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## Justin Fenwick QC

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*He's just an amazing advocate, whose ability to make an incredibly complex case seem simple is really good. He had the trial judge eating out of the palm of his hand.*

- Chambers & Partners

**Justin Fenwick QC specialises in offshore and onshore commercial litigation, with a particular emphasis on fraud cases and claims against professionals arising out of fraudulent transactions.**

Justin was named 'Professional Negligence Silk of the Year' (2018) by Chambers & Partners UK.

He is regularly instructed in high-profile, high-value cases for his cross-examination skills. Chambers & Partners have variously described him as, "The doyen of professional negligence skills, and a man who has few peers in the market", "a force to be reckoned with", "great with clients and always calm under fire", "he's a star act, who is magnificent in a trial forum", "his strategic thinking is extraordinary and his grasp of legal principle is a wonder to behold", "very smooth, unbelievably experienced and has a lovely style in court", "a long-time star in the professional indemnity world and someone to always consider for the most challenging cases." The Legal 500 recommend Justin for the way in which 'he can deal with the most combative of benches without pausing for a breath'. He is 'a top-quality advocate' who is 'calm in a crisis and a clear-thinker', 'very commercially astute' and (again) 'someone always to consider for the most challenging cases.' Justin sums up his practice as constantly striving to improve outcomes and to demolish seemingly unanswerable arguments.

### General

Justin Fenwick came to the Bar in 1981 and was appointed QC in 1993 (the most junior member of the Bar to be appointed as Silk in the 1993 list). He has sat as a Judge in both civil and criminal cases, having been made an Assistant Recorder in 1994, a Recorder in 1999 and a Deputy High Court Judge (Chancery and Queen's Bench Division) in March 2003. He was appointed a Deputy Judge of the Administrative Court in 2008. He was Head of Chambers at 4 New Square between 2000 and 2005 and has been a Bencher of the Inner Temple since 1997 and was Chairman of its Investment Sub-Committee between 2004 and 2011. He has been Chairman of the Bar Mutual Indemnity Fund (the Bar's own Mutual Insurer) since 1999. He is a Commissioner of the Royal Hospital Chelsea (home to the Chelsea Pensioners) since 2011 where he sits on the Investment and Remuneration Committees.

### Previous experience

Before coming to the Bar, Justin Fenwick spent 10 years in the army, serving in the Grenadier Guards as Platoon Commander, Intelligence Officer, Operations Officer, Adjutant and Company Commander. His principal functions included intelligence gathering and analysis in Hong Kong, Northern Ireland and West Germany, responsibility as adjutant for the administration and discipline of a battalion of 700 plus, and two years spent as Temporary Equerry and Additional Private Secretary to the Duke of Edinburgh.

## Profile

Justin Fenwick practises extensively in the Commercial Court in London, in commercial disputes in the Caribbean, Bermuda and Dubai and, mainly in an advisory capacity, in Singapore and Hong Kong and the United States. He has been admitted for the purpose of conducting a trial in Singapore relating to an insurance dispute over a Jewellers Block Policy and has been admitted as an advocate in BVI, Bermuda, the Cayman Islands and Nevis. He has been instructed in international commercial arbitrations in the former USSR, the UAE, Kuwait and other jurisdictions. He specialises in commercial disputes and commercial dispute resolution and insolvency situations.

He has extensive experience of commercial arbitration including international arbitration and is familiar with ICC and LCIA procedures. He regularly acts as arbitrator in commercial and insurance disputes. He has acted for and against governments including the Hong Kong government and the Chinese government as well as extensive and varied work on behalf of the UK government. His arbitration work has included international contractual disputes, international sports tournament franchise contracts, new highways in Turkey, pipelines in Kuwait, housing developments in Hong Kong and shipping disputes in the Far East.

He has acted for one of the Big 4 accountancy firms in a dispute against the Dubai Financial Services Authority in The Financial Markets Tribunal, DIFC-LCIA.

He is currently acting for another Big 4 accountancy firm, leading a team of 3 QCs and several juniors in the Defence of a £1.6 billion audit claim in relation to the collapse of a tertiary lender through management fraud.

