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## Shail Patel

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*An innovative thinker, who brings a fresh insight to any case.*

- Legal 500

**Shail Patel is a commercial litigator with a particular focus on financial services, fraud, insurance, professional liability work and costs. He also advises in regulatory and disciplinary investigations and enforcement proceedings. Shail is currently shortlisted for the 'Professional Negligence Junior of the Year' 2020 award by Chambers & Partners UK.**

Shail prides himself on being able to quickly identify the heart of a dispute and provide practical and commercial advice leading to its resolution. He is an experienced and tenacious advocate who will go the extra mile for his clients.

His commercial caseload spans multi-jurisdictional disputes in court and arbitration proceedings. It includes corporate and shareholder disputes and claims against officers, trustees and recipients of funds, particularly where those claims have an off-shore element. He is a leading specialist in securities actions under s.90 and s.90A of FSMA and has been instructed in 10 separate actions including Tesco, RBS and other confidential matters. He is also experienced at obtaining and defending applications for urgent injunctive relief, including freezing, evidence preservation and *Norwich Pharmacal* orders.

Shail is registered to practice in the Courts of the DIFC.

See the 'Areas of Expertise' below for more details of Shail's experience and practice areas.

### Recent Highlights

#### Directories

Shail is ranked as a leading junior by the directories in Commercial Litigation, Financial Services, Insurance, Professional Negligence and Costs.

**"Leaves no stone unturned, an excellent trial lawyer." "Always brings a fresh perspective." - Legal 500, 2019**

**"Very commercial, bright, personable and user-friendly." "Calm, assured and confident." - Chambers & Partners, 2019**

**"He is incisive and has a nice manner. I can see him becoming a leader in the field." "He is very bright, user-friendly, and great on technical detail." - Chambers & Partners, 2019**

**"He is smart, technically very good and provides watertight advice. He is also very good with clients." "Very intelligent, switched-on and on the ball commercially." - Chambers & Partners, 2018**

**"He provides high-quality commercial advice and tactical thinking, and has a pronounced desire to work seamlessly as a member of the team. He is also impressive in terms of his speed of response and the commerciality of his advice." - *Chambers & Partners, 2018***

**"Impressive on his feet." - *Legal 500, 2017*. "An innovative thinker." - *Legal 500, 2016***

**"An accomplished litigator who acts for and against a range of professionals including solicitors, surveyors and accountants. Frequently appears before the county courts and High Court in complex and high-profile matters. "Very strong academically and assists greatly with the preparation of evidence in a short time frame." - *Chambers & Partners, 2016***

#### Recent Reported Cases

*Bank of Baroda v Maniar* [2019] EWHC 2463 (Comm)

Successfully defending a bank's claim on personal guarantees at trial, in a dispute involving a number of involved European cross border insolvency law and conflicts of law issues, in relation to the effect of the Irish law Examinership and Debt Settlement Agreement insolvency processes on English law bank guarantees. A full analysis can be found [here](#).

*Orb and ors v Fiddler and Anciano* [2016] EWHC 361 (Comm)

Shail acted for a respondent to an unusual *Norwich Pharmacal* and evidence preservation order made in the context of substantial commercial court litigation. Shail (with Patrick Lawrence QC) acted on the successful application to discharge the injunction, which was set aside as an abuse of process and for significant material non-disclosures. The Judgment of Popplewell J considers the correct approach to the question of the purpose for which *Norwich Pharmacal* information is to be used.

*E.Surv Limited v Goldsmith Williams Solicitors* [2014] EWHC 1104 (Ch); [2015] EWCA Civ 1147

Shail was sole advocate at trial and led by Ben Hubble QC in the Court of Appeal 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 trial judge, upheld by the Court of Appeal, 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 in breach of duty 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 was 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.

## Privacy Policy

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## Areas of Expertise

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### Financial Services Regulation

**“Excellent – confident in the delivery of his views but has a collaborative and open style.” – *Legal 500, 2020***

A substantial part of Shail's case load involves litigation with a financial services, and financial services regulation aspect. He also has a significant advisory practice on FSMA related matters.



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Shail's experience in this area includes:

- Acting for regulated firms and individuals in enforcement actions brought by the FCA
- Acting in a number of the most important cases involving Collective Investment Schemes in recent years, including Innovator, Keydata, Connaught, Africa Land, Ingenious, Scion, and others.
- Mis-selling claims for and against advisers, product providers and promoters, including in respect of complex structured products and Collective Investment Schemes.
- Shareholder claims under s.90 and s.90A of FSMA 2000, including Tesco and the RBS Rights Issue Litigation.
- Advising on perimeter issues in various sectors, including Collective Investment Schemes, regulated insurance business and derivatives trades.

## Cases

- **RBS Rights Issues Litigation**

Acting for a group of institutional investors in this securities class action against RBS

- **FCA v Fund Manager**

Acting for an authorised fund manager in a substantial penalty and redress claim brought by the FCA in the RDC.

- **Connaught Income Fund v Capita and Blue Gate**

Acting with John Powell QC and Graeme McPherson QC for Capital Financial Managers Ltd in a £100m Comm Ct. claim against the promoter and operator of an investment fund specialising in bridging finance. The claimant alleged unlawful promotion of the scheme as a matter of the proper construction of FSMA 2000 and relevant SIs, and that the promotional documents were misleading. There were a large number of complex technical, procedural and factual issues arising.

