



James Counsell QC

Year of call	Silk	Email
1984	2017	james.counsell@outertemple.com

James Counsell QC, one of Outer Temple Chambers' heads of chambers, responsible for governance, is widely recognised in the fields of Clinical and Professional Negligence and Personal Injury, acting both for claimants and for defendants. He also specialises in acting for victims of historical sexual abuse, having recently acted as lead counsel in the second successful claim against the Jehovah's Witness organisation and the first of a series of cases against professional football clubs. He currently represents numerous claimants not only in cases against football clubs but also other sporting bodies, religious and educational organisations and the Scout Association.

James also acts for claimants and financial institutions in claims based upon the alleged mis-selling of financial products and breaches of FSMA and at common law, both in the UK and the Middle East.

His claims work is combined with a busy disciplinary and regulatory practice, regularly representing doctors, dentists, barristers, solicitors and those in the financial services sector in their respective disciplinary tribunals.

Besides defence regulatory work, he represents the Council of Lloyd's in enforcement proceedings brought against its members by the Society of Lloyd's. He is also an active member of the BSB Prosecuting Panel and has represented the BSB in a number of recent high profile cases against well-known barristers, including proceedings against Constance Briscoe, Shaun Wallace, Damian McCarthy and Howard Godfrey, QC.

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Clinical Negligence

James has recently acted on both sides in cases involving allegations of negligence in the fields of general surgery – failure to staple after bowel removal, failure to treat abscess leading to septicaemia and death, spinal surgery (decompression, treatment of spinal fractures), orthopaedics (hip replacement and hip resurfacing), foot and back and knee surgery and failure to diagnose surgical error leading to leg amputation. Additionally, he has expertise in obstetrics (delivery delay, leading to brain damage / failure to intubate, leading to death), general practice (failure to act on histological report indicating carcinoma / failure to refer to specialist, leading to amputation, failure to identify cancerous mole, failure to advise on hepatitis, failure to identify diabetes), vascular surgery (failure to treat post-thrombotic syndrome), paediatrics (failure to detect hip dysplasia, shortly after birth) and obstetrics (negligent caesarean section).

Besides clinical issues, he has recently successfully acted for a patient in a consent case where the patient was not told of a late switch of clinician and in a Montgomery case in which failure to explain treatment options is alleged.

The split of his work is roughly 50.50 between claimant and defendant.

James also represents doctors at inquests, and acted for two clinicians in the inquiry into Hyponatraemia-related deaths (O'Hara J) in Northern Ireland (report now published).

Cases:

Jones v Royal Devon and Exeter NHS Foundation Trust (Lawtel 22 September 2015)

Acted for claimant in successful claim against Trust for failure to “consent” patient properly by informing her of change of surgeon before spinal surgery.

Evans v Royal Wolverhampton Hospitals NHS Trust [2014] EWHC 4132 (QB)

Brain damage caused after premature discharge from A&E. Case is leading authority on circumstances in which Part 36 offeror may withdraw offer early after receiving anonymous tip-off that the claim was a sham.

Harris v South Warwickshire NHS Foundation Trust

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Successful defence of orthopaedic surgeon alleged to have performed hip replacement surgery negligently.

Oakes v Birmingham and Solihull Mental Health Foundation Trust

Successfully defended psychiatrist against allegations prescribed wrong psychotic drug, leading to diabetes.

Howe v Taunton & Somerset NHS Foundation Trust

Acted for Claimant who sustained brain injuries as a result of alleged delay in treating subdural haematoma.

Pinnick v Fitzherbert

Acting for Claimant, in claim against GP, who suffered injuries as a result of delay in treatment of type 1 diabetes, leading to severe diabetic complications including almost complete loss of mobility.

Bayley v George Eliot Hospital NHS Trust

Successfully defended Trust against allegation relating to treatment after DVT and alleged failures to consent.

Green v Nardo

Represented Trust in Quantum hearing after post natal negligent vaginal repair surgery

Welsh v Walsall Healthcare NHS Trust

Represented Trust in claim for negligent bariatric surgery resulting reversal and serious physical and psychiatric injuries

Wright v South Warwickshire NHS Foundation Trust

Acted for Trust in quantum only high value claim for damages arising out of negligent caesarian section.

