



Scott Allen

Education

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Profile



Scott *“acts for claimants and defendants, and is known for the strength of his solicitors’ and surveyors’ negligence practice.”* *“He is a talented advocate who has a nice, concise way of expressing himself in clear and understandable language.”* *“Very approachable and absolutely sound on all aspects”* (Chambers and Partners, 2015). *“Personable, easy to engage with, perceptive and very bright”* (Legal 500, 2015). His *“sharp intellect and well thought-through opinions”* have made him a junior of choice on a range of professional negligence claims” (Chambers and Partners, 2013). Scott is a recommended junior in the Legal 500 and Chambers and Partners for professional liability claims. He is committed to providing practical, commercial advice and advocacy of the highest quality, complemented by an approachable and client-friendly service. Scott is instructed regularly in professional liability work involving solicitors, barristers, accountants/auditors, surveyors/valuers (including rights to light surveyors), insurance brokers, independent financial advisers, and administrative receivers, acting for claimants as well as defendants. The current economic climate has seen Scott develop a particular specialism in claims involving administrative receivers (e.g. *Bell v Long & PKF* [2008] EWHC 1273 Ch, [2008] 2 BCLC 706), as well as in claims brought by lenders against solicitors and surveyors.

In addition to his professional indemnity work, Scott is also instructed in specialist insurance disputes including policy wording/coverage issues and allegedly fraudulent insurance claims. Scott is also instructed in Disciplinary Tribunal proceedings, advising or appearing in proceedings involving the Accountant’s Joint Disciplinary Scheme, the Council of Licensed Conveyancers Disciplinary Committee and the Chartered Institute of Public Finance and Accountancy. Scott has recently been able to combine his work with his love of all things involving sport, and to represent the Motor Sports Association successfully in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK.

Scott advises and appears in construction disputes (including Party Wall Act proceedings), appearing frequently in the Technology and Construction Court in construction litigation, as well as advising and appearing in arbitration and adjudication of construction disputes.

Scott also has a considerable Chancery-based practice involving partnership disputes, international trust disputes (Cayman Islands), declarations of beneficial interest in property, general banking and mortgage work, and applications under the Trusts of Land and Appointment of Trustees Act 1996.

At least half of Scott’s practice is however general commercial litigation, with a particular focus on telecommunications and information technology disputes. Scott frequently appears for telecommunications providers, and is presently involved in a multi-million pound recovery action involving a wavelength capacity agreement and indefeasible rights of use. Scott has undertaken some energy work, and appeared successfully in a major commercial court trial (*Dalkia v Cetech* [2006] 1 Lloyd’s Rep 599) involving a complex contractual dispute in relation to an electricity generating turbine.

Scott’s commercial work has seen him advise on pre-action and third-party disclosure applications, and successfully obtain orders pursuant to the *Norwich Pharmacal* jurisdiction against third parties.

Professional Liability

Scott is instructed in all areas of professional liability work. He has a wealth of experience in claims against solicitors, barristers, auditors, accountants, valuers, surveyors, architects, construction professionals, recruitment professionals, insurance brokers, independent financial advisors and administrative receivers. He is recommended by the Legal 500 and Chambers and Partners in the sphere of professional liability work.

Scott successfully defended administrative receivers in the case of *Bell v Long & PKF* [2008] EWHC 1273 Ch, [2008] 2 BCLC 706, [2008] BPIR 1211; [2008] 25 EG 172 (C.S.), in which an important and widely reported judgment was given by Patten J. about the duties of receivers and the timing and method of sale of property portfolios.

The current economic climate has seen a proliferation of lender claims against solicitors and surveyors, and Scott has been heavily involved in the developing litigation of this nature, acting on behalf of lenders but more usually for the solicitors or the surveyors. Such claims also often involve a breach of undertaking claim against solicitors, and Scott has extensive experience in advising on the interpretation and method of enforcement of solicitors' undertakings.

A large and developing part of Scott's practice is the representation of professionals involved in the provision of information technology services. Scott is an assistant editor of the current edition of Jackson & Powell on Professional Negligence and is the co-author of the chapter on IT Professionals.

Scott has been instructed in a number of disputes involving computer contracts, in particular the issues arising from server contracts (acceptable service levels, inevitable problems and down-time, quantification of loss, implied terms and fitness for purpose), the functionality of bespoke software, and losses incurred as the result of third party fraud made possible by a defective telephone software system. Scott's practice in this area is growing swiftly and he has an especially keen interest in developing this part of his practice even further.

Accountants, Auditors & Actuaries

Scott has been involved in numerous cases involving accountants and auditors, in which issues have included:

- advice given in relation to Capital Gains Tax,
- advice given on inheritance planning,
- advice given on the taking of income as dividends rather than salary,
- the scope of the duty (if any) owed to third parties where accounts are audited and the company is later purchased, and
- advice given in relation to figures to be included in a Sale and Purchase Agreement.

Scott enjoys the technical challenge of familiarising himself with the relevant accounting standards, and arguing with his brother (who is a chartered accountant) about their interpretation and application.

