

Overview

Banking and Financial Services
Consumer Credit
Commercial Disputes
Property

Profile: Overview

Malcolm Waters QC's practice is focused on retail banking, financial services, mortgages, consumer credit, building societies and other mutual institutions, land law and conveyancing. He has a particular interest in the law relating to unfair contract terms and in the different legal and regulatory regimes which provide redress for the unfair treatment of consumers by financial services businesses.

Experience and Expertise

Malcolm Waters QC acts regularly for banks, building societies and other financial institutions in litigation, drafting and advisory work relating to their retail lending and deposit-taking business. He also specialises in consumer credit and mortgage work and in the law relating to mutual institutions (including building societies, friendly societies and co-operative and community benefit societies). His practice additionally includes land law and conveyancing.

He has extensive experience in applying the legislation on unfair terms (now contained in Part 2 of the Consumer Rights Act 2015) to standard form contracts, particularly those relating to mortgages, unsecured loans, current accounts and savings accounts. He acts regularly in cases involving other legal and regulatory regimes which provide protection for consumers in the financial services area, including the unfair relationships provisions of the Consumer Credit Act 1974, the Consumer Protection from Unfair Trading Regulations 2008, the Payment Services Regulations 2017, MCOB, BCOBS and the Standards of Lending Practice. His work in these areas covers claims in proceedings before the civil courts, regulatory intervention by the FCA and complaints to the FOS. He also has wide experience of issues relating to mortgage regulation, including the application of provisions implementing the Mortgage Credit Directive and the consequential changes in the boundary between regulation under FSMA and the CCA.

His consumer credit work includes the drafting of standard form documentation and he has experience in advice and litigation in all areas of consumer credit law. He previously acted for a number of licensees seeking to avoid the revocation of their licenses, or the imposition or requirements by the OFT. Following the transfer of responsibility for consumer credit regulation to the FCA, he has continued to act for businesses seeking to obtain or maintain authorisation under FSMA or to respond to regulatory intervention by the FCA.

He provides specialist advice on the law relating to building societies, friendly societies and co-operative and community benefit societies (previously known as industrial and provident societies). He was involved in all the building society transfers of business which took place in the 1980s and 1990s and, more recently, appeared for the transferor societies at the hearings to confirm the mergers of the Lambeth and Portman Building Societies, the Portman and Nationwide Building Societies, the Derbyshire and Nationwide Building Societies and the Cheshire and Nationwide Building Societies. He also appeared for Britannia Building Society at the hearing seeking confirmation of its merger with the Co-operative Financial Services (which was the first transaction to proceed under the new legislation which permits mergers between different types of mutual organisation) and for Kent Reliance Building Society at the hearing to confirm the transfer of its business to OneSavings plc.

His work in relation to mortgages grew out of his practice in land law and conveyancing, in which he retains an active interest. He (together with [Elizabeth Ovey](#)) is a member of the two committees responsible for drafting each of the successive editions of the Standard Conditions of Sale and the Standard Commercial Property Conditions.

Cases and Work of Note

- *Baxendale-Walker v APL* 2017 (whether mortgage contract regulated by FSMA or

- the CCA; unfair relationships; unfair terms);
- NRAM plc v McAdam and Hartley* [2015] EWCA Civ 751 (effect of documenting an unregulated agreement as regulated);
- JP Morgan Chase Bank NA v Northern Rock (Asset Management) plc* [2014] 1 WLR 2197 (statements under section 77A of the Consumer Credit Act 1974);
- Log Book Loans Ltd and Nine Regions Ltd v OFT* [2010] UKFTT 643 (preliminary issues in proceedings by the OFT to revoke a consumer credit licence);
- Southern Pacific Mortgages Ltd v Heath* [2009] EWCA Civ 1135 (multiple agreements and the effect of section 18 of the Consumer Credit Act 1974);
- Office of Fair Trading v Abbey National and others* [2009] EWHC 36 (Comm) (whether charges relating to unarranged overdrafts capable of being penal);
- Office of Fair Trading v Abbey National and others* [2008] EWHC 875 (Comm) (whether terms imposing charges relating to unarranged overdrafts assessable for fairness);
- Bristol and West plc v Bartlett & anr; Paragon Finance plc v Banks; Halifax plc v Grant* [2002] 4 All ER 544 (when an action to recover the shortfall due under a mortgage becomes time-barred);
- Director-General of Fair Trading v First National Bank* [2002] 1 AC 481 (whether a term making interest on a loan payable at the contract rate after judgment unfair);
- Woolwich plc v Gomm* (2000) 79 P&CR 61 Court of Appeal (whether bank had imputed notice of undue influence);
- Harwood-Smart v Caws* [2000] Pens LR 101 Chancery Division (rights to pension scheme surplus);
- Building Societies Commission v Halifax Building Society and Leeds Permanent Building Society* [1997] Ch 255 Chancery Division (merger of building societies with a view to conversion to plc status);
- Cheltenham & Gloucester Building Society v Norgan* [1996] 1 WLR 343 Court of Appeal (terms on which possession orders should be suspended);
- Halifax Building Society v Thomas* [1996] Ch 217 Court of Appeal (profits derived from mortgage fraud);
- Cheltenham & Gloucester Building Society v Building Societies Commission* [1995] Ch 185 Chancery Division (acquisition of a building society by a bank); *Peggs v Lamb* [1994] Ch 172 Chancery Division (charities and charitable purposes);
- Cheltenham & Gloucester Building Society v Grattidge* (1993) 25 HLR 454. Court of Appeal (relationship between money judgment and suspended possession order);
- Abbey National Building Society v Building Society Commission* (1989) 5 BCC 259. Chancery Division (conversion of building society to plc status);
- Midland Bank Trust Co v Green* [1981] A.C. 513 (land charges registration);
- Pritchard v Briggs* (rights of pre-emption). Malcolm Waters QC has long been recommended by the legal directories as a leading silk for both Banking and Financial and Consumer Credit work. Recent directory editorial includes the following:

