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John Powell QC

Education

M.A., LL.B. (Cantab.)

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Year of Call: 1974
Year of Silk: 1990

Profile

John Powell QC's practice is complex commercial litigation, arbitration and advisory work in the UK and overseas. His practice reflects his renowned leading text books on professional liability and financial services and securities regulation (see below).

His litigation practice is centred on investment, banking and corporate fraud and related accessory and professional liability claims. He has wide experience of "deep pocket" claims involving banks, fund managers, trustees & administrators, financial advisers and other practitioners, accountants, auditors & actuaries, lawyers, valuers and company directors. Claims typically engage complex areas of financial services and securities regulation, company law, trusts and tax, often involving several jurisdictions. His career has included claims arising from most of the best known corporate collapses and investment scandals (e.g. PCW, Barlow Clowes, BCCI, Paamllc, pension and endowment misselling), SPLITS, many investment schemes, as well as a variety of other major matters, in the UK, USA, Caribbean, Gulf, Far East and elsewhere. His arbitration practice has included several investment disputes involving overseas governments under investment treaties and other agreements. Recent overseas work has included an arbitration for an overseas government (defeating a US$600m claim), judicial review proceedings against an overseas regulator and acting for a central bank in relation to a major banking and investment fraud.

His extensive advisory practice is focused particularly on financial services and markets issues (UK, EU, EEA and US). His instructions typically involve collective investment schemes, structured schemes, derivatives, disputes with regulators, corporate governance, promotion and listing issues and interpretation of UK regulations and EU directives.

His advisory work related to professional liability typically engages insurance issues and professional terms of engagement.

His clients include banks, hedge funds, various kinds of investment practitioners (e.g. promoters, investment managers, trustees, administrators, financial advisers), investment exchanges, issuers, product providers, regulators, trustees, lawyers, accountants and actuaries, professional indemnity insurers and private individuals.

Earlier in his career he drafted Jersey's collective investment funds legislation.

He has considerable experience of acting as an arbitrator, as well acting as an expert in overseas litigation on UK financial services and professional liability issues.

His practice reflects his publications in the fields of financial services and markets, professional liability and company law (see below). He occasionally presents papers on subjects within his expertise in UK and abroad (e.g. recently in Moscow and Kuala Lumpur).

He has been called to the Bars of Trinidad & Tobago, the Turks & Caicos Islands & the British Virgin Islands.

The Directories

He is consistently highly rated in the major directories for financial services, professional liability and civil fraud.

Publications

Jackson & Powell on Professional Liability
Sweet & Maxwell
Lomnicka & Powell Encyclopedia of Financial Services Law
Sweet & Maxwell

Palmer's Company Law 24th ed. (1987) (specialist editor)

Issues and Offers of Company Securities (1988)

Wrongs and Remedies in the Twenty-First Century (1996) (contrib.)

Various conference papers including recently on investment fraud, claims from complex investment schemes & hedge funds, accessory liability and professional liability.

Further Information
Chairman, Bar Law Reform Committee 1997-8; Member, Bar Council 1999-2004; Bencher of the Middle Temple; COMBAR (former Executive Committee member); Chancery Bar Association; PNBA; LCIA; CFLA; Society of Construction Law (President 1991-93). Head of Chambers 1997-9.

Professional Liability

John Powell QC is recognised as one of the leading practitioners at the Bar in this field. Professional liability is a core area of his practice, reflecting his co-authorship (of earlier editions) and co-editorship (of later editions) of ***Jackson & Powell on Professional Liability*.**

His practice in this field especially involves claims against accountants, auditors and actuaries as well as a range of other financial practitioners, reflecting another core area of his practice, Financial Services and Securities Regulation (see his profile under this heading).

Directory comments include a "*supreme professional negligence exponent*", "*top-notch on complex matters*"; "*one of the best advocates in the field*"; "*distils the most complex facts into clear and precise pleadings*"; "*particularly impressive in the realm of auditors' negligence*".

Professional indemnity related issues

He has vast experience of such issues (e.g. coverage, aggregation). He conducts arbitrations involving such issues, both as arbitrator and advocate.

