



Shail Patel



Education

Shail studied law at Merton College, Oxford, where he graduated with the second highest first in the university and was awarded the Martin Wronker and Field Fisher Waterhouse prizes for the highest marks in tort law and EC law. He obtained a distinction in law moderations, a college Scholarship from Merton and Fowler prizes in jurisprudence, contract law and trusts. Shail completed his LLM at Harvard Law School where he participated in the university's intensive trial advocacy program. He is a member of Inner Temple, where he received the Peter Taylor Scholarship. During his BVC year Shail was a seminar leader and examiner in tort law at King's College London.

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Profile



B.A. (Oxon), LL.M. (Harvard)

Shail has a broad commercial disputes practice with particular emphasis on financial services, insurance, professional liability work and costs. He appears regularly in the county courts and High Court both as sole advocate and as part of a team. Shail prides himself on being able to quickly identify the heart of a dispute and provide practical and commercial advice leading to its resolution.

Shail is named a "Leading Junior" in Chambers & Partners and Legal 500 2016 for professional negligence and Legal 500 2016 for costs. He is described as 'Exceptionally bright, very good on the detail, commercial and always contactable', 'an innovative thinker, who brings a fresh insight to any case' and a junior who is 'always right on top of the detail, is incredibly user friendly and always makes time to provide advice when required', and whose 'written advice and advocacy belies someone of his call'.

Recent Highlights

'An accomplished litigator who acts for and against a range of professionals including solicitors, surveyors and accountants. Frequently appears before the county courts and High Court in complex and high-profile matters. "Very strong academically and assists greatly with the preparation of evidence in a short time frame."' - Chambers & Partners, 2016

'An innovative thinker, who brings a fresh insight to any case.' - Legal 500, 2016

'Exceptionally bright, very good on the detail, commercial and always contactable.' - Legal 500, 2015

Orb and ors v Fiddler and Anciano [2016] EWHC 361 (Comm)

Shail acted for a respondent to an unusual *Norwich Pharmacal* and evidence preservation order made in the context of substantial commercial court litigation. Shail (with Patrick Lawrence QC) acted on the successful application to discharge the injunction, which was set aside as an abuse of process and for significant material non-disclosures. The Judgment of Popplewell J considers the correct approach to the question of the purpose for which *Norwich Pharmacal* information is to be used.

E.Surv Limited v Goldsmith Williams Solicitors [2014] EWHC 1104 (Ch); [2015] EWCA Civ 1147

Shail was sole advocate at trial and led by Ben Hubble QC in the Court of Appeal in this claim brought by valuers against solicitors under the Contribution Act. The case raised an important point of construction of a conveyancing solicitors' retainer under the CML Handbook and Solicitors' Practice Rules. The trial judge, upheld by the Court of Appeal, held that the duty imported by *Mortgage Express v Bowerman* [1996] 1 PNLR 62 was not excluded by the terms of the retainer, and the defendant was therefore in breach of duty for failing to report the prior purchase price of

the security property to its lender client.

Mathiesen v Clintons [2013] EWHC 3056

Acting for the Defendant West End firm of solicitors in successfully defending a £15m claim arising out of the drafting of a shareholders agreement. The case involved allegations of dishonesty against the solicitors involved (which were rejected by the Court) and other legal and factual complexities. Acting with Michael Soole QC and Jamie Smith.

Yeates v Aviva Insurance plc [2012] EWCA Civ 634

Shail appeared as counsel for Aviva in the Court of Appeal successfully resisting the Claimant's application for an extension of time for appeal. The Court of Appeal accepted Aviva's submissions that the Claimant had not been candid in the presentation of his application and laid down a principle that a misstatement to the court when applying for an extension would "almost inevitably lead the court to decline to exercise its discretion in favour of a would be appellant regardless of the merits of an appeal".

Adams & ors v Ford & Ors [2012] EWCA Civ 544; [2012] All ER (D) 137

Shail appeared with Graham Chapman for the respondents before the Court of Appeal, successfully resisting an appeal relating to authority to issue claim forms and abuse of process. The appeal raised a novel procedural dilemma concerning proceedings issued without authority. See the '[News](#)' section for further details.

