

ANNUAL CASE REVIEW 2023

# serlecourt



RAISING THE BAR IN CHANCERY & COMMERCIAL





Welcome to Serle Court's review of 2023. As you will read, members of Serle Court have been involved in cases across the commercial chancery field and around the world, bringing our unique combination of expertise to bear on disputes between parties ranging from major international companies to individuals and families or charities. We have litigated, arbitrated and managed disputes from Hong Kong and Singapore to the Caribbean and Kentucky, have been involved in cases from developing the strategy at the beginning of disputes up to arguing discrete points of law in the highest level of the courts, and are involved in editing some of the major text books in our field. We hope you find it an interesting read.

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**Elizabeth Jones KC**  
Head of Chambers

## In 2023, members of Serle Court were involved in a range of substantial, high-profile and precedent-setting cases

Jonathan Adkin KC and Zahler Bryan act with counsel from other chambers for the Republic of Mozambique in *Mozambique v Credit Suisse & Ors; VTBC & Ors v Mozambique*. One of The Lawyer's Top 20 Cases of 2023, the Republic brings multi-billion dollar claims against entities in the Credit Suisse group, the Prinvest group and others concerning an alleged enormous international fraud said to have been perpetrated on the Republic to secure its entry into sovereign guarantees purportedly to secure funding for maritime protection and tuna fishing supply contracts. In 2023, the Supreme Court handed down a notable judgment on the scope and application of section 9 of the Arbitration Act 1996 ([2023] UKSC 32) and the High Court handed down important judgments on issues including the disclosure obligations of a foreign employer over employees' personal emails ([2023] EWHC 1148 (Comm)) and the President of Mozambique's claim to immunity under the State Immunity Act 1978 ([2023] EWHC 2215 (Comm)). The trial in these proceedings took place from October – December 2023.

In *Re BHS Group Ltd (in liquidation)*, Daniel Lightman KC, Charlotte Beynon and Tim Benham-Mirando represent Dominic Chandler, one of four former directors of BHS who are respondents to High Court claims brought by the liquidators of four BHS group companies for alleged wrongful trading, misfeasance, breach of statutory and fiduciary duties. The claims are alleged to be worth over £130 million and are said to have arisen in the period following the sale of BHS by Sir Philip Green to Retail Acquisitions Ltd for £1. The five-week trial of this claim took place in November and December 2023. It was one of The Lawyer's 'Top 20 Cases of 2023', and one of its 'Blockbuster

trials to watch out for in October'. In a judgment handed down in the middle of trial, ([2023] EWHC 2873 (Ch)), Leech J directed that the claims against one of the Respondents, Dominic Chappell, be severed and the trial of the claims against him be adjourned in light of his recent release from prison and ongoing treatment for cancer.

Jonathan Fowles acted in the Supreme Court for the Appellant in *Merton LBC v Nuffield Health* [2023] UKSC 18. This landmark case is the first in which the Supreme Court has considered in depth the public benefit requirement under the Charities Act 2011, and is the leading case on charities' eligibility for mandatory relief from non-domestic rates where they carry on their activities across multiple premises. Jonathan was led by James Goudie KC alongside Cain Ormondroyd.

Ruth Jordan and Thomas Elias appeared in the Privy Council as part of a team (instructed by Callenders & Co) acting for the overall successful Appellant in *Responsible Development for Abaco (RDA) Ltd v Christie* [2023] UKPC 2. The appeal from The Bahamas succeeded in overturning one of two orders for security for costs given in the context of environmental judicial review litigation.

Chris Stoner KC acted for Michael Vaughan, the former England cricket captain, in his successful defence of a charge of acting prejudicially to the interests of cricket and/or bringing the game of cricket into disrepute by the use of racist and/or discriminatory language, which the charge alleged to have been spoken in 2009. The disciplinary hearing before the Cricket Discipline Commission attracted widespread publicity, with a live feed provided for members of the press.

Ruth Jordan and Thomas Elias appeared for the Appellant in the Privy Council, with a team from Callenders & Co, in *Ngumi v Attorney General of The Bahamas* [2023] UKPC 12: the appeal succeeded in part. The judgment is important as it clarifies the law in The Bahamas concerning aspects of immigration law, the legality of detention pending deportation, and the quantum of damages for false imprisonment.

Sparsh Garg (with David Brownbill KC and Daniel Warents) acted for the Appellants in *Perry v Lopag Trust Reg* [2023] 1 WLR 3494, an appeal to the Privy Council from the Cayman Islands by the widow and elder daughter of the late Mr Israel Perry, seeking to set aside Mr Perry's transfer of the single share in a Cayman holding company (worth in excess of US\$200 million) to a Liechtenstein trust on the grounds of equitable mistake or a breach of the widow's Israeli matrimonial rights. The Privy Council's judgment which was handed down in May 2023 is now the leading authority on the circumstances in which appellate courts will intervene with findings of foreign law by the trial court.

Sophie Holcombe and Jamie Randall obtained judgment in *Bidzina Ivanishvili v Credit Suisse Trust* [2023] SGCH(I) 9 on behalf of the former Prime Minister of Georgia and his family as beneficiaries of a Singapore Trust. The Singapore International Commercial Court found that Credit Suisse Trust had acted in

breach of trust in failing to safeguard trust assets and awarded the claimants over \$700 million. Careful consideration was given to the effect of clauses in the trust deed permitting the settlor to reserve powers and the inclusion of so-called anti-Bartlett clauses.

Michael Edenborough KC acted for Lifestyle Equities in an appeal brought by Amazon in the Supreme Court, which was heard in November 2023. The case addresses the question of whether overseas websites that advertise and sell goods to UK-based customers are trading within the jurisdiction. The result will have a profound effect upon all international internet operators who deal with UK customers and whether they will have to comply with UK trade mark law. The judgment is expected to be handed down in 2024: *Lifestyle Equities CV and Anr v Amazon UK Services Ltd and Ors* (UKSC).

Constance McDonnell KC appeared before the Supreme Court in January 2024 for the respondent in *Hirachand v Hirachand*, concerning the single issue of whether an award under the Inheritance (Provision for Family and Dependents) Act 1975 could be calculated so as to enable a claimant to pay a success fee under a conditional fee agreement. Judgment is awaited.

James Mather and Mark Wraith (led by Jonathan Davies-Jones KC and previously by Graham Chapman KC) act for the



Claimants in **Akinluyi & Ors v HSBC UK Bank Plc**, which is set down for trial in early 2024. This case forms part of the litigation against HSBC arising out of the “Eclipse” investment scheme. The Claimants allege that they were induced to invest in a failed film tax scheme by fraudulent misrepresentations made by a third party, and that HSBC is liable in conspiracy, joint tortfeasorship, or on the basis that it was in partnership with the third party. The case has been named one of The Lawyer’s Top 20 Cases of 2024.

**James Weale** (led by Nicholas Saunders KC and Matthew Lavy KC) acts for the Claimant in one of the most substantial and complex cases to have been litigated in the TCC in **IBM United Kingdom Ltd v LzLabs GmbH & Ors**. James acted as lead counsel in certain of the heavily contested CMCs (**[2023] EWHC 2142 (TCC)**; **[2023] EWHC 3015 (TCC)**). The claim concerns an alleged breach of a licence agreement based on alleged reverse engineering of IBM Mainframe software over a period spanning a decade. The claim has been listed for an 8-week trial in April 2024. This is one of The Lawyer’s Top 20 cases for 2024.

A team of Serle Court barristers (**Nicholas Harrison, Jonathan McDonagh, Sophie Holcombe, Amy Proferes, Adrian de Froment and Ryan Tang**, instructed by Pogust Goodhead) continues to represent over 700,000 Brazilian victims of the Fundão Dam disaster in **Município de Mariana v BHP Group**, one of the largest group actions ever commenced in England and Wales. The case is now listed for trial from October 2024 and is described as a “landmark trial” for 2024 in The Lawyer’s Top 20 cases for 2024.

**Dakis Hagen KC, Emma Hargreaves and Stephanie Thompson** continue to act for the plaintiff, **Richard Wilson KC, James Weale and Charlotte Beynon** continue to act for the counterclaiming defendant, and **Jonathan Adkin KC and Adil**

**Mohamedbhai** continue to act for the five defendant trustees in **Wong v Grand View Private Trust Company Ltd & Ors**. The first instance judgment handed down in 2022 is the subject of four appeals that are listed to be heard by the Bermuda Court of Appeal which has proposed that the Justices of Appeal will sit in London for the 10-day appeal hearing in January 2025, but the Court will be convened in Bermuda by way of a public broadcast in that jurisdiction (**[2023] CA (Bda) 18 Civ**).



