

MARK HARPER KC | MANCHESTER, LEEDS & BIRMINGHAM

Year of call: 1993

Year of silk: 2016

Qualifications: Downing College,
Cambridge – Law MA Hons (1989 –
1992), Hardwicke Scholar (Lincoln’s
Inn)

Clerked by: Gary Young Harry Young

AREAS OF EXPERTISE:

Arbitration Banking & Finance
Company Commercial Litigation
Insolvency Partnership Professional
Negligence Real Estate Litigation
Sport



Profile

Mark is a member of the Business and Property team in Chambers. As evidenced by his ranking in Chambers & Partners as a leading silk across 6 practice areas (Banking, Chancery Litigation, Commercial Dispute Resolution, Company, Partnership and Professional Negligence) and a “Star of the Bar”, he is viewed (by peers, solicitors and clients) as the “complete all-rounder” being equally adept at all aspects of the advocate’s role which he couples with tactical/strategical acumen and an affable and approachable style. His skills and reputation as a robust cross-examiner mean that he is particularly sought after for trial work.

Chambers & Partners 2022 Stars of the Bar:

A “superstar on the Northern Circuit,” Mark Harper KC is said to be “right at the top of the tree for chancery work.” In addition, he enjoys band one Chambers rankings across banking and finance, commercial dispute resolution, company and professional negligence; his partnership practice also merits a listing. Commentators enthuse that “his manner with clients is fantastic, and he has the mindfulness to give them meaningful advice,” adding that “he is an unrivalled advocate and a brilliant cross-examiner.” His focused approach is admired by our sources, with one stating: “He is extremely sharp and assimilates detail quickly,” while another adds: “He manages to cut through complicated and document-heavy cases and has a very succinct style.” “Calm and never flustered,” Harper is also described as “a team player, and a silk who is not afraid to roll up his sleeves.” He is also commended for his determination by one commentator: “He is prepared to hold his ground and stare down the barrel of the gun.”

Mark appears regularly in the Court of Appeal, High Court and in Arbitrations.

He is the Chair of the Northern Chancery Bar Association and the Treasurer to the Northern Circuit

In October 2022, Mark was elected Deputy Head of Chambers.

Year of Call: 1993

Year of Silk: 2016

Areas of Expertise

Arbitration

Mark’s arbitration practice encompasses all his areas of expertise.

Banking & Finance

Throughout his time at the Bar, Mark has regularly advised and acted on behalf of a number of major banks and finance providers in relation to Banking Litigation to the extent now that he is regarded as one of the leading silks outside London in this area of work. His practice in this regard encompasses (among other things) all issues relating to security enforcement (including challenges to the validity of the security), security rectification and completion, title defect resolution, restitution (in particular recovery of payments by mistake), fraud, guarantees, bills of exchange, consumer credit and professional negligence in the context of the bank/customer relationship.

Company

As an adjunct to his Company Litigation practice, Mark is regularly instructed to provide advice on matters relating to the internal conduct of the affairs of companies and other limited entities including issues surrounding the proper convening and conduct of meetings, reduction of share capital, removal of director/shareholders, alterations to Articles of Association, Shareholder Agreements.

Commercial Litigation

Mark regularly provides representation and advice on litigation proceeding in the Chancery Division, Commercial Court, Mercantile Court and Technology & Construction Court with his expertise in this area including agency, company litigation (including shareholder disputes and claims against directors/fiduciaries), confidential information, contract disputes, employer/employee post-termination disputes, insurance, restraint of trade and sale of goods.

Insolvency

Mark regularly provides advice and representation in relation to all issues arising out of corporate and personal insolvency with particular emphasis on (a) contentious proceedings in relation to allegations of misfeasance, transactions at an undervalue, preference and transactions to defraud creditors; (b) challenges to the appointments and/or decisions of office holders; (c) income payments orders in the context of personal bankruptcy and (d) suspension of discharge in the context of personal bankruptcy. This aspect of Mark's practice also includes Company Director Disqualification and Public Interest Winding Up with him building on the experiences he had whilst acting for the Secretary of State for in excess of 12 years.

