



## James McCreath

Call: 2009

[jmccreath@wilberforce.co.uk](mailto:jmccreath@wilberforce.co.uk)

### Clerks' Details

Danny Smillie +44 (0)20 7306 0102  
Stewart Cameron [tcj@wilberforce.co.uk](mailto:tcj@wilberforce.co.uk)  
Nancy Lee  
Jack Barker

### Qualifications and Appointments

- BA Oxon (First Class), DipLaw (City) (Distinction)
- Major Scholar (Inner Temple), Scholar (Balliol College, Oxford)

*“He masters complex cases with relative ease”*

Chambers & Partners, 2016

### Memberships

- Chancery Bar Association
- Commercial Bar Association

### Publications

- Co-editor (with Andrew Mold) of the negligence section of *Cordery on Legal Services*
- Contributor to Atkins' Court Forms (Restrictive Covenants)

### Practice Overview

James has a growing reputation as an up and coming junior in Chambers' core areas, with a practice focusing on commercial disputes, property, pensions, trusts, and associated professional liability. He has been recommended in Chambers & Partners 2015 and 2016 for Commercial Chancery work (the first junior of his call to be ranked in this field), and in Chambers & Partners 2016 for Pensions. The directories noted his communication skills, his ability to get on top of the details of a case, and his attention to client service. He was also "highly recommended" in Legal Week's 2016 'Stars at the Bar'.

His recent highlights include acting as junior Counsel for the successful appellant in *Cavendish Square Holdings BV v Makdessi* [2015] UKSC 67, [2015] 3 WLR 1373, in which the Supreme Court redefined the test for identifying a contractual penalty. That was his second appearance in the Supreme Court in two years, having previously appeared for the successful appellant in *Manchester Ship Canal Company Ltd v United Utilities Water Plc* [2014] UKSC 40, [2014] 1 WLR 2576.

James' practice combines both advisory and litigious work and he has a busy practice acting in cases as junior to silks inside and outside Chambers, often in cases involving an international element or proceedings in several different jurisdictions. Alongside these, he also undertakes his own substantial cases and regularly appears as an advocate, appearing at all levels up to and including the Court of Appeal.

He has been recommended in the directories in the following terms:

- Chambers and Partners 2016, Chancery: Commercial: *"A notable young junior who has a growing reputation among solicitors and peers alike", "He is thorough and articulate and demonstrates very good research skills."*
- Chambers and Partners 2016, Pensions: *"He masters complex cases with relative ease, and is always helpful no matter what the demands of the case are."*
- Chambers and Partners 2016, Chancery: Commercial: *"He has an excellent grasp of detail and is very user-friendly and available."*



---

## Pensions

James undertakes a range of pensions litigation and advisory work, where he is instructed on his own as sole counsel and as junior counsel as part of a larger team. He has experience acting for employers, trustees, and members, and in cases across a range of areas in pensions law, including regulatory matters.

His recent experience includes:

