



Tetyana Nesterchuk

Call 2011

"She is full of drive, ambition, enterprise, cleverness and is fearless: everything you need to be a good barrister."

Chambers & Partners

 tyn@fountaincourt.co.uk  +44 (0)20 7583 3335

Tetyana is an experienced litigator and arbitrator, and a native Ukrainian and Russian speaker.

She regularly acts in high profile, complex and sensitive cases, representing government bodies and high net worth individuals.

As an advocate, Tetyana is dynamic, hard-working and flexible, leaving no stone unturned. As a senior junior, she has significant advocacy experience, regularly appearing against silks.

As an arbitrator, Tetyana acted in numerous disputes in the LCIA (as chairwoman as well as sole arbitrator), is a recommended arbitrator by the Ukrainian Arbitration Association, and a member of ICC (Ukraine).

As a former lecturer in Trusts, Torts and Land law at Oxford University, and a former Judicial Assistant at the Supreme Court, Tetyana masterfully operates different areas of commercial and conflict of laws to come up with novel claims and defences. She is equally at ease bringing her knowledge of public and human rights law into her commercial practice, using innovative human rights-based arguments in commercial claims.

Tetyana is consistently recognised by legal directories and other publications for her innovative work, having been named as one of *The Lawyer's* 'Hot 100 2024', 'Barrister of the Week' by *The Lawyer* in May 2021 and one of the ten Stars at the Bar by the *Legal Week* in 2016.

Recent Highlights

Athena Capital v Secretariat of State for the Holy See [2022] EWCA Civ 1061

Dubbed by the media as the "trial of the century", the claim by Tetyana's clients brought against the Vatican's Secretariat of State seeks the English court to make declarations concerning the legality of the contracts for the sale of prime London property impugned by the Vatican due to allegations of corruption and misuse of charitable donations from the Peter Pence funds. Tetyana acted as a speaking co-counsel in the High Court, and in the Court of Appeal.

PJSC National Bank Trust v Mints [2022] EWHC 1132

Acting for Boris Mints in successfully defending an application by the Russian state-owned banks for summary judgment/ strike out and amendment of the claim against her client on the basis of findings allegedly made by an arbitral tribunal.

PJSC Bank “Finance and Credit” v Zhevago [2021] EWHC 2522

Representing the Ukrainian state Deposit Guarantee Fund, responsible for the management of failed Ukrainian banks, in bringing proceedings seeking the recovery of assets allegedly fraudulently removed from the bank.

VTB Bank v Firtash [2021] EWHC 1634 (Comm), [2021] EWHC 1023 (Comm)

Successfully representing a Ukrainian high-net worth individuals in an international dispute (spanning proceedings in Cyprus, Switzerland and England) with a Russian state-owned bank concerning loans to a Crimean business. She successfully obtained a discharge of the freezing order obtained against her client, citing (amongst other things) the Russian invasion of Crimea as the cause of the business failure, which earned her the nomination as “Barrister of the Week” by *The Lawyer*.

Expertise

Administrative & Public Law

Notable Administrative & Public Law cases

R (on the application of the London Borough of Hillingdon & Others) v Secretary of State for Transport

Acting for Arora Holdings Limited (an interested party) in a one day preliminary hearing in relation to the judicial review of the Airports National Policy Statement which contains the Government’s proposal for the expansion of Heathrow Airport.

R (Lumsdon) v Legal Services Board [2015] 3 WLR 121, [2015] EWCA Civ 421, [2014] HRLR 29, [2014] EWHC 28, [2013] EWHC 3289

Acting for the Bar Standards Board (led by Timothy Dutton KC) in a judicial review challenge of the QASA scheme brought by the Criminal Bar. Appearing at all levels from the Divisional Court to the Supreme Court. The case raised complex EU law and domestic public law issues including independence of advocates and judiciary, proportionality, compliance with the EU provision of services regulations and directives, compliance with Art 6 ECHR right to fair trial.

R (on the application of OJSC Rosneft Oil Co) v HM Treasury [2014] EWHC 4002 (Admin)

Appearing on behalf of the Financial Conduct Authority to resist an urgent application by Rosneft to stay the coming into force of UK secondary legislation implementing EU sanctions on companies providing certain oil exploration services in Russia. Raised issues of EU law as well as domestic public law.

