

Andrew Fletcher QC

Email Address: afletcher@3vb.com

Year Of Call: **1980**

Year Of Silk: **2006**



Andrew Fletcher is described as having "*excellent technical skills, and is responsive and engaged*" and "*excellent at coming in fresh to a case and getting stuck into the detail before giving an authoritative view* (Chambers 2020). He is described as "*Strategically sound, [with] an impressive grasp of detail, is very responsive, and has an excellent manner with clients.* (Legal 500, 2020). He is a "very able and measured advocate who is vastly experienced and has a very wide-ranging practice." "Within hours of being instructed, he appears to know everything about a case" (Chambers 2019). Andrew "*adopts a commercial approach, and recognises the financial and time-consuming realities of litigation.*" "*He's completely on top of the law in all aspects.*" (Chambers 2018). He is "*Very tenacious in court with a terrier-like manner and a great command of the law.*" (Legal 500, 2018). "*He is very good on his feet, is very measured and has the ear of the judge*" (Chambers 2017). He "*enjoys a growing reputation*" for commercial dispute resolution and "*has a considerable presence in court, is a powerful advocate and is strong in cross-examination.*" (Chambers 2016).

Other reports describe Andrew as "*very responsive and works very hard ... has good judgement and is very conscientious.*" (Chambers 2015); "*... very good...very careful, meticulous ... really easy to deal with.*" (Chambers 2014) "*always stunningly well prepared*", "*very thorough and painstaking*" and "*noted for being excellent with clients*" (Chambers 2013); "*approachable, responsive and great on his feet*" (Chambers 2012); someone who "*turns work around quickly and always displays impressive attention to detail*" (Chambers 2011); and as "*relaxed but incisive and on-the-ball*" (Chambers 2010).

Most recently he appeared in applications to enforce arbitration awards (*MODSAF v IMS* [2019] EWHC 1994 (Comm)), proceedings which raise important issues as to the impact of EU sanctions on claims to enforce arbitral awards.

In 2018 - 2019 he appeared in proceedings relating to claims for fraudulent misrepresentation in relation to currency trading strategy he successfully resisted an application to discharge a freezing injunction, obtained orders for cross-examination of the defendants and ultimately an order debaring the Defendants from defending the proceedings on the basis of their failure to pay interlocutory costs orders (*Consult II v Shire Warwick Lewis & others* [2019] EWHC 286 (Comm)).

In 2017 he advised a Middle Eastern bank as to its position in respect of letters of credit issued in relation to a major Libyan infrastructure project affected by civil disturbance giving rise to allegations of force majeure.

He also successfully resisted an application for an injunction seeking to freeze US\$15 million escrow monies following determination in a Singapore arbitration of substantive issues in relation to a share purchase agreement involving indirect transfers of participation rights in Indonesian oil and gas projects (*KUFPEC v Sanderson Capital* [2017] EWHC 2816 (Comm)).

In *Deutsche Bank AG v CIMB* [2017] 2017] EWHC he successfully argued that in relation to 10 letters of credit issued UCP600 an issuing bank was entitled to require the confirming bank to provide information as to payments in respect of which it was seeing reimbursement.

In *Business Comms Solutions v Club Communications* [2016] EWHC] 343 (QB) he obtained interim injunctive relief on behalf of telecommunications resellers against the defendant telecommunications wholesaler following termination of the contract between them.

Since taking silk in 2006, other highlights have included a 40 day trial pursuing claims in deceit for the Abu Dhabi Investment Corporation in relation to the sale of a fleet of container ships ([2007] EWHC 1267 (Comm)), and on appeal ([2008] EWCA Civ 699); acting for the Claimant in proceedings for a declaration that the National Transitional Council was the recognized government of Libya following the collapse of the Gaddafi regime (*British Arab Commercial Bank v The National Transitional Council of the State of Libya* [2011] EWHC 2274 (Comm)); reversing, in the Court of Appeal, a ruling about a solicitor's retaining lien (*Withers v Rybak* [2012] 1 WLR 1712(CA)); and prolonged involvement in proceedings to discharge or vary a freezing injunction for more than £100 million (*Kazakhstan Kagazy v Arip* [2013] EWHC 3618 (Comm) - and on appeal ([2014] EWCA Civ 381).

