



## MATTHEW LAVY

Year of call 2004

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### Recommendations

Matthew is recommended in Chambers & Partners and the Legal 500. Comments have included:

- exceptionally talented
- exceptional technical understanding
- a real help on very difficult software and hardware cases
- A profound understanding of the technical complexities of software

He was featured as one of 10 “*Stars at the Bar*” in the December 2013 issue of Legal Week, was nominated for Intellectual Property/Information Technology Junior of the Year at the Chambers & Partners Bar Awards 2014 and 2019, and won that award in 2016.

### Practice

Matthew has a broad commercial practice, but with a particular interest in and focus on disputes involving technology (in all industrial, commercial and consumer contexts). In addition to litigation and arbitration (institutional and ad hoc), Matthew advises in relation to dispute avoidance and in non-contentious commercial contexts. He is on the Lord Chief Justice’s advisory group on Artificial Intelligence and a Trustee of the Society for Computers and Law.

His core practice areas are:

- Technology and Telecoms
- Intellectual Property
- Aviation
- Commercial Litigation & Arbitration

### Technology & Telecoms

Matthew acts and advises on a wide range of technology and telecoms-related disputes. He is regularly instructed on behalf of providers, purchasers and users of networks, computer systems, internet and cloud services and software across a variety of industry sectors. In addition to disputes involving mainstream business systems and services of all sizes, Matthew has acted and advised in relation to highly specialised applications such as broadcasting platforms, radio-telecommunication networks, core banking systems, military technology, safety critical software, and industrial control systems (SCADA/PCL). Disputes in which he has been instructed include those arising out of project failures and delays, IP licensing, copyright infringement, breach of confidence, outsourcing agreements, data protection, digital media and digital rights management. He also has expertise and has advised in relation to cyber liability and the insurance of cyber risks, cryptocurrencies, blockchain technologies and ICOs. His clients regularly include tier-one IT suppliers, telecoms giants, and software and equipment suppliers with global reach.

Prior to coming to the bar, Matthew worked as a software developer, system administrator and technical writer. Between 1997 and 2002 he gained extensive software development experience (programming in Java, C, C++, Perl, SQL and VB), provided technical support to an 800-node computer network and wrote two books on systems administration. He was responsible for the design and implementation of a business critical 15-000 user bespoke software application commercially commissioned by a leading university. As a result of this experience, Matthew brings to technology disputes an excellent and deep seated understanding of software, networks, IT systems and development approaches, and first-hand appreciation of the realities



of project definition and delivery. He is able to discuss details of a case with experts and clients at the deepest technical level; he can “translate” technical concepts for the benefit of a legal team, arbitral tribunal or the court.

Matthew was one of the experts involved in the EU Commission-funded E-Crime Project, and is currently on the Nominet and ADNDRC Domain Name Dispute Resolution Panels. He speaks regularly on the legal implications of leading edge technologies such as blockchain, IoT and AI. He was one of the authors of the Legal statement on cryptoassets and smart contracts issued by the LawTech Delivery Panel UK Jurisdiction Taskforce.

Examples of Matthew’s previous instructions in technology-related matters are set out below:

### ***Internet, E-Commerce & Cyber Risk***

- Advising on a dispute concerning the design and implementation of an intrusion detection system for a cyber watch centre servicing a 75,000 node network.
- Advising a major telecommunications provider in relation to liabilities arising out of RIPA interception activity.
- Advising on liability for security flaws in software design and adequacy of security measures in the context of EU data protection legislation.
- Advising a cloud-based provider of business-critical services in the transport sector as to the responsiveness of its cyber-risk insurance cover to predicted loss scenarios;
- Advising a multi-national conglomerate in relation to the negotiation of bespoke elements of a group-wide cyber-risk policy;
- Acting in an LCIA arbitration concerning allegations of hacking corporate IT infrastructure;
- Advising a cloud service provider in relation to the creation of new standard terms and conditions;
- Acting for an Internet trading company in relation to the abusive registration of domain names;
- Advising an on-line retailer as to availability of injunctive relief in relation to a dispute with its e-commerce site developer;
- Advising a website owner as to its legal rights in relation to traffic generation by alleged unwarranted and abusive robot activity;
- Acting for a domestic insurer in a high-value dispute arising out of the poor performance of web channel infrastructure;
- Acting for a digital media agency in a dispute with the supplier of its demand-side platform technology over ownership market segmentation data;
- Advising a crypto-currency holder on potential routes to recovery of crypto-assets fraudulently transferred from an online wallet;
- Advising transport infrastructure operator in relation to the responsiveness of its cyber-insurance policy and liability of IT providers in relation to a hostile cyber-event.

