


ANNUAL CASE REVIEW 2020

# serlecourt

RAISING THE BAR IN CHANCERY & COMMERCIAL





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commercial chancery sets,  
and one of the few that  
genuinely competes in both  
traditional chancery and  
commercial litigation”*

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I am extremely proud to introduce the 2020 Annual Review in what is my last year as Head of Chambers at Serle Court. In what was a year different to any other we have experienced, Serle Court has again been involved in some of the most complex and interesting Commercial and Chancery cases across a wide range of practice areas and in many jurisdictions. Whilst the new experience of virtual trials and hearings has changed the way we conduct legal process, it has not changed the nature of the cases which again include, some high profile, some legally complex, and others establishing key legal principles. The selection of cases in this Annual Review includes many before the higher courts, the Courts of Appeal in the UK and other jurisdictions, the Supreme Court and Privy Council.

**Alan Boyle QC**  
Head of Chambers



# In 2020, Serle Court was involved in many substantial, high-profile, and precedent-setting cases

Elizabeth Jones QC, Justin Higgs QC, Gareth Tilley, Paul Adams, Zahler Bryan and Oliver Jones continue to act for Kea Investments in the ongoing litigation against Eric Watson, following the substantial judgment obtained against Mr Watson for deceit and breach of fiduciary duty in 2018. This year resulted in notable decisions on the circumstances in which a defendant can have resort to assets subject to a freezing or proprietary injunction when there is an unsatisfied judgment debt ([2020] EWHC 472 (Ch)), a judgment creditor's right to be subrogated to the position of a bank that had used money held on trust for the judgment creditor to satisfy debts of its customer, the judgment debtor ([2020] EWHC 309 (Ch)) and, in a judgment reaffirming the risk taken by litigants who deliberately breach court orders, Mr Watson was committed to prison for 4 months for failing to disclose assets which were made available for his use ([2020] EWHC 2599 (Ch); [2020] EWHC 2796 (Ch)). Mr Watson's application to stay the committal order was refused.

Dakis Hagen QC (assisted by Emma Hargreaves) acts for the Plaintiffs and Jonathan Adkin QC (assisted by Adil Mohamedbhai) acts for the Defendant trustee in **Wong & Anor v Grand View Private Trust Company Ltd**, a claim to recover substantial trust property transferred to a trustee of a purpose trust. The Plaintiffs succeeded in obtaining summary judgment at first instance on the ground that powers of addition and exclusion cannot be exercised in a manner which alters or destroys the substratum of the trust ([2019] SC (Bda) 37 Com (5 June 2019)), but this was overturned by the Bermuda Court of Appeal in April 2020 (Civil Appeal No. 5A of 2019,

20 April 2020). Richard Wilson QC (assisted by James Weale) acts for Tony Wang, an intervenor in the appeal. The Plaintiffs and Tony Wang have each been granted leave to appeal to the Judicial Committee of the Privy Council.

Elizabeth Jones QC and Oliver Jones are acting for the eOne group, a major international producer of material for film and TV (e.g. the film 'Green Book' and 'Peppa Pig'), in proceedings against Monex Europe Ltd and eOne's former Treasury Manager. The claim arises out of the paying of secret commissions to fiduciaries, alleging that Monex paid some £8m of secret commissions to eOne's Treasury Manager and his deputy in order to induce them to place FX trades with Monex. The 4-week trial is listed for March 2021.

Philip Marshall QC, Jonathan Harris QC (Hon.) and James Mather are acting for Abu Dhabi Commercial Bank in **State of Qatar v Emirates NBD Bank**, one of the largest claims to be brought in the English High Court, in which claims are brought against the bank by the State of Qatar in conspiracy said to arise out of an alleged international scheme to manipulate the value of Qatari currency and bonds connected with the so-called 'blockade' of Qatar by neighbouring Gulf states causing the Qatari Central Bank to have to deposit US\$13 billion to defend its currency peg.

Philip Marshall QC and Matthew Morrison continue to act for Business Energy Solutions (BES) in respect of proceedings arising from the obtaining and execution of search warrants, and an ongoing trading standards investigation into BES's affairs. The claims, which seek damages for misfeasance



in public office and just satisfaction under the Human Rights Act 1998, raise novel points of public and private law including immunity from suit. The 12-day trial commences in November 2021.

**Philip Marshall QC** and **James Mather** are acting for Dr Vijay Mallya, the former Chairman of Kingfisher Airlines, in relation to a bankruptcy petition presented by a consortium of Indian banks on the basis of an alleged debt in excess of £1bn and in the context of substantial overlapping proceedings in India. It was held in a judgment of Chief ICC Judge Briggs in April 2020 ([2020] BPIR 990) that the petitioner banks had failed to disclose the security they held over the assets of Dr Mallya in India, rendering the petition defective. There is an ongoing dispute as to whether the banks can now amend the petition. The case also raises important issues in regarding, among other things, validation of legal expenses and *forum conveniens* in respect of insolvency proceedings.

**Philip Jones QC** appeared in a 5-day Court of Appeal hearing in the BVI in the long running **Peckson** case involving the ownership of shares in a BVI company which was the ultimate owner of a casino and hotel in Macau. This followed a 5-week retrial. The case had already been to the Privy Council, which had ordered a retrial.

**Philip Jones QC** was successful in the Privy Council in **Shanda Games**. This was an appeal from the Cayman Islands and was the first case to reach the Privy Council in relation to the determination of the 'fair value' of shares owned by those who dissent to the merger of a company as part of a de-listing of shares. Philip was also involved in a lengthy trial at first instance in the Cayman Islands in Trina Solar involving the same jurisdiction.

**Philip Jones QC** and **Hugh Norbury QC** are each instructed on behalf of separate Defendants in the major commercial fraud case of **Vale v Steinmetz & Ors**, arising out of a failed mining joint venture in Guinea. The claim is for nearly US\$2 billion.

