

Mark Phillips KC

KC1999, Called to the Bar 1984

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Mark Phillips KC is an experienced Silk. His clients have included the Governor of the Bank of England, UEFA and the Football League as well as liquidators, directors, sportsmen and premier sports clubs and he was named as Company/Insolvency Silk of the Year by Chambers and Partners in 2018.

In his autobiography "Calling the shots" David Dein, formerly the Vice Chairman of Arsenal, says of Mark "We retained the brilliant Mark Phillips QC. He really does have two brains! (As already mentioned, he went on to play a significant part in the legalities when we formed the Premier League.)"

Mark operates at the highest level and has over thirty years winning complex cases in the highest courts. His first appearance in the Court of Appeal was at the start of his practice in 1986 in the ground-breaking case, West Mercia Safetywear v Dodd. Subsequently, he has led or has appeared in many cases in the House of Lords and Supreme Court including the Lehman's Pensions appeal, Toshoku Finance, Paramount Airways, Leyland Daf, Sher v Policyholders Protection Board and Three Rivers District Council v the Governor and Company of the Bank of England.

Mark is especially well known for his tenacity in cross examination and resilience during long trials. He successfully defended the Bank of England in a two-year trial against the claim made arising out of its regulation of BCCI and defended the GT Liquidators in the Saad fraud trial that lasted for 129 days in Court over 12 months.

Legal 500 say of Mark in the 2022 edition:

"Mark is an excellent trial lawyer and always relishes the challenge - exactly who you want acting for you when the rest of the courtroom is opposing you."

"Astute and incisive. A force to be reckoned with in court."

Mark also has a high-profile sports law practice. He was involved in the establishment of the Premier League for the "big 5 clubs". He has appeared at several disciplinary and regulatory hearings. He prosecuted Manchester City on behalf of UEFA, and Sheffield Wednesday and Derby County on behalf of the Football League and has appeared for Lewis Hamilton in relation to several matters including the "Ferrari Gate" hearing. He has assisted with the future of football regulation and the EFL's covid task force.

Legal 500 say of Mark in the 2022 edition:

"The best there is in F1 regulatory. Elite status in motorsport."

Mark is often quoted in the business press and in industry forums in relation to the government's response to businesses support during the Covid pandemic. He produced the Administration Consent Protocol and is co Chair of Back to Business UK, which has now been rolled out over 52 countries worldwide. He is active on social media and has spoken at several international

conferences on how to help small to medium sized businesses to deal with debt. His views are sought by policy makers, industry leaders and decision-makers around the world.

Insolvency and Restructuring

Mark has extensive experience in all aspects of insolvency and restructuring.

On expenses and the insolvency waterfall, cases include:

- **Re Lehman Brothers International** (Europe) [2013] UKSC 52, ranking of Pensions Act 2004 claims
- **Revenue & Customs Commissioners v Football League** [2012] EWHC 1372 (Ch), validity of the “football creditors rule”
- **Re Toshoku Finance UK** [2002] 1 WLR 671 (HL), ranking of claims for corporation tax in a liquidation
- **In the matter of LB Holdings Intermediate 2 Limited (in Administration); and in the matter of Lehman Brothers Holdings plc (In administration)** [2020] EWHC 1681, ranking of subordinated debt Court of Appeal: [2021] EWCA Civ 1523, [2021] EWCA Civ 1523, [2022] Bus. L.R. 10, [2021] 10 WLUK 239, [2022] 2 B.C.L.C. 513, [2022] B.P.I.R. 459 [2021] All ER

On schemes and voluntary arrangements, cases include:

- **The Co-operative Bank**, advising and appearing on behalf of noteholders on the Co-operative bank restructuring and scheme of arrangement
- **Re Cape** [2006] 3 All ER 1222, scheme of arrangement concerning asbestosis claims
- **Sea Assets v Perusahaan Pereroan (Peroso) PT Perusahaan (Garuda Airlines)** [2001] EWCA 1696, established that in a scheme the same offer need not be made to all creditors, only to scheme creditors
- **Somji v Cadbury Schweppes** [2001] 1 BCLC 498 (CA), collateral deal invalidating scheme of arrangement
- **Maxwell Communications Corporation** [1994] 1 All ER 737, subordinated debt was valid
- **Re British and Commonwealth Holdings (No 3)** [1992] 1 WLR 672, subordinated creditors not entitled to vote
- **Nuoxi Capital Ltd and others (In Liquidation in the British Virgin Islands) v Peking University Founder Group Company Ltd**, [2021] HKCU 6170, [2021] HKCFI 387, whether Keepwell Deeds give rise to a right to prove in a Mainland China reorganisation