ZZZ v Yeovil NHS Foundation Trust

Claim by insurers of negligent driver for contribution against hospital for alleged delayed diagnosis of spinal fracture leading to paraplegia. Acted for Trust in successful defence of claim.

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Personal Injury

James has an extremely busy personal injury practice, representing mostly, but not exclusively, claimants, often funded by CFAs. He specialises in acting for claimants in non-recent and recent sex and racist abuse claims against religious organisations, schools, the scouts and against football clubs and other sporting bodies.

He acted for a successful claimant in the first successful historic sex abuse case against the Jehovah's Witness organisation and in the second claim against that organisation, he has just been successful at first instance and on appeal to the CA (see below). In three months at the end of 2019 and beginning of 2020, he represented three survivors of historical sexual abuse in contested High Court trials, the first against the Jehovah's witnesses, the second against Blackpool football club and the third against a girls' boarding school (all reported).

He is currently representing the survivors of abuse committed by Barry Bennell in multiple claims against Manchester City and Crewe Alexandra and by Frank Roper against Blackpool Football Club together with cases against Newcastle United, Leicester City, Watford and Southampton. He is also representing a number of claimants in cases against Chelsea FC arising out of allegations of racist abuse and assaults by Graham Rix and Gwyn Williams, former coach and youth manager respectively.

Much of his PI work involves claims arising out of serious injuries sustained in accidents at work and other health and safety contexts and he also acts for both parties in high RTA claims.

Cases:

BXB v Watch Tower and Bible Tract Society of Pennsylvania and another [2020] EWHC 156 (QB); [2020] 4 WLR 42 (trial judgment) and [2020] 656 (QB) (costs judgment)

Successful claim for claimant who suffered psychiatric injuries as a result of rape by elder of Barry congregation when aged 29. Important case on vicarious liability (liability for trespass by elder of congregation, who was also a friend of claimant), limitation (claim brought 24 years out of time) and also on costs (failure of defendant to engage in settlement leading to indemnity costs order). Trial before Chamberlain J over 5 days in November and December 2019. The judgment is here and the news item for this case can be read [here](#).

Trustees of the Barry Congregation of Jehovah's Witnesses v BXB [2021] EWCA Civ 356; [2021] 4 WLR 42

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James, together with Ben Bradley successfully represented the Respondent in the appeal by the Jehovah's Witnesses. The Court of Appeal (confirmed that the well-defined principles of vicarious liability should apply to the acts of Elders in the Jehovah's Witness organisation. A late attempt on the part of Jehovah's Witnesses to argue that such issues were non-justiciable (for fear of allowing the Court to determine matters of religious doctrine) was rejected. Applying *Shergill v Khaira* [2015] AC 359, the Court of Appeal accepted that a court can treat a religious dispute as justiciable "*where the determination of the dispute is necessary in order to decide a matter of disputed legal right.*"

The Court of Appeal confirmed, in a manner which may be of wide application in other cases of sexual abuse, that the two-stage test (which to date has often been applied in cases involving the sexual abuse of children) "*...must be equally applicable to cases involving the sexual abuse of adult victims.*"

[The full CA judgment in *Barry Congregation v BXB* is available here.](#)

TVZ and Others v Manchester City Football Club Limited [2021] EWHC 1179 (QB)

The first civil claims which look likely to go to trial (eight weeks starting in late October 2021 before Lambert J), brought by eight survivors of sexual abuse by Barry Bennell, due to be heard for. James and Ben Bradley represent the claimants. This was an important interlocutory application where the Court (Cavanagh J) was hearing argument as to the admissibility of the Manchester City compensation scheme, the terms of which were inconsistent with the Defendant's case as now pleaded, the admissibility of the FA inquiry report and of a report commissioned by the club itself and as to outstanding disclosure. Cavanagh J ruled in favour of the claimants on the admissibility of the scheme and its terms and on disclosure and reserved the issue of the admissibility of the reports to the trial judge. The judgment can be read [here](#).

