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## DR JAMES BICKFORD SMITH

Call: 2008



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### Overview

James joined Littleton after obtaining a Double First and Doctorate from Oxford University, where he worked as a College Lecturer in History. When converting to law he gained "Outstanding" marks on the Bar Vocational Course, scoring particularly highly in the cross-examination assessment and winning the Herbert Smith award for outstanding individual speaker in the Final of the Apex Competition.

James has unusually extensive experience of Tribunal advocacy for a barrister of his call. He is regularly briefed in multi-day hearings and PHRs and has also appeared successfully in the EAT. He is a tenacious advocate who appears in complex matters before Tribunals across the country. For example, a recent fortnight saw him in Manchester, Leicester, London Central and Nottingham arguing cases involving issues of TUPE & ETO, Disability Discrimination, Collective Redundancy Consultation in the context of business insolvency, and the TULR(C)A special circumstances defence. Much of his practice consists of repeat business, with instructing solicitors ranging from City firms to sole practitioners.

His commercial practice is focused on giving straightforward advice based on meticulous research to a variety of commercial parties, ranging from private investors to multinational companies. Cases on which James assisted during pupillage included a number of complex insurance and reinsurance disputes as well as the Bank Charges Litigation (Court of Appeal and House of Lords/Supreme Court). Over the summer of 2011 James undertook a secondment with a highly-regarded Banking and Finance Litigation team alongside his existing bookings. During his secondment he settled pleadings for retail banks, finance companies, and a payment-systems operator in breach of mandate, guarantee, payment system, CCA, and debt claims. He is now appearing with increasing regularity in a range of County Court claims.

Please click on the links below or contact the clerks for fuller details of recent employment and commercial experience.

### Employment

James has a broad employment practice focused on trial work, with experience of bringing or responding to claims of:

- unfair dismissal;
- race, sex, age and disability discrimination;
- unlawful deductions;
- breach of contract;
- lay-off redundancy;
- part-time worker discrimination;
- unjustifiable discipline (TULR(C)A);
- breaches of the WTR;
- automatically unfair dismissal following protected disclosure or TUPE transfer.

Respondent clients have included small businesses, limited, public limited and multinational companies, public sector bodies, community organisations, a Trades Union, and charities. James enjoys learning about his client's businesses or activities and considers it essential to do so. He is now increasingly instructed at an early stage to handle highly-charged or problematic cases for corporate and other clients he has represented in earlier Tribunal proceedings.

Claimant clients have come from all walks of life, and James has secured a number of high value settlements or awards. He is also careful to establish early what non-financial outcome if any a client seeks and then to work towards achieving this; settlement agreements have included provisions a) waiving restrictive covenants b) concerning detailed agreed references and c) concerning re-engagement on negotiated terms.

James undertakes advisory work both in the run-up to hearing and on a stand-alone basis. The latter often involves smaller commercial employment disputes (TUPE transfers, bonus schemes, restrictive covenants).

## TUPE

Cases as sole counsel include:

- *Dumol, Naitta & ors v Aircraft Services International Group (1), Gate Aviation Ltd (2), Performa Elan Singapore Pte Ltd (3)*: 4-day PHR concerning closure of Heathrow Terminal 2. James acted for C2, successfully arguing transfer from business class lounge in T2 to cross-branded lounge in T4. Over twenty different airlines involved. Issues of fragmentation, whether “client” requires legal personality, correct legal test for when services fundamentally different.
- *Barnes & or v Milsteda Systems*: acted for C1 in claim brought against transferee only. C employed by payroll company. R argued that Tribunal not entitled to pierce corporate veil. Transfer upheld following legal submissions at PHR. Case settled on Day 3 of Full Merits Hearing in course of cross-examination of R's witnesses on ETO/redundancy pool issues.
- *X & ors v B Ltd & J Ltd*: acted for C9. Cs employed as delivery drivers by freight forwarding company which lost nationwide delivery contract. Main issue: whether organised grouping of employees assigned to contract. Case settled on Day 2 of PHR.
- *F v H Council and X Police Force*: scope of administrative transfer exception to TUPE, construction and effect of policing agreement between Police Force and Council.
- *R v S Ltd (High Court)*: transfer of enhanced redundancy rights under TUPE 1981.

