

International Trust Litigation Conference

Geneva 2018

Four Seasons Hotel des Bergues

XXIV
BARRISTERS' CHAMBERS



Wednesday 19 September 2018

Pre-conference drinks and dinner from 19:00

Thursday 20 September 2018

09:00 - 15:00 (Registration from 08:15)

XXIV Old Buildings International Trust Litigation Conference 2018

We look forward to welcoming you to XXIV Old Buildings' International Trust Litigation Conference 2018. Our team of specialists will guide you through a range of topical issues from multiple jurisdictions with the emphasis on practical and commercial answers to a range of problems in contemporary trust law. The conference concludes with a chance to challenge and test the experts in a quick fire "Question Time" session.



08:15 – 09:00

Welcome coffee and registration



09:00 – 09:10

Introduction – Sue Medder, Chambers Director



09:10 – 09:40

Power without responsibility? Trustee liability to third party creditors
– Owen Curry and Daniel Warents



09:40 – 10:00

Arbitration, the sensible route to resolve compensation claims against trustees without requirement to prove fault? – Marcus Staff



10:00 – 10:30

The supervisory jurisdiction of the court: How broad is it really? How far can it be stretched? – Elspeth Talbot Rice QC and Andrew Holden

10:30 – 10:50

Coffee Break



10:50 – 11:20

R-E-S-P-E-C-T, directors of a PTC – Edward Cumming QC and Kira King



11:20 – 11:50

Honest Guv? Attribution, vicarious and personal liability for fraud in claims against service providers and their agents. – Sarah Bayliss and Oliver Assersohn



11:50 – 12:20

Freezing Hope: Discretionary trusts, freezing orders, and the game of cat and mouse – Francis Tregear QC and Ben Waistell



12:20 – 15:00

Lunch followed by Question Time

Panellists: Francis Tregear QC, Edward Cumming QC, Bajul Shah and Andrew Holden



Chair: Stephen Moverley Smith QC

Speakers' Biographies

Sue Medder

Sue is Chambers' Director at XXIV Old Buildings and is responsible for client care. Sue works with members and the clerking team to develop client relationships and ensure a continuing level of excellence in service. Sue also sits on XXIV's management committee and is closely involved in the strategic growth of chambers.

Stephen Moverley Smith QC

Stephen specialises in commercial and private client disputes, trust and company work with a multi-jurisdictional dimension. He has an extensive international practice, particularly in the Cayman and British Virgin Islands, and is recommended by Chambers & Partners as a leading offshore silk. Also recommended for private client, commercial chancery, commercial litigation, fraud, company, insolvency and banking/finance, the legal directories describe him as "an obvious leader" and "a creative problem solver who rolls up his sleeves, gets stuck in and has an excellent courtroom style".

Francis Tregear QC

Francis is a very experienced silk regarded as a "a talented tactician and an effective advocate" in relation to his expertise in a number of areas:

- Hedge funds and international insolvency (*The Herald Liquidation*, *BTU Power Company*)
- Commercial fraud and jurisdiction disputes (*Aeroflot v Boris Berezovsky* and others)
- Banking and finance (eg *North Shore Ventures v Anstead Holdings & Ors*; *Credit Suisse v Camerata*);
- Trust disputes (He acted for Sergei Pugachev in the Court of Appeal) and has been involved in trust disputes in Bermuda and Cayman)
- Corporate disputes (he was involved in the recent boardroom coup in *Petropavlovsk Plc*)

He is valued for his detailed understanding of the commercial and financial issues affecting clients and acknowledged as an extremely effective advocate in court as well as on paper. This has made him a popular choice particularly in relation to disputes involving offshore funds and politically exposed individuals based in London.

The majority of his work is international in nature and he has a well-deserved reputation for his international expertise, he has acted and advised in many offshore jurisdictions such as the Cayman Islands, BVI, Guernsey, Gibraltar, Cyprus and the Isle of Man. He is called to the Bar of the Eastern Caribbean. His pre-eminence in multi-jurisdictional disputes involves him in strategy, interim remedies such as freezing injunctions, conflicts of law, asset tracing and recovery.

Elsbeth Talbot Rice QC

Elsbeth is well known and very highly regarded for her International trusts expertise. She acts in international trust matters for private clients and commercial enterprises across the globe. She combines a wealth of knowledge and experience with clarity of expression, practicality and supreme approachability. Chambers & Partners, Chambers Global and Legal 500 as well as Citywealth Leaders all recommend her as a leading silk. Chambers HNW rank her as a star individual for traditional chancery work, quoting a market source as saying that she is "at the pinnacle of her field - one of the best in the business." She has been described as "the smiling assassin" and Chambers and Partners' market sources describe "An absolutely top-class advocate, who presents arguments in court beautifully" "Elsbeth is a real team player as well as a true leader, who is a go-to person for complex international disputes. She is incredibly hard working, diligent, rigorous and organised." "Just marvellous. She can cut through the issues and has a particular ability to help clients focus on the central issue of the case." "She is the most compelling advocate and is unbelievably crisp and clear. The court just takes it from her." "She grasps the issues quickly and provides clear and effective solutions." "Doesn't take any nonsense and is really good on her feet. She's straightforward – if she says something, a court will be inclined to think that's the case." "A robust courtroom advocate, who is forceful in her submissions, always extremely well prepared and someone who has always thought things through. Her paperwork is brilliant as well." "A razor-sharp intellect and a forensic approach. Her mastery of detail is second to none."

