

# Henry Phillips

Called to the Bar 2008

+44 (0)20 7696 9900

henryphillips@southsquare.com



Henry is described in the directories as “*extremely bright*”, “*easy to work with*”, “*highly responsive*” and his “*instincts for what a judge and court think about are very strong*”. His practice focuses on commercial and banking litigation and insolvency / restructuring.

Henry has substantial experience in commercial and banking litigation and is used to working with large counsel and solicitor teams on multi-week trials and international arbitrations. In recent years, he has been instructed in numerous high-value (i.e. between £500m and £2bn) and high-profile disputes including the long-running conspiracy claim brought by Robert Tchenguiz against Grant Thornton, concerning the SFO’s investigation into the collapse of Kaputhing Bank. Henry’s current arbitration work includes acting in a circ. US\$1.5bn ICC-administered arbitration seated in Hong Kong concerning the formation and operation of a Cayman Island private equity fund.

Henry is regularly instructed on securitisation transactions and has a particular interest and expertise in in the ISDA Master Agreement, which he advises on frequently having been instructed in three of the most significant recent cases (namely, LBF v Klaus Tschira Stiftung [2019] EWHC 278; Re Lehman Brothers International Europe [2016] EWHC 2417; Fondazione Enasarco v LBF [2015] EWHC 1307).

In the insolvency context, Henry has acted in many of the most complex insolvencies in recent years including Carillion and Lehman Brothers International Europe and in 2020 was instructed by the Bank of England in connection with a potential application under Part 2 of the Banking Act 2009. Henry’s insolvency work often has an international and cross-border dimension, and he used to receiving instructions from officeholders of companies in the British Virgin Islands and Cayman Islands.

Henry’s restructuring experience includes many of the most high-profile retail CVAs in recent years (including Toys “R” Us, Debenhams, Mothercare and Homebase) and he is regularly instructed to advise and appear in connection with complex cross-border schemes of arrangement, including Noble Group’s restructuring of circ. US\$4bn of liabilities which gave rise to one of the most ambitious schemes of arrangement to come before the English Courts (see In Re Noble Group Ltd [2018] EWHC 3092).

Henry is ranked in the legal directories (Chambers and Partners and Legal 500) for Commercial Dispute Resolution and Restructuring/Insolvency and in 2020 was shortlisted for Legal 500’s Insolvency Junior of the Year. He is recommended as being “*extremely bright, very committed and highly responsive*” and “*very personable, always on top of the details of the argument and very quick to respond with advice to clients*”. Clients find him to be “*very responsive and very helpful*”, “*broad-minded and easy to work with*” and “*very good at responding pragmatically to new developments*”.

---

## Insolvency and Restructuring

Recently instructed in a variety of administrations and liquidations in respect of financial institutions (*MF Global, LBIE*), offshore SPVs (*Oscatello Investments Limited (BVI)*), insurers (*Hill Insurance Company Limited (Gibraltar), Elite Insurance Company (Gibraltar), British American Insurance Company Limited (Bahamas, Trinidad & Tobago)*), large retailers (*Toys "R" Us Limited*); construction firms (*Carillion*) and football clubs (*Portsmouth City FC* (advising former directors), *Luton Town FC* (advising former directors)). Henry regularly advises in relation to CVAs and has appeared in many high-profile hearings to convene and sanction complex schemes of arrangement.

Recent cases include:

