

Andrew Henshaw QC

YEAR OF CALL: 2000 YEAR OF SILK: 2013

"Very smart and straightforward; not a prima donna, he just gets on with the job."

Legal 500 2017

Clerk's Email: PaulsClerkingTeam@brickcourt.co.uk



Practice Overview

Andrew Henshaw has extensive experience of commercial, European and public law cases. His commercial law experience includes banking/securities, insurance, financial services, energy, misrepresentation claims, company law and commercial contracts. He acted for the successful defendant in *Berezovsky v Abramovich*, and for the claimant in a multi-billion dollar LCIA arbitration about a Russian commodity company and a parallel \$50 million arbitration about economic duress. He has appeared in complex financial disputes (including *Cassa di Risparmio v Barclays*), jurisdiction disputes (such as *UBS v HSH Nordbank*) and injunction applications. Andrew has broad experience of commercial arbitrations relating to corporate transactions, shareholders' agreements, insurance and commercial contracts, and accepts appointments as arbitrator.

Andrew's EU and public law experience includes leading one of the few successful claims for *Francoovich* damages, significant judicial review claims relating to medicines regulation and medical foods (Admin Court and Court of Appeal), the *Phillip Morris* tobacco packaging case (CJEU), appearing for the UK in its challenge to the short selling regulation, *Gallaher and Somerfield v CMA* (equal treatment: Admin Court and Court of Appeal), public procurement litigation in Northern Ireland and advice to governmental bodies in England on procurement issues, frequent advice on financial regulation issues, acting for an intervenor in *Miller* ("Brexit" case, Supreme Court), and the successful defence of challenges by Tottenham Hotspurs and Leyton Orient to decisions about the post-Games Olympic Stadium.

Andrew was a member of the Attorney General's A, B and C Panels, and continues to act for government bodies in Silk. He has also been a member of the Bar of Northern Ireland since 2011, and in 2014 was appointed to the Panel of Senior Counsel for Property/Commercial, Procurement and Administrative Law. In 2017, he was appointed a part-time Deputy High Court Judge.

Previously as a partner of Linklaters, he specialised in commercial litigation and qualified as a Solicitor-Advocate. The cases he handled as a solicitor including multi-national litigation arising from the collapse of the Maxwell empire, claims arising from corporate transactions and complex derivatives disputes.

Andrew's recent publications include co-authorship of the report recently submitted on behalf of COMBAR to the Ministry of Justice in January 2017 on Brexit and financial services; and an article on "Reciprocity after Brexit" to be published in the *Journal of International Banking and Financial Law* in February 2017. Recent speaking appearances include the C5 Arbitration Conference (January 2017), Brick Court Chambers seminar on Brexit and Financial Services (November 2016) and Brick Court Chambers seminar on Brexit and Jurisdiction and Judgments

(October 2015).

Commercial

Andrew's commercial law experience includes banking/securities, insurance, financial services, energy, misrepresentation claims, company law and commercial contracts. He acted for the successful defendant in *Berezovsky v Abramovich*, and for the claimant in a multi-billion dollar LCIA arbitration about a Russian commodity company and a parallel \$50 million arbitration about economic duress. He has appeared in complex financial disputes (including *Cassa di Risparmio v Barclays*), jurisdiction disputes (such as *UBS v HSH Nordbank*) and injunction applications. Andrew has broad experience of commercial arbitrations relating to corporate transactions, shareholders' agreements, insurance and commercial contracts, and accepts appointments as arbitrator. He has frequently been involved in large and high profile matters involving complex issues and often proceedings in multiple jurisdictions. Notable cases include:-

