

James Bickford Smith

Call: 2008

Barrister

Email: jbs@littletonchambers.co.uk

Email Clerk: Dan@littletonchambers.co.uk

Telephone Clerk: +44 (0)20 7797 8659



James has a busy practice across his specialisms of commercial, employment and partnership law. An experienced and versatile advocate, in 2020 he has appeared in the Commercial Court, the Business and Property Courts (Chancery Division; Circuit Commercial Courts), the Insolvency and Companies Court, the Court of First Instance of the DIFC, and the interim applications court of the QBD. This advocacy work is combined with numerous instructions as a junior, both as part of teams led by Queens Counsel and as sole adviser.

Recent work examples:

Commercial

- Junior for **TRM in BNP Paribas S.A v Trattamento Rifiuti Metropolitan S.p.A [2018] EWHC 1670 (Comm), [2019] EWCA Civ 768, [2020] EWHC 2436 (Comm)**, international swaps, bank finance and jurisdictional dispute, Commercial Court and Court of Appeal (led by Charles Samek QC);
- Sole Counsel successfully resisting Chancery appeal brought by debtor challenging assignment of Bank non-performing loan portfolio: **Nicoll v Promontoria (Ram 2) Ltd [2019] EWHC 2410 (Ch)** and at 2020 Bankruptcy Trial (against QC);
- Sole Counsel for well-known national charity, recovering monies paid away following payment fraud. Secured **Norwich Pharmacal** and **Bankers Trust** orders against multiple financial institutions (Soole J, Whipple J), a Worldwide Freezing Order (Whipple J) continued on return date (King J), and judgment (Robin Knowles J). More than half of stolen monies recovered.

Employment

- Defending start-up professional services firm in two team move claims brought by rivals, and advising on further individual recruitments.
- Junior for the Defendants in 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);
- Resisting injunction application concerning alleged misuse and retention of confidential information by departed senior executive (against QC);
- Counsel for corporate Defendants in Chancery proceedings arising out of a senior executive exit, with disputes over shareholdings, options, and the exercise of contractual discretion by a board;
- Defending unlawful deductions claims brought by union concerning hourly rates payable pursuant to formulae in historic terms and conditions, following TUPE transfers.

Partnership/company

Most of James' partnership and LLP instructions comprise confidential & sensitive disputes in professional or financial services firms, recently:

- Acting for Respondent LLP (In ET) and Respondent Partners (in arbitration) defending claims brought by partner expelled from professional services firm following misconduct;
- Acting for partner in 1890 Act solicitors' partnership subject to detriment after pregnancy and pregnancy-related illness (against QC); the case saw a significant financial settlement;
- Advising on LLP team moves and covenant disputes, including in offshore jurisdictions;
- Acting for two members of an algorithmic trading fund in a dispute with a departing member and a BVI nominee company concerning asset & IP ownership and valuation.
- Acting in a long-running LLP Unfair Prejudice Petition. Main issues: exclusion, diversion of business opportunity.

In company law, James is currently instructed in several unfair prejudice & breach of fiduciary disputes in England & Wales and in similar disputes in the DIFC.

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:

"He is very good at detail, he leaves no stone unturned and he is a good person to have on your side."

"He is a very clever barrister and he is the one to go to for a novel idea."

"James is fiercely intelligent, commercially astute, and has an easygoing but disciplined style with clients and the court alike. He knows when to seek specialist input on cases of his, and works diligently and rigorously in everything he does - an excellent lawyer."

"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."

RECOMMENDATIONS

"He is very good at detail, he leaves no stone unturned and he is a good person to have on your side." "He is a very clever barrister and he is the one to go to for a novel idea."

Chambers UK Bar 2022

"James is fiercely intelligent, commercially astute, and has an easygoing but disciplined style with clients and the court alike. He knows when to seek specialist input on cases of his, and works diligently and rigorously in everything he does - an excellent lawyer."

Legal 500 2022

"An intelligent and knowledgeable barrister with a good sense of how a matter is likely to play out."

Legal 500 2022

"He's a pleasure to work with, grasps issues quickly and is prepared to work extremely hard to deliver the required output."
"He's commercial, supportive and adds great value."

Chambers UK Bar 2021

"A brilliant advocate who understand cultural variables and has the ability to stay calm in some heated negotiations."

Legal 500 EMEA

AREAS OF LAW

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 shareholder dispute and related proceedings concerning failure to repay or issue shares in respect of a significant private loan/capital contribution (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.
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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 has been instructed in corporate and personal insolvency cases since pupillage. He is most commonly instructed where (a) there is an overlap between civil fraud/contractual claims and insolvency (b) specialist advisers seek an oral advocate for heavily-contested matters or (c) there is an employment law crossover.

Recent instructions have included:

- Counsel for defendant resisting s. 238, 239, and s. 423 claims at High Court trial;
- Resisting applications to set aside statutory demands, including demands of over £10m;
- Successfully resisting a Chancery appeal concerning the failure of such an application: *Promontoria (Ram 2) Ltd v Nicoll*;
- Acting for appellant seeking to reopen findings made after a lengthy high court trial of liquidator's claims against multiple parties that had proceeded in some defendants' absence;
- Advising directors resisting liquidator claims under s. 423;
- Advising creditors on preference, wrongful trading and other claims following a business insolvency and sale of assets;
- Long-running cases involving TUPE, collective redundancy, business sales, and insolvency priorities.

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 Respondent LLP (In ET) and Respondent Partners (in arbitration) defending claims brought by partner expelled from professional services firm following misconduct;
- Acting for partner in 1890 Act solicitors' partnership subject to detriment after pregnancy and pregnancy-related illness (against QC); the case saw a significant financial settlement;
- Advising on LLP team moves and covenant disputes, including in offshore jurisdictions;

- Acting for two members of an algorithmic trading fund in a dispute with a departing member and a BVI nominee company concerning asset & IP ownership and valuation.
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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

TUPE and Restructuring

- 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)
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