

James McClelland QC

YEAR OF CALL: 2004 YEAR OF SILK: 2021

*"Absolutely outstanding", "prodigiously intelligent",
"lauded for his quickness and resilience in court"*

Chambers & Partners

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Practice Overview

"Terrifyingly intelligent", "exceptionally gifted", "a brilliant lawyer", "a compelling advocate", "an outstanding jurist", "fantastic both on his feet and on paper", "provides a brilliant delivery in court", "his submissions are rapier sharp", "particularly good at dealing with difficult points", "calm under fire", "a very creative advocate", "inspires confidence in the client and the court", "an advocate who tribunals like", "has a very good feel for what the court is interested in", "comes up with creative solutions to the hardest problems", "provides sure-footed direction on difficult judgement calls", "his advice is always clear and pragmatic", "totally down to earth", "exceptionally easy to work with", "good fun", "genuinely intellectually brilliant", "often the barrister I choose to instruct in my most sensitive cases" (current or past editions of Chambers & Partners or Legal 500).

James has a wide-ranging practice specialising in commercial, public and regulatory law. He has been instructed in a number of the most interesting, heavily reported, and high-value matters in each of these

areas, including:

- **Commercial litigation / arbitration**, such as the £4bn RBS Rights Issue litigation, the >£1bn Kuwaiti sovereign wealth fund dispute, the leading Supreme Court authority on piercing the corporate veil and forum conveniens, a >£200m claim for the breach of a purchase option agreement over commercial property, a >£140m claim for the negligent drafting and execution of a payment waterfall, and international arbitrations tackling subject matter as varied as energy infrastructure contracts, commercial trusts and bank guarantees; James is also a co-author of the leading work on the Law of Bank Payments (Brindle & Cox);
- **Public law**, including the UBER licensing appeal, the Leveson press reforms, the LCF judicial review ("JR"), resisting Rosneft's JR of sanctions against Russia, Greenpeace's challenge to work on Hinkley Point C, challenges to the EU and UK farming subsidy regimes, overturning the UK Government's forfeiture of multi-million pound food import securities, quashing grant decisions made by HEFCE (now UK Research and Innovation), test case litigation on the limits of the "victim" standing threshold under s.7(1) Human Rights Act 1998, JRs of landmark civil justice reforms (including those affecting both mesothelioma compensation and whiplash injuries), and numerous regulatory JRs (below);
- **Regulatory law**, including:
 - *Financial services*, e.g. the JR of the PSR's regulation of ATM interchange fees (judgment pending), the JR of the FSCS's denial of compensation to investors in London Capital & Finance, the JR of the FCA's £30bn PPI repayment regime, and the test cases on each of the following: the lawfulness of bank overdraft charging (preserving the "free to use" retail banking model), the FOS's jurisdiction over D&O policies (removing an entire business line from the FOS regime), the treatment of non-transferable bonds under MiFID II, and the consequences of inadvertently contracting into statutory regulation (resolving a >£250m liability);
 - *Legal services*, e.g. the test case on the scope of the SRA's statutory powers to destroy client data following interventions (enabling the destruction of 1.5m client files) and each of the leading cases (both at first instance and on appeal) concerning solicitors' involvement in the Coal Miners' Compensation scheme;

- *Energy*, e.g. the landmark appeal against the RIIO-2 price controls and net zero licence modifications (overturning Ofgem's decisions), advising on nationwide smart-meter rollout, and acting in a heavy JR (ongoing) of government intervention in the energy supply sector following the spike in wholesale gas prices;
- *Pensions*, acting for the Pension Protection Fund in the Court of Appeal overturning the first instance judgment in the >£1bn JR as to the basis for calculating pensioner compensation under retained EU law;
- *Healthcare / Life sciences*, contesting NICE's nationwide guidance on therapeutic efficacy; defeating three linked judicial reviews (with accompanying injunction applications) against Medco Registration Solutions (the UK's soft tissue clinical evidence portal); quashing the unlawful clawback of medical research funding (affecting oncology and cardiovascular); and advising a leading NHS Foundation Trust as to requirements under the National Health Service Act 2006 and the supervisory powers of Monitor. James has a particular interest in challenges concerning the MHRA, NICE, Clinical Commission Groups and the Human Medicines Regulations 2012.

Disciplinary proceedings, including the successful defence of a Magic Circle partner following a 21-day trial in the SDT (resulting in a full acquittal); and the FRC's successful prosecution of a "Big Four" firm arising out of a heavily publicised accounting scandal. James has acted in heavy cases in the SDT for almost 14 years, most involving allegations of serious misconduct, including dishonesty, lack of integrity, conflicts of interest, the misappropriation of client assets, giving false evidence under oath, misleading the regulator, and sexual harassment).

James's cases frequently straddle more than one of these practice areas and he has been recognised as "*particularly strong at the intersection of commercial law and public law*" (Legal 500) and "*one of the few people that has cross-over between banking, regulatory and public law*" (Chamber and Partners). He is often sought out for cases raising complex points of law (in particular statutory construction) including in fields previously outside his core areas of practice (such as insolvency, pensions, tax and agriculture).