### ***Telecoms and Networking***

- Acting for an MNO in a claim in excess of £100m involving rights to use of mast sites for 2G and 3G Radio Access Networks across the United Kingdom. The dispute was primarily focused on contractual matters and aspects of telecommunications law, but also involved detailed technical factual and expert evidence in relation to the mechanisms involved in roaming and signal handover;



- Acting for a global telecoms provider in relation to a contractual dispute arising out of the implementation of an international high-speed international data network;
- Acting for a leading MNO in dispute with a MVNO wholesale customer arising out of allegations of service discrimination and breach of contract;
- Advising a major network equipment manufacturer in relation to a dispute arising out of major service outage suffered by an MNO customer;
- Acting for a global telecoms provider in relation to a contractual dispute arising out of defective works discovered after expiry of a long-term outsourcing arrangement.

### ***Outsourcing***

- Advising a Far East government in relation to a high-value dispute arising out of a large-scale, cross-governmental IT outsourcing project, where complex issues of damages arose;
- Advising a major insurer in relation to rights and liabilities arising under a long-term back-office outsourcing contract;
- Acting for major telecoms provider in relation to an eight-figure dispute with its IT services provider regarding transformation and management of legacy IT infrastructure.

### ***Commercial and Regulatory Disputes in the Tech Sector***

- Acting for a provider of aviation ground support services in relation to a contractual dispute concerning the installation and supply of a global wide-area network;
- Acting in the Fujitsu v IBM litigation, a high-value contractual dispute arising out of a long-term sub-contracting arrangement for a public authority;
- Acting for Tier one global IT supplier in relation to a dispute with a UK public authority as to (amongst other things) the operation of a financial incentives/compensation model.
- Advising a major communications provider as to its obligations and liability under RIPA and related legislation, and as to the interaction of those regimes with its potential liability under data protection legislation.
- Advising a software supplier on the impact of cryptography export controls under the Wassenaar Arrangement on its products.
- Advising a global telecoms provider in relation to its regulatory obligations under the General Conditions of entitlement.
- Advising a tech startup on the legal risks associated with its blockchain-based technology and Initial Coin Offering.

### ***IT Project Failures***

- Acting in the BSKyB v EDS litigation, a very substantial claim for deceit, negligence and breach of contract relating to the procurement of a Customer Relationship Management System for new state-of-the-art call-centres;
- Acting in the Ericsson v EADS litigation, a dispute relating to the development and supply of command and control software for the UK FiReControl project;
- Acting for numerous suppliers and purchasers in relation to failed implementations of SAP and other enterprise resource planning software solutions.

### ***Safety-critical Software and Control Systems***



- Acting for a specialist software supplier in a multi-million pound dispute concerning project delay and allegations of defective design and implementation of safety critical software for the rail industry;
- Acting in a dispute about compliance with specification and fitness for purpose of military-grade communications equipment;
- Acting for the developer of SCADA and PCL control systems for heating and ventilation control on one of the world's largest superyachts.
- Acting for a manufacturer of wind turbines in a dispute relating to intellectual property rights in its PCL software.

## **Intellectual Property**

Matthew regularly acts and advises in relation to copyright infringement, design right infringement, technology licensing (copyright and patent) and breach of confidence. He has a particular focus on intellectual property issues arising out of the use of computer software, where his deep knowledge and understanding of software (see Technology and Telecoms above) is highly valued. Examples of previous instructions include:

- Acting in a high-value UNCITRAL arbitration about the licensing of patents and technology rights relating to 3G access stratum technology;
- Advising a telecoms services company in relation to alleged copyright infringement of open source software and violations of the GNU Public Licence;
- Acting for a software development house in a claim against former employees for copyright infringement and breach of confidence;
- Acting for major network equipment manufacturer in licensing and copyright infringement arbitration (LCIA) arising out of the sale and license back of service provisioning software;
- Acting for well-known software house in relation to a licensing dispute arising out of the use of its software on virtualized and partitioned environments;
- Advising and acting for numerous users and suppliers of software in relation to the scope and effect of their licence agreements;
- Acting for equipment manufacturer accused of authorizing infringement of design rights by reverse engineering printed circuit boards;
- Acting for fabless IC designers in relation to a claim for breach of confidence and of non-compete covenants arising out of the sale of a semiconductor business.
- Acting for industry organization against a manufacturer and distributor of set-top boxes that circumvent Digital Rights Management technology.
- Advising on resale rights in relation to "used" licences for commodity software.