Partnership

Mark has developed a leading practice in the area of partnership law (as recognised by his recommendation in this field in Chambers & Partners). His practice in this area involves advice and representation in relation to all aspects of partnership law (including the applicability of Equality Legislation in the context of partnership disputes) and he is a regular "port of call" for professional partnerships in the North West (or individual partners within such partnerships) when advice is needed in connection with partnership matters, in particular exclusion of partners, breakdown in relationships between partners and the protection of partnership assets consequential upon the same.

Professional Negligence

Mark has considerable experience of providing advice and representation to both Claimants and Insurers in relation to professional negligence claims involving solicitors, accountants, financial advisers, and surveyors. This practice involves a considerable amount of work concerning the mis-selling of financial, investment and tax-saving products and schemes including products such as alternative invest markets, unregulated collective investment schemes, film schemes, environmental/eco tax saving schemes, endowment purchase schemes etc.

Real Estate Litigation

As represented by his reported cases Mark has experience of property litigation in a variety of areas

Sport

Mark's Dispute Resolution Practice (see above) involves sports related disputes and his experience in this regard is illustrated by his representation of Sir Bradley Wiggins and (with Paul Chaisty QC) of Wayne Rooney in their disputes with their former management companies (see under Commercial Litigation). Mark's practice also encompasses providing advice and representation in relation to (a) proceedings before Sports Tribunals; (b) arbitrations; (c) challenges in the Courts to the disciplinary decisions of Sporting Bodies (including applications by disciplined clubs to be reinstated to competitions or leagues); and (d) contractual disputes between players and clubs etc.

Significant/Reported Cases

Mark acted for Michael Turl in successfully opposing the appeal by the FA that challenged as unduly lenient the fine imposed on him by a Regulatory Commission following his admission that he breached Regulation 4.3 of the Owner and Director Test Regulations by providing a false declaration

Cardiff City v Barnes & others - currently acting for Carly Barnes in defending a claim brought against her in her capacity as a football agent arising out of the fall-out between Cardiff City and Malky Mackay and Iain Moody. Listed for trial in London Commercial Court in October

MTC (UK) Ltd v Sir Bradley Wiggins [2014] - represented Sir Bradley in defending the claim brought by his former management company for alleged breach of contract in terminating the management agreement and an account of commissions/payments due.

Proactive Sports Management Ltd v Rooney & Others [2010] EWHC 1807 (QB) (restraint of trade in the context of an agreement between football player and agent)

Proactive Sports Management Limited v Rooney [2011] EWCA Civ 1444 - (acting for Wayne Rooney (lead by Paul Chaisty QC) in successfully upholding the first instance decision that his Image Rights Representation Agreement was an unreasonable restraint of trade).

Bolton Wanderers FC v Middlesbrough FC - Premier League Arbitration in relation to fees due following transfer of Michael Ricketts and construction of words "live Sky Games" in a transfer contract.

Hemmingborough Cricket Club v Yorkshire & District Senior Cricket League - acting on behalf of the League in opposing an application for an injunction and a claim for damages following the decision by the League to exclude the Club from the competition pursuant to the disciplinary procedures of the League.

Hunslett Warriors Amateur Rugby League Football Club v (1) National Conference League and (2) British Amateur Rugby League - acting on behalf of the Leagues in successfully opposing an application for an injunction by the club to be reinstated in the Leagues following their demotion pursuant to the disciplinary procedures of the Leagues.

A.J. Sullivan v St. Helens RFC -acted on behalf of the player in this contractual dispute with his club over an entitlement to a testimonial bonus.

Denis Betts v Wigan Rugby League Football Club - acted on behalf of the player/coach pre-litigation in a contractual dispute with his club.

