

ANNUAL REVIEW 2018

# serlecourt

RAISES THE BAR IN CHANCERY AND COMMERCIAL



chancery  
commercial



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I am extremely proud to introduce the 2018 Annual Review. In 2018 Serle Court has been involved in some of the most complex and interesting Commercial and Chancery cases across a wide range of practice areas, some high profile, some legally complex, and others establishing key legal principles. The selection of cases in this Annual Review include many before the higher courts, the Court of Appeal and Privy Council and others offshore, from a range of jurisdictions.

**Alan Boyle QC**  
Head of Chambers

*“Acknowledged as one of the very best commercial chancery sets, and one of the few that genuinely competes in both traditional chancery and commercial litigation”*

Chambers UK

## In 2018 Serle Court was involved in some substantial and high-profile cases, and in a number of precedent-setting cases in the Court of Appeal and Privy Council.

Elizabeth Jones QC, Justin Higgs, Gareth Tilley, Paul Adams, Zahler Bryan and Oliver Jones continue to act for Sir Owen Glenn and his company, Kea Investments Limited in their dispute with New Zealand businessman Eric Watson, following judgment in **Glenn v Watson** [2018] EWHC 2016 (Ch) in which Kea succeeded in establishing its entitlement to set aside agreements relating to a joint venture between Sir Owen and Eric Watson on the basis of (i) fraudulent misrepresentations made on behalf of Mr Watson, (ii) the rules against bribes and secret commissions, and (iii) breach of Mr Watson's fiduciary duty to Kea. The court gave an important decision on equitable interest, awarding interest at 6.5% compounded annually, at [2018] EWHC 2483 (Ch). Litigation continues as Kea seeks to enforce its judgment against Mr Watson's assets in the UK and internationally.

Philip Marshall QC and Oliver Jones, with junior counsel from other chambers, represent the defendants and claimants by way of counterclaim and ancillary claim in proceedings in the BVI, in a dispute worth circa US\$1 billion between two prominent Russian businessmen and

associated parties concerning a joint venture in relation to various power generation and distribution assets in Russia (**Renova Industries Ltd & ors v Emmerson International Corporation & ors**). The proceedings involve contractual claims and claims for breach of trust and dishonest assistance, deceit, conspiracy to injure and other economic torts. Freezing and disclosure orders have been obtained, and the case has provided the first major decision in the BVI on disclosure to assist a decision whether to apply for a freezing order. Sophia Hurst acts for the claimants and defendants by way of counterclaim and ancillary claim.

Lance Ashworth QC and Matthew Morrison secured judgment for the First Defendant, Mr Rosser in **Instant Access Properties v Rosser** successfully defeating a fraudulent trading and breach of fiduciary duty claim for £35 million.

John Machell QC appeared in the Court of Appeal in the long running **Campbell v Campbell** [2018] EWCA Civ 80 partnership litigation on a point as to whether a litigant in person could recover the costs of an overseas lawyer.

Dakis Hagen QC was instructed for Appleby in **Appleby Trust (Mauritius) Limited v Crociani** [2018] JCA 136A, the substantive appeal in the long-running and high value Crociani litigation in Jersey. The appeal was allowed to the extent that the equitable compensation to be paid by the main appellants was substantially reduced. The judgment addressed circumstances in which a court will decline equitable compensation as a matter of discretion, even when a breach of trust is established. Stephanie Thompson has since been instructed with Dakis for Appleby in the ongoing litigation and Giles Richardson has advised another party in related matters.

Dakis Hagen QC appeared for the applicant in **Akhmedova v Akhmedov** [2018] EWFC 23 in which the High Court, as part satisfaction of England's largest divorce award, transferred to the applicant ownership of a superyacht allegedly worth \$487m, pierced the corporate veil of a Liechtenstein anstalt, set aside a number of dispositions under s. 423 of the Insolvency Act 1986 and extended a worldwide freezing order.

