

## Robert Marven QC

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*He provides top-class analytical skills and is excellent at focusing on the key issues.*

- Legal 500

Robert is a specialist in all aspects of the law of costs and litigation funding. He is instructed in a range of high profile cases and he is often brought into major group and commercial litigation to deal with specific costs issues. He provides strategic advice on matters of commercial importance to all involved with the costs and funding of litigation. He advises on complex funding solutions for major commercial disputes, and he acts in substantial disputes concerning legal expenses insurance.

Robert also specialises in contractual and commercial disputes, civil procedure, regulatory and consumer law and insurance law as well as related issues of professional regulation and discipline. He has a growing practice in solicitors' negligence work.

Robert is also an expert in the law relating to the claims management industry.

Robert is ranked as a leading Costs junior by both Chambers & Partners and the Legal 500.

Chambers & Partners 2018<sup>7</sup> describes him as having an "enormous depth of knowledge, is highly responsive and is a real pleasure to work with on every level." Chambers & Partners 2017 described him as "Very intelligent, excellent with difficult clients and very forensic." The Legal 500 2017 says "He provides top-class analytical skills and is excellent at focusing on the key issues." Chambers & Partners 2016 described him as "a go-to for many instructing solicitors" and "an impressive advocate, who produces excellent written work and shows great attention to detail", "he has that well informed approach that the clients and costs judges lap up." Chambers & Partners 2015 say "He's very much the iron fist in the velvet glove." "The nice thing about working with him is he gives you confidence in what you're doing. He always comes out and expresses his opinion." In addition the Legal 500 2016 says he has "great attention to detail and very knowledgeable". The Legal 500 2015 described him as "very helpful in putting a good case together", "great attention to detail and very knowledgeable". Chambers & Partners 2014 described him as "a great asset to any costs team". Chambers & Partners 2012 says Robert is "an astute and specialised performer with an intricate knowledge of costs law" and "level-headed and approaches cases with good commercial sense". The Legal 500 2013 says he is "good on paper and in court" and the Legal 500 2012 refers to his "excellent service" and "invaluable knowledge of the specialist costs rules". It has also been said that "there seems to be nothing he doesn't know about the subject" (Chambers & Partners 2011), he has "excellent attention to detail with an eye for the wider context" (Legal 500 2011), he is "bright, articulate and has a strong command of the subject" (Chambers & Partners 2008). Robert "stands out for his appearances in the Court of Appeal in *Sulaman v Axa* and *Direct Line* and in two of the three test cases on the enforceability of the Law Society Accident Line Protect CFAs" (Legal 500 2010). He is "incredibly bright and has intricate knowledge of his subject matter" (Chambers & Partners 2010); he "combines intellectual rigour with practicality" and he "presents difficult cost issues in an attractive and nuanced way" (Legal 500 2009). Robert has also been recognised for his "outstanding technical knowledge and recall of case law" (Chambers & Partners 2009) and his "excellent and broad-based costs practice" (Legal 500 2008).

## Areas of Expertise

## Costs

*“He has enormous depth of knowledge, is highly responsive and is a real pleasure to work with on every level.” Chambers & Partners, 2018 (Leading Junior, Costs).*

*“Highly regarded for his litigation funding expertise.” Legal 500, 2017 (Leading Junior, Costs).*

*“Very intelligent, excellent with difficult clients and very forensic.” Chambers & Partners, 2017 (Leading Junior, Costs).*

*“He’s an impressive advocate, who produces excellent written work and shows great attention to detail.” “He has that well informed approach that the clients and costs judges lap up.” – Chambers & Partners, 2016 (Leading Junior, Costs).*

Robert is a specialist in all areas of costs law. He is also an expert on the law concerning the funding of litigation. He has been instructed in a range of high profile cases in the Supreme Court, the Court of Appeal, the High Court, the Senior Courts Costs Office and the County Court. Robert also has considerable experience in mediating costs and related disputes both as a representative and as a mediator.

His practice includes: costs issues arising from high value litigation; conditional fee agreements and contingency fee agreements; commercial funding for substantial disputes; legal expenses and ‘after the event’ insurance ; fixed costs; costs budgets and estimates; costs capping; as well as wasted and non-party costs orders.

Robert has considerable experience in advising on the effect and implications of the recent changes to the rules concerning the recoverability of costs.

Robert acts for a wide range of clients including PLCs and public bodies, solicitors, major insurers, funders, claims management companies and individuals.

Robert is often brought into major group and commercial litigation to advise and present submissions on specific costs issues.

He provides strategic advice on matters of commercial importance to insurers, solicitors and others involved with the management and funding of litigation.

Robert also undertakes drafting work, in particular conditional fee agreements, general retainer documentation, and agreements for the transfer of legal business between different firms.