Memberships

Chancery Bar Association

Northern Chancery Bar Association

Northern Circuit Commercial Bar Association

Reported/significant cases

Durose v Tagco BV [2022] EWHC 3000 - dismissal of unfair prejudice petition where conduct of PE investor was permitted by the investment agreements and there was no basis to impose equitable restraints on the exercise of those powers.

Asher v Jaywing Plc [2022] EWHC 893 - claim to enforce an oral contract modifying the earn-out provisions under a share purchase agreement in the circumstances of a no oral modification clause

AAA V CCC [2022] EWCA Civ 479 - appeal against unduly lenient committal order imposed in relation to breaches of super-injunction

R (on the application of Fortt) v Financial Services Compensation Scheme Ltd [2022] EWHC 152 (Admin)

Kelly v Baker [2021] EWHC 3643 - extension of time for service of witness statements in circumstances where there was continuing non-disclosure

Hodgson v Creation Consumer Finance Ltd [2021] EWHC 2167 (Comm) - acting for the C in a test case in which it was alleged and found that a supplier of solar panels had made misrepresentations as to the performance of the solar panels and that the company financing the purchase were liable for the same. Case also deals with approach to assessment of damages in such cases.

Re Electrical Control Installations Ltd [2021] EWHC 2661 (Ch) - unfair prejudice petition where majority alleged to have conspired to divert business of the company away to a company in which the majority were interested

Taylor Goodchild Ltd v Taylor [2021] EWCA Civ 1135 - application of Henderson v Henderson abuse of process to claims pursued by a company against a former director/shareholder where there had been a determined unfair prejudice petition in which the facts giving rise to the claims were live. Important decision for those advising or acting for parties to unfair prejudice claims.

Re Macom GmBH (UK) Ltd [2021] EWHC 1661 - unfair prejudice petition by (unusually) majority shareholder for breaches of shareholders agreement. Court found petition established but declined to make a buy-out order and instead imposed a management order

Ardent Advisors Ltd v UK Web Media Ltd & others [2021] EWHC 63 - construction of payment calculation mechanism in corporate finance advisor agreement

AAA &BBB v CCC [2020] EWCA Civ 846. *Paul Chaisty KC (instructed by IPS Law) successfully represented the Respondent. The appeal was from a final injunction granted by HHJ Eyre KC on the Respondents' summary judgment application (on which Mark also acted) to enforce the confidentiality, non-disparagement and privacy obligations contained in Share Purchase and Employee Compromise Agreements. On appeal the Court considered the question(s) as to the width of the relief granted and the certainty of the terms used in the injunction and the underlying agreements.*

Re Jones [2020] EWHC 1112 (Ch) - statutory demand in respect of unpaid directors' loan account where an issue as to whether or not loans drawn in the anticipation of dividends could be recovered where dividends did not materialise.

Secure Mortgage Corporation Ltd v Harold & others [2020] EWHC 1364 (Ch) - acting for the Company in obtaining declaratory relief that the appointing executors were not entitled to appoint an administrator under Sch B1 Insolvency Act 1986 as it had not demonstrated that the deceased had succeeded to the security that had been relied upon or that there was an enforceable debt due and owing. Also; the point that because probate had not been taken out the Executors were unable to prove title to the security

Maher v Maher [2020] EWHC 1000 (Comm) - claim concerning the administration of a trust that was the shareholder in the family company of which the trustees were directors. Consideration as to whether or not all or some of the present trustees should be removed and whether a binding decision taken by the trustees to sell the shares.

