

CLYDE DARRELL

CALL – 2014

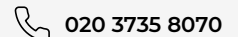
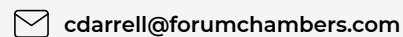
“Clyde is extremely responsive, very approachable and his advice is concise and effective.”



Banking &
Finance



Crypto &
Blockchain Assets



Clyde specialises in banking, finance, financial services litigation and regulation, fintech, civil fraud and commercial litigation. He is particularly experienced in civil fraud claims and other commercial cases with a quasi-criminal element having qualified at a leading criminal law set in London specialising in fraud and commercial disputes, business crime and investigations.

Clyde has considerable trial experience and is regularly instructed on matters in the Business and Property Courts by some of the largest law firms and financial institutions.

Clyde also undertakes a large amount of advisory work, advising on all stages of the dispute resolution process from pre-issue through to enforcement.

Before qualifying as a Barrister, Clyde worked in Bermuda at some of the largest offshore firms in the Caribbean. Clyde is currently going through the process of being called to the Bermuda bar.

Clyde is approachable, hardworking and responsive and has developed a reputation for his ability to advise on complex legal issues.

AREAS OF EXPERTISE

BANKING, FINANCIAL SERVICES & FINTECH

Clyde has a busy and thriving banking, financial services and fintech practice with a particular focus on all matters relating to financial services litigation and regulation. Clyde is a co-author of the Encyclopaedia of Banking Law.

Clyde is regularly instructed for and against banks and other financial institutions (such as investment firms) in disputes arising out of financial instruments (derivatives and related products), mortgages, guarantees, charges and other securities. He is also well versed in advising and acting in consumer

credit matters particularly those arising out of allegations of unauthorised lending in breach of the general prohibition and unfair relationship claims under s.140A.

Clyde advises and acts for claimants and defendants in respect of claims for financial miss-selling including mortgage miss-selling, negligent investment and pension advice and secret and half secret commissions.

Clyde has particular knowledge of most of the provisions of the FCA Handbook and has experience in advising on COBS, ICOBS, CASS, COND, MCOB, FIT, TC, PERG, CONC, MiFID, MiFID II, MIFIDPRU and DISP. Clyde has recently advised and assisted an EU bank with their post-Brexit application for FCA authorisation (part 4A permissions).

Clyde also acts for claimants in group actions against crypto developers, crypto exchanges and custodian wallet providers in claims for deceit, misrepresentation, breach of contract, negligent misstatement, breach of the general prohibition under s.19 of FSMA and breach of the financial promotion restriction under s.21 of FSMA.

Clyde has particular experience in the following:

- Payment services disputes (including the impact of fraud on bank payments)
- Financial miss-selling disputes
- FCA authorisations (part 4A permissions)
- FCA Approved Persons/Senior Managers Regime
- Advising banks and financial institutions generally on their regulatory obligations
- Cryptoasset disputes involving crypto exchanges and custodian wallet providers
- Asset recovery claims against exchanges, custodian wallet providers and crypto developers
- Financial promotions
- Consumer Credit (in particular, unfair relationship claims under s.140A)
- Enforcement of securities, guarantees and indemnities (in particular, bringing and defending possession claims by mortgagees, LPA Receivers and charge holders)

Recent Notable Cases:

- Currently advising a claims management company on its potential claims against a defendant bank for breach of duty and breach of money laundering requirements arising from the client's ex-employee who fraudulently transferred significant funds from the client's company account to the ex-employee's personal account (ongoing)
- Currently acting for SME on a potential claim against its bank for breach of its express and implied contractual duties of care, breach of statutory duties and economic duress arising from the collapse of the client's business as a direct result of its relationship with the potential defendant bank (ongoing).
- Instructed by a group of claimants bringing claims against a crypto developer and its CEO for fraudulent misrepresentation, unlawful means conspiracy, breach of fiduciary obligations and

breach of FSMA 2000 and the FCA Handbook rules (ongoing).

- Instructed by a group of UK consumers bringing claims against an overseas crypto lending firm for breach of contract, misrepresentation, breach of the Consumer Credit Act 1974 and breach of FSMA 2000 in particular breach of the general prohibition and the restrictions on financial promotions (ongoing).
- Successfully acted for Deputy authorised by the Court of Protection in claim against crypto exchange for recovery of over £1 million worth of crypto assets fraudulently invested by the former power of attorney.
- Successfully acted for an overseas digital asset management platform in resisting a claim by a UK based crypto investor for breach of contract, misrepresentation and negligent misstatement.
- Advised and assisted an overseas bank on their post-Brexit applications for FCA authorisation (part 4A permissions).
- Advised a large EU bank on its legal and regulatory obligations in offering investment advisory, portfolio management and execution only services to its UK clients. The UK legal and regulatory issues arising include compliance with UK GDPR, DPA 2018, ICO guidance, COBS, BCOBS, CONC, UK EMIR, Consumer Rights Act 2015, Consumer Credit Act, the consumer duty, financial promotions and the Economic Crime (Transparency and Enforcement) Act 2022.
- Currently advising a large investment management company on the legal and regulatory impact of its group demerger on its employee Share Incentive Scheme and the related consumer credit impact on its employee loans valued at £18 million (ongoing).
- Routinely advises finance companies on the updates required to their consumer credit fixed sum loan agreements and pre-contract credit information documents so as to comply with legal developments and to mitigate risk.
- Advised a large EU bank on taking security over its HNW UK clients life insurance policies and bank accounts under English law.
- Successfully acted for finance company in a claim against a borrower who argued that the loan agreement had given rise to an unfair relationship under section 140A of the Consumer Credit Act 1974 by reason of the interest charged in the context of short-term bridging finance.
- Appear for claimants in PPI miss-selling claims against defending banks. Well versed in resisting the defending banks arguments on compromise, abuse of process and unfairness under s.140A.
- Successfully represented a major high street bank in resisting an appeal of a possession order brought by the executor of the estate. The court dismissed the appeal and awarded costs on the indemnity basis.
- Successfully acted for a finance company in proceedings to enforce their security over real property in the context of a regulated mortgage contract.

