

TOM FAIRCLOUGH

Call 2015

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Practice Overview

Tom's practice focuses on commercial, professional negligence, travel, insurance, property damage, and employment litigation. He specialises in cases where conflicts of laws issues arise. He has experience of working on high profile, high value and sensitive inquiries and litigation, including being led by a range of QCs.

Highlights of Tom's current and recent include:

- Acting as junior counsel (led by Charles Dougherty QC and Isabel Barter) in litigation arising out of the Grenfell Tower fire.
- Acting as junior counsel (led by Charles Dougherty QC) in a large-scale claim involving emissions and diesel engines.
- *Colley v Shuker and ors* [2020] EWHC 3433 (QB): acting as junior counsel (led by Marie Louise Kinsler QC) in a claim pleaded at £10m+ involving disputes as to the scope and effect of European Union insurance law.
- Advising (led by Howard Palmer QC) on the scope and effect of an insurance policy designed to cover multiple litigation funding investments worth £10m+.
- Acting as junior counsel (led by William Clerk) for the applicant in an *ex parte* worldwide freezing order application involving jurisdiction and applicable law disputes.
- Acting as sole counsel in a complicated haulage claim involving significant battle of the forms issues.

Prior to joining Chambers, Tom graduated first in his year (University of Reading), achieved a distinction in a master's degree (University College London), and was awarded a PhD by the University of Cambridge after being examined by Lord Reed (President of the Supreme Court). Tom continues to teach at the University of Cambridge, where he is a Bye-Fellow in Law at Murray Edwards College. Tom's College profile, with a fuller list of publications, is available [here](#).

Practice areas

Commercial
Employment
Insurance
Personal Injury
Private International and Travel Law
Product Liability
Professional Negligence
Public Law

Education

Gonville and Caius College, Cambridge (PhD)
University College London (LLM): Distinction
University of Reading (LLB (Hons)): First class, first in year

Scholarships and Awards

AHRC Scholarship (University of Cambridge)
Administrative Law Bar Association Scholarship
Exhibition Award and Duke of Edinburgh Scholarship (Inner Temple)
Sweet and Maxwell Law Prize (University of Reading)
Chancellor's Prize (University of Reading)
The Blandys' Prize (University of Reading)



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For the legal year 2019-20, Tom was the Judicial Assistant to Lady Arden and Lord Leggatt at the Supreme Court and Privy Council, where he was exposed to a number of high-profile cases across a range of disciplines.

Commercial

Tom practises across the full spectrum of commercial work, including multi-track and High Court trials, injunctions and a variety of applications. Recent examples include:

- Acting as junior counsel in a claim worth c £600m+ involving questions of contractual interpretation, transferred loss, and agency.
- Acting as sole counsel in a High Court claim against a group of companies, all in administration, seeking declarations and/or remedies for breach of contract, deceit, and misrepresentation.
- Acting as sole counsel in a High Court claim involving significant battle of the forms issues.
- Acting as sole counsel in a High Court claim involving questions of breach of contract, liens, and conversion.
- Acting as junior in an *ex parte* application for a worldwide freezing order involving allegations of unlawful means conspiracy, deceit, and breach of contract.
- Acting as sole counsel in a commercial trial focusing on the correct identity of the Defendant.

During his time at the Supreme Court, Tom worked on, *inter alia*, *Shagang Shipping Company Ltd (in liquidation) v HNA Group Company Ltd* [2020] UKSC 34; *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48 (on which Tom co-authored a chambers' case note, available [here](#), and authored a piece in the Cambridge Law Journal, available [here](#)); and *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38 (on which Tom co-authored a case note, available [here](#)).

Employment

Tom has been instructed in numerous preliminary and multi-day final hearings before the Employment Tribunal involving, for example, issues of gross misconduct, directors, constructive dismissal, notice and holiday pay, and the impact of Covid-19 on working patterns. Tom has also worked on cases involving breach of confidentiality and restrictive covenants.

Whilst at the Supreme Court, Tom worked on cases including *Uber BV v Aslam* [2021] UKSC 5; *Royal Mencap Society v Tomlinson-Blake* [2021] UKSC 8; and *Asda Stores Ltd v Brierly* [2021] UKSC 10. In June 2020, Tom

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gave a webinar on vicarious liability following new Supreme Court judgments (available [here](#)).

Insurance

Tom has worked on cases involving coverage and subrogation disputes in relation to commercial property, financial fraud, fees charged by financial institutions, and litigation funding agreement insurance.

Recent work has included:

- Advising (led by Howard Palmer QC) on an insurance policy designed to cover multi-million pound litigation funding investments.
- Being led by Marie Louise Kinsler QC in *Colley v Shuker and ors* [2020] EWHC 3433 (QB), which concerns the scope and effect of European Union insurance law Directives.
- Assisting senior counsel in a dispute concerning a financial institution's policy coverage concerning fees wrongly charged to customers.

