



Max Mallin QC

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QC: 2017

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“Approachable and client-focused, he is ferociously intelligent”

Chambers & Partners, 2017

Practice Overview

Max has a broad commercial practice covering a wide range of contractual and other business disputes (including commercial fraud) often with a significant international element. In recent years, he has acted on an increasing number of shareholder disputes (principally unfair prejudice petitions and derivative actions). Recognised as a **“tough opponent”** and a **“superb cross-examiner”** in Chambers & Partners, Max is highly valued by his clients as an extremely effective trial advocate.

Prior to coming to the Bar, Max had a successful career as an investment banker and trader which gives him a first-hand understanding of financial markets and products (including complex derivative instruments). This background has proved invaluable in the financial markets and related disputes for which Max is regularly instructed. A facility with numbers (Max has been described as having a **“tremendous head for figures”**) and a real understanding of finance has also proved of great benefit in other areas of his practice (e.g. claims for loss of profits and share valuation issues) and gives him a great advantage when cross-examining expert accounts in such areas.

Max has well-recognised experience and expertise in commercial fraud claims and specialises in obtaining and responding to freezing injunctions and all related pre-emptive remedies. In common with other areas of his practice, this frequently involves significant jurisdiction and applicable law issues. Max is also regularly instructed in relation to international arbitrations governed by bodies including the ICC, the LCIA and the LME.

Specific practice areas include: contractual disputes (including distributorship/agency agreements and guarantees/indemnities); company law disputes (including unfair prejudice petitions and derivative actions); financial markets disputes; commercial fraud; IT disputes; partnership claims; professional negligence (particularly in relation to accountants and financial advisers); jurisdiction and applicable law disputes; arbitration.



Commercial

Max has a well-established reputation as an excellent and experienced commercial litigator and has been recommended by both Chambers UK and The Legal 500 for many years. Clients comment on the fact that he is "**very commercially focused**" with "**a no-nonsense and direct approach**" as well as the fact that he achieves results because he is a "**tough opponent**" and "**superb cross-examiner**".

His experience covers a wide variety of commercial and business claims including banking and financial markets cases, contractual, joint venture and IT disputes, breach of warranty claims and company and shareholder disputes. A significant part of Max's practice involves making or opposing urgent applications for injunctions (particularly freezing injunctions).

Many of his cases include cross-border issues with jurisdiction challenges and disputes as to applicable law. Max's experience in relation to actions involving banks, financial institutions and financial institutions is dealt with in the "Banking and Financial Services" section of his profile.

Ongoing and recent cases include:

- **BGC Brokers LP & Ors v Tradition (UK) Limited.** Max acts for the Claimants in this dispute between inter-dealer brokers in the City. The claim is for injunctive relief and damages for breach of confidence. In October 2017, Max obtained an urgent without notice injunction to prohibit use of the Claimants' confidential information and preserve evidence. The relief obtained included an "imaging order". The claim is ongoing and is set down for a CCMC in July 2018.
- **Industrial Chemicals Limited v Inovyn.** Max acts for the Claimant in this substantial claim for breach of contract arising out of an agreement for the supply of hydrochloric acid. The claim is ongoing and is likely to be tried in early 2019.
- **Woodford & Anor v (1) AIG Europe Limited & (2) Keymed (Medical and Industrial Equipment) Limited** [2018] EWHC 358 (QB). Max acted for the Second Defendant. The primary claim against the First Defendant was for a declaration that the Claimants were entitled to cover under a D&O policy issued by the First Defendant. There was a contingent claim against the Second Defendant for breach of contract. Following a 5-day trial in February 2018, the Second Defendant was 100% successful.
- **Bonnier Publishing Limited & Ors v Styryng & Ors.** Max acted for the Defendants to this substantial claim for damages for breach of warranty arising out of an SPA pursuant to which the Defendants sold their shares in a private publishing company to the Claimants. The case settled at a mediation in March 2018.
- **Brainbox Digital Limited v Backbord Media & Ors.** Max acted for the Claimant in this claim for damages for breach of contract and/or restitution arising out of a contract between the Claimant and the Defendants for the supply to the Claimant of specified digital services. In July 2017, Max applied for and obtained a without notice freezing and proprietary injunction. Permission to enforce these orders out of the jurisdiction was obtained and after further interlocutory skirmishing (including an application for security for costs and to fortify the Claimant's cross-undertaking in damages) the case settled in December 2017.
- **AC Scout v Ebullo & Ors** (Commercial Court). Max acted for the Claimant in this large claim for damages for conspiracy to injure arising out of wrongful trading in Tin futures on the London Metal Exchange.
- **Phillip Ivey v Genting Casinos UK Limited** [2017] UKSC 67. Max acted for the Claimant in this claim for damages for breach of contract arising out of the Defendant's refusal to pay the £7.7 million which the Claimant won gambling at the Defendant's casino. After a 6 day trial, the Claimant's claim was dismissed but the Claimant was then granted permission to appeal. In dismissing the Claimant's appeal in July 2017, the Supreme Court took the opportunity to overrule the Ghosh test for dishonesty which had stood since 1984 for purposes of criminal law.



Commercial continued

- ***HTV Limited v ITV2 Limited (Commercial Court)***. Max acted for the Claimant in this claim for damages for breach of a TV Production Agreement. The Claimant was successful after a 3 week trial and was awarded a significant amount in damages for lost profits and interest. The Defendant was refused permission to appeal on paper but obtained limited permission at an oral hearing. The appeal was listed to be heard by the Court of Appeal in October 2017 but settled on the eve of the hearing.
- ***Re TPD Investments*** [2017] EWHC 657 (Ch) Max acted for one of the principal respondents to this section 994 Petition. After a 5-week trial in February/March 2017 before Asplin J, the Petition was dismissed as against Max's client.
- ***Eminent Energy & Ors v Daxin Petroleum*** (Commercial Court) Max acted for the Claimant in a claim initially concerned with obtaining release of a cargo of Naphtha held in Latvia. In 2016, he successfully applied for a without notice injunction to prevent disposal of the naphtha by the Defendant (an Estonian company). The Defendant counterclaimed alleging widespread fraud on the part of the Claimant and others. The case settled after Max made a successful application for security for the Claimant's costs of the Defendant's counterclaim. The application was vigorously opposed and gave rise to an important judgment which is reported at [2016] EWHC 2585 (Comm).
- ***Natural Instinct Limited & Ors v Brock & Ors*** (QBD) Max acted for the Claimants in this claim for equitable compensation for fraudulent misappropriation of company funds by former directors which was set down for trial in 2017. There were also cross-994 Petitions. The claims settled in March 2017.
- ***Nextam v Mughal & Ors*** (QBD) Max acted for the Claimant in this substantial fraud claim against a former director of the Claimant. Max obtained a number of interlocutory orders including freezing injunctions and passport orders. The Claimant then instructed Max to apply to commit the Defendant for breach of the freezing injunction and the Defendant was committed to prison for 4 months in March 2016.
- ***Gigsky APS v Vodafone Roaming Services Sarl*** Max acted for the Claimant in this substantial claim for specific performance (or damages for breach) of a telecommunications contract. In October 2015, Max obtained an urgent without notice injunction requiring the Defendant (domiciled out of the jurisdiction) to reinstate and maintain its network service to the Claimant. Max held onto the injunction after a significant challenge by the Defendant on the return date and the case settled shortly thereafter.