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Theo Barclay

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Outstanding. Smart, diligent, hard-working.

- Legal 500 2021

He has been recognised by the directories:

- as a “rising star” in Commercial Litigation: “*Outstanding. Smart, diligent, hard-working. Absolutely will go as deep into the subject matter as necessary to find the answers and to be prepared – excellent on his feet and in the courtroom*”.
- as a Leading Junior in Sports Law: “*Excellent oral and written submissions and hugely confident; he has appeared against and beaten several QCs already*”.
- as a Leading Junior in Costs Law: “*Extremely hard working, he gets stuck into problems very quickly, and has well-judged insights into what points really matter.*”

Current and recent cases include:

- ***SKAT v Solo Capital Ltd & Ors*** [2021, ongoing] acting for the Danish tax authority on costs in this multi-billion pound fraud and unjust enrichment litigation (led by Nick Bacon QC).
- ***Lehtimäki v Cooper*** [2020] UKSC 33: the leading Supreme Court case on trust administration, charitable companies and fiduciary duties (led by Guy Mopuss QC and Professor Sarah Worthington QC).
- ***Glencairn v Product Specialities*** [2020] EWCA Civ 609: leading Court of Appeal authority on solicitors’ duties of confidentiality to their former opponents (sole counsel at first instance and in the Court of Appeal).
- ***GHS v Beale, Webstorm & Ors*** [2021, ongoing]: Multi-million pound conspiracy and copyright infringement claim in the IT sector, raising jurisdictional issues *and questions of alternative service (as sole counsel)*.
- ***Combe International Ltd v Dr Augustus Wolff GMBH*** [2021, ongoing]: High Court trademark infringement and passing off dispute between the owners of personal healthcare brands Vagisil and Vagisan (led by Mark Vanhegan QC)



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- ***Recovery Partners & Anor v Rukhadze & Ors*** [2021]: instructed on privilege issues in major Commercial Court fraud litigation arising out of the death of Georgian billionaire Arkady Patarkatsishvili.
- ***Beiersdorf v Aldi Stores Limited*** [2021, ongoing]: High Court claim against a supermarket for trademark infringement in relation to lookalikes of the Nivea Sun range. Representing Nivea (led by Guy Hollingworth)
- ***Winlink Marketing v Liverpool Football Club*** [2020] EWHC 2271 (Comm): Part of successful team in this High Court trial concerning brokers' contracts and commission for a sponsorship agreement (led by Robert Anderson QC)
- ***Albion Energy Ltd v Energy Investments Global BRL*** [2020] EWHC 301: dispute between a Qatari oil exploration company and an energy company (led by Guy Morpuss QC for the appeal to the Court of Appeal)
- ***New Balance v Liverpool Football Club*** [2019] EWHC 2837: successfully acted for Liverpool Football Club in this Commercial Court trial on whether it was permitted to appoint Nike as its kit sponsor (led by Guy Morpuss QC).
- ***BV Nederlandse van Eiprodukten v Rembrandt*** [2019] EWCA Civ 596: leading authority on the test for causation in fraud (led by Guy Morpuss QC at first instance and in the Court of Appeal).

Academic law

In addition to his practice, Theo has lectured on commercial law at City University and on international law at King's College, London. He is a regular contributor to legal journals.

Outside of Law

Theo has written about British politics for, among others, the Times, the Daily Telegraph, the Independent and the Spectator.

- His first book, ***Fighters and Quitters: Great Political Resignations*** was published by Biteback in January 2018 (Hardback) and February 2019 (Paperback). It is available [here](#).
- He is a contributing author to ***The Prime Ministers: Three Hundred Years of Political Leadership*** (Hodder & Stoughton, November 2020). It is available [here](#).

Privacy Policy

Click here for a **Privacy Policy** for Theo Barclay.

Areas of Expertise

Commercial Litigation

Theo is regarded as one of the up-and-coming juniors at the Commercial Bar, having been ranked by Legal 500 as a rising star in commercial litigation.

A large proportion of Theo's work is in the Commercial Court. He has experience across the whole range of commercial litigation, including banking, civil fraud, company and insolvency, breach of confidence, economic torts, energy and natural resources, all forms of injunctions, restitution, Sale of Goods, trusts, jurisdiction points and conflict of laws.

