



## Mark Fell

Call: 2004

### Barrister

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#### RECOMMENDATIONS

"Extremely approachable, friendly and someone whose knowledge of the law is excellent."

Chambers UK Bar 2019

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**Mark Fell** is a versatile advocate, with particular specialisms in banking/financial services (including consumer credit) and tax. As a member of the Attorney General's A Panel he works for central government and regulators, as well as private sector institutions.

Over the last few years Mark has been involved in an array of substantial cases in venues from the High Court to the Court of Justice of the European Union. One day he might be arguing a technical customs law point in the Tribunal on behalf of HM Revenue and Customs with industry wide implications for the way goods are cleared into the UK. Another, he might be advising a building society on regulatory issues arising from a multi-billion-pound mortgage portfolio.

#### BANKING AND FINANCIAL SERVICES

Banking and financial services is a core specialism for Mark, in which he is involved in cutting-edge advocacy for the regulator and financial institutions. He has particular technical expertise in retail banking and consumer credit matters. Alongside his litigation practice, Mark has a substantial advisory practice in this area - key advisory work has included advising on building society mergers and acquisitions during the 2008/9 credit crisis and a project redrafting one of the clearing banks account terms and conditions in the run up to the so-called overdraft charges litigation.

Selected recent work includes:

- *Mason v Godiva Mortgages Ltd* [2018] EWHC 3227 (QB)  
- Acting as sole counsel in a High Court case relating to

## RECOGNITION

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Mark has been recommended by The Legal 500 and by Chambers UK for more than a decade. Recent editorial comment has included the following:

- *“He is a highly intelligent and analytical barrister who has the ability to provide clear legal advice with commercial awareness of the practical implications.”* (Consumer Law, *Chambers UK Bar 2020*)
  - *“An expert in the consumer credit field, superbly responsive and supportive.”* (Banking and Finance, *The Legal 500 UK Bar 2020*)
  - *“An extremely capable advocate able to meet the challenges of complex cases.”* (Finance Service Regulation, *The Legal 500 UK Bar 2020*)
  - *“Extremely approachable, friendly and someone whose knowledge of the law is excellent.”* (*Chambers UK Bar 2019*)
  - *“An excellent junior barrister – one to watch.”* (*The Legal 500 2019*)
  - *“Very knowledgeable, responsive and diligent, particularly in retail banking law.”* (*The Legal 500 2019*)
  - *“He has an excellent bedside manner. He puts very complex things into very simple terms, he is very efficient and he gets things done.”* (*Chambers UK Bar 2018*)
  - *“An excellent financial services and regulatory barrister.”* (*The Legal 500 Bar 2017*)
  - *“His work is thoroughly researched and of a consistently high standard.”* (*The Legal 500 Bar 2017*)
  - *“Shows meticulous attention to detail, together with clarity and precision in drafting, and has a patient, accessible and responsive manner.”* (*Chambers UK Bar 2017*)
  - *“He gets straight to the heart of the issue and is very user-friendly.”* (*Chambers UK Bar 2017*)
  - *“A responsive, diligent and impressive barrister with an expert knowledge of the law.”* (*The Legal 500 2016*)
- compliance with responsible lending rules. The first case in which the High Court has considered those rules in the context of a claim for damages under the Financial Services and Markets Act 2000.
- *Chickombe v Financial Conduct Authority and Barclays Partner Finance* [2018] CTLC 197 – Acting in a widely reported case concerning the validation order in relation to a £47 million consumer credit loan portfolio brokered by an unauthorised credit broker. Leading case on the relevance of consumer detriment to such orders.
  - *Nationwide Debt Consultants v Financial Conduct Authority* [2017] UKUT 0142 TCC – Appearing in a case relating to the significance of record keeping allegations in regulatory authorisation litigation.
  - *Maoudis v Financial Conduct Authority* (2017) BPIR 1555 – Acting in regulatory authorisation litigation concerning the consumer credit interim permission of a debt management firm.
  - Acting for a global bank in a test case concerning interest rate variations on a mortgage pool (2017).
  - *Koksai v Financial Conduct Authority* (2016) CTLC 201 and (2017) BPIR 1517 – Acting in a tribunal reference challenging a decision refusing to authorise a consumer credit broker. The first consideration by the Tribunal in an authorisation case of its revised jurisdiction under the Financial Services Act 2013.
  - Advising in relation to an amendment to the UK’s financial services regulatory perimeter by HM Treasury (2017).
  - *PDHL Ltd v Financial Conduct Authority* (2017) BPIR 1623 – Appearing, led by Javan Herberg QC, in an application to suspend the ceasing of an interim permission of a consumer credit firm pending a book sale.
  - Advising in relation to an FCA consultation process (2017).
  - *Financial Conduct Authority v HFO* [2015] UKUT 0118 (AAC) – Appearing, led by Patrick Goodall QC, in proceedings concerning the cancellation of the regulatory authorisations of a group of debt collection firms.
  - Advising a clearing bank on the operation of the payment services directive in relation to card transactions.
  - Advising on due diligence and regulatory authorisation issues in relation to a multi-billion pound loan pool sale in 2015.
  - Advising a major banking group on aspects of the legislation ring fencing retail and investment banking in 2014.
  - *Revenue and Customs v Ben Nevis (Holdings) Ltd & Ors* [2012] STC 2157 and [2014] WTLR 1 – Acting in a case led by James Ayliffe QC. In these proceedings a claim was made for judgment in respect of over £220 million in unpaid South African tax from two offshore companies. The case raised a number of important issues about the operation of offshore private banking and fund management services.