Dakis Hagen QC and Emma Hargreaves are acting for the trustee of a Bermuda trust, with assets worth billions of dollars, in proceedings against its former director who refused to hand over trust property following his resignation. In the recent judgment, **St John's Trust Company (PVT) Ltd v Tamine** [2018] EWHC 3629 (Ch), they successfully obtained interim relief (along with indemnity costs) against the former director under section 25 of the Civil Jurisdiction and Judgments Act 1982 in support of Bermuda proceedings.

Will Henderson acted for the independent trustees in the potentially game-changing case of **Lehtimäki v Children's Investment Fund Foundation UK** [2018] EWCA Civ 1605. The Court of Appeal held that, at least where they were few in number, members of charitable companies owed fiduciary duties to the charity and could not vote in their own selfish interests; but that the court would not interfere with their decisions unless they had acted or were threatening to act improperly. At the time of writing there is an outstanding application for permission to appeal to the Supreme Court.

Kathryn Purkis and James Brightwell obtained judgment in and undertook the costs arguments in respect of the Privy Council decision of **Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd** [2018] UKPC 7. This case confirmed (amongst other things) that the private international law status of trustees (at least of Channel Islands trusts), and that notwithstanding the Jersey legislation, a creditor must nonetheless access trust funds by being subrogated to the trustee's indemnity from the fund.

James Weale acted for the successful appellant in the Court of Appeal in **Chernukhin v Danilina** [2018] EWCA Civ 1802 which gave important guidance on the applicable principles for determining the quantum of security for costs against foreign claimants. John Machell QC acted for the Defendants in various interlocutory applications arising in the course of the litigation.



## We remain at the forefront of Commercial Litigation and Civil Fraud work

Philip Marshall QC, Matthew Morrison and Gregor Hogan continue to act for Business Energy Solutions (BES) and others in respect of proceedings relating to Trading Standards' conduct in connection with the obtaining and execution of search warrants and an ongoing investigation into BES's affairs. The claims raise a number of novel points of public and private law including the extent to which participants in applications for search warrants are immune from suit, and whether such immunity applies to claims under the Human Rights Act 1998.

In **Accident Exchange v McLean & Ors**, Hugh Norbury QC, Dan McCourt Fritz and Charlotte Beynon acted for Keoghs, one of three firms of solicitors joined to Accident Exchange's £130m conspiracy relating to Autofocus' "perjury on an industrial scale". Following successful applications by Keoghs and the other firms for security for costs, the claim settled shortly before trial.

Hugh Norbury QC and Adil Mohamedbhai appeared in **Motortrak v FCAA** [2018] EWHC 990 (Comm), a contractual and civil fraud dispute which was tried before Moulder J in the Commercial Court over three weeks. This is an important decision on the law of affirmation of contracts procured by bribes and on the construction of exclusion clauses.

Jonathan Adkin QC and Adil Mohamedbhai act for one of the parties in a major piece of litigation in the Commercial Court concerning various Russian businessmen involved in a jewellery business. The case will involve, among other things, consideration of the scope of the law on illegality.

Jonathan Adkin QC and Sophia Hurst represent the Fifth Defendant in **Yukos Finance B.V & ors v Stephen Lynch & Ors** in a series of claims arising out

of the historic bankruptcy of a large Russian oil company, OAO Yukos Oil. Auctions of Yukos Oil's assets took place in Russia between March and August 2007 which the Claimants claim were rigged. This case is set down for trial for 18 days in June 2019.

Rupert Reed QC acted in **Aurora Developments Ltd v. Delta Holdings Ltd** [2018] EWHC 1047 (Ch); [2018] EWHC 1356 (Ch) in obtaining summary judgment, after a three-day hearing, on complex fraud and commercial claims brought by two syndicates of European investors against the promoters of the North Kensington Gate development valued at £70m. The project can now proceed with the creation of over 200 new homes in the regeneration of Old Oak.

