

James Barnard

Call: 1993
 Education: BA (Bristol)
 Languages: Fluent Italian, good French, basic German
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James was formerly a banker with a leading Japanese investment bank having overall responsibility for Italy. He practises in commercial and chancery litigation, including banking and guarantees, contract, professional negligence, fraud & asset tracing, consumer credit, personal insolvency and insurance law. James has a wide experience of commercial disputes, both of an advocacy and advisory nature. He has excellent knowledge of procedural matters, including extensive experience of freezing injunctions, strike out/summary judgment applications and specific disclosure applications and thanks to his linguistic abilities he has increasingly acted in European cross-border disputes.

His expertise includes:

- regular appearances at interim hearings including applications for interim remedies (such as freezing injunctions, search orders and security for costs), strike out/summary judgment applications, and disclosure applications
- claims involving the enforcement of guarantees and other security
- cases involving allegations of deceit, dishonest assistance, breach of fiduciary duty and conspiracy to defraud
- advising and acting for banks and other lenders in professional negligence claims against solicitors, including where allegations of fraud are involved
- professional negligence claims involving surveyors and valuers retained to provide property valuations for secured lending purposes
- cases related to speculation in derivative products, such as futures, options and contracts for differences, requiring extensive knowledge of financial markets and the way they operate.

James has been recommended in Legal 500 as a leading junior barrister for banking and finance for a number of years.

Banking & Finance

James is regularly instructed on behalf of major UK clearing banks and other major finance houses throughout the world. Typical disputes relate to enforcement of different types of personal and corporate loan agreements, enforceability of guarantees, charges, validity of mandates and other banking related matters.

James also carries out work relating to the regulation and provision of financial services (including the Financial Services and Markets Act 2000).

Recent case of interest:

- **CM2 Services Ltd (in liquidation) - Chancery Division** in which James was instructed by the Claimant, a company in liquidation, in a £3.5 million claim against a major clearing bank for negligence and/or conversion of numerous cheques drawn by would-be investors for the purposes of investing in a scheme by the Claimant. The Defendant denied liability on the basis that the Claimant was a participant in what appeared to be a dishonest investment scheme operated by the sole director of the Claimant for the purpose of defrauding the investors. The Defendant argued that the Claimant was not the true owner of the cheques and could not have acquired good title to the cheques by reason of its own unlawful conduct. The claim settled.

Commercial

James has a wide experience of commercial disputes (both of an advocacy and an advisory nature) which represent the core of his practice. Areas of law regularly handled by him include:

- banking, guarantees and securities
- consumer credit
- contract
- deceit, dishonest assistance, conspiracy to defraud and breach of fiduciary duty
- factoring and invoice discounting
- insurance
- sale of goods
- warranty claims

Recent case of interest:

- **Mainline Private Hire Ltd v Nolan [2011] EWCA Civ 189** in which James successfully argued in the Court of Appeal that it was not universally the case that a bailee who received chattels for storage for reward was in possession of those chattels. The Court of Appeal accepted that, as a matter of law, possession involved two elements: factual possession and intention to possess, which depended on the circumstances of each case.
- **R v D and others - Queen's Bench Division** in which the Claimant claimed that he had been the victim of a "Ponzi" scheme, a dishonest investment operation promoted by a fraudster to provide abnormally high returns. The fraudster had disappeared and James was instructed by the Fourth Defendant, the bank which operated the bank account into which duped investors paid their monies. The claim against the bank included allegations of dishonest assistance and failures to comply with money laundering legislation. The Claimant's claims were heard in private.

Insolvency

James has a wide experience in personal insolvency and in company liquidations both as an advocate and in the provision of advice including:
statutory demands, winding-up petitions and bankruptcy petitions
matters arising during the course of a winding-up including examinations, preference, transactions at an undervalue, restrictions on the re-use of company names and the like

Recent case of interest:

- **Monarch Properties (UK) Ltd (in liquidation) v Hampshire Trust plc** in which James acted for the Defendant bank, whose then solicitors had negligently failed to register a charge at Companies House within the appropriate time limits. After the Bank had sold the property as mortgagee and received the proceeds of sale, the liquidator sought to allege that the charge was void pursuant to Insolvency Act 1986 Section 127. The case revolved around the interesting questions of whether the liquidator was estopped from advancing a restitutionary claim for the sale monies because he had acquiesced to the sale and whether estoppel could be relied upon as a defence to a statutory provision designed to protect the public interest.

Professional Negligence

James deals in a wide range of professional negligence claims and has particular experience in relation to lawyers, surveyors and valuers. He has acted in many cases, representing both the claimant and the professional.

Recent case of interest:

- **Allied Surveyors v Newcastle Home Loans Ltd and others - Chancery Division** in which James acted for a surveyor and valuer in a multi-million pound claim against property developers, surveyors, solicitors and mortgage packagers who, it was alleged, formed part of a network engaged in a large and systematic fraud on mortgage lenders for buy-to-let properties in the North Of England. The claim included allegations of fraud, deceit, bribery, breach of fiduciary duty, dishonest assistance and professional negligence.