## Cases

- **Plevin v Paragon Personal Finance Ltd (No 2)**  
Supreme Court appeal which establishes that for the purposes of the LASPO transitional provisions an appeal is part of the same ‘matter’ or ‘proceedings’ as the claim at first instance. Hence where, after the coming into force of the LASPO regime, a pre-LASPO CFA and ATE policy are extended to cover the appeal, the CFA and policy still fall under the pre-LASPO regime so that the appeal success fee and premium are recoverable inter partes.
- **JC and A Solicitors Ltd v Iqbal**  
Court of Appeal decision which establishes that where solicitors received stage 1 fixed costs in a claim under the RTA Protocol for low-value personal injury claims, but the claim did not proceed to stage 2, the defendant’s insurers are not entitled to repayment of the stage 1 costs.
- **Kupeli v Cyprus Turkish Airlines**  
Court of Appeal decision on the application of the Cancellation of Contracts made in a Consumer’s Home or Place of Work etc Regulations 2008. The Regulations do not apply to contracts signed by consumers at a meeting in a community centre which was not the traders’ usual place of business, and which the clients attended as a result of advertisements and text messages; this was not an ‘excursion’ which had been ‘organised by’ the trader.

- **Harrison v Eversheds LLP**  
High Court appeal decision on the level of cost a client should be required to pay in circumstances where the costs were very substantially higher than the estimate which the solicitors had given. It was held that that it was wrong in principle for the solicitors to rely on the increase in the other side's costs in attempting to justify exceeding their estimate.
- **Halborg v EMW Law LLP**  
Court of Appeal decision which establishes that Limited Liability Partnerships of solicitors are not litigants in person, for the purposes of the litigant in person costs rules in CPR r 46.5
- **EMW Law LLP v Halborg**  
High Court appeal decision which establishes that in a dispute between a solicitor and his former agent, the solicitor could not rely on the 'without prejudice' privilege of his former clients and their opponents in the litigation to resist disclosure of some. However the solicitor could rely on his former clients' legal professional privilege to resist disclosure of other documents.
- **Kai Surrey v Barnet & Chase Farm Hospitals Trust**  
An important appeal decision on the reasonableness of publicly funded claimants transferring to CFA plus ATE funding, immediately before LASPO came into force. It was held that the test was wholly objective: what a reasonable person standing in the shoes of the claimant would do. The claimants had not been advised that the transfer would deprive them of the *Simmons v Castle* 10% increase in general damages, but their decisions to transfer were nonetheless reasonable: in all but exceptional cases the prospect of the 10% increase on general damages would not prevent a reasonable claimant from switching to CFA plus ATE.
- **Jones v Spire Healthcare Ltd**  
Appeal decision on the important issue of when and whether one firm of solicitors can validly assign to another firm of solicitors both the benefit and the burden of a CFA, so effectively assign the CFA as a whole. It was held that a CFA can be assigned as a whole, and that the burden can be assigned along with the benefit because the two are inextricably linked. This principle is of general application and applies irrespective of the circumstances surrounding the assignment; the principle is not confined to the situation where the assignment is motivated by the client's wish to follow the fee earner conducting his case from the first to the second firm.
- **O'Brien v Shorrock & MIB**  
High Court appeal concerning various issues in relation to the CFA between the claimant and his solicitors. The CFA applied retrospectively from a back-date about a year before the CFA was actually entered into. The judge held that the Costs Practice Direction required that the notice of funding filed and served by the claimant's solicitors stated the date that the CFA had actually been entered into. As the notice actually provided only referred to the back-date, then unless relief from sanction was granted, the claimant could not recover any success fee.
- **Cashman v Mid Essex Hospital Services NHS Trust**  
Appeal decision considering the application of Part 36 to detailed assessment proceedings where the receiving party had beaten his own offer. The court held that it was not 'unjust' to award the receiving party the 'additional amount' provided for in CPR r 36.14(3)(d). The purpose of this provision was to penalise a paying party for not accepting a timely and realistic offer from the receiving party. The costs judge had been wrong not to award the additional amount because there had been a 'significant reduction' to the receiving party's bill.
- **Broni v Ministry of Defence**  
Appeal decision deciding that the fixed success fee regime for injury claims by 'employees' did not apply to claims brought by members of the armed forces, or by others who were not strictly employees such as sub-contractors. This will exclude very many cases from the fixed success fee regime, which were previously regarded as falling within it.
- **Redfern v Corby Borough Council**  
One of the first appeal decisions on the new costs budgeting regime. The court considered how past costs should be taken into account when revising and approving a budget for future costs. The court also considered how the new definition of proportionality applies to costs budgeting.