**Philip Jones QC** and **Gareth Tilley** are acting for HMRC in **HMRC v IGE USA Investments Ltd**, a claim arising from the Revenue's contention that it has rescinded tax settlements with the UK Subgroup of the US conglomerate worth upwards of £650m. The trial is to take place in late 2021. An interlocutory decision of Zacaroli J reported at [2020] EWHC 2121 (Ch) permitting the Claimants to amend to allege fraud is currently on appeal to the Court of Appeal raising the question of what if any limitation period applies to equitable claims for rescission

on the basis of fraudulent misrepresentation.

In **Re Infund LLP**, [John Machell QC](#) and [Dan McCourt Fritz](#) act for the appellants in respect of a claim brought by Grupo Mexico seeking to avoid the restoration of an LLP to the Register of Companies. The case will be heard by the Supreme Court in October 2021 and concerns the proper construction and effect of section 1096 of the Companies Act 2006.

[John Machell QC](#) acts for the appellants in **ITG Limited v Glennalla Properties Limited** in an appeal to the Privy Council. The case concerns issues relating to the insolvency of trusts including the priority between the indemnity claims of successive trustees, and between trustees and outside creditors.

[Jonathan Adkin QC](#), [Sophie Holcombe](#) and [Jamie Randall](#) act on behalf of the former Prime Minister of Georgia and his family as beneficiaries of a Singapore Trust in **Bidzina Ivanishvili v Credit Suisse Trust**. Claims have been commenced against Credit Suisse entities for losses arising from the mismanagement of an investment portfolio said to be worth over US\$1bn. In July 2020 the Singapore Court of Appeal dismissed Credit Suisse Trust's jurisdiction challenge, bringing an end to a long-running jurisdiction battle.

[Jonathan Adkin QC](#) and [Charlotte Beynon](#) act for the fourth defendant and [Philip Marshall QC](#) and [Simon Hattan](#) for the fifth defendant in **Public Institution for Social Security of Kuwait v Al-Rajaan and Ors**, one of the largest fraud claims ever heard in the Commercial Court. PIFSS alleges that the defendants are liable for over US\$800m as a result of a large-scale fraud perpetrated by its former director general, Mr Al-Rajaan, in conjunction with the other defendants. The Serle Court contingent recently successfully challenged the jurisdiction of the English Court to hear the claims against their clients, with the Court directing that the claims should be heard in Switzerland, a decision

which the Claimant has been given permission to appeal.

[David Blayney QC](#), [Sophie Holcombe](#) and [Sophia Hurst](#) continue to represent the Claimants in the group action against British Airways over its 2018 customer data breach. With over 16,000 claimants, the claim is now the largest ever data protection and privacy group action in England and Wales.

In **Re Dinglis Properties Ltd**, [Daniel Lightman QC](#) and [Gregor Hogan](#) represented the respondents to a section 994 petition. In a landmark judgment in June 2020 ([2020] 2 BCLC 607), Adam Johnson QC (sitting as a deputy High Court Judge) considered the impact of the Covid-19 crisis on the share purchase order which he had previously made.

[Dakis Hagen QC](#) (assisted by [Emma Hargreaves](#) and [Stephanie Thompson](#)) acts for the Plaintiff, [Jonathan Adkin QC](#) (assisted by [Adil Mohamedbhai](#)) acts for the Defendant trustees, and [Richard Wilson QC](#) and [Jonathan Harris QC \(Hon.\)](#) (assisted by [James Weale](#) and [Charlotte Beynon](#)) act for another Defendant, Tony Wang, in **Wong v Grand View Private Trust Company Ltd & Ors**, proceedings in Bermuda concerning very substantial purpose trusts. In 2020, the Bermuda Supreme Court handed down decisions on issues including: (i) the iniquity exception to legal professional privilege ([2020] SC (Bda) 33 Com, 5 August 2020); (ii) purging contempt for breach of the implied undertaking ([2020] SC (Bda) 52 Civ, 10 December 2020); and (iii) specific discovery based on "practical control" and joint interest privilege ([2020] SC (Bda) 57 Com, 30 December 2020). The trial of the case is listed to be heard in 2021 for several months and is thought to be the largest case in Bermuda and one of the largest ever trust disputes anywhere in the common law world.

[Constance McDonnell QC](#) acts for the claimants in the first-ever derivative claim in Bermuda by the beneficiaries of an estate.

[David Drake](#) appeared for the successful respondents in the Supreme Court hearing in **Secretary of State for Health v**

**Servier Laboratories Ltd** [2020] 3 WLR 1207, where it was held that the EU law principle of absolute *res judicata* arising from decisions of the European Courts annulling acts of EU institutions could not be applied in a legal context detached from the annulling judgment.

## ...we remain a leading set for Civil Fraud

[Philip Marshall QC](#) and [Oliver Jones](#) continue to represent Emmerson International Corporation and several other defendants and claimants by way of counterclaim and ancillary claim in proceedings in the BVI in a dispute worth circa US\$1bn between two prominent Russian businessmen and associated parties concerning a joint venture in relation to 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. There were numerous interlocutory hearings and appeals in 2020, including a successful appeal by Emmerson against the lower court's decision to set aside certain amendments to its claims (BVIHCMAP 2019/0017), applications made by Emmerson for anti-suit injunctions in relation to proceedings brought in Russia (currently subject to appeal) and Cyprus, and an application by the Renova parties for an order that Emmerson be required to share legal representation with certain other parties notwithstanding that there is a conflict of interests between them. Judgment of the ECCA is also pending on Emmerson's appeal against the lower court's decision to impose a confidentiality club in relation to disclosure ordered to be given ancillary to a freezing injunction obtained by Emmerson, which will be the first appellate decision on the subject in the BVI.

the claimant in **Kelly v Baker & Braid**, a commercial court claim for damages for fraudulent misrepresentation and/or breach of fiduciary duty leading to the sale of a group of companies at an undervalue of over £110m.

[Lance Ashworth QC](#) acts for the claimant in **Grove Park Properties v Royal Bank of Scotland**, which is due for a 10-day Commercial Court trial in January 2021, in which it is alleged that the defendant bank fraudulently amended a loan agreement to halve the term of the loan.

