



## Patricia Robertson QC

### Call date

1988

### Silk date

2006

### Practice Areas

Patricia Robertson has a broadly based commercial and civil practice dealing with commercial disputes of all kinds but with particular emphasis on:

- ADR;
- Banking & Finance;
- Commercial Litigation;
- Electronic Commerce
- Professional Negligence;
- Professional Disciplinary Proceedings;
- Public Law and Regulatory Law (including legal and financial services)

### Recommendations (Practitioners' Guides)

Patricia was named by *The Lawyer* as one of the "Hot 100" for 2011. This prestigious list recognises a group of lawyers who have been at the top of their games and who have "consistently demonstrated nimbleness and innovation". *The Lawyer* said of Patricia that her broad based practice means she is well-placed to deal with major litigation spilling out of the recession, from professional negligence to regulatory to commercial disputes.

Patricia has been recommended in the fields of Banking & Finance, Professional Discipline and Professional Negligence in Chambers Directory, in Banking, in Legal Experts and in Legal 500. Comments made about her in the Directories have included:

"first-rate" (Legal 500, 2012); "clear advice presented in ordinary language" "approachable, creative and a pleasure to work with" (Chambers, 2012); "highly intellectually capable" "known for her work on high-profile and high-value professional negligence cases" (Chambers, 2011); "unflappable demeanour", "It's amazing how cool she can be under immense pressure - nothing seems to faze her." (Chambers 2010); 'We tend to go to her when you need a silk that is really going to get stuck into the detail of a case.' (Chambers, 2009); "...her complete and unquestionable commitment prove highly attractive to those who instruct her, while her ability to demonstrate the factual circumstances to a client is nothing short of excellent." "...always prepared for anything." (Chambers, 2008); "extremely thorough and a real glutton for papers"... "a real tiger" in contentious matters (Chambers 2007); "immense intellectual firepower" (Chambers, 2006); "a tenacious and enthusiastic advocate", "tough" (Chambers, 2003-4).

### Education

Balliol College, Oxford (BA in Modern History)  
City University, London (Diploma in Law)

## **Prizes & Scholarships**

Brackenbury Scholarship, Balliol College, Oxford

## **Other Qualifications**

CEDR accredited mediator

## **Other Appointments:**

Board member of the Bar Standards Board from January 2010.

Chair of Entity Regulation Project Board, BSB.

Chair of Standards Committee, BSB.

Master of the Bench, Inner Temple.

## **Professional Experience**

### ***Overview***

- Patricia has been involved in a number of particularly large and long-running pieces of litigation over the years and she is very familiar with the challenges of managing large scale litigation and of working within a team involving large numbers of lawyers and experts in different fields or multiple jurisdictions.
- Patricia relishes advocacy in all its forms and believes that practising across a number of different fields is a positive advantage in keeping advocacy skills sharp and legal thinking flexible.
- Much of Patricia's practice in recent years has been dedicated to ensuring that her client's problems do not become a reported case: for example, advising regulated firms on how to achieve a given business objective without falling foul of the regulator, particularly in the field of electronic commerce; and mediating (as advocate) a succession of very large professional negligence/commercial claims for sums ranging from the tens to hundreds of millions, all of which were successfully resolved without a writ being issued. Latterly, she has qualified as a CEDR accredited mediator and has acted as assistant mediator to a number of the leading mediators in mediating commercial disputes.
- Patricia has published extensively on topics connected with her niche areas of practice: including contributing to the relevant leading textbooks chapters on the subjects of internet banking and plastic money, on claims against investment managers and on regulation of legal services (see publications, below, for further details).

