

ANNUAL CASE REVIEW 2022

# serlecourt

RAISING THE BAR IN CHANCERY & COMMERCIAL







Welcome to Serle Court's Annual Case Review of 2022. In the year in which we have gradually and thankfully returned (on the whole) to court hearings in person, barristers at Serle Court have continued to appear in some of the biggest and some of the most interesting cases across our wide field of commercial chancery law. We hope you will enjoy reading about the range of legally complex and factually fascinating cases which members of Serle Court have been involved in 2022.

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**Elizabeth Jones KC**  
Head of Chambers



## In 2022, members of Serle Court were involved in a range of substantial, high-profile and precedent-setting cases

Eleven barristers from Serle Court acted in one of the largest trust claims ever litigated in any jurisdiction in **Wong v Grand View Private Trust Company Ltd & Ors**. Judgment was handed down in June 2022 ([2022] SC (Bda) 44 Com) following a six-month remote trial in 2021. [Dakis Hagen KC](#) (assisted by [Emma Hargreaves](#) and [Stephanie Thompson](#)) acted for the plaintiff, [Richard Wilson KC](#) and [Prof. Jonathan Harris KC \(Hon.\)](#) (assisted by [James Weale](#), [Adrian de Froment](#) and [Charlotte Beynon](#)) acted for the counterclaiming defendant, and [Jonathan Adkin KC](#) (assisted by [Adil Mohamedbhai](#) and [Tim Benham-Mirando](#)) acted for the five defendant trustees. Other than one claim brought by the plaintiff against one of the five defendant trustees, the Court dismissed all the claims brought against the five defendant trustees. The judgment determined novel issues including the meaning of the statutory requirement that the purposes of a purpose trust be sufficiently certain to enable the trust to be carried out and the reception of the Statute of Frauds 1677 into British Virgin Islands law. Consequential issues were determined by a judgment in August 2022 ([2022] SC (Bda) 60 Com). Both judgments are now under appeal to the Bermuda Court of Appeal.

In **Grand View Private Trust Co Ltd & Anor (Respondents) v Wong & Ors** [2022] UKPC 47, [Dakis Hagen KC](#), [Emma Hargreaves](#) and [Stephanie Thompson](#) acted for the appellants in the first appeal; [Richard Wilson KC](#), [James Weale](#) and [Charlotte Beynon](#) acted for the appellant in the second appeal; and [Jonathan Adkin KC](#) and [Adil Mohamedbhai](#) acted for the respondent in both appeals. In one of the most important trusts law judgments in recent years, the Privy Council unanimously allowed the appeals and held that the exercise of a power adding and excluding beneficiaries was void on the basis that it was inconsistent with the purpose for which the power was conferred.

[John Machell KC](#) (assisted by [John Eldridge](#)) appeared for the successful Guernsey appellants and [Andrew Gurr](#) appeared for the respondents before the Privy Council in **ITG Ltd v Fort Trustees Ltd** [2022] UKPC 36. The landmark appeal – which was heard by a panel of 7 at the same time as the Jersey appeal in **Equity Trust (Jersey) Ltd v Halabi** – concerned fundamental issues relating to trustees' rights of indemnity, including, in particular, how successive trustees share an inadequate trust fund.

[Jonathan Adkin KC](#), [Zahler Bryan](#) and [George Vare](#) 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, in which the Republic brings multi-billion dollar claims against entities in the Credit Suisse group, the Privinvest group and others. These high profile proceedings concern 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 2022, the High Court handed down judgments on issues including the disclosure obligations of a foreign state where documents are held by that state's courts ([2022] EWHC 157 (Comm)), pleading obligations in the context of a bribery claim ([2022] EWHC 429 (Comm)), disclosure obligations of a foreign employer over employees' personal emails ([2022] EWHC 3054 (Comm)) and privilege against self-incrimination ([2022] EWHC 3094 (Comm)). The case is listed for trial in October 2023.

[Rupert Reed KC](#) acted for the claimant in the trial of claims in professional negligence against *Mishcon de Reya LLP* in respect of its advice on a 'build arounds scheme' in what is now the 'Park Modern' Development on the Bayswater Road. This case was one

of The Lawyer's Top 20 Cases of 2022. The judgment is one of the leading decisions on the application of **Manchester BS v Grant Thornton** [2021] UKSC 20.

In **Chandler v Wright**, [Daniel Lightman KC](#), [Charlotte Beynon](#) and [Tim Benham-Mirando](#) represent Mr Chandler, one of the former directors of the BHS group of companies, in proceedings brought by the liquidators claiming some £163 million for alleged wrongful trading and misfeasance. In an important judgment handed down in August 2022 ([2022] EWHC 2205 (Ch); [2022] Bus LR 1510) in which he allowed Mr Chandler's appeal against the decision of Deputy ICC Judge Schaffer (**Re BHS Group Ltd** [2022] 2 BCLC 145; [2022] BCC 457), Edwin Johnson J reaffirmed that causation and quantum are essential elements of a cause of action under section 214 of the Insolvency Act 1986, as they are for breach of duty claims under section 212, and that it is essential for liquidators to plead these elements. He further held that, given the scale of the claims and complexity of the BHS litigation, it is not acceptable for a case on the date of knowledge for the purposes of a claim under section 214 to be left "at large" on the pleadings. The six-week trial of this claim is due to start in November 2023 and is one of The Lawyer's Top 20 Cases of 2023.

**Re The Will of His late Royal Highness Prince Philip, Duke of Edinburgh, Guardian News and Media Ltd v (1) The Executor of HRH the Prince Philip, Duke of Edinburgh and (2) HM Attorney General** [2022] EWCA Civ 1081. The issue was as to the publicity, if any, appropriate to the making of an order sealing up the late Duke of Edinburgh's will. The Duke's executor had obtained an order that his will be sealed up. The hearing was attended only by representatives of the executor and the Attorney General. The Guardian appealed against the decision for the application to be heard in private. The Appeal was dismissed. Asking for submissions from the media would have generated significant publicity and conjecture, which would have been contrary to the need to

preserve the dignity of the sovereign and to protect the privacy of the royal family. [William Henderson](#), led by Sir James Eadie KC, represented HM Attorney General.