James is equally comfortable leading teams of junior counsel or acting as a sole advocate and has substantial experience of both. He also has a heavy advisory practice and frequently advises on the application of complex statutory regimes to novel forms of commercial activity. James has particular expertise in the regulation of financial and legal services and has been described as having "*an encyclopedic knowledge of financial regulatory work*" and "*great technical expertise*" (Chambers).

In appropriate cases, James takes on pro bono instructions and approximately 20% of his time in 2020 was spent on unpaid work for deserving clients. James is also an executive committee member of the

Alliance for Lawyers at Risk (supporting human rights defenders worldwide) and sits on the Bar Disciplinary Tribunal, hearing disciplinary cases relating to members of the Bar.

Prior to taking silk James was profiled by *Legal Week* as one of its Stars at the Bar and nominated for both commercial litigation and banking and finance junior of the year at the Chambers UK Bar Awards. He was named as “one of the leading senior juniors in commercial litigation” (Legal 500) and “a rising star of the Commercial Bar” (Chambers).

James’ public law practice is of equal depth. Before taking Silk, he was one of the Attorney General’s A Panel Counsel, appointed to conduct the most complex first instance and appellate advocacy for central government in all aspects of public law. Earlier in his practice, he was a tutor and then college lecturer in public law at Oxford University and in 2019 James was named by *Finance Monthly* as its UK public law lawyer of the year.

Public Law

James’ public law and regulatory practice is wide ranging. Having been a tutor and later lecturer in public law at Oxford University (St Hugh’s and Keble Colleges), James has acted in a great variety of judicial reviews and statutory appeals and has advised, or appeared for, national regulators (including the PRA, FOS, FSCS, FRC, and the SRA), central government (including the Home Office, Foreign Office, MoJ, HMRC, and DCMS), and a wide variety of claimants and interested parties, ranging from corporations and trade bodies to universities and private individuals.

James’ public law cases frequently concern commercial subject-matter, but also address territory as diverse as parliamentary law, press regulation, international sanctions, civil justice reform, the recognition of foreign governments, higher education funding, healthcare, agricultural subsidies, import regulation, licensing, extradition, infringements of EU rights by public bodies, and claims for interferences with human rights.

Examples of recent or ongoing matters:

(See also financial and legal services below for regulatory JR.)

- *R (NoteMachine) v Payment Services Regulator & LINK* [judgment pending]: acted for LINK (leading Tim Johnston) in a challenge brought by a leading ATM operator to the PSR’s decision not to amend LINK’s nationwide fees for ATM providers (concerns legitimate expectations, alleged breaches of policy / guidance, statutory discrimination, and the jurisdictional “footprint” of the Payment Services Regulations 2017 and Financial Services (Banking Reform) Act 2013).

- *R (A) v BEIS & Ofgem* [ongoing] [details withheld]: acting (leading Max Evans) in a heavy, expedited JR of government intervention in the energy supply sector following the spike in wholesale gas prices (concerns: substantive and procedural legitimate expectations; departure from policy guidance; breach of AIP1 / Human Rights Act 1998, and errors of law).
- *AIP1 Claim / Interim injunction* [details withheld]: acting (leading Philip Ahlquist) for a public authority resisting an expedited judicial review challenge and injunctive application brought by a Russian-orientated entity alleging breach of statutory duty and interference with the peaceful enjoyment of possessions (Article 1 of the First Protocol / Human Rights Act 1998). (Claim withdrawn following service of Grounds of Defence.)
- *R (B) v Ofgem* [pre-issue] [details withheld]: acted (leading Sarah Love) for the claimant in pre-action intimated challenges to Ofgem's decision-making on aspect of price control; all allegations were denied but alleged errors were then corrected by subsequent decisions (concerned: rationality, error of fact, proportionality, departure from policy, price control).
- *R (Hughes) v Pension Protection Fund & DWP* [2021] EWCA Civ 1093: acting for the PPF successfully overturning the decision at first instance in this >£1 billion JR of the PPF's method of calculating pensioner compensation (concerned: the interpretation and effect of retained EU law; age discrimination).
- *RIO-2 Licence Modification Appeals* [CMA, 28 October 2021]: acted for SP transmission plc (owner of the electricity transmission network in Central and Southern Scotland) in a successful challenge to Ofgem price control / licence modification decisions. The CMA accepted SP's submissions that key modifications were ultra vires since they purported to reserve to Ofgem a right to make future discretionary modifications without specifying their manner or circumstances.
- *R (Donegan & Ors) v Financial Services Compensation Scheme* [2021] EWHC 760 (Admin): acted for the claimants (leading Tim Johnston and Charlotte Thomas) challenging the FSCS's decision to decline compensation to thousands of investors who lost >£200m in the London City & Finance "mini-bonds" scandal. Mr Justice Bourne commended the "force, lucidity and skill" of James's argument and found that the mini-bond terms were unfair, having been imposed contrary to good faith. Three weeks after that judgment, and having previously stated that it would "assess whether there [was] justification for further one-off compensation payment in certain circumstances for some LCF bondholders", HM Treasury announced that it would pay out to all uncompensated investors, paying 80% of their original investments up to the level of the FSCS's statutory cap. (Concerned transferable securities, MiFID 2, the Consumer Rights Act 2015).

