
Matthew Cook KC

Call 1999 Silk 2021



Scope of Practice

• International Arbitration (including ICSID, LCIA, ICC, Ad-Hoc and UNCITRAL) • Banking and Financial Services • Civil Fraud • Commodity Trading • Energy and Natural Resources • Contractual Disputes • Competition/EU • Jurisdiction and Conflict of Laws • Company and Insolvency • Insurance and Reinsurance

Overview

Matthew Cook specialises in all aspects of commercial dispute resolution in litigation, international and domestic arbitration, expert determination and ADR. He has significant experience in (but not limited to) disputes arising in the fields of administrative and public law, banking and finance, commodities, commercial contracts, competition and EU law, company law, corporate and individual insolvency law, energy and natural resources, financial services, professional negligence and industry regulation in general.

He is also experienced in applications for injunctive relief (including anti-suit). Matthew is recommended by Chambers UK (Commercial Dispute Resolution and Competition & EU Law) and the Legal 500 (Competition & EU Law):

Well known for his work defending key financial services clients in high-value commercial damages actions. He has experience of opposing collective proceedings order applications to the CAT and defending follow-on cases that are appealed up to the Supreme Court.

In line with his niche Competition / EU Law expertise, Matthew has particular expertise in commercial disputes, within a regulatory context, arising in the banking and financial services sector (including those under the Takeover Panel Rules, relating to Mergers and Acquisitions and those under the remit of the Financial Services Authority); in disputes for and against industry regulators (including, the OFT, OFCOM and OFWAT); and those arising in the context of GEMA / OFGEM consultations.

Matthew regularly appears before all levels of the High Court (including the Administrative and Appellate Courts),

the Competition Commission, and the Competition Appeals Tribunal. He is also experienced before a range of arbitration (ADRR, ICSID, ICC, LCIA, LME and ad hoc UNCITRAL) and other Tribunals (including Expert Determination).

Examples of Recent Cases

Arbitration

Matthew Cook has significant experience in a broad range of arbitral and other tribunal based disputes, governed by a variety of rules, including: ADRR, ICSID, ICC, LCIA, LME and ad hoc UNCITRAL and in Expert Determination:

Recent experience includes:

- **Expert Determination**
Pricing dispute concerning long term agreement for the supply of radio telecommunications equipment.
- **ADRR Proceedings**
Chapter II prohibition dispute in rail industry arbitration proceedings.
- **ICC Proceedings**
Joint Venture dispute involving one of the world's largest steel producers.
- **LCIA Proceedings**
Joint Venture dispute involving Liquefied Natural Gas (LNG)
- **Ad Hoc Proceedings**
Freight Forwarding Contracts.
- **Expert Determination**
Electricity and Gas Supply Agreements.

Banking and Financial Services

Matthew Cook's practice covers the whole domestic and investment banking spectrum, including banks' standard terms and conditions; enforceability of mortgage claims; pensions (including occupational pensions, trustee malpractice, conflict of interest, estoppel and rectification); disputes concerning early termination under ISDA Master (and other such derivative and facility) Agreements; swaps; syndicated loans; issues of subrogation, bills of exchange and letters of credit.

With strong Competition and JR aspects to his practice, he is also particularly well suited to regulatory disputes in the sector.

- **Taberna v Roskilde [2015] EWHC 871 (Comm); [2016] EWCA Civ 1262**
Acting (with Charles Bear KC) for the Defendant bank in proceedings relating to allegations of fraudulent or negligent misrepresentation in relation to the issue of subordinated notes.
- **Camden Market Estate Holdings Limited & Ors -v- Irish Bank Resolution Corporation Limited (2015)**
Advising Camden Market Estate Holdings Limited in relation to alleged swaps mis-selling claims.