## TAX

Mark has a high-level tax litigation practice, appearing regularly in the First-tier Tribunal and the Upper Tribunal. He

## PUBLICATIONS AND SPEAKING

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Mark is an editor of *Wurtzburg & Mills on Building Society Law*, which he co-edits with colleagues in Chambers and the law firm Allen & Overy. He is also the author, along with Malcolm Waters QC and Elizabeth Ovey, of *Retail Mortgages: Law, Regulation and Procedure*, published by Sweet & Maxwell.

Mark is very happy to speak at events and provide training based on his areas of practice.

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## COMMUNITY AND PRO BONO

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Mark is committed to voluntary and community-based work. Highlights of his work in this area include:

- mentoring as part of in Lincoln's Inn's mentoring scheme
  - being a member of the Bar Council's Ethics Committee;
  - being a member of the steering committee for the Radcliffe Chambers Student Barrister Experience Programme, which won the Diversity & Inclusion Initiative of the Year award at the 2018 UK Diversity Legal Awards
  - acting as a trustee of one of the leading London homeless charities.
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## QUALIFICATIONS

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Mark read Philosophy at Corpus Christi College, Cambridge, where he secured a double first and was made a Scholar. He went on to do a Masters Degree in Political Theory at the London School of Economics, securing a distinction and coming top of his year. Mark is a Bowen and Mansfield scholar of Lincoln's Inn.

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## MEMBERSHIPS

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Mark is a member of the Chancery Bar Association, the Commercial Bar Association and the Financial Services Lawyers Association.

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has extensive experience of customs, excise, VAT, corporation tax, diverted profits tax, tax litigation involving offshore elements, the OECD transfer pricing guidelines and tax enforcement.

Selected cases include:

- *R v Revenue and Customs (Awodiya)* [2019] EWHC 251 (Admin) – Acting in High Court judicial review proceedings in relation to the tax credit system.
- *Revenue and Customs v Curzon Capital Limited* [2019] UKFTT 63 (TC) – Acting in Tribunal proceedings in relation to the DOTAS regime.
- *Renesola UK Ltd v Revenue and Customs* [2018] UKFTT 0647 (TC) – Acting in a case regarding validity of EU regulation determining origin of imported solar panels for anti-dumping duty purposes. The EU equivalent of similar litigation conducted in the US regarding dumping of Chinese solar panels on world markets. Whether reference to CJEU needed.
- *Performers College Ltd v Revenue and Customs* [2018] STI 834 – Case concerning the consistency of a VAT exemption with EU law.
- Acting in relation to litigation concerning the OECD's transfer pricing regime for the taxation of multi-national enterprises and the UK's diverted profits tax regime.
- (Case C-545/2016) *Kubota*, Court of Justice of the European Union, Judgment of 22 February 2018 – Acting in a case reference to the CJEU concerning the classification of utility vehicles under EU customs legislation.
- *Savant Distribution v Revenue and Customs* [2016] UKFTT 533 (TC) – Acting in a case regarding the customs classification of food supplements.
- *Alpine Electronics v Revenue and Customs* [2016] UKFTT 437 (TC) – Acting in a case regarding the customs classification of electronic navigational products case.
- *Nas & Co v HM Revenue and Customs* [2014] UKFTT 50 (TC) – Case concerning the return of forfeited excise goods.
- *Atlas Property v Revenue and Customs* [2014] STI 2664 – Acting in a case regarding exempt VAT status of supplies of temporary accommodation.
- *Insectlore v Revenue and Customs* [2014] UKFTT 368 (TC) – Acting in a case regarding the customs status of butterfly storage products.
- *Liquid Investments v Revenue and Customs* [2014] UKFTT 297 (TC) – Acting in a case regarding the standing of a party to bring a tribunal appeal.
- *Snackwell v HM Revenue and Customs* [2013] UKFTT 661 (TC) – Acting in a case concerning the flavouring of excise goods.
- *Franck and Tobieson (UK) Ltd v HM Revenue and Customs* [2013] UKFTT 648 (TC) – Appearing in challenge to UK implementation of VAT directive as regards relief on import VAT.
- *Cadbury v Revenue and Customs* [2013] STI 555 – Concerning the availability of a VAT relief in respect of disabled persons.
- *Revenue and Customs v Ben Nevis (Holdings) Ltd & Ors* [2012] STC 2157 and [2014] WTLR 1 – Appearing in litigation concerning the interpretation of a double