- recent instructions to act for on claims by several hundred claimants against a Cypriot bank and developers suing for misrepresentations relating to purchases of 'off-plan' holiday homes, also involving complex jurisdictional issues
- advising a government department about threatened proceedings claiming negligent misrepresentation arising from a Share Purchase Agreement
- acting for offshore trustees in an expert determination regarding an interest rate swap entered into in connection with a large property transaction
- acting for a Russian client in relation to a threatened arbitration about alleged breach of good faith provisions in shareholders' agreements following the repudiation of a major energy supply contract
- acting for government department in High Court claims for breach of a substantial telecom-related services contract
- advising a Brazilian telecommunications group on an £82 million claim for success fees under a management consultancy services contract
- acting for a corporate shareholder in high profile Russian commodity company in substantial LCIA arbitrations, including a multi-billion dollar claim about validity of veto rights under shareholders' agreement (one of the largest Russian-related disputes ever heard in London)
- leading a successful \$50 million LCIA arbitration claim involving allegations of economic duress and breach of contract in the context of a financial restructuring and an IPO, and resisting a High Court challenge to the Award
- providing expert opinions on English contract law in overseas arbitration proceedings relating to a commodity contract, and on English contract/company law for Russian litigation about a company sale transaction
- advising on regulatory issues concerning market abuse, credit broking, financial promotions, IT outsourcing and suitability/appropriateness assessments
- acting for a government department in expert determination of substantial contract claim
- appearing for claimant in Commercial Court application for freezing and oral examination orders in \$300 million claim arising from Indian telecoms market crisis
- advising a client in relation to the implications of alleged manipulation of the foreign exchange markets
- advising a government department on legal issues relating to guarantees, insurance contracts and insurance mediation
- leading a successful defence for a government department of an arbitration claim over an asset disposal contract, involving arguments over alleged implied terms regarding exclusivity and compliance with procurement law
- acting for the successful defendant in the high-profile *Berezovsky v Abramovich* [2012] EWHC 2463 (Comm), a \$5.5bn Commercial Court claim for intimidation and breach of trust relating to Russian oil and aluminium companies, involving multiple parties and numerous Russian law issues

- appeared (unled) for the Part 20 Defendant stock broking firm in *Sisters of Charity and others v Morgan Stanley; Morgan Stanley v Bloxham Stockbrokers*: Commercial Court case over sales and early redemptions of structured bonds purchased by over 100 claimants, raising complex issues of contribution and restitution (settled after first day of trial)
- *AstraZeneca v Albemarle* [2011] EWHC 1574 (Comm); [2011] 2 C.L.C. 252: trial of dispute over right of first refusal in a large commercial contract for the supply of pharmaceuticals
- *Cassa di Risparmio di San Marino v Barclays Bank* [2011] EWHC 484 (Comm); [2011] 1 C.L.C. 701: Commercial Court litigation of €78 million misrepresentation claim about CDOs, a complex structured credit derivative product
- *AstraZeneca v Albemarle* [2010] EWHC 1028 (Comm), [2010] 2 Lloyd's Rep. 61: successful jurisdiction challenge in Commercial Court over claims for duress and conspiracy in pharmaceutical supply contract
- *Masefield AG v Amlin Corporate Member Ltd* [2010] 2 All ER 593 (Comm); [2011] 1 WLR 2012 (CA): insurance claim for \$7.5 million in Commercial Court and Court of Appeal arising from capture and ransom of vessel by Somali pirates
- *UBS v HSH Nordbank* [2008] 2 Lloyd's Rep. 500 (Comm.) and [2009] 2 Lloyd's Rep. 272 (Court of Appeal): successful jurisdiction challenge, in Commercial Court and Court of Appeal, in \$500 million CDO dispute with parallel proceedings in US courts and overlapping jurisdiction clauses
- *Banco Popolare di Intra v Barclays Bank PLC*: Commercial Court claim for misrepresentation relating to sale of credit derivatives, the first case to reach trial in the UK relating to CDOs (settled during trial)
- *Underwriting Members of Lloyd's Syndicate 980 v Sinco SA* [2008] EWHC 1842 (Comm): Commercial Court; jurisdiction application raising a novel point of law about the application of the "court first seised" rule to claims for breach of an exclusive jurisdiction clause
- *Banco Popolare di Intra v Bank of America*: Commercial Court claim for misrepresentation in relation to credit derivatives (CDOs) (settled)
- *Valse v Merrill Lynch* [2004] EWHC 2471: acting for bank defending Commercial Court claim for allegedly negligent advice regarding investment portfolio
- *Price-Jones v Commerzbank*, [2003] EWCA Civ 1663: set-off claims in High Court and Court of Appeal for restitution of bonus erroneously awarded twice
- *Southern Shipping v Chase Manhattan*: acting for high net worth individual's investment company against bank in claim for losses suffered on Russian GKO derivatives (settled)
- arbitrations relating to political risk reinsurance, trademark licensing, rights of set-off and shareholders' agreements.
- previously as a partner of Linklaters, Andrew he specialised in commercial litigation and qualified as a Solicitor-Advocate in 1998. Cases included multi-national litigation arising from the collapse of the Maxwell empire, claims arising from company sale and other corporate transactions, banking, insurance, shipping and complex derivatives disputes
- acting as an arbitrator and as an independent adjudicator; sitting as a member of a Bar Council/Law Society Joint Tribunal to resolve a fee dispute

