



James Ayliffe QC

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Clerks' Details

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Qualifications and Appointments

- First in Philosophy Politics & Economics
New College, Oxford
- Distinction in Diploma of Law.
City University, London

“Superb at anything”

Chambers & Partners 2014

Publications

- [Hill and Redman's Law of Landlord and Tenant](#) (2014)
Specialist Editor

Memberships

- Chancery Bar Association
- COMBAR
- Commercial Fraud Lawyers Association
- Insolvency Lawyers Association
- Professional Negligence Bar Association
- Property Bar Association
- Member of the Bar of the British Virgin Islands

Practice Overview

James is a highly experienced QC with a broad commercial/financial practice.

He provides advice and advocacy services across a range of fields including banking, company, insolvency, financial services, civil fraud and asset tracing, joint venture/partnership, professional negligence, real estate and contentious trust matters.

His practice is marked by determination to achieve the best outcome for his clients, mental agility, attention to detail and sound practical judgment.

Much of his work has an international flavour, involving jurisdictions as diverse as the BVI, Cayman Islands, Channel Islands, Cyprus, South Africa, Isle of Man, Gibraltar, New York and Ukraine.

His work also includes acting as an arbitrator, mediator or expert.

He has been recommended for many years in the legal directories (*Chambers & Partners*, *Chambers Global* and/or *The Legal 500*) for:

- Commercial Dispute Resolution (Chancery)
- Banking & Finance
- Real Estate Litigation
- Professional Liability
- International & Offshore.

Among the comments that have been made of him in the directories are: “superb”, “excellent”, “a fine barrister with a charming manner”, “very good with clients”, “a first rate intellect with a user-friendly manner that engenders confidence”, “has the ability to digest information and advise coherently on the most complex of legal arguments”, “an excellent communicator who provides supremely intelligent advice”, “very confident in implementing the advice he gives”, “a real specialist”, “his advocacy is fantastic and he is able to sway the judge’s mind”, “a great guy to work with”, “fantastic”, “dynamic”, “level-headed and focused”, “easy to deal with”, “always on top of his cases”, “a splendid understated style”, “held in high regard”, “widely respected”, “meriting the most notable compliments”, “a team player”, “intellectually tough”, “will stand up to anyone”, and “a star of the commercial Bar”.



Pensions

James regularly deals with cases in the pensions field, particularly those which require or benefit from possession of wider legal expertise.

Some representative cases include:

- representing City solicitors facing complex claim by scheme trustees for damages for losses arising out of failure to equalise retirement ages;
- advising the Pensions Regulator in relation to a 'failure to agree' between trustees and employer under Part 3 of Pensions Act 2004;
- advising beneficiaries under SIPPs arrangements regarding claims against trustees and managers for mismanagement of trust investments;
- successfully representing the Pension Protection Fund in its first court case involving pursuit of a winding up order against an employer based on a contingent S 75 debt;
- advising the trustees of a large occupational pension scheme regarding issues relevant to assessment of employers' ability to satisfy its potential s. 75 liability;
- advising the trustees of a large occupational pension scheme regarding 'employer related investments';
- acting for pension fund trustees on multi-million pound claim against a major life office for mismanagement of a core investment;
- acting for City solicitors in defence of multi-million pound claim by pension fund trustees in respect of allegedly negligent advice/drafting of scheme documentation;
- advising major life office in relation to potential claims exceeding £300m regarding negligent advice in respect of changes to pension arrangements;
- acting on claim against benefit consultants arising out of re-structuring of pension scheme on sale of business.

Professional Liability

James has extensive experience of professional liability matters, including claims for negligence, breach of contract, warranty of authority, fiduciary duty, trust, and regulatory or professional rules.

He has acted for and against a diverse range of professionals including:

- lawyers (solicitors and barristers);
- accountants;
- financial advisers;
- investment managers;
- trustees and fiduciaries;
- directors;
- pension professionals (including actuaries and benefit consultants);
- surveyors and valuers;
- construction professionals (including architects and quantity surveyors).

