NEW SQUARE

Charles Phipps

Education

M.A. (Oxon.) (Literae humaniores, First class) Dip Law (City)

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Year of Call: 1992

Profile

Charles is a specialist in professional liability claims involving lawyers, accountants and auditors, financial services professionals, insolvency practitioners, surveyors and valuers, construction professionals and insurance brokers. He is also instructed in more general chancery and commercial litigation and has a particular interest in disputes relating to obligations of confidentiality and privilege. He is the co-author, with Sir Roger Toulson, of *Confidentiality* (2nd edition, Sweet & Maxwell, 2006).

He has been rated for several years by both Chambers & Partners and the Legal 500 in the Professional Negligence section. The Directories have described him in the following terms: *"Charles Phipps … is regarded by many as something of an unsung hero of the Professional Negligence Bar. Clients say he is 'unbelievably clever and hard-working...'. He has had great success in high-value claims relating to a number of professions." "Renowned for his incredible intellect, Charles Phipps has a 'wonderfully analytical brain' that lends itself to handling complex cases".* He *"has 'an amazing ability to grasp a large volume of detail, quick turnaround on papers and a sensible approach to difficult legal issues'. He is particularly strong on accountants' negligence…" … "specialises in accountants' and solicitors' negligence. He wins praise for his 'consistency and objectivity' in cases" … "'terribly thorough and very reliable', Phipps 'certainly puts himself out for you'."*

Professional Liability

The successful conduct or defence of professional liability litigation requires clear analysis of underlying legal issues and a firm grasp of forensic practicalities. In his advice Charles aims always to cover both aspects thoroughly. He seeks also to ensure that his clients' cases are presented in a manner that is both articulate and forceful.

Charles has specialised in professional liability cases since he first began to practise at the Bar in 1993 and has seen more than one full revolution of the business cycle (with all its attendant economic side-effects). A large part of his practice is devoted in particular to claims of all kinds against lawyers, auditing and tax-related claims against accountants, negligent investment and mis-selling claims against financial services professionals and over-valuation claims against surveyors.

Charles (led by Patrick Lawrence QC) was recently instructed on behalf of the respondents to the appeal to the Supreme Court in *Jones v Kaney* (relating to the immunity of expert witnesses).

Accountants, Auditors & Actuaries

Charles is regularly instructed to act for both claimants and defendants in accountant's negligence cases concerning liability for, among other things, audit services and tax advice. He was editor of the chapter on accountants in Jackson & Powell's *Professional Liability Precedents* (Sweet & Maxwell, loose-leaf).

He was instructed on behalf of the liquidators of BCCI in the audit litigation against Price Waterhouse and Ernst & Whinney (as they then were), at that time the largest accountant's negligence claim ever to have been brought. The litigation eventually settled, following a successful appeal against an order striking out large parts of the claim in which he was led (with Adrian Beltrami (now QC)) by John Powell QC: *BCCI (Overseas) Ltd (in liquidation) v Price Waterhouse* [1998] Lloyd's Law Rep (Banking) 85.

Other more recent cases in which he has been instructed include:

- a claim against a firm of accountants in respect of their alleged failure to provide an adequate expert's report (*Baker Tilly v Makar* [2009] EWHC 1715 (QB));
- a claim by a further education institution against its auditors for failing to detect substantial defalcations by a

trusted member of staff over a lengthy period of time;
- a claim by a commercial property investment company against its accountants for failing to advise it of its right to claim capital allowances in respect of its expenditure (amounting to several million pounds) on plant and machinery;
- a claim against a firm of accountants arising out of fraudulent investment advice given by one of its partners;
- the defence by a firm of accountants of an action alleging negligent advice relating to CGT liabilities arising on the disposal of the majority shareholding in a restaurant chain;
- the defence by a firm of accountants of an action alleging negligent conduct resulting in the avoidance of business interruption insurance cover;
- the defence by a firm of accountants of an action alleging negligence advice in relation to the winding-up of a partnership;
- a claim against a firm of accountants by beneficiaries under a will alleging negligence in the course of their retainer by the deceased;
- the defence by a firm of accountants of an action alleging negligent reporting under the Solicitors' Account Rules, resulting in thefts from the office and client accounts of a firm of solicitors;
- the defence by a firm of accountants of a claim alleging negligent tax in relation to a company's PAYE and NIC liabilities;
- the defence by an insolvency practitioner of negligent conduct of the claimants' IVAs;
- the defence by a liquidator of a claim made by the directors of an insolvent company.

