

Barry Isaacs QC

QC 2011, Called to the Bar 1994

+44 (0)20 7696 9900

barryisaacs@southsquare.com



Barry specialises in insolvency and restructuring, banking and finance, commercial litigation and arbitration, and company law. He is an Associate of the Society of Actuaries and has particular expertise in cases of financial complexity. He often appears as an advocate or expert in overseas jurisdictions. The Bar Guides describe Barry as “*incredibly impressive*” and “*a great advocate, both orally and on paper*”, his cross-examination as “*astounding*”, and his courtroom presence as “*devastatingly effective*”.

Barry has appeared in numerous substantial and high-profile cases in the Supreme Court/House of Lords (eg *Lehman Brothers (Waterfall)*, *Nortel (Expenses)*, *Rubin/New Cap Reinsurance*, *Sigma Finance*, *Mainstream Properties*, *Three Rivers v Bank of England*), in the Court of Appeal (eg *Prudential/Rothsay*, *(Pt VII transfer)*, *Rosesilver v Paton*, *Woolworths*, *Davenham Trust*, *FKI v Stribog*, *Golden Key*, *Whistlejacket Capital*, *OT Computers*), and at first instance, including several major trials and arbitrations.

Other recent cases of note include *Provident Financial*, *Greensill*, *Premier Oil*, *Castle Trust*, *Debenhams*, *Intu*, *Castle Trust*, *VB Football Assets v Blackpool Football Club*, *HSBC (ring-fencing scheme)*, *Carillion*, *International Bank of Azerbaijan*, *Ve Interactive*, *Orion Insurance*, *Stemcor*, *APCOA Parking*, *MF Global*, *Punch Taverns*, *Travelodge*, *BTA Bank v Ablyazov*.

Cases in overseas jurisdictions include (in the Cayman Islands) *iKang*, *Sky Solar*, *Qunar*, *Abraaj Capital*, *Nord Anglia*, *Medimpact*, *Platinum Partners*, *China Branding*, *Weaving*, *Eurasia Drilling*, *Homeinns*, *Pacific Harbor Asia Fund*, *CHC Group*, *Primeo Fund*, *FFC Fund*, *China Fishery*, *Sterling Macro Fund*, *Caledonian Bank*; (in Bermuda) *Caroline Bay*, *VL Insurance*, *Lehman Re*, *Saab Financial*, *Millennium Asset Management*, *KIC*; (in the British Virgin Islands) *Chagala*, *Kaupthing*, *Monarch Pointe Fund*, *Thema Fund*; (in the Bahamas) *British American Insurance*; (in Hong Kong) *Noble Group*, *Mongolian Mining Corporation*; (in the DIFC) *Abraaj Capital*; and (as an expert witness in New York) *Lehman Brothers*, *Hellas Telecommunications*, *Mill Financial v Hicks*, and *Deutsche Bank v Serengeti*.

Barry was named as Chambers and Partners Insolvency/Restructuring QC of the Year 2013. He is recommended in the Bar Guides as a leading silk in insolvency and restructuring; banking and finance; company and partnership; and offshore. Barry is described as “*highly rated for his tremendous work rate, his exhaustive knowledge of insolvency law and his excellent client-facing skills*”, “*incredibly knowledgeable, insightful and commercial, practical and very user-friendly*”, and “*one of the smartest and also nicest people you could ever hope to work with*”.

Insolvency and Restructuring

Reported cases include:

- **Debenhams** [2020] 5 WLUK 398, administrators/ contributories petitions/investigations
- **Castle Trust** [2020] 4 WLUK 63, scheme of arrangement/ coronavirus/ remote meetings
- **London Oil & Gas** [2020] 1 WLUK 47, validity of appointment/ locus standi/ retrospective effect
- **Ve Interactive** [2019] BPIR 438, removal of administrators from office
- **VB Football Assets v Blackpool Football Club** [2019] BCC 896, equitable execution/receivers
- **Bakhshiyeva v Sberbank of Russia** [2018] 4 All ER 964, Cross-Border Insolvency Regulations, rule in *Gibbs*
- **Lehman Brothers International (Europe)** [2018] 1 All ER 205 (SC); [2016] Ch 50 (CA); [2015] Ch 1 (Waterfall Application), priority of subordinated debt/potential liability of members for liabilities of company/currency conversion claims/interest
- **APCOA Parking** [2014] 2 BCLC 285, scheme of arrangement/change of governing law
- **Nortel; Lehman Brothers International (Europe)** [2014] AC 209 (SC); [2012] BCC 83 (CA); [2011] BCC 277, provable debts/expenses
- **Rubin v Eurofinance; New Cap Reinsurance v Grant** [2013] AC 236 (SC); [2012] Ch 538 (CA); [2010] 1 All ER (Comm) 81, mutual recognition and assistance/enforcement of foreign insolvency judgments
- **Bank of Scotland v Targetfollow Property Holdings** [2013] BCC 817, contested administration
- **European Directories** [2012] BCC 46, pre-pack administration/change of COMI
- **Stanleybet UK Investments** [2012] BCC 60, removal of administrators/wishes of creditors
- **Rodenstock** [2012] BCC 459, solvent scheme of arrangement/foreign company
- **Shah v Patel** [2010] BPIR 496 (CA), contempt of court by company director/appropriate sentence
- **Perpetual Trustee Co v BNY Corporate Trustee Services; Butters v BBC Worldwide** [2010] Ch 347 (CA); [2009] BPIR 1315, anti-deprivation principle/joint ventures

Other significant cases include **Provident Financial, Premier Oil, Intu, Arcadia, Carillion, Co-operative Bank, Cory Environmental, Punch Taverns, Travelodge, Portugal Telecom, NCP, Quinn Group, Southern Cross, Tele Columbus, Alitalia, Borsodchem** and **IMO Car Wash**.

Banking and Finance

Significant cases include:

- **Galapagos**
- **HSBC**, ringfencing transfer scheme
- **Nord Anglia, Eurasia Drilling, Homeinns Hotel Group**, dissenting shareholders/appraisal of fair value
- **Caledonian Bank**, disputed sanction application/construction of facility agreements
- **US Bank Trustees v Titan Europe 2007-1**, servicing agreement/identity of controlling party
- **Mill Financial v Gillett**, expert on English finance law in New York Supreme Court
- **AWAL Bank**, GRMA close out and misrepresentation claims

- **MF Global** [2013] Bus LR 1030 (Hindsight Application), client money rules/hindsight principle
- **Davenham Trust v White** [2012] 1 BCLC 123 (CA); [2011] BCC 77, guarantees/security
- **Lehman Brothers**, ISDA close out and related disputes
- **Monarch Pointe Fund v Somers Dublin** HCVAP 2011/040 (BVI CA) and BVIHCV 2008/197, redemption payments
- **Landsbanki**
- **Kaupthing**

Structured finance and investment vehicles, CFOs, CLOs and CDOs, RMBS and CMBS, including:

- **Titan Europe 2006-1, 2006-2, 2007-2**
- **NorthLake CDO I**
- **White Tower**
- **Clio European CLO**
- **Sigma Finance** [2010] 1 All ER 571 (SC); [2009] BCC 393 (CA)
- **Eurosail** [2009] EWHC 513 (Ch)
- **Bank of New York v Montana Board of Investments (Orion Finance)** [2009] 1 All ER (Comm) 1081
- **Whistlejacket Capital** [2008] 2 BCLC 683 (CA)
- **Golden Key** [2009] All ER (D) 18 (CA); [2009] All ER (D) 40
- **Cheyne Finance (No 2)** [2008] 2 All ER 987
- **Cheyne Finance (No 1)** [2008] 1 BCLC 732
- **Sciens CFO**
- **Rhinebridge**
- **Mainsail**

Commercial Litigation and Arbitration

Barry has wide-ranging commercial experience and has appeared in a number of major trials.