DSN v Blackpool Football Club Limited [2020] EWHC 595 (QB), [2020] EWHC 670 (QB) (costs judgment)

In the first of many anticipated cases arising out of abuse of young footballers, James successfully represented the claimant in the first of these claims, for injuries suffered by survivor of sexual abuse, when aged 13, for abuse committed by football scout, Frank Roper, working for football club on football tour to New Zealand in 1987 before Griffiths J in January 2020. Issues: vicarious liability – connection between scout and football when scout not an employee, limitation – whether club prejudiced by death of abuser and youth coach and delay of 22 years and costs – another important costs decision in this area: defence was criticised for (1) failing to concede issue of abuse when no evidence to contrary and for failing to engage in settlement discussions on basis confident would win. The judgment is [here](#) and the news item for this case can be read [here](#). The article James wrote on the

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case for PSL can be read [here](#). James also wrote a review of DSN v Blackpool FC and its implications for sexual abuse claims in English football for LawInSport. This article can be read [here](#).

EXE v Governors of the Royal Naval School [2020] EWHC 596

Represented claimant in claim for damages arising out of alleged sexual abuse by school porter whilst working for girls boarding school in 1980. Besides issues of vicarious liability, limitation and causation, consent was also at issue and the claim alleged negligence for failing to vet an prospective employee to discover serious of criminal convictions. Tried by Griffiths J in February 2020.

A v The Trustees of the Watchtower Bible Tract Society and Others [2015] EWHC 1722 (QB)

Landmark first successful claim against Jehovah's Witnesses organisation for historic sexual abuse committed by one of its ministerial servants and for vicarious liability of elders in failing to safeguard member of congregation. Judgment here.

Various Claimants v Chelsea Football Club

Claims of historical physical, racial and sexual abuse committed by two former coaches of Chelsea Football Club against young black schoolboy and apprentice players. To be tried in March 2020. Recent hearing interlocutory hearing before Stacey J successful in requiring the club to re-plead its case and provide further information as to what its case is.

Betteridge & Others v Leicestershire CC

Claims by claimants of historical abuse in children's homes by staff and by Lord Janner

Mewse & Others v Deansgate 123 LLP

Claims by survivors of sexual abuse in a school against former solicitors for advice to settle at an undervalue.

PQR v The Conservation Volunteers

Claim by young charity volunteer with learning difficulties against charity for damages for psychiatric injuries sustained in assault by another volunteer, leading to onset or exacerbation of schizophrenia. Recently settled

McCoid v Adamski

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Acting for three members of same family in claim for extensive physical and psychiatric injuries in very serious RTA.

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Disciplinary & Regulatory

James's regulatory practice, on the defence side, is chiefly in the medical and dental field together with acting for solicitors and barristers.

He is frequently instructed (by all the principal defence organisations (including MPS, MDU, MDDUS) to represent doctors and dentists at the General Medical Council (the MPTS) and General Dental Council. His work has involved the full range of misconduct and health cases, including clinical malpractice, dishonesty, sexual misconduct and health/addiction-related cases and he regularly conducts appeals in the Administrative Court.

As an active member of the BSB Prosecution Panel, he has prosecuted recent misconduct hearings against barristers leading to disbarment for dishonesty and has acted for the BSB in the high profile cases of Constance Briscoe, Shaun Wallace, Damien McCarthy and Howard Godfrey, QC. He recently successfully defended in a case where a barrister was alleged to have assaulted the defendant outside court in a case where he was representing the claimant.

James has represented Lloyd's of London in over 40 cases and assisted Lloyd's in the complete redrafting of the misconduct byelaws in 2005. He led an inquiry for Lloyd's into the conduct of a Lloyd's Managing Agency and then prosecuted the subsequent successful disciplinary proceedings against the Company and its three senior officers. He has completed an enforcement case against a Lloyd's member, found to have been dishonest in respect of brokerage.

Cases:

Council of Lloyd's v Equity Syndicate Management Limited and others

With Farhaz Khan, James represented the Council of Lloyd's, in disciplinary proceedings against a Lloyd's Managing Agent, its CEO, FD and Active Underwriter arising out of the circumstances surrounding a very substantial deterioration in ultimate net claims (assessed at £262 million). Led prosecution of subsequent disciplinary proceedings before the Lloyd's Enforcement Tribunal resulting in settlement by all defendants shortly before the hearing was due to commence.