Maher v Maher - Chancery Division [2019] EWHC 3613 (Ch) 26 Nov 2019 - Civil evidence; Trusts - Bank statements; Removal; Specific disclosure; Trustees

Robert Glew and Denton and Co Trustees Ltd v Matossian-Rogers - Chancery Division [2019] EWHC 3183 (Ch) 22 Nov 2019 - Company law; Civil procedure - Breach of fiduciary duty; Derivative claims; Directors' powers and duties; Minority shareholders; Permission to issue

Re Audas Group Ltd [2019] EWHC 2304 (Ch) - successfully acted for the petitioner in establishing that he had been unfairly prejudiced as the majority shareholders had dismissed him when acting in bad faith and/or for improper purpose, had not offered him fair value for his shares and had managed the company post his exclusion without complying with the terms of the Shareholders Agreement

Buckingham Homes Ltd v Rutter & Others [2019] EWHC 1760 (Ch) - successfully acted for the defendant directors in defending a claim that they had breached their statutory duties by selling a property as opposed to retaining and developing it

Philbin v Davies [2018] EWHC 3472 - setting aside a statutory demand presented on the basis of the alleged shortfall debt under a consumer loan where the agreement was subject to an unfair relationship challenge and there was a claim that the security had been sold at an undervalue.

Re Capital Funding One Limited (in Administration) [2017] EWHC 3567 - issue as to what were the applicable repayment terms under a loan and therefore whether or not Administrators had been validly appointed

Zavarco Plc v Nasir [2017] EWHC 2877 - requirement for subscriber shares of €36 million to be paid in cash and the interaction between sections

Woolliff v Rushton-Turner & others [2017] EWHC 3129 – unfair prejudice petition considering whether or not a joint venture company was a quasi-partnership and whether or not removal and/or dilution of shares was unfairly prejudicial conduct

Woolliff v Ruston-Turner & others [2016] EWHC 2802- jurisdiction under s996 Companies Act 2006 wide enough to include a payment of compensation by the Company to the Petitioner for wrongful dismissal.

Utilise TDS Ltd v Neil Davies & others [2016] EWHC 2127 – whether or not an implied term reserving the Cs' rights to proceed with claims against other defendants was to be implied into a contract of settlement

Brian John Harris v Microfusion 2003-2 LLP & others [2016] EWCA Civ 1212 – representing the C (being the representative of a group of investors in a Film Partnership Scheme) seeking permission to bring a common law derivative claim against the managing partners of the LLP

Redstone Mortgages Ltd v B Legal Ltd [2014] EWHC 3398- Mark has (together with Paul Chaisty KC) acted and provided advice to the Claimant where the Claimant was the transferor of sub-prime mortgages) in 4 x test professional negligence claims against the solicitors who were responsible for perfecting the security and who alleged that their obligations had been circumscribed by a course of dealing with the transferee and the presence of title insurance

Darren Neil Masters v Barclays Bank Plc [2013] EWHC 2166(Ch) -jurisdiction to hear a bankruptcy petition under the Insolvency Act 1986 s265(1)(c)(ii) in respect of a debtor ordinarily resident in Florida in connection with aircraft financing agreed within the jurisdiction.

Sikorski v Sikorski [2012] EWHC 1613 –unfair prejudice petition and the circumstances in which a breach of a shareholders agreement could found such a petition and the circumstances in which relief other than a share-purchase order would be appropriate

Proactive Sports Management Limited v Rooney [2011] EWCA Civ 1444 - (acting for Wayne Rooney (lead by Paul Chaisty KC) in successfully upholding the first instance decision that his Image Rights Representation Agreement was an unreasonable restraint of trade).

Proactive Sports Management Ltd v Rooney & Others [2010] EWHC 1807 (QB) (restraint of trade in the context of an agreement between football player and agent)

Quinn v CC Automotive Group Ltd (t/a Carcraft) [2010] EWCA Civ 1412 – apparent authority and the issue of the knowledge on the part of the person dealing with the apparent agent which will prevent them from relying upon the apparent authority

Office of Fair Trading v Miller [2009] EWCA (Civ) 34 (committal proceedings in the context of breaches of Stop-Now Orders)

Nigel Fryer Joinery Services Limited v Ian Firth Hardware Limited [2008] EWHC 767(Ch) (issues of repudiation and compensation entitlement under the Commercial Agents Regulations)

Secretary of State for Trade & Industry v Thornbury [2008] BCC 768 (Crown Debts allegation in Directors Disqualification Proceedings)

