



# Nicholas Medcroft KC

Call 1998 | Silk 2019

*"A great court performer, and tough, with great ability."*

*The Legal 500 (Financial Services)*

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Nicholas Medcroft KC is described in the legal directories as “a fantastic legal mind”; “a great performer”; “a great strategic thinker and a complete team player”.

His practice encompasses commercial disputes, big ticket regulatory and disciplinary investigations, commercial crime, and inquiries.

His main areas of expertise are fraud, banking and finance, financial services regulation, corporate crime, and professional liability. His clients include individuals, prominent banks and financial institutions, major accountancy and financial services firms, governments and regulators.

He is particularly well known for his experience of cases which straddle civil and criminal law. The legal directories note: “he can operate seamlessly across commercial law, professional regulation and criminal law”.

He has acted in many of the major corporate collapses and accounting scandals in recent times including *MG Rover*, *BHS*, *Greensill Capital* and *Carillion*. He is currently instructed in connection with the ‘*Post Office scandal*’.

He is also a market leader in POCA, money laundering and sanctions (“the first person to turn to when it comes to matters relating to financial crime and banks”) and has acted in many of the leading cases in this area including *Shah v HSBC* and *N v RBS*.

He is ranked in the legal directories as a leading silk in the fields of Financial Services, Financial Crime, POCA & Asset Forfeiture, Professional Discipline and Regulatory Law.

He was shortlisted as ‘Professional Discipline Silk of the Year’ in 2022 by Chambers & Partners.

He sits as a Recorder (part-time judge).

## Recent Highlights

### Carillion

Acting for the FRC in proceedings against KPMG arising from the provision of false and misleading information in

connection with the audits of Carillion and Regeneris. One of *The Lawyer's* 'Top 20 cases' for 2022.

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### **MG Rover, Silentnight and BHS**

Acting for the regulators in professional disciplinary proceedings for misconduct following these high-profile corporate collapses.

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### **Shah v HSBC Private Bank**

Acting for HSBC in the leading case on the conflict between a bank's duties to its customers and its duties under POCA.

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### **Magner & T&T Trustees v Royal Bank of Scotland**

Acting for RBS at first instance, in the Court of Appeal and before the Privy Council successfully defending a claim for dishonest assistance following the notorious collapse of Marrache & Co in Gibraltar.

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### **N v Royal Bank of Scotland Plc**

Acting for the defendant bank before the Commercial Court and in the Court of Appeal. The bank, suspecting money laundering, had frozen accounts held by N and terminated the banking relationship without notice. One of *The Lawyer's* 'Top 20 cases for 2019'.

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## Expertise

### **Banking & Finance**

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#### Notable Banking & Finance cases

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#### **Joint Liquidators of Kijani Resources Ltd. and Ratio Ltd. v Royal Bank of Scotland International Limited**

Acting for the bank defending a *Quincecare* claim in connection with an alleged fraudulent investment scheme.

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#### **Fairweather Stephenson v Barclays Bank**

Acting for a solicitors' firm who were victims of 'vishing' frauds, in a claim against the bank for failure to refund unauthorised payments and negligence.

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## N v (1) S & (2) National Crime Agency (interested party) (Commercial Court)

Acting for the bank before the Commercial Court and in the Court of Appeal (freezing suspicious bank accounts – whether POCA excludes the court’s jurisdiction). One of *The Lawyer’s* ‘Top 20 cases’ for 2019.

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## Magner & T&T Trustees v Royal Bank of Scotland

Acting for RBS at first instance, in the Court of Appeal and before the Privy Council in proceedings following the notorious collapse of Marrache & Co in Gibraltar.

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## Hmicho v Barclays Bank PLC [2015] EWHC 1757

Acting for Barclays in a claim for breach of contract/negligence/injunctive relief arising from the bank’s compliance with the Syrian sanctions’ regime.

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## Parvizi v Barclays Bank [2014]

Acting for the bank successfully striking out a claim arising out of disclosures made under POCA 2002.

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## Becker & Fellowes v Bank of Scotland [2013] EWHC 3000 (Ch)

Acting for the bank in a claim brought by trustees of a pension scheme suspected of involvement in pension liberation.

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## Stone Consultants Ltd v National Westminster Bank [2013] EWHC 208 (Ch)

Acting for Nat West defending a £30 million claim for dishonest assistance, conspiracy, deceit, unjust enrichment and negligence arising from the bank’s unwitting involvement in reportedly one of the UK’s biggest Ponzi’s schemes.

