



Nichola Warrender

Called: 1995

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Nichola is an experienced junior who enjoys a broad commercial litigation and arbitration practice with particular emphasis on shipping, carriage of goods, commodities, shipbuilding, energy and construction and related insurance and finance disputes.

She undertakes drafting and advisory work in all of her practice areas. She regularly appears as an advocate in the High Court and in arbitration, as sole counsel and as a junior. She has a good balance between led and non-led work and is frequently recommended as a junior by those with whom she has previously worked.

Nichola is a meticulous and persuasive advocate with a wide range of experience within her fields of specialism and in more general commercial disputes. Many of her cases involve issues of jurisdiction, private international law or require careful analysis of complex factual, expert and technical or legal issues. She has experience in various forms of pre-emptive remedies such as freezing orders, anti-suit injunctions and other pre-action relief and has obtained or resisted most forms of pre-trial applications.

She adopts a modern, efficient and user-friendly approach to her work. She is a team player who works well with others to efficiently manage and prepare a case for trial/arbitration. Nichola believes in combining a good command of the issues and commercial understanding of her clients' needs with sound intellectual legal analysis and practical advice. She aims to deliver thorough, well-prepared and effective presentation of the case both on paper and in person to achieve the best results for her clients.

Nichola is happy to be instructed on urgent matters and at short notice when available.

Nichola is recommended as a leading barrister for shipping.

What the directories say

- *"Nichola pays exceptional attention to detail and has an excellent memory; she is very valuable on long-running matters involving complex facts and multiple expert disciplines."* (Chambers UK, 2020)
- *"She has an incredible eye for detail"* (Chambers UK, 2020)
- *"Her attention-to-detail is outstanding, she is highly personable, and is a persuasive orator."* (Legal 500, 2020)
- *"She is extremely detailed and thorough."* (Legal 500, 2019)
- *"She is unbelievably hard-working and has an immense capacity to absorb information. She is also extremely user-friendly and a pleasure to deal with."* (Chambers UK, 2019)
- *"Very hard-working and efficient."... "Technically very thorough."* (Chambers UK, 2018)
- *"She is very hardworking, highly responsive and shows great attention to detail"* (Legal 500, 2017)

- *"Responsive, helpful and thorough"*(The Legal 500, 2013)

Shipping

'Leading Junior'(The Legal 500, 2020) (Chambers UK Bar, 2020)

Dry shipping, commodities and transport form a substantial part of Nichola's practice. As a result, she has developed a wealth of experience in these fields. Her latest quote: **"Her attention-to-detail is outstanding, she is highly personable, and is a persuasive orator.";** **"Nichola pays exceptional attention to detail and has an excellent memory; she is very valuable on long-running matters involving complex facts and multiple expert disciplines."**

Dry Shipping

Nichola is frequently instructed in disputes under charterparties, long term contracts of affreightment and bills of lading. She has acted for owners, disponent owners, charterers (demise, time and voyage) and receivers in a variety of claims associated with such contracts. Her experience includes disputes with the added complications of litigating/arbitrating in multi-party and/or multi-jurisdictions or governing laws.

Her extensive experience of cargo claims includes claims for misdelivery, claims for damage including alternative liability in tort and bailment, claims for declarations of non-liability by owners, cases involving the effect of the Hague, Hague-Visby and Hamburg Rules and claims for apportionment for cargo damage between owners and charterers under the NYPE Inter-Club agreements.

Other dry shipping cases in which Nichola has been instructed have raised legal issues of misrepresentation, charterparty construction, frustration, force majeure and wrongful termination/ cancellation/repudiation. She has also been instructed in a cases which have raised a variety of factual and technical expert issues such as unseaworthiness, proper stowage and carriage techniques, manning and crew training and as to the causes of the particular types of cargo damage.

In addition to the above, Nichola has undertaken other shipping- related work, ranging from claims for indemnity arising out of the UK Standard Towage Conditions to claims brought by crew members against their employers/owners. She also has experience of tort and contract claims brought by and against port and harbour authorities, marinas and ship yards and repairers.