### **Administrative, Public Law & Regulatory Law; Professional discipline:**

*Legal services:* Patricia has frequently acted for the Law Society on judicial reviews relating to interventions, handling of complaints or applications to the Compensation Fund. Applicants often seek to raise Human Rights issues. She has acted both for the Solicitors Regulatory Authority and for the solicitor in cases before the SDT, and on appeal to the Divisional Court and Court of Appeal. Patricia also has experience acting for other regulators, such as the AADB, FSA, CLC and GMC, and is therefore well-placed to deal with the issues of principle that are common to different regulatory fields. Some examples:

- *R (Prudential) v Special Commissioner of Income Tax* – Patricia is acting for ICAEW in their intervention in the appeal before the Supreme Court (due to be heard Nov 2012) as to whether legal professional privilege should extend to accountants giving legal advice as to tax. ICAEW seeks clarification as to the relationship between common law privilege and the LSA 2007 provisions for privilege within ABSs.
- Patricia has appeared for claimants in judicial reviews challenging the decisions of local authorities in setting fees for residential care below cost or in failing to allow the private sector a reasonable return on capital.
- Patricia has advised regulators on a number of issues relating to the application of the Legal Services Act 2007 and has acted in an appeal from the SDT to the Court of Appeal directed at preventing lawyers from anticipating the implementation of rules permitting LDPs and ABSs under that Act. She has also advised potential new entrants to the ranks of approved regulators/licensing bodies under the LSA 2007.
- She has advised a number of firms on the compatibility of their business structures with the current regime of legal services regulation. For example, Patricia has advised a major firm of accountants as to the lawfulness, and compatibility with the current regulatory regimes of the SRA and BSB, of arrangements under which employed barristers and solicitors provide tax advice and litigation support to clients of the firm on a conditional fee basis and on ways those arrangements could be restructured as an alternative business structure under the LSA 2007 regime, once fully in effect.
- She has advised on the interpretation of the provisions in the LSA 2007 relating to privilege within an ABS and, more generally, on the impact of the LSA 2007 on the availability of privilege for authorised persons who are neither solicitors nor barristers.
- Patricia has advised the Law Society on the standard of proof in disciplinary proceedings before the SDT and intervened on behalf of the Law Society against the SRA in a test case on the point: *Richards v The Law Society* (which was decided on other grounds).
- Patricia has acted for the SRA in a number of complex, lengthy and high profile disciplinary cases testing points of principle, such as when a solicitor is obliged to stop acting for a client because the client's business might be fraudulent or when referral fee arrangements put solicitors in breach of their duties to clients: *The Law Society v Pitts Tucker*; *The Law Society v Sheikh*; *The Law Society v Tilbray*.
- Patricia is currently advising a number of firms on their regulatory obligations or on their responses to SRA investigations.
- She appeared for the Compensation Fund at the hearing of a test case before Lawrence Collins J in which the Law Society was applying for directions as to the administration of some £50m of statutory trust funds that have vested in the Law Society following interventions: *In the matter of the Interventions into the solicitor's practices formerly known as Ahmed & Co, Biebuyck Solicitors, Dixon & Co and Zoi*. The case raised a novel issue as to the nature and scope of the Law Society's powers and duties as statutory trustee and required an analysis of voluminous case-law on private trusts and public law. Although instructed by the Law Society, Patricia's role was to put before the Court arguments contrary to the Law Society's primary case, in a manner analogous to an "amicus", in order to ensure the arguments on both sides were fully considered.
- Patricia obtained a judgment by Sullivan J in favour of the Compensation Fund that decisions whether or not to award grants do not engage Article 6: *Collins v Law Society*.
- Patricia acted for the Council of Legal Conveyancers in defending a judicial review testing the scope of their powers to make grants from their compensation fund.
- She has contributed chapters on the new regulatory regime and on the Legal Services Board to the *Guide to the Legal Services Act 2007* (eds. Miller & Thorne, Butterworths Lexis-Nexis, 2009) and to *Cordery on Legal services* (Lexis-Nexis, Looseleaf).

*Financial Services:* Patricia has considerable experience of advising both regulator and regulated in respect of various issues arising under the FSMA 2000 and, in particular, in respect of the regulation of electronic money and of financial services provided over the internet and/or cross border. For details, see under "Banking & Finance". Patricia sees her work in the field of professional regulation and discipline as a natural fit with her professional negligence practice: for example, in handling or defending claims against financial services firms a thorough knowledge of their regulatory obligations

is essential: see under "Professional Negligence". Patricia has lectured at a number of conferences on topics related to the field of regulation, such as separation of powers, the Strachan Review, the impact of human rights and the relative merits of different methods of challenging FSA decisions.

