



PHILIP CURRIE

CALL – 2009

“Swift, to the point and gets to the details impressively quickly.”

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Philip is a commercial barrister with particular expertise in insolvency, banking, property and professional negligence. He is an experienced advocate, appearing regularly in the High Court both as sole advocate and as junior counsel.

Clients enjoy working with Philip not only for the breadth and depth of his legal knowledge, but also because he understands their commercial needs. With an eye for detail and strong analytical skills, he always seeks to work with his clients to find the most pragmatic solution to any dispute.

He has a busy practice advising on claims involving all manner of insolvency disputes, banks and financial advisors, share purchase agreements and breaches of warranty, shareholder and partnership disputes, civil fraud and economic torts. He also regularly acts in cases involving professional negligence that concern other areas of his practice.

Philip is also experienced in the arbitration of commercial disputes.

AREAS OF EXPERTISE

BANKING AND FINANCE

Philip brings his wealth of experience of insolvency and property litigation to bear on his banking and financial services work. He has particular experience of claims in which banks initiated insolvency proceedings as a result of the cash-flow difficulties that resulted from mis-sold products. He has experience across a whole range of banking and financial services cases, including mis-sold mortgages, negligent investment and pension advice, claims by and against guarantors, and claims involving undue influence, duress and other economic torts. He is familiar with COBS, MCOB, and other rules in the FCA Handbook.

Recent Notable Cases:

- Representing the Claimant in a claim against its former financial advisors for misrepresentations

and negligent investment advice

- Representing property investors in unfair relationship claims against bridging finance providers
- Advising guarantors on viable defences arising from misstatement and breach of duty on the part of the lender
- Representing mortgagors in defending claims brought by lenders on the basis of undue influence

COMMERCIAL LITIGATION

Philip enjoys a reputation as a strong and strategic commercial litigator who gives practical advice on complex disputes. He acts for a wide variety of businesses – from sole traders, to SMEs, to multi-nationals – across a range of business sectors.

He advises on all manner of commercial disputes, including share purchase agreements and related warranty claims, shareholder disputes, agency, guarantees and indemnities, insolvency, banking, and construction.

He has experience of arbitration and other modes of alternative dispute resolution. He also has experience of group litigation, and can devise strategies to assist with assessing the merits of large numbers of cases efficiently.

Recent Notable Cases:

- Representing the Defendants to a multi-million pound conspiracy claim, which raised significant issues about the quantity of potential evidence and the need for statistically significant representative samples. The litigation settled following mediation.
- Arbitration arising out of one party's retirement from a partnership, involving a challenge to the arbitrator's jurisdiction and a dispute about the scope of an expert determination clause.
- Advising property investors on potential claims against scheme managers for fraud and their banks for breach of the Quincecare.
- Representing the Defendants in a claim for additional sums said to be due under a share purchase agreement, the terms of which were disputed and subject to a counterclaim for rectification.

CONSTRUCTION

- Led by Simon Lofthouse KC, acting for a design consultant in a number of high-value adjudications and now in litigation concerning significant disputes arising from the design and construction of a large biomass energy plant.
- Advising a City Council in relation to a guarantee and bond dispute arising out of the renovation of a local arts venue and the insolvency of the main contractor.
- Acted in an adjudication concerning delay and incentive payments arising from the construction of a nuclear waste storage facility.
- Advised on professional negligence claims against contractor's agents.
- Advising a Local Authority on various delay and defects disputes.

- Advised main contractors on threatened proceedings against them for breach of allegedly non-delegable duties.
- Acting for land owners in claims against subcontractors and their insurers.
- Advised creditors of Carillion following its collapse in early 2018, and in particular on their rights to obtain payment from the bank under Carillion's Early Payment Facility Agreement.
- Acting for the assignee of claims from an insolvent plumbing company in its claims against a negligent subcontractor.

INJUNCTIONS

Philip regularly appears on applications for injunctions to restrain the presentation and advertisement of winding up petitions, and for freezing injunctions to prevent the disposal of assets pending the determination of disputes concerning their ownership. He also appears in applications to prevent breaches of restrictive covenants in employment contracts and those concerning breaches of freeholder covenants in property conveyances.

He is able to advise quickly on the timing and suitability of injunction applications, including the question of whether an ex parte application is appropriate.

He is also well-placed to advise on the prospects of successfully opposing injunction applications and is often able to devise strategies for prompt settlement of disputes at this early stage.

Recent Notable Cases:

- Obtaining an injunction (ex parte and continued inter partes) to prevent the sale of a house pending the trial of a claim under s.423 of the Insolvency Act 1986 concerning the transfer of that house (in which Philip later successfully represented the Claimants).
- Obtaining an injunction (ex parte) to prevent the advertisement of a winding up petition. The petition was withdrawn prior to an inter partes hearing.