In 2014 he also appeared in an LCIA arbitration, obtaining an award in respect of a guarantee relating to a major seismological survey in Iraq, which involved complex issues as to force majeure arising out of civil unrest in Iraq. In *Wanxiang v Impala* [2015] EWHC 25 (Comm) he resisted an anti-suit injunction relating to aluminium worth US\$ 9 million warehoused in Shanghai. Major current instructions include acting in proceedings for breach of warranty and misrepresentation in relation to the acquisition of a majority stake in an offshore investment management group, and advising as part of a global team on behalf of a foreign government in relation to enforcement worldwide (including by obtaining a freezing injunction in Bermuda of a USD 500 million judgment (based on dishonest procurement of breach of director's duties). In 2016 he advised a major telecoms service provider in relation to issues arising under an exclusive supply agreement and related competition issues. He obtained an injunction preventing migration of customers to a new wholesale supplier (*Business Comms Solution Ltd v Club Communications Ltd* [2016] EWHC 343 (HC).

In 2016 he obtained a freezing injunction in the Cayman Islands in aid of pending Commercial Court proceedings for misrepresentation and breach of warranty in relation to an acquisition of controlling interests in a hedge-fund manager.

Directory Quotes

"enjoys a growing reputation ... he has a considerable presence in court, is a powerful advocate and is strong in cross-examination."

Chambers & Partners UK 2016

“He has good judgement and is very conscientious.”

Chambers & Partners UK 2015

Expertise

Arbitration

Appearing in long-running proceeding to enforce awards exceeding £350 million (*MODSAF v IMS* [2019] EWHC 1994 (Comm)), proceedings which raise important issues as to the impact of EU sanctions on claims to enforce arbitral awards under section 101 of the 1996 Act.

Resisting an application for an injunction seeking to freeze US\$15 million escrow monies following determination in a Singapore arbitration of substantive issues in relation to a share purchase agreement involving indirect transfers of participation rights in Indonesian oil and gas projects (*KUFPEC v Sanderson Capital* [2017] EWHC 2816 (Comm)).

Advising in respect of allegations of bias against an arbitrator in a foreign domestic arbitration under UNCITRAL rules (2015).

Related references under LCIA & SCC rules in respect of disputes as to termination, force majeure, and damages issues in respect of a large oilfield exploration contract in Iraq, and a parent company guarantee before a tribunal chaired by Lord Goldsmith QC. Related issues included applications for security under LCIA rules and as to enforcement of awards, including post-award freezing injunction relief in other jurisdictions (2013-2015).

11 consolidated references heard under LMAA rules involving issues determination of 10 bareboat charters, claims for unpaid charter-hire and related claims under parent company guarantee subject to a separate arbitration agreement. These complex proceedings involved freezing injunctions, jurisdiction issues, arbitration appeals and enforcement in Hong Kong and Dubai (2011-2013).

Giving expert evidence as to English law in a reference under SCC rules in relation to a Russian infrastructure project before a panel chaired by Dr Marc Blessing (2011).

An ad hoc reference relating to property damage and business interruption claims arising out of Hurricane Katrina before a panel chaired by Sir Gordon Langley which was subject to the IBA Rules on the Taking of Evidence In International Commercial Arbitrations (the “IBA Rules”) (2009).

Acting for a contractor in relation to a development, operational and production enhancement contract relating to offshore oilfields in the Persian Gulf, in a reference under International Chamber of Commerce (“ICC”) rules before Mr Richard Salter QC sitting as sole arbitrator (2008).

An ad hoc reference determined by a panel chaired by Mr Jonathan Hirst QC concerning aggregation issues arising under a reinsurance contract in respect of bloodstock losses arising out of

a “killer wave” of foetal deaths amongst thoroughbred mares in Kentucky (2002-2004).

Banking & Finance

Advising a central bank as to its position in relation to issues as to authority in respect of assets held overseas.

