

# Rosalind Phelps QC

Call 1998 | Silk 2016

"Rosalind is an outstanding barrister with a fine-tuned intellect that is able to get to the heart of any dispute."

*The Legal 500*



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Rosalind Phelps QC is a successful silk with a broad commercial practice.

She specialises in large-scale commercial disputes, frequently acting in trials, appeals and interim matters including injunctions, jurisdiction applications and summary judgment hearings. She is as comfortable in arbitrations as in court, often sitting as an arbitrator.

Rosalind's principal practice areas are commercial dispute resolution, banking/finance (including the upcoming discontinuance of LIBOR), arbitration, aviation and travel, civil fraud and professional negligence. Recent cases include *FSHC v GLAS* (leading case on rectification) and *Federal Republic of Nigeria v JP Morgan* (claim for US\$1.1 billion arising from alleged breach of bank's duties). She is currently representing Barclays in the high-profile litigation concerning alleged FX manipulation (*Allianz, O'Higgins and Evans*). Rosalind is also a leading aviation QC, regularly acting in large-scale aviation disputes, giving recent advice on COVID-19-related issues, and advising the CAA in relation to the collapse of Flybe and Thomas Cook.

She is a co-author of *Thanki on Privilege* and frequently acts in disputes involving privilege and related matters, including a number of leading Court of Appeal cases.

Recommended by *The Legal 500* and *Chambers & Partners* in banking and finance, aviation and travel law and also by *Chambers & Partners* in commercial dispute resolution, civil fraud and travel.

## Recent Highlights

**Allianz Global Investors GmbH v Barclays Bank Plc & Others, O'Higgins FX Class Representative Ltd v Barclays Bank Plc & Others, Phillip Evans v Barclays Bank Plc & Others**

For Barclays (with Mark Hoskins QC) in a trio of high-value claims in the Commercial Court and CAT concerning alleged manipulation of FX rates and breaches of competition law.

**Federal Republic of Nigeria v JP Morgan Chase [2019] EWCA 1641**

### London

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### Singapore

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For JP Morgan Chase in a claim for US\$875 million for breach of contract in relation to the operation of a depository account for the Nigerian Government. Claim arises out of an alleged fraud concerning the grant of an oil exploration licence in 1998. Court of Appeal decision is now a leading authority on bankers' duties.

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### FSHC Group Holdings v GLAS [2020] 2 WLR 429

For the Claimant (part of the Terra Firma group), with David Wolfson QC in the trial of a claim for rectification in relation to structured finance documentation, and the appeal from that decision. Now the leading recent case on rectification of commercial contracts. Rosalind has subsequently acted for several other clients in relation to rectification issues, and delivered lectures on the topic.

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### Re Flybe Limited

Appointed legal advisor to the CAA Panel issuing decision about Flybe's operating licence, culminating in the written decision in April 2020. Currently under appeal to the Secretary of State for Transport.

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### Alpstream AG v PK Airfinance & GE Capital Aviation Services (2011-2016)

Acting (with Stephen Moriarty QC) in the trial and appeal of a major Commercial Court action brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of 7 Airbus A380 aircraft. 2 month Commercial Court trial: [2013] EWHC 2370 (Comm). Appeal to the Court of Appeal: [2015] EWCA Civ 1318.

## Expertise

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### Aviation & Travel

Recommended by *Chambers & Partners*, *The Legal 500* and *Legal Experts* as an aviation and travel specialist, Rosalind has advised on and acted in a wide variety of aviation matters including issues arising from the COVID-19 crisis, the collapse of Flybe in 2020, Thomas Cook Airlines in 2019 and Monarch Airlines in October 2017 as well as disputes caused by the April 2010 volcanic ash cloud. Other experience includes aircraft leasing disputes, Warsaw/Montreal Convention issues, other property and contractual disputes, air accidents and discrimination claims against airlines. Clients include airlines, airports and aviation finance parties as well as the Civil Aviation Authority.

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### Notable Aviation & Travel cases

Advising a sovereign state as to aviation implications of travel restrictions arising from COVID-19.

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### Re Flybe Limited

Appointed legal advisor to the CAA Panel issuing decision about Flybe's operating licence, culminating in the written decision in April 2020. Currently under appeal to the Secretary of State for Transport.

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### **Re Thomas Cook Airlines**

External legal adviser to the CAA in relation to issues concerning Monarch's ATOLs and route/operating licences which culminated in the licensing decision.

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### **Aersale Aviation Ltd v Wahab**

Acting for Claimant lessee in claims for around US\$40 million relating to two Boeing 737-300 aircraft leased to Air Indus in Pakistan. Summary judgment hearing listed in 2020.