Arbitration

Andrew has experience of arbitrations and expert determinations relating to a broad range of commercial matters including corporate transactions, shareholders' agreements, insurance and commercial contracts.

He also accepts appointments as arbitrator and as expert, and is a member of the LCIA and ICCA.

Notable cases include:-

- acting for a corporate shareholder in high profile Russian commodity company in substantial LCIA arbitrations, including a multi-billion dollar claim about validity of veto rights under shareholders' agreement (one of the largest Russian-related disputes ever heard in London)

- leading a successful \$50 million LCIA arbitration claim involving allegations of economic duress and breach of contract in the context of a financial restructuring and an IPO, and resisting a High Court challenge to the Award
- acting for offshore trustees in an expert determination regarding an interest rate swap entered into in connection with a large property transaction
- leading a successful defence for a government department of an arbitration claim over an asset disposal contract, involving arguments over alleged implied terms regarding exclusivity and compliance with procurement law
- acting for a Russian client in relation to a threatened arbitration about alleged breach of good faith provisions in shareholders' agreements following the repudiation of a major energy supply contract
- acting for a government department in expert determination of substantial contract claim
- arbitrations relating to political risk reinsurance, trademark licensing, rights of set-off and shareholders' agreements.
- providing expert opinions on English contract law in overseas arbitration proceedings relating to a commodity contract
- acting as an arbitrator and as an independent adjudicator
- sitting as a member of a Bar Council/Law Society Joint Tribunal to resolve a fee dispute

EU/Competition

Andrew's EU experience includes recently leading one of the few successful claims for *Francovich* damages, significant judicial review claims relating to EU regulation of medicines and medical foods (Admin Court and Court of Appeal), the *Phillip Morris* tobacco packaging case (CJEU), appearing for the UK in its challenge to the short selling regulation (CJEU), public procurement litigation in Northern Ireland and advice to governmental bodies in England on procurement issues, frequent advice on EU-related financial regulation issues, and acting for an intervenor in *Miller* ("Brexit" case, Supreme Court). . He has acted on cases about financial regulation, free movement of goods, medicines regulation, State Aid and competition law. He has appeared for private clients, governmental bodies and regulators, including representing the UK in references to the CJEU in cases about market abuse, free movement of goods, jurisdiction/enforcement of judgments, electricity regulation, pharmaceuticals regulation and insolvency law.