In 2018 – 2019 appearing in proceedings relating to claims for fraudulent misrepresentation in relation to currency trading strategy, defeating an application to discharge a freezing injunction on grounds there was no good arguable case, and thereafter obtaining orders for cross-examination of the defendants and ultimately an order debarring them from defending the proceedings on the basis of their failure to pay interlocutory costs orders (Consult II v Shire Warwick Lewis & others [2019] EWHC 286 (Comm)).

In 2018 advising a Middle Eastern bank as to its position in respect of letters of credit issued in relation to a major Libyan infrastructure project affected by civil disturbance giving rise to allegations of force majeure.

In *Deutsche Bank AG v CIMB* [2017] EWHC 1264 (Comm) establishing that, in relation to 10 letters of credit subject to UCP600, an issuing bank was entitled to require the confirming bank to provide information as to payments in respect of which it was seeing reimbursement.

Representing the Claimant seeking a stay of proceedings in respect of a letter of credit subject to UCP 600 on grounds of forum non conveniens and issues as to proof of payment *Deutsche Bank v CIMB* [2017] EWHC 81 & 1264).

Advising a foreign lender as to its position under a term loan agreement and in particular as to claims for anticipatory breach by reason of the borrower’s manifest inability to pay the sums due on maturity and related insolvency issues (2016).

Obtaining a freezing injunction in the Cayman Islands in aid of pending Commercial Court proceedings in London for misrepresentation and breach of warranty in relation to an acquisition of controlling interests in a hedge-fund manager and acting in the substantive proceedings (2016).

Acting for a bank in relation to a dispute as to the application of the rule against double proof, in the context of repo transactions conducted under a tripartite repurchase agreement closed out following the collapse of Lehman Brothers (2015).

Advising an overseas bank as to its position under a standby letter of credit and counter standby letter of credit. Issues as to requisite form of demand under UCP 600 and the Uniform Rules for Demand Guarantees, and as to the impact of the EU Financial Sanctions Regulations (2015).

Acting for a consortium of leading banks recovering sums stolen by an employee, including proprietary and tracing claims and claims for equitable relief (2014).

Providing expert evidence to the Icelandic Court in respect of the English law approach to construction of guarantees (2011).

Advising in respect of an Interest Rate Swap & Collar agreement following the collapse of Kaupthing; issues as to application of provisions of the ISDA Master Agreement (2011).

Appearing for the Claimant in *British Arab Commercial Bank v National Transitional Council of the State of Libya* [2011] EWHC 2274 (Comm) obtaining urgent declarations as to the recognition of the government of Libya following the collapse of the Gadaffi regime.

Advising a UK commercial counterparty as to the proper construction and effect of facility agreements simultaneously incorporating an Interest Rate Swap and Collar Agreement governed by Icelandic law and the ISDA 2002 Master Agreement governed by English law (2010).

A contributing editor to **Paget on the Law of Banking** (confidentiality and data protection).

Civil Fraud

Appearing in proceedings relating to claims for fraudulent misrepresentation in relation to currency trading strategy he successfully resisted an application to discharge a freezing injunction, obtained orders for cross-examination of the defendants and ultimately an order debarring the Defendants from defending the proceedings on the basis of their failure to pay interlocutory costs orders (*Consult II v Shire Warwick Lewis & others* [2019] EWHC 286 (Comm)).

Acting for a global investment fund in respect of allegations of misrepresentation in respect of a purchase of an investment management business (2015-17 and ongoing).

Acting as part of a global enforcement team pursuing enforcement of judgments (based on dishonest procurement of breach of director's duties) exceeding US\$500 million including obtaining a freezing injunction in Bermuda (2015).

Establishing claims in summary judgment proceedings for equitable compensation arising out of fraudulent breaches of fiduciary duty by an employee of a forex trading vehicle formed by a syndicate of leading UK and US banks (2015).

Instructed by D&O Insurer on behalf of directors accused of fraudulent trading and other breaches of duty as directors (2014 - 2015).

Acting for the Defendant in allegedly fraudulent breaches of duty as director under Isle of Man and Kazakhstan law relating to cardboard and paper manufacturing businesses in Kazakhstan including substantial proceedings for variation and discharge of freezing injunctions. (*Kazakhstan Kagazy plc & Others v Zhunus & Others* [2013] EWHC 3618 (Comm) and in the Court of Appeal [2014] EWCA Civ 381 (2013 - 2014).