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### **Re Volare Aviation (2019)**

Acting as external legal adviser to the CAA Panel deciding a contested case about the use of aircraft parts and their impact on the airworthiness of passenger aircraft.

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### **National Air Services Company v Hi-Fly Transportes Aereos SA (2016-2018)**

Substantial wet leasing dispute concerning three Airbus A330 aircraft (settled shortly before trial in 2018).

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### **Monarch Airlines (2017)**

Acting as external legal adviser to the CAA in relation to issues concerning Monarch's ATOLs and route/operating licences.

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### **Alpstream AG v PK Airfinance & GE Capital Aviation Services (2011-2016)**

Acting (with Stephen Moriarty QC) in the trial and appeal of a major Commercial Court action brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of 7 Airbus A380 aircraft. 2 month Commercial Court trial: [2013] EWHC 2370 (Comm). Appeal to the Court of Appeal: [2015] EWCA Civ 1318.

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### **Haughey Air v AgustaWestland [2014] EWHC 2746 (Comm)**

Claim in relation to alleged contract to repurchase a faulty helicopter.

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### **Belfast International Airport v Aer Lingus (2013-2014)**

Breach of contract claim brought in Northern Ireland arising from the airline's withdrawal from BIA, and relocation to Belfast City Airport.

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### DAE Leasing v Kingfisher Airlines [2013] EWHC 3926 (Comm)

Substantial summary judgment application made by airline leasing company against bankrupt airline for unpaid rental.

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### Eagle Aircraft Leasing v Société Air France (2009-2010)

For the Claimants in a heavy Commercial Court action involving the sale and purchase of Boeing 747-400 aircraft. Raised complex issues as to the physical condition of the aircraft and also the construction of the detailed sale and purchase agreements. Also involved issues as to compliance with aviation regulatory requirements (EASA and DGAC).

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## Banking & Finance

Recommended as a leading QC by Chambers & Partners and the Legal 500, Rosalind has advised on various issues arising from the planned discontinuance of LIBOR by the end of 2021 including the expected impact on long term LIBOR-referenced contracts such as the ISDA Master Agreement and LMA standard form documentation. She has also advised and appeared for both high street and investment banks in disputes of varying sizes and types including those involving derivative mis-selling/FSMA claims, alleged LIBOR manipulation, private equity structured finance, mortgages, guarantees, letters of credit, fraud/tracing claims and also litigation arising out of the global financial crisis.

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### Notable Banking & Finance cases

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#### Allianz Global Investors GmbH v Barclays Bank Plc & Others, O'Higgins FX Class Representative Ltd v Barclays Bank Plc & Others, Phillip Evans v Barclays Bank Plc & Others

For Barclays (with Mark Hoskins QC) in a trio of high-value claims in the Commercial Court and CAT concerning alleged manipulation of FX rates and breaches of competition law.

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#### FSHC Group Holdings v GLAS [2020] 2 WLR 429

For the Claimant (part of the Terra Firma group), with David Wolfson QC in the trial of a claim for rectification in relation to structured finance documentation, and the appeal from that decision. Now the leading recent case on rectification of commercial contracts. Rosalind has subsequently acted for several other clients in relation to rectification issues, and delivered lectures on the topic.

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#### Federal Republic of Nigeria v JP Morgan Chase [2019] EWCA 1641

For JP Morgan Chase in a claim for US\$875 million for breach of contract in relation to the operation of a depository account for the Nigerian Government. Claim arises out of an alleged fraud concerning the grant of an oil exploration licence in 1998. Court of Appeal decision is now a leading authority on bankers' duties.

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**Ventra Investments Ltd v Bank of Scotland plc [2019] EWHC 2058 (Comm); [2017] EWHC 199 (Comm)**

Acting for Bank of Scotland in high-value commercial claim in relation to the alleged misselling of derivative products including interest rate hedges, and also allegations about the fixing of LIBOR.

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**Kilimanjaro AM Limited v Mortgages Plc (2019)**

Acting for a subsidiary of Bank of America Merrill Lynch in claim arising from a complex mortgage securitisation structure.

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**Marz Ltd v Bank of Scotland Plc [2017] EWHC 3618 (Ch)**

Acting for Bank of Scotland in the trial of a claim for misselling of interest rate hedging products. First derivatives misselling claim to come to trial for Lloyds Banking Group.