Recent and current dry shipping cases have included the following types of disputes:-

- Unsafe port/berth claims and unsafe cargo/dangerous goods claims.
- Claims for damages/ indemnity under NYPE time charter in respect of hull-fouling and related issues affecting performance.
- Laytime/ demurrage and despatch claims under various voyage charters including issues of validity of Notices of Readiness, allegations of owner's fault, frustration and of contract renunciation.
- Charterparty time-bar disputes for demurrage, cargo and indemnity claims.
- Liens on freight and sub-freight disputes and advising on English legal principles on extinction of maritime liens.
- Speed/performance claims and off-hire claims including construction of off-hire clauses and contractual or equitable deductions from hire for cross-claims for damages for (amongst others) crane breakdowns, breach of maintenance obligations, fire, detention of the vessel by port authorities and refusal to permit a vessel to enter US waters due to crew matters.
- Hire claims including those leading to withdrawal of the vessel and compliance with anti-technicality clauses.
- Claims arising out of delivery/redelivery obligations and questions of the proper quantum of damages for early/late redelivery of a vessel under a time charter.
- Claim of repudiation of charter following a failure to load a cargo after a change in cargo export procedures in country of loading raising issues of restraint of princes, frustration and force majeure.
- Claims in which BIMCO piracy and war risks clauses have been invoked by owners to refuse to comply with orders and/or claim additional security and insurance costs as a result of risks of piracy and/or other alleged war risks including political risks.
- Claim involving the impact and effect of US/ EU and UK sanctions against Iran on the validity of voyage orders given by charterers.
- Claims for indemnities under the NYPE 1996 Inter-Club agreement following settlement of cargo interests' claims by owners or charterers.
- Bills of lading claims involving loss of or cargo damage to various types of cargo including containerised, bagged

and bulk cargoes and cases involving challenges to the jurisdiction and issues of charterparty incorporation into the bills of lading.

- Claims for contributions to general average and under average bonds/guarantees.
- Claim brought by harbour authority against vessel owner for damage caused to harbour lock gates/ flood defence system.
- Claims for stevedore damage when using ship's cranes.

In terms of led work, a selection of her most recent dry shipping cases includes the following:-

- Junior to Luke Parsons QC in claims under an NYPE time charter in unsafe port arbitration arising out of the grounding and sinking of a bulk carrier in Richards Bay, South Africa with an approximate value in excess of US\$150 million and associated claims under a sub-voyage charter.
- Junior to David Goldstone QC in arbitration claims for repudiatory breach/ wrongful termination and counterclaim alleging misrepresentation/ conversion of bunkers and speed/performance claims over the duration of an NYPE charterparty. Collective value of claims in excess of US\$10 million.
- Junior to David Goldstone QC in a demurrage and additional port clause claims in LMAA arbitration involving issues of contract construction of the relevant contractual time-bar provisions and documentary requirements/ validity of notices of readiness when a demurrage claim arises in the context of ship-to-ship transfer operations. Subsequently instructed to defend application for permission to appeal the award.
- Junior to Luke Parsons QC in an arbitration claim for wrongful termination, off-hire deductions and breach of trip time charter on NYPE form following US Coastguard's refusal of entry into US waters of a Syrian-crewed vessel because none of crew had US immigration visas. A settlement sum was paid to clients before the arbitration hearing.
- Junior to Jeremy Russell QC on claim brought in the High Court (Commercial Court) for indemnity for loss of vessel and personal injury claims under the UK Standard Towage Conditions. This claim involved a wide range of issues of expert/technical issues ranging from seaworthiness of the tug, pilotage and navigation of the tow to allegations of negligence of port authority's practices and procedures. It also required cross-jurisdictional discussion with Scots lawyers where personal injury actions and statutory inquiries were ongoing. The English claims were settled before trial.
- Junior to David Goldstone QC in the successful defence of claim in arbitration for fraudulent misrepresentation by (admitted) ante-dating bill of lading on causation/inducement grounds and subsequent section 68 Arbitration Act application (withdrawn) and section 69 Arbitration Act application (rejected).