- *Uber v Transport for London* [Westminster Magistrates Court] [September 2020]: acted for Uber London Ltd in its successful challenge to TfL's refusal to renew its operating licence within London. The case preserved Uber's business and, with it, a significant part of London's transport infrastructure.
- *R (United Trade Action Group) v Transport for London & Uber* [April 2020]: successfully resisted (as interested party) UTAG's challenge to TfL's decision not to suspend Uber's licence pending appeal (concerned rationality, public safety and error of law).
- *R (Major UK Importer) v Secretary of State for Environment, Food and Rural Affairs* [September 2020]: acted for the claimant in a successful JR challenge to DEFRA's refusal to recognise a force majeure event resulting in the forfeiture of a multi-million pound import security. The claim was conceded following service of the Claimant's Grounds. (Concerned irrationality/unreasonableness (error of reasoning) and error of law.)
- *R (B) v Secretary of State for Environment, Food and Rural Affairs* [ongoing]: James acted (leading Tim Johnston) for the Secretary of State resisting a challenge to the UK's implementation of aspects of the EU agricultural subsidy regime. (Concerned legitimate expectations, breach of policy guidance and error of law.)
- *R (Taveta Investments Ltd) v Financial Reporting Counsel & Ors* [2018] EWHC 1662 (Admin): acting for the FRC resisting an injunction to restrain publication of the detailed reasons for its settlement agreement with PWC relating to the audit of BHS. (Concerned issues under ECHR Art. 10 (freedom of expression), and 8 (private life).)
- *Cian Ciaran v NNB Generation Company (HPC) Ltd* [2018] (High Court, QBD) E90CF102: acting for a subsidiary of EDF resisting a challenge to the lawfulness of statutory authorisations granted by the Welsh Government for work on Hinkley Point C nuclear power station.
- *R (Med Chambers Ltd) v Medco Registration Solutions Ltd* [2017] EWHC 3258 (Admin): successfully resisting three linked judicial review challenges (accompanied by urgent injunction applications) to suspension decisions taken by MedCo under the MoJ's accreditation scheme for medical reporting in injury claims (concerned ECHR Article 6 (fair hearing); Article 1 of the First Protocol (right to possessions); rationality; delay and alternative remedies).
- *R (Rosneft Oil Co) v HMT, FCA & Aor* [2018] Q.B. 1 (CJEU, Grand Chamber): acting for the FCA in the JR challenge brought by Rosneft against the FCA and HMT concerning the validity and interpretation of EU sanctions against Russia following its actions in Ukraine;

- *Disputed recognition of Libyan Government (Bouhadi v Breish)* [2016] EWHC 602: acting for the claimant seeking declarations identifying the legitimate government of Libya for the purposes of establishing control over Libyan sovereign wealth held within the UK.
- *Leveson press reforms*: advising the Department of Culture Media and Sport in relation to the controversial implementation of the statutory reforms to press regulation arising out of the Leveson report (section 40 of the Crime and Courts Act 2013).
- *R (Sison) v SSHD* [2016] UKUT 33 (IAC): acting for the SSHD in a JR concerning the ability of claimants to “piggy back” on alleged infringements of the human rights of third parties, ECHR Article 8 (right to private life).
- *Ocean Reef Ltd v Nevis Island Administration & Governor-General of St Kitts and Nevis* (NEVHCV2017/0114): acting (with Jonathan Crow QC) for the claimant in relation to a judicial review / constitutional challenge to the alleged expropriation of property in St Kitts and Nevis.
- *>50 linked intimated JR challenges*: acting (as sole Counsel) for a commercial regulator resisting more than 50 linked pre-action JR challenges to >£100m decisions affecting an entire industry sector.
- *Statutory remediation of land contamination*: advising the Environment Agency in relation to the lawful exercise of statutory powers to compel the remediation of contaminated land.
- *In re. Law Society* [2015] 1 W.L.R. 4064: seeking novel declaratory relief for the SRA over its powers to destroy property seized on statutory interventions; raising issues under ECHR Article 1 of the First Protocol (right to possessions), and Article 6 (fair hearing).
- *R (Bluefin Insurance Services Ltd) v FOS* [2014] EWHC 3413 (Admin): acting for an insurance broker in a test case JR concerning the jurisdiction of the FOS to make awards in respect of D&O policies.
- *R (Whitston) v SStE for Justice* [2014] EWHC 3044 (Admin): acting for the ABI in a JR challenge concerning changes to the funding regime for mesothelioma claims. (Concerned a challenge to the validity of a statutory consultation process.)
- *R (APIL) v SStE for Justice* [2013] EWHC 1358 (Admin): acting for the ABI in a JR challenge to the Government’s decision to cut recoverable costs in RTA claims (the judgment paved the way for reforms to remove £1 million per day out of the motor insurance system).

- *USA v Wood* [2013] EWHC 1971 (Admin): acting for the UK (Home Secretary) in a procedural/jurisdictional challenge to the USA's request for the extradition of a UK national to face allegations of wire fraud; raising issues under ECHR Article 8 (private life).
- *NA v Law Society & Ors* [2012] EWHC 980 (QB) acting for the SRA resisting a claim for, amongst other things, a declaration of incompatibility under the HRA 1998 relating to the SRA's statutory powers to intervene into solicitors' practices.
- *R (BBA) v FSA* [2011] EWHC 999 (Admin) acting for the FSA in the PPI JR, successfully resisting a challenge by the BBA to the regulator's multi-billion pound PPI redress scheme.
- *Cooper v Attorney General* [2008] 3 C.M.L.R. 45: acting for the claimant against the Attorney General in the first damages claim ever brought against the UK for alleged infringements of EU law by a domestic Court (reported as "ground-breaking" in Chambers & Partners).
- *R (Queen Mary's University of London) v HEFCE* [2008] E.L.R. 540 acting for a university in a JR challenge to funding decisions by the Higher Education Funding Council (resulting in the quashing of those decisions).