INSOLVENCY

Philip's practice has always had a strong insolvency angle. He acts in all manner of insolvency cases, including claims involving transactions at an undervalue, preferences, and transactions to defraud creditors.

Philip works closely with office holders and company directors to fully understand the nature of the business and the issues that arise upon insolvency.

Philip regularly advises on and appears in applications for injunctions to prevent the presentation or advertisement of winding up petitions. He has also acted in many applications to set aside statutory demands, for validation orders, and for orders under the Company Directors Disqualification Act 1986.

Recent Notable Cases:

- *Manolete Partners plc v Hope and Jones* (ICC Judge Prentis): successfully representing the

Claimant at the trial of claims for the repayment of dividends that had been paid unlawfully, and for the recovery of sums wrongly paid by the company in an attempt to satisfy the terms of a share purchase agreement. Of particular interest, the court agreed that the interpretation of the shareholders' knowledge requirement for the repayment of unlawful dividends in s.847 of the Companies Act 2006 (as explained by reference to EU law in *It's a Wrap (UK) Ltd (In Liquidation) v Gula* [2006] EWCA Civ 544) was not altered by Brexit or the European Union (Withdrawal) Act 2018.

- Re MM CAM Ltd (in administration): successfully representing the administrators of an asset management company in the film industry. The claim started with a series of Berkely Applegate applications relating to collective asset management agreements and substantial unallocated trust funds held by the company.
- Re MM CAM Ltd (in liquidation): Successfully representing the liquidators of that same asset management company in a claim against the directors for having abandoned the company in breach of duty, causing the company to become liable to various stakeholders for breach of trust. Included enforcement by way of charging order and order for sale
- Acting for a company in opposing a winding up petition brought by the Secretary of State on grounds of allegedly trading with a lack of commercial probity and contrary to the public interest
- Re Tough Mudder GmbH: successfully obtaining confirmation of the Creditors Voluntary Liquidation of the German subsidiary of an English company, on the basis that its COMI was shown to be in England.
- *Wessely & Anor (Zoom UK Distribution Ltd) v Rubra & Ors* [2021] EWHC 800 (Ch): representing the directors of a company in administration in an application for a declaration that the administrators' appointment was valid notwithstanding the failure to give notice to a qualifying floating charge holder. The decision resolves an issue on which there had previously been a conflict of judicial opinion.

PROFESSIONAL NEGLIGENCE

Philip has acted in a number of professional negligence cases against IFAs, solicitors, accountants, and architects. He advises on disputes arising out of a range of situations, including negligent investment advice, the unwise drafting of share purchase agreements and construction contracts, and the improper handling of commercial litigation. He is well placed to advise on professional negligence claims across the range of his other work.

Recent Notable Cases:

- Advising on a potential claim against solicitors arising out of alleged failures to follow client instructions in the drafting of a share purchase agreement, leading to litigation about the true purchase price
- Advising on a potential claim against solicitors arising out of alleged failures to advise on the appropriate form and the drafting of a multi-million pound construction contract
- Acting in a claim against an IFA for negligent investment advice
- Acting in a claim against solicitors for failing to issue commercial lease renewal proceedings in time
- **Right to Buy Litigation [2015] EWHC 1559 (Ch):** together with David McIlroy, representing

thousands of claimants in a group action concerning claims against solicitors conducting conveyancing under the Right to Buy Scheme.

CONSTRUCTION

Philip has developed a niche practice in cases concerning both construction and insolvency disputes, acting for construction companies threatened with insolvency and creditors of insolvent construction companies alike. This has led to an expansion of his work profile to include construction disputes more generally.

Recent Notable Cases:

- Acting (led) for a consultant in a number of high-value adjudications and now in litigation concerning significant disputes arising from the construction of a large biomass energy plant.
- Advising main contractors on threatened proceedings against them for breach of allegedly non-delegable duties.
- Advising home owners and a main contractor on potential claims against negligent subcontractors.
- Advising creditors of Carillion following its collapse in early 2018, and in particular on their rights to obtain payment from the bank under Carillion's Early Payment Facility Agreement.
- Acting for the assignee of claims from an insolvent plumbing company in its claims against a negligent subcontractor.

PROFESSIONAL BODIES

- Chancery Bar Association
- Financial Services Lawyers Association
- Professional Negligence Bar Association

QUALIFICATIONS

- BSc Biochemistry, Imperial College London
- LLB, The College of Law
- LLM International Commercial Practice, The University of Law

SCHOLARSHIPS AND AWARDS

- Queen Mother's Scholarship, Middle Temple