closed its first application window in June; a larger programme of up to £160 million is expected later in 2026. The Compute Roadmap sets milestones through 2030, including ongoing expansion of the AI Research Resource and the National Supercomputing Centre in Edinburgh.

Fladgate's Technology and Outsourcing Group advises clients across the quantum, AI and deep-tech sectors on public procurement, regulatory compliance and investment structuring.

We are monitoring developments closely and can assist with preparing for procurement opportunities and tender processes, advising on NSIA notifications and clearances, structuring investments and joint ventures involving the Sovereign AI Fund or other public co-investment vehicles, navigating export controls and dual-use compliance for quantum-enabled products, and

advising on data centre development, planning and energy supply arrangements.



Tim Wright
Partner
+44 (0) 7903 349 701
twright@fladgate.com

Price Adjustment Mechanisms

By number of deals, there was an increase from 30% in 2024, to 50% in 2025, in deals featuring a locked box as opposed to a completion accounts adjustment mechanism.

After six years of tracking M&A data, we have seen the market swing from locked box to completion accounts, and now back again to locked box, which demonstrates that there isn't necessarily a market standard for price adjustment mechanisms on M&A transactions.

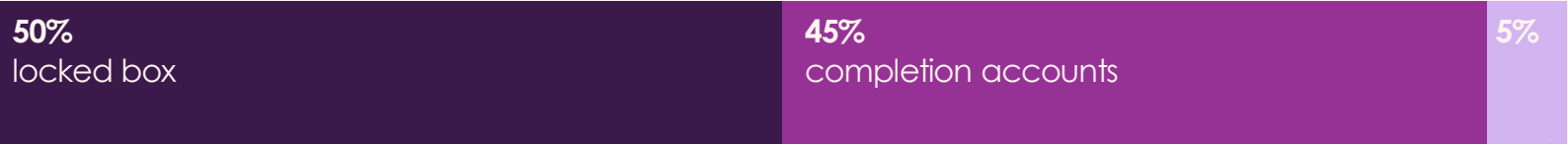
For deals involving locked-box mechanisms, the vast majority of deals featured a "cash kicker."

Price adjustment mechanisms
2024 v 2025 (number of deals)

2024



2025



No price
adjustment
mechanism

Split Exchange and Completion

2025 saw a noticeable increase in deals with a split exchange and closing, rising from 35% in 2024 to 55% in 2025.

As in prior years, a significant proportion of transactions continue to involve a split exchange and completion, typically due to financing, regulatory, shareholder, and/or other conditions that must be satisfied between exchange and completion. This, in turn, necessitates the negotiation of MAC clauses and pre-closing seller covenants.

Split exchange and completion
(by number of deals)

2024



2025



Unfair dismissal protection is changing: what do you need to know?

Mike Tremeer and James McConkey

For many years employers in the UK have had two years to decide whether a new hire meets expectations before unfair dismissal protection kicks in. However, that extended, informal probation or trial period is now changing. From 1 January 2027, the period of continuous service required for employees to benefit from protection against unfair dismissal drops from two years to just six months under the Employment Rights Act 2025.

At the same time, the statutory cap on unfair dismissal compensation (currently £123,543) is being removed entirely.

For businesses that have been running on autopilot when it comes to managing and, if necessary, exiting new employees, these changes will have serious implications.

What is changing?

At present, employees usually need two years of continuous service before they are able to bring an unfair dismissal claim – which is typically the most relevant protection available. Within that window, an employer can exit someone who is not performing as expected by giving contractual notice (often three months or less) and without needing to follow any formal process. That model has been

the backbone of probation management since the qualifying period was extended from one year to two in 2012.

From 1 January 2027, unfair dismissal protection applies after just six months of service. Crucially, this applies to dismissals on or after that date, not just future hires: and so, anyone with six months' service on 1 January 2027 will be protected immediately. Despite not coming into effect until January 2027, this change will therefore benefit employees whose employment began on or after 1 July 2026.

In the future, once employees have six months of continuous service, the

full unfair dismissal protection framework applies meaning that employers will need a potentially fair reason (there are five defined fair reasons: capability, conduct, redundancy, statutory restriction or some other substantial reason) and to follow a fair procedure, including following the ACAS Code of Practice where relevant, to avoid liability for unfair dismissal.

Why notice periods are now a trap

Many employment contracts include a shortened notice period during probation, typically one week, so that an underwhelming new recruit can be exited quickly in the early stages of.

their employment. That logic will still hold for the first six months. But once an employee crosses the threshold, a contractually valid termination in which adequate notice (or payment in lieu of notice) is given is not the same thing as a procedurally fair dismissal. The tribunal will look at reason and process, not just whether the correct period of notice was given.

