

Mark Hapgood QC

YEAR OF CALL: 1979 YEAR OF SILK: 1994

“An advocate with gravitas who is responsive, strategic and effective”

Chambers & Partners 2013

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Practice Overview

Mark Hapgood was called to the Bar in 1979 and was the most junior member of the Bar to be appointed Queen's Counsel in April 1994. He is widely recognised as a leading Silk in commercial litigation. In recent years, he has led the defence in a succession of heavy commercial cases, including the £2.6 billion claim by Equitable Life against Ernst & Young, and the US\$850 million claim by Springwell Navigation against JP Morgan Chase Bank.

Mark also has a very extensive advisory practice and regularly advises City firms on issues arising as transactions are being put together or after they have closed.

In both 2009 and 2016, Mark advised a joint working party of The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees on the execution of documents at a virtual signing or closing and on electronic signatures generally.

He edited Paget's Law of Banking (10th, 11th, 12 and 13th editions), Joint Contributor to Halsbury's Laws of England, General Editor Butterworths on-line service Banking Law Direct and a contributor to Professional Negligence and Liability.

Mark is a member of the External Review Panel created under Paragraph 4 of the ISDA Credit Derivatives Determinations Committees Rules. Mark is also a Member of The Panel of Recognised International Market Experts in Finance.

For full CV, see under Commercial.

Commercial

Important Cases

Amalgamated Investment & Property Co. Ltd. (In Liquidation) v Texas Commerce International Bank Ltd [1982 QB 84] (Robert Goff J and Court of Appeal) (estoppel by convention); *Bank of Credit International SA v Blattner* [1986] WL 1255278, CA (compound interest on mortgage debt); *Redmond v Allied Irish Banks Plc* [1987] FLR 307 (duty of bank to advise customer of effect of "account payee" crossing); *Bhogal v Punjab National Bank* [1988] 2 All ER 296 (banker's right of set-off); *Pfeiffer v Arbuthnot Factors Ltd* [1988] 1 WLR 150 (priority between a seller and an equitable assignee); *Astro Exito v Chase Manhattan Bank* [1988] 2 Lloyd's Rep 217, CA (stipulation under documentary credit of a document incapable of being obtained); *The River Rima* [1988] 1 WLR 758, HL (whether containers are goods supplied to a ship); *Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd* [1988] 2