Nichola has advised on the validity and effect of assignments on ongoing LMAA arbitral proceedings and arbitral awards and been instructed in upholding and making challenges to LMAA arbitration awards pursuant to sections 67, 68 and 69 of the Arbitration Act 1996.

Although most of her dry shipping work is in arbitration, Nichola's reported cases in the field of shipping include:

- **African Fertilizers & Chemicals Nig Ltd (Nigeria) v BD ShipsNavo GmbH & Co Reederei KG (The Christian D)** [2011] 2 Lloyds Rep 531 – successfully defended application to set aside judgment granting permission to enforce an arbitration award on jurisdiction in claim for general average against cargo interests following the obtaining of the underlying declaratory arbitration award and injunctive and declaratory relief from the English court in support of those arbitration proceedings in circumstances where cargo interests were bringing foreign proceedings in breach of an arbitration clause in bill of lading. This case was referred to and the judgment approved by the Court of Appeal in *West Tankers Inc v Allianz SpA & Another* [2012] EWCA Civ 27 in upholding enforcement of a declaratory arbitration award. In this case, prior the declaratory arbitration award, Nichola had applied for and successfully obtained an anti-arbitration injunction against the respondent.
- **Parker v Levy (trading as Essex Marina)**(2007) 151 SJLB 1166 – successfully defended at trial a claim by user against a marina for injuries sustained when using a finger pontoon which was allegedly dangerous and/or defectively designed.
- **Anton Durbeck GmbH v Den Norske Bank ASA (The Tropical Reefer)**[2006] 1 Lloyds Rep 93 – junior to Luke Parsons QC in successful defence of claim against mortgagee bank brought by third party cargo owner for interfering with performance of bill of lading contracts by arresting the vessel.

Commodities.

Nicola has advised on GAFTA and FOSFA disputes and has also been instructed in cases concerning long-term commercial contracts for the sale and supply of other commodities suas oil, coal and aluminium, other metals and related storage agreements. Her more recent cases include successfully defending a scrap metal claim in an LCIA arbitration in which the claimant was alleging fraud, misrepresentation and breach of contract in relation to the

quality of the scrap provided.

Transport

Nichola has experience of disputes in carriage of goods by road (domestic and CMR) including a number involving high-value thefts of goods. She has also advised on freight forwarding, other transportation agreements and in warehousing disputes involving UKWA terms.

Wet Shipping

Nichola acts in a number of disputes which fall within the Admiralty jurisdiction of the High Court.

In addition to those appearing below, she has been instructed in admiralty claims concerning ownership of a vessel, ship mortgages (including seeking application for sale), for personal injury and crew wages and claims in respect of goods and materials supplied to a ship. Nichola also has experience of ship arrests and judicial sale (particularly to enforce mortgagee's rights).

Collision

Nichola has been instructed in a number of collision cases and is familiar with the procedural, jurisdiction and limitation issues that arise in connection therewith.

A selection of the collision cases in which she has been involved include:-

- **The Paola icw The Mineral Venture** involving allegations of fraudulent invoices submitted in support of claims and quantum led by Charles Macdonald QC.
- **The Cape Passero icw The Fino** advising on quantum of claims and offers to settle in collision cases.
- **The CT Longford icw AHT Primus** claim against tug following fouled propeller by line during unmooring operations from floating storage platform.

Towage

Nichola has advised on towage contracts including TOWCON and contracts on the UK Standard Towage Conditions or similar terms in foreign jurisdictions but subject to English law.

Nichola was junior to Jeremy Russell QC on claim for indemnities for loss of vessel and personal injury claims under the UK Standard Towage Conditions following the sinking of the Flying Phantom tug in the River Clyde. The dispute raises issues of seaworthiness of the tug, pilotage and navigation of the tow and allegations of negligence of the port authority's practices and procedures. The case settled before trial.

Pollution

Nichola was second junior instructed on behalf of Milford Haven Port Authority following the Sea Empress grounding in the claim brought by the IOPCF raising issues of pilot training, oil pollution and as to the liability of the port for the economic and physical consequences of the oil spill.