Acting for six London Boroughs (led by Tim Dutton KC) in the JR challenge of the cuts to the local government funding.

Anderson Solicitors v SRA [2012] EWHC 3659

Acting in one of the leading authorities on the issue of publication of details of professional misconduct by the SRA. Tetyana successfully appeared as sole counsel for the SRA at the hearing dealing with issues of costs and the continuing effect of the interim anonymity order.

Banking & Finance

Notable Banking & Finance cases

ICC Arbitration

Acting for a Russian Bank in an arbitration concerning the mis-selling of certain derivatives, involving issues of causation of loss in an unstable financial market as well as cross-examination of experts on complex issues of valuation of derivatives and causation of loss.

Monks v National Westminster Bank Plc [2015] EWHC 2310 (Ch)

Acting for the NatWest bank in a four-day High Court trial arising out of a mortgage contracts disputes raising issues of banking law and practice as well as interpretation and bank's compliance with its duties to consumers under the FCA Code of Conduct.

Solomon v Barclays Bank Plc [2015] EWHC 1495 (Fam)

Successfully acting for Barclays Bank in a five-day High Court trial concerning the allegedly forged transfer of property secured to the Bank. The case raised issues of trusts and property law, as well as banking law and practice.

Patel v National Westminster Bank [2015] EWCA Civ 332

Acting as sole counsel for the Bank in High Court and Court of Appeal proceedings relating to non-payment of a Kenyan cheque, raising issues of conflict of laws in the context of claims on a foreign cheque and liability for loss of chance.

Appearing, as sole counsel, in a number of County Court and High Court proceedings acting for high street banks in disputes raising a variety of legal issues from consumer credit and bankruptcy laws to complaints under the Equality Act 2010 and mis-sale of PPI.

Advising on and settling pleadings for a wide number of claims against retail banks for mis-sale of PPI and interest rate hedging products.

Advising on construction of the ISDA Master Agreement.

Belmont Park Investments PTY Limited (Respondent) v BNY Corporate Trustee Services Limited & Lehman Brothers Special Financing Inc (Appellants) [2012] 1 AC 383

Assisting Lord Collins, as a judicial assistant in the Supreme Court, with the appeal in this case concerning the application of the anti-deprivation principle of insolvency law in the context of structured derivative transactions.

Civil Fraud

Notable Civil Fraud cases

Patel v Vaid

Acting (led by Paul Sinclair KC) for the defendants in a seven-day Chancery Court trial (settled on the fifth day of hearing) raising issues of principal's liability for agent's deceit, unlawful means conspiracy, Quistclose trusts, knowing receipt and restitution of payments induced by fraud or mistake.

AHAB v Al Sanea

Acting in civil fraud proceedings (led by Marcus Smith QC and Bridget Lucas KC) in the Cayman Islands raising complicated issues of tracing of assets through bank accounts.

Kazakhstan Kagazy Plc v Zhunus [2014] 1 CLC 451

Appearing in the Court of Appeal (led by Michael Brindle KC) successfully resisting an application to discharge a freezing injunction obtained by a group of Kazakh companies against its former director and chief executive officer who were accused of conspiring in a complex USD 150 million fraud. The case raised complicated issues of limitation under English and Kazakh laws in the context of civil fraud.

LCIA Arbitration

Acting (as part of a team led by David Foxtton QC) in a high-profile dispute between Mr Pinchuk and Msr Bogolyubov and Kolomoisky concerning the ownership of a Ukrainian iron ore mining business. The case raised a

multitude of legal issues ranging from company law to contractual interpretation, trusts and civil fraud.

Defending proceedings brought against a number of CIS parties for unlawful means conspiracy.

Commercial Disputes

Tetyana has particularly experience in cases involving conflicts of law and jurisdiction.

In addition, Tetyana has acted in numerous costs-related cases.

Notable Commercial Disputes cases

BPP Holdings Limited & Others v HMRC

Acting for HMRC in an ongoing contractual dispute concerning the issue of whether a settlement agreement is void for unilateral mistake.

Bhardwaj v RBