



Max Mallin QC

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“That rare beast of being all things: advocate, legal analyst, commercial resolver and understands figures.”

Legal 500, 2019

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/Martin Brokers Group Limited v Bell & Ors.** Max acts for the Claimants in these related actions which are now being jointly case-managed and are set down for an 11 day trial in December 2019. Both claims arise out of disputes between inter-dealer brokers in the City. The BGC 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 BGC's confidential information and preserve evidence. The relief obtained included an "imaging order". The Martin Brokers claim is for damages and other relief arising out of a "team move" of a number of brokers from Martin Brokers to Tradition.
- **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 set down for a 5 day trial in March 2019.
- **Al-Rawi v Sidawi.** Max acts for the Claimant in this dispute over the beneficial ownership in the shares of companies with substantial property interests.
- **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 Styling & 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.
- **Sony v Adecco.** Max acted for the Claimant in this substantial claim for damages arising out of alleged breaches by Adecco of a large HR outsourcing contract. The case settled in February 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.



Commercial continued

- ***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.
- ***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 Vodaphone 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.

Banking & Finance

Max's background in the financial markets ensures that he gives clients a competitive edge in dealing with complicated disputes involving banks, financial institutions and complex financial instruments. He has wide experience in cases involving improper trading on financial and commodities markets such as front-running, market manipulation and mispricing. In recent years he has acted for many clients in disputes arising out of interest rate swaps, credit default swaps, financial spread-betting and other derivative instruments. Max also acts frequently in claims based on negligent investment advice and negligent advice in relation to tax avoidance schemes such as film finance schemes, EBTs and EFRBs.

Chambers UK refers to the fact that "**he is fluent in investment banking cases**" and both Chambers UK and The Legal 500 praise his considerable ability to deal effectively with both clients and the court.



Banking & Finance continued

Some of his ongoing and recent cases include:

- *BGC Brokers LP & Ors v Tradition (UK) Limited/Martin Brokers Group Limited v Bell & Ors*. Max acts for the Claimants in these related actions which are now being jointly case-managed and are set down for an 11-day trial in December 2019. Both claims arise out of disputes between inter-dealer brokers in the City. The BGC 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 BGC's confidential information and preserve evidence. The relief obtained included an "imaging order". The Martin Brokers claim is for damages and other relief arising out of a "team move" of a number of brokers from Martin Brokers to Tradition.
- Max is currently acting for a client seeking very substantial damages against one of the high street banks for its role in a fraudulent scheme to pressure the client into selling his shares in a large private company owned and controlled by him at an undervalue.
- Max is advising in relation to a potential group action for breach of duty in relation to the FCA's swaps redress scheme.
- Over the past few years Max has advised and acted for a large number of companies and individuals with claims against the banks arising out of tax avoidance schemes and swap transactions.
- *ACS Scout v Ebullio & Anor, AC Scout v Ebullio & 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.
- Max acts for creditors of a failed investment bank in their claims to recover their investments.
- *Dexia v Comune di Forli*. Max acted for the Defendant (an Italian local authority) in this multi-million dollar interest rate swap dispute. Max has been and is still involved in a number of other such claims.
- *Cambridge Commodities Limited v Proedge*. Max acted for the Claimant in this very substantial claim for damages for negligent investment advice in relation to and EBT and EFRBs. Max has been and is still involved in a number of other such claims.

Civil Fraud

Max is a "*well regarded*" civil fraud practitioner whose financial background makes him an ideal choice for complicated asset tracing claims. He is recommended by both Chambers UK and The Legal 500 who refer to the fact that he has a "*very quick mind*" and "*gives clear directional guidance*".

Some of his recent work includes:

- Max is currently acting for a client seeking very substantial damages against one of the high street banks and other parties for their participation in a fraudulent scheme to pressure the client into selling his shares in a large private company owned and controlled by him at an undervalue.
- Max is currently advising an individual claiming compensation from his bank for money fraudulently misappropriated from the client's online bank account in respect of his claim against.
- *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. It was the Claimant's case that the Defendants had obtained payment under the contract by fraud and, 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.