[Nicholas Harrison](#) and [Jonathan McDonagh](#) appeared for the successful appellants in **Município de Mariana v BHP Group** [2022] EWCA Civ 951, by which the Court of Appeal permitted one of the largest group actions ever commenced in this jurisdiction to proceed, and in doing so set out important guidance for the conduct of large scale, multinational litigation. The claim is brought by more than 200,000 Brazilian victims of the Fundão Dam disaster. The appeal concerned issues of abuse of process, forum non conveniens, and Article 34 of Brussels Recast. A subsequent decision of O'Farrell J, [2022] EWHC 330 (TCC), has set down trial to commence in April 2024, where the issues concerning BHP's liability will be determined.

[Ruth Jordan](#) and [Thomas Elias](#) were instructed by Callenders, The Bahamas, as part of a team (including [Fred Smith KC](#) from Callenders), in an appeal to the Privy Council in the matter of **Responsible Development for Abaco (RDA) Ltd v Christie**. The appeal concerned the appropriateness of orders for security for costs made against those who bring environmental judicial review claims against the Government, in light of concerns that such claims might be stifled.

[James Weale](#) acted for the successful claimant in a probate trial before the High Court in June 2022, in which the Court set aside three disputed wills: **Speakman v Muir** [2022] Lexis Citation 1487. The case is a rare example of a successful will challenge being made on the ground of fraudulent calumny.

We are a leading set for civil fraud and asset tracing

In *IsZo Capital LP v Nam Tai Property Inc* (7 April 2022) Jack J (BVI), John Machell KC acted for the successful ancillary claimant in a claim concerning allegations of conspiracy, dishonest assistance and change of position.

John Machell KC acts for the trustee and Emma Hargreaves for two of the beneficiaries in *PJSC National Bank Trust v Mints*. In the English proceedings, two Russian banks advance heavily contested claims for fraud against members of the Mints family, and also make claims against the trustee of a Cayman trust in relation to the proper construction of the trust instrument and under s.423 of the Insolvency Act 1986. In a recent decision ([2023] EWHC 118 (Comm)), Mrs Justice Cockerill has given a judgment that deals with various issues arising from the fact that one of the claimants is sanctioned.

Carey Street Investments (in liquidation) & Anor v Brown and Equity Trust (Jersey) Ltd: Hugh Norbury KC and Dan McCourt Fritz are continuing to defend an offshore corporate services provider against allegations of dishonest breach of fiduciary duty in relation to the intra-group transfer of properties. The trial is due to commence at the end of February 2023.

PIFSS v Al Rajaan & Ors: Hugh Norbury KC continues to act for the Kuwaiti state pension fund in a \$800m+ claim against multiple defendants arising out of the alleged bribery of the former Director General of the fund. Jonathan Adkin KC and Charlotte Beynon represented the fourth defendant and Philip Marshall KC and Simon Hattan represented the fifth defendant in successfully resisting the claimant's appeal to the Court of Appeal, and its application for permission to appeal to the Supreme Court, against the first instance judgment

allowing their clients' jurisdiction challenges. James Mather continues to act for the Pensee Foundation, one of the other defendants to the claim.

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. Following a 3-day CMC ([2022] EWHC 2431 (Comm)), the Court considered the reliance on decisions by foreign bodies (known as the rule in *Hollington v Hewthorn*) and a novel application for a split trial. The claim is now listed for a 21-week trial in 2025. In a further judgment (in which Tim appeared unled), the Court also considered how far employees can claim privilege over documents held on an employer's servers ([2022] EWHC 2856 (Comm)).

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 have commenced claims in the Chancery Division against thirteen defendants for breach of fiduciary duty, unlawful means conspiracy, dishonest assistance and knowing receipt, which will be set down for trial in 2024. Jonathan Adkin KC and Adil Mohamedbhai acted for three of the defendants.

In *Trafalgar Multi Asset Trading Co v Hadley & Ors*, Justin Higgo KC, assisted by Jamie Randall and Mark Wraith, continues to act for the benefit of numerous small pension holders to recover the proceeds of a complex pension fund fraud from multiple defendants who conspired with the fund managers to misappropriate fund assets, and from professional third parties who failed to take steps to prevent the frauds. The Court of Appeal

granted judgment on Trafalgar's bribery claims in December 2022 and Trafalgar's claims against the principal defendants will be tried in the Chancery Division in March 2023.

James Mather and Max Marenbon are acting for the petitioner in *Re Coinomi Ltd* [2022] EWHC Civ 3178 (Ch), a joint venture dispute concerning the ownership of a cryptocurrency wallet business and alleging misappropriation to offshore companies of valuable cryptocurrency assets. The case raises important issues as to the appropriate relationship between an unfair prejudice petition and a derivative claim.

Dan McCourt Fritz, Tim Benham-Mirando and Andrew Gurr continue to act for the claimant in *İşbilen v Turk & Ors*. The proceedings involve allegations of fraud, breach of fiduciary duty and undue influence arising out of complex dealings with the claimant's assets by her former advisor over a number of years.

In March 2022, the claimant obtained search, imaging and inspection orders in support of disclosure obligations aimed at locating and tracing assets ([2022] EWHC 572 (Ch); [2022] EWHC 697 (Ch)) and has subsequently obtained permission to use documents identified through the search in support of foreign proceedings ([2022] 12 WLUK 299).

Sophie Holcombe (led by Clare Stanley KC) appeared for the claimant in *East-West United Bank v Gusinski* [2022] EWHC 3056, successfully resisting a strike out application of proprietary claims to money that was held in a solicitor's client account and was represented to be earmarked for the claimant. The claimant further alleges that the defendants conspired to improperly avoid paying the debt owed to the claimant. Partial strike out of the claimant's conspiracy claims was also successfully resisted.