NEW SQUARE

- **Tasleem v Beverley**

Decision on the operation of the fixed costs regime upon the issue of a default costs certificate. It was held that where a receiving party commences Part 8 costs-only proceedings in order to commence detailed assessment proceedings, the party can recover the assessed costs of the costs-only proceedings in addition to the fixed costs stated on the default costs certificate in respect of the commencement of detailed assessment proceedings.

- **Ultimate Products Ltd v Woolley**

Two related High Court appeals in a substantial intellectual property claim. The first appeal considered the important issue of the proper approach to the issue of granting relief from sanction when the correct information about a CFA's success fee had not been given in notice of funding (so that unless relief were granted the success fee is irrecoverable), under the new CPR rule on granting relief. The second appeal concerned the correct approach to construing a CFA in order to determine whether there had been a 'win' as defined by the CFA.

- **Accentuate Ltd v Asigra Inc**

A firm whose commercial and international practice was in part conducted from an office outside London was nonetheless entitled to claim London rates for the work done.

Costs which a respondent to an application incurred prior to the application being made, although they ultimately assisted the respondent in defeating the application, were not costs of or occasioned by the application; rather they were costs of the action.

- **Light on Line Ltd v Zumtobel Lighting Ltd**

A receiving party who redacted a certificate of insurance so that it did not record the stages of the premium which in the event were not payable, was not in breach of para 32.5(2) of the Costs Practice Direction.

It was appropriate to grant relief from sanction in respect of the lateness of the service of the certificate of insurance in circumstances where any prejudice to the paying party could be reduced or eliminated by case management measures.

- **Letts v Royal Sun Alliance plc**

Appeal on whether a court can conduct standard basis assessment in accordance with pre-issue fixed costs regime if claim is issued to avoid that regime.

- **Joyce v West Bus Coach Services Ltd**

Appeal in respect of purported acceptance of Part 36 offer after striking out of statement of case.

- **Pattni v First Leicester Buses Ltd**

Court of Appeal case on recovery of interest in credit hire claims.

- **Legal Services Commission v F**

Case considering meaning of "financial hardship" test for payment of non-funded party's costs by the LSC.

- **Rybak v Langbar International Ltd**

Application for wasted costs, alleging non-disclosure.

- **Ashia Centur Ltd v Barker Gillette LLP**

Solicitors free to resile from promise to client to waive fees which was unsupported by consideration.

- **Sulaman v Axa and Direct Line**

Court of Appeal case considering appropriate reduction to costs of successful defendant who had lied.

- **Tankard v John Fredericks Plastics Ltd; Fawcett Old Ltd v Hibberd [The Accident Line Protect test cases]**

Whether CFA regulations obliged solicitors acting under Law Society's Accident Line scheme to declare an interest in recommending the scheme's ATE policy.

- **Hallam-Peel & Co v Southwark London Borough Council**



NEW SQUARE

Court of Appeal decision on whether solicitors should pay wasted costs of last-minute adjournment resulting from new point.

- **Crane v Canons Leisure Centre**  
Court of Appeal case on the distinction between profit costs and disbursements, and on the recoverability of success fees in detailed assessment proceedings.
- **Merrick v Law Society**  
Administrative Court judgment on appeal from the Solicitors Disciplinary Tribunal on prohibition in legal aid costs regime against solicitors “topping up”.
- **Evans v TNT Logistics Ltd**  
Proper measure of damages where victim unreasonably refused offer of amends from tortfeasor.
- **Days Healthcare UK Ltd v Pihsiang Machinery Manufacturing Co Ltd and others**  
Court’s power to debar a party in breach of court orders from participating further in detailed assessment proceedings.

## **Disciplinary**

Robert practises in areas of professional regulation and discipline that relate to costs and litigation funding.

He has particular experience of issues that arise in relation to claims referrals, costs recovery and public funding.

Robert has appeared in the Solicitors’ Disciplinary Tribunal and the Administrative Court.

## **Claims Management**

Robert is also an expert in the law relating to the claims management industry. This includes insurance, consumer credit and other regulatory issues.

He advises several claims management and credit hire companies strategically.

Robert frequently appears in court to argue the issues, often where there is a point of general importance.

## **Professional Liability**

Robert has a growing practice in solicitors’ negligence claims which relate to costs issues.

He acts and advises in disputes where costs claims are met with allegations of poor service; and in claims which concern advice given on appropriate funding arrangements, disputes about the adequacy and effect of estimates provided and alleged conflicts of interest.

## **Qualifications & Memberships**

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Robert is a member of the Commercial Bar Association, the Professional Negligence Bar Association and the London Common Law & Commercial Bar Association.

MA (Cantab), Astbury Scholar of the Middle Temple.

## **Publications**

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### **Editor of Cordery on Legal Services**