Significant commercial cases include:

- **Rosesilver v Paton** [2018] EWHC 103 (Ch), setting aside judgment obtained by fraud/pre-action disclosure
- **Rosesilver v Paton** [2017] EWCA Civ 158, [2015] EWHC 1758 (Ch), breach of fiduciary duty/specific performance/equitable remedies
- Confidential arbitration, \$150 million claim for professional negligence/breach of contract against valuation agent (6 week trial with 28 witnesses)
- Confidential arbitration, \$350 million fraud claim against investment manager and manager of two Bermuda hedge funds
- **Stainer v Lee** [2011] 1 BCLC 537, derivative action/breach of directors' duties
- **FKI Engineering v Stribog** [2011] 1 WLR 3264 (CA); [2010] 2 All ER (Comm) 906, declaration of incompatibility/Judgments Regulation
- **Stornoway v SIV Portfolio** [2011] All ER (D) 98, scope of indemnity clause
- **BTA Bank v Ablyazov**, fraudulent misappropriation of funds

- **OBG v Allan, Douglas v Hello! (No 3), Mainstream Properties v Young** [2008] AC 1 (HL), inducing breach of contract/interference with contractual relations/causing loss by unlawful means
- **Alfa Petroleum**, dispute with BP relating to TNK-BP joint venture
- **Brunei Investment Authority v Price Jefri**, misappropriation of funds
- **Leaderguard v MF Global**, breach of duty and dishonest assistance
- **Amadeo Hotels v Zaman** [2007] EWHC 295 (QB), worldwide freezing order

Major commercial trial experience includes **Three Rivers DC v Bank of England** (2 year commercial trial), the **Bermuda Fire & Marine Insurance** litigation (9-month trial in Bermuda), and **NEMGIA v AGF**.

Barry has particular expertise in relation to legal privilege, disclosure and civil procedure, having appeared in numerous cases arising from the BCCI collapse, including 7 appeals in the Court of Appeal or House of Lords:

- [2005] 1 AC 610 (HL); [2004] QB 916 (CA); [2003] All ER (D) 40, legal professional privilege
- [2005] CP Rep 47 (CA), judgments in private
- [2005] CP Rep 46 (CA), restriction of cross-examination
- [2003] All ER (D) 76, conduct of proceedings/exclusion of witnesses
- [2003] All ER (D) 78, amendment of pleadings
- [2003] QB 1556 (CA); [2002] CP Rep 34, scope of legal advice privilege
- [2003] 1 WLR 210 (CA); [2002] All ER (D) 524, third party disclosure/meaning of “likely”
- [2003] 2 AC 237 (HL), test for summary judgment
- [2002] All ER (D) 130, disclosure/confidentiality
- [2002] All ER (D) 207, public interest immunity/summary of report of British Intelligence services

Offshore

Barry frequently appears in overseas jurisdictions in the fields of insolvency/restructuring, banking/finance, and commercial law, and as an expert on English law. He has been called to the Bars of the Cayman Islands, Bermuda, and the British Virgin Islands and registered as a legal practitioner in the Dubai International Financial Centre.

Recent cases in the Cayman Islands include:

- **Medimpact**, just and equitable winding up petition
- **iKang**, s 238 appraisal action
- **Sky Solar**, strike out of winding up petition
- **Qunar**, s 238 appraisal action
- **Platinum Partners Value Arbitrage Fund**, sanction of litigation funding agreement
- **Abraaj**, commercial and insolvency disputes
- **Nord Anglia Education**, s 238 appraisal action
- **FFC Fund**, just and equitable winding up
- **Weaving Macro Fixed Income Fund**, preference claim
- **China Branding Group**, appeal against rejection of proof
- **Eurasia Drilling**, s 238 appraisal action

- **Pacific Harbor Asia Fund**, appointment of official liquidators
- **CHC Group**, validation order/provisional liquidation
- **Primeo Fund**, third party disclosure/liquidator's duties
- **Homeinns Hotel Group**, s 238 appraisal action
- **China Fishery Group**, appointment of provisional liquidators
- **Sterling Macro Fund**, just and equitable winding up
- **Caledonian Bank**, commercial disputes/sanction application

Other recent cases in overseas jurisdictions include:

- DIFC: **Abraaj Capital**
- Bermuda: **Georges Bay; VL Assurance; Lehman Re; Saab Financial (Bermuda); KIC; Millennium Asset Management**
- British Virgin Islands: **Chagala Group; Kaupthing; Monarch Pointe Fund; Thema Fund**
- Hong Kong: **DMX Technologies, Noble Group, Mongolian Mining Corporation**
- New York: **Lehman Brothers International Europe; Mill Financial v Hicks; Hellas Telecommunications v TPG; Deutsche Bank v Serengeti**
- Bahamas: **British American Insurance**
- Luxembourg: **Hellas Telecommunications**

Barry's expert evidence on cross-border insolvency and transaction avoidance was accepted by the US Bankruptcy Court, Southern District of New York in *Re Hellas Telecommunications, TPG Capital Management v Hosking* (Case No 12-10631, 29 January 2015).

Insurance

Extensive experience of insurance and reinsurance insolvencies and restructurings, solvent and insolvent schemes of arrangement and business transfer schemes, including:

- **Stronghold**, scheme of arrangement
- **Prudential, Rothesay**, (Court of Appeal) Part VII transfer
- **Scottish Widows**, Part VII transfer
- **Royal London Mutual**, Part VII transfer
- **Enstar** (*Bosworth, Knapton, Marlon, Mercantile, Indemnity, Unionamerica, River Thames*), Part VII transfers
- **British American Insurance Co** (Bermuda), scheme of arrangement
- **KIC Insurance** (Bermuda), disputed proof of debt, *Wrotham Park* damages
- **Orion**, cut-off scheme of arrangement
- **Enstar** (*Cavell, Fieldmill, Hillcot Re, Longmynd, River Thames, Unione Italiana (UK) Re*), Part VII transfers
- **Ansvar** (New Zealand), contingent solvent/insolvent scheme of arrangement
- **Lehman Re** (Bermuda), subrogation/set-off/restructuring scheme
- **Equitas Insurance** [2010] Lloyd's LR 69, the largest transfer of insurance business, covering all 1992 and prior nonlife business of members of Lloyd's
- **Phoenix and London Assurance** [2009] EWHC (Ch) 3502, scheme of arrangement

- compromising guaranteed pension rates and changing future investment strategy
- **Equitas Insurance** [2009] Bus LR 509, dispensation of notification requirements under Part VII before finalisation of independent expert's report
 - **WFUM Pools** [2007] EWHC 1781 (Ch), contested solvent schemes of arrangement
 - **Sompo**, contested Part VII transfer
 - **Highlands**, direct solvent scheme and cedant scheme for insolvent company
 - **Minster**, 7 solvent schemes of arrangement
 - **World Marine**, solvent scheme of arrangement
 - **Equitable Life** [2002] 2 BCLC 510, scheme compromising guaranteed annuity rates and mis-selling claims
 - **Equitable Life** [2002] BCC 319, whether three classes appropriate/split voting

Other

Other reported cases include:

- **Dolphin Quays v Mills** [2008] 1 WLR 1829 (CA); [2007] 4 All ER 503, third party costs
- **Crompton's Leisure** [2007] BCC 214, exit from administration
- **Three Rivers DC v Bank of England** [2003] 2 AC 1 (HL), misfeasance in public office/First Bank Coordination Directive (77/780/EEC)
- **Company** (No 2507 of 2003) [2003] 2 BCLC 346, costs
- **Stallton Distribution** [2002] BCC 486, administration/wishes of creditors
- **Munns v Perkins** [2002] BPIR 120, remuneration
- **Society of Lloyd's v Waters** [2001] BPIR 698, annulment of bankruptcy
- **Mathew** [2001] BPIR 531, statutory demand
- **Cevello v Currys Group** [2000] BPIR 976, statutory demand/fresh evidence
- **BCCI v Al-Kaylani** [1999] ILPr 278, discovery/domicile
- **Judd v Brown** [1999] BPIR 517 (CA); [1997] BPIR 470, sale of matrimonial property/benefit to creditors
- **Raval** [1998] BPIR 389, sale of matrimonial home/mental illness
- **Salter's Hall School** [1998] BCC 503, remuneration/successive liquidators
- **McMahon v AGF** [1997] 2 BCLC 191, damages
- **Pendigo** [1996] BCC 608, costs

