

## Sa'ad Hossain KC

Barrister Call 1995 Silk 2013



# **Scope of Practice**

• Arbitration • Banking and Financial Services • Commercial Litigation • Jurisdiction and Conflict of Laws • Civil Fraud and Investigations • Economic Torts • Company and Insolvency • Insurance and Reinsurance • Energy and Natural Resources • Professional Liability

## Overview

Sa'ad Hossain's practice covers the full range of domestic and international commercial litigation, advice and arbitration.

Singled out for his work in some of the highest profile commercial cases fought in London, Sa'ad's work includes complex, high-value disputes in energy/oil and gas, inc. development, operating, processing, JV and M&A disputes, and wholesale and retail energy supply (inc. price cap/SoLR/hedging) disputes; banking and finance; civil fraud and asset tracing investigations; company law matters, particularly shareholder disputes; and claims involving complex questions around jurisdiction and choice of law. As well as appearing regularly for clients in High Court applications, trials and appeals, Sa'ad also has considerable experience of arbitration matters, including in ICC, LCIA, SCC and ad hoc proceedings.

# **Examples of Recent Cases**

### **Commercial Litigation**

Sa'ad deals with a wide range of commercial disputes including in relation to share sale agreements and indemnities, joint ventures, joint operating agreements, agency and distributorship contracts and tort disputes - including

conspiracy, unlawful interference, professional negligence and breach of confidence/privacy.

Recommended in the leading directories as an advocate and adviser in complex commercial disputes:

"Gets more into the detail of cases than most." "His advice is always clear, considered and commercial, and he's excellent in front of the client." Commercial Dispute Resolution, Chambers Global 2020

#### Recent work includes:

#### • Travelport Ltd v WEX [2020] EWHC 2670 (Comm)

For the sellers of a travel payments business in a \$1.7 billion transaction in the trial of preliminary issues relating to whether the "Material Adverse Effect" clause in the contract releases the buyers from the obligations to close as a result of the effect of the Covid-19 pandemic.

#### • SDIR (Sports Direct) v. The Rangers Football Club Limited

Acting for Sports Direct in the Commercial Court obtaining urgent injunctive relief, determination of construction issues, and final declaratory relief, concerning disputes about matching rights in relation to Rangers' kit and branded products. Arising from contracts entering into following the compromise of derivative proceedings relating to prior arrangements, in which Sa'ad also acted as advising counsel prehearing.

#### GAMA Aviation v Volare Aviation and Others

For GAMA at trial of numerous commercial disputes between aviation chartering and maintenance companies, arising from an exit agreement between GAMA and its former CEO. Numerous issues of contractual construction, fiduciary obligations, technical aviation issues. Settled part way through a 4 week trial.

#### Lehman Brothers' Special Financing v. NPC and PSALM

For LBSF in the Commercial Court in proceedings concerning Close-Out Amount calculations following an Event of Default in interest rate swaps. The leading case on the objective nature of reasonableness under the 2002 ISDA terms, requirements of good faith, and the ability to revise calculations. Also involving complex expert evidence regarding pricing of long term swaps in illiquid markets.

#### • Brown v. British Car Auctions Limited (Re: Tradeouts Limited)

For BCA defending unfair prejudice claims arising out of its purchase of a developing on-line dealer to dealer sales platform. 4 week evidence heavy trial in the ChD essentially revolving around an unsuccessful allegation of a concerted attempt to cause the Company to fail. Raising legal issues of – equitable restraints, fiduciary duty, good faith, contractual construction, and numerous factual questions of corporate governance.

#### • Ashany v. Eco-Bat

For Ashany in hearings ancillary to a dispute regarding anti-trust investigations into Eco-Bat. At first instance and in the CA, successfully displacing the default costs rules following discontinuance in Ashany's favour.

#### • TWUL v. Canal and River Trust Authority

For TWUL on appeal to the CA, a water rights case concerning the ability to convey property in a body of running water, and the statutory purpose of payment provisions in historical water rights statutes, leading up to the present regulatory regime.

#### • Sir Owen Glenn v Watson and Others

Leading a 3 counsel team for certain Defendant trust companies in heavy ChD proceedings arising out of the "Spartan" venture. Settled on behalf of the trust companies part way through a 3 month trial (trial continued

against Watson). A case raising numerous issues: joint venture obligations, fiduciary duties of nominee directors, equitable proprietary claims, unjust enrichment, ground rent securitisation, attribution of knowledge.