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**Aldersgate Investments v Bank of Scotland plc (2016-2018)**

Acting for Lloyds Bank in four claims brought by companies associated with the Reuben brothers in relation to interest rate hedging and alleged manipulation of LIBOR. Commercial Court trial listed in November 2018.

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**Monks v National Westminster Bank plc [2016] EWHC 492**

Acting for the Defendant in a substantial claim for damages arising from reports to credit reference agencies.

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**Alpstream AG v PK Airfinance & GE Capital Aviation Services (2011-2016)**

Acting (with Stephen Moriarty QC) in the trial and appeal of a major Commercial Court action brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of 7 Airbus A380 aircraft. 2 month Commercial Court trial: [2013] EWHC 2370 (Comm). Appeal to the Court of Appeal: [2015] EWCA Civ 1318.

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**Felixstowe Dock & Railway Co v Barclays Bank (2013-2014)**

Multi-million pound claim for recovery of monies paid out of the Claimants' bank accounts as a result of a mandate fraud. Claim against the bank for breach of contract, breach of duty of care and in restitution.

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**Rawlinson & Hunter Trustees v Kaupthing Bank Hf (2010-2011)**

Acting for Claimant (with Michael Brindle QC) in complex multi-jurisdictional dispute between the family trust of Vincent Tchenguiz and Kaupthing, the failed Icelandic Bank. Commercial Court claim for over £800 million arising from the provision of security for various loans as well as proceedings in Iceland. Involved questions of cross-border insolvency law in relation to credit institutions, banking regulation, illegality/ultra vires under Icelandic and English Law, wrongful interference in business and misrepresentation.

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## Civil Fraud

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Recommended by *Chambers & Partners* as a leading silk, Rosalind has wide experience of applications for freezing injunctions, Norwich Pharmacal orders and related matters. She has also been heavily involved in litigation arising from alleged LIBOR rate manipulation.

### Notable Civil Fraud cases

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#### Federal Republic of Nigeria v JP Morgan Chase [2019] EWCA 1641

Acting for JP Morgan Chase in a claim for US\$875 million for breach of contract in relation to the operation of a depository account for the Nigerian Government. Claim arises out of an alleged fraud concerning the grant of an oil exploration licence in 1998. Court of Appeal decision is now a leading authority on bankers' duties.

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#### Doosan Power Systems v Uniper France Power [2017] EWHC 3410

Acting for the respondent in setting aside a without notice order obtain in relation to an on-demand bond. Appearing in substantial application to set aside the order, including on the grounds of material non-disclosure.

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#### Orb ARL v Quest

Contested application for Norwich Pharmacal relief in December 2014.

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#### Bitel Litigation

Acting in the Isle of Man in complex, high-value multi-party proceedings concerning the ownership of a mobile phone operator in Kyrgyzstan which followed contested jurisdiction application (*AK Investment CJSC v Kyrgyz Mobil Tel Limited* [2011] UKPC 7). Settled during trial in 2013.

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#### Tajik Aluminium Plant v Ermatov & Others (2005-2008)

Acting for the principal Defendants in very heavy commercial litigation involving multiple parties and allegations of fraud arising out of contracts to supply raw materials in the former Soviet Union. Appearing (led by Brian Doctor QC) in the trial of the action in the Commercial Court in October 2008 (trial settled after the first month). Also appeared in various heavy interlocutory applications including a contested application to overturn a freezing injunction ([2005] All ER (D) 250), a substantial jurisdiction application ([2006] All ER (D) 448) and an application for indemnity costs ([2006] All ER (D) 15).

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#### Ashton Investments v OJSC Russian Aluminium (Rusal) [2007] 1 All ER (Comm) 857 [2007] 1 Lloyd's Rep 311

Jurisdiction application concerning computer 'hacking'.

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## Barclays Bank v Patel & Others (2006-2008)

Commercial Court claim against 15 Defendants in relation to alleged mortgage/valuation fraud. Involved heavy applications for Norwich Pharmacal orders, multi-million pound freezing injunctions and applications to serve out of the jurisdiction.

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## Commercial Disputes

Rosalind is a leading commercial dispute resolution silk. She regularly appears in the Commercial Court, Chancery Division and Court of Appeal in substantial disputes. She has acted in a wide variety of commercial contract disputes and other commercial matters, including fraud claims, as well as jurisdiction, injunction and summary judgment applications.

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## Notable Commercial Disputes cases

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### Allianz Global Investors GmbH v Barclays Bank Plc & Others, O'Higgins FX Class Representative Ltd v Barclays Bank Plc & Others, Phillip Evans v Barclays Bank Plc & Others

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### Re Sargent-Disc Ltd: Entertainment Partners LLC v Sargent & Others [2019] EWHC 3718

For a respondent purchaser of the subject company in an interim injunction application in support of an unfair prejudice petition under s 994 of the Companies Act 2006.