Insurance

Insurance is an expanding area of work for Nichola, particularly in the field of marine insurance which complements her shipping practice. She is experienced in advising on and appearing as an advocate in policy disputes with issues of misrepresentation or non-disclosure, policy construction and breach of warranties. Much of her insurance work concerns hull and machinery cover or additional war risk cover but she also deals with other types of marine insurance such as P&I, cargo, general average, professional indemnity and other non-marine insurance.

Examples of the sorts of disputes in which Nichola has been instructed include:-

- Advising on coverage under a surveyor's professional indemnity policy.
- Advising on coverage under a yacht policy.
- Advising an assured on a claim under a new hull and machinery policy effected after a constructive total loss and sale of the vessel to the assured where the insurer raised issues of non-disclosure.
- Advising on coverage under policy of insurance for a yacht harbour and repair yard.

Recent reported cases include:

- **Suez Fortune Investments & Piraeus Bank v Talbot Underwriting & Others** [2015] 1 Lloyd's Rep 651 in which Nichola acted as junior to David Goldstone QC in the Stage One quantum hearing of a claim (valued at approx. US\$85 million) for constructive total loss, loss of hire and salvage and sue and labour indemnities under a war risk policy in respect of a tanker on which there was an explosion and fire whilst off the coast of Aden in 2011. Stage One involved expert issues as to nature of damage and cost of repairs and value of the vessel in assessing whether the vessel was a constructive total loss, legal arguments on the proper approach to measure of indemnity for a partial loss and on quantification of sue and labour claims and arguments on the construction of the loss of hire provision in the policy. An appeal against the judgment issued in Stage One is stayed pending the Stage Two liability hearing which is due to take place in February 2017 following various interlocutory applications on amendment and disclosure. Nichola continues to act as the junior for the underwriters for the Stage Two hearing.
- **Sea Glory Maritime Co v Al Sagr National Insurance Co** [2014] 1 Lloyd's Rep 14 in which Nichola acted as a junior for the successful assured in a claim for US\$ 4.4 million under a hull and machinery policy notwithstanding multiple defences raised by the insurer including misrepresentation, non-disclosure, breach of ISM and other warranties and illegality based on an alleged breach of EU and US sanctions against Iran.

Shipbuilding

Nichola's shipbuilding practice has expanded in recent years. She has been instructed as junior counsel in a number of substantial high-value shipbuilding disputes on behalf of a number of Chinese yards. She has also advised and has acted solely for the purchasers in other cases. Collectively, these disputes have given Nichola experience of the full-range of legal and technical issues which can arise including issues with design, delay, contractual cancellation, rescission and repudiation, defective construction, defaults by purchasers in payment, quantification of damages and associated refund guarantee liabilities.

Cases in which Nichola has been led include:-

- Junior to James Turner QC in an arbitration involving design issues and delays in construction of six multi-purpose vessels in series of shipbuilding contracts defending claims against the Sellers and Yard. This raised questions of responsibility for design under the shipbuilding contract, whether extensions of time could be granted for design delays and the effect of such delays on the construction of the vessels in the series and questions of contractual construction following a variation to the original shipbuilding contract.
- Junior to Simon Croall QC advising the Sellers on construction of shipbuilding contract and services of notices of default to trigger contractual remedies.
- Junior to James Turner QC instructed on behalf of the Sellers and Yard in a dispute involving buyer's delays in construction of a bulk carrier which settled following mediation.

In addition to high value shipbuilding disputes, Nichola has been instructed in disputes arising from construction of barges and yachts and associated purchases and related professional negligence valuation and survey claims. She has also handled second-hand tonnage ship sale and yacht sale disputes including those on the Norwegian Sale Form.

Energy

Nichola has a varied practice in the field of energy and has been instructed by clients involved in a number of different energy projects at home and abroad.

Her more recent cases include obtaining an injunction on behalf of Dong Energy to enable them to perform the necessary pre-construction survey work for a wind farm project off the Norfolk coast without interference.