Link to press:

- <http://www.lloyds.com/~media/Files/The%20Market/Communications/Market%20Bulletins/2013>

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[/02/Y4675.pdf](#)

- <http://www.insuranceinsider.com/lloyd-s-bars-and-fines-two-equity-execs>
- <http://www.ft.com/cms>

Council of Lloyd's of London v M (Names withheld – not in public domain)

Three employees of Lloyd's managing agents leaving one underwriting agency to go to a competitor, taking with them confidential information and seeking to "poach" business and clients for the benefit of their new employer in breach of Lloyd's and contractual duties.

Council of Lloyd's of London v Y (Name withheld)

Disciplinary proceedings against underwriting agent for misappropriating client money in Singapore.

Council of Lloyd's v O'Sullivan

Disciplinary proceedings against Lloyd's member of an LLP member alleging dishonesty as placing broker by misleading others as to nature of and extent of brokerage to be earned. Discreditable misconduct arising out of dishonestly obtaining more than US\$1.7m out of deception found proved and banned from market, censured and ordered to pay costs. Successfully represented Council of Lloyd's at disciplinary tribunal, appeal tribunal and before the Council in a second appeal by the Defendant.

<http://www.lloyds.com/~media/files/the%20market/communications/market%20bulletins/2017/03/y5067.pdf>

GMC v Pool

Fitness to practise proceedings brought against expert witness (psychiatrist) for failing to act within limits of expertise. Appeal to Administrative Court partially successful – suspension quashed.

GMC v Walker

General Practitioner, working in botox clinic admitting allegations of sexual impropriety with patient, who, with her husband allegedly sought to blackmail him (husband convicted of blackmail). Complainant a dominatrix. Panel accepted his evidence that patient had a financial interest in continuing relations and played a leading role in what occurred, including filming it covertly. Doctor suspended rather than erased. Judicial review proceedings brought mid hearing to resolve challenge to decision to conduct hearing in public. Four week case.

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Bar Standards Board v McCarthy

Prosecuted barrister accused of lying about the sending of client care letters in Direct Access instruction – disbarred. Represented BSB when barrister unsuccessfully appealed to Administrative Court

Bar Standards Board v Wallace

Prosecuted TV quiz barrister accused of misconduct when representing young defendant facing section 18 charge.

<http://www.mirror.co.uk/tv/tv-news/chases-barrister-fined-2500-after-9122962>

Bar Standards Board v Briscoe

Prosecuted barrister and former judge in respect of dishonesty in police investigation into Chris Huhne penalty points prosecution – disbarred.

<https://www.theguardian.com/books/constance-briscoe>

Bar Standards Board v Jenkins

Secured acquittal of barrister facing allegation that he assaulted the defendant to possession proceedings outside court after hearing in which he was appearing for the claimant.

Howard Godfrey, QC v Bar Standards Board

Successfully represented the BSB in appeal brought by silk of 25 years, accused of misconduct by making offensive remarks during a criminal appeal about a 15 year old victim of a sexual assault committed by a stepfather.

<http://nuk-tnl-deck-email.s3.amazonaws.com/213/e98aebc54e5513e88b2014574d209255.html>

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Financial Services

Instructed both by claimants and defendants in financial services litigation. He successfully represented a couple against their bank in which the court considered the extent of the duties owed by the bank in providing information about fixed interest rate loans.

Cases:

Lakhan v Lamia [2021] CA 001.

Successful, leading Stephen Doherty, in an appeal to the DIFC Court of Appeal in this ground-breaking jurisdiction decision which dealt with the circumstances in which a stay should be granted when a matter is referred to the Joint Judicial Committee (“JJC”) because proceedings have been brought in the onshore Dubai Courts after a claim to the DIFC Courts had already been made by the other party.

In Lakhan, the Court of Appeal revised its historical practice of automatically staying proceedings upon petitions being made to the JJC, by confirming that, in order for any stay to take effect, there must first be a positively determined “conflict of jurisdiction”, and the mere existence of two sets of proceedings before the DIFC Courts and the onshore Dubai Courts is no longer a sufficient basis on which to stay proceedings.

