



Tim Penny QC

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Memberships

- Tim is a member of the LCIA and COMBAR

“Brilliant in all respects. He is tactically astute, quick to grapple with complex issues of law and a first-rate advocate.”

The Legal 500, 2022

Practice Overview

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

Tim has a particular expertise in worldwide freezing orders and search orders, and much of his work involves high value injunctions and/or jurisdiction / conflicts issues in England and Wales as well as in a variety of common law jurisdictions.

He has been instructed recently to advise and act in many high profile commercial cases, including acting for 2 of the 6 defendants in *Abu Dhabi Commercial Bank v Shetty & others*, a \$1B+ claim arising out of the collapse into administration of NMC Health PLC (2020-2022), 2 of the 6 defendants in the \$1B claim in *National Trust Bank v Yurov* (2019-2020) and for the wife in the high value divorce case *Akhmedova v Akhmedov* (2019-2020). 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. During 2020 he completed a course on *Cryptocurrency and Disruption* at LSE, and has been instructed on several fraud claims involving the misappropriation of cryptocurrency.

Tim is called to the Bar in the BVI, and is currently instructed in high value litigation 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 2022 notes that Tim **"presents very dense and factually intricate material in a really clear and persuasive way."** He is **"a really brilliant, thoughtful and compelling advocate. His written work is excellent, and he's a pleasure to work with."** and that **"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."**

The Legal 500 2022 describes Tim as **"an excellent advocate whose thoughtful, balanced and considered style is highly effective."** and **"brilliant in all respects. He is tactically astute, quick to grapple with complex issues of law and a first-rate advocate."**



Practice Overview continued

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"*.

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:

- *Wang v Darby* [2021] EWHC 3054 (Comm): November 2021: cryptocurrency dispute involving a WFO and an issue as to whether the cryptoassets in question were held on trust.
- *Wang v Darby* [2021] EWHC 3125 (Comm) November 2021: cryptocurrency dispute involving a proprietary injunction and a question whether the defendant should be entitled to use funds caught by the injunction to fund his legal fees.
- *Von Der Heydt Invest SA v Mex Clearing Limited & others* BVIHC (COM) 2021/0073 and 2020/p215, 19 October 2021, Jack J: judgment upholding and continuing a WFO and dismissing an application to discharge a WFO granted in connection with a claim by third party Noteholders under Luxembourg Loan Notes to set aside a Tomlin Order for fraud and unlawful means conspiracy.
- *Domestic & General Insurance PLC v Homeshield Direct Ltd* [2021] 4 WLUK 278: April 2021: opposition to an application for pre-action disclosure in a matter involving allegations of fraud.
- *Raiffeisen International Bank AG v Scully Royalty Ltd*, Cayman Grand Court, Parker J, March 2021: successful opposition to jurisdiction applications issued by 2 of the 8 defendants in this long-running asset-stripping dispute in Cayman, acting for the claimant bank.
- *Sebastian Holdings Inc. (acting by Court appointed receivers) v Sarek Holdings, Vik & others*, Supreme Court of the Turks & Caicos islands, 11 February 2021: judgment on consequential issues including the 'Barrell jurisdiction' and costs, acting for court-appointed receivers.
- *Abu Dhabi Commercial Bank v Shetty* [2020] EWHC 3692 (Comm): December 2020: application for the imposition of a limited confidentiality club on the 1st return date of a \$1B WFO relating to the collapse of NMC Health PLC, acting on behalf of the second and third defendants.
- *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.



Commercial continued

- *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.
- *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.

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, March 2021: successful opposition to jurisdiction applications issued by 2 of the 8 defendants in this long-running asset-stripping dispute in Cayman, acting for the claimant bank.



Banking & Finance continued

- *Abu Dhabi Commercial Bank v Shetty* [2020] EWHC 3692 (Comm): December 2020: application for the imposition of a limited confidentiality club on the 1st return date of a \$1B WFO relating to the collapse of NMC Health PLC, acting on behalf of the second and third defendants.
- *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.
- *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 have an international flavour and involve cross-border issues such as jurisdiction disputes, anti-suit injunctions and foreign law considerations. He has excellent knowledge of search orders and worldwide freezing orders. 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 dishonesty, breach of fiduciary duty and conspiracy.

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Civil Fraud continued

- *Wang v Darby* [2021] EWHC 3125 (Comm) November 2021: cryptocurrency dispute involving a proprietary injunction and a question whether the defendant should be entitled to use funds caught by the injunction to fund his legal fees.
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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 advised 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 sought to enforce a USVI arbitration award in various offshore jurisdictions in particular the Cayman Islands.