## POLICIES AND OTHER DETAILS

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- Read Mark's [Privacy Notice](#), [Data Protection Policy](#) and [Disposal Policy](#).
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taxation treaty between the UK and South Africa and a judgment for in excess of £220 million in unpaid tax. Led by James Ayliffe QC.

- *Revenue and Customs v Ali* [2012] STC 42 - An authority in which it was determined that HMRC has sufficient right to support a freezing order where income tax assessments have been issued, but the obligation to pay tax sought under the assessments has not yet crystallised.
- *Skillbond Direct Limited v Revenue and Customs* [2012] UKFTT 488 (TC) - Case concerning the availability of a preferential rate of customs duty on goods imported from Liechtenstein without presentation of proofs of origin.
- *Furukawa Electric Europe Limited v Revenue and Customs* [2012] UKFTT 129 (TC) - Decision concerning the classification for customs duty purposes of car components imported into the UK by a Japanese manufacturer.
- *Revenue and Customs v Harris* [2011] STI 3429 - Case concerning the status of an income tax closure notice and VAT assessments in the Bankruptcy Court.
- Advising and representing HM Revenue and Customs in relation to various pieces of insolvency, tax and commercial litigation arising from the decision of the High Court in *Abbey Forwarding Ltd v Hone* [2010] EWHC 2029 (Ch).

## COMPANY AND INSOLVENCY

Mark appears regularly in the Companies Court in company and insolvency matters. He has particular expertise in directors' disqualification work, and insolvency matters involving unpaid taxes, public interest winding up petitions.

Selected work includes:

- *Secretary of State for Business Innovation and Skills v Marley* [2018] EWHC 236 (Ch) - Acting in a High Court case regarding the impact of professional advice on the assessment of the fitness of a director in disqualification proceedings relating to an insolvent company.
- *PDHL Ltd v Financial Conduct Authority* (2017) BPIR 1623 - Acting in a case concerning the role of a book sale prior to insolvency by the company in an application to suspend the ceasing of an interim permission.
- *Nationwide Debt Consultants v Financial Conduct Authority* [2017] UKUT 0142 TCC - Acting in a case relating to advice on 'debt solutions' for consumers facing insolvency.
- *Maoudis v Financial Conduct Authority* (2017) BPIR 1555 - Opposing an application to suspend the ceasing of an interim permission of a debt management firm advising on 'debt solutions' for consumers facing insolvency.
- *Revenue and Customs v Smart* [2016] BPIR 1329 - Acting in a case concerning the operation of the EU mutual assistance directive in the context of a bankruptcy petition. Clarifies whether the court can review the foreign claim on public policy grounds.
- *Revenue and Customs v Ben Nevis (Holdings) Ltd & Ors* [2012] STC 2157 and [2014] WTLR 1 - Appearing in these proceedings, led by James Ayliffe QC, regarding a

claim being made for judgment in respect of over £220 million in unpaid South African tax. The Claimants relied on sections 423-425 of the Insolvency Act 1986 to challenge an alleged transaction to defraud creditors.

- *Revenue and Customs Commissioners v Harris* [2011] STI 3429 – Acting in this case concerning the status of an income tax closure notice and VAT assessments in the Bankruptcy Court.
- *Abbey Forwarding Ltd v Hone* [2010] EWHC 2029 (Ch) – Advising and representing HM Revenue and Customs in relation to various insolvency issues arising from this decision of the High Court.
- Mark has regularly represented the Secretary of State and the Official Receiver in directors' disqualification claims.
- He has also regularly represented the Secretary of State in public interest winding up petitions.

### **COMMERCIAL DISPUTES**

Mark appears in a range of commercial disputes, usually with a financial services, tax or company/insolvency element to them. For examples, see the sections above.