

# Banking and Financial Services



“Established among the  
Chancery elite” Chambers UK

“The building society set of choice, but is also known for consumer credit work and well regarded by in-house counsel as well as solicitors for banking.”

Banking and Finance section, *The Legal 500*

Members of Chambers deal with a wide range of banking and financial services matters. Our members undertake drafting and advisory work, in relation to both established products and to new products being brought to market.

We also provide advice in due diligence exercises and undertake advocacy in a wide variety of cases, from test cases with the potential to have an impact on the whole market, to smaller-scale disputes in the county courts. Members also appear in other forums such as Tribunals.

In addition to general banking and financial services litigation, our work includes advice, drafting and advocacy in the following areas:

- Building Societies, Friendly Societies and Industrial and Provident Societies
- Financial Services Regulation
- Banking and Financial Services Products

Our clients include banks, building societies, hedge funds, institutional investors, regulators and customers.

Members have undertaken secondments in both the Financial Conduct Authority and the former Office of Fair Trading.

## Publications

Members of Chambers have contributed to the following publications:

- The leading textbook on building society law, *Wurtzburg and Mills*
- The Law of Investor Protection (2nd edition)
- The section on Mutual Institutions in the current (fifth) edition of Halsbury's Laws of England and the section on Friendly Societies in the preceding (fourth) edition

- Malcolm Waters QC, Elizabeth Ovey and Mark Fell are the authors of *Retail Mortgages: Law, Regulation and Procedure*, published by Sweet & Maxwell
- Mark West is author of “Swaps & Local Authorities: A Mistake?” in *Swaps & Off-Exchange Derivatives Trading: Law & Regulation* (edited by Bettelheim, Parry & Rees) (FT Law & Tax, 1996)

## Cases of Note

**Rosserlane v Credit Suisse** [2015] EWHC 384 (Ch) - claim in relation to the sale of an interest in an oil field in Azerbaijan (Jeremy Cousins QC)

**NRAM plc v McAdam** [2015] EWCA Civ 751– whether borrowers under a non-regulated agreement documented as regulated under the Consumer Credit Act 1974 are entitled to rights and protections equivalent to those provided under the Act (Malcolm Waters QC)

**BNY v LBG Capital** [2015] EWHC 1560 (Ch) - bankers' attempt to redeem securities issued at high coupon relying on suggested capital disqualification event) (Jeremy Cousins QC)

**Yeganeh v Ross Freese and Jonathan Cookson & ors** [2015] EWHC 2032 (Ch) - claim against receivers and banks by a principal debtor and a guarantor for damages arising from alleged breaches of duty (Tina Kyriakides)

**AIB v Redler** [2014] 3 WLR 1367 - solicitors' liability for breach of trust in security transaction. (Jeremy Cousins QC)

**Graves v Capital Home Loans Ltd** [2014] EWCA Civ 1297 – obligations of a lender where a borrower in arrears has mental health problems; whether the appointment of a receiver or the exercise of a power of sale gave rise to an unfair relationship (Peter Dodge)

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**JP Morgan Chase Bank NA v Northern Rock (Asset Management) Plc** [2014] EWHC 291 (Ch) – consequences of non-compliant statements of account in respect of consumer credit agreements (Malcolm Waters QC)

**HMRC v Ben Nevis (Holdings) Ltd** [2013] EWCA Civ 578 – operation of offshore private banking and fund management services (Mark Fell)

**Davies v AIB Group (UK) Plc** [2012] 2 P&CR 19 - Undue influence in banking transaction (Jeremy Cousins QC)

**FBME Bank v Elwes & Aspin** [2012] EWHC 2209 (QB) – interpretation of the payment terms of a guarantee (Shantanu Majumdar)

**OFT v Ashbourne Management Services Ltd** [2011] EWHC 1237 (Ch) - Meaning of credit; fairness of terms, penalties (Jeremy Cousins QC)

**In the Matter of Tag Capital Ventures Ltd** [2012] EWHC 1171 - issue whether any agreement for the purchase of shares and if so whether that agreement was vitiated by fraudulent misrepresentation (Reuben Comiskey)

**National Westminster Bank plc v Msaada Group** [2011] EWHC 3423 (Ch) - acting for the bank which was owed over £5 million by the company and which sought to appoint an administrator. The court had to consider whether the appointment was valid. (Tina Kyriakides)

