



## Philip Brook Smith QC

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### Practice Areas

Philip Brook Smith has a broad commercial and civil practice, specialising in particular in:

- All areas of commercial law;
- Arbitration;
- Aviation;
- Civil Fraud;
- Professional Negligence;
- Product liability; and
- Employment

Philip is widely regarded as a leading commercial dispute resolution lawyer. He is recommended for Product Liability in Chambers & Partners and Chambers Global Guide, and is listed as a Leading Silk, both as regards Product Liability and Commercial Litigation, in Legal 500. Comments in legal directories in recent years include:

- “a fine advocate with openness and intelligence that endears him to solicitors and Judges alike.”
- “stands out for his expert grasp of intricate statistical, scientific and technical matters.”
- “highly personable team player”
- “incredibly intelligent and charismatic”
- “swift and incisive in his understanding of the interplay between legal and commercial considerations”
- “extremely personable and skilled”
- “a rising star whose mathematics background proves invaluable in explaining and demystifying statistical and scientific concepts in court.”
- “perfectly equipped to deconstruct the often-complex technical features found in Product Liability cases”

Philip is equally comfortable acting as sole counsel or as part of a larger team of barristers. He is very ‘user friendly’, and a team player. His work with overseas clients (lay and professional) means that he is ready, as necessary, to perform more ‘hands on’ functions than those usually expected of leading counsel.



## **Recent/current work**

The following is a summary only. Please do not hesitate to contact Philip or his clerks if you would like further details about his current workload.

- advising a government regulator in dealing with a high-profile complaint, requiring considerable background technical expertise
- advising a Primary Care Trust, in relation to contractual issues and disputes in a changing health care environment
- the \$150 million dollar 'Jahre' Cayman Islands litigation
- successful anti-suit proceedings in the Cayman Islands and several associated international arbitrations
- a multi-million pound claim/cross claim in Guernsey concerning financial services and investment funds
- a very large claim concerning a procurement fraud – conspiracy, breach of fiduciary duties and miscellaneous torts
- a multi-million dollar contractual dispute concerning a distributorship agreement for supply of goods in Africa
- a claim regarding confidential information/trade secrets in relation to disaster recovery systems
- claims in connection with IT systems in banking insolvency context
- Cayman insolvency litigation, arising from banking investments
- aviation litigation as to lease agreements and refurbishment/maintenance of engines
- disputes as to solicitors' Panel Membership agreements
- a dispute in relation to wrapper pension policies and guaranteed investment funds
- a dispute as to the appointment and non-retention of arbitrators to Lloyd's panel (Open Form arbitrations)

## **Professional Experience**

Philip has substantial experience of a wide variety of areas of commercial and civil law. Whilst achieving notable distinction in the field of Product Liability, he has always enjoyed a very broad commercial practice.

Much of his work is international, and frequently concerns offshore jurisdictions, in particular the Cayman Islands, BVI and the Channel Islands. He has wide experience of the laws and practice of these and other jurisdictions, for example the US, Canada, France, Norway, Liechtenstein, Nigeria, Chile, Japan and Middle Eastern countries.

He has advised in respect of, and appeared in, numerous arbitrations, both in England and overseas.

His cases often involve a technical/industrial content, including in the pharmaceutical field. His background means that he is able quickly to assimilate and analyse difficult concepts, detecting 'bad science', and also very swift to engage with expert disciplines outside the immediate experience of many barristers.

**Product Liability:**

Philip has been involved in many of the leading Product Liability cases, in his case starting with Whooping Cough vaccine. He was instructed by the National Blood Authority in the Blood Products litigation (HIV/AIDS), and later in the Hepatitis C litigation. He acted for the manufacturers in the Oral Contraceptives litigation, and subsequently in the Persona litigation. He was instructed (again for the manufacturer) in relation to Seroxat anti-depressant, in the MMR litigation, and regarding non-EU compliant components of food supplements.

**Arbitration:**

Arbitrations in which Philip has been instructed cover many diverse fields, for example:

- as regards pharmaceutical products, unique medical formulations, confidentiality, and wrongful competition, between an English company and a Dutch company
- a supply agreement for provision of processing of nuclear waste, between two English companies
- supplies of steel from Russia to France, between a Russian seller and a Russian buyer
- banking services in Nigeria, between a French bank and a Nigerian bank
- supplies of copper concentrates, between a Chilean mining company and a Swiss metals trader
- supplies of goods to the Middle East, between a Cayman Islands company and English/Dutch companies
- insurance claims for business interruption arising from metals mining and processing operations in Australia, between an Australian insured and Lloyd's underwriters.