## We continue to be instructed in major company, insolvency, restructuring and financing disputes

Philip Marshall KC, Gareth Tilley and Adil Mohamedbhai acted for the claimants, a private equity fund with investment commitments in excess of €1 billion and its general partner, in **BRG NOAL GP S.a.r.l v Kowski** [2022] EWHC 867 (Ch). The claimants sought to enforce, by way of interim and final injunctions, certain undertakings given by the founders of the fund. The case gave rise to novel issues concerning the application of Article 4 of the Rome I Regulation, forum non conveniens, the proper approach to anti-suit type relief in the context of covenants not to sue and the availability of section 25 CJA 1982 relief as an alternative to relief in support of extant English proceedings.

Lance Ashworth KC and Gregor Hogan successfully struck out the claim against the directors and shareholders of a medical services company for a 20% shareholding worth in the region of £10 million in **Guy's and St Thomas' NHS Foundation Trust v ESMS Global Ltd** [2022] EWHC 2941 (Comm).

Lance Ashworth KC and Matthew Morrison represented two of the applicants in **Croxen v Gas and Electric Markets Authority** [2022] EWHC 2826 (Ch), in which Zacaroli J determined a number of market-wide issues arising from the failure of energy supply companies, including Ofgem's entitlement to prove for Renewables Obligations and the Suppliers of Last Resort's entitlement to be subrogated to the position of customers whose credit balances they had met on the transfer of the customers.

Lance Ashworth KC represented the Official Receiver in **Re Beaufort Asset Clearing Services Ltd (In Special Administration)** [2022] EWHC 636 (Ch), successfully obtaining permission to cause three companies in an investment banking group to be dissolved, notwithstanding that they continued to hold assets on trust for former customers.

Lance Ashworth KC and Wilson Leung represented the petitioning creditor and trustee in bankruptcy in **Re Dusoruth (A Bankrupt)** [2022] EWHC 2346 (Ch), an unsuccessful application by a bankrupt, who had fled Bermuda and was jailed in Holland, to annul the bankruptcy on grounds that there was never a liquidated debt and therefore the Court had had no jurisdiction to make the bankruptcy order.

Lance Ashworth KC and Dan McCourt Fritz continue to represent the respondent company and 12 of its directors in **Zedra Trust Co (Jersey) Ltd v Hut Group Ltd**, most recently on an application before Fancourt J to amend an unfair prejudice petition to bring new claims for in excess of £60 million, after the Court of Appeal struck out the original claim in 2021 ([2021] EWCA Civ 904).

Lance Ashworth KC and Wilson Leung are representing Rad Phase 1 Devco, disputing an alleged £23 million debt in winding up proceedings arising out of the multi-million pound development of the Royal Albert Docks in London.

Hugh Norbury KC and Thomas Elias are instructed in the case of **Lemos v Church Bay Trust Company and Lemos**. The trial of a s.423 claim is due to begin in June 2023.

John Machel KC appeared for the respondent before the Eastern Caribbean Court of Appeal in **Fang v Green Elite Ltd**, a case concerning the scope of the Duomatic principle and in particular the role of intention and certainty. He also appeared for the successful appellant in an interlocutory appeal in the same proceedings (**BVIHCM-AP2022/0048, 20 October 2022**), concerning the use of disclosed documents in other proceedings.



[Jonathan Adkin KC](#) appeared in **Re 58.com**, the ongoing Cayman Islands shareholder appraisal action in which the Grand Court is required to determine the fair value of the dissenting shareholders' shares in a major Chinese firm.

[Jonathan Adkin KC](#) successfully acted for the respondents before the Cayman Islands Court of Appeal in the case of **Re Changyou**, in which the Court upheld the Chief Justice's determination that appraisal rights were conferred on dissenting shareholders in short-form mergers under section 238 of the Cayman Companies Act.

**Re Bulb**: [Jonathan Adkin KC](#) and [Matthew Morrison](#) were instructed to represent British Gas before the Chancery Division in bringing a challenge to the decisions of the energy administrators in the ongoing administration of the major Energy firm, Bulb.

[Daniel Lightman KC](#) and [Max Marenbon](#) represented the successful petitioner in **Re Klimvest plc [2022] BCC 747**, obtaining the first order under section 122(1)(g) of the Insolvency Act 1986 for the just and equitable winding up of a listed plc on the ground of loss of substratum. After a 7-day trial in February 2022, HH Judge Cawson QC, (sitting as a High Court Judge) found that the identification of a company's purpose or substratum is a matter of equity between the company – even a listed plc – and its shareholders, and that winding up by the court could be triggered where that purpose had been abandoned. He also granted the petitioner's application for an order permitting the liquidator to seek recovery of the company's costs of participating in the petition from the majority shareholder: **Duneau v Klimt Invest SA [2022] BCC 1258; [2022] Costs LR 1463**.

In **Kulkarni v Gwent Holdings Ltd & St Joseph's Independent Hospital Ltd**, [Daniel Lightman KC](#) and [Tom Braithwaite](#) represented Gwent Holdings

Limited in its successful opposition to an application for summary judgment made by Dr Rohit Kulkarni, a consultant orthopaedic surgeon who is a minority shareholder in the company which owns St Joseph's Hospital in Newport, Gwent. In a judgment handed down in June 2022 (**[2022] EWHC 1368 (Ch)**), the Court refused either to order the rectification of the company's register of members under section 125 of the Companies Act 2006 with retrospective effect or to grant relief entitling Dr Kulkarni to acquire Gwent's shares compulsorily.

In **Re Orbit Energy Ltd (in administration)**, [Daniel Lightman KC](#) and [Emma Hargreaves](#) are representing the sole shareholder of an energy company which went into administration. By an application made under rules 18.34(2)(b) and 18.37 of the Insolvency (England and Wales) Rules 2016, the shareholder is challenging the substantial remuneration charged, and expenses incurred, by the company's joint administrators as excessive.

