

James Purchas

Call 1997



James Purchas has extensive experience in the High Court, Court of Appeal, Supreme Court (as junior counsel) and in domestic and international arbitration, as well as in heavy offshore matters in the Channel Islands.

He is regularly instructed from the outset of a case to advise on strategy and tactics and/or where urgent injunctive relief is required.

James has a commercial practice with particular expertise in:

- Banking & Financial Services
- Insurance & Reinsurance
- Commercial Litigation

James is qualified to undertake Public Access work.

Banking & Financial Services

Since a secondment to the FSA in 2004, James has been regularly instructed by the FSA (and now the FCA) and overseas regulators particularly in respect of perimeter and supervisory work.

James is also regularly instructed by those in the regulated sector and on the cusp of the regulatory perimeter.

His work spans the breadth of issues arising under FSMA, the FSA 2012, the RAO and other secondary legislation.

His instructions often involve multiple jurisdictions as well as the complexities and issues arising in the interface between civil and criminal matters. He also has particular expertise in the scope of regulatory powers and jurisdictional

matters.

James also has significant experience of national and international commercial disputes involving those in the banking, financial and insurance sectors.

Featured Banking & Financial Services cases

Advising and representing two HNWIs in respect of the misselling of various IRHPs over several years. Issues include the roll-over of swaps into new structures and questions arising in respect of unfair relationship.

Advising a Swiss entity in respect of its regulatory arrangements for a UK subsidiary in the context of a commercial dispute with lead employees.

Advising a HNWI in respect of claims in respect of bespoke structured notes. Issues involved complex counter-party questions spanning four jurisdictions with a Middle-Eastern based IFA, a Channel Islands trust and a London based branch of a European principal.

Advising and representing a Russian individual in respect of a compromise agreement of a dispute arising from a joint investment arrangement through corporate vehicles with interests in Russia. Issues involved questions of jurisdiction and forum conveniens.

Advising and representing a Polish subsidiary of an overseas investment fund in respect of the repayment of convertible bonds pursuant to a guarantee and subrogated rights arising under Polish law and the application of an English jurisdiction clause in the underlying contractual documents.

Advising and representing multiple claimants in FSMA s. 90A proceedings against an AIM listed company.

Advising and representing 100+ claimants in respect of multi-million claims against IFAs for misselling of EZ Schemes.

Acting for defendant directors in proceedings in Jersey in respect of a Guernsey company's refinancing.

Acting for a Guernsey property development company in respect of a £100 million plus property development where the financing was withdrawn by funders.

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Advising (in conjunction with US lawyers) on FCPA, RICO and SEC 'whistleblowing' matters in respect of activities undertaken in Europe by entities with listings in the USA.

Acting for a major UK Bank in resisting injunctive proceedings relating to the closing of an account. Issues included the interface between the Bank's mandate and its obligations under the Proceeds of Crime Act 2002.

Acting for and advising the FCA in multiple matters in respect of Ponzi and other deposit taking schemes, collective investment schemes, land-banking schemes and market abuse matters.

Acting for and advising FCA in respect of contentious insolvency proceedings with cross-border elements arising from land-banking schemes and the subsequent distribution of the sums recovered.

Acting for and advising FCA in respect of disciplinary proceedings relating to a senior executive within a major financial institution.

Acting for and advising FCA in respect of distribution schemes involving insolvent defendants and competing creditor claims.

Advising overseas stock-exchange as to the scope of its regulatory powers in the context of disciplinary proceedings, its D&O insurance needs and coverage and the scope of a statutory indemnity.

Acting and representing a director of a listed company in respect of a stock-loan dispute involving shares pledged in anticipation of a loan which was not advanced. Required urgent interim freezing and other interlocutory relief.

Advising insurers in respect of an insured's business model and the extent to which it infringed FSMA ss. 19 and/or 21 through its approach to delegated and outsourced activities.

Insurance & Reinsurance

James regularly advises in a wide variety of insurance matters. He advises and appears on behalf of brokers, major UK and foreign insurers and re-insurers as well as private and commercial assureds in arbitrations and court proceedings.

Featured Insurance & Reinsurance cases

AmTrust v Thames: Instructed by cover-holder in respect of Commercial Court proceedings relating to risks written on a construction book of business. Issues involved questions relating to the scope of the binder, the duties of a coverholder to go beyond the pre-agreed Statement of Fact and internal and external referrals.

Cassidy Capital Limited & Ors v Underwriting Agencies of Australia and QBE Insurance (Australia) Limited: Instructed by Lloyd's Syndicate in respect of dispute with former overseas cover-holder involving diversion of business to a competitor insurer, retention and use of confidential materials and withholding of claims float. Claim also involved challenges to the jurisdiction of the English courts.