Brown & Ors v InnovatorOne plc and Ors [2012] EWHC 1321

From Autumn 2008 until the conclusion of the 18 week trial in February 2012 shail acted as junior counsel for the Claimants in *Brown v InnovatorOne and Ors*, a c. £50m claim involving complex tax avoidance schemes and allegations of fraud against individuals and professional advisers, led by John Powell QC and Graham Chapman. Over that period Shail gained unparalleled hands-on experience on all aspects of running complex commercial court proceedings from start to finish.

The issues arising in *Innovator* included breach of trust, dishonest assistance, conspiracy, insurance and coverage points, and causes of action under the Financial Services and Markets Act 2000, as well as a large number of procedural and satellite matters. Shail has appeared in the following *Innovator* related decisions:-

- [2011] EWHC 3321 (Comm) - on mid-trial amendments to statements of case; cited at White Book vol. 1: note 17.3.7
- *Bjorn Stiedl v Enyo Law LLP* [2011] EWHC 2649 (Comm) - where a defendant in the action applied to injunct the Claimants' solicitors from acting; cited at White Book vol. 1, note 31.3.27 (where Shail appeared at the earlier hearing before Walker J).
- [2008] EWHC 1376 (Comm) - the first reported decision on the correct interpretation of CPR 6.15, cited at White Book vol. 1 note 6.15.3 (on substituted service)
- Further interim applications and hearings: [2011] EWHC 119 (Comm), [2011] EWHC 215 (Comm), [2010] EWHC 2281 (Comm), [2009] EWHC 2905 (Comm), [2009] EWHC 1376 (Comm).

Dominic Adams v Stewart Ford, Keydata Investments Services Ltd & Ors.

Shail is instructed with Graham Chapman for over 100 Claimant investors in technology based tax mitigation investment schemes, appearing in:-

- [2012] EWCA Civ 544; [2012] All ER (D) 137 (Court of Appeal, abuse of process/strikeout)
- [2011] EWHC 3412 (Comm); stay of proceedings
- [2011] EWHC 2101 (Comm); abuse of process/strikeout

Shail acted for the vendor bridging finance provider in *Wickens v Cheval Property Developments Ltd* [2011] 1 P & C.R. DG9, (2010) 154 (35) SJLB 30; [2010] EWHC 2249 (Ch), a leading case on the meaning of the Law Society's Standard Conditions of Sale. The dispute concerned the sale of a £1.3m stately home, issues of construction and allegations of deceit.

Publications

- Contributor to the of *the Encyclopaedia of Financial Services Law* (Powell & Lomnicka, looseleaf)

- Co-editor (with David Halpern QC) of the "Accountants" chapter in *Jackson & Powell on Professional Liability* (7th

ed.)

- Regular articles including in the New Law Journal, Insurance Law Monthly, Journal of International Banking and Financial Law and Butterworths Costs Newsletter

Professional Liability

'An accomplished litigator who acts for and against a range of professionals including solicitors, surveyors and accountants. Frequently appears before the county courts and High Court in complex and high-profile matters. "Very strong academically and assists greatly with the preparation of evidence in a short time frame."' - Chambers & Partners, 2016

'Exceptionally bright, very good on the detail, commercial and always contactable' - Legal 500, 2015 (Professional Negligence: Leading Junior)

Shail acts for claimants and defendants in claims involving solicitors, surveyors/valuers, accountants, financial services professionals (including insurance brokers and financial advisers) and construction professionals. In his first year in chambers Shail acted for and advised defendant insurers in a large number of small to medium value claims against solicitors, giving him the experience necessary to draft advices, defences and letters of response swiftly and efficiently.

Recent highlights include:-

- Acting for the claimant on a c. £400k claim against a firm in respect of its conduct of a piece of commercial litigation which was struck out.
- Instructed for the claimant with Ben Hubble QC in a claim against solicitors involving the purchase of over 30 buy-to-let properties.
- Acting as junior for a claimant purchaser of development land in a fraud claim against solicitors which settled at mediation in 2010 for c. £2m.
- Sole counsel against for a claimant against her former solicitor and a QC arising out of matrimonial proceedings in a c.£350k claim.

