



## Andrew Spink QC

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Year of call	Silk	Email
1985	2003	<a href="mailto:andrew.spinkqc@outertemple.com">andrew.spinkqc@outertemple.com</a>

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Andrew Spink QC is a highly respected advocate with 35 years' experience at the Bar, of which 17 years have been as a successful QC. He is one of the Heads of Outer Temple Chambers and a part-time judge sitting as a Deputy High Court Judge in the Queen's Bench and Chancery Divisions of the English High Court and as a Justice of the Astana International Financial Centre in Kazakhstan (where he is also a member of the panel of arbitrators). Andrew served as the Chair of the Commercial Bar Association from 2017 to 2019.

Andrew has a broad-based business law practice, specialising particularly in disputes relating to the interpretation or breach of most types of commercial contract and trust deed, claims for breach of fiduciary duty, freezing injunctions and asset recovery, cross-jurisdictional issues, CPR Part 8 claims as well as hostile CPR Part 7 claims for damages and other relief in the context of pensions and other commercial trusts, banking and financial services, a wide range of other commercial contracts (currently with a focus on cases of force majeure and frustration arising out of the Covid-19 pandemic) professional negligence claims (acting for both claimants and defendants) and company law and insolvency issues.

As well as appearing as a leading advocate, he is highly sought after for the provision of expert technical and strategic advice to clients, both in relation to complex commercial civil disputes and in non-contentious situations (corporate mergers or takeovers; in relation to the many issues arising in the administration of large occupational pension schemes, including dealing with the UK Pensions Regulator; advising on pensions issues in the area of corporate insolvency; advising on issues of contractual interpretation in day-to-day commercial business life and on company law issues).

Andrew is also experienced in cases involving mediation or other forms of alternative dispute

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resolution, together with regulatory cases in front of the Determinations Panel of the Pensions Regulator and the Upper Tribunal (Tax and Chancery Chamber). This is a relatively new and fast-developing pensions jurisdiction where Andrew has been involved in several of the most significant recent cases.

Andrew's clients include individuals, partnerships, companies (including financial institutions), pension scheme trustees / employers / members, Government departments, International Financial Centres, and participants in multiparty group actions.

In the international context, Andrew is a registered advocate at the Dubai International Financial Centre ("DIFC") Court. He has expertise in various aspects of DIFC law, both in terms of the application of existing DIFC Law to ongoing disputes but also having led the team of Outer Temple Chambers barristers which in 2016-17 provided the DIFC Authority with advice on how to amend its existing Companies Law, leading to the enactment of Companies Law DIFC Law No.5 of 2018. In 2019-20 Andrew led another OTC team which advised the DIFC Authority on the appropriate legal structure for, and then undertook the drafting of some of the key framework documents necessary to implement, the DIFC Employee Workplace Savings Plan, a groundbreaking trust-based end-of-service benefit arrangement design to align the DIFC workforce with global retirement savings standards.

Andrew is ranked in Band 1 for Pensions in *Chambers UK*, which notes that *"One of the most experienced pensions silks at the Bar. He's user-friendly, hugely knowledgeable, pragmatic and commercial"* and in the top tier for Pensions in *Legal 500* which notes that he is *"Probably the best advocate at the pensions bar. Great team leader. He gets the best out of the juniors on the case."* Andrew is also listed as a leading silk for Professional Negligence and Commercial Litigation in *Legal 500 2021*, where he is recognised as an advocate who *"always finds the right argument, and the right way to deliver it, he also knows when to step in and fits in very well to a client team."*

Over the years, Andrew has been variously described in the legal directories as *"terrifyingly good in court"*, *"highly valued"*, *"seriously good"*, *"reliable, commercial and pragmatic"* and *"very personable and down to earth."* *"[He is] Terrifyingly good and incisive"* and *"He has a very good client manner; he puts clients at ease and always seems in control."* The *Legal 500* adds that he is *"definitely someone you want on your side...he has extensive expertise and is a real pleasure to work with."*

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## Pensions & Trusts

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Andrew has been listed as a leading silk in pensions in *Chambers & Partners* and *Legal 500* ever since being appointed QC in 2003. Over that time, he has appeared in many of the leading pieces of litigation in the Chancery Division and in the newer and fast-developing field of work involving the Pensions Regulator.

## Pensions – Litigation Cases

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### **The AB Retirement Benefits Scheme (2016-20 and continuing, proceedings shortly to be issued in the Chancery Division)**

Andrew is jointly instructed by all companies of the Group and the Trustees of the Scheme in a soon to be issued Part 8 claim which raises a multitude of issues concerning the validity of a large number of deeds entered into in relation to a single scheme over a 20-year period where it is alleged that various different formality requirements were not met, also raising numerous estoppel issues, some quite novel, Section 37 issues, and forfeiture issues. There is a complex associated professional negligence claim against the scheme's former actuarial and legal advisers.

### **Atos UK IT Ltd & Ors v Atos Pension Schemes Ltd (Chancery Division 2014-20)**

Andrew represented the Atos group of companies in Part 8 Proceedings heard in January 2020 in which judgment was given by Nugee J. The issues included i) whether RPI should now be regarded as having been functionally replaced by some other index for the purposes of the indexation provisions in the scheme rules where RPI has lost its national statistic status, and ii) whether the power to select an alternative index was engaged. In light of recent events in relation to RPI (which occurred after the trial in the BT case below), the Judge accepted that its publishers, the ONS, no longer regarded it as an appropriate measure of inflation and warned against its use, but on the interpretation of the pension increase rule adopted by the Judge, this was insufficient to engage the power to switch indices.

### **British Telecommunications plc v (1) BT Pension Scheme Trustees Limited and (2) Linda Bruce-Watt ("BT") (Chancery Division and Court of Appeal 2017-19)**

Andrew represented BT in highly significant proceedings brought urgently by BT (with a court order for expedition) to determine whether, under the rules of the BT Pension Scheme applicable to "C Section" members, it might be permissible to make a change from the RPI, as the inflation index used. The

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Scheme with c. 300,000 members has a current deficit of c. £14bn. The value at stake in this case alone was estimated to be c. £2bn.

