



VIBERTS

LITIGATION





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"We are committed to resolving disputes efficiently and in the most cost-effective way by encouraging clients where possible to settle their disagreements outside of court by arbitration, mediation or another form of alternative dispute resolution."

Advocate Christina Hall - Viberts' Litigation Partner



Welcome to



We are a long established law firm renowned for outstanding client service, effective problem solving skills and strategic thinking.

Experts in Litigation

Viberts' experienced litigation team advises on all types of litigation arising in an offshore environment, including disputes involving contracts, companies, trusts, funds and commercial debt recovery.

Experienced in multi-party, cross-jurisdictional and other complex disputes, our team regularly works with counsel from other jurisdictions and retains a close working relationship with a number of specialised London chambers to achieve the best result possible. We encourage our clients where possible to settle their disagreements outside of court by arbitration, mediation or another form of alternative dispute resolution. Where litigation is unavoidable, our team is skilled in progressing our clients' interests by deploying the relevant law, their procedural options and the evidence to devise the best strategy possible.

We have a proven track record acting for banks, trust companies, insurers, accountancy firms and individuals and have particular expertise in the specific areas covered in this brochure.





Banking & Finance

Our litigation team has a wealth of experience in all types of financial and banking litigation. As preferred counsel for a range of clients including offshore banks, insurers, accountants, trust companies, high net worth individuals and other financial institutions, our clients instruct us in disputes involving:

- > lender enforcement action;
- > regulatory issues;
- > mis-selling;
- > injunctions;
- > professional negligence; and
- > contractual disputes.

Our experienced litigators work closely with our corporate team to provide clients with tailored advice and a seamless service from both a litigation and corporate perspective. Our clients value our pragmatic and succinct analysis of their financial and banking problems.



Commercial Litigation

Viberts understand that being involved in any litigation, whether you are a sole owner of a small business or part of a large corporation, can be costly and time consuming.

The inevitable drain on time and finances is disruptive to businesses and is immensely worrying no matter how large your business may be. With this in mind, our approach to commercial litigation is to aim successfully to conclude any action in the most cost and time efficient manner possible.

In line with the message regularly given by the Jersey courts to litigants, we advise our clients to explore alternative dispute resolution, for example by way of mediation or settlement meetings. We have strong connections with specialised mediators and have a successful track record of settling our cases outside of the court procedure. Advice to clients on when to explore alternative dispute resolution is vital and we will always provide clear and candid advice as to the merits of pursuing a case so clients can make informed decisions.

Clients have access to senior practitioners and partners throughout the conduct of the case. Whilst work will be delegated to persons with the appropriate level of expertise, a case is always partner led. If the case reaches court, we have adept litigators who regularly appear before the Jersey courts to fight your case. Our litigators have presented some of the most ground-breaking and widely published cases in Jersey and where cases are multi-jurisdictional or require specialist input, Viberts also has strong connections to UK counsel and law firms.

We provide the right advice in all types of commercial litigation, including:

- > Competition law;
- > Corporate debts;
- > Registering and enforcing non-Jersey judgments;
- > Director and partnership disputes; and
- > Shareholder minority, unfair prejudice and derivative actions.

Construction Disputes

Viberts' litigation team regularly advises architects, building companies, contractors, developers, home owners, sub-contractors and other construction professionals in relation to residential and commercial construction disputes.

Typically construction projects include multiple parties and when something goes wrong it is difficult to determine who is legally responsible. Our specialist team can help identify the responsible party and provide the specialist advice needed to secure a remedy for the financial loss suffered. However, even when it is easy to identify who is at fault, it is not always possible to bring a claim for negligence. Not all errors constitute professional negligence and if the relevant party has carried out their duty with due care and skill they may not be liable.

More often than not construction disputes will involve expert evidence. Such evidence will play an important part in the success of a case so it is vital the right expert is instructed. Viberts work with a panel of carefully selected experts who are able to provide independent, skilled and specialist opinions. Crucially these experts have the requisite experience necessary to provide court compliant opinions and are adept at providing oral evidence in court when required. This collaborative approach ensures our clients have the strongest case possible.

Should your dispute be particularly complex or involve English law (such as British latent defects insurance), we work closely with a set of chambers which specialises in construction and insurance disputes.

Whether you are pursuing or defending a professional negligence claim, we are able to provide clear and accurate advice as to its prospects of success. The advice that Viberts provide in this area includes:

- > advising on the applicability of insurance;
- > contractor / employer insolvency;
- > disputes relating to defective works/remedial works;
- > disputes relating to final accounts, including delay and extension of time claims;
- > payment disputes under construction contracts;
- > professional negligence on construction projects; and
- > retention of title claims.