In **Hussein v Her Highness Princess Nouf Bint Khalid bin Abdullah al Saud** [2018], Rupert Reed QC and Oliver Jones represented the former head of the family office of the late Prince Fahd bin Salman of Saudi Arabia in claiming unpaid remuneration, expenses and commission owed on various Knightsbridge property developments pursued for the benefit of the family.

Lance Ashworth QC and Matthew Morrison acted on behalf of the Claimant in **Blackstar Advisors Ltd v Cheyne Capital**, in a 10-day commercial court trial claiming €25 million of introducers' fees against a hedge fund.

Lance Ashworth QC represents the Claimant in **Grove Park Properties v Royal Bank of Scotland**, in which it is asserted the Bank fraudulently altered a loan document, with the result that the Claimant is excused from repaying £16 million. This is set down for trial for 14 days in May 2020.

John Machell QC, James Weale and Stephanie Thompson acted for the defendants in **Filatona Trading**

**Limited v Navigator Equities Ltd**, a 5-week trial in the Commercial Court between Oleg Deripaska and Vladimir Chernukhin and their respective corporate vehicles. The Claimants seek to challenge an award of \$100 million following an LCIA arbitration in

2017 (in which James appeared for the successful claimants). The underlying dispute arises out of an alleged armed takeover of business premises in Moscow by one of the shareholders to a joint venture.

## ...and our Intellectual Property practice has remained as active as ever.

Michael Edenborough QC and Thomas Elias acted for the glassmaker, Dartington, in a registered design right dispute over the shape of a whisky glass.

Michael Edenborough QC has been involved in a wide range of IP cases, for example: trade mark disputes involving a bottle in the shape of a human skull, the shape and get-up of the mini Babybel cheese, and one of the largest multi-jurisdictional infringement cases with defendants in the UK, Panama, Chile, Peru, Mexico, UAE, Cyprus, Bulgaria, and Greece. He has also been involved in, amongst other things, a patent ownership dispute, a confidential information case involving biotechnology, and the on-going copyright action concerning the Kate Moss Vogue cover tribute to David Bowie's Aladdin Sane album cover.

Thomas Elias acted for the US National Basketball Association in relation to a trade mark comprising the logo of the New Orleans Pelicans, successfully resisting an appeal in the General Court of the EU (T-112/17).

Stephanie Wickenden joined chambers in December, bringing with her a busy IP practice. Since joining chambers she has represented easyGroup in the Court of Appeal (unled) and in the High Court in relation to jurisdiction challenges to the trade mark claims. She also successfully represented easyGroup in **Pathway IP SARL v Easygroup Ltd**, a High Court appeal from the Trade Marks Registry which gives new guidance on how Nice Classification numbers may be used to interpret a trade mark specification. Stephanie continues to be involved in the ongoing **Glaxo v Sandoz** litigation, relating to the purple Seretide inhaler.





## Our presence in domestic and offshore trusts, probate, and private client cases goes from strength to strength

Alan Boyle QC, Richard Wilson QC and Zahler Bryan appeared in ***Khan v Gany Holdings*** [2018] UKPC 21 in the Privy Council for the successful Respondents, a case involving allegations that a trustee had wrongfully failed to account for trust assets worth \$100m and that an appointment by trustees should be set asset.

In the British Virgin Islands ***Re V & W Trust*** [2018] before Mr Justice Adderley Frank Hinks QC and Tim Collingwood successfully used a trustee's Beddoes summons to obtain substantive relief for a Claimant.

In the latest of a series of hard fought Bermuda court applications stretching back over 10 years in ***Re A Trust*** [2018] SC (Bda) 42 Civ before Kawaley C.J, Frank Hinks QC was successful in supporting the obtaining court approval to a momentous trustee decision in the face of beneficiary opposition.

In ***Re E*** [2018] Switzerland Frank Hinks QC provided expert evidence in relation to powers of appointment contained in the Bermudian trusts of a billionaire family.

John Machell QC appeared in ***Re The Ophelia Trust*** in the Grand Court of the Cayman Islands before Justice Kawaley in a trial as to the capacity of a settlor to change the beneficiary of a trust.