All ER 880 (apportionment of recoveries from one of two defendants); *Rabobank Nederland v Sumitomo Bank Ltd* [1988] 2 Lloyd's Rep 250, CA (effect of waiver of discrepancies under a documentary credit); *Derby v Weldon*, reported 10 times between 1988 and 1991 (the leading case on worldwide freezing orders and the appointment of receivers over foreign trust assets); *Uttamchandni v Central Bank of India* [1989] WL 650414, CA (banker's right of set-off); *First National Bank of Boston v Union Bank of Switzerland* [1990] 1 Lloyd's Rep 31, CA (jurisdiction dispute); *Banque Financiere de la Cite v Skandia (UK) Insurance Co Ltd* [1990] 1 QB 655 (duty of underwriter to report broker's fraud; causation in the law of contract and tort) (Judgment of Steyn J after 40 day trial; Judgment of Court of Appeal after 24 day hearing); [1991] 2 AC 249 (House of Lords); *Bankers Trust Co v State Bank of India* [1991] 2 Lloyd's Rep 443, CA (validity of rejection notice under a documentary letter of credit); *M.S.Fashions Ltd v BCCI* [1993] Ch 425, CA (insolvency set-off); *Eagle Trust Plc v SBC Securities Ltd* [1993] 1 WLR 484 (strike out of constructive trust claim) and *Eagle Trust Plc v SBC Securities Ltd (No 2)* [1996] BCLC 121 (trial of remaining issues) (duties of a financial adviser and underwriter in the context of a takeover bid); *Seaconsar v Bank Markazi Iran* [1993] 1 Lloyd's Rep 236, CA, [1994] 1 AC 438 (House of Lords) (test for service out of the jurisdiction); *Continental Bank NA v Aeakos Compania Naviera SA and Others* [1994] 1 WLR 588, CA (compliance of documents under a documentary credit); *Banque Bruxelles Lambert SA v Eagle Star Insurance Co Ltd* [1995] 2 All ER 769 (judgment of Phillips J after 86 day trial); [1995] QB 375 (Court of Appeal); [1997] AC 191 (House of Lords) (duty of an underwriter to report known fraud of a broker; damages for negligence); *Turkiye Is Bankasi v Bank of China* [1996] 2 Lloyd's Rep 611 (fraud exception under performance bonds); *Union Eagle Ltd v Golden Achievement Ltd* [1997] AC 514, PC (effect of time being of the essence); *Nederlandse Reassurantie Groep Holding NV v Bacon & Woodrow & Others* [1997] Lloyd's Reinsurance Law Reports 678 (judgment of Colman J after 86 day trial) (advisory duty on the acquisition of a reinsurance company); *Esso Petroleum Co Ltd v Milton* [1997] 1 WLR 938, CA (effect of payment by direct debit); *Century National Merchant Bank and Trust Co Ltd v Davies* [1998] AC 268 (revocation of banking licence); *Nuova Safim S.p.A. v The Sakura Bank Ltd* [1998] Lloyd's Law Reports Banking 142 (rights of termination under ISDA Swap Agreements); *Abbott v Strong* [1998] 2 BCLC 420 (auditor's duty of care to subscribers in a rights issue); *Karaganda Ltd v Midland Bank plc* [1999] 1 All ER (Comm) 801 (original documents under a letter of credit); *Bank of Scotland v Bennett* [1999] Lloyd's Rep Bank 145, CA (undue influence in relation to mortgage over matrimonial home); *Yorkshire Bank v Lloyds Bank* [1999] Lloyd's Rep Bank 191 (duty of care owed by payee of cheque to drawer); *Barclays Bank Plc v Dean* [1999] QB 309, CA (solicitors' standard form undertaking to a bank at completion); *Satnam Investments Ltd v Dunlop Heywood & Co Ltd* [1999] 1 BCLC 385 (remedies for diversion of corporate opportunity); *Texaco Limited v Esso Petroleum Co Ltd* (Cresswell J, 19.10.99) (construction and effect of a shareholder's agreement); *Kredietbank Antwerp v Midland Bank* [1999] Lloyds Rep Bank 219, CA (original documents under letters of credit); *Starling v Lloyds TSB Bank Plc* [2000] Lloyd's Rep Bank 8, CA (duty of good faith owed by mortgagee to mortgagor); *Smith v Lloyds TSB Group Plc* [2000] Lloyd's Rep Bank 58 (damages for conversion of materially altered cheque); *Kuwait Airways Corp v Kuwait Insurance Company SAK* [2000] 1 All ER (Comm) 972 (statutory interest); *Lloyds Bank Plc v Independent Insurance Ltd* [2000] 1 QB 110, CA (restitution of monies paid under mistake); *Kuwait Airways Corp v Kuwait Insurance Co* [Langley J, 19 April 2000] (interest on Commercial Court judgment in US dollars); *Peregrine Fixed Income Ltd v Robinson Department Store Public Co Ltd* [2000] Lloyd's Rep Bank 304 (construction of Early Termination provisions in ISDA Master Agreement); *Banco Santander SA v Banque Paribas* [2000] Lloyd's Rep Bank 165, CA (impact of fraud discovered after the discounting of deferred payment letter of credit); *Sir Elton John v Price Waterhouse* [2001] EWHC Civ 438 (Ch) (claim against auditors of Sir Elton John's companies); *Shanning International Ltd v Lloyds TSB Bank plc* [2001] 1 WLR 1462 (impact of UN Resolutions on counter guarantee in favour of Iraqi party); *Emerald Meats (London) Ltd v AIB Group (UK) plc* [2002] EWCA Civ 460 (interest on proceeds of cheques); *Credit Industriel et Commercial v China Merchants Bank* [2002] EWHC 973 (Comm) (status of ICC Policy Statement on original documents under UCP 500); *R (on the application of Land) v Executive Council of the Joint Disciplinary Scheme* [2002] Pens LR 545 (review of decision to proceed with disciplinary proceedings pending High Court litigation); *Lloyds TSB General Insurance Holdings Ltd v Lloyds Bank Group Insurance Co Ltd* [2003] UKHL 48, [2003] 4 All ER 43 (construction of claims aggregation clause); *GE Reinsurance Corp v New Hampshire Insurance Company* [2003] EWHC 302 (Comm) (reinsurance of film finance); *Equitable Life Assurance Society v Ernst & Young* [2003] EWCA Civ 1114 (strike-out of claim against auditors); *Manx Electricity Authority v JP Morgan Chase Bank* [2003] EWCA Civ 1324 (availability of demand guarantee following settlement between underlying parties); *Barings plc (in liquidation) v Coopers & Lybrand* [2003] EWHC 1319 (Ch) (liability of Barings' Japanese subsidiary for Leeson's fraudulently concealed