The case raised issues of construction in relation to two different indexation rules as well as a complex factual assessment (requiring cross examination of expert witnesses) of whether RPI has now “become inappropriate” for the indexation of C Section pensions. A first instance judgment determining some of the issues against BT and some in favour was handed down in January 2018 and BT’s appeal and the members’ cross-appeal to the Court of Appeal were determined in a judgment handed down in December 2018. The Supreme Court denied permission to appeal in May 2019.

### **Honda Motor Europe Ltd & Honda of the UK Manufacturing Ltd v Tony Powell & Honda Group UK Pension Scheme Trustee Ltd (Chancery Division 2018 – 2020)**

Andrew acted for the Honda companies in their claim for rectification of a Deed of Adherence entered into in 1986, which the Court of Appeal held at [2014] PLR 255 did not, on a true construction provide the intended level of benefits for Honda manufacturing employees joining the scheme. Hotly contested Part 7 action with up to £70m of liabilities at stake, raising novel facts and rectification legal issues listed for 2-week trial in November 2018 including rare live evidence and cross-examination of five witnesses. Trial adjourned for consideration of proposed settlement.

### **Baldwin & others v Standard & Poor’s Credit Market Services Europe Limited (McGraw-Hill Pension Scheme) (Companies Court 2018)**

The context for these proceedings, of a type never brought before by UK pension scheme trustees, was a Brexit-inspired proposed cross-border merger whereby one of the S&P group of UK companies, which was a sponsoring employer of the group’s UK pension scheme, would merge into an Irish group company and thereafter cease to exist in accordance with the fast track procedure provided for under the Companies (Cross-Border) Mergers Regulations 2007, leaving the pension scheme with a significantly altered UK employer covenant. This raised significant issues of concern for the trustees, for whom Andrew acted, as to the security of the benefits payable under the Scheme, as well as issues of English companies and pensions law and Irish law. Proposed compromise approved by Nugee J at a hearing in May 2018.

### **Wedgwood Pension Plan Trustee Ltd v Keith Salt (Chancery Division 2014 – 2018)**

Andrew represented the Trustee of the Wedgwood Pension Plan in complex Part 8 proceedings after the collapse of the iconic Wedgwood group. This led to the Plan entering into a Pension Protection Fund assessment period.

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The case highlighted multiple issues of interest and importance to pension schemes generally. These included whether a fetter on the power of amendment prevented the employer from reducing both past and future service benefits, the current status of part of the well-known decision in *Bestrustees* since *Pitt v Holt* on the true scope of the rule in *Hastings Bass* and what the meaning and effect is of a number of provisions in the parts of the Pensions Act 2014 relating to the PPF.

Judgment in favour of the Trustee was handed down in January 2018.

### **IBM UK Ltd & IBM Holdings Ltd v Dalglish & Others (“the Project Waltz Proceedings”) (Chancery Division and Court of Appeal 2013 – 2017)**

Following Warren J’s massive “duty of good faith breach” judgment in April 2014, a further wide-ranging “remedies” hearing took place in July 2014, where Andrew (for the Trustee, leading a team of seven barristers including two other silks) took the lead role in successfully arguing a large number of complex legal issues ranging across trust, contract and employment law on behalf of the members.

Following many consequential remedies hearings and two further judgments, the case was appealed by IBM and cross-appealed by the Representative Beneficiaries. The Court of Appeal’s judgment was handed down in July 2017, finally bringing this huge piece of litigation to an end.

### **Merchant Navy Ratings Pension Trustees v P&O (& Others) (Chancery Division 2013 – 2015)**

A major piece of commercial litigation with significant financial and legal implications arising out of a dispute between the Trustee of and the many shipping companies contributing to the Merchant Navy Ratings Pension Fund. With hundreds of millions of pounds at stake as between the competing contributors and 7 QCs appearing this was understandably one of *The Lawyer’s* Top 20 Cases for 2014.

Andrew represented the P&O Group, which took the leading role representing a large group of scheme employers in opposition to the Trustee’s deficit reduction plans. His role involved cross-examining the Chairman of the Trustee over two days, as well as having to deal with wide-ranging legal issues.

The case produced the leading judgment on whether and, if so, in what circumstances and to what extent trustees can take into account the interests of scheme employers when considering how to act. This case followed on from the earlier first instance and Court of Appeal decisions in *Stena v MNRPF Trustees* [2011] EWCA Civ 543, which concerned whether the Trustee had the power to introduce a new contribution rule by amendment, a case in which Andrew also acted for P&O.

### **Philips Pension Trustees Limited & Philips Electronics UK Limited v AON Hewitt & AllianceBernstein (Chancery Division 2011 – 2016)**

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Fiercely fought Part 7 claims for damages for professional negligence by the employer and trustees of a large UK pension scheme against the scheme's former investment strategy consultants and one of its fund managers, arising out of the scheme's investment in 2007 of £2 billion of trust assets in credit default swaps and £500 million in US sub-prime mortgage backed assets, which caused the scheme massive losses during the Credit Crunch.

The issues include the scope of the duty owed by the Defendants to the trustee/employer, the risks inherent in the financial products, and an important issue as to whether or not the investment consultant was an authorised person carrying on regulated activities for the purposes of FSMA 2000. The court was engaged for several days in 2016 on a strike out application. The matter was thereafter listed for trial and settled for a substantial sum later in 2016.

### **Pollock v Reed & Halcrow Group Limited (“Project Gravity”) (Chancery Division 2015)**

Andrew acted for the trustees of the Halcrow Pension Scheme in one of the most important pensions cases of 2015 in which the trustees of a pension scheme (with an employer which expected to go into liquidation but for a restructuring of the benefits provided to members under the scheme) sought approval, on an expedited basis and subject to a privacy order, of their decision to agree to a novel form of restructuring in which members would be transferred without their consent to a new scheme with lower “headline” benefits but with much better prospects of survival. Numerous significant pensions law issues were raised. In addition, important guidance was given as to the circumstances in which privacy orders would be made in cases such as this.