- **Taberna Europe CDO II Plc v. Selskabet AF 1 September 2008 in Bankruptcy (formerly Roskilde Bank A/S) [2012] EWHC 949 (Comm)**
For Danish bank Roskilde, in a dispute concerning the sale of loan notes. The case provided for an interesting and novel question about whether a party that bought a bank's bonds in the secondary market (and therefore, from a 3rd party not the bank) can bring a claim directly against the bank for misrepresentation (based on the bank's published prospectus and offering circular) relying on the jurisdiction clause in the bond, even though its loss was suffered pursuant to the contract with the 3rd party.
- **Strategic Value Master Fund Ltd v. Ideal Standard International Acquisition SARL & Ors [2011] EWHC 171 (Ch)**
Declaratory proceedings relating to the powers of Majority Lenders and the types of financial transaction that qualify as Equity Cures under a Senior Facilities Agreement.
- **OJSC Uralsib v. CRR BV & Ors**
Declaratory proceedings before the Chancery Division for a consortium of Russian Banks, in dispute with other lenders who are party to a syndicated loan arrangement, concerning alleged Events of Default and arising out of USD100m Loan Participation Note.
- **Barclays Bank PLC v. Competition Commission [2009] CAT 27**
High Profile CAT Proceedings overruling the CC's Decision that the sale of PPI products by lenders was anti-competitive and had a detrimental effect on consumers. The CAT found that the OFT had failed to take account of the convenience to consumers of buying the insurance when they obtain a loan or similar product.
- **National Westminster Bank PLC v. Garland & Anr [2008] EWHC 1713 (Ch)**
Resisting NATWEST's claim for loss arising out of fraudulent misrepresentation. The bank's claim that the director would execute legal charge over a property as security against additional borrowing failed.
- **The Argo Fund Ltd v. Essar Steel Ltd [2005] EWHC 600 (Comm); [2005] 2 Lloyd's Rep 203; [2005] CLC 209**
Qualifying transferee for purchase of syndicated debt.
- **The Equitable Life Assurance Society**
Variously for the Society, concerning mis-selling claims arising out of the the sale of Guaranteed Annuity Rates (GARs); Guaranteed Interest Rates (GIRs); disputes with offshore merchant banks; and in relation to disputes with foreign policy holders.

Civil Fraud

- **Templeton Insurance Ltd v. Motorcare Warranties Ltd [2010] EWHC 3113 (Comm)**
For Claimant in fraud proceedings concerning the actions of an onshore sales agent for an offshore insurer, involving allegations against the Defendant of misappropriation of insurance premiums, the sale of unauthorised insurance and deceit. And against the Directors (both actual and shadow), alleged claims for deceit and misappropriation of funds. The proceedings commenced in 2008 through an ex-parte application for a search and seizure order and freezing injunctions and inter-parties hearings seeking to discharge the injunctions.
- **Donne Place v. McDonnell Associates Ltd [2011] EWHC 930 (TCC)**
For two offshore companies, as sole counsel, in a 2-week Technology & Construction Court proceedings, in relation to knowing receipt and deceit claims against a company and individual director which held themselves out as being architects and are said to have misappropriated substantial payments. The case also

involves a dispute relating to architectural and project management, hence its forum before the TCC.

Energy and Natural Resources

Matthew Cook has detailed knowledge and understanding of the contractual, operative and regulatory aspects of the energy markets and natural resource sector.

His expertise covers the oil, gas, electricity, nuclear and water industries, together with their associated environmental issues. Within that, he has a wide knowledge of the industry specific disputes of a contractual, technical and regulatory nature affecting suppliers, purchasers, distributors, generators, regulators, financing parties, administrators and joint venturers and operators.

Recommended by both Chambers UK and Legal 500 2010 for his Competition and EU law expertise, he provides a particular edge in disputes arising out of industries' regulatory consultation processes. He acts and advises both market users and regulators alike.