Nichola has advised on domestic gas storage cavern and pipeline projects in the North East including on the rights affected by the laying of the necessary cabling and pipe work and the availability of injunctive relief to enable the projects to proceed without interruption by vessels.

Nichola has been led by David Goldstone QC in a LCIA arbitration dispute worth \$3.6 million for works carried by one consortium member on an intended construction/ installation of oil refining/ petrochemical plant project. She has also advised together with David Goldstone QC on the construction of an oil exploration joint operating agreement

and licence for a project in Nigeria.

Nichola has advised solely in other oil disputes arising from foreign on-shore oil storage and handling agreements in the UAE and in other joint venture oil exploration and co-operation agreements in foreign jurisdictions but which are subject to English law.

As to alternative energy projects, Nichola has advised on claims for damage to wind turbines during transportation for sea trials.

Commodities & International Trade

Nicola has advised on GAFTA and FOSFA disputes and has also been instructed in cases concerning long-term commercial contracts for the sale and supply of other commodities such as oil, coal and aluminium, other metals and related storage agreements. Her more recent cases include successfully defending a scrap metal claim in an LCIA arbitration in which the claimant was alleging fraud, misrepresentation and breach of contract in relation to the quality of the scrap provided.

Commercial Dispute Resolution

In addition to her more specific practice areas Nichola advises and represents clients in a wide range of commercial disputes. These have included contractual disputes under agency and distribution agreements, joint venture/operating agreements and international and domestic sales contracts.

A few examples of her work in the area of commercial litigation include:

- Advising on the agency structure deployed by and agreements entered into by a large chemical tank storage company and the implications for the company in permitting global agents to enter into contracts on its behalf as undisclosed principal.
- Advising on the rights and liabilities of an environmental company who shipped goods to customers abroad without receiving payment on claims brought by port authorities for storage charges of containers and the goods.
- Advising on the division of responsibilities under a management agreement for a yacht charter exhibition as between the owner of the event and the organiser and on rights of termination.
- Jurisdictional challenges in international sales and other contract disputes.
- Advising on disputes relating to termination of oil storage and related sales agreements including issues as to ownership, jurisdiction and availability of pre-trial/arbitration relief.
- Advising in a dispute arising out of a joint operating agreement in respect of an oil mining licence.
- Advising and drafting in a payment dispute for works carried by one consortium member on an intended construction/ installation of oil refining/ petrochemical plant project.
- Acting for a finance house in dispute arising out of financing and supply agreements for vehicles and/or parts to commercial dealer.

As a member of the Attorney General's Panel, Nichola has also appeared in a number of director's disqualification proceedings and acted in a range of insolvency actions including company winding up petitions, disputed company insolvency and bankruptcy proceedings and has experience of employment litigation.

International Arbitration

A significant amount of Nichola's practice comprises cases dealt with by way of arbitration which have an international element and she is fully familiar with applications to the High Court in support of English arbitrations from commencement of the arbitration through to challenges to arbitration awards under sections 67, 68 and 69 of the Arbitration Act 1996.

A selection of her international arbitration work includes:-

- LCIA arbitration claims in the context of the following types of underlying contract: long term supply agreement for aluminium, a joint operating agreement in respect of oil mining licence and a consortium/ joint venture agreement regarding an oil refining and petrochemical plant project and other commodity disputes including claims for fraud and misrepresentation.

- Applying for orders in support of various arbitrations under section 44 of the Arbitration Act 1996.
- Advising on the commencement procedures for arbitration in an oil storage agreement dispute.
- Applications under section 18 of the Arbitration Act 1996.
- Defending an application under section 32 of the Arbitration Act 1996 for a determination by the court on the extent of the tribunal's jurisdiction on costs as damages following publication of an award on the substantive merits.
- Advising on an application under section 69 of the Arbitration Act 1996 having not appeared in the arbitration.
- Successfully resisting an application for permission under section 69 of the Arbitration Act 1996 and leading to the withdrawal of a challenge under section 68 of the Arbitration Act 1996 in a case in which she was led by David Goldstone QC.
- Successfully enforcing arbitration awards as judgments pursuant to section 66 of the Arbitration Act 1996. Nichola's reported cases in this field include **African Fertilizers & Chemicals Nig Ltd (Nigeria) v BD ShipsNavo GmbH & Co Reederei KG** [2011] 2 Lloyds Rep 531.