Al Soor Investments LLC and Others v Julius Baer (Middle East) Limited and Others

Acting for Claimants in claim brought in DIFC Courts arising out the provision of investment advisory and placement services provided by the Defendant bank after Claimant had been advised to invest about AED 700 million in equity swaps, leading to very significant losses.

Thomas v Triodos Bank [2017] EWHC 314 (Lawtel AC0154076)

Counsel for the Claimants in claim heard by HHJ Havelock-Allan, QC in which the court considered the extent of the duties owed by a bank to its customers when providing information about fixed interest rate loans.

Wanstall v Clydesdale Bank

Acting for Claimant farm partnership in claim against bank for negligent advice and information in selling fixed rate business loans.

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Professional Negligence

James acts for claimants in professional negligence claims against a wide variety of professionals, including accountants, solicitors, barristers and surveyors.

Cases:

Solicitors' Negligence

Mewse & Others v Deansgate 123 LLP

Claims by survivors of sexual abuse in a school against former solicitors for advice to settle at an undervalue.

Rowse v Nalders LLP

Acted recently for claimant in claim for negligent advice as to jurisdiction and powers of Financial Ombudsman and need to bring court proceedings.

Pearson v Georgiou and Others

Failing to advise client adequately as to entries on planning register, leading to purchase of property blighted by proposed development.

Financial advice

Peryer v Arbuthnot Latham

One of a series of cases where James acted for individual claimants in claims against their financial advisers for the mis-selling of financial products, causing losses arising out of the financial difficulties of AIG during the crash of September 2008.

Thomas v Triodos Bank NV

Successfully acted for Claimant farming business in claim for breach of contract and

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misrepresentations in selling of fixed rate bank loans by bank.

Wanstall v Clydesdale Bank

Represented claimant farm partnership in claim against bank for negligent advice and information in selling fixed rate business loans.

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Sports Law

James is a widely experienced Queen's Counsel working in Sports Law, focusing, in particular, on civil actions arising from failures of safeguarding in football and other sports.

Amongst his current cases:

- Leading Counsel, representing the survivors of sexual abuse committed by Barry Bennell in multiple High Court claims against Manchester City and Crewe Alexandra;
- Leading Counsel, acting for survivors in claims of sexual abuse by [Frank Roper against Blackpool Football Club](#), the first of which was tried in the High Court before Griffiths J over five days in late January 2020;
- Leading Counsel instructed in a series of high profile claims against Chelsea FC by young black youth team players who were allegedly abused, physically and racially, by a former youth coach and international player and the team manager;
- Leading Counsel in a claim against the English Karate Federation arising out of a sexual relationship between national coach and young medal winning female British champion (names withheld).

These High Court claims are all ongoing. Each involves complex issues relating to the quantification of the claims.

James's expertise in safeguarding claims has led him to act for claimants in very many historical sex abuse claims against, amongst others, religious organisations, schools, the scouts.

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Commercial Litigation

James has a commercial practice with a particular emphasis on financial services, with experience of disputes in the UK and overseas, particularly in the Middle-East.

Disputes often arise from conflict of jurisdiction, interest rate loans, equity swaps, investments, negligence as well as matters where duties owed by the bank.

Cases:

Lakhan v Lamia [2021] CA 001.

Successful, leading Stephen Doherty, in an appeal to the DIFC Court of Appeal in this ground-breaking jurisdiction decision which dealt with the circumstances in which a stay should be granted when a matter is referred to the Joint Judicial Committee (“JJC”) because proceedings have been brought in the onshore Dubai Courts after a claim to the DIFC Courts had already been made by the other party.

