



Simon Atkinson

Call: 2011

Clerks' Details

+44 (0)20 7306 0102
tcj@wilberforce.co.uk

Qualifications and Appointments

- BA (History)/BSc (Chemistry) – Melbourne University
- MA (Law) – Trinity College, Cambridge University

satkinson@wilberforce.co.uk

Memberships

- Chancery Bar Association
- Property Bar Association
- Commercial Bar Association
- Association of Pension Lawyers

Publications

- [Where different legal systems collide: the decision in *Labrousche v Frey & Ors* \(2016\) *Trusts & Trustees* 22 \(7\): 741-752](#)
- [Rules of the DIFC Courts'](#) (2016) *Wilberforce Chambers, 4th edition*
- ['Away with words: LPA 1925, s. 62'](#) (2016) *Wilberforce Property Update* (Issue 2) April 2016
- ['Self-dealing: rigours and risks'](#) (2013) *Trusts and Estates Law & Tax Journal* 149 TEL&TJ 8 – 11
- ['Talking on sub-tenants: lessons for unwilling landlords'](#) (2013) *Wilberforce News Alert*
- News alert: *Ansa Logistics Ltd v Towerbeg Ltd* (with Martin Hutchings QC)

Practice Overview

Simon has a busy and diverse practice. He accepts instructions across the gamut of Chambers' areas of work. The core of his practice, however, comprises property, trusts and estates, pensions and commercial litigation.

He appears both as sole counsel and as a junior in the Court of Appeal, High Court and County Court as well as before various tribunals, such as the FTT. He also acts in alternative dispute resolution processes such as mediations, arbitrations and expert determinations.

He is instructed in both domestic and international matters, and has particular experience in disputes with a Middle Eastern element, including DIFC litigation. He is a co-author of Wilberforce's publication of the Rules of the DIFC Courts.

Notable cases in which Simon has been instructed include:

- *Interactive Technology Corp Ltd v Ferster* [2017] EWHC 1510 (Ch); [2017] EWHC 1799 (Ch) Litigation concerning the beneficial ownership of an offshore, web-based business, the admissibility of Part 36 offers in split trial proceedings, and the availability of summary judgment in response to a purported defence of causation where equitable compensation for loss is claimed.
- *Dutton v FDR Ltd* [2015] EWHC 2946 (Ch); [2017] EWCA Civ 200 Proceedings concerning how an underpin operated in relation to the increases applicable to pensions in payment. The underpin arose as a result of a defective trust deed executed in 1991 which purported to change the rate at which pensions in payment were increased from 3% to 5%LPI.
- *Catalyst Housing Limited v Martin* [2016] EWCA Civ 1156 Simon appeared as sole counsel in a renewed oral application for permission to appeal (and the later substantive appeal) in proceedings concerning contractual succession to an assured tenancy.
- *Pollock v Reed* [2016] Pens LR 129 Proceedings brought by the trustees of an occupational pension scheme seeking court approval of a proposed bulk transfer of the scheme's assets and liabilities without individual member consent to a new scheme.
- *Labrousche v Frey; Re Olga Martin-Montis Will Trusts* [2016] EWHC 268 (Ch) Substantial High Court litigation in which the beneficiary of English will trusts brought claims against former professional and lay trustees for alleged breaches of trust between 1984 and 2010. The claim also raised issues of Swiss and Liechtenstein law.



Practice Overview continued

- *Wood v Waddington* [2014] EWHC 1358 (Ch); [2015] EWCA Civ 538
A dispute between neighbouring landowners concerning the grant of easements, the scope of section 62 of the Law of Property Act 1925 and the rule in *Wheeldon v Burrows*.
- *Spencer v Fielder* [2015] 1 WLR 2786
Beddoe proceedings relating to litigation between British Airways and the trustees of the Airways Pension Scheme arising out of the decision of the trustees to grant discretionary benefit increases to members.
- *Cosmetic Warriors Ltd v Amazon.co.uk Ltd* [2014] FSR 31; [2014] EWHC 1316 (Ch)
Trademark dispute between the owner of the 'Lush' cosmetics brand and the well-known online retailer.
- *Ansa Logistics Ltd v Towerbeg Ltd* [2012] EWHC 3651 (Ch)
A landlord and tenant dispute concerning whether the tenant had breached a covenant against parting with possession and whether the landlord had unreasonably withheld consent to underlet the premises to a third party, Ford Motor Company Ltd.