Shail is co-editor (with David Halpern QC) of the "Accountants" chapter in *Jackson & Powell on Professional Liability* (7th ed.)

International Arbitration

A number of members of Chambers have built up expertise as advocates and arbitrators in domestic and international arbitration and have appeared before a wide variety of tribunals and courts in jurisdictions around the world – including all the main arbitral centres: whether Singapore, Hong Kong, Dubai, Mumbai, Geneva, Stockholm, London, Paris or The Hague. This expertise is recognised in profiles of members in both Chambers & Partners and Legal 500.

The experience extends across the commercial spectrum, ranging from construction claims, insurance and reinsurance matters, energy and utilities, civil fraud, banking, commodities and international trade. Experience also includes acting in investment treaty arbitrations – whether under the auspices of ICSID or otherwise, both for or against investors and states.

Equally, we have experience of claims run under an extremely broad range of domestic and international institutions such as the AAA, HKIAC, LCIA, ICC, CIETAC, SIAC, ICSID or the UNCITRAL rules.

Chancery

Shail frequently acts in chancery matters, predominantly for lenders in disputes arising out of mortgages and land transactions.

Highlights include:-

- *Wickens v Cheval Property Developments Ltd* [2011] 1 P & C.R. DG9, (2010) 154 (35) SJLB 30; [2010] EWHC 2249 (Ch), a leading case on the meaning of the Law Society's Standard Conditions of Sale. Shail acted for the vendor bridging finance provider in a dispute over the £1.3m sale of a stately home, involving issues of construction and allegations of deceit.

- Junior in a c. £5m lender claim against solicitors and valuers currently proceeding in the Chancery Division.

Commercial Dispute Resolution

Shail is regularly instructed by leading City firms in complex matters encompassing all areas of domestic and international commercial dispute resolution. Shail's practice includes:-

- Contractual disputes including the sale and supply of goods and services
- Civil fraud and asset tracing
- Injunctive relief including freezing injunctions and *Norwich Pharmacal* orders as well as evidence seizure and preservation orders
- Company disputes, unfair prejudice proceedings, partnership and shareholder disputes and claims against directors.
- Financial services, especially claims involving a FSMA angle (see Shail's financial services regulation profile)
- Claims with an international dimension giving rise to jurisdictional disputes, applications for service out, and choice of law problems

Recent Highlights and examples:

Melbury Road v Cornet

Shail (with Patrick Lawrence QC) acted for the successful claimant in a two week trial in June 2016 to establish the true ownership of a £15m property in Holland Park.

Orb and Ors. v Fiddler and Anciano [2016] EWHC 361 (Comm)

Shail acted for a respondent to an unusual Norwich Pharmacal and evidence preservation order made in the context of substantial commercial court litigation. Shail (with Patrick Lawrence QC) acted on the successful application to discharge the injunction, which was set aside as an abuse of process and for significant material non-disclosures. The Judgment of Popplewell J considers the correct approach to the question of the purpose for which Norwich Pharmacal information is to be used.

Pyrrho Investments Ltd v MWB Property, Balfour Lynn & Ors

Acting (with Graham Chapman QC) for a former director of a major property business which owned the Liberty brand and Mal Maison hotel chain in £20m+ claim by a Hong Kong private equity fund for misrepresentation, breaches of fiduciary duty and secret profits. The case has given rise to the leading authority on predictive coding ([2016] EWHC 256 (Ch)).

Bengough v OBAR Camden & Ors

Shail acts for the petitioner in heavy unfair prejudice proceedings in the Companies Court regarding a well known London nightclub. Shail successfully obtained an unusual form of interim injunction against the Respondent director pending resolution of the Petition.

Patel v Barrowfen and others

Acting in a highly acrimonious shareholders' dispute involving a substantial family owned commodities and property conglomerate. In the English Companies Court proceedings the claimants (instructing Shail) alleged forgery of company documents by the defendants and faced counterclaims regarding the claimants' commercial conduct in businesses in Malaysia and the Far East.

