



Simon Atrill

Call date

2005

Email

sa@fountaincourt.co.uk

Practice Areas

Simon is *"a star of the future ... very clever"* (*Legal 500 2011*). He has a broad commercial practice in line with Chambers' profile and is consistently ranked as a leading junior in Commercial Litigation, Banking and Finance and Civil Fraud in *Chambers and Partners* and the *Legal 500*, according to which he is *"performing well above his call"* (*Legal 500 2010*). Other recent comments from the directories include the following:

"excellent, user friendly and robust"

"combines a pragmatic and commercial approach with impressive drafting skills."

"a particularly capable junior ... calm, considered and clever"

"well capable of tackling matters of varying sizes and degrees of complexity"

"works well both on his own and as part of a larger team."

Summary of Practice

Simon has been involved in some of the largest scale commercial litigation in recent years. He acted for Barclays Bank (led by Iain Milligan QC/Jonathan Sumption QC and Andrew Mitchell) in the high-profile test case brought by the OFT against eight financial institutions in respect of the legality of current account charges. (Described as one of the top ten trials of 2008 in *The Lawyer* 14/1/08). Since then, he has been heavily involved in the litigation relating to the sale of payment protection insurance. He is also instructed (both as junior counsel and as sole counsel) in relation to a number of substantial 'credit crunch'-related matters, both in relation to advisory work and in ongoing litigation, including numerous claims related to complex financial instruments, issues arising from sub-prime mortgage lending and assorted questions relating to substantial credit facilities. During 2006-08, he acted for Rabobank Nederland (in a team led by Ali Malek QC and including Jeffrey Chapman) in the interlocutory, trial and appellate stages of the international commercial litigation between Rabobank and NatWest, which had a value of more than US\$200m (Described as one of the top ten trials of 2006 in *The Lawyer* 9/1/06, see also *The Lawyer* 4/9/06). The Court of Appeal heard the appeal in October 2008.

Simon's wider commercial practice has included instructions in relation to numerous large-scale commercial cases, including a substantial fraud claim involving multi-jurisdictional freezing orders (*Intercontinental Bank v Akingbola*, led by Michael Bloch QC), *Bank of Tokyo-Mitsubishi AFJ v Ferrero Group and others* [2009] EWHC 1276 (Ch) (appellate stage), a \$1bn Russian oil and gas dispute, a



significant telecommunications dispute involving two of the world's richest men, an ongoing Commission of Enquiry into the collapse of a multi-billion dollar banking and insurance conglomerate in Trinidad and Tobago and several large insurance disputes.

Simon is frequently instructed in cases of varying sizes and degrees of complexity, both on his own and as part of a larger team. Simon has experience in a wide range of commercial and civil matters, including:

- Arbitration
- Aviation
- Banking and Financial Services
- Chancery
- Civil Fraud
- Commercial Litigation
- Conflicts of Law and Jurisdiction
- Contractual Disputes
- Insurance and Reinsurance
- Professional Negligence
- Sale of Goods and International Trade
- Sports Law

Education

BA Law, St Catharine's College, Cambridge (Double First)
BCL, St John's College, Oxford (Distinction)
LLM, University of Pennsylvania (Summa cum laude) (First Class equivalent)
BVC, Inns of Court School of Law (Very Competent)

Recent Practice

Banking & Finance

OFT v Barclays Bank and seven other financial institutions
[2009] EWCA Civ 116; [2009] 2 W.L.R. 1286
[2008] EWHC 2325 (Comm); [2009] 1 All E.R. (Comm) 717
[2008] EWHC 875 (Comm); [2008] 2 All E.R. (Comm) 625

Simon acted for Barclays Bank plc (led by Iain Milligan QC/Jonathan Sumption QC and Andrew Mitchell) in the high-profile test case brought by the OFT against eight financial institutions in respect of the legality of current account charges. That has included acting for Barclays Bank in relation to the various trials in the Commercial Court and the appellate stage, as well as in the mercantile and county courts.

Payment Protection Insurance (PPI) litigation

Acting for Barclays Bank plc in the High Court and county courts, and advising in relation to issues arising from claims relating to sale of PPI. Also instructed in ongoing CCA-based claims against Barclays Bank in the High Court and county courts.

National Westminster Bank plc v Rabobank Nederland

[2007] EWHC 3163 (Comm); [2008] 1 All E.R. (Comm) 266; [2008] 1 Lloyd's Rep. 16



[2007] EWHC 1742 (Comm); [2008] 1 All E.R. (Comm) 243
[2007] EWHC 1056 (Comm);
[2006] EWHC 2959 (Comm); [2007] 1 All E.R. (Comm) 975

During 2006-07, Simon acted for Rabobank Nederland (in a team led by Ali Malek QC and including Jeffrey Chapman) in the interlocutory, trial and appellate stages of this international commercial litigation. Rabobank's claims for misrepresentation (including fraud) and breach of fiduciary duty, amounting to more than US\$200m, were tried in the Commercial Court before Colman J for twelve weeks in the autumn of 2006. (Described as one of the top ten trials of 2006 in [The Lawyer 9/1/06](#), see also [The Lawyer 4/9/06](#)). The Court of Appeal is due to hear the appeal in October 2008.