He also advises on professional indemnity insurance matters such as interpretation of policy provisions, aggregation of claims, declinature of cover, conflicts of interest/separate representation, and confidentiality/privilege issues.

He has been recommended for many years by both *The Legal 500* and *Chambers & Partners*, who have described him as (among other things) a "**real specialist**" in the area, who "**regularly acts in legal and property-related professional negligence disputes**" but is also "**superb at anything with a trusts angle**" and "**good for technical pension cases**".



Professional Liability continued

Some representative cases include:

- defending City solicitors facing £5m claim arising out of contract for sale of valuable development land in Kensington, London;
- defending well-known firm of accountants against a multi-million pound claim for losses arising out of a PPP/PFI project;
- acting for bank on multi-million pound claim against construction professionals in relation to losses on a failed property development project;
- acting for Channel Islands trustees in defence of multi-million pound claim for alleged negligence in management of substantial investment portfolio;
- defending leading commercial QC against £6m claim in relation to conduct of litigation relating to commercial property development;
- advising liability insurers of company directors facing US \$200m claims for breach of duties owed to the company in relation to the management of failed investment fund;
- defending City solicitors against complex claim by pension scheme trustees arising out of failure to implement equalisation of retirement ages;
- acting for accountancy firm facing £50m claim arising out of allegedly negligent audit work in failing to detect that company was being run as a Ponzi scheme;
- acting for well-known firm of solicitors against £55m claim for alleged negligence in relation to grant of options for development of airspace above a portfolio of petrol filling stations;
- advising pension fund administrators in relation to a claim by pension scheme trustees for losses arising out of failure to implement Barber equalisation;
- advising City solicitors regarding mitigation options in relation to a multi-million pound negligence claim in relation to advice regarding acquisition of property;
- advising indemnity insurer on coverage issues arising from multiple claims by lenders for losses arising out of mortgage frauds;
- defending City solicitors against multi-million pound claim for allegedly negligent implementation of tax saving scheme;
- acting for accountancy firm facing US\$30m claim by a hedge fund arising out of failure to warn of fraud in relation to proposed investment by the fund;
- defending City solicitors against £200m claim arising out of advice given in connection with the takeover of listed company;
- defending solicitor trustee against complex multi-million pound claim for negligence and breach of duties in management of trust assets over more than 20 years;
- acting for bank on a multi-million pound claim against well-known firm of valuers in relation to losses on development loan facility;
- acting for wealthy individual on multi-million pound claim against accountants/tax advisers in relation to negligent tax advice and failure to disclose 'secret commissions';
- advising pension fund trustees regarding a multi-million pound claim against City solicitors for alleged negligence in relation to advice regarding property acquisition;
- representing leading tax QC in defence of £10m claim for allegedly negligent advice in relation to a container leasing tax scheme;
- defending leading commercial QC in defence of a multi-million pound claim for alleged negligence regarding conduct of commercial litigation;
- defending solicitors against substantial claims arising out of failed litigation over ownership of shares in Bonham's auction house; and
- acting for banking syndicate on a £100m claim against City solicitors in relation to advice regarding title to the 'Pointwest' property development.



Trusts, Tax, Probate and Estates

James is regularly involved in high-value contentious trusts and estates disputes.

Some representative matters include:

- acting for trustees of substantial Channel Islands trust in defence of multi-million pound claim for alleged breach of trust in relation to management of investment portfolio;
- representing an international bank trustee company in contested application by beneficiary for appointment of judicial trustee in respect of UK and offshore trusts;
- acting for principal beneficiary of trust of £100m landed estate in wide-ranging dispute with trustees and others regarding validity of trust and rights of beneficiary;
- advising trustees of Isle of Man trust regarding potential claim against investment advisers in respect of losses suffered on investments in a failed Lehmans fund;
- advising trustee in bankruptcy of well-known UK property tycoon in proceedings to recover hundreds of millions of pounds owing to creditors from assets held in Channel Islands trusts;
- acting for South African judgment creditor seeking to 'break open' a trust structure established across a number of offshore jurisdictions in order to enforce against hundreds of millions of pounds of assets transferred into trust by the judgment debtor
- acting for trustees of a Jersey property unit trust in dispute as to priority of their rights of indemnity and associated lien against trust property;
- acting for trustee facing a multi-million pound claim alleging breach of trust in relation to his dealings with trust property comprising shares in a real estate company;
- advising well-known firm of solicitors facing a multi-million pound claim arising out of a disastrous Beddoe application;
- acting for a high-net worth individual seeking to set aside trusts set up for the purpose of mitigating tax and to claim damages and an account of 'secret profits' from the advisers involved in setting up the trusts;
- advising a settlor regarding avoidance of a multi-million pound Bermudan trust on the grounds of mistake;
- acting for a firm of solicitors in successful defence of wide-ranging claims by beneficiary in relation to conduct of earlier trust litigation;
- acting for Hong Kong bank in proceedings to set aside a multi-million pound 'sham' trust established with a view to defrauding creditors; and
- advising on issues arising out of dispute between Russian oligarchs involving challenges to the validity of trust and nominee arrangements.

Property

James has extensive experience of real property matters, including:

- contracts for the sale or grant of interests in land;
- options;
- restrictive and other covenants affecting land;
- easements;
- adverse possession;
- registered land;
- landlord & tenant;
- mortgages and charges over land; and
- trusts of land.



Property continued

His familiarity with wider areas of commercial law (see his "Commercial" practice) makes him particularly suited to property cases with wider commercial elements – eg disputes arising from joint ventures for the acquisition and exploitation of real property.

He also has a particular expertise in property-related insolvency matters as editor of the insolvency chapter of Hill & Redman's Law of Landlord & Tenant (Lexis/Nexis) and co-author of Transaction Avoidance in Insolvency (OUP).

He has been recommended for property/real estate litigation in both Chambers & Partners and The Legal 500 for many years. Chambers & Partners (2016) described him as "an excellent communicator who provides supremely intelligent advice" and "very diligent".

Some representative cases include:

- advising and acting for a well-known FTSE company in connection with issues and disputes arising under a £2bn sale and leaseback of portfolio of 6,000 properties;
- acting for defendant facing claim for alleged repudiation of £20m contract for sale of former Royal Mail sorting office in Kensington;
- representing partner in a property joint venture in multi-million pound dispute arising out of failures by other partner to disclose personal interests and profits from dealings with joint venture vehicle;
- acting for defendant in successful defence of a £55m claim concerning alleged breach of options to grant leases of the airspace above a portfolio of UK petrol filling stations (*Ridgewood Properties v Valero Energy* [2013] 6 EG 105);
- acting for the administrators of HMV in relation to proceedings by landlords for possession of its flagship Oxford Circus store and other stores;
- acting for vendor in a claim for specific performance of contract for sale of multi-million pound factory premises involving difficult issues regarding s 2 Law of Property (Miscellaneous Provisions) Act 1989;
- representing guarantor seeking a vesting order in respect of a commercial lease following insolvency of the tenant so as to mitigate against on-going losses of £2.5m pa;
- advising landlords of retail premises with insolvent tenants regarding entitlement to payment of rent as an expense of the tenants' administration;
- advising residents of a luxury development in wide-ranging dispute with developer/freeholder
- advising a well-known supermarket chain regarding claims arising out of the disposal of portfolio of stores;
- acting for a well-known car dealership on a complex claim for the recovery of valuable leasehold land following dissolution of the tenant company and disclaimer of lease;
- acting for trustees of a property unit trust in dispute regarding priority of competing interests in £28m warehouse premises (*Dominion Trustees v Capmark Bank Europe* [2011] 2 EGLR 87);
- advising owner of valuable advertising sites regarding the status and priority of its rights;
- acting for vendor in dispute regarding enforceability of contract for sale of development property in west London (*Best Beat v Maurant & Co* [2009] PLSCS 1);
- acting on dispute regarding the operation and effect of section 28 Land Registration Act 2002 (*Halifax v Curry Popeck* [2009] 1 P&CR 7);
- acting for well-known house-builder in multi-million pound dispute regarding enforceability of overage provisions in contract for sale of development property;
- advising London borough regarding easements in connection with the multi-million pound development of a well-known London landmark.