AAI and others v Financial Conduct Authority and PWC

Acting for PWC in a £600m claim brought by an assignee of the former MD of Keydata Investment Services (a substantial asset management company) arising out of the withdrawal of its regulatory permissions by the FCA. The claim involved serious allegations of breach of duty, conspiracy and misfeasance against the defendants and raised complex issues of privilege and the financial regulatory framework.

Connaught Income Fund v Capita and Blue Gate

Acting with John Powell QC and Graeme McPherson QC for Capital Financial Managers Ltd in a £100m Comm Ct.

claim against the promoter and operator of an investment fund specialising in bridging finance. The claimant alleged unlawful promotion of the scheme as a matter of the proper construction of FSMA 2000 and relevant SIs, and that the promotional documents were misleading. There were a large number of complex technical, procedural and factual issues arising.

Various Investors v Tesco plc

Advising institutional investors in relation to potential claims worth several hundred million US\$ under s.90A of FSMA against Tesco plc arising out of the £260m 'black hole' in Tesco's accounts announced in 2014.

Shetty v Al Rushaid Petroleum Investment Company & Ors

Fraud by directors on a Saudi oil/gas conglomerate by taking secret commissions through offshore financial structures as found by Floyd J ([2013] EWHC 1152). Shail (with Justin Fenwick QC) obtained a worldwide freezing injunction against the defendants and has since appeared at five separate return dates (as sole counsel), successfully retaining and extended the injunction and obtaining information disclosure orders.

Noorgat v Manning & Co and others

Shail acted as sole counsel for individuals who had lost purchase monies for their new home by paying them to fraudsters masquerading as the seller's solicitors. Shail successfully obtained an unusual form of freezing injunction against the ascertained assets of unascertained defendants and *Norwich Pharmacal* relief from Burton J, and acted subsequently in seeking to trace and enforce against the misappropriated funds.

Hawksford Trust v Stella UK Ltd.

Junior counsel for defendant, a substantial travel group. The £35m claim alleged breaches of a sale and purchase agreement and mismanagement of the company sold by C to D. The case raised complex factual issues (including transfer pricing and accounting matters) and constructions points, and was been subject of a rectification decision (Ch. D) and two appeals to the CA. Led by Roger Stewart QC and Ben Elkington QC.

Central Bank of Trinidad and Tobago and Colonial Life Insurance Company Ltd v Duprey, Monteil & Ors

Acting on counsel team with John Powel QC, Leigh-Ann Mulcahy QC and George Spalton for Claimants in claims totalling several hundred million USD against the former management and shareholders of the Trinidadian national life assurance company following its nationalisation but the Trinidad government. Claimants alleged misappropriation of assets and policyholder funds as well as financial mismanagement and unauthorised investment.

Whessoe Oil & Gas and Cleveland Bridge UK v Dale

Acting for the Claimant oil/gas and construction/manufacture companies in claims pleaded at over £50m, alleging malfeasance and financial irregularities against former management of a liquefied natural gas project, and responding to counterclaims. Settled at trial, led by Justin Fenwick QC.

Brown v InnovatorOne and Ors

From Autumn 2008 until the conclusion of the 18 week trial in February 2012 shail acted as junior counsel for the Claimants in *Brown v InnovatorOne and Ors*, a c. £50m claim involving complex tax avoidance schemes and allegations of fraud against individuals and professional advisers, led by John Powell QC and Graham Chapman. Over that period Shail gained unparalleled hands-on experience on all aspects of running complex commercial court proceedings from start to finish.

The issues arising in *Innovator* included breach of trust, dishonest assistance, conspiracy, insurance and coverage points, and causes of action under the Financial Services and Markets Act 2000, as well as a large number of procedural and satellite matters. Shail has appeared in the following *Innovator* related decisions:-

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2281 (Comm), [2009] EWHC 2905 (Comm), [2009] EWHC 1376 (Comm).

Wickens v Cheval Property Developments Ltd [2010] EWHC 2249 (Ch)

Acting for the vendor bridging finance provider in a dispute over the £1.3m sale of a stately home, involving issues of construction of the Standard Conditions of Sale and allegations of deceit.

