

Tom Fairclough

Call 2015



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Described as “*an exceptional lawyer throughout*” and “*thorough, knowledgeable and always approachable*”, Tom’s practice involves most aspects of civil commercial work, and he has particular expertise in group litigation and cases where conflicts of laws issues arise.

Prior to joining Chambers, Tom graduated first in his year before being awarded a PhD after being examined by Lord Reed. Tom taught at the University of Cambridge for seven years and was a Director of Studies in Law and a Bye-Fellow in Law at Murray Edwards College, Cambridge.

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.

Expertise

Commercial

Tom practises across the full spectrum of commercial work from interim relief to trials. Recent examples are below.

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](#)).

Notable Commercial cases

Acting as junior counsel (led by Charles Dougherty KC) in group litigation involving allegations of a multi-national commercial fraud (ongoing).

Acting as junior counsel in a claim worth c £600m+ involving questions of contractual interpretation, transferred loss, and agency (ongoing).

Acting as junior counsel in a successful ex parte application for a worldwide freezing order involving allegations of unlawful means conspiracy, deceit, and breach of contract.

Acting as sole counsel in successfully obtaining an emergency interim mandatory injunction in a commercial property dispute.

Acting as successful sole counsel in a High Court claim relating to an alleged Singaporean commercial fraud.

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 (claim settled).

Acting as sole counsel in a High Court claim involving significant battle of the forms issues (claim settled).

Acting as sole counsel in a breach of contract claim relating to a sunken vessel (claim settled).

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.

Recent and current work includes successfully defending a rail company (unled) in a discrimination trial (and obtaining a costs order of over £30,000), acting (led by Niazi Fetto KC) in the three-week trial of *H v Ministry*

of Defence 2601422/2020, and being instructed in the appeal in *Rubery v Ministry of Defence* 3312963/2021.

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 gave a webinar on vicarious liability following new Supreme Court judgments (available [here](#)) and in July 2022 gave a webinar on Equality Act 2010 claims and limitation (available [here](#)).

Group Litigation

Tom is often instructed in group claims, which frequently have an international dimension. Tom is happy to consider acting on a CFA.

Ongoing examples include:

The Grenfell Tower Litigation: Acting (led by David Turner KC, Clare Dixon KC, and Isabel Barter) for the Royal Borough of Kensington and Chelsea and the Kensington and Chelsea Tenant Management Organisation in litigation arising out of the Grenfell Tower fire.

The BMW NOx Diesel Emissions Group Litigation/NOx Emissions Group Litigation: Acting (led by Charles Dougherty KC) for BMW in a GLO that is currently managed with 12 other GLOs involving over a million Claimants. The President of the KBD has noted “*the scale of the litigation is unprecedented*”.

Various Claimants v (1) Crispin Odey and (2) Odey Asset Management LLP: Acting (led by Christopher Russell) in claims relating to alleged sexual assaults dating to the early 1990s. A hearing took place in March 2024 at which Master Sullivan, considering *Abbott v MoD* [2023] EWHC 1475 (KB), severed the initial Claim Form and required each Claimant to issue a Claim Form, with the claims to be case managed together in the future.

Insurance

Tom frequently acts in insurance coverage (including fraud) disputes. Such claims often also involve property damage and/or product liability issues.

Notable Insurance cases

Acting (led by Howard Palmer KC) in an arbitration relating to policy coverage and cancellation clauses (arbitration concluded).

Advising (led by Howard Palmer KC) on an insurance policy designed to cover multi-million pound litigation funding investments.

Acting (led by Marie Louise Kinsler KC) in *Colley v Shuker and ors* [2020] EWHC 3433 (QB), which concerns the scope and effect of European Union insurance law Directives.

Acting as sole counsel for an insurer in a coverage dispute including allegations of fraud and raising novel questions regarding restitutionary principles (claim settled in insurer's favour).

Personal Injury

Tom practises across the full spectrum of personal injury litigation. Examples include working on matters involving injuries sustained abroad, employers' liability, complex procedural applications, public authority liability, sexual assaults, and multi-defendant cases with indemnity disputes.

Tom is happy to consider work on a CFA basis and is particularly interested in cases involving alleged breaches of duty by the state.

Notable Personal Injury cases

Acting as junior counsel (led by David Turner KC, Clare Dixon KC, and Isabel Barter) in ongoing litigation arising out of the Grenfell Tower fire.

Acting as junior counsel (led by Christopher Russell) in (1) *JFM* and (2) *MAM v (1) Crispin Odey and (2) Odey Asset Management LLP*, an ongoing claim regarding alleged historic sexual assaults.

Acting as junior counsel (led by Niazi Fetto KC) in *H v Ministry of Defence* 2601422/2020, concerning personal injury resulting from sexual assault allegations.

