

JAMES BICKFORD SMITH

Call: 2008



James specialises principally in the fields of Commercial and Employment law. He also practices in the fields of Partnership and Insolvency law. He has extensive advocacy experience for a barrister of his call.

Recent work includes high-profile commercial and employment cases as a junior, and sole counsel instructions across the full spectrum of Chambers' work. 2018/19 examples include:

- Junior for the Defendants in the first team-move trial heard in the DIFC: **ED&F Man Capital Markets MENA Limited v Hussain (1) RJ O'Brien MENA Limited (2) Ghallami (3)** (led by Tom Montagu-Smith QC);
- Junior for TRM in **BNP Paribas S.A v Trattamento Rifiuti Metropolitan S.p.A**, a dispute concerning the financing of a powerplant near Turin and related swaps contracts. Jurisdictional challenge in Commercial Court and Court of Appeal (led by Charles Samek QC);
- Counsel for corporate Defendants in Chancery proceedings arising out of a senior executive exit, with disputes over shareholdings, options, Braganza and the exercise of contractual discretion by a board;
- Restrictive covenant, confidential information, and springboard injunctions;
- Partnership and LLP disputes;
- Civil fraud work for claimants and defendants, including applications for freezing orders.

James joined Littleton after obtaining a Double First and Doctorate from Oxford University, where he worked as a College Lecturer. He was a Lord Haldane and Lord Mansfield scholar of Lincoln's Inn and won a Buchanan Award for his performance in Bar Finals.

James works with both domestic and international litigation teams. Over the last eighteen months James has worked on cases involving the law of and/or legal teams from: the BVI, Cyprus, Greece, Italy, Singapore, Switzerland (Geneva), the UAE (Dubai), Uganda, and the US.

Feedback has included:

"Sources repeatedly stressed the high quality of his advocacy, as well as his powerful intellect. He is an advocate experienced in the tribunal and courts at all levels."

"Terribly user-friendly, gets the result and gets it done, rolls up his sleeves and is not afraid to muck in."

"He is praised for his grasp of legal principles, with numerous interviewees commenting on his standout academic strength. His practice is diverse and takes in an array of High Court work."

"Sensible, pragmatic and very pleasant to deal with..."

"Previously an academic at Oxford University who now frequently takes on complex employment disputes, often appearing in High Court injunctive relief cases. Clients and peers comment on his mental acuity and strategic approach to his advocacy."

Commercial

James has a busy commercial practice comprising:

- Led work in high value and complex commercial disputes;
- Work as sole counsel in the High Court, often appearing against more senior barristers.

He regularly receives unsolicited positive feedback from solicitors, clients and opponents.

Examples only of recent work are given below. James has undertaken work within a wide range of areas of commercial law: should you wish to inquire about experience of particular areas or sectors please contact James' clerks.

Led work

- Acting for an Italian company in a jurisdictional dispute arising out of a bank's application for negative declaratory relief to stymie proceedings in Italy (led by Charles Samek QC);
- Acting (led by Adam Solomon) for claimants in a conspiracy, breach of fiduciary duty and asset tracing claim;
- Acting in an appeal of orders made following a 35-day Chancery trial involving allegations of knowing receipt and knowing assistance following a €100m fraud (led by Charles Samek QC);
- Acting in a claim brought following failure to repay a significant private loan (led by David Reade QC);
- Acting for special administrator of bank in dispute over registration in England and Wales of a €3bn overseas freezing order (led by Charles Samek QC).

Court Work as sole Counsel

- Acting for a charity recovering monies paid away following a fraud. Two freezing order applications, Norwich Pharmacal applications, application for service by alternative means. Judgment secured and majority of funds recovered;
- Acting for solicitors firm in successful High Court enforcement action concerning a debt owed by related Iraqi and BVI companies;
- Acting for a minority shareholder in Chancery proceedings over control of a well-known restaurant group. Two silks and three senior juniors represented the other parties;
- Acting for bank counterparties in disputes over interest rate swaps, breach of lending agreements, property valuation, and security enforcement.

James has particular expertise in interlocutory applications and co-authors the Injunctions Practice Note for PLC. He also writes a long-running column on civil procedure as well as specialist articles.

