



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 Legal 500 2015 for professional negligence and costs. He is described as 'always right on top of the detail, is incredibly user friendly and always makes time to provide advice when required' whose 'written advice and advocacy belies someone of his call'.

Recent Highlights

E.Surv Limited v Goldsmith Williams Solicitors [2014] EWHC 1104 (Ch)

Shail was sole advocate for the successful claimant 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 Court 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 liable 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

Shail is named a "Leading Junior" in the field of professional liability in Legal 500 2012.

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's commercial disputes practice encompasses a broad range of work including:-

- General contractual disputes including the sale and supply of goods and services
- Civil fraud, with particular experience in fraud arising in investment, mortgage and insurance contexts
- Financial services, especially claims involving a FSMA angle
- Claims against directors
- Banking disputes, in particular those involving mortgages, bridging finance, factoring facilities and consumer credit
- Claims with an international dimension giving rise to jurisdictional disputes, applications for service out, and choice of law problems

Highlights include:

- *Brown v InnovatorOne and Ors*: junior counsel on a c. £50m claim in involving complex tax avoidance schemes and allegations of fraud against individuals and professional advisers. Shail worked on the case from Autumn 2008 before proceedings were issued until the conclusion of the 16 week trial in February 2012, giving him unparalleled hands-on experience of 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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- *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*".
- 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.
- Instructed with Ben Hubble QC for the claimant in a £6m fraud claim involving the purchase of commercial development property.
- Appearing as sole advocate and advising in a substantial claim by a liquidator against the former directors of a company, and a further (unrelated) claim against a former director brought by a factoring company.

Financial Services Regulation

Shail has experience of a broad range of disputes with a financial services element. He is a contributor to the forthcoming edition of *the Encyclopaedia of Financial Services Law* (Powell & Lomnicka). His experience includes:-

- *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.
- 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.

Insurance & Reinsurance

Shail has experience of a wide range of insurance and reinsurance disputes including:-

- Pursuit of fraudulent insurance claimants
- 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.
- Advising on subrogation issues and acting in subrogated recovery claims.

Recent Highlights include:-

- *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.
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Costs

Shail has a thriving practice in the field of costs. He regularly advises on the interpretation of costs rules, and funding agreements and appears at both detailed assessment hearings and on costs appeals.

Recent highlighted include:-

Langstone v Willers

Shail is instructed with Nicholas Bacon QC in this £3.5m detailed assessment hearing in late 2014. The assessment listed for 8 days raises a number of preliminary issues, including novel issues relating to the assignment of a right to costs and variation of funding agreements.

Clients of Rapid Solicitors v Various

Shail acts for a medical insurer defending costs claims progressed by this well known claimant personal injury firm in the North East. The costs cases have 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 party should reasonably be entitled to before taking that step.

Heard v Seame

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.
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