Commercial

James' commercial practice covers the following main areas:

- Banking & Finance
- Company
- Insolvency
- Civil fraud & Asset tracing
- Commercial contracts.
- Financial services.
- Joint ventures & Partnership.
- High-value trust disputes.
- International & Offshore.

Commercial contracts

James regularly deals with issues and disputes concerning the validity, interpretation and enforcement of rights under commercial, financial or business contracts.

Some representative cases include:

- acting for well-known FTSE 100 company in LCIA arbitration concerning operation of complex £2bn re-financing arrangements;
- acting for printing company defending multi-million pound Commercial Court claim by government agency for breach of contractual duties to protect confidential material from theft;
- acting for hotel owner in multi-million pound LCIA arbitration relating to alleged breaches of operating and management agreement in respect of a major hotel in Saudi Arabia;
- advising Russian investment bank in relation to claim by executive recruitment firm for fees for alleged services in connection with the recruitment of top executives;
- representing provider of share and bond trading services in multi-million pound dispute with IT suppliers;
- representing licensor in defence of US\$80m LCIA arbitration regarding alleged breach of international licence agreement governing use of well-known brand and trademark in connection with sale of handbags;
- advising manufacturer of street cleaning vehicles on contractual claim against company responsible for the cleaning of London boroughs;
- acting for international financial services group facing £20m claim for alleged fraudulent misrepresentation in relation to the sale of insurance business;
- representing vendors of air conditioning business in claim for deferred consideration for sale of shares;
- advising local health authority in relation to issues arising under complex contractual outsourcing arrangements;
- acting for licensor in US\$20m claim for alleged repudiation of international licence agreement relating to use of brand in connection with sale of watches.



Commercial continued

Financial services

James has wide experience of financial services, including:

- perimeter, compliance and enforcement issues under FSMA;
- advice and 'misselling' claims;
- investment mismanagement claims;
- issues relating to collective investment schemes;
- life assurance;
- with profits.

Some representative cases include:

- advising Independent Expert appointed in relation to Royal London's introduction of a new form of with profits product ('profit share accounts');
- advising trustees of employee benefit trusts regarding claims against investment advisers in relation to losses on failed Lehmans fund;
- acting for Policyholder Advocate appointed to represent the interests of policyholders of Commercial Union and Norwich Union (both now part of Aviva) in relation to reattribution of a £5bn inherited estate;
- advising Channel Islands financial regulator regarding issues relating to trading of overseas firms through use of serviced offices and other facilities;
- acting for Equitable Life in high-profile litigation regarding 'guaranteed annuity rates' culminating with the House of Lords decision in *Equitable Life v Hyman*;
- advising 'nationalised' bank regarding financial services issues arising from the impact of a collapse in its share price on staff incentive arrangements;
- acting for wealthy investor on multi-million pound claim in respect of losses arising from investment in capital redemption contracts;
- advising ACD regarding exposure to claims from mismanagement of ICVCs;
- acting for pension fund trustees on multi-million pound claim for mismanagement of core fund investment;
- acting for investors seeking to recover investments following the collapse of the Bahamas-based Imperial Consolidated Alpha Plus Fund;
- advising on claims arising from the mis-selling of split capital investment trusts;
- acting for custodian trustee of Docklands property enterprise trust in a successful defence of claims by investors.

James also regularly acts on cases in the pensions field. See further under "Pensions" section of CV.



Commercial continued

Joint ventures & Partnership

Much of James' work is concerned with disputes and issues between partners in joint ventures of one form or another (whether corporate, contractual, partnership, limited partnership, LLP, LLC or otherwise).