Edward Cumming QC

One of the youngest QCs ever to be appointed, Edward – said by Chambers & Partners to be “*a lion in court*” – has exceptional experience of most areas of trust and succession litigation, which, together with commercial litigation and company / insolvency work, form key parts of his thriving practice.

Edward prides himself on being both a “*formidable advocate and excellent with clients*”. Recommended by Chambers & Partners (2018) as a ‘New Silk’ in no fewer than 6 separate practice areas, and by Legal 500 (2017) in 8 separate practice areas, he is said to show “*maturity beyond his years*”, and to be a “*formidable opponent*”, whilst also being “*ferociously hard-working, but always a delight to deal with*” and “*a solicitor’s dream*”.

Recent professional highlights include: In the matter of the *X Trusts* [2018] SC (Bda) 56 Civ, which gives guidance on the removal of trustees and directors of PTCs; *Lehtimäki v Children’s Investment Fund Foundation UK & ors* [2018] EWCA Civ 1605, concerning the limits on the court’s inherent jurisdiction to supervise charities and direct fiduciaries; *Re Z* [2018] EWHC 1488 (Ch), an ongoing dispute in the Court of Protection regarding the capacity of a successful businessman and the future management of his property and affairs; acting for Viscount Weymouth in relation to the trusts that hold the famous Longleat Estate; his Supreme Court appearance in *Wood v Capita Insurance Services* [2017] AC 1173 (now the leading authority on contractual interpretation); and various substantial and high-profile claims on behalf of the Libyan Investment Authority against Goldman Sachs, Société Générale and other financial institutions. Shortly before Edward took silk, Legal 500 (2018) shortlisted him for its “Junior of the Year” award for both “Private Client: trusts and probate” and “Insolvency”, and he was named “Chancery Junior of the Year” at the 2016-17 Chambers & Partners UK Bar Awards.

He has a particular interest in trust, private wealth and business disputes with an international dimension, and frequently acts on cases in the major offshore jurisdictions – with ongoing matters in Jersey, Guernsey, Bermuda and the BVI – as well as appearing in cases in the UK.

Marcus Staff

Marcus specialises in private and commercial trust and fund disputes resolved in litigation or arbitration. He has particular expertise in cross-border disputes concerning private and commercial funds involving the duties of investment managers, trustees, banks and other financial intermediaries, and the rights of investors and beneficiaries in specific assets and funds of property.

Bajul Shah

Bajul’s practice comprises trusts and estates litigation, commercial litigation, insolvency and fraud. He is also a member of the Bar of the Eastern Caribbean Supreme Court and has experience of litigation in Anguilla, the BVI, Cayman, Guernsey, Gibraltar, the Isle of Man and Jersey. He is recommended in the legal directories for trusts litigation and offshore work. His recent work has included the *Tchenguz* litigation in Guernsey, acting for a beneficiary in high-net-worth divorce proceedings in England and offshore, and acting for the liquidators of an investment fund that was the victim of the *Madoff* fraud.

Sarah Bayliss

Sarah is noted as a “*fantastic barrister*”, “*very commercial as well as pragmatic*” and “*a good tactician with a sharp mind for complex issues*”. Sarah’s private client/offshore practice spans substantial international disputes involving private individuals, fiduciaries and banks/funds and domestic wills and trusts work. Sarah’s extensive experience in financial services and insolvency disputes serves as a useful adjunct to her international private client practice. In addition to her English clients, Sarah acts for clients in a number of jurisdictions including the BVI, Bermuda and the Cayman Islands, the Channel Islands, Gibraltar and the DIFC. Recent matters include a substantial multi-jurisdictional dispute involving allegations of malpractice against a major international bank, several disputes concerning substantial family businesses in England and the Near and Far East and a number of domestic wills and trusts claims including *Re Charles Willis Harrison 1924 Settlement* [2018] 1 WTLR 299. Sarah is presently engaged in international litigation to recover assets on behalf of members of the Perry family with proceedings presently on foot in England, the Cayman Islands, the BVI, Liechtenstein, Curacao and Delaware.

Oliver Assersohn

Oliver is a commercial/Chancery and regulatory barrister specialising in banking and financial services and is recommended by the foremost independent legal directories for financial services. He has had extensive involvement in cases involving fraud (both domestic and international) and a substantial element of Oliver’s work has a banking or financial services angle to it. He has acted for states, institutions, funds, family offices and individuals.