- Acting (with [Brian Green QC](#) and [Sebastian Allen](#)) for the targets in regulatory proceedings in which TPR is seeking a contribution notice.
- Acting (with [Brian Green QC](#)) for the corporate targets in the regulatory proceedings relating to the Carrington Wire Pension Scheme.
- Assisting as part of the multi-jurisdictional team for the UK Pension Claimants and the PPF in the proceedings in Canada the US, and the UK in the US \$7bn Nortel insolvency.
- Acting and advising in various matters concerning S75 debts, including in multi-employer schemes (including as junior to [Paul Newman QC](#) and to [Jonathan Hilliard QC](#)), and in matters involving the proposed use of regulated agreements to seek to minimise any debts arising.
- Acting (as junior to [Paul Newman QC](#)) for the employer in *Briggs v Gleeds* [2014] EWHC 1178 (Ch). The case raised a variety of important issues in pensions law, including whether a link to final salary is an 'accrued' benefit, whether estoppels binding the trustees can bind members, and when contracts with individual members can override contrary provisions in scheme rules. It also raised issues of wider importance, including whether documents which do not comply with statutory formalities can be made valid by estoppel, and whether representations of law can found estoppels.
- Acting (as junior to [Paul Newman QC](#)) for the rep ben in rectification proceedings.
- Successfully obtaining an order striking out a claim for over £3m brought by a former trustee for benefits he claimed were due to him under the scheme.
- Acting (as junior to [Michael Furness QC](#)) for the defendants in a substantial professional negligence claim relating to an alleged failure validly to effect equalisation in four schemes.
- Acting (as junior to [Michael Tennet QC](#)) for the employer and trustees in proposed rectification proceedings.
- Acting (as junior to [Jonathan Evans QC](#)) in multi-million pound proceedings for breach of trust and professional negligence brought against the former trustees and professional advisors of a scheme.
- Advising employers, trustees, and the PPF on various questions of statutory construction or interpretation of schemes' governing documentation.
- Acting (as junior to [Paul Newman QC](#)) in proceedings for fraudulent breach of trust threatened against a former trustee.
- Acting (as junior to [Michael Tennet QC](#)) for the trustees in *Danks & Others v Qinetiq Holdings Ltd & Another*, [2012] EWHC 570 (Ch) [2012] Pens LR 131, which considered whether a switch to CPI from RPI was prohibited by s.67 of the Pensions Act 1995.

## Professional Liability

James has a considerable amount of experience of professional liability work, primarily but by no means exclusively, in the context of property, estates, and pensions, acting for both defendants and claimants. His recent cases include:

- Acting (as junior to [Joanna Smith QC](#)) in the defence of a liquidator accused of having sold millions of pounds worth of assets belonging to third parties (*Euromex Ventures Ltd v BNP Paribas & Others* [2013] EWHC 3007 (Ch)). The defence was wholly successful, and the claimants were ordered to pay indemnity costs.



---

## Professional Liability continued

- Acting (as junior to [Michael Furness QC](#)) for the defendants in a substantial professional negligence claim relating to an alleged failure validly to effect equalisation in four pension schemes.
- Acting (as junior to [Jonathan Evans QC](#)) for the claimant in multi-million pound proceedings brought against the solicitors and investment advisers to a pension scheme for advice given regarding the scheme's investment strategy.
- Acting (as junior to [Joanna Smith QC](#)) for the Claimant in a multi-million pound claim against solicitors for allegedly negligent drafting and advice in relation to the overage provisions in an agreement for the purchase of a substantial London office building.
- Acting as sole counsel in a wide range of matters, including in matters relating to solicitors (for negligence in among other things conveyancing, inheritance matters, and the conduct of litigation), barristers, financial advisors, surveyors and managing agents, and architects.

## Trusts, Tax, Probate and Estates

James practices across a range of contentious trust and estate matters. He is involved in matters relating both to onshore and offshore structures, and his recent cases include:

- Acting in a number of applications to remove trustees and executors (including as junior to [Brian Green QC](#) in a matter relating to a very substantial BVI trust).
- Acting and advising on allegedly 'sham' trusts in divorce proceedings.
- Acting and advising in cases relating to dispositions of trust property (including challenges to those dispositions).
- Acting in various proceedings against trustees for breach of trust.
- Acting in various proceedings against solicitors for allegedly negligent advice relating to estate and inheritance tax matters.

## Property

James has a substantial and wide-ranging property practice which encompasses all aspects of real property and landlord and tenant related litigation and advice. He is regularly instructed on disputes in the County Court, High Court and property Tribunals.

James' landlord and tenant practice includes residential and business tenancies, service charge disputes, terminal dilapidation claims and disputes with managing agents.