ABIC Insurance Ltd v Torus Insurance (Europe AG) & Anr: Instructed by Lloyd's reinsurance broker in a multi-party dispute in respect of the reinsurance of a self insured retention arising out of a US property programme. Issues included practice of reinsurance underwriting, expectation as to presentation of material on an 'as if' basis, affirmation and waiver.

Arbitration: Instructed by US cover-holder in respect of dispute with insurers over nature of policies written over four consecutive years. Issues included the scope and application of a guideline manual, the construction of its terms, cherry-picking and limitation.

Advising on composite PI and D&O cover for a large financial institution that has collapsed into insolvency causing enormous consumer losses and amidst substantial negative publicity. Issues include points arising under the Insurance Act 2015, the scope of exclusions and the interplay with fair presentation through to a suspected fraudulent business model.

Advising offshore stock-exchange as to the scope of its D&O coverage needs.

Advising a major international insurer as to the structure of a bespoke policy for an international clearing house. Issues included questions relating to the consequences of insolvency of a group entity, regulatory concerns as to financial guarantee insurance and the implications of being a valued policy.

Advising a leading insurer on a coverage issue where a directors was the subject of a criminal prosecution and the implications for coverage questions in related to administrative proceedings.

Advising and appearing on a s. 69 challenge to an Arbitration Award relating to aggregation issues arising following the World Trade Center terrorist attack.

Advising on scope of D&O cover in respect of proceedings brought in USA against group companies under New York single employer doctrine and intimated inter-group claims.

Advising large regional IFA in dispute with insurer over liability for regulator required changes to commission basis on an historic and ongoing basis.

Arbitration between US entity and insurer as to recoverability of a multi-million US punitive damages award under English law policy. Issues included whether such a recovery was prevented by English public policy, the scope of the meaning of “damages” and “arises from”.

Arbitration acting for Lebanese insurers against UK and US based reinsurers in respect of medical cover. Issues included disclosure, claims co-operation and scope of policy.

Sutherland Professional Funding Ltd v Bakewells & Ors and Chartis & RSA [2013] LLR IR 93: Instructed by insurers in respect of a claim for an indemnity by solicitors in respect of a guarantee given to third party funders of litigation where the ATE insurance has not met the claims. Issues include prior notification to other insurers and coverage.

Advising professional indemnity insurers in respect of liability for funding of failed group litigation.

Khan v Hargreaves: Acting for underwriters in a disputed claim under a jeweler’s block policy. Issues involved disclosure pre / post inception, moral hazard, proof of loss and quantification of loss.

Advising legal expenses insurers about application of alternative insurance exclusions.

Acting for the assured in respect of the scope of a “hot works” exclusion.

LA Fitness & Anr v Quinn: Instructed by LA Fitness in respect of 1930s Act fire claim against insurers. Issues included notification obligations and other coverage issues.

E.A. Foods v E.W. Spice: Instructed in respect of a multi-million claim under the 1930s Act. Issues included whether contamination by admixture amounts to physical damage.

Commercial Litigation

James has a busy general commercial practice with instructions involving contractual, product liability, fire, distribution, M&A, jurisdictional and other issues. He is also regularly instructed by insurers to represent their interests in professional negligence disputes, particularly in the accountancy, financial services, valuation and legal sectors. His practice encompasses a wide variety of domestic and international claims. His clients include major contractors, national and international corporate organisations, private entrepreneurs, professionals and their insurers.

Featured Commercial Litigation cases

Acting for a major UK company in the motor industry in respect of a dispute involving an exclusive distribution agreement. The case involved multi-party proceedings in the High Court and arbitration proceedings in Tokyo with complicated conflicts of law issues as well as multiple interlocutory matters including injunctive relief in the High Court.

Acting in s. 69 appeal to High Court on reinsurance dispute emanating from the World Trade Center attacks.

Acting in ad hoc arbitration for multi-national against insurer in respect of a claim on a public liability policy for a multimillion US jury punitive damages award.

Acting in ad hoc arbitration for US cover-holder in respect of dispute with insurers over nature of policies written over four consecutive years. Issues included the scope and application of a guideline manual, the construction of its terms, cherry-picking and limitation.

Acting in ICC arbitration in Zurich for Bulgarian company in dispute with Swiss pharmaceutical company over exclusive distribution rights for pharmaceutical products.

Arbitration acting for Lebanese insurers against UK and US based reinsurers in respect of medical cover. Issues included disclosure, claims co-operation and scope of policy.