trades in Singapore); *United States of America v Philip Morris Inc & Others* [2004] EWHC 941 (Comm) (privilege); *Office of Fair Trading v Lloyds TSB Bank plc* [2004] EWHC 2600 (Comm); [2007] QB 1, CA; [2008] 1 AC 316, HL (connected lender liability in respect of credit card transactions overseas); *Valse Holdings SA v Merrill Lynch International Bank Ltd* [2004] EWHC 2471 (Comm) (duty of care in respect of advice on investments); *Jackson v Royal Bank of Scotland plc* [2005] 1 WLR 377, HL (liability of issuing bank for breach of duty of confidentiality owed to first beneficiary of a transferable letter of credit); *JP Morgan Chase Bank v Springwell Navigation Corporation* [2005] EWCA Civ 1602 (similar fact evidence in claim relating to transactions in fixed income instruments); *Diamantides v JP Morgan Chase Bank* [2005] EWCA Civ 1612 (strike-out of claim by sole shareholder of investor); *Masri v Consolidated Contractors International Co SAL* [2006] EWHC 1931 (Comm) (construction of oil and gas agreement); *Springwell Navigation Corp v JP Morgan Chase Bank & Others* [2008] EWHC 1793 (Comm) (Judgment of Gloster J after 68 day trial on duties owed by a trading desk to a sophisticated customer in emerging market debt instruments and the effect of disclaimer provisions in bank documentation); *Carey Value Added S.L. v Grupo Urvasco SA* [2010] EWHC 1905 (characterisation of a “payment on demand” instrument); *UBS AG v Kommunale Wasserwerke Leipzig GmbH* [2010] EWHC 2566 (Comm) (jurisdiction of the London Court over German municipality under CDO transactions); *Barclays Bank Plc and Others v HHY Luxembourg* [2010] EWCA Civ 1248 (dispute over payment waterfall); *Springwell Navigation Corp v JP Morgan Chase Bank & Others* [2010] 2 CLC 705, CA (appeal on liability for selling Russian GKO); *Lehman Brothers International (Europe) v JFB Firth Rixson, Inc* [2011] 2 BCLC 120 (Ch), CA, (dispute over effect of conditions precedent in the 1992 ISDA Master Agreement); *Brittania Bulk plc v Pioneer Navigation Ltd* [2011] 2 Lloyd’s Rep 84 (meaning of “Loss” in the ISDA Master Agreement); *Anthracite Rated Investments (Jersey) Ltd v Lehman Brothers Finance SA* [2011] 2 Lloyd’s Rep 538 (dispute over payment waterfall in Lehman swap contract); *RE SMP Trustees Ltd* [2012] EWHC 772 (Ch) (amendment of bond trust deed); *VTB Capital Plc v Nutritek International Corp and Others* [2013] 2 A.C. 337 (Supreme Court) (setting aside service out of the jurisdiction); *Forsta AP Fonden v Bank of New York Mellon SA/NV* [2013] EWHC 3127 (Comm) (securities lending); *Deutsche Bank AG v Unitech Global Ltd* [2013] EWCA Civ 1372 (strike out of LIBOR manipulation claim); *Constantin Median v Bernard Ecclestone and Others* [2014] EWHC 387 (Ch) (conspiracy to injure through alleged bribe to German banker); *Fondazione Enasarco v Lehman Brothers Finance SA* [2014] EWHC 34 (Ch) (jurisdiction dispute); *Akers v Samba Financial Group* [2014] EWHC 540 (Ch), [2014] EWCA Civ 1516 (Recognition of Trusts Act 1987); *Fairfield Sentry Ltd (In Liquidation) v Migani* [2014] UKPC 9, PC (claim by Madoff feeder fund against redeemed shareholders); *Knighthead Master Fund LP v Bank of New York Mellon* [2015] EWHC 270 (Ch) (Argentine sovereign debt). *Fondazione Enasarco v Lehman Brothers Finance SA (No 2)* [2015] EWHC 1307 (Ch) (measure of Loss under ISDA 1992 Master Agreement); *Energysolutions EU Limited v Nuclear Decommissioning Authority* [2016] EWHC 1988 (TCC) (success fees for witnesses).

