



## Tim Penny QC

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### Clerks' Details

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### Memberships

- Tim is a member of the LCIA and COMBAR

*“An impressive and charming advocate who has excellent judgement in choosing the points to run and the way to put them”*

The Legal 500, 2021

## Practice Overview

Tim has a strong commercial and chancery litigation practice, specialising in the areas of commercial fraud, shareholder disputes, court-appointed receiverships, financial services related claims and breach of confidence, 'soft' intellectual property and sports disciplinary disputes.

Tim has a particular expertise in worldwide freezing orders and search orders, and much of his work involves injunctions and/or complex jurisdiction and conflicts of laws issues in England and Wales as well as in a variety of common law jurisdictions. He has been instructed to advise and act in many high profile commercial cases, including acting for a number of the defendants in *National Trust Bank v Yurov*, and for the wife the high value divorce case *Akhmedova v Akhmedov*. He has been involved in a number of important recent cases in the developing area of receiverships by way of equitable execution and cross-border recognition of court appointed receivers, and he is the author of the chapter of *Kerr and Hunter on Receivers and Administrators on Recognition of Foreign Court-Appointed Receivers (2020)* dealing with cross-border recognition. He has also been involved in the leading recent cases on collective investment schemes in the Supreme Court and Court of Appeal. Most recently, during 2020 he has completed a course on *Cryptocurrency and Disruption at LSE*, has delivered a lecture on litigation involving cryptocurrencies and is currently instructed on a fraud claim involving the misappropriation of cryptocurrency.

Tim is called to the Bar in the BVI, and is currently instructed in various high value cases in the BVI, the Turks & Caicos Islands and the Cayman Islands.

Tim is ranked in the directories in both commercial chancery and civil fraud.

Chambers and Partners 2021 describes Tim as *"A really brilliant, thoughtful and compelling advocate. His written work is excellent, and he's a pleasure to work with." "He's extremely thorough and capable of getting through a lot of material while maintaining the quality of his drafting. In his oral submissions he's able to represent some very dense and factually intricate material in a really clear and persuasive way. An excellent leader." "He is incredibly knowledgeable on civil fraud and freezing orders and has an assured advocacy style."*

The Legal 500 2021 notes that Tim is *"an impressive and charming advocate who has excellent judgement in choosing the points to run and the way to put them - he is particularly strong on jurisdictional issues and complex trust and tracing points."* Tim is also described as having a *"deep knowledge of the law, persuasive advocate, excellent in conference, a tremendous team player and a go-to QC for complex civil fraud"*.

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## Practice Overview continued

Chambers and Partners 2020 describes Tim as "*extremely user-friendly and has sound judgement. He's an impressive advocate and very likeable*". "*He brings a lot of weight to proceedings, and he makes a huge difference*." Furthermore, he is described as being "*bright, determined and supportive. He's always willing to fight his client's corner*" and is "*very persuasive in court and judges like and respect him*". The Legal 500 2020 describes him as "*very diligent and thoughtful - he treats every case as if he himself was a party to the litigation*". He is also described as "*an outstanding advocate whose charm and sound judgement inspire confidence in clients and court alike*".

## Commercial

Tim has been recommended for many years by the legal directories for commercial litigation and commercial chancery litigation. His practice covers both domestic and international disputes, his clients benefiting from his extensive experience in areas such as financial services, shareholder and partnership disputes, intellectual property, IT, sport as well as media and entertainment.

Some of his recent cases and instructions include:

- *Akhmedova v Akhmedov*; [2020] EWHC 3005 (Fam), [2020] EWHC 3006 (Fam), 28 October and 4 November 2020; without notice application for a search order and judgment on the return date in relation to this high value case.
- *October 2020*: instructed for the claimant on a claim involving allegations of misappropriation of cryptocurrency.
- *VTB Bank v Skurikhin* [2020] EWCA Civ 1337 (October 2020); Tim acted for the successful respondent in the English Court of Appeal in which the Court dismissed the appeal against the decision of the Commercial Court ([2019] EWHC 1407 (Comm)) whereby it dismissed the application of a Liechtenstein Foundation to discharge a receivership order obtained by Tim in 2015. Tim has acted in this matter for the claimant, a Russian Bank, since 2012. The case concerns the enforcement of Russian judgments totalling c.£20m against assets in England, Italy and the BVI. The judgment notably applies principles relating to issue estoppel and *Henderson v Henderson* abuse of the process.
- *Sebastian Holdings Inc. (acting by Court appointed receivers) v Sarek Holdings, Vik & others*, Supreme Court of the Turks & Caicos islands, 4 September 2020: Tim acts for receivers appointed by the English Commercial Court, who by this judgment obtained recognition of their appointment and powers in the TCI with a view to bringing high value proceedings in the TCI against parties alleged to have acted unlawfully by receiving assets belonging to Sebastian Holdings Inc., which is a judgment debtor of Deutsche Bank in England and Wales.
- *Raiffeisen International Bank AG v Scully Royalty Ltd*, Cayman Grand Court, Parker J, September 2020: Tim obtained an anti-suit injunction to restrain a defendant in this Cayman litigation from pursuing parallel proceedings in Malta
- *August/September*: instructed on a high value Cayman claim concerning alleged dissipation of assets by a group of companies headed by a Cayman topco.
- *Raiffeisen International Bank AG v Scully Royalty Ltd*, Cayman Grand Court, Parker J, 7 July 2020: Tim acts in this matter for the plaintiff, which claims that it is owed c.€100m and that its guarantor was asset-stripped by the defendants. RBI asserts claims pursuant to the Cayman Fraudulent Dispositions Law 1989 (1996 Revision) and in the tort of unlawful means conspiracy. By this Judgment, Parker J held that RBI had established its right to injunctions against the Cayman defendants and to serve other defendants outside the Cayman jurisdiction.
- *National Bank Trust v Yurov & Others* [2020] EWHC 100 (Comm), 23 January 2020, [2020] EWHC 757 (Comm), 27 February 2020 Lengthy judgment of the Commercial Court Judge, and judgment on consequential issues, following a 9 week Commercial Court trial. Tim represented the 2nd and 5th Defendants in this case in which a Russian Bank claimed damages in the sum of c.US\$1 Billion against its former director/shareholders arising out of breaches of duty arising under Russian law.

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## Commercial continued

- *VTB Bank v Taurus*, Jack J, Eastern Caribbean Supreme Court, BVI Commercial Court, 23 January 2020: Judgment of the BVI Court on the defendant's application to discharge an ex parte receivership, arising out of linked proceedings in England and Wales. This ongoing case involves claims by VTB Bank, the judgment creditor, that the judgment debtor is the beneficial owner of certain assets situate in the BVI.
- *Akhmedova v Akhmedov* [2019] EWHC 1705 (Fam). In this high profile divorce case, Tim successfully applied on notice for freezing order relief to prevent assets being removed from Dubai in support of the applicant's financial relief award of c.£500 million in the Family Division. The decision is notable for the finding of a good arguable case that individual directors of the corporate director of the respondent are to be treated as 'de facto' directors of the respondent.
- In *Woodward v Phoenix* [2018] EWHC 2152 (Ch), [2018] EWHC 334 (Ch), Tim was instructed in relation to an application for retrospective alternative service in circumstances where the limitation period has expired, following his successful appearance in the Supreme Court in *Abela v Baadarani* (2013).
- In *Hi-Level v Levine* [2018] EWHC 1882 (Ch), Tim obtained orders for further searches following a without notice 'doorstep Piller' order relating to breaches of database right and breaches of confidence.
- In *Best Friends v Barclays* [2018] EWCA Civ 601, Tim was instructed in the appeal concerning a mis-named claimant in a swap mis-selling case.
- In *Marashen v Kenvett* [2018] 1 WLR 288, the Court considered issues relating to alternative service orders in circumstances where service should ordinarily take place in a Hague Service Convention territory.
- In *BM-Bank JSC v Chernyakou* [2017] EWHC 2564 (Comm), Tim obtained the maximum 2 years sentence against a contemnor for multiple breaches of a high value WFO.
- In *Abela v Fakh* [2017] EWHC 269 (Ch), Tim successfully opposed an application to set aside a search order on jurisdictional and discretionary grounds. The case is notable as the first case expressly recognising the jurisdiction to grant search orders against third parties.

## Sports

Tim has a wide range of experience in sports law disputes and advised athletes and clubs on a variety of sporting issues, including doping and other disciplinary issues over the years. For many years The Legal 500 recommended him on sports law issues. In addition, he has lectured at sports law events on principles of natural justice in a sporting context.

- *The British Equestrian Federation v FEI* (CAS/2010/A/2058): represented the British Equestrian Federation before the CAS tribunal in Lausanne in its successful appeal against the decision of the FEI to relegate the British Nations Cup showjumping team at the end of 2009.

## Banking & Finance

Tim has a strong banking and financial services practice. In recent years, he has been particularly involved in litigation related to unregulated collective investment schemes.

Some of his recent cases include:

- *Raiffeisen International Bank AG v Scully Royalty Ltd*, Cayman Grand Court, Parker J, 7 July 2020: Tim acts in this matter for the plaintiff, which claims that it is owed c €100m and that its guarantor was asset-stripped by the defendants. RBI asserts claims pursuant to the Cayman Fraudulent Dispositions Law 1989 (1996 Revision) and in the tort of unlawful means conspiracy. By this Judgment, Parker J held that RBI had established its right to injunctions against the Cayman defendants and to serve other defendants outside the Cayman jurisdiction.

