



Fountain Court
CHAMBERS

2020: A REVIEW

DECEMBER 2020

INTRODUCTION

2020 has been an extraordinary year. During challenging times, we have been lucky enough to experience some positive moments.

Six of our members were appointed Queen's Counsel (a record for the Magic Circle), we welcomed three new tenants following successful completion of their pupillages, we were joined by an ex-UK Supreme Court Justice and many of our members gained prestigious awards, rankings and appointments.

Sadly, we also lost our former colleague and friend in Conrad Dehn QC, whom we remember fondly.

This review looks at some of our news stories of 2020 and details some of the significant cases in which our members were involved.

We wish all of our colleagues and clients a very happy and healthy festive period and look forward to continuing to work with you in 2021.

Please [click here](#) to watch our Christmas message.



Bankim Thanki QC
Head of Chambers



Alex Taylor
Senior Clerk





Pictured in February 2020: (from l-r) Fountain Court's new Silks, Robin Barclay QC, Giles Wheeler QC, Chloe Carpenter QC, Tamara Oppenheimer QC, Edward Levey QC and Ben Lynch QC

Broken records, innovation and some long-awaited judgments

Six QCs appointed

2020 started in a promising way, with the appointment of a record-breaking six Queen's Counsel appointments. Giles Wheeler, Edward Levey, Robin Barclay, Chloe Carpenter, Ben Lynch and Tamara Oppenheimer were all successful in their applications, bringing the total number of silks at Fountain Court to 42.

AI advisory service

Jacob Turner, working with Simmons & Simmons and Best Practice AI, launched an Artificial Intelligence (AI) compliance framework and advisory service. Read more [here](#).

COVID-19: The impact on the aviation and insurance sectors

Michael McLaren QC produced an outline on the impact of COVID-19 from an airline perspective, including thoughts on how the sector might seek to reduce its vulnerability to failure. Read more [here](#).

Akhil Shah QC, Ben Lynch QC, Christopher Knowles and Max Evans also outlined implications for insurers and insureds, including in relation to business interruption, event cancellation and other issues. Read more [here](#).

Online fraud and corruption legal resource

Aaron Taylor is now running a free online legal tool, *Financial Wrongs*, on the law relating to fraud, financial crime and corruption. Find out more [here](#).

Major judgments and court appearances

- *Jet2.com v Civil Aviation Authority* [2020] EWCA Civ 35 addressed the role of dominant purpose in legal advice privilege. Read more [here](#).
- RBS successfully defended a claim brought by a property developer in *Morley Estates v RBS* [2020] EWHC 88 (Ch). Read more [here](#).
- The long-awaited Court of Appeal judgment considering the law of privilege was handed down in *Sports Direct v FRC* [2020] EWCA Civ 177. Read more [here](#).
- Questions surrounding the algorithmic trading of cryptocurrency were addressed by the Singapore Court of Appeal in *Quoine Pte Ltd v B2C2 Ltd* [2020] SGCA(I) 02. Read more [here](#).
- Criminal charges against Barclays arising from the 2008 capital raising from Qatar were dismissed, and the court removed all restrictions on reporting the judgment. Read more [here](#).
- The court's jurisdiction to make orders against a non-party to an arbitration was addressed in *A v C* [2020] EWCA Civ 409. Read more [here](#).



Adapting to change and the start of the FCA Test Case

Innovation in a time of uncertainty: A practical guide to remote hearings

Anneliese Day QC and Niamh Cleary, with contributions from others, outlined the difficulties of remote hearings and some practical tips on how to mitigate them. Read more [here](#).

COVID-19, Force Majeure and Frustration: Key legal principles and industry implications

Patricia Robertson QC, Ben Lynch QC and Deborah Horowitz considered the ramifications of COVID-19 in the context of force majeure and frustration, for parties in the UK and globally. Read more [here](#).

Contribution to *Information Rights* (5th edition)

Bankim Thanki QC and Henry King QC contributed to the 5th edition of Philip Coppel QC's *Information Rights (A Practitioner's Guide to Data Protection, Freedom of Information and Other Information Rights)*. Read more [here](#).