[Lance Ashworth QC](#) and [Matthew Morrison](#) are acting for the claimants in **Wellcourt Investment Corp v Propfun Ltd**, a claim in connection with a £100m property portfolio in London, owned by BVI and Liberian companies. They have so far successfully obtained recovery of all monies held by the former agents of the claimants.

[John Machell QC](#) acts for the claimants in **Circumference v Martin** in which the Claimants claim an entitlement to rescind a share purchase agreement for fraudulent misrepresentation.

[Hugh Norbury QC](#) has been involved in the English leg of **China Metals v Chun**, a large international fraud case relating to the alleged misappropriation of assets in China / Hong Kong. Hugh is acting for the daughters of the alleged fraudster in relation to a proprietary injunction over valuable assets that they hold in London.

[Lance Ashworth QC](#) acts for





[Hugh Norbury QC](#) is instructed on behalf of corporate and individual trustee and director defendants in ***Ballacorey What v Brown and Ors***, a fraud claim issued in the Isle of Man arising out of a relationship between investment managers in the GEM financial management business.

[Jonathan Adkin QC](#) and [Adil Mohamedbhai](#) acted for the successful defendants in ***Magdeev v Tsvetkov & Ors***, a high-profile piece of civil fraud and commercial litigation involving various Russian individuals who had invested in a jewellery business in the UAE and Cyprus. The trial lasted three weeks. Cockerill J's judgment ([2020] EWHC 887 (Comm)) contains a detailed analysis of the law on foreign illegality.

In ***Equity Real Estate (Bracknell) Ltd & Ors v Capstan Capital Partners LLP & Ors***, [Justin Higgo QC](#) and [Stephanie Thompson](#) are representing five SPVs who are the apparent victims of a substantial property investment fraud. They have so far obtained extensive disclosure from third parties under the Bankers Trust, Norwich Pharmacal and pre-action disclosure jurisdictions.

In ***Federal Republic of Nigeria v Tibit***, [Timothy Collingwood QC](#) acts for the defendant company in an action in the BVI brought on behalf of the Government of Nigeria to recover funds which it is claimed were appropriated by corrupt former officials and used to purchase an executive jet.

[Matthew Morrison](#) acts for Sheikh Mohamed Bin Issa Al Jaber and a number of companies within the MBI Hotel Group in proceedings alleging breaches of fiduciary duty, fraudulent misrepresentation and an unlawful means conspiracy in relation to loans which are said to have been orchestrated by and for the benefit of MBI's former

inhouse counsel. A seventeen-day trial in the Chancery Division is due to commence in June 2021.

[Matthew Morrison](#) acts for the defendants to proceedings concerning the ownership and operation of Globcon Limited, an English company which was the ultimate owner of a shopping centre in Ukraine. The proceedings raise issues concerning the extent to which criminal proceedings in Turkey and Ukraine concerning fraudulent attempts to misappropriate the shopping centre may be relied upon by the defendants in proceedings in the Chancery Division.

In ***Ward v Savill*** [2020] EWHC 1534 (Ch), [James Mather](#) acted for the successful defendant in the determination of a preliminary issue on whether declarations obtained in earlier proceedings to which the defendant was not a party that property was held on constructive trust for the claimants could be relied on in future proceedings for purposes of asserting a tracing or following claim against her. The case is due to be heard by the Court of Appeal in March 2021.

In ***Russell v Cartwright*** [2020] EWHC 41 (Ch), [Dan McCourt Fritz](#) and [Stephanie Thompson](#) represented three defendants in the trial of a claim for fraudulent non-disclosure and unlawful means conspiracy brought by their former business partner. They were wholly successful at trial, with the Court finding that the parties did not owe fiduciary duties or duties of disclosure and that the defendants had been honest in their dealings with the claimant. The defendants were entitled to their costs on the indemnity basis.



# ...we are at the forefront of Commercial Litigation in London and globally

Lance Ashworth QC and Dan McCourt Fritz acted for the successful Respondents in the Court of Appeal in **Taylor v Van Dutch Marine Holding** [2020] EWCA Civ 353, in a claim concerning agents for undisclosed principals. They are now instructed for the defendants in **Taylor v Khodabaksh** in which it is claimed that the original decision in **Taylor v Van Dutch Marine Holding** was obtained by fraud. That will come on for trial in 2022.

Hugh Norbury QC has been working on the Bermudian element of the international battle waged by the private equity firm Apollo and its subsidiary Athene against their former partner / employees who have set up a competitive business (**Athene v Siddiqui, Cernich & Caldera**).

Hugh Norbury QC was instructed in **Gens v Goldenberg**, in which a battle between Russian investors in a Russian software business was briefly before the English High Court; the case was compromised before the interesting issue of jurisdiction was resolved.

Hugh Norbury QC and Mark Wraith represented Charles Saatchi and relevant corporate entities in a successful attempt to obtain permission to pursue derivative proceedings against his former senior employee, Rahul Gajjar and in related litigation. The underlying dispute related to the storage and transportation of Mr Saatchi's fabulous collection of art.

Zoe O'Sullivan QC acted for the successful defendant in a US\$170m guarantee claim brought by the Shanghai Shipyard, in which Robin Knowles J held that the guarantee given by it to the Shipyard in respect of the final instalment of a shipbuilding contract was not a performance bond but gave rise only to secondary liability: **Shanghai**

**Shipyard v Reignwood International Investment (Group) Company Ltd** [2020] EWHC 803 (Comm). She is also acting for the shipowner in its 2021 LMAA arbitration claim under the shipbuilding contract.

In **PPRS v Tecar** Justin Higgo QC represents the defendant in multiple claims for breach of warranty arising out of the sale of a Romanian paper business.

Julian Burling advised the PRA on the FSMA Part VII transfer to Lloyd's Insurance Company S.A., Brussels, of the EEA situs risk cover in all policies written in the Lloyd's market from 1993 to 2018.