### **Other cases of note – Court of Appeal**

Court of Appeal cases in the field of Pensions in which Andrew has acted include both *BT* and *IBM* (see above), the appeals against certain aspects of Warren J's decision in the massive Pilots National Pension Fund litigation (one of *The Lawyer's* Top 10 Cases of 2010), *Stena v MNRPF Trustees* in 2011 (see above) and in the leading equalisation case concerning the Foster Wheeler Pension Plan.

### **Other cases of note – first instance**

Andrew has also represented the trustee in the leading decision on the approach to be taken to Courage-style fetters on powers of amendment, *Re IMG Pension Plan*, and the representative beneficiary in *Danks v QinetiQ Holdings Ltd*, in which Vos J considered the power of trustees to change the index used to make increases in pensions in payment and to revalue deferred benefits from RPI to CPI. He also appeared in two well-known rectification claims: *Pioneer GB Ltd v Webb & ors* and in *AMP v Barker*. In 2011-13 he appeared in a series of well-known and significant pensions liberation cases – *Dalriada v Nidd Vale*; *Dalriada v Faulds*; *Dalriada v Woodward*).

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## Pensions – Regulatory Cases

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Andrew has been involved in a number of the leading cases involving regulatory intervention by the UK Pensions Regulator, including its attempts to exercise its financial support direction (“FSD”) jurisdiction extra-territorially. As at February 2019, he is working on a ground-breaking case involving foreign entities alleged to have acted to the material detriment of a UK pension scheme with Section the meaning of 38A of the Pensions Act 2004, in which a Warning Notice has been issued.

### **The Pensions Regulator v X & Y**

Andrew represents several US-based private equity companies who are targets in a confidential and ground-breaking “material detriment” regulatory action brought by the Pensions Regulator arising out of the breaking up and separate selling off of the members of a large group of companies leaving a UK pension scheme with the financial support of what the Regulator alleges was a materially weaker employer covenant, to the benefit of the private equity former owners. The Regulator seeks up to about £50m from the Targets.

### **Guinness Peat Group Plc (“GPG”) and the Coats UK Pension Plan (2014 – 2016)**

Andrew was instructed over a two-year period as leading counsel by the Trustees of the Coats UK Pension Plan. This case was probably the largest and most complex on-going regulatory action brought by the Pension Regulator over one of the UK’s largest schemes (c. 27,000 members). The Pensions Regulator was seeking Financial Support Directions against various GPG entities. The case raises very important questions over the “insufficiently resourced” jurisdiction.

Proceedings were hotly contested by GPG and the case proceeded as a major piece of multi-party commercial litigation before settling in December 2016 – described by the Regulator as *“the most important settlement the Pensions Regulator has ever reached”*.

### **Carrington Wire (2012 – 2015)**

Andrew acted for the Trustee of the Carrington Wire DB Pension Scheme in a case in which the Pensions Regulator sought Contribution Notices against Severstal (one of the largest mining companies in the world) and the director of the corporate purchaser of Severstal’s former UK business. Andrew acted for the Trustees who sought to recover the multi-million pound scheme deficit from these

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Targets.

The case was ground-breaking given that it was the first time the Regulator had sought to invoke the “material detriment” test set out in Section 38A of the Pensions Act 2004. Important issues of construction of that section arose, as well as heavily disputed issues of fact. The case settled against Severstal, but proceeded successfully against the director in March 2015 with important rulings on the issues of law being made.

### **Lehman (2010 – 2014)**

The Lehman litigation has been the largest and most wide-ranging series of UK proceedings arising out of the ‘moral hazard’ legislation. Andrew acted on behalf of four Lehman companies from the outset of the case in 2010 when two of those companies successfully secured a determination that no FSD should be issued against them. Upon the Trustees initiating a reference from that determination to the Upper Tribunal, his clients’ application to strike out the reference became the first ever pensions case to reach the Court of Appeal from the Upper Tribunal and is the leading case on the Regulator’s FSD jurisdiction. The underlying references went back to the UT and were proceeding to a three-week hearing in February 2015 before settlement.

### **Chemtura (2011)**

Andrew acted on behalf of all six members of the worldwide Chemtura Group of companies against which the Regulator was seeking the issuing of a Financial Support Direction, the matter settling shortly before a Determinations Panel hearing.

### **Nortel (2010)**

Andrew provided expert evidence on UK pensions legal issues to the Court in Ontario in proceedings arising there out of the Regulator’s attempt to obtain a Financial Support Direction against members of the Nortel Group of companies.

## Pensions – Advisory Work

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### **Project Taurus (2015)**

Andrew was instructed jointly by Philips Electronics UK Ltd (sponsoring employer) and the Trustee of

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the Philips Pension Fund to advise on key aspects of the de-risking of the Fund by way of a c. £2.4 billion transaction with Pension Insurance Corporation PLC (PIC). The transaction, which was announced in November 2015, involved the entering into a bulk annuity policy with PIC that will transfer to PIC responsibility for payment of retirement benefits owed to approximately 26,000 current and former UK employees and their beneficiaries. The transaction results in the transfer of £2.4 billion of the Fund's defined benefit obligations to PIC and is expected to give rise to the largest full pension buy-out in the UK.

### **New workplace savings pension vehicle (2015 – 2016)**

Andrew advised on technical issues arising under the pensions legislation (in particular the scope of the definition of "occupational pension scheme") in the context of the development of a proposed new workplace savings pension vehicle.

### **Other advice in the context of large final salary pension schemes**

Andrew has given advice on numerous occasions in recent years to the employers and trustees of several major schemes on the pensions implications of corporate acquisitions, restructuring and insolvency, continuing problems over equalisation, construction of powers of amendment, closure to accrual, breaking final salary linkage and other benefit restructuring proposals including bulk transfers without consent, non-pensionable agreements and other South West Trains agreements, section 75 debt issues and (post-IBM) on whether historic benefit restructurings might be vulnerable to arguments that the employer acted in breach of the Imperial duty and/or its contractual duty of trust and confidence owed to its employees.

### **UK Government and Local Government pension issues**

Andrew has advised the Ministry of Defence on a number of pensions-related issues, as well a large local government pension scheme on its powers of investment.

### **Employment – related pensions advice**

Andrew has given advice both to employers and employees on particular issues that have arisen concerning individual pension rights under employment contracts.

