

Andrew Fulton

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Overview

Andrew has a broad and busy practice. He advises and appears in a range of high-value financial and commercial disputes, often with an international dimension. A large proportion of his work in recent years has involved major fraud litigation and asset recovery exercises.

He also has particular experience in capital markets and investment banking disputes, derivatives and structured products.

Andrew has experience of contractual disputes across a wide range of industry sectors. These include construction and offshore drilling arbitrations, telecommunications, mining, and motor racing. He appeared as sole counsel in a leading Court of Appeal decision on Norwich Pharmacal relief.

Before joining Twenty Essex, Andrew worked as an in-house advocate in several major law firms, most recently in the London office of US litigation specialists Quinn Emanuel Urquhart & Sullivan.

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Education

- Inns of Court School of Law: Bar Vocational Course
- City University: Common Professional Examination
- University of Oxford, Brasenose College: BA Hons, English (First Class) (1997)

Example cases

- *Fundo Soberano De Angola and others v dos Santos* [2018] EWHC 2199 (Comm): junior counsel for respondents in successful application to discharge a US\$3 billion worldwide freezing order and proprietary injunction wrongly obtained ex parte by the Angolan sovereign wealth fund.
- *Sabbagh v Khoury* [2018] EWHC 1330 (Comm), [2017] EWCA Civ 1120: long-running litigation in respect of allegations of US\$600 million conspiracy, involving a range of jurisdictional disputes and an anti-arbitration injunction.
- *Candy v Holyoake* [2017] EWHC 2943 (QB), [2017] EWHC 373 (QB): proceedings to prevent threatened misuse of private information in the context of £180 million conspiracy allegations
- *ICC Arbitration (2018)*: obtained eight-figure award and post-award freezing order in aid of enforcement.
- Sole counsel in Commercial Court proceedings in relation to allegedly fraudulent Russian investment scheme (settled shortly before trial).
- Sole counsel in Commercial Court action in relation to alleged Ponzi scheme allegedly worth more than US\$250 million.
- *ICC arbitration (2017)*: appeared as sole counsel in eight-figure arbitration in relation to non-payment of cash calls under a JOA and the claim for forfeiture of the participating interest.
- *OMV Petrom SA v Glencore International AG* [2017] EWCA Civ 195: leading case on Part 36 enhancements following dishonest defence of claim and unreasonable stance in relation to settlement.
- *OMV Petrom SA v Glencore International AG (Rev 1)* [2016] EWCA Civ 778: important decision on the measure of damages in deceit in relation to claim worth nearly US\$100 million.
- *LCIA Arbitration (2016)*: appeared as sole counsel in substantial claim arising out of an allegedly corrupt procurement exercise for the purchase of oil and gas equipment.
- Obtained €60 million worldwide freezing order in support of intended LCIA arbitration.
- *Deutsche Bank AG v CIMB Bank Berhad* [2017] EWHC 81, 264 (Comm): appeared as sole counsel in US\$10 million letter of credit dispute, the proceedings involving a jurisdictional challenge, a dispute over the requirement of proof of payment on a confirming bank and a two-day Commercial Court trial under the shorter trials scheme.
- *Gaydamak v Leviev* [2014] EWHC 1167 (Ch): struck out US\$2 billion conspiracy action as an abuse of process.
- *Nobahar-Cookson v The Hut Group Ltd* [2016] EWCA Civ 128: interpretation of contractual time-bar in the context of claims for fraudulent breach of warranty (following three-week Commercial Court trial: [2014] EWHC 3842).
- *Decura IM Investments LLP v UBS AG* [2015], EWHC 171 (Comm): expedited trial as to whether UBS's reshaping of its investment bank triggered the termination provisions of an agreement for the development of complex structured products.
- *Deutsche Bank AG v Sebastian Holdings* [2014] EWHC 2073: application for a non-party costs order in respect of Deutsche Bank's costs (including an interim payment of £34.5 million).