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## Shah v HSBC Private Bank

Acting for HSBC at first instance and in the CA in a \$300 million claim for defamation, deceit, breach of contract and negligence arising out of disclosures made under POCA 2002. This is the leading case on the conflict between a bank’s duties to its customers and its duties under POCA.

## Civil Fraud

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Nicholas’s expertise in civil fraud is complemented by his experience in financial services, POCA, asset forfeiture and corporate crime, for which he is ranked as a leading silk in the legal directories. His experience covers all aspects of complex, commercial frauds including asset recovery, freezing injunctions, *Norwich Pharmacal* relief, Bankers Trust Orders, actions involving deceit, conspiracy, unjust enrichment, breach of trust and fiduciary duty, knowing receipt, dishonest assistance and proprietary restitutionary claims.

## Notable Civil Fraud cases

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### **Joint Liquidators of Kijani Resources Ltd. and Ratio Ltd. v. Royal Bank of Scotland International Limited**

Acting for the Bank defending a *Quincecare* claim in connection with an alleged fraudulent investment scheme.

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### **N v Royal Bank of Scotland Plc**

Acting for the defendant bank before the Commercial Court and in the Court of Appeal in a claim based on the bank's unwitting involvement in money laundering and investment fraud. One of *The Lawyer's* 'Top 20 cases for 2019'.

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### **Magner & T&T Trustees v Royal Bank of Scotland**

Acting for RBS at first instance, in the Court of Appeal and before the Privy Council defending a claim for dishonest assistance following the notorious collapse of Marrache & Co in Gibraltar.

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### **Excalibur Ventures LLC v Texas Keystone [2014] EWHC 3436 (Comm)**

Acting for some of the funders in relation to the disastrous fraud claim brought by Excalibur against Texas and Gulf Keystone.

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### **Stone Consultants Ltd v National Westminster Bank [2013] EWHC 208 (Ch)**

Acting for Nat West defending a £30 million claim for dishonest assistance, conspiracy, deceit, unjust enrichment and negligence arising from the bank's unwitting involvement in reportedly one of the UK's biggest Ponzi's schemes.

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### **Dhaliwal & Others v Bluebell Land Ltd & Others [2011] EWHC 2292 (Ch)**

Acting for the operator of an alleged land-banking scam in a claim for conspiracy, deceit and breach of statutory duty (s 19 FSMA).

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Acting for a well-known British singer and actress in a claim against her former accountants for fraud/breach of fiduciary duty.

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Acting for a high net worth individual duped into investing many millions of pounds in a bogus foreign exchange investment scheme.

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Acting in relation to unfair prejudice proceedings and anti-suit injunctive relief arising out of breach of directors' duties.

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## Commercial Crime

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Nicholas is ranked in the legal directories for Financial Services, Financial Corporate Crime and Global Investigations and POCA and Asset Forfeiture. He has particular expertise of issues which straddle civil and criminal law. He has experience of all aspects of financial crime, including bribery and corruption, money laundering, market abuse, fraud and corporate and gross negligence manslaughter. He is well known as an expert in banks and financial crime in the context of civil claims and in the context of FCA and SFO investigations. He was, for over 10 years, on both the SFO and the Attorney General's panels of prosecuting advocates, acting for the government in major frauds and tax evasion and has considerable experience, at the coalface, of global investigations.

### Notable Commercial Crime cases

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#### **N v (1) S & (2) National Crime Agency (interested party) (Commercial Court)**

Acting for the bank before the Commercial Court and in the Court of Appeal (freezing suspicious bank accounts – whether POCA excludes the court's jurisdiction). One of *The Lawyer's* 'Top 20 cases' for 2019.

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#### **Magner & T&T Trustees v Royal Bank of Scotland**

Acting for RBS at first instance, in the Court of Appeal and before the Privy Council in proceedings following the notorious collapse of Marrache & Co in Gibraltar.

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Advising in relation to production orders and SFO Section 2 Notices (including the extraterritorial effect of such notices).

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Advising banks in relation to public interest immunity applications.

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Advising bank in relation to third party disclosure obligations, confidentiality and privilege.

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Advising the provider of investment consultancy services to a substantial pension scheme on, inter alia, breaches of COB rules and the general prohibition.

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Acting for a bank in relation to a tax evasion and money laundering scandal.

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Acting for a bank in relation to an investigation into alleged money laundering and sanctions busting.