- ***Re Fairfield Sentry Limited (in Liquidation)*** [2019] UKPC 20: Junior counsel (led by Lord Falconer QC and Tom Smith QC in the Privy Council. Acting on behalf of former investors of a BVI Madoff feeder fund.
- ***Re NN2 Newco Ltd, Re Politus BV*** [2019] EWHC 1917(Ch): Junior counsel (led by Daniel Bayfield QC). Acting on behalf of the Nystar Group of companies promulgating schemes of arrangement to restructure debt worth in excess of £700m.
- ***In Re Noble Group Ltd*** [2018] EWHC 3092: Junior counsel (led by William Trower QC). Acting on behalf of Noble Group Limited promulgating a scheme of arrangement to restructure circ. US\$4bn of liabilities.
- ***Re Carillion*** (involvement ongoing): Acting on behalf of the Special Managers of the Carillion group of companies.
- ***Re Toys "R" Us Limited*** (involvement ongoing): Acting for Toys "R" Us in connection with a CVA and subsequent administration.
- ***Re DTEK Finance Plc*** [2017] B.C.C. 165: Junior counsel (led by Daniel Bayfield QC). Acting for a Ukrainian energy company in connection with a successful scheme of arrangement.
- ***Shlosberg v Avonwick Holdings Ltd*** [2017] Ch 210: Junior counsel (led by Tom Smith QC) in the Court of Appeal. The leading decision on the vesting of rights of privilege in trustees in bankruptcy
- ***Waterfall II Application*** [2017] EWCA Civ 1462; [2017] 2 All E.R. (Comm) 275; [2017] B.C.C. 1; [2015] B.P.I.R. 1162; [2016] B.C.C. 239 (involvement ongoing): Junior counsel (led by Robin Dicker QC and Richard Fisher). Acting for the Senior Creditor Group of unsecured creditors in the ongoing LBIE Waterfall II application, involving the resolution of various novel legal questions relevant to the distribution of a multi-billion pound surplus from the LBIE estate.
- ***Re Guardian Digital Communications Limited*** [2014]: Junior counsel (led by David Allison QC) on a successful application to sanction a multi-billion pound Scheme of Arrangement.
- ***Isis Investments v Oscatello Investments*** [2013] EWHC 7 (Ch): Junior counsel (led by William Trower QC and David Allison) resisting an application to stay proceedings pending in the Commercial Court in favour of proceedings in the Isle of Man.
- ***Re Metrovesca*** [2011] EWHC 1014 (Ch): Junior counsel (led by William Trower QC). Acting for a Spanish company in connection with a successful scheme of arrangement.

---

## Commercial Litigation and Arbitration

Recent cases include:

- ***In the Matter of an ICC-Administered Arbitration*** (involvement ongoing). Led by Tom Smith QC. Acting for the respondents in a hard-fought multi-billion dollar arbitration administered by the International Chamber of Commerce, seated in Hong Kong, presided over by Lord Neuberger and concerning the formation and operation of a Cayman Islands private equity fund.
- ***In the Matter of an HKIAC-Administered Arbitration*** (Award released in 2019) Led by Tom Smith QC acting for the respondents in a four-day arbitration seated in Hong Kong concerning the termination of certain football consultancy agreements entered into between one of China's largest football clubs.
- ***Lehman Brothers Finance A.G. v Klaus Tschira Stiftung*** [2019] EWHC 278: Junior counsel (led by Robin Dicker QC). Important decision on the calculation of "Loss" under the 1992 ISDA Master Agreement.
- ***Robert Tchenguiz and Ors v Grant Thornton UK LLP and Ors*** (action discontinued during 8 week trial): Junior counsel (led by David Allison QC). Acting for the defendant BVI companies in proceedings for unlawful means conspiracy brought by Robert Tchenguiz.
- ***Avonwick Holdings Limited and Ors v Castle Investment Fund Limited and Ors*** (settled shortly before 4-5 week trial): Junior counsel (led by Tom Smith QC). Acting for the claimants in proceedings against two Russian businessmen claiming significant damages (in excess of £150m) for unlawful means conspiracy.
- ***AC Scout Trading LLC v Ebulio Capital Management LLP and Ors***: Junior counsel (led by Anthony Zaccaroli QC). Acting for the defendants to a claim for unlawful means conspiracy involving trading in tin forwards contracts on the London Metal Exchange.
- ***Murray Holdings Limited v Ocatello Investments Limited*** [2018] EWHC 162 (Ch): Junior counsel (led by David Allison QC). Acting on behalf of the defendant (formerly an investment vehicle for Robert Tchenguiz) against a subsidiary of Kaupthing Bank, resisting an application for rectification of a framework agreement entered into in 2007.
- ***Re Lehman Brothers International Europe*** [2016] EWHC 2417: Junior counsel (led by Robin Dicker QC). Important decision on the meaning of the "default rate" under the 1992 ISDA Master Agreement.
- ***Fondazione Enasarco v Lehman Brothers Finance***[2015] EWHC 1307 (Ch): Junior counsel (led by Jeremy Goldring QC). Important decision on the calculation of "Loss" under the 1992 ISDA Master Agreement.
- ***US Bank Trustees Ltd v Titan Europe 2007-1 (NHP) Ltd*** [2014] EWHC 1189 (Ch): Junior counsel (led by William Trower QC) in a part 8 claim involving a determination of the rights of junior noteholders under a servicing agreement entered into in connection with a £1.1 billion loan agreement.
- ***Landesbank Hessen-Thüringen Girozentrale v Bayerische Landesbank (London Branch)*** [2014] EWHC 1404(Comm): Junior counsel (led by Mark Phillips QC) in a part 8 claim concerning the construction of a waterfall provision in a £369 million loan facility in relation to the financing and purchase of "the Gherkin" building in London.
- ***Tchenguiz v Director of the Serious Fraud Office*** [2013] EWHC 2297 (QB): Junior counsel (led by William Trower QC and David Allison QC) opposing an application for third party disclosure on the grounds of privilege.
- ***National Westminster Bank v Gaetano Alfano*** [2012] EWHC 1020 (QB); [2013] EWCA Civ 1703: Junior counsel (led by David Alexander QC) in four day trial to set aside four guarantees alleged to be subject to a condition precedent and / or not to have been effectively delivered as deeds due to certain representations allegedly made by the bank.