David Drake acted for the successful defendants in **SPI North Ltd v Swiss Post International (UK) Ltd** [2020] EWHC 3268 (Ch), where the court had to consider the practical limits to the permission, frequently given to respondents to an amendment application, to make "consequential" amendments to their own responsive statement of case.

Simon Hattan is acting for RSA plc in defence of claims brought by a group of over 50 institutional claimants under section 90A of the Financial Services and Markets Act 2000. The claimants allege that Annual Reports and other published financial information contained untrue or misleading statements, in particular about accounting irregularities in the company's Irish subsidiary, and that as a result they suffered significant losses on their holdings of RSA shares.

In **The Union Castle Steamship Company Ltd v HMRC** [2020] EWCA Civ 547 a case concerning the use of derivative contract rules to engineer tax deductible losses exceeding £100m, the Court of



Appeal clarified the meaning of 'loss' and 'arising from' and the nature of the 'fairly represents' test in that context. The earlier decision of the Upper Tribunal also extended the application of transfer pricing rules to certain shareholder transactions (bonus share issues). [Ruth Jordan](#) acted for HMRC.

[Matthew Morrison](#) successfully resisted an application to set aside an order permitting service out of the jurisdiction on Dubai Islamic Bank (DIB) in proceedings before the Commercial Court which seek mandatory injunctive relief aimed at securing an end to Mr Ridley's ongoing imprisonment in Dubai ([2020] EWHC 1213 (Comm)). Mr Ridley was imprisoned under Dubai's Law 37 of 2009 which allows certain types of judgment creditors to apply for the imprisonment of debtors for up to twenty years. Mr Ridley claims that DIB's ability to seek an order under Law 37 was compromised by a settlement agreement governed by English law with an exclusive jurisdiction clause in favour of England. Matthew also successfully opposed DIB's attempts to obtain an order allowing the costs awarded to Mr Ridley to be set off against monies said to be due to DIB under an earlier Commercial Court judgment: [2020] EWHC 2088 (Comm).

In ***Filatona Trading Ltd v Navigator Equities Ltd*** [2020] 1 Lloyd's Rep. 418, [James Weale](#) acted for the successful respondent before the Court of Appeal. The Court

of Appeal gave guidance on the inter-relationship between principles of agency law and contractual construction in order to determine when a disclosed principal can intervene in, and assert rights under, a contract. James acts in related proceedings in Jersey which have been listed for trial in March 2021.

[James Weale](#) acted in committal proceedings against Oleg Deripaska. The judgment of Andrew Baker J [2020] EWHC 1978 (Comm) established that an applicant in committal proceedings is under a duty to present a contempt dispassionately and in the public interest and that an application may be abusive if the subjective motive of the applicant is inconsistent with that duty. Permission to appeal the judgment has been granted by the Court of Appeal and James is instructed in the appeal listed to be heard in October 2021.

[Adil Mohamedbhai](#) is advising (unled) a potential defendant who is being threatened to be sued for professional negligence in the context of a very high-profile fraud which has generated substantial global press coverage. If the case proceeds, it is likely to be one of the most high-value professional negligence claims ever brought in an English court (in excess of US\$1 billion).

In **Khalifeh v Blom Bank**, [Zahler Bryan](#) is acting for the claimant who seeks the return of monies held in a Lebanese bank account and, in a high-profile decision earlier this year, successfully resisted the Lebanese bank's jurisdiction challenge by establishing that the claimant was a consumer for the purposes of the European rules of jurisdiction ([2020] EWHC 2427(QB)).

In **Satfinance Investment Ltd v Inigo Philbrick** [2020] EWHC 1261 (Ch), [Zahler Bryan](#) acted for Athena Art Finance Corp, a New York based company specialising in providing finance secured on works of art, in proceedings arising from an alleged fraud concerning a Jean-Michel Basquiat. Permission for Satfinance to serve Athena out of the jurisdiction was successfully set aside as there was no real issue to be tried and on forum conveniens grounds.

[Professor Suzanne Rab](#) is advising on a number of potential claims against leading UK banks and lenders which represent the 'second wave' of payment protection insurance (PPI) litigation. The claims arise out of the Supreme Court's judgment in the Plevin case of 2014 which allowed the claimant to claim the full amount of undisclosed commission on a PPI policy. Unlike claims for mis-sold PPI these claims focus on the unfairness in

the relationship between the debtor and the creditor and raise novel issues, some of which are untested in the courts. The Financial Conduct Authority estimates that Plevin pay-outs could exceed £33bn.

[Stephanie Wickenden](#) acted as sole counsel for the successful appellants in the Court of Appeal in **Glencairn IP Holdings Ltd & Anor v Product Specialities Inc & Ors** [2020] EWCA Civ 609 which created new precedent in respect of solicitors' conflicts. The Appellants/Defendants' solicitors previously acted for another defendant in a case brought by the same claimant where the facts had some overlap, and which was resolved by a confidential mediation. The Court found that the principles to be applied were not the same as those in former clients, but that there was a potential for a conflict of duties owing to the confidential information received through the previous mediation. On the facts, the solicitors had not breached any duty as they had implemented an appropriate information barrier.

[Sophia Hurst](#) represented the Claimants in **Toucan Energy Holdings Ltd v Wirsol Energy Ltd** in a five-week trial in the Commercial Court before Henshaw J. The US\$60m dispute related to the sale, construction and financing of 19 solar farms in the UK. Judgment is awaited.

## ...we continue to have considerable expertise in domestic and offshore trusts, probate and private client matters

[Philip Jones QC](#) has been acting in the BVI in numerous applications in the **Skobelev** case in which a Russian national has sought to recover money and assets stolen from him by a former employee and her husband.

[John Machell QC](#) appeared for the appellant before the Eastern Caribbean Court of Appeal (BVI) in July in **Green Elite v Fang Ankong**. The appeal concerned

the discharge of a world-wide freezing injunction and, in particular, whether the judge at first instance was right to discharge the injunction on the basis of a lack of risk of dissipation. Judgment is awaited.