*Other professional disciplinary experience:*

- Acting for NHS trusts in two high profile disciplinary proceedings against hospital consultants (Siddle and Ledward, both widely publicised cases of surgical and clinical incompetence involving a large number of patients).
- Acting for the GMC in prosecuting doctors accused of serious professional misconduct (in particular, in the Ledward case itself and in various other cases involving allegations ranging from surgical incompetence to drug abuse).

## **Banking & Finance:**

Patricia identified early on the need for a treatment of the ways in which banking law has been affected by the development of electronic commerce and has contributed chapters on "Plastic Money" and "Internet payment" to "The Law of Bank Payments" eds. Brindle & Cox (4th edition). For example, Patricia wrote an article on the application of section 75 of the Consumer Credit Act 1974 to credit card transactions over the internet in 1999, anticipating by 8 years the answer eventually given by the House of Lords in *OFT v Lloyds TSB* on that very issue.

Patricia has built up an advisory practice advising the regulator, banks and other financial service clients on issues relating to electronic commerce and internet banking and on regulatory issues. Some of this work has been done instructed directly by the legal department of the company concerned. This has included:

- Advising on the interpretation of "contracts of annuity" in the RAO.
- Advising on the interpretation of the Payment Services Regulations in relation to the requirements for segregation of funds.
- Advising the promoter of an unregulated collective investment scheme as to the scope of deposit-taking activities.
- Advising a provider of "pay day" loans on the application of the rules of the Cheque Guarantee Scheme to post-dated cheques taken in repayment.
- Advising on various passporting issues in relation to a scheme to provide insurance for mobile phones sold in the UK via a captive insurer established elsewhere in Europe.
- Advising on regulatory issues arising from the transfer to a trustee of the property portfolio of a home reversion plan provider, as part of a restructuring of the group.
- Advising on application of the CCA 1974 and CCA 2006 to loans made as part of a film financing scheme.
- Advising as to whether providing deposit guarantees in respect of off-plan property purchases is to be classed as banking or insurance for the purpose of passporting the service into the UK under the FSMA 2000.
- Advising on interest rate swaps under ISDA master agreements.
- Advising a US company as to implications under the FSMA 2000, CCA 1974 and Money Laundering Regulations, of proposals to provide credit card processing services in the UK.
- Advising a Scottish insurance company on compliance with the regulations on distance marketing of financial services and on the application of various parts of COB and ICOB of the FSA's handbook.
- Advising in relation to the regulation of "precipice bonds" under the FSMA 2000.
- Advising a housing association on whether a saving scheme for tenants required authorisation under the FSMA deposit-taking regime.
- Advising an insurance broker on the application of the client money provisions.

- Advising a mobile phone service provider on the regulatory issues, both under domestic banking regulations and the directives on E-money institutions, raised by a proposed electronic payment system for use in relation to WAP services.
- Advising on provision of credit card services on-line, in relation to the compatibility or otherwise of domestic consumer credit regulations, as they then stood, with paperless business (especially, the use of paperless agreements, e-mail account statements and web banner advertisements) and the impact of domestic and European legislation relating to E-commerce.
- Advising a major UK credit card issuer on cross border provision of credit card services.
- Advising a high street bank on setting up its internet banking service and, in particular, on the compatibility with current legislation of paperless agreements for banking services and on the likely impact of various applicable European Directives (E-Commerce, Distance Selling, Distance Marketing of Financial Services etc) and the (then) Electronic Communications Bill.

Patricia has extensive experience of dealing with claims against financial services firms relating to investment advice and fund management services: see under "Professional Negligence". Her litigation practice in the field of banking & finance has also included:

- Acting for Italian local authorities in three cases relating to the legality and enforceability of interest rate swaps and associated claims for damages and/or restitution, including acting in challenges to the jurisdiction and subsequently defending the substantive proceedings.
- Acting for a bank's private wealth division in defending a potential class action by investors for alleged misselling of an AIG related fund, which was subject to a run, forcing closure in late 2008 (ongoing).
- Advising a solicitor on a dispute as to enforceability of a loan for partnership equity, following the collapse of Halliwells.
- A dispute between merchant banks over an option for gold bullion under an ISDA Master Agreement, raising issues of mistake and rectification.
- Acting for a merchant bank in recovering substantial sums lost as a result of a massive fraud on the Bombay Stock Exchange.
- Acting (with Michael Brindle QC) for a Receiver by way of equitable execution in successfully resisting, at first instance, an application for a cross undertaking in damages in *Ashford Hotels Ltd v Higgins and others* (unreported at first instance, the decision was later upheld on appeal and reported as *Allied Irish Bank v Ashford Hotels* [1997] 3 AllER 309).
- Acting (with Michael Brindle QC) for a major clearing bank in an LCIA arbitration over defects in processing systems for credit and debit card transactions.
- Acting (with Conrad Dehn QC) for a number of local authorities in the local authority interest rate swaps litigation (negotiating the selection of lead cases and the terms of the cost sharing order for the lead actions and acting for various local authorities in resisting the restitutionary claims by banks).
- Acting (with Michael Lerego QC) in a long running guarantee dispute relating to the application of the rule on *Holmes v Brunskill*.
- Acting for a building society in bringing claims for negligent lending against its agent (which involved analysing and pleading a case in relation to vast numbers of individual bad loans under the umbrella of master pleadings).

### **Civil Fraud:**

- Acting for the claimant in a novel case seeking damages for deceit on grounds of paternity fraud. The case settled after Patricia amended to raise an alternative claim for restitution based on shared mistake as to paternity.
- Advising a school on civil recovery of funds paid out to key staff unlawfully and in breach of fiduciary duty over a ten year period. There are parallel criminal and disciplinary proceedings.

- Patricia acted (with Peter Goldsmith QC and, subsequently, with Nicholas Stadlen QC) for a Saudi Arabian Prince in seeking to trace and recover some \$212m stolen from him by his personal assistant.

## Commercial Litigation:

Patricia's commercial cases have covered, in addition to the usual run of disputes over share sale agreements and the like, a broad field, including:

- Advising on complex financial service regulatory issues arising in litigation over a failed tax shelter scheme relating to film finance (settled shortly before trial).
- Acting for a major telecommunication network in pursuing claims against two other networks for sums overpaid under interconnection agreements (settled shortly before trial).
- Acting as an expert on English law in commercial litigation overseas involving claims in excess of €200m against directors and shareholders (both individual and corporate) for alleged misrepresentations inducing a syndicated loan. Issues include champerty, application of Lord Tenterden's Act, joint tortfeasorship, personal liability of directors for torts, attribution of knowledge, and vicarious liability. (Judgment awaited.)
- A complex private equity dispute arising out of the refinancing of a BVI company, raising issues of BVI and Hong Kong law, as well as issues of English law as to the scope of the authority conferred by the Investment Committee of a private equity fund on its Adviser.
- A claim for *quantum meruit* for work done introducing investors to a start-up trading carbon credits. (Settled in third week of trial.)
- A minority shareholder dispute arising from the collapse of an equity derivatives business, involving allegations of breaches of FSMA and breaches of director's duties. (A particularly good example of Patricia's skills and approach: the case required familiarity with derivatives broking and knowledge of the law across an unusually broad span, including employment law, company law, joint ventures, and financial services regulation. When Patricia was brought in the case was scheduled for a 4 week trial in a year's time, involving experts in at least two different fields. On her advice, the radical step was taken of adding a counterclaim and applying for summary judgment on a part of the case involving allegations of dishonest breaches of FSMA principles. Faced with that, the other side started settlement negotiations, which Patricia handled, and the matter was satisfactorily resolved, resulting in a considerable cost saving for her client.)
- A claim for breach of fiduciary duty against an advertising agency which was alleged to have accepted kickbacks from manufacturers whose products it recommended for inclusion in the client's promotions.
- Allegations of faulty manufacture of hip replacements (issues as to jurisdiction and proper law as well as complex technical issues relating to the quality of the product).
- A claim by a major UK supplier of digital set-top boxes for losses caused by defective microchips (issues as to contractual construction as well as technical issues relating to the mechanism of failure).
- Defending a claim for a commercial agent's fees in relation to Iraqi business (issues of Iraqi law and illegality defences).
- A claim relating to defects in computer software designed to track student numbers/courses attended for use by a Further Education College (issues of contractual construction of a poorly drawn IT contract).
- A challenge by one national newspaper to another's audited circulation figures.