Hayes v Somerfield Stores Ltd (unrep. 27 March 2009):

Appeared with Sue Carr QC for the supermarket to defend a £2.7m claim brought by one of its former retail partners. Somerfield's written submissions were described by the High Court as "*scholarly, comprehensive and fair*".

Financial Services Regulation

A substantial part of Shail's case load involves litigation with a financial services, and financial services regulation aspect. He also has a significant advisory practice on FSMA related matters.

Recent highlights include:-

Connaught Income Fund v Capita and Blue Gate

Acting with John Powell QC and Graeme McPherson QC for Capital Financial Managers Ltd in a £100m Comm Ct. claim against the promoter and operator of an investment fund specialising in bridging finance. The claimant alleged unlawful promotion of the scheme as a matter of the proper construction of FSMA 2000 and relevant SIs, and that the promotional documents were misleading. There were a large number of complex technical, procedural and factual issues arising.

Various Investors v Tesco plc

Advising institutional investors in relation to potential claims worth several hundred million US\$ under s.90A of FSMA against Tesco plc arising out of the £260m 'black hole' in Tesco's accounts announced in 2014.

Financial Conduct Authority v Waygood and others

Shail acted as sole counsel for a defendant in this multiparty action for damages and an injunction brought by the FCA against various individuals said to have run and profited from unlawful collective investment schemes. The case raised many complex issues under FSMA (a number of which were determining in the Court of Appeal ([2015] EWCA Civ 284).

Roughton International v Clydesdale and National Bank of Australia

Acting as sole counsel for an international engineering firm which purchased a complex foreign exchange rate structured derivative from the bank.

Adams & ors v Ford & Ors [2012] EWCA Civ 544; [2012] All ER (D) 137.

Shail appeared with Graham Chapman for the respondents before the Court of Appeal, successfully resisting an appeal relating to authority to issue claim forms and abuse of process. The appeal raised a novel procedural dilemma concerning proceedings issued without authority.

Shail's other experience in this area includes:-

- Mis-selling claims for and against IFAs and investment promoters including in respect of complex structured products and Collective Investment Schemes. Recently Shail has been instructed separately by claimants investing in Keydata Senior Life bonds, and carbon-offset collective investment schemes.
 - Disputes concerning the promotion, establishment and operation of unregulated Collective Investment Schemes (see *Brown v InnovatorOne* under Commercial Disputes).
 - Assisting and advising in a c. £10m claim brought by the Financial Services Compensation Scheme involving the mis-selling of 'precipice bonds' and advising in on FSMA causes of action in that context;
 - Assisting with advising on perimeter issues and the scope of the RAO in the context of a proposed entity to take counterparty risk in derivatives trades.
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Insurance & Reinsurance

Shail was ranked in Legal 500 under *Insurance and reinsurance* as a “*Leading Junior*” in 2014. He has experience of a wide range of insurance and reinsurance disputes including:-

- Advising and acting on policy wording/coverage matters
- Advising in disputes between insurers, including those arising out of the successor practice provisions of the solicitors’ Minimum Terms and Conditions.
- Pursuit of fraudulent insurance claimants
- Subrogated recovery claims for property damage, product liability and financial loss/fraud