He is also acting for a major accountancy firm in the defence of an \$700 million audit fraud claim brought in Cayman in relation to a Cayman based hedge fund.

He is also currently advising the Liquidator of Stanford Bank in Antigua in relation to proceedings in various jurisdictions.

He has recently acted for a Brazilian liquidator in recovering substantial assets in the Cayman Islands and elsewhere in the Caribbean.

He is currently involved in several claims in BVI relating to alleged fraudulent dissipation of assets emanating from the Russian Federation and Ukraine. He has advised on and acted in a case involving consideration of the Nevis law of secret trusts (NIETO) which was heard in camera in the BVI Commercial Court and the Court of Appeal of the Eastern Caribbean.

In the insurance field, he has frequently acted as Counsel in coverage arbitrations involving scope of cover, aggregation, avoidance and dishonesty and other exclusions. He has regularly acted as arbitrator with and without oral hearings in coverage matters including notification disputes, disputes between insurers, non-disclosure and aggregation issues, where the underlying policy is professional liability cover (solicitors, surveyors, financial intermediaries, product liability cover, jewellers block and Contractors All Risk cover).

He has advised extensively in relation to partnership disputes and to disputes involving Limited Liability Partnerships and minority shareholder claims.

A substantial part of his work, both in trial and in an advisory capacity, has been in relation to property litigation and property related matters. In addition to acting in very large numbers of mortgage lending claims against professionals, in particular valuers and solicitors, he has been involved in extensive litigation in relation to mortgage indemnity policies and their construction. He has acted for solicitors in relation to partial equity schemes including '50/50' schemes and other forms of shared ownership. He acted for several hundred solicitors in relation to the Equity Release and Home Investment Plan claims brought by the *Investors' Compensation Scheme* against building societies and solicitors. He was involved in the *Etridge* litigation in respect of undue influence claims. He has also acted in key mortgage-related claims such as *Bradford & Bingley v Rashid & Ashe v Natwest* in the House of Lords and Court of Appeal respectively, where the courts clarified the applicability of the Limitation Acts to the rights of mortgagees. He is awaiting judgment from the Supreme Court in a landmark case involving the rights of mortgagees in sale and leaseback transactions.



He has acted regularly in relation to insolvency matters, including those affecting insolvent banks, both in the UK and in offshore jurisdictions. He has advised in a number of cases involving failed hedge funds and investment plans in the UK, the Cayman Islands and the USA. He has considerable experience in asset-tracing, particularly tracing assets misappropriated fraudulently, including acting for liquidators in the Caribbean, Brazil and Canada. He has acted in relation to numerous freezing orders in the UK and foreign jurisdictions.

Justin Fenwick has played a key role in the development of group litigation in England and Wales. Having had some limited involvement in the Pertussis (Whooping Cough) vaccination litigation in the early 1980s (acting first for the Secretary of State for Health and Committee on Safety in Medicines and then for various medical experts summoned as witnesses), he witnessed the collapse of the first phase of that litigation because of the inadequacies of the test case approach adopted. As a result, in the Open litigation in which he again acted for the Government, he was instrumental in developing the approach to group litigation with lead cases and costs sharing orders which has since become the model for GLOs. After the Government's successful defence of that litigation, he has become involved in a wide range of group actions, principally in the field of product liability (in particular, tobacco, HIV haemophiliac litigation, CJD human growth litigation and BSE litigation) but also in a range of other fields including group actions against solicitors (Investors Compensation Scheme litigation, Paragon Finance litigation and most recently The Accident Group litigation), tax schemes (Container Leasing, Film Finance and Technology Investment Schemes in particular), and disaster litigation (Buncefield oil explosion at Hatfield by way of example).

He has practised extensively in most areas of product liability, commercial litigation and related fields, with a particular emphasis on cases involving technical and scientific issues, commercial fraud, complex financial accountancy and taxation issues. He is particularly experienced in the analysis of contractual issues, including insurance contracts, share sale agreements, development and construction agreements.