In **Re Prospect Place (Wimbledon) Management Co Ltd [2022] BCC 1176**, [Daniel Lightman KC](#) represented the petitioner in its appeal against the dismissal following trial of its section 994 petition in which it complained of unfairly prejudicial conduct in relation to the management company of an exclusive private estate in Wimbledon. Mrs Justice Joanna Smith's judgment on appeal, handed down in January 2022, considered the circumstances in which the court will grant declaratory relief under section 996 of the Companies Act 2006 which is intended to "send a message" to future directors of a company.

In **Boston Trust Co Ltd v Szerelmey Ltd**, [Daniel Lightman KC](#) represented the company on whose behalf derivative claims

had been brought. On the hearing in October 2022 of the claimant's application to continue a costs indemnity order (**[2022] EWHC 2849 (Ch)**), he successfully argued that there should be appropriately worded protection against the use of the costs indemnity to fund a separate partnership claim which the derivative claimant had issued after the initial costs indemnity order had been made. A subsequent judgment (**[2022] EWHC 3055 (Ch)**) concerned how the costs indemnity should operate with respect to (i) any consequential hearing after trial and (ii) work which would benefit the claimant's partnership claim.

[Justin Higgo KC](#) and [Paul Adams](#) are acting for one of the defendants in **Harrington & Charles Trading Co Ltd v Mehta**, a claim brought by liquidators of English companies said to have been used to launder the proceeds of an alleged billion dollar fraud on two Indian gold and jewellery companies. The case raises issues as to the ability of companies said to have participated in money laundering as mere conduits to bring proprietary and other claims to recover any proceeds. A challenge to a freezing injunction was dismissed in November (**[2022] EWHC 2960 (Ch)**); a judgment on jurisdiction is awaited.

[Simon Hattan](#) acted for RSA plc in defence of claims brought by a group of over 50 institutional claimants under s.90A of the Financial Services and Markets Act 2000. The claimants alleged 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. The claim, which has given rise to a number of interlocutory decisions,

was due to be the subject of an 8-week trial commencing in October 2022, but settled in advance.

[Jennifer Meech](#) acted for one of the successful applicants in **Chopra v Katrin Properties Ltd [2022] EWHC 2728 (Ch)** before the Chief Insolvency and Companies Court Judge. This case, argued by multiple parties over several days, was factually complicated and involved the proper construction of guarantees as well as allegations of fraud.

[Max Marenbon](#) represented the successful appellant in **Kennedy v The Official Receiver [2022] EWHC 1973 (Ch)**; **[2022] BPIR 1536**, a rare reported case on the Bankruptcy Restrictions Orders (BRO) regime. Mr Nicholas Thompsell (sitting as a Deputy High Court Judge) gave guidance on the principles that apply to fixing the length of a BRO. It was established law that the Court would apply the three brackets used in the context of directors' disqualification, as promulgated in **Sevenoaks Stationers (Retail) Ltd [1991] Ch 164**. However, the Court accepted the appellant's argument that it was also appropriate to have regard to previously decided cases with a factual similarity to the case at hand, particularly where those facts went to the culpability of the bankrupt, and reduced Mr Kennedy's BRO from 8 years to 4 years.





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

In *Kea v Hussain & Ors*, Elizabeth Jones KC, Gareth Tilley and Oliver Jones acted for Kea in striking out a series of bogus claims in the Commercial Court purportedly brought in Kea's name at the behest of a Mr Rizwan Hussain (a person of some notoriety in the Commercial Court in recent years): **[2022] EWHC 2449 (Comm)**. The claims formed part of a corporate attack on Kea orchestrated by Mr Hussain, as part of which Mr Hussain purported to take control of Kea's board and shares by producing false company registers and purporting to dis-instruct Kea's London solicitors. Kea also obtained declaratory relief as to its true directors and shareholders, a general civil restraint order against Mr Hussain, and a costs order against Mr Eric Watson, whom the Court found was economically interested in the litigation (apparently as part of his long-running campaign to frustrate Kea's efforts to enforce judgment against him following the *Glenn v Watson* trial in 2017: **[2018] EWHC 2016 (Ch)**).

Elizabeth Jones KC, Gareth Tilley and Oliver Jones, together with Prof Jonathan Harris KC (Hon.) and Amy Proferes, are also advising Kea in connected proceedings in New Zealand, Kentucky and the BVI.

Elizabeth Jones KC appeared in *SFO v Litigation Capital, Ticehurst & Ors v Harbour Fund II LP & Ors* **[2022] EWHC 3053 (Comm)**, in which Foxton J considered the interaction of contract and equity in the context of litigation funding agreements. Importantly for litigation funders and funded parties alike, the Court held that the terms and purpose of the funding agreement meant that the trust imposed on the proceeds of litigation placed only limited duties on the funded parties, and that the majority of powers under the Trustee Act 1925 were excluded by implication.

In *JPO (in liquidation) v Joannou & Ors*, Philip Marshall KC and Oliver Jones, with counsel from other chambers, 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. The claims are valued at up to c.\$1 billion and are expected to be tried over 12 weeks in late 2024/early 2025. In August 2022, Philip and Oliver assisted JPO in successfully resisting security for costs applications brought by the defendants on the grounds that, whilst security lay against the company in principle (it being insolvent), it would be wrong for the Court to exercise its discretion to grant security because no additional costs would be caused by the company's continuing involvement as plaintiff, in circumstances where its claims overlap substantially with those of its co-plaintiffs (the joint liquidators) who would continue the claims in any event.

Philip Jones KC and Amy Proferes continue to act for the defendant in *Jomast Accommodation Limited v Muckle LLP*, a professional negligence claim against solicitors in which it is alleged that negligent drafting of a subcontract for the provision of asylum seeker accommodation resulted in losses of over £100 million.

