



DAVID McILROY

HEAD OF CHAMBERS | CALL 1995
CALLED TO THE BAR OF GIBRALTAR PRO HAC VICE 2017

"David is a formidable trial advocate and a master of the facts."

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David is Head of Chambers at Forum Chambers. He specialises in banking and financial services law, commercial law, and professional negligence.

His combination of experience and insight enables him to identify persuasive arguments and to see where the law might be developed in the future.

Alongside his busy practice, David is Visiting Professor in Banking Law at Queen Mary University of London and at the University of Notre Dame (USA) in England.

AREAS OF EXPERTISE

Banking (EU)

David is a fluent French speaker and holds a Master's Degree in EU law from a French University. David frequently advises on questions of EU law. David acts for foreign banks which wish to sell financial services in the UK. David is regularly instructed on cases which involve conflicts of laws and analysis of foreign laws, and he has acted as an expert for the EU on the laws in Albania governing banking and money laundering. David has also recently been training lawyers in Cyprus on their new civil procedure rules.

Notable Banking (EU) Cases

- Advising on the introduction of Unexplained Wealth Orders into the law in Kosovo.
- Advising on cross-border issues relating to the Electronic Money Regulations 2011 and the Payment Services Regulations 2017.
- Acting for investor given advice in Cyprus by an Appointed Representative of a UK firm.
- Acting for Irish investors into a failed UK property development scheme.

- Advising an Irish businessman in respect of claims for breach of contract, breach of fiduciary duty, and mis-selling against an Irish bank and its UK subsidiary.
- Advising foreign private banks which wish to enter into mortgages secured on land in the UK as to the UK's regulatory frontier and the conduct of business rules which have to be complied with in the event that their activities fall within the UK's regulatory frontier.
- Advising foreign banks on commercial financing agreements and hedging agreements which are subject to English law.
- Acting in a claim by an Indian bank against a guarantor involving questions of Belgian law and Indian law.

Banking (UK)

David acts and advises across the full range of financial services disputes and banking transactions, but with a particular focus on the business sector. David has dealt with hundreds of claims of financial mis-selling. He is increasingly instructed on claims of fraud, including authorised push payment (APP) fraud. David is as comfortable advising in respect of a commercial loan, a mortgage or a guarantee as he is analysing the financial services rules contained in the FCA and PRA Handbooks. David has particular expertise in misrepresentation claims, in claims about negligent financial advice, and in claims relating to complex financial products. David also advises debtors in cases where there has been an unfair credit relationship, economic duress, or other abusive practices by a bank or other lender. In addition, David has expertise in providing advice on regulatory questions, including on cryptocurrency and fintech, both on behalf of institutions seeking authorisation and those subject to investigation by the financial services regulators.

Notable Banking (UK) Cases

- *Philipp v Barclays Bank* [2022] EWCA Civ 318: Acting for intervener in Court of Appeal case relating to APP fraud.
- Acting for elderly victim of APP fraud involving multi-million pounds being transferred to the Middle East.
- Advising victims of the fraud at HBOS Reading in their submissions to the Foskett Panel.
- *Davis v Lloyds Bank Plc* [2021] EWCA Civ 557: claim against bank for breach of the complaints handling rules in the FCA Handbook.
- *Scarborough Group v BOS*: multi-million pound claim against BOS for manipulation of LIBOR (2020).
- Advising lenders on the enforceability of security.
- *Standish v RBS* [2019] EWHC 3116 (Ch), [2020] 1 BCLC 826: Claim by shareholders that RBS GRG and West Register had conspired to expropriate their shares.
- *Financial Conduct Authority v Allied Wallet Ltd* [2019] EWHC 2808 (Ch), [2020] BCC 147: application by FCA for the appointment of a Provisional Liquidator over a fintech company.
- Claims against Lloyds Banking Group related to the Impaired Assets Office of BOS/ HBOS at Reading and elsewhere.