- **GEMA v. Electricity Distributor**
Discrimination arising in the context of the distributors' charging methodology.
- **Expert Determination**
Price-indexation of electricity contracts.
- **Claxton Engineering Services Limited v. TXM Olaj-Es Gazkutato KFT [2010] EWHC 2567 (Comm)**
Manufacture, sale and delivery of well-head engineering equipment to oil and gas prospectors.
- **Guardian Industries UK Ltd v. British Gas Trading Ltd**
Gas and electricity products aimed at corporate and institutional customers, designed to enable the hedging of exposure to the rise and fall of energy prices.
- **English Welsh & Scottish Railway Ltd v. EON UK PLC & ORR [2007] EWHC 599 (Comm)**
Coal Carriage Agreement between rail freight company and electricity generator was void and unenforceable where it contained terms which the Rail Regulator had held to be an abuse of dominant market position.
- **Westerngeco Ltd v. ATP Oil & Gas (UK) LTD [2006] EWHC 1164 (Comm); [2006] 2 Lloyd's Rep 535; 115 Con LR 84**
Scope of contractual indemnity between contractor and well-head operator under standard UK offshore oil and gas industry contract (as amended), known as LOGIC CRINE or CRINE, to perform seismic survey work.
- **LCIA Proceedings**
Joint venture agreements for Liquefied Natural Gas (LNG).

Contractual Disputes

Matthew Cook has wide experience of contractual disputes in a variety of industries, including (but not limited to): those arrangements and licence requirements affecting the energy market; banking and finance (including facility agreements, derivatives / swaps and those governed by ISDA); commodities; insurance and reinsurance; and agency (including the Commercial Agents (Council Directive) Regulations). For the full spectrum of experience, please refer to the other sub-sections of this document.

- **TELE2 International Card Co SA & Ors v. Post Office Ltd [2009] EWCA Civ 9**

Contractual dispute in the telecommunications industry.

Competition/EU

Matthew Cook is recommended as a leading junior for his niche Competition and EU law practice, providing a significant edge to his commercial regulatory practice, which seems him deal both with Judicial Reviews and like proceedings before the Competition Commission and Competition Appeals Tribunal.

Matthew has acted for MasterCard since 2012 in the high profile multi-billion pound High Court claims by most of the largest retailers in the UK including Tesco, Sainsburys, Asda, Morrisons, Dixons over fees on card transactions. To date, there have been over twenty sets of proceedings in the Commercial Court, the Chancery Division and Competition Appeal Tribunal, as well as a number of appeals to the Court of Appeal. He is also instructed for MasterCard in collective action proceedings brought by Mr Merricks before the Competition Appeal Tribunal – the largest single claim in English legal history seeking over £14 billion in damages. Matthew has also recently been instructed on behalf of the British Bankers Association to defend a competition law claim brought by the US Government body responsible for bailing out failed US banks against allegations of LIBOR rigging during the financial crisis.

- **Walter Hugh Merricks v MasterCard Inc [2017] CAT 16; [2020] UKSC 51**

A claim on behalf of 46.2 million individuals for damages for increased multilateral interchange credit card fees that had been held to infringe competition law and had potentially been passed on to them through increased retail prices was not suitable for a collective proceedings order under the Competition Act 1998 Pt I s.47B. Mastercard's appeal to the Supreme Court was heard in May 2020 [2020] UKSC 51 and the case remitted for reconsideration by the CAT.

- **Sainsbury's Supermarkets Ltd v (1) Mastercard Inc (2) Mastercard International Inc (3) Mastercard Europe SA [2016] CAT 11; [2018] EWHC 412 (Ch); [2018] EWCA Civ 1536; [2019] CAT 5; [2020] EWCA Civ 671; [2020] UKSC 24**

Following an eight week trial before the Competition Appeal Tribunal, the Tribunal held that the multilateral interchange fees imposed in the UK by MasterCard were a restriction of competition by effect and infringed TFEU art.101, but damages were to be assessed on the basis that without multilateral interchange fees, interchange fees would have been negotiated bilaterally at close to the level actually agreed.