Contentious Regulatory Advice

One area of modern life where the legal profession makes an important contribution is in holding the government and its various agencies to account. In some legal systems, such as in France, a parallel court structure exists to allow the citizen to challenge government actions felt unfairly to interfere with his constitutional rights. Jersey has by contrast followed the British path. Many statutes creating official powers to regulate the life of the citizen contain appeal provisions, allowing a challenge on the grounds of unreasonableness. Even where these provisions do not apply there is a right to seek a judicial review of administrative action.

Our lawyers have the skills to advise individuals and businesses wishing to address or even challenge the requirements made of them by bodies in a position of authority, such as the Jersey Financial Services Commission (the “JFSC”). The JFSC prides itself on setting and enforcing high regulatory standards, reasoning that persons or businesses that fail to treat their clients properly or fail to comply with the international agreements to which Jersey is party are jeopardising the reputation of an industry whose commitment to maintaining high standards is crucial to the success of the Jersey economy. The legislator shared this view of the importance of Jersey’s finance industry and gave the JFSC far reaching powers. These are set out in the island’s financial services legislation and in the codes of conduct promulgated under it. Even the right of silence, as would be enjoyed by a suspect under police investigation in Jersey, has been removed. Industry members have a positive duty to be open and cooperative with the JFSC.

We act for numerous providers and consumers active in Jersey’s financial services sector. The technical advice traditionally given has been supplemented by the need also to consider its regulatory implications. We recognise that no regulatory body is infallible and neither are its advisors.

Viberts can help clients to assess the relevant facts against the relevant legislation, rules, policies and case law. If needs be, our lines of communication with expert counsel in London are well established. We understand that if dealings with the JFSC are handled incorrectly, the financial and reputational ramifications for an individual or a business can be severe. At such times the client needs a trusted and level-headed legal advisor on their side.



Criminal Prosecution & Defence

Viberts has a specialised criminal defence team who have the depth of experience required to defend clients from their first appearance in the Magistrate's Court to the Royal Court where more serious offences are heard. Our team also regularly appear before the Court of Appeal for those cases which necessitate the Appeal Court's review.

Whether the representation needed is limited to mitigation at a sentencing hearing or extends to the preparation and presentation of a case at trial, Viberts' team will ensure you receive the correct advice and have an experienced advocate presenting your case throughout the process.

With two Viberts' partners appointed as Crown Advocates to prosecute cases on behalf of the Attorney General, Viberts' team is one of the most experienced in Jersey. It has handled some of the most complex and serious criminal cases to have occurred in Jersey such as:

- > drug offences;
- > fraud;
- > homicides;
- > money laundering; and
- > sexual offences.

Defamation

There are two types of claim for defamation; libel and slander. Libel is where the publication is permanent, or could be recorded and so become permanent, such as a radio or TV transmission, newspaper articles or comments posted online. Slander is the spoken word and/or gestures.

Defamation is an area of law rarely considered before the Royal Court and claims are more often settled out of court. Viberts recognise that with internet publication services available to all, clients will need advice on how to avoid a defamation action and/or whether defamation has occurred.

If your case is particularly complex, we have strong connections to specialised counsel that only practice in this area. We pride ourselves on being able to offer clients technical, yet clear and straightforward advice.



Fraud & Asset Recovery

Viberts recognise the importance of a client's reputation, particularly in an offshore jurisdiction such as Jersey. If you require assistance in this area, our team prides itself on ensuring each client's specific needs are handled sensitively, yet effectively.

We have a proven track record in representing plaintiffs and defendants in both civil and criminal fraud cases and have acted in some of Jersey's most high profile cases in this area.

Whether you are a victim of fraud or are facing allegations of fraud, our team will take clients carefully through each step of the process, ensuring they receive clear and practical advice and skilful legal representation before the Jersey courts.

We are also regularly instructed in asset tracing cases and recognise that if a party is dissipating or hiding assets, time will be of the essence. Our highly experienced team will respond quickly and decisively for clients who need to locate and freeze Jersey assets, often working across jurisdictions.

We are also able to respond swiftly and provide advice if you find yourself defending a freezing order. In every case, we provide clear advice on the various procedural options available, including a thorough risk and reward review of each of them.

Human Rights

The Human Rights (Jersey) Law 2000 incorporated certain rights contained in the European Convention of Human Rights into Jersey Law. This important piece of legislation formalised Jersey residents' entitlement to the protection of certain rights which many UK residents had long taken for granted.

The introduction of this law meant practitioners must ensure they do not idly accept Jersey law as being good law if it appears to conflict with the European Conventions. Our team will advise clients on whether old customary law is Human Rights compliant and where necessary will seek a declaration of incompatibility from the Jersey court in relation to Jersey legislation which is in conflict with the European Conventions.