Personal Injury

Tom practises across the full spectrum of personal injury litigation. He has advised on and acted in matters involving injuries sustained abroad, employers' liability, complex procedural applications, public authority liability, and multi-defendant cases with indemnity disputes. He is happy to consider work on a CFA basis and is particularly interested in cases involving alleged breaches of duty by the state.

Highlights of Tom's recent work include:

- Acting as junior counsel in litigation arising out of the Grenfell Tower fire.
- Being instructed as junior counsel in long running litigation involving a multi-million pound personal injury claim with complicated questions of EU law.
- Advising on novel duties of care.
- Advising in relation to novel psychiatric injury claims.
- Acting for a Defendant in a claim with ten other Defendants.
- Acting in a range of construction site accident cases involving multiple defendants and indemnity issues.

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Private International and Travel Law

Tom has a busy private international and travel law practice, specialising in cases where conflict of laws issues arise. He has particular expertise in Montreal Convention and accident abroad cases, and is happy to consider instructions on a CFA basis. His recent work includes:

- Advising on the Brussels Recast transitional provisions, particularly on when/if Brussels Recast can be relied upon post-transition period.
- Acting in an *ex parte* worldwide freezing order matter with jurisdiction and applicable law issues.
- Frequently acting in Part 11 jurisdiction hearings, particularly ones involving issues regarding the end of the Brussels Recast regime.
- Advising on the standard and burden of proof in jurisdiction challenges.
- Acting in matters involving disputes as to the content of foreign law.
- Drafting in a matter concerning a death at sea with jurisdiction and applicable law issues.
- Drafting in a case concerning several possible applicable laws and multiple Defendants.
- Acting in a range of holiday claims including Montreal Convention, holiday sickness, and conflicts of laws issues.
- Acting in a matter involving a *lis pendens* challenge.

Whilst at the Supreme Court Tom worked on cases such as *and Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38 (on which Tom co-authored a [case note](#)) and *Aspen Underwriting Ltd v Credit Europe Bank NV* [2020] UKSC 11 (on which Tom co-authored a [Practical Guide](#)).

Product Liability

Tom has worked in matters involving a range of product liability issues. He is currently instructed (as sole counsel and led) in a range of cases involving Parts 1 and 2 of the Consumer Protection Act 1987, in particular their operation post-Brexit.

Recent highlights include:

- Acting as junior counsel (led by Charles Dougherty QC and Isabel Barter) in litigation arising out of the Grenfell Tower fire.
- Instructed as sole counsel in multi-track litigation relating to an allegedly defective household electrical product that allegedly caused severe personal injury. This matter involves disputes as to the content of foreign law.

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- Assisting more senior counsel in litigation relating to allegedly defective diving equipment. This matter involves disputes as to the content of foreign law.
- Assisting Charles Dougherty QC and Isabel Barter with *Wilson v Beko plc* [2019] EWHC 3362 (QB), the leading case on the interrelation between Parts 1 and 2 of the Consumer Protection Act 1987

Professional Negligence

Tom's professional negligence practice includes dealing with allegations against a wide range of professionals, including accountants, solicitors and surveyors. Recent work includes:

- Acting for an accountant in disciplinary proceedings brought by their regulatory body concerning alleged breaches of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
- Acting in multiple solicitors' negligence cases, one of which recently led to a drop hands offer from the Claimant after the Defence was filed and served.
- Representing a surveyor at trial in a matter involving disputes over breach, causation, and the correct measure of loss.
- Advising in a construction dispute that had allegedly led to substantial diminution in value to the Claimant's property.

Public Law

Tom has extensive experience in public law. His doctorate focused on administrative law and he has published with Hart, the Cambridge Law Journal, Judicial Review, and the UK Constitutional Law Blog. Tom's work was recently cited in the Independent Review of Administrative Law report, chaired by Lord Faulks QC.

Tom supervises administrative law at the University of Cambridge and is a member of the Attorney General's 'Junior Junior' Scheme.

Tom's recent work includes:

- Advising on the state's positive obligations under the Human Rights Act 1998.
- Advising in relation to a regulatory body's disciplinary procedure's compatibility with procedural fairness requirements.

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- Acting as junior counsel to Marie Louise Kinsler QC in a High Court matter that requested, *inter alia*, a reference to the CJEU.
- Working on the Brook House Inquiry.
- Working on Napier Barracks litigation.

Whilst at the Supreme Court, Tom worked on cases including *R (Miller) v The Prime Minister* [2019] UKSC 41; *R (Palestine Solidarity Campaign Ltd) v Secretary of State for Communities and Local Government* [2020] UKSC 16; *AM (Zimbabwe) v Secretary of State for the Home Department* [2020] UKSC 17; and *R (Maughan) v Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 46.

At the Supreme Court Tom was invited to be part of a small team that produced materials for the Justices on European Union law post-Brexit.

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