He specialises in the cross-examination of witnesses, both factual and technical, in areas varying from specialist scientific subjects such as pharmaceuticals, chemicals and materials and engineering issues, to financial, accountancy and taxation issues.

A key element of his work for defendants in litigation is the analysis of causation issues. This includes issues of epidemiology, statistical probability and causation in fact and was a central element of his preparation work for the human growth hormone and Variant CJD litigation. He spent many months learning about the relative risk of cancer from different activities and problems of causation of cancer when acting for Gallaher, one of the principal Defendants in the tobacco litigation. This work also involves issues of scope of duty and remoteness of damage, particularly in relation to future economic loss.

He is accustomed to dealing with cases involving very large numbers of documents and is familiar with most document management technology systems as well as the use of spreadsheets and databases.

Many of his cases involve careful analysis of accounts, taxation issues, the detection of fraud and exaggerated claims, and the calculation of economic loss.

He has wide experience in dealing with issues of limitation and successfully brought to an end the Tobacco Litigation in the 1990s following success on a preliminary issue of limitation in a number of lead cases.

He has consistently been rated by Chambers and the Legal 500 in the fields of product liability and professional negligence. He is also rated by the Legal 500 in the field of civil fraud, insurance and reinsurance and by Chambers in commercial dispute resolution and construction. Comments include the following:

- *'Incredibly intelligent and commercially astute counsel, who is able to look at a massive amount of information, both legal and technical in nature, and still grasp the point of a case quickly'*. He is presently acting for the claimant manufacturer in a case concerning defective resin used to manufacture oil storage tanks. Peers regard him as a *'ferocious cross-examiner'* while clients aver that *'he has the knack of always being a step ahead of the judge'*. They further comment that *'he knows when it's the right time to say less, and is an all-round fabulous tactician'*. **Chambers 2012 in relation to product liability.**
- A *'phenomenal big-case performer'* and *'excellent on strategy and tactics'*, he is a *'masterly advocate who dominates the court'*. **Chambers 2011 in relation to commercial dispute resolution.**

- '*Excellent client skills*'. **Legal 500 2011 in relation to professional negligence.**
- '*Remains at the top of the professional liability tree*'. He is a '*top-class courtroom advocate*' but is also '*exceptionally loyal and diligent*'. He is often involved in leading cases, such as *Levicom v Linklaters*. **Chambers 2011 in relation to professional negligence.**
- '*Superb, simply outstanding and a superstar*'. **Chambers 2011 in relation to professional negligence.**
- '*Highly recommended for any case which is likely to go to court – he is brilliant in trial*'. **Legal 500 2010 in relation to insurance.**
- An '*exceptional tactician and a persuasive advocate*'. Adept at whatever he turns his hand to, his recent insurance work has seen him advising a bank in a high-profile negligence claim against brokers. **Chambers 2011 in relation to insurance.**
- '*A real construction guru with great all-round knowledge; if you need someone with huge expertise, go to him*'. **Chambers 2011 in relation to construction.**
- A '*heavyweight when it comes to professional negligence instructions*', Fenwick's strong standing within the domestic sphere is rapidly attracting instructions from solicitors with instructions relating to overseas projects, and he has been particularly active in Russia. **Chambers 2011 in relation to construction.**

#### **Selected major cases**

- Recently acted for solicitors in a claim brought by over 500 investors arising out of an unsuccessful tax scheme.
- Acting for the liquidator of a Caribbean bank in claims for restitution and tracing remedies brought by depositors in Bermuda and the Privy Council (*Horizon Bank v Walsh and Taal*).
- Acted for PWC in their successful defence of a claim brought for damages in relation to a share-cell transaction (*Denard v PWC*).
- Acted for the Bradford & Bingley Building Society in the landmark decision on the inter-relationship between the Limitation Acts and without prejudice communications in the House of Lords in *Rashid v The Bradford & Bingley Building Society* (2006).
- Acted for Ernst & Young in their successful defence of a Part 20 claim for in excess of £300 million brought by a subsidiary of Daimler Chrysler arising out of a dispute between MAN and Freightliner over the fraudulent falsification of the accounts of the last English owned truck company, ERF Limited.
- Acted for over three hundred solicitors in defending claims brought by insurers arising out of the collapse of The Accident Group (TAG) and for over a hundred firms in the parallel litigation brought by insurers arising out alleged illegal referral fees paid under the TAG scheme.
- Acted for several major international petroleum companies in relation to the Buncefield oil explosion at Hatfield.
- Acted for Football League in its claim for compensation against Edge Ellison (now Hammond Suddards) arising out of the collapse of ITV Digital.
- Acted for Howard Kennedy in their successful defence of a multi-million pound claim brought arising out of the collapse of the Portuguese Airline Euroair and the consequences of earlier unsuccessful litigation against Bae.