## **Aviation**

Matthew acts and advises in relation to commercial and technical aspects of aviation and the business of aviation. He has been instructed by aircraft owners and operators, equipment manufacturers, maintenance organisations and ground handling agents. Matthew holds European and US commercial pilot's licences, and maintains a current instrument rating on both (EASA CPL ME/IR; FAA CPL SE/IR), which he uses regularly to fly throughout Europe VFR and IFR in controlled and uncontrolled airspace. Consequently, he has a detailed practical understanding of aircraft operation and maintenance, air traffic control, airport and airspace operation and the regulations that underpin them, particularly in a GA context.

Examples of previous instructions include:



- Acting for a designer of aerodynamic performance enhancements in a \$1 billion ICC arbitration concerning the alleged misuse of confidential information by the manufacturer of large transport aircraft;
- Acting for an owner and lien-holder resisting the repossession of a King Air 250 and Cessna Citation 2 by a mortgagee;
- Advising maintenance organization in relation to an allegedly negligent pre-purchase inspection of a Piper Chieftan;
- Acting for an aircraft owner in relation to a dispute as to the contractual basis and scope of certain build works undertaken in relation to an RV7 assembly project;
- Acting for a major ground handling agent in relation to a dispute relating to the installation and management of a trans-continental data transmission network;
- Acting for the owner of a B737 in relation to a dispute with lessee airline over holdover rent, maintenance reserves and redelivery;
- Acting for the owner of a B767 in relation to a dispute with lessee airline over redelivery compensation for life-limited parts.
- Advising lessor of a fleet of large transport aircraft as to its security enforcement rights as against a defaulting airline.

### **General Commercial litigation & Arbitration**

Matthew acts in a wide range of commercial and contractual disputes in a variety of industry sectors, including the fields of banking, energy, financial services, insurance and the sale of goods. He was instructed by the Treasury Solicitor in relation to an action brought by Lloyd's Names against HM Government and by the Inland Revenue in relation to an action brought against it by a major cross-channel ferry operator. Further examples of previous instructions include:

- Acting for a major insurer in relation to a substantial portfolio of property damage and business interruption claims arising out of the Buncefield explosion;
- Advising an equipment supplier in relation to the effect and scope of a restrictive covenant;
- Advising a major fuel supplier in relation to the Compulsory Stock Obligation regime;
- Instructed in an ICSID arbitration concerning the procurement and implementation of revenue collection software;
- Advising a television format owner in relation to a dispute arising out of the audit provisions of a global licensing and distribution agreement;
- Acting for the Defendant in *Comau UK Limited v Lotus Lightweight Structures Limited*, where a widely-reported summary judgment considered the effect of termination for convenience provisions on damages flowing from a repudiatory breach;
- Acting for the Defendant in *Jomast Accommodation Limited v G4S Care and Justice Services (UK) Limited*, a case involving multiple allegations of fraudulent misrepresentation;
- Acting for the liquidator of an insolvent hedge fund in relation to a dispute concerning the proper approach to determining a close-out amount under the 2002 ISDA Master Agreement;
- Acting for the Defendant in *Motortrak Ltd v FCA Australia Pty Ltd* [2018] EWHC 990 (Comm), where the counterclaim involving bribery by the claimant IT supplier of the defendant's CEO.

### **Qualifications**



MA (Cantab) Music  
PhD (Cantab) Musicology  
PgDL (BPP)

### **Publications**

- Contributor to Computers and Information Technology chapter of Bullen & Leake & Jacob's Precedents of Pleadings and Precedents, 18<sup>th</sup> edition.
- Co-author of England & Wales Chapter in Thalhofer's IT Litigation Handbook, published by Otto Schmidt, 2012.
- Contributor to the chapter on IT Consultants in Simpson's Professional Negligence and Liability (published by Informa).