Acting as junior counsel (led by Marie Louise Kinsler KC) in long running litigation involving a multi-million-pound personal injury claim with complicated questions of EU law.

Winks v HUK [2024] 1 WLUK 31: Acting for the successful Appellant in a dispute regarding whether claims relating to accidents abroad can be litigated in England and Wales.

Private International Law

Tom has a busy private international law practice, specialising in cases where conflict of laws issues arise.

He is happy to consider instructions on a CFA basis. His recent work examples can be seen below.

Whilst at the Supreme Court Tom worked on cases such as *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](#)).

Notable Private International Law cases

Winks v HUK [2024] 1 WLUK 31: Acting for the successful Appellant in a dispute regarding how the forum conveniens test should operate in accident abroad cases.

Acting (as sole counsel) in a contested registration of a foreign judgment involving allegations of fraud in Singapore worth over \$1,500,000.

Acting as junior counsel (led by Charles Dougherty KC) in a disputed Hague Evidence Convention matter.

Acting (led by Will Clerk) in an ex parte worldwide freezing order matter with jurisdiction and applicable law issues.

Acting as junior counsel in a dispute relating to jurisdiction in a foreign parent company claim.

Advising and acting in a case involving a sunken vessel, breach of contract, and three jurisdictions.

Advising and acting in a contribution claim involving foreign applicable law and an arbitration agreement.

Product Liability

Tom is frequently instructed in products claims involving personal injury and property damage. Tom has a particular interest in cross-border product liability claims.

Notable Product Liability cases

Acting as junior counsel (led by David Turner KC, Clare Dixon KC, and Isabel Barter) in litigation arising out of the Grenfell Tower fire.

Acting as junior counsel (led by Charles Dougherty KC) in group litigation arising out of allegations of ‘defeat devices’ affecting vehicle performance.

Instructed as sole counsel in litigation relating to an allegedly defective household electrical product that allegedly caused severe personal injury. This matter involved disputes as to the content of foreign law.

Assisting Charles Dougherty KC 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.

Notable Professional Negligence cases

Acting as junior counsel (led by David Turner KC, Clare Dixon KC, and Isabel Barter) in litigation arising out of the Grenfell Tower fire.

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.

Representing a surveyor at trial 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 KC.

Tom supervised administrative law at the University of Cambridge for seven years and is a member of the Attorney General's 'Junior Junior' Scheme. Tom's recent work examples are below.

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.

Notable Public Law cases

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.

Acting (led by Niazi Fetto KC) in a matter concerning the Human Rights Act 1998 and the Employment Tribunal's jurisdiction.

Acting as junior counsel to Marie Louise Kinsler KC in a High Court matter that requested, inter alia, a reference to the CJEU.

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.

Working on the Brook House Inquiry.

Working on the Covid-19 Inquiry.

Working on Napier Barracks litigation.

Travel Law

Tom has an exceptionally busy travel law practice, and specialises in jurisdiction and/or applicable law disputes. He also has particular expertise in Montreal Convention and Athens Convention cases. His recent work can be found below.

At the beginning of his third year of practice Tom was ranked as one of six 'Rising Stars' in the field by Legal 500 and he is happy to consider instructions on a CFA basis. His recent work can be found below.

Whilst at the Supreme Court Tom worked on cases such as *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](#)).

Notable Travel Law cases

Advising (led by Meghann McTague) in a personal injury claim involving a yachting accident and the Athens Convention.

Instructed as sole counsel by the Claimants in a multi-day trial applying foreign law with a KC acting for the Defendant.

Advising and acting in a contribution claim involving foreign applicable law and an arbitration agreement.

Advising on the Hague Evidence Convention and the requirements for witnesses to give evidence from abroad.

Frequently acting in Part 11 jurisdiction challenges for both Claimants and Defendants.

Frequently advising on jurisdiction matters including burden and standard of proof and the scope of the PD6B Gateways.

Drafting applications (with supporting witness statements) applying to serve Claim Forms out of the jurisdiction.

Often acting in matters, including to trial, involving disputes as to the content of foreign law.

Acting in a range of holiday claims.

Awards

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

Education

- PhD, Gonville & Caius College, Cambridge
- LLM (Distinction), University College London
- LLB (Hons) (First), University of Reading

Case Reports

- *Halliburton v Chubb: Unlocking Arbitrator's Bias*
- *Enka v Chubb: Arbitration Agreements, Governing Law, and Party Choice*
- *Descending into the Arena: Supreme Court Guidance on Judicial Unfairness – Serafin v Malkiewicz & others (2020) UKSC 23*

Recommendations

"Tom is thorough, knowledgeable and always approachable"

Legal 500 2024

"Tom is very strong on each of the following: advocacy, commercial vision, level of expertise and sophistication of work and client service. Tom is an exceptional lawyer throughout."

Legal 500 2023