Andrew Holden

Andrew enjoys a busy commercial and chancery practice. He has extensive experience acting in complex international trust litigation for the trustees, beneficiaries, settlors and protectors of trusts in all of the prime offshore jurisdictions, including Guernsey, Jersey, the Isle of Man, Gibraltar, the Cayman Islands, the BVI, and Bermuda. He also maintains a thriving commercial, fraud and asset tracing practice. Chambers UK Bar 2018 places Andrew in Band 1 for his Trusts practice, saying "*there is nothing in the trusts world that he is not familiar with*". Recent trust cases of note include *Re X Trusts* [2018] SC (Bda) 56 Civ, concerning an application to remove from office the directors of a PTC, and *A v A* (2017), in which Andrew acted for the trustees of a Gibraltar trust in respect of a £1.1 billion divorce claim in the United Kingdom.

Owen Curry

Owen specialises in commercial and traditional chancery litigation. He has regularly appeared in trials and interlocutory matters in the High Court and County Court. His trial experience includes: *Aeroflot v Berevosky and ors*: Acting for Swiss company defendants in a \$125 million international fraud claim; *Hamilton v Hamilton* [2016] EWHC 1132: a two week trial led by Steven Thompson QC concerning the disputed inheritance of a Lichtenstein foundation; *Kaki v Kaki* [2015] EWHC 3692: a trial concerning the validity of a trust; *Skala v Via Servis* [2014] EWHC 3069 (Ch): a six day trial concerning a dispute between shareholders involving cross examination through an interpreter and over video link; *Re Fit Out* (2016): Leisure a claim by a liquidator against the former directors of a company. He has also been involved in off-shore litigation in both the Caribbean and the Channel Islands and has spent time assisting law firms in London and the Channel Islands. As a result he has gained a broad experience of contentious probate trust and estate disputes and well as document heavy commercial litigation.

Daniel Warents

Daniel has a busy practice specialising in most areas of chancery and commercial work both in England and in a number of other jurisdictions (including the BVI where he has been called). He has a particular interest and expertise in trust disputes raising conflicts of law issues, having appeared in the Privy Council in both *Crociani v Crociani* [2014] UKPC 40 (the leading case on jurisdiction clauses in trusts) and in *Investec v Glenalla* [2018] UKPC 7 (the leading case on statutory limitation of trustee liability to third party creditors under private international law).

He recently appeared as sole counsel in the Court of Appeal in his own right in *Christofi v National Bank of Greece* [2018] EWCA Civ 413, a leading case on the procedure for enforcing judgments under the Brussels I Regulation.

Daniel has substantial experience in dealing with trials, applications, and appeals raising complex legal and factual issues including jurisdiction and forum challenges, applications for injunctive relief, and summary judgment and strike-out applications.

Kira King

Kira has over ten years experience of contentious trusts matters which she combines with a broad commercial practice with a particular focus on civil fraud, insolvency, banking and company matters. Kira appears in a broad range of contentious trust matters including fraud and tracing claims, claims for relief in relation to breach of trust and/or fiduciary duty and disputes concerning beneficial ownership of property and mistake. Kira is an experienced advocate who frequently appears in the High Court and has experience of both trial and appellate advocacy.

Kira has substantial offshore experience having been called to Bar of the Eastern Caribbean Supreme Court (BVI) and the Gibraltar Bar (on an ad-hoc basis) and in addition has been instructed on cases in the Cayman Islands, Dubai, Guernsey, and Jersey. Kira has experience of acting for the settlors, trustees, beneficiaries and protectors of private trusts. Her traditional chancery experience includes applications to remove or substitute trustees, applications by trustees for directions, Beddoe applications, a wide variety of contentious probate claims (including allegations of fraud, undue influence, lack of capacity and want of knowledge and approval).

Kira's recent experience includes representing the minor and unborn beneficiaries in the Gibraltar proceedings in the case of *Line Trust Corporation Limited (as Trustee of the Aziz Continuation Trust) v Omar Aziz & others*, a case in which the wife of the settlor of the trust in question sought ancillary relief in the sum of £350 million and argued that the trust was a nuptial settlement.

Ben Waistell

Ben joined Chambers in 2017 and is developing a broad commercial and chancery practice encompassing civil fraud, commercial litigation, company and insolvency matters, and a wide range of both domestic and international trusts and estates disputes. He regularly appears both led and unled in the English Courts and has experience of assisting in a number of international and offshore matters. Ben has recently returned from a secondment at a leading offshore law firm in Jersey, during which time he advised and assisted on matters relating to a variety of offshore trust and corporate structures. Holding a particular interest in civil fraud, asset-recovery, and 'trust-busting' matters, Ben has been involved in a number of claims – both led and unled – concerning the identification and/or freezing of opaque beneficial interests. Recent work includes: instruction as a junior on a large offshore trust dispute, advising on an asset recovery exercise and interlocutory relief in a civil fraud matter, seeking an interim injunction to restrain dealings with certain shares in a private company, advising an investment advisor to a trust on their potential liability for failed investments, contentious English probate proceedings, and a multi-jurisdictional probate dispute.