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## NICHOLAS GOODFELLOW

Call: 2009



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### Introduction

Nick is an experienced commercial litigator, with a particular focus on **civil fraud** claims, disputes in the **banking and finance** sector, and claims against **professionals**. Nick is frequently instructed in case involving issues of **company, partnership and LLP** law. Nick's cases often involve urgent applications for commercial injunctions (such as anti-suit, freezing order, and proprietary relief), and/or conflicts of law issues, due to the international context. Nick is regularly instructed in high value commercial claims on his own account, against more senior counsel.

Nick frequently acts in **business protection** cases, involving claims for breach of restrictive covenants, misuse of confidential information, breach of fiduciary duties, the economic torts, and passing off. Nick has extensive experience of complex **team move** litigation (led by more senior members of chambers) and has been involved in several leading reported cases in this area.

Nick also acts in **statutory employment** cases, and appeared in the Supreme Court in the leading whistleblowing worker status case of *Winklerhof v Clyde & Co LLP* [2014] UKSC 32 (led by Andrew Stafford QC and Chris Quinn). Nick is a member of Littleton's **sports law** group. A keen sportsman himself, Nick has represented a rugby player before the National Anti-Doping Panel, and acted for a racehorse trainer claiming unpaid fees and defending allegations of professional negligence.

Nick obtained 'outstanding' on the Bar Vocational Course, has a first class degree in Natural Sciences, and before coming to the Bar worked as a management consultant.

### Commercial

#### Civil fraud

- **Greenbrier Companies Inc v Ebreez Railway Services and others** (Commercial Court) 2016: Claim in deceit relating to a \$15million commission, the subject of proceedings in Saudi Arabia; successfully resisted anti-suit injunction and application to serve outside the jurisdiction, on behalf of D1; succeeded in staying claim on grounds of forum non conveniens and discharging freezing order, on behalf of D3 (led by Jonathan Cohen QC).
- Application for freezing order and proprietary injunction to restrain disposition of various residential properties, erroneously registered in defendant's name because of deception, (QB) 2016 (led by Jonathan Cohen QC).
- Instructed as sole counsel in an ongoing claim on behalf of one of the defendants in a multi-million-pound claim based on an alleged fraudulent diversion of business by two company directors (QB) 2016.
- Claim for fraudulent misrepresentation relating to the transfer of ownership of a number of hotels, pleaded at a value of £5million (Ch) 2015;
- Claim for negligence, breach of fiduciary duty, dishonest assistance and unlawful means conspiracy relating to a substantial fraudulent scheme relating to various properties (QB) 2014;
- Claim against foreign currency trading business based on alleged breaches of the Money Laundering Regulations, dishonest assistance and/or negligence (Ch) 2013;
- Claim for professional negligence and breach of trust against solicitors arising out of a property transaction tainted by fraud, in a claim worth circa £1million, (QB) 2013/4;

- **Santander UK plc v Foster & Co (a firm)** (Ch) 2011: claim for breach of trust against a firm of solicitors arising out of a fraudulent mortgage transaction.

#### Shareholders

- Claim by former director of company seeking order that he was entitled to 50% share in a software company, on the basis of an alleged quasi-partnership and/or constructive trust, in order to found an unfair prejudice petition. Case settled prior to multi-day trial (Ch) 2016.
- Advised on the construction of a share purchase agreement on an issue potentially worth circa £2million (2014);
- Claim for breach of warranty in a share purchase agreement in a claim worth circa £450,000 (ChD), 2014.

#### Company / Partnership / LLP

- **Poole v Horton** [2016] 1315 (Ch): Claim against a liquidator appealing against proof of debt raised by claimant, seeking payment of 33.33% of the net asset value of the company when he ceased to be a director. Succeeded after 2 day trial in Companies Court.
- **Re a Company** [2016] EWHC 1548 (Ch): Application for injunction to restrain advertisement of winding up petition, raising issues relating to the doctrine of apparent authority;
- **Wraith v Fincken**, 2016: Succeeded after 3 day County Court trial in claim based on loan agreement and defending counterclaim based on alleged partnership, or common intention constructive trust;
- Claim for an injunction to restrain a company director from holding themselves out as a director, (County Court) 2014;
- Advised on various claims in the partnership and LLP context, relating to issues such as construction of partnership/ LLP agreements, dissolution, fiduciary duties and enforceability of covenants.