#### • Clean Power v. Network Rail

For Clean Power in ongoing Commercial Court proceedings concerning alleged breach of reasonable endeavour obligations and loss of opportunity to construct EfW power plants on Network Rail sites.

#### • MHB v. Structadene

Obtained summary judgment for the claimant bank on sums due under ISDA documentation. The issues raised were set-off and netting under ISDA documentation, and the relevance of mis-selling cross-claims. Currently, the leading case on the ISDA early termination set-off provisions.

#### McKillen v. Misland

As lead Counsel successfully obtained judgment on preliminary issues concerning the interpretation of preemption provisions in the context of the acquisition of control of Claridge's, the Connaught and the Berkeley hotels by the client companies associated with the Barclay Brothers. A leading authority on the approach to interpretation of pre-emption provisions.

#### • Re: Coroin (trial and appeal)

For the Barclay Interests in an expedited trial and appeal, successfully defending various allegations of wrongdoing in the context of a hostile acquisition of control over the Coroin hotel group by the Barclay Brothers. Issues arose of shareholder agreement interpretation, pre-emption provisions, contract formation, good faith obligations, unfair prejudice, economic torts and breach of fiduciary duty. The litigation also raised complex procedural issues including: expedition, preliminary issues, non-party disclosure and privacy regimes.

 Advised in connection with domestic and foreign satellite litigation following trial, including jurisdictional issues.

#### • BG v. Talisman

For Talisman as lead counsel in relation to claims and counterclaims for operating expenditure in relation to North Sea oil production arrangements. Successfully obtained judgment on preliminary issues as to the scope of operating expenditure under new production arrangements. Issues raised included the interpretation of operating agreements, restitution, operation of consent provisions, and prudent operatorship.

#### • Dorchester v. BNP Paribas and Landprop

For the Inter-IKEA group of companies in case concerning a substantial Stratford property development site. Issues raised were alleged breach of confidence and non-disclosure obligations, together with substantial damages issues requiring expert consideration of planning conditions,  ${\rm s}106$  agreements, development funding, and expert development profit assessment.

#### • London Underground v. Freshfields

For Freshfields (as junior silk) in a prominent professional negligence claim arising from the collapse of the PPP for the refurbishment and maintenance of the London Underground, and the subsequent payment of substantial sums pursuant to a complex PPP structure. Issues of PPP structure, interpretation of interlocking finance and operational agreements, bond terms and conditions, solicitor's duty and standard of care, and causation and loss, including Wrotham Park principles.

#### MFL v. Bank Leumi

For the defendant bank in a claim for overuse of banking software. Issues of jurisdiction (as between England

and Israel), and underlying issues of contractual interpretation, usage, agency, authority and estoppel.

#### • PIC v. Dow

For the claimant in Commercial Court proceedings seeking to set aside an arbitration award on grounds of procedural irregularity. Issues concerned the scope of challenge, and the application of the Achilleas to the rules of remoteness of damage.

#### Jurisdiction and Conflict of Laws

Sa'ad has recently acted and advised in relation to jurisdictional and conflict of laws disputes in relation to various jurisdictions including: Ireland, Israel, California, and Kuwait.

Examples of recent and notable work:

#### • Kwok v UBS AG

Acting for an ultra-high net worth Chinese businessman and dissident, Mr Miles Kwok, and his companies against UBS to claim damages in excess of US\$500 million arising out of the total loss of a leveraged investment in shares in a Chinese company listed on the Hong Kong stock exchange. Relating to the exercise of its security rights during a margin call. Resisting the Defendant bank's challenge to the jurisdiction of the English courts to hear claims relating to allegations of negligence.

# • PJSC Bank "Finance and Credit" v Zhevago [2021] EWHC 2522 (Ch) Successfully obtained a stay for the Fifth Defendant on the ground of forum non conveniens in a substantial case involving alleged fraudulent schemes to transfer assets from Ukrainian financial institutions. The Court determined that the Fifth Defendant's application for strike-out did not amount to a submission to the jurisdiction of England & Wales.