- **Asda Stores Ltd & Ors v (1) Mastercard Inc (2) Mastercard International Inc (3) Mastercard Europe SA (4) Mastercard / Europay UK Ltd [2017] EWHC 93 (Comm)**

Following a six week trial before the Commercial Court, Popplewell J held that multilateral interchange fees set by MasterCard did not infringe TFEU art.101. They fell outside the scope of art.101(1) under the "ancillary restraint" doctrine since they were objectively necessary to the main operation of the scheme as a whole, which was neutral or positive in its competitive effect. In a hypothetical counterfactual world where the card operator set its fees at zero, the scheme would collapse and issuers would switch to issuing cards from a rival card operator. If the interchange fees had been a restriction of competition, they met the criteria for exemption under Article 101(3). The Claimants are appealing against this judgment to the Court of Appeal.

- **Mastercard Inc & Ors v Deutsche Bahn AG & Ors [2017] EWCA Civ 272**

The judge had been wrong to hold that a new claim concerning a different scheme rule arose from the "same or substantially the same facts" as claims already pleaded and so permission to amend should be granted under CPR r.17.4(2). The requirement in competition cases to consider the counterfactual world would

require very different factual enquires if the new claim was permitted, and the claimant could not rely on the contents of its own reply as justification for being given permission to amend. The Claimants are appealing against this judgment to the Supreme Court.

- **Sports Resolutions Arbitration**

Acting as Sole Counsel for a Rugby Club seeking to challenge the Salary Cap regulations which apply to the Rugby Premiership on the basis that they are anti-competitive and so unenforceable.

- **Arbitration before the Groceries Code Adjudicator**

Acting as Sole Counsel for a large supplier claiming against one of the major supermarket chains in the first arbitration brought before the Groceries Code Adjudicator, involving claims under the Groceries Code and competition law.

- **FDIC v British Bankers Association**

Acting on behalf of the British Bankers Association in defending competition law and deceit claims brought by the US Government in relation to the rigging of LIBOR during the financial crisis.

- Since it's outset, Matthew has acted for MasterCard in the high profile multi-billion pound High Court claims by most of the largest retailers in the UK including Tesco, Sainsburys, Asda, Morrisons, Dixons over fees on card transactions. There have been over twenty sets of proceedings in the Court of Appeal, Commercial Court, the Chancery Division and Competition Appeal Tribunal.

- **Channel TV v. OFCOM (Admin) (2010)**

- **Barclays Bank PLC v. Competition Commission [2009] CAT 27**

- **T-Mobile (UK) Ltd & Ors v. Vodafone Ltd & Ors v. OFCOM [2008] CAT 12**

- **Co-Operative Group (CWS) Ltd v. OFT [2007] CAT 24**

- **English Welsh & Scottish Railway Ltd v. EON UK PLC & ORR [2007] EWHC 599 (Comm)**

- **R (on the application of T-Mobile (UK) Ltd & Ors) v. Competition Commission & Anr [2003] EWHC 1566 (Admin); [2003] ACD 72**

Jurisdiction and Conflict of Laws

Matthew Cook advises and appears in cases involving conflict of laws issues, including choice of law issues in respect of restitutionary, tortious, contractual and equitable causes of action and jurisdictional disputes under the EU Council Regulation, the Brussels and Lugano Conventions and UK domestic law. Matthew also advises on anti-suit relief, both in relation to court and arbitration proceedings.

- **Claxton Engineering Services Limited v. TXM Olaj-Es Gazkutato KFT [2010] EWHC 2567 (Comm)**

Company and Insolvency

Company & Insolvency Advising and appearing in numerous cases relating to disputes between shareholders (including under shareholders' agreements and by derivative action and/or s459 proceedings), in relation to allegations of director's misfeasance and in relation to corporate or personal insolvency, including injunctive proceedings. Recent experience includes:

- **In The Matter of Kilopress Ltd (Norris J., 22 April 2010)**

For the applicant in declaratory proceedings that found an unfair prejudice petition under the Companies Act 1985 s459 had been settled as there had been a valid CPR Part 36 offer made by the petitioner to sell his shares and that an offer had been accepted.

