

SIMON ARNOLD

CALL – 2018

“A first-class junior... beyond user-friendly and a phenomenal addition to the team.”



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Simon is an acknowledged commercial litigation specialist.

His commercial litigation experience spans banking and financial services litigation, arbitration (domestic and overseas), construction litigation and professional liabilities including bringing and defending claims against a range of professionals in the legal, property, insurance, and construction sectors. Simon's commercial litigation practice includes advising on partnership and franchise disputes, insurance coverage matters (for both insurers and policyholder) and disputes arising from the sale of goods and manufacturing equipment, often with a conflict of laws element.

AREAS OF EXPERTISE

BANKING & FINANCIAL SERVICES

Recent Notable Insolvency Cases

- Defending an application for security for costs (£18m) brought by a clearing bank against a litigation funder where the underlying proceedings involved a LIBOR manipulation / mis-selling claim in which the damages claimed exceeded £600m (led by Michael McLaren QC, Fountain Court Chambers).
- Instructed by Shearman & Sterling LLP to assist with amendments to the Financial Services and Markets Bill promoting enhanced accountability for the U.K.'s financial services regulators and the introduction of a financial adjudication scheme and the establishment of a new financial services tribunal. The drafting included significant amendments to the Financial Services and Markets Act 2000, the Financial Services Act 2012 and the First Tier Tribunal and Upper Tribunal (Chambers) Order 2010.
- Instructed in respect of alleged mis-selling of structured foreign exchange derivatives. The issues involved complex technical issues concerning the nature and effect of the transactions and the close out costs (led by Adam Tolley QC, Fountain Court Chambers).
- Instructed by a global firm to settle Particulars of Claim to enforce various security documents

when the collateral held by the security agent was insufficient. Claims against several overseas-based guarantors.

- Advised a firm of solicitors in a claim against a clearing bank concerning its 'global restructuring group and settled the Particulars of Claim.
- Acting in a wide variety of financial disputes concerning claims which included alleged Financial Conduct Authority regulatory breaches under COBS and ICOBS, including issues as to whether such claims were actionable.
- Acting for two clearing banks in relation to a series of claims (ongoing) concerning the unfair relationship provisions under section 140A and the available remedies under section 140B of the Consumer Credit Act 1974. The legal issues involved include limitation (and often allegations of deliberate concealment under s32 of the Limitation Act 1980, compromise, unfairness, and the entitlement to statutory interest.

COMMERCIAL LITIGATION

Recent Notable Commercial Litigation Cases

- Instructed to advise the liquidators of a multinational company in respect of potential claims exceeding \$750m against its former auditors.
- Advising on an LCIA arbitration concerning a dispute arising under an international distribution agreement. Value circa \$20m.
- Instructed to enforce or oppose enforcement of several adjudicator's awards in the High Court in London, Leeds, Newcastle, and Manchester (including MG Scaffolding (Oxford) Ltd v Palmloch Ltd [2019] EWHC 1787 (TCC)
- Successfully represented the claimant in Part 8 declaratory relief proceedings regarding whether an individual entered into a construction contract in a representative rather than personal capacity. Maftoon t/a FM Construction Services v (1) Ahmed Sayed and (2) Lebaneat (Yarm) Limited [2020] EWHC 1801
- Instructed in respect of a claim made by a well-known Japanese car manufacturer against an Italian based manufacturer of 'stop-start' batteries. The claim value exceeded £100m and included claims made in several European countries.
- Acted for a regional contractor in a series of disputes with its groundwork sub-contractor across several projects, including advising on various adjudications; successful enforcement of an adjudicator's award; the defence of Part 8 proceedings; prosecution of separate Part 8 proceedings regarding declaratory relief as to whether a document was a valid 'pay-less' notice; and the defence of Part 7 proceedings involving the underlying dispute in the adjudication enforcement proceedings.
- Represented residential homeowners in a multi-day trial defending a claim for wrongful termination of a building contract and a lost profits claim.
- Acting for several homeowners in a claim brought against a national homebuilder alleging negligent design, defective workmanship, failures to comply with Building Regulations and NHBC codes of practice and breaches of the Defective Premises Act 1972.
- Acting in a multi-party dispute in the TCC in Manchester concerning claims arising in respect of

an 'eco-village' development.

- Advised and settled proceedings in respect of allegedly defective electrical installation work to an on-shore wind farm.
- Advised a Czech based manufacturer of specialist farming equipment in respect of a multi-party claim in which jurisdiction issues arose.
- Advised on several franchise dispute and have acted for the franchisor and franchisees in proceedings in the Business and Property Courts.
- Instructed to advise on factoring agreements / enforceability of assignments and proceedings against off-shore based parent company guarantors.