#### Unicredit Bank GmbH v RussChemAlliance LLC [2024] EWCA Civ 64

Acted in the most recent appellate case interpreting Enka v Chubb principles applicable to ASIs in support of foreign arbitral proceedings. The Court held that the general rule that an arbitration agreement is governed by the law applicable to the main contract was not, in this case, displaced by the law of the seat (French law). The arbitration agreement between the parties was governed by English law. Accordingly, the Court had jurisdiction to grant an anti-suit injunction to restrain the respondent's pursuit of proceedings in Russia.

#### Claridge's litigation

Advised and acted in relation to jurisdictional questions affecting multiple competing proceedings issued, respectively, in Ireland and England and Wales, subsequent to the Barclay companies' successful defence of the original English Re: Coroin litigation concerning the validity of control acquired over the hotel group

#### Nets v. Sanmina

Advised and acted in litigation securing English jurisdiction in respect of commercial agency disputes notwithstanding exclusive Californian jurisdiction and governing law provisions. A case raising novel legal issues as to the mandatory effect of the Commercial Agents Regulations.

#### Acting as expert

Sa'ad has also acted as expert in Cypriot proceedings on the scope of Article V of the New York Convention.

#### Arbitration

Sa'ad has wide experience as leading, sole and junior counsel in ICC, LCIA, SCC and ad hoc arbitrations, as well as

extensive experience of expert determinations. His expertise includes ancillary proceedings, in particular: arbitral award challenges; arbitral validity challenges; ancillary orders; and stays of court proceedings in favour of arbitration.

Recent and notable cases include:

#### LCIA Arbitration

Leading counsel for the respondent in a case seeking specific performance/damages in relation to completion of a share purchase agreement concerning Middle Eastern insurance businesses.

#### • ICC Price Review

For the claimant energy major, seeking a price review in relation to a substantial European long term energy supply contract. A case raising a wide variety of issues of construction of price review provisions, and economics issues concerning the effects on gas values and merit orders of energy supply and demand changes, including renewables, shale gas, government regulation and CO2 allowances.

#### • ICC Shipbuilding dispute

For the claimant shipbuilder in a substantial dispute relating to a contract for the construction and delivery of coastguard vessels. Issues raised included construction of the delivery and performance specifications, and detailed expert ballistics and armament evidence.

#### • ICC Petrochemicals merger (Dow v. PIC)

As junior counsel and lead advocate on quantum for the effective buyer in relation to the non-completion of the world's largest petrochemicals merger. A case raising issues of Kuwaiti constitutional law, SPA construction, and many quantum issues including: Achilleas principles of remoteness, date of assessment (Golden Victory), business valuation methodology, damage to credit rating, bond pricing and term loan pricing, event-studies of share price fluctuation, and global energy and petrochemical market developments.

#### • PIC v. Dow

For the claimant in Commercial Court proceedings challenging an arbitral award on grounds of serious procedural irregularity. A case raising issues as to the nature and extent of procedural challenges, and substantive issues of the law of remoteness.

#### Expert determination of electricity pricing

As leading counsel for the electricity purchaser in a case concerning the interpretation of pricing formulae in an electricity allocation agreement. An energy case raising issues concerning carbon price support rates and climate change levy amendments.

#### • ICC SPA indemnity dispute

For the seller of an international waste management business, in relation to indemnities for regulatory penalties.

#### • LCIA hotel development dispute

For the claimant luxury brand in relation to the development of branded luxury hotels in the Middle East.

#### • SCC SPA and pensions dispute

For the claimant, SEB, in a long running claim for indemnity/damages in relation to the sale of a pensions business, in the context of substantial payments to third parties under the Pensions Review.

• Also for SEB in several related court proceedings, including: defending a challenge to the validity of the arbitration; breach of warranty of authority proceedings; and defending an award challenge on error of law

grounds.

#### • Price Indexation reviews

Several ad hoc expert determinations concerning long term energy price indexation provisions in the context of changes in environmental taxation.

#### • Ad hoc Utilities dispute

For a water company in relation to a construction/rectification dispute regarding water charges.

#### • Bluecrest v. Rusal

For the respondent facility agreement lender, obtaining a s.9 stay of proceedings in favour of arbitration, involving issues of jurisdiction and the construction of arbitration and jurisdiction clauses.