Some representative cases include:

- representing member of LLP in £10m claim for damages for breach of fiduciary and other duties and recovery of 'secret profit' made by partner;
- advising property developer facing claim for account of millions of pounds of profits made from alleged joint venture for acquisition and development of land in north of England;
- representing corporate vehicle for investment of Euro 60m in shopping malls in Eastern Europe in defence of multi-million pound claim by one of investors;
- acting for one of two 50/50 shareholders in dispute relating to joint venture for sale of agricultural equipment in the former CIS;
- advising investor in joint venture for establishment of a private jet hire business in dispute with other investors.

High-value trust disputes

James is frequently involved in high-value trust disputes, many of which are of a highly commercial nature. See further under "Trusts, Tax, Probate & Estates" section of CV.

International & Offshore

James is frequently instructed on matters with substantial international, off-shore or cross-border elements and is ranked in *Chambers & Partners* and *Chambers Global* for such work.

Some representative matters include:

- see representative high-value trust cases mentioned above, many of which have substantial international, offshore or cross-border elements;
- acting for Russian joint venture partner in successful defence of BVI proceedings for alleged misrepresentations in relation to establishment of joint venture vehicle and appeal before Eastern Caribbean Court of Appeal;
- acting for Dubai and Brunei investors in LCIA arbitration concerning alleged breaches of hotel management agreement in respect of hotel in Saudi Arabia;
- acting for defendant to US\$30m claim by Cayman- and Netherlands Antilles-based hedge fund vehicles;
- advising Jersey financial regulator regarding responsibility of overseas firms operating through serviced offices and other facilities in Jersey;
- advising in relation to alleged misappropriation of Ukrainian media interests and enforcement of US judgment against Cypriot company (owned by Channel Islands trust) to which such interests had been transferred.

James is also a member of the Bar of the British Virgin Islands.



Banking & Finance

James is frequently involved in banking and finance cases and is ranked in The Legal 500 for work in the field. Areas covered by him include:

- loan agreements;
- mortgages, charges and other forms of security (e.g. guarantees, bills of sale, performance bonds);
- appointment of receivers;
- bondholder disputes;
- syndication disputes;
- investment management disputes;
- disputes and issues arising out of settlement and clearing services;
- advice/ 'misselling' claims;
- claims against professional advisers.

Some representative cases include:

- acting for court-appointed representative noteholder in proceedings by security trustee of £1bn securitisation structure for directions;
- advising borrowers on several substantial interest rate swap and other hedging instrument 'misselling' claims;
- acting for borrower under £60m investment loan facility in dispute arising out of alleged breaches of LTV covenants;
- acting for bank on claim to recover losses on a property development loan facility;
- acting for UK property group on multi-million pound claim against its principal bankers for duress and intimidation arising out of withdrawal of £100m loan facilities;
- advising Irish bank regarding issues arising out of the winding up of its deposit-taking business;
- acting on a dispute regarding the priority of equitable charges in favour of different lenders;
- acting on successful strike out of high profile claim arising out of allegedly wrongful enforcement of a mortgage over the largest stately home in England;
- acting for defendant to £50m claim arising out of financing arrangements in respect of the development of a shopping centre;
- advising bank regarding enforceability of 'shared appreciation mortgages' (SAMs); and
- advising department store regarding £100m claim against bank in respect of breaches of agreement regarding branded store and credit cards.

Company

James often deals with company law matters, including:

- interpretation and enforcement of articles of association and shareholder agreements;
- management issues;
- claims for breach of directors' duties;
- shareholder disputes (including unfair prejudice petitions);



Company continued

- disputes arising from share/asset sale agreements;
- issues as to validity and enforcement of company charges;
- miscellaneous Companies Act issues;
- corporate insolvency issues.