Examples of recent cases include:

- **SKAT v Solo Capital Ltd & Ors**: [2021, ongoing] acting for the Danish tax authority on costs in this multi-billion pound fraud and unjust enrichment litigation (led by Nick Bacon QC).
- **Lehtimäki v Cooper** [2020] UKSC 33: The leading authority on the courts' jurisdiction over charities and the question of whether charitable trusts owe fiduciary duties (acted as first junior to Guy Moppuss QC and Professor Sarah Worthington QC)
- **Glencairn IP Holdings Ltd v Product Specialties Inc** [2020] EWCA Civ 609: Landmark Court of Appeal decision on the circumstances in which a solicitors' firm will be removed from the record when the firm has previously acted against the same opponent (instructed as sole counsel in the High Court and Court of Appeal)
- **Recovery Partners & Anor v Rukhadze & Ors**: instructed on privilege issues in major fraud litigation arising out of the death of Georgian billionaire Arkady Patarkatsishvili.
- **Winlink Marketing v Liverpool Football Club** [2020] EWHC 2271 (Comm): Acted for the successful defendant in this High Court trial concerning brokers' contracts and commission for a sponsorship agreement (led by Robert Anderson QC)
- **Albion Energy Ltd v Energy Investments Global BRL**: A dispute between a Qatari oil exploration company and an energy company, currently on appeal to the Court of Appeal (instructed for the appeal, led by Guy Moppuss QC)
- **B.V. Nederlandse Van Eiprodukten v Rembrandt Enterprises Inc.** [2019] EWCA Civ 596: landmark Court of Appeal authority on the test for inducement in fraudulent misrepresentation and the transferred loss doctrine (led by Guy Moppuss QC in the High Court and Court of Appeal).

Much of Theo's commercial law work is advisory. Recent clients include:

- a financial services company a claim for commission on a company sale;
- a vaccine manufacturer on various supply contracts;
- a broadcaster on issues arising out of organised piracy;
- a global consultancy firm, on the impact of Covid-19 and the force majeure clauses in its contracts;
- a TV network, on the implications of the Covid-19 pandemic on its broadcast licences;
- an ultra-high net worth individual, on a dispute over a film finance loan;
- a solicitors' firm, on whether it had breached a series of undertakings;
- a group of disaffected rail passengers, on the prospects of mounting a group action in against a train operating company;
- a communications agency, on the effects of the House of Lords' Code of Conduct; and
- a leading UK recruitment firm, on a series of breach of contract claims.

Theo has written the following articles on commercial law:

- 'Causation and Quantum in Covid-19 Business Interruption Policy claims', New Law Journal (2020)
- 'Moving on from Bolam– the High Court applies the Montgomery v Larnarkshire test in a financial professionals case', Solicitors Journal (November 2016)
- 'Labour v Labour: the courts' resolution of political disputes', Solicitors Journal (September 2016)
- 'Fair is foul and foul is fair', Solicitors Journal Vol 159 no 42 (November 2015)
- 'The proportionality test in UK law: a new ground of review or a fading exception?', SJOL (January 2012)

Sports Law

Theo specialises in sports-related commercial litigation and regulatory work. He is recognised as a Leading Junior in Sports Law in the Legal 500 2022, in which he is noted for his "excellent oral and written submissions" and described as "hugely confident".

In the last two years he has appeared for Liverpool Football Club in two of the largest football-related claims in the English courts and worked on disputes relating to the ownership of Sheffield United FC and Rangers FC.

He acts on behalf of and against other Premier League football clubs and sporting institutions, advising on contractual issues between clubs and players, sponsorship disputes, negotiations with governing bodies, litigation with suppliers, and intellectual property issues.

Outside of football, he has advised on matters concerning golf, cricket, boxing, athletics and horse racing.

Current and recent cases include:

- **Grant v Tottenham Hotspur FC**: acting for Tottenham Hotspur in a copyright infringement claim against the club.
- **Winlink Marketing v Liverpool Football Club** [2020] EWHC 2271 (Comm): Acted for the successful defendant in this High Court trial concerning brokers' contracts and commission for a sponsorship agreement (led by Robert Anderson QC).
- **Sir Mo Farah v Diamond Mist**: a passing-off dispute brought by Sir Mo Farah against a vaping company that allegedly used a likeness of him in an advert (sole counsel).
- **New Balance v Liverpool Football Club** [2019] EWHC 2837: successfully acting for Liverpool FC in high profile Commercial Court trial about whether the Club kit could be sponsored by Nike (led by Guy Morpuss QC).
- An ongoing multi-million-pound arbitration concerning football television rights and piracy (led by Guy Morpuss QC).
- **HoneyPunch v Hill**: acting for leading boxing brand "Ringside" in a trademark infringement claim in the IPEC (sole counsel).
- **S v M** (ongoing): a claim brought by a horseracing gambling syndicate against a commission agent in respect of several bets, including allegations of forgery and fraud.