Recommendations

- Member of the committees responsible for drafting the Standard Conditions of Sale and the Standard Commercial Property Conditions.
- "He speaks knowledgeably and puts difficult arguments forward persuasively." "He is a long-established guru." "He has that all-round experience that means you can go to him with your trickiest, highest-risk matters and get a very measured view- he has a first-class intellect." (Consumer Law, Chambers UK, 2018)
- "He has an excellent depth of knowledge and experience, and is always very thorough in his advice." (Banking and Finance, Chambers UK 2018)
- "He shows excellent depth of understanding and appreciation of context." (Banking, Legal 500, 2018)
- "He is very thorough and shows exceptional depth of understanding." (Financial Services, The Legal 500, 2017)
- "Shows very good attention to detail." (Restructuring/ Insolvency, Chambers UK, 2017)
- "I was impressed with how approachable he was." (Consumer Law, Chambers UK, 2017)
- "He was very familiar with the area and could give concise advice at short notice." (Consumer Law, Chambers UK, 2017)
- "The guru on the Consumer Credit Act, who gets his technical points across

- extremely well." (Banking and Finance, Chambers UK, 2017)
- "His analysis of consumer protection legislation is really amazing." (Banking and Finance, Chambers UK, 2017)
- "An absolute star in the consumer credit world." (Banking and Finance, The Legal 500, 2016)
- a real expert on consumer credit law; clients feel very confident having him as an adviser.
- very popular, an outstanding leading counsel praised for his legal know-how, pragmatic advice and smooth delivery.
- brings commercial realism to his cases and can work his way well through the most complicated consumer credit legislation.
- has a strong pedigree in banking and finance cases.
- a consummate performer, provides great advice.
- collaborative, honest, and very accommodating to specific needs.
- considered the leading authority on the fairness of mortgage terms and conditions.
- undoubtedly the best consumer credit silk there is.
- at the forefront of the developing law and advises on groundbreaking transactions in the [banking and financial services] sector.
- approachable and willing to discuss issues, but also not afraid to give a robust opinion.
- has market leading knowledge.
- very erudite and intellectual in his approach but also friendly and down to earth.

Publications

He is senior editor of Wurtzburg and Mills on Building Society Law (which he co-edits jointly with colleagues, [Elizabeth Ovey](#) and [Mark Fell](#)), a looseleaf work which is kept up to date with regular releases.

He is also the author, along with Elizabeth Ovey and Mark Fell, of *Retail Mortgages: Law, Regulation and Procedure*, 2013, Sweet & Maxwell.

He was (together with Elizabeth Ovey) a contributing editor of *The Law of Investor Protection*, 2nd edition, and consultant editor of the title on Mutual Institutions in the current (fifth) edition of *Halsbury's Laws of England*:
<http://lexisweb.co.uk/guides/sources/halsbury-s-laws-of-england>.

He was also consultant editor of the title on Friendly Societies in the preceding (fourth) edition of *Halsbury's Laws of England* (2007 reissue).

Seminars

He is happy to provide seminars on unfair terms/unfair treatment in the retail financial services area and on consumer credit and topics relating to mortgage law.

Qualifications

BA (first class) Oxford University BCL (first class)

Oxford University Queen's Counsel

Memberships

Member of the Chancery Bar Association and the Professional Negligence Bar Association.

Other Details

VAT Registration Number: 235337667 Bar Membership Number: 18031

For More Information

Please click on the links to the left or contact a member of the clerking team.