Dakis Hagen QC (assisted by Emma Hargreaves) acts for the Plaintiff and Jonathan Adkin QC (assisted by Adil Mohamedbhai) acts for the Respondent trustees in ***Wong v Grand View Private Trust Company Ltd & ors*** [2019] SC (Bda) 1 Com, proceedings in Bermuda concerning very substantial purpose trusts. In a recent ruling, Kawaley J gave guidance on the considerations relevant to determining when a preliminary issue will be ordered.

Richard Wilson QC appeared in the BVI Commercial Court and Eastern Caribbean Court of Appeal in ***Tchengui v R&H Trustees***, which involved a hotly contested application for disclosure of trust documents and access to documents on a court file.

Richard Wilson QC appeared in the latest instalment of the High Court proceedings in ***Dawson Damer v Taylor Wessing*** which raised important issues concerning compliance by solicitors with Data Protection legislation and the extent to which legal advice privilege can be asserted by a trustee against a beneficiary. Richard also acts for the claimant in related proceedings in The Bahamas and Bermuda.

Richard Wilson QC and James Mather acted for the children of the late Winston Churchill MP in a dispute over his estate.

Richard Wilson QC and Amy Proferes continue to act for Patrik Schumacher in his ongoing claim for the removal of his co-executors of the will of the celebrated architect, Dame Zaha Hadid.

Dakis Hagen QC and Emma Hargreaves are acting for the adult children of a late Russian businessman in ***Re Scherbakov, deceased***, a cross border dispute concerning the succession to his very substantial worldwide estate. The case has already generated a judgment in the BVI (2018 BVIHC (COM) 134), where Dakis appeared as the advocate, on the circumstances in which an interim discretionary grant of administration will be made in order to promote investigation into, and preservation of, an estate pending determination of ongoing probate proceedings. Giles Richardson acts for the deceased's former wife and Richard Wilson QC acts for the administrators.

In the ***T Trusts***, Kathryn Purkis has advised new trustees in relation to various complex trusteeship transfer issues arising in respect of a network of family trusts, including in relation to the participation arrangements in litigation and as to an allegedly forged deed of indemnity.

In ***re S***, Kathryn Purkis secured the replacement of executors with administrators in a multijurisdictional estate to enable the investigation of allegations of fraud.

Kathryn Purkis advised the beneficiaries of a Jersey trust in relation to the trustee's attempts to withhold significant funds on winding up in respect of a potential tax liability that would be unenforceable. Kathryn Purkis has also advised the beneficiaries of extremely valuable Jersey trusts where the trustee faces an inter-generational dispute as to the steps required to protect their position.

Constance McDonnell appeared in May 2018 against James Weale in ***Gupta v Gupta***, a contentious probate dispute in which her client propounded a will made by his Indian mother. The deputy Judge considered detailed evidence and arguments about the testatrix's ability to read and

understand English, and concluded that the will was valid.

Constance McDonnell acted for the defendants in ***Wellesley v Wellesley***, a claim under the Inheritance (Provision for Family and Dependents) Act 1975 by an impecunious adult child who had been estranged from her father for over 30 years. On consideration of the claimant's financial means and the reasons for the estrangement, the claim was dismissed in January 2019.

In ***Dubai Islamic Bank PJSC v Ridley***, Matthew Morrison assisted with the defence of Jersey proceedings brought by the bank seeking to trace allegedly misappropriated assets into a discretionary trust. A novel issue raised by the case was whether the governing law clauses of certain contracts, relied upon as establishing fiduciary duties for the purposes of the bank's proprietary claims, could validly incorporate principles of Sharia law as a matter of Jersey private international law. The Royal Court overturned the Master's decision to strike out Mr Ridley's defences based upon such Sharia law principles and the proceedings have now been discontinued by the bank.

James Weale acted for the Defendant in ***Ubbi v Ubbi*** [2018] W.T.L.R. 1039, an Inheritance Act Claim which was the subject of a week-long trial in the High Court. The judgment is the first decision in recent years to have considered the principles applicable to claim brought by minor children of the deceased.