Lance Ashworth KC, Tim Benham-Mirando and George Vare acted for the successful main defendants in *Festival Hotels Group v Murphy* in striking out a multi-million pound conspiracy claim brought following the collapse of the Festival Hotels Group.

Lance Ashworth KC and Wilson Leung represent the defendants who are counterclaiming for in excess of \$400 million in a Commercial Court claim arising out of an agreement to terminate

mining services at the Yanfolila gold mine in Mali.

**Hugh Norbury KC** continues to act (with **Jamie Randall** and other counsel) for a hedge fund in **Covalis v BTG**, a performance bonus and confidential information dispute due to go to trial in November 2023.

**Hugh Norbury KC** continues to act in **Athene v Siddiqui & Ors**, in Bermuda, in a claim involving allegations of breach of fiduciary duty and dishonest assistance relating to confidential information in the world of insurance and private equity.

**Hugh Norbury KC** acted with **Adil Mohamedbhai** in a confidential arbitration in Singapore relating to the alleged misuse of confidential information relating to a potential mining deal worth \$billions.

In **Re Jardine Strategic Holdings Ltd**, **Jonathan Adkin KC** appeared in the ongoing Bermuda litigation concerning the valuation of the shares of a multi-billion dollar company.

**Justin Higgo KC** represents the defendant in **PPRS Holdings & Anor v Tecar**, a Commercial Court claim for breach of warranty in relation to the sale of a substantial paper business in Romania. 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 at a summary judgment hearing in 2023.

**James Mather** and **Mark Wraith** appeared for the successful appellant in **Malik v Hussain [2023] EWCA Civ 2**, in which the Court of Appeal held that, where there was a term requiring contracts to be exchanged within seven days of payment of the deposit by a successful bidder, that only required the bidder to exchange within seven days of being presented with a contract in a form capable of being executed and exchanged. The issue arose in the context of a long-running partnership and company dispute

concerning the ownership of a prominent restaurant business in Manchester. In previous trials, James and Mark successfully established the disputed existence of the partnership, and that the claimant was entitled to require an open-market sale of the relevant assets rather than a buy-out at a valuation determined by the Court.

**James Weale** (led by Jonathan Crow KC) acts for the claimants in **Navigator Equities Ltd and Chernukhin v Oleg Deripaska**, in proceedings to commit the defendant for contempt of court. In a significant judgment in February 2022, Jacobs J held that there was no obligation on a claimant in committal proceedings to disclose privileged documents (**[2022] EWHC 374 (Comm); Times, 1 April, 2022**). In a further significant judgment in November 2022, Robin Knowles J held that the trial should proceed notwithstanding funding difficulties caused by sanctions (**[2022] 11 WLUK 436**). The trial has been listed in March 2023.

**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 raises important issues as to whether or not defendants can be required to make payments to companies linked to sanctioned persons.

**James Weale** (led by Nicholas Saunders KC and Matthew Lavy KC) acts for the claimant in a substantial claim for breach of a licence agreement on the basis of alleged reverse engineering of IBM Mainframe software in **IBM United Kingdom Ltd v LzLabs GmbH & Ors**. The claim has been listed for a 6-week trial in 2024.

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

**Conor Quigley KC** acted for the applicants in **Mead Johnson (Asia Pacific) Pte Ltd (and affiliated group companies) v European Commission** in **Case T-508/19, EU:T:2022:217** in the General Court of the European Union. The Commission, following a complaint from Spain, alleged that a de facto state aid system arose out of the corporate income tax legislation applicable in Gibraltar in 2010, in particular the non-taxation of royalty and passive (inter-company loan) interest income. In 2014, it expanded its investigation to cover an aid scheme based on an alleged tax ruling practice of the Gibraltar tax authorities. Ultimately, in 2018, the Commission adopted a Final Decision in which it found that the 2010 legislation amounted to an aid scheme, which was unlawful and incompatible with the internal market. It accepted submissions that there was no unlawful tax ruling practice, but nevertheless held that the tax rulings applicable to the MJN Group were selective. The General Court upheld the Commission's finding regarding the 2010 legislation, but annulled the Decision in so far as it applied to the MJN Group on the ground that the Commission had acted unlawfully in not providing the Group with adequate notice that it was under investigation.

**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 1441/7/7/2, 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 an ongoing market investigation by the Competition and Markets Authority (CMA) in relation to overcharging for the emergency service radio network, Airwave. The CMA's provisional assessment finds lack of competition is allowing Motorola to make around £160m excess profits a year (approximately £1.2 billion in total).







## Our property practice is wide-ranging

[Rupert Reed KC](#) continued to act for a widow of King Fahd of Saudi Arabia in defending the claims of a Liechtenstein foundation to a London property transferred to her after the death of King Fahd but pursuant to written instructions given by him inter vivos. The claims in ***Asturion Foundation v HH Princess Jawharah al Ibrahim***, which went to the Court of Appeal on procedural issues in 2020, now proceed to trial in July 2023. This has been listed in *The Lawyer* as one of The Top 20 Cases of 2023.

In ***Yuntian Leasing Company v Dream Aircraft & Quendon Ltd***, [Justin Higgo KC](#) represents the offshore owner of substantial property in central London, in proceedings to set aside a charging order nisi granted by the Commercial Court over an alleged beneficial interest in the subject property.

[Jonathan Fowles](#), led by Mark Sefton KC of Falcon Chambers, has been acting for the claimants in proceedings about the ownership as between charitable trusts of a large site in East London which was formerly the subject of an application for planning permission for the construction of the largest mosque in Europe.

[Andrew Bruce](#) represented the objectors in ***HAE Developments Ltd v The Croft Ealing Ltd [2022] UKUT 120 (LC)***, which concerned an application to modify restrictive covenants to permit the construction of a block of 8 apartments on the site of a large house in Ealing. The Upper Tribunal's judgment in the case is a rare decision where post-war covenants have been discharged on the basis of obsolescence.