**Sofaer v Anglo Irish Bank** [2011] EWHC 1480 (Ch) - claim on a limited guarantee; issues about the nature of guarantees, whether the resulting claim was one in debt, damages or secured (Christopher Boardman)

**Crastvell Trading Limited v Bozell SA** [2010] EWHC 166 (Comm) – multi-jurisdictional loan litigation (Shantanu Majumdar)

**Basinghall Finance PLC v Butler** [2009] EWCA Civ 1262 – mortgages, assignment, securitisation, privity, consumer credit (Dov Ohrenstein)

**Southern Pacific Mortgages Ltd v Heath** [2009] EWCA Civ 1135 – multiple agreements and the effect of section 18 of the Consumer Credit Act 1974 (Malcolm Waters QC)

**Office of Fair Trading v Abbey National & Ors** [2009] EWHC 875 (Comm) – whether charges relating to unarranged overdrafts were capable of being penal (Malcolm Waters QC)

**Banfield v Leeds Building Society** [2007] EWCA Civ 1369 – whether endowment mortgage or repayment mortgage; no obligation to account in respect of a mortgage indemnity guarantee; effect of failure to surrender insurance policy on existence of possession action (Mark West, Frances Ratcliffe)

**Peekay Intermark Limited v Australia and New Zealand Banking Group Ltd** [2006] EWCA Civ 386 – modern ambit of the doctrine of contractual estoppel (Shantanu Majumdar)

**Shogun Finance Ltd v Hudson** [2003] UKHL 62.- Scope of application of inter praesentes principle where written contract; passing of title to goods (Jeremy Cousins QC)

**AIB Group v Martin** [2001] UKHL 63 - Construction of joint mortgagor clause, giving rise to joint liability for one partner's several debts whose existence was not known to co-mortgagor (Jeremy Cousins QC)

**Director-General of Fair Trading v First National Bank** [2001] UKHL 52 – whether a term making interest on a loan payable at the contract rate after judgment was unfair (Malcolm Waters QC)

**Portman Building Society v Bevan Ashford** [2000] Lloyd's Rep PN 354 – application of test in SAAMCO to solicitor's negligence action (Mark West)

**Kleinwort Benson v Lincoln CC** [1999] 2 AC 349 (HL) – whether money paid under a void interest rate swap contract can be recovered on the ground that it was paid under a mistake of law (Mark West)

**Portman Building Society v Hamlyn Taylor Neck** [1998] 4 All ER 202 (CA) – whether a lender has a cause of action in restitution to recover money paid under a mistake of fact in the context of a solicitor's negligence action (Mark West)

**Kleinwort Benson v Birmingham CC** [1997] QB 380 (CA) – whether passing on is a defence to restitution of monies paid under a void interest rate swap contract (Mark West)

**Cheltenham & Gloucester Building Society v Norgan** [1996] 1 WLR 343 (CA) – terms on which mortgage possession orders should be suspended (Malcolm Waters QC)

**Morgan Grenfell v Welwyn Hatfield DC** [1995] 1 All ER 1 – whether interest rate swap contracts are wagers within the terms of s.18 of the Gaming Act 1845 and/or the Gaming Act 1892 (Mark West)

## Areas of Expertise

### ■ Banking and Financial Services

Charities  
Commercial Disputes  
Company

### ■ Consumer Credit

Court of Protection  
Insolvency  
Partnership and Joint Ventures  
Pensions  
Professional Liability  
Property  
Tax  
Trusts  
Wills and Estates  
Mediation and Arbitration  
International

## Members of Chambers practising in this area of law

Malcolm Waters QC  
Jeremy Cousins QC  
Elizabeth Ovey  
Tina Kyriakides  
Piers Feltham  
Mark West  
Howard Smith  
Peter Dodge  
Shantanu Majumdar  
Dov Ohrenstein  
Christopher Boardman  
Douglas Keel  
William Moffett  
Gary Lidington  
Reuben Comiskey  
Tom Beasley

Steven Barrett  
Frances Ratcliffe  
Mark Fell  
Wendy Mathers  
Dawn McCambley  
Catherine Doran  
Natalie Brown  
Daniel Burton  
Henry Day  
Nicholas Macklam  
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