Financial Regulation

James acts both for and against regulators in contested proceedings and advises regularly on financial regulatory issues, including FSMA and its subordinate legislation; the powers and competencies of the FCA, the FOS, the PRA and the FSCS; the Financial Services Handbook (in particular COBS, ICOBs, DISP, PRIN); the Regulated Activities Order, the Payment Services Regulations, collective investment schemes, and the territorial application of the FSMA regime.

In addition to numerous advisory matters, examples of previous instructions include:

- *R (NoteMachine) v Payment Services Regulator & LINK* [judgment pending]: acted for LINK (leading Tim Johnston) in a challenge brought by a leading ATM operator to the PSR's decision not to open investigations into alleged unlawfulness in LINK's setting of ATM Interchange Fees (concerns legitimate expectations, alleged breaches of policy guidance, statutory discrimination, and the jurisdictional "footprint" of the Payment Services Regulations 2017 and Financial Services (Banking Reform) Act 2013).

- *R (Donegan & Ors) v Financial Services Compensation Scheme* [2021] EWHC 760 (Admin): acted for the claimants (leading Tim Johnston and Charlotte Thomas) challenging the FSCS's decision to decline compensation to thousands of investors who lost >£200m in the London City & Finance "mini-bonds" scandal. Mr Justice Bourne commended the "force, lucidity and skill" of James's argument and found that the mini-bond terms were unfair, having been imposed contrary to good faith. Three weeks after that judgment, and having previously stated that it would "assess whether there [was] justification for further one-off compensation payment in certain circumstances for some LCF bondholders", HM Treasury announced that it would pay out to all uncompensated investors, paying 80% of their original investments up to the level of the FSCS's statutory cap. (Concerned the meaning of "transferable securities" under MiFID 2; the status of "non-transferable bonds"; the assessment of investment products under the Consumer Rights Act 2015).
- Acting for a group of investors in proposed JR proceedings against a regulatory body (2020-2021). (Claim settled following letter before claim.)
- *FRC investigation into financial reporting scandal*: advising (leading Max Evans) the FRC in relation to proposed disciplinary action against accountants arising out of a heavily publicised financial scandal (2017-2020).
- *Strategic Advice on regulation of Fossil Fuel / Climate Change exposures*: James advised a key stakeholder as to regulatory issues surrounding the financing of fossil fuel investments both within the UK and globally. This was very extensive, strategic, framework advice commissioned to support long-term decision making which was provided over an extended period and addressed the whole framework for regulating lending to the energy sector and the prudential and systemic risks associated with fossil-fuel exposures.
- *R (Rosneft Oil Co) v HMT, FCA & Aor* [2018] Q.B. 1 (CJEU, Grand Chamber): acting for the FCA in the JR challenge brought by Rosneft against the FCA and HMT concerning the validity and interpretation of EU sanctions against Russia following its actions in Ukraine.
- *Disputed recognition of Libyan Government (Bouhadi v Breish)* [2016] EWHC 602: acting for the claimant seeking declarations identifying the legitimate government of Libya for the purposes of establishing control over Libyan sovereign wealth held within the UK.
- *R (Taveta Investments Ltd) v Financial Reporting Counsel & Ors* [2018] EWHC 1662 (Admin): acting for the FRC resisting an injunction to restrain publication of the detailed reasons for its settlement agreement with PWC relating to the audit of BHS.

- FSCS COMP jurisdiction: advising the FSCS as to the scope and discretionary exercise of powers to award compensation arising out of firm default (2017).
- FCA strategic advice: advising the FCA's General Counsel's Division ("GCD") on the proper interpretation and application of Handbook rules of industry-wide significance (multiple instances).
- R (Bluefin Insurance Services Ltd) v FOS [2015] Bus. L.R. 656: acting for an insurance broker in a test case concerning the jurisdiction of the FOS to make awards in respect of D&O policies (the case has removed an entire line of insurance business from FOS jurisdiction).
- Bank of England: advising the Bank of England (with Jonathan Crow QC) on the interpretation of its systemic, market stabilisation powers under the Banking Act 2009.
- Formation of the PRA: advising the Bank of England (with Jonathan Crow QC) on aspects of the creation and operation of the PRA.
- PPI Judicial Review: acting for the FCA (then FSA) against the British Bankers Association in the test case concerning banks' regulatory obligation to pay compensation for PPI mis-selling. Compensation payments of >£30 billion have now been made.
- Bank Overdraft Charges test case: acted for HBOS against the OFT in the test case as to banks' obligations under the UTCCRs. The banks' success in those proceedings averted potentially multi-billion pound pay-outs.
- Advising the FSCS concerning its £326m exceptional fund management levy under FEES following the failure of Keydata and other entities.
- Argentum Lex Wealth Management Limited v Giannotti & FSA [2011] EWCA Civ 1341: acting against the FCA (as sole Counsel) in a Court of Appeal hearing concerning the effect of pro forma arrangements for the transfer of regulatory liabilities.