There is also a more technical issue to consider. Where an employer gives less than the statutory minimum notice period (e.g. where dismissal is immediate with a payment in lieu of notice), the effective date of termination is extended by the statutory notice the employee should have received. An employee dismissed without notice at five months and 28 days would therefore be treated as having over six months' service, and so unfair dismissal protection.

Employers wanting a clean exit before the six month threshold must either give notice early enough for it to expire in time, or use a contractual

payment in lieu of notice (PILON) clause to terminate immediately, bearing in mind the extension mentioned above. A contract without the right to make a PILON will leave employers exposed (and so this is a good opportunity to review your contracts of employment generally).

The practical pinch point is months five to seven. Given how easy it is to let that deadline slip, particularly in businesses without a strong HR function, expect a wave of claims in the early years of the new regime. That will be a concern for many given the current backlogs and delay in the employment tribunal system (with final hearings currently being listed for 2030 in many cases).

The compensation cap is gone: but what does that actually mean?

Here is the change that might add insult to injury. Currently, the compensation that can be awarded for future loss if an employee is successful in an ordinary unfair dismissal claim is capped at the lower

of 52 weeks' gross pay or £123,543. From January 2027, both limits are abolished and tribunals will award whatever reflects the employee's actual financial loss. The basic award (reflecting historic loss) is unchanged.

To give this some deeper perspective, the average unfair dismissal award currently sits at around £14,000, claimants must still evidence loss and make efforts to mitigate it, and tribunals are not in the business of awarding windfalls. As a result, unfair dismissal is often not very appealing to high earning senior executives. But this will change with the abolition of the compensation cap.

A senior employee on £200,000 who is poorly managed out and takes time to find a comparable role now has very substantial losses to put before a tribunal with no ceiling, and for complex packages the recoverable heads extend well beyond salary: bonuses, forfeited equity, unvested options and pension loss are all in play.

The potential uplift of up to 25% for failing to follow the ACAS Code also takes on a different perspective: 25% of a capped award was painful but containable while 25% of an uncapped award for a senior employee is another matter entirely.

Settlement dynamics shift too. Negotiations for senior exits have always been anchored, at least in part, by the unfair dismissal compensation cap. The familiar strategy of exiting a senior leader without process and simply paying the maximum compensation award is no longer viable, and employees and their solicitors will have every incentive to push expectations higher.

This change is likely to result in a raft of unfair dismissal claims that we would not have seen before, leading to even more pressure on the employment tribunal system.

What should employers do before January 2027?

- Shorten contractual probationary periods to three or four months, with a discretionary one-month extension, so decisions are made comfortably before the six-month (less one week) practical threshold.
- Ensure that every contract of employment contains a clear PILON clause, so notice periods do not inadvertently push an employee over the line.
- Train line managers on why the six-month date now matters, and on documenting and tackling performance and conduct concerns proactively from day one, with probationary reviews that are substantive rather than a rubber stamp exercise.
- Tighten recruitment processes, since the cost of a poor hire just went up materially.
- Factor uncapped exposure into risk assessments for contested exits, particularly higher earners, and review employment practices liability cover.
- Involve professional advisers early in any exit with the potential to become contentious, rather than after the decision has been taken.