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#### **FSA v Semperian Investment Partners Limited Partnership & Others**

Acting for the FSA in proceedings for breach of the FSMA change in control regime following the disposal by Land

Securities of its PPP fund and asset management business.

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### **FSA v Alexander & Others [2011] (Chancery Division)**

Acting (with Richard Lissack KC) for the defendant in a claim (under s. 129 FSMA) for market manipulation in the derivatives market – the first market abuse case to be brought by the FSA in the Chancery Division under s. 129 FSMA (instructed by Ashurst).

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### **Shah v HSBC Private Bank**

Acting for HSBC at first instance and in the CA in a \$300 million claim arising out of disclosures made under POCA 2002. This is the leading case on the conflict between a bank's duties to its customers and its duties under POCA.

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### **SOCA v Perry**

Advising respondent to civil recovery proceedings brought under Part 5 POCA.

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### **Re FSA & SOCPA**

Advising the FSA as its legal power to enter into agreements under SOCPA 2005 and offer immunity in enforcement proceedings for market abuse.

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### **Re: Buncefield explosion**

Acting (with Richard Lissack KC and Stephen Tromans KC) for one of the major oil companies for regulatory failures.

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### **GG Plc & others ([2009] 1 WLR 459 (HL); [2007] EWCA Crim 2659 (CA))**

Junior Counsel for the Crown (led by Richard Lissack KC and James Flynn KC) before the House of Lords and Court of Appeal in respect of the SFO's high-profile investigation into price fixing within the generic pharmaceutical industry.

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### **SFO v Rybak & others**

Acting for the SFO in relation to its investigation and prosecution for bribery in connection to oil and gas engineering contracts in Iran, Egypt, Russia, Singapore and Abu Dhabi. Contracts corrupted valued at £70 million.

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### **Potters Bar train crash**

Gross negligence manslaughter / HSWA.

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## The Tebay train crash

Gross negligence manslaughter.

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## Financial Services

Nicholas is ranked in *The Legal 500* and *Chambers & Partners* for Financial Services.

He has extensive experience of advising acting in relation to investigations and enforcement action breaches of the general prohibition under s 19 FSMA, claims under s. 150/138D FSMA, breaches of the FCA Handbook, market abuse, money laundering, and financial crime.

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## Notable Financial Services cases

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### **N v (1) S & (2) National Crime Agency (interested party) (Commercial Court)**

Acting for the bank before the Commercial Court and in the Court of Appeal (freezing suspicious bank accounts – whether POCA excludes the court’s jurisdiction). One of *The Lawyer’s* ‘Top 20 cases’ for 2019.

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### **Hmicho v Barclays Bank PLC [2015] EWHC 1757 (before Picken J, QBD)**

Acting for Barclays in a claim arising from the bank’s compliance with the Syrian sanctions regime.

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### **Parvizi v Barclays Bank [2014]**

Acting for the bank successfully striking out a claim arising out of disclosures made under POCA 2002.

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### **MG Rover**

Acting (with Tim Dutton KC) for the FRC in proceedings against Deloitte in respect of its role as corporate finance advisors in the Phoenix Four/MG Rover affair, one of *The Lawyer’s* ‘Top 20’ cases of 2013).

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### **Becker & Fellowes v Bank of Scotland [2013] EWHC 3000 (Ch)**

Acting for the bank in a claim brought by trustees of a pension scheme suspected of involvement in pension liberation.

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### **Shah v HSBC Private Bank**

Acting for HSBC at first instance and in the CA. This is the leading case on the conflict between a bank’s duties to its customers and its duties under POCA.

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Advising the provider of investment consultancy services to a substantial pension scheme on, *inter alia*, breaches of COB rules and the general prohibition.

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### **FSA v Semperian Investment Partners Limited Partnership & Others**

Acting for the FSA in proceedings for breach of the FSMA change in control regime following the disposal by Land Securities of its PPP fund and asset management business.

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### **FSA v Alexander & Others [2011] (Ch)**

Acting for the defendant in a claim (under s. 129 FSMA) for market manipulation in the derivatives market – the first market abuse case to be brought by the FSA in the Chancery Division under s. 129 FSMA (instructed by Ashurst).

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### **Dhaliwal & Others v Bluebell Land Ltd & Others [2011] EWHC 2292 (Ch)**

Acting for the operator of an alleged land-banking / collective investment scheme in breach of FSMA.