Legal Services Regulation

James regularly advises both regulators and private persons concerning the obligations of legal service providers and the powers and public law duties of the SRA. He has acted in numerous judicial review or appellate proceedings concerning the SRA and the scope and effect of the regulatory framework. James also appears regularly (as sole counsel) in disciplinary prosecutions, including those concerned

with dishonesty, the misappropriation of client funds and other serious misconduct. Examples include:

- *SRA v Magic Circle solicitor (2020–2021)*: acted for a solicitor at a Magic Circle firm in relation to an SRA investigation and proposed disciplinary referral for misconduct to the SDT. Following detailed written representations (including a 35,000 word rebuttal of all allegations) the investigation and proposed referral were discontinued.
- *SRA v Narayanasamy [2021] EWHC 2918 (Admin) [Divisional Court]*; and Case No. 11893–2018 [SDT]: James acted for the SRA in this prosecution concerning allegedly false and evasive evidence given under oath in a partnership dispute in the Chancery Division. Following a 2-day interim hearing and 7-day trial, the SDT made findings of dishonesty and ordered that the respondent be struck from the Roll. Currently under appeal, including an interlocutory appeal from the Divisional Court to the Court of Appeal over the admission of fresh evidence on appeal.
- *SRA v Elizabeth Ellen / MdR (formerly Mischon de Reya) [2021]*: providing specialist public law advice to the respondent solicitor who was subsequently exonerated by the SDT in a trial relating to the conduct of payments for player transfers in the Premier League.
- *SRA v Gary Senior, Baker McKenzie LLP & Ors (2019–2020)*; Case No. 11976–2019: acted for Tom Cassels (partner at Linklaters LLP) in this very heavily publicised 21-day SDT trial concerning Baker McKenzie’s internal disciplinary response to sexual misconduct by its Managing Partner. Mr Cassels was acquitted of all wrongdoing.
- *Dean v SRA (2017) (SDT; 11582–2016)*: successfully resisted appeal against order indefinitely prohibiting a non-solicitor from being employed in connection with solicitor’s practice.
- *SRA v Nickson (2016) (SDT; 11436–2016)* (as sole counsel) strike-off; integrity; public trust; best interests of client.
- *Lawson v SRA [2015] EWHC 1237 (Admin)* (as sole counsel): re. suspension.
- *R (IA) v SRA [2014] EWHC 197 (Admin)* (as sole counsel): re. suspension, fresh evidence, conditions on certificate.
- *SRA v V (2013) (11090/12)* (as sole counsel): re. improper contingency fees; dishonesty; compromising integrity; conduct unbecoming; diminishing trust in profession; striking off.
- *Westlaw Services Ltd v Boddy [2010] EWCA Civ 929* (as sole counsel): Court of Appeal hearing re. whether commercial contracts formed in breach of regulatory obligations could be enforced by non-regulated counter-parties.

- Coal Miners Compensation Scheme prosecutions: James acted for the SRA in the widely publicised SDT prosecutions for alleged solicitor misconduct in connection with the >£4.4 billion miners' compensation scheme – the largest industrial injuries compensation scheme in the world. This was collectively the most substantial enquiry ever undertaken into misconduct within the legal profession in England & Wales. James appeared in four separate prosecutions, including both of the headline cases of Raleys and Beresfords, the latter of which resulted in findings of dishonesty following what was described as a "landmark hearing" (*The Times*).
- James is a member of the Association of Regulatory and Disciplinary Lawyers; has contributed to their quarterly bulletin, and has appeared in a panel debate on proposed regulatory reforms.

Energy & Natural Resources

James's energy practice spans both (a) commercial disputes within the energy-sector (in particular disputes as to the interpretation of complex contracts and share-sale agreements); and (b) public law challenges for/against regulators.

- *R (A) v BEIS & GEMA* [ongoing] [details withheld]: acting (leading Max Evans) in a heavy ongoing JR of government intervention in the energy supply sector following the spike in wholesale gas prices (concerns: substantive and procedural legitimate expectations; departure from policy guidance; breach of A1P1 / Human Rights Act 1998, and errors of law).
- *R (B) v GEMA* [pre-issue] [details withheld]: acted (leading Sarah Love) for an energy market participant in pre-action intimated challenges to GEMA's decision-making on business-critical issues; alleged errors were denied but then corrected in further decisions (concerned: rationality, error of fact, proportionality, departure from policy, price control).
- Advising on regulatory aspects of nationwide smart-meter rollout.
- *R110-2 Licence Modification Appeals* [CMA, 28 October 2021]: acted for SP transmission plc (owner of the electricity transmission network in Central and Southern Scotland) in a successful challenge to Ofgem price control / licence modification decisions. The CMA accepted SP's submissions that key modifications were ultra vires since they purported to reserve to Ofgem a right to make future discretionary modifications without specifying their manner or circumstances.