Mike Tremeer
Partner
+44 (0) 7506 735 412
mtremeer@fladgate.com



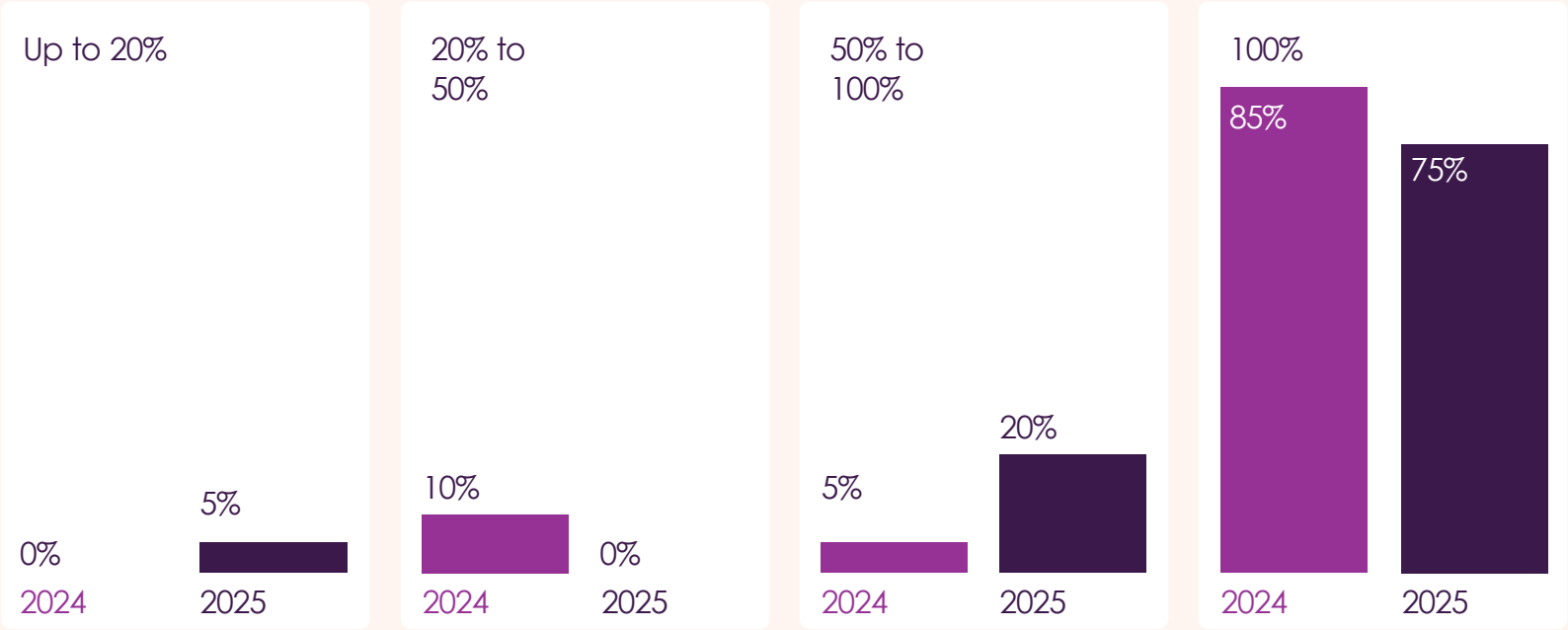
James McConkey
Associate
+44 (0) 7484 028 829
jmccconkey@fladgate.com

Liability Caps for Warranty Claims

The percentage of deals (by number) in which the liability cap for warranty claims was set at 100% stayed at broadly the same level, going from 85% of deals in 2024 to 75% of deals in 2025.

Similarly, basket and threshold levels on deals remained relatively consistent between 2024 and 2025.

Downside protections:
total cap on liability as % of consideration - 2024 v 2025
(by number of deals)



Time Limits for Warranty Claims

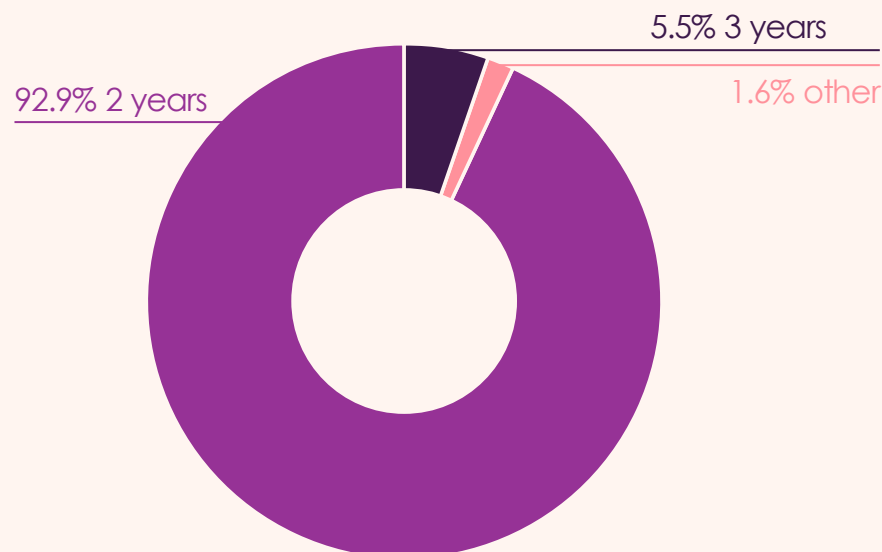
2025 witnessed a significant trend in deals featuring a three year, as opposed to a two year, time limit for non-tax warranties; with that percentage increasing from 5.5% to 49.5%.

This represents a shift away from the “two year” market norm; and may be driven by a range of factors including deals being closed with less comprehensive diligence being undertaken and more reliance on the warranties (and often the insurance policies underpinning them).