FCA Business Interruption Test Case

The FCA launched a test case against eight defendant insurers and Lloyd's managing agents, addressing issues of legal principle raised by COVID-19 business interruption claims. Leigh-Ann Mulcahy QC, Richard Coleman QC, Deborah Horowitz and Max Evans were instructed on behalf of the FCA. Read more [here](#).

Major judgments and court appearances

- Judgment was handed down in *Gwynt y Môr OFTO Plc v Gwynt y Môr Offshore Wind Farm Limited and ors* [2020] EWHC 850 (Comm), concerning one of the UK's largest offshore wind farms, Gwynt-y-Môr. Read more [here](#).
- *Goodman v DMS Governance Ltd* dismissed the remaining claims against DMS, following the 2012 collapse of the Axiom Legal funds. Read more [here](#).
- The *Barclays Brothers Litigation* considered the issue of legal professional privilege in the context of the *Lyell v Kennedy* exception. Read more [here](#).
- Jurisdiction over claims for \$3.2 billion, arising out of the allocation of an oil prospecting license, was decided in *Federal Republic of Nigeria v Royal Dutch Shell & Others*. Read more [here](#).
- The SDT dismissed all allegations against Baker McKenzie and Tom Cassels in relation to the Gary Senior investigation. Read more [here](#).
- The TCC rejected public procurement challenges by disqualified bidders for the South Eastern, East Midlands and West Coast lines in the *2019 Rail Franchising Litigation*. Read more [here](#).
- An important decision regarding design life and design life obligations was published in *Blackpool Borough Council v Volkerfitzpatrick Limited and Ors* [2020] EWHC 1523 (TCC). Read more [here](#).



(From l-r) Marcus Field, Nathalie Koh and Orestis Sherman

New tenants, the launch of a mentoring scheme and a strike out for Wirecard

Three new tenants

Following successful completion of their pupillages, all our pupils – Marcus Field, Nathalie Koh and Orestis Sherman – joined as tenants with effect from October 2020. Read more [here](#).

Recent reflections of the Supreme Court on Reflective Loss

Bridget Lucas QC looked at the Supreme Court decision in *Sevilleja v Marex Financial Ltd* and the clarification it provides as to the narrow scope of 'reflective loss'. Read more [here](#).

Fountain Court participates in mentoring scheme for underrepresented groups at the Bar

Together with five other commercial sets, the mentoring scheme was created to support and encourage individuals who are currently underrepresented at the Bar to pursue careers as barristers. Read more [here](#).

Chambers Bar Awards 2020

Fountain Court was very proud to be shortlisted for a total of nine awards. Read more [here](#).

Major judgments and court appearances

- A wrongful trading claim by insolvency litigation funders was heard in *Manolete Partners Plc v Ellis* [2020] EWHC 1674 (Ch). Read more [here](#).
- A €25 million conspiracy claim brought against Wirecard AG, arising out of its purchase of a group of companies including Hermes, was struck out in *Manek & Ors v Wirecard AG* [2020] EWHC 1904. Read more [here](#).
- An application to set aside alternative service in a Zimbabwe ICSID award battle was resisted in *Pezold v Border Timbers Ltd* [2020] EWHC 2172 (QB). Read more [here](#).
- The High Court handed down judgment in the FCA Business Interruption Test Case in *The Financial Conduct Authority v Arch Insurance (UK) Ltd & Ors* [2020] EWHC 2448 (Comm). Read more [here](#).
- An FRC Disciplinary Tribunal ordered Deloitte to pay £15 million following findings of misconduct over its audits of Autonomy Corporation. Read more [here](#).



Lord Nicholas Wilson (credit for this photograph to The UK Supreme Court and photographer Kevin Leighton)

The arrival of an ex-Supreme Court justice, senior appointments and arbitrator obligations

Fountain Court welcomes ex-UK Supreme Court Justice

Lord Wilson joined Fountain Court as an arbitrator and mediator door tenant in October 2020. Read more [here](#).

Michael Green QC appointed to High Court Bench

Michael Green QC was appointed as a Justice of the High Court, with effect from November 2020, assigned to the Chancery Division. Read more [here](#).

Christopher Bathurst Prize 2020

In October 2020, we announced the winner of the Christopher Bathurst Prize. Read more [here](#).

