



Fountain Court

Richard Power

Call: 2007

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Practice Areas

Banking and Finance
Commercial Litigation and Arbitration
Competition and European Law
Conflicts of Law and Jurisdiction
Insurance and Reinsurance
Professional Negligence
Sale of Goods and International Trade
Aviation
Employment

Education

BA Law, Christ Church, Oxford (First)
BCL, Christ Church, Oxford (Distinction)
BVC, Inns of Court School of Law (Outstanding, second in the year)

Prizes & Scholarships

Scarman Prize for second highest overall results on the Bar Vocational Course (2007)
Crowther Shield for Advocacy, Lincoln's Inn (2006)
Lord Mansfield Scholarship, Lincoln's Inn (2006-2007)
Hardwicke Entrance Award, Lincoln's Inn (2006-2007)
Gray's Inn Tax Chambers Prize for the highest mark in BCL Personal Taxation (2006)
Arts and Humanities Research Council Award for postgraduate study (2005-2006)
Dixon Scholarship, Christ Church (2005-2006)
John Radcliffe Exhibition for the Best Overall Performance in F.H.S Jurisprudence at Christ Church (2004)
Lovells Scholarship in Law, Christ Church (2002-2004)
Winner of the Oxford University Law Society Mooting Competition 2006 (final judged by Lord Hoffmann)

Summary of Practice

Commercial Litigation and Arbitration

Regularly instructed to advise and represent companies and individuals in the High Court, County Court and in arbitrations. Recent and current matters include:

Excalibur Ventures LLC v Texas Keystone & Ors- acting (with Michael Crane QC and Tamara Oppenheimer) for Texas Keystone in defence of a very substantial claim (around \$500 million) concerning rights to exploit and develop petroleum fields in Iraqi Kurdistan.



Acted (with David Railton QC) for Depfa Bank in the Norwegian “swaps” case. The case raised important issues in the law of restitution, conflict of laws and contractual damages, all of which went to the Court of Appeal:

(1) Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2) [2010] EWHC 227 (Comm), [2010] 1 All ER (Comm) 1109, [2010] 2 Lloyd's Rep. 323; [2010] P.N.L.R. 21

Acted (with David Railton QC and Andrew Fulton) for Depfa Bank in its Part 20 Claim for damages of approximately £28 million against Wikborg Rein, a leading firm of Norwegian solicitors. The case concerned the measure of damages payable by the bank's negligent solicitors and, in particular, the relevance of Depfa's claim against the municipalities in restitution.

(1) Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2) (Court of Appeal) [2011] EWCA Civ 33;, [2011] 3 All E.R. 655, [2011] 1 C.L.C. 166, 2011 WLR(D) 25

Acted (with David Railton QC) for Depfa in the appeal brought by Wikborg Rein against the decision of Tomlinson J in *Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2)*.

(1) Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank [2010] EWCA Civ 579, [2011] 1 All E.R. 190; [2011] 1 All E.R. (Comm) 985; [2010] 1 C.L.C. 770

Acted (with David Railton QC and Andrew Fulton) for Depfa in three day hearing in the Court of Appeal. The appeal concerned the application and scope of the change of position defence and the application of the choice of law rule for determining the capacity of a foreign corporation.

Haugesund Kommune v Depfa ACS Bank [2009] EWHC 2227 (Comm), [2009] All ER (D) 34 (Sep). Assisted David Railton QC and Andrew Fulton for Depfa Bank in its substantial claim (approx. £56 million) in the Commercial Court against the municipalities of Narvik and Haugesund concerning certain swap transactions.

Acted (with Murray Rosen QC) in a two day arbitration concerning the construction of a share purchase agreement.

Slocom v Sibir Energy Plc (and others)- acting (with Andrew Hunter) for the defendant oil company in defence of claims concerning the sale of a Villa (worth \$70 million) owned (indirectly) by Chalva Tchigirinsky.

Acting (with Derrick Dale QC) for a UK based company in a substantial claim in the Commercial Court for breaches of warranties provided in a Share Purchase Agreement.



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Investec Asset Finance plc v Owens & Associates and others - acted for Investec in relation to a series of claims brought pursuant to hire agreements with a number of accountancy firms.

Dystar UK v Nicholas Dewhirst - acted as sole counsel for Dystar in its claim in the High Court against a former finance director for breach of contract and fiduciary duty. Successfully obtained (and held at the return date) a freezing injunction against the Defendant.

Acted as sole counsel for a UK company in a claim in the High Court against a former director for breach of contract and breach of fiduciary duty and a former employee for dishonest assistance. Successfully obtained (and held at the return date) a freezing injunction against both Defendants.

Acted for the governors of an independent school in connection with an investigation by the Secretary of State under the Company Directors Disqualification Act 1986.

Completed (in Summer 2010) a three month secondment to Cleary Gottlieb Steen & Hamilton LLP. Whilst on secondment Richard acted (with Richard Hacker QC) for a BVI company in a LCIA arbitration.