[John Machell QC](#) and [Dan McCourt Fritz](#) act for one of the





respondents to an appeal in **St Johns Trust Company (PUT) Ltd v Medlands (PTC) Ltd**. The appeal concerned various orders made by the Court exercising its supervisory jurisdiction in relation to trusts. The appeal was heard by the Bermudian Court of Appeal in January 2020.

In **Sofer v SwissIndependent Trustees SA** [2020] EWCA Civ 699, [Richard Wilson QC](#) and [James Weale](#) acted for the respondent in an appeal against an order striking out the claimant's pleading on the basis that it did not properly particularise a claim in fraud. The Court of Appeal gave important guidance on the pleading requirements of fraud in the context of a dispute against a professional trustee.

In **Cowan v Foreman**, [Richard Wilson QC](#) and [Gregor Hogan](#) acted for the trustee-executors in this high-profile Inheritance (Provision for Family and Dependents) Act 1975 litigation, which was brought to a successful settlement in Spring 2020.

[Constance McDonnell QC](#) is acting for the respondent in the important case of **Re H**, in which the Court of Appeal will consider in June 2021 whether a CFA success fee can be recoverable as part of an award under the 1975 Act.

[Constance McDonnell QC](#) successfully resisted the adjournment of a trial sought for Covid-related reasons in **Lucas v Gatward** [2020] EWHC 3040 (Ch). The widely reported case about ownership of a family home settled shortly before the trial due to commence in November 2020.

[Constance McDonnell QC](#) acted for minor beneficiaries in **QR v ST**, an application to vary trusts so that illegitimate children could be included as beneficiaries.

[Constance McDonnell QC](#) appeared in **Glover v Barker** [2020] EWCA Civ 1112 in which the Court of Appeal considered for the first time the extent of the liability of a litigation friend for legal costs.

[Dakis Hagen QC](#) appeared for the first defendant in **Geneva Trust Company (GTC) SA v IDF & Anr** (21/12/2020) FSD 248 OF 2017 (IKJ) in her successful application for a stay of a claim in the Cayman Islands seeking declarations as to the validity of a Cayman Islands trust which trust was already being impugned by her in ongoing litigation in Italy. The application was met in part by the argument that the Cayman court had an exclusive statutory jurisdiction to determine such matters under section 90 of the Cayman Trusts Law (which, it was said, in that context abrogated the power to stay on grounds of forum non conveniens); the court noted that such had been the orthodox view historically based on authorities stretching back 20 years. However, having conducted a full survey of the case law, Kawaley J found that on analysis no authority was binding or persuasive as to the presence of such a statutory exclusive jurisdiction, nor was such the proper reading of the statute, and on the facts ordered a stay of the Cayman claim. The case is also important more widely for its commentary on the scope of jurisdiction clauses in trust instruments in the wake of *Crociani*.

[Dakis Hagen QC](#) and [Emma Hargreaves](#) continue to act 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 and related proceedings concerning the beneficial ownership of very valuable shares in a BVI company. Dakis and Emma recently succeeded in obtaining an order for joint case management of the two English claims, notwithstanding opposition from the claimants. [Giles Richardson](#) acts for the deceased's former wife and [Richard Wilson QC](#) and [Oliver Jones](#) act for the interim administrators.

[Ruth Jordan](#) is acting for the applicants in a judicial review

challenge to a controversial exploratory offshore oil drilling project in the Bahamas by Bahamas Petroleum Company plc.

[James Weale](#) acted for the successful applicant in a committal application against the managing partner of an international law firm in **Schwartz v VGV (UK) Ltd, Vivanco and Ors** [2020] EWHC 2227 (Ch). Following a 5-day trial, Roth J found that Clemente Vivanco had been complicit in forging trust documents and, in breach of a court order, had failed to produce an original electronic version of one such document. At a subsequent sentencing hearing, the Court imposed an immediate custodial sentence of 4 months [2020] EWHC 3500 (Ch).

[James Weale](#) acted for the successful claimant in a dispute over the ownership of company which held a valuable Chelsea property in **Moutreuil v Andreewitch** [2020] EWHC 2068 (Fam). Following a 4-day trial, Cobb J held that the transfer of shares by Mr Andreewitch to his partner in order to insulate the property against creditors took effect as an outright gift. In related committal proceedings, which also formed the subject of hearing in the Court of Appeal [2020] 4 W.L.R. 54, James succeeded in an application to commit Mr Andreewitch for contempt of court [2020] 2 F.L.R. 812 for which he received a suspended sentence of 6 months [2020] EWHC 2068 (Fam).

[James Weale](#) acted for the successful claimant in an application for a final charging

order over a property over a property valued at £9m, which formed the subject matter of a 3-day trial before Edis J in July 2020 in **Cobussen v Akbar** [2020] EWHC 2805 (QB). Notwithstanding that the property was held by a company, whose shares were held within a discretionary trust, the Court found that the property was held on resulting trust for the judgment debtor, Ghouse Akbar. Following a successful application for wide-ranging disclosure in the same proceedings, Edis J gave guidance as to the role of solicitors in ensuring compliance with disclosure obligations [2020] EWHC 476 (QB).

In **Z v Z**, [Sophie Holcombe](#) and [Gregor Hogan](#) act for the trustees of a Jersey trust holding UK residential property in the context of English matrimonial proceedings.

[Adil Mohamedbhai](#) acted as an expert in Swiss proceedings brought by a former trustee in relation to an English trust holding valuable assets worth many millions of dollars. Adil opined on complex issues concerning the proper characterisation of a claim for remuneration and reimbursement of expenses by former trustees.

In **B v B**, [Emma Hargreaves](#) and [Gregor Hogan](#) act for the wife in divorce proceedings involving Portuguese property held in a Cypriot trust. The case involves complex questions of jurisdiction and trusts law, and is expected to be one of the first decisions considering the Privy Council's decision in *Webb v Webb*. Judgment is expected in early 2021.

