

JEFFREY

GREEN

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Banking Dispute Resolution





Jeffrey Green Russell are a full service commercial law firm with an international outlook based in the heart of London.

With expertise in all core legal fields, the firm also has a number of leading industry-specific teams.

Our clients receive clear, practical advice and above all an efficient service. We expect to work to your needs and timetable, wherever possible adding value along the way.

Our lawyers are bright, enthusiastic and personable and understand what is expected of them by clients, colleagues and other professionals.

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Banking Dispute Resolution

SUMMARY

Who we are

We are a mid sized, progressive, commercial practice based in Central London. We are a top ranked firm in the Chambers and Partners Directory. We have a highly experienced Banking Dispute Resolution Team. We are well known in the Banking Industry, in the courts and the profession.

Unrivalled sector knowledge

We utilise the latest technology and practice management techniques. Our team write articles and provide seminars on Banking matters. We are an associate member of the Council of Mortgage Lenders and a Member of the Institute of Credit Management Secured Lending Group. We are an associate member of and legal advisers to the Association of Short Term Lenders and an affiliate member of the Asset Based Finance Association.

Expertise and proven track record

We act for a wide range of financial institutions. We have particular expertise in acting in commercial and banking disputes including professional negligence and mortgage fraud claims.

Added value and cost efficiency

We provide top quality performance, utmost reliability and the finest service at a competitive price. We are successful because we are experts in our field and deliver maximum value. We are able to offer unrivalled value and expertise. All matters will be partner led, so clients always receive expert and value added advice. We provide expert one to one personal service and a consistency of expertise where the relevant solicitor/partner will, where possible, deal with the matter from start to finish and be familiar with every aspect of the case.

Cost effective funding arrangements

For suitable cases we are prepared to offer “no win no fee” Conditional Fee Agreements (“CFA”) and seek recovery of our costs from the Defendant. A CFA reduces the litigation cost risk of bringing a claim. Alternatively we can work on a fixed fee basis. Whichever option is preferred it is tailored to client requirements.

OUR APPROACH

Key issues

We concentrate on the following:

- We provide valued expert advice which explains in plain English the likely outcome of any claim, the risks involved, what the strengths and weaknesses are and a range of reasonable settlement values.
- We focus on good cases and ensure clients do not waste valuable management time on matters with low prospects of success.
- Our aim is to avoid going to trial unless necessary, but rather reach a good, cost effective settlement as quickly as possible through mediation or negotiation.
- Every one of the banking dispute cases are run at partner level on a bespoke basis, not by unqualified junior staff under a computerised system.

Swift action needed

- Many defendants are limited companies or LLPs who can enter into Administration and then start up as a new phoenix company without any liabilities of the old business.
- The claim may be out of time – the general rule is claimants have 6 years from when the cause of action accrues to bring a claim. This can be extended in certain circumstances by 3 years from the date negligence is discovered.
- If the claim is against a professional notifying the professional immediately is key. There is a risk that if a claim is not notified to the professional's insurers the claim may not be covered by their insurers. Also, insurance cover and assets are being eaten up by earlier claims.

Defendant tactics

We know how to counter Defendant tactics used to avoid paying out settlements and delay your claims including the following allegations:

- a failure to act as a reasonably competent lender, which includes claims of loan to values being excessive, improper due diligence on borrowers and failing to comply with the lender's own underwriting policies.
- failing to properly mitigate losses, either by not seeking recovery from elsewhere or failing to sell the security for the proper price following repossession.

FUNDING CLAIMS

No win no fee - CFAs

- For suitable cases we are prepared to act on CFAs backed, where required, by After the Event Insurance (“ATE”). Under CFAs we seek to recover our costs from the defendant or its insurer. CFAs reduce the litigation cost risk of bringing a claim. If a CFA is entered into then our “success fee” is customised on a case by case basis. If the case is suitable for a CFA, ATE is usually obtained, which covers the other side’s costs if the claim fails.
- The general requirements for cases that are suitable for a CFA are:
 - 60% or more prospects of success
 - the claim should have a value of £50,000 or more otherwise the costs of the claim could exceed recovery and therefore be disproportionate and not justify the risk
 - the defendant has sufficient assets to pay an award or professional indemnity insurance coverage
 - the claim is not out of time.

Third party funding

- If a CFA with ATE is not appropriate but there is a good claim of substantial value (usually £1million plus) it may be possible to secure third party funding, who fund all or any of the costs of the claim in return for a share of the proceeds. If the claim is not successful, the funder does not receive payment.

Fixed fees

- Alternatively, if CFA with ATE or third party funding are not suited then we can consider alternative fee structures, such as fixed fee work. Under a fixed fee agreement we agree a fee for each stage of the case which assists clients in managing cash flow and avoids unexpected bills.

Whichever funding option is preferred we will tailor our solution to client requirements.

RECENT CASE STUDIES

Case study 1

We acted for a lender in a claim against a negligent valuer. Our client obtained a valuation which gave the proposed security, a hotel and leisure development, a market value of £2.15 million in its existing condition. The valuation report confirmed the property was good security for the proposed loan. A loan of £1.5 million was granted. Subsequently the borrower defaulted. The Property was taken into possession and sold with a resulting shortfall of £850,000. We obtained an expert retrospective valuation which confirmed property was overvalued by £900,000, and thus outside the bracket of reasonable opinions.

Court proceedings were issued and the claim was strongly defended. The case was particularly complex due to the number of different elements that made up the original valuation. The key issue in this case was the methodology adopted by the valuer to arrive at his figures, and whether errors in many parts of the valuation were counterbalanced by other parts of the valuation and thus whether the overall valuation was still acceptable. The Defendant valuers took a very bullish approach which meant settlement was difficult. However following exchange of expert evidence we persuaded the Defendant valuers to enter into settlement negotiations and we were able to negotiate an excellent settlement of damages and costs.

Case study 2

We acted for a high street lender in a negligence claim against their conveyancing solicitors. Following default by the borrower the property was repossessed and sold with a large resulting shortfall. We were instructed to investigate the loan transaction. Upon reviewing the Solicitor's file it was apparent that the Solicitors had not only been negligent but also fraudulent. A claim was brought against the Solicitors and was defended by the Solicitors' insurers. The key allegations against the Solicitors were that they failed to advise the lender that the true purchase price was not as reported, that there was an allowance from the vendor in the sale contract, the borrower did not provide any funds towards the transaction, the Solicitors received and paid out significant sums to third parties who had no connection with the transaction, they failed to comply with Money Laundering Regulations and they did not write to the borrower until 3 months after completion. This was a mortgage fraud ring.

Once we received the Solicitor's letter of response we were able to reach a swift settlement whereby the lender client obtained its recoverable damages in full plus costs.

TEAM PARTNERS



Kamran Rehman

Kamran Rehman is a Partner at JGR. Kamran specialises in Commercial and Banking Disputes including Professional Negligence and Mortgage Fraud claims. He has worked both in industry and private practice. Kamran is a member of the Professional Negligence Lawyers Association.

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Clive Whitfield-Jones

Clive Whitfield-Jones is a Partner at JGR. Clive has many years of experience in Property and Secured Lending. He has particular expertise in Secured Recoveries and LPA Receivership. Clive is an Associate Member of NARA.

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