

JAMES WIBBERLEY

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James Wibberley is a sought-after commercial litigation specialist who represents individuals and corporations in a wide range of disputes before the High Court, County Court and Court of Appeal.

He has a particular interest in cases that throw up novel or complex points of law and regularly deals with cases that straddle the divisions between his main practice areas.

James is praised by clients and commentators for his approachability, and his commitment to working collaboratively as part of a wider legal team. James usually appears as sole counsel but is increasingly instructed to lead junior counsel teams.

James has twice appeared in the Supreme Court in **Swynson Limited v Lowick Rose LLP [2017] UKSC 21 – Professional Negligence**: assessment of damages and **Gavin Edmondson Solicitors Limited v Haven Insurance Co Limited [2018] UKSC 21 – Litigation Funding**: solicitor’s equitable lien.

He is recommended in Chambers & Partners and the Legal 500 in the fields of **Commercial Dispute Resolution**, **Professional Negligence**, and **Costs Litigation**.

Expertise

Commercial Dispute Resolution

James specialises in corporate and commercial litigation, including company/shareholder disputes, partnership disputes, claims against directors, fraud/conspiracy claims, business purchase disputes (including claims for misrepresentation and breach of warranty) and breach of contract claims. James also has a keen interest in cases involving restraint of trade, breach of confidence and breaches of fidelity or fiduciary duty and is regularly involved in claims against business vendors and departing employees for breaches of restrictive covenants. He also has experience of dealing with more esoteric commercial work such as intellectual property disputes (including passing off and trademark infringement) and defamation claims brought by commercial organisations.

Most of James' work is within the High Court and James has experience of acting as sole counsel in cases worth up to £20 million. Recent work (in each case as sole/lead counsel) includes:

- Acting for the Petitioner in an unfair prejudice claim concerning the management of a third largest logistics supplier to Amazon in the UK.
- Acting for the owner of a nightclub business in a £3 million fraud claim against a former director.
- Acting for a firm of finance brokers in a £2 million claim for commission due for arranging the financing of a major mining project in Brazil.
- Acting for a Chinese property investor in a multi-million-pound fraud claim against the co-owner of a construction company specialising in the construction of social housing. The case contains allegations of both of the misappropriation of funds, and of the diversion of business opportunities to companies owned by associates of the alleged wrongdoer.
- Defending a major high street chain in a multi-million-pound claim for the breach of the terms of the sales agency agreement. The case turned on the question of whether performance of the agreement had been rendered impossible by the Coronavirus Regulations.
- Advising a major legal expenses insurer on recovery actions (worth multiple millions) following the collapse of Pure Legal Limited.
- Both pursuing and defending IFAs in various restraint of trade proceedings following the sale of their businesses to a national networks.

In addition to his High Court work, James is increasingly instructed to represent clients ICC Arbitrations. Recent examples include representing a Belgian-based construction group in a dispute concerning the purchase of a UK piling company and representing a Mexico-based cryptocurrency company in a \$3.5 million claim against its payment services provider.

Featured Commercial Dispute Resolution cases

Tosi Ltd v 99 Hippos Limited [2023] EWHC 852 (Ch)

Unfair prejudice claim concerning a group of recruitment consultancies.

Camberley Group Plc v Foster [2022] EWHC 2643 (KB)

Breach of warranty, inducement to breach of contract and conspiracy claims brought against the former managing director of an international manufacturing business.

URE Energy Limited v Notting Hill Genesis [2022] EWHC 1809 (Comm)

Partially successful summary judgment application in claim for £3 million termination payment following the repudiation of an electricity supply agreement (led by Hugh Sims KC).

Veasey v McDougall [2022] EWHC 864 (Ch)

Application to enforce disclosure obligations under CPR PD 51U in unfair prejudice proceedings brought in respect of Peak Wildlife Park in Staffordshire.

Dowman Imports Limited v 2 Toobz Limited [2020] EWHC 291 (Comm)

Claims for breach of contract and in unjust enrichment for failure to honour the terms of an anticipated exclusive manufacturing agreement for a range of children's toys.

Business Protection & Injunctions

James' Business Protection work falls into four main categories.

As part of his wider commercial practice, James is regularly instructed to bring and defend claims against business vendors for breaches of restrictive covenants entered as part of sale (both asset and share sale agreements). Much of this work stems from the sale of financial services business, but James also has experience of acting in claims relating to solicitors' practices, and networks of estate/lettings agents and health and beauty providers. He also has experience of bringing and defending claims to enforce restrictive covenants in franchise agreements.