- Advising and appearing (with John McCaughran Q.C.) for a US medical equipment supplier in relation to disputes arising out of a share sale/purchase agreement and breaches of fiduciary duty/fraud by directors of a UK subsidiary.
- Advising (with Mark Barnes Q.C. and Ken MacLean Q.C.) in High Court proceedings between Enron and TXU arising out of Enron's insolvency and collapse.
- Advising (with Elizabeth Gloster Q.C.) in respect of disputes arising out of the insolvency of English and American Insurance Company Ltd

Sale of Goods and Supply of Goods and Services

Matthew Cook has advised in relation to and appeared in numerous cases, (including disputes relating to satisfactory quality of goods), concerning the enforceability of consumer credit contracts and hire purchase and lease finance agreements.

Notable experience includes:

- **Wilson v. Robertsons (London) Ltd [2005] EWHC 1425 (Ch); [2006] 1 WLR 1248; [2006] EWCA Civ 1088**

Insurance and Reinsurance

- Advising in relation to disputes arising under insurance and reinsurance contracts including choice of law disputes.
- Advising (with Elizabeth Gloster Q.C.) in respect of disputes arising out of the insolvency of English and American Insurance Company Ltd

Professional Liability

- Advising and appearing (with Neil Kitchener) in auditors negligence proceedings.
- Advising and appearing in negligence proceedings brought against Nottingham Law School.
- Advising and appearing in numerous cases relating to allegations of negligence against solicitors and investment advisers.
- Advising (with Irish Senior Counsel) in relation to disputes relating to trustee malpractice and conflict of interest.
- Involved for 6 months as a pupil in the preparation for the Unilever v Merrill Lynch trial in October 2001 - the first case to go to trial in respect of allegations of negligence against a fund manager.

What the Directories Say

"Matthew is extremely knowledgeable, responsive and decisive. He is increasingly a go-to silk for complex and technical issues, and for hearings in the competition law space." (Competition - Chambers & Partners 2024)

"His ability to digest huge amounts of complex information and produce synthesised and succinct arguments is impressive." (Competition - Chambers & Partners 2024)

"Matthew is a fountain of knowledge who is all over the facts. He works with client objectives to reach the desired outcome. His advice on all procedural aspects is strong. He works very well with all levels of seniority of our team, and is willing to muck in." (Competition - Chambers & Partners 2024)

"A real details man, in the best possible sense. He had the best understanding of the facts of anyone in the case; he has hugely impressive recall and comes up with some good points." (Competition and EU Law - Chambers & Partners 2021)

"An excellent advocate, very commercially aware of the bigger picture, who just takes the judge through the case calmly." (Commercial Dispute Resolution - Chambers & Partners 2019)

Particularly experienced in contentious competition law issues, including the representation of defendants and claimants in private damages actions following cartels. "A very experienced commercial litigator." "He's really good to work with and provides a very polished product." (Competition and EU Law - Chambers & Partners 2019)

'An amazing breadth of knowledge, particularly in relation to finance/payment cards in the context of competition litigation.' (Competition and EU Law - Legal 500, 2018/2019)

'His synthesis of complex financial documentation is fast, insightful and reliable. Good advocacy skills to boot.' (Energy and Natural Resources, Legal 500, 2018/19)

"Particularly adept at assessing the commercial issues at play and giving practical advice." "Quick to respond and very efficient, he's one of the quickest workers at the Bar." (Commercial Dispute Resolution, - Chambers & Partners 2018)

Particularly experienced in contentious competition law issues, including private actions and arbitration. "He has an amazing background knowledge, produces excellent written work and his advocacy is very good." (Competition & EU Law - Chambers & Partners 2018)

He wins plaudits from the market for his knowledge of competition and regulatory matters in particular, but is also active in other areas such as banking and fraud. "He is extremely bright and exceptionally numerate. In one recent case he had a better grasp of the quantum arguments than anyone at trial, and that includes the experts." (Commercial Dispute Resolution - Chambers & Partners 2017)

