



## Thomas Mallon

Call 2019

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Thom accepts instructions across the range of Chambers' practice areas. He focuses on commercial litigation, consumer finance, group litigation, competition, product liability, and employment.

He is regularly instructed in high-value commercial litigation as junior counsel, having recently acted as junior counsel for Qatar Airways in a £1 billion dispute with Airbus S.A.S. and for the Department for Health and Social Care in a £140 million dispute relating to the supply of medical equipment. He currently acts for NEXT Plc in the first mass equal pay dispute of its kind under the Equality Act 2010.

In his own right he has represented many of the country's largest financial institutions, and acts for businesses of all sizes in both commercial litigation and employment disputes.

He also acts for the Government in the areas of his specialisms and is on the Attorney General's C Panel.

Before qualifying as a barrister Thom completed his undergraduate studies at the University of Oxford, and then worked the New York and Tokyo trading desks of several multinational banks. While in Japan he earned an MA in Economics from the University of Tokyo, and speaks fluent Japanese.

He is the winner of both the Oxford International IP Moot, and the Middle Temple Rosamund Smith Moot. After earning a distinction on the GDL he was granted the prestigious Quatercentenary Scholarship by Middle Temple to fund his BPTC studies.

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# Commercial Litigation

Thom has experience across a range of high-value commercial matters.

He was recently instructed as junior counsel by Qatar Airways in a £1 billion claim against Airbus S.A.S, which settled, and by the Department for Health and Social Care in a £140 million dispute involving the supply of medical equipment.

He represents small and medium-sized businesses in his own right, in court and at the advisory stage. He is known as a skilled tactician with a keen eye for detail and an excellent command of the law.

As a former trader he is technically adept and is often instructed in cases turning on complex expert evidence.

He accepts all commercial instructions.

## Representative Cases

- *Qatar Airways Group Q.C.S.C. V Airbus SAS*  
Acted as junior counsel for the claimant in a £1 billion dispute arising out of the sale of aircraft, which settled before trial.
- *Secretary of State for Health and Social Care v Primer Design Ltd*  
Acted as junior counsel for the Claimant in this £130 million claim against a provider of COVID-19 test kits, which revolved around technical analysis of the functionality of the kits in laboratory environments. The Claim settled in favour of the Claimant on the first day of trial.
- *Beaumont v AVC One Limited*  
Drafted pleadings for the claimant as sole counsel in respect of a £180,000 claim arising out of the sale of a telecommunications company to the defendant. The claim settled shortly after on favourable terms.
- *B Construction Ltd v S Fittings Ltd*  
Drafted pleadings for the Claimant in a £130,000 construction claim arising out of an agreement to fit windows and doors for a large commercial development.
- *B v F*  
Represented the claimant at trial, in a £100,000 dispute arising out of a sale of his construction company to the defendant and a complex set of deferred payment clauses.
- *W v W*  
Advised on a partnership dispute arising out of the running of a valuable dental practice, and the proper interpretation of a complex fees sharing agreement.
- *W v SI International Ltd*  
Advised as sole counsel on the recoverability of a commission fee payable for the sale of a high-value yacht, after the owner sold the yacht privately and declined to pay any commission to the broker. This advice considered both the effect of the contract itself, and potential claims in equity including *quantum*

*meruit.*

## Consumer Credit, Banking, and Insurance

Thom has extensive consumer credit experience, regularly appearing in misrepresentation, secret commission, PPI, s.140A-D and s.75 Consumer Credit Act 1974 claims.

He has acted for most of the country's major lenders. Recent instructions include success at trial defending a £70,000 claim alleging bribery against the claimant's mortgage broker, and successfully obtaining summary judgment for the Defendant in a £40,000 claim alleging a secret commission against the defendant bank.

Some of his recent alerters on important developments in this area can be found below:

- Johnson & Ors in the Supreme Court
- Harrop v Skipton Building Society and Self v Santander Cards UK Limited [2024] EWCA Civ 1106
- Canada Square Operations v Potter [2023] UKSC 41

He also has a busy practice advising on the interpretation of contracts of insurance.

Thom has significant professional experience in the financial sector, having worked as a trader for several years in New York and Tokyo.

