

James Malam

Call 2002



Clerks' Details

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Memberships

- Professional Negligence Bar Association
- TECBAR
- Chancery Bar Association
- Northern Circuit Commercial Bar Association

Education

- Bar Vocational Course, Nottingham Law School, Very Competent, 2002
- Lord Justice Holker Award, Gray's Inn, 2001
- LLB (Hons) Law, University of Sheffield, 2001
- Plessington High School, Wirral, 1991-1998

Beyond the Bar

James enjoys reading, photography, cycling, swimming, food and drink and spending time with his family.

Commercial CV

Overview

James' practice covers a wide range of commercial litigation and the skills and experience learned from his other practice areas frequently complement that commercial practice.

In the purely commercial sphere James' experience extends to:

- Contract disputes generally, including disputes over the proper interpretation of contractual terms and as to whether and to what extent a party's standard terms have been incorporated into the parties' contract.
- Securities, including in particular the interpretation of and surety's liability on guarantees and indemnities.
- Acting in arbitrations both domestically and internationally, including under the LCIA and ICC rules and under bespoke rules.
- Dealing with substantial interim applications such as freezing injunctions and other relief and dealing with disputes against the background of a continuing interim injunction.

Recommendations

“James Malam is client-friendly, very good technically, commercially minded when dealing with litigation, and is always very well prepared.”

Chambers and Partners 2022, Construction

“He is calm and able to get to the crux of the issues. He has good cross-examination skills.”

Chambers and Partners 2022, Professional Negligence

“Strong technical advice, clear and robust drafting of pleadings, incisive and effective advocacy. Also very easy and pleasant to work with, and prepared to give an off-the-cuff view if asked and to work through the wider strategy of a claim with us. Understands the requirements and priorities of insurer clients”

The Legal 500 2022, Professional Negligence

“James is quick to identify the key issues and gets to grips with the case within a short period of time, performing well at trial.”

The Legal 500 2022, Commercial Litigation

“James was organised and effective in presentation of our client’s case. He presented it with clarity and persuasion, both on paper and on his feet. He was calm and reassuring to work with.”

Chambers and Partners 2021, Construction

“Very good on paper, with clear and forceful pleadings. Just as good before the court. Always feel in safe hands with James on determining the key technical points, putting forward our best case on them.”

The Legal 500 2021, Professional Negligence

“Technically sound, accessible, thorough, reliable and commercial.”

The Legal 500 2021, Property and Construction

“Technically sound, accessible.”

The Legal 500 2021, Commercial Litigation

“He is very commercial and client-friendly.”

Chambers and Partners 2020, Construction

“He is very good with clients and puts them at ease.”

Chambers and Partners 2020, Construction

“Technically sound and accessible.”

The Legal 500 2020, Commercial, Banking, Insolvency and Chancery Law

“Technically sound, accessible, thorough, reliable and commercial.”

The Legal 500 2020, Construction, Planning and Environment

“Supportive and thorough.”

The Legal 500 2018/19, Commercial, Banking, Insolvency and Chancery Law

“He has a keen eye for the key issues of a case.”

The Legal 500 2018/19, Construction, Planning and Environment

“Knowledgeable and meticulous.”

The Legal 500 2017, Commercial, Banking and Insolvency

“A strong advocate, who provides sensible and pragmatic advice.”

The Legal 500 2016

“His courteous and helpful manner enables him to readily deal with even the most difficult of clients.”

The Legal 500 2015, Commercial, Banking and Insolvency

“Has a sound grasp of the technicalities of a legal problem.”

The Legal 500 2015, Construction, Planning and Environment

“Understands the need for commercial cost-effective solutions.”

The Legal 500 2014, Construction, Planning and Environment

“He has a swift grasp of the key issues in his cases.”

The Legal 500 2014, Commercial, Banking and Insolvency

Recommended for professional negligence work.

The Legal 500 2013, Chancery and Commercial

“Quick to grasp the strengths and weaknesses of a case”.

The Legal 500 2012, Chancery and Commercial

“Very careful, easy to work with and bright’...has a practice that is ahead of his call.”