Publications

Apart from Jackson & Powell on Professional Liability, his other publications in this field include:

- *Wrongs and Remedies in the Twenty-First Century* (1996) (contrib.: with Prof Birks and others: Oxford Clarendon Press); and various papers on:
- *Limitation* (Hong Kong Society of Construction Law 2000);
- *Fiduciary Duties* (Commonwealth Law Conference, Melbourne, 2003;
- *Coastlines of Liability and Containment* (Chancery Bar Association 2006);
- *Professional Negligence R.I.P* (London Common Law & Commercial Bar Association 2007)
- *Accessory Liability: an Emerging Tort?* (COMBAR 2007);
- *Claims arising from Complex Investment Schemes and Hedge Funds* (IFLR European Securities Litigation Conference 2009);
- *Professional Liability & Construction: Risk Retained and Risk Transferred* (Society of Construction Law 2009)

Accountants, Auditors & Actuaries

Claims against accountants, auditors and actuaries remain a central part of John's practice, reflecting his expertise and publications in relation to both professional liability and financial services and securities regulation. He is very familiar with financial sector and corporate governance issues generally, including developments on both sides of the Atlantic.

Apart from acting as leading counsel for the liquidators in the BCCI audit negligence litigation (winning the critical appeal: see *BCCI (Overseas) Ltd (in liquidation) v. Price Waterhouse (No.2)* [1998] Lloyd's Rep Bank 85, [1998] PNLR 564, he has acted and continues to act in major claims arising from corporate and mutual fund collapses, fraud and other contexts, both in the UK and overseas. Recent cases include several eight and nine figure claims. He

frequently addresses frontier legal issues relating to reflective loss, contributory (comparative) negligence, participatory liability and causation. He has wide experience of leading the large teams of barristers, solicitors, accountants and other professionals required for such claims.

Financial Services Professionals

Reflecting his expertise in financial services and regulatory issues, he has vast experience of acting for and against financial services professionals and firms (e.g. investment banks, hedge funds, insurers, product providers including pensions providers, fund managers and administrators, CIS operators, sponsors, stockbrokers, insurance brokers, financial advisers, directors and others). His instructions typically arise from a wide range of contexts including investment misselling, investment advice and fund management, banking, mergers and acquisitions, flotations and collective investment schemes. These include several multimillion claims involving derivatives and collective investment schemes (mutual funds), usually involving serious fraud and complex conflict of law issues. His clients include banks, liquidators, administrators and regulators both in the UK and overseas (including the USA and offshore jurisdictions).

The range of services and products which he regularly deals with is apparent from his *Financial Services and Securities Regulation* profile.

Surveyors & Valuers

He has wide experience of claims against surveyors and valuers, especially claims arising from complex commercial claims involving portfolios of commercial properties and hotels. He has similarly wide experience of in claims against auctioneers and fine art dealers arising from misattribution of provenance.

Lawyers

Claims against barristers and solicitors, particularly claims arising from commercial contexts, feature large in his practice. These include claims brought under the wasted costs jurisdiction. He acts for both claimants and defendants. In recent years he has often acted for and against senior lawyers who have been the subject of claims, many of which have been resolved without recourse to trial. He is instructed to act as expert or arbitrator in resolving contribution and indemnity claims as between solicitors and barristers arising from claims against them.

Construction Professionals

Construction and engineering, especially claims involving architects, engineers, quantity surveyors, developers and building contractors have featured large in his practice. From 1991-93 he was President of the Society of Construction Law. He has considerable experience of arbitrations, both as advocate and arbitrator, including in Hong Kong and the Caribbean.

Patent Agents

Claims against them are few relative to claims against other professionals. Nevertheless, he has considerable experience of such cases.

Financial Services Regulation

John Powell Q.C. is recognised as one of the country's leading experts in financial services (including markets) and securities regulation.

His practice in this area reflects his co-authorship (with *Professor Eva Lomnicka*, another member of chambers) of the leading UK text on financial services law, the ***Encyclopedia of Financial Services Law*** (Sweet & Maxwell). He is also a former specialist editor of ***Palmer's Company Law*** (24th ed). The chapters edited by him were separately published as ***Issues and Offers of Company Securities: the New Regimes*** (Sweet & Maxwell 1998). He also edits the chapter on financial practitioners in ***Jackson & Powell on Professional Liability***

Directory comments include: "[He] is *held in high esteem by fellow barristers and instructing solicitors alike as he evinces a 'superb comprehension of the intricacies of FSMA and related legislation."* He is "*renowned for his exceptional grasp of the legal issues and is prized by solicitors for the valuable contributions he makes to big cases*". See further his general profile.