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### Kilimanjaro AM Limited v Mortgages Plc (2019)

Obtained without notice injunction in Commercial Court and acting in ongoing claim arising from a complex

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mortgage securitisation structure.

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**Ventra Investments Ltd v Bank of Scotland Plc [2019] EWHC 2058 (Comm); [2017] EWHC 199 (Comm)**

Substantial Commercial Court proceedings concerning misselling of financial products, allegations of LIBOR manipulation during the global financial crisis, and breach of duty by administrative receivers.

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**Marz Ltd v Bank of Scotland Plc [2017] EWHC 3618 (Ch)**

For Bank of Scotland in Chancery Division trial of a claim for mis-selling of interest rate hedging products.

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**Doosan Power Systems v Uniper France Power [2017] EWHC 3410**

Contested application to set aside without notice order restraining payment of an on-demand bond. Grounds for setting aside included material non-disclosure and section 2 of the Arbitration Act 1996.

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**Aldersgate Investments v Bank of Scotland Plc (2016-2018)**

For BOS in four claims brought by companies associated with the Reuben brothers in relation to interest rate hedging and alleged manipulation of LIBOR.

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**Cephalon Inc & Teva Pharmaceuticals v CP Pharmaceuticals Limited (2015-2017)**

Acting for the Claimant pharmaceutical corporations in Commercial Court claim for £58 million arising from alleged economic duress and conspiracy in relation to a pharmaceutical manufacturing and supply contract for a leukaemia drug. Appeared in 6-week trial in 2017 (settled before judgment).

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**Monks v National Westminster Bank Plc [2016] EWHC 492**

Abuse of process application in relation to substantial claim for damages against bank arising from reports to credit reference agencies.

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**Alpstream AG v PK Airfinance & GE Capital Aviation Services (2011-2016)**

Acting (with Stephen Moriarty QC) in the trial and appeal of a major Commercial Court action brought following the collapse of the Blue Wings airline in Germany and arising out of the financing of 7 Airbus A380 aircraft. 2 month Commercial Court trial: [2013] EWHC 2370 (Comm). Appeal to the Court of Appeal: [2015] EWCA Civ 1318.

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**Rawlinson & Hunter & Vincent Tchenguiz v Serious Fraud Office (2012-2014)**

For Vincent Tchenguiz in the claim brought against the SFO arising from the failed fraud investigation by the SFO



into the business activities of the Tchenguiz brothers. Appeared at various heavy interlocutory hearings throughout 2013 and 2014, including an application for third party disclosure ([2013] EWHC 2297, appealed to Court of Appeal [2014] 4 All ER 627), an application regarding inadvertent disclosure of documents subject to privilege and PII (also appealed to the Court of Appeal; [2014] EWCA Civ 1129), and further applications regarding disclosure ([2014] 1 WLR 1476) and issue estoppel ([2013] Lloyd's Rep FC 535). Case settled shortly before trial in October 2014.

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### Trimast Holding SARL v Fried Frank (2014-2016)

For defendants in substantial Commercial Court claim arising from a failed loan and restructuring of a French telecommunications business. Professional negligence claim with issues of French insolvency law. One of The Lawyer's top 20 cases for 2016, settled shortly before trial.

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### Haughey Air Ltd v AgustaWestland SPA [2014] EWHC 2746 (Comm)

Contested jurisdiction application in Commercial Court arising from contract of sale of a helicopter.

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### Orb ARL v Quest

Contested Norwich Pharmacal application in December 2014.

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### Bitel Litigation

Acting in the Isle of Man in complex, high-value multi-party proceedings concerning the ownership of a mobile phone operator in Kyrgyzstan which followed contested jurisdiction application (*AK Investment CJSC v Kyrgyz Mobil Tel Limited* [2011] UKPC 7). Settled during trial in 2013.

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## Competition

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Notable Competition cases

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Acting for Barclays (with Mark Hoskins QC) in a trio of high-value claims in the Commercial Court and CAT concerning alleged manipulation of FX rates and breaches of competition law.

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## Financial Services

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Notable Financial Services cases

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## FSHC Group Holdings v GLAS [2020] 2 WLR 429

Acting for the Claimant (part of the Terra Firma group), with David Wolfson QC in the trial of a claim for rectification in relation to structured finance documentation, and the appeal from that decision.