#### **Energy and Natural Resources**

Sa'ad has a substantial energy practice in upstream and downstream oil and gas, and in electricity supply and generation. He advises regularly in relation to operating, transportation and capacity agreements; decommissioning agreements; drilling rig and FPSO operation; take-or-pay obligations; price indexation and review; and oil hedging.

#### Current recommendations:

"His softly spoken eloquence masks a razor-sharp intellect. Importantly, he is also very down-to-earth and client-friendly, effortlessly summarising difficult legal issues into digestible nuggets." "He's very clever, very charming and receptive. If he promises to give you something he always does; he'll never let you down." Energy & Natural Resources, Chambers Global 2020

Recent and notable cases include:

#### • ConocoPhillips A/S v Aker BP ASA

Acting for the defendant in a price review dispute relating to the sale of gas produced from the Valhall field. Unusually, the dispute is being resolved in the High Court.

#### • Taga Bratani Limited & Ors -v- Rockrose USCS8 LLC

For the defendant in an trial concerning the hostile removal of Rockrose as operator of five oil and gas field blocks on the UK Continental Shelf in the North Sea known collectively as the Brae Fields. A case raising novel issues of construction, good faith, and the implication of rationality constraints on the exercise of contractual termination rights.

#### • Clean Power v Network Rail

For Clean Power in ongoing Commercial Court proceedings concerning alleged breach of reasonable endeavour obligations and loss of opportunity to construct EfW power plants on Network Rail sites.

#### • BG v. Talisman

For Talisman as lead counsel in relation to Commercial Court claims and counterclaims for operating expenditure in relation to North Sea oil production arrangements. Successfully obtained judgment on preliminary issues as to the scope of operating expenditure in the context of replacement production arrangements. Issues raised included the interpretation of operating agreements, restitution, operation of consent provisions, and prudent operatorship.

#### ICC Price Review

For the claimant energy major, seeking a price review in relation to a substantial European long term energy

supply contract. A case raising a wide variety of issues of construction of price review provisions, and economics issues concerning the effects on gas values and merit orders of energy supply and demand changes, including renewables, shale gas, government regulation and CO2 allowances.

#### • ICC Petrochemicals merger (Dow v. PIC)

As junior counsel and lead advocate on quantum for the effective buyer in relation to the non-completion of the world's largest petrochemicals merger. A case raising issues of Kuwaiti constitutional law, SPA construction, and many quantum issues including: Achilleas principles of remoteness, date of assessment (Golden Victory), business valuation methodology, damage to credit rating, bond pricing and term loan pricing, event-studies of share price fluctuation, and global energy and petrochemical market developments.

#### Capacity Reservation and Transportation Agreement

Advising in relation to disputed fees for reservation of capacity in a major pipeline system.

#### • LNG processing dispute

Advising in relation to regasification charges and contractual and restitutionary remedies at a major LNG terminal.

#### • Transocean v. Providence

For Providence, the hirer, advising and acting in relation to Commercial Court claims and counterclaims in relation to rig hire claims and rig defects.

#### • ADTI v. Endeavour

For Endeavour, the hirer, advising and acting in relation to Commercial Court claims and counterclaims in relation to rig hire, mitigation and rig defects.

#### • Force majeure obligations arising from strike action

Advising a major refinery in relation to the interpretation and application of force majeure provisions in the context of threatened industrial action potentially affecting upstream and downstream assets.

#### • Advice in relation to take-or-pay obligations

Advising an energy major as to the extent and nature of send-or-pay obligations in a very substantial long-term LNG supply contract, and the availability and interpretation of diversion cargo rights.

#### • Advice in relation to oil and gas joint venture

Advising an oil major in relation to arbitral and court proceedings in connection with a dispute with its joint venture partners in relation to Russian production assets.

#### • Standard Chartered Bank v. Ceylon Petroleum Corporation

For the bank, enforcing out-of-the-money oil derivative contracts. A case raising issues of contractual capacity, illegality, advisory duties, and non-reliance provisions in relation to zero cost-collars entered into by state owned corporations.

#### Expert determination of electricity pricing

As leading counsel for the electricity purchaser in a case concerning the interpretation of pricing formulae in an electricity allocation agreement. An energy case raising issues concerning carbon price support rates and climate change levy amendments.

#### • Price Indexation reviews

Several ad hoc expert determinations concerning long term energy price indexation provisions in the context of changes in environmental taxation.