## Mediation:

An increasingly large proportion of Patricia's practice involves acting as advocate in the mediation of very large commercial/professional negligence disputes, often before any writ has been issued.

Patricia has accumulated very extensive experience in the effective use of advocacy in the mediation of heavy and complex claims, many of them valued well in excess of £100m. Over the past 10 years

she has accumulated a level of experience in this area which relatively few members of the Bar could match.

Careful analysis and preparation is required for an effective mediation of technically complex/high value cases. This frequently involves the preparation of documents that combine the functions of pleadings, witness statements, expert evidence and opening submissions, requiring highly effective drafting and a cogent analysis of the key factual and legal issues. However, the techniques and purposes of advocacy in this context differ in important respects from a courtroom context and must successfully persuade the other party to readjust its risk assessment, often by reference to commercial as well as legal factors.

Typically, this work includes preparing any pre-action protocol exchanges, drafting the case summary (in liaison with experts, where appropriate), analysing and discussing with the team the strengths and weakness of the case and possible negotiated outcomes, making the opening statement at the mediation and preparing speaking notes for senior management, and leading the strategy of the team through to conclusion. Some of this work has been done instructed directly by the legal department of the company concerned.

Patricia is now also a CEDR accredited mediator and has assisted a number of a number of the most prominent mediators in mediating commercial disputes. At the invitation of the Bar Council, she appeared on a panel with Michel Kallipetis QC and Philip Naughton QC, teaching advanced mediation advocacy to members of the Bar.

## **Professional Negligence:**

### *Investment Management*

Patricia acted for Mercury Asset Management in defending the claim brought against them by the Trustees of the Unilever Pension Fund for allegedly negligent fund management (settled in late 2001). This was a novel claim raising complex technical issues relating to measurement of risk in investment portfolios, as well as legal issues as to the scope of the duty owed by a fund manager and the correct approach to quantum.

Patricia very frequently advises and acts in relation to disputes over fund management. In one year alone she acted in relation to five such matters, each valued between tens and hundreds of millions of dollars, all of which were resolved without proceedings being issued. She has contributed a chapter on Liability of Fund Managers in *Professional Negligence and Liability* (ed. Simpson) which was in press at the time the Madoff scandal broke. She has written and advised on the subject of Madoff-related claims against banks and investment advisers.

Current work in this field includes:

- Acting for an investment bank in defending a \$300m claim relating to an advisory portfolio which was invested in emerging markets on a leveraged basis and suffered a total "wipeout" in late 2008. (Ongoing.)
- Acting for investment managers in defending a claim for misselling of structured notes and alleged mismanagement of an advisory portfolio which suffered losses when margin calls in late 2008 were not met. (Ongoing.)
- Acting for the wealth management division of a major bank in defending misselling claims relating to investments sold as cash equivalents. (Ongoing.)

### *Legal Services*

Examples include:

- Advising an international law firm as to its pre-action protocol response, including advising on jurisdiction (there were jurisdiction issues arising from the way the law firm was structured

internationally) and proper law (the claim relates to advice on foreign law given by an overseas office).

- Advising on a potential claim for 210 million Euros against legal advisers who had acted for the lenders in relation to a syndicated loan. The borrower was declared insolvent within weeks of the funds being drawn down. The potential claimants were banks who had purchased the debt on the distressed debt market and had taken assignments of ancillary claims.
- Acting for the BMIF in defending a number of claims brought against barristers. With Ali Malek QC, she successfully defended a leading commercial silk against the largest such claim that the BMIF had until then faced (the claimant submitted to dismissal of his case and an order for indemnity costs in the 5th week of the trial, in July 2006).