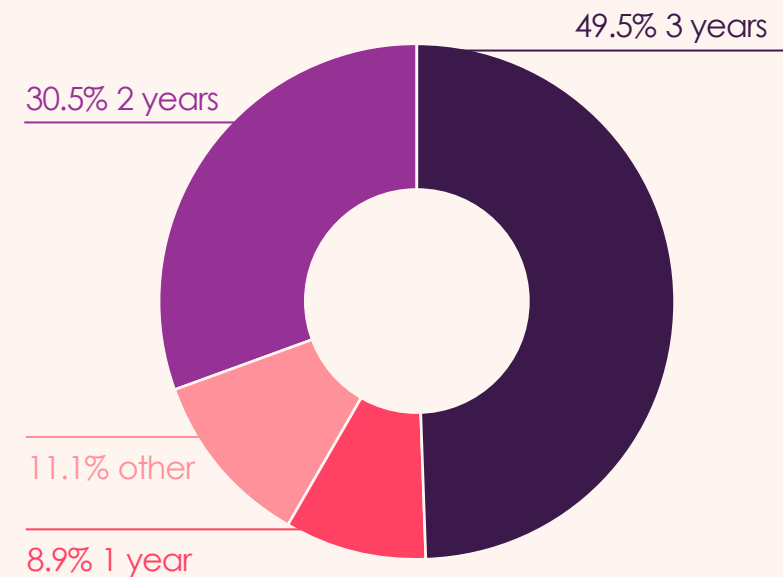
Downside protections:

time limit for non-tax warranties 2024 v 2025
(by deal value)

2024



2025



Restructuring NASDAQ-listed businesses through English Restructuring Procedures

Jeremy Whiteson

A problem that needed fixing

A trio of recent cases offer a way through a conundrum for many NASDAQ businesses: how to restructure financial debt without unanimous creditor approval, while keeping the NASDAQ listing alive. A Chapter 11 restructuring, if available, would likely lead to a delisting. In this article, we explore the recent cases that illustrate how an English restructuring plan can be used to overcome this difficulty.

What is a restructuring plan?

Restructuring plans are a fairly new procedure, introduced in 2020 and inserted as Part 26A of the English

Companies Act 2006. They are similar to schemes of arrangement (a procedure in English company law since the 19th century), but with much greater court powers. Like a scheme of arrangement, a company may propose a compromise or arrangement with its creditors and members, of any class of them. After an initial court “convening hearing,” meetings of creditors or members are held to consider the proposal. After those meetings, the company must return to court for sanction of the decision, following which the plan can take effect. However, in a restructuring plan, unlike in a scheme of arrangement, the court may, if satisfied on certain tests of fairness, sanction the plan even if not all

meetings approved the proposal by the requisite percentage through “cross class cram down”.

Argo Blockchain plc (Argo)

Argo was the first cryptocurrency miner to list on the London Stock Exchange's Main Market in 2018. In September 2021 it became dual listed and its securities were admitted to trading on NASDAQ. With its share price on a high, in November 2021 it issued \$40m of “baby bonds”. However, difficult trading conditions in the “crypto winter” of 2022 to 2023 significantly affected profits and share price. Argo explored several financing and corporate deals to restore its financial strength but, suffering from

the overhang of the bond debt, failed to complete transactions.

In June 2025, Argo announced a proposed restructuring by which Growler Mining Tuscaloosa LLC (Growler) would inject a loan for immediate working capital needs of the business. Argo would propose a restructuring plan to convert the bonds into ordinary shares. On sanction of the plan, Growler would convert its loan into equity, and contribute valuable crypto assets and additional funding, leaving Growler with a majority stake in Argo.

After an appearance before the NASDAQ Hearing Panel, it was determined that the restructuring plan

(unlike a US Chapter 11 restructuring) was not a bankruptcy proceeding for their purposes and so did not invalidate the NASDAQ listing.

Argo had to navigate through a host of other issues, including UK Takeover Code compliance, delisting from the London Stock Exchange, other NASDAQ listing requirements, and a series of concerns taken into account by the English court in assessing fairness for the cram down. However, the plan was sanctioned in December 2025 and Argo (along with Fossil and New Fortress discussed below) continues to enjoy its NASDAQ listing.