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## Commercial & Chancery

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Andrew is ranked as a leading silk in Commercial Litigation in *Legal 500 2021*.

### **X Inc v Y Ltd (2020 – proceedings not yet issued)**

Andrew is advising a US-based company, which is a party to a sponsorship contract with a UK company, on its rights under the contract's force majeure provisions following the cancellation due to Covid-19 of sporting events to which the sponsorship contract relates.

### **MacQuarie Capital (Europe) Ltd v Nordsee Offshore MEG I GmbH (Commercial Court, 2019)**

Andrew appeared for Nordsee Offshore in a contractual dispute with international bank, MacQuarie at a Commercial Court trial in front of Butcher J in May 2019. The dispute concerned the correct construction of the terms of the English law engagement contract under which MacQuarie agreed to raise equity and debt finance for a €1.7bn German offshore windfarm development. The 4-day trial involved cross-examination of foreign law experts as well as a number of factual witnesses.

### **Prakash Industries Ltd v Peter Beck Und Partner Vermögensverwaltung GmbH (Commercial Court 2019-20)**

Andrew acts for an investment fund which is the defendant in declaratory proceedings brought by an Indian company against a German Investment Fund. The dispute concerns whether an event of default has occurred in relation to convertible bonds issued by Prakash to *inter alia* the Investment Fund. The Investment Fund also bring a counterclaim for the late delivery of shares following the exercise of conversion rights.

### **Dell Emerging Markets (EMEA) Ltd v IB Maroc SA (Commercial Court 2017-2019)**

Commercial Court claim and counter claim concerning failings in designing and implementing a major IT project for Morocco's largest telecommunications provider. Proceedings were initially brought in Morocco, but moved to the Commercial Court in England following an anti-suit injunction obtained before Teare J. Andrew was brought into the case to argue an application for permission to appeal a key aspect of Teare J's order consequent upon the anti-suit injunction which raised a particular point of construction on the jurisdiction clause in the contract which it was alleged had been breached. Thereafter, he remained instructed on the case as it progressed through the pleading and early stages of preparation for trial before settling.

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### **In the matter of X (Holdings) Ltd and others (in administration) (2019)**

Andrew advised on numerous insolvency, trust and pensions legal issues arising out of the entry into administration of several group companies over whose valuable assets (held by the Administrators) the Trustee of the group pension scheme claimed to hold priority charges under a mortgage ahead of other creditors including the companies' bankers. Andrew was jointly instructed by two clients with potentially adverse interests with a view to exploring whether an agreed settlement could be reached between the Administrators and the Trustee as to whether the general creditors as a whole or the pension scheme alone should receive the benefit of the assets.

### **Baldwin & others v Standard & Poor's Credit Market Services Europe Limited (McGraw-Hill Pension Scheme) (Companies Court 2018)**

The context for these Companies Court proceedings, of a type never brought before by UK pension scheme trustees, was a Brexit-inspired proposed cross-border merger whereby one of the S&P group of UK companies, which was a sponsoring employer of the group's UK pension scheme, would merge into an Irish group company and thereafter cease to exist in accordance with the fast track procedure provided for under the Companies (Cross-Border) Mergers Regulations 2007, leaving the pension scheme with a significantly altered UK employer covenant. This raised significant issues of concern for the trustees, for whom Andrew acted, as to the security of the benefits payable under the Scheme, as well as issues of English companies and pensions law and Irish law. Proposed compromise approved by Nugee J at a hearing in May 2018.

### **X v Y (2018-2019)**

Andrew advised on remedies and claims against parties involved in an alleged conspiracy to give false evidence in foreign arbitral proceedings.

### **Bluewaters Communications Holdings Ltd v (1) Ecclestone, (2) Bayerische Landesbank Anstalt Des Öffentlichen Rechts ("BLB") (3) Bambino Holdings (2016)**

Claim arising from sale of Formula One in 2005. Claimant, whom Andrew advised up to issue of proceedings in 2016, was a bidder for the shares in one of the companies controlling Formula One and alleged that, owing to a corrupt bribery agreement entered into between Bernie Ecclestone and the chief risk officer of BLB in order to ensure the sale to a purchaser amenable to Mr. Ecclestone (as found in an earlier case, *Constantin Median AG v Ecclestone & ors*), it lost the opportunity to acquire those shares and thus control of Formula One. The claim raised complex issues of fact and law, including jurisdictional issues and questions, under both English law and German law, relating to

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liability for unlawful interference with the Bluewaters' economic interests, conspiracy by unlawful means, deceit, fraudulent misrepresentation, fraudulent misstatement, and vicarious liability or equivalent civil wrongs, together with remoteness and quantification of loss issues.

### **Mengiste & anor v Endowment Fund For The Rehabilitation Of Tigray & Ors ("EFFORT") (2012 – 2016)**

Two strands: (1) [2013] EWHC 599 (Ch) (2) [2013] EWHC 857 (Ch), [2013] EWHC 1087 (Ch), [2013] EWCA Civ 1003; [2014] P.N.L.R. 4

Strand 1: Chancery commercial claim seeking to have judgments obtained in Ethiopia by the Defendants set aside and damages awarded on the grounds of an alleged fraudulent conspiracy in the prosecution of the original claims. Raised complex issues of Ethiopian law (including issues about the ambit of restitutionary causes of action) as well as an important jurisdictional forum issue as to whether a claimant in civil proceedings against defendants with alleged links to the Ethiopian government could expect to receive a fair trial of his action in Ethiopia or whether the action should be tried in England. Andrew's cross-examination of the other side's Ethiopian law expert, described by the Judge as a "*thorough and comprehensive destruction*", was instrumental in securing a resounding victory for his clients. In 2015, the claimants sought to have the stay of their action imposed in 2013 lifted. Their application was unsuccessful at first instance but is now proceeding to the Court of Appeal, for hearing in 2016.

Strand 2: Application for wasted costs by successful Defendants on Strand 1 against solicitors representing unsuccessful Claimants on grounds that Strand 1 claims were effectively an abuse of process owing to fundamentally inappropriate expert evidence relied on by Claimants to which solicitors should not have lent their support. Went to Court of Appeal on decision of Strand 1 trial judge not to recuse himself and on his substantive stage 1 wasted costs decision. A leading decision on both recusal and wasted costs.

