



# Adam Sher

Call 2007

*"He is very bright, passionate and drafts very well. He is punchy." "He is very responsive, user-friendly, very bright, and his drafting is excellent and concise."*

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*Chambers & Partners*

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Adam Sher practices across a broad range of practice areas and is particularly recognised for his expertise in all aspects of banking work, having been involved in many of the leading disputes in that field in recent years.

He is recognised in the leading legal directories and was named 'Banking Junior of the Year' at the 2017 *Chambers UK Bar Awards* (having also been nominated for the same award in 2016).

Civil fraud claims (including cases concerning breach of fiduciary duty, bribery, deceit, conspiracy forgery and breach of trust) also form an increasing part of Adam's practice, as do insurance related matters (acting for both for insurers and insureds), especially those relating to credit insurance.

Adam also has a particular interest in all aspects of legal professional privilege, having been involved in a number of important decisions in this area, and frequently speaks and writes on this topic. He is a contributor to the forthcoming edition of the leading practitioner text on legal privilege, edited by Bankim Thanki KC.

Much of Adam's work has an international dimension, and he has been instructed in matters before courts or arbitral tribunals in The Bahamas, Gibraltar, Guernsey, Abu Dhabi, Singapore and the BVI.

He is also frequently involved in cases before the appellate courts, including the Court of Appeal and Supreme Court.

## Recent Highlights

### Loreley Financing (Jersey) No 30 Ltd v. Credit Suisse

Acting with Paddy Goodall KC, Laurie Brock and Marcus Field for Credit Suisse in this long-running case arising from the sale of a CDO linked to RMBS in 2007. The buyer (an SPV set up by IKB, a German bank) made wide-ranging allegations of fraud concerning Credit Suisse's RMBS business, based upon a large number of allegedly implied representations. The 9-week trial was heard by Mrs Justice Cockerill in April-June 2023 and judgment is awaited.

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**Loreley Financing (Jersey) No 30 Ltd v. Credit Suisse [2023] 1 WLR 1425**

Led by Tamara Oppenheimer KC in the Court of Appeal successfully upholding the first instance ruling of Mr Justice Robin Knowles in an important dispute concerning whether the identity of the party giving instructions is itself subject to legal professional privilege.

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### Leeds City Council & Ors v Barclays Bank [2021] QB 1027

Led by Adrian Beltrami KC for Barclays in two sets of proceedings brought by local councils seeking rescission of hundreds of millions of pounds of “Lender Option Borrower Option” (“LOBO”) loans relying on alleged implied representations based on LIBOR misconduct. The judgment of Mrs Justice Cockerill, striking out the claims, is the leading authority in this area. The proceedings were compromised shortly before the hearing of an appeal in early 2022.

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### Sports Direct International v Financial Reporting Council [2020] EWCA Civ 177, [2020] 2 WLR 1256

Acting (led by Richard Lissack KC) for SDI in an important appeal concerning legal professional privilege in the context of professional regulatory investigations in which the Court of Appeal allowed SDI’s appeal, confirming the absolute nature of legal professional privilege and rejecting the existence of a so-called “no infringement” exception.

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### VTB Capital v Republic of Mozambique & Ors

Acting (with David Railton KC, Timothy Howe KC and Ian Bergson) for VTBC Capital in multiple proceedings in the Commercial Court arising from the so-called “hidden loans” controversy involving in excess of \$2 billion of debt guaranteed by the Republic of Mozambique.

## Expertise

### Banking & Finance

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Much of Adam’s practice is banking/finance related, covering the full spectrum from investment banking and investment management to private and retail banking, with previous and present clients including VTB Capital, Credit Suisse, Barclays, Bank of Scotland, NatWest / The Royal Bank of Scotland, Bank of America Merrill Lynch, Deutsche Bank, CA-CIB (formerly Calyon), Julius Baer, HSH Nordbank, ING Bank, CaixaBank and Nomura. Adam was *Chambers & Partners* ‘Banking Junior of the Year’ in 2017 (having also been nominated for that award in 2016). He has particularly deep experience of LIBOR/EURIBOR related claims, having acted in most of the leading civil cases in that area.