On administration, including special administration, cases include:

- **Re Maltby Investments** [2012] EWHC 4 (Ch), the EMI pre-pack
- **Re Metronet Rail BCV** [2008] BCLC 760

- **Re Ferranti International :Powdrill v Watson Re Leyland DAF**; [1995] 2 AC 394 (HL), liabilities to employees under adopted contracts
- **Re Olympia & York Canary Wharf (No 3)** [1994] 1 BCLC 702, administration and restructuring of Canary Wharf
- **In re Hartlebury Printers** [1993] 1 All ER 470, administrator's duty to consult on redundancies
- **Re Arrows (No 3)** [1992] BCLC 555, contested administration order
- **Re Atlantic Computer Systems (No 1)** [1992] Ch 505 (CA), criteria for leave to enforce rights
- **Re Charnley Davies (No 2)** [1990] BCLC 760, administrator's duty of sale
- **Re Smallman Construction** [1989] BCLC 420, power to give directions to take steps other than those approved by creditors
- **Re: Toys "R" Us Properties (UK) Limited**, [2018] EWHC 3848 (Ch) [2018] 12 WLUK 273
- **Re: Silentnight Ltd**, representing the administrators in proceedings before the FRC.
- **Re: Utility Point Ltd and others** [2022] EWHC 2826 (Ch), [2022] EWHC 2826 (Ch), [2022] 11 WLUK 142, rights of Ofgem and Suppliers of Last Resort to prove in administration of an energy company
- **Re: Sova Capital Limited (In special administration)**, [2023] EWHC 452 (Ch), [2023] All ER (D) 24 (Mar), special administration - approval of an unsecured credit bid for assets held in Russia
- **Re: Petropavlovsk plc (in administration)** [2022] EWHC 2097 (ch) [2022] AER (D) 63 (Dec), special administration of entity holding Russian gold mines
- **Re: Sberbank CIB (UK) LTD**, [2022] EWHC 1059 (Ch) special administration of Russian bank

On court appointed receivers cases include:

- **Re: Cooper v VB Football Assets re Blackpool Football Club**, [2019] EWHC 1599 (Ch) [2019] All ER (D) 01 (Jul)|[2019] EWHC 1599 (Ch), [2019] 4 W.L.R. 93

On large bankruptcy cases and IVAs include:

- **Re: Moises Gertner & Laser Trust -v- CFL Finance Ltd**, [2020] EWHC 1241 (Ch), [2020] EWHC 1241 (Ch), [2019] 7 WLUK 918, [2020] B.P.I.R. 752, [2020] C.T.L.C. 241| [2020] All ER (D) 147
- **Re: Servis-Terminal Limited Liability -and- Mr Valeriy Ernestovich Drelle**, [2023] EWHC 506 (Ch) [2023] All ER (D) 43 (Mar), for the petitioning creditor, Servis Terminal, on a petition founded on a Russian judgment debt.

On recognition of overseas insolvencies, cases include:

- **STX Pan Ocean Co**, recognition of the stay of termination provisions under a Korean insolvency process
- **BTA Bank**, advising on the Kazakh schemes for the restructuring of the Kazakh BTA Bank, and appearing at the hearing for recognition

On directors duties, cases include:

- ***West Mercia Safetywear v Dodd*** [1988] BCLC 250 (CA), duty of directors where a company is insolvent or on the verge of insolvency

On the use of compulsory powers, cases include:

- ***Re Galileo Group*** [1999] Ch 100, production of documents by the Bank of England under the liquidator's powers of compulsion
- ***Re Barlow Clives Gilt Manager*** [1992] Ch 208, whether transcripts of examinations could be used in criminal proceedings
- ***Re Esal (Commodities)*** [1989] BCC 784 (CA), disclosure by liquidators of information obtained under compulsion

Banking and Finance

Recent cases include:

- ***Harbinger v Caldwell, Re Northern Rock*** [2013] EWCA Civ 492, acting for the shareholders of Northern Rock in their appeal against the nil valuation of their shares
- ***Britannia Bulk v Bulk Trading*** [2012] EWCA Civ 419, [2011] 2 Lloyd's Rep 84, dispute over the construction of the ISDA Master Agreement