## We are a leading set for civil fraud and asset recovery

In ***Frain v Reeves* [2023] EWHC 73 (Ch)**, [Elizabeth Jones KC](#) and [Paul Adams](#) successfully opposed an application for permission to bring contempt proceedings. The application was based on alleged false statements of truth in witness statements and disclosure certificates. Despite a trial judgment which was highly critical of the Defendants, the court hearing the contempt application held that there was no *prima facie* case that the allegations of contempt would be proved to the criminal standard at trial.

In ***King v Stiefel* [2023] PNLR 18, [2023] Costs LR 559**, Jacobs J handed down an important judgment in which he considered the requirements for a wasted costs application to pass the “stage 1” test under CPR PD 46, para 5.7(a). [Daniel Lightman KC](#) represented five of the nine applicants - a firm of solicitors and four of its lawyers, who had successfully applied to strike out a £58 million claim in unlawful means conspiracy which had been brought against them in the Commercial Court (**[2022] 1 All ER (Comm) 990**).

[Elizabeth Jones KC](#) continues to act for Kea Investments, with [David Drake](#) and [Paul Adams](#), in the long-running litigation against Eric Watson, following the judgment and interim payment order obtained against Mr Watson for deceit and breach of fiduciary duty in 2018, and recoveries made against a variety of assets, defendants and potential defendants between 2018 and 2022 through judgments or settlements. This year saw a final judgment on the amount of equitable compensation due from Mr Watson to Kea (**[2023] EWHC 1830 (Ch)**), in which Miles J was required to rule on the appropriate way of accounting for the recoveries that had been made, in light of Kea's elections

and allocations of those recoveries between the various claims to which they were attributable. The Judge also made orders protecting the confidentiality of the terms of some of the settlements involved, drawing on principles allowing such orders where there is a real risk of harm through harassment (**[2023] EWHC 1768 (Ch)**).

[Elizabeth Jones KC](#) and [Professor Jonathan Harris KC \(Hon.\)](#) also act for Kea Investments in litigation abroad involving Eric Watson and others. Kea discovered that a default judgment had been entered against it in Kentucky for some \$130 million based on an alleged “Coal Agreement” which Kea contended was forged. The Kentucky proceedings had been brought by Wikeley Family Trustee Ltd (a New Zealand Trust company). Kea brought proceedings in the High Court of New Zealand against Wikeley Family Trustee Ltd, Kenneth Wikeley and Eric Watson. At the trial by formal proof, Kea established that the Kentucky proceedings were part of a conspiracy to defraud Kea, and obtained final injunctions precluding the enforcement of the Kentucky default judgment, and damages (***Kea Investments Ltd v Wikeley Family Trustee Ltd & Ors* [2023] NZHC 3260**). Earlier in the litigation, Kea successfully resisted a forum challenge and obtained worldwide anti-enforcement and anti-suit injunctions in New Zealand pending trial (**[2023] NZHC 466**). Anti-enforcement and anti-suit injunctions were also obtained against Mr Wikeley in his place of residence, Queensland, Australia, along with a passport confiscation order. Kea successfully resisted a challenge to these orders (***Kea Investments Ltd v Wikeley* [2023] QSC 215**).

[Thomas Elias](#) and [John Eldridge](#) appeared for the successful Appellants in ***Floreast Investment Management Ltd v Churchill* [2023] EWCA Civ 440**, in which the Court of Appeal reversed a finding of dishonesty made at first instance and entered judgment in favour of the Appellants.

In ***Nam Tai Property Inc v West Ridge Investment Company Limited* (BVIHMAP2022/0046 27 July 2023)**, [John Machell KC](#) (instructed by Harneys, BVI) acted for the successful Respondent to an appeal before the Eastern Caribbean Court of Appeal. The appeal raised issues as to the effect of Tomlin orders, unlawful means conspiracy, dishonest assistance and change of position.

[Dan McCourt Fritz KC](#) and [Andrew Gurr](#) continue to act for the Claimant in ***İsbilen v Turk and Ors***, a high-profile c.£40 million fraud claim which has involved several applications for interim relief and attracted interest from the national media. The trial of the Claimant's committal application against the First Defendant, Mr Turk, in relation to alleged breaches of an asset tracing disclosure order, was heard in November and December 2023, with judgment expected in early 2024. [David Drake](#) acts for the second and fourth defendants.

In ***Vandaglas Group GmbH v Meredith***, [Gareth Tilley](#) represents the Second Defendant and [Dan McCourt Fritz KC](#) and [Stephanie Thompson](#) represent the Third and Fourth Defendants to a c.£12 million claim relating to the allegedly fraudulent sale of a business. The Third and Fourth Defendants have applied to strike out the allegations of deceit and unlawful means conspiracy made against them, and the three day strike-out application was heard in January 2024.

[Max Marenbon](#) (led by Antony White KC and Ben Silverstone) continues to act on behalf of the Fourth Additional Defendant in ***Azima v Ras Al Khaimah Investment Authority and others***, proceedings involving allegations of fraud, hacking and perjury which are listed for a ten-week trial before Michael Green J commencing in May 2024.

[Lance Ashworth KC](#) and [Gregor Hogan](#) act for the three Defendants to a claim for fraudulent misrepresentation, breach of fiduciary duty and negligence in ***Wickers & Ors v Humble & Ors***, which is listed for a 6-8 week trial in June 2024 in the Isle of Man and will be the longest trial in the Isle of Man

in recent times. The claims arise out of a £240 million development of a number of properties in Regents Park for ultra High Net Worth individuals through the property crash of 2007/2008.

[Lance Ashworth KC](#), [Dan McCourt Fritz KC](#) and [Ramyaa Veerabathran](#) act for the Defendants in ***Taylor v Khodabakhsh & Ors***, a claim seeking to set aside a judgment obtained in 2019 on the grounds that it was obtained by fraud. The case is listed for trial in October 2024 for 2-3 weeks.

In ***Equity Real Estate (Bracknell) Ltd v Patel & Ors***, [Justin Higgo KC](#), [Stephanie Thompson](#) and [Andrew Gurr](#) continue to act for five SPVs who are the alleged victims of a complex property fraud. Following disclosure from third parties under the Bankers Trust and Norwich Pharmacal jurisdictions, the SPVs commenced claims against thirteen defendants for breach of fiduciary duty, unlawful means conspiracy, dishonest assistance and knowing receipt. They have obtained default judgment against four of the Defendants, including declaratory relief, and a seventeen-day trial against the remaining defendants is due to take place in early 2025.

[Hugh Norbury KC](#) continues to act for the Kuwaiti state pension fund in ***PIFSS v Al Rajaan & Ors***, a \$800+ million claim against multiple defendants arising out of the alleged bribery of the former Director General of the fund. [Philip Marshall KC](#) and [Simon Hattan](#) act for one of the Defendants to the claim, Kamran Amouzegar. [James Mather](#), [Tim Benham-Mirando](#) and [Ramyaa Veerabathran](#) act for the Pensée Foundation, one of the other defendants to the claim. The claim is listed for a 26-30 week trial to commence in March 2025.

[Hugh Norbury KC](#) is leading [Tim Benham-Mirando](#) in ***Jinxin v Aser Media Pte Ltd & Ors***, a deceit and conspiracy claim for \$661 million in relation to the sale of a leading global sports media agency. The alleged fraud relates to the acquisition of media rights in Italian Serie A and FIFA World Cup football matches. The claim is listed for a 21-week trial in 2025.



Zoe O'Sullivan KC and Andrew Gurr acted for the Claimant in *Instituto de Salud para el Bienestar v Viva Enterprises Limited and another* [2023] EWHC 3377 (Ch), successfully resisting a reverse summary judgment application made by the Defendants. The claim concerns an alleged fraud relating to the supply of ventilators by an English electrical retailer to an entity within the Mexican federal health system, resulting in the loss of over \$40 million.

In *Trafalgar Multi Asset Trading Co v Hadley & Ors* Justin Higgo KC continues to act for the benefit of numerous small pension holders in the enforcement of a judgment obtained following trial in the Chancery Division to recover the proceeds of a complex pension fund fraud from multiple defendants who conspired with the fund managers to misappropriate fund assets.

Gareth Tilley is acting as sole counsel for the Claimant in *MUT 103 Limited (in liquidation) v WTUK Limited*, a c.£20 million claim arising from the collapse of the German Property Group Ponzi scheme. The Claimant was a special purpose vehicle that raised money from Irish Investors and the claim concerns the alleged dishonest assistance of the Defendant foreign exchange providers, whose bank accounts the investors' money passed through in alleged furtherance of the fraud.

