

Mark Phillips QC

QC 1999, Called to the Bar 1984

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Mark Phillips QC is an experienced Silk who guides large companies and high-profile individuals through complex commercial and sporting challenges. 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.

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.

Mark also has a high-profile sports law practice. He was involved in the establishment of the Premier League for the "big 5 clubs". In 2013 he advised the chairman of the FA on changes that could be made in English Football to help the England Team win a major championship. 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.

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 assisting Back to Business UK. 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 acquired during the covid period. 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 instruments.

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

On 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

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 Claims 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 SA. 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

Civil Fraud and Asset Recovery

Mark has appeared in several large fraud cases, including:

- **AHAB v SICL**
 - **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
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Offshore

Mark has regularly appears 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
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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 rules.
- **EFL v Sheffield Wednesday** (EFL Commission), prosecution under financial sustainability rules.
- **EFL v Derby County** (EFL Commission), prosecution under financial sustainability rules.

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

Awards and Recommendations

Company and Insolvency Silk of the year at the Chambers UK Bar Awards 2018.
Ranked in Insolvency/Restructuring, Banking and Finance and Sport

“Identified as one of the best advocates in the market and regularly involved in high-profile cases. He deploys his tenacious advocacy skills on behalf of a broad range of clients, including liquidators, companies and administrators”

“He fights for the cause, and is not just intellectually powerful but has the guts to go and fight. He never goes soft on an opinion”

Chambers &
Partners

“He has real gravitas and gets to the heart of the matter, providing clear and commercial advice”

“He is excellent. ... his industry knowledge makes him very popular with the client”

“He gets straight to the point and doesn’t get us bogged down in all of the technical aspects”

“Commentators say he is “a very punchy, aggressive and single-minded advocate, who gets results and is underestimated at your peril””

“Praised for his fluid advocacy”

Legal 500

“He has a ‘very appealing style’ and is ‘remarkably relaxed in court’”

Career

2002-2003 President Insolvency Lawyers Association

2000-2008 Recorder

2000 Called to the Bar of the British Virgin Islands

1999 Appointed Queen'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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