Advisory Work

James' advisory practice is broad. It ranges from "quick view" assessments made in the context of pressing commercial deadlines or injunction applications to much more detailed analyses. James' academic background

and legal writing often see him instructed in cases raising difficult and/or novel points of law.

International

James undertakes court work in the **DIFC**, where he is a registered practitioner. He has advised and acted in a wide range of DIFC commercial, company and employment disputes. He has acted in cases involving other Middle Eastern jurisdictions and Pakistan.

James has wide experience of **international fraud** and commercial contract disputes. He has worked for a year or more on disputes anchored in each of **Switzerland, Cyprus, Italy**, and the **UAE**, in each case working with local legal teams.

Languages: James speaks fluent **French** and reads **Italian**. He has worked on cases with documentation in both languages.

Civil law. James has worked with law firms in European jurisdictions on cases turning on points of civil law. He is familiar with and enjoys working with academic lawyers on points of civil law arising for determination in English proceedings.

Employment (High Court)

"Previously an academic at Oxford University who now frequently takes on complex employment disputes, often appearing in High Court injunctive relief cases. Clients and peers comment on his mental acuity and strategic approach to his advocacy."

James has ten years experience of High Court employment litigation and undertakes similar work internationally.

Employee competition and team moves

- Trial Counsel for the Defendants in ***ED&F Man Capital Markets MENA Limited v Hussain (1) RJ O'Brien MENA Limited (2) Ghallami (3)***, the first team move case to reach trial in the DIFC (led by Tom Montagu-Smith QC);
- Trial Counsel for the second and third Defendants in Bluefin ***Insurance Services Limited v Bruce (1) Rogers (2) Powell (3) Global Risk Partners Limited (4) Thornton (5)***, High Court (sole Counsel; the Claimant was represented by Leading and Junior Counsel).
- Applying for or resisting injunction applications. Examples of claimant work: enforcing a UK-wide 12 month non-compete (sole counsel); securing search order following which over 15,000 stolen documents were obtained (led). Examples of defendant work: sole counsel for all Defendants to a team move case. The case settled after the interlocutory application was dismissed; sole counsel for respondent to Restrictive Covenant/Confidential Information injunction application. Two hearings. Application dismissed on indemnity cost basis.

Bonus and other contractual disputes

James has broad experience of:

- Bonus claims;
- Claims concerning shares and share options;
- Deferred compensation and long-term incentive plans;

- Good/bad leaver disputes in all the above contexts;
- Remuneration disputes with parallel or related proceedings in Court/Tribunal or Court/arbitration.

Employment (Statutory)

"Sources repeatedly stressed the high quality of his advocacy, as well as his powerful intellect. He is an advocate experienced in the tribunal and courts at all levels" (Chambers & Partners 2016)

James has trial experience across a full range of statutory claims, including: 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, and automatically unfair dismissal following protected disclosure or TUPE transfer.

James was involved in lengthy trials from early in practice, often appearing against much more senior barristers. He is now primarily briefed in:

- Unlawful deduction/contractual remuneration disputes (collective and individual);
- International/jurisdictional disputes;
- Cases involving both ET and High Court/arbitral proceedings.

Banking & Finance Litigation

James has been involved in banking and finance litigation ever since beginning pupillage a few weeks after the failure of Lehman Brothers. He sat successively with barristers acting in the Bank Charges Litigation in the Court of Appeal and House of Lords, in PPI Litigation, in other retail banking disputes (breach of mandate, fraud) and in investment banking disputes. He later undertook a secondment with a well-known lender-focused banking and finance litigation team. He has subsequently developed a substantial banking practice of his own at Littleton acting for bank customers and counterparties in High Court actions or FCA/FOS matters. A significant number of his cases have been high profile or high value or both. Recent instructions include:

- Actions arising out of the conduct of RBS' GRG unit; James has acted for companies, administrators, shareholders and directors of companies put into GRG;
- Actions involving West Register;
- Actions arising out of banks breaching terms of pre-credit crunch loan agreements, notably in the property sector;
- Interest rate swap cases for both individuals and businesses, both involving the FSA scheme and High Court litigation;
- Chargeholder disputes;
- Guarantee and other security disputes.