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

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[Dominic Dowley QC](#), [Richard Wilson QC](#) and [Zahler Bryan](#) acted for the trustee in **PTNZ v AS**, a *Public Trustee v Cooper* application concerning the

restructuring of a substantial group of English trusts, in a case involving proceedings before the English and Jersey courts.



[Philip Marshall QC](#) and [Simon Hattan](#) represent the US Trustee in Bankruptcy of Sean Dunne, a well-known Irish businessman and property developer, who filed for bankruptcy in the US in 2013 and was adjudged bankrupt in the Republic of Ireland the same year. The US bankruptcy was recognised by the English Court following an application by the Trustee in March 2020. The Court subsequently granted applications for both Mr Dunne and his ex-wife to produce documents relating to various of their financial dealings and made an order for Mr Dunne to be examined under section 366 of the Insolvency Act 1986.

[Philip Jones QC](#) was successful in the Privy Council in ***Ocean Sino***, a case which involved a claim by one joint owner of a BVI company to wind it up on the just and equitable ground. He had previously acted at the original trial and before the BVI Court of Appeal.

[Lance Ashworth QC](#) is acting for two sets of Joint Administrators of 2 electricity suppliers, each of which is facing claims from Ofgem and from Suppliers of Last Resort, which claims are for many millions of pounds and will make very substantial impact on the returns available for other creditors. The Court will have to determine these claims in 2021.

[Lance Ashworth QC](#) and [Dan McCourt Fritz](#) acted for the successful Appellants in ***Loveridge v Loveridge*** [2020] EWCA Civ 1104 overturning injunctions in an unfair prejudice petition and in partnership proceedings which had granted the running of the companies and partnerships to a minority shareholder and partner. The Court of Appeal effectively put the majority back in charge. Both the petition and the partnership proceedings continue and will come on for trial in 2022.

[Lance Ashworth QC](#) and [Dan McCourt Fritz](#) continue to act for the company and shareholders in ***The Hut Group***, in which in early

2021 the Court of Appeal will consider the appeal against the refusal of the first instance judge to strike out the petition.

[Lance Ashworth QC](#) and [Zahler Bryan](#) have been acting for the claimant in the case of ***de Silva v Lucas & Ribeiro***, a claim in respect of the ownership of an Estonian holding company, which (through Estonian and Portuguese subsidiaries) owns a very substantial property development in Lisbon, Portugal.

In ***Nimat Halal Food Ltd v Patel*** [2020] EWHC 734 (Ch), [Zoe O'Sullivan QC](#) appeared for the creditor in an insolvency case in which Chief ICC Judge Briggs gave guidance on the personal liability of an administrator to pay costs following a creditor's successful appeal against the rejection of its proof of debt.

In ***Re Global-IP Cayman***, [Daniel Lightman QC](#), representing the majority shareholder in the Grand Court of the Cayman Islands, successfully argued before Parker J that (i) the case was an exception to the usual rule that the petitioning creditor should be awarded its costs of a winding-up petition (unrep, 21 July 2020) and (ii) the majority shareholder's appointees to the company's board had not been removed from office because on a proper interpretation of the company's articles the relevant board meeting had been inquorate (unrep, 31 December 2020).

In ***Christoforou v Christoforou*** [2020] 1196 EWHC (Ch), [Daniel Lightman QC](#) and [Stephanie Thompson](#) represented the claimant, who claimed that a London property was held on trust for him pursuant to a common intention constructive trust, in a successful and novel application to strike out allegations of dishonesty, fraud, and illegality from the defendants' Amended Defence and to exclude those allegations from consideration and cross-examination at trial, on

the grounds that they amounted to similar fact evidence which was of peripheral value to determining the claim and would have increased the cost (and risked adjournment) of the trial.

In **Trafalgar v Hadley & Ors** [Justin Higgo QC](#) and [Jamie Randall](#) continue to represent the liquidator of Trafalgar in multi-party proceedings in the Chancery Division to recover funds misappropriated from a Cayman Islands segregated portfolio by its fiduciaries.

In **Brown v MML Capital**, [Timothy Collingwood QC](#) acted for the petitioners in an unfair prejudice petition in which he succeeded in obtaining an injunction to restrain the continuation of disciplinary proceedings concerning disputed allegations of misconduct pending resolution of the Petition ([2020] EWHC 23 (Ch)).

In **Re: H Limited**, [Timothy Collingwood QC](#) acts for majority shareholders in BVI proceedings involving allegations against them of unfairly prejudicial conduct, where the Court has had to address the effect on the claim against the shareholders of an arbitration agreement in the company's articles of association.

In **Medical Imaging Partners v St Joseph's Independent Hospital**, the question arose as to whether an MRI machine and other medical equipment subject to chattel leases had become annexed to land owned by a company in administration, so that title to the equipment passed to the purchasers of the business when the company's assets were sold by the administrators. [Thomas Braithwaite](#) acted for the purchasers.

[Gareth Tilley](#) acted as junior

counsel for the Official Receiver in **Re Keeping Kids Company; Official Receiver v Atkinson**, the disqualification proceedings arising from the collapse of the charity Kids Company. These are believed to be the first ever proceedings for disqualification of charity trustees as company directors and they raise questions about the standard to be applied to unpaid trustee directors, whether a remunerated charity CEO can or ought to be classified as a de facto company director, and what degree of latitude the trustee directors have in relation to the pursuit of charitable objects when the company is of doubtful solvency.

[Matthew Morrison](#) and [Gregor Hogan](#) act for **Haz International Limited** in connection with misfeasance proceedings alleging the diversion of business opportunities and other wrongs by a former director and shareholder. These have been consolidated with a just and equitable winding up/unfair prejudice petition presented by the defendant director/shareholder. The evidential stage of the trial (including the cross-examination of three Turkish witnesses via a translator) took place remotely over ten days in the Insolvency and Companies Court during January 2021. Closings will be presented in March 2021.