Applying restructuring plans to businesses incorporated outside of England

Fossil Group, Inc, is a US corporation, based in Texas with a business in design and sales of watches, wallets, bags and fashion accessories. Burdened by \$150m of unsecured loan notes it explored restructuring options. Having failed to reach the required level of agreement for a consensual deal to extend

the maturity date on its notes, it searched for alternatives. While English restructuring plans are expressed by statute to be available only for companies which are incorporated in England and Wales or have a “sufficient connection” to the jurisdiction, there is a well-trodden path around this restriction known as “Issuer Substitution”. Under this structure, first developed for schemes of arrangement but accepted by the Court of Appeal in England as applicable to restructuring plans, an English company is established as a substitute obligor or co-obligor of debt owed by a foreign company.

This substitute unilaterally assumes liability for the financial indebtedness and so engages the jurisdiction of the English courts for restructuring plans (or schemes of arrangement). While the English courts recognise the risks of this approach, they are prepared to accept issuer substitution for “good forum shopping” where it is being used “not to enable a debtor to exploit for its own advantage, and at the expense of a creditor class, the insolvency laws of a particular

jurisdiction, but with a view to achieving the best possible outcome for all”.

This approach was adopted in Fossil and considered by the court to be appropriate. To enhance this position, the company also consensually changed the choice of law of the notes from New York law to English law.

The decision was subsequently recognised in the US under Chapter 15 Bankruptcy Code, a provision introduced into US law to implement the UNCITRAL Model Law on Cross-Border Insolvency, which offers more streamlined recognition of overseas insolvency procedures.

What about larger businesses?

In June 2026, the English High Court gave sanction to the restructuring plan of New Fortress Energy, extinguishing \$9.6bn of debts. The group was reported to be “a global LNG infrastructure business involving shipping, storage and liquefaction, and the operation of power

generation facilities”. It was headed by New Fortress Energy Inc which was listed on NASDAQ.

The group had a complicated structure and proposed compromises with seven classes of plan creditors relying on five collateral pools. As required by the English procedure, expert evidence was submitted on the “relevant alternative” which was reported to conclude that this was likely to be an accelerated sale of parts of the group under Chapter 11 or other procedures yielding \$1.44bn less for creditors than would be the case in the restructuring plan.

English companies in the group had assumed obligations, which brought the plan within the jurisdiction of the English courts. Consistent with earlier cases, the court in New Fortress was willing to sanction a restructuring plan of a business with strong foreign connections in a case of “good” forum shopping. The plan was subsequently recognised by the US bankruptcy court under Chapter 15 of the US bankruptcy code.

Other benefits of restructuring plans and schemes

In the light of these cases, restructuring plans offer a clear route for NASDAQ listed businesses, wherever incorporated, to compromise financial obligations and maintain their listing. However, restructuring plans and schemes of arrangement under English law also offer a number of other benefits such as:

- *A well-trodden path:* Following from the long history of schemes of arrangement, restructuring plans are widely respected and are likely to be recognised in the US courts in conventional cases.
- *Filling some gaps from Chapter 11:* Unlike Chapter 11, schemes of arrangement and restructuring plans do not require approval by a majority in number of creditors, which may reduce the influence of 'hold-out' creditors. They are also not subject to the absolute priority rule, providing greater flexibility when compromising debts of creditors at the same level of statutory priority.
- *Effective to vary English debt:* An estimated 40% of global business and financial transactions are estimated to be governed by English law. Restructuring plans and schemes of arrangement are effective to vary these obligations, which may not be the case for all non-UK procedures.
- *A step down to schemes of arrangement offers a safety net to regulatory change:* There is a long history of schemes of arrangement being utilised by US corporations in a wide variety of situations, including takeovers of businesses with no financial difficulty. While they do not offer the possibility of cross class cram down, schemes of arrangement may offer a less aggressive options for appropriate cases.
- *Flexibility:* while there are guardrails created by the case law, the English procedures have great flexibility. They can be used to compromise some but not all debts of a

company, implement corporate restructurings and dovetail with a range of corporate transactions and overseas restructurings and legal proceedings.

Conclusion

English restructuring plans along with schemes of arrangement are flexible tools which may be useful to overcome shortcomings in the Chapter 11 procedure or other non-English restructuring processes. Of particular value in restructuring debts of NASDAQ listed businesses, the adaptability of the structure creates opportunities for businesses in many jurisdictions and with varied restructuring needs.

Fladgate LLP is a London law firm and one of the very few mid-sized English law firms to have acted for a company through a restructuring plan.

While much of our work has a cross-border element we only practice English law and partner with appropriate law firms in other jurisdictions on cross border matters.