In his advisory practice, Theo has provided assistance to several major sporting venues and institutions on the contractual problems caused by the Covid-19 pandemic, including advising:

- A golf club on a dispute with a member.
- An EPL football club on the effect of the postponement of the 2019/20 Premier League on certain sponsorship contracts.
- A leading sports team on the impact of Covid-19 on its sponsorship contracts.
- A broadcasting rightsholder on a contractual issue with the English Premier League.
- An international sports broadcaster on a contractual dispute with a rightsholder.
- A television station on a potential dispute with a leading sports management company.

Theo is a regular contributor to:

- the New Law Review, on which he recently wrote the cover story on the rise of e-sports litigation; and
- Law In Sport, the leading sports website.

Intellectual Property

Theo's intellectual property practice is focussed on "soft IP": trademarks, copyright infringement, design rights and passing off. He is often brought in as junior on commercial cases with an Intellectual Property aspect.

He is currently instructed in the following matters:

- **Combe International Ltd v Dr Augustus Wolff GMBH**: a Chancery Division trademark infringement and passing off dispute between the owners of personal healthcare brands Vagisil and Vagisan (led by Mark Vanhegan QC).
- **Frontier Estates v Ford & Ors**: Multi million pound Chancery Division action between two property companies, including claims of passing off in relation to images of developments, alongside an action for breach of fiduciary duty and conspiracy (led by Paul Nicholls QC)
- **Beiersdorf v Aldi Stores**: a trademark infringement claim in the Chancery Division (as junior to Guy Hollingworth).
- **GHS v Beale & Ors**, a multi-million pound database rights & copyright infringement claim in the Chancery Division (as sole counsel).
- **Sir Mo Farah v Diamond Mist**: a passing off dispute involving the alleged use of a lookalike of Mo Farah to advertise a product.
- **Corkers v BFY**, an infringement and passing off claim in the IPEC concerning a brand of crisps (as sole counsel)
- a SIAC arbitration concerning copyright infringement and breaches of an exclusive rights agreement (as junior to Guy Morpuss QC).
- a putative claim to declare a recording contract unenforceable as a restraint of trade/unconscionable bargain (as sole counsel).

His past experience includes the following matters:

- **Mars v Aldi**: A now-settled claim issued in the Chancery Division concerning unfair advantage trademark infringement (as junior to Guy Hollingworth).
- **Distinctive Wholesale v Clayton Horsnell**: Chancery Division claim for infringement of copyright and database rights relating to bathroom supplies (as sole counsel).
- **Glencairn v Product Specialties**: a trademark infringement and passing off claim concerning whisky tasting glasses (as sole counsel).
- **7Eleven v Kankesu**: acting for 7Eleven in a claim for breach of a non-infringement agreement (as sole counsel).
- **VoltyLab v Volta**: trademark infringement in the financial services industry (as sole counsel).

In September 2019 he completed Oxford University's Intellectual Property Law Residential Programme.

Professional Liability

Theo has a wealth of experience in professional liability claims, having advised and acted in claims involving solicitors, auditors, accountants, surveyors, construction project managers and engineers.