Advising a syndicate of investors in respect of claims totalling £30 million for fraudulent misrepresentations in relation to property investments (*Barks v Instant Access Properties Ltd* [2013] EWHC 114 (QB).

Acting for a claimant seeking damages for fraudulent misrepresentation/breach of duty/breach of trust in relation to placing of shares in high profile internet technology start up (2012).

Obtaining a freezing injunctions and search orders on behalf of a major supermarket in relation to allegations of deceit and false accounting against by dishonest employees and third parties in relation to procurement of fraudulent maintenance contracts in respect of stores and superstores nationwide, and claims for restitution.(2011).

Claims in dishonest assistance knowing receipt, conspiracy and related asset tracing claims in respect of USD 16 million obtained by fraudulent misrepresentation (2009).

Independent Insurance Group v Ramsay - instructed by D&O Insurers on behalf of former CEO of the Independent Insurance Group following its collapse. Issues as to legality of a dividend, corporate governance issues especially in relation to non-executive directors; directors' duties in relation to misstated accounts by reason of the alleged fraud of other directors. Extensive involvement in pleadings and witness statements (2002 - 2004).

Shaker v Al Bedrawi & Others [2003] Ch 350 (acting for successful defendant at first instance) Trust assets shares in company - Director allegedly holding shares on trust for claimant - Claimant suing director as trustee for account of profits from sale of company subsidiaries - Company having possible cause of action against director for whole sum - Possibility of director having lawfully extracted part of sum from company - Whether rule precluding shareholder from recovering company's loss barring claim by beneficiary against director as trustee even though claim might extend to lawfully extracted moneys over which company had no claim.

Sir Elton John & ors v Price Waterhouse & anr Chancery Division - Ferris J [2002] 1 WLR 953 appearing for a director accused of breach of duty as a director for failing to deal properly with concert tour income.

Issues of constructive trust in particular knowing receipt in a 180 day trial of claims against banks arising out of misuse of pension fund assets (*Bishopsgate Investment Management v Credit Suisse* Lindsay J (The Independent, 12 December 1994).

Contracts

Resisting an injunction to restrain payment of escrow monies in relation to a share purchase agreement on the basis that on the true construction of the Escrow Agreement there was no serious issue to be tried (*KUFPEC Singapore Holdings Ltd v Sanderson Capital Resources Ltd & Citibank NA London Branch* [2017] EWHC 2816).

Acting for a joint venture participant in relation to injunction proceedings arising out of a US\$20 million capital fundraising relating to a much larger joint venture for the construction and development of an exclusive resort and club, raising issues as to the proper construction of shareholder agreements and whether they constituted an unlawful fetter on the companies' powers (2017).

Advising a foreign lender as to its position under a term loan agreement and in particular as to claims for anticipatory breach by reason of the borrower's manifest inability to pay the sums due on maturity (2017).

Advising a buy-to-let mortgage provider as to its position in relation to restrictive covenants in a

funding agreement (2016).

Advising a major telecoms service provider in relation to issues arising under an exclusive supply agreement and related competition issues (2016).

Advising a litigation funder as to the drafting of a bespoke funding agreement (2015).

Advising a litigation funder as to the effect of termination provisions in relating to a litigation funding agreement (2015).

Advising an AIM listed entity as to the effect of financing provisions in an overseas mining project joint-venture investment agreement (2015).

Resisting an anti-suit injunction on grounds that on a true construction of an agreements no exclusive jurisdiction clause was incorporated into the relevant contract (*Wanxiang v Impala* [2015] EWHC 25 (Comm)) (2014).

Acting in arbitration proceedings where a principal issue was whether payments specified as due on termination of bareboat ship-financing charters were irrecoverable as a penalty (2011-2013).

Giving expert evidence as to English law principles of construction of contracts to an international commercial arbitration under SCC rules relating to a Russian infrastructure project before a panel chaired by Dr Marc Blessing (2011).

Giving expert evidence to the District Court of Reykjavik as to the principles of the English law of construction and the law governing contracts of guarantee in relation to a counter-indemnity and guarantee given in relation to a Guarantee Facility Agreement involving Kaupthing (2011).

