

## James Barnard

Call: 1993  
 Education: BA (Bristol)  
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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, fraud & asset tracing, consumer credit, personal insolvency and insurance law. His linguistic abilities have led to his increasing involvement in European cross-border disputes. 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. James is recommended in Legal 500 2008 as a leading barrister for banking.

### 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).

### 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
- ◆ Insurance
- ◆ Partnership disputes
- ◆ Sale of Goods
- ◆ Warranty Claims

### 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.

### Professional Negligence

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

### Continuing cases for James include:

James is instructed by a Defendant in a dispute in which the Claimant is claiming that it has been defrauded of in excess of US\$23 million and has sought to restrain the presentation and payment under various letters of credit which were allegedly fraudulently obtained.

James is instructed by a Defendant bank which was the sub-mortgagee of a property which is it is alleged by the Claimant was sold at an undervalue by the mortgagee-in-possession, allegedly acting as agent for the sub-mortgagee. James is in the process of making an application to strike out the claim and for summary judgment against the Claimant.

James is instructed by the Defendant in which the Claimant, who was a co-guarantor of a dissolved company's liabilities to a bank, is seeking a contribution from the Defendant in respect of the indebtedness arising under the guarantee. The Defendant is defending the claim on equitable grounds on the basis that, after the Defendant resigned as a director of the company, the Claimant managed the affairs of the company to siphon off its assets and to serve his own personal and financial gains, against the interests of the company and the Defendant.

James is instructed by a Claimant bank in a professional negligence action against surveyors and valuers who were retained to provide valuation of a property portfolio for secured lending purposes.

James is regularly instructed by a large city broker in numerous cases against clients who speculate in derivate products, such as futures, options and contracts for differences. The claims require an extensive knowledge of financial markets and the way they operate.

## **Previous cases of interest:**

### ***BSS v A***

James was instructed by a Defendant who had previously been convicted (and imprisoned) in criminal proceedings for carrying out a substantial and complex fraud against her former employers. Before James came to be instructed, the Defendant was facing personal bankruptcy because her previous solicitors had consented to judgment for a substantial sum being entered against her in civil proceedings commenced by her employers. Notwithstanding her criminal conviction, after James was instructed, he succeeded in getting the judgment against her in the civil proceedings set aside. He then made a well-judged application for specific disclosure and it transpired that the documents obtained were prejudicial to the Claimant. This resulted in the Defendant's criminal conviction being quashed by the Criminal Court of Appeal. The civil case settled shortly thereafter.

### ***Royal Bank of Scotland Commercial Services Ltd v X and others***

James was instructed by the Claimant (a company providing invoice discounting facilities) in a claim against various companies and their directors arising out of a dishonest and fraudulent scheme whereby phantom invoices were presented to the Claimant for payment. The claim included allegations of deceit, dishonest assistance and conspiracy to defraud. The claim settled.

### ***Choraria v HTS and others***

James (led by Alan Gourgey QC) was instructed by the Defendants in a claim arising out of an Investment Agreement whereby the Claimant agreed to procure £5 million worth of financial facilities for investment into the Defendants' business. The Claimant sought to recover the immediate return of monies invested, commission allegedly due, and damages for breach of contract and breach of fiduciary duty. The claim settled on the second day of the trial.

### ***Banque Francaise de L'Orient v Al-Anizi***

James was instructed in a case in which the Defendant speculated in foreign currencies and options. The Defendant's counterclaim involved allegations of misrepresentation, negligence, breach of contract and breach of fiduciary duty.

### ***Ross v McGrath***

James was instructed by the Claimant in a claim to recover monies which had been advanced to the Defendant in a property development scheme. It was common ground between the parties that the Claimant had commenced his claim more than 6 years before his cause of action had accrued. One of the principal issues in the claim was whether the Claimant could rely on Sections 29 and 30 of the Limitation Act 1980 because the Defendant had allegedly subsequently acknowledged his indebtedness to the Claimant. James was successful at first instance and was upheld by the Court of Appeal.

### ***R v D and others***

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.