

DAVID McILROY

HEAD OF CHAMBERS | CALL 1995
BARRISTER, ENGLAND & WALES
BARRISTER-AT-LAW, IRELAND
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 is called to the Bar of England & Wales and to the Bar of Ireland. He has also been called to the Bar of Gibraltar. He specialises in banking and financial services law, cryptocurrencies and professional negligence as well as commercial litigation and civil fraud, particularly on cases involving cross-border elements, class actions or innovative arguments.

David is ranked by the legal directories *Chambers & Partners* and *Legal 500* for Banking and Finance and for Professional Negligence. He is also ranked in Tier 1 by *Legal 500* for Cryptocurrency. David is co-editor of Butterworth's *Encyclopaedia of Banking Law*.

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

AREAS OF EXPERTISE

Banking (EU and International)

David is a fluent French speaker and holds a Master's Degree in EU law and International law from a French University. He has acted for a number of foreign banks which are affected by UK financial services regulation after Brexit, including successfully obtaining authorisation for a UK branch of a bank based in the EEA.

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 and has been a trainer in Cyprus on the new civil procedure rules.

Notable Banking (EU and International) Cases

- Acting for EEA bank seeking authorisation to open a branch in the UK
- 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 for high net worth depositors in Lebanese banks seeking to transfer their money out of the country
- Acting for a high net worth investor given advice in Cyprus by an Appointed Representative of a UK firm.
- Acting for Irish investors into failed UK property development schemes.
- 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 in a claim by an Indian bank against a guarantor involving questions of Belgian law and Indian law.
- 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.

Banking and Financial Services (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 and on financial regulation. He is also a leading expert on cases involving payment services providers and electronic money issuers. David has dealt with hundreds of claims of financial mis-selling. David has particular expertise in misrepresentation claims, in claims about negligent financial advice, and in claims relating to complex financial products. He acted for *Which?* in the Supreme Court and the Court of Appeal in the leading case on authorised push payment (APP) fraud and is frequently instructed by clients who have been victims of fraud.

Notable Recent Banking (UK) Cases

- *H2O* - Acting for French and UK investors relating to a £1bn fraud and judicial review of the FCA Final Notice issued against H2O Asset Managers.
- *Privilege Wealth v GCEN* [2024]. Acting for liquidators (Grant Thornton) of investment companies in £8 million claim against payment services provider for failing to prevent APP fraud.
- *Philipp v Barclays Bank UK Plc* [2023] UKSC 25, [2024] AC 346; [2022] EWCA Civ 318; [2022] QB 578: Acting for intervener in leading case on APP fraud committed against individuals.
- 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).
- *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 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.
- Acting on behalf of businessman who claimed that bank had reneged on promises of lending: *Hodell v Clydesdale Bank* [2018] EWHC 1009 (QB).

Cryptocurrency and E-Money

David acts and advises on a wide range of claims relating to cryptoassets and electronic money, particularly on claims which involve allegations of fraud and/or breaches of the regulatory rules.

- Advising on the regulatory rules applicable to stablecoins
- Acting for crypto-currency investors in multi-million claim for losses caused by the sale of their cryptoassets by Nexo
- Leading Clyde Darrell in a claim relating to a fraudulent crypto-token
- Acting for victims of an international cryptocurrency investment scheme fraud
- *Payward Ltd v Chechetkin*: Acting for investor whose cryptocurrency trading was funded by unregulated consumer credit and infringed the FCA's rules relating to investments
- Appearing as Co-Counsel in an arbitration in Singapore in a dispute between a cryptocurrency operator and its IT security provider.
- *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.
- Acting in *AA v Bitfinex*, the first case where a worldwide freezing injunction was granted by an English court over Bitcoin.

Professional Negligence

David's professional negligence practice relates to claims which have a banking or an investment 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 or representative actions

on claims for professional negligence relating to banking and finance. David has worked on class action cases relating to mortgage mis-selling, negligent conveyancing, failed property developments and other unregulated collective investment schemes (UCIS).

Notable Professional Negligence Cases

- *Office Properties (PL) Ltd*: Acting on behalf of a liquidator in a £7 million claim against a solicitor for negligent advice which led to a company paying unlawful dividends.
- *Yee Shi Yin v 174 Law Solicitors Ltd* [2023] EWCA Civ 13, [2023] PNLR 15 Acting for claimants in class action alleging breach of contract against solicitors acting as stakeholders.
- *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. Multi-million pound losses.
- 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 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.

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.
- *Khan v Khan*: Acting for the investor in a high value family dispute involving allegations of breaches of company law
- 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.

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 (in liquidation) [2021] EWHC 3209 (Ch), [2022] BCC 360: acting for Defendant in Part 20 claim against director who had devised a transaction at an undervalue causing multi-million losses to the taxpayer.
- 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.

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

- Chancery Bar Association.
- Chartered Institute of Arbitrators.
- Financial Services Bar Association (Ireland).
- Financial Services Lawyers Association.
- Franco-British Lawyers Society.
- Professional Negligence Lawyers Association.

Professional Development

David regularly chairs conferences for the Professional Negligence Lawyers Association and delivers seminars on a variety of topics including banking and cryptocurrency regulation, class actions, and misrepresentation.

Teaching , Research and Publications

David's teaching at the University of Notre Dame (USA) in England. 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's teaching at QMUL covers emerging topics in banking law such as open banking, confidentiality and data protection, fintech and crypto-currencies. David is the author of 'Digital Contract and Sales of Goods Law' and (together with Michael Phillis) of 'Data Protection Law and FinTech' in George Walker (ed.) *Financial Technology and Digital Commercial Law* (Oxford University Press, 2024). David is currently researching for a book on the History of Banking Regulation in the USA, the UK and Ireland 1750-2020.