



## Simon Atkinson

Call: 2011

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### Clerks' Details

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### Qualifications and Appointments

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

*“He has an absolute mastery of the law and is also very good on his feet – clients have real confidence in him.”*

The Legal 500 UK, 2022

## Memberships

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

## Publications

- [You raise me up: but for how much longer? CGT and the uplift on death](#) (2021) *Wilberforce Chambers Tax Commentary*
- [International charitable trusts and IHT exemption](#) (2019) *Wilberforce Chambers Tax Commentary*
- [Rules of the DIFC Courts](#) (2018) *Wilberforce Chambers, 5th edition*
- [Approaches to applying a pension increase underpin \(FDR v Dutton\)](#) (2017) *Lexis®PSL*

## Practice Overview

Simon is an experienced and in demand practitioner. He has a broad Chancery practice; the core of his work comprises property, trusts and estates, pensions and commercial litigation.

Simon believes that the giving of practical and clear advice, combined with persuasive and fearless Courtroom advocacy and an eye for detail, are qualities which clients rightly demand and which he brings to the cases on which he is instructed.

Simon regularly appears in the higher courts as well as in the country court and in various tribunals. He is frequently instructed in alternative dispute resolution processes such as mediations and expert determinations (in which he has acted variously as both advocate and expert).

Cases with an international element form a significant part of Simon's practice. Recent instructions have concerned matters in Hong Kong, Singapore, the Channel Islands, Bermuda, the British Virgin Islands and Dubai. He has particular experience of disputes concerning assets and/or parties based in the Middle East. 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:

- **Goodrich v AB** [2022] EWHC 81 (Ch): Simon was instructed on behalf of the trustees in an important decision concerning the construction of settlements created prior to the Human Rights Act 1998, the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013. The trustees of two employee trusts sought directions concerning, *inter alia*, the construction of the terms "spouses" and "children" contained in a settlement deed dated April 1990, as well as directions concerning the possible sharing of confidential information between the trusts. The judgment considers the approach to construction of employee trust deeds given their commercial purposes and also whether it is possible to read down the CPA 2004 and the MSSCA 2013 compatibly with ECHR rights, specifically articles 8 and 14, to eliminate potentially discriminatory outcomes between (i) spouses and civil partners, (ii) opposite sex and same sex spouses and (iii) children and step-children in older settlements.
- **National Stadium Project (Grenada) Corp v NH (Caribbean) Ltd** [2020] UKPC 25: This dispute arose out of the construction of a sports stadium in Grenada in the late 1990s and concerned the entitlement to a multi-million dollar fund which had been frozen when the dispute first arose back in 1999. After 20 years, an arbitration, and multiple court proceedings, the matter was finally resolved by the Privy Council in 2020. It is an important recent authority on the law of Quistclose trusts and equitable assignment.



## Publications continued

- [Where different legal systems collide: the decision in \*Labrousche v Frey & Ors\* \(2016\) \*Trusts & Trustees\* 22 \(7\): 741-752](#)
- [‘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 continued