Banking and derivatives

- *Deutsche Bank AG v CIMB Bank Berhad* [2017] EWHC 81, 264 (Comm) – appeared as sole counsel in US\$10m letter of credit dispute, the proceedings involving a jurisdictional challenge, a dispute over the requirement of proof of payment on a confirming bank and a 2-day Commercial Court trial under the Shorter Trials Scheme.
- Pleadings and advices in relation to a number of retail banking “vishing” frauds.
- *Decura IM Investments LLP v UBS AG* [2015] EWHC 171 (Comm); – Expedited trial as to whether UBS' reshaping of its investment bank triggered the termination provisions of an agreement for the development of complex structured products.
- *Kaupthing Singer & Friedlander Ltd v UBS AG* [2014] EWHC 2450 (Comm); \$65m claim for the enforcement of a sum due under an ISDA Master Agreement which UBS had mistakenly paid to the wrong entity.
- *Deutsche Bank AG v Sebastian Holdings* [2014] EWHC 2073. Application for a non-party costs order in respect of Deutsche Bank's costs (including an interim payment of £34.5m).
- *Credit Suisse AG v Up Energy Group Limited* [2013] EWHC 3611 (Comm) – Resisted HK\$234m summary judgment application under a put option for the repurchase of convertible notes on the basis that there was a real prospect of establishing a defence of mutual mistake.
- Advising in numerous close-out disputes (including under ISDAs, GMRA and GMSLAs).
- *Barclays Bank plc v UniCredit Bank AG* – Dispute over termination of synthetic securitisation transactions entered into for

regulatory capital purposes.

- Commercial Court proceedings in relation to the acquisition finance for the Madrid headquarters of Banco Santander.
- Legal and strategic advice to hedge fund over challenges to conversion of convertible securities with Euro 1billion face value.
- Represented junior loan purchasers in breach of warranty claim.
- *LaCrosse Financial Products LLC v UBS AG* – Part 8 claim by monoline insurer for delivery of notes under a credit default swap. Settled before trial.
- *Haugesund Kommune v Depfa ACS Bank* [2010] 1 CLC 770 (Court of Appeal) – Two Norwegian municipalities lacked capacity to enter into borrowing contracts. The lender was entitled to restitution of the sums lent under the void contracts and the fact that the municipalities had invested and lost the money did not amount to a change of position.
- Urgent advice on potential bond defaults following Iceland’s suspension of FX market.
- *Koo Golden East v Bank of Nova Scotia* [2008] QB 717 (Court of Appeal) – The state immunity of a foreign central bank precluded the making of a Norwich Pharmacal order against the commercial bank with whose London branch the central bank held an account. In any event, to order disclosure would not in the circumstances have been a proper exercise of discretion. The House of Lords at an oral hearing refused leave to appeal.
- Dispute under the 1991 ISDA Definitions over the late exercise of an option in interest rate swap. Acted from initial correspondence challenging the validity of the notice to final trial preparation.
- *Law Debenture v Elektrim Finance NV* [2006] EWHC 1305 (Ch) – Euro 500million judgment against defaulting bond issuer, upholding parallel debt structure.
- *Haydon-Baille v Bank Julius Baer* [2007] EWHC 1609, 3247 (Ch) – struck out claims in relation to the mortgagee sale of Wentworth Woodworth, one of Europe’s largest stately homes.