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Dubai, UAE

T: +971 4401 9584

Appointments & Memberships

- Consultant Editor, Halsbury Laws, Vols 74 and 74A – Medical Professions
- Advocacy trainer for the Academy of Law, Dubai
- Civil Practitioner Representative on the Western Circuit Committee

Membership of

- APIL
- ARDL
- Bristol Medico Legal Society
- PIBA
- PNBA
- DIFC Part II Registered Advocate
- Western Circuit

London

Outer Temple Chambers
The Outer Temple
222 Strand
London
WC2R 1BA

T: +44 (0)20 7353 6381
F: +44 (0)20 7583 1786
E Fax: +44 (0)870 220 3256
DX: LDE 351 (Chancery Lane)

Abu Dhabi

24th Floor, Al Sila Tower,
Abu Dhabi Global Market Square,
Al Maryah Island
Abu Dhabi, UAE

T: +971 2694 8596

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Recommendations



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Testimonials

“He is a gentlemen’s advocate: very charming, personable and effective.” **Professional Discipline, Chambers & Partners 2021**

“Very thorough, diligent and provides good client care.” **Professional Discipline, Chambers & Partners 2021**

“A strong advocate who is clearly very passionate about his cases. He’s also extremely professional.” **Clinical Negligence, Chambers & Partners 2021**

“A go-to QC for financial services litigation – bright, personable and good with judges.” **Financial Services Regulations, Legal 500 2021**

“James is reliable, resilient and a brilliant tactician. He has a calm and measured yet devastating approach in the examination of witnesses and captivates his audience in submissions.” **Professional Disciplinary and Regulatory, Legal 500 2021**

“A specialist barrister when it comes to the niche area of law covering sexual abuse.” **Personal Injury, Legal 500 2021**

“Terrific at cross-examination – you want to be on his side, not on the receiving end.” **Financial Services Regulations, Legal 500 2020**

“His forensic attention to detail leaves no stone unturned.” **Personal Injury, Industrial Disease and Insurance Fraud, Legal 500 2020**

“A self-possessed and imperturbable silk.” **Professional Disciplinary and Regulatory, Legal 500 2020**

“He’s an extremely pragmatic fighter and is very good with strategy. He is excellent on his feet in court and can change a case through his cross-examinations.” **Clinical Negligence, Chambers & Partners 2020**

“A leader in his field, who has a calm and unflappable approach.” **Professional Discipline, Chambers & Partners 2020**

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“Cool, calm and collected.” “He’s really excellent to work with. You know you are in good hands. He does it all beautifully.” **Professional Discipline, Chambers & Partners 2019**

“A very charming advocate.” “Very dedicated.” **Clinical Negligence, Chambers & Partners 2019**

“His main strengths are his approach to clients and his positive outlook on cases.” **Personal Injury, Legal 500 2019**

“All round, he is always available and helpful; his cross-examination is a considerable strength.” **Financial Services, Legal 500 2019**

“Highly recommended for banking litigation work.” **Banking & Finance, Legal 500 2019**

“Thorough, approachable and very switched-on in relation to the issues that need to be resolved.” **Clinical Negligence, Chambers & Partners 2018**

“Technical, well prepared and a very good advocate.” **Professional Discipline, Chambers & Partners 2018**

“Very meticulous and excellent on his feet.” **Professional Discipline, Chambers & Partners 2018**

“His calm, collected style is particularly effective with difficult clients and complex issues.” **Professional Discipline & Regulatory Law, Legal 500 2017**

“Calm, robust and steady in difficult circumstances.” **Financial Services, Legal 500 2017**

“Exactly the sort of person you want to take you through a trial.” **Banking & Finance, Legal 500 2017**

“He’s very detail-focused, he picks up on absolutely everything and he’s very good at digesting large quantities of information in a very short period of time.” **Professional Discipline, Chambers & Partners 2017**

“unflappable exterior makes him a really polished performer before the panels. He is well received whenever he appears.” **Professional Discipline, Chambers & Partners 2017**

“Extremely thorough and knowledgeable.” **Professional Discipline and Regulatory Law, Legal 500 2016**

“Highly experienced in mis-selling and negligence claims.” **Banking and Finance, Legal 500 2016**

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“He’s absolutely superb as he’s very quick on the uptake of issues and has no mannerisms or posturing.” **Professional Discipline, Chambers & Partners 2016**

“He addresses things in exactly the right way for each individual client.” **Professional Discipline, Chambers & Partners 2016**

“A well-regarded specialist in financial regulatory, banking and insurance law.” **Banking & Finance, Legal 500 2015**

“He is always well prepared.” **Professional Discipline & Regulatory Law, Legal 500 2015**

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