### **Philips Pension Trustees Limited & Philips Electronics UK Limited v AON Hewitt & AllianceBernstein (2011 – 2016)**

Fiercely fought Part 7 claims for damages for professional negligence by the employer and trustees of a large UK pension scheme against the scheme's former investment strategy consultants and one of its fund managers, arising out of the scheme's investment in 2007 of £2 billion of trust assets in credit default swaps and £500 million in US sub-prime mortgage backed assets, which caused the scheme massive losses during the Credit Crunch.

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The issues include the scope of the duty owed by the Defendants to the trustee/employer, the risks inherent in the financial products, and an important issue as to whether or not the investment consultant was an authorised person carrying on regulated activities for the purposes of FSMA 2000. The court was engaged for several days in 2016 on a strike out application. The matter was thereafter listed for trial and settled for a substantial sum later in 2016.

### **X v Y (Law Firm) (2014 – 2015)**

Andrew acted for an international law firm in a claim against it for injunctive relief concerning whether it should be permitted to continue to act for a party to an international commercial arbitration in London on the grounds of conflict and/or having come into possession of confidential/privileged information. He also gave advice to that party concerning English legal and procedural issues arising in the context of related commercial litigation in New York.

### **Pavel Sukhoruchkin & Others v Marc Giebels van Bekestein & Others (Hadar Fund) (2013 – 2014)**

A multi-party, multi-jurisdictional high value shareholder dispute concerning various alleged frauds, breaches of fiduciary duties and numerous other claims in respect of an investment fund in the Cayman Islands and its investment manager in the BVI. The case was listed for a five-day interlocutory hearing in July 2014 in the Chancery Division for permission to continue a double-derivative claim (brought by the Defendants in a counter-claim) and a strike out application (of some (but not all) other elements of the counterclaim) by the Claimants. Andrew acted for the directors of the corporate entities central to the dispute.

### **Gate Gourmet Luxembourg IV SARL v Morby & Other Related Actions (2010 – 2011)**

Three related commercial and insolvency matters in the Chancery Division arising out of disputes between companies over alleged breaches of warranty in a share purchase agreement, breaches of fiduciary duty and trust by company directors and preferential payments.

### **Ruttle v DEFRA / Farm Assist v DEFRA (2002 – 2009)**

A series of hard-fought commercial claims against DEFRA in the Technology and Construction Court in which Andrew acted for companies involved in the clean-up works following the 2000 and 2001 outbreaks in the UK of Swine Fever and Foot and Mouth. These raised a large number of complex construction issues in the areas of contractual and statutory interpretation, corporate insolvency, assignment of causes of action, legal professional privilege and quantum. There were eight first instance judgments and two trips to the Court of Appeal, in both of which Andrew's client was successful, most recently in relation to the recoverability of interest under the Late Payment of

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Commercial Debts (Interest) Act 1998 and the Supreme Court Act 1981.

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## Company Law

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Company Law has always formed part of Andrew's business law practice. In the autumn of 2016, instructed by the Dubai International Finance Centre Authority (DIFCA), Andrew led a four-strong team from Outer Temple Chambers to review, amend and redraft a new Companies Act based on English Law, for the DIFC. This high profile and important work included the provision of extensive and detailed advice on numerous company law issues including directors' duties, shadow directors, shareholders, companies purchasing own shares, redemption rights, financial assistance, reduction in capital, penalties, mergers and acquisitions, accounting records and requirements.

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# Professional Negligence

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## Professional Negligence – Cases

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### **Re AB Retirement Benefit Scheme (2016-2020 and continuing)**

Andrew acts for the proposed claimants, the employer and trustees of a pension scheme with a 20-year history of alleged serial failures by their professional advisers to advise properly on compliance with formality requirements in relation to scheme documentation amendments. This has given rise to complex overlapping and interlocking high value professional negligence claims against the scheme's former administrator and multiple firms of solicitors. The outcome of the claims will be influenced by Part 8 proceedings shortly due to be commenced by the trustees to determine the effect of the formality failures and various other legal issues in which Andrew is also acting.

### **Re CD Pension Scheme (2016-20 and continuing)**

Andrew acts on behalf of the proposed claimant trustees of a pension scheme and the PPF (the scheme employer is in liquidation so the scheme is in a PPF assessment period) in another complex and high value proposed claim against various entities (which acted as the scheme administrators and legal advisers on certain issues) for many years, together with one of the law firms that advised the trustees, over a failure to comply with formality requirements in relation to the closure of the scheme to future accrual.

### **Re XY Pension Scheme (2019-20 and continuing)**

A potential Part 7 claim for professional negligence against a leading law firm (Firm A) for failing to advise the employer and the trustee of a pension scheme about (a) the need for a deed to implement benefit changes introduced in 2003 and (b) the potential negligence during 2002-3 of another leading law firm (Firm B) which advised the employer and the trustee about those benefit changes (leading to a "loss of a chance" claim against Firm A), the claim against Firm B in respect of its negligence being time barred. Andrew is advising the proposed claimant employer and the trustee. The extent of Firm A's liability is likely to be determined by the outcome of Part 8 and/or 7 proceedings for construction and rectification to be pursued first by the employer and the trustee.

### **P Group Pension Trustees and others v various Q entities and Law Firm Y**

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Andrew was instructed on behalf of various proposed defendant entities which acted for many years as administrators to the X's Pension Scheme. Predecessor firms to Law Firm Y were the Scheme trustees' legal advisers. A professional negligence claim against Andrew's clients and Law Firm Y based upon a failure by the scheme to equalise Normal Retirement Dates as had been intended. Andrew was closely involved in developing the defence strategy on behalf of his clients including limitation, duty and quantum arguments deployed in their letter of response to the letter of claim. The claim settled following two mediations at both of which Andrew represented his clients' interests.