**Aviation:**

Examples of Philip's cases include:

- disputes between lessors and lessees concerning lease terms and airworthiness
- contractual and tortious claims arising in respect of the maintenance and repair of engines, and title to parts (Gamit v Saudi Arabian Airlines)
- jurisdictional disputes under maintenance/repair contracts
- advising as to enforceable contractual terms, and drafting the same
- advising on insolvency matters in an aviation context.

**Banking & Finance:**

Philip has substantial, long-standing and continuous experience in banking litigation, dating back to National Westminster v Morgan (HL). More recently, he advised clients in relation to fallout from the Enron affair.

Philip's experience extends over the range of banking issues, including private client lending facilities/securities, custodianships, underwriting agreements, corporate restructuring, syndicated loans, regulatory issues. His knowledge of offshore banking/investment funds is extensive, including as to banking secrecy laws. Most recently he has been instructed in cases concerning the Madoff scheme and its impact on affected depositors, in various jurisdictions.

**Civil Fraud:**

Examples are as follows.

Philip acted throughout in the Dubai Aluminium v Salaam (HL) case, involving payment of secret commissions.

He advised and appeared for a major international retail client in fraud claims against employees and suppliers, obtaining a range of freezing and ancillary orders, and involving several jurisdictions including Guernsey, Liechtenstein and the US.

He was instructed for many years in the Anders Jahre litigation, variously proceeding in many jurisdictions and over several decades. The case was perhaps the longest-running in legal history, reported as being 'one of the most complex trust and fraud litigations to ever involve the English bar'.

**Employment:**

Philip has practised in employment (and related) matters for many years. Recent experience involved advising in relation to litigation in Singapore between two leading firms of solicitors, following the migration of a partner from one firm to the other.

Philip is experienced in cases concerning eg confidential information, directors' duties and bonus issues, restrictive covenants, as well as sex/race discrimination etc.

**Financial Services:**

Examples of Philip's work are:

- advising clients in relation to Jersey and Guernsey financial regulatory matters
- advising a Friendly Society in relation to proposed rule changes in the regulatory environment
- advising in relation to disclosure issues – stock exchange listings

**Insolvency:**

Philip advised in relation to the successful appointment of provisional liquidators in the BVI, arising from the Gold & Appel affair (giving rise to the largest ever individual US tax debt). He represented (successfully) in the Cayman Court of Appeal in winding up proceedings arising from a failed investment in a German bank.

**Insurance & Reinsurance:**

Philip has dealt with insurance/reinsurance matters for very many years, dating back to the Howden affair. His experience encompasses Lloyd's and other markets and related arbitrations, as an intrinsic part of his commercial practice. He was also involved in the Costs litigation concerning Before/After The Event Insurance (Sawar v Alam) and has advised (and mediated) in relation to solicitors firms' contracts with financial service providers for claims handling. He regularly advises on coverage issues in all types of case, most recently being instructed in litigation concerning an employee's disability policy.

**Professional Negligence:**

As part of his commercial/civil litigation practice, Philip has acted on very many occasions in relation to eg claims involving solicitors (eg Summit Properties v Pitmans), accountants (eg ADT v Binder Hamlyn), valuers, architects, surveyors, insurance brokers and merchant bankers.

**Travel:**

Philip has advised travel companies in relation to group litigation in the US arising from holiday disasters, anti-suit injunctions and the Package Tour Regulations.



## **Mediation:**

Philip has been involved in many mediations, as adviser/representative/mediator. Examples include the successful mediation of a complex and high-value TCC case, and that of a food supplements claim, in each case raising difficult technical and damages issues.

## **Other Experience**

Philip's knowledge of, and expertise in, advocacy skills is undoubted. He has for many years taught advocacy for Middle Temple and the South Eastern Circuit, latterly as Course Director for the internationally-renowned Keble College Course; he frequently assists a leading US firm in providing their in-house training for advocacy in international arbitrations.

He is a case reviewer for, and a senior member of the management committee of, the Bar Pro Bono Unit.

He is a member of the British Boxing Board of Control Anti-Doping Tribunal and also sits, as the Bar Council representative, as a member of a Joint Tribunal which determines disputes between solicitors and barristers.

## **Education**

London School of Economics (BSc. 1<sup>st</sup> class honours – Mathematics)

London University (MSc. Mathematics – distinction)

City University (Diploma in Law)

## **Prizes & Scholarships**

Blackstone scholar (Middle Temple)

## **Appointments**

Philip sits as a Crown Court Recorder, and is a member of the Tribunal Procedure Committee, responsible for ongoing drafting of a series of Tribunal Rules and chairing a subgroup.

## **Other Qualifications**

CEDR accredited mediator

Member of the Gibraltar Bar

## **Interests**

Many, including theatre, 20<sup>th</sup> century art, classic cars (the battle against rust), pop music minutiae, and following the Arsenal. Boxing is a particular interest – Philip is chairman of the Commonwealth Boxing Council.