Whilst experience in this area helps with the conduct of all types of litigation, it is vital when providing representation for clients who face deportation or unnecessary detention. Our team regularly advises clients who face the prospect of deportation by order of the Lieutenant Governor and we have been involved in some of the very few cases in Jersey where clients have sought political asylum.

Human rights issues also arise in a variety of other subjects, such as data protection, appeals or judicial reviews of administrative decisions and in any other case where an individual is concerned that their convention rights have not been respected.

Insolvency

Viberts has a highly experienced team, well placed to advise on all Jersey and cross-border aspects of bankruptcy, restructuring and insolvency. We can help you whether you are an individual facing insolvency problems, a Jersey company or international group in need of advice on restructuring, or a liquidator acting in a winding up. We advise corporates, banks, liquidators, trustees as well as interested individuals in various capacities.

Our lawyers are members of ARIES¹ and INSOL² and can help you with any of the following issues:

- > Appointment and removal of liquidators;
- > Asset recovery;
- > Cross-border disputes;
- > Debt restructuring;
- > Distressed financing, acquisitions and sales;
- > Enforcement of security;
- > Insolvency proceedings including representations seeking relief or directions;
- > Personal bankruptcy (désastre) and dégrèvement;
- > Powers and duties of office holders in insolvency situations;
- > Regulatory issues;
- > Reinstatement of dissolved entities;
- > Shareholder claims; and
- > Winding up of Jersey companies.

Where necessary we can call upon expertise both within the firm and from our wide network of international correspondents. This enables us to provide assistance to clients in infinitely variable and complex circumstances. Connected issues might include banking, finance, corporate, property and employment.

We work closely with government departments and regulators and keep up to date with current processes and accepted approaches to specific issues in order to ensure our clients receive the best advice possible.

¹ ARIES - Association of Restructuring and Insolvency Experts

² INSOL - International Association of Restructuring, Insolvency and Bankruptcy Professionals



Personal Injury & Clinical Negligence

Viberts has an extensive personal injury practice and as a result we believe we successfully conclude more personal injury cases than any other firm in Jersey. We are preferred counsel for large international insurance companies, Trade Unions and individuals seeking to make or defend personal injury claims.

If you are thinking of bringing a personal injury, clinical negligence or industrial disease claim, we recommend you take advice as quickly as possible to ensure the time limit on bringing your claim has not expired. We recognise issuing proceedings can be daunting for any person unfamiliar with litigation, and the process can appear complex and confusing. Just because you have had an accident and been injured does not automatically mean you will be entitled to compensation; even if your injuries are serious and you cannot work. Furthermore, the injured party must prove that their injuries or illnesses were caused by the negligence of another party, whether that is another driver, an employer or a medical professional.

Proving who is legally responsible for your injury will not always be straightforward, and proving your injuries are a result of the negligence of another typically requires the opinion of an expert. Our team has the requisite experience to gather the vital evidence needed to prove your case. We are able to provide the advice needed to ensure the correct party is held responsible and we ensure the best experts are instructed to show you have the strongest case possible.

If you are injured, you should be able to concentrate on your recovery. If appropriate, we will secure early payments from the defendant to help aid your physical and psychological recovery. Our team aims to ensure your claim is handled as quickly, effectively and as smoothly as possible. We take particular care to make sure our clients understand the various funding options available to them.

Our significant experience in this area has resulted in significant successes in complex cases ranging from:

- > Accidents at work;
- > Asbestos-related disease;
- > Assault claims;
- > Car accidents;
- > Children's accidents;
- > Clinical negligence;
- > Faulty products; and
- > Slips, trips and falls.

The majority of personal injury cases are settled so our clients do not need to go to trial.

Personal Litigation

Most of us aim to go through life avoiding conflict as far as we reasonably can, but this is not always possible. You may find yourself having to defend a complaint, or the behaviour of a person or organisation may leave you with no choice but to assert your interests and issue proceedings.

The conduct of disputes with a view to securing a positive outcome is central to the expertise of the lawyers at Viberts. Even those whose work is traditionally non-contentious take care to evaluate the advice they give to make sure it would survive a critical review in court unscathed.

We recognise that whilst court proceedings make good drama, litigation is a widely misrepresented and misunderstood process. For example, continental court hearings often allow the judge to conduct an inquisition: he takes an active role, sometimes questioning the witnesses so as to get to the bottom of the dispute. A Jersey judge is less interventionist, he adjudicates upon the submissions made to him although he will pose questions to test them for their strengths and weaknesses. As a general rule, the judge decides matters of law and the Jurats sitting with him decide matters of fact.