Construction Professionals

Scott has been instructed in many cases involving construction professionals, bringing claims against (and defending) architects, contract administrators and numerous skilled sub-contractors.

He appears regularly in the Technology and Construction Court, and has a healthy following amongst solicitors specialising in construction work, both in London and in the regional centres. Scott's ability to digest the technical aspects of heavy construction claims is valued highly by those who instruct him, and his practice in this area continues to grow.

Recent cases include claims against architects in relation to numerous defects in a West End refurbishment project, insufficient design/monitoring of piling works, and a defective specification and testing regime for a passive cooling system.

Financial Services Professionals

Scott has been instructed in a number of cases involving the advice provided by financial services professionals. These have involved a range of investments and issues, including:

- equity-release mortgages,
- foreign exchange mortgage products,
- investment advice for charities and pension funds, and
- insufficient investment advice for private individuals in relation to global, higher risk funds.

Scott has noticed an increase in this area of his work from as the effects of the global recession worked their way into litigious activity in the courts. He anticipates that this will continue to be a major part of his practice in the coming years.

Insurance Brokers & Agents

Scott receives regular instructions to represent insurance brokers, and was involved in a recent trial involving the apportionment of liability between successive brokers where cover was not obtained in relation to burglary of a commercial premises.

Scott has also advised upon a number of cases involving defective fire damage cover, each with their own non-disclosure issues.

Claims against insurance brokers are often linked to or arise from Scott's practice in relation to coverage advice, and he is a respected port of call whenever a claim against an insurance broker is contemplated.

Lawyers

Scott has a wealth of experience in claims against solicitors and barristers, covering the vast range of work (both litigious and non-litigious) which lawyers undertake. Claims in which Scott has been instructed, involving claims against solicitors, include:

- the construction of and claims upon solicitors undertakings,
- negligent advice on and drafting of Share Purchase Agreements,
- negligent advice on VAT election in the sale of commercial property,
- negligent conveyancing (including breach of duty to lenders, breach of trust, failure to conduct drainage search, failure to advise upon covenants and easements, failure to advise upon adverse ground conditions),
- negligent advice on and drafting of commercial leases,
- negligent advice/representation in matrimonial proceedings (including drafting of consent orders and advice on pension sharing orders),
- negligent advice/representation in employment proceedings (drafting of consent orders, advice as to merits), and
- negligent advice/representation in commercial proceedings (advice as to merits, acting without authority, drafting of consent orders) .

Scott has brought successful claims against barristers and has also defended successfully senior members of that profession. He ranks claims against lawyers as one of his core areas of specialism and it is an area of his practice that he particularly enjoys.

Surveyors & Valuers

Scott has very extensive experience of claims involving surveyors and valuers and has delivered several lectures on the topic.

He has advised upon the whole range of issues in this area of law including

- the correct measure of loss (applying the SAAMCO 'cap', cost of cure v diminution in value, ancillary recoverable heads of loss, distress and inconvenience),
- the existence and scope of duties to third parties, scope of inspection duties, the application of the margin of error,
- limitation of liability clauses and UCTA,
- remoteness issues and
- a wide variety of fact-specific issues on breach of duty.

Claims against surveyors and valuers form a large part of Scott's practice and the post 2008 economic climate has seen this area of his core work grow significantly.

International Arbitration

Scott is instructed to advise upon and appear in commercial arbitrations, arbitrations arising from construction contracts, as well as paper arbitrations in insurance coverage disputes.

Chancery

Scott is instructed in a variety of Chancery matters, including partnership disputes, declarations of beneficial interest in property and Chancery related professional negligence matters including solicitor's conveyancing negligence cases, negligent tax advice, and the undue influence allegations raised in cases such as RBS v. Etridge (No 2). He was recently instructed to represent a multi-national bank in relation to recovery proceedings against a trustee company pursuant to the terms of a Sale and Purchase Agreement. Scott is routinely instructed by banks and building societies in relation to the gamut of claims arising from mortgage lending, and has lectured several times on the issues arising from such claims. Scott has also been instructed to advise in relation to international trust disputes.

Commercial Dispute Resolution

Commercial contractual disputes form a major and burgeoning part of Scott's practice. This stems in large part from his facility to immerse himself in his client's business and both to understand and be fascinated by it. Scott particularly enjoys his involvement in commercial disputes, and believes that his pragmatic approach and tactical awareness lends itself particularly well to the priorities and client sensitivities of commercial litigation. He is also instructed in commercial arbitration and sees this as a key area of his practice, especially in relation to arbitration involving foreign corporations.

Scott has been involved in disputes involving computer games, dentists' partnership agreements, recruitment agreements for large bakeries, telecommunications disputes, cost saving facilitators' agreements, an energy turbine financing and servicing agreement, fleet maintenance agreements, lost profit claims in the nightclub industry, breach of contract in the adult film and services sector, motor sport regulation, foreign currency loan accounts, the interpretation and effect of a staged contract for the provision of landfill materials; the interpretation and effect of truck drivers' franchise agreements; the interpretation and effect of 'discretionary' bonus clauses in banker's remuneration packages; and the interpretation and effect of a computer game marketing distribution and sale agreement. He is regularly instructed to appear in the Commercial Court and in commercial arbitrations.