CONSTRUCTION

- Represented a design and build contractor in a claim against its engineering sub-contractor regarding the negligent design of an academy school roof.
- Acting for a quantity surveyor in two separate adjudications concerning interim valuations of two property developments. The claims arose on the administration of the contractor, and it was alleged the interim valuations were negligently over-valued. Successful in both adjudications.
- Instructed on a multi-party £10m+ claim concerning an allegedly defective rain-screen cladding system.
- Advised and settled proceedings in respect of allegedly defective electrical installation work to an onshore wind farm.
- Represented insurers of a mixed-use development heavily damaged by fire in claims against the architect, engineer and design and build contractor.
- Acted for a regional contractor in a series of disputes with its groundwork sub-contractor across several projects, including advising on various adjudications; successful enforcement of an adjudicator's award; defence of Part 8 proceedings; prosecution of separate Part 8 proceedings regarding declaratory relief as to whether a document was a valid 'pay-less' notice; and the defence of Part 7 proceedings involving the underlying dispute in the adjudication enforcement proceedings.
- Represented residential homeowners in a multi-day trial defending a claim for wrongful termination of a building contract and a lost profits claim.
- Acting for several homeowners in a claim brought against a national homebuilder alleging negligent design, defective workmanship, failures to comply with Building Regulations and NHBC codes of practice and breaches of the Defective Premises Act 1972.
- Acting for the leaseholders of a luxury development in their claims against an architect regarding the design of external balconies.
- Acting for various homeowners in multiple claims against national homebuilders in respect of new build properties.
- Successfully acting for a national charity defending a series of claims advanced against it by its former professional team concerning two separate building projects.
- Defending a restaurant in business in claims brought by its fit out contractors.

PROFESSIONAL NEGLIGENCE

Simon has many years of experience advising the leading insurers on claims concerning construction professionals (architects, engineers, project managers, quantity surveyors, geotechnical engineers, and design and build contractors). Simon has developed his professional liabilities expertise to advise on claims concerning legal, insurance, property and construction professionals and a summary of his experience is identified below.

Lawyers

Simon has significant experience of bringing and defending a wide variety of solicitor negligence claims including commercial and residential property transactions, alleged negligent conduct of litigation, failed transactions, claims in respect of multiple dwelling relief and defending alleged breaches of the GDPR, breach/invasion of privacy, negligence, misuse of private information and breach of confidence claims. Examples include:

- Drafting Particulars of Claim and other statements of case and attending interim hearings in respect of several claims brought by (generally) Far East based claimants against several firms of solicitors who acted for the claimants in the purchase of residential units in an off-plan mixed-use residential development. Simon acted unled for numerous claimants in several separate proceedings which were together case managed in the Manchester District registry. One of the actions in which Simon was sole counsel for the claimants was listed for a 5-week trial (November 2021) in the Chancery Division of the Manchester District registry but that (and other claims) were resolved at mediation.
- Acting for a firm of solicitors and defending at a multi-day trial allegations of professional negligence arising from the conduct of litigation concerning the renewal of a commercial lease.
- Acting for a City firm in a complicated matter where the Claimant alleged negligence in respect of advice given concerning her status as a potential executrix of an estate (where the death occurred abroad but the death certificate could not readily be obtained) and her potential interest in the proceeds of litigation in which she asserted an equitable interest. Trial listed for later in 2022.
- Advising generally concerning claims against solicitors in respect of commercial and residential property transactions, alleged negligent conduct of litigation and failed transactions.
- Advised a firm of solicitors in respect of numerous claims made by former and existing clients regarding alleged breaches of GDPR, breach/invasion of privacy, negligence, misuse of private information and breach of confidence claims.
- Advising on a potential claim against a barrister concerning the conduct of a multi-day trial regarding a claim by an individual against a bank and advising on related potential claims against the solicitors and other parties.

Insurance & Insurance Brokers

- Settled the Defence in a substantial claim brought by several claimants against an insurance broker. It is alleged that the broker failed to effect the relevant insurances in respect of an industrial unit and stock that was subsequently destroyed by a fire.

- Advising and settling Particulars of Claim in respect of claims brought under both Third Party (Rights Against Insurers) Act 2010 and the earlier 1930 Act.
- Advising insurers on coverage matters including breach of warranty, misrepresentation, scope of notification, extent and application of cover and advising on and drafting declinature letters.
- Advising policyholders in respect of denial of indemnity by insurers and acting in the subsequent litigation.