Awards and Recommendations

Chambers & Partners

- Insolvency/Restructuring QC of the Year 2013
- "One of the smartest and also nicest people you could ever hope to work with"
- "On his feet, during cross-examination, he was astounding"
- "On his feet he is incredibly impressive"
- "Fantastic - easy to deal with, gives very good advice and a really good operator in court"

- “Very thoughtful and pragmatic; he is just top-drawer”
- “His knowledge of the area is absolutely encyclopaedic”
- “Really goes the extra mile for clients”
- “Very diligent and very thorough. No stone is left overturned and every single point is dealt with as fully as it can be. He doesn’t miss anything”
- “No-nonsense, very thorough, accessible and good with clients. He’s incredibly impressive”
- “Incredibly responsive, easy to deal with and an excellent lawyer”
- “Provides very sensible advice, picks up on points others miss and really builds a rapport with his client”
- “Highly rated for his tremendous work rate, his exhaustive knowledge of insolvency law and his excellent client-facing skills”
- “A great guy to work with and very bright”
- “Meticulous in his preparation for trial and impressed with his ability to manipulate small pieces of data with accuracy and focus”
- “Has excellent technical knowledge and an impressive ability to distil complex issues into manageable chunks”
- “A very clever lawyer, he really knows his stuff”
- “Applauded for his attention to detail and diligence. He’s very good at getting on top of a brief so that he has total recall of all the detail in the case”
- “Incredibly knowledgeable, practical and accessible”
- “Has a very impressive legal mind”
- “Insightful and commercial”
- “Has excellent client relationships”
- “Praised for his important work on cross-border insolvency”
- “Highly recommended for his insight into reconstruction and insolvency law, and for his complementary expertise in the areas of company, commercial litigation and banking and finance”
- “Well respected by judges”
- “Very well received by judges”

Legal 500

- “A calm courtroom presence, which is devastatingly effective”
- “Wonderfully measured advocacy style combined with a phenomenal work ethic”
- “A great advocate, both orally and on paper: he is concise, incisive, well-measured, nimble, and judges like and appreciate his style”
- “Unflappable in court”
- “Clinical as a surgeon in his preparation – knows a case like the back of his hand and is able to think strategically and outside of the box. A go to silk in the prime of his career”
- “He is extremely diligent, and exceptional on technical business valuation matters, particularly in cross-examination of experts on the subject”
- “Known for his precision and clear advocacy”
- “Excellent on strategy and attention to detail”
- “At the top of his game, and extremely accessible and good with clients”
- “Has a proven ability to navigate a clear path through the most complex of matters”
- “Very user-friendly and commercial”
- “Strong numeracy skills and a willingness to grapple with esoteric legal and financial issues.”
- “Highly recommended for structured finance, insurance and insolvency issues”

- “Praised for his excellent knowledge of the insurance world”
 - “At the top of his game in offshore insolvency and involved in most of the big matters”
 - “Outgoing, charming and fun, and is part of the team from day one”
 - “Has excellent client relationships and is very good to work with”
 - “Particularly effective in finding some obscure authority to use”
 - “One of the best silks when it comes to numbers”
-

Career

2018	Registered practitioner in the Dubai International Financial Centre
2015	Called to the Bar of the Cayman Islands
2012	Called to the Bar of the British Virgin Islands
2011	Appointed Queen’s Counsel
1999	Called to the Bar of Bermuda
1994	Called to the Bar of England and Wales
1991-1993	Henderson Investors plc, Investment Manager, private equity
1989-1991	Bain & Company, Strategy Consultant

Publications

Contributor to *Company Directors: Duties, Liabilities and Remedies* (1st Edition, OUP)

Education and Qualifications

1989	Associate of the Society of Actuaries
1989	Harvard University, MA; Teaching Fellow
1987	Oriel College, Oxford University, MA