AG (Manchester) Ltd (formerly Accident Group Ltd) (In Liquidation), Re [2008] EWHC 64 (Ch); (acting for former Finance Director of the Accident Group in relation to Directors Disqualification Proceedings)

Secretary of State for Trade & Industry v Gill & others [2006] BCC 725 (Directors Disqualification Proceedings arising out of insolvency of World of Leather and Uno)

Forrest & Sons Limited v CGU Insurance Plc [2006] Lloyd's Rep. I.R. 113(variation of risk, alterations, disclosure in relation to insurance contract)

Secretary of State for Trade & Industry v Gill & others [2005] BCC 24 (amendments in Directors Disqualification Proceedings)

Customs & Excise Commissioners v Anglo Overseas Ltd [2004] EWHC (Ch) 2198 (disputed winding up petition in relation to unpaid excise duty claimed from innocent guarantor following "slaughtering" of consignments)

First Quench Retailing Limited v Whitbread Plc [2004] EWHC 366 (Ch)(rectification of commercial contract)

Lavelle v Lavelle [2004] EWCA Civ 223 (presumption of advancement)

Russell v Finn [2003] EWCA Civ 399 (right of way and the construction of the extent of the dominant land)

Mulvaney v Gough [2003] 1 WLR 360 (CA) (easement - enjoyment of garden)

Fortman Holdings Ltd v Modem Holdings Ltd [2001] EWCA Civ 1235 (construction of accelerated payment(s) clause)

Conroy v Kenny [1999] 1 WLR 1340 (unenforceable money-lending contracts)

Halstead v Manchester City Council [1998] 1 All ER 33 (interest on CPO compensation)

Publications

"Can I have my deposit back please" (insolvency position where consumer deposits are used to fund insolvent companies) [2014] 6 CRI 225

"Fiduciary Duties owed to the excluded shareholder" (with Lesley Anderson KC) Law & Financial Market Review January 2013

Qualifications and Awards

Downing College, Cambridge – Law MA Hons (1989 – 1992)

Recommendations

Chambers UK 2023

"Mark is pragmatic, pays attention to the detail, gets to grips with issues quickly and is always well prepared."

"Mark is very user-friendly, always available and helpful. He knows his stuff and is excellent when it comes to trial."

"A strong advocate and he produces excellent written work. Mark is able to build a rapport with clients easily."

"Mark's advice is clear and unequivocal. He often suggests solutions which are outside of the box."

Legal 500 2023

"Mark is prepared to provide clear and robust advice at the outset of a dispute and stand by it all the way to trial. He does not waiver and clients naturally warm to his no-nonsense approach delivered with impeccable client care."

"Mark is ferocious in cross-examination. He has an eye for the detail. Clients respond well to Mark, as they find him engaging, commercial and approachable. He works collaboratively and is incredibly generous with his time. He looks for ways through, not problems. Mark is by far one of the go-to barristers."

Chambers UK 2022

"Mark is an exceptionally proficient technical lawyer. He establishes great rapport with judges and is an excellent advocate."

"For leading counsel, Mark is particularly user-friendly, approachable and always shows a commercial approach which is appreciated by clients."

Legal 500 2022

"Mark is a prodigy virtuoso with a first-class aptitude and instinct."

"Mark is simply superb. He has that rare skill of being able to combine top draw technical knowledge and litigation strategy with commercial acumen that enables him to deliver successful practical outcomes for his clients. Above all else, he's a team player that gets the job done."

"Provides early robust and concise advice. Never waivers from that advice and does not sit on the fence. Sets the legal team on a course and sticks with it which gives tremendous confidence to solicitors and clients alike."

Chambers UK 2021

"He is outstanding: extremely good with clients, well rounded, highly competent and intelligent." "He's very knowledgeable and I have found him to be excellent with his advice and drafting."

"His cross-examination is excellent and he has a good feeling for what the key points were." "Mark is a very persuasive advocate. He has a really good style in court and certainly has the ear of the judges."

