



Patricia Robertson QC

Call 1988 | Silk 2006

'Formidable, unflappable and a real pleasure to work with, she has a very easy manner and her advocacy is exceptional.'

The Legal 500 (Financial Services Regulation)

 pr@fountaincourt.co.uk

 +44 (0)20 7583 3335

Patricia Robertson QC regularly has cases listed amongst *The Lawyer's 'Top 20 Cases'*.

She has previously been named in *The Lawyer's "Hot 100"*, awarded Professional Discipline Silk of the Year by *Chambers UK*, "Commended" for Barrister of the Year by *The Lawyer* and shortlisted for Litigation Team of the Year by *Legal Business*.

Patricia is very familiar with managing large scale commercial litigation and regulatory investigations, with a focus on the financial and legal sectors. Patricia believes that practising across a number of related fields helps to keep advocacy skills sharp and legal thinking flexible. Significant reported cases have included *R (Prudential) v Special Commissioner of Income Tax* [2013] UKSC 1 (legal advice privilege); *Ageas (UK) Limited v (1) Kwik-Fit (GB) Ltd (2) AIG Europe Ltd* [2014] (authority on use of hindsight in measuring damages); and *West and another v Ian Finlay & Associates (a firm)* [2014] EWCA Civ 316 (leading case on effect of a net loss clause).

Patricia is accredited as a mediator and accepts arbitration appointments. She was Vice Chair of the Bar Standards Board 2013-2015 and has been a Deputy High Court Judge since 2016. She has been a member of the Abu Dhabi Global Markets Appeal Panel since 2016. Patricia has published extensively on topics connected with financial and legal services (see publications, below, for further details).

Recent Highlights

Skatteforvaltningen v Solo Capital Partners LLP & Ors

Defending claims brought by the Danish tax authorities against multiple defendants relating to an alleged fraudulent scheme to reclaim £1.5 billion in withholding tax (ongoing).

Stanford International Bank v HSBC

Defending HSBC in respect of claims arising from Sir Allen Stanford's Ponzi scheme, including obtaining a strike out of SIB's dishonest assistance claims (ongoing).

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

Suppapat v Narongdej & Ors

Defending a \$1-2 billion claim for conspiracy under Thai law, concerning dealings in the shares of a substantial Thai renewable energy company (ongoing).

Acting in regulatory cases including successfully defending Baker McKenzie's investigation of a sexual harassment complaint against Gary Senior and success in the longest case so far heard before the SDT in *SRA v Martyn Day and others* (2017) and on appeal (2018).

Acting in significant reported cases including *R (Prudential) v Special Commissioner of Income Tax* [2013] UKSC 1 (legal advice privilege); *Ageas (UK) Limited v (1) Kwik-Fit (GB) Ltd (2) AIG Europe Ltd* [2014] (authority on use of hindsight in measuring damages); and *West and another v Ian Finlay & Associates (a firm)* [2014] EWCA Civ 316 (leading case on effect of a net loss clause).

Expertise

Administrative & Public Law

Patricia has acted both for and against the SRA in cases before the SDT, and on appeal to the Divisional Court and Court of Appeal. She has appeared in judicial reviews relating to interventions, handling of complaints or applications to the Compensation Fund, often including Human Rights issues.

Patricia also has experience acting for other regulators, such as the AADB, FSA, CLC and GMC, and is therefore well-placed to deal with the issues of principle that are common to different regulatory fields.

Notable Administrative & Public Law cases

Acting for the Council of Legal Conveyancers in defending a judicial review testing the scope of their powers to make grants from their compensation fund.

Ahmed & Co, Biebuyck Solicitors, Dixon & Co and Zoi [2006] EWHC 480 (Ch)

Appearing for the Compensation Fund at the hearing of a test case before Lawrence Collins J in which the Law Society was applying for directions as to the administration of some £50 million of statutory trust funds that have vested in the Law Society following interventions. The case raised a novel issue as to the nature and scope of the Law Society's powers and duties as statutory trustee and required an analysis of voluminous case-law on private trusts and public law. Although instructed by the Law Society, Patricia's role was to put before the Court arguments contrary to the Law Society's primary case, in a manner analogous to an "amicus", in order to ensure the arguments on both sides were fully considered.

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

Collins v Law Society

Obtaining a judgment by Sullivan J in favour of the Compensation Fund that decisions whether or not to award grants do not engage Article 6.

R (Prudential) v Special Commissioner of Income Tax [2013] UKSC 1

Acting for the ICAEW in their intervention in the appeal before the Supreme Court as to whether legal professional privilege should extend to accountants giving legal advice as to tax, focussing in particular on the relationship between common law privilege and the LSA 2007 provisions for statutory privilege within ABSs.

MPS Ltd v Crawford and another [2012] EWHC 2373 (Admin)

Acting for the appellant in the Court of Appeal on the issue of whether laying an information before magistrates is a reserved activity under the LSA 2007 (permission for appeal to the Supreme Court granted).

Bevan & Clarke LLP & Ors v Neath Port Talbot County Borough Council [2012] EWHC 236 (Admin) (2012) PLLR 036; R (Mavalon) v Pembrokeshire County Council [2011] EWHC 3371 (Admin)

Appearing for claimants in judicial reviews challenging the decisions of local authorities in setting fees for residential care below cost or in failing to allow the private sector a reasonable return on capital.

Advising regulators on a number of issues relating to the application of the Legal Services Act 2007 and acted in an appeal from the SDT to the Court of Appeal directed at preventing lawyers from anticipating the implementation of rules permitting LDPs and ABSs under that Act. She has also advised potential new entrants to the ranks of approved regulators / licensing bodies under the LSA 2007, including major national firms, insurers and providers of automated online legal services.