James Weale acts for the Claimant trustee in proceedings where the Indian Enforcement Directorate has alleged that the entirety of the trust fund (valued at around \$20 million) represents the proceeds of fraud: *Trident Trust Company (Singapore) Pte Ltd v Modi and others*.

Philip Marshall KC and Oliver Jones, with counsel from other chambers, continue to act for the

joint liquidators of the Joannou & Paraskevaides construction group in proceedings in Guernsey against JPO's former directors and other persons for breach of duty, misfeasance and conspiracy, and for wrongful and/or fraudulent trading (*JPO (in liquidation) v Joannou & Ors*). The Claims are valued at up to c.\$1 billion and are listed for trial over 12 weeks commencing in April 2025.

Justin Higgo KC acted for the Third Defendant and Paul Adams acted for the First to Fourth Defendants in *Harrington & Charles Trading Co Ltd & Ors v Mehta & Ors* [2022] EWHC 1810 (Ch); [2022] EWHC 2960 (Ch); [2023] EWHC 307 (Ch); [2023] EWHC 609 (Ch); [2023] EWHC 998 (Ch); [2023] EWHC 2420 (Ch), a \$1 billion fraud claim arising out of an alleged misappropriation of gold bullion from two Indian companies and the alleged laundering of the

proceeds through a network of UAE and English companies. In 2023 the court determined that England was the appropriate forum for the claims despite the connections with India, and considered whether the claims had a real prospect of success notwithstanding that they were being brought by companies said to have been complicit in the alleged money-laundering.

# We continue to be a go-to set for major company, insolvency, restructuring and financing disputes

[John Machell KC](#) (instructed by Harneys, BVI) appeared for the successful Respondent before the Eastern Caribbean Court of Appeal in ***Fang v Green Elite Limited* (BVIHCMAP2022/00139)** January 2023), a case concerning the scope of the Duomatic principle and, in particular, the role of intention and certainty.

[Lance Ashworth KC](#) and [Dan McCourt Fritz KC](#) continue to represent the Respondent company and 12 of its directors in ***Zedra Trust Co (Jersey) Ltd v The Hut Group plc***, having successfully resisted an application to bring a £200 million claim by the petitioner before Fancourt J (**[2023] EWHC 65 (Ch)**), and were in the Court of Appeal in early February 2024 seeking to establish the existence of limitation periods for unfair prejudice petitions in respect of the one remaining claim.

In ***Re Jardine Strategic Holdings Ltd***, [Jonathan Adkin KC](#) and [Adil Mohamedbhai](#) act in the ongoing Bermuda litigation concerning the valuation of the shares of a multi-billion dollar company. The Bermuda Supreme Court delivered its judgment on disclosure and privilege issues in **[2023] SC (Bda) 8 Civ 14**. Among other issues, it confirmed the rule that a company cannot claim privilege against its existing or former shareholders other than where the documents are brought into existence for the purpose of a dispute between the company and shareholders. That judgment was the subject of an appeal which was heard in the Bermuda Court of Appeal in December 2023.

In ***Hawkwing Plc v Hanover Investors Management LLP***, [Daniel Lightman KC](#), [Timothy Collingwood KC](#) and [Tim Benham-Mirando](#) represented Hawkwing PLC in a hostile administration application. The application was brought urgently

in December 2022 on the asserted basis that Christmas was a critical time for trading. [Daniel Lightman KC](#) and [Tim Benham-Mirando](#) successfully persuaded ICC Judge Prentis that the application was not in fact urgent. In his judgment (**[2022] EWHC 3665 (Ch)**), ICC Judge Prentis accepted their argument that the nature of the businesses – which sold surfboards and sunglasses – was such that Christmas and winter were not in fact critical trading periods for this company and so the application did not require expedition. The administration application followed a contested redemption notice in respect of convertible unsecured loan notes and was itself heavily contested at a hearing in which [Timothy Collingwood KC](#) and [Tim Benham-Mirando](#) appeared for the company. The judgment of ICC Judge Barber (**[2023] BCC 556**) has already been cited by leading insolvency law textbooks.

In ***Marwaha v EOL* [2023] EWHC 480 (Ch)** [Oliver Jones](#) acted for the successful Respondent, Entertainment One Ltd (EOL), on an appeal against the dismissal of an application brought by Mr Marwaha, EOL's former Group Treasurer, to set aside a statutory demand brought by EOL in relation to a substantial debt, the benefit of which EOL had taken on an assignment in earlier proceedings involving bribery claims against Mr Marwaha and EOL's former FX broker. Amongst other things the court held (at first instance and on appeal) that it was not contrary to the so-called rule in *Henderson v Henderson* for EOL to serve a statutory demand for the debt when in the earlier bribery proceedings (which had settled before trial) EOL had alleged that the loan agreement on which the debt was founded was not genuine and had been documented to conceal the payment of bribes.

***Ventura v DnaNudge Limited*** concerned the loss of class rights by the holders of preference

shares through a purported conversion of the shares. [Timothy Collingwood KC](#) successfully appeared for the Claimant in challenging the conversion at first instance and in the Court of Appeal (**[2023] 2 BCLC 1, [2023] EWHC 704 (Ch)** and **[2023] EWCA Civ 1142**).

2023 saw the handing down of the second judgment of the Eastern Caribbean Court of Appeal in ***Caldicott v Hector Finance Group Ltd* (BVIHCMAP2021/0007, 22 March 2023)**, in which [Timothy Collingwood KC](#) represented the successful Respondents, and the hearing of a third appeal by the Court of Appeal. The appeals concern the effect on an unfair prejudice claim of a (common form) arbitration agreement in a BVI company's articles of association. [Timothy Collingwood KC](#) represents the Second to Fourth Respondents to the unfair prejudice claim.

[Lance Ashworth KC](#) and [Wilson Leung](#) continue to represent the petitioning creditor and trustee in bankruptcy in ***Re Dusoruth (A Bankrupt)***, a set of bankruptcy proceedings arising out of large-scale fraud committed by a debtor who has fled across multiple jurisdictions. In a key decision, the court analysed the requirement in section 267(2)(b) of the Insolvency Act 1986 that the debt must be for a 'liquidated' sum, and held that the court has a discretion not to annul a bankruptcy order even if the petition debt failed to satisfy that requirement: **[2023] 1 All ER (Comm) 1075** and **[2023] EWHC 1050 (Ch)**.

[John Machell KC](#) and [Dan McCourt Fritz KC](#) represented the successful Appellant before the Court of Appeal in ***Stephen Hunt (as Provisional Liquidator of Black Capital) v Ravneet Ubhi* [2023] EWCA Civ 417; [2023] Bus. L.R. 1827** in which the Court set aside a freezing order that had been obtained by the provisional liquidator of an alleged partnership on the basis of a cross-undertaking in damages that was limited to the net realisations from the alleged

partnership's insolvent estate. The Court of Appeal held that the default position is that an unlimited cross-undertaking in damages is required and any departure therefrom must be justified by the applicant. The fact that the applicant was a liquidator acting in the interests of all creditors, of whom the petitioning creditors were a minority, did not constitute sufficient basis to depart from the default position. This is another important judgment that has already been cited by the leading commentaries on insolvency law.

In the underlying insolvency proceedings, [John Machell KC](#) represented the successful Third Respondent in ***Town and Country Properties (GB) Ltd and Ors v Patel and Ors* [2023] EWHC 1168 (Ch)**, in which Lady Justice Asplin (sitting in the High Court) upheld an order dismissing a winding up petition in respect of the First Respondent, an alleged partnership, and dismissed a bankruptcy petition against the Third Respondent, allegedly a partner in the First Respondent, on the basis that there was a dispute on substantial grounds as to whether the Third Respondent was a partner in the First Respondent. [Dan McCourt Fritz KC](#) and [Tim Benham-Mirando](#) had appeared for the successful Third Respondent at first instance in 2022: ***Town & Country Properties (GB) Ltd v Black Capital* [2022] EWHC 2914 (Ch); [2023] B.P.I.R. 792**.

[Emma Hargreaves](#) appeared for the Fourth and Fifth Defendants in ***Morina v McAleavey & Ors* [2023] B.P.I.R. 1420** which concerned a strike out application by Emma's clients, together with an amendment application and application for permission to appeal by the Claimant. The court struck out part of the Claimant's case on the grounds that: (1) "claim" within the meaning of section 423(3) of the Insolvency Act 1986 does not require the applicant to demonstrate that the "claim" had realistic prospects of success and the Claimant was, in any event, barred by issue estoppel from pursuing the point of law in circumstances where



it had been resolved against her in an earlier judgment which had not been appealed (with the consequence that permission to appeal a later judgment on the same point was refused); and (2) there is no exception to section 423 in relation to foreign claims that could not be enforced in England and Wales. The court further held, contrary to the Claimant's case, that "victim" within the meaning of section 423(5) could extend to someone who had suffered prejudice only after the claim against the transferor had been dealt with and that the discretion as to remedy under section 423 is not a wide one.