#### Contractual/Common Law Claims

- **Rana v Tears of Sutton Bridge Limited** [2015] EWHC 2597 (QB): bailment claim arising out of the destruction of Hummer limousine by arson whilst under the care of a third party;
- **JK Health & Beauty Technologies Group plc v Douglas Edgar** (QB) 2015; **JK Health & Beauty Technologies Group plc v The Official Receiver** (County Court) 2015: final charging order obtained against individual previously adjudged bankrupt, following decision by court to exercise exceptional jurisdiction under section 346(6) Insolvency Act 1986;
- Claim for breach of an alleged settlement agreement, relating to a dispute arising out of an agreement for the operation of a parking enforcement policy at retail premises (Mercantile, 2014);
- Claim to recover three high value vehicles (including a Bugatti Veyron) with a value totalling circa £1million, (QBD) 2012;
- **Cartley Commercial Collections v ABF Grain Products Limited** (County Court) 2015: strike out of claim based on limitation defence pleaded and allowed by way of amendment;
- Drafted particulars of claim on behalf of a well-known leading business figure based on an allegation of false representation of endorsement against a recruitment company, (ChD) 2012;
- Acted in various claims involving allegations of professional negligence against professionals, particularly solicitors and architects.

Nick is a co-author of an article "When will the court grant freezing orders in support of foreign proceedings?". Nick has also lectured on the developing area of law surrounding the implied duty of good faith in commercial contracts.

Nick is also interested in international arbitration. Nick experienced a number of high value construction arbitrations during his pupillage and has acted as secretary to an ICC Arbitral Tribunal in an international commercial dispute relating to a luxury hotel in Morocco.

## Banking and Financial Services

Nick has completed a secondment in the banking and finance department of a leading law firm, and has since developed a specialism in this area. Nick's experience includes the following:

### Banking

- ***BA Cash & Carry v (1) NatWest (2) Habib Allied International Bank*** (QBD): defending claim for conversion of two high value cheques, and bringing part 20 claim against a foreign bank for an implied indemnity in respect of the main claim;
- ***Santander UK plc v Stasis (t/a/ CHL Mortgages)*** (ChD): claim relating to the receipt of funds paid out to a third party in breach of trust, in proceedings where two banks disputed the entitlement to frozen funds;
- ***Allerton Developments (UK) Limited v Royal Bank of Scotland Group plc*** (ChD): claim for breach of trust and a secret commission, arising out of a loan agreement;
- ***NatWest v Bhattia*** (County Court): claim for breach of a guarantee.

### Financial Services

- Ongoing claim for unlawful means conspiracy against a bank arising out of the steps that it took to secure a majority equity share in a company in which the Claimants were shareholders, worth in excess of £17 million (led by David Reade QC) (Ch) 2016.
- Claim for mis-selling of an interest rate hedge product worth approximately £7million (led by David Reade QC) (QBD);
- Advising on potential claims arising out of the actions of West Register and RBS' GRG business unit;
- Advised an offshore trust on whether loans totalling circa £3million were a 'regulated activity' within the meaning of FSMA and/or were regulated by the Consumer Credit Act 1974;
- Advised on various claims relating to the mis-selling of interest rate hedge products, under the common law and FSMA regime;
- Advised on claims brought under the FSA Handbook and the obligations imposed under COBS relating to suitability and advice on investments.

Nick has written an article for the website on the leading Court of Appeal case of 'Green v RBS: Lessons in Interest-Rate Hedge Products litigation' and has also delivered a number of talks in this field.

## Business Protection

Nick has extensive experience of claims involving the misuse of confidential information, enforcement of restrictive covenants, breach of fiduciary duties, passing off and the economic torts, and has acted in numerous injunction hearings both as sole counsel and led by more senior members of chambers. Nick's experience includes the following:

### Team Move

- ***De Vere Holding Company Ltd v Belgravia Wealth Management Europe Kft*** [2014] EWHC 3189 (QB), [2014] EWHC 3781 (QB): multi-jurisdictional team move case concerning independent financial advisors across Eastern Europe, obtaining springboard relief against numerous defendants (led by Adam Solomon);
- ***First Rate FX Ltd v Trading by Telephone Ltd and others*** [2014] EWHC 982 (QB); [2014] EWHC 983 (QB): foreign currency trader "team move" case involving allegations of unlawful means conspiracy in breach of financial regulations, obtaining and continuing interim injunctive relief against nine Defendants (led by Adam Solomon).

### Confidential Information / Restrictive Covenants

- **M&E Global (Staffing) Solutions Ltd v Tudge** (QB): international springboard injunction case, involving personnel engaged at US military bases in Germany (led by Adam Solomon, but unable to attend injunction hearing [2016] EWHC 597 (QB)).
- **House of Flags v Geranio** (QB) 2016: claim for breach of restrictive covenants against former managing director of company; interim injunction application successfully resolved by undertakings to Court; case also concerned forensic inspection application which was the subject of an appeal (sole counsel);
- Ongoing claim against the former directors of the claimant company based on a conspiracy to launch a competitive business formed during the defendant's employment, in concert with a private equity business (led by Stuart Ritchie QC).
- **Davies v Hart** [2015] EWHC 3121 (QB): court refused to set aside default judgment in restrictive covenant share sale agreement case, where some aspects of the defence had no real prospect of success (sole counsel);
- **Morris v Tullett** (QBD) 2015: application for interim injunction to restrain breach of restrictive covenants, resolved by undertakings to the Court (sole counsel);
- Application for an injunction based on alleged 'passing off' and misuse of confidential information in the energy broking industry (sole counsel), (ChD) 2014;
- Acting for co-defendant in claim for breach of post-termination restrictive covenants in the recruitment industry (QBD) 2014;
- Injunction application to restrain breach of post-termination covenants (sole counsel) (ChD) 2012;

Nick has co-authored an article (with Gavin Mansfield QC) published in the Industrial Law Journal on the Court of Appeal decision in **Tullett Prebon plc and others v BGC Brokers LP and others**, and the implications of the decision as regards the scope of the implied duty of trust and confidence in 'team move' situations.