Publications & Awards

Contributions to Halsbury's Laws of England

- Sole contributor to: Halsbury’s Laws of England, vol 3(1) (1989 reissue) title “Banking”.
- Joint contributor to Halsbury’s Laws of England, vol 4(1) (1992 reissue), title “Banking”.
- Joint contributor to Halsbury’s Laws of England, vol 4(1) (1992 reissue), title “Bills of Exchange”.
- Sole contributor to ‘Halsbury’s Laws of England’, vol 4(1), (reissue 2002), title ‘Bills of Exchange’.

Academic Publications

- Editor of *Paget’s Law of Banking* 10th edition (1989), 11th edition (1996), 12th edition (2002) and 13th edition (2007).
- Contributor to “Professional Negligence and Liability”
- General editor of Butterworth’s online service “Banking Law Direct”.

Public Awards

- Chambers & Partners Banking and Finance Silk of the Year 2007

- Chambers & Partners Banking and Finance Silk of the Year 2011
- Named in Global Business Awards 2018 as most influential in banking; law in England
- Named in Who's Who Legal 2018 as among the world's leading Litigation lawyers

Education & Qualifications

LLB (Nottingham) - degree.

Directory Quotes

Listed in:

- All the leading annual reviews of the Bar (Legal 500, Chambers Directory, etc).
- Euromoney's Guide to the World's Leading Banking Lawyers.
- The Legal Business Directory of Legal Experts (Banking litigation, Commercial litigation).
- Law Business Research International Who's Who of Banking Lawyers.
- Law Business Research An International Who's Who of Commercial Litigators.

Legal Directory Comments:

Mark Hapgood QC "has an excellent reputation that is well deserved" according to respondents who praise his extensive experience handling sophisticated professional negligence and liability claims. (Who's Who Legal - UK Bar: Professional Negligence 2019)

"Truly one of the 'super-silks' in the world of banking litigation." "Mark is particularly adept at cutting to the heart of complicated issues and presenting them simply and clearly. He provides practical, commercial and strategic advice and is a very persuasive advocate." (Chambers & Partners 2019)

"Mark is particularly adept at cutting to the heart of complicated issues and presenting them simply and clearly."
"He's very commercial, great with clients and devastating on his feet." (Chambers & Partners UK & Global 2019)

"Comes across very well and has good rapport with the judges. He's impressively well prepared and has no weaknesses." (Chambers & Partners UK & Global 2019)

"Very commercial and devastating on his feet." (The Legal 500 2018-19)

"A very persuasive advocate." (The Legal 500 2018-19)

"Particularly adept at cutting to the heart of complicated issues." (The Legal 500 2018-19)

"Provides practical, commercial and strategic advice and is a very persuasive advocate." (The Legal 500 2018-19)

"Strong, experienced advocate." (The Legal 500 2018-19)

Named in Global Business Awards 2018 as most influential in banking; law in England.