Two Stars at the Bar and a Silk of the Year

Bankim Thanki QC and Richard Lissack QC were named 'Stars of the Bar' (read more [here](#)) and Anneliese Day QC was named International Arbitration Silk of the Year (read more [here](#)) by *Chambers & Partners*.

Andrew Mitchell QC appointed Vice Chair of the BSB

Andrew will hold the most senior barrister position on the BSB Board, from January 2021, while remaining in full time practice. Read more [here](#).

Challenging Private Law: Lord Sumption on the Supreme Court

Bankim Thanki QC, Chloe Carpenter QC, Nik Yeo, Louise Merrett, Rebecca Loveridge and Ian Bergson contributed to this title which covers a range of areas in private law upon which Lord Sumption had a decisive impact. Read more [here](#).

Major judgments and court appearances

- An application for permission to judicially review a decision of the DPP was resisted in *The Queen (on the application of Deripaska) v Director of Public Prosecutions*. Read more [here](#).
- Bankim Thanki QC and Simon Atrill appeared in the Supreme Court in November in the appeal from the decision of the Court of Appeal in *Times Travel v Pakistan International Airlines* [2020] Ch 98. The Supreme Court decision is expected in 2021 and will determine the existence and status of lawful act duress in English law. More detail [here](#).
- An appeal in a breach of warranty claim against a party not named in the contract was considered by the Court of Appeal in *Bell v Ivy Technology Limited* [2020] EWCA Civ 1563. Read more [here](#).
- The High Court considered a \$16 million oil and gas claim following a force majeure event in *Nord Naptha Limited v New Stream Trading*. Read more [here](#).
- The long-awaited judgment by the Supreme Court in *Halliburton Company v Chubb Bermuda Insurance Limited* [2020] UKSC 48 gave guidance on obligations of disclosure and confidentiality in international arbitration. Read more [here](#).
- The Court of Appeal gave a landmark judgment on applications to sanction transfers of insurance business under Part VIII of FSMA. Read more [here](#).

THE



Fountain Court
CHAMBERS

PODCAST

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Conrad Dehn QC, 1926-2020

In memory of Conrad Dehn QC

It was with great sadness that Fountain Court noted the death on 26 April 2020 of its former Head of Chambers (1984-1989), Conrad Dehn QC.

Following service in the Royal Artillery between 1945-1948, Conrad took a First in PPE from Oxford (Christ Church) in 1950. He was called to the Bar (Gray's Inn) in 1952 and took Silk in 1968. He was made a Bencher of Gray's Inn in 1977 and served as its Treasurer in 1996. At the height of his formidable powers, Conrad was one of the most attractive and feared advocates at the English Bar, known for his meticulous preparation and complete command of his brief and the courtroom. He had an incredibly varied practice ranging through employment, competition, insurance, administrative and commercial law, and he appeared in diverse fora from industrial tribunals to the House of Lords and the ECJ. He appeared in numerous landmark cases, including *Black Clawson International Property v Papierwerke Waldorf-Aschaffenburg* [1975] AC 591, *Faccenda Chicken v Fowler* [1987] Ch.117, *Post Office v Crouch* [1974] 1 WLR 89, *Royco Homes v Southern Water Authority* [1979] 1 WLR 1366, *Re Supply of Ready Mixed Concrete* [1992] 2 QB 213, *Rogers v Essex CC* [1986] AC 66 and *Barclays Bank of Swaziland v Hahn* [1989] 1 WLR 506.

Conrad had a huge commitment to public service and, amongst other roles, served as a Recorder (1974-1978), as a deputy High Court Judge (1988-1996), as the Chairman of the Bar Council Working party on Liability for Defective Products (1975-1977), as a member of the Foster Committee of Inquiry into Operators' Licences, Dept of Transport (1978), as the Chairman of the London University Appellate Disciplinary Committee (1986-1996), as the Vice-Chairman of the London Legal Aid Committee (1987-1992), as a governor of the Inns of Court School of Law (1996-2008), as a director of the Bar Mutual Indemnity Fund (1988-2010) and as a legal adviser to and vice-president of Age Concern UK.

Chambers continues to remember Conrad with fondness and affection as a kind, generous and highly cultured friend and colleague. Conrad was the subject of a well-received obituary in *The Times*. Read more [here](#).



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