Domestic Arbitration & ADR

Simon regularly advises in relation to, and acts in, alternative dispute resolution processes such as mediations and arbitrations. Although the matters in which he has acted are confidential, the following are examples of the type of work Simon undertakes:

- Preparing written submissions for an expert determination in relation to the proper construction of a deed of settlement.
- Appearing for a party at a mediation of a dispute about boundaries locations between, and rights of way over, neighbouring properties.
- Advising in relation to a mediation of a residential landlord and tenant dispute concerning service charges and a claim for specific performance of an agreement for an underlease.
- Providing an expert opinion on the interpretation of a rent review clause to assist in an expert determination.
- Preparing written submissions for an expert determination in relation to a rent review for commercial premises.

International Arbitration

Simon accepts instructions to advise in relation to and to act in international alternative dispute resolution processes. Although the matters in which he has acted are confidential, the following are examples of the type of work Simon undertakes:

- Acting (with [Nikki Singla QC](#)) for various director defendants of a Jersey-based corporate trustee in a two-day mediation. The Jersey litigation concerned alleged breaches of trust and directors' common law and fiduciary duties as directors of a corporate trustee of a family settlement.
- Acting (with [Joanna Smith QC](#)) in arbitration proceedings concerning a multi-million pound construction project in the Middle East.
- Advising in relation to a mediation of a dispute concerning a multi-jurisdiction distribution agreement.

Commercial

Commercial disputes comprise a significant proportion of Simon's work. Instructions range from small consumer disputes to multi-party, multi-jurisdictional litigation. He acts both in his own right and as a junior as part of a larger team. He has a particular interest in cases involving civil fraud, company disputes, asset-tracing and cross-border issues.



Commercial continued

Simon is regularly instructed in disputes with a Middle Eastern element. He has been instructed in relation to DIFC matters as well as disputes in England raising issues of Sharia law.

Notable instructions include:

- Acting (with [Clare Stanley QC](#)) in *Interactive Technology Corporation Ltd v Ferster* [2017] EWHC 1510 (Ch); [2017] EWHC 1799 (Ch), which concerned the beneficial ownership of an offshore, web-based business and the relief to be granted to a company whose director had been found liable for dishonest breaches of his fiduciary duties.
- Acting for trustees of an employee benefit trust in relation to the proposed sale of the shares in the company which formed the principal asset of the trust.
- Acting for members of a private company limited by guarantee who were purportedly expelled under the disciplinary procedures contained in the company's articles of association.
- Acting (with [James Ayliffe QC](#)) in proceedings concerning a purported joint venture development of land. This ongoing litigation concerns two claims, one a derivative action and the other a direct action, brought by the representatives of one of the parties to the alleged joint venture.
- Acting (with [Nikki Singla QC](#)) for various director defendants of a Jersey-based corporate trustee in a two-day mediation. The Jersey litigation concerned alleged breaches of trust and directors' common law and fiduciary duties as directors of a corporate trustee of a family settlement.
- Appearing (with [John Wardell QC](#)) in High Court litigation where both parties had brought unfair prejudice petitions under s. 994 of the Companies Act 2006. The case concerned various sale purchase agreements relating to a technology joint venture. The litigation raised, amongst other things, issues of international law, including the existence of constitutional and customary values in foreign countries and their impact on disclosure obligations in English courts.
- Acting (with [Joanna Smith QC](#)) in arbitration proceedings concerning a multi-million pound construction project in the Middle East.
- Instructed in a case concerning the purported forfeiture of a business tenancy in the Dubai International Finance Centre for non-payment of rent and relief under the DIFC Real Property Law and DIFC Law of Damages and Remedies.
- Advising on the extent of third-party disclosure obligations in unfair prejudice petitions.
- Instructed in a landlord and tenant dispute concerning the repairing obligations of high velocity lifts in a newly-built high-rise tower in London.
- Acting for a business intending to offer will-writing and probate services in relation to regulatory requirements under the Legal Services Act 2007.
- Appearing for the claimants in *Cosmetic Warriors Ltd v Amazon.co.uk Ltd* [2014] FSR 31; [2014] EWHC 1316 (Ch), a European Community trademark dispute.
- Acting for a cosmetics company in relation to its international distribution agreements and alleged breaches of those agreements by the company's overseas distributors.
- Appearing for a defendant in proceedings concerning the sale of allegedly defective switchable transparent glass LCD panels.
- Acting for a defendant in proceedings concerning an alleged joint venture between business partners. Accounts and inquiries were sought as were the repayment of monies allegedly loaned and the recovery of other luxury assets said to be held as part of the alleged joint venture.
- Acting as junior counsel for the defendant in High Court litigation concerning the actual and/or ostensible authority of a former director of the claimant, a Liechtenstein foundation, to execute a purported transfer of high-value real property from the claimant to the defendant.