Other noteworthy cases include:

- ***Re Butlers Wharf*** [1995] 2 BCLC 43, rights of subordination and the effect of suspense accounts
- ***Scher v Policyholders Protection Board; Ackman v Policyholders Protection Board*** [1993] 3 WLR 357 (HL), whether overseas insurance policies were caught by the Policyholders Protection Act 1975
- ***Re Bank of Credit and Commerce International*** [1992] BCLC 570, winding up of BCCI ***Re Rafidain Bank*** [1992] BCLC 301, provisional liquidators making payments out of the bank's assets
- ***ED & F Man (Coffee) v Miyazaki SA Commercial Agricola*** [1991] Lloyd's Rep 154

Commercial Litigation and Arbitration

Mark has wide ranging experience of commercial litigation, including:

- **Caring v Sharp**, claim arising out of the collapse of a deal to develop the old US Navy site in Grosvenor Square
- **Three Rivers District Council v Bank of England** [2003] AC (HL), representing the Bank of England on the misfeasance claim brought by the liquidators of BCCI Several applications over a 10 year period (twice in the House of Lords and 2 year commercial trial)
- **In re Lonrho plc (No 2)** [1990] Ch 695, representing Alan Bond in the trial of the action brought by Lonrho
- **Stephen John Akers, Mark McDonald (Joint Liquidators of Chesterfield United Inc and Partridge Management Group) v Deutsche Bank AG** [2012] EWHC 244 (Ch), representing the liquidators of Kaupthing in potential claims arising out of related SPVs
- **Geoffrey Lambert Carton-Kelly (As Additional Liquidator of Comet Group Limited (In Liquidation)) v Hailey Acquisitions Limited** [2019] EWHC 2697, successfully defending Harbinger against the claim of the liquidators of Comet Group Ltd.
- **Ahmad Hamad Algozaibi et al v Saad Investments Company Limited et al** [FSD 54 OF 2009 (ASCJ)], 12 month trial of fraud allegations against SICL (in liquidation), claim dismissed.
- **Fraser Group PLC v (1) Geoffrey Rowley and Alastair Massey (2) Lucid Trustee Services Limited (3) Silver Point Capital LP (4) GLAS Trust Corporation Limited (5) Global Loan Agency Services Limited**, acting for Glas the agent on the claims brought by House of Fraser following the collapse of Debenhams.

Civil Fraud and Asset Recovery

Mark has appeared in several large fraud cases, including:

- **Ahmad Hamad Algozaibi et al v Saad Investments Company Limited et al** [FSD 54 OF 2009 (ASCJ)], 12 month trial of fraud allegations against SICL (in liquidation), claim dismissed.
- **Malcolm Cohen v Collyer Bristow LLP**, representing the liquidators of Rangers FC football club in its fraud claim against Collyer Bristow and Craig Whyte arising out of the takeover and subsequent collapse of Rangers FC
- **Re Esal (Commodities), London and Overseas (Sugar) Co v Punjab National Bank** [1993] BCLC 872, claim against a bank for fraudulent trading arising out of the collapse of Esal (Commodities)
- **Jokai Tea Holdings** [1992] 1 WLR 1196 (CA), strike out of fraudulent trading claim for late filing of particulars

Offshore

Mark has regularly appeared in the courts of the Cayman Islands and BVI. Notable cases include:

- **Re Sphinx Group of Companies**, advising the Liquidation Committee over several years in relation to all aspects, including the issues of priority as between different classes of claim, the provisions that should be made for legal expenses and potential US claims, and the scheme of arrangement
- **Re Monarch**, the ranking of redeeming creditors in a liquidation
- **Re Trading Partners**, appearing on a winding up petition of a trading group

- **Ahmad Hamad Algozaibi et al v Saad Investments Company Limited et al** [FSD 54 OF 2009 (ASCJ)], 12 month trial of fraud allegations against SICL (in liquidation), claim dismissed.
- **Re: Chu Kong and (1) Ocean Sino Limited (2) David Yen (3) Chan Pui Sze (Nicole) (4) Roy Bailey (5) John Greenwood (6) Lau Wing Yan**, [BVIHCMAP2021/0048], representing the Joint Liquidators on the removal application and appeal and investigating the alleged fraud.