In ***Essex Waste Ltd v Sharp [2022]***, [Andrew Bruce](#) acted for the freehold owners of a commercial yard in Essex which had been used for a waste collection and recycling business. The owners took possession of the yard in December 2020 and the High Court granted the tenant

an injunction to re-enter. The owners claimed the tenant had no right to occupy the yard and/or its failure to clear earth and waste that it had dumped on neighbouring land entitled the owner to possession. The claim settled on the 1st day of the substantive trial.

[Andrew Bruce](#) represented the defendants in ***Phillips v Wheeler***, a heavily-contested trial relating to Japanese Knotweed. In the case, in which judgment is expected imminently, it was alleged the defendants fraudulently misrepresented that the home they were selling was not affected by Japanese Knotweed when, two years after the sale, the property was found to be significantly contaminated. The case raised interesting questions as to knowledge and the importance of the standard TA6 Property Information Form, as well as difficult factual issues as to the source of the infestation.

[Amy Proferes](#) continues to act for the 1st and 2nd defendants in ***Toner v Telford Homes & Ors***, a claim in fraudulent misrepresentation, breach of contract and harassment relating to the sale and management of an off-plan property. The case raises important questions as to the extent to which developers can amend the specifications of a property sold off-plan after contract, including whether disclaimers can be used to avoid liability. Permission has been granted to the 1st and 2nd defendants to appeal both judgments which have been given thus far (**[2021] EWHC 516 (QB)** and **[2022] EWHC 634 (QB)**). The appeal will consider, amongst other grounds, the interaction of CPR 3.1A and the relatively new PD1A in respect of vulnerable parties.

## Our intellectual property, IT and art practices have remained as active as ever

Michael Edenborough KC leading Stephanie Wickenden had a notable success for easyGroup when they obtained its first victory against an infringer who did not use orange and was not in the travel sector (*easyGroup v Easy Live Auction* [2022] EWHC 327 (Ch)).

Michael Edenborough KC and John Eldridge (along with other counsel) clarified the practice and procedure on electronic service of originating documents in a case concerning Peppa Pig and her dispute with the Vietnamese Woolfoo cartoon character (*Entertainment One v Sconnect Co Ltd* [2022] EWHC 3295 (Ch)).

Michael Edenborough KC and Stephanie Wickenden were successful before the General Court in establishing that the law on trade mark targeting applied not only in infringement cases, but also to proof-of-use matters (*Standard International Management v EUIPO* [2022] ETMR 44). This case was notable also because it was the last case filed by a UK attorney before Brexit, as it was filed on 31 December 2020.

Michael Edenborough KC (leading other counsel) was successful in the Court of Appeal in establishing that Amazon.com had targeted customers in the United Kingdom when it sold and advertised goods bearing infringing trade marks to UK consumers (*Lifestyle Equities v Amazon* [2022] FSR 20).

Michael Edenborough KC appeared in *Jones v Irmac Roads* [2022] FSR 18, where it was held that the legal interest in an invention had to be assigned in writing, just as did the legal interest in any resultant patent application or granted patent.

Michael Edenborough KC (leading other counsel) was involved in an important case on the scope of what is permissible evidence that may be given by a witness of fact

at trial, in particular whether a trade witness could give opinion evidence without being declared an expert (*Lifestyle Equities v Royal County of Berkshire Polo Club* [2022] FSR 22).

John Eldridge acted for the claimant, and Thomas Elias acted for the defendants, in the trial of *Costa v Dissociadid* [2022] EWHC 1934 (IPEC). The claim alleged infringement of copyright in scripts and other literary works used on the defendants' YouTube channel; the counterclaim included a claim for causing loss by unlawful means as a result of various "take down" requests made by the claimant to YouTube. Both claim and counterclaim succeeded in part.

Thomas Elias acted for Aldi Stores Ltd in the trial of a claim in IPEC brought by Marks & Spencer alleging infringement of registered designs for a light-up snow globe gin liqueur bottle. Judgment is expected imminently.

Stephanie Wickenden continues to have a busy practice in the art sector, acting for artists, art dealers and estates. She acted in the matter of *Adolf Schaller v Ivor Braka*, which considered the lawfulness of appropriation art. She has also advised on a number of cases with complex issues of moral rights, artist resale rights, and trade marks and confidential information within the arts and cultural property sector.

Stephanie Wickenden represented easyGroup in the complex trade mark trial *easyGroup v Nuclei Ltd* [2022] EWHC 901 (Ch). The case deals with numerous difficult legal issues relating to infringement, revocation, res judicata, honest concurrent use, and procedural matters following Brexit. This case is going to the Court of Appeal and will be heard in October 2023.

## We have acted in many of the largest and most important cases in private client, trusts and probate matters

John Machell KC and Dan McCourt Fritz appeared for the protector in *St. John's Trust Co (PVT) Ltd v Medlands (PTC) Ltd* [2022] CA (Bda) 18 Civ, in which the Court of Appeal handed down an important judgment on indemnity costs in Bermuda.

Richard Wilson KC and Amy Proferes act for the claimant in *Radwan v al-Sultan*, a dispute amongst members of a Saudi family as to the beneficial ownership of various assets under an informal family arrangement intended to give effect to a Letter of Wishes.

In *Middleton v MEHL*, Richard Wilson KC and Oliver Jones acted for the children of a successful British businessman in successfully setting aside a series of loan agreements which had given rise to adverse tax consequences. The decision is interesting because it demonstrates that the equitable principles which apply to setting aside voluntary dispositions for mistake (as set out in *Pitt v Holt*) can be applied to set aside interest-free loan agreements. James Weale acted for the respondent company which had received the loans, MEHL.

In *O & Anor v Q & Ors*, Richard Wilson KC and Oliver Jones acted for the trustees of two BVI trusts worth c.\$500 million in seeking the Court's blessing of a substantial restructuring exercise involving complicated considerations of tax in multiple jurisdictions. The blessing application was heard in the BVI in January 2023. Members of Serle Court acted for all other parties in the case: Dakis Hagen KC and William Henderson acted for the two adult beneficiaries (respectively), Justin Higgo KC acted for the Next Friend to the minor beneficiaries, and Giles Richardson KC acted for the representative of the unborns.