Acting in BCCI arbitration in Sofia for Bulgarian company in respect of a multi-million pound dispute between a pharmaceutical manufacturer and its local partner. Issues involved challenges to the competence of the arbitrators; the application and effect of the Commercial Agents Regulations, jurisdiction and compensatory issues.

Advising and acting for two HNWI individuals in a substantial IRHP misselling claim against a bank in respect of multiple lending facilities.

Advising a HNWI individual in respect of a claim in respect of a structured note that failed to respond in accordance with the manner in which it was intended to.

Acting for and advising a director in respect of claims brought by his former company's liquidators and related Directors' Disqualification proceedings.

Acting for and advising two directors in respect of claims brought against them in respect of the re-financing of the company's borrowings.

Advising (in conjunction with US lawyers) on FCPA, RICO and SEC 'whistleblowing' matters in respect of activities undertaken in Europe by entities with listings in the USA.

Acting for multi-national company in proceedings against two former employees who had taken confidential information to a competitor company. Instructed to obtain urgent injunctive relief.

Advising investor in fraud claim against company, directors and other shareholders in circumstances where shortly after his investment the company was put into administration and its business sold on by way of pre-pack to a competitor.

Acting for multiple insurers in dispute with brokers over PPI liabilities.

Acting for the vendors of a business in respect of a disputed earn-out payment due from the purchasers based on the company's subsequent performance. The dispute raised issues of contract construction, rectification, and a challenge to an expert determination.

Acting for the liquidators of a company in respect of loans to former employers.

Advising and acting for liquidators of a company in respect of recovery of a judgment debt against an individual subject to a restraint order and facing parallel criminal and insolvency proceedings.

Advising a major financial intermediary in respect of multiple claims seeking recovery of commission paid by creditors over many years. The case involved issues of scope of duty of an introducing agent, breach of fiduciary duty, secret commission and limitation. Strategic issues involving claims farming and successfully resisting attempts to consolidate and identify lead claims for a group action.

Acting and appearing on behalf of an aggregator in a chain of supply contracts involving the supply of animal by-products and their onward process in to tallow. Issues involved the construction of the terms and the scope of the statutory implied terms, the impact of the change in EU Regulations and the involvement of a third party government body.

Professional Negligence

Featured Professional Negligence cases

Acting for auditors in alleged defective audit alleged to have been overly conservative.

Acting for auditors in alleged failure to detect fraud.

Various cases involving tax mitigation schemes that had failed representing clients and the relevant professionals. Cases are ongoing.

Acting against Guernsey based directors in respect of decisions to enter into a financing arrangement in association with property development.

Acting for Jersey based directors wholly owned by a Guernsey based trust in respect of a decision to enter into a Swiss franc denominated re-financing arrangement in association with a substantial English estate.

Acting for insurer in respect of a claim against a US based third-party claims administrator where the insurer had been

exposed to a punitive damages claim by reason of the alleged negligent claims administration.

Acting for and against lenders in respect of mortgage fraud claims.

Acting for and against numerous solicitors firms in claims arising out of advice, conduct of litigation and transactional work.

Acting for Gibraltar based firm and barrister in respect of alleged professional negligence in respect of a claim against a bank in English proceedings where claims are also made against two other barristers who were subsequently instructed. Issues include the viability of the pleaded claims, professional obligations in respect of pleading fraud and causation. Trial to take place in 2020.

Acting for and against surveyors on residential and marine valuations.

Appointments

- Trained mediator

Publications

- Civil Appeals: Principle and Procedure. Sweet & Maxwell 1st Edition 2010. 2nd Edition 2015.
- Regular contributing editor on Financial Services, Professional Negligence and Insurance for Law Brief Update (electronic monthly newsletter for solicitors and practitioners).
- Lloyd's Law Reports: Financial Crime – Case reporter and commentator.

Education

- MA (Cantab) Classics
- Dip Law (City University)
- Dip European Law (London)

Languages

- French (working knowledge)

Recommendations

James is recommended as a leading junior for Banking & Finance, Financial Services and Insurance and Reinsurance in the legal directories where comments include:

- Highly responsive, extremely clever and user friendly
- Energy, commitment and attention to detail enable him to produce clear and robust advice and representation
- Diligent, hard-working and extremely intelligent
- Very hard working, very bright and very reliable
- He's brainy and reliable, gives brilliant notes and produces excellent written advice
- He never lets you down...totally conscientious, totally unflappable and totally on the ball
- Intellectually sharp and admired for his depth of knowledge
- Very well regarded within the junior Bar for his ability to handle highly sensitive and complex insurance and reinsurance disputes