

# James Ross



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<http://gough.squareeye.com/wp-content/uploads/2014/02/james-ross.jpg>

## **Banking & Financial Services (including Consumer Credit)**

James regularly acts on behalf of banks, building societies and other financial institutions. He advises on a wide range of matters relating to consumer credit and financial services. Examples of current and recent work include:

### *Drafting and advisory work*

- Advising on the scope of the new consumer credit activities added to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- Advising on the application of the Money Laundering Regulations 2007, Payment Services Regulations 2009 and Electronic Money Regulations 2011.
- Advising on whether arrangements constitute a collective investment scheme under section 235 of the FSMA 2000.
- Drafting a variety of credit agreements and pre-contract information (SECCI) documentation in compliance with the requirements under the Consumer Credit Directive.
- Drafting a new suite of documentation for a high street bank (including loan, credit card and overdraft conditions).
- Drafting unusual consumer credit agreements such as equity release mortgage agreements (First Time Buyers' Initiative), credit gym membership agreements and litigation funding agreements.
- Advising on the enforceability of regulated credit agreements, especially in respect of credit card agreements where the original signed agreement is no longer available and a request for a section 78 copy has been made.
- Advising on content of statutory notices introduced by Consumer Credit Act 2006 (notices of default sums, periodic statements, sums in arrears etc).
- Connected lender liability under section 75 of the CCA 1974.
- Advising on exempt agreements under the CCA 1974, especially in relation to the section 16A high net worth and section 16B business exemptions.
- Advising on consumer credit licensing and the consequences of carrying on a consumer credit business without a licence.
- Providing advice and drafting pleadings in response to allegations of unfair relationships or extortionate credit bargains under the Consumer Credit Act 1974.
- Advising on consumer credit advertising.
- Advising lenders on penalties issues in the context of bank current accounts, credit cards and hire purchase agreements.

- Advising lenders and credit brokers of their potential liability in respect of undisclosed or secret commissions following *Hurstanger v Wilson* CTLC [2007] 59.
- Advising in relation to allegations of harassment made by debtors.

### *Litigation*

- Representing banks and financial advisors in relation to the alleged mis-selling of investments and financial products, including alleged breach of the COB rules and associated limitation issues.
- Successfully represented the Claimant in *Santander UK plc v Harrison* [2013] EWHC 199 (QB), the leading authority on the meaning of "credit in the form of a cash loan" and the interaction between securitisation and unfair relationships under the CCA 1974.
- Successfully represented the Defendant in *Barnes v Black Horse Limited* [2011] 2 All ER (Comm) 1130, the leading High Court authority on transitional provisions in Schedule 3 to the Consumer Credit Act 2006 relating to unfair relationships and extortionate credit bargains. The case also concerned the fiduciary and common law obligations owed by a lender when selling payment protection insurance to consumers. Heard over course of two days by HHJ Waksman QC sitting as High Court judge as test case to help resolve numerous County Court cases where similar issues were raised.
- James was instructed by numerous banks in the Manchester litigation leading up to the decision in *Carey v HSBC* [2009] EWHC 3417 (QB) relating to sections 61 (prescribed terms), 78 (statutory copies), 140A (unfair relationships) and 142 (declarations of unenforceability) of the Consumer Credit Act 1974.
- Also appeared in the satellite costs litigation (*Teasdale v HSBC* [2010] EWHC 612 (QB)) relating to the costs of cases discontinued in the above Manchester litigation.
- James regularly appears on behalf of creditors and assignees in debt recovery claims which are defended on technical grounds under the Consumer Credit Act 1974.
- James has particular experience of representing creditors and brokers defending claims of mis-sold payment protection insurance and breach of the Insurance Conduct of Business (ICOB) rules.

### **Commercial Litigation**

Regularly acts and advises in a broad range of commercial work. Examples of recent and current work include:

- Acting in a substantial dispute under a brokerage agreement between a bank and broker in relation to the consequential losses arising from the alleged fraud of a supplier over a number of years.
- Acting in a claim issued in High Court relating to alleged dual financing of till equipment. Represented all three Claimants: finance companies who alleged that the Defendant supplier had purported to sell the same equipment to each. Two day trial followed by further legal submissions on issues of agency, ostensible authority and sale of goods generally.
- Acting as a sole advocate in the Court of Appeal on behalf of a finance company in the context of a large scale fraud committed by a vehicle fleet management company, with particular reference to claims made by innocent purchasers of vehicles under Part III of the Hire Purchase Act 1964 and the Factors Act 1889 (*Kulkarni v Manor Credit* [2010] EWCA Civ 69).

- Advising on the liability of an original creditor to an assignee under warranties contained in a master assignment of credit card debts.
- Acting on behalf of a merchant in a substantial commercial dispute with a merchant acquirer and card issuer following the fraudulent use of a credit card and subsequent charge back by the card issuer.
- Advising companies on disputes arising from the hire or purchase of defective or badly maintained commercial equipment such as photocopiers and machinery.

### **Mortgages**

James regularly appears in mortgage possession and appeal hearings, as well as providing advice on the following matters:

- Responding to allegations of irresponsible secured lending, especially where this is alleged to give rise to an unfair relationship under section 140A of the Consumer Credit Act 1974.
- Advising in relation to regulated mortgage contracts and the application of the FSA Mortgage Conduct of Business (MCOB) rules.
- Responding to applications by borrowers for suspension of a warrant of possession under section 36 of the Administration of Justice Act 1970 and applications for time orders under the Consumer Credit Act 1974.
- Claims by occupiers that they have an overriding interest in the property because they are tenants of the borrower or have acquired a beneficial interest in the property whilst in actual occupation.
- Drafting pleadings and mortgage agreements, including equity purchase schemes.