- Advising on regulatory data protection in connection with a proposed new medicinal product
- Acting for an intervener in the *Miller* 'Brexit' case [2017] UKSC 5 (Supreme Court)
- *Blue Bio Pharmaceuticals and another v Secretary of State for Health* [2014] EWHC 1679 (Admin Court) and [2016] EWCA Civ: judicial review claim regarding classification of putative food supplements under the Medicinal Products Directive
- Case C-547/14 *Phillips Morris Brands and others v Secretary of State for Health*: appearing for German paper manufacturer on reference to Court of Justice regarding validity of Directive 2014/40/EU on tobacco packaging and branding
- *R. (on the application of Nutricia Ltd) v Secretary of State for Health* [2015] EWHC 2285 (Admin): judicial review claim about Secretary of State's powers, rationality and free movement of goods, relating to classification of medical foods
- *Regularly advising on EU-related financial regulation matters*
- Acting for a government department defending claims by over 350 claimants for *Francovich* damages arising from the activities of an unauthorised financial services business
- Acting for claimant in claim for abuse of dominant position by failure to supply spare parts
- *Barco de Vapor v Thanet District Council* [2014] EWHC 490 (Chancery Division): leading successful claims against port operator under *Francovich* principle arising from ban on livestock shipments
- *Office of Fair Trading v Gallaher Group and Somerfield Stores* [2014] EWCA Civ 400: appearing for OFT on appeal to Court of Appeal regarding consequences of third parties' appeals to CAT from OFT's Tobacco Decision
- C270/12 *United Kingdom v Parliament and Council* (European Court of Justice): appearing for the UK on its challenge to the EU short selling regulation

- Case C-19/11 *Geltl*: written observations on behalf of the UK, and oral hearing before European Court of Justice, about important issues of the interpretation of Market Abuse Directives
- Case C-619/10 *Trade Agency*: written observations on behalf of the UK, and oral hearing before ECJ, about validity of UK default judgments under the Brussels I Regulation
- Case C-45/08 *Spector* [2010] 2 C.M.L.R. 30: written observations on behalf of the UK, and oral hearing before European Court of Justice, about important issues of the interpretation of Market Abuse Directives
- *Poole v HM Treasury* [2006] EWHC 2731 (Comm), [2007] Lloyds Rep IR 114; and [2007] EWCA Civ 1021, [2008] 1 All ER (Comm) 1132: acting for HM Treasury defending *Francovich* claims relating to the regulation of the Lloyd's insurance market; also represented the UK at meetings with European Commission
- Case C-439/06 *Citiworks* [2008] All ER (D) 309 (May): written observations of UK and hearing before ECJ regarding the regulation of the electricity industry
- Case 386/05 *Color Drack* [2008] 1 All ER (Comm) 168: written observations of UK and oral hearing in the first case to reach the European Court of Justice about the Brussels I Regulation on jurisdiction and the enforcement of judgments

Public Law

Andrew's public law experience includes judicial review claims relating to medicines regulation and medical foods (Admin Court and Court of Appeal), the *Gallaher and Somerfield v CMA* litigation (equal treatment: Admin Court and Court of Appeal), public procurement litigation in Northern Ireland, advice to governmental bodies in England on procurement issues, frequent advice on financial regulation issues and the successful defence of challenges by Tottenham Hotspurs and Leyton Orient to decisions about the post-Games Olympic Stadium Andrew has represented and advised government bodies and private clients in public law cases involving financial regulation, public procurement, telecoms, mental health, social security and State Aid. He was a member of the Attorney General's A, B and C Panels, and has acted for HM Treasury, the Financial Conduct Authority, the Competition and Markets Authority and several central government departments. Andrew continues to act for both private clients and government bodies in Silk. Notable cases include:-