- *Strategic Advice on regulation of Fossil Fuel exposures*: James advised a key stakeholder as to regulatory issues surrounding the financing of fossil fuel investments both within the UK and globally. This was very extensive, strategic, framework advice commissioned to support long-term decision making which was provided over an extended period and addressed the whole framework for regulating lending to the energy sector and the prudential and systemic risks associated with fossil-fuel exposures.
- *Advice re. > EURO 50m payment right*: advising a multi-national mining conglomerate as to the interpretation of a payment formula under a complex share-sale arrangement in a dispute as to whether, and if so when, a >EURO 50 million payment tranche had fallen due and payable.

Commercial Litigation / Arbitration

James' commercial litigation/arbitration practice has covered a number of the most interesting disputes arising in the last 15 years, including the >£4 billion RBS rights issue litigation (resulting from the failure of RBS); the test cases on both PPI and bank overdraft charges (each of which had multi-billion pound consequences), and the leading Supreme Court authority on piercing the corporate veil and *forum conveniens*. He has been instructed in connection with a number of other matters heavily reported in the national press, including the controversial sale of BHS by the Arcadia Group; Tesco's profit misstatement, and the LIBOR "rigging" scandal.

In addition to court proceedings, James has appeared in high-value international arbitrations, ranging from contested oil and gas industry contracts to disputes involving commercial trusts and the restructuring of foreign debt.

- *CIArb Arbitration concerning US\$ 20m African debt guarantees*: acted (leading Chintan Chandrachud) for a guarantor denying liability under a US\$ 20 million guarantee over lending to a multi-national corporate group in sub-Saharan Africa. Issues included rescission for misrepresentation; termination for non-disclosure; and exclusion of "political risks" (default having allegedly occurred due to state interference in the borrower's businesses).
- *>\$130 million LCIA arbitrations*: acting for the claimant in two linked arbitral disputes arising out of the restructuring of distressed debt in a foreign public company. The case involved complex banking assignment documentation, the disputed operation of multi-million pound commercial trusts, and allegations of political influence in procuring commercial arrangements with a public entity.

- *Sovereign Wealth Fund v Global Financial Services provider*: James acted (with Richard Lissack QC and Leonora Sagan) for a leading Global Financial Services provider resisting circa >£200m claims in bribery, conspiracy, unjust enrichment, and under foreign anti-corruption laws brought by a sovereign fund relating to alleged systematic impropriety maintained over >15 years.
- *X Investments Ltd v Y Ltd* (2017-2019) (Comm. Ct). James acted (leading Alexandra Whelan) for a high net-worth Chinese national and his corporate vehicle in this joint venture dispute concerning contested interests in globally diversified assets running to the hundreds of millions of GBP. The case raised issues of Chinese, Hong Kong, Luxembourg, and English law concerning inter-company debt arrangements, a promissory note, and a variety of contested lending and capital contribution arrangements. Opposing Counsel were Tony Peto QC and Peter Head.
- *Harbour Castle Ltd v David Wilson Homes Ltd* [2019] EWCA Civ 505; [2018] EWHC 25 (Ch): acted for the claimant in a >£200m claim for the alleged breach of an option agreement (permission to appeal granted by Henderson LJ).
- *RBS Rights Issue litigation* (2013-2017): acting for RBS and its former directors defending the multi-billion pound group action arising out of the bank's part-nationalisation.
- *NRAM plc v McAdam* [2015] EWCA Civ 741: acting against Northern Rock Plc in the >£250m test case concerning whether the CCA could apply by contractual incorporation or estoppel to lending in excess of the statutory threshold.
- *VTB v Nutritek* [2013] UKSC 5: acted against VTB bank in the landmark Supreme Court case on piercing the corporate veil and *forum conveniens* (appeared at first instance, in the Court of Appeal, and in the Supreme Court).
- *Deutsche Banke (Suisse) SA v Khan* [2013] EWHC 482 (Comm): acted for Deutsche Bank in a >£50 million claim over a secured lending facility.
- >\$680 million claim under a cross-undertaking: acted for the claimant in a claim under a cross-undertaking following the setting aside of a worldwide freezing order.
- £20 million claim against Credit Suisse: acted for corporate investors in a claim for the alleged mis-selling of structured notes geared to the U.S. life insurance markets;
- *London Underground v Freshfields & Herbert Smith Freehills* (Commercial Court): acted for HSF in a >£140 million claim relating to the drafting and execution of complex PPP financing for the regeneration of the London tube network.

- *Marex Financial Ltd v Creative Finance Ltd* [2013] EWHC 2155 (Comm): acted for investors claiming against a FOREX broker concerning the forced liquidation of US\$800 million cross- currency positions.

Notable cases

- *R (Hughes) v Pension Protection Fund & DWP* [2021] EWCA Civ 1093
- *R/IO-2 Licence Modification Appeals* [CMA, 28 October 2021]
- *R (Donegan & Ors) v Financial Services Compensation Scheme* [2021] EWHC 760 (Admin)
- *Uber London Ltd v Transport for London* [Westminster Magistrates Court] [September 2020]
- *SRA v Narayanasamy* [2021] EWHC 2918 (Admin) [Divisional Court]; and Case No. 11893-2018 [SDT]
- *SRA v Gary Senior, Baker McKenzie LLP & Ors* [2020] Case No. 11976-2019 [SDT]
- *R (Taveta Investments Ltd) v Financial Reporting Counsel & Ors* [2018] EWHC 1662 (Admin)
- *R (Med Chambers Ltd) v Medco Registration Solutions Ltd* [2017] EWHC 3258 (Admin)
- *Harbour Castle Ltd v David Wilson Homes Ltd* [2018] EWHC 25 (Ch)
- *RBS Rights Issue litigation (2013-2017)* (Ch)
- *R (Rosneft Oil Co) v HMT, FCA & Aor* [2018] Q.B. 1 (CJEU, Grand Chamber)
- *Bouhadi v Breish* [2016] EWHC 602
- *NRAM plc v McAdam* [2015] EWCA Civ 741
- *The Law Society (Solicitors Regulation Authority)* [2015] EWHC 166 (Ch)
- *R (OJSC Rosneft Oil Co) v HMT, FCA & Aor* [2015] EWHC 248 (Admin)
- *R (Bluefin Insurance Services Ltd) v FOS* [2014] EWHC 3413 (Admin)
- *Greenwood & Ors v Royal Bank of Scotland Plc, Goodwin & Ors* [2014] EWHC 227 (Ch)
- *R (Whitston) v SSte for Justice* [2014] EWHC 3044 (Admin)
- *R (Adelakun) v Solicitors Regulation Authority* [2014] EWHC 198 (Admin)
- *Deutsche Banke (Suisse) SA v Khan* [2013] EWHC 482 (Comm)
- *Marex Financial Ltd v Creative Finance Ltd* [2013] EWHC 2155 (Comm)
- *VTB Capital Plc v Nutritek International Corp* [2013] UKSC 5 [2013] 2 W.L.R. 398
- *United States of America v Wood* [2013] EWHC 1971 (Admin)
- *R (Association of Personal Injury Lawyers) v SSte for Justice* [2013] EWHC 1358 (Admin)
- *Stack v Ajar-Tec Ltd* [2012] EWCA Civ 543
- *VTB Capital Plc v Nutritek International Corp* [2012] EWCA Civ 808; [2012] 2 Lloyd's Rep. 313
- *McNulty v Revenue and Customs Commissioners* [2012] S.T.C. 2110
- *R (British Bankers Association) v FSA & FOS* [2011] EWHC 999 (Admin)
- *VTB Capital Plc v Nutritek International Corp* [2011] EWHC 3107 (Ch)
- *Argentum Lex Wealth Management Ltd v Giannotti* [2011] EWCA Civ 1341
- *Westlaw Services Ltd v Boddy* [2010] EWCA Civ 929
- *Beresford v Solicitors' Regulation Authority* [2009] EWHC 3155 (Admin)

- Richards v Law Society [2009] All ER (D) 103
- Office of Fair Trading v Abbey National Plc (No. 2) [2008] EWHC 2325 (Comm); [2009] 1 All E.R. (Comm) 717
- Office of Fair Trading v Abbey National Plc [2008] EWHC 875 (Comm); [2008] 2 All E.R. (Comm) 625
- Cooper v Attorney General [2008] EWHC 2178; [2008] 3 C.M.L.R. 45
- R (Queen Mary University of London) v the Higher Education Funding Council for England [2008] EWHC 1472 (Admin); [2008] E.L.R. 540; [2008] A.C.D. 69

Directory quotes

- "He's a class act. He is certainly very thorough, his writing skills are strong, and he produces excellent and tight submissions." "He really takes his time to understand both the legal and regulatory issues at stake and the client's objectives. As a result his advice is always clear and pragmatic." (Chambers 2022)
- "A class act." "Insanely smart." (Chambers 2022)
- "Genuinely intellectually brilliant and very likeable." (Chambers 2022)
- "He is extremely good. He is a very good technical barrister and one of the few people that has cross-over between banking, regulatory and public law. He has versatility and is very useful." "He delivers excellent written work and is thorough in his approach and quick to get across the details." (Chambers 2022)
- "He is very analytical and extraordinarily hard-working." "He provides brilliant delivery in court and great technical expertise." (Chambers 2022)
- "An absolute star: razor-sharp, totally devoted to his cases and clients, covers every single detail of the case – and comes up with creative solutions to the hardest problems." (Legal 500 2022)
- "He is rapidly becoming a leader in the sector – a hugely forensic approach, client-friendly but focussed on the tribunal, and providing sure-footed direction on difficult judgement calls." (Legal 500 2022)
- "Very sharp, and completely on top of his brief in relation to financial services matters. He inspires confidence in the client and in the court." (Legal 500 2022)
- "James has a cool head under pressure and his submissions are rapier sharp. He is calm, forensic and puts the client's case forcefully." (Legal 500 2022)
- "Extraordinarily hard-working, clever, with great attention to detail and calm under fire." (Legal 500 2022)
- "Charming and brilliant"; "unflappable"; "he always delivers"; "a stylish advocate". (Chambers 2021)
- "Incredibly hard-working and has very good judgement"; "totally gets under the bonnet of a case"; "incredibly charming with clients"; "often the barrister I choose to instruct in my most sensitive cases". (Chambers 2021)

