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## JAMES BICKFORD SMITH

Call: 2008



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### Overview

*“Terribly user-friendly, gets the result and gets it done, rolls up his sleeves and is not afraid to muck in.”*  
(Chambers & Partners 2016)

James is a commercial barrister also sought out for the most challenging employment law claims and for crossover work (bonus disputes, restrictive covenant cases, team moves, LLP matters). He has over recent years acted in cases in the Chancery and Queen’s Bench Divisions of the High Court (including the Commercial Court, the Financial List and the Companies Court), in LCIA Arbitration, in County Courts, and in the Employment Appeal Tribunal.

James has unusually extensive advocacy experience for a barrister of his call and often acts as sole counsel against more senior opponents. He is a junior of choice in larger litigation and is listed as a leading barrister in Chambers & Partners:

*“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.”*

*“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.”*

James’ recent work in each of his fields of practice is detailed in the **Fraud, High Court Employment, Statutory Employment, Banking & Finance, Partnership and LLP Law** tabs below. Work over the last year has included:

- Sole Counsel in a series of fast-paced *Norwich Pharmacal* and freezing order applications for a charity that successfully unravelled a payment fraud involving multiple financial institutions;
- Sole Counsel for two defendants in the High Court trial of the *Bluefin* team-move/springboard claim, appearing against a QC and senior junior;
- Acting (led by David Reade QC) in a Libor-fixing and unlawful means conspiracy claim against RBS listed for a six week trial in the Financial List;
- Sole Counsel for an airline respondent to a union test case concerning aircrew terms and conditions.

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.

## Commercial

James has a substantial and busy commercial practice (see also Banking & Finance Tab). Current or recent instructions include:

- Acting (led by David Reade QC) in a High Court Freezing Injunction following discovery of an unlawful means conspiracy, leading to substantial asset recovery;
- Acting (led by Adam Solomon) for claimants in a conspiracy, breach of fiduciary duty and asset tracing claim listed for a speedy trial after freezing order obtained;
- Sole counsel in force majeure dispute concerning construction project in the Philippines;
- Sole counsel for solicitors firm in successful High Court enforcement action concerning a debt owed by related Iraqi and BVI companies;
- Sole counsel in several High Court claims brought against banks; James is also led in two very substantial banking cases (see Banking Tab);
- Sole counsel in complex priorities dispute between charge holders.

James's practice divides into work as specialist junior in cases of significant complexity or value and work as sole counsel, often in "*David v Goliath*" situations. He regularly receives positive unsolicited client or solicitor feedback.

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

## Employment (High Court)

James is familiar with, and thrives on, bringing or resisting injunctive relief applications arising out of employment relationships, including matters where IP claims have or should be advanced. Recent work includes as:

- Sole counsel for all Defendants to a team move case. The case settled after the interlocutory application was dismissed.
- Sole counsel for Defendant in Chancery Division damages action arising out of alleged breach of implied terms and equitable duties.
- Sole counsel for Respondent to Restrictive Covenant/Confidential Information injunction application. Two hearings. Application dismissed on indemnity cost basis.
- Sole counsel advising on a range of putative applications and damages claims.

James also has significant experience of High Court employment cases that have run from injunction to trial. He worked for some nine months (led by Andrew Stafford QC and Jeffrey Bacon) as junior in the team move case of ***JM Scully Ltd v Minett and others***, which began with a Search Order after which over 15,000 documents were recovered. The case involved claims of: unlawful means conspiracy; breach of implied and express contractual terms; breach of fiduciary duty; inducement of breach of contract; unlawful interference; breach of equitable and contractual duties of confidence. James was involved in the case from the first draft of witness statements in support of the initial injunction application to the drafting of the settlement agreement on the eve of a ten day High Court trial. James also acted in the *Marathon* litigation.

## 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 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, parttime worker discrimination, unjustifiable discipline (TULR(C)A), breaches of the WTR, and 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. James is now primarily instructed cases carrying significant risk (including reputational risk) for Respondents, or raising issues of importance to the business as a whole.

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; when cases fight, however, James is known for his resilience and effectiveness as a trial advocate. After gaining much trial experience in Tribunals the length and breadth of the country he is now primarily briefed in highly charged or legally complex cases against better resourced Respondents.

### **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.

### **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.

## Employment (Specialist Areas)

### 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 & 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)