The Legal 500 2011, Chancery and Commercial

Cases

Cases of particular interest include:

- Successful arbitration in London under ICC arbitration rules following a 2-day hearing. Represented a consultant claiming fees arising from its procurement on behalf of a FTSE 100 company of contracts with the Mauritian government. The FTSE 100 company sought to avoid paying the fees on the basis of alleged 'red flags' suggesting possible fraud on the part of the consultant. The FTSE 100 company's allegations were rejected and the consultant awarded its fees in full.
- Long running dispute regarding the retirement of three of seven partners from a farming partnership with several million pounds of assets. Dispute revolved around the proper interpretation of the partnership deed regarding the 3 retiring partners' half share in the partnership and whether and when that half share fell due so as to trigger an acceleration of the payments due. [Liddle v. Liddle \[2019\] EWCA Civ 346](#), [2019] B.P.I.R. 947; [2017] EWHC 2261 (Ch), [2017] B.P.I.R. 1538.
- Successful 3-day TCC trial. Dispute as to the specification of a sewage treatment plant serving a large care home. Question of interpretation of parties' informal contract in which the engineer agreed to design 'sewers' and whether that obliged it to specify the type of package sewage treatment plant to be used. Limitation issues revolving around when the Defendant's right to a contractual indemnity accrued under the terms of the contract. [Baylham Care Centre Ltd v. Mixbrow Ltd \[2019\] EWHC 2645 \(TCC\)](#).
- Appeal to Marcus Smith J. against dismissal of application to set aside a settlement agreement on the basis of mistake of law. Raised issues as to whether it is possible to set aside compromise agreements in circumstances where the matter about which the parties were mistaken was not the subject matter of the compromise between them, but a matter on which they both held the same view, and as to what constitutes a mistake versus a misprediction. [Elston v. King \[2020\] EWHC 55 \(Ch\)](#), [2020] B.P.I.R. 501; [2018] B.P.I.R. 1281.
- Resisting appeal to Court of Appeal (David Richards, Newey LJJ.) against judge's refusal to award indemnity costs of enforcing judgment. Judgment makes clear that conduct need not be 'unusual', only 'out of the norm' (ie. unacceptable) to attract indemnity costs. [Whaleys \(Bradford\) Ltd v Bennett \[2017\] 6 Costs L.R. 1241](#).
- Defending claim for injunction and damages for breach of confidence based on provisions in a recruitment consultant's contract of employment. Issues as to the construction of the employee's confidentiality/non-compete covenants and whether the new employer was liable as having procured the employee's breach of those covenants.
- Dispute regarding the incorporation by reference or conduct of standard terms substantially curtailing supplier's liability for defects, including

requirement of notice within 30 days of supply, when it was known the products were to be incorporated into an oil refinery and would be exported by sea to Baton Rouge, Louisiana so would not be used for more than 30 days.

- C.£1m claim on an allegedly unpaid loan subject to several variations of disputed effect. Questions of construction of the variations, whether breaches of those variations rendered them void and whether the alleged breaches were waived. Resisting a freezing injunction over the client's assets.
- Representing the Defendants to an action on a guarantee which raised questions of private international law, the EU Insolvency Regulation and the impact of Irish insolvency law on the enforceability of a guarantee which was subject to English law but given over the indebtedness of an Irish company.
- Successfully represented the Respondent in first Court of Appeal case on interpretation of s.1032 Companies Act 2006: whether restoration of a company to the Register was retroactive so as to validate proceedings issued against it while struck off. Peaktone Ltd v. Jodrell [2013] 1 WLR 784, [2013] 1 All ER 13.
- Representing debtors at first instance and on appeal in test cases against banks arising from section 78 of the Consumer Credit Act 1974, led by David Uff and Lawrence West QC. Teasdale v. HSBC [2010] 4 All ER 630 and Brookes v. HSBC [2011] EWCA Civ 354.
- Drafting Grounds of Appeal and representing a Swiss property investment company at an oral application for permission to appeal against findings of fraud and judgment on a c. €14m bond claim.