COMMERCIAL DISPUTE RESOLUTION

Clyde has a wide range of experience in commercial litigation matters having been instructed in matters for a range of clients including SME's, high net worth individuals and consumers both in the High Court and County Court. Clyde is particularly proficient in grappling with complex legal issues as well as understanding the commercial needs of his clients to ensure the best possible outcome.

Clyde has particular experience in the following areas:

- Breach of contract
- Misrepresentation in tort and contractual claims
- Sale of Goods and Supply of Goods and Services
- Debt recovery
- Shareholder disputes (including unfair prejudice petitions and derivative actions)
- Partnership disputes
- Conflict of laws
- Restrictive covenants
- Consumer related claims

Recent Notable Cases:

- Acted for large manufacturer of generators in a claim for breach of contract by the Nigerian Government for failing to manufacture generators valued at over £1.5 million in accordance with the claimant's particular specifications.
- Acted for IT company in obtaining a Quia Timet injunction against an ex-employee who, resigned and, in breach of their restrictive covenant, commenced employment at the client's sole competitor and failed to return confidential company equipment or provide an undertaking not to disclose the client's business and intellectual property.
- Acted for lease management company in a claim for breach of contract against a logistics company for failing to indemnify the client for losses caused by the defendant's breach of contract.
- Represented leading solicitors firm specialising in family law in claim against ex-client for recovery of unpaid fees.
- Advised and acted for a Swedish governmental body in a number of breach of contract claims arising from loan agreements governed by the law of the Kingdom of Sweden. The claims involve complex legal issues of limitation and the appropriate lex fori.
- Successfully settled a unfair prejudice petition for a client where the majority shareholders in a property management company had taken steps to remove the client from the business by diluting their shareholding and unlawfully removing the client from the share register.
- Successfully obtained the return of funds for a consumer whose bank had unlawfully retained funds by relying on the principle as set out in *Astro Exito Navegacion SA v Southland Enterprise Co Ltd (No.2)* [1982] Q.B. 1248 in obtaining mandatory injunctions.
- Successfully represented a group of consumers in their cross-border claim that an exclusive jurisdiction clause which required them to bring any legal action exclusively in Bulgaria was unfair under the UTCC Directive 1993. This involved detailed consideration of the interplay between Brussels I (recast) and the UTCC Directive.
- Advised and represented a respected business owner whose silent partner had taken steps to remove the client from the business, dissolve the Partnership and misappropriate Partnership

assets.

- Acted in a claim for breach of contract of a loan agreement which raised issues of beneficial interests in joint bank accounts, proprietary estoppel and issues under section 5 and 6 of the Limitation Act 1980.

CIVIL FRAUD

Clyde has a growing civil fraud practice having been instructed to advise and appear in a wide range of civil fraud matters. Clyde originally qualified at a leading criminal law set in London specialising in white collar fraud and gained extensive experience advising and representing clients in such matters.

Clyde has particular experience in the following:

- Asset recovery claims against persons unknown/fraudsters (e.g. interim steps including proprietary claims, injunctions, disclosure orders etc)
- Asset recovery against financial institutions (e.g. victims bank, fraudsters bank, Quincecare, unjust enrichment, accessory liability etc)
- Other general bank related fraud claims
- Fraudulent misrepresentation
- Breach of fiduciary duty
- Dishonest assistance
- Economic Torts (e.g. conspiracy, intimidation, causing loss by unlawful means, inducing or procuring breach of contract, malicious procurement)
- Misappropriation of assets
- Bribery
- Confiscation proceedings
- Rate rigging

Recent Notable Cases:

- Acted as independent counsel in a SFO investigation of widespread and systematic fraud and financial misconduct in a large multinational company trading in raw steel and steel products. The investigation has involved detailed consideration of 38 trade finance advances from trade finance banks culminating in losses to the banks of over US\$170m.
- Acted as Junior Counsel for a businessman in his claim for damages for malicious procurement, unlawful act conspiracy and unlawful interference arising out of a Serious Fraud Office investigation into the collapse of Kaupthing Bank. The case was widely reported in the press and was one of The Lawyer's Top 20 Cases of 2018.
- Successfully advised and represented a client in a section 10A application in POCA proceedings before a High Court Judge. The proceedings were brought by the Environment Agency against the client's ex-partner. The issues before the court were the interrelationship between the client's respective beneficial interest in a number of co-owned businesses and domestic properties and

the confiscation provisions under POCA.

EDUCATION

- Bar Professional Training Course (BPTC)
- LLM (International Commercial Law)
- LLB (Hons)

PROFESSIONAL MEMBERSHIPS

- Commercial Bar Association (COMBAR)
- Bermuda Bar Association
- London Young Lawyers Group
- ADR Group Accredited Mediator
- The Honourable Society of Gray's Inn (2012)

AWARDS

- Dame Lois Browne-Evans Scholarship - 2015 (Bermuda Bar Association)
- Cox Hallett Wilkinson, Legal Bursary Award - 2008- 2009
- Appleby, Legal Bursary Award – 2008- 2009
- Chairman, Staff Student Panel, Cardiff University - 2009-2011