Insolvency

James is instructed in insolvency cases where (a) there is an overlap with civil fraud or contractual claims (b) insolvency solicitors seek an oral advocate for heavily-contested applications or trials or (c) there is an employment law crossover. 2016/2017 instructions have included:

- Resisting an application to set aside a statutory demand for £10m;
- Counsel for defendant company resisting s. 238, 239, and s. 423 claims at High Court trial;

- Advice/drafting re insolvency aspect of a multi-party fraud claim (interaction between proprietary claims, freezing order, office-older claims, disputes over proofs);
- Disputes similar to the above three cases;
- Long-running cases involving TUPE, collective redundancy, and insolvency (see separate tab).

Partnership & LLP

James is the Chair of our Partnership and LLP group. His LLP and partnership practice involves both classic Chancery matters and work with more of an employment flavour.

Recent work has included:

- Acting for the Petitioner in a long-running unfair prejudice dispute between LLP members in the Companies Court.
- Junior to Jonathan Cohen QC in the ten-day trial of an 1890 Partnership Act claim.
- Acting for the Designated Members of a financial services LLP in a dispute with the offshore vehicle of a former LLP member over ownership of the LLP's key assets and the legal effect of an earlier separation deed.
- Acting for an LLP member in an Employment Tribunal claim that turned on a status dispute. James persuaded the Tribunal that his client was an employee within the meaning of s. 230 (1) ERA and as such eligible to bring an unfair dismissal claim. After resolution of the status issue at a Preliminary Hearing the case settled on terms that included non-publicity of the judgment.
- Acting in disputes crossing over partnership and discrimination law when the partnership law element of the claim is as significant as the discrimination one. This has included cases of partnerships with no deed, partnerships mislabeled as LLPs (but not registered as such), LLPs with complex "bad leaver" provisions, etc.
- Acting in restrictive covenant/breach of fiduciary duty claims involving LLPs and their current or former members.

While James is happy dealing with contentious LLP and partnership work, the majority of his work in this field is advisory and as such confidential. James is familiar with the pressures that partnership disputes can create on those involved in them, and he remains focused on exploring ways of resolving issues early and/or before they proceed to litigation.

TUPE and Restructuring

TUPE

Cases as sole counsel include:

- ***Wells v 1) MRGB Realisations Ltd (In Administration) 2) Langley Holdings PLC 3) Manroland Sheetfed (UK) Ltd***: Acted for R1's administrators in high value unfair dismissal claim with follow-on civil claim. Issues of assignment and scope of decision in Spaceright. Held: R1 not liable for dismissal.
- ***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. 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.

Insolvency and Employment Law

James is well-recognised for his work in the crossover area where insolvency and employment law meet. By way of professional recognition, James has been invited to deliver training to the Employment Lawyers Association on "*Insolvency for Employment Lawyers*" and to write on Employment Law/TUPE for R3. He is frequently the first port of call for insolvency lawyers seeking quick guidance on employment law issues, or employment lawyers seeking quick guidance on insolvency law. He has developed close relationships with leading Insolvency Practitioners and is often involved on a licensed access basis pre-appointment at the stage teams are assembled.

James is always happy to discuss restructuring options at an early stage pre-appointment and generally recommends that employment law input be sought as early as possible.

Personal Background

- BA (Balliol College, Oxford): Double First
- Frazer Scholar of Balliol College and James Gay Prize for History
- University of Oxford Carlyle Scholar in the History of Post-Classical Political Thought (1999-2003)
- Arts and Humanities Research Board Competitions A & B Winner (1999-2004)
- Doctorant Etranger at the Ecole Normale Supérieure (LSH)
- D. Phil (Oxon) (also completed Master of Studies)
- College Lecturer in History at St Hugh's College, Oxford
- Lincoln's Inn: Lord Haldane CPE Scholarship; Lord Mansfield major BVC Award; Buchanan Prize for performance in Bar Finals; Sir Robert Megarry pupillage award

While researching his doctorate in France James also delivered academic papers in French, including at the Ecole Pratique des Hautes Etudes.

James's examiners recommended his doctorate on the history of Normandy in the eleventh century for publication by Oxford University Press and he continues to prepare this for publication when time allows. In July 2011 he presented a paper to the 34th Battle Conference on Anglo-Norman Studies in York. He has also delivered papers and taught in French.

Other interests include art and travel.

Languages

- French (fluent)
- Italian (basic)