Some representative cases include:

- acting for agent alleged to be liable under Companies Acts for £20m contract entered into on behalf of company which had not yet been incorporated;
- acting for a 50% shareholder in dispute with US partner over control of vertical transportation services company;
- acting for defendant to £200m claim arising out of the takeover of a listed company involving issues regarding stock exchange rules, the takeover code, and the duties of professionals involved in advising on takeovers;
- acting for former chairman of Chestertons estate agency in multi-million pound shareholder dispute;
- acting for director accused of complicity in establishing of “poison pill” arrangements to deter company takeover;
- acting for purchaser of paint manufacturing company on multi-million pound claim for breach of warranty in share sale agreement;
- advising directors of well-known healthcare company in administration;
- acting for company providing support services to private equity industry in successful opposition to claim for rectification of its share register.

Insolvency

James has extensive experience of insolvency matters, both corporate and individual, and particular expertise in two specific areas:

- avoidance of transactions in insolvency (he is co-author of *Transaction Avoidance in Insolvencies*, 2nd ed); and
- real estate-related insolvency (he edits the insolvency chapter in one of the principal practitioner texts on landlord and tenant law, *Hill & Redman’s Law of Landlord & Tenant*).

Some representative cases include:

- advising trustee in bankruptcy and liquidators of well-known property investor (reputed to have been one of the richest men in England) and his companies in attempts to recover assets worth in excess of £100m for the benefit of creditors;
- acting for administrators of HMV in defence of proceedings by its landlords for permission to retake possession of its flagship Oxford Circus store and other stores;
- acting for tax authorities of foreign state seeking avoidance of transactions by which insolvent tax debtor transferred more than £100m into offshore tax havens;
- obtaining a vesting order in favour of guarantor to help mitigate substantial on-going costs following disclaimer of lease by liquidator of insolvent tenant;
- advising a lender regarding potential voidability of proposed transactions with a customer under ss 238–239 Insolvency Act 1986;
- advising landlords regarding their entitlement to payment of rent as an expense in the tenants’ administration;



Insolvency continued

- acting for a well-known car dealership in a complex dispute arising out of the conduct of company administration;
- advising the purchasers of apartments in a luxury development regarding their options following insolvency of the developer/landlord.

Civil Fraud

Civil fraud & Asset tracing

Many of James' cases involve dealing with the consequences of fraud, including

- applications for freezing injunctions and other interim relief;
- claims for damages for deceit, breach of fiduciary duty, unlawful means conspiracy;
- asset tracing claims;
- setting aside or avoidance of transactions (including transactions defrauding creditors).

Some representative cases include:

- representing Russian joint venture partner defending claim for fraudulent misrepresentation in connection with establishment of BVI joint venture vehicle;
- acting for shareholder in property investment company on claim for fraud, breach of fiduciary duty, and conspiracy against other shareholders/directors in connection with sale of company assets to themselves at a substantial undervalue;
- acting for tax authorities of foreign state seeking to set aside fraudulent transactions entered into by tax debtor in efforts to prevent enforcement of £200m tax debt;
- acting for defendant to £50m claim arising out of the operation of a corporate Ponzi scheme;
- representing City trader in defence of claim for the recovery of £20m of AIM-listed company shares allegedly misappropriated by him;
- acting for European car parts distributor in claim against former directors/ employees for fraud and unlawful means conspiracy;
- setting aside "sham" trust established by Hong Kong businessman to shield his assets and prejudice creditors.

International Arbitration

Much of James' commercial work (see details in "Commercial") involves advising and acting as an advocate in international arbitrations.

Some representative cases include:

- acting for well-known FTSE 100 company in LCIA arbitration concerning operation of complex £2bn re-financing arrangements;
- acting for Dubai and Brunei investors in multi-million pound LCIA arbitration relating to alleged breaches of operating and management agreement in respect of a major hotel in Saudi Arabia;
- representing licensor in defence of US\$80m LCIA arbitration regarding alleged breach of international licence agreement governing use of well-known brand and trademark in connection with sale of handbags; and
- acting for licensor in US\$20m claim for alleged repudiation of international licence agreement relating to use of brand in connection with sale of watches.