Construction Professionals

Claims against construction professionals require (more than most) a willingness to grapple with factual detail in a legal context. Charles's belief is that a clear focus on the crucial issues can reliably emerge only from a proper mastery of the facts. Cases in which he has been instructed include:

- a claim against engineers alleging negligence in the design and supervision of a scheme to underpin residential property;
- the defence by engineers of an action alleging the negligent design of electronic equipment;
- the defence by quantity surveyors of an action alleging a negligent failure to identify asbestos in a survey of commercial premises;
- the defence by architects of an action alleging negligent design of a factory roof;
- the defence by project managers of an action alleging negligent administration of a building contract relating to brewery premises;
- a claim against architects alleging the negligent design/supervision of the construction of a block of flats;
- the defence by architects of a claim alleging negligent supervision of a major office refurbishment;
- the defence by a firm of architects of a claim alleging negligent supervision of a domestic building contract.

Financial Services Professionals

Claims against financial services professionals require not only a firm grasp of common law principles, but also close attention to the regulatory context (which may itself require a quasi-archaeological exploration of the relevant legislative history). Charles is numerate and seeks always to turn his familiarity with technical detail to his clients' advantage. Cases in which he has recently been instructed include:

- the defence of a claim by individuals alleging negligent pensions advice (*Williams v Lishman Sidwell Campbell & Price* [2010] PNLR 25);
- a claim by private investors in respect of the mis-selling of derivative instruments;
- the defence by a Channel Islands company administrator of a claim by liquidators alleging negligent and/or improper conduct resulting in the loss of several million pounds;
- a claim by investors against fund managers alleging negligent investment advice;
- the defence by a life assurance company of multi-party litigation brought by numerous overseas investors.

Insurance Brokers & Agents

Claims against insurance intermediaries require not only an understanding of the role of insurance professionals, but also familiarity with the large underlying body of discrete case-law relating to insurance contracts. Charles enjoys applying principles of insurance law in the professional negligence context and has acted both for and against insurance brokers and agents.

Claims in which he has been instructed include:

- the defence by insurance intermediaries of a third party claim by insurance brokers arising from inadequate reinsurance cover;
- a claim against insurance brokers alleging negligence resulting in the avoidance of cover against fire;
- the defence by a financial services company of an action alleging the negligent recommendation of inappropriate loan protection policies;

- the defence by insurance brokers of an action alleging negligence resulting in the under-insurance of residential property.

Lawyers

Charles has very extensive experience of all kinds of claims against lawyers, in cases involving a wide range of legal activities. As the co-author, with Sir Roger Toulson, of *Confidentiality* (Sweet & Maxwell, 2nd edition, 2006), he has a particular interest in the issues of privilege and confidentiality which frequently crop up in the course of a lawyer's practice. Apart from claims arising in the commercial sphere, he also relishes lost litigation claims and is familiar with the technicalities of land law which underlie many conveyancing negligence claims. He is regularly instructed by major insurers of solicitors.

Cases in which he has recently been instructed include:

- claims for delivery up of privileged and/or confidential documentation from a solicitor's file (*Mortgage Express v Sawali* [2010] EWHC 3054 (Ch) and [2010] EWHC 90181 (Costs));
- the defence by a firm of solicitors of claims for breach of undertakings given in the course of conveyancing transactions (*Clark v Lucas Solicitors LLP* [2010] PNLR 2);
- the defence by a firm of solicitors of an application for a wasted costs order based on the alleged breach of obligations of disclosure [2011] PNLR 17;
- advice to a firm of solicitors in respect of confidentiality obligations arising in the context of the sale of a football club;
- numerous claims in respect of conveyancing negligence or fraud, many of them involving multiple property units;
- a claim against a firm of solicitors alleging negligence in the conduct of a partnership dispute;
- a multi-million pound claim against a firm of solicitors alleging negligence in relation to the financial assistance provisions of the Companies Acts;
- the defence by numerous firms of solicitors of multi-party claims for millions of pounds relating to ATE insurance schemes ("the TAG litigation" and "the CLE litigation")
- the defence by a barrister of a claim for over £4m in relation to allegedly negligent advice in relation to the claimant's VAT liabilities
- the defence by a barrister of a claim by a firm of solicitors in relation to duties allegedly owed to the solicitors under the terms of a conditional fee agreement;
- the defence by a firm of solicitors of a claim alleging negligence in the preparation of a testator's will and related tax advice
- the defence by a firm of solicitors of a wasted costs application based upon the pursuit of an allegedly hopeless defence to a possession claim;
- a claim against a firm of solicitors alleging negligence resulting in the loss of a claim against negligent accountants and tax advisers;
- the defence by a firm of solicitors of a claim based upon the allegedly negligent drafting of a commercial sale and purchase agreement;
- the defence by a firm of solicitors of a claim based upon allegedly negligent advice in relation to the purchase of residential property and in relation to subsequent boundary-related litigation.

Surveyors & Valuers

Charles acquired a close familiarity with claims against surveyors in the last round of lenders' litigation at the turn of the century. He has been struck by the faithfulness with which history has repeated itself, but is also interested in the various ways in which the claims which are presently being made (and the accompanying allegations of contributory negligence against lenders) differ from those which were advanced in the past. He has acted both for and against surveyors and valuers in both commercial and domestic contexts, including:

- the defence by a firm of surveyors of a claim brought by a residential property owner (claim dismissed summarily on the basis that no relevant duty owed to the claimant – *National Westminster Bank plc v Lloyd* (QBD) LTL 10/2/2009);
- the defence by a firm of surveyors of a claim by a bank in respect of the alleged over-valuation of specialist industrial premises;
- the defence by a firm of surveyors of a claim by non-status lenders alleging negligent overvaluation of mixed commercial and residential property;
- the defence by a firm of surveyors of a claim by property owners alleging negligent advice in relation to damage caused by tree roots;
- a claim against a firm of surveyors and land agents alleging negligent advice in relation to a scheme of commercial development.

Commercial Dispute Resolution

Charles is regularly retained in disputes of a general contractual nature, leading to mediation, arbitration or litigation.

He is familiar with freezing injunctions and other forms of urgent interim relief. He is the co-author, with Sir Roger Toulson, of *Confidentiality* (Sweet & Maxwell, 2nd edition, 2006) and takes a particular interest in claims for breach of confidence. Claims in which he has been instructed include:

- sale of goods disputes;
- advice in respect of statutory, contractual and equitable confidentiality obligations arising in the context of litigation relating to companies engaged in the nuclear industry;
- advice to a local council as to the confidentiality obligations imposed by a settlement agreement entered into with building contractors;
- advice as to jurisdictional and other issues in respect of the cross-border transfer of confidential information;
- arbitration/litigation over the proper construction of oil exploration contracts.

Chancery

Charles is regularly instructed to appear in the Chancery Division, in cases which may or may not involve allegations of professional negligence. As the co-author, with Sir Roger Toulson, of *Confidentiality* (Sweet & Maxwell, 2nd edition, 2006), he takes a particular interest in the equitable principle of confidentiality. Cases in which he has been instructed include:

- partnership disputes;
- applications for minority shareholders' relief;
- trustees' liability claims;
- claims against directors under the Insolvency Act 1986
- contested insolvency proceedings;
- disputes over the validity of deeds;
- an application by a firm of solicitors to restrain the further use of accidentally disclosed privileged information relating to the firm’s clients;
- advice as to obligations of confidentiality arising in the context of disciplinary hearings before the General Medical Council;
- advice as to the confidentiality and data protection obligations arising on the creation of a national database for combating fraud.