Surveyors

Simon's practice includes advising both lenders and residential purchasers on claims against surveyors and defending such claims. In particular:

- Advising a specialist lender on a claim (£1m+) against a commercial property surveyor concerning the valuation of a significant purpose-built student accommodation development.
- Drafting pleadings, attending interim hearings, and conducting several trials in respect of claims brought against cavity wall surveyors and installers.
- Defending and/or bringing claims against building surveyors in which it is alleged that the surveyor failed to identify defects in the buildings, Simon's experience spans both residential and commercial units.
- Prosecuting and defending claims against valuation surveyors.

Property Professionals

Simon defends claims brought against managing and letting agents, including claims (and appeals) in both the First Tier Tribunal (Property Chamber) and Upper Tribunal (Property Chamber):

- Defending in a two-day hearing in the FTT claims against the managing agent concerning the calculation and collection of maintenance charges and the application and/or validity of various section 20 notices and the operation of the Landlord and Tenant Act 1985.
- Acted for the successful respondent management company in an appeal to the Upper Tribunal. The claim had a complicated background and involved many applications by the tenant to the First Tier Tribunal over a number of years: see *Brett v Harlow Court Limited* [2022] UKUT 52 (LC)
- Drafting various defences in claims advanced against letting agents.

Construction Professionals

Simon's construction expertise spans claims both for and against construction professionals which is complemented by his experience of acting in non-insurance related construction matters. Simon's recent construction professional indemnity experience includes:

- Represented a design and build contractor in a claim against its engineering sub-contractor regarding the negligent design of an academy school roof.
- Acting for a quantity surveyor in two separate adjudications concerning interim valuations of two property developments. The claims arose on the administration of the contractor and it was alleged the interim valuations were negligently over-valued. Successful in both adjudications.

- Instructed on a multi-party £10m+ claim concerning an allegedly defective rain-screen cladding system.
- Advised and settled proceedings in respect of allegedly defective electrical installation work to an on-shore wind farm.
- Represented insurers of a mixed-use development heavily damaged by fire in claims against the architect, engineer and design and build contractor.

Construction & Engineering

Simon's non-professional liabilities construction experience includes:

- Instructed to enforce or oppose enforcement of several adjudicator's awards in the High Court in London, Leeds, Newcastle, and Manchester (including *MG Scaffolding (Oxford) Ltd v Palmloch Ltd* [2019] EWHC 1787 (TCC))
- Successfully represented the claimant in Part 8 declaratory relief proceedings regarding whether an individual entered into a construction contract in a representative rather than personal capacity. *Maftoon t/a FM Construction Services v (1) Ahmed Sayed and (2) Lebaneat (Yarm) Limited* [2020] EWHC 1801.
- Acted for a regional contractor in a series of disputes with its groundwork sub-contractor across several projects, including advising on various adjudications; successful enforcement of an adjudicator's award; defence of Part 8 proceedings; prosecution of separate Part 8 proceedings regarding declaratory relief as to whether a document was a valid 'pay-less' notice; and the defence of Part 7 proceedings involving the underlying dispute in the adjudication enforcement proceedings.
- Represented residential homeowners in a multi-day trial defending a claim for wrongful termination of a building contract and a lost profits claim.
- Acting for several homeowners in a claim brought against a national homebuilder alleging negligent design, defective workmanship, failures to comply with Building Regulations and NHBC codes of practice and breaches of the Defective Premises Act 1972.

ARBITRATION

Simon has significant current and past experience of LCIA, ICC and ad hoc arbitrations. They encompass disputes within the construction, transport, insurance, distribution and banking and financial services sectors. His practice is cross-jurisdictional, and he has been involved with matters that include the U.K, Italy, U.A.E., the Philippines Hong Kong, and Canada. Recent experience includes:

- Advising on an LCIA arbitration concerning a dispute arising under an international distribution agreement. Value circa \$20m.
- High value residential property dispute concerning dilapidations.
- Dispute as to whether firm of solicitors A was a successor practice to firm of solicitors B for the purposes of the successor practice rules. Value £10m+.
- Dispute between an employer and a professional services consultant providing multi-disciplinary

design and project management services. Value £10m+.

- Dispute between a global contractor and utility services provider regarding a dispute under the New Roads and Street Works Act 1991. Value £15m+.
- Advising in connection with a dispute regarding the design of the M&E services in a high profile overseas hotel.

QUALIFICATIONS

- 1992 – 1995 University of Lancaster, Law and Economics (2:1)
- 1995 – 1996 College of Law, Legal Practice Course
- 1998 – admitted as a solicitor
- 2016 – Higher Rights of Audience (civil)

MEMBERSHIPS

- Professional Negligence Bar Association
- North Eastern Commercial Bar Association
- North Eastern Circuit
- The Society for Construction Law
- TECBAR