Named in Who's Who Legal 2018 as among the world's leading Litigation lawyers.

Mark Hapgood QC is a highly distinguished silk, commended for his knowledgeable insight into complex issues such as broker fraud, and damages relating to fraudulently concealed trading. (Who's Who Legal - UK Bar: Professional Negligence 2018)

"A banking litigation doyen, he is a widely respected advocate who exhibits incisive judgement in the most complex cases." "One of the big hitters, he is good on his feet and fiendishly intelligent." (Chambers & Partners

2018)

"He provides practical, commercial and strategic advice, and is a very persuasive advocate." "He's very commercial, devastating on his feet and great with clients." (Chambers & Partners 2018)

"His reputation is first-rate and he is very much in demand." (Chambers & Partners 2018)

"Absolutely brilliant; a recognised leader in banking litigation." (The Legal 500 2017)

"One of the grand QCs and one of the better team players at that level." (The Legal 500 2017)

"Brilliant, and a recognised leader." (The Legal 500 2017)

"A very good advocate and very hardworking." (The Legal 500 2017)

"Excellent experience." (The Legal 500 2017)

"Mark Hapgood QC is recognised by peers for his top-notch commercial practice and possesses great advisory and litigation experience handling professional negligence claims." (Who's Who Legal - UK Bar: Professional Negligence 2017)

"Bright and hard working, he's very commercial and devastating on his feet." (Chambers & Partners 2017)

"He is bright, hard-working, great with clients, very commercial and devastating on his feet." "He is one of the best all-rounders at the Bar, and a person to trust with bet-the-company cases." (Chambers & Partners 2017)

"Mark is particularly adept at cutting to the heart of complicated issues and presenting them simply and clearly. He provides practical commercial and strategic advice and is a very persuasive advocate." "Absolutely in the category of super silks. He is one of the pre-eminent banking silks around." (Chambers & Partners 2017)

"Particularly adept at cutting to the heart of complicated matters and presenting them simply." (The Legal 500 2016)

"He has a masterful ability to make very difficult concepts easy to understand." (The Legal 500 2016)

"He has a very good connection with the judges." (The Legal 500 2016)

"Very astute." (The Legal 500 2016)

"One of the doyens of the banking litigation world. He has a laser-like cross-examination style that's very effective." "He's at the top of the tree in terms of presenting complex problems clearly and persuasively." (Chambers & Partners 2016)

"He has the invaluable skill of presenting the most tricky issue with great clarity." "He's one of the very top people at the London Bar. A very good lawyer and very capable advocate." (Chambers & Partners 2016)

"Mark Hapgood QC is recognised for his defence work in cases such as the £2.6 billion claim by Equitable Life against Ernst & Young, with clients describing him as an 'inspirational' barrister." (Who's Who Legal 2016)

"He is "the barrister of choice" for "heavyweight, complex cases" such as the £2.6 billion claim by Equitable Life against Ernst & Young, and the US\$850 million claim by Springwell Navigation against JPMorgan Chase Bank. Peers "cannot rate him highly enough" and lauded his "innovative approach and gravitas in the courtroom"."