It should never be forgotten that the courts see themselves as an option of last resort. Great care is taken to encourage litigants to exhaust all other avenues such as negotiation, mediation and arbitration. All these procedures are referred to collectively as alternative dispute resolution.

Alternative dispute resolution and litigation will only ever be successful if the client's lawyer has identified the material facts and evidence and applied the applicable law. There are also various human factors to consider. For example, will a witness be reliable? Are there other parties who should be involved, whether invited in as allies or summoned to appear as the persons actually responsible for what has happened? If a litigant is a business or organisation, which member of it is best placed to represent it in court to show it has properly understood and performed its rights and duties?

Unless all these factors are considered and the case is presented correctly and skilfully, a client will never achieve the fair result. Because of this, dispute resolution in general and litigation in particular requires detailed and time consuming preparation. This can make it expensive, without offering the guarantee of a successful outcome.

Almost all disputes should therefore be the subject of a continuing risk/reward review, comparing the cost implications of proceeding against the available alternatives. This approach is taken on every one of our cases and we pride ourselves on ensuring litigation costs are as transparent as possible for our clients.

Viberts' litigation team approaches each case with these issues in mind, carefully considering the tactics and strategy underlying each case. This approach informs the advice we give both in and out of court; from the drafting of the first pleadings all the way to the courts of appeal.





Planning & Property Disputes

Viberts has expertise in all aspects of property and planning litigation.

Whether you own or occupy domestic or commercial premises our litigation team could help you resolve your dispute. We know property disputes are unsettling and can be highly complicated. We aim to find the most cost effective and satisfactory solution to your particular issue in the shortest possible time. If you are struggling to deal with a property dispute you can rely on us to untangle the evidence, advise clearly on the law and offer you the strategic guidance you need with professionalism, sensitivity and care.

We 'problem solve', working closely with our specialists in other areas, including Viberts' conveyancing team, which is highly skilled in reconciling the property contracts filed in the Public Registry with Jersey's land law. We find this is often where the solution to many property disputes can be found.

Our litigation team has years of experience advising on and appearing in court to argue a wide range of issues affecting all types of property, be it residential or commercial, and all types of tenure, such as freehold, flying freehold, leasehold or share transfer.

We advise on and deal with all the disputes that can arise for an owner/occupier of a property including:

- > Acquiring and defining title, for example boundaries, servitudes, covenants and neighbour disputes;
- > Co-ownership disputes including parties who claim an interest in a property but do not hold legal title;
- > Dealing with the Planning and Building Control authorities;
- > Development of land and its financing; and
- > Multi occupancy buildings, for example articles of association and declarations of co-ownership.

We also assist with issues than can arise over leasehold land, both for landlords and for tenants.

Planning

Recent changes to Jersey's Planning Law have made the appeals system more accessible to those aggrieved by planning decisions, whether as applicants or as the owners of neighbouring land. To gain a full understanding of such issues, it is necessary to understand the law in the context of the Island Plan and the numerous items of secondary legislation derived from it. Our team is able to advise you on these and to represent you at all stages of the appeal process; from deciding whether you are eligible to bring an appeal, to representing you at a judicial review or appeal hearing before the Royal Court.

Trust Litigation

Disputes relating to family wealth, trusts and estates often involve complex and sensitive issues. Viberts' team has the necessary experience to assist you in finding the most cost-effective solution no matter the problems you face in this area.

We can help you whether you are a family, settlor, trustee, beneficiary, lawyer or other intermediary, in Jersey or elsewhere. Whoever and wherever you are, we take the trouble to understand what is important to you. As with all our work, our clients' affairs are treated with strictest confidence. This is very important to us, and we recognise the particular significance confidentiality has in the field of contentious trusts and estates.

Our lawyers include members of the Society of Trust and Estate Practitioners (STEP). They have vast experience in both the non-contentious and contentious aspects of trust and estates matters. This enables us to offer clear, valuable and effective advice on any of the following issues:

- > Breach of trust and other fiduciary duties;
- > Claims in relation to negligent advice;
- > Incapacity;
- > Inheritance disputes;
- > Problems in the transfer of trust assets;
- > Removing trustees and executors;
- > Secondary claims, such as dishonest assistance and misrepresentation;
- > The rights of beneficiaries and duties of trustees;
- > The validity of trusts and wills;
- > Trustee fees and costs; and
- > Trustees' applications for directions.

Viberts works closely with foreign advisers and counsel in multi-jurisdiction disputes and has acted in many of the leading cases before the Jersey courts in this area.



If you need us

If you need assistance in any of these areas please call our litigation team for a free initial consultation.

We place great importance on the establishment of a good relationship between client and lawyer. We will be here when you need us. Contact us:

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ANDROIC



VIBERTS

Lexcel
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