### **Insolvency**

James acts in insolvency proceedings brought against companies and individuals:

- Experience of obtaining and resisting winding-up orders.
- Appearing on applications to set aside statutory demands and bankruptcy hearings.

### **Regulatory Crime**

James also acts and advises in relation to criminal proceedings brought by trading standards departments and other prosecuting authorities, as well as civil claims for enforcement orders under the Enterprise Act 2000:

- Appeared in the Administrative Court, led by Claire Andrews in chambers, on an appeal as to whether the supply of cigarettes by a vending machine to an underage purchaser amounted to a "sale" for the purposes of section 7(1) of the Children and Young Persons Act 1933 (*Merton LBC v Sinclair Collins* [2010] WLR (D) 286)
- Drafting claims for enforcement orders under the Enterprise Act 2000 in order to restrain the activities of rogue traders.
- Advising companies of their potential exposure to enforcement action under the Enterprise Act 2000 and the new Consumer Protection from Unfair Trading Regulations 2008.
- Appearing in criminal trials, disclosure applications, plea and case management hearings and other interlocutory hearings.

## Notable Cases

- Santander UK plc v Harrison [2013] EWHC 199 (QB); [2013] Bus LR 501: Successfully represented the Claimant in the County Court, High Court and Court of Appeal in the leading case on the meaning of "credit in the form of a cash loan" and the interaction between securitisation and unfair relationships under the CCA 1974.
- HFC Bank Plc v Moody [2013] CTLR 85: Successfully represented the creditor on an appeal where technical challenges were made by the debtor in relation to default notices and compliance with a request under section 78 of the CCA 1974.
- Barnes v Black Horse Limited [2011] 2 All ER (Comm) 1130: Successfully represented the Defendant in the leading High Court authority on transitional provisions in Schedule 3 to the Consumer Credit Act 2006 relating to unfair relationships and extortionate credit bargains. The case also concerned the fiduciary and common law obligations owed by a lender when selling payment protection insurance (PPI) to consumers. Heard over course of two days by HHJ Waksman QC sitting as High Court judge as test case to help resolve numerous County Court cases where similar issues were raised.
- Merton LBC v Sinclair Collis [2011] 1 WLR 1570: Appeared in the Administrative Court, led by Claire Andrews in chambers, on an appeal as to whether the supply of cigarettes by a vending machine to an underage purchaser amounted to a "sale" for the purposes of section 7(1) of the Children and Young Persons Act 1933;
- Kulkarni v Manor Credit [2010] 2 All ER (Comm) 1017, [2010] 2 Lloyd's Rep 431: Acted as a sole advocate in the Court of Appeal on behalf of a finance company in the context of a large scale fraud committed by a vehicle fleet management company, with particular reference to claims made by innocent purchasers of vehicles under Part III of the Hire Purchase Act 1964 and the Factors Act 1889;
- Teasdale v HSBC Bank plc [2010] EWHC 612, [2010] 4 Costs LR 543: Appeared in the satellite costs litigation relating to the costs of cases discontinued in the Carey litigation.
- Carey v HSBC Bank plc [2009] EWHC 3417 (QB), [2010] Bus LR 1142: Instructed by numerous banks in the Manchester litigation leading up to the decision in relation to sections 61 (prescribed terms), 78 (statutory copies), 140A (unfair relationships) and 142 (declarations of unenforceability) of the Consumer Credit Act 1974.

## Directory Quotes

"James Ross ... has a strong practice advising banks on consumer credit-related disputes ... very well informed on the latest consumer laws. He is particularly commercial, cost-effective and tenacious ... very cool, calm and collected in court." *Chambers and Partners UK Bar Directory 2014*

## **Publications**

- General editor of the new textbook Modern Financial Regulation, which was published by Jordans in 2013.  
<http://www.jordanpublishing.co.uk/publications/commercial/-modern-financial-regulation-#overview>
- Founding editor of the Consumer and Trading Law Cases (CTLC) series of law reports published by chambers and available on Westlaw.
- “Recent developments in consumer credit (2010)” podcast available at [www.CPDcast.com](http://www.CPDcast.com)
- “Overseas Purchases and Secret Commissions- the Good News for Consumers in 2007” *Consumer Law Yearbook 2009*, Ashgate
- “Consumer Power: the Consumer Protection from Unfair Trading Regulations 2008” *New Law Journal* 2008, 158 (7317), 535
- “Carry the Costs” *Solicitors Journal* 2007, 151 (28), 944
- “The Serious Organised Crime Agency- should we be afraid?”, *Criminal Law Review* 2006, December, pp1019-1034 (with Professor Ben Bowling)
- “A Brief History of Criminology”, *Criminal Justice Matters* Autumn 2006 (65) (with Professor Ben Bowling)
- “SOCA: the Serious and Organised Crime Agency”, *Criminal Justice Matters* Spring 2006 (63) (with Professor Ben Bowling)

## **Professional Memberships**

- Association of Regulatory and Disciplinary Lawyers
- Consumer Credit Forum
- London Common Law and Commercial Bar Association

## **Direct Access**

James is authorised to accept Direct Access instructions, usually from businesses and professionals.

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