(Who's Who Legal UK Bar 2015)

"The doyen of banking litigation, with incisive judgement in the most complex cases." (The Legal 500 2014)

"An exceptional practitioner, who is extremely bright." (The Legal 500 2014)

"Rated very highly by solicitors." (The Legal 500 2014)

"Very persuasive advocate." (The Legal 500 2014)

"He has a great reputation and is clearly very good." (Chambers & Partners 2014)

"Mark is particularly adept at cutting to the heart of complicated issues and presenting them simply and clearly. He provides practical, commercial and strategic advice, and is a very persuasive advocate." (Chambers & Partners 2014)

"A leader in the field, he's an advocate with true gravitas who is responsive, strategic, effective and great to work with." (Chambers & Partners 2014)

"Exceptional. Extremely bright and quick to focus on the issues." (Chambers & Partners 2014)

"Mark is particularly adept at cutting to the heart of complicated issues and presenting them simply and clearly. He provides practical, commercial and strategic advice and is a very persuasive advocate." (Chambers & Partners 2014)

"the 'phenomenally clever' Mark Hapgood QC" (Legal 500 2013)

"Standout silks include the 'thorough' Mark Hapgood QC, who has a 'wealth of experience'" (Legal 500 2013)

"Mark Hapgood QC is 'devastating on his feet', and 'one of the finest silks at the Bar for derivatives-related litigation'." ((Legal 500 2013)

"Mark Hapgood QC is "a true leader in the field." "An advocate with gravitas who is responsive, strategic and effective," he is "enormously respected by judges, who hang on his every word." He frequently acts on the most complex of cases, and is called "Mr ISDA" for his expertise in matters relating to the Master Agreement." (Chambers & Partners 2013)

"Another high-calibre commercial litigator is "the exceptionally bright and focused" Mark Hapgood QC, who offers "excellent, commercial advice." Hapgood, who has recently been involved in a good deal of Lehman Brothers litigation, wins particular praise from clients for his "very user-friendly, commercial approach." " (Chambers & Partners 2013)

"Brick Court Chambers' Mark Hapgood QC is one of the most illustrious silks at the UK Commercial Bar." (Chambers & Partners 2013)

"There is no finer QC in this area' than Mark Hapgood QC, whose 'advocacy skills are extraordinarily good' and who has 'an uncanny knack of predicting the other side's next move'." (The Legal 500 2012)

"has 'a wealth of experience' and 'goes out of his way to help and be available even on short notice';" (The Legal 500 2012)

"He receives plaudits for his success rate: "We really rate Mark Hapgood – frankly he wins so many of his applications it's quite unreal," says an interviewee. Hapgood's mastery of commercial litigation is greatly respected across the board." (Chambers & Partners 2012)

"Mark Hapgood QC is "everything his reputation suggests - clever, consistent and tough." Said to be "truly a star,"

he is "devastating on his feet," an attribute brought to bear in many of the most high-profile banking disputes." (Chambers & Partners 2012)

"Mark Hapgood QC is another of the set's standout silks. Solicitors rate his "responsive and user-friendly style," as well as his "ability to absorb and address complex issues in a straightforward and commercial manner." He has been involved in matters of the utmost importance over the years, and in one recent highlight successfully acted for the defendant in *Springwell v JPMorgan Chase*." (Chambers & Partners 2012)

"The 'first-rate' Mark Hapgood QC is 'the person to go to for weighty finance matters'." (Legal 500 2011)

" 'approachable, extremely hands on and hardworking, and retains a sense of humour throughout'." (Legal 500 2011)

"one of the best in the field" (Legal 500 2011)

"an absolute star who prepares brilliantly and is an impressive advocate." (Chambers Global 2011)

"both a decent lawyer and an utterly decent man .. brilliant on his feet, he is a succinct advocate; he is always on top of the facts and figures in a case" (Chambers & Partners 2010)

"the silk of choice for the defence of claims involving financial instruments" (The Legal 500 2009)

"a real terrier who is good on his feet and aggressive in chasing down every point; a match for the very very best" (Chambers & Partners 2009)

"ability to quickly identify and isolate issues"; "spark of genius"; "brilliant on his feet" (Chambers & Partners, 2008)