Civil Fraud continued

- ***Eminent Energy v Daxin Baltic***. Max acted for the Claimant in this Commercial Court claim for damages and declarations arising out of the supply of Naphtha to the Claimant by the Defendant. The Defendant alleged fraud and conspiracy. In March 2016, Max obtained an urgent without notice injunction to prevent the Defendant from disposing of a quantity of Naphtha held at a storage facility in Latvia.
- ***Nextam v Mughal***. Max acted for the Claimant in his claim for breach of fiduciary duty/fraud against a former director. Max obtained a number of urgent interlocutory orders (including freezing and disclosure orders) before obtaining judgment for about £2 million in October 2015. Max also represented the Claimant in its application to commit the Defendant to prison for contempt of Court. Following a 4 day hearing, Whipple J committed the Defendant to prison in March 2016 [2016] EWHC 367 (QB).
- In the matter of ***African Safari Club Limited (in liquidation)***. Max acted for the liquidators in this claim against ex-directors for fraud/breach of fiduciary duty and compensation under sections 212 and 214 of the Insolvency Act 1986.
- ***ICF v Mistry***. Max acted for the Claimant in this claim for damages/equitable compensation against an ex-director of the claimant company. Max obtained a freezing injunction on very short notice in March 2016.
- ***African Land Ltd v Haddow & others***. Max acted for the Claimant in this high value action for fraud and breach of contract in relation to investment in plots of land in Sierra Leone. Max obtained a number of interlocutory orders on behalf of the Claimant including freezing injunction prior to the settlement of the case.

Insolvency

Max deals with a variety of insolvency related issues usually involving questions of asset recovery and breach of fiduciary duty.

Some of his recent work includes:

- In the matter of ***African Safari Club Limited (in liquidation)***. Max acted for the liquidators in this claim against ex-directors for fraud/breach of fiduciary duty and compensation under sections 212 and 214 of the Insolvency Act 1986.
- Max recently acted for creditors of a failed investment bank in their claims to recover their investments.
- ***Re Hole in One Limited (in liquidation)***. Max acted for the liquidators of Hole in One in relation to a number of claims for recovery of assets. As well as tracing claims, there were also claims for breaches of fiduciary duty.
- ***Re: TAG Capital Ventures Limited & Ors***. Max acted for creditors applying for the appointment of a Provisional Liquidator due to fraudulent misappropriation of funds and, immediately upon appointment, acted for the Provisional Liquidator in applying for a freezing injunction against an ex-director.
- ***James Earp v Thomas McCabe & Ors***. Max acted for the liquidators of a telecommunications company. The claim was for breach of fiduciary duty arising out of a fraud perpetrated by the company whilst under the control of the respondents. The claim settled following the respondents' unsuccessful application to discharge worldwide freezing injunctions obtained by Max on behalf of the Liquidators.

International Arbitration

Max has experience both of acting as counsel in arbitrations under various different rules and also dealing with applications in the courts in support of arbitration proceedings and to enforce arbitration awards.

Some of his recent cases include:

- An ongoing LCIA Arbitration in which Max acts for the Claimant seeking to set aside an agreement for the sale and purchase of a substantial group of companies.



International Arbitration continued

- An LME arbitration in which Max acted for the Claimant, seeking to recover damages arising out of the supply of zinc in India.
- A successful application to the Commercial Court under section 44 of the Arbitration Act 1996 for an injunction to prevent the respondent from terminating the applicant's access to the respondent's telecommunications network.
- A number of claims for enforcement in the Commercial Court of arbitration awards made by the Beth Din.
- An ICC arbitration in which Max acted for the Respondents to a claim for damages for breach of a settlement agreement arising out of a shareholder dispute.
- ICC arbitration in which Max acted for the Claimant in his claim for damages for breach of a contract for the hire of a luxury yacht in the Caribbean.
- ICC arbitration in which Max acted for the Claimant in his claim for damages for breach of a commission agreement in respect of the sale of an oil production platform in Libya.