Has a broad corporate and commercial practice and is gaining a strong reputation for competition litigation. He is notably active in follow-on damages cases. "He has an excellent knowledge of the law and an impressive ability to assimilate complex information and get straight to the point. Matthew is charming and a real pleasure to work with." (Competition & EU Law - Chambers & Partners 2017)

'Innovative in his legal arguments.' (Competition & EU Law - Legal 500 2017)

'He moves matters along with realistic advice without losing sight of any risks involved.' (Energy & Natural Resources - Legal 500 2017)

'Versatile junior called upon by instructing solicitors to appear in a range of contentious proceedings. He is especially adept at handling competition cases, and offers clients additional expertise in relation to banking and finance and civil fraud matters.' *'He's great at spotting legal arguments, and at cutting through the facts to focus on what's important for us'. "Very commercial and efficient junior counsel".* (Commercial Dispute Resolution – Chambers & Partners 2016)

'Handles competition law litigation and arbitration as part of his broader commercial practice.' *"Excellent in terms of the support he gives, the technical expertise he has and the strategic skills he possesses. He has a good eye for how to best run arguments."* (Competition & EU Law – Chambers & Partners 2016)

'A senior junior who regularly handles major commercial cases and international arbitrations, he is particularly strong on the energy side. Sources praise him for his intellectual ability and user-friendliness.' *"Extremely bright and exceptionally numerate."* *"He's a good, experienced junior who gives quick, clear advice, is very user-friendly and is almost always available to talk."* (Commercial Dispute Resolution – Chambers & Partners 2015)

'Handles both competition law and wider commercial and company litigation. He has been active of late in a number of high-profile cases, such as the MasterCard litigation.' *"Outstandingly bright, he is a highly capable litigator."* (Competition & EU Law – Chambers & Partners 2015)

'Handles the full range of commercial law, and offers niche expertise in competition law. "Extremely bright and exceptionally numerate." *"Provides efficient, pragmatic, no-nonsense advice."* (Commercial Dispute Resolution – Chambers & Partners 2014)

'Has a broad commercial background that complements his developing expertise in the competition sector. He has handled complex challenges to competition and cartel decisions, and has also acted on a number of high-profile cases in the water sector.' (Competition & EU Law – Chambers & Partners 2014)

Qualifications

Queen Mother's Scholar of the Middle Temple (1997)

Harmsworth Entrance Exhibition (1997)

Elected as Exhibitioner of Oriel College (1998)

Oriel College Prize for Degree Results (1998)

British Academy Major Scholarship (1999)

Allen & Overy Prize for Insolvency (2000)

Highest Mark in BCL Conflict of Laws Papers (2000)

Oriel College Prize for Degree Results (2000)

Education

Oriel College, Oxford (1995-1998; 1999-2000) BA (Hons) Law - (1st Class) (top five) BCL - Distinction (top five)

Other academic achievements Queen Mother's Scholar of the Middle Temple (1997)

Harmsworth Entrance Exhibition (1997)

Elected as Exhibitioner of Oriel College (1998)

Oriel College Prize for Degree Results (1998)

British Academy Major Scholarship (1999)

Allen & Overy Prize for Insolvency (2000)

Highest Mark in BCL Conflict of Laws Papers (2000)

Oriel College Prize for Degree Results (2000)

Awards



Contact Clerks



Darren Burrows

Senior Clerk

+44 (0)20 7520 4611

dburrows@oeclaw.co.uk



Rob Smith

Deputy Senior Clerk

+44 (0)20 7520 4612

rsmith@oeclaw.co.uk



Jade Cassell

Deputy Team Leader

+44 (0)20 7520 4614

jcassell@oeclaw.co.uk



Ben O'Hanlon

Deputy Team Leader

+44 (0)20 7520 4604

bohanlon@oeclaw.co.uk



Jodie Ellerington

Team Leader's Assistant

+44 (0)20 7520 4620

JEllerington@oeclaw.co.uk



Calum Jenkins

Clerk

+44 (0)20 7520 4821

cjenkins@oeclaw.co.uk