Commercial law

- Company acquisition dispute involving claims and counterclaims of breaches of accounting warranties.
- Commercial Court proceedings involving allegations of breach of warranty and deceit in relation to the sale of a power-generation barge.
- Former member of the Quinn Emanuel team acting for Oleg Deripaska in his defence of the Commercial Court proceedings brought by Michael Cherney.
- Advice on potential claims arising out of capsized dredging vessel.
- Advice on operation and refinancing of PFI contract.
- *Force India Formula One Team v Etihad Airways* [2009] EWHC 2768 (QB) – counsel in one week trial over breaches of F1 sponsorship agreement.
- Numerous shareholder pre-emption disputes, including detailed advice and drafting input in connection with \$350m sale of foreign telco.
- Represented joint venture partner in acrimonious dispute over luxury Caribbean resort development.
- Counsel for Claimant in 2 day LME arbitration.
- Lead associate and junior counsel in defence of £160m claim alleging dishonest assistance in diversion of business opportunity.
- ICC arbitration proceedings over aircraft lease.
- Administrative Court application to enforce POCA freezing order.
- *Kennedy v DSG Retail* [2006] EWHC 924 (Comm) – Part 8 trial victory over purchase of phone business.
- *Dorotheum v Micky Tiroche* [2005] EWHC 3223 (QB) – enabled enforcement of foreign judgment, establishing in cross-examination that evidence of non-service was not credible.

Civil fraud

- *Sabbagh v Khoury* [2017] EWCA Civ 1120 – major jurisdiction dispute in relation to allegations of a \$600m conspiracy.
- *OMV Petrom SA v Glencore International AG (Rev 1)* [2016] EWCA Civ 778 – important decision on the measure of damages in deceit: the claimant was entitled to the difference between price paid and true value as at the transaction date and the fraudster’s damages were not reduced due to post-transaction events turning out better than the

hypothetical purchaser would have anticipated. Upheld the Judge's award of nearly \$90m in damages, interest and costs in relation to Glencore's deceitful sales of counterfeit cargoes of crude oil [2015] EWHC 666 (Comm).

- Obtained worldwide freezing order in support of claims under €100m guarantees given in support of corporate facility.
- Appeared in the BVI Commercial Court on US\$2.5bn worldwide freezing injunction in support of ICC arbitration.
- Appeared in Commercial Court proceedings in relation to an alleged ponzi scheme connected to FX funds.
- Currently instructed in Commercial Court proceedings in relation to alleged fraud in connection with Russian hedge funds.
- *Dynami v Chiriboga* (2015) – Substantial Commercial Court dispute arising of the sale of a power-generation barge. Settled in second week of 3-week trial.
- *The Hut Group Limited v Nobahar-Cookson* [2014] EWHC 3842 – 3-week trial of business acquisition dispute involving allegations of fraudulent breaches of warranty and deceit.
- *Gaydamak v Leviev* [2014] EWHC 1167 (Ch) – struck out \$2bn conspiracy claim in relation to a diamond joint venture.

Energy and natural resources

- *LCIA arbitration* – involved in ongoing arbitration in relation to the allegedly premature termination of Middle Eastern oil and gas project.
- *ICC arbitration* – counsel in substantial dispute over African mining joint venture.
- *ICC arbitration (2017)* – appeared as sole counsel in 8-figure arbitration in relation to non-payment of cash calls under a JOA and the claim for forfeiture of the participating interest.
- *LCIA arbitration (2016)* – appeared as sole counsel in substantial claim arising out of an allegedly corrupt procurement exercise for the purchase of oil and gas equipment.
- Advising on dispute in relation to major African oil and gas joint venture.
- *OMV Petrom SA v Glencore International AG* [2015] EWHC 666 (Comm) – Dispute over fraudulent supply of crude oil cargoes.
- *Dynami v Chiriboga* (2015) – Substantial Commercial Court dispute arising of the sale of a power-generation barge. Settled in second week of 3-week trial.
- Instructed in ICC arbitration raising issues of alleged gross negligence under Joint Operating Agreement.
- *Kivu Watt v Citibank NA* [2013] EWHC 2354 (Comm) – Letter of Credit dispute in relation to construction of methane gas extraction facility.
- *Credit Suisse AG v Up Energy Group Ltd* [2013] EWHC 3611 (Comm) – dispute in relation to Credit Suisse's structuring of the fund-raising for a Hong-Kong listed owner of a Chinese coal mining operation.