- *Public procurement litigation in Northern Ireland and regular advice to government departments in England/Wales and Northern Ireland on complex public procurement issues*
- *R. (on the application of Gallaher Group Ltd) v Competition and Markets Authority* [2013] CAT 5, [2014] EWCA Civ 400, [2015] EWHC 84 (Admin) and [2016] EWCA Civ 719: series of competition appeals and judicial review claims arising from the tobacco pricing litigation, involving issues of substantive legitimate expectation, rationality and equal treatment
- *Blue Bio Pharmaceuticals and another v Secretary of State for Health*: see above under EU/Competition law
- *Leyton Orient v London Legacy Development Corporation*: successful defence in Administrative Court of Leyton's challenge to decision not to include it as a tenant of post-Games Olympic Stadium
- *Tottenham Hotspur and Leyton Orient v Olympic Park Legacy Company and others*: defending Administrative Court challenge to client's recommendation of West Ham as preferred bidder for post-Games stadium, involving complex issues of procurement law; state aid, rationality and bias; high-profile matter involving sensitive political issues (case settled)
- *Goldblatt McGuigan v Chief Constable of Northern Ireland*: ongoing defence of procurement claim in the High Court of Northern Ireland
- Advice on the options under procurement law for extension of a major IT contract for a public body
- Advice to a public body on the handling and settlement of a procurement dispute relating to the supply of specialist vehicles
- Advice to claimant on a prospective procurement claim relating to medical products
- Advice to prospective claimant in a judicial review challenge to a decision of the Advertising Standards Authority (decision reconsidered following letter before claim)
- Reference to Review Board for Government Contracts, under rarely used procedure, about pricing of substantial long-term defence contracts, involving issues of jurisdiction and the application of the special rules for non-competitive government contracts

- *R. (on the application of Forest Heath DC) v Electoral Commission* [2009] EWCA Civ 1296: defending judicial review claim in Administrative Court and Court of Appeal about the setting of local government boundaries
- *R (Child Poverty Action Group) v Sec. of State for Work & Pensions* [2009] EWCA Civ 1058; [2010] 1 W.L.R. 1886; [2010] 2 All E.R. 113: judicial review claim concerning right to recover overpaid social security benefits at common law, outside the statutory scheme, in Administrative Court, Court of Appeal and Supreme Court
- *J B Leadbitter & Co Ltd v Devon County Council* [2009] EWHC 930 (Ch); [2010] Eu. L.R. 60: procurement challenge in Chancery Division arising from submission of incomplete tender in electronic procurement process; established that the proportionality principle applies to a contracting authority's evaluation of tenders
- *Secretary of State for Defence v Duncan and McWilliams* [2009] EWCA Civ 1043: high profile appeal to Court of Appeal about the interpretation of a new scheme for the compensation of injured service personnel
- *Federal Security Services Ltd v The Northern Ireland Court Service* [2009] NIQB 15: defending judicial review claim in High Court of Northern Ireland about procurement of court security services)
- *Wilkinson v Secretary of State for Work and Pensions* [2009] Pens. L.R. 369: appeal to Court of Appeal about calculation of state pension entitlements
- *Ratcliffe v Ministry of Defence* [2009] EWCA Civ 39: appearing before Social Security Commissioner, and in Court of Appeal, on case raising human rights issues in relation to military pension scheme
- *Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform* [2008] CAT 36: judicial review application in Competition Appeal Tribunal alleged fettering of discretion by Minister in relation to decision to clear the Lloyds Bank/HBOS Merger
- *R (GN) (Iran) v Secretary of State for the Home Department* [2008] EWCA Civ 112, [2008] All ER (D) 10 (Jan): appeal to Court of Appeal in an asylum case
- *R (OS) v Secretary of State for Home Department* [2006] EWHC 1903 (Admin): judicial review claim challenging decision in a mental health case
- *Beltekian v City of Westminster*, [2004] EWCA Civ 1784, [2004] All ER (D) 121: appeal to Court of Appeal about construction of legislation relating to housing benefit
- *In re Medicaments* [2001] 1 WLR 700: appeal to Court of Appeal seeking recusal of Restrictive Practices Court on the grounds of bias
- *R v DTI ex p. BT3G*: judicial review claim in Administrative Court (2000) and Court of Appeal (2001) alleging unlawful state aid in connection with 3G licence auctions
- Advice to Northern Ireland Office and Police Service of Northern Ireland on procurement issues on numerous occasions
- Advice to a UK government department on transparency, application of price criteria and the re-running of part of a procurement exercise
- Advice to Transport for London on an issue concerning procurement remedies.

Qualifications & Further Information

Qualifications

BA in Law (Cambridge, First Class)

Solicitor-Advocate 1998

Further Information

Member of Combar, Bar European Group and Administrative Law Bar Association.