- ***Standard Chartered Bank v Ceylon Petroleum Corporation*** [2011] EWHC 1785: Junior counsel (led by Robin Dicker QC and Jeremy Goldring) for the claimant bank seeking payment under two oil derivative contracts.
- 

## Banking and Finance

Recent cases include:

- ***Lehman Brothers Finance A.G. v Klaus Tschira Stiftung*** [2019] EWHC 278: Junior counsel (led by Robin Dicker QC). Important decision concerning the calculation of “Loss” under the 1992 ISDA Master Agreement following the early termination of collared hedges.
  - ***Lehman Brothers International (Europe) (In Administration) (Waterfall IIC)*** [2017] 2 All ER (Comm) 275: Acting on behalf of the Senior Creditor Group of unsecured creditors in proceedings concerning, among other things, the meaning of the definition of “default rate” in the 1992 and 2002 ISDA Master Agreements and the scope of the interest provisions in a German law governing master agreement for financial derivatives.
  - ***Fondazione Enasarco v Lehman Brothers Finance*** [2015] EWHC 1307 (Ch): Junior counsel (led by Jeremy Goldring QC). Important decision on the calculation of “Loss” under the 1992 ISDA Master Agreement following the early termination of a put option.
  - ***US Bank Trustees Ltd v Titan Europe 2007-1 (NHP) Ltd*** [2014] EWHC 1189 (Ch): Junior counsel (led by William Trower QC) in a part 8 claim involving a determination of the rights of junior noteholders under a servicing agreement entered into in connection with a £1.1 billion loan agreement.
  - ***Landesbank Hessen-Thüringen Girozentrale v Bayerische Landesbank (London Branch)*** [2014] EWHC 1404(Comm): Junior counsel (led by Mark Phillips QC) in a part 8 claim concerning the construction of a waterfall provision in a £369 million loan facility in relation to the financing and purchase of “the Gherkin” building in London.
- 

## Civil Fraud and Asset Recovery

Recent cases include:

- ***In the Matter of an ICC-Administered Arbitration*** (involvement ongoing). Led by Tom Smith QC. Acting for the respondents in a hard-fought multi-billion dollar arbitration administered by the International Chamber of Commerce, seated in Hong Kong, presided over by Lord Neuberger and concerning the formation and operation of a Cayman Islands private equity fund.
- ***Robert Tchenguiz and Ors v Grant Thornton UK LLP and Ors*** (action discontinued during 8 week trial): Junior counsel (led by David Allison QC). Acting for the defendant BVI companies in proceedings for unlawful means conspiracy brought by Robert Tchenguiz.
- ***Avonwick Holdings Limited and Ors v Castle Investment Fund Limited and Ors*** (settled shortly before 4-5 week trial): Junior counsel (led by Tom Smith QC). Acting for the claimants in proceedings against two Russian businessmen claiming significant damages (in excess of £150m) for unlawful means conspiracy.
- ***AC Scout Trading LLC v Ebulio Capital Management LLP and Ors***: Junior counsel (led

by Anthony Zacaroli QC). Acting for the defendants to a claim for unlawful means conspiracy involving trading in tin forwards contracts on the London Metal Exchange.