### **Employment**

Nick has appeared in the Supreme Court, EAT and is frequently instructed in multi-day ET hearings on behalf of individuals and leading corporate clients in discrimination, whistleblowing, unfair dismissal, and other statutory employment claims.

Nick's experience includes the following:

### Appellate

- **E Ivor Hughes Educational Foundation v Morris** [2015] IRLR 696: appeal against protective award claim, raising issues as to the timing of the obligation to consult; appeal against procedural irregularity by ET;
- **Winklehof v Clyde & Co LLP** [2014] UKSC 32 (SC): Supreme Court case concerning whether members of LLPs are entitled to statutory whistleblowing protection (led by Andrew Stafford QC and Chris Quinn);
- **Ranu v Diamond Solicitors LLP** (UKEAT/0537/11/BA) 2012: appeal against finding on employee status;
- **Maher v Tasha Foundation** (EAT) 2011: Acted pro-bono for a client seeking to appeal the decision to refuse her appeal on the ground that it was out of time.

### Tribunal

- Represented respondent in defence to claim alleging race discrimination by a teacher at a young offenders institute (ET) 2014;
- **SKR v LP Ltd** [2013] EqLR 856 (ET): represented Claimant in an unfair dismissal and sex harassment claim arising out of an affair between the CEO of a leading Property Company and the employee, which led to the employee's dismissal (see Daily Mail; Telegraph; Standard);
- **Corpe v ITV** (ET) 2012: represented ITV in defence to a claim alleging pregnancy discrimination against the former editor of ITV's show Daybreak (see Daily Mail; Standard);

- ***Momin v BSKyB*** (ET) 2013: represented BSKyB in defence to claim alleging race discrimination against a manager;
- ***Ellis v Mid Staffordshire NHS Foundation Trust*** (ET) 2012: represented the respondent in defence to a claim by a former physiotherapist alleging direct disability discrimination and a failure to make reasonable adjustments.

Nick also has experience of trade union law, and has been instructed as a junior in a proposed application for an injunction to restrain industrial action by a critical department of an NHS Trust.

## Sports

Nick is a keen sportsman, which drives his interest in sports related work. Nick's experience in the sports sector includes the following:

- Acted for a rugby player before the National Anti-Doping Panel;
- Represented a racehorse trainer claiming unpaid fees and defending allegations of professional negligence under the BHA regime;
- Acted in bankruptcy proceedings on behalf of a senior executive of a leading football club arising out of (disputed) claims under various guarantee agreements.

Nick is particularly interested in the law relating to doping in sport, and has written comments/articles on the following topics:

- 'Armstrong, USADA, the UCI, WADA and limitation periods in doping cases'
- 'Horse racing and doping: Ignorance of the law is a dubious excuse'
- 'Proportionality in doping cases and proposed revisions to the World Anti-Doping Code'

## Arbitration

As a commercial litigator, Nick is comfortable accepting instructions in any ADR forum, whether it be arbitration, or some other form of dispute resolution format that the parties have agreed.

Nick's experience of arbitration includes the following:

- Advising on a potential ICC arbitration claim in the aircraft industry
- Advising on whether a claim for negligent repair work to property against an insurance provider fell within the scope of an agreement to arbitrate
- Acted as secretary to an ICC Arbitral Tribunal in an international commercial dispute relating to a luxury hotel in Morocco.
- Assisted, during pupillage, in the preparation of written submissions for an ICC arbitration concerning a large government infrastructure project in a West African country
- Assisted, during pupillage, in advising in the context of a high value international LCIA arbitration, regarding two issues of company law

## Background

Nick is married with a young son and daughter. His main interests are sport related. Nick is a former rugby player at county standard, and currently enjoys triathlon, cycling, kite-surfing and skiing in his spare time.

## Education

BSc Natural Sciences, 1st, University of Birmingham, (2000-2003)  
GDL, BPP (2007-2008)  
BVC, BPP (2008-2009)  
Outstanding and top mark of year in the drafting paper on the BVC

## Awards

Hardwicke scholarship, Lincoln's Inn (2008)

Lord Denning scholarship, Lincoln's Inn (2008)

Sunley scholarship, Lincoln's Inn (2009)

## Memberships

Nick is a member of COMBAR, PNBA, ELBA and BASL