Publications

Andrew is a contributor to Oxford University Press's "*Competition Litigation*", written by members of Brick Court Chambers, and drafted the Bar Council's response to the EU Commission's Green Paper on consumer collective redress.

He is the author of chapters on derivatives litigation and financial self-regulation in "Derivatives Instruments Law" (ed. Swan, 1995), and articles on preference law in international insolvency (1997), choice of forum under the Brussels Convention (1997) and managing internal investigations (1999).

More recent publications include co-authorship of the [report recently submitted on behalf of COMBAR to the Ministry of Justice](#) in January 2017 on Brexit and financial services; and an article on "[Reciprocity after Brexit](#)" published in the Journal of International Banking and Financial Law in February 2017.

Recent speaking appearances include the C5 Arbitration Conference (January 2017), Brick Court Chambers seminar on Brexit and Financial Services (November 2016) and Brick Court Chambers seminar on Brexit and Jurisdiction and Judgments (October 2015).

Directory Quotes

- Andrew Henshaw QC is commended by peers as an "excellent" and "very thoughtful" silk. He has a wealth of experience in the field and is particularly knowledgeable in corporate transactions and derivatives disputes. (Who's Who Legal - UK Bar: Banking & Finance 2019)
- "Clients, solicitors and judges respect him for his calm and measured approach." (Legal 500 2018-19)
- Sources "think very highly" of Andrew Henshaw QC, and effuse: "Whatever room you put him in, his analysis is the most accurate, considered and clearly articulated." (Who's Who Legal - UK Bar: Banking & Financ 2018)
- "Very smart and straightforward; not a prima donna, he just gets on with the job." (Legal 500 2017)
- "A very safe pair of hands, who works very well in a team." (Legal 500 2016)
- "He's a brilliant man. He's clever and has really good judgement. When he speaks, he always says something intelligent. You get a first-class service from him - no point will be missed." (Chambers & Partners 2015)
- "Very good on the paperwork, and a real brain." (Chambers & Partners 2015)
- "A former solicitor and new silk, Henshaw has an active banking practice and is particularly knowledgeable on financial regulation matters." (Chambers & Partners 2014)
- "Extremely approachable, he's good to deal with and picks up on complex financial issues very quickly. His advice is always very clear and very helpful, and he's very prompt and responsive." (Chambers & Partners 2014)
- "Another 2013 silk, Henshaw is noted for his broad commercial litigation practice and his recognised expertise in banking and derivatives matters." (Chambers & Partners 2014)
- "Andrew is very able, clear-minded and responsive." "He's very user-friendly and a great person to have on your team." (Chambers & Partners 2014)
- "Andrew Henshaw is a strong junior who excels at credit derivative mis-selling claims. One such was a recent claim in the Commercial Court connected with the sale and restructuring of a series of credit derivative notes." (Chambers & Partners 2013, Banking & Finance)
- "Another junior doing well at the set is Andrew Henshaw, a "very able, clear-minded and responsive" barrister. He was a member of Berezovsky's counsel team, led by Jonathan Sumption QC, in the widely reported clash of the titans with Roman Abramovich." (Chambers & Partners 2013, Commercial Dispute Resolution)
- "Formerly a litigation partner at Linklaters, Andrew Henshaw has an intimate knowledge of credit derivatives and securities. Sources say: "He is extremely bright and good at the detail." (Chambers UK 2012, Banking & Finance)

- "The "never-tiring" Andrew Henshaw is unfazed by complicated matters, and always provides "excellent attention to detail." He particularly excels in commercial banking and derivatives work." (Chambers UK 2012, Commercial Dispute Resolution)
- "Andrew Henshaw is 'extremely intelligent'" (Legal 500 2011, Administrative and Public Law)
- "Andrew Henshaw has 'excellent attention to detail and is a first-rate draftsman'." (Legal 500 2011, Banking and Finance)
- "Among the juniors, Andrew Henshaw 'understands what solicitors need. He has excellent attention to detail and is a first-rate draftsman'." (Legal 500 2011, Commercial Litigation)