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## **Professional Discipline**

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Shortlisted by Chambers and Partners as Professional Discipline Silk of the Year in 2022, Nicholas has extensive experience of disciplinary proceedings and investigations in the financial services industry and the legal profession, including in relation to auditors, accountants, bankers, corporate finance advisers, barristers and solicitors.

He acts for regulators (and has acted for the FCA (formerly FSA), FRC and the BSB) as well as for regulated firms and individuals.

He is ranked by the legal directories as a leading silk ranked in Professional Discipline.

### **Notable Professional Discipline cases**

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#### **Misleading regulator about Carillion audit**

Acting for the FRC in proceedings against KPMG and others for misconduct arising from the provision of false and misleading information in connection with the audits of Carillion and Regeneris. KPMG fined £14.4 million; the firm's former staff excluded for between 7 and 10 years. One of *The Lawyer's* 'Top 20 cases' for 2022.

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#### **Carillion Plc**

Acting for the Financial Reporting Council in relation to its investigations into the collapse of Carillion Plc and in respect of proceedings under the Audit Enforcement Procedure.

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#### **Silentnight**



Acting for the Financial Reporting Council in disciplinary proceedings against KPMG & David Costley-Wood arising out of events preceding the collapse into administration of Silentnight: £13 million fine imposed on KPMG; £500,000 fine and 13-year exclusion order imposed on Mr Costley-Wood (report dated July 2021).

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## BHS

Acting for the Financial Reporting Council in disciplinary proceedings under the Accountancy Scheme against PwC and Stephen Denison following the collapse of the high-profile high street chain.

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## MG Rover

Acting (with Tim Dutton KC) for the FRC in proceedings against Deloitte in respect of its role as corporate finance advisors in the Phoenix Four/MG Rover affair, one of *The Lawyer's* 'Top 20' cases of 2013).

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## Tanfield Group

Acting for regulator in disciplinary proceedings against Baker Tilly and audit engagement partners for audit failures in relation to the Tanfield Group Plc (Report dated January 2019).

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## Connaught

Acting for the FRC (led by Javan Herberg KC) in proceedings against PwC and the audit engagement partner for misconduct arising out of the collapse of Connaught Plc. (Report dated April 2017).

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## MG Rover

Acting (with Tim Dutton KC) for the FRC in proceedings against Deloitte in respect of its role as corporate finance advisors in the Phoenix Four/MG Rover affair, one of *The Lawyer's* 'Top 20' cases of 2013).

## Professional Negligence

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Nicholas is ranked in the legal directories in areas of Professional Discipline and Financial Services and, as a junior, was for many years ranked as a leading junior in Professional Negligence. He has extensive experience in the field of financial professional negligence including claims relating to auditors, accountants, bankers, corporate finance advisers, barristers and solicitors. He acts for both claimants and defendants.

### Notable Professional Negligence cases

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Acting for a firm of solicitors defending a multi-million pound solicitors' negligence claim arising from their conduct of Part 8 civil recovery proceedings under POCA

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Acting in professional negligence claims against banks, financial institutions and advisors for breach of advisory duty/breach of duty of care and misrepresentation.

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Acting in claims under s. 150/138D FSMA.

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Acting in relation to claims regarding breach of the general prohibition under s 19 FSMA, the FCA Handbook, market abuse, money laundering, financial crime and FCA enforcement action.

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Advising and acting in claims against accounting firms arising out of breaches of the ethical standards and allegations of negligence and misconduct in carrying out audit work.

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### **Fairweather Stephenson v Barclays Bank**

Acting for a solicitors' firm who were victims of 'vishing' frauds, in a claim against the bank for failure to refund unauthorised payments and negligence.

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### **Silentnight**

Acting for the FRC in proceedings alleging lack of objectivity and lack of integrity arising from the collapse of the Silentnight Group of Companies.

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### **BHS**

Acting for the Financial Reporting Council in disciplinary proceedings under the Accountancy Scheme against PwC and Stephen Denison following the collapse of the high-profile high street chain.

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### **MG Rover**

Acting (with Tim Dutton KC) for the FRC in proceedings against Deloitte arising from the collapse of the MG Rover Group (one of *The Lawyer's* 'Top 20' cases of 2013).

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### **Financial Reporting Council v Pricewaterhouse Coopers & Others**

Acting for the FRC (led by Javan Herberg KC) arising out of the collapse of Connaught Plc.

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Advising in connection with collapse in the share price of Tanfield Group Plc.