### Notable Banking & Finance cases

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### FDIC-R v Barclays, NatWest Markets & Ors

Instructed (with Robert O’Donoghue KC) by NatWest in connection with these competition law proceedings

brought by an arm of the US Government as receiver for 39 failed banks in connection with LIBOR manipulation.

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### **Leeds City Council & Ors v Barclays Bank**

Acting with Adrian Beltrami KC for Barclays in defending LIBOR-manipulation based misrepresentation claims brought by a number of local authorities who had entered into long term lending with Barclays. Barclays succeeded in a strike-out application against the local authorities on the grounds that they had not been aware of the implied representations relied upon.

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### **Marme Inversiones v RBS, HSH, BayernLB, ING & La Caixa**

Acting (with Tim Howe KC) for four banks in successfully defending claims for rescission and damages arising from alleged EURIBOR manipulation.

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### **Property Alliance Group v RBS**

Instructed for RBS throughout (led at various times by David Railton KC, David Foxtton QC and then Richard Handyside KC and Paul Sinclair KC) these important financial List proceedings, which resulted nine interlocutory judgments (including multiple decisions relating to legal professional privilege), a 10-week trial before Asplin J and seven-day appeal before the Court of Appeal, where the dismissal of all claims against RBS was upheld. ([2016] EWHC 3342 (Ch), [2018] EWCA Civ 355, [2018] 1 WLR 3529).

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### **Deutsche Bank v Unitech**

Acting (with a series of leaders, Mark Hapgood QC, Tim Howe KC and Sonia Tolaney KC) for DB in this long-running litigation including (among others) claims arising relating to LIBOR manipulation. The case went twice to the Court of Appeal on interlocutory claims before concluding with a judgment after trial in DB's favour in 2019.

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### **Italian Swaps litigation**

Acting, over the past 10 years, in numerous cases arising out of derivative transactions entered into between international banks (including in particular Bank of America Merrill Lynch and Nomura International) and various Italian local authorities including *Merrill Lynch v Verona* and *Merrill Lynch v Florence*.

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### **Barclays v Borkhatria**

Acting (as sole counsel) for Barclays in a successful summary judgment application in relation to a claim on a personal guarantee raising wide-ranging issues including economic duress, breaches of duties of disclosure in the context of guarantees and misrepresentation.

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### **WW Property Investments v NatWest**

Acting (with Andrew Mitchell KC) for NatWest, successfully striking out a case that the bank owed a duty of care to a customer taking part on the Interest Rate Hedging Review programme. The decision was upheld by the Court of Appeal in a conjoined appeal (with *CGL v RBS*).

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## Stuart Wall v RBS

Instructed (with Andrew Mitchell KC, Jeremy Goldring KC, James Cutress KC, Tamara Oppenheimer KC and Laurie Brock) for RBS to defend a £700 million claim concerning an abortive CMBS transaction and involving allegations concerning RBS's GRG division and LIBOR manipulation. The case (one of *The Lawyer's* 'Top 20 Cases of 2017') settled shortly before a 12-week trial in 2017.

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## Civil Fraud

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### Notable Civil Fraud cases

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#### VTBC v Republic of Mozambique

Acting for VTBC in substantial fraud claims against Republic of Mozambique arising from so-called "hidden loans" controversy.

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#### Confidential Arbitration (SCC)

Acting (with Tim Howe KC) in a substantial confidential SCC arbitration in connection with 20+ claims involving allegations of fraud, breach of fiduciary duty, forgery and bribery.

Between 2017 and 2019, acting (with David Mumford KC) for two Ukrainian businessmen in a substantial dispute involving allegations of forgery, sham trust, dishonest assistance and conspiracy. The case raised a wide range of legal issues on interlocutory applications including relation to the proper scope of proprietary injunctions, the powers of receivers and access to their documents, as well as issues relating to champerty and litigation funding.

Previously acting (with Michael McLaren KC) in proceedings brought against English solicitors alleging conspiracy resulting in the fraudulent misappropriation of \$17.5 million of client money.