### **Philips Pension Trustees Limited & Philips Electronics UK Limited v AON Hewitt & AllianceBernstein (Chancery Division 2011 – 2016)**

Investment advice and management negligence claims for over £200m, brought by the employer and trustees of a major UK pension scheme, for whom Andrew acted, against the scheme's former investment strategy consultants and one of its fund managers. The claim arose out of the scheme's prior investment of £2 billion of trust assets in credit default swaps and £500 million in US sub-prime mortgage backed assets that caused the scheme huge losses during the Credit Crunch.

Issues included the scope of the respective duties owed by each of the Defendants to the trustee/employer, the risks inherent in the financial products, and importantly, whether or not the investment consultant was an authorised person carrying on regulated activities for the purposes of FSMA 2000. The claim settled at a mediation after an extensive and hard fought interlocutory battle.

### **Sopra Steria Ltd and others v Punter Southall Ltd, Stuart Southall and Nabarro LLP (Chancery Division 2017)**

Andrew advised two of the defendants (the scheme's actuarial advisers) in this highly complex professional negligence claim also brought against the scheme's legal advisers arising out of a benefit restructuring process.

### **Legal professional negligence claim – pensions law – RAA (2014 – 2016)**

Andrew advised the potential defendant (the pensions team of a well-known law firm in relation to a claim brought by scheme trustees and the Pension Protection Fund for damages for alleged negligence in relation to the law firm's advice in connection with a regulated apportionment agreement entered into by the trustees.

### **Actuarial professional negligence claim – failure to equalise (2012)**

Andrew advised the potential defendant, a major actuarial firm, on a claim brought against it by

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trustees of a pension scheme arising out of an alleged failure to equalise benefits, which was successfully settled at a mediation. The claim raised issues relating to scope and breach of duty, construction of amendment powers, causation, quantum and limitation.

**Legal professional negligence claim – pensions law – equalisation / failed amendment (2011 – 2013)**

Andrew advised and represented at a mediation the proposed defendant, the pensions team of a well-known law firm, in a claim against them for professional negligence alleged to have occurred in the context of benefit changes purportedly introduced into pension scheme rules but which fell foul of the scope of the power of amendment.

**Legal professional negligence claim – pensions law – pension increases / failed amendment (2011)**

Andrew advised the proposed claimants, the trustees and principal employer of a final salary scheme in relation to a claim against the scheme's former solicitors for negligence arising out of an alleged failure to comply with the power of amendment in the scheme rules when purporting to reduce the annual rate of increase on pensions in payment. The issue related to the correct actuarial basis for calculating the trustees' or employer's losses.

**Actuarial negligence claim – failure to equalise (2011)**

Andrew advised the proposed claimant, a pension scheme's trustees and principal employer, on a claim against the scheme's former actuarial advisers for negligent advice relating to an allegedly failed equalisation of normal retirement ages. The issues included scope and breach of duty and limitation.

**Philips v Hewitt (No. 1) (Chancery Division 2006 – 2009)**

Andrew advised the trustee and employers of the Philips Pension Plan in its successfully settled claim against Hewitt, based upon allegations of actuarial negligence.

**Credit Lyonnais Securities and 6 others v Watson Wyatt (Chancery Division (trial in front of Warren J): 2003-2005)**

In one of the very few actuarial negligence claims ever to go to a full trial, Andrew represented the trustee and employers of a large pension scheme in a claim alleging that their actuarial advisers prepared a negligently over-optimistic valuation of scheme liabilities (indicating that it was in surplus when in fact it was in deficit) as a result of which, amongst other things, the employer banks paid large

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bonuses to staff that would not otherwise have been paid. Although the matter went to trial, it settled on the third day after Andrew's opening speech. The judgment would have determined many of the legal issues on duty, breach, causation and quantum that remain unresolved to this day.

### **Commercial property valuation professional negligence cases (1990s)**

During the 1990s Andrew acted for numerous banks in a series of cases in which the banks sought to recover damages for professional negligence from commercial property valuers who had prepared allegedly negligently low valuations on commercial property over which the banks held security, the value of which security was significantly reduced by the property crash at the end of the 1980s.

## Professional Negligence – Advisory Work

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Andrew has wide experience of advising, on both sides, in relation to legal and actuarial negligence alleged to have occurred in the context of failed attempts to equalise normal retirement ages post-Barber, as well as in many other pensions-related contexts. As well as raising breach of duty, causation and (often complex) quantum questions, these cases almost invariably involve issues over limitation.

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## Banking

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### Banking & Financial Services – Cases

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#### **Philips Pension Trustees Limited & Philips Electronics UK Limited v AON Hewitt & AllianceBernstein (2011 – 2016)**

Claims by the employer and trustees of one of the biggest UK pension schemes against the scheme's former investment strategy consultants (one of the UK's biggest) and one of its fund managers, arising out of the scheme's investment in 2007 of £2 billion of trust assets in credit default swaps and £500 million in US sub-prime mortgage backed assets, which caused the scheme massive losses during the Credit Crunch. The issues include the risks inherent in and the market perception of the financial products, and an important and untested issue as to whether or not the scheme's investment strategy consultant was an authorised person carrying on regulated activities for the purposes FSMA 2000.

#### **Warners Retail Ltd -v- National Westminster Bank and Barclays Bank (Chancery Division 2014)**

Action against bank for misselling of interest rate hedging products to a company in 2006 and 2007, in this case bank cancellable swaps, in relation to the selling of which the bank owed a statutory duty to observe FSA conduct of business rules. The swaps were entered into to hedge loans made by the bank to the company. Issues arose as to the suitability of the swaps for the customer, the relevant standard of practice in the banking industry at the time, causation and quantum, and as to the appropriateness and need for expert evidence.

#### **Axa Sun Life v Ideal Financial Planning & ors (2011) [2011] EWCA Civ 133**

Court of Appeal decision in case involving issues of contractual estoppel, various contractual construction issues including the scope of an "entire agreement" clause, a "conclusive evidence" evidence clause and an exclusion clause, misrepresentation, whether an exclusion clause fell within the scope of the Unfair Contract Terms Act 1977 and, if it did, whether it was reasonable for the appellant to rely on it. All issues arose in relation to the appellant's standard form agreement under which it appointed the various respondents to act as its representatives to sell investments and other products on its behalf.