### Representative Cases

- *F (in administration) v U & others*  
Represented the broker as sole counsel in a £70,000 claim arising out of alleged secret commissions, where it was alleged that the broker had procured the lender's breach of duty so as to be liable for the same damage.
- *L v ND Ltd*  
Obtained summary judgment for the defendant lender in a £40,000 claim alleging the payment of secret commissions and breach of the Consumer Credit Act 1974.
- *H v Allianz*  
Advised as sole counsel on the merits of a £100,000 breach of contract claim against an insurer, following a refusal to pay medical costs incurred as a result of catastrophic heart failure suffered abroad.
- *W v SI International Ltd*  
Advised as sole counsel on the recoverability commission fee payable for the sale of a high-value yacht, after the owner sold the yacht privately and declined to pay any commission to the broker. This advice considered both the effect of the contract itself, and potential claims in equity including *quantum meruit*.
- *A v DG Holdings*  
Advised as sole counsel on the availability of a claim under the Third Parties (Rights Against Insurers Act) 2010, following the insolvency of the insured defendant to a high-value personal injury claim.

## Group Actions and Product Liability

Thom has been involved in some of the largest product liability and group action disputes, including the Volkswagen NOx Emissions litigation. He is currently instructed by NEXT plc in a mass equal pay claim.

He has particular expertise dealing with technical and expert matters, having a strong technical background himself.

### Representative Cases

- *Secretary of State for Health and Social Care v Primer Design Ltd*  
Acted as junior counsel for the Claimant in this £130 million claim against a provider of COVID-19 test kits, which revolved around technical analysis of the functionality of the kits in laboratory environments. The claim settled in favour of the Claimant on the first day of trial.
- *Qatar Airways Group Q.C.S.C. V Airbus SAS*  
Acted as junior counsel for the claimant in a £1 billion dispute arising out of the sale of aircraft, which settled before trial.
- *Thandi & Ors v NEXT Plc*  
This is the first mass equal pay claim against a private employer since the coming into force of the Equality Act 2010, now under appeal in the EAT. Thom represents the Respondent in the ongoing proceedings.
- *Liquiat v Audi*  
Acted as sole counsel for the Claimant in a claim alleging a total failure of a new Audi motor vehicle. The claim turned on expert evidence of the particular faults which were likely to have caused the failure, and their originals.

## Competition

Thom is uniquely placed in the competition landscape, having a strong background in economics honed by work on major trading desks in both Tokyo and New York.

His technical strengths, experience on large group actions, and experience working with experts make a valuable contribution to any team, both at the pre-action stage and beyond.

He has assisted leading counsel in preparing cross-examination of experts in relation to (for example) the definition and limits of specific markets, worker preferences over different job roles, the limits of monopolies and corresponding market power, and the effect of wage and non-wage amenities.

## Employment

Thom is currently instructed by NEXT Plc the first a mass equal pay claim against a private employer since the coming into force of the Equality Act 2010.

He regularly appears in discrimination and unfair dismissal claims before the ET. He was recently instructed as sole counsel by the Metropolitan Police in a 7-day direct race discrimination trial, which his client won.

Given his significant trial experience for a barrister of his call, he has particular strength in claims that require adept witness handling and cross examination.

### Representative Cases

- *Thandi v NEXT Plc*

This is the first mass equal pay claim against a private employer since the coming into force of the Equality Act 2010, now under appeal in the EAT. Thom represents the Respondent in the ongoing proceedings.

- *Ayiya v Commissioner of Police of the Metropolis*

Thom represented the successful respondent. This was a seven-day trial for direct race discrimination brought on 14 different bases, as well as a claim for unfair dismissal. It also included claims for harassment and a breach of various provisions of the Employment Relations Act 1999.

The acts complained of spanned several years, and the Claimant's case was based on an alleged persistent pattern of racial bullying and harassment.

It also raised an interesting legal question as to whether a police officer without a contract of employment can claim constructive unfair dismissal pursuant to s.39 of the Equality Act 2010 (as opposed to unfair dismissal which is not constructive).

- *Bashir v Star Academies*

This was an appeal in the Court of Appeal in relation to extensions of time for bringing appeals in the EAT.

The question was whether time should be extended in circumstances where an ET1 form was missing from the application to appeal, but the full Grounds of Complaint was included and otherwise in time.

This has been a fraught question, with the EAT historically applying extremely strict criteria for extending time.

The Appeal was granted by agreement on the day of the hearing, following negotiations arising out of service of the Appellant's skeleton argument.

## Property

Thom's practice covers the full range of property-related matters.