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## Commercial continued

- *National Bank Trust v Yurov & Others* [2020] EWHC 100 (Comm), 23 January 2020, [2020] EWHC 757 (Comm), 27 February 2020 Lengthy judgment of the Commercial Court Judge, and judgment on consequential issues, following a 9 week Commercial Court trial. Tim represented the 2nd and 5th Defendants in this case in which a Russian Bank claimed damages in the sum of c.US\$1 Billion against its former director/shareholders arising out of breaches of duty arising under Russian law.
- *The Financial Conduct Authority v Park First Limited & others* (2016–2020): Tim is instructed by the FCA in this very high value claim which is listed for trial in early 2022.
- *The Financial Conduct Authority v Capital Alternatives & 15 others* [2014] EWHC 144 (Ch), [2014] 3 All ER 780; [2015] EWCA Civ 284, [2016] EWHC 1984 (Ch), [2018] 3 WLUK 623: Tim headed up a team on 2 lengthy trials acting for the FCA: the first was a successful 10 day trial against 15 defendants on a preliminary issue of whether certain investment schemes were Collective Investment Schemes within s235FSMA, the defendants' appeal being dismissed by the Court of Appeal; the second was a 22 day trial on the FCA's claims under s.382 FSMA following which the FCA obtained substantial judgments against all of the defendants.
- *The Financial Conduct Authority v Asset L. I. Inc (trading as Asset Land) & others* [2016] UKSC 17; [2014] EWCA Civ 435 [2014] Bus LR 993; [2013] EWHC 178 (Ch) [2013] 2 BCLC 480: Tim headed up the FCA team in what was the first Unauthorised Business Department matter under s235 FSMA (collective investment schemes) to go to a fully contested trial and then to the Court of Appeal. Tim obtained without notice and on notice injunctions, closing down a £20 million 'land-banking scheme' and led the team at the subsequent trial of liability and the interim payment hearing.
- Tim regularly advises the FCA and private clients in issues relating to FSMA and in particular relating to the operation and promotion of collective investment schemes and other unregulated business.

## Civil Fraud

### Commercial fraud/cross-border cases

Tim has particular expertise in commercial fraud cases, many of which are cross-border. He therefore has excellent knowledge of search and worldwide freezing orders, jurisdiction and choice of law clauses and applications for permission to serve outside the jurisdiction; these cases often involve cross-examination on asset disclosure, contempt of court applications and without notice applications testing the boundaries of the court's jurisdiction to ensure that assets are eventually available for the enforcement of judgments or arbitral awards.

Tim is also experienced in taking steps to assist fraud disputes taking place abroad (for example, by orders under s.25 CJA) or in arbitrations. Tim's cases often involve allegations of breach of fiduciary duty and conspiracy.

### Some of his recent cases include:

- *Akhmedova v Akhmedov*: [2020] EWHC 3005 (Fam), [2020] EWHC 3006 (Fam), 28 October and 4 November 2020: without notice application for a search order and judgment on the return date in relation to this high value case.
- *October 2020*: instructed for the claimant on a claim involving allegations of misappropriation of cryptocurrency.
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- *Sebastian Holdings Inc. (acting by Court appointed receivers) v Sarek Holdings, Vik & others*, Supreme Court of the Turks & Caicos islands, 4 September 2020: Tim acts for receivers appointed by the English Commercial Court, who by this judgment obtained recognition of their appointment and powers in the TCI with a view to bringing high value proceedings in the TCI against parties alleged to have acted unlawfully by receiving assets belonging to Sebastian Holdings Inc., which is a judgment debtor of Deutsche Bank in England and Wales.
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- *VTB Bank v Taurus*, Jack J, Eastern Caribbean Supreme Court, BVI Commercial Court, 23 January 2020: Judgment of the BVI Court on the defendant's application to discharge an ex parte receivership, arising out of linked proceedings in England and Wales. This ongoing case involves claims by VTB Bank, the judgment creditor, that the judgment debtor is the beneficial owner of certain assets situate in the BVI.
- Between 2016 and 2020, Tim has been instructed as lead counsel for the claimant/ purchasers in a substantial multi-party cross-border claim arising from alleged breaches of warranty in a Sale and Purchase Agreement and allegations of breaches of fiduciary duty/secret profits by the leaving directors.
- *Akhmedova v Akhmedov* [2019] EWHC 1705 (Fam). In this high profile divorce case, Tim successfully applied on notice for freezing order relief to prevent assets being removed from Dubai in support of the applicant's financial relief award of c.£500 million in the Family Division. The decision is notable for the finding of a good arguable case that individual directors of the corporate director of the respondent are to be treated as 'de facto' directors of the respondent.
- In *Hi-Level v Levine* [2018] EWHC 1882 (Ch), Tim obtained orders for further searches following a without notice 'Doorstep Piller' order relating to breaches of database right and breaches of confidence.
- In *BM-Bank JSC v Chernyakou* [2017] EWHC 2564 (Comm), Tim obtained the maximum 2 years sentence against a contemnor for multiple breaches of a high value WFO.
- *Abela v Fakh* [2017] EWHC 269 (Ch) (search order); a judgment on the jurisdictional basis for the granting of a search order against a third party to the litigation. In 2013, Tim was involved in the Supreme Court ([2013] UKSC 44) in this long-running case in what is now the leading case on applications for permission to serve by alternative means under CPR r6.15 and r6.37 in non-Convention States; in 2015 Tim was involved in contempt of Court proceedings and in 2016 obtained WFOs and a search order.
- *Marashen v Kenvett* [2017] EWHC 1706 (Ch) (service outside the jurisdiction); an appeal on whether the Court was correct to permit alternative service within the jurisdiction of an application for a third party costs order in circumstances where, but for the alternative service order, service would have been effected through Hague Service Convention channels in Russia.

