

Joe McBrien

Called: 2017
joemcbrien@fivepaper.com



PROFILE

Joe has a busy commercial chancery practice, with an emphasis on commercial litigation, civil fraud, banking and finance litigation and insolvency. Joe is an experienced advocate for his call with both trial and appellate experience. He frequently appears in the High Court and County Court with experience in responding to urgent commercial injunctions, both as sole counsel and as part of a counsel team.

An increasing amount of Joe's practice has an international element. Joe has particular experience with claims governed by the laws of Jersey and Sweden.

He is a co-contributor to the 2022 edition of Atkin's Sale and Supply of Goods and Services.

Prior to starting pupillage, Joe worked as a Solicitors' Agent where he gained substantial advocacy experience. Joe was also a manager in a firm of solicitors who provide advocacy services. In this role Joe worked closely with clients to provide practical, cost effective solutions to litigation. In 2018, he received a travel scholarship from the Middle Temple which allowed him to intern with a boutique commercial litigation law firm in the USA.

EXPERTISE

Commercial and Civil Fraud

Joe has a broad commercial litigation practice. In addition to his paper practice, Joe frequently represents lenders, companies and consumers at hearings, including at trial. Further, through his recent editing of Atkin's Court Forms, Joe is well versed in issues arising out of contracts for the sale and supply of goods and services.

An increasingly amount of Joe's practice involves allegations of civil fraud and has an international element. For example, Joe has particular experience with claims governed by the laws of Jersey and Sweden.

Recent work includes:

- Multi-million pound civil fraud claim involving allegations of fraudulent misrepresentation, deceit and conspiracy. The case has involved responding to both a worldwide freezing injunction and a passport order, as well as settling the defence, led by Zachary Kell (ongoing).
- Successfully resisting an application to cross-examine a respondent on his assets under a freezing injunction.
- Prosecuting a claim of the fraudulent misrepresentation of overage agreements at an auction.
- Settling particulars of claim for various misrepresentation regarding the sale of a classic car.
- Attending a 4-day trial regarding claims in breach of contract and unjust enrichment.
- Settling a defence in a high value wrongful interference with goods claim with numerous parties.
- Acting as part of a counsel team, led by Rachel Sleeman, in a large document review exercise concerning a potential breach of trust and breach of directors' duties with an estimated value of £3 million.
- Applying for an interim injunction for the delivery up of goods in the Circuit Commercial Court.
- Settling a defence and counterclaim in building dispute which also involved consideration of the law on VAT relief.
- Successfully defending a building company at trial on the basis of merger in judgment following an ombudsman's decision.
- Assisting in advising a client on how to manage conflicting duties which were owed both as a director and executrix.
- Assisting in advising on the merits of a defending a claim of allegations of misrepresentation in context of a vehicle hire purchase agreement worth c.£250,000.

Insolvency

Joe frequently acts and advises in relation to both corporate and personal insolvency proceedings. Joe is familiar with bankruptcy proceedings and voluntary arrangements, as well as Insolvency Practitioner's enforcement actions and Directors Disqualification proceedings.

Recent work includes:

- Successfully setting aside the disposition of property as being a transaction at an undervalue.
- Extending an administration to enable the pursuit of claims of professional negligence.
- Resisting a third-party debt order being made final pursuant to s.183 IA 1986 where allegations of impropriety were made against the Insolvency Practitioner.
- Advising on the presentation of a winding up petitions to enforce a Russian arbitral award.
- Representing a high-profile debtor in resisting a bankruptcy order.
- Assisting in advising a liquidator as to the merits of pursuing section 127 claims against the insolvent company's landlord.
- Assisting in advising on whether Malaysian bankruptcy proceedings can prevent the presenting of a bankruptcy petition in the England and Wales.
- Assisting Simon Mills, as a pupil, in *Lynch v Cadwallader and Anor*[2021] EWHC 328 (Ch) where a Bankrupt challenged the Trustee's decision to admit a debt founded on a unlimited guarantee into the

bankruptcy.

Banking and Finance

Joe regularly acts in a broad range of business and personal banking disputes. In particular, Joe drafts and advises upon the enforcement of security documents and the recovery of assets. Frequently, Joe's work in this area involves allegations of fraud and forgery.

Recent work includes:

- Successfully appealing the striking out of possession proceedings brought pursuant to a legal change.
- Drafting a guarantee and indemnity for a Jersey trust company.
- Acting for a lender on a case listed for multi-day trial where there are allegations of forged security documents (ongoing).
- Bringing a claim for the recovery of high value assets following the termination of an asset finance agreement.
- Advising a bank on the security documents to recover unpaid fees on a commercial loan
- Settling pleadings to bring a claim against an offshore guarantor.

Property

Joe has experience of wide variety of property litigation, from real property to landlord and tenant matters. Joe frequently represents landlords in possession proceeding and in obtaining injunctive relief. Joe has particular experience in representing mortgagees, having acted in numerous such claims.

Recent work includes:

- Advising on rectifying the Land Registry following accidental discharge of a legal charge.
- Settling particulars of claim to seek specific performance of a contract for the sale of land.
- Settling pleadings in which a mortgagor lacks capacity and, through the litigation friend, asserts undue influence.
- Advising on substantial dilapidation claims.
- Representing a freeholder in the FTT for a leasehold enfranchisement hearing listed for two days
- Settling particulars of claim for a service charge dispute following major works.
- Settling a reply to a defence of non est factum when enforcing a charge against a guarantor.
- Settling particulars of claims for possession proceedings where the tenant had abandoned the property.
- Assisting in drafting advices on the existence and scope of easements of access.
- Assisting in drafting a Particulars of Claim and an advice on Japanese Knotweed claims.
- Assisting in advising as to whether the easements of access, drainage and to run services could support the redeveloping of land to build over 20 residential dwellings.
- Assisting in settling a defence and counterclaim regarding the purported assignment of a commercial lease

FURTHER INFO

Publications

- Atkin's Sale and Supply of Goods and Services (2022)

Education/Qualifications

- LLB – University of Bristol (2013 -2016)
- BPTC – University of Law (2016-2017)

Memberships

- COMBAR
- R3 Association of Business Recovery Professionals