Private international law

- *Haugesund Kommune v Depfa ACS Bank* [2010] 1 CLC 770 (Court of Appeal, Aikens and Pill LJ, Etherton LJ dissenting) A lack of substantive power under Norwegian law to enter a contract was properly regarded, for English conflicts of laws purposes, as a lack of capacity.
- *Winnetka v Julius Baer International Ltd* [2009] Bus LR 1006 – Stay application to enforce jurisdiction clause in investment management agreement. Also addressed the issues of comity arising in circumstances where the Guernsey Court had granted an anti-suit injunction seeking to restrain the English proceedings.
- Advice and assistance in relation to various Hague Convention requests for English support for US proceedings, including appearing as English counsel in depositions.

Insolvency and restructuring

- Involvement in a range of major insolvencies and restructurings including: Kaupthing Singer and Friedlander, Kaupthing hf, MF Global, Lehman Brothers, Sigma Finance Corporation, European Directories, Stabilus, Petroplus, Transfield.
- *United Drug (UK) Holdings Ltd v Bilcare Singapore Pte Ltd & Anor* [2013] EWHC 4335 (Ch) – automatic stay under the Cross Border Insolvency Regulations 2006 lifted to allow three-party ICC arbitration to continue.
- Applications under the Cross Border Insolvency Regulations 2006 in relation to a stay of Commercial Court proceedings.
- Defending former directors of insolvent company against 7-figure claims by liquidator for breaches of duty, including a

successful strike out application.

- Representing angel investors in challenges to pre-pack administration.
- Advising on effectiveness under English Law of intended “burden sharing” measures under Irish banking legislation.
- Offshore cases including winding-up proceedings in Guernsey and applications in the dissolution of Nevis-incorporated hedge fund.

Professional negligence

- *Haugesund Kommune v Depfa ACS Bank* [2010] Lloyd’s Rep PN 21, and *No.2* [2010] 1 All ER (Comm) 1109 – Judgment on liability against the solicitors who had issued opinion letters that certain swap transactions were enforceable under Norwegian law. Second decision as to the quantum of loss and the scope of their duty.
- Secured recovery in mediation for victims of serious financial fraud from their negligent private client solicitor.

Recommendations

He's user-friendly and previously worked as a solicitor so he understands their position. [Chambers UK Bar 2020](#)

A key member of the team – knowledgeable, and very quick to distil materials and identify the issues. [The Legal 500 UK Bar 2020](#)

A pleasure to work with, he combines crisp analytical and strategic advice with skilful advocacy. [Chambers UK Bar 2019](#)

Particularly knowledgeable on trade and banking instruments, he is an excellent advocate and always fights the clients' case with enthusiasm. [The Legal 500 UK Bar 2020](#)

He is quick to grasp complex issues and identify commercial solutions. He provides practical advice and he's a great team player. [Chambers UK Bar 2019](#)

The great thing about Andrew is that in a tricky case he makes it clear he knows the issues. [Chambers UK Bar 2020](#)

His advocacy is outstanding and he is a tenacious litigator who sees points that others don't. [The Legal 500 UK Bar 2020](#)

He combines crisp analytical and strategic advice with skilful advocacy. [Chambers UK Bar 2020](#)

A real go-to senior junior, who has the benefit of having spent a lot of time working in solicitors' firms so has a more realistic world-view than some barristers. It's a huge benefit to have him on your team in a big case. [Chambers UK Bar 2019](#)

Intellectually very able, he always fights the client's case with vigour and is able to cut to the heart of the dispute quickly [Chambers UK Bar 2020](#)

Extremely knowledgeable on banking and trade related matters and hugely committed. [The Legal 500 UK Bar 2018](#)

He is very approachable and collaborative, making you feel like you're all on one large team. [Chambers UK Bar 2020](#)

A first-class operator, mature beyond his years and very confident in conference with clients. [The Legal 500 UK Bar 2018](#)