### *Banking and other financial services*

Patricia frequently acts and advises in relation to professional negligence claims involving banks, accountants, financial advisers, and other providers of financial services. Examples include:

- Acting for a bank in defending a claim for allegedly negligent financial modelling of the costs of a major PFI project in Northern Ireland. (Ongoing.)
- Advising on a claim against an insurance broker for inadequate advice on scope of income replacement cover for company director.
- Defending a claim against accountants for allegedly negligent valuation of goodwill (ongoing).
- Defending a claim relating to alleged failures by auditors to identify the true extent of a farming cooperative's exposure to liability on commodity futures and options (settled).
- Acting in *Brostoff & others v CKL* [1998] PNLR 635 (CA), for an international association of accounting firms in long-running multi-party litigation in which we successfully resisted, at first instance and on appeal, claims brought by around 100 victims of a fraud perpetrated by the Executive Director of the association (subsequently the subject of a BBC drama series starring Hugh Laurie as the fraudster, Nicholas Young).
- Acting for actuaries in (successfully) defending a professional negligence claim relating to actuarial projections of reinsurance liabilities in the LMX market, in *NRG v Bacon & Woodrow* [1997] LRLR 678 (a trial which lasted around 9 months and involved at the outset 4 parties and 14 Counsel).

Patricia has considerable experience of resolving complex and high value professional negligence disputes by means of mediation in situations where the client relationship or costs of trial make this the preferable course: examples include resolving a claim against a fund manager by a member of a Middle Eastern Royal family and resolving a multi-party dispute involving claims and cross claims between receiver, auditor and directors that was due to go to an 8 week trial involving experts from two disciplines.

Patricia's chapter on expert witnesses (first published in 2006 in *Professional Negligence and Liability*) put forward an argument for removal of immunity from expert witnesses, which was accepted by the Supreme Court in *Jones v Kaney* [2011] UKSC 13.

## **Publications**

Chapters on *Fund Managers and on Expert Witnesses* in *Professional Negligence and Liability*, ed Simpson, Informa, Looseleaf.

Chapters on *Plastic Money* and on *Internet Payments* in *The Law of Bank Payments* eds. Brindle & Cox, 3rd Ed. (Sweet and Maxwell).

Chapters on the new regulatory regime under the *Legal Services Act 2007* and on the *Legal Services Board* in *The Guide to the LSA 2007* eds. Miller & Thorne, 2009 (Butterworths Lexis-Nexis).

Contributor to chapter on *Professional Negligence* in Bullen & Leake & Jacob's *Precedents of Pleadings*, 16th edn (Sweet & Maxwell).

Article on *Madoff investor claims: US proceedings and possible UK approaches* (The In-House Lawyer, May 2009).

Article on *Loss of chance in claims against fund managers* (The In-House Lawyer, December 2008).

Article on expert witness immunity ("*Expert witness: professionally immune?*" in Tottel's Journal of Professional Negligence vol 23 No 2, 2007, 66).

Article on the *Payment Services Directive* (The In-House Lawyer, Issue No 152, July/August 2007, p31)

Article on *Application of Consumer Credit Act 1974 to credit card transactions over the internet* (Credit and Finance Law, March 1999).

Article on proposed *Directive on Distance Marketing of Financial Services* (Electronic Commerce Law and Policy, June 1999).

- The Proposed Directive on Distance Marketing of Financial Services
- The Application of Consumer Credit Act 1974 to Credit Card Transactions over the Internet
- Butterworths Guide to the Legal Services Act 2007

## Other Experience

Frequently asked to speak at conferences on the Legal Services Act 2007. Speaker at Informa's prestigious annual Professional Negligence and Liability conference. Past speaking engagements have also included speaking at Hawksmere, MetaGroup and ICC conferences on e-commerce related topics and at IBC and CLT conferences on regulatory/human rights topics. Other lecture topics have included the impact of the CPR on costs awards, implications of the Human Rights Act for professional disciplinary procedures, and a round table with in-house lawyers on "Cautionary Tales for Investment Banks".

Training experience has included teaching advanced advocacy for international arbitrations, teaching on the South Eastern Circuit's advanced advocacy course, appearing on panel of a Bar Conference workshop on expert witnesses, running a training seminar for expert witnesses, providing training for new committee members of the GMC and appearing on the panel of a Bar Council seminar on advanced mediation advocacy.

Past Member of ICC (UK) Electronic Commerce Working Group and of ICC International Task Force on Jurisdiction and Applicable Law in Electronic Commerce.

Patricia undertook a "Stage" with an American law firm in Brussels in 1991, advising both on English law and on European law aspects of a wide range of commercial transactions. Much of the work was carried out in French or involved translation into and out of French. Patricia speaks ungrammatical but functional Italian and has a good reading knowledge of Italian.

## Languages

French  
Italian