#### **Various Claimants v Various Banks (2009 – 2010)**

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Advised in relation to allegations of negligence, breach of contract and statutory and fiduciary duty made against the financial services/wealth management departments of a number of banks by a group of investors whose assets were invested on their behalf by or on the advice of those banks in the collapsed **AIG Enhanced Variable Rate Fund** marketed as an alternative to a cash deposit account.

### **Equitable Life (2007)**

Advised in 2007 in relation to the group action brought by several hundred investors against **Equitable Life** involving allegations of mis-selling of with-profit pension annuities.

## Banking & Financial Services – Advisory Work

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### **New workplace savings pension vehicle (2015 – 2016)**

Advising on technical issues arising under the pensions legislation (in particular the scope of the definition of “occupational pension scheme”) in the context of the development of a proposed new financial product.

### **P Trust v M Financial Services Ltd (2010)**

Advising a network of IFAs authorised and regulated by the FSA under FSMA 2000 on a claim arising out of loan-backed purchases by sophisticated investors of portfolios of traded endowment policies in the context of a Final Notice having been issued against the product provider. Issues included whether there had been breaches of fiduciary duty in relation to commission, non-disclosure and unsuitability of the product and date of crystallisation of loss and quantum.

### **A v B (2010)**

Advising in relation to a proposed claim arising out of advice given by an IFA to a high-earning senior academic member of a fully funded final salary pension scheme to leave the pension scheme and invest the transfer value in a SIPP.

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## Disciplinary & Regulatory

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### Regulatory Pensions Work – Cases

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Andrew has been involved in a number of the leading cases involving regulatory intervention by the UK Pensions Regulator, including its attempts to exercise its financial support direction (“FSD”) jurisdiction extra-territorially.

#### **The Pensions Regulator v X & Y**

Andrew represents several US-based private equity companies who are targets in a confidential and ground-breaking “material detriment” regulatory action brought by the Pensions Regulator arising out of the breaking up and separate selling off of the members of a large group of companies leaving a UK pension scheme with the financial support of what the Regulator alleges was a materially weaker employer covenant, to the benefit of the private equity former owners. The Regulator seeks up to about £50m from the Targets.

#### **Guinness Peat Group Plc (“GPG”) and the Coats UK Pension Plan (2014 – 2016)**

Andrew was instructed over a two-year period as leading counsel by the Trustees of the Coats UK Pension Plan. This case was probably the largest and most complex on-going regulatory action brought by the Pension Regulator over one of the UK’s largest schemes (c. 27,000 members). The Pensions Regulator was seeking Financial Support Directions against various GPG entities. The case raises very important questions over the “insufficiently resourced” jurisdiction. Proceedings were hotly contested by GPG and the case proceeded as a major piece of multi-party commercial litigation before settling in December 2016 – described by the Regulator as *“the most important settlement the Pensions Regulator has ever reached”*.

#### **Carrington Wire (2012 – 2015)**

Andrew acted for the Trustee of the Carrington Wire DB Pension Scheme in a case in which the Pensions Regulator sought Contribution Notices against Severstal (one of the largest mining companies in the world) and the director of the corporate purchaser of Severstal’s former UK business. Andrew acted for the Trustees who sought to recover the multi-million pound scheme deficit from these Targets. The case was ground-breaking given that it was the first time the Regulator had sought to invoke the “material detriment” test set out in Section 38A of the Pensions Act 2004. Important issues

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of construction of that section arose, as well as heavily disputed issues of fact. The case settled against Severstal, but proceeded successfully against the director in March 2015 with important rulings on the issues of law being made.

### **Lehman (2010 – 2014)**

The Lehman litigation has been the largest and most wide-ranging series of UK proceedings arising out of the 'moral hazard' legislation. Andrew acted on behalf of 4 Lehman companies from the outset of the case in 2010 when two of those companies successfully secured a determination that no FSD should be issued against them. Upon the Trustees initiating a reference from that determination to the Upper Tribunal, his clients' application to strike out the reference became the first ever pensions case to reach the Court of Appeal from the Upper Tribunal and is the leading case on the Regulator's FSD jurisdiction. The underlying references went back to the UT and were proceeding to a three-week hearing in February 2015 before settlement.

### **Chemtura (2011)**

Andrew acted on behalf of all six members of the worldwide Chemtura Group of companies against which the Regulator was seeking the issuing of a Financial Support Direction, the matter settling shortly before a Determinations Panel hearing.

### **Nortel (2010)**

Andrew provided expert evidence on UK pensions legal issues to the Court in Ontario in proceedings arising there out of the Regulator's attempt to obtain a Financial Support Direction against members of the Nortel Group of companies.

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## Financial Services

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### Financial Services & Banking – Cases

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## Arbitration

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### *Acting as counsel*

#### **X v Y (Law Firm) (2014 – 2015)**

Andrew acted for an international law firm in a claim against it for injunctive relief concerning whether it should be permitted to continue to act for a party to an international commercial arbitration in London on the grounds of conflict and/or having come into possession of confidential/privileged information. He also gave advice to that party concerning English legal and procedural issues arising in the context of related commercial litigation in New York.

### *Arbitral Appointments*

With effect from 1 January 2017 Andrew is a founding member of the panel of arbitrators at the International Arbitration Centre of the Astana International Financial Centre in Kazakhstan.

In 2019, Andrew was appointed to the panel of arbitrators at the LIAC-DIFC.

**2014 appointment** in pension scheme dispute.

### *Judicial decisions*

#### **Re: West of England Ship Owners Insurance Services Ltd RBS [2014] 20 (Ch)**

This was one of Andrew's own judgments handed down in his capacity as a Deputy Judge of the Chancery Division. It involved issues of construction intermingled with public law in the context of an appeal from a decision of the Pension Protection Fund Ombudsman to uphold a challenge by pension scheme trustees against the annual levy imposed on the scheme by the Pension Protection Fund ("PPF"). The case required Andrew to resolve (for the first time in the English High Court) a controversial and important issue about the extent to which pension scheme trustees may challenge such a decision by the PPF, as well as a number of other issues relating to the scope of the powers of the PPF Ombudsman.