- Claims against secondary lender for disguising loans as lease finance transactions, undue influence and other malpractice.
- BOS v Noel Edmonds: counterclaim by celebrity in respect of loss of business as a result of fraud by dishonest banker.
- Deane, Murphy, Savage and Wilcox v Coutts & Co [2018] EWHC 1657 (Ch): claims by footballers for investment advice given in breach of fiduciary duty.
- R (Mazarona Properties Ltd) v Financial Ombudsman Service [2017] EWHC 1135 (Admin): Judicial review of the Financial Ombudsman Service's refusal to consider a complaint about the conduct of the Interest Rate Swap Redress Scheme by a bank.
- Blackwater Services Ltd v West Bromwich Commercial Ltd [2016] EWHC 3083 (Ch): Interpretation of a market disruption clause in a loan agreement.

Commercial Litigation

David deals with commercial disputes and transactions, including those which have a cross-border element. He is experienced in appearing as Counsel in international arbitrations. He also deals with complex shareholder disputes, particularly where there have been breaches of fiduciary duties or of financial services or money laundering laws. David brings a common sense approach to commercial litigation. He is able to devise strategies which reflect the client's attitude to risk and maximise the outcomes in their case.

Notable Commercial Litigation Cases

- Acting on behalf of the Claimants in a claim against a solicitor for breach of a stakeholder contract: NPPM Claimants v 174 Law Solicitors Ltd [2022] EWHC 4 (Ch).
- Appearing as Co-Counsel in an arbitration in Singapore in a dispute between a cryptocurrency operator and its IT security provider.
- Acting in AA v Bitfinex, the first case where a worldwide freezing injunction was granted by an English court over Bitcoin.
- Acting for accountants in claim against a former partner for diverting a commission payment.
- Acting for corporate borrower resisting claim for repayment of loan on the grounds of misrepresentation by the lender.
- Acting for entrepreneurs in shareholder dispute with major PLC.
- ETL v Munn: Acting for purchaser in claim for breach of warranties in a Share Purchase Agreement.
- Acting for minority shareholder in unfair prejudice petition.
- Acting for foreign bank in claim to recover foreign exchange from Travelex.
- Appearing in the Gibraltar Supreme Court in Magner v Royal Bank of Scotland on an application for inspection witness statements and exhibits under CPR 32.13.

Financial Mis-selling

David has handled a wide range of claims where investors have been given financial advice which was negligent and/or in breach of fiduciary duty. He is able to identify a wide range of causes of action in tort and in equity and to advise on the liability of accessories to wrongdoing. David has also dealt with hundreds of claims of financial mis-selling. He specialises in claims relating to products governed by the ISDA Master Agreement including all types of interest rate hedging products including both vanilla and complex collars and swaps.

Notable Financial Mis-selling Cases

- Angelgate Claimants v Key Manchester Ltd [2020] EWHC 3643 (Ch), [2021] PNLR 15: Acting for claimants who have entered into unregulated collective investment schemes (UCIS) in relation to property in the UK and abroad.
- Acting on behalf of an individual given negligent financial advice in Cyprus by the Appointed Representative of a UK firm.
- Claims on behalf of high net worth individual against private bank for negligent and unauthorised investments.
- Acting on behalf of businessman who claimed that bank had reneged on promises of lending: Hodell v Clydesdale Bank [2018] EWHC 1009 (QB).
- Deane, Murphy, Savage and Wilcox v Coutts & Co [2018] EWHC 1657 (Ch): claims by footballers arising out of investment advice to invest in a UCIS in Spanish property given in breach of fiduciary duty.
- Acted on behalf of investor who was advised to invest in UCIS in Cape Verde and then to invest into the Connaught Income Fund.
- Acted on behalf of investor who was advised by Merrill Lynch to invest in AIG's Enhanced Fund.
- Poulton Plaiz Ltd v Barclays Bank Plc [2015] EWHC 3667 (QB): Interest Rate Swap mis-selling claim.
- Hundreds of swaps cases in which a small business was mis-sold an unsuitable interest rate swap or a fixed rate loan which contained an embedded swap.

Financial Services Regulation

David regularly advises on questions relating to financial services regulation, including issues relating to the EU and in developing areas such as cryptocurrency, fintech, open banking and payment services. David is a fluent French speaker and holds a Master's Degree in EU law from a French University. David frequently advises on questions of EU law, foreign laws, conflicts of laws and in relation to Brexit. David has acted as an expert for the EU on the laws in Albania governing banking and money laundering.