In his professional liability practice, he acts for both claimants and defendants in cases in the county courts and the High Court. Current and recent cases include:

- **X v Y** (2021, ongoing): A high value proposed claim against a tax advisor (led by Justin Fenwick QC).
- **Murray & Murray v HCB Accountants** (2020, ongoing): a claim against a solicitor for negligent accounting advice on the purchase of a business.
- **Spanakis v Waran & Co** (2020, ongoing): A claim against a solicitor for conspiracy, breach of undertaking and for breach of a Quistclose trust.
- **Metis Law v Armstrong Watson** (2020, ongoing): a claim against a firm of accountants for allegedly negligent advice on entrepreneur's relief.
- **Fazal v Zoi Builderberg Law** (2020, ongoing): a claim against a solicitor for over optimistic advice on an employment dispute.
- **Stern v Seddon** (2019), major set of claims arising out of a failed property development scheme in Egypt.
- **Blacknell v Evans** (2019): high value "lost litigation" claim against a solicitor accused of professional negligence in relation to a complex underlying personal injury claim concerning congenital hip dislocation.
- **Swain v (1) Swains (2) Kirby (3) Berry** [2015] EWHC 2585 (Ch) (led by Paul Mitchell QC)

Lawyers

Theo is very experienced in advising and acting in professional liability claims against legal professionals. He acts for both Claimants and Defendants.

He has experience in the full range of solicitor liability claims, including lost litigation, under settlement, Limitation Act claims, domestic and international conveyancing negligence and claims arising out of personal injury litigation. He has also acted in claims against solicitors relating to non-contentious transactions that have failed, such as business sales and wills claims.

Current and recent instructions include:

- **Blacknell v Evans** (2019): high value "lost litigation" claim against a solicitor accused of professional negligence in relation to a complex underlying personal injury claim concerning congenital hip dislocation.
- **Spanakis v Waran & Co** (2020, ongoing): A claim against a solicitor for conspiracy, breach of undertaking and for breach of a Quistclose trust.
- **Fazal v Zoi Builderberg Law** (2020, ongoing): a claim against a solicitor for over optimistic advice on an employment dispute.
- **Stern v Seddon** (2019): series of high-value claims arising out of a failed property development scheme in Egypt.



Accountants

Theo has extensive experience of claims involving accountants and auditors, which has included the following:

- Litigation relating to negligently prepared accounts.
- Disputes over the valuation of businesses in the context of business sales and shareholder disputes.
- Claims arising from negligent tax planning.
- Litigation by insolvency practitioners against directors and officers.
- Auditor's negligence matters.

Current cases include:

- ***Murray & Murray v HCB Accountants*** (2020, ongoing): a claim against a solicitor for negligent accounting advice on the purchase of a business.
- ***Metis Law v Armstrong Watson*** (2020, ongoing): a claim against a firm of accountants for allegedly negligent advice on entrepreneur's relief.

Financial Professionals

Theo's has experience acting in claims involving auditors, brokers, actuaries, IFAs and tax advisors.

He has a strong background in investment advice work, having worked for three years on behalf of the Financial Conduct Authority as a 'skilled person' under s.166 FSMA, reviewing compensation claims made by SMEs that had been miss-sold Interest Rate Hedging Products.

He also has experience of claims made against mortgage brokers and financial advisors for negligently recommending Interest Only mortgages.

Insurance Brokers

Theo has experience in broker's negligence claims – an area he is well placed to advise due to his practice in Insurance Law. His experience includes acting and advising on:

- Under-insurance claims
- Failure to cover all risks
- Failure to renew insurance when instructed
- Renewing on inadequate terms
- The provision of false information re: renewal
- Failure to obtain all necessary information

Surveyors

Theo has advised on cases involving surveyors. He is able to assist on claims involving a broad range of surveys (from regular residential property surveys to damp and asbestos surveys).

His experience covers a spread of issues, from subsidence to damp, advice on value and the quantum of rectification works.

Costs

Theo is listed as a Leading Junior for costs litigation in Legal 500 2022 and is noted to be: "*Extremely hard working, he gets stuck into problems very quickly, and has well-judged insights into what points really matter*".

He frequently acts on costs matters in major commercial litigation:

- ***Lehtimäki v Cooper*** [2020] UKSC 33: a complex dispute in the Supreme Court about the principle of costs involving multiple parties (led by Guy Morpuss QC).
- ***Vald Nielsen & Newwatch v Collyer Bristow*** [2021, ongoing]: a high value solicitor-client dispute concerning the validity and enforceability of a discounted-fees CFA (led by Robert Marven QC)

His expertise also includes:

- disputes about the termination of CFAS;
- disputes on the proper basis of costs;
- major solicitor/client disputes;
- disputes about the validity and enforceability of CFAs and DBAs;
- disputes with former solicitors about the ownership of client files and liens; and
- routine detailed assessment matters.