**John Machell KC** (instructed by Callin Wild) appeared for the Appellant before the Staff of Government Division (the Isle of Man appeal court) in ***VR Global Partners LP v Broadsheet LLC (in liquidation)* (2DS 2023/06 10 June 2023)**, a case concerning the validity of a trust over company assets created by a liquidator and, in particular, where the creation of a trust arises out of a covenant to settle future property, whether it is necessary

for that covenant to remain specifically enforceable.

**Wilson Leung** acted in ***Durkan v Jones* [2023] BPIR 1074** to defend a bankruptcy petition on jurisdictional grounds, resulting in a key judgment on whether the US-resident debtor had "carried on business" (within the meaning of s.265(2)(b)(ii) of the Insolvency Act 1986) by letting out a single residential property in England.

**Thomas Elias** and **Andrew Gurr**, instructed by Withers, appeared for the successful Respondents in ***Lemos v Church Bay Trust Co Ltd* [2023] EWHC 2384 (Ch)**. The claim was brought under section 423 of the Insolvency Act 1986 (transactions defrauding creditors) seeking the transfer of a property in London worth c. £8 million, but was dismissed in its entirety following an 8 day trial. The judgment raises interesting points regarding notices to prove documents and the requirements for advancing allegations of forgery in cross-examination.

**Dan McCourt Fritz KC** assisted the successful Defendants in ***Kazzaz and Others v Standard Chartered Trust (Guernsey)***

***Limited (in liquidation) and Another* [2023] GRC 049**, in which the beneficiaries, certain creditors and the new trustees of two Guernsey trusts brought claims alleging breaches of trust (some alleged to be fraudulent) by the original trustee and the director of a trust-owned company. The Royal Court of Guernsey dismissed all of the claims in a comprehensive judgment which contains an important analysis of issues such as the applicability of the rule in *Hollington v Hewthorn* [1943] KB 58 under Guernsey law, the requirements for proving fraud against a corporation and limitation under Guernsey trusts law, as well as discussion of a novel issue (which ultimately did not need to be decided) as to the nature and permissibility of claims against trustees for breach of trust brought by the creditors of an "insolvent" trust. **Dan McCourt Fritz KC** leading **Ramyaa Veerabathran** continues to assist Standard Chartered Trust (Guernsey) Limited and Songbird Limited in the Claimants' appeal to the Court of Appeal of Guernsey which is expected to be heard in July 2024.

In ***Re Contingent and Future Technologies Ltd* [2023] EWHC 2451 (Ch)**, **Daniel Lightman KC** represented the Respondents to a section 994 petition who applied to strike out the petition on the grounds that the petitioner lacked standing, as he was no longer a member of the company. The court made novel use of its case management powers to order a split trial to determine whether the register of members should be rectified.

**James Weale** acted for the Claimants in a substantial dispute arising out of alleged breaches of an LLP agreement and extraneous remuneration agreements in ***Klaturov v Revetas Capital Advisors* [2023] EWHC 2671 (Comm)**. Having successfully defeated a summary judgment application, James represented the Claimants at the trial in December 2023 and is instructed to appear at a further trial of a buyout claim to be listed in 2024.

**James Mather** acted for the successful appellant in ***Ntzegkoutanis v Kimionis* [2023] EWCA Civ 1480** which arose



out of a shareholder dispute concerning a cryptocurrency business. The Court of Appeal held that, contrary to a suggestion made in the Hong Kong Court of Final Appeal in *Re Chime Corp Ltd* (2004) 7 HKCFAR 546, the position under English law is not that relief which could otherwise be sought by way of derivative claim will be allowed to be sought by way of an unfair prejudice petition only in a rare and exceptional case. The Court of Appeal also rejected an argument that, whatever the common law position, the provision made by the Companies Act 2006 for derivative claims precluded the seeking of corporate relief within an unfair prejudice petition. This is a significant case that clarifies the law on the relationship between unfair prejudice petitions and derivative claims.

In *Re Breton Park Residential Homes Ltd* [Dan McCourt Fritz KC](#) and [Ramyaa Veerabathran](#) appeared for the successful Respondent controlling shareholder, Ivy Loveridge, in an application seeking to prevent the administrators of a company from rescuing it as a going concern on the basis that the proposed rescue plan would be unfair to the interests of the applicant who is (at best) a deadlocked shareholder. Jennifer Meech appeared for two of the creditors of the company. [Dan McCourt Fritz KC](#) and [Ramyaa Veerabathran](#) also represent Ivy Loveridge in *Re Kingsford Caravan Park Ltd*, an unfair prejudice petition in respect of another company of which Ivy is the majority shareholder and in which the petitioner sought an interim proprietary injunction aimed at preventing Kingsford's funds from being deployed to facilitate the rescue of Breton Park Residential Homes Ltd. The High Court dismissed both applications in a judgment handed down in February 2024 ([2024] EWHC 329 (Ch)). These are the latest in a series of Company and Insolvency proceedings that have arisen out of a long-running dispute between Michael Loveridge and other members of the Loveridge family (including Ivy), in connection with which [Lance Ashworth KC](#) and

[Dan McCourt Fritz KC](#) have, in the past three years, secured successive victories in the Court of Appeal as reported in *Loveridge v Loveridge* [2022] 2 BCLC 314 and *Loveridge v Loveridge (No 2)* [2022] 2 BCLC 340.

[Tim Collingwood KC](#) and [Gregor Hogan](#) act for the Claimants in *Invenio Business Solutions Ltd & Anor v Goyal and Goyal*, in their claim for damages/ equitable compensation for various breaches of duty by the Defendants. Invenio further seeks declaratory relief that, as result of their wrongdoing, the Defendants are "bad leavers" under its articles of association. The claim is proceeding to a 10-day trial in the Chancery Division in March 2024.

The 7th edition of *Minority Shareholders: Law, Practice, and Procedure* is expected to be published by Oxford University Press in March 2024. The contributors to this well-respected work (Victor Joffe KC, SC, [Daniel Lightman KC](#), [Tim Collingwood KC](#), [Giles Richardson KC](#), [David Drake](#), [Thomas Elias](#) and [Zahler Bryan](#)) are all present or (in the case of Victor) former members of Serle Court.

[Julian Burling](#) is editor of the *Research Handbook on International Insurance Law and Regulation*, 2nd Edition, published in 2023



## We are at the forefront of commercial litigation, both in London and globally

**James Weale** (led by Jonathan Crow KC) acted for the Claimants in a high-profile contempt trial against the well-known oligarch Oleg Deripaska (**[2023] EWHC 788 (Comm)**). The Court of Appeal granted permission to appeal the Judge's dismissal of the claim on all four grounds of appeal. The substantive appeal has been listed for March 2024.

**Mark Wraith** acted for the successful Claimant in **JBR Capital v JM Investments / Trading [2023] EWHC 174 (Comm)**. The judgment deals with various issues including the validity of the guarantees given by the Second Defendant and the application of the law of promissory estoppel.

**Philip Marshall KC** and **Wilson Leung** are acting in **Eternity Sky Investments v Zhang** to defend complicated multi-jurisdictional proceedings involving claims of over £150 million made by the Huarong Group (one of the largest state-owned asset managers in China) against a deceased Chinese tycoon and his widow. The litigation has involved a freezing order application and award enforcement proceedings in the English Commercial Court (**[2023] EWHC 1964 (Comm)**); a petition in the English courts for an insolvency administration order; an application in the Insolvency & Companies List for an interim receiver over the tycoon's estate (**[2023] EWHC 2744 (Ch)**); award enforcement proceedings in the BVI Commercial Court; and Norwich Pharmacal proceedings in Hong Kong and the Cayman Islands. The defence relates to weighty allegations of illegality affecting the underlying debt (necessitating expert evidence on foreign law) as well as breach of consumer rights legislation.

**Andrew Gurr** (led by Lisa Lacob and instructed by Peters & Peters) acted for the Defendant in **Crane Legal Ltd v Huttunen** (HC, 4 April 2023) in successfully resisting a summary judgment application on a claim under a solicitors' CFA. The application raised novel points concerning the enforceability of CFAs under s.58 of the Courts and Legal Services Act 1990.