Sophie Holcombe continues to be instructed as junior counsel on behalf of the former Prime Minister of Georgia and his family as beneficiaries of two trusts which suffered multi-million dollar losses due to the mismanagement of an investment portfolio said to be worth over USD 1 billion in ***Bidzina Ivanishvili & Ors v Credit Suisse & Ors***. Litigation has been commenced in New Zealand, Bermuda and Singapore. In August 2018 Credit Suisse Life unsuccessfully attempted to strike out part of the beneficiaries claim in the proceedings taking place in Bermuda (see the Judgment of the Supreme Court of Bermuda [2018] SC (Bda) 67 Civ).

## ...whilst we continue to be instructed in significant company, insolvency and partnership disputes.

Lance Ashworth QC represented the majority individual shareholders in a company dispute involving 7 central London hotels said to be worth up to £900 million, while Giles Richardson represented the interests of the trusts holding shares.

Lance Ashworth QC advised on the sale of a number of money exchange bureaux across Europe and the USA to a Chinese company for in excess of £185 million.

John Machell QC and Dan McCourt Fritz appeared for the defendants in **Re Infund LLP** [2018] EWHC 1306 (Ch), which is the first case to consider the Court's power to rectify the register pursuant to section 1096 of the Companies Act 2006.

In **Estera Trust v Singh**, Daniel Lightman QC and Emma Hargreaves represent Jasmin Singh, the chief executive of a prominent hotel chain, the principal respondent to a section 994 petition presented by his brother and by a trust company connected to him. In July 2018, following an 8-week trial, Fancourt J ([2018] EWHC 1715 (Ch)) rejected much of the petitioners' case but ordered their shares to be bought out on a discounted basis valuing the company as at June 2014. A second trial, to determine how much the petitioners should receive for their shares took place, also before Fancourt J, in January and February 2019.

In **Griffith v Gouragey**, Daniel Lightman QC, Adil Mohamedbhai and Emma Hargreaves represent 9 respondents to three unfair prejudice petitions which seek orders for the purchase of the petitioners' shares in substantial property development companies. There have been four highly significant judgments in this case in 2018: in **Re Pedersen (Thameside) Ltd** [2018] BCC 58, the claim against one of the respondents was struck out; in **Griffith v Gouragey** [2018] 3 Costs LR 605, Fancourt J ordered the petitioners and three law firms to pay substantial costs in respect of claims made against a trust by which those firms had not in fact been instructed; in a landmark judgment in **Re Bankside Hotels Ltd** [2018] BCC 617, Sir Nicholas Warren decided what role respondents whose defences have been struck out can play at the trial of an unfair prejudice petition; and in **Re G & G Properties Ltd** [2018] EWHC 2807 (Ch), the same judge struck out claims against five respondents to two of the petitions.

In **Chaggar v Chaggar** [2018] EWHC 1203 (QB), Richard Wilson QC and James Weale successfully represented the Claimant following a week-long trial which raised issues of economic duress and the legality of an agreement by a company to purchase its own shares.

In **Re AMT Coffee Ltd**, Thomas Elias and Matthew Morrison each represented one of the respondents in the trial of a 10 day unfair prejudice petition. Issues included appropriate levels of directors' remuneration and the circumstances in which a minority discount should be applied in relation to a share purchase order.

Eleni Dinenis is acting as a junior in the Cambridge Analytica insolvency litigation. She represents Professor David Carroll, who brought a high-profile data protection claim against the group and who is now contesting the appointment of the administrators as liquidators.



## We have covered a broad range of Property Litigation

Lance Ashworth QC and Jamie Randall are representing the Defendants in ***Wright v Hill & Impact Property Development***, a property development dispute concerning development sites in Rickmansworth worth up to £25 million. The Claimants are represented by James Mather.