Commercial continued

- Acting for a project management business in relation to a claim for breach of contract arising out of a proposed redevelopment of substantial commercial premises and the funding arrangements to be provided by a local authority.
- Acting in professional negligence proceedings brought by the purchaser of a long leasehold of commercial premises against its conveyancing solicitors in respect of an alleged failure by the solicitors to advise properly in relation to planning matters relating to the property.
- Instructed in a case concerning the validity of two purported buy-backs of shares in a private company which buy-backs did not comply with the formalities set out in the Companies Act 1985 and the Companies Act 2006.
- Acting for the managers of a commercial premises following damage to the property and its contents having been sustained and a dispute arising as to whose responsibility it was to insure the contents of the premises under the terms of the service contract agreed between the various stakeholders.
- Acting for a sub-contractor concerning a potential claim for breach of contract against the head contractor in relation to support services provided on behalf of a local authority.

Pensions

Simon's pensions work encompasses contentious and non-contentious instructions relating to both defined benefit and defined contribution schemes. Simon has advised upon and acted in numerous pensions matters: from regulatory proceedings to ombudsman disputes, from claims for rectification of governing documentation to professional negligence actions. Simon has acted for individual and institutional trustees, companies, members and representative beneficiaries; he has also acted for and against the Pensions Regulator.

Notable instructions include:

- Appearing (with [Paul Newman QC](#)) for the employer in *Dutton v FDR Ltd* [2015] EWHC 2946 (Ch); [2017] EWCA Civ 200. This claim concerned how an underpin operated in relation to the rate of increases for pensions in payment under a pension scheme's rules. The underpin arose as a result of a defective trust deed executed in 1991 which purported to change the rate at which pensions in payment were increased from 3% to 5% LPI.
- Appearing (with [Edward Sawyer](#)) in *Pollock v Reed* [2016] Pens LR 129 on behalf of the trustees of an occupational pension scheme seeking court approval of a proposed bulk transfer of the scheme's assets and liabilities without individual member consent to a new scheme. This case concerned whether a scheme actuary, when undertaking the statutory certification process, was required to take into account the security of members' benefits under the respective schemes.
- Acting (with [Fenner Moeran QC](#)) for employer defendants in proceedings brought by the trustees of a defined benefit occupational pension scheme seeking payment of a s. 75 debt in circumstances where the principal employer had suffered an insolvency event.
- Acting (with [Brian Green QC](#), [Edward Sawyer](#), [Sebastian Allen](#), [James McCreath](#) and [Bobby Friedman](#)) for target respondents in proceedings brought by the Pensions Regulator seeking to impose a Contribution Notice in relation to a defined benefit pension scheme following the purchase out of administration of the business and assets of the scheme's employers.
- Appearing for third-party defendant solicitors in a professional negligence claim brought by the trustees of a pension scheme against its actuarial advisers concerning the equalisation of normal retirement dates.
- Appearing in *Spencer v Fielder* [2015] 1 WLR 2786 for the representative beneficiary. These were Beddoe proceedings relating to litigation between British Airways and the trustees of the Airways Pension Scheme concerning the decision of the trustees to grant discretionary benefit increases to members.



Pensions continued

- Acting (with [Brian Green QC](#), [Jonathan Hilliard QC](#), [Emily McKechnie](#), [Emer Murphy](#) and [Bobby Friedman](#)) for target respondents in proceedings brought by the Pensions Regulator seeking to impose a Financial Support Direction in relation to three defined benefit pension schemes
- Acting (with [Jonathan Hilliard QC](#)) for the defendant actuarial advisers in a professional negligence claim concerning the equalisation of normal retirement dates.
- Acting for a complainant in proceedings before the Pensions Ombudsman in respect of alleged maladministration by the trustees of a defined benefit pension scheme.
- Acting for companies holding investments on behalf of an occupational pension scheme in circumstances where the replacement trustee of the scheme alleged that the investments, which had been made by the previous trustee, were or may have been improper.

Professional Liability

Simon's instructions concerning professional liability arise predominantly out of his property, trusts and pensions practice. He has particular experience in litigation brought against legal and actuarial advisors as well as surveyors.