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## Alternative Dispute Resolution

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Andrew has represented parties in countless mediations over the years in all areas of his practice, acting for both claimants and defendants, most recently in a number of professional negligence claims arising in the pension scheme context – involving allegations of negligence against actuaries, investment advisers and lawyers.

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## Appointments & Memberships

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Between 2017 and 2019, Andrew was the new Chair of the Commercial Bar Association (COMBAR), having previously served as COMBAR's Vice Chair as well as Chair of its International Committee, which is responsible for coordinating the Association's activities in all non-UK jurisdictions. Before that, Andrew was Chair of COMBAR's North American Committee and organised the annual North American Meetings for 2012 and 2013.

In the UK, he sits as a Deputy High Court Judge in both the Chancery and Queen's Bench Divisions and has been a Civil Recorder since 2005. He was appointed a Deputy High Court Judge in the QBD in 2008 and the Chancery Division in 2011.

With effect from 1 January 2018, Andrew was appointed on a part-time basis as one of the initial panel of Justices at the Astana International Financial Centre Court in Kazakhstan together with Lord Woolf (Chief Justice), Sir Robin Jacob, Sir Rupert Jackson, Sir Jack Beatson, Sir Stephen Richards and Lord Faulks QC. See: <http://aifc-court.kz/about-the-aifc-court>.

Andrew was elected as a Bencher of the Middle Temple in 2010.

He is joint head of Outer Temple Chambers and Head of the Business Department.

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## Awards

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Andrew has been a Civil Recorder since 2005 and was appointed a Deputy High Court Judge in the QBD in 2008 and in the Chancery Division in 2011.

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## Languages

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- French

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## Recommendations



Outer Temple Chambers



Leading Set



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## Testimonials

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“An authoritative and experienced advocate well known for his handling of high-profile pension disputes.” **Pensions, Chambers & Partners 2021**

“He is extremely commercial in his approach, gets to the heart of the matter very quickly and produces clear, client-friendly advice.” **Pensions, Chambers & Partners 2021**

“He has consummate client care skills, complete mastery of an incredible volume of material, and the ability to distil complex matters and cut a path to a practical as well as a legally correct solution.”  
**Pensions, Chambers & Partners 2021**

“He has long experience of valuer and pensions-related professional negligence cases. Confident in court and a good delegator.” **Professional Negligence, Legal 500 2021**

“Probably the best advocate at the pensions bar. Great team leader. He gets the best out of the juniors on the case.” **Pensions, Legal 500 2021**

“He always finds the right argument, and the right way to deliver it, he also knows when to step in and fits in very well to a client team.” **Commercial Litigation, Legal 500 2021**

“An authoritative and experienced advocate well known for his handling of high-profile pension disputes. He frequently undertakes regulatory work as well as Part 7 and 8 claims in relation to pensions. He also offers experienced advice on the inflation index to be applied to pension increases.” **Pensions, Chambers and Partners 2020**

“One of the most experienced pensions silks at the Bar. He’s user-friendly, hugely knowledgeable, pragmatic and commercial.” “He combines a calm and genial approach, which goes down very well with clients, with top-notch advocacy and advisory skills.” **Pensions, Chambers and Partners 2020**

“Personable, great with clients and as an advocate; adopts a calm, knowledgeable and impressive approach.” **Pensions, Legal 500 2020**

“He is highly skilled.” **Professional Negligence, Legal 500 2020**

“An exceptional pensions silk who is approachable, practical with his advice and well prepared.” **Pensions, Chambers & Partners 2019**

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"Client-friendly and a superb cross-examiner." "A very accomplished advocate." **Pensions, Chambers & Partners 2019**

"He is very bright and user friendly with excellent technical knowledge." **Pensions, Legal 500 2019**

"He is an extremely practical and commercial QC who puts clients at ease." **Pensions, Chambers & Partners 2018**

"He is technically excellent and driven by the client's goals." **Pensions, Chambers & Partners 2018**

"Masters very technical briefs quickly." **Professional Negligence, Legal 500 2017**

"A powerful advocate, who has the ear of the court and can be relied on in an emergency." **Pensions, Legal 500 2017**

"Any opinion of his carries weight with the other side." **Pensions, Chambers & Partners 2017**

"He takes everything into account, thinks outside the box and thinks commercially." **Pensions, Chambers & Partners 2017**

"A leader in the field." **Pensions, Legal 500 2016**

"He has a very measured type of approach and he is very thorough." **Pensions, Chambers & Partners 2016**

"A superb thinker who processes all of the arguments and delivers first-rate analysis." **Pensions, Chambers & Partners 2016**

"An excellent barrister who comes up with well-considered, persuasive answers. A good man to use in practice and not just academically. He has the ability to convey incredibly difficult matters clearly, and is terrifyingly good. He is tactically brilliant and is an exceptionally good all-rounder." **Pensions, Chambers & Partners 2015**

"Great with clients and as an advocate." **Pensions, Legal 500 2015**

"Terrifyingly good and incisive." "He has a very good client manner; he puts clients at ease and always seems in control." **Pensions, Chambers & Partners 2014**

"He has brilliant commercial instincts and extraordinary attention to detail." **Pensions, Legal 500 2014**

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“Extremely easy to work with, responsive, hard-working and a lawyer who understands the issues clients face.” Noted for having “one of the best attitudes to client service at the Bar”, he received glowing praise from instructing solicitors across the country, who were taken with his “commercial and robust” advice. **Pensions, Chambers & Partners, 2013**

Andrew Spink QC is “terrifyingly good in court.” **Pensions, Legal 500 2013**

Andrew Spink QC has demonstrated that “he can mix it with the best, and do so with an easy, commercial manner.” **Pensions, Chambers & Partners 2012**

Andrew Spink QC demonstrates “great leadership and tactical nous.” **Pensions, Legal 500 2012**

“Highly regarded as someone who is “not only strong technically, but is also very hands-on and practical.” Especially good when in court, “he has an impressive portfolio of cases.” **Pensions, Chambers & Partners 2011**

“Definitely someone you want on your side”, “he has extensive expertise and is a real pleasure to work with.” **Pensions, Legal 500 2011**

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