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### **FSA v Alexander & Others [2011] (Chancery Division)**

Acting for the defendant in a claim (under s. 129 FSMA) for market manipulation in the derivatives market – the first market abuse case to be brought by the FSA in the Chancery Division under s. 129 FSMA.

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### **Dhaliwal & Others v Bluebell Land Ltd & Others [2011] EWHC 2292 (Ch)**

Acting on a claim relating to the operation of an alleged collective investment scheme in contravention of s 19 FSMA.

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### **FSA v Semperian Investment Partners Limited Partnership & Others**

Acting for the FSA in proceedings for breach of the FSMA change in control regime following the disposal by Land Securities of its PPP fund and asset management business.

## **Sanctions**

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### **Notable Sanctions cases**

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Advising numerous banks and financial institutions in relation to freezing bank accounts under US, UK and European sanctions regimes.

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Advising numerous banks and financial institutions on their liability for sanctions violations, money laundering and accessory liability.

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Advising on the scope of s 44 *Sanctions and Money Laundering Act 2018* (protection from civil proceedings for acts done in the “reasonable belief” that they are in compliance with regulations).

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### **Hmicho v Barclays Bank PLC [2015] EWHC 1757 (before Picken J, QBD)**

Acting for Barclays in a claim arising from the bank’s compliance with the European sanctions against supporters or beneficiaries of the Syrian regime.

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Advising on the application of US Sanctions / Russian Harmful Foreign Activities Sanctions Regulations.

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Advising in connection with sanctioned Russian oligarchs’ ‘superyachts’.

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Acting for bank in connection with the misappropriation of states assets in Kazakhstan and the application of secondary sanctions.

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Acting for global bank in SFO investigation for potential violations of Ukraine sanctions regime for the misappropriation of Ukrainian state assets.

## Directory Quotes

*"An outstanding practitioner in the FRC area. He is extremely astute and capable."*

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Chambers & Partners (Professional Discipline)

*"A really good strategic thinker." "He is an absolute specialist in financial crime. His advice is very digestible, client-friendly, pragmatic and commercial."*

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Chambers & Partners (Financial Crime)

*"A pleasure to work with: he is thorough, hard-working, bright and utterly reliable."*

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Chambers & Partners (Professional Discipline)

*"He can operate seamlessly across commercial law, professional regulation and criminal law."*

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The Legal 500 (Business & Regulatory Crime)

*"He is massively hard-working and keeps calm under fire - he's a class act. For big-ticket professional discipline work he is a fantastic choice."*

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Chambers & Partners (Professional Discipline)

*"A great strategic thinker and a complete team player who has a commanding courtroom presence."*

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The Legal 500 (Banking & Finance)

*"A market leader in financial crime and fraud relating to financial services."*

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The Legal 500 (Financial Services)

*"He is extremely smart, very approachable, very hardworking and commercial in his outlook."*

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The Legal 500 (Professional Negligence)

*"A clear thinker and a delight to work with."*

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The Legal 500 (Business & Regulatory Crime)

## Directory Rankings

### Chambers & Partners

- Financial Crime: Corporates
- Financial Services
- Professional Discipline

### The Legal 500

- Business & Regulatory Crime (including Global Investigations)
- Financial Services Regulation
- Proceeds of Crime (POCA) & Asset Forfeiture
- Professional Disciplinary & Regulatory Law

## Education

- LLB, Durham University

## Appointments, Memberships and Prizes

- Recorder (Crown Court) (2018)
- Attorney General's Panel of Prosecuting Advocates (2002-2012)
- Commercial Bar Association
- Financial Services Lawyers Association

## Publications

- Editorial Board of *Lloyd's Law Reports: Financial Crime*
- “**Impact of Brexit**” as published by GIR. (July 2016)
- *Piercing Sham Trusts*, [2015] *Lloyds Law Reports* 648 (with James Goodwin)
- “*POCA s. 338(4A) – Damp Squib or dynamite?*” *JIBFL* May 2015 p. 268
- “*A question of attribution: Shah v HSBC Private Bank (UK) Ltd*” *Trusts & Trustees*, Vol. 18, No.1, 2012
- “*Lissack and Horlick on Corruption*” *Lexis Nexis*, July 2011 (co-author of two chapters)
- *A banker's liability for damages arising from compliance with pt 7 POCA* [2010] 4 *JIBFL* 217
- ‘Refusing to execute payment instructions where a bank suspects money laundering’ [2009] 4 *JIBFL* 190
- *Financial Services Law & Regulation* *Lexis Nexis* [contributor] (2009)

## Awards