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## Commercial Disputes

Adam is instructed in a wide range of commercial disputes, frequently as part of a large counsel team but also often alone. Many of his cases involve international elements, and questions of jurisdiction and the management of multiple proceedings are a frequent feature.

## Notable Commercial Disputes cases

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### **VTBC v Republic of Mozambique**

Acting for VTBC in multiple proceedings against Republic of Mozambique arising from so-called “hidden loans” controversy and raising wide-ranging issues, including in connection with sovereign immunity.

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### **FDIC-R Litigation**

Acting for NatWest Markets (with Robert O’Donoghue KC) in connection with these proceedings brought by an arm of the US Government as receiver for 39 failed banks in connection with LIBOR manipulation.

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### **Barclays v ENPAM**

Acting (with Sonia Tolaney KC) for Barclays in a claim against an Italian pension fund for breach of an exclusive jurisdiction clause and the application of the lis pendens rules under the Judgments Regulation, at both first instance (Blair J) and before the Court of Appeal.

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### **Marme Inversiones v NatWest Markets & Ors**

Acting (with Tim Howe KC and Simon Atrill) in the jurisdiction battle phase over this dispute which raised issues as to the relationship between the jurisdiction provisions of the Judgments Regulation and the Insolvency Regulation.

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### **NZ Super v Novo Banco**

Acting (with Laurence Rabinowitz KC and Tom Smith KC) at first instance for the claimants in a jurisdiction battle over claims against a Portuguese “Bridge Bank”.

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### **GMR v Government of the Maldives**

Arbitration in Singapore under UNCITRAL rules. Acting (with Bankim Thanki KC) for Indian infrastructure giant GMR in its \$1.3 billion claim against the Republic of the Maldives relating to the repudiation by the Maldives Government of a concession agreement to operate and develop Mále International Airport.

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### **Glencore v Total**

Acting (with Patrick Goodall KC) for Total in a claim brought against it by Glencore in respect of a delivery (or lack of delivery) of petroleum product in Kenya.

## Financial Services

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An increasing feature of Adam's practice is the occurrence of contentious questions of privilege, with a particular emphasis on claims to privilege in the context of regulatory investigations, a subject on which he has lectured.

### Notable Financial Services cases

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#### Financial Reporting Council v Sports Direct International

Acting (with Richard Lissack KC) for Sports Direct International at first instance and before the Court of Appeal in an action brought by the Financial Reporting Council (the accountancy regulator) which raised important issues of privilege arising from a regulatory investigation in which documentary requests were made of it as a witness. In early 2020, the Court of Appeal overturned Arnold J's decision and rejected the existence of any so-called "no infringement" exception.

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#### A v (1) B & (2) Financial Reporting Council

Acting (with Richard Lissack KC) for 'A' in Part 8 proceedings arising from an investigation by the FRC, addressing the proper approach in relation to disputes between a regulated entity and its client over documents over which the client claims legal professional privilege.

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#### PAG v RBS

Acting in the long-running dispute (see above under Banking & Finance) involved numerous interlocutory applications and a series of judgments from Birss J and Snowden J on matters including the scope of the "without prejudice" privilege, limited/selective waiver, collateral waiver, the scope of so-called "waiver by pleading" and claims to litigation privilege over secretly taped interviews procured by dishonesty. An appeal from the first decision of Birss J, in which the FCA intervened in respect of the "without prejudice" communication issue, was compromised shortly before hearing in the Court of Appeal.

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#### RBS v Cooke, Young & Keidan LLP

Acting (with Patrick Goodall KC and Laurie Brock) for RBS in urgent injunctive proceedings against Cooke, Young & Keidan LLP (the then-solicitors for Property Alliance Group) concerned with the obligations on firms to protect confidential information received by or in possession of an employee of the firm as a result of his prior employment.

## Insurance

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### Notable Insurance cases

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#### Confidential Arbitration (LCIA)

Currently acting with James Cutress KC for the insured in relation to a dispute under a credit insurance policy.