Examples of his current and recent cases include the following:

Solicitor/client costs

- ***Matyas v Rosling King***: Solicitor-client dispute on ownership of a file, delivery up of documents and the Solicitors' Act 1974 (junior to Nick Bacon QC)
- ***Vald Nielsen & Newwatch v Collyer Bristow***: Solicitor-client dispute concerning limitation under the Solicitors' Act 1974, the nature of a retainer and the validity of a CFA (junior to Robert Marven QC).
- ***Charles Russell v Beneficial***: Solicitor client dispute raising issues as to the existence of a retainer and ostensible authority (sole counsel, instructed for appeal to the High Court)
- Advising on the difference between requests for payment on account and interim statute bills under the Solicitors Act 1974.
- Acting on a high value solicitor-client claim arising out of the proper construction of a retainer.

Budgeting issues

- Advising on the correct procedure for revision of costs budgets in a High Court claim worth over £20m with budgets in the region of £1m for each party.
- Advising on the impact of *Sharp v Blank* [2017] EWHC 3390 (Ch) on amendments to costs budgets.
- Acting in dozens of Costs and Case Management hearings.

Detailed assessment

- Appeared in several detailed assessments, for paying and receiving party, including using the new electronic bill of costs and cases with hybrid bills.
- Appearing in the SCCO to recover a success fee where a pre-April 2013 CFA had been terminated.
- Successfully appearing in the SCCO to make an application that the recovering party should recover no costs, as they had missed deadlines in the costs proceedings.

Other

- Advising on how to insulate against non-party costs orders.
- Pitching to and working with major litigation funders.
- Advising on recovery of costs after a default judgment.
- Advising on how costs can be recovered from a trustee in bankruptcy.
- ***R v Dave Lee Travis***: Acting for the DJ Dave Lee Travis in the Crown Court in the early stages of costs proceedings following his conviction for one count of indecent assault.

Legal articles



Theo has written the following legal articles about costs:

- ‘Conditional Fee Agreements, the price of success’, Costs Lawyer, the Association of Costs Lawyers, 2018
- ‘Addressing the opportunistic use of QOCS’, Personal Injury Brief Update Journal (November 2015)
- ‘An abuse of QOCS’, Solicitors Journal Vol 159 no 26 (August 2015)

Insurance

Theo has considerable experience in insurance litigation, having acted for and against insurers. Recently, he has advised and acted in a number of business interruption matters arising out of the Covid-19 pandemic.

He has acted in cases covering the full range of liability insurance, including D&O, employers, public, product and professional indemnity. He has also appeared in a number of insurance fraud and misrepresentation matters, including the pursuit of fraudulent claimants.

Theo has acted in arbitrations between insurers under the PIA, and has particular experience in coverage disputes between insurers relating to run-off insurance and double insurance scenarios.

International Commercial Arbitration

Theo is building up a strong arbitration practice, with a range of claims under a variety of institutional rules, including ICC, SIAC and LCIA. He also has experience working on arbitrations between insurers in relation to coverage disputes.

Recent experience includes:

- acting as first junior in a SIAC arbitration concerning matching rights in a global broadcasting contract (led by Guy Moppuss QC, ongoing)
- acting as first junior in a SIAC arbitration arising out of the Saudi-Qatari diplomatic crisis (led by Guy Moppuss QC, ongoing).
- acting as first junior in LCIA arbitration proceedings between a global telecommunications company and a competitor company set up in alleged breach of covenant.
- assisting Michael Black QC and Edward Knight in *IPCO v NNPC* [2014] EWHC 576 (Comm), the leading case on the enforcement of international arbitration awards in circumstances where there are allegations of fraud.

Qualifications & Memberships

Theo studied Modern History at Brasenose College, Oxford, where he was an academic exhibitor.

He then achieved a Distinction in the Graduate Diploma in Law, placing second in his year group.

Between 2010 and 2014 he was awarded Hardwicke, Lord Haldane, Lord Denning and Lord Wolfson scholarships by Lincoln's Inn.

In 2017 the Inns of Court awarded Theo the Pegasus Scholarship to undertake a two-month fellowship in the United States to study comparative law. The placement included working in the Supreme Court, Senate and House of Representatives, as well as marshalling federal and state judges in Florida, California, Delaware and Virginia.

Theo is a member of COMBAR, the British Association of Sport & Law, the PNBA and the Financial Services Law Association.