Real property related cases in which he has been involved include:

- Easements
- Restrictive covenants
- Boundary disputes
- Town and Village Greens
- Adverse possession
- Mortgages
- Nuisance
- Land registration issues

**His recent cases include:**

- Acting for the tenants of a City wine bar in complex proceedings including a contested 1954 Act renewal claim, a claim for adverse possession, and a claim for rectification of the register. James acted unled against Martin Hutchings QC in a number of interim hearings, and was led by Kirk Reynolds QC for the trial (the matter settled very shortly before the trial was due to begin).



---

## Property continued

- Acting in the First-Tier Tribunal for an applicant to be registered as proprietor of an estate on the basis of adverse possession. Prior to James' instruction, the matter had gone to the Court of Appeal, which had held that the criminalisation of squatting did not prevent title from being acquired through adverse possession (*R(on the application of Best) v Chief Land Registrar* [2015] EWCA Civ 17, [2016] QB 23).
- Acting for United Utilities (as junior to Jonathan Karas QC and [Julian Greenhill](#)) in defending a claim brought by the Manchester Ship Canal Company about the lawfulness of the use of a very substantial amount of infrastructure. Among the issues raised by the case are questions relating to statutory authorisation, construction of local statutory provisions, compulsory purchase powers and compensation, and issues under the 1954 Act. James was part of the successful team in UU's successful appeal to the Supreme Court on its summary judgment application ([2014] UKSC 40, [2014] 1 WLR 2576), and its recent successful opposition to the claimant's attempt to amend its pleadings to avoid the consequences of that judgment ([2016] EWHC 259 (Ch)).
- Acting (as junior to Jonathan Karas QC) successfully resisting an application to register part of the grounds of the University of Kent as a town or village green.
- Acting and advising in a considerable number of matters concerning the powers and duties of various statutory undertakers, including in particular sewerage and water undertakers.
- Acting (as junior to [Ian Croxford QC](#)) in the re-trial of *Barr v Biffa Waste Services*, a group litigation claim alleging that odours from a landfill site constituted a nuisance.
- Acting in a number of disputes relating to the construction of development agreements.
- Acting (as junior to [Martin Hutchings QC](#)) in a claim for breach of contract and for breaches of duty of confidence arising out of a bid for a development site.
- Acting (as junior to [Joanna Smith QC](#)) for the claimant in a multi-million pound claim against solicitors for allegedly negligent drafting and advice in relation to the overage provisions in an agreement for the purchase of a substantial London office building.

## Commercial

James regularly acts in large and complex commercial disputes.

### His recent cases include:

- Acting (as junior to [Joanna Smith QC](#)) in *Cavendish Square Holdings BV v Makdessi* [2015] UKSC 67, [2015] 3 WLR 1373, the leading authority on contractual penalties. James was part of the team acting for the successful appellant in its appeal to the Supreme Court, where a 7 justice panel held that neither of the clauses in issue in a multi-million pound business acquisition agreement were unenforceable penalties, redefining the test to do so.
- Acting (as part of a cross-border team) in proceedings seeking a declaration as to the construction of voting rights in the articles of an AIM-listed company incorporated in the Isle of Man (*Origo Partners Plc v Brooks Macdonald Asset Management Ltd*).
- Acting (as junior to [James Ayliffe QC](#)) in multi-million pound tri-partite litigation brought by a government agency in respect of a failure to destroy documents which were subsequently fraudulently misused. The claim raised a variety of issues in contract (including as to liability, causation, and remoteness), tort, bailment, conversion, and deceit.
- Acting (as junior to [Joanna Smith QC](#)) in the defence of a liquidator accused of having sold millions of pounds worth of assets belonging to third parties (*Euromex Ventures Ltd v BNP Paribas & Others* [2013] EWHC 3007 (Ch)). The defence was wholly successful, and the Claimants were ordered to pay indemnity costs.
- Acting and advising in numerous breach of contract claims, both led and unled, and including in matters with an international element and where the governing law of the contract is not English law.
- Acting (as junior to [Martin Hutchings QC](#)) in a claim for breach of contract and for breaches of duty of confidence arising out of a bid for a development site.