ICB v Akingbola

Simon was instructed (led by Michael Bloch QC) in relation to the defence of various claims in excess of £80m with associated multi-jurisdictional freezing orders, arising from the alleged misappropriation of assets from a major Nigerian bank.

Bank of Tokyo-Mitsubishi AFJ v Ferrero Group and others [2009] EWHC 1276 (Ch)

Simon acted (led by Anthony Boswood QC) in relation to the appellate stage in this substantial case (86 Court days at trial), relating to claims based on conspiracy to injure by unlawful means.

Dhanani v Crasnianski [2011] EWHC 926.

Simon acted (led by Marcus Smith QC/Robert Miles QC) in this two-week Commercial Court trial and subsequent appeal concerning a multi-million pound dispute about the establishment of a private equity fund.

Commission of Enquiry into the failure of CL Financial Ltd

Instructed by the Central Bank of Trinidad and Tobago (led by Bankim Thanki QC with Henry King) in relation to an Enquiry, led by Sir Anthony Colman, into the collapse of and subsequent State intervention in, the CLF Group resulting in billions of dollars in losses. Simon has been instructed in relation to multiple evidential hearings in Port of Spain during 2011.

Simon is frequently instructed on banking cases of varying sizes and degrees of complexity, recently including:

- Advising (with Michael Brindle QC) in relation to a substantial 'credit crunch'-related dispute involving derivatives
- Acting in relation to several multi-million dollar test cases in Hong Kong relating to alleged misselling of investments
- Acting in relation to the administration of a Middle Eastern bank and issues arising from unwinding of complex financial instruments (led by Marcus Smith QC)
- Acting for a lender in connection with alleged fraud relating to sub-prime mortgage lending (led by Michael Brindle QC and with Nik Yeo). Two-week trial on liability due January 2012.
- Acting for a prominent Middle Eastern company in relation to multiple claims in the High Court concerning various credit facilities (including jurisdictional and substantive issues)
- Acting for a high street bank in relation to a multi-million pound claim brought against it
- Advising in relation to multi-million pound claims against an investment advisor involving breaches of fiduciary duty and negligence
- Acting (with Richard Handyside QC) in relation to a multi-million pound arbitration
- Acting for a high street bank in relation to a negligence claim brought against it



- Acting for an American bank in relation to claims brought against it in the English High Court
- Acting in a claim brought by receivers of Heritable Bank plc after the credit crunch
- Acting for the Royal Bank of Scotland in relation to the recovery of losses arising from an alleged fraudulent moneylaundering scheme
- Acting for a customer in a claim against a major high street bank involving issues of misrepresentation, negligence and undue influence
- Advising major retail banks in connection with compliance with freezing orders and ancillary orders, including their international effect
- Various claims in relation to the enforcement of loans and their security (in particular, mortgages and guarantees)
- Numerous cases involving Consumer Credit Act issues (including PPI and other products)

Civil Fraud

National Westminster Bank plc v Rabobank Nederland;
ICB v Akingbola;
Bank of Tokyo-Mitsubishi AFJ v Ferrero Group and others.

See entries under Banking and Finance.

Acting for a lender in connection with alleged fraud relating to sub-prime mortgage lending (led by Michael Brindle QC and with Nik Yeo). Two-week trial on liability due January 2012.

Commercial Litigation/Contractual Disputes

National Westminster Bank plc v Rabobank Nederland;
OFT v Barclays Bank plc and seven others;
Bank of Tokyo-Mitsubishi AFJ v Ferrero Group and others;
ICB v Akingbola.

See entries under Banking and Finance.

Acting (with Tim Howe QC and Nik Yeo) in relation to a US\$1bn Russian oil and gas dispute.

Acting (led by Michael Brindle QC) for one of the world's richest men in a claim in the Cayman Islands for more than US\$200m concerning a shareholder dispute regarding a mobile telecommunications project in the Middle East.

Acting (with Anthony Boswood QC) in *Internet Broadcasting Ltd v Managed Accounts Reports LLC* [2009] 2 Lloyd's Rep. 295 (defending a claim for £6m arising from a dispute arising from an internet TV channel; case settled before CA hearing).

Advising (led by Brian Doctor QC and Jeffrey Chapman QC) in relation to shareholder disputes concerning two FTSE 100 companies.

Acting in relation to a substantial contractual dispute worth £1m relating to antique motorcycles (7-day High Court trial settled immediately before trial)



Frequently instructed in relation to seeking, resisting or advising on the effects of injunctive relief in the High Court (both freezing orders and other forms of injunction); acting (as appellant and respondent respectively) in several appeals in relation to decisions of High Court Masters.

Instructed as an expert witness in proceedings in the Netherlands concerning various disputes arising from shareholder agreements.