In **The Motoring Organisation Limited v Spectrum Insurance Services Limited** **Matthew Morrison** appeared for the Claimant in a ten-day Commercial Court liability trial in which it was alleged that contractual and fiduciary duties, and obligations of confidence, were breached by the Defendant in appropriating an opportunity to provide insured warranties for cars manufactured by SsangYong and sold in the UK, and certain other business opportunities. Judgment is expected in early 2024.

**Justin Higgs KC** represents the defendant in **PPRS Holdings & Anor v Tecar**, comprising two Commercial Court claims for breach of warranty in relation to the sale of a substantial paper business in Romania, and for alleged breach of a restrictive covenant in the share sale agreement. An application to strike out the claims resulted in the abandonment by the Claimant of multiple claims for relief, with the balance of the claims to be determined in 2024.

In **LLC Eurochem North-West-2 v Société Générale S.A** **James Weale** (led by Camilla Bingham KC) acts for ING Bank NV in relation to claims by EuroChem Group AG for payment of €212 million under various performance bonds. The case, which has been listed for a four-week trial in April

2025, raises important questions as to whether or not defendants can be required to make payments to companies that are linked to sanctioned persons.

In **African Mining Services Mali SARL v Societe Des Mines De Komana** **Lance Ashworth KC** and **Wilson Leung** continue to represent a leading gold production company that is counterclaiming for more than \$400 million in Commercial Court proceedings arising out of an agreement to terminate mining services at the Yanfolila gold mine in Mali. The liability trial, which will involve complex technical questions regarding drilling and blasting methods and mining equipment maintenance, is scheduled for three weeks in mid 2025. Relatedly, they represent the same company in Circuit Commercial Court proceedings against another mining services provider, which again involves technical disputes over mining operations.

In **Momentum Properties Limited v D&A Nominees Limited** **Justin Higgs KC** represents the Claimant in an action for professional negligence against the former professional director of a company for failure to prevent the loss of assets misappropriated from the Trafalgar Multi Asset Fund.

**Justin Higgs KC** represents the Defendant trustee in **Dorset Limited v Triantfyllidis** in a claim for an indemnity in respect of the administration of shares in a private investment company.

In **Frischmann v Vaxeal Holdings SA & Ors [2023] EWHC 2698 (Ch)**, **Tim Benham-Mirando** (unled) was successful in a summary judgment application that considered when a legal or equitable assignment can take place by someone acting under a power of attorney.

**Lance Ashworth KC** and **Tim Benham-Mirando** are instructed by the former owner of Wasps Rugby Club in two sets of proceedings against (1) his former solicitors, Kennedys, for professional negligence, and (2) his former family office, Hottinger, for breaches of fiduciary duty and contract and also for negligence. This resulted in his loss of control of the companies, which ended up in insolvency proceedings, and the ultimate destruction of all of his value in the companies.

**Adil Mohamedbhai** continues to advise an Eastern European investor in connection with his dealings with and investment in a company listed on the NASDAQ which, until recently, had a market capitalisation in the region of US\$ 1 billion but whose share price has now collapsed partly as a result of potentially unlawful conduct.

**Prof. Jonathan Harris KC (Hon.)** is general editor (with Lord Collins) of Dicey, Morris and Collins, The Conflict of Laws and the author of nine chapters. The First Supplement to the 16th edition was published in 2023.

## We are a pre-eminent set for private client, trusts and probate matters

**Richard Wilson KC** and **Jamie Randall** acted for Stephane Etroy and RBC Trust Company in a claim for losses stemming from negligent tax advice given in relation to a trust structure. In February 2023, they were successful in a preliminary issue trial on limitation which concerned the date of knowledge under section 14A of the Limitation Act (**Etroy v Speechly Bircham [2023] EWHC 386 (Ch)**).

[Emma Hargreaves](#) appeared for the successful Respondents in **Re Scherbakov**, deceased [2023] EWHC 440 (Ch), an appeal concerning the issue of whether non-contemporaneous documents are disclosable pursuant to CPR Practice Direction 57AD in circumstances where the definition of “Issues for Disclosure” refers to “contemporaneous documents”. [Sparsh Garg](#) appeared for the Appellants and [Oliver Jones](#) for the interim administrators.

[Giles Richardson KC](#), [Justin Higgs KC](#), [Emma Hargreaves](#) and [Thomas Fletcher](#) advise three respondents and [Stephanie Thompson](#) advises another respondent in **Re SG Kleinwort Hambros Trust Company (CI) Limited** in Jersey and in parallel proceedings in Guernsey. Judgments handed down in the matter in 2023 include the Jersey Court of Appeal’s decision ([2023] JCA 088) on the non-intervention principle and circumstances in which courts can and should give “non-binding” guidance to trustees. The subsequent decision of the Royal Court of Jersey providing “non-binding” guidance is at [2023] JRC 143.

[James Weale](#) (led by Deborah Bangay KC) acted for the respondent husband and [Giles Richardson KC](#) acted for an intervening party in a substantial and complex matrimonial dispute involving the ownership of shares in a bank and allegations of a sham transaction in relation to the matrimonial home. The case formed the subject of a two-week trial before Sir Jonathan Cohen in October 2023 ([2023] EWFC 209).

In **Re G Trust** (FSD 270 of 2023 (HKJ)) [Dakis Hagen KC](#) and [Stephanie Thompson](#) (instructed by Ogier) are assisting the trustee of a Cayman STAR trust who is a defendant to a proprietary claim made in Hong Kong. Kawaley J in the Cayman Grand Court **In The Matter of the G Trust** (11 December 2023) granted the trustee Beddoe relief permitting it to adopt a neutral stance in the Hong Kong proceedings and to use the disputed assets to bring rectification proceedings in the Cayman Islands. [John Machell KC](#) (instructed by Collas Crill) acted

for several of the beneficiaries (who are the plaintiffs in Hong Kong).

[Sparsh Garg](#) (with Hodge Malek KC and James Potts) acted for the successful Claimants in **Morina v Scherbakov** [2023] EWHC 3253 (Ch), a probate dispute concerning the validity and alleged revocation of the last will of the Russian businessman, Vladimir Scherbakov, and the applicable law of succession to Mr Scherbakov’s worldwide estate. Following a 3-week trial, involving extensive forensic document analysis and foreign law expert evidence, Bacon J found that Mr Scherbakov had not revoked his will, which in fact had been suppressed by his ex-wife and adult children. She further found that Mr Scherbakov had acquired an English domicile of choice such that English law governed succession to his worldwide moveables. [Sparsh](#) continues to act for the Claimants. [Richard Wilson KC](#) and [Oliver Jones](#) act for the interim administrators of the estate. [Dakis Hagen KC](#) and [Emma Hargreaves](#) appeared for the Second and Third Defendants at an earlier stage of the proceedings.

[Sparsh Garg](#) continues to act for the representor in **C v X**, a Jersey trust claim concerning the removal of a trustee and claims for breach of trust in respect of an extremely valuable trust. The trial is listed for May 2024.

[Gareth Tilley](#) is acting as junior counsel for HMRC in the widely publicised cases of **Ritblat v HMRC and HMRC v Ernst & Young LLP**, concerning a settlement agreement under the Employee Benefit Trust Settlement Opportunity under which the sum of £400 was agreed to be paid as tax on trust assets worth (unbeknownst to HMRC) some £130 million. The case concerns the construction and validity of the settlement agreement and runs in parallel with a claim in negligent misstatement against EY, which raises for the first time the question whether a taxpayer’s agent owes a duty of care in tort to HMRC in settlement negotiations. The trial is listed for 20 days in July 2024.

[Prof. Jonathan Harris KC \(Hon.\)](#) and [Adil Mohamedbhai](#) acted in relation to a multi-jurisdictional succession and inheritance dispute concerning the estate of a wealthy American businessman worth at least many tens of millions of dollars, including extremely valuable works of art situated in London. The dispute spanned three jurisdictions (Illinois, Italy and England) and gave rise to complex private international law issues.

In **Re A, D and B Trusts Dakis Hagen KC** and [Oliver Jones](#), and [Giles Richardson KC](#), [Emma Hargreaves](#) and [Stephanie Thompson](#) advise respectively the two adult beneficiaries of three discretionary trusts holding very valuable corporate assets in proceedings in the Royal Court of Jersey brought by the trustees for directions concerning the future of the trusts and the corporate assets. [Thomas Fletcher](#) acts for the trustees.