## Ventra Investments Ltd v Bank of Scotland plc [2019] EWHC 2058 (Comm); [2017] EWHC 199 (Comm)

Acting for Bank of Scotland in high-value commercial claim in relation to the alleged misselling of derivative products including interest rate hedges, and also allegations about the fixing of LIBOR.

## Marz Ltd v Bank of Scotland plc [2017] EWHC 3618 (Ch)

Acting for Bank of Scotland in the trial of a claim for misselling of interest rate hedging products. First derivatives misselling claim to come to trial for Lloyds Banking Group.

## International Arbitration

Rosalind is currently sitting as an arbitrator in LCIA arbitrations and accepts arbitration appointments and has experience of ICC and LCIA arbitrations as counsel. She also has experience of conducting *ad hoc* arbitrations, including paper-only determinations.

## Privilege, Confidentiality & Conflicts of Interest

Rosalind is a co-author of *Thanki on Privilege*.

### Notable Privilege, Confidentiality & Conflicts of Interest cases

#### Rawlinson & Hunter and Vincent Tchenguiz v Serious Fraud Office (2012-2014)

Acting for Vincent Tchenguiz in the claim brought against the SFO arising from the failed fraud investigation by the SFO into the business activities of the Tchenguiz brothers. Experience includes application for third party disclosure ([2013] EWHC 2297, appealed to Court of Appeal [2014] 4 All ER 627), an application regarding inadvertent disclosure of documents subject to privilege and PII (also appealed to the Court of Appeal; [2014] EWCA Civ 1129), and further application regarding disclosure ([2014] 1 WLR 1476).

## Professional Negligence

Rosalind's experience includes actions involving accountants, solicitors, stockbrokers, architects, conveyancers, insurance brokers, surveyors and mortgage valuers.

### Notable Professional Negligence cases

### Trimast Holding SARL v Fried Frank (2014-2016)

Acting for defendants in substantial Commercial Court claim for professional negligence against US law firm arising from a failed loan and restructuring of a telecommunications business, including issues as to French insolvency and professional liability law. One of The Lawyer's top 20 cases for 2016, settled shortly before trial.

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### Law Society v Sephton & Co [2006] 2 AC 543 (HL)

Acting for the Law Society (led by Timothy Dutton QC) in the Chancery Division trial of a preliminary issue in a professional negligence claim against a firm of accountants (when the cause of action in negligence accrues) and in the subsequent appeals to the Court of Appeal and House of Lords.

## Directory Quotes

*"She has a mastery of the detail, strategic vision, tactical nous and the most fantastic client handling skills. She is an utter, utter pleasure to work with."*

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The Legal 500

*"She is fantastic, has a steely determination in court and is incredibly easy to deal with - she has about 82 brains."*

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Chambers & Partners

*"Always gives extremely sensible and practical advice, and is outstanding both in terms of her paperwork and in court."*

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Chambers & Partners

*"She's firm, strategic and technically extraordinary. She's incredibly bright, very commercially minded and really understands her clients."*

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Chambers & Partners

*"Really willing to roll her sleeves up and understands how to get to the client's destination."*

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Chambers & Partners

*"Very commercial, excellent on strategy and someone who always sees the bigger picture, which is what clients want. Extremely impressive on her feet, she makes her points succinctly and forcefully, which means judges really listen to her."*

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Chambers & Partners

*"She has a really good knack of being able present cases in a way that means judges follow her way of thinking."*

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The Legal 500

*"A brilliant lawyer who drills down into the detail with ease but also can see the wood for the trees."*

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The Legal 500

*"Ros is a brilliant lawyer. She makes sure we have got our answers ready on the really hard questions. She is a pleasure to work with. She has great judgement and an attention to detail which some silks move away from as they get more lofty."*

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The Legal 500

## Directory Rankings

### Chambers & Partners – Global

- Dispute Resolution: Commercial – UK

### Chambers & Partners – UK

- Aviation
- Banking & Finance
- Commercial Dispute Resolution
- Fraud: Civil
- Travel: Regulatory & Commercial

### The Legal 500 – UK

- Aviation

- Banking & Finance (including Consumer Credit)
- Commercial Litigation
- Travel Law (including Jurisdiction issues)

## Education

- BCL (Distinction), Pembroke College, Oxford (1997)
- BA Law & French Law (First Class), Pembroke College, Oxford (1996)
- Diploma in French Law, University of Paris II (1995)

## Publications

- Joint Author of *The Law of Privilege* (OUP 3rd ed 2018)

## Languages

- French (Fluent)

## Awards