His work in this field covers both litigation and advisory work.

Litigation:

His litigation practice is centred on investment, banking and corporate fraud and related accessory and professional liability claims: see his general profile. On-going and recent cases typically engage complex areas of financial

services and securities regulation, as well as company law, in the UK and in other jurisdictions. He is currently acting for an overseas bank in litigation arising from multi-billion banking and investment collapse.

Recent cases include:

- (several): acting for claimants in film finance claims;
- acting for defendant in film finance claim;
- acting for claimants in banking product fraud claim;
- (several) acting for defendant financial advisors and their insurers in claims arising from misselling and failed investment schemes;
- (several) acting for claimants/prospective claimants in hedge fund claims;
- judicial review of overseas regulator;
- expert in US litigation arising from hedge fund fraud

Advisory work:

His practice in this area falls under the following heads.

- **Advice as to the regulatory regime and its impact:** He is regularly instructed to advise as to regulatory regime under the Financial Services and Markets Act 2000 and related EU legislation. Regular issues pertain to the Regulated Activities Order and the Financial Promotion Order.
- **Advice as collective investment schemes and structured schemes:** He is widely known for his advice on regulatory aspects of collective investment schemes (mutual funds) and structured schemes of various kinds, established in the UK and overseas. These typically involve complex structures involving groups of companies, limited partnerships, limited liability partnerships and trusts, with some schemes involving sums as high as several £bn. His clients include major banks, insurers and developers.
- **Regulatory investigations, disciplinary proceedings and complaints to Ombudsman:** Instructions in these contexts engage typically issues relating to investment misselling, the scope of the jurisdiction of the Financial Ombudsman Service and the merits a judicial review applications.
- **Expert evidence as to the regulatory regime for overseas litigation:** On several occasions he has provided such evidence.
- **Regulatory legislation, rules and guidance**: He considerable experience of advising regulators and others as to these matters. As senior junior, he drafted Jersey's collective investment funds legislation.

Representative recent instructions:

These include:

1. Advising on dispute with UKLA relating to FSMA prospectus requirements in reverse takeover context.
2. Advising on issues relating to Payment Services Directive and Payment Services Regulations.
3. Advising on issues relating to ISA Regulations and OEIC definition in context of life settlement fund.
4. Several cases involving advising on issues related to RAO & MiFID.
5. Advising on issues relating to liability of principal for appointed representative in context of misselling claims.
6. Advising on issues related to EEA firm passport rights and the life assurance consolidation directive.
7. Advising on structural and regulatory aspects of £10bn institutional fund.
8. Advising on structural and regulatory aspects of new investment exchange.
9. Advising on structural and regulatory aspects of £100m structured finance scheme.
10. Advising on structural and regulatory aspects of US$3bn BRIC structured finance scheme.
11. Advising an overseas bank in relation to a regulatory investigation arising from an investment fraud.
12. Advising on structural and regulatory aspects of a Middle-East structured investment scheme.
13. Many cases involving collective investment scheme issues..

Papers: He regularly presents papers in conference in the UK and Overseas including recently in Moscow and Kuala Lumpur on claims from Complex Investment Schemes & Hedge Funds.

Civil Fraud

John Powell QC's litigation in silk has been dominated by "*deep pocket*" claims arising from civil fraud, especially investment, banking and corporate fraud and related accessory and professional liability claims: see his ***general profile***. On-going and recent cases typically engage complex areas of financial services and securities regulation, as well as company law, in the UK and other jurisdictions.

His practice and experience in this field reflects his expertise and leading publications on professional liability and financial services and securities regulation, as well as papers on accessory liability and complex investment schemes.

Major fraud related instructions over his career have included claims related to *PCW*, *Barlow Clowes*, *Maxwell*, *BCCI*, *Paamllc* and other banking and investment frauds in the UK and abroad, especially in the USA, Caribbean, Middle East and Far East. He is currently acting for an overseas bank in litigation arising from multi-billion banking and investment collapse.