- ***In the Matter of Lehman Re*** (Bermuda), instructed for a 3 week trial as Richard Sheldon QC's junior by a major creditor of Lehman Re in Bermuda bringing multi-million dollar tracing claim.

---

## Offshore

Recent cases include:

- ***In the Matter of an ICC-Administered Arbitration*** (involvement ongoing). Led by Tom Smith QC. Acting for the respondents in a hard-fought multi-billion dollar arbitration administered by the International Chamber of Commerce, seated in Hong Kong, presided over by Lord Neuberger and concerning the formation and operation of a Cayman Islands private equity fund.
- ***Re Elite Insurance Company*** (Gibraltar) (involvement ongoing), advising the administrators of a Gibraltar insurance undertaking)
- ***Re Fairfield Sentry Limited (in Liquidation)*** [2019] UKPC 20 (BVI): Junior counsel (led by Lord Falconer QC and Tom Smith QC) in the Privy Council. Acting on behalf of former investors of a BVI Madoff feeder fund.
- ***Re E-House (China) Holdings Limited*** (Cayman Islands) (involvement ongoing): instructed on behalf of dissentient shareholders in an application pursuant to s.238 of the Cayman Islands Companies Law.
- ***Re SPHinx*** (Cayman Islands), 4 week trial in the Cayman Islands as Richard Sheldon QC's junior acting on behalf of DPM Mellon in a dispute concerning the amount of reserves to be set under a proposed scheme of arrangement.
- ***Re Hill Insurance Company*** (Gibraltar), advising the liquidators of a Gibraltar insurance undertaking.
- ***Re British American Insurance Company*** (Bahamas, Trinidad & Tobago), advising the Judicial Managers of BAICO, once the largest insurance company in the Caribbean.
- ***Re SO Finance*** [2011] JCA 189A, appeal against dismissal of a winding up petition in the Jersey Court of Appeal.

---

## Awards and Recommendations

### Chambers and Partners 2020/21

Restructuring/ Insolvency

*"He's very responsive, extremely clever, and on really difficult and complex matters he always gets right into the complicated issues and gives very pointed and practical advice."*

Commercial Dispute Resolution

*"He is very good at digesting and understanding extremely complicated information"*

*"His written work is just so good".*

*"A clear verbal communicator".*

## **Chambers & Partners 2019**

Restructuring/Insolvency

*"He is very responsive and very helpful. He's very good at responding pragmatically to new developments and his instincts for what a judge and court think about are very strong."*

*"He's extremely thorough, broad-minded and easy to work with."*

Commercial Dispute Resolution

*"Very personable, always on top of the details of the argument and very quick to respond with advice to clients."*

*"Henry works diligently across multiple jurisdictions, and is mindful of his clients' considerations and duties."*

## **Legal 500 2020**

Insolvency (Tier 1)

*"Good on his feet in court"*

## **Legal 500 2019**

Insolvency (Tier 2)

*"Extremely bright, very committed and highly responsive."*

## **Legal 500 2018**

Insolvency (Tier 2)

*"He really gets to grips with the detail."*

---

## Career

2008 Called to the Bar of England and Wales

---

## Memberships

Financial Markets Law Committee working group on FSA reform 2010  
Commercial Bar Association

---

## Publications

Contributor to ***Rowlatt on Principal and Surety*** (Moss, Sweet and Maxwell)  
Contributor to ***Totty and Moss on Insolvency*** (Totty, Moss and Segal, Sweet and Maxwell)  
Contributor to ***R3 Recovery***  
Contributor to ***Insolvency Intelligence***  
Contributor to ***International Corporate Rescue***

---

## Education and Qualifications

2009 Oxford University, BCL, Distinction (second in the University)  
2008 Inns of Court School of Law, Bar Vocational Course  
2007 City University, GDL, Distinction  
2005 Worcester College, Oxford University, BA English, First Class

---

## Prizes and Scholarships

- Vinerian Scholarship, Proxime Accessit (Oxford University)
  - Bruce Reynolds Prize for best performance in the BCL (Worcester College, Oxford University)
  - Wigglesworth Scholarship (Lincoln's Inn)
  - Worshipful Company of Arbitrators Prize for commercial law and civil procedure (ICSL)
  - College Award for Outstanding Academic Achievement (Worcester College, Oxford University)
  - Worcester College Scholarship (Worcester College, Oxford University)
- 

## Interests

Travel and reading