[Richard Wilson KC](#), [James Weale](#), [Zahler Bryan](#) and [Harry Martin](#) act for three beneficiaries in a cross-border dispute relating to a very substantial trust. The principal claim (before the Bahamian Supreme Court) is for the removal of the trustee, but related proceedings have been issued in the Royal Court of Guernsey. The case has already generated important case law on the scope and effect of no contest clauses and privacy restrictions applicable to trust litigation in the Bahamas (which was the subject of a judgment of the Bahamian Court of Appeal). It is anticipated that the main trial will be listed in late 2024 or early 2025. [Emma Hargreaves](#) acts for the guardian of minor/unborn beneficiaries.

[Constance McDonnell KC](#) and [George Vare](#) (assisted by [Anneliese Mondschein](#)) acted for the successful claimants in the 12-day trial of a probate claim where a will was drafted by a chartered tax adviser. They successfully argued that the Deceased neither had testamentary capacity at the time of executing a purported final will, nor knew and approved of its contents. The comprehensive judgment of Mrs Justice Joanna

Smith DBE includes guidance as to the court’s approach to medical expert evidence in such cases, and clarifies the operation of limbs 1 and 4 of *Banks v Goodfellow*.

[Constance McDonnell KC](#) acted in an appeal to the Privy Council from the Guernsey Court of Appeal in **Dorey v Ashton** about whether a lawyer who had prepared an invalid will had a tortious duty of care to the beneficiaries of the estate who were affected by the provisions of the invalid will.

[Thomas Fletcher](#) is an editor of the 20th Edition of *Lewin on Trusts*. The First Supplement to this edition was published at the end of December 2023.

## Our trusts expertise finds specialist expression in our charities work

[Jonathan Fowles](#) acted in the Supreme Court for the Appellant local authority in the landmark case of **Merton LBC v Nuffield Health** [2023] UKSC 18, which is discussed above on page 3.

[Jonathan Fowles](#) acted for the successful Claimants in **Mohammed v Daji** [2023] EWHC 2761 (Ch). The claim was to establish that a very substantial site in East London is held by the Claimants on a charitable trust associated with a particular Sunni Muslim community in the London region, rather than upon the charitable trusts of a related community. Both communities are associated with the worldwide Tablighi Jamaat movement, and the dispute took place in the context of a worldwide schism in that movement which caused rancour between the communities. The judgment contains an illuminating analysis of the law of charity appeals, and further develops the principle of delegated authority to declare charitable trusts in *Attorney-General v Mathieson* [1907] 2 Ch 383. Jonathan was led by Mark Sefton KC.

[William Henderson](#) is Junior Counsel to the Treasury in charity matters and advises HM Attorney General on a standing basis.

## Our wide-ranging property practice has continued to grow

In **Prescott Place Freeholders Limited & Others v Batin & Donovan [2023] EWHC 435**, [Michael Walsh](#) acted for the successful Claimants in a long-running dispute about whether various deeds of trust and leases had been fraudulently created. Following trial, Richards J found the Defendants had lied about when the documents were executed and had backdated them to devalue the property at the centre of the dispute. The case decided a number of important points of law for the first time in relation to tenants' rights of first refusal under the Landlord and Tenant Act 1987, including whether an order under section 19 of the 1987 Act is an interest in land. The Court of Appeal has granted permission to appeal to the unsuccessful Defendant and the appeal will be heard over two days in March 2024.

[James Weale](#) acted for the successful Defendant in a claim relating to the ownership of property based on a constructive trust in **Patel v Patel**. The claim formed the subject of a 5-day trial before HHJ Johns KC in March 2023.

[Michael Walsh](#) acted for the successful Respondent in the Court of Appeal in **Healey v Fraine & Others [2023] EWCA Civ 549**, where it was decided that

Parliament did not intend to change the law of adverse possession in the Land Registration Act 2002 so that occupiers of land could be in possession with the consent of the owner and also be in adverse possession at the same time for the purposes of paragraph 5 of schedule 6 of the Act. The Court decided that the meaning of adverse possession had not changed. The judgment contains a wide-ranging review of the authorities relating to the legal principles of adverse possession in unregistered and registered land, which is well worth reading as a succinct statement of the law. The case also confirmed an important point of procedure that a party may plead two alternative cases but cannot plead as part of the same case two assertions that contradict each other. The Court also decided that a subsequent statement of case must not contradict or be inconsistent with an earlier one and that a single pleading must not contradict, or be inconsistent with, itself.

[Amy Proferes](#) acted for the successful Respondents in **Dyer v Webb [2023] EWHC 1917 (KB)**, [2023] EWHC 2651 (KB), which raised the novel question of whether objecting to planning applications is a right protected by the European Convention on Human Rights. The Respondents

were awarded their costs on the indemnity basis and the application was recorded as being totally without merit.

[Jonathan Upton](#) acted in a significant Rights of Light claim for £1.9 million arising out of the redevelopment of a prominent site in Shoreditch, London. The matter settled at mediation in November 2023.

[Rupert Reed KC](#) acted with Simon Atkinson for the successful Defendant, Princess Aljawarah of Saudi Arabia, widow of the late King Fahd, in **Asturion Foundation v. Aljawarah Bint Ibrahim Abdulaziz Alibrahim [2023] EWHC 3305 (Ch)**. Judgment was handed down by Adam Johnson J on 21 December 2023 after a three-week trial over the summer. The Claimant, a Liechtenstein foundation controlled by other members of the Saudi royal family, challenged the transfer of a London property, Kenstead Hall, to the Princess in 2011. All of the Claimant's various grounds of challenge were dismissed. The judgment includes significant discussion of the scope of the protection afforded to the disponees of registered land under section 26 of the Land Registration Act 2002.

[Jonathan Upton](#) continues to act in the ongoing Canary Riverside Litigation, which relates to a management order made in 2016 in relation to the premises. The latest dispute concerned whether

a tribunal manager can be an Accountable Person" under the Building Safety Act (the BSA) and the interaction between building safety functions under the BSA and management functions under a management order. In related litigation, Jonathan is due to appear in the Upper Tribunal in March 2024 on an appeal concerning £1.5 million in unlawful insurance commissions.

[Andrew Bruce](#) acted for the Canal and River Trust in a claim for forfeiture of the lease of Liverpool Marina. The case raised interesting issues including whether dredging is a repair, and whether relief from forfeiture ought to be granted if the repair proposed could be done faster with greater expenditure.

[Andrew Bruce](#) successfully defended a claim of fraudulent misrepresentation about the presence of Japanese Knotweed at a property in Birmingham: **Phillips v Wheeler (2023, unreported)**.



## Our intellectual property, IT and art practices are burgeoning

[Michael Edenborough KC](#) had a busy appellate practice in 2023, having won three appeals so far, including acting for Oatly to secure the mark “Post Milk Generation” against a complaint by Dairy UK based upon an objection to the use of the word MILK in a mark for non-dairy products. He has acted also for Lifestyle Equities against Amazon in the Supreme Court where a decision is expected in 2024.

[Michael Edenborough KC](#) leading [John Eldridge](#) acted in an unusual case where it was alleged that parts of the UK’s trade mark legislative regime infringed a party’s human rights: ***Enreach UK v Inreach Group* [2023] RPC 4**.

[Michael Edenborough KC](#) leading [John Eldridge](#) (and outside junior counsel) acted for the owners of the cartoon character ***Peppa Pig*** and successfully clarified the law in favour of electronic service of originating documents (**[2023] 1 WLR 2333**). They continue to act in this multi-jurisdictional copyright, trade mark and passing-off dispute against the Vietnamese cartoon character Woolfoo.

[Thomas Elias](#) acted for Aldi (instructed by Freeths) in ***Marks and Spencer plc v Aldi Stores Ltd* [2023] EWHC 178 (IPEC), [2023] FSR 17**, a registered design claim regarding light-up snow globe gin liqueur bottles. Marks and Spencer succeeded at first instance, but the trial judge gave permission to appeal. [Michael Edenborough KC](#) led [Thomas Elias](#) in the appeal to the Court of Appeal in January 2024.

[Michael Edenborough KC](#) leading [Stephanie Wickenden](#) was involved in a complicated Brexit procedural dispute that involved an amendment to allege infringement of an EU trade mark after IP Completion Day (original and supplemental judgments at **[2023] FSR 23 and 24**). Permission to appeal has been

granted, and the Defendant has already conceded the first ground of appeal.

[Michael Edenborough KC](#) (leading outside junior counsel) represented the Claimant in a trade mark dispute that hinged on the issue of whether a crowded market and co-existence agreements were relevant considerations when considering the existence of the likelihood of confusion (**[2023] FSR 22**). The trial judge gave permission to appeal on these issues.