Advising in respect of an Interest Rate Swap & Collar agreement following the collapse of Kaupthing; issues as to the effect of provisions of the ISDA Master Agreement (2011).

Advising a hotel developer in respect of a Management Agreement in respect of issues as to breach, termination, whether breaches were remediable, termination rights and damages (2011).

Advising a purchaser as to his position in respect of a multi-million share purchase agreement and subsequent related asset sale agreement. Issues as to the construction of express and scope of implied terms of the agreements including terms as to earn-out, right of first refusal, and anti-embarrassment clauses (2010).

Advising as to the possible consequences of failure by an investor in a US\$200 million global private equity fund to comply with a drawdown notice, in circumstances where the investor had concerns as to the fund managers performance. Approach to damages, and availability of specific performance (2010).

Advising a mobile phone company following theft of a consignment of mobile phones, as to the proper construction of carrier agreements including issues as to extinction/discharge/release of rights and subrogation (2009).

Freezing Orders & Injunctions

Appearing in proceedings relating to claims for fraudulent misrepresentation in relation to currency trading strategy he successfully resisted an application to discharge a freezing injunction, obtained orders for cross-examination of the defendants and ultimately an order debarring the Defendants from defending the proceedings on the basis of their failure to pay interlocutory costs orders (*Consult II v Shire Warwick Lewis & others* [2019] EWHC 286 (Comm)).

Resisting an injunction to restrain payment of escrow monies in relation to a share purchase agreement on the basis that on the true construction of the Escrow Agreement there was no serious issue to be tried (*KUFPEC Singapore Holdings Ltd v Sanderson Capital Resources Ltd & Citibank NA London Branch* [2017] EWHC 2816 (Comm)).

Obtaining a *Chabra* freezing injunction against a non cause of action defendant in the Cayman Islands in aid of pending Commercial Court proceedings in London for misrepresentation and breach of warranty in relation to an acquisition of controlling interests in a hedge-fund manager.

Obtaining an injunction preventing migration of customers to a new mobile telephony wholesale supplier (*Business Comms Solution Ltd v Club Communications Ltd* [2016] EWHC 343 (HC)).

Obtaining a worldwide freezing injunction and related relief (including passport orders) for post-judgment in an overseas common law jurisdiction as part of a multi-jurisdictional enforcement exercise for sums exceeding US\$500 million (2015).

Enforcement proceedings relating to over US\$67 million under a guarantee of obligations under contracts for the construction of semi-submersible drilling rigs (*CIMC v Schahin* [2014] EWHC 1742); (2014).

Obtaining worldwide freezing injunctive and related relief (under Dadourian guidelines in relation to enforcement in multiple jurisdictions) in London in aid of enforcement of LMAA awards under the New York Convention in Hong Kong and Dubai (2011 - 2013).

Urgent advice and application on behalf of corporate entities affected by freezing injunctive relief; obtaining variation to clarify their entitlement to make payments in the ordinary course of business (2011).

Acting for the appellant, in *Withers LLP v Rybak* [2012] 1 W.L.R. 1748 in which the Court of Appeal held that no retaining lien arose in favour of solicitors Withers, in respect of monies held in its client account, pursuant to the equivalent of a freezing injunction.

Tarbs Europe v JP Macedonian Radio & Television & Republic of Macedonia & Others (Commercial Court, Popplewell J, 27 April 2012) Heavy application for security for costs in relation to claims in relation to television broadcast rights, advertising revenues and satellite segment space fees involving issues as to Macedonian public procurement law resulting in substantial orders for security for costs.

Advising and appearing in proceedings arising out of the *PK Air Finance v Mahan Air* litigation, in relation to freezing injunctions obtained by judgment creditors in respect of an aircraft subject to a

French law mortgage, raising issues as to the validity of the mortgage for the purposes of the *lex situs* (2011).

Obtaining a freezing injunctions and search orders on behalf of a major supermarket in relation to allegations of deceit and false accounting against by dishonest employees and third parties in relation to procurement of fraudulent maintenance contracts in respect of stores and superstores nationwide, and claims for restitution (2004).

