



# Philip Brook Smith KC

Call 1982 | Silk 2002

*"Stands out for his expert grasp of intricate statistical, scientific and technical matters."*

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Philip Brook Smith KC has a very broad commercial practice.

Philip has substantial experience of a wide variety of areas of commercial and civil law, achieving notable distinction in the field of Product Liability.

Much of his work is international, and frequently concerns offshore jurisdictions, in particular the Cayman Islands, BVI and the Channel Islands. He has wide experience of the laws and practice of these and other jurisdictions, for example the US, Canada, France, Norway, Liechtenstein, Nigeria, Chile, Japan and Middle Eastern countries.

He has advised in respect of, and appeared in, numerous arbitrations, both in England and overseas.

His cases often involve a technical/industrial content, including in the pharmaceutical field. His background means that he is able quickly to assimilate and analyse difficult concepts, detecting 'bad science', and also very swift to engage with expert disciplines outside the immediate experience of many barristers.

## Recent Highlights

Representing a shipowner (Golar LNG) in very high value arbitration claims arising under a charterparty. The case concerned provision of a FSRU for operation in Ghana, termination rights and frustration. Enforcement proceedings were conducted in England, BVI and Isle of Man.

Acting for a commercial property developer (R&F) in a security dispute with builder Multiplex, arising from the One Nine Elms project.

Acting for a UAE bank in connection with the provisional liquidation of Abraaj Holdings in the Cayman Islands. The case related to a review of claimed debts.

Representing a group of law firms in arbitrations under a Panel Solicitor Agreement. The case involved issues surrounding termination rights, loss calculations, the CFA regulatory landscape and motor insurance terms.

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Advising an individual policyholder in connection with high value property insurance claims against a leading UK insurer. The matter involved claims handling and good faith issues.

## Expertise

### Administrative & Public Law

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#### Reported Administrative & Public Law cases

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##### **Axis International v Civil Aviation Authority (May 2013 and on appeal March 2014)**

Acting on a judicial review in Cayman Islands of a CAA decision to licence operation of a heliport. The case related to issues surrounding the admissibility of expert evidence on judicial review, OTARs and all regulatory issues.

#### Notable Administrative & Public Law cases

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Advising a government regulator in dealing with a high-profile complaint from a TV company. Considerable background technical expertise was required.

### Aviation & Travel

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#### Reported Aviation & Travel cases

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##### **Gamit Ltd v Saudi Arabian Airlines Corp [2011] EWHC 989 (Comm)**

Acting on claims in contract and tort arising in respect of the maintenance and repair of engines, and title to parts. The claim involved issues surrounding remoteness of loss.

#### Notable Aviation & Travel cases

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Extensive drafting and advisory work for the CAA in relation to ATOL Regulations and standard terms and trust instruments.

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Advising in relation to the potential insolvency of a major carrier as regards all regulatory issues arising for the CAA.

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Representing in disputes between lessors and lessees concerning lease terms and airworthiness.

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Acting in jurisdictional disputes under maintenance/repair contracts.

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Advising travel companies in relation to group litigation in the US arising from holiday disasters, anti-suit injunctions, and the Package Tour Regulations.

## Banking & Finance

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Philip has substantial, long-standing and continuous experience in banking litigation, dating back to *National Westminster v Morgan* (HL). He has advised on the range of banking issues, including private client lending facilities / securities, custodianships, underwriting agreements, corporate restructuring, syndicated loans and regulatory issues. He has extensive knowledge of offshore banking / investment funds, including as to banking secrecy laws.

### Notable Banking & Finance cases

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Advising clients in relation to fallout from the Enron affair.

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Instructed in cases concerning the Madoff scheme and its impact on affected depositors, in various jurisdictions.

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Acting in a very high value claim/cross claim in Guernsey concerning financial services and investment funds.

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Representing in a dispute in relation to wrapper pension policies and guaranteed investment funds.

## Civil Fraud

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### Reported Civil Fraud cases

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Acting in a case relating to procurement fraud, involving issues surrounding conspiracy, breach of fiduciary duties and miscellaneous torts. The dispute involved claims against employees and suppliers, obtaining a range of freezing and ancillary orders, and involved several jurisdictions including Guernsey, Isle of Man, Liechtenstein and the US. Malicious falsehood and malicious prosecution.

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#### Dubai Aluminium Co Ltd v Salaam [2002] UKHL 48

Acting in a dispute relating to secret commissions, relating to the Civil Liability (Contribution) Act 1978.

### Notable Civil Fraud cases

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Instructed for many years in the \$150 million Anders Jahre litigation, variously proceeding in many jurisdictions and over several decades. This was perhaps the longest-running case in legal history, reported as being 'one of the most

complex trust and fraud litigations to ever involve the English bar’.

## Commercial Disputes

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### Reported Commercial Disputes cases

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#### **Djibouti v Boreh [2016] EWHC 405 (Comm)**

Acting on a case involving allegations of secret commissions in relation to a port operation in Djibouti.

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#### **Secretary of State for Justice v LSM Professional Ltd [2012] EWHC 1280 (QB)**

Acting in relation to the sale and purchase contract for commercial property, involving allegations of conspiracy, fraud and bribery.

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#### **IRT Oil & Gas Ltd v Fibre Optic Systems Technology (Canada) Inc [2009] EWHC 3041 (QB)**

Acting in a contractual dispute concerning an exclusive agency agreement for supply of products for use in the oil and gas industry. The case involved issues relating to rights to terminate, assignments and damages.

### Notable Commercial Disputes cases

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Advising a Primary Care Trust, in relation to contractual issues and disputes in a changing health care environment.

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Representing in successful anti-suit proceedings in the Cayman Islands and in several associated international arbitrations.

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Acting in a claim regarding confidential information/trade secrets in relation to disaster recovery systems.

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Representing in a dispute as to the appointment and non-retention of arbitrators to Lloyd’s panel (Open Form arbitrations).

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The successful mediation of a complex and high-value TCC case. raising difficult technical and damages issues.

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Mediation involving a food supplements claim, again raising difficult technical and damages issues.

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Acting as the appointed mediator in a dispute between a FI team and a leading employee.

## Company, Restructuring & Insolvency

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### Notable Company, Restructuring & Insolvency cases

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Advising in relation to the successful appointment of provisional liquidators in the BVI, arising from the Gold & Appel affair (giving rise to the then largest ever individual US tax debt).

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Representing (successfully) in the Cayman Court of Appeal in winding up proceedings arising from a failed investment in a German bank.

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Advising as to claims in connection with IT systems in banking insolvency context.

## Construction, Energy & Infrastructure

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### Reported Construction, Energy & Infrastructure cases

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#### **Multiplex Construction Europe Ltd v R&F One (UK) Ltd [2019] EWHC 3464 (TCC)**

Advising in relation to a dispute under a £670 million building contract as to provision of payment security and right to suspend works.

## Employment

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Philip has practised in employment (and related) matters for many years. He is particularly experienced in cases concerning confidential information, directors' duties, bonus issues, restrictive covenants and claims relating to discrimination.

### Notable Employment cases

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Advising in relation to litigation in Singapore between two leading firms of solicitors, following the migration of a partner from one firm to the other.

## Financial Services

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### Notable Financial Services cases

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Advising in relation to Jersey and Guernsey financial regulatory matters.

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Advising a Friendly Society in relation to proposed rule changes in a new regulatory environment.

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Advising in relation to disclosure issues regarding stock exchange listings.

## Insurance

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Philip has dealt with insurance and reinsurance matters for very many years, dating back to the Howden affair. His experience encompasses Lloyd's and other markets and related arbitrations, as an intrinsic part of his commercial practice.

### Notable Insurance cases

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#### Sawar v Alam

Representing in the Costs litigation concerning Before/After The Event Insurance.

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Regularly advising on coverage issues in all types of cases, most recently being instructed in litigation concerning an employee's disability policy.

## International Arbitration

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Arbitrations in which Philip has been instructed cover many diverse fields.

### Notable International Arbitration cases

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Advising on a claim relating to pharmaceutical products, unique medical formulations, confidentiality and wrongful competition, in a dispute between an English company and a Dutch company.

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Acting on a claim relating to a supply agreement for provision of processing of nuclear waste, between two English companies.

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Advising on a claim relating to supplies of steel from Russia to France, between a Russian seller and a Russian buyer.

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Acting on a claim relating to banking services in Nigeria, between a French bank and a Nigerian bank.

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Advising on a claim relating to supplies of copper concentrates, between a Chilean mining company and a Swiss metals trader.

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Acting on a claim relating to supplies of goods to the Middle East, between a Cayman Islands company and English / Dutch companies.

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Advising on insurance claims for business interruption arising from metals mining and processing operations in Australia, between an Australian insured and Lloyd's underwriters.

## Product Liability

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Philip has been involved in many of the leading Product Liability cases.

### Reported Product Liability cases

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#### **X v Schering Health Care Ltd [2002] EWHC 1420 (QB)**

Acting in group litigation against three drug companies concerning third generation combined oral contraceptives and venous-thromboembolism (VTE). Philip acted on the trial of seven lead claims, relating to issues surrounding whether excess risk of VTE was more than twice that for second generation, whether the products were defective, development risk defence, prescription practices and causation.

### Notable Product Liability cases

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In a case regarding a Whooping Cough vaccine.

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Being instructed by the National Blood Authority in the Blood Products litigation (HIV/AIDS).

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Being instructed in the Hepatitis C litigation.

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Acting for manufacturers in the Oral Contraceptives litigation.

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Acting in the Persona litigation.

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Instructed (for the manufacturer) in relation to Seroxat anti-depressant.

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Acting in the MMR litigation.

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Acting in claims regarding non-EU compliant components of food supplements.

## Professional Negligence

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As part of his commercial / civil litigation practice, Philip has acted on very many occasions in relation to professional negligence claims including in claims involving solicitors, accountants, valuers, architects, surveyors, insurance brokers and merchant bankers.

Recently, he acted for an individual victim of clinical negligence, advising as to damages for losses of business opportunities overseas.

## Directory Quotes

*"An experienced silk for product liability cases."*

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The Legal 500

*"He is thoroughly excellent. His subject matter knowledge second to none and this, teamed with his commercial acumen, makes for a winning formula." "He is an absolute joy to work with: he's so friendly, practical and reassuring."*

*"A fine advocate with openness and intelligence that endears him to solicitors and Judges alike."*

*"Highly personable team player."*

*"Incredibly intelligent and charismatic."*

*"Swift and incisive in his understanding of the interplay between legal and commercial considerations."*

*"Extremely personable and skilled."*

## Education

- BSc. Mathematics (First Class Honours), London School of Economics
- MSc. Mathematics (Distinction), London University
- Diploma in Law, City University

## Appointments, Memberships and Prizes

- Blackstone Scholar, Middle Temple
- Crown Court Recorder (and member of the Tribunal Procedure Committee)
- Case reviewer for, and a trustee of, Advocate





- Chair of the Commonwealth Boxing Council
- CEDR Accredited Mediator
- Teaches advocacy for Middle Temple and the South Eastern Circuit and has regularly assisted a leading US firm in providing their in-house training for advocacy in international arbitrations.

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