Richard Wilson KC (assisted by James Weale, Zahler Bryan and Max Marenbon) acts for beneficiaries of a substantial Bahamian trust in a trustee removal claim. The case has generated a number of legally significant issues which have been (or are) the subject of hearings before the Supreme Court and Court of Appeal of The Bahamas. Emma Hargreaves acts for another party in the proceedings.

Richard Wilson KC continues to act for the plaintiff in *Dawson-Damer v Grampian*, high value trust litigation in The Bahamas, in which the plaintiff seeks to set aside appointments worth over \$400m on the basis that the trustee failed to give proper consideration to its decision. Judgment is awaited from the Court of Appeal, which heard the appeal in December 2022.

Richard Wilson KC and James Weale acted for the trustee in a construction claim in *Swiss Independent Trustees SA v Sofer & Ors* [2023] EWHC 12 (Ch), which contained an important analysis on the principles of construction applicable to property transactions and guidance on the procedure for proving foreign law.

In *Ieremeieva & Anor v Estera Corporate Services & Ors*, Dakis Hagen KC and Oliver Jones act for the first defendant, a professional trustee of a BVI trust ostensibly settled by a late Ukrainian businessman, in a dispute between the settlor's BVI administrators, who are heirs under the Ukrainian law of succession, and the settlor's two former business partners (the former trustee and former protector of the trust). The assets at stake include interests in a Ukrainian conglomerate, which are said by the claimants to be worth a nine-figure sum.



[Dakis Hagen KC](#) (assisted by [Emma Hargreaves](#)) acted for 9 of the 31 defendant beneficiaries in **Re XYZ Trusts [2022] SC (Bda) 10 Civ**, which concerned a major restructuring of 23 Bermuda trusts of substantial value which has been in progress for a decade. The Supreme Court of Bermuda blessed the trustees' decision to effect the restructuring, notwithstanding opposition from 4 of the beneficiaries.

[Dakis Hagen KC](#) 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. [Richard Wilson KC](#) and [Oliver Jones](#) act for the interim administrators of the estate. In 2022, Deputy Master Teverson handed down three reserved judgments determining issues of disclosure (**[2022] EWHC 609 (Ch)**), expert evidence and the proper interpretation of section 423(3) of the Insolvency Act 1986, one of which is the subject of two appeals set to be heard in early 2023. The trial is set to be heard over 60 days beginning in October 2023.

[Constance McDonnell KC](#) acted for the successful defendant in **Reeves v Drew**, a probate claim over a £100m estate and probably the most valuable such claim ever heard in this jurisdiction. The trial extended over 3 weeks in November 2021, with evidence from 59 witnesses, and was widely reported in the national press. Constance's client resisted attempts by the losing party to appeal in 2022, including a rare application under CPR 52.30 to re-open an unsuccessful application for permission to appeal.

[Constance McDonnell KC](#) advised in connection with a **Public Trustee v Cooper** application in Guernsey for the Court's blessing of a trustee's decision. Her client was

successful in obtaining a judgment in April 2022 refusing to grant such a blessing on the basis that the trustee's decision was vitiated by its own conflict. The case settled at a lengthy mediation in London in January 2023.

[Constance McDonnell KC](#) obtained two judgments in the Bermuda Court of Appeal in 2022 in **Ingham v Wardman**, the main appeal restoring a privacy order so as to enable confidential documents disclosed in Guernsey trust proceedings to be used in Bermuda proceedings, and a costs decision by which the Court of Appeal ordered the unsuccessful fiduciaries to pay the costs of the main appeal personally with no right of indemnity from the estate.

[Justin Higgo KC](#) represents the defendant and counter-claimant in **Patel v Patel**, in proceedings relating to the operation of a family online retail business in which claims to remove the trustees of family trusts holding the company shares, and for declaratory relief in relation to the misuse of a power to appoint trustees, will be determined at trial in June 2023.

[Sophie Holcombe](#) and [Jamie Randall](#) (led by Joe Smouha KC) acted 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** at trial before the Singapore International Commercial Court. The breach of trust claim against Credit Suisse Trust is for losses arising from the mismanagement of an investment portfolio said to be worth over \$1 billion. Judgment is expected in 2023.

[Adrian de Froment](#), led by Edward Fitzgerald KC and Frederick Smith KC, acted for the appellant in **Jean-Rony Jean Charles v Attorney General of the Bahamas & Ors [2022] UKPC 51**, concerning whether constitutional relief may be sought within habeas corpus proceedings.

[Andrew Gurr](#) represented the Public Trustee of Guernsey in ongoing proceedings concerning

the administration of Guernsey pension schemes in which the former trustees are uncooperative. In May 2022 the Guernsey Court of Appeal (**[2022] GCA 024**) upheld

a decision of the Bailiff enforcing the former trustees' duties to deliver up trust documents and information, and dismissed allegations by the former trustees of bias and procedural unfairness.

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

In **White Willow (Trustees) Ltd v Trilogy Management Ltd & Anor [2022] JRC 120**, proceedings concerning multi-million dollar distributions to sub-trusts made in the final stages of the winding up of one of Jersey's largest charitable trusts, the Royal Court of Jersey gave guidance on the principles affecting the nature and scope of the security which a distributing trustee is entitled to require before parting with its assets. [Dakis Hagen KC](#) advised the corporate trustee of the majority of the sub-trusts.