Jeremy Whiteson
Partner
+44 (0) 7880 727 529
jwhiteson@fladgate.com

Warranty and Indemnity (W&I) Insurance

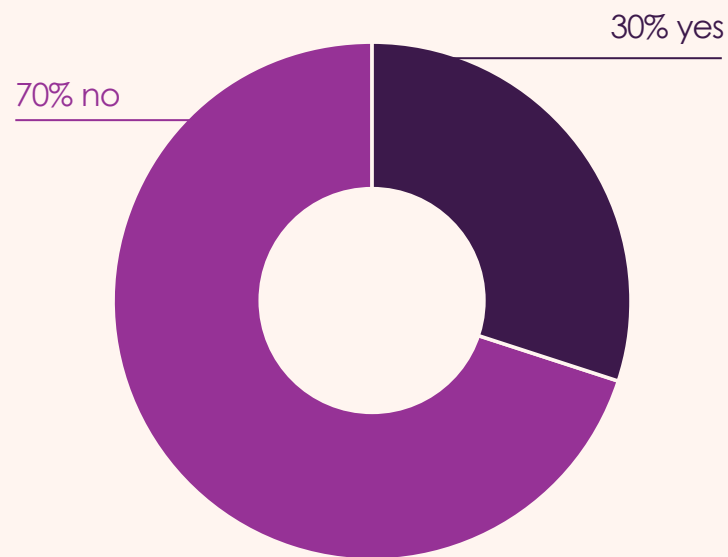
Significantly more deals featured W&I insurance in 2025 relative to 2024, with 80% of deals being underwritten by that insurance compared to 30% in 2024.

2025 also saw a notable increase in W&I policies being sourced on the buy side, as opposed to the sell side (and then being flipped).

Downside protections:

W&I policy (by number of deals)

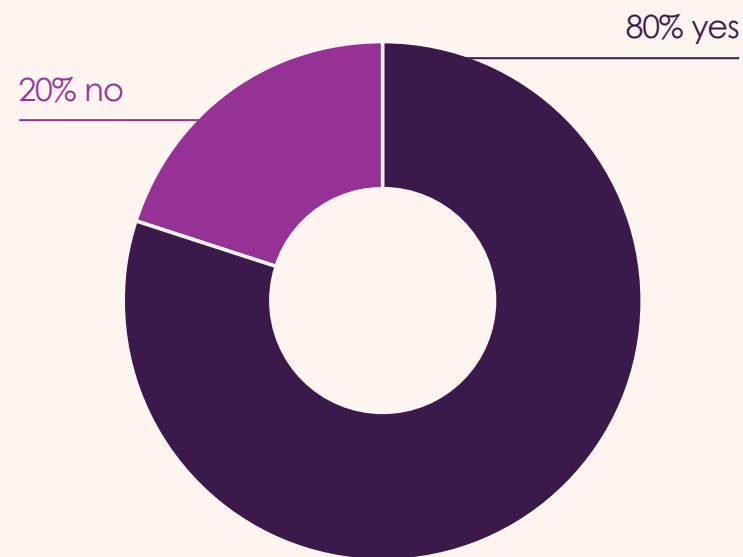
2024



Downside protections:

W&I policy (by number of deals)

2025



Navigating founder disagreements – How to protect your start-up from disputes

Matt Akers and Will Thompson

How to avoid and resolve disputes in start-ups

Disagreements between the founders of a business are often inevitable. Whilst they may make great business partners at the outset, they may not have fully aligned on the direction and expansion of the business, the founders' roles, the way the business is managed or funding and exit strategies, with departures from the business having the potential to become particularly contentious. Whilst most disputes can be resolved amicably, some can be totally destructive to the business, which can be mitigated by reaching alignment at an earlier stage.

Agree things from the outset

Disputes can be hugely expensive and time consuming. However, potential problems can be nipped in the bud from the start.

When establishing a start-up business where founders are on an equal footing at shareholder and board level, consider putting a co-founder agreement in place so that everyone is on the same page about how the business should be run and clearly sets out the rights and obligations of the key stakeholders. It is likely that any investors who later join the business will insist on certain terms (especially regarding leaver

and vesting). However, whilst the co-founder agreement is likely to be superseded at some point, there are certain matters that you should decide on before any investors come on board. You should agree:

- The aims for the direction for the business. The founders' agreed targets, timetable for growth and the vision for the product itself.
- Each founder's roles and obligations. Who does what in the business.
- Any restrictions on the founders. This might include restrictions on working on other projects.

- Incentivisation to make sure everyone is committed to the business in the long term. This includes salaries, equity incentives and a mechanism for vesting, and in what circumstances shares should be forfeited (for example, if they leave to join a competing business or for health reasons). You should consider whether any equity should be transferred from a departing founder to the remaining founders who continue to drive the growth of the business.
- What happens when people leave. Restrictions can be put in place to prevent leavers from competing with your business or using the

business's IP. Whilst it may be unappealing to think about a founder leaving, you should consider what is best for the business if one founder departs and leaves the other to grow the business.