Arbitration

Simon has been instructed in a number of high-value commercial arbitrations including:

- A reinsurance arbitration (led by Michael Crane QC and Marcus Smith) with a value of approximately \$100m that settled shortly before the ten-week trial;
- A substantial LCIA arbitration (led by Richard Handyside QC);
- An aviation dispute (led by Bankim Thanki QC)

Insurance and Reinsurance

Simon has extensive experience of insurance and reinsurance disputes of varying sizes and complexity, both on his own account and also as part of a counsel team. For example:

- Simon was instructed in relation to a very substantial reinsurance arbitration (led by Michael Crane QC and Marcus Smith), with a value of approximately \$100m, that settled shortly before the ten-week trial.
- Instructed as sole counsel in relation to a Commercial Court reinsurance dispute
- Regularly instructed in connection with professional indemnity insurance disputes. In the last few years, he was led in several multi-million pound disputes of that kind, in particular relating to professional indemnity insurers for solicitors (including the insurers of a leading City law firm; led by Stephen Rubin QC) and accountants (led by Patricia Robertson QC),
- Instructed in relation to various insurance disputes relating to coverage and non-disclosure;
- Instructed in a multi-million pound claim raising issues of double insurance and coverage issues (led by Mark Simpson QC);
- Instructed by the Central Bank of Trinidad and Tobago (led by Bankim Thanki QC with Henry King) in relation to an Enquiry, led by Sir Anthony Colman, into the collapse of and subsequent State intervention in, the CLF Group and its insurance companies resulting in billions of dollars in losses, raising various insurance issues and questions of regulatory supervision of insurance products. Simon has been instructed in relation to multiple evidential hearings in Port of Spain.

In addition to work in connection with such larger disputes, he is frequently involved as sole counsel in relation to smaller scale disputes, across a range of insurance products and for a range of insurers (including being regularly and frequently instructed by Barclays Bank plc in relation to certain retail insurance products), and both in the provision of advice and as an advocate.

Conflict of Laws and Jurisdiction

Acting for a prominent Middle Eastern company in relation to multiple claims in relation to various credit facilities (including jurisdictional and substantive issues)



Acting (led by Michael Brindle QC) for one of the world's richest men in a claim in the Cayman Islands for more than US\$200m concerning a shareholder dispute regarding a mobile telecommunications project in the Middle East. Acting for a Texan company concerning issues relating to the enforcement of a Texan judgment in England.

Simon frequently advises in relation to questions relating to jurisdiction (including under the Judgments Regulation) and choice of law.

Professional Negligence

- Acting (with Richard Handyside QC) in relation to a multi-million pound arbitration
- Acting in relation to several multi-million dollar test cases in Hong Kong relating to alleged misselling of investments
- Advising (with Patricia Robertson QC) in relation to a substantial accountant's professional negligence case
- Advising in relation to multi-million pound claims against an investment advisor involving breaches of fiduciary duty and negligence

Publications

Civil Procedure:

- Legal Privilege and Mandatory Disclosure under the Proceeds of Crime Act 2002 [2005] LMCLQ (co-authored with Alex Barden)

International Commercial Litigation/Conflict of Laws:

- Sole Author, UK Government / Dept of Constitutional Affairs Summary of English Conflict of Laws rules for EU
Project: http://ec.europa.eu/civiljustice/applicable_law/applicable_law_gen_en.htm
- "Choice of Law in Contract: The missing Pieces of the Article 4 Jigsaw?" (2004) 54 International and Comparative Law Quarterly 559
- "The Enforcement of Foreign Judgments in Canada" (2004) 63 Cambridge Law Journal 574
- Book review: Adrian Briggs', *The Conflict of Laws* [2004] LMCLQ 265

Regulatory / Public Law / Human Rights:

- *The Law of Habeas Corpus*, Sharpe, Farbey and Atrill (3rd ed, 2011 OUP). The leading text on habeas corpus; previous editions were cited in the House of Lords, US Supreme Court and Canadian Supreme Court.
- "The Right to Property" in *Grosz, Beatson and Duffy on the Human Rights Act 1998* (Sweet & Maxwell forthcoming)
- "The End of Estoppel in Public Law?" (2003) 62 Cambridge Law Journal 3
- "Keeping the Executive in the Picture: a reply to Professor Leigh" [2003] Public Law 41



Fountain Court

- "Who is the 'fair-minded and informed observer'? Bias after Magill" (2003) 62 Cambridge Law Journal 272
- "*Nulla Poena Sine Lege* in Comparative Perspective: Retrospectivity under the ECHR and US Constitution." [2005] Public Law 107
- Book review: Conor Gearty, *Principles of Human Rights Adjudication* (2005) 64 Cambridge Law Journal

Other Experience

Supervisor in Conflict of Laws and Administrative Law, University of Cambridge (2004-05)

Internship with Jamaican Council for Human Rights, Kingston, Jamaica (working on Death Row appeals to the Privy Council) (June - September 2000)

Languages

Working knowledge of French and Spanish