[Stephanie Wickenden](#) and [Stefano Braschi](#) acted for ***easyGroup***, which brought a claim for trade mark infringement against the indie rock band Easy Life. The case received significant media attention after the band decided to change its name as a result of the proceedings.

[Stephanie Wickenden](#) (led by outside leading counsel) represented ***easyGroup*** in the Court of Appeal in the long-running trade mark dispute of ***easyGroup v Nuclei*** (and others) **[2023] EWCA Civ 1247**. The appeal gave significant guidance on non-use, confusion and the defence of honest concurrent use.

[Stephanie Wickenden](#) represented Lord Andrew Lloyd Webber and Sir Trevor Nunn in a claim brought against them by an individual who claimed to have written the song “Memory” from the musical *Cats*. Stephanie successfully obtained an order striking out the claim, which Master Brightwell recorded as totally without merit and referred the matter to a Judge to consider an extended civil restraint order against the claimant.

[Michael Edenborough KC](#) leading [Stephanie Wickenden](#) (with [Stefano Braschi](#) assisting) acted for ***easyGroup*** in securing an injunction for the first time against the use of a Sign that did not use ***easyGroup***’s characteristic

orange colouring and that was being used in relation to non-travel related services (trial reported at **[2023] ETMR 12** and costs at **[2023] Costs LR 367**) upon which ***easyGroup*** lost. Michael and Stephanie succeeded on appeal in also establishing passing off and overturning a broad declaration made by the first instance judge (20 December **[2023] EWCA Civ 1508**).

[Stephanie Wickenden](#) and [Niamh Herrett](#) successfully represented Aldi in a claim brought by Thatchers cider. The claim alleged trade mark infringement and passing off by Aldi’s cloudy lemon cider product. The trial attracted much press interest. Judgment was handed down in January 2024 where the claim was dismissed in its entirety (**[2024] EWHC 88 (IPEC)**).

[Stephanie Wickenden](#) acted for Marks & Spencer in a trade mark claim alleging infringement of marks protecting the well-known Percy Pig sweets.

[Michael Edenborough KC](#) and [Adrian de Froment](#) continue to act for the defendants in a trade mark and passing off case concerning “Lost Mary” branded vapes, having successfully obtained the transfer of the matter out of the Shorter Trial Scheme (**[2023] EWHC 2972 (Ch)**).

The IP team has had an especially busy year in the trade Marks Registry. [Michael Edenborough KC](#), [Stephanie Wickenden](#), [John Eldridge](#) and [Niamh Herrett](#) have each appeared before the tribunal and/or the Appointed Person, in matters relating to a broad range of businesses and goods including medical devices, social media, tea and motorbikes.

[Stephanie Wickenden](#) has had another busy year of art and cultural property cases, representing a range of galleries, artists and charities in disputes relating to copyright, trade marks, contracts and directors’ duties.

[Harry Martin](#) acts in multiple art disputes, including for Ashti Fine Art in litigation about the ownership of a Francis Bacon painting allegedly fraudulently pledged as loan collateral.

[Michael Edenborough KC](#), along with expert contributions from [Thomas Elias](#), [Adrian de Froment](#) and [Stephanie Wickenden](#) (and with [Niamh Herrett](#) who compiled the Index), wrote the 2nd edition of *Contentious Trade Mark Registry Proceedings*, which was published by CITMA in October 2023.



## We have specialist expertise in competition, EU and regulatory work

**Suzanne Rab** acts for the proposed class representative in four associated sets of collective proceedings against Mastercard and Visa in the Competition Appeal Tribunal (**Commercial and Interregional Card Claims I Limited v Mastercard Incorporated & Others (CAT 1441/7/7/22, et seq)**). The claims are made on behalf of merchants accepting payments using UK corporate cards, and credit and debit cards from overseas visitors, in relation to Multilateral Interchange Fees; if certified, they are worth several billions of pounds.

**Suzanne Rab** is representing the Home Office in a market investigation by the Competition and Markets Authority (CMA) in relation to overcharging for the UK's emergency services radio network, Airwave. The CMA's final assessment found a lack of competition allowing Motorola to make around £160 million in excess profits each year (approximately £1.2 billion in total). Suzanne successfully represented the Home Office as intervener in an appeal by Motorola against the CMA's decision which was unanimously rejected by the Competition Appeal Tribunal (**Case 1593/6/12/23 Airwave Solutions Limited & Others v Competition and Markets Authority [2023] CAT 76**).

**Suzanne Rab** continues to maintain an active practice advising on new and emerging regulation internationally and most recently in the Middle East. She is advising on and drafting the new competition law and regulation for Saudi Arabia's new NEOM city project, which is planned on the coast of the Red Sea with various unique and challenging features as a part of its vision 2030 to transform itself from an oil-dependent economy

to a knowledge-based economy. In the digital and communications sector she is supporting the Saudi Communications, Space and Technology Commission, as part of its Digital Regulatory Academy, on international comparative best practices in regulation of the digital economy.

In November 2023 **Suzanne Rab** was appointed as a panel member to the Office for the Internal Market (OIM). The OIM was set up to support the effective operation of the UK internal market, advising the UK government and the devolved administrations on how specific laws, rules and regulations impact the market.

**Suzanne Rab** is one of the editors of a collection of essays to honour the memory and contribution of Paul Heim CMG, the founder of Lincoln's Inn Euro Group. Judges at European and international courts; leading practitioners and officials; and recipients of the Inn's dedicated scholarship programmes contributed their personal reflections and expertise in human rights and European law ("Building Bridges in European and Human Rights Law", Hart/Bloomsbury, forthcoming in 2024). She is also a co-author to the UK chapter of the "Handbook of consumer protection and consumer behaviour in energy markets" (Taylor and Francis, forthcoming in 2024). Suzanne also recently authored chapters on Competition Law and Telecommunications in "Artificial Intelligence Law and Regulation" (Edward Elgar) and contributed a series of chapters to "Legal Education and Legal Profession During and After COVID-19" (Springer), which captures experiences and experiments in the governance of law schools and the legal profession during and after the COVID-19 pandemic.





## We enjoy a leading Chambers presence in the Dubai International Financial Centre

Zoe O'Sullivan KC and Gregor Hogan acted for the Appellant, Horizon, in **Horizon Energy LLC v Al Buhaira National Insurance Company [2022] DIFC CA 015 (19 April 2023)**, in which the DIFC Court of Appeal considered for the first time the interaction between the regulation of insurance in the UAE, specifically under the Federal Insurance Law, and jurisdiction clauses that confer jurisdiction on "courts of the UAE". The Court of Appeal held that the provisions of Federal law and the specific dispute resolution regime for insurance litigation established thereunder did not prevent parties invoking the jurisdiction of the DIFC Courts. In a separate appeal from an interim order made in the same proceedings, **Zoe O'Sullivan KC and Gregor Hogan** secured another victory for Horizon in **Al Buhaira National Insurance Company v Horizon Energy LLC [2023] DIFC CA 001 (27 April 2023)**, in which the DIFC Court of Appeal refused to uphold an anti-suit injunction preventing Horizon from pursuing parallel proceedings in Sharjah. This leading case holds that it will be rare for the DIFC Court to restrain proceedings in another Emirates court, given issues of judicial comity.

**Rupert Reed KC** acted with Tim Killen for the Defendant insurer in **Globemed Gulf Healthcare Solutions LLC v. Oman Insurance Company PSC [2017] DIFC CFI 051**. The trial was heard in the DIFC Court in May 2023. The Claimant sought damages for loss of profits arising from the alleged

termination of joint venture arrangements for the 'third party administration' of the Defendant's health insurance portfolio in the UAE. The case raised issues in respect of the nullity of the Claimant for breach of the requirement of majority UAE ownership, the satisfaction of a condition precedent, and whether the profits claimed would have been sufficiently certain to found a claim in damages as a matter of UAE law.

**Rupert Reed KC** and **Gregor Hogan** acted for the Defendant, IPMR, in **Union Insurance PJSC v International Precious Metals Refiners LLC [2022] DIFC CFI 064 (15 September 2023)**. IPMR challenged the jurisdiction of the DIFC Courts on the basis that, in the specific factual matrix of the case, a "courts of the UAE" jurisdiction clause in an insurance contract could not be properly construed to mean or include the DIFC Courts. IPMR also contended that pre-existing and ongoing proceedings before the "onshore" Sharjah Courts constituted *lis alibi pendens*. Justice Wayne Martin applied the analysis of the DIFC Court of Appeal in *Horizon Energy LLC v Al Buhaira National Insurance Company* [2022] DIFC CA 015 (19 April 2023) (in which **Zoe O'Sullivan KC** and **Gregor Hogan** acted) to find the jurisdiction clause covered the DIFC Courts; however, Justice Martin's judgment contained the first detailed consideration of the doctrine of *lis alibi pendens* in DIFC law finding that it could not be disaggregated from the wider doctrine of forum non conveniens which is not

applicable on an intra-UAE basis. IPMR has applied for permission to appeal Justice Martin's judgment.