Notable Financial Services Regulation Cases

- Asking foreign banks as to their post-Brexit obligations and in respect of applications for authorisation in the UK.
- Advising private banks which wish to enter into mortgages secured on land in the UK as to the

UK's regulatory frontier and conduct of business rules.

- Acting for borrower who faced extortionate repayments in loan made by unauthorised lender.
- FCA v Allied Wallet Ltd [2019] EWHC 2808 (Ch): Acting for e-money and payment services provider in FCA's application to wind up the company.
- Advising Egyptian borrowers and guarantors as to their liabilities under commercial financing agreements and hedging agreements which are subject to English law.
- Advising foreign banks on consumer protection legislation in England and Gibraltar.

Insolvency

David is skilled at handling the interaction between financial services regulation and insolvency, particularly in cases involving applications to wind up a company on the just and equitable ground and in cases concerning the ring-fencing of customer assets. In the context of claims for financial mis-selling and other professional negligence, he focuses on the ability to recover damages as well as establishing liability.

Notable Insolvency Cases

- Dormco SICA Ltd [2021] EWHC 3209 (Ch): acting for Defendant in Part 20 claim against director who had devised a transaction at an undervalue.
- Advising a victim of an accident on obtaining an assignment from the liquidators of Thomas Cook.
- Financial Conduct Authority v Allied Wallet Ltd [2019] EWHC 2808 (Ch), [2020] BCC 147: acting for fintech company resisting application by FCA for the appointment of a Provisional Liquidator.

Professional Negligence

David's professional negligence practice relates to claims which have a banking or a commercial element. David is particularly adept at addressing complex questions of causation and loss. David frequently works with others at Forum to devise strategies for handling group actions on claims for professional negligence relating to banking and finance. David has worked with Philip Currie and with Lloyd Maynard on class action cases relating to mortgage mis-selling, negligent conveyancing, and failed property developments.

Notable Professional Negligence Cases

- Angelgate Claimants v Key Manchester Ltd [2020] EWHC 3643 (Ch), [2021] PNLR 15: Acting in a class action against solicitors for failing to protect the interests of foreign buyers purchasing properties off plan in the North of England.
- Acting on behalf of a liquidator in a claim against a solicitor for negligent advice which led to a company paying unlawful dividends.
- Acting for a high net worth individual in a claim against accountants for negligent tax advice.

- Acting against a solicitor for professional negligence in failing to address the tax consequences of a corporate takeover.
- Acting in a claim against a quantity surveyor for professional negligence in project monitoring.
- Right to Buy Litigation [2015] EWHC 1559 (Ch): Group litigation of claims for professional negligence against solicitors conducting conveyancing under the Right to Buy Scheme.

Qualifications

- Diploma in French Gonville & Caius College, Cambridge.
- MA Law Gonville & Caius College, Cambridge.
- Maîtrise en Droit (International and European Law) Université de Toulouse I.
- PhD University of Wales.

Scholarships and Awards

- Major Scholarship Inner Temple.
- Concours Annuel Université de Toulouse 1ère Mention – European Competition Law.
- Tapp Studentship Gonville & Caius College, Cambridge.
- George Long Prize for Roman Law Cambridge University.
- Squire Scholarship Cambridge University.
- Senior Scholarship Gonville & Caius College, Cambridge.
- McNair Law Prize Gonville & Caius College, Cambridge.
- Exhibition Gonville & Caius College, Cambridge.

Professional Bodies

- Chartered Institute of Arbitrators.
- Financial Services Lawyers Association.
- COMBAR.
- Professional Negligence Lawyers Association.
- Franco-British Lawyers Society.

Professional Development

David regularly chairs conferences on Banking Litigation and Financial Mis-selling and delivers seminars on a variety of topics including professional negligence, misrepresentation, and financial services claims.

Teaching

David is Distinguished Fellow and Visiting Professor at the University of Notre Dame (USA) in England, where he delivers a course which critically examines financial services regulation and banking practices and asks: do the laws governing banking really benefit customers and serve the common good? David is also Visiting Professor in Banking Law at Queen Mary University of London where he teaches on emerging topics in banking law such as open banking, confidentiality and data protection, fintech and crypto-currencies.