Recent cases

Recent cases include:

- (several): acting for claimants in film finance claims;
- acting for defendant in film finance claim;
- acting for claimants in banking product fraud claim;
- (several) acting for defendant financial advisors and their insurers in claims arising from misselling and failed investment schemes;
- (several) acting for claimants/prospective claimants in hedge fund claims;
- expert in US litigation arising from hedge fund fraud

Recent publications on fraud related issues

- *Fiduciary Duties* (Commonwealth Law Conference, Melbourne, 2003;
- *Accessory Liability: an Emerging Tort?* (COMBAR 2007);
- *Claims arising from Complex Investment Schemes and Hedge Funds* (IFLR European Securities Litigation Conference 2009*);*
- *Litigating Russian-related fraud in the UK: Accessory Liability and Professional Liability claims* (Moscow 2009);
- *Claims arising from the World Financial Crisis: The Frontiers of Liability and Containment* (Kuala Lumpur 2009).

Banking and Finance

John Powell Q.C.'s practice engages substantial banking and finance issues reflecting his expertise related to accessory liability claims and the financial services (which includes banking and finance (see further his profile under *Financial Services & Securities Regulation*

His work in this field covers both litigation and advisory work.

Litigation

His litigation practice is centred on investment, banking and corporate fraud and related accessory and professional liability claims: see his general profile. On-going and recent cases typically engage complex areas of financial services and securities regulation, as well as company law, in the UK and in other jurisdictions. He is acting for overseas bank in litigation arising from multi-billion banking and investment collapse.

Advisory*:* John also has an extensive advisory practice relating to structured investment schemes, financial services regulation and professional liability issues. Earlier in his career he drafted Jersey's collective investment funds legislation.

Expert in overseas litigation**:** John often acts as expert as to English law issues in overseas litigation and arbitration, including recently in US litigation arising from a hedge fund fraud.

Arbitrator: John occasionally sits as an arbitrator. He also sits as a Deputy High Court Judge.

Publications: Apart from, *Lomnicka & Powell, Encyclopedia of Financial Services Law* and *Jackson & Powell on Professional Liability.* Other publications in the course of his career have included Palmer's Company Law (specialist editor, 23rd ed.) and "*Issues and Offers of Company Securities*" (1988), as well as contributions to other books.

He frequently presents papers in conferences in the UK and overseas, including recently in Moscow and Kuala Lumpur.

Commercial Dispute Resolution

John Powell QC's practice is complex commercial litigation, arbitration and advisory work in the UK and overseas. His litigation and arbitration practice is centred on investment, banking and corporate fraud and related accessory and professional liability claims, especially "deep-pocket" claims: see his ***general profile***, as well as his profiles for ***professional liability***, ***financial services and securities regulation***, ***civil fraud***, ***international practice*** and

***arbitration*.**

His litigation practice reflects his expertise and leading publications on professional liability and financial services and securities regulation, as well as papers on accessory liability and complex investment schemes. His major publications, ***Jackson & Powell on Professional Liability*** and the **Encyclopedia of Financial Services Law** are well known to all commercial practitioners in the UK and major common law jurisdictions.

Directory comments

John Powell QC is "*widely sought after for his advisory and litigious expertise.*" "*He is recognised as a genius on financial services regulation and is particularly skilled at handling cases involving investment fraud* ", "*top-notch on complex matters*"; "*a fearless advocate*" *supreme professional negligence exponent*", "*particularly impressive in the realm of auditors' negligence*".

On-going cases

On-going cases include:

- acting for an overseas bank in litigation arising from multi-billion banking investment collapse.

Recent cases

Recent cases include:

- jurisdiction dispute;
- insolvency related dispute
- (several): acting for claimants in film finance claims;
- acting for defendant in film finance claim;
- acting for claimants in banking product fraud claim;
- judicial review of overseas financial services regulator
- arbitration instructed by an overseas government, arising from $600m multi-hotel, golf club and residential development (defeating a $600m claim);
- arbitration related to aggregation issues arising from major multi-party litigation;
- (several) acting for defendant financial advisors and their insurers in claims arising from misselling and failed investment schemes;
- (several) acting for claimants/prospective claimants in hedge fund claims.

Arbitration

Throughout his career John Powell Q.C has conducted arbitration both as advocate and as arbitrator, in the UK and overseas: see his profiles for ***international practice*** and ***arbitration.***

Expert evidence

On several occasions he has provided expert evidence for the purposes of commercial litigation in USA, Canada, Australia and Ireland.