In ***Lamble v Buttaci*** [2018] UKUT 175 (LC) Andrew Francis successfully relied upon s. 84(1) LPA 1925 to modify restrictive covenants over land in the Surrey Green Belt to allow a new house and garage. Where a covenant is qualified by consent requirement there is no need to seek declaration of the Court on whether consent refused unreasonably. The decision contains warnings about the effect of the conduct of the objectors' solicitor on costs recovery by his client.

Andrew Francis acted in a successful application in ***Thomas Pocklington Trust v Aikman & Ors.*** [2018] UKUT 256 (LC) in the UTLC to modify covenants under s. 84(1)

LPA 1925 to modify a covenant over land at Northwood to allow blocks of flats. The case is particularly important on basis of the assessment of compensation.

Kathryn Purkis advised in the Jersey case of ***Mackie v Scott*** in which it was confirmed for the first time under Jersey law that (alleged) misrepresentations in precontractual enquiries are not forgiven by the so-called "tout tel" clause in a Jersey conveyance.

Jonathan Fowles has been acting in an appeal to the Upper Tribunal with potentially wide-ranging repercussions for the service of notices by the Land Registry. The appeal in ***Poon Tip v Lawrence*** is concerned with whether squatters are entitled to be registered on the basis of adverse possession under Schedule 6 of the Land Registration Act 2002 where the registered proprietor did not in fact receive notice of their application. The appeal is likely to be heard later in the year.

## We have covered a range of specialist EU, Competition and Regulatory cases...

Suzanne Rab is supporting the Financial Conduct Authority in the context of onshoring EU financial services legislation as part of Brexit. This is a cross-regulatory project involving the FCA, HMT and the Bank of England involving drafting of the legal instruments under the EU Withdrawal Act. She is also supporting the CMA as part of its new State aid function.

Suzanne Rab is acting on a number of follow-on damages actions for members of the Freight Transport Association arising out of the

European Commission's infringement decision in the trucks cartel where it imposed fines of approximately €3 billion. A number of follow-on individual and collective actions are gathering momentum in the English Courts.

Suzanne Rab has advised a number of public and private sector clients on their implementation of the GDPR. This includes advising the FCA on an 18-month implementation programme for the GDPR and the Law Enforcement Directive.



## We finish with just a small selection of some of the other practice areas and cases we have been involved in.

Prof. Jonathan Harris QC and Oliver Jones were instructed in ***Bowes v Panareti***, a jurisdiction dispute concerning alleged misselling of properties in Cyprus.

Prof. Jonathan Harris QC has advised a number of leading companies on the implications of Brexit for choices of English courts and English law and for the enforcement of English judgments overseas.

Julian Burling is acting for the PRA on the proposed FSMA Part VII transfer to a new Belgian-authorized subsidiary of Lloyd's of all non-life business written in the Lloyd's market between 1993 and 2018 – ***In the matter of certain of the members and former members of the 1993 to 2018 (inclusive) years of account, represented by the Society of Lloyd's, and in the matter of Lloyd's Insurance Company SA***, [2018] EWHC 3228 (Ch).

Ruth Jordan acted for HMRC in ***The Union Castle Mail Steamship Company Ltd v HMRC*** [2018] UKUT 0316 (TCC) a case about the use of derivative contract rules to engineer £39m in tax deductible losses. The taxpayer's appeal against the decision of the Upper Tribunal which deals with the definition of 'loss' and arise from' and widens the application of transfer pricing rules to certain shareholder transactions (bonus share issues) is likely to be heard by the Court of Appeal (along with another related appeal by Ladbrokes Group Finance Plc in which Ruth is also instructed) in 2019 or early 2020.


Gareth Tilley is acting for the applicants in ***R v Minnis, ex parte Respect Our Homes Ltd***, a judicial review in the Supreme Court of the Bahamas concerning the constitutionality of the government's attempt to remove hundreds of occupiers from "shantytowns" on what is said to be Crown land. Injunctions to restrain the government from bulldozing several towns were obtained urgently in August 2018 and remain in place pending a trial expected to take place in 2019.





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