[James Mather](#) acted for the Joint Administrators of an insolvent FCA-regulated international payment services provider in **Re Supercapital Ltd** [2020] EWHC 1865 (Ch). This involved the first application to seek a court's approval for a distribution plan under the Payment Services Regulations 2017, on the basis of statutory trust principles applied in the context of other financial services regulations.

## ...we have covered a broad range of Property and Charities work

In **Wickers v Humbles**, [Philip Jones QC](#) and [Gregor Hogan](#) continue to act for the directors of a property development company

in a dispute arising from the impact of the global financial crisis on a super-prime property development in London. The case

is expected to proceed to a six-week trial in the Isle of Man in late 2021 or 2022.

In ***Children's Investment Fund Foundation (UK) v Attorney General*** [2020] UKSC 33, the Claimant charitable company had agreed to make a grant of US\$360m to another English charity conditionally on the approval of the court. The payment of the grant required the approval of the members under section 217 Companies Act 2006. The Supreme Court held that the members owed fiduciary duties and that the court had an exceptional jurisdiction to order them how to vote, even if they had not and were not threatening to vote in breach of duty. The majority of the Supreme Court also held that by reason of the High Court having, on the directors' surrender of discretion, held that it was in the best interests of the charity for the grant to be paid; the members, who were parties to that decision were bound by it and, absent a substantial change in circumstances were bound to vote in favour of it, even if, but for the judicial decision, they could reasonably have voted against it. [Will Henderson](#) acted for the charitable company.

In ***Attorney General v Zedra Fiduciary Services (UK) Ltd*** [2020] EWHC 2988 (Ch), [Will Henderson](#) acted for the Attorney General. This involved 'The National Fund' which was settled with £500,000 of cash and securities in 1928 on trust to accumulate income and profits until the date fixed by the trustee as being the date when, either alone or together with other funds

then available for the purpose, the fund was sufficient to discharge the National Debt. The fund was then to be transferred to the National Debt Commissioners to be applied by them in reduction of the National Debt. The Fund is now worth about £0.5 billion. Zacaroli J held that there was a valid charitable trust and that the court had jurisdiction to order a cy-pres scheme. He adjourned the question of what (if any) scheme to order.

In ***Dunmoore (West London) Ltd v Vanessa Donegan*** [2020] (Upper Tribunal Lands Chamber), [Andrew Bruce](#) acted for the Objector on an application to modify a restrictive covenant under s.84(1)(aa) of the Law of Property Act 1925. The Applicants were constructing an industrial park on agricultural land near Billingshurst, Sussex and sought to modify a covenant which prevented any building on a buffer zone of 200' from the boundary of the Objector's (extensive and valuable) home. The application was settled the last working day before the Upper Tribunal hearing on commercial terms.

In ***Kelleher v Castlebourne Homes (Rock) Ltd*** [2020] (High Court, Bodmin District Registry) [Andrew Bruce](#) represented the Defendant developers in a dispute about the width of a strip of land and easement at a site in Trebetherick, Cornwall. The trial took place over a week entirely remotely in Summer 2020 and involved detailed consideration of historic conveyances, numerous plans and various aerial photographs, together with





contested expert surveying evidence. HHJ Carr's judgment paid tribute to the quality of the submissions.

[Thomas Braithwaite](#), acting for the Crown Estate Commissioners, successfully defeated an adverse claim to part of the North Norfolk coast. The case addressed the principles of accretion and avulsion, and the presumption of Crown ownership of the foreshore (***Bett & Gethin v Crown Estate*** (FTT, REF/2017/0591)).

[Jonathan Fowles](#) has been acting for London Borough of Merton against Nuffield Health in a dispute about the charitable exemption from non-domestic rates. The issues in the case are of potentially wide significance for charities. Nuffield succeeded in their claim at first instance ([2020] EWHC 259 (Ch)), but Merton obtained permission to appeal. The case was heard by the Court of Appeal in January 2021 and judgment is awaited.

[Jonathan Fowles](#) acted for Dr Zakir Naik, a renowned international speaker and author of books on Islam and comparative religion, in his appeal

from the Charity Commission's decision to disqualify him as a charity trustee. Jonathan succeeded in reducing the period of his disqualification from 15 to 7.5 years. The judgment of the FTT provides the most in-depth legal analysis yet of the Commission's relatively new disqualification power.

[Amy Proferes](#) acts for the First and Second Defendants in ***Toner v Telford Homes & Ors***, a claim regarding a flat purchased off-plan. The claimant seeks rescission, damages and other remedies against 6 defendants including the developer, the property manager and the current freeholder, on the basis of misrepresentation, breach of contract, fraud, negligence and harassment. The case raises questions which will be of importance to developers selling properties off plan as to representations made in sales models and brochures, as well as how (and whether) developers can protect themselves from such claims by means of disclaimers and/or contractual terms. Judgment is currently awaited on applications by the First to Fourth Defendants seeking summary judgment and/or strike out of the claim.

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

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In 2020 [Michael Edenborough QC](#) has been instructed in relation to 4 new trade mark appeals to the General Court, Luxembourg, and taken to trial a case alleging that Amazon is involved in importing counterfeit goods.

[Michael Edenborough QC](#) has also dealt with some interesting trade mark cases, e.g. a bottle in the shape of a human skull (***Skullduggery Rum Ltd v Globefill Inc*** [2020] ETMR 9), and the 'Babybel' red cheese mark ([2020] Bus LR 514). These decisions and other decisions continued developing the law on procedure in both the UK IPO (e.g.

on late filing of TM8s [2020] FSR 33), and the EU IPO (e.g. an appeal to the General Court on the proper construction of potentially ambiguous specifications for EUTMs [2020] ETMR 7).

In ***Lunar Holdings Ltd v Lunar Caravans Ltd***, [Thomas Braithwaite](#) blended IP and company law when he appeared in the IPEC for defendants accused of breach of a trade mark licence. A summary judgment application was defeated on the grounds that the claimant arguably did not have good title to the trade mark, having acquired it by way of an unlawful return of



capital and disguised distribution by a company to its shareholder.