**Attorney General v Zedra Fiduciary Services [2020] EWHC2988 (Ch)** and **[2022] EWHC 102 (Ch)**: In this case Zacaroli J directed how a charitable fund of some £600 million and known as the National Fund should be applied. In 1928, £500,000, referred to as the "National Fund", was settled on trust to accumulate income and profits until the date fixed by the trustees as the date when, either alone or together with other funds, it was sufficient to discharge the National Debt, when the Fund was to be applied in reduction of the National Debt. The Attorney General applied for a scheme in respect of the Fund, now worth c.£600 million. Zacaroli J rejected claims that the trust was invalid. He held that the court had jurisdiction to make a cy-près scheme. He subsequently determined that the Fund should be applied in reduction of the National Debt. [William Henderson](#) acted for HM Attorney General.

**Butler-Sloss v (1) Charity Commission (2) HM Attorney General [2022] EWHC 974 (Ch)**. The trustees of two charities sought the Court's approval of their decisions to adopt investment policies designed, broadly, to minimise the risk of

their acquiring investments which conflicted with their charitable activities of, amongst other things, environmental protection, while still providing a reasonable financial return, though probably not as a good a return as would be achieved with a less restrictive policy. The Court was satisfied that the financial considerations might properly be tempered by reference to their possible or probable impact on the pursuit of the charity's activities and approved the trustees' decisions. [William Henderson](#) acted for HM Attorney General.

[Jonathan Fowles](#) has been acting for Merton LBC on its appeal to the Supreme Court from the decision of the Court of Appeal in **Nuffield Health v Merton [2021] EWCA Civ 826; [2022] Ch.1**. The case concerns what Peter Jackson LJ called a "novel and important issue", namely whether a charity must show that its premises are being used for the public benefit in a charity law sense if the premises are to qualify for mandatory charitable relief from non-domestic rates. The Court of Appeal by a majority (David Richards LJ dissenting) held that the respondent charity had not needed to show that its relevant premises were used for the public benefit to qualify for exemption, but unanimously that, if it had needed to show this, it had not done so. The Supreme Court granted Merton permission to appeal on 27 May 2022, and the appeal will be heard in March 2023. Jonathan Fowles is led by James Goudie KC of 11KBW alongside other counsel.



## Finally, we are regularly instructed in the Dubai International Financial Centre

Rupert Reed KC (leading James Weale and Gregor Hogan) acted for the successful claimant in a substantial fraud trial in **SBM Bank (Mauritius) Ltd v Renish Petrochem FZE and Mehta [2022] DIFC CA 011**. Permission to appeal has been granted and the appeal is expected to be listed in 2023. In the same proceedings James Weale successfully resisted an application to set aside the substantive judgment and (assisted by John Eldridge) obtained an anti-suit injunction for the claimant.

Rupert Reed KC continues to act for Oman Insurance in resisting claims by the Globemed Group arising from negotiations for a joint venture for the third-party administration of health insurance in the UAE that did not ultimately proceed. The case in **GMGHS LLC v Oman Insurance Company PSC [2017] DIFC CFI 051** proceeds to trial in May 2023.

Rupert Reed KC (leading Gregor Hogan) acted at the trial of committal proceedings against various directors of a UAE conglomerate in respect of failures to comply with freezing and related information orders. The anonymised judgment in **Lateef v Liela [2020] DIFC CFI 017 (24 March 2022)** is now the leading decision on the law of contempt in the DIFC.

Rupert Reed KC (leading Gregor Hogan) has acted for a UAE precious metals refiner on its claim under a refinery policy. They seek to stay proceedings brought by the insurer in the DIFC in **Union Insurance Company PJSC v IPMR LLC [2022] DIFC CFI 064** that are parallel to existing proceedings brought by the assured in the Sharjah Courts.

Zoe O'Sullivan KC and Gregor Hogan are acting for the insured, Horizon, in a dispute with insurers which is proceeding in parallel in both the DIFC Court and in the Sharjah Courts. Gregor acted for Horizon in its application to challenge the jurisdiction of the DIFC Court, which was the first occasion that the DIFC Court had considered the scope of its jurisdiction and the proper approach to construing jurisdiction clauses in the context of the onshore UAE's insurance law and regulatory regime. Zoe and Gregor are instructed by Horizon in its appeal of Justice Giles's judgment. Zoe and Gregor then successfully opposed the insurer's application for an anti-suit injunction preventing Horizon from pursuing its claim in Sharjah, in an important decision which emphasises the reluctance of the DIFC Court to interfere with the process of other Emirates courts. They are both now instructed by Horizon in the insurer's appeal of

the dismissal of anti-suit injunction application: **Al Buhaira National Insurance Co v Horizon Energy LLC CFI 098/2021 (27 April 2022)** and **(9 November 2022)**.

Adrian de Froment continued to act for Barclays Bank in English proceedings to enforce a judgment for \$131 million obtained in the DIFC Court: **Barclays Bank Plc v Shetty [2022] EWHC 19 (Comm)**.

Gregor Hogan acted for Qatar Insurance Company in its application to challenge the jurisdiction of the DIFC Court to hear a claim by major international reinsurers for negative declaratory relief as to their liability under a facultative reinsurance policy. The case centred on the proper construction of Article 5(A)(1) of the Judicial Authority Law and the circumstances in which the DIFC Court's exclusive jurisdiction over DIFC licensed establishments is engaged. It was also the first occasion in which the DIFC Court considered the effect of Justice Giles's judgment in **Al Buhaira National Insurance Co v Horizon Energy LLC CFI 098/2021 (27 April 2022)**, in which Gregor also appeared, on the construction of jurisdiction clauses in insurance contracts: **AIG International Group & Ors v Qatar Insurance Co (Branch of Foreign Company) [2022] CFI 003 (29 August 2022)**.

Gregor Hogan acted for a major Dubai hotel in an ad hoc arbitration seeking indemnification under a business interruption policy. The claim centred on whether the outbreak of Covid-19 and the resulting closure of the hotel during the UAE Government's "lockdown" period triggered coverage and, if so, the proper accounting methodology for quantifying the profits lost.

Rupert Reed KC (leading Gregor Hogan) acts in the LCIA arbitration of an investment dispute arising out of a major joint venture in the UAE defence sector in which the claimant seeks to recover a significant loss of profits.



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