**Zoe O'Sullivan KC** appeared in **Muhallam v Muhaf [ARB 021/2022] (19 September 2023)** in which the DIFC Court confirmed that it has jurisdiction to enforce an interim measure ordered by a foreign tribunal in the form of a provisional award.

**Rupert Reed KC** and **James Weale** acted for the Respondent (and Cross-Appellant), State Bank of Mauritius, SBM, in **SBM Bank (Mauritius) Ltd v. Renish Petrochem FZE & Anor [2022] DIFC CA 011** on appeal, which was heard in September 2023. The Defendants sought on appeal to overturn factual findings of trade finance fraud obtained by **Rupert, James** and **Gregor Hogan** at trial in [2018] DIFC CFI 054 (29 December 2021). The appeal raises important questions as to the standard of proof in fraud claims under DIFC Law. **James Weale** also acted for SBM on a committal application against the Defendants in the same proceedings.

**Gregor Hogan** acted for the first and second defendants, Petrochina, in **Gulf Petrochem FZC LLC v (1) Petrochina International (Middle East) Company Limited (2) Petrochina International (Singapore) PTE Ltd & Ors [2023] DIFC CFI 048 (23 November 2023)**. Petrochina successfully applied to set aside a USD 10.5 million default judgment on the basis of ineffective service, had the claim struck out and the claim dismissed on the basis that the dispute was governed by an arbitration clause with a Singapore seat.

**Zoe O'Sullivan KC** represented the reinsured in **AIG (UK) Ltd v Qatar Insurance Company**, a re-insurance case which concerned whether payment under a re-insurance contract would infringe US-Iran sanctions.

**Gregor Hogan** acts for the claimant, Cobra, in **Cobra Instalaciones y Servicios SA v (1) Al Bloushi (2) UTICO FZC**, in defending an application to refuse recognition and enforcement of an AED 47.5 million arbitration award on the basis that to do so would be contrary to the public policy of the UAE. Specifically, recognition and enforcement is resisted because the award requires the Defendants to buy out Cobra's shares in the parties' underlying UAE joint venture company pursuant to the terms of their shareholders' agreement. To find that such awards are not enforceable has the potential to have a significant impact on the structuring of inward investment into the UAE. Judgment is awaited.

**Rupert Reed KC** and **Gregor Hogan** act for the Claimant, Paramjit Kahlon, who seeks damages of USD 32 million arising from the unlawful termination of his employment shortly before the accrual of a significant incentive entitlement: **Paramjit Kahlon v (1) Liberty Steel Group Ltd (2) Liberty Steel Group DMCC**.

## Serle Court mediators have mediated disputes across several jurisdictions and often mediate in multi-party disputes

Our barristers are at the top of their game in mediation – both as mediators and mediation advocates.

Mediation has now come of age with the decision in *Churchill v Merthyr Tydfil CBC* [2023] EWCA Civ 1416 confirming that the court can make an order for non-court dispute resolution, including mediation, or order a stay of proceedings for it to take place.

Serle Court barristers are experienced in representing clients in mediation and many of them are qualified as mediators. A few examples of disputes in which they have acted as mediation advocates in 2023 are a dental partnership dispute, intellectual property disputes, rights of way and boundary disputes and undue influence and 1975 Act claims.

Our core group of mediators, [Liz Jones KC](#), [Beverly-Ann Rogers](#), [Paul Johnson](#) (celebrating respectively 25, 25 and 22 years mediating this year) and [Jennifer Haywood](#), have undertaken well over 2000 mediations between them. They have been exceptionally busy during 2023, mediating disputes across the whole spectrum of cases in the Business and Property Court and beyond from high profile property developments and international trust disputes to smaller family and business disputes, deploying their legal expertise, commercial acumen and skill at handling emotionally fraught disputes to help parties find a mutually acceptable resolution.

## Serle Court's Arbitrators have extensive experience in Commercial and Chancery law and are involved in both international and domestic arbitrations

**Our barristers also regularly act as counsel in arbitrations conducted under the rules of all major arbitration centres in relation to the whole gamut of Commercial and Chancery disputes.**

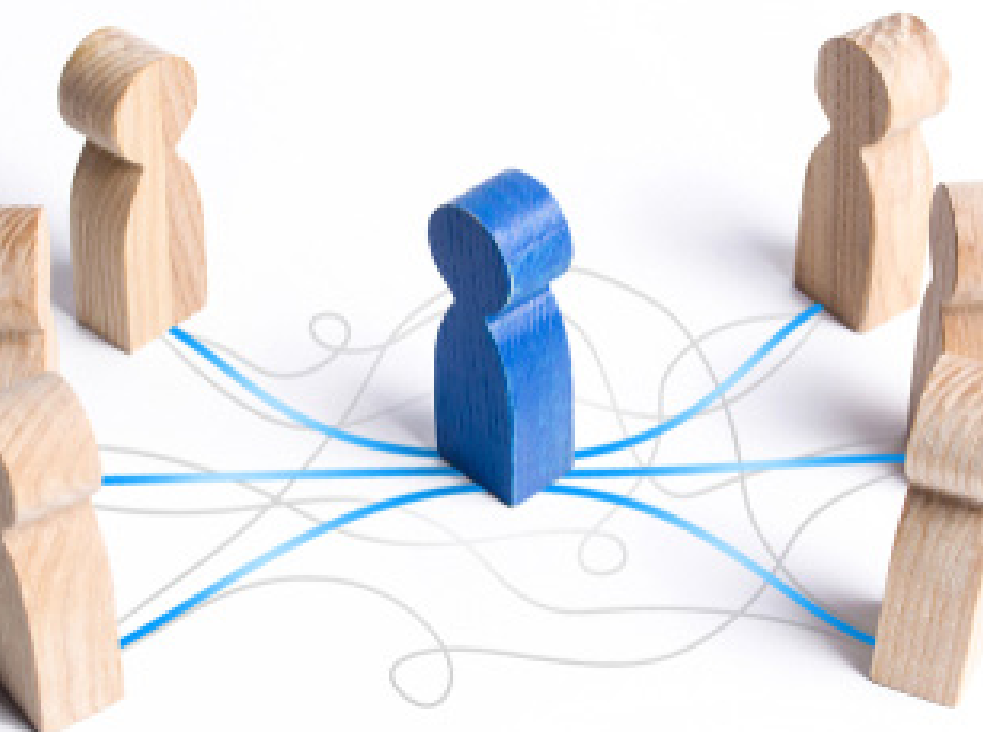
In *Volpi v Delanson Services Ltd*, [Dakis Hagen KC](#) and [Stephanie Thompson](#) act for the New Zealand trustee of three Bahamian trusts in a Bahamian-seated arbitration (conducted under Bahamian legislation which deems arbitration clauses in trust instruments to be arbitration agreements), before a tribunal of Dr Georg von Segesser, Professor Alberto Malatesta and Lord Neuberger of Abbotsbury. The arbitration concerns the distribution of the entirety of the trust assets (including West African oil and gas interests) to the settlor. Following the award on liability, the arbitration was stayed pending the determination of challenges and appeals to the Bahamian Supreme Court, in which [Dakis Hagen KC](#) and [Stephanie Thompson](#) are assisting Bahamian counsel. The 168-page judgment of Klein J was handed down on 28 December 2023.

[Hugh Norbury KC](#) and [Adil Mohamedbhai](#) represented the claimant in a series of hearings in a confidential arbitration in Singapore concerning the alleged misuse of confidential information relating to a potential mining deal worth more than US\$ 1 billion.

[Daniel Lightman KC](#) and [Charlotte Beynon](#) act for the majority shareholder in a Cayman-registered company in arbitral proceedings in Hong Kong. The complex and large-scale dispute arises out of an alleged fraudulent conspiracy and fraudulent breaches of the shareholders' agreement of a company operating in the satellite

industry. In January and February 2023, [Daniel](#) and [Charlotte](#) represented the shareholder at a six-week hearing of the reference at the HKIAC. The arbitration is ongoing, as are related proceedings in the Cayman Islands, the US and the Hong Kong national courts.

[Wilson Leung](#) is acting as counsel in an LCIA arbitration over investment introductory fees relating to brokerage of an investment deal between a global asset management firm and a major Middle East sovereign wealth fund.







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