#### • Ad hoc Utilities dispute

For a water company in relation to a construction/rectification dispute regarding water charges.

#### • Centrica v. Premier Power

For the (successful) Claimant in relation to a substantial dispute over the sharing of gas transportation costs along the undersea pipeline between N. Ireland and Great Britain, following Network Code changes and postalisation in N. Ireland.

#### Various production and operation costs disputes

Advising numerous clients in relation to North Sea production fields including in relation to: cost sharing under tie-in and TPOSA arrangements; uneconomic field notifications and disputes; force majeure in the context of non-delivery because of upstream equipment failure; and termination of transportation, processing and operation agreements.

#### Banking and Financial Services

Sa'ad has broad experience in banking and finance cases, including in relation to disputes concerning: ISDA documentation; interest rate swaps; oil derivatives; credit rating downgrades; SOCA notifications; "bad bank" asset transfers (NAMA and IBRC); CDS valuation; disputed bond terms and conditions; and disciplinary proceedings (market abuse).

Recent and notable cases include:

#### LBSF v. NPC and PSALM

For LBSF in the Commercial Court in proceedings concerning Close-Out Amount calculations following an Event of Default in interest rate swaps. The leading case on the objective nature of reasonableness under the 2002 ISDA terms, requirements of good faith, and the ability to revise calculations. Also involving complex expert evidence regarding pricing of long term swaps in illiquid markets.

#### MHB v. Structadene

Obtained summary judgment for the claimant bank on sums due under ISDA documentation. The issues raised were set-off and netting under ISDA documentation, and the relevance of mis-selling cross-claims. Currently, the leading case on the ISDA early termination set-off provisions. Also raising issues of the effect of the IBRC Act on Events of Default, and validity of IBRC assignments

#### • McKillen v. MFL

For the successful defendant, as part of the Claridge's litigation, in relation to preliminary issues concerning the validity of NAMA transfers of senior debt, raising issues of facility agreement interpretation, and statutory interpretation of the NAMA Act.

#### • Re: Coroin Limited

For the successful Barclay companies in the Claridge's litigation. A case raising issues of funding qualification and senior debt/mezzanine finance availability in the context of shareholder pre-emption disputes and allegations of breach of fiduciary duty.

#### • Standard Chartered Bank v. Ceylon Petroleum Corporation

For the bank, enforcing out-of-the-money oil derivative contracts. A case raising issues of contractual capacity, illegality, advisory duties, and non-reliance provisions in relation to zero cost-collars entered into by state owned corporations with the bank.

#### • LCIA Arbitration

For the hedge fund administrator, in a breach of contract and negligence claim concerning valuation of credit default swaps, duties of care and scope of duty in the context of hedge fund manager malpractice.

#### • Dow v. PIC

As lead advocate on quantum for the effective buyer in relation to the non-completion of the world's largest petrochemicals merger. Quantum issues raised included issues as to: credit rating downgrades; corporate bond issue pricing; rights issue losses; and term loan availability and conditions.

#### • Dorchester v. Landprop

As lead counsel for the Inter-IKEA group, a property development case, raising expert issues as to the availability, funding qualifications and terms of UK property development finance.

#### Company and Insolvency

Sa'ad has recently advised and acted in shareholder disputes concerning: pre-emption rights; rights issues; directors' duties; unfair prejudice; derivative proceedings; and connected allegations of dishonesty (in particular conspiracy and unlawful interference).

Examples of cases are:

#### • SDIR (Sports Direct) v. The Rangers Football Club

Acting for Sports Direct in the Commercial Court obtaining urgent injunctive relief, determination of construction issues, and final declaratory relief, concerning disputes about matching rights in relation to Rangers' kit and branded products. Arising from contracts entering into following the compromise of derivative proceedings relating to prior arrangements, in which Sa'ad also acted as advising counsel prehearing.

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shareholders, and s.994 requirements including conduct of the affairs of the company and the nature of unfair prejudice.