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## Commercial continued

- *FCA v Capital Alternatives* [2016] EWHC 1984 (Ch); a judgment on costs following cross-examination of a defendant on his defective asset disclosure.
- During 2016, Tim was instructed by the trustee in bankruptcy of a Russian individual in a complex case in restitution against third parties alleged to have been holding assets of c.\$14m belonging to the bankrupt. Tim obtained urgent without notice proprietary injunctive relief and the claim settled before trial.
- During 2015 and 2016, Tim was instructed by the claimant to enforce a c.US\$40m U.S. judgment in this jurisdiction; a without notice injunction was obtained and the claim eventually settled.
- In 2017, Tim obtained a 'Doorstep Pillar' against a party alleged to have defrauded a well-known technology company.
- Tim acted for the claimant who is endeavouring to enforce a USVI arbitration award in various offshore jurisdictions including in particular the Cayman Islands.

### Older cases include:

- *VTB Bank v Skurikhin and others* [2015] EWHC 2131 (Comm); [2014] EWHC 2254 (QB); [2014] EWHC 1053 (Comm); [2014] EWHC 271 (Comm); [2013] 2 All ER 418 (Comm); [2012] EWHC 3116 (Comm); [2012] EWHC 3916 (Comm) : Tim acted for VTB, one of Russia's largest banks, in a claim which started off as a contested 'without notice' claim for interim relief under s25 CJA 1982 in support of proceedings in Russia against a high profile Russian businessman, and concluded with the appointment of an equitable receiver against the target entity.
- *A v B* [2014] EWHC 719 (Ch); [2013] EWHC 1776 (Ch); [2013] EWHC 330 (Ch): Between 2009 and 2014 Tim acted for the successful claimants in this £3 million fraud claim. Tim obtained a WFO in late 2009 and conducted a 15-day trial in early 2013, following which his clients obtained a substantial judgment for dishonest breaches of fiduciary duty and forfeiture of agent's commissions/fees. Post-judgment, Tim obtained a WFO against the judgment debtor's offshore trust company, post-judgment disclosure orders a post-judgment charging order and the claim settled in the middle of a trial under s423 of the Insolvency act 1986.
- *A v B*: In this case arising in the regulated sphere, Tim acted for a defendant facing allegations of bribery and breach of fiduciary duty.
- *Key Homes v Patel* [2014] WL 16417: Tim acted for the defendant in this £20m claim, in which the client sought to challenge the jurisdiction of the Court to hear the claim.
- *Ukrsibbank v Polyakov* (2013): Tim was part of a team instructed by the claimant in a US\$100m WFO pursuant to section 25 CJA in support of proceedings in Ukraine.

## International Arbitration

Tim's commercial practice also involves domestic and international Arbitration. He is a member of the *London Court of International Arbitration (LCIA)*.

### Recent work:

- During 2019 and 2020, Tim has been advising funders in relation to a substantial ICC arbitration.
- In 2017/2018, Tim was instructed in a Russian shareholder arbitration in the LCIA involving allegations of corporate raid and economic duress.
- During 2015/2016, Tim acted for a well-known British vehicle manufacturer in an ICC arbitration against a foreign franchisee.
- Tim has appeared in the Court of Arbitration for Sport in Lausanne on behalf of the British Nations Cup team, having previously appeared in Geneva before the world governing body in Geneva.
- He has successfully acted for the British Equestrian Federation in a sports disciplinary dispute arbitration, and has appeared in the British Archery Federation internal tribunal.
- Tim acted for the claimant who endeavoured to enforce a USVI arbitration award in various offshore jurisdictions in particular the Cayman Islands.