Alternative Dispute Resolution

Nichola has been instructed to draft mediation position papers, advise her clients on preparation for the mediation meeting and has represented at mediations and settlement meetings.

Some examples of the types of dispute with which Nichola has been involved that have gone to mediation and settled there or shortly thereafter include:-

Shipbuilding disputes.

Multi-party hire disputes under a time charterparty including cross-claims for damages.

High-value claim brought by IOPCF against harbour authority.

Professional negligence claims brought against a ship surveyor by purchaser of a vessel.

Multi-claimant bills of lading claim against the owners of a vessel arising out of the same incident.

Marine insurance dispute defended on the grounds of misrepresentation/non-disclosure and breach of warranty.

Professional Negligence

Nichola advises and has appeared in a number of professional negligence disputes.

Due to the development of her practice in the field of shipping most of her recent cases in this field of professional negligence are associated with shipping. She has been instructed in claims against solicitors involved in shipping litigation, ship surveyors, ship valuers and shipbuilders or repairers. These have included issues of missed litigation or arbitration time-limits, negligent advice or conduct of cases, negligence in relation to carrying out surveys for sale/purchase and/or valuation of the ships and negligence in identifying and rectifying defects or the supervision of such work.

Recent examples include:-

- Acting on behalf of a surveyor in a claim brought against him following a pre-purchase survey of a houseboat on the River Thames.
- Representing a purchaser in a claim for negligent survey and valuation of a sailing yacht.
- Advising a yacht harbour in a claim brought for negligent storage and repairs.
- Advising in a solicitor's negligence claim arising from a missed limitation period in underlying shipping claim.

In addition, Nichola has a background of far wider experience in solicitors' negligence claims generally. She has been instructed in disputes concerning allegations of negligence in the provision of transaction services and in the conduct of general litigation. Nichola was instructed as a junior on behalf of professional indemnity insurers to investigate and identify fraud and misappropriation of client and beneficiary monies in a large-scale potential claim.

Nichola also has some experience in professional negligence claims against healthcare providers both privately and publicly funded and has in the past acted for the MOD in several cases where allegations of medical malpractice have been made.

Aviation & Travel

Nichola has some experience of most types of travel disputes.

In the early years of her career at the Bar, she acted on behalf of several major domestic tour operators and travel agents in contractual and personal injury claims brought by purchasers of package holidays. More recently she has advised on conflicts of laws and jurisdictional issues arising out of international travel.

Nichola appeared on behalf of the claimant in **Tantera v Moore** [2009] EWCA Civ 1393, CA when an excursion operator who was a defendant to a CPR Part 20 claim sought to be legally represented in the main action brought against the tour operator for injuries sustained whilst undertaking a snowmobile excursion on a package holiday.

In the context of domestic and international travel by passengers on board ships, Nichola's experience includes advising on the applicability and effect of international conventions on this type of claims.

Banking

Nichola advises and represents international clients on various banking and finance issues including the construction and enforceability of performance bonds, guarantees and P&I Club letters of undertaking, disputes under irrevocable payment undertakings and letters of credit and ship mortgages including enforcement proceedings by arrest and sale of the vessel.

Nichola also has experience of claims brought by and against banks.

She was junior counsel to Luke Parsons QC representing a bank in successfully defending a claim by cargo owners for wrongful interference with performance of a bill of lading contract under either English or Panamanian law against the ship mortgagee bank seeking to enforce its mortgage **Anton Durbeck GmbH v Den Norske Bank ASA (The Tropical Reefer)** [2006] 1 Lloyd's Rep 93.

She has acted for major domestic retail banks in claims against individuals and companies under guarantees, loans, mortgages and relating to the provision of other financial services which have included defending allegations of fraud, duress and undue influence.

Nichola has also been instructed in asset financing disputes.

Ranking