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### Confidential Arbitration (LCIA)

Currently acting with James Cutress KC for insurers in relation to a dispute under a trade credit insurance policy including issues relating to non-disclosure, breach of warranty and late notification.

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### Confidential Arbitration (LCIA)

Acting with David Railton KC and James Cutress KC for insurers in a substantial (\$200 million) arbitration, held in early 2015, which concerned to coverage under a financial institutions crime and civil liability policy.

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Advising (as part of a team of counsel lead by Mark Simpson KC) insurers in connection with a £50 million+ aggregation dispute arising from the Innovator litigation.

## Professional Negligence

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### Notable Professional Negligence cases

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Instructed (with Patricia Robertson KC) by a Guernsey-based fund administrator and its former directors in connection with a high-value claim for negligence and breach of fiduciary duty arising from the high-profile failure of the Arch Cru investment funds.

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Acting for the claimant in a claim before the Gibraltar Courts against an independent financial advisor for negligent advice.

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Acting (with Mark Simpson KC) for a firm of accountants in relation to a professional negligence claim in relation to tax advice.

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Acting (with Bankim Thanki KC) for a law firm in proceedings in The Bahamas in respect of a claim for professional negligence arising from a conveyancing transaction.

## Directory Quotes

*"Adam is very quick to form considered views on difficult issues. He is very forthright and produces fantastic written work."*

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Chambers & Partners

*"In a league of his own. He both drives the strategy and drafts reams of papers, and is exceptionally clever, extremely hard working, and a very nice person to have on the team."*

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The Legal 500

*"One of the outstanding juniors at the Bar and a superstar of the future."*

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The Legal 500

*"He has a first-rate mind, a wonderful drafting style, unstinting energy and is a real pleasure to work with."*

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The Legal 500

*"He is one of the leading juniors in this area and someone with encyclopaedic legal knowledge and incredible enthusiasm."*

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Chambers & Partners

*"Absolutely superb. Exceptionally clever, good on paper and really nice to work with - the quality of his work is much higher than his years would suggest."*

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Chambers & Partners

*"A superb barrister, who offers substantial experience in a wide range of commercial and banking matters."*

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Chambers & Partners

*"A very bright and passionate junior who is fun to have on the team."*

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Chambers & Partners

*"Extremely clever and very imaginative, he is determined, confident and offers very powerful analysis."*

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Chambers & Partners

## Directory Rankings

Chambers & Partners – Global

- Dispute Resolution: Commercial (UK)

Chambers & Partners – UK

- Banking & Finance – Band 1
- Commercial Dispute Resolution

The Legal 500

- Banking & Finance (including Consumer Credit) – Band 1
- Commercial Litigation

## Education

- BA Law, Oriel College, Oxford (First Class)
- BCL, Oriel College, Oxford (Distinction)
- LLM, Harvard Law School
- BVC, BPP Law School (Outstanding, Highest mark in year)

## Appointments, Memberships and Prizes

Appointments

- Research Assistant in the Commercial and Common Law Team at the Law Commission of England and Wales (2004-5).
- Teaching Fellow in the Conflict of Laws, University College London (2004-5).
- Teaching Fellow in Contract Law, University College London (2006-7).

Prizes

- Sunley Scholarship (Lincoln's Inn, 2007)
- Buchanan Prize (Lincoln's Inn, 2007)

- Lord Mansfield Scholarship (Lincoln's Inn 2005)
- Hardwicke Scholarship (Lincoln's Inn 2002)
- Clarendon Scholarship (Oxford University, 2003)
- Prize for best performance in Commercial Law finals paper (Oxford University, 2003)

## Publications

- Co-author (with Tamara Oppenheimer KC) of privilege chapter in *Lissack & Horlick on Bribery* (2nd ed, 2020)
- *Consensus, Separability & Article 23 of the Brussels Regulation* [2009] LMCLQ 275
- 'The National Minimum Wage: Under Threat From An Unlikely Source' (2006) 35 *Industrial Law Journal* 289 (with Sarah Fraser)

## Languages

- German

## Awards