# What the Directories Say

"Sa'ad Hossain is so professional and charming - he really engages the judges." (Commercial Dispute Resolution, Chambers UK 2024)

"His intellect is second to none and he has a wonderful style with judges that is so impressive." (Commercial Dispute Resolution, Chambers UK 2024)

"Sa'ad Hossain is user-friendly, incisively intelligent and good on his feet." (Energy & Natural Resources, Chambers UK 2024)

"He is very sensible, commercially aware and very authoritative." (International Arbitration: Counsel, Chambers UK 2024)

"He is extremely user-friendly, very good with clients and a very nice man to deal with." (International Arbitration: Counsel, Chambers UK 2024)

Now one the leading silks in the commercial market and deservedly so. He combines strategic insight, creative thinking and an effective advocacy style devoid of pomposity or self regard to deliver great results for his clients in difficult cases.'

(Commercial Litigation, Legal 500 2022)

Very quick to grasp the issues and provide concise and clear advice on complex matters leading to good outcomes for the client.' (Energy; and International Arbitration: Counsel, Legal 500 2022)

"He's a first-stop shop for people wanting a heavy energy contractual problem sorting out." (Energy & Natural Resources, Chambers & Partners 2022)

"Sa'ad is a considered advocate who commands the judge's attention and presents cases in a well thought out and logical way." (Dispute Resolution: Commercial, Chambers & Partners 2022)

"He has a very nice, understated style." (International Arbitration: The English Bar, Chambers & Partners 2022)

"His softly spoken eloquence masks a razor-sharp intellect. Importantly, he is also very down-to-earth and client-friendly, effortlessly summarising difficult legal issues into digestible nuggets." "He's very clever, very charming and receptive. If he promises to give you something he always does; he'll never let you down." (Energy & Natural Resources, Chambers Global 2020)

"Gets more into the detail of cases than most." "His advice is always clear, considered and commercial, and he's excellent in front of the client." (Commercial Dispute Resolution, Chambers Global 2020)

"A superb modern-day KC." "He is very good on contract interpretation and has a very nice manner." (Energy & Natural Resources, Chambers UK 2020)

"A very methodical and calm thinker, he knows what it takes to win and he's very hands-on in his written work and advice." "A really nice guy who is understated but very well prepared."

#### (Commercial Dispute Resolution, Chambers UK 2020)

"Very proactive, hard-working, personable and effective." (International Arbitration (Counsel), Chambers UK 2020)

"Very methodical, cool and calm, and very astute in terms of getting the right result." (Commercial Litigation, Legal 500 2019-2020)

"Succinct and convincing, he demonstrates good empathy with clients." (Energy & Natural Resources, Legal 500 2019-2020)

"Gets more into the detail of cases than most." "His advice is always clear, considered and commercial, and he's excellent in front of the client." (Commercial Dispute Resolution, Chambers UK 2019)

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"A very clear thinker." "Clear, considered and commercial." (International Arbitration (Counsel), Chambers UK 2019)

Ego-free, razor-sharp intellect, with an advocacy style that is absolutely destructive.' (Commercial Litigation, Legal 500 2018-2019)

Excellent.' (Energy, Legal 500 2018-2019)

Has a fantastic depth of knowledge in the oil and gas sector, which really distinguishes him.' International Arbitration (Counsel), Legal  $500\ 2018-2019$ 

"He provides excellent strategic input and robust advice, and is a pleasure to work with." "A good commercial lawyer applying the law in a common-sense, practical way.", "He takes a thorough, hands-on approach and provides excellent strategic input and robust advice.", "He is practical, thorough and very easy to work with.", "He's quality, as he's so bright and capable. He's steeped in the industry and a real expert. He's also very responsive and user friendly.', "A clear leader in the new generation of silks, he's quick, efficient and a real team player." "A very thoughtful barrister with very strong drafting skills.", "A very user friendly lawyer, who is intellectually and legally adept.", "He manages to combine being incredibly brainy and very clear in his submissions with being approachable". "He is really good fun to work with and offers really clear, incisive advice"., "He has a mighty intellect"; "absolutely charming and very clever.", "His preparation of a case is excellent, and his knowledge of this sector is invaluable.", "He is obviously going to have a great future - he has the ability to take on information, works hard and impresses"; "measured, quick and proactive in his advice.", "I would single him out as someone who does fantastic work"; "he has a superb grasp of the law and is excellent on paper too.", "A terrific advocate with a hands on approach." Energy & Natural Resources, Commercial Dispute Resolution and International Arbitration (Counsel), Legal 500 and Chambers UK

## Education

Cambridge University, Gonville & Caius College: Natural Sciences

# 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