Notable instructions include:

- Acting for the purchasers of an apartment who were in a dispute with their conveyancing solicitors for failing to advise in relation to the increased liability to Stamp Duty Land Tax as a result of a proposed variation to the transaction following exchange of contracts but before completion.
- Acting for the beneficiary of two will trusts in professional negligence proceedings brought against the solicitors retained to draft the wills of the testator and testatrix.
- Appearing for third-party defendant solicitors in a professional negligence claim brought by the trustees of a pension scheme against its actuarial advisers concerning the equalisation of normal retirement dates.
- Acting (with [Nikki Singla QC](#)) for various director defendants of a Jersey-based corporate trustee in a two-day mediation. The Jersey litigation concerned alleged breaches of common law and fiduciary duties by the directors of a corporate trustee of a family settlement.
- Acting (with [Jonathan Hilliard QC](#)) for the defendant actuarial advisers in a professional negligence claim concerning the equalisation of normal retirement dates.
- Acting for the freehold owners of land who had, on legal advice, granted and later extended an option over their land. The principal issues in the case concerned the existence or otherwise of a legal adviser's duty to revisit earlier advice and whether that duty extended to advising on the commercial consequences of extending the option agreement.
- Acting for the vendors of freehold owners of land in relation to a potential professional negligence claim against their conveyancing solicitors. The land had been conveyed subject to certain overage provisions which had not then been fully registered by their legal advisors.

Property

Property law is a core component of Simon's practice. He is regularly instructed across the gamut of Chambers' areas of work including: boundary disputes and easements (including wayleaves), overage agreements, restrictive covenants, adverse possession claims, landlord and tenant work (both commercial and residential), mortgagor-mortgagee disputes, TOLATA claims, commercial development agreements, lease renewals, rent reviews, land registration issues and possession proceedings.



Property continued

Notable instructions include:

- Appearing for the claimants/appellants in *Wood v Waddington* [2014] EWHC 1358 (Ch), [2015] EWCA Civ 538, a case concerning boundary disputes and alleged rights of way.
- Appearing as sole counsel for the appellants in *Catalyst Housing Limited v Martin* [2016] EWCA Civ 1156, a renewed oral application for permission to appeal (and the later substantive appeal) in proceedings concerning contractual succession to an assured tenancy.
- Acting (with [James Ayliffe QC](#)) in a claim concerning a purported joint venture development of land. This ongoing litigation concerns two claims, one a derivative action and the other a direct action, brought by the representatives of one of the parties to the alleged joint venture.
- Appearing (with [Julian Greenhill QC](#)) in possession proceedings brought in the High Court seeking expedition of the trial as the site was needed urgently for the manufacture of critical components for a national infrastructure project.
- Appearing for a defendant in a claim for alleged noise nuisance brought by neighbours who complained of the defendant's use of a wooded area on its land to run outdoor lessons.
- Appearing for the mortgagee, in possession proceedings relating to a multi-million pound country estate.
- Acting for the executors of an estate in respect of potential rectification claims arising out of conveyances of land containing mistakes as to the description of the parcels conveyed.
- Acting (with [Julian Greenhill QC](#)) for freehold owners in relation to a dispute with their neighbour concerning the extent of rights of way granted by a conveyance of land and alleged nuisances and breaches of restrictive covenants.
- Instructed in a case concerning the purported forfeiture of a business tenancy in the Dubai International Finance Centre for non-payment of rent and relief under the DIFC Real Property Law and DIFC Law of Damages and Remedies.
- Instructed in a landlord and tenant dispute concerning the repairing obligations of high velocity lifts in a newly built tower in London.
- Acting for a residential tenant of a high-value estate in west London in a dispute as to whether qualified covenants had been waived by the landlord's predecessor in title.
- Acting for several heirs under Saudi Arabian law, who sought to have restrictions entered against the titles of UK properties as beneficiaries of an English resulting trust.
- Acting for a freehold owner seeking possession of land against trespassers who claimed adverse possession over part of the freeholder's title.
- Acting for a tenant seeking rectification and variations of a long leasehold estate.
- Advising trustees of a charitable trust as to their powers in relation to the upkeep of a public recreation ground.
- Appearing for the landlord in the First Tier Tribunal, Property Chamber in an application under Part IV of the Landlord and Tenant Act 1987 to vary leases of 32 flats in a holiday park.
- Appearing (with [Martin Hutchings QC](#)) for the third party, Ford Motor Company Ltd, in *Ansa Logistics Ltd v Towerbeg Ltd* [2012] EWHC 3651 (Ch). This was a landlord and tenant dispute concerning an alleged breach by the tenant of the covenant against alienation.
- Acting for the freehold owners of land who had, on legal advice, granted and later extended an option over their land. The principal issues in the case concerned the existence or otherwise of a legal adviser's duty to revisit earlier advice and whether that duty extended to advising on the commercial consequences of extending the option agreement.