He specialises in Real Property disputes, dealing with mortgages and charges, insolvency, restrictive covenants, adverse possession and boundary disputes, easements, applications for sale, and land registration and

conveyancing disputes.

He also regularly appears in both residential and commercial possession claims, and applications for injunctions.

## Representative Cases

- *S v H*

Advised as sole junior as to the beneficial interests held in a family home worth £600,000, where there were six siblings who had resided in the property at different times, but where the property was in the sole name of only one sibling. Further, the father had contributed to the purchase and subsequently died in circumstances where it appeared he may have had the intention to create a trust for the siblings. The advice dealt with the possibility of a trust and the consequences of either a failed express trust or a constructive trust under traditional rules of equity, as well as the likelihood of a common intention or implied trust further to *Stack v Dowden* and *Jones v Kernott*.

- *Trustees in Bankruptcy of CF v P*

Advised a major lender on the validity of a registered charge over a high-value property purchased after a petition in bankruptcy had been made against the creditor.

- *Re: an Estate*

Advised as sole junior on the relative priority of a charging order worth £150,000, as against six prior legal charges, in circumstances where the freehold proprietor had died intestate.

This advice considered *inter alia*, ss. 15, 17, 20(1) and 20(5) of the Limitation Act 1980, s.96 Land Registration Act 2002, s.27 Land Registration Act 1925, and s.87 Law of Property Act 1925.

It also considered the mechanisms by which equitable charges are converted into legal charges per s.90 LPA 1925 and *Ladup Ltd v Williams And Glynn's Bank* [1985] 1 W.L.R 851 and *Re Thompsons Mortgage Trusts* [1920] 1 Ch. 508.

- *P v GT*

Advised as sole junior on the liability of a freehold company under the terms of a lease and sub-lease, for damage caused by an unremedied leak in a block of flats by one of its lessees, in circumstances where the freeholder was also the sub-lessor of the tenant who suffered damage under that sub-lease. Drafted the Particulars of Claim.

- *Re: an Estate*

Advised as sole junior on the merits of an application for sale pursuant to CPR 73.10C in respect of a high-value freehold property over which there were eight different parties with legal charges or charging orders and where the registry was considerably out of date and now inaccurate as to the relative priority of those charges.

## Public Sector

Thom was appointed Junior Counsel to the Crown (C Panel) in 2023 and regularly advises and represents numerous Government Departments, agencies and related bodies (including the Department of Health and Social Care; Ministry of Defence; Ministry of Justice; Department for Levelling Up, Housing, and Communities;

Department for Work and Pensions; and various London Boroughs).

He has advised the Government on everything from high-value contractual disputes for the supply of medical equipment, to claims under the Human Rights Act 1998, to intellectual property disputes around licensing.

He was recently instructed by a DHSC in a £140 million contractual dispute with a supplier of goods and services.

## Inquests and Health and Safety

Thom has significant inquest experience. Recent instructions include representing a school for autistic children as sole counsel in a 4-week inquest arising out of the suicide of a former pupil, and acting for MHCLG in the Covid Enquiry.

He has a strong Health and Safety practice, including both inquests and the criminal prosecutions by the HSE, mostly involving fatal accidents. He has particular expertise in the special duties and requirements arising out of construction contracts.

Recent instructions include representing an international chemicals manufacturer following an escape of caustic at a refinery, the Ministry of Defence in relation to military equipment, and the government of the Isle of Mann.

He has extensive criminal trial experience in his own right, from the Magistrates courts up to the Court of Appeal, allowing him to give accurate and effective advice to clients. He can assist both tactically in the early stages, and at trial.

## Personal Injury

Thom is an experienced cross-examiner and highly effective trial advocate. Recent instructions include successfully defending high-value claims in relation to a permanent back injury, and in relation to a serious head injury following a fall.

He has particular experience defending large organisations, where the claim often arises out of alleged defects in systems of work and health and safety monitoring.

He also regularly advises on particularly difficult areas of quantum, including injuries to the back, injuries involving the acceleration of pre-existing degenerative conditions, and permanent injuries to the hand and thumb.

## Appointments

- Attorney General's Panel of Junior Counsel to the Crown, C Panel (2023)

## Memberships

- The Commercial Bar Association (Combar)

## Education

- BPTC, City University
- Middle Temple Quatercentenary Scholarship
- GDL, City University (Distinction)
- MA Economics, University of Tokyo
- BA (Hons) English, University of Oxford