Scott was involved (successfully) in the case of *Dalkia v Cetech* [2006] 1 Lloyd's Rep 599 in which he was led by Michael Soole QC and in which virtually the gamut of English contractual law was debated. Key issues in that case involved the meaning of 'material breach' in a termination clause, the principles upon which the court could interfere with the drafting of a commercial contract to remedy an 'obvious mistake' by the parties, even where that involved substantial consequential amendment to several clauses, and the application of the rule against penalties to an accelerated payment clause upon termination of an energy services agreement.

Scott has advised in international commercial disputes and was involved in preparing a fascinating fraud trial in Belize involving a medical school.

Insurance & Reinsurance

Scott frequently advises in relation to insurance disputes. As with his professional liability work, whilst the majority of Scott's work is for insurers he has been instructed by claimants in a number of disputes where insurers refused to pay after fire and flood damage, and he was heavily involved in the subrogated recovery by insurers of payments made in relation to the Buncefield oil refinery explosion. He has also advised on numerous aspects of motor insurance law, most recently on the question of how widely the compulsory insurance provisions of the Road Traffic Act 1988 are to be interpreted in light of the cases of *Dunthorne v Bentley* and *Slater v Buckinghamshire CC*.

Scott was heavily involved for some years in the film contingent expense insurance litigation, and remains involved in the film finance litigation which followed.

Scott has advised on the coverage effect of policy wording in relation to professional indemnity and general insurance policies, in particular in relation to the provisions which deal with when a claim is first made and which of several potential insurance policies respond to the claim in question. He has also advised in several cases on the construction of Legal Expenses Insurance policies, and successfully resisted claims against LEI insurers where policy coverage has been declined.

Scott has advised in several cases where fraud allegations have been made, as well as successfully defending a number of claims where theft losses have been wrongly inflated. He also advised upon issues arising from claims made by one co-insured against another, in partnerships as well as within companies, and the effect of fraud upon such claims.

Scott is also instructed regularly in relation to claims which are covered by Directors and Officers insurance policies.

Disciplinary

Scott was instructed with Patrick Lawrence QC on the successful prosecution of complaints on behalf of the Accountants Joint Disciplinary Scheme against company auditors and in-house company accountants, has appeared before the Council of Licensed Conveyancers' Disciplinary committee and has been instructed to prosecute serious complaints on behalf of the Chartered Institute of Public Finance and Accountancy, involving public authority leasing arrangements, NHS trust financial management and local council financial improprieties.

Recently Scott represented the Motor Sports Association in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK. The issues in that case were the use of a non-homologated part by MMUK in the Yorkshire Rally, enabling their driver to win the national rally championship, and the evidence given by MMUK in the MSA National Court proceedings which followed. As a result of Scott's cross-examination in the Investigatory Tribunal

proceedings, it was found that MMUK had for a number of years put competitive advantage above the safety of competitors and spectators, and had not taken sufficient steps to put into effect the recommendations of the National Court.

Construction & Engineering

Scott regularly advises and appears in construction and engineering disputes in the Technology and Construction Court, and in adjudication and arbitration proceedings. He represented the defendant in the case of *Young v Bemstone Limited* [2004] EWHC 2651, which involved the interpretation of certain sections of the Party Wall Act and the entitlement to damages of an innocent party under that Act. He enjoys the challenge of grappling with the technical issues raised in heavy TCC cases, which in his cases have included the reasons for the failure of: a swimming pool installation, a concrete screed floor, a piled underpinning system and a passive cooling system within a large office development.

Scott has been involved in construction disputes ranging from very large and well-known projects which have gone awry in well-publicised circumstances, to smaller scale domestic disputes. He has advised on the interpretation of key provisions of various JCT contracts including the provisions relating to nominated sub-contractors and materials. He regularly appears for and against construction professionals, including architects, surveyors, planning consultants and rights to light surveyors.

Sports Law

Scott has represented the Motor Sports Association in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK. The issues in that case were the use of a non-homologated part by MMUK in the Yorkshire Rally, enabling their driver to win the national rally championship, and the evidence given by MMUK in the MSA National Court proceedings which followed. As a result of Scott's cross-examination in the Investigatory Tribunal proceedings, it was found that MMUK had for a number of years put competitive advantage above the safety of competitors and spectators, and had not taken sufficient steps to put into effect the recommendations of the National Court. Scott has also advised the Motor Sports Association in relation to various aspects of its insurance arrangements and terms and conditions with its members.

Scott hopes to develop his Motor Sports practice further, and to branch out into other areas of sports work – Scott is a life-long sports fan and relishes the chance to combine business with pleasure in this manner. His experience in other disciplinary work makes him an ideal candidate for sports disciplinary work, and his commercial law experience means that he would be well suited to contractual and other commercial disputes within a sporting context.