Sport

Mark's football practice includes acting for the FA, the Premier League, the Football League, Arsenal FC, Wimbledon FC, Tottenham Hotspur FC, Sunderland FC, Arsène Wenger and several Arsenal players. Mark advised the then first division clubs on the establishment of the Premier League.

- **FA v Wenger** (FA Disciplinary Appeals), appeal against 12 match ban
- **FA v Vieira** (FA Disciplinary Commission), use of lip reader to establish whether or not the player had sworn at an official
- **FA v Keown** (FA Disciplinary Commission)
- **FA v Henry** (FA Disciplinary Commission)
- **FA v Arsenal** (FA Disciplinary Commission), Arsenal and Manchester United failing to keep their players under control at the end of the derby at Old Trafford
- **FA v Adebayor** (FA Disciplinary Commission), Adebayor sent off against Chelsea in the Carling Cup Final
- **Wimbledon v Football League** (FA Commission), re-location of Wimbledon FC to Milton Keynes
- **UEFA v Eduardo da Silva** (UEFA Appeals Body), appeal against sending off of Eduardo da Silva for diving in a Champions League qualifier against Celtic
- **UEFA v Manchester City FC** (CAS), prosecution under the Financial Fair Play
- **EFL v Sheffield Wednesday** (EFL Commission), prosecution under financial sustainability
- **EFL v Derby County** (EFL Commission), prosecution under financial sustainability

In Formula 1, Mark has appeared before the International Court of Appeal of the FIA, the Contract Recognition Board and the World Motor Sport Council.

- **FIA World Motorsport Council v McLaren** (FIA World Motorsport Council), appeared for Lewis Hamilton on the "FerrariGate" hearings
- **FIA v McLaren, Re Lewis Hamilton** (International Court of Appeal), appeal against disqualification of Lewis Hamilton from Spa 2008
- **FIA v Liuzzi** (International Court of Appeal), appeared for Adrian Sutil on appeal against penalty given to Liuzzi for overtaking under yellow flags
- **FIA v Toyota** (International Court of Appeal), challenge by manufacturers to the legality of Toyota's diffuser
- **BMW v Timo Glock** (Contract Recognition Board), BMW seeking to stop Timo Glock signing for Toyota
- **FIA v Renault** (FIA), appeared for Nelson Piquet Jnr at the hearings following "crashgate"

Mark has also advised or appeared in matters concerning cricket, Formula 3, Formula Ford and World Powerboat racing

- **RE: Abu Dhabi GP 2021**, representing Lewis Hamilton in relation to the final race of the 2021 season

Awards and Recommendations

Chambers & Partners	Company and Insolvency Silk of the year at the Chambers UK Bar Awards 2018. Ranked in Insolvency/Restructuring, Chancery: Commercial and Sport <i>"Mark is a great trial advocate."</i> <i>"Mark Phillips KC brings dedication to cases. He deeply understands the cases he handles and the numbers involved in them."</i> <i>"Mark is hugely respected by his fellow barristers: he has been in all of the main insolvency cases and he is a huge presence in court."</i> <i>"A great trial advocate."</i>
Legal 500	Ranked in Insolvency, Banking and Finance, Commercial Litigation, Fraud Civil and Sport. <i>"Mark is an excellent trial lawyer and always relishes the challenge - exactly who you want acting for you when the rest of the courtroom is opposing you."</i> <i>"Astute and incisive. A force to be reckoned with in court."</i> <i>"The best there is in F1 regulatory. Elite status in motorsport."</i>

Career

2002-2003	President Insolvency Lawyers Association
2000-2008	Recorder
2000	Called to the Bar of the British Virgin Islands
1999	Appointed King's Counsel
1984	Called to the Bar of England and Wales

Memberships

International Insolvency Institute
Insolvency Lawyers Association (Past President)
Association of Business Recovery Professionals (Fellow and past Council Member)
INSOL International
INSOL Europe
Commercial Bar Association
Chancery Bar Association

Publications

Mark has written many articles and regularly talks on Brexit in the insolvency and restructuring context and on the Corporate Insolvency and Governance Act 2020.

Editor of ***Butterworth's Insolvency Law Handbook*** (Butterworths LexisNexis, 1986-2013)

Contributor to chapter on insolvency in ***Paget's Law of Banking*** (2007)

Contributor to ***Insolvency of Banks: Managing the Risks*** (1996)

Education and Qualifications

Bristol University, LLM, Commercial Law

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