Banking & Finance:

Regularly instructed to advise and represent banks and lenders in relation to, *inter alia*, loan agreements, guarantees and mortgages in both the High Court and County Court

Recent and current matters include:

Depfa Bank plc & Dexia Crediop SpA v Provincia di Pisa- acting (with Richard Handyside QC) for Depfa and Dexia in Commercial Court proceedings against the Province of Pisa concerning the enforceability of two interest rate swap agreements. 3 week trial listed for February 2012.

Dexia Crediop SpA v Comune di Prato/ Comune di Firenze- acting (with Richard Handyside QC) for Dexia in Commercial Court proceedings against the authorities of Prato and Florence concerning the enforceability of interest rate swap agreements.

Deutsche Bank AG v Regione Toscana- acting (with Tim Howe QC) for Deutsche Bank in Commercial Court proceedings against the Region of Tuscany concerning the enforceability of an interest rate swap agreement.

Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2) [2010] EWHC 227 (Comm), [2010] 1 All ER (Comm) 1109. See Commercial Litigation above.

(1) Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2). See Commercial Litigation above.

Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank [2010] EWCA Civ 579, [2010] All ER (D) 273 (May). See Commercial Litigation above.



Lloyds Bank plc v Groome (Recorder Cotter QC)- acted as sole counsel for Lloyds in a 4 day multi-track trial in Bristol County Court. The case concerned allegations of mis-selling of PPI and the application of the unfair relationship provisions of the Consumer Credit Act 1974 (as amended)

Acted as sole counsel for a major finance company in a two day multi-track trial concerning the enforceability of a hire-purchase agreement regulated under the Consumer Credit Act.

Saleslease Purchase Ltd v Complete Vehicle Management Ltd & The Funding Corporation (2011) Slough County Court (HHJ Elly)- acted for the successful Claimant in a two-day trial of a claim arising out of the refinancing of and transfer of title to a number of vehicles.

Richard is a contributing author to the forthcoming 4th edition of Brindle & Cox on *The Law of Bank Payments*.

In December 2008, Richard undertook a month's secondment in the Banking and Finance Litigation Department of Matthew Arnold and Baldwin

Insurance:

Instructed as sole counsel for a major firm of insurance brokers in defence of a claim brought against it in the Commercial Court for alleged breach of contract/ negligence in the broking of the Claimant's professional indemnity insurance

Regularly instructed by a major insurance broker to review client's collateral warranties in light of the client's professional indemnity insurance

Competition and European Law:

Instructed (with Sir Francis Jacobs QC) to advise a national competition authority on a number of questions regarding the interpretation of Article 82

Instructed (with Sir Francis Jacobs QC) to advise a major trade association on the meaning and likely effect of a proposed amendment to an EC Directive

Instructed (with Sir Francis Jacobs QC) to advise a major trade association on the meaning and likely effect of an article of the Lisbon Treaty

Conflicts of Law and Jurisdiction:

Successfully represented a major bank in an application for service to be set aside on the basis that the English courts did not have jurisdiction pursuant to Regulation 44/2001

Haugesund Kommune v Depfa ACS Bank [2010] EWCA Civ 579, [2010] All ER (D) 273 (May).
Acted (with David Railton QC and Andrew Fulton) for Depfa in the Court of Appeal. The



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appeal concerned, *inter alia*, the application of the choice of law rule for determining the capacity of a foreign corporation

Acted for a Swiss company in an application to set aside service of proceedings.

Professional Negligence and Professional Discipline:

Instructed, as sole counsel, for a firm of solicitors, in defence of a substantial claim brought against it by a mortgage lender for alleged breach of contract/ negligence

Acting as sole counsel for LPA Receivers in a claim against solicitors for breach of contract and/or duty

Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2) [2010] EWHC 227 (Comm), [2010] 1 All ER (Comm) 1109, [2010] P.N.L.R. 21. See Commercial Litigation above.

(1) Haugesund Kommune (2) Narvik Kommune v Depfa ACS Bank (Defendant) & Wikborg Rein & Co (Third Party) (No 2) (Court of Appeal) See Commercial Litigation above.

Masrur (A Solicitor), Re [2009] EWCA Civ 944- acted (as sole counsel) for the SRA in an appeal to the Master of the Rolls from a decision of the SRA adjudication panel.

Aviation:

Regularly represents airlines in defence of claims relating to, *inter alia*, the application of the Montreal Convention and Regulation 261/2004

Instructed for a major airline in defence of a number of separate claims concerning the interpretation of the “extraordinary circumstances” exception within Regulation 261/2004

Employment:

Recent work includes:

Acted for a management consultant in a claim for unfair dismissal on grounds of redundancy in a three day hearing in the Employment Tribunal

Acted for a major construction company in a 5 day Employment Tribunal hearing. The case involved allegations of race discrimination and whistleblowing

Acted for a major University in defence of a substantial claim for wrongful dismissal

Other experience

Instructed by the Treasury Solicitor as part of a team of counsel for the Ministry of Defence in the Nuclear Test Veterans Group Action