"He has a real eye for detail." "He is very good performer in court." "He is very bright and a pleasure to deal with."

"A breath of fresh air - approachable and helpful."

"He has a very good manner with his clients and is very persuasive in court."

"An unrivalled advocate and a brilliant cross-examiner who is superb in dealings with clients." "He is extremely sharp, he assimilates detail quickly and he is warm and a good listener."

Legal 500, 2020

"Extremely sharp witted, bright,accommodating, determined and understands the importance of getting to the nub of the issue quickly. Popular with clients."

"He is an excellent planner and communicator and leads a team very well - ensuring each member of the team has a clear understanding of what is required and their roles and tasks. He has an ability to distil a case to the essential features and to identify the key points of law quickly, whether in preparation or on his feet. His advocacy style is exceptionally effective."

"He is an excellent advocate with great presence. User friendly, always happy to roll up his sleeves and get stuck in. Clients warm to him quickly and he is comfortable with difficult clients."

"Undoubted strength is commitment to give clear and swift advice and to stand by it. Clients are impressed by approachability aligned with incisive legal thinking."

"Has excellent bedside manner with clients."

Chambers UK 2020

"He turns work around very quickly and considers all aspects of a case. He doesn't get lost in the minutiae and gets immediately to the crux of the matter. He's very quick, bright, easy to work with and his written work is excellent." "He's very personable and approachable."

"Harper gives very concise, clear and firm advice. He is not afraid to express his opinion and most importantly he inspires confidence in his clients." "He has a good style and a very good grasp of the law. He is strong in court, has a persuasive advocacy style and judges listen to him."

"A brilliant barrister who is great on his feet and very good with judges. He's user-friendly and extremely responsive."

"He is a good team player. Clients like him and he is an intelligent, brilliant lawyer." "His oral advocacy is very smooth, very sweet and very persuasive."

"He is extremely good on his feet and has very good analytical sense." "He is clear and authoritative, has good legal knowledge and, most importantly, he inspires confidence in his clients."

"He prepares well and very quickly, and he's very client-friendly. His advice is easily understandable." "He is very good at cutting through detail to provide practical advice and develop successful strategy."

Chambers UK 2018

"Mark is astute and commercial, as well as being dependable and widely admired."

"Very calm, level-headed, approachable and methodical. He's forceful without being aggressive."

"He has excellent commercial awareness and, having seen him in court, he is an exceptional advocate." "He is very organised, clear and a very nice chap."

"An impressive advocate who is highly approachable, very practical and structured in his thinking and gives sensible commercial advice with no waffle."

"He's very thorough, personable and incisive. An excellent advocate who focuses on the key issues."

Legal 500 2018

'He has a great bedside manner with clients.'

Legal 500 2017

'A team player throughout the litigation process.'

Chambers UK 2017

"The speed at which he can turn things round is incredible. He is a great advocate who is quick at thinking on his feet, and his way with the judiciary is great." "He is fantastic."

"His reputation is excellent and he gives a first-rate service to clients." "He is very pragmatic, very user-friendly and very good on his feet."

"He's always a very safe pair of hands - excellent and good with clients, he is short and succinct in his advice, which goes down well." "He's a class above most and very good on his feet before a judge."

"An excellent trial advocate who excels at tough cross-examination." "He's always a very safe pair of hands. He's excellent, good with clients, and short and succinct in his advice which goes down well."

Chambers UK 2016

"Technically excellent."

"A safe pair of hands and very commercial."

Recent work: Represented Travel Counsellors against Barclays Bank in claims alleging the mis-selling of an interest swap product and the improper deduction of 'fees' from accounts.

"An extremely capable lawyer and a very hard worker. He leaves no stone unturned in seeking out the detail of a matter and is confident in his own abilities. He has the hallmark of quality."

"Forthright, exceptionally commercial and gets straight to the nub of the issue - exactly what the clients want."