TSB Private Bank SA v Chabra [1992] 1 WLR 231 acting on behalf of the claimant bank, obtaining a Mareva injunction against a party against whom no cause of action lay in support of the claim against another party against whom there was a cause of action. This case is the foundation of the so-called *Chabra* jurisdiction, now frequently cited and followed.

Professional Negligence

Advising in relation to claims against a solicitor in respect of failure to identify and give advice as to a conflict of interest in relation to the grant of an all monies charge & guarantee in the context of the acquisition of a company from liquidators (2016 and ongoing).

Appearing at trial on behalf of a UK clearing bank claiming damages arising out of a solicitor's failure to register a legal charge at Companies House, involving issues as to foreseeability and remoteness of damage in respect of decline in property values subsequent to the transaction and issues of contributory negligence in respect of allegedly imprudent lending. The claim was settled after the hearing and before judgment (2013).

Advising a water utility company in relation to claims against accountants in respect of errors in financial modelling resulting in the presentation of proposals to the relevant authority which provided an unreasonably low rate of return; issues as to duty, negligence, causation, loss and damage (including loss of a chance) (2008).

Abu Dhabi Investment Co and others v H Clarkson & Co Ltd & Others [2007] All ER (D) 448 (May) Claims for fraudulent misrepresentation, shipping consultants and bankers' negligence relating to the sale of a container fleet (following a 40 day trial in the Commercial Court); and on appeal [2008] All ER (D) 354 Jun). Claims by a bank to recover damages from auditors arising out losses made in financing transactions relation to commodities trading primarily in Russia.

Independent Insurance Group v Ramsay Instructed by D&O Insurers on behalf of former CEO of the Independent Insurance Group following its collapse. Issues as to legality of a dividend, corporate governance issues especially in relation to non-executive directors; directors' duties in relation to misstated accounts by reason of the alleged fraud of other directors.

Sir Elton John & ors v Price Waterhouse & anr Chancery Division - Ferris J [2002] 1 WLR 953 appearing at trial on behalf of a director accused of negligence in relation to the treatment of concert touring income.

Polly Peck International v BDO Stoy Hayward Acting for defendant auditors, facing allegations of negligence in relation to the audit of PPI following its collapse. Extensive involvement in preparation of witness statements and expert evidence, especially as to auditors and directors' duties and

corporate governance.

Career Summary

In 2006, Andrew took silk. He appeared in a 40 day trial on behalf of the Abu Dhabi Investment Corporation pursuing allegations of fraudulent misrepresentation in relation to the sale of a fleet of container ships ([2007] EWHC 1267 (Comm)), and in the subsequent appeal ([2008] EWCA Civ 699).

He has appeared in the Courts of the Cayman Islands in both offshore and onshore disputes.

Amongst other matters, during 2011-2013 he was instructed on behalf of ship financing companies in securing freezing injunctions, then obtaining LMAA arbitration awards (involving issues as to the effect of assignments on arbitral claims to enforce payment under charterparties and related guarantees; and whether termination sums constituted penalties), and finally obtaining security for and ultimately dismissal of the respondents' arbitration appeals and in proceedings in aid of enforcement under the New York Convention in Hong Kong and the DIFC.

In 2014 he also appeared for claimants in an arbitration under LCIA rules relating to claims under a guarantee and related force majeure issues arising out of a seismological survey over 400 km² in Iraq (with related proceedings before a tribunal constituted under the Stockholm Chamber of Commerce); and in enforcement proceedings relating to over US\$67 million under a guarantee of obligations under contracts for the construction of semi-submersible drilling rigs (*CIMC v Schahin* [2014] EWHC 1742); and claims established in summary judgment proceedings for equitable compensation arising out of breaches of fiduciary duty by an employee of a forex trading vehicle formed by a syndicate of leading banks.

In 2015 and 2016 He appeared in major applications both for and resisting the grant of freezing injunctions both in this jurisdiction and in Bermuda and the Cayman Islands.

His current instructions include work on letters of credit, sanctions and arbitration enforcement, and fraudulent misrepresentation and breach of warranty claims in the context of the multi-million US\$ acquisition of a hedge fund manager.