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- Acted for Chaffe Street in their successful defence of a £70m claim brought as a result of an unsuccessful takeover of part of the Coates Viyella Group (*Marplace v Chaffe Street* 2006).
- Acted for the defendant solicitors, Collyer-Bristow, in a claim brought by Cable & Wireless Plc arising out of the allegedly fraudulent conduct of those responsible for managing its insurance subsidiary.
- Conducted the appeal on behalf of the appellant solicitors in the case of *Somatra v Sinclair Roche Temperley* [2003] 2 Lloyds Rep 855; [2003] EWCA Civ 1474.
- Acted for solicitors Maxwell Batley in successfully defending a £70 million claim for contribution brought by Watson Wyatt arising out of the setting up of an international employee share scheme (*SITA v Watson Wyatt*) [2002] EWHC 2025 CH.

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## Areas of Expertise

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### Product Liability

*“Highly sought after for the breadth of his expertise.” – Legal 500, 2019*

*“A huge-hitting professional indemnity silk who does product liability work. A very high-profile player, who has done some big product liability litigation. He is a highly effective performer in all respects, and clients have great confidence in him.” – Chambers & Partners, 2016*

He has acted extensively for suppliers, manufacturers and government bodies in product liability litigation involving tobacco, aircraft components, engine development, mobile telephones and mobile telephone masts, electronic goods, medicinal products, polymer and polymer resin products, roofing materials, windows and other construction materials, packaging materials and similar products, computer software and computer hardware. He regularly advises on technical and causation issues. He has advised extensively on regulatory issues, including those involving EC Regulations. His cases in this field have included:-

- Advising manufacturers, importers and suppliers of a wide variety of products in relation to their statutory and common law obligations and liabilities, in particular in relation to the Consumer Protection Act and various European Regulations and their domestic implementation in the UK. Acting on cases involving the Oil Industry including oil pipelines in Kuwait and the Russian Republics, the recent explosion at the Buncefield Terminal, Petro-Chemical Plants in the former USSR and other issues involving the Oil Industry
- Acting for the government in the Opren Litigation, the HIV Haemophiliac Litigation, the CJD Human Growth Litigation, the BSE Litigation, Hepatitis C Litigation, the Aspirin and Reye’s Syndrome Litigation, Nuclear Test Veterans Litigation (arising out of the Nuclear Test programme in the South Pacific in the 1950s and 1960s; and other litigation and threatened litigation involving medicinal products, Foot and Mouth Disease and food.
- Acting for public bodies in relation to Whooping Cough Vaccine Litigation, the Leukaemia Radiation Litigation and the MMR Litigation.
- Acting for manufacturers in relation to Measles Vaccine Litigation in the early 1990s, Asthma/Steroids Litigation (again in the early 1990s) and the Tobacco Litigation (in which he represented Gallaher Ltd in its successful defeat of the Group Actions brought by a number of lung cancer sufferers on a Conditional Fee Agreement) and giving ongoing advice to tobacco and other manufacturers.
- Acting for manufacturers in relation to allegedly defective building materials.
- Acting for manufacturers and consultants involved in the design and production of engines and engine components including heavy engines, aircraft braking systems and other components, with particular emphasis on computer aided design and finite element analysis.



He has advised the European Commission on accountancy aspects arising out of proposed take-overs (*MyTravel v. European Commission*).