- *Asturion Foundation v Alibrahim* [2020] 1 WLR 1627: These ongoing proceedings concern a multimillion-pound property on "Billionaire's Row" in North London. The fiercely contested claim raises multiple questions of Liechtenstein, English and Shari'a Law. Simon acts for Ms Alibrahim, a wife of the late King Fahd of Saudi Arabia, in proceedings brought by a Liechtenstein foundation seeking to set aside a conveyance of the property. The Court of Appeal judgment is now the leading authority relating to the striking out of proceedings for abuse of process where a party is alleged to have "warehoused" proceedings.
- *Long v Rodman* [2019] EWHC 753 (Ch), [2019] EWHC 2451 (Ch): Simon was instructed (along with [Andrew Mold QC](#)) on behalf of two of four beneficiaries of a c. USD130m estate who successfully sought the removal of the professional administrator following a bitterly contested dispute, in which the professional administrator was, unusually, held not to be entitled to recover the majority of his costs from the estate as a result of the way the litigation had been conducted.
- *PS Independent Trustees Ltd v China Shipping (UK) Agency Co Ltd* [2019] ICR 1375: Simon acted for the defendants in a claim for the recovery of a multimillion-pound debt allegedly owed by the defendants in respect of the funding of a defined benefit pension scheme. The claim raised novel questions concerning the interpretation of pensions legislation governing the circumstances in which companies who sponsor multi-employer pension schemes may be liable for debts where another sponsoring company enters into insolvency.
- *Catalyst Housing Limited v Martin* [2018] EWCA Civ 1206: Simon appeared as sole counsel for the appellants in both the renewed oral application for permission to appeal and the substantive appeal in proceedings concerning contractual succession to an assured tenancy under the Housing Act 1988.
- *Interactive Technology Corp Ltd v Ferster* [2017] EWHC 1510 (Ch); [2017] EWHC 1799 (Ch): Simon appeared (with [Clare Stanley QC](#)) in 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: Simon acted (with [Paul Newman QC](#)) for the successful appellant in 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.
- *Pollock v Reed* [2016] Pens LR 129: Simon acted (with [Edward Sawyer](#)) for 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): Simon acted (with [Emily Campbell](#)) for the professional trustees in a seven-week High Court trial concerning the administration of multi-million pound will trusts created in 1980. The claimant alleged various breaches of trust over decades by the professional trustees and against his own mother, a former lay trustee. The claim raised a number of complex issues of Liechtenstein, Swiss and English trust law.
- *Wood v Waddington* [2014] EWHC 1358 (Ch); [2015] EWCA Civ 538: Simon acted for the successful appellants in a right of way dispute between neighbouring landowners. The claim is now one of the leading authorities concerning the grant of rights of way by operation of law under section 62 of the Law of Property Act 1925.
- *Spencer v Fielder* [2015] 1 WLR 2786: Simon acted for the representative beneficiary in 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): Simon acted for the successful claimant in a trademark dispute between the owner of the 'Lush' cosmetics brand and the well-known online retailer.



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## Practice Overview continued

- *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.

## Trusts, Tax, Probate and Estates

Simon has a specialist trusts and estates practice. He is frequently instructed in his own right, although he also acts as junior counsel in more substantial disputes. He undertakes 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:

- *Goodrich v AB* [2022] EWHC 81 (Ch): Simon was instructed on behalf of the trustees in an important decision concerning the construction of settlements created prior to the Human Rights Act 1998, the Civil Partnership Act 2004 and the Marriage (Same Sex Couples) Act 2013. The trustees of two employee trusts sought directions concerning, *inter alia*, the construction of the terms "spouses" and "children" contained in a settlement deed dated April 1990, as well as directions concerning the possible sharing of confidential information between the trusts. The judgment considers the approach to construction of employee trust deeds given their commercial purposes and also whether it is possible to read down the CPA 2004 and the MSSCA 2013 compatibly with ECHR rights, specifically articles 8 and 14, to eliminate potentially discriminatory outcomes between (i) spouses and civil partners, (ii) opposite sex and same sex spouses and (iii) children and step-children in older settlements.
- Appearing with [James Ayliffe QC](#) in *National Stadium Project (Grenada) Corp v NH International (Caribbean) Ltd* [2020] UKPC 25. This dispute arose out of the construction of a sports stadium in Grenada in the late 1990s and concerned the entitlement to a multi-million dollar fund which had been frozen when the dispute first arose back in 1999. After 20 years, an arbitration, and multiple court proceedings, the matter was finally resolved by the Privy Council in 2020. It is an important recent authority on the law of Quistclose trusts and equitable assignment.
- Appearing (with [Andrew Mold QC](#)) in *Long v Rodman* [2019] EWHC 753 (Ch), [2019] EWHC 2451 (Ch) on behalf of two of four daughters who successfully sought the removal of a Court-appointed professional administrator of their father's estate in a heavily contested application under s. 50 of the Administration of Justice Act 1985.
- 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.
- 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.
- 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.



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## Trusts, Tax, Probate and Estates continued

- 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.