- "Extraordinarily bright and quite singular in that he is able to drive through an argument very quickly." (Chambers 2021)
- "A highly persuasive advocate who sees problems with crystal clarity." (Legal 500 2021)
- "A cut above the rest, he has a huge brain but remains humble, engaging and commercial." (Legal 500 2021)
- "An outstanding jurist ... and an excellent advocate." (Legal 500 2021)
- "Particularly strong at the intersection of commercial law and public law." (Legal 500 2021)
- "Absolutely outstanding" (Chambers), "prodigiously intelligent" (Chambers), "a brilliant lawyer" (Legal 500), "a cut above the rest" (Legal 500), "his energy and intelligence are exceptional". (Legal 500)
- "A compelling advocate" (Legal 500), "fantastic both on his feet and on paper" (Chambers), "inspires real confidence"(Chambers); "lauded for his quickness and resilience in court" (Chambers), "terrifyingly intelligent" (Legal 500); "a very difficult opponent" (Chambers); "particularly good at dealing with difficult points" (Chambers), "his advocacy is cerebral yet accessible". (Legal 500)
- "Gives crisp answers to judicial questions delivered in an astonishingly engaging manner" (Legal Week), "a very creative advocate who has a very good insight into how courts ... think" (Chambers),
- "highly regarded for his calm and assured advocacy" (Chambers), "has a very good feel for what the court is interested in" (Chambers)
- "Utterly dedicated" (Chambers), "totally down to earth" (Chambers), "a delight to work with (Chambers); "combines intellectual brilliance with excellent communication skills and a willingness to grasp the practical and commercial realities of a case". (Chambers)
- "He has a huge brain but remains humble, engaging and commercial". (Legal 500)
- "A super-brain" (Chambers), "he has such intellectual rigour and tenacity that he won't let a point drop – he shakes it and shakes it until he's got a better answer" (Chambers), "if one needs to employ serious brain power he's the right person to go to". (Chambers)
- "Gets his teeth into anything and always resolves the situation". (Chambers)
- "Great depth and diversity, spanning commercial litigation with regulatory and public law" (Legal Week), "a noted ability and experience in handling cases arising in administrative and public law" (Chambers), "particularly good for commercial judicial review". (Legal 500)
- "One of the leading senior juniors in commercial litigation" (Legal 500), "a rising star of the Commercial Bar" (Chambers), "wins instructions from top litigation law firms". (Chambers)
- "Has an encyclopaedic knowledge of financial regulatory work" (Chambers), "has an outstanding ability to grasp the technical aspects of financial products" (Legal 500), "he seemingly understands the clients' products better than they do". (Chambers)
- "Ferociously hard working" (Legal 500), "celebrated for his intelligence and determination" (Chambers), "an exceptional work ethic" (Chambers), "his knowledge of detail and his precision are second to none" (Chambers), "meticulous in his approach" (Chambers), "unbelievably sharp" (Chambers), "he never misses a trick and always considers things from every angle". (Chambers)

- "Exceptionally easy to work with" (Chambers), "good fun" (Chambers), "excellent and totally down to earth" (Chambers), "highly intelligent but has no airs about him at all" (Chambers), "a very nice guy" (Chambers), "exceedingly intelligent, hardworking and user friendly" (Legal 500), "an advocate who tribunals like". (Legal 500)
- "Good at getting to the heart of the issue". (Chambers)

Education & appointments

Academic appointments

- 2012-2013: Lecturer in Public and Administrative law, Keble College, Oxford University
- 2011-12: Tutor in Public and Administrative law, St Hugh's College, Oxford University

Education

- MA, Cambridge University (Eng. Lit) – Starred Double First (double first, including top starred first in the University)
- CPE, City University – Distinction (second highest in the University)
- BCL, Oxford University – Distinction
- BVC, Inns of Court School of Law – Outstanding

Prizes/awards

- Eldon Scholarship (for the most promising graduate of Oxford University commencing practice at the Bar)
- Barnett Bequest Award (for an outstanding student of the BCL) (Merton College)
- Buchanan Prize (for outstanding performance on the Bar Vocational Course) (Lincoln's Inn)
- Eastham Scholarship (Lincoln's Inn)
- Mansfield Scholarship (Lincoln's Inn)
- Bowen Scholarship (Lincoln's Inn)
- Hardwicke Entrance Award (Lincoln's Inn)
- Maitland Advocacy Prize
- Rylands Prize (for top First in English) (Cambridge)
- Heineman Prize (for outstanding work on Shakespeare) (Cambridge)
- Matthew Wren Senior Scholarship (Peterhouse)
- College Exhibition (Peterhouse)

- Friends of Peterhouse Prize for English

Publications

- Contributing author of Brindle & Cox on "The Law of Bank Payments".
- Past Contributor to the Association of Regulatory & Disciplinary Lawyers' Quarterly Bulletin.
- Contributor to Sweet & Maxwell's Civil Procedure Reports 2006-2009.

Other experience

- 2008-2009 Part-time supervisor in English literature at Peterhouse, Cambridge.
- James has published on the influences of mid-19th century French philosophy on American Literature. (See Journal of American Studies, Cambridge University Press, 39 (2005) pp. 239-255: "Losing Grip: Emerson, Leroux and the Work of Identity".)
- James participates in the Bar Council's Social Mobility Scheme and mentors sixth form students contemplating a career at the Bar.
- James is an advocacy trainer certified by the Honourable Society of Inner Temple.
- James has sat on the scholarships interview panel for the Honourable Society of Lincoln's Inn.