James also acts for parties in more 'traditional' restrictive covenant disputes, such as claims to restrain departing employees (and, increasingly, employee shareholders) from joining actual or potential competitor employers. Recent cases have included acting for two high-value employees within the power distribution industry said to have been key to the delivery of a contract worth £50 million per annum and advising an executive in the commercial hygiene industry.

In addition, James has a keen interest in cases involving allegations of breach of confidence, breaches of fidelity or fiduciary duty, and fraud/conspiracy. James has recent experience of defending a former director accused of misappropriating confidential product information to establish a competing business and representing a business owner accused of misappropriating funds and diverting business opportunities. He is currently acting for a Chinese property investor in a multi-million-pound fraud/breach of duty claim involving the diversion of business opportunities in the construction sector.

Finally, James is often instructed to advise upon and obtain freezing orders in advance of or to support the above types of claim.

Featured Business Protection & Injunctions cases

Acting for the purchaser of a multi-million pound waste management business in a claim for misrepresentation against its former owners.

Representing a soft toy company facing a \$4million claim for an alleged breach of an exclusive manufacturing agreement.

Representing a financial advisor in restraint of trade proceedings following the sale of this IFA business to a national network.

Representing a national HR consultancy in the enforcement of post-termination restrictions against a former franchisee.

Acting for an IFA being sued for breaching his restrictive covenants following the sale of his business to a national network and advising a major firm of solicitors on the recruitment of a partner of a competitor firm.

James has experience of Business Protection disputes in a wide range of industries not just financial services and the law, but also advertising, human resources, sales and even hairdressing.

Within the Employment Tribunal, James primarily deals with unfair dismissal and disability discrimination disputes as well as a growing number of harassment and victimisation claims.

Professional Negligence

James has a growing Professional Negligence practice and is regularly instructed (on both the Claimant and Defendant side) to deal with claims involving:

- Solicitors & Barristers
- Financial Advisors
- Insurance Brokers
- Surveyors
- Construction Professionals

Much of James' Professional Negligence work dovetails with his other areas of practice. He is regularly involved in claims against solicitors where the allegations of negligence relate to advice concerning costs or litigation funding, or where professional negligence claims are advanced in response to claims for unpaid fees. Much of his construction practice involves claims of negligence against those designing or supervising construction projects.

As an offshoot of his Professional Negligence work, James is instructed to advise on issues a range of insurance issues such as coverage, the ability to avoid cover due to non-disclosure, and proceedings against the insurers for insolvent or dissolved defendants.

James' recent cases include:

- Advising a legal expenses insurer in multi-million-pound claims against solicitors and third-party underwriters following the collapse of Pure Legal and the various litigation funding schemes operated by them.
- Advising and representing a successful claimant in professional negligence proceedings against her former solicitors following the collapse of a private prosecution.
- Advising a property developer in a claim against its former solicitors following the collapse of the sale of a multi-million pounds property in the West End.
- Advising another property developer in a claim against its former solicitors for the failure to secure development rights worth potentially £3 million.
- Defending an architect from a claim relating to the alleged negligent design of a bespoke coastal, and partially subterranean, property.
- Numerous successful claims for a range of mortgage lenders in respect of the over valuation of commercial property, buy-to-let portfolios, and niche/high-value properties.
- Numerous successful claims for residential purchasers following negligent pre-purchase surveys.

Costs & Litigation Funding

James specialises in solicitor and own client assessment proceedings, as well as bringing and defending claims for unpaid legal fees. He is familiar with claims to enforce Contentious Business Agreements, claims asserting an equitable lien or statutory charge over the fruits of litigation, and coverage disputes relating to BTE and ATE insurance policies. Most of the cases James is involved in are worth hundreds of thousands of pounds, turn on novel or complex questions of law and/or involve allegations of negligence or misfeasance by the solicitors.

James is regularly instructed to both bring and defend applications for both non-party and wasted costs.

Alongside his contentious work, James is regularly instructed to advise on non-contentious matters such as the drafting of retainers (both for solicitors for use with lay clients, and for legal expenses insurers for use with panel solicitors) and drafting and reviewing business sale or transfer agreements. He also advises on credit agreements between solicitors and clients, including providing advice on the regulatory framework. James has helped a number of South-West firms undergoing mergers or restructuring, and is prized for the commercial nature of his advice.