[Stephanie Wickenden](#) acted as sole counsel in a dispute relating to trade mark and design rights in the ***Glencairn IP Holdings Ltd & Anor v Product Specialities***. This included successfully representing the Defendant in the Court of Appeal in respect of an application brought to restrain the Defendants' solicitors from acting owing to an alleged conflict. She also was involved in proceedings going to the validity of the trade marks at the European IPO.

[Stephanie Wickenden](#) continues to act for easyGroup in a number of matters, including in a disputed jurisdiction application in case against Colombian airline "Easy Fly" which set new guidance for assessing whether trade mark acts are in the jurisdiction.

[Stephanie Wickenden](#) has acted for Standard International hotels regarding their EU trade mark, and will continue to act in an upcoming appeal before the General Court led by [Michael Edenborough QC](#).

## ...and worked on a range of EU, Competition and Regulatory cases

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[Professor Suzanne Rab](#) is advising on EU and UK data protection and privacy matters under the General Data Protection Regulation and the Data Protection Act 2018. Her representations straddle claims involving data breach, misuse of personal information and human rights. Many of the legal issues raised have not been tested in the courts (e.g. data controller classification, measure of damages). Her representations include proceedings before the Information Commissioner's Office (ICO) and in litigation seeking orders for compliance with data protection legislation and damages.

[Suzanne](#) also represented ***Riverside Truck Rental*** in parallel proceedings in the Technology and Construction Court (TCC) and the Administrative Court for judicial review. The claim raised EU and procurement law questions arising out of the conduct of a public procurement

procedure subject to the requirements of the Public Contracts Regulations 2015 (SI 2015/102) (PCR 2015) and related duties arising under EU law. The case raised novel issues of law including consideration of when judicial review claims can be brought where there is a statutory procedure.

[Suzanne](#) is also advising energy market regulator Ofgem on an ongoing basis on a range of competition and regulatory matters. This involves providing legal support to the regulator's in-house legal team on significant projects, providing strategic, risk-based advice up to board level on a regular basis across these areas and advising Ofgem lawyers and policy officials.



## ...we are regularly instructed overseas in the Dubai International Financial Centre

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Rupert Reed QC and James Weale act for the Claimant bank in a US\$30m fraud claim against various defendants in proceedings in the DIFC in ***SBM Bank (Mauritius) Ltd v Renish Petroleum FZE*** (CFI 054/2018). Having successfully obtained summary judgment against the first two defendants, the trial against the third defendant has been listed in December 2021. A committal application against the first two defendants has been listed for January 2021.

Rupert Reed QC and Gregor Hogan act for the Sarjah Electricity and Water Authority in ***FAL Oil Company Ltd v Sarjah Electricity and Water Authority***. The case involves the challenging of the recognition and enforcement in the DIFC of a Sarjah court judgment on the basis of inter-Emirate immunity. This is the first time the DIFC Court has considered the concepts of sovereign immunity within the UAE and judgment is expected in early 2021.

In ***Brown & Company Plc v Faber Capital (DIFC) Ltd***, Rupert Reed QC and Gregor Hogan continue to act for a financial services firm defending allegations of breach of fiduciary duty arising from a sophisticated phishing attack.

In ***Credit Europe Bank (Dubai) Ltd v. (1) NMC Trading LLC (2) NMC Healthcare LLC (3) Bavaguthu Raghuram Shetty*** [2020] DIFC CFI 031, Rupert Reed QC and Gregor Hogan acted for the major Dutch Bank, CEBD, to obtaining a worldwide freezing order against Dr BR Shetty, founder of the troubled NMC Group. The decision also confirmed that an applicant need not demonstrate any assets of the respondent in the jurisdiction of the DIFC to obtain a worldwide freezing order. Rupert and Gregor will represent CEBD at the trial of its claim against Dr Shetty in September 2021.

Zoe O'Sullivan QC is acting for Dr Michael Fakih in his DIFC fraud claim against NMC Health plc, which collapsed in early 2020 following the revelation of widescale fraud by the short seller Muddy Waters. Zoe O'Sullivan QC and Adrian de Froment are also acting for Barclays Bank in the DIFC Court in a guarantee claim against Dr BR Shetty, the founder of the NMC Health Group.

In ***Basin v Rouge*** CFI 057/2018, James Weale appeared in the last in-person hearing in the DIFC Court before lockdown. Following a trial, James obtained judgment for the claimant in a claim under a guarantee agreement: [2018] CFI 057. The Court gave guidance on the extent to which variations to underlying obligations affect the validity of an associated guarantee. James also successfully defeated a jurisdiction challenge submitted to the Joint Judicial Committee (Cassation No. 9 of 2019).

## ... and in arbitration matters generally

In **Cesfin Ventures LLC v Ghaith Al Qubaisi**, [Rupert Reed QC](#) and [Gregor Hogan](#) obtained a worldwide freezing order in the Chancery Division against a director and shareholder of a UAE conglomerate in support of New York proceedings against him as “alter ego” of the UAE holding company, alternatively in setting aside fraudulent transfer to himself and others of company assets to frustrate enforcement of the award rendered in an ICC arbitration seated in New York.

In **L v B** [2020] DIFC ARB 014 (17 June 2020), [Rupert Reed QC](#) and [Gregor Hogan](#) obtained an order for the recognition of a London arbitration award, a worldwide freezing order and the first notification order made by the DIFC Court against a UAE

resident entrepreneur.

[Zoe O'Sullivan QC](#) appeared for the respondent at the quantum stage of a multi-million dollar LCIA arbitration arising out of the collapse of a Ukrainian agricultural joint venture following the revolution in Ukraine in 2014, involving complex valuation issues.

[James Weale](#) and [Jamie Randall](#) act for the defendant in an LCIA Arbitration governed by Kuwaiti Law. The claimant seeks commission payment in the sum of US\$10m allegedly due in respect of substantial contracts for petroleum products. The matter has been listed for determination in 2021.





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