## Commercial

James has broad experience of commercial work gained first at a magic circle commercial set and then at Littleton. He has drafted advices, notes, or pleadings in respect of claims which have proceeded to judgment in the High Court and/or Court of Appeal in each of the following fields:

- insurance;
- reinsurance;
- aviation;
- civil fraud;
- retail banking;
- investment banking;
- professional negligence;
- general commercial.

Since arriving at Littleton James has also gained substantial experience of advising on conflicts of law problems in both the commercial and commercial employment fields.

Much of James' commercial work is undertaken as part of a team, and he has often been tasked with researching discrete but difficult points of law at short notice as well as drafting pleadings and liaising with expert witnesses or foreign lawyers.

Current or recent commercial matters undertaken alone include freight claims, insurance coverage disputes, bonus and commission disputes, a construction matter, and international arbitration work.

In all his work James aims to provide clients with prompt, straightforward and commercially realistic advice based on meticulous research.

## General commercial

- *Distribution Agreements*: alleged breach of accounting and other obligations in UK distribution agreement; wrongful termination of multimillion dollar agreements covering several jurisdictions.
- *Share Purchase and Business Sale Agreements*: advising and/or drafting particulars of claim in respect of possible claims for a) breach of warranty b) failure to pay deferred consideration c) breach of covenants restricting future commercial activities of vendor and d) breach of collateral banking covenants.

## Investment Banking and Financial Regulation

- Experience of working in teams advising on potential or active claims arising out of the “credit crunch”.
- FSA enforcement proceedings.
- Advising on recent and draft legislation effecting deposit-taking and other financial institutions and their employees.

- Some experience of swaps disputes and ISDA Master Agreements.

## International elements/conflicts of law

- James has become familiar with conflicts of law questions concerning Rome I and II, the CJJA, and relevant provisions of the Arbitration Act. He also has experience of less common conflicts questions arising in practice areas in which chambers has particular expertise, such as the employment claim exceptions with respect to both jurisdiction and choice of law.
- James is highly familiar with handling underlying evidence relating to events in foreign jurisdictions.

## Insurance and Reinsurance

- Coverage disputes in respect of liability, fire, all-risks, life and PHI policies.
- Particular interest in coverage disputes involving company directors, whether in D & O or PHI context.
- Reinsurance, including an important LMX spiral dispute.

## Retail banking

- Most banker and customer disputes, including breach of mandate and guarantee claims.
- Mortgage and other frauds.
- James sat with barristers who acted in The Bank Charges Case while this was before the Court of Appeal and Supreme Court.

## Commercial employment

- James has assisted members of Chambers advising on Pension Deeds, TUPE transfers, and injunctions to enforce restrictive covenants.
- He is now increasingly called on to advise in smaller commercial employment disputes in his own right. These have included:
  - Multi-day PHRs concerned with establishing whether a TUPE Transfer occurred;
  - Multi-day PHRs concerned with whether a claimant was part of the organised grouping of employees admitted to have transferred;
  - PHRs on corporate veil issues;
  - Bonus/commission claims which have settled shortly before hearing for figures in the region of £40, 000.

## Academic

James took a Double First in History from Balliol College, Oxford, before going on to gain a Master of Studies and then a Doctorate from Oxford.

James also studied at the Ecole Normale Supérieure (LSH) and at City University.

James won scholarships and prizes at each stage of his education and briefly went on to be a College Lecturer in History at St Hugh's College, Oxford. His examiners recommended his doctorate for publication by Oxford University Press and he retains a keen interest in medieval Norman history.

When coming to the Bar James was awarded Lord Haldane, Lord Mansfield, and Sir Robert Megarry major scholarships by Lincoln's Inn and a Buchanan Prize for his performance in Bar Finals.

## Languages

French (fluent)

Italian (basic).