- Deadlock and dispute resolution provisions. Set out a process for handling any disagreements that do arise to prevent hamstringing the business.

You will also want to consider putting in place non-disclosure agreements with potential investors and other stakeholders if you want to discuss your idea for the business or disclose any proprietary information.

Depending on the structure of your business, founders will almost certainly also have legal obligations to each other and to the business as company directors. These include obligations to act in the best interests of the business, not to make secret profits from the business and to avoid conflicts of interest.

What to do when issues arise

Having this type of agreement in place can help deal with problems when they do arise and regulate behaviour to avoid disputes in the future. You can refer back to your original goals and what you have agreed in order to help negotiate a solution.

As noted above, the agreement should also include deadlock provisions to prevent stalemate in the business if the founders cannot agree on a decision. These types of provisions are designed to break the impasse without going to court by providing a framework for dealing with disagreements. For example, you might wish to identify someone with expertise in the relevant area to advise you and provide guidance, which could help navigate an issue. If a more serious dispute arises, you could agree to resolve it by mediation, where an experienced third party helps both sides agree on a solution, or perhaps you could refer the dispute to an expert for them to determine the matter. You might

also have a buyout clause allowing one founder to exit on terms which ensure a fair price for the exiting shareholder.

Ultimately, the last resort is to go to Court, and this generally only arises where a founder has egregiously breached their obligations under the agreement and/or their duties to the company. Where this happens, you could potentially claim damages or obtain an injunction to prevent them from doing something which would harm the business. However, this is generally very expensive and time consuming. Court cases can drag on for years, are an unwelcome distraction and will likely prevent you from raising further capital.

The reality is that having detailed provisions written down from the outset which help you work past any issues are likely to be the best tools to keep things moving forward. The threat of legal action and the respective strength of the parties' legal positions, however, could be used to help break deadlock and negotiate a positive outcome.



Matt Akers
Partner
+44 (0) 7867 158 383
makers@fladgate.com



Will Thompson
Senior Associate
+44 (0) 7866 186 163
wthompson@fladgate.com

Q&A

Nick Wallis and Jack Bettell, Gerald Edelman

We sat down with Gerald Edelman to discuss some of the key issues shaping the current M&A landscape, including valuation, deal structures, buyer expectations and the factors most likely to impact successful transactions

What can be the key differences in the terms offered by a PE versus a trade buyer?

Gerald Edelman: Trade buyers can often pay a strategic premium for synergies, market share or IP, but may offer more of the consideration in the form of an earn-out or deferred consideration. PE buyers tend to price at a lower multiple, but usually offer cleaner cash consideration, often alongside rollover equity for the management team staying on – we regularly see rollover in the region of 10-30% but this can be significantly more. Process also differs. PE processes tend to be faster and more structured, while trade buyer timelines can be slower and less predictable

given internal sign-off chains. That said, experienced trade buyers – particularly those backed by PE – can operate just as efficiently.

Other differences are seen post-completion, with trade buyers often seeking to integrate the target into its existing business, which can mean loss of autonomy and restructuring of the operating structure.

On the other hand, PE buyers usually keep the business standalone (unless the acquisition is a bolt-on to an existing platform investment) with existing management retained under an investment agreement and service agreements.

What terms have you been encountering recently in relation to earn-outs on deals?

Gerald Edelman: Earn-outs remain common, particularly on owner-managed and founder-led businesses. The most common earn-out period we are seeing is three years, though we have worked on deals in the last 12 months with both longer and shorter earn-outs.

Simpler metrics are in favour: targets based on revenue or gross profit rather than EBITDA, because they're easier to interpret and harder to manipulate. We have encountered challenges on earn-out negotiations in relation to conduct of the

business post-completion; finding the right balance between seller and buyer control during a period where sellers are incentivised to hit targets is always an area of contention.

What are the most common reasons deals fall over after heads of terms are agreed?

Gerald Edelman: The three most common causes we see are trading performance, due diligence findings and price chips.

Trading performance during the due diligence and legal drafting period is often the biggest risk. Heads of Terms (HOTs) are typically agreed on a set of historical numbers and a forecast,

but a deal can take upwards of three months to get to completion from that stage. If trading softens or simply fails to hit the trajectory the buyer expects, confidence is eroded. The longer the gap between HOTs and completion, the more exposed a deal is to this.