- **Various Investors v Tesco plc**

Advising institutional investors in relation to potential claims worth several hundred million US\$ under s.90A of FSMA against Tesco plc arising out of the £260m 'black hole' in Tesco's accounts announced in 2014.

- **Financial Conduct Authority v Waygood and others**

Shail acted as sole counsel for a defendant in this multiparty action for damages and an injunction brought by the FCA against various individuals said to have run and profited from unlawful collective investment schemes. The case raised many complex issues under FSMA (a number of which were determining in the Court of Appeal ([2015] EWCA Civ 284).

- **Roughton International v Clydesdale and National Bank of Australia**

Acting as sole counsel for an international engineering firm which purchased a complex foreign exchange rate structured derivative from the bank.

- **Adams & ors v Ford & Ors**

Shail appeared with Graham Chapman for the respondents in 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.

## Qualifications & Memberships

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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.

## Insights

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## **2018 – A year in Costs**

21 January 2019

Costs law update by 4 New Square - the most significant costs cases of 2018.

### **APP and Cyber Fraud: A Commercial Litigator's Perspective**

16 October 2018

APP ("authorised push payment") fraud and related cyber frauds have featured heavily in the financial and mainstream press lately. These scams involve the victim being tricked into making an instant electronic payment to fraudsters instead of the intended recipient. The industry has taken note, and a voluntary code for Payment Services Providers is currently under consultation. If it is adopted in 2019, it will provide for compensation for certain victims in certain circumstances. However it is unlikely to assist those who have already fallen victim, and it may not assist SMEs and larger businesses.

### **Third Party Rights in FCA Supervisory Notices: room for more?**

14 May 2018

The recent decision of the Upper Tribunal in *UK Innovative TI Limited v Financial Conduct Authority* [2018] UT 0136 (TCC) confirmed that third parties have no statutory rights in relation to supervisory notices issued by the FCA. However, with evident dissatisfaction at the potential prejudice this could cause, Judge Herrington suggested the answer might not always be as clear cut.

### **R v The FRC [2018] EWHC 446: No Third Party Rights in the FRC?**

21 March 2018

Shail Patel considers this High Court decision in which the Court found that an individual (C) did not have the right to be heard at an FRC Tribunal hearing, nor a right to redaction of findings against him prior to publication of the Report.

### **End Of The Road for LIBOR Rigging Claims; or Just a Detour?**

6 March 2018

The Court of Appeal's decision in *Property Alliance Group v RBS* [2018] EWCA Civ 355 is a decisive victory for RBS over PAG. However, the door has undoubtedly been opened for other potential claimants.

### **Duelling first instance decisions create a rift in the law of litigation privilege**

19 February 2018

The Chancellor's decision in *Bilta v RBS* [2017] EWHC 3535 sits uneasily with that of *Andrews J in SFO v ENRC* [2017] EWHC 1017, on a point which is short, but of critical importance to those acting for the subjects of enforcement action and investigations.

### **FCA v Grout [2018] EWCA Civ 71: Anonymous or Synonymous?**

6 February 2018

The Court of Appeal confirms the restrictive approach to third party rights under FCA Notices adopted by the Supreme Court in *Macris v FCA* [2017] UKSC 19

### **Burns v Financial Conduct Authority [2017] EWCA Civ 214: a sign of things to come?**

15 January 2018

Directors' duties, procedural fairness and issue based costs; the Court of Appeal decision sheds lights on several aspects of financial regulatory enforcement action.

### **Hourly Rates in Budgeted Costs; a Wrong Turn? RNB v Newham [2017] EWHC B15 (Costs)**

22 August 2017

Dispute Resolution Analysis for LexisNexis

### **When a CFA says one thing and means another**

2 August 2017

In *Stevensdrake v Stephen Hunt* [2017] EWCA Civ 1173 (31 July 2017) the CA rewrote a CFA relying on estoppel by convention



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## **What a difference a day makes!**

13 July 2017

Dispute Resolution Analysis of the High Court decision in *Lakhani v Mahmud* [2017] EWHC 1713

## **Reinsurance: non-disclosure and misrepresentation**

15 January 2016

In *Axa Versicherung AG v Arab Insurance Group (BSC) (Arig)* [2015] EWHC 1939 (Comm) Males J had to consider whether the claimant Axa was entitled to avoid two reinsurance treaties entered by its predecessor in title, with the defendant Arig, for misrepresentation or non-disclosure of material facts.-*Insurance Law Monthly*

## **Challenging debt claims: pay later and litigate now?**

1 January 2014

In this article, Shail Patel considers the effect of the anti set-off clause in loan documentation in light of recent Australian and English case law, in particular debtors' attempts to outflank the clause.-*Journal of International Banking and Financial Law*

## **Encyclopaedia of Financial Services Law**

1 November 2016

Contributor

## **Jackson & Powell on Professional Liability**

1 December 2016

Co-editor (with David Halpern QC) of the "Accountants" chapter (7th ed.)