Property continued

- Acting for the vendors of freehold owners of land in relation to a potential professional negligence claim against their conveyancing solicitors. The land had been conveyed subject to certain overage provisions which had not then been fully registered by their legal advisors.
- Acting for the purchasers of an apartment who were in a dispute with their conveyancing solicitors for failing to advise in relation to the increased liability to Stamp Duty Land Tax as a result of a proposed variation to the transaction following exchange of contracts but before completion.
- Acting for the owners of land seeking to redevelop their garden and open land which land was potentially subject to various restrictive covenants contained in a conveyance between their predecessors in title and the neighbouring landowner.
- Acting for the owners of a public house in relation to a dispute over a private road regarding rights of access arising under s. 62 of the Law of Property Act 1925 and/or by prescription.
- Acting for a public body which sought to require statutory undertakers to connect utilities to undeveloped land where the services to be laid had to cross a private road owned by a third party.
- Acting in trespass proceedings for a riparian land owner to whose land various individuals were mooring without permission.
- Acting on behalf of an owner of property who claimed that it had been induced by fraudulent misrepresentations to execute a TR1 transferring title to the property to a party connected with the individual who made the representations.
- Appearing (with [Andrew Mold](#)) in High Court proceedings for breach of fiduciary duty and dishonest assistance, which claims were brought against the claimants' managing agents and the director of the managing agents.
- Acting for the owner of land in relation to a claim for breach of fiduciary duty brought against his former agent retained to negotiate a purchase of the neighbouring land in circumstances where the agent subsequently acquired an option over the neighbouring land for his own benefit.

Trusts, Tax, Probate and Estate

Simon has a specialist trusts and estates practice. He is frequently instructed in his own right, although he has also been led on several larger cases. His is a mixture of contentious and non-contentious work, both onshore and offshore. His instructions span the whole spectrum of Chambers' work including: advising trustees in relation to the administration of a trust (including charitable trusts as well as commercial and private trusts), appearing as sole and junior counsel in breach of trust claims and claims challenging trustees' decision-making generally, acting in probate disputes and Inheritance Act claims and advising in relation to TOLATA claims and family trust disputes.

Notable instructions include:

- Appearing (with [Emily Campbell](#)) for the professional trustees in *Labrousche v Frey; Re Olga Martin-Montis Will Trusts* [2016] EWHC 268 (Ch). This was a seven-week trial in which a beneficiary of English will trusts alleged numerous breaches of trust by the trustees over a period spanning the 1980s to 2010. The claim raised a number of questions of Liechtenstein, Swiss and English law.
- Acting for the purchasers of an apartment in a dispute against their conveyancing solicitors for failing to advise in relation to the increased liability to Stamp Duty Land Tax as a result of a proposed variation to the transaction following exchange of contracts but before completion.
- Advising the trustees of an accumulation and maintenance trust as to whether a proposed distribution would comply with the requirements of section 71 of the Inheritance Tax Act 1984 and thus allow the settlement to remain subject to favourable tax treatment.



Trusts, Tax, Probate and Estate continued

- Acting for several heirs under Saudi Arabian law, who sought to have restrictions entered against the titles of UK properties as beneficiaries of an English resulting trust.
- Advising the settlor of a charitable trust of steps to take where the terms of all the trustees had expired without new trustees having been appointed.
- Appearing in the High Court to seek the removal of a co-executor because of his alleged fraudulent activities and to make related specific disclosure and third-party disclosure applications.
- Advising trustees of a charitable trust as to their powers in relation to the upkeep of a public recreation ground.
- Appearing in the High Court on behalf of a co-executor in relation to a specific disclosure application and directions for the administration of an estate.
- Appearing in the Court of Protection in relation to the disputed appointments of health and welfare attorneys, and property and financial affairs attorneys.
- Advising as to whether an *inter vivos* sale of property at an undervalue would be treated as an advancement under the deceased's will.
- Acting for the executors of an estate in relation to potential rectification claims arising out of conveyances of land containing mistakes as to the description of the parcels conveyed.
- Acting for the beneficiary of two will trusts in professional negligence proceedings brought against the solicitors retained to draft the wills of the testator and testatrix.
- Acting (with [Andrew Child](#)) for the father of a family who was being sued for alleged breaches of trust in relation to the management of the family's extensive property portfolio which was owned through various offshore entities.
- Acting for the trustees of an employee benefit trust in relation to the proposed sale of the shares in the company which formed the principal asset of the trust.
- Advising outgoing trustees of a large investment fund in relation to the vesting of onshore and offshore trust assets in incoming trustees.
- Appearing in various claims under the Inheritance (Provision for Family and Dependents) Act 1975, including acting for claimants, defendants and executors.