Due diligence issues identified throughout the process are another key contributor to deals falling over. Examples include a lower quality of earnings than expected, higher customer concentration, contractual risk and tax liabilities that weren't fully understood or disclosed at HOTs stage.

Finally, a valuation gap opening through a price chip, where the buyer uses genuine (or opportunistic) diligence findings to renegotiate price during the process can also lead to deals falling over. Price adjustments are often badly received by sellers and it can be difficult to salvage the relationship unless highly justifiable. Sellers can best mitigate this risk by preparing for the process thoroughly and by ensuring not to

agree to HOTs too quickly and without proper advice.

How do you approach valuation for owner-managed businesses, and how do you balance buyer and seller expectations?

Gerald Edelman: The key point on valuation is about managing expectations. Sellers can have inflated views on the valuation of their business, often because their view is anchored to published headline multiples, which are regularly exaggerated due to selection bias and being based on historical, unadjusted financial metrics.

Published multiples must be adjusted to consider the idiosyncrasies of the target business, such as size, specific sector, growth profile and quality of earnings. Running a genuinely competitive process, even with just a handful of credible buyers, does more to validate valuation than any amount of pre-market analysis.

Normalising EBITDA is critical and often contentious. Owners' salaries, other

owner or family-related expenses and exceptional items all need addressing transparently. A good adviser will identify and evidence these adjustments early, so the number stands up when a buyer's team stress-tests it.

Buyer and seller expectations are usually best balanced through structure rather than price alone. A combination of earn-outs, retained equity and deferred consideration can bridge a gap without either side feeling as though they've "lost" on the headline number.

Locked box or completion accounts: how do you advise clients on which route to take?

Gerald Edelman: Locked box gives price certainty and a cleaner process post-completion. Completion accounts suit situations with longer gaps between signing and completion or where the target's financial reporting isn't robust enough to support a locked box with confidence.

In practice, sellers often prefer locked box for the certainty it gives and the lack of post-completion true-up disputes. It is generally buyer-acceptable too, provided the financial information is reliable and leakage protections are tight. Locked box is also usually preferable in a PE context due to certainty around equity value at the point of completion.

The right route depends on the specifics of the deal - the reliability of the target's financial reporting, the likely gap between signing and completion, and the buyer's own preference - and we work through those factors with the client case by case.

For a first-time seller, what does good advice look like beyond the transaction mechanics?

Gerald Edelman: It starts with preparing the business and the owner well before going to market. We perform a pre-due diligence check to flag any potential issues

which may come to light later in the process. First-time sellers are often unprepared for how personal the process feels and for the scrutiny that diligence brings, so managing that emotional dimension matters as much as the transaction mechanics.

Setting realistic expectations on timeline and on the intensity of the process, which often conflicts with running the business day-to-day, is essential. Our job as advisors is to take away as much of the time commitment from owners to enable them to continue to run the business, though there inevitably will be an increase in intensity and workload, particularly in the latter stages.

Furthermore, it is important to help the seller in choosing the *right* buyer rather than simply the highest bidder, particularly where staff, culture or legacy matter to the seller.

Where are you seeing the most buyer appetite in the UK lower mid-market right now?

Gerald Edelman: The lower mid-market has entered a more active phase in 2026. Stability has returned, though buyers remain disciplined rather than aggressive. PE buy-and-build strategies continue to drive volume through bolt-on acquisitions.

Activity is decisively sector-led rather than high across-the-board, concentrated in industries undergoing consolidation, regulatory change or structural transformation. We've advised on a wide range of sectors which are experiencing strong activity, including technology, professional services, healthcare and education.

What are your predictions for M&A activity in the lower mid-market over the next 12 to 18 months?

Gerald Edelman: Activity is as strong as it's been for a while. There's been a lot of uncertainty for a long time

now - rates, tax, politics, you name it - and buyers and sellers have largely been sat on their hands waiting for it to clear. It hasn't, and seemingly, people have stopped waiting.

Where it gets interesting is which sectors are in favour. Right now, it's the old-school, boring-but-essential businesses that are attracting the most interest – for example, built environment, facilities management, infrastructure. These sectors are hard for AI to disrupt, easy to underwrite, and there's a lot of fragmentation and opportunity for consolidation.

On the flipside, software assets are a harder sell at the moment because buyers are wary of anything AI could commoditise. We expect that split to keep going over the next 12 to 18 months.



Nick Wallis
Partner
+44 (0) 2072 991 420
nwallis@geraldedelman.com



Jack Bettell
Director
+44 (0) 2072 991 468
jbettell@geraldedelman.com

Contact us:

Ellen Livett

Business Development Manager

elivett@fladgate.com

+44 (0) 7484 469 979