Recent examples of the work undertaken by James include:

On the contentious side:

- Representing several firms of solicitors involved in the infamous *Xanthopoulos v Rakshina* divorce proceedings on recovering their costs and/or defending assessment proceedings brought by the unsuccessful husband.
- Representing a major hotel chain in a claim for the assessment of costs exceeding £1 million following an unsuccessful arbitration. One of the key issues in the case is whether interim invoices delivered pursuant to a discounted CFA amount to interim statute bills.
- Representing a major care home group in ongoing assessment proceedings following the settlement of a claim involving the death of a resident (see *Cooke v Woodchurch* [2023 EWHC 3318 (SCCO)). The Court accepted James' argument that where legal aid is only granted for the purposes of an inquest, the disapplication of the indemnity principle does not apply, so the successful claimant can only recover from the defendant at legal aid rates. It is the only authority on this point.
- Representing the claimant solicitors in proceedings before the Court of Appeal (CA-2023-001684) which will determine whether a personal injury claimant who relies upon a cause of action in the misuse of private information can recover a 100% success fee .
- Defending a claim to enforce a contentious business agreement following the loss of proceedings due to the claimant's inability to provide security for costs.

On the non-contentious side:

- Drafting a collective conditional fee agreement for a major legal expenses insurer.
- Drafting client correspondence and accompanying CFA assignments agreements for use by two firms of solicitors undergoing a merger (one of several occasions when James has performed the same task).
- Drafting new retainer (including CFA) documentation to take account of: (i) the new fixed costs regime and (ii) the informed consent requirements set out by the Court of Appeal in *Belsner v Cam Legal Services Ltd*.
- Advising a major South West firm on the funding of unpaid client fees.
- Advising several different firms on the impact of the extended fixed costs regime.

Technology & Construction

James deals with a wide range of construction disputes arising from both residential and commercial developments, across both the public and private sector. These disputes include claims for payment, delay and disruption, allegations defective workmanship and professional negligence as well as more niche matters such as the enforcement of adjudication awards and representing clients at arbitration hearings.

James is increasingly involved in cases involving complicated agricultural construction projects (such as milking parlours and chicken sheds) and public sector projects involving schools and other public buildings. These cases cross the boundary between technology and construction and include issues concerning the functioning of complicated machinery, such as the installation and functioning of electrical and heating systems, and the installation and performance of solar panel arrays.

Alongside his more traditional construction practice, James' wider professional negligence practice regularly involves claims against Architects, Quantity Surveyors and Project Managers. He also has experience of dealing with claims against solicitors involved in the purchase and sale of development land (eg. failure to

advise on restrictions on development and/or listed building status).

James also has experience of dealing with disputes under the Party Wall Act 1996 and claims in nuisance and/or negligence for damage caused to neighbouring properties. As well as acting for private clients, corporations and local authorities, James also handles cases for and against public liability insurers

Recent cases include:

- Acting for the successful claimant in a £650,000 dispute concerning the installation of defective cladding on a newly constructed school.
- Defending one of the UK's leading agricultural contractors in a £500,000 claim for the supply and installation of (allegedly) defective concrete walls.
- Acting for the successful claimants in claims against their structural engineers and builders following the collapse of their home during a (substantial) extension project.
- Representing a not-for-profit organisation in a five-handed mediation concerning the installation of a new underfloor heating system in a church building.
- Advising a hotel chain on claims stemming from the (historic) installation of flammable internal decorations (as a result of which all hotels within the group had to be closed for remedial works, with one never reopening).
- Representing a farmer in multimillion pound claim against one of the UK and Ireland's largest suppliers of milking parlours.
- Several medium value (i.e. £100,000 to £250,000) claims involving the allegedly defective installation of flooring and roofing systems in large commercial buildings.

Banking & Finance

James has a broad Banking & Finance practice advising and representing lenders, insurers, advisors, payment intermediaries and consumers alike.

The majority of James' banking work falls into two categories: (i) claims involving (allegedly) negligent advice or the mis-selling of financial products (both prof-neg and FISMA claims); and (ii) the enforcement of loan agreements, guarantees, mortgages and other securities.

James has a particular interest in cases involving allegations of misrepresentation, fraud or undue influence, or where there is a dispute about the authority of an intermediary under section 39 of the FISMA and/or the common law principles of agency.

James also undertakes non-contentious work such as advising on whether financial arrangements constitute collective investment schemes.

James' recent experience includes representing an international lender in a 260+ claimant group action for the mis-sale of high-cost-short-term credit loans, acting for a niche lender seeking to enforce personal guarantees worth over £1.5 million, and advising a For-ex trader being sued for over-gearing investments.

He also has experience of more esoteric issues affecting banks and financial institutions such as claims under the Data Protection Act and GDPR.

Education

- LLB (First Class), Nottingham Law School
- History (Modern) (First Class), Keble College Oxford