Recent publications on commercial litigation issues

- *Fiduciary Duties* (Commonwealth Law Conference, Melbourne, 2003
- *Coastlines of Liability and Containment* (Chancery Bar Association 2006);
- *Professional Negligence R.I.P. (London Common Law and Commercial Bar Association 2007)*
- *Accessory Liability: an Emerging Tort?* (COMBAR 2007);
- *Claims arising from Complex Investment Schemes and Hedge Funds* (IFLR European Securities Litigation Conference 2009);
- *Litigating Russian-related fraud in the UK: Accessory Liability and Professional Liability claims* (Moscow 2009);
- *Claims arising from the World Financial Crisis: The Frontiers of Liability and Containment* (Kuala Lumpur 2009).
- *Professional Liability & Construction: Risk Retained and Risk Transferred* (Society of Construction Law 2009.

Memberships

COMBAR (former Committee member) , LCIA, CBA, LCLCBA, PNBA, CFLA; SCL (President 1991-93).

International Arbitration

John Powell QC conducts arbitrations, both as arbitrator and as advocate, in the UK and abroad.

His experience extends to international, commercial, professional liability, financial services, insurance, construction and engineering arbitrations.

Recent cases

Recent cases have included the following:

- (as advocate) arbitration instructed by an overseas government, arising from $600m multi-hotel, golf club and residential development (defeating a $600m claim);
- (as advocate): arbitration related to aggregation issues arising from major multi-party litigation;
- (as arbitrator): commercial dispute.

Previous cases

Previous arbitration highlights as advocate include:

- Successful multi-million professional liability claim on behalf of overseas government .
- Successful defence of multi-million claim arising out of airline privatisation, instructed by overseas government Successful multi-million professional liability claim on behalf of overseas government.
- Successful defence of multi-million claim arising out of airline privatisation, instructed by overseas government.
- Numerous professional liability arbitrations
- Numerous construction and engineering arbitrations (both defects & loss and expense claims).

As arbitrator he has conducted numerous arbitrations on commercial, professional liability, financial services, insurance, and construction issues.

Deputy High Court Judge

He is a Deputy High Court Judge (QBD, Chancery Division & Administrative Court)

Relevant Memberships

LCIA, COMBAR (ex committee member), PNBA, CBA, Society of Construction Law (ex President: 1991-3)

Offshore

International litigation, arbitration, advisory and expert work has been, and continues to be, a heavy component of John Powell QC's practice, especially in silk. He has conducted both litigation and arbitration overseas, as well giving expert evidence as to English law issues in overseas litigation.

He also delivers occasional papers overseas on subjects within his expertise.

His international practice reflects his expertise and publications: see his **main profile** and profiles for **professional liability**, **financial services & securities regulation**, **civil fraud** and **commercial work**. His major publications, ***Jackson & Powell on Professional Liability*** and the **Encyclopedia of Financial Services Law** are well known in the major common law jurisdictions.

Litigation & arbitration

Current instructions include claims arising from a multi-billion banking and investment collapse. He is instructed on behalf of an institutional client.

Recent instructions have included the following:

- Arbitration instructed by an overseas government, arising from $600m multi-hotel, golf club and residential development (defeating a $600m claim).
- Judicial review application of overseas financial services regulator.

Previous career highlights include:

- Successful multi-million professional liability claim on behalf of overseas government (arbitration).
- Successful defence of multi-million claim arising out of airline privatisation, instructed by overseas government (arbitration).

Expert evidence

- On several occasions he has provided expert evidence for the purposes of commercial litigation in USA, Canada,

Australia and Ireland.

Advice

- He is regularly instructed by overseas clients, especially in relation to financial services, professional liability, insurance and contractual construction issues.
- Throughout his career he has frequently travelled overseas for consultations, as he continues to do: Europe, USA, Caribbean, Gulf, Hong Kong, Singapore, as well as local offshore jurisdictions

Drafting

- He drafted Jersey's collective investment fund legislation.

Papers

- He has delivered papers on subjects within his expertise (especially professional liability, financial services and securities regulation and investment fraud) in Australia, USA, BVI and, Hong Kong, as well Russia and several other European countries.

Overseas Bars

- He has been called to the Bars of the Turks & Caicos Islands & the British Virgin Islands.