Advising a number of firms on their business structures, for example, advising one of the largest national law firms on its application for an ABS licence for a joint venture with insurers and advising a major firm of accountants as to the lawfulness, and compatibility with the current regulatory regimes of the SRA and BSB, of arrangements under which employed barristers and solicitors provide tax advice and litigation support to clients of the firm on a conditional fee basis and on ways those arrangements could be restructured as an alternative business structure under the LSA 2007 regime, once fully in effect.

Advising on the interpretation of the provisions in the LSA 2007 relating to privilege within an ABS and, more generally, on the impact of the LSA 2007 on the availability of privilege for authorised persons who are neither solicitors nor barristers.

Banking & Finance

In addition to an extensive track record in banking/financial services litigation, Patricia often advises on regulatory compliance in those sectors, in particular on aspects of electronic commerce, payment services and internet banking. See listings under "Professional Discipline – financial services" and "Professional Negligence – Financial Services" for related areas of work. Her publications have addressed cutting-edge topics, often correctly anticipating the direction the law would take: for example, chapters on "Plastic Money" and "Internet Payment" in *The Law of Bank Payments* eds. Brindle & Cox (5th edition) and an article on the application of section 75 of the Consumer Credit Act 1974 to transactions over the internet, which anticipated by eight years the answer eventually given by the House of Lords in *OFT v Lloyds TSB* on that issue.

Notable Banking & Finance cases

Advising on the application of PSRII to various Fintech schemes.

Advising on a complaint to the Payment Services Regulator about alleged breaches of the Payment Services Regulations 2017.

Advising on the regulatory obligations of SIPP operators and the extent to which they may be exposed to civil liability to investors for allowing unsuitable investments to be made through the SIPP.

Advising on whether property-based investment schemes come within the definition of unregulated collective investment schemes.

Advising on the interpretation of "contracts of annuity" in the RAO.

Advising on the interpretation of the Payment Services Regulations in relation to the requirements for segregation of funds.

Advising the promoter of an unregulated collective investment scheme as to the scope of deposit-taking activities.

Advising a provider of "pay day" loans on the application of the rules of the Cheque Guarantee Scheme to post-dated cheques taken in repayment.

Advising on various passporting issues in relation to a scheme to provide insurance for mobile phones sold in the UK via a captive insurer established elsewhere in Europe.

Advising on regulatory issues arising from the transfer to a trustee of the property portfolio of a home reversion plan provider, as part of a restructuring of the group.

Advising on application of the CCA 1974 and CCA 2006 to loans made as part of a film financing scheme.

Advising as to whether providing deposit guarantees in respect of off-plan property purchases is to be classed as banking or insurance for the purpose of passporting the service into the UK under the FSMA 2000.

Advising on interest rate swaps under ISDA master agreements.

Advising a US company as to implications under the FSMA 2000, CCA 1974 and Money Laundering Regulations, of proposals to provide credit card processing services in the UK.

Advising a Scottish insurance company on compliance with the regulations on distance marketing of financial services and on the application of various parts of COB and ICOB of the FSA's handbook.

Advising in relation to the regulation of "precipice bonds" under the FSMA 2000.

Advising a housing association on whether a saving scheme for tenants required authorisation under the FSMA deposit-taking regime.

Advising an insurance broker on the application of the client money provisions.

Advising a mobile phone service provider on the regulatory issues, both under domestic banking regulations and the directives on E-money institutions, raised by a proposed electronic payment system for use in relation to WAP services.

Advising on provision of credit card services on-line, in relation to the compatibility or otherwise of domestic consumer credit regulations, as they then stood, with paperless business (especially, the use of paperless agreements, e-mail account statements and web banner advertisements) and the impact of domestic and European legislation relating to E-commerce.

Advising a major UK credit card issuer on cross border provision of credit card services.

Advising a high street bank on setting up its internet banking service and, in particular, on the compatibility with current legislation of paperless agreements for banking services and on the likely impact of various applicable European Directives (E-Commerce, Distance Selling, Distance Marketing of Financial Services etc) and the (then) Electronic Communications Bill.

Stanford International Bank v HSBC Bank PLC

Acting for HSBC in a matter involving claims (in more than one jurisdiction) arising out of the collapse of Stanford International Bank in Antigua, following the discovery of a massive fraud perpetrated on investors by its owner, Sir Allen Stanford. Judgment awaited from Supreme Court on SIB's appeal from HSBC's successful strike out of all but £2.4 million of the £118.5 million claimed.

BMW Hams Hall Motoren GMBH v HSBC UK Bank PLC

Defending claims against HSBC arising out of a fraud perpetrated on BMW by an employee.

Arena Plaza Jersey Limited Partnership v Lanebridge Investment Management Limited and N M Rothschild & Sons

Defending claims against an investment bank and its investment management subsidiary that negligent advice was given in respect of hedging the interest rate risks in a highly leveraged private equity investment in property.

Killybegs Seafood and Ors v Ulster Bank; Brendan McEneaney & Ors v Ulster Bank

Acting for Ulster Bank in defending misselling claims and allegations of breach of fiduciary duty relating to an investment in Canary Wharf, raising issues under Irish law and Irish financial services legislation.

Advising funds on potential claims in misrepresentation arising out of the acquisition of HBoS by Lloyds.

UBS v Comune di Firenze; MLIB v Comune di Firenze; Dexia v Comune di Firenze

Acting for an Italian local authority in three lead cases relating to the legality and enforceability of interest rate swaps and associated claims for damages and/or restitution, including acting in challenges to the jurisdiction and subsequently defending the substantive proceedings (settled shortly before trial).

Acting for a number of the major banks in defending cases relating to the misselling of interest rate swaps, for example in *Strutt & Parker v Barclays* (settled).

Financial Services Compensation Scheme v Independent Financial Advisers

Acting for the lead defendant IFA in a multi-million pound claim brought by the Compensation Scheme in respect of investments involving Keydata (settled).

SPL Guernsey ICC Limited and others v Bordeaux Services (Guernsey) Limited

Acting for the defendant directors and administrator of the Guernsey Cell companies in defending substantial litigation in Guernsey arising out of the collapse of Arch Cru.

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

Acting for a bank's private wealth division in defending a potential class action by investors for alleged misselling of an AIG related fund (the EVRF), which was subject to a run, forcing closure in late 2008 (settled).

Advising a solicitor on a dispute as to enforceability of a loan for partnership equity, following the collapse of Halliwells.

Acting in a dispute between merchant banks over an option for gold bullion under an ISDA Master Agreement, raising issues of mistake and rectification.

Acting for a merchant bank in recovering substantial sums lost as a result of a massive fraud on the Bombay Stock Exchange.

Allied Irish Bank v Ashford Hotels

Acting (with Michael Brindle QC) for a Receiver by way of equitable execution in successfully resisting, at first instance, an application for a cross undertaking in damages in *Ashford Hotels Ltd v Higgins and others* (unreported at first instance, the decision was later upheld on appeal and reported as *Allied Irish Bank v Ashford Hotels* [1997] 3 AllER 309).

Acting (with Michael Brindle QC) for a major clearing bank in an LCIA arbitration over defects in processing systems for credit and debit card transactions.

Acting (with Conrad Dehn QC) for a number of local authorities in the local authority interest rate swaps litigation (negotiating the selection of lead cases and the terms of the cost sharing order for the lead actions and acting for various local authorities in resisting the restitutionary claims by banks).

Acting (with Michael Lerego QC) in a long running guarantee dispute relating to the application of the rule on *Holmes v Brunskill*.

Acting for a building society in bringing claims for negligent lending against its agent (which involved analysing and pleading a case in relation to vast numbers of individual bad loans under the umbrella of master pleadings).

Civil Fraud

Notable Civil Fraud cases

Enigma Diagnostic v Boulter, DAL Piper & Anr

Defending claims (in dishonest assistance and under s213 Insolvency Act 1986) against solicitors who acted for the

Porton Group in relation to sales of beneficial interests in shares in Enigma Diagnostics (ongoing).

Skatteforvaltningen v Solo Capital Partners LLP & Ors

Defending claims brought by the Danish tax authorities against multiple defendants relating to an alleged fraudulent conspiracy to reclaim £1.5 billion in withholding tax (ongoing).

Stanford International Bank v HSBC

Obtaining a strike out of dishonest assistance claims against HSBC relating to Sir Allen Stanford's Ponzi scheme.

Suppitat v Narongdej & Ors

Defending a \$1-2 billion claim for conspiracy under Thai law, concerning dealings in the shares of a substantial Thai renewable energy company (ongoing).

Acting for the claimant in a novel case seeking damages for deceit on grounds of paternity fraud. The case settled after Patricia amended to raise an alternative claim for restitution based on shared mistake as to paternity.

Advising a school on civil recovery of funds paid out to key staff unlawfully and in breach of fiduciary duty over a ten-year period. There are parallel criminal and disciplinary proceedings.

Acting (with Peter Goldsmith QC and, subsequently, with Nicholas Stadlen QC) for a Saudi Arabian Prince in seeking to trace and recover some \$212 million stolen from him by his personal assistant.

Commercial Disputes

Patricia's commercial work is very broad, with the underlying context ranging from Danish withholding tax to hip replacements, telecoms to offshore private equity, blacklisting of construction workers to tax shelter schemes. Cases have often involved defending allegations of conspiracy or dishonest assistance in allegedly fraudulent schemes. Comments in directories have praised Patricia's ability to combine a clear overall strategic vision for complex litigation, with grasp of the underlying detail and an acute instinct as to how best to distil the key issues for the Court. For other cases in the Commercial Court, see listings under "Banking and Finance" and "Professional Negligence". Patricia recently co-authored an article in *New Law Journal* on 'COVID-19, force majeure and frustration: Key legal principles and industry implications' (8 May 2020).

Notable Commercial Disputes cases

Skatteforvaltningen v Solo Capital Partners LLP & Ors

Defending claims brought by the Danish tax authorities against multiple defendants to recover very substantial sums

paid out in refunds of Withholding tax, on the grounds of fraudulent misrepresentation, dishonest assistance, unconscionable receipt or unjust enrichment. Issues include whether Danish or English law governs the alleged torts and whether the underlying Cum-ex trading amounted to a fraudulent scheme.

Suppapat v Narongdej

Acting in multi-party litigation involving allegations of conspiracy under Thai law relating to transactions in the shares of a Thai sustainable energy company.

Steven Acheson & Ors v Sir Robert McAlpine & Ors

Acting in a massive juggernaut of a class action brought against most of the major construction companies in the UK by workers who alleged that a trade association functioned as a means of blacklisting workers. Patricia represented Cleveland Bridge UK in defending claims raising complex legal issues relating to vicarious liability for the actions of a trade association, data protection, defamation and human rights (one of The Lawyer's 'Top 20 Cases' for 2016, now settled).

Advising on complex financial service regulatory issues arising in litigation over a failed tax shelter scheme relating to film finance (settled).

Acting for a major telecommunication network in pursuing claims against two other networks for sums overpaid under interconnection agreements (settled).

Acting as an expert on English law in commercial litigation overseas involving claims in excess of €200 million against directors and shareholders (both individual and corporate) for alleged misrepresentations inducing a syndicated loan. Issues include champerty, application of Lord Tenterden's Act, joint tortfeasorship, personal liability of directors for torts, attribution of knowledge, and vicarious liability (settled shortly before hearing of appeal).

Acting in a complex private equity dispute arising out of the refinancing of a BVI company, raising issues of BVI and Hong Kong law, as well as issues of English law as to the scope of the authority conferred by the Investment Committee of a private equity fund on its Adviser.

Acting in a claim for *quantum meruit* for work done introducing investors to a start-up trading carbon credits (settled before conclusion of trial).

Acting in a minority shareholder dispute arising from the collapse of an equity derivatives business, involving allegations of breaches of FSMA and breaches of director's duties. A particularly good example of Patricia's skills and approach, the case required familiarity with derivatives broking and knowledge of the law across an unusually broad span, including employment law, company law, joint ventures, and financial services regulation. When Patricia was brought in the case was scheduled for a four-week trial in a year's time, involving experts in at least two different

fields. On her advice, the radical step was taken of adding a counterclaim and applying for summary judgment on a part of the case involving allegations of dishonest breaches of FSMA principles. Faced with that, the other side started settlement negotiations, which Patricia handled, and the matter was satisfactorily resolved, resulting in a considerable cost saving for her client.

Acting in a claim for breach of fiduciary duty against an advertising agency which was alleged to have accepted kickbacks from manufacturers whose products it recommended for inclusion in the client's promotions.

Advising on allegations of faulty manufacture of hip replacements (issues as to jurisdiction and proper law as well as complex technical issues relating to the quality of the product).

Acting in a claim by a major UK supplier of digital set-top boxes for losses caused by defective microchips (issues as to contractual construction as well as technical issues relating to the mechanism of failure).

Defending a claim for a commercial agent's fees in relation to Iraqi business (issues of Iraqi law and illegality defences).

Acting in a claim relating to defects in computer software designed to track student numbers/courses attended for use by a Further Education College (issues of contractual construction of a poorly drawn IT contract).

Acting in a challenge by one national newspaper to another's audited circulation figures.

Mediation and Other Forms of ADR

Patricia is an accredited mediator and also regularly acts as advocate in the early resolution of large commercial and professional negligence claims, often at the pre-action stage. She has accumulated very extensive experience, which few members of the Bar match, in the effective use of advocacy in the mediation of heavy and complex claims, many of them valued in excess of £100 million. Advocacy in this context differs from that in a courtroom setting and Patricia is very experienced in both environments. At the invitation of the Bar Council, Patricia appeared on a panel teaching advanced mediation advocacy to members of the Bar.

Not all claims require the mechanism of mediation to arrive at a resolution. For example, Patricia's experience includes settling a \$300 million claim against an investment bank at a one-day meeting of legal teams and clients, following detailed pre-action protocol exchanges.

Financial Services

In addition to an extensive track record in banking/financial services litigation, Patricia often advises on regulatory compliance in those sectors, in particular on aspects of electronic commerce, payment services and internet banking. See listings under "Professional Discipline" and "Professional Negligence" for related areas of work. Her

publications have addressed cutting-edge topics, often correctly anticipating the direction the law would take: for example, chapters on "Plastic Money" and "Internet Payment" in *The Law of Bank Payments* eds. Brindle & Cox (5th edition) and an article on the application of section 75 of the Consumer Credit Act 1974 to transactions over the internet, which anticipated by eight years the answer eventually given by the House of Lords in *OFT v Lloyds TSB* on that issue. She also wrote the chapter on the liability of fund managers in *Simpson on Professional Negligence*.

Notable Financial Services cases

Advising on the application of PSRII to various Fintech schemes.

Advising on a complaint to the Payment Services Regulator about alleged breaches of the Payment Services Regulations 2017.

Advising on the regulatory obligations of SIPP operators and the extent to which they may be exposed to civil liability to investors for allowing unsuitable investments to be made through the SIPP.

Advising on whether property-based investment schemes come within the definition of unregulated collective investment schemes.

Advising on the interpretation of "contracts of annuity" in the RAO.

Advising on the interpretation of the Payment Services Regulations in relation to the requirements for segregation of funds.

Advising the promoter of an unregulated collective investment scheme as to the scope of deposit-taking activities.

Advising a provider of "pay day" loans on the application of the rules of the Cheque Guarantee Scheme to post-dated cheques taken in repayment.

Advising on various passporting issues in relation to a scheme to provide insurance for mobile phones sold in the UK via a captive insurer established elsewhere in Europe.

Advising on regulatory issues arising from the transfer to a trustee of the property portfolio of a home reversion plan provider, as part of a restructuring of the group.

Advising on application of the CCA 1974 and CCA 2006 to loans made as part of a film financing scheme.

Advising as to whether providing deposit guarantees in respect of off-plan property purchases is to be classed as banking or insurance for the purpose of passporting the service into the UK under the FSMA 2000.

Advising on interest rate swaps under ISDA master agreements.

Advising a US company as to implications under the FSMA 2000, CCA 1974 and Money Laundering Regulations, of proposals to provide credit card processing services in the UK.

Advising a Scottish insurance company on compliance with the regulations on distance marketing of financial services and on the application of various parts of COB and ICOB of the FSA's handbook.

Advising in relation to the regulation of "precipice bonds" under the FSMA 2000.

Advising a housing association on whether a saving scheme for tenants required authorisation under the FSMA deposit-taking regime.

Advising an insurance broker on the application of the client money provisions.

Advising a mobile phone service provider on the regulatory issues, both under domestic banking regulations and the directives on E-money institutions, raised by a proposed electronic payment system for use in relation to WAP services.

Advising on provision of credit card services on-line, in relation to the compatibility or otherwise of domestic consumer credit regulations, as they then stood, with paperless business (especially, the use of paperless agreements, e-mail account statements and web banner advertisements) and the impact of domestic and European legislation relating to E-commerce.

Advising a major UK credit card issuer on cross border provision of credit card services.

Advising a high street bank on setting up its internet banking service and, in particular, on the compatibility with current legislation of paperless agreements for banking services and on the likely impact of various applicable European Directives (E-Commerce, Distance Selling, Distance Marketing of Financial Services etc) and the (then) Electronic Communications Bill.

Stanford International Bank v HSBC Bank PLC

Acting for HSBC in a matter involving claims (in more than one jurisdiction) arising out of the collapse of Stanford International Bank in Antigua, following the discovery of a massive fraud perpetrated on investors by its owner, Sir

Allen Stanford. Judgment awaited from Supreme Court on SIB's appeal from HSBC's successful strike out of all but £2.4m of the £118.5m claimed

BMW Hams Hall Motoren GMBH v HSBC UK Bank PLC

Defending claims against HSBC arising out of a fraud perpetrated on BMW by an employee.

Arena Plaza jersey Limited Partnership v Lanebridge Investment Management Limited and N M Rothschild & Sons

Defending claims against an investment bank and its investment management subsidiary that negligent advice was given in respect of hedging the interest rate risks in a highly leveraged private equity investment in property.

Killybegs Seafood and Ors v Ulster Bank; Brendan McEneaney & Ors v Ulster Bank

Acting for Ulster Bank in defending misselling claims and allegations of breach of fiduciary duty relating to an investment in Canary Wharf, raising issues under Irish law and Irish financial services legislation.

Advising funds on potential claims in misrepresentation arising out of the acquisition of HBoS by Lloyds.

UBS v Comune di Firenze; MLIB v Comune di Firenze; Dexia v Comune di Firenze

Acting for an Italian local authority in three lead cases relating to the legality and enforceability of interest rate swaps and associated claims for damages and/or restitution, including acting in challenges to the jurisdiction and subsequently defending the substantive proceedings (settled shortly before trial).

Acting for a number of the major banks in defending cases relating to the misselling of interest rate swaps, for example in *Strutt & Parker v Barclays* (settled).

Financial Services Compensation Scheme v Independent Financial Advisers

Acting for the lead defendant IFA in a multi-million pound claim brought by the Compensation Scheme in respect of investments involving Keydata (settled).

SPL Guernsey ICC Limited and others v Bordeaux Services (Guernsey) Limited

Acting for the defendant directors and administrator of the Guernsey Cell companies in defending substantial litigation in Guernsey arising out of the collapse of Arch Cru.

Acting for a bank's private wealth division in defending a potential class action by investors for alleged misselling of an AIG related fund (the EVRF), which was subject to a run, forcing closure in late 2008 (settled).

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

Advising a solicitor on a dispute as to enforceability of a loan for partnership equity, following the collapse of Halliwells.

Acting in a dispute between merchant banks over an option for gold bullion under an ISDA Master Agreement, raising issues of mistake and rectification.

Acting for a merchant bank in recovering substantial sums lost as a result of a massive fraud on the Bombay Stock Exchange.

Allied Irish Bank v Ashford Hotels

Acting (with Michael Brindle QC) for a Receiver by way of equitable execution in successfully resisting, at first instance, an application for a cross undertaking in damages in *Ashford Hotels Ltd v Higgins and others* (unreported at first instance, the decision was later upheld on appeal and reported as *Allied Irish Bank v Ashford Hotels* [1997] 3 AllER 309).

Acting (with Michael Brindle QC) for a major clearing bank in an LCIA arbitration over defects in processing systems for credit and debit card transactions.

Acting (with Conrad Dehn QC) for a number of local authorities in the local authority interest rate swaps litigation (negotiating the selection of lead cases and the terms of the cost sharing order for the lead actions and acting for various local authorities in resisting the restitutionary claims by banks).

Acting (with Michael Lerego QC) in a long running guarantee dispute relating to the application of the rule on *Holmes v Brunskill*.

Acting for a building society in bringing claims for negligent lending against its agent (which involved analysing and pleading a case in relation to vast numbers of individual bad loans under the umbrella of master pleadings).

Insurance

Patricia's work includes insurance-related commercial litigation and advice on coverage issues and aggregation, in particular where this arises in the context of commercial litigation and professional negligence claims.

Notable Insurance cases

Ageas (UK) Limited v (1) Kwik-Fit (GB) Ltd (2) AIG Europe Ltd [2014]

Acting for AIG in the authority on the use of hindsight in measuring damages.

Advising on aggregation in the context of professional negligence claims against a major law firm.

Advising insurers on forming alternative business structures with lawyers, for delivery of legal services.

International Arbitration

Patricia was appointed a Deputy High Court Judge in 2016, sitting in the Commercial Court. She has handled a number of complex applications in disputes relating to oligarchs, including giving a judgment in *JSC VTB Bank v Skurikhin* ([2019] EWHC 1407 (Comm)) which has recently been comprehensively upheld by the Court of Appeal ([2020] EWCA Civ 1337).

She is a member of the Abu Dhabi Global Markets Appeal Panel and of an expert panel advising the Astana International Financial Centre on regulatory matters. Patricia has published extensively on topics connected with financial and legal services (see publications, below, for further details).

Patricia's practice as an advocate is largely focussed on complex multi-party disputes with an international dimension, such as:

- *Skatteforvaltningen v Solo Capital Partners Ltd & Ors*: Defending claims brought by the Danish tax authorities against multiple defendants relating to an alleged fraudulent scheme to reclaim £1.5 billion in withholding tax (ongoing).
- *Stanford International Bank v HSBC*: Defending HSBC in respect of claims arising from Sir Allen Stanford's Ponzi scheme, including obtaining a strike out of SIB's claims (appeal to Supreme Court pending)).
- *Suppapat v Narongdej & Ors*: Defending a \$1-2 billion claim for conspiracy under Thai law, concerning dealings in the shares of a substantial Thai renewable energy company (ongoing).
- *Enigma Diagnostics v Harvey Boulter and others*: Defending claims in dishonest assistance and fraudulent trading against DLA Piper and a partner at the firm, relating to services provided to the Cayman based Porton Group, founded by Harvey Boulter, a controversial figure now awaiting trial in South Africa for murder (ongoing).

Patricia also has considerable experience of resolving complex and high value professional negligence disputes by means of mediation in situations where the client relationship or costs of trial make this the preferable course. She is accredited as a mediator.

Patricia is now bringing this wider experience to bear in appointments as an arbitrator. Current arbitral appointments include sitting as sole arbitrator in LCIA arbitration, party appointed arbitrator in DIFC arbitration, and member of arbitration panel chaired by Helen Davies QC.

Privilege, Confidentiality & Conflicts of Interest

Patricia frequently advises on privilege issues, in particular where these present in the context of regulatory or other investigations.

Notable Privilege, Confidentiality & Conflicts of Interest cases

R (Prudential) v Special Commissioner of Income Tax [2013] UKSC 1

Acting for the ICAEW in their intervention in the appeal before the Supreme Court as to whether legal professional privilege should extend to accountants giving legal advice as to tax, focussing in particular on the relationship between common law privilege and the LSA 2007 provisions for statutory privilege within ABSs.

Advising a firm on complex privilege issues arising in the context of an investigation under s447 Companies Act 1985, including as to the application of privilege to multiparty email communications between co-investors and their respective legal advisers.

Professional Discipline - Legal services

Patricia frequently appears in high profile disciplinary cases before the SDT. She regularly advises magic circle firms and major national firms on handling SRA investigations, on their reporting obligations, or other regulatory issues, such as conflicts or confidentiality, or AML compliance. Her wider commercial experience is an advantage when handling disciplinary matters arising from a firm's conduct of complex underlying litigation, or transactional work. She is also familiar with the challenges of managing a regulatory investigation whilst simultaneously defending a related professional negligence claim against the firm. She has contributed to leading textbooks on regulation of legal services.

Patricia has contributed chapters on the new regulatory regime and on the Legal Services Board to the *Guide to the Legal Services Act 2007* (eds. Miller & Thorne, Butterworths Lexis-Nexis, 2009) and to *Cordery on Legal Services* (Lexis-Nexis, Looseleaf).

In December 2015 Patricia completed a six year term on the Board of the Bar Standards Board, the regulator of barristers in England & Wales, for the last three years as Vice Chair of that Board, and in that capacity she was responsible for comprehensive reforms of the BSB's regulatory regime. She therefore has experience of viewing regulatory issues from both sides, that of the regulator and that of the regulated.

Notable Professional Discipline - Legal services cases

SRA v Senior & Others

Successfully defending disciplinary proceedings brought against Baker McKenzie and others relating to the firm's investigation of allegations of sexual misconduct against the then managing partner. In the course of the last few years she has frequently advised firms on the handling of #MeToo allegations and related SRA investigations.

SRA v Martyn Day & Others

Successfully defending Leigh Day and three individual solicitors in the longest hearing so far heard before the SDT, at the conclusion of which all 19 allegations were dismissed against all of her clients. In the course of the

proceedings, the SRA was ordered to give disclosure of its exchanges with Government departments about the proceedings. Patricia also successfully acted for Leigh Day in the appeal by the SRA to the Divisional Court.

SRA v Martyn Day & Others

At a separate costs hearing following judgment in *SRA v Martyn Day & Others*, the SDT agreed with Patricia's submission that they had jurisdiction to award costs against the SRA if the SRA had conducted itself unreasonably (a significantly lower threshold than that contended for by the SRA) but split two to one on whether their criticisms of the SRA in the substantive judgment were sufficient to amount to unreasonableness.

Richards v The Law Society [2009] EWHC 2087 (Admin)

Advising the Law Society on the standard of proof in disciplinary proceedings before the SDT and intervened on behalf of the Law Society against the SRA in a test case on the point (which was decided on other grounds).

Acting for the SRA in a number of complex, lengthy and high profile disciplinary cases testing points of principle, such as when a solicitor is obliged to stop acting for a client because the client's business might be fraudulent or when referral fee arrangements put solicitors in breach of their duties to clients. For example, decisions of the SDT in *The Law Society v Pitts Tucker*, *The Law Society v Sheikh*; and *The Law Society v Tilbray*.

Advising on high profile regulatory investigations including the phone-hacking scandal and a number of instances where widely reported criticisms have been made by trial judges of the conduct of a firm or partner representing one of the parties.

Professional Discipline - Auditing, Accountancy and Financial Services

Patricia has significant experience of public interest investigations into breaches of accounting and audit standards (both when acting for the regulator and when defending regulated firms and individuals). Patricia sees her work in the field of professional regulation and discipline as a natural fit with her professional negligence practice: for example, in handling or defending claims against financial services firms a thorough knowledge of their regulatory obligations is essential: for details of this work, see under "Professional Negligence".

Patricia has lectured at a number of conferences on topics related to the field of regulation, such as separation of powers, the Strachan Review, the impact of human rights and the relative merits of different methods of challenging FCA decisions.

For experience advising on privilege issues in the context of regulatory investigations see under "Commercial Dispute Resolution".

Notable Professional Discipline - Auditing, Accountancy and Financial Services cases

Acting for the FRC on a number of public interest investigations into breaches of accounting and audit standards,

relating to high profile collapses of financial services institutions in 2008 (the Presbyterian Mutual Society, in Northern Ireland, which was taking deposits without authorisation; Cattles, a sub-prime lender, whose accounts made insufficient provision for impairment of its book of loans).

Advising firms and individuals on handling an FRC investigation or on aspects of compliance with the FRC's regime, such as conflicts or auditor's independence.

Advising a major Stock Exchange on their disciplinary rules and procedures.

Advising both regulator and regulated in respect of various issues arising under the FSMA 2000 and, in particular, in respect of the regulation of electronic money and of financial services provided over the internet and/or cross border. For details of this work, see under "Banking & Finance".

Professional Discipline - Other experience

Whilst Patricia's recent regulatory experience has focussed primarily on financial and legal services, the underlying principles are common to other professional sectors.

Notable Professional Discipline - Other experience cases

Acting for NHS trusts in two high profile disciplinary proceedings against hospital consultants (*Siddle* and *Ledward*, both widely publicised cases of surgical and clinical incompetence involving a large number of patients).

Acting for the GMC in prosecuting doctors accused of serious professional misconduct (in particular, in the *Ledward* case itself, *Bijl* (reported in Privy Council: [2001] UKPC 42), and in various other cases involving allegations ranging from surgical incompetence to drug abuse).

Professional Negligence - Accountancy, auditors, investment management, banking and financial services

Patricia frequently acts and advises in relation to professional negligence claims involving fund managers, banks, accountants, auditors, financial advisers, and other providers of financial services. In one year alone she acted in relation to five claims relating to fund management, each valued between tens and hundreds of millions of dollars, all of which were resolved without proceedings being issued. She has contributed a chapter on Liability of Fund Managers in *Professional Negligence and Liability* (ed. Simpson) which was in press at the time the Madoff scandal broke. She has written and advised on the subject of Madoff-related claims against banks and investment advisers. Over the years Patricia has continued to build on this specialist experience.

Notable Professional Negligence - Accountancy, auditors, investment management, banking and

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

financial services cases

Stanford International Bank v HSBC Bank Plc

Defending claims against HSBC relating to alleged negligence in not identifying a fraud on its correspondent banking customer, Stanford International Bank, by its owner, Sir Allen Stanford.

BMW Hams Hall Motoren GMBH v HSBC UK Bank Plc

Defending claims against HSBC relating to whether a fraud perpetrated on BMW by an employee should have been prevented by anti-money laundering checks on the employee's account with HSBC.

Arena Plaza Jersey Limited Partnership v Lanebridge Investment Management Limited & N M Rothschild & Sons.

Defending claims against an investment bank and its investment management subsidiary that negligent advice was given in respect of hedging the interest rate risks in a highly leveraged private equity investment in property. (Action discontinued shortly before a security for costs application).

Acting for an investment bank in defending a \$300 million claim relating to an advisory portfolio which was invested in emerging markets on a leveraged basis and suffered a total "wipeout" in late 2008. (Settled.)

Al Sulaiman v Credit Suisse Securities (Europe) Limited and Plurimi Capital LLP [2013] EWHC 400 (Comm)

Acting for investment managers in successfully defending a \$30 million claim for alleged misselling of leveraged structured notes which suffered losses when margin calls in late 2008 were not met.

UBS v Comune di Firenze; MLIB v Comune di Firenze; Dexia v Comune di Firenze

Acting both for and against banks in claims relating to misselling of swaps, including acting for an Italian local authority in three lead cases relating to the legality and enforceability of interest rate swaps and associated claims for damages and/or restitution, including acting in challenges to the jurisdiction and subsequently defending the substantive proceedings. (Settled shortly before trial). See the "Banking & Finance" section for other examples.

Acting for the wealth management division of a major bank in defending misselling claims relating to investments sold as cash equivalents (settled).

Acting for IFA in defending misselling claims relating to Keydata bonds invested in life insurance policies (settled).

Acting for Guernsey administrator of cell companies for Arch Cru closed-ended funds in defending allegations of negligence in discharging functions as sponsor, administrator and company secretary and allegations of negligence

and breach of fiduciary duty against directors (ongoing).

Acting for Mercury Asset Management in defending the claim brought against them by the Trustees of the Unilever Pension Fund for allegedly negligent fund management. This was a novel claim raising complex technical issues relating to measurement of risk in investment portfolios, as well as legal issues as to the scope of the duty owed by a fund manager and the correct approach to quantum (settled during trial).

Acting for a bank in defending a claim for allegedly negligent financial modelling of the costs of a major PFI project in Northern Ireland (settled).

Advising on a claim against an insurance broker for inadequate advice on scope of income replacement cover for company director.

Defending a claim against accountants for allegedly negligent valuation of goodwill (settled).

Defending a claim relating to alleged failures by auditors to identify the true extent of a farming cooperative's exposure to liability on commodity futures and options (settled).

Brostoff & Others v CKL [1998] PNLR 635 (CA)

Acting for an international association of accounting firms in long-running multi-party litigation in which we successfully resisted, at first instance and on appeal, claims brought by around 100 victims of a fraud perpetrated by the Executive Director of the association (subsequently the subject of a BBC drama series starring Hugh Laurie as the fraudster, Nicholas Young).

NRG v Bacon & Woodrow [1997] LRLR 678

Acting for actuaries in (successfully) defending a professional negligence claim relating to actuarial projections of reinsurance liabilities in the LMX market (a trial which lasted around 9 months and involved at the outset four parties and 14 Counsel).

Professional Negligence - Legal services

Patricia has extensive experience of professional negligence claims against legal advisers. This also includes handling parallel regulatory investigations (see also "Professional Discipline").

Notable Professional Negligence - Legal services cases

Bronze Monkey LLC and another v Simmons & Simmons LLP and another [2017] EWHC 3097 (Comm)

Successfully obtaining summary judgment on behalf of the defendant law firm in respect of a claim that statements made in correspondence on behalf of a client constituted a representation by the firm.

Fortelus Special Situations Master Fund v Fried Frank

Acting for an international law firm in defending allegations of professional negligence brought by a private equity fund against its Paris office in respect of insolvency advice under French law (one of *The Lawyer's* 'Top 20 Cases' for 2016).

Ridgewood Properties Group Ltd & Anor v Kilpatrick Stockton LLP & Ors [2014] EWHC 2502 (Ch)

Acting for an international law firm in defending allegations of negligence in transactional advice relating to the acquisition of a national network of petrol stations. (Claim abandoned by claimant following a successful application to strike out parts of the claim as an abuse of process).

Advising an international law firm as to its pre-action protocol response, including advising on jurisdiction (there were jurisdiction issues arising from the way the law firm was structured internationally) and proper law (the claim relates to advice on foreign law given by an overseas office).

Advising on a potential claim for €210 million against legal advisers who had acted for the lenders in relation to a syndicated loan. The borrower was declared insolvent within weeks of the funds being drawn down. The potential claimants were banks who had purchased the debt on the distressed debt market and had taken assignments of ancillary claims.

Acting for the BMIF in defending a number of claims brought against barristers. With Ali Malek QC, she successfully defended a leading commercial silk against the largest such claim that the BMIF had until then faced (the claimant submitted to dismissal of his case and an order for indemnity costs in the 5th week of the trial).

Professional Negligence - Other professions

Notable Professional Negligence - Other professions cases

West and another v Ian Finlay & Associates (a firm) [2014] EWCA Civ 316

Acting for an architect on a successful appeal to the Court of Appeal on the construction and effect of a net contribution clause, which is now the lead case on such clauses.

Acting for Savills in defending professional negligence claims relating to estate agency services and property management relating to the acquisition and development of a number of shopping malls in Central London (settled).

Jones v Kaney [2011] UKSC 13

Patricia's chapter on the liability of expert witnesses (first published in 2006 in *Professional Negligence and Liability*) put forward an argument for removal of immunity from expert witnesses, which was accepted by the Supreme Court in this case.

Professional Negligence - Use of ADR

Patricia has considerable experience of resolving complex and high value professional negligence disputes by means of mediation in situations where the client relationship or costs of trial make this the preferable course: examples include resolving a claim against a fund manager by a member of a Middle Eastern Royal family and resolving a multi-party dispute involving claims and cross claims between receiver, auditor and directors that was due to go to an eight-week trial involving experts from two disciplines.

Directory Quotes

"She is doggedly determined and can run rings around the most experienced advocates."

The Legal 500 (Professional Negligence)

"She has a complete grasp of the issues and the documents. Exceptionally well-prepared. Excellent in court - persuasive, thorough and someone the court listens to."

The Legal 500 (Banking & Finance)

"A real tour de force and a true expert in the field of professional disciplinary and regulatory matters. Nothing fazes Patricia."

The Legal 500 (Professional Disciplinary & Regulatory Law)

"A very high-energy lawyer who will absolutely get stuck into the detail of a case." "Tremendous fun to work with", "she is a calm and collected advocate who is very impressive."

Chambers & Partners (Dispute Resolution)

"The court eats out of her hand." "She's absolutely excellent on financial litigation. Hugely client-friendly, sophisticated, hands-on and down to earth."

Chambers & Partners (Banking & Finance)

"An intellectual powerhouse who combines forensic attention to detail with an unrivalled ability to distil huge quantities of information and complex law into comprehensible and relatable nuggets, whether for clients or for judges."

Chambers & Partners (Professional Discipline)

"She is in complete control" and has "a manner that instils confidence and makes her a delight to work with."

The Legal 500 (Banking & Finance)

"One of the go-to barristers in the field she has a fantastic ability to deal with high-pressure cases."

The Legal 500 (Professional Disciplinary & Regulatory Law)

"She is excellent. Fantastic ability to deal with high pressure cases and absorb huge amounts of information."

The Legal 500 (Professional Negligence)

Directory Rankings

Chambers & Partners – Global

- Dispute Resolution: Commercial – UK (Global Guide)

Chambers & Partners – UK

- Banking & Finance
- Commercial Dispute Resolution
- Professional Discipline (Band 1)

The Legal 500

- Banking & Finance (including Consumer Credit)



- Financial Services Regulation
- Professional Disciplinary & Regulatory Law (Tier 1)
- Professional Negligence

Education

- Diploma in Law, City University, London
- BA in Modern History, Balliol College, Oxford

Memberships

- Member of the Advisory Panel on legal regulatory matters for the Astana International Financial Centre (2019-)
- Member of the Appeals Panel established by the Board of Directors of Abu Dhabi Global Market (ADGM) pursuant to section 227 of ADGM Financial Services & Markets Regulations 2015 (2016-)
- Deputy High Court Judge (QB) (2016-)
- Vice Chair of Bar Standards Board (2013-2015)
- Member of Bar Standards Board (2010-2015)
- Former Chair of Standards Committee, Bar Standards Board
- Master of the Bench, Inner Temple
- Brackenbury Scholarship, Balliol College, Oxford

Publications

- Chapters on Fund Managers and on Expert Witnesses in *Professional Negligence and Liability*, ed Simpson, Informa, Looseleaf.
- Chapters on Plastic Money and on Internet Payments in *The Law of Bank Payments* eds. Brindle & Cox, 5th Ed. (Thomson Reuters).
- Chapters on the new regulatory regime under the Legal Services Act 2007 and on the Legal Services Board in *The Guide to the LSA 2007* eds. Miller & Thorne, 2009 (Butterworths Lexis-Nexis).
- Contributor to chapter on Professional Negligence in *Bullen & Leake & Jacob's Precedents of Pleadings*, 16th edn (Sweet & Maxwell).
- Article in *New Law Journal* on COVID-19, force majeure and frustration: Key legal principles and industry implications (8 May 2020, with Ben Lynch QC and Dr Deborah Horowitz).
- Blog post on confidentiality in arbitration: "Lifting the Veil", March 2018 (see [here](#)).
- Article on Madoff investor claims: US proceedings and possible UK approaches (*The In-House Lawyer*, May 2009).
- Article on Loss of chance in claims against fund managers (*The In-House Lawyer*, December 2008).
- Article on expert witness immunity ("Expert witness: professionally immune?" in *Tottel's Journal of Professional Negligence* vol 23 No 2, 2007, 66).
- Article on the Payment Services Directive (*The In-House Lawyer*, Issue No 152, July/August 2007, p31)

London

Fountain Court Chambers
Fountain Court
Temple
London EC4Y 9DH

T: +44 (0)20 7583 3335
F: +44 (0)20 7353 0329
E: chambers@fountaincourt.co.uk
DX: 5 LDE

Singapore

10 Collyer Quay
Ocean Financial Centre
#40-38
Singapore 049315

T: +65 6808 6611

- Article on Application of Consumer Credit Act 1974 to credit card transactions over the internet (*Credit and Finance Law*, March 1999).
- Article on proposed Directive on Distance Marketing of Financial Services (*Electronic Commerce Law and Policy*, June 1999).

Languages

- French (fluent)
- Italian (working knowledge)

Awards

