Nicholas Bacon QC

Education

Law LLB(Hons) Essex

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Year of Call: 1992
Year of Silk: 2010

Profile

RANKED IN CHAMBERS UK BAR 2014 Nicholas Bacon

Nicholas Bacon is a leading silk in his specialised field of costs He has appeared in practically all of the most important costs and funding cases in recent years. His costs practice is well juxtaposed to his professional negligence work with particular emphasis on solicitors' negligence, both for and against solicitors. This includes solicitors' regulatory and disciplinary work.

The Directories

Chambers and Partners 2013 describe Nicholas as "*top of the tree in this field*" and "*one of the go-to people*" at the Costs Bar. Praised for his "*huge knowledge of costs authorities*", "*he can always arrest the attention of the judge*." 'He acted in Motto v Trafigura case, one of the largest costs cases in English legal history.'

Prior to taking silk in 2010, Nicholas was described as "Undoubtedly the best-known junior in the field,". This high acclaim has continued. In 2011 he was described in the Legal 500 as 'a guru on costs matters', *4 New Square ….houses two of the top practitioners in the field. New QC Nicholas Bacon QC receives praise from all quarters - 'an exceptional practitioner', 'he responds quickly and thinks quickly'. Bacon is instructed on the £100m costs claim arising out of the Trafigura group litigation"* .

'The "enormously likeable" Nicholas Bacon QC continues to consolidate his practice after last year's elevation to silk. "A deservedly popular choice of counsel," he is "a vigorous defender of his clients' interests." Famed for his encyclopaedic knowledge of costs law, he has "an impressive analytical eye, which he uses to great effect when on his feet." Clients particularly take a shine to his "bold and forceful advocacy style," as it "reassures them that he is always fighting their corner hard." (Chambers and Partners: 2008). "Hardworking, energetic and steeped in costs law, Nicholas Bacon has probably the biggest costs practice at the Bar and "solicitors like him enormously". (Legal 500 – 2005) "An experienced and formidable opponent who lives and breaths costs appeared in many leading cases" (Legal 500-2004) "Knows the subject backwards' and is the leading player, with a string of important recent cases to his name" (Legal 500: 2003).

Appointments
High Court Assessor on Costs Appeals Member of the Joint Tribunal (Bar Council/Law Society) on fee disputes Bar Council Remuneration Committee Bar Council CFA Panel Member of PNBA

Member of the Civil Procedure Rules Committee

Costs

There is not an area of the law of costs that Nick Bacon does not or cannot deal with.

Nick Bacon is probably one of the best-known leading barristers in his specialised field of costs. He is described in the Legal 500 as having "probably the biggest costs practice at the Bar" and by Chambers and Partners as being "top of the tree in this field". He has appeared in practically all of the most important costs funding cases in recent years. He is a recognised specialist in that area having been appointed as an Assessor in the High Court on appeals against costs assessments.

He advises on all aspects of inter parties and Solicitor Act assessments and represents both claimants and defendants, insurers and funders and solicitors either pursing costs or defending clients' challenges to their fees. He has been instructed in some of the largest costs claims to come before the courts, including the BCCI v. Bank of England claim where the costs exceeded £70M. He is currently retained in the largest costs assessment in English legal history involving over £105M.

He is an advisor to a number of Unions and Incorporated Associations and Membership Organisations in respect of Collective Conditional Fee agreement structures and related legal expense insurance arrangements.

He has advised some of the leading Third Party funders in the market on terms of indemnities and "premium" recovery.

He is often retained by the leading ATE insurers to advise not just on premium recovery but on the form and content of LEI policies underlying the insurance. He is often instructed to advise on and draft associated panel solicitor documentation.

He was junior counsel in the House of Lords for the successful claimant in Callery v Gray (HL) (2002) 1 WLR 2000 which was and remains the leading case on the recovery of success fees and insurance premiums. He appeared as Counsel in the House of Lords in KAC v. Iraqi Airways Company on an Incidental Petition concerning the recovery of costs. He has been instructed in most of the significant conditional fee agreement/ after the event insurance premium cases in the Court of Appeal including the seminal case on the enforceability of conditional fee agreements, Hollins v Russell (CA) (2003) 1 WLR 2487 and subsequently Garrett v. Halton Borough Council; Myatt v. National Coal Board [2007] 1 WLR 554. He appeared for the Appellant in the Court of Appeal in the first discounted fee agreement test case of Gloucestershire County Council v. Evans [2008] EWCA Civ 21 and in Butt v. Nizami [2006] 1 WLR 3307. He represented the successful Respondent before the Master of the Rolls in the recent fixed costs case of Kilby v. Gawith [2008] WLR (D) 163.

He appeared for the successful Respondent in the lead Costs Capping case of Willis v. Nicholson [2007] EWCA Civ 199

He was instructed at first instance and on appeal in the Court of Appeal in the Claims Direct Test Cases [2003] Lloyd's Law Reports 67 and subsequently in The Accident Group Test Cases [2004] 3 All ER 325. He was instructed for the Defendant in the RSA Pursuit Test Cases (27 May 2006) where he achieved the largest reduction to any of the premiums claimed.

He was a member of Lord Justice Jackson's working group on the report into Civil Costs Review.

Mediation of Costs Disputes

Introduction - the Directories

Nicholas is ranked as the leading Silk in Costs: Legal 500 2013.

Chambers and Partners 2013 describe Nicholas as "*top of the tree in this field"* and "*one of the go-to people*" at the Costs Bar. Praised for his "*huge knowledge of costs authorities*", "*he can always arrest the attention of the judge*." 'He acted in Motto v Trafigura case, one of the largest costs cases in English legal history.' He acted for News Group Newspapers in the seminal Mitchell (Plebgate) case.

Prior to taking silk in 2010, Nicholas was described as "Undoubtedly the best-known junior in the field,". This high acclaim has continued. In 2011 he was described in the Legal 500 as 'a guru on costs matters'*, 4 New Square ….houses two of the top practitioners in the field. New QC Nicholas Bacon QC receives praise from all quarters - 'an exceptional practitioner', 'he responds quickly and thinks quickly'. Bacon is instructed on the £100m costs claim arising out of the Trafigura group litigation"* .

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Appointments
High Court Assessor on Costs Appeals.

This equips Nicholas with experience in undertaking assessments of the kind required in a mediation process. As an

Assessor he advises the Judge as to the applicable costs assessment principles to apply. He was requested in the Mealing McCloud case to advise the High Court Judge as to the likely level of recovery of costs sought by the appellant litigant.

Member of the Joint Tribunal (Bar Council/Law Society) on fee disputes. Nicholas has conducted Tribunal determinations which are dealt with usually by a written judgment without a hearing and based on written submissions. This involves assessing the likely recoverable fees of the barrister concerned.

Mediation

The fact that Nicholas is not a trained mediator with accreditation does not prevent him from accepting instructions to act as a mediator and he is frequently asked to do so. He has considerable mediation experience in the field of costs as a party representative where he has successfully mediated some of the largest costs claims passing through the courts. Subject to conflict issues he will act as a mediator to settle any form of costs dispute whether as between solicitor and client or inter partes. This includes the whole or any part of the bill(s) in question. The process is very often seen as a more efficient and costs effective route to resolving costs disputes than the traditional detailed assessment process.

ADR

Nicholas' background and status as leader in his field lends attraction to parties wishing to settle their disputes via a process of adjudication in which the parties agree to be bound by a written determination of the likely costs recovery in the particular case. The process can be adapted to suit the parties' wishes to involve a short hearing if required but more often than not written submissions alone can form the basis for the adjudication process. This form of determination very often results in substantially less costs being incurred than if the matter had been progressed through the court assessment process and results in much speedier resolution of the dispute.

Expert

Nicholas also accepts instructions to act as an expert witness. Most recently he provided an expert report on the likely recovery of costs in a dispute being determined by the US District Court of New York in respect of legal costs incurred in England.

Committees

Member of the Civil Procedure Rules Committee

Bar Council Remuneration Committee Bar Council CFA Panel Member of PNBA

Professional Liability

Lawyers

Nick Bacon has spent the best of part of 16 years devoted to work relating to the practice of solicitors and barristers.

He undertakes all types of claims for and against solicitors and barristers, both in advisory and litigation context. His practice covers failed litigation in business disputes, lost litigation in person injury cases, cases involving limitation issues, failed property investment / shared equity schemes, negligent drafting and advice in respect of commercial agreements and funding agreements, wills, administration of estates. He has considerable experience of group action litigation both for and against solicitors. He was instructed for Panel Solicitors in the multi party litigation arising out of the collapse of The Accident Group Ltd. He regularly advises in respect of insurance issues relating to solicitors including in respect of FSA Insurance Mediation Activities. He represents solicitors in SRA disciplinary matters and regularly advises solicitors on all issues of professional conduct.

His expertise in the area of costs (described by Legal 500 as the leading player), provides him with an excellent platform for all wasted costs issues and applications at both first instance and appellate levels. His costs expertise has provided him with unparalleled exposure to the work of solicitors and barristers across the entire litigation spectrum both in the UK and abroad.

He is author of the Bar Handbook (Bar Council publication) which arises out of his interest and experience in the professional conduct of barristers at all levels of seniority.

He is a member of the Joint Tribunal (Law Society and Bar Council Tribunal for resolving fee disputes). He is an appointed High Court Costs Assessor.

Property/Mis-selling/Valuers

Nicholas has represented claimants in two GLO / group action cases, one in claims arising out of the PPP property scam and the other more recently arising out of the Morris Property Group - featured on BBC Panorama. These were both claims against solicitors and valuers. Currently lead counsel in the Mortgage Trust v. White case - another claim against solicitors with the potential for valuers to be added at a later date. Preliminary rulings awaited in linked cases.

Disciplinary

Regulatory - FSA/SRA/Bar Standards

Nicholas acts for members of the Bar and solicitors in all areas of professional discipline. He is commonly instructed in representing solicitors before the Solicitors Disciplinary Tribunal and assists in all forms of complaints arising from SRA investigations including interventions.

He has been instructed by Queen's Counsel in respect of fee disputes and represented their interests in Joint Tribunal proceedings.

Nicholas has advised extensively in respect of FSA registration and approval in respect of the provision of financial services and insurance mediation activities. Advising after the event insurers on FSA regulatory issues arising under the Solicitors Financial Services (Scope) Rules 2001 and the Solicitors Financial Services (Conduct of Business) Rules 2001.

He is currently advising business and practices looking to set up ABS's in the future and providing advice as to the structure of the complaints processes that will apply. His experience in the area has led to him becoming the new co-contributor to Cordery on Legal Services in respect of the regulation of the Bar under the Legal Services Act.

Example Regulatory/Disciplinary work in past year.

Acting in long running SDT proceeding involving multi handed alleged offences ranging from breach of referral code to mortgage fraud.

Acted for Solicitor accused of breach of Solicitors Practice Rules in seeking to recover legal costs said to have been incurred by his client but which were allegedly not incurred at all. Case involved an application for the matter to be referred to the DPP. (Bury CC: District Judge Duerden) 29/4/2008

Advising solicitors in respect of SRA references arising out of the Accident Group and other claims management companies.

Advising and representing solicitor in complaint by a local authority against a solicitor who was accused of having held herself as acting as a solicitor, but without a valid practicing certificate. Complaint within both court proceedings and before the Solicitors Regulation Authority (Oct 2008).

Acting for Claimants as part of a group/class action against solicitors retained by the property developers Morris Properties Group. A nationwide alleged property investment "scam" (feature on BBC Panorama program) in which the solicitors are accused of multiple breaches of the Solicitors Practice Rules and Solicitors Accounts Rules. Advising in respect of referrals to the SRA. Case ongoing.

Regularly advising solicitors on all aspects of the Solicitors' Code of Conduct and in particular in respect of fee sharing and referral fees, conditional fees and insurance mediation activities.

Advising after the event insurers on FSA regulatory issues arising under the Solicitors Financial Services (Scope) Rules 2001 and the Solicitors Financial Services (Conduct of Business) Rules 2001.

Advising and acting for solicitors in court proceedings (alongside SRA referral) arising out of alleged breaches by the solicitor of the Money Laundering under the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2007. Case ongoing.

Advising consortium of solicitors in respect of their leading national personal injury claims referral business on the application of the Cancellation of Contracts made in a Consumer's Home or Place of Work etc.Regulations 2008.

Claims Management

Advised Claims Direct both before after it became a PLC as to regulatory requirements and the legality of business model. Advised as to the procurement of business including as to breach of referral fee codes of practice. Represented Claims Direct in High Court and Court of Appeal on legitimacy of the retainers it had with solicitors. Claims Direct Test Cases [2003] EWCA Civ 136, Claims Direct Test Cases [2003] Lloyd's Law Reports 677

Advised and represented The Accident Group – a claims management company specialising in procurement of personal injury cases. Assisted in the drafting of model agreements for use by panel firms. Represented TAG in successful appeal to the Court of Appeal on enforceability of its retainers with its panel members. Advised TAG over the recovery of ATE insurance premiums payable by customers of TAG and of the recovery of interest under support consumer credit loans taken out by customers of TAG. Accident Group Test Cases [2003] 1 All ER 353

Advised Accident Advice Helpline as to legitimacy of terms of conditional fee arrangements between panel and the CMC. Represented AAH in the recovery of AAH costs and ATE premiums taken out pursuant to the AAH scheme. Advised as to the issue of incorporating an "association" and the timing of the issuing of the AAH policy in CFA ATE cases.

Advised Lawyers for You as to whether panel members obligations to contribute towards advertising expenses amounted to an unlawful referral fee. Advised as to whether a policy of insurance which provides for a deferred payment of the insurance premium could be considered to be a Consumer Credit Agreement.

Advised various CMC's on establishing consumer retainers and fee agreements in respect of endowment and Bank fees on overdraft and other consumer driven bank charges. Advised as to regulatory requirements of contracts incepted at home (off business premises) whether by personal attendance or via telephone. Advised firms of solicitors (often as panel firms to the CMC) as to applicability of consumer protection legislation to not only their own business models but of their clients too including obligations akin to those arising under the Conduct of Authorised Person Rules 2007 and the distance selling regulations.

Advised CMC as to ABS (alternative business structures).

Member of the Civil Procedure Rules Committee. Currently working closely with the MOJ on substantial reforms to the legal sector including as to the introduction of contingency fee arrangements / no cure no pay agreements / referral fee ban under reforms proposed by Lord Justice Jackson / litigation funding generally.