Recent Highlights include:-

- *X v LV*: acting for insurers in a fire claim brought by an antiques business, defended on grounds of material non-disclosure regarding prior financial circumstances, shadow directorship, and moral hazard.
- *Chandler v Hiscox* (QB): Acting for the defendant insurer in an insurance claim arising out of an alleged burglary and alleged loss of over £300,000 of jewellery, fine china, leather goods and other valuables.
- *Aviva v Upper Crust Bakery*: Acting for the claimant in seeking to recover a business interruption insurance settlement paid out pursuant to fraudulent means and devices used by the owners of a bakery business. All allegations of fraud were denied at trial. Shail acted as sole counsel at trial and following two days of cross examination the Judge found the defendant shown to be “*thoroughly dishonest*” and gave judgment for the claimant.
- *Yeates v Aviva Insurance plc* [2012] EWCA Civ 634 Shail appeared as counsel for Aviva in the Court of Appeal successfully resisting the Claimant’s application for an extension of time for appeal. The Court of Appeal accepted Aviva’s submissions that the Claimant had not been candid in the presentation of his application and laid down a principle that a misstatements to the court when applying for an extension would “*almost inevitably lead the court to decline to exercise its discretion in favour of a would be appellant regardless of the merits of an appeal*”.
- *Yeates v Aviva* [2010] EWHC 3016 (QB). Acting for the buildings insurer on appeal to the Court of Appeal in this fraudulent claims/fraudulent means and devices dispute in the context of a £300k insurance claim.
- Acting for the buildings and contents insurer in a £150k claim by a property investment company arising out of a fire at two substantial London properties. The claim is defended *inter alia* on grounds of suspected fraudulent claims and other irregularities.
- Acting for the insurer in a £150k motor trade policy claim arising out of the alleged firebombing of a prestige vehicle. Claim defending on grounds of breaches of warranty and non disclosure.
- Acting for insurer defending a £0.5m claim arising out of the lapsing of a motor insurance policy (and subsequent accident) in circumstances where the insurer’s and broker’s obligations to renew the policy under the relevant wording was unclear. The case also engages issues of construction of the relevant policy documents and points arising under the ICOBS.

Costs

‘An innovative thinker, who brings a fresh insight to any case.’ - Legal 500, 2016

Recognised as a Leading Costs Junior by the Legal 500, Shail has a thriving practice in the field of costs. He regularly appears in the SCCO and related appeals and advises on the interpretation of costs rules, and funding agreements. He also drafts and settles fresh and remedial retainer documentation, including CFAs and DBAs.

Recent highlighted include:-

Advising a City firm on a solicitor-client dispute that arose in the midst of a large scale commercial court trial, including advice on termination of the retainer and related procedural issues.

Caldero v Beppler and Jacobson, Lazurenko and others

Instructed as costs counsel for the respondent and various companies and is involved in advising on and coordinating strategy on numerous sets of detailed assessment proceedings arising out of a series of high profile High Court judgments in this long running oligarch litigation involving TNK-BP (Russia's third largest oil producer) and the respondent.

Various Claimants v Barclays Bank plc

Instructed with Nick Bacon QC for the bank in respect of its strategy to manage the costs of Interest Rate Hedging Product claims settled via the FSA Settlement structure.

Langstone v Willers

Shail was instructed with Nicholas Bacon QC in this £3.5m detailed assessment. The assessment took place over 12 days and raised a number of preliminary issues with cross examination of witnesses, including novel issues relating to the assignment of a right to costs and variation of funding agreements.

Roger v Bala

Acting for the defendant dentist and dental insurer in a long running detailed assessment of a £260k bill, culminating in three days of appeal before HHJ Wood QC where Shail succeeded on various points of principle relating to 'alternative means of funding' with the result that all of the claimant's additional liabilities were disallowed.

Clients of Rapid Solicitors v Various

Shail acted for a medical insurer defending costs claims progressed by this well known claimant personal injury firm in the North East. The costs cases attracted widespread press coverage given the very substantial bills of costs presented by claimants in comparison to the amount of damages recovered.

Derwent Holdings v Pannone

Shail acted for a commercial client against its former solicitors in applications for their time records for the purposes of enforcing costs orders. The case raised various issues surrounding delay in issuing costs proceedings and the documentation a former client is entitled to.

Heard v Sesame

Shail appeared for a firm of financial advisers at a detailed assessment hearing of costs against them. The dispute raised complex issues in relation to recoverability of ATE premiums and other points of principle.

Construction & Engineering

Shail appears regularly in the county courts and Technology and Construction Court on disputes of all sizes arising out of technology and construction. He has significant experience of subrogated recovery claims involving fires, floods and other wrongful damage to buildings and property.

Highlights in this area includes:-

- A fire claim against a plumbing contractor in respect of a fire at a college causing c. £1m of damage. Liability and causation is heavily contested.
 - Acting for a defendant construction firm in a claim brought against it for allegedly damaging gas infrastructure.
 - A delay claim against a firm of consulting engineers in respect of a significant London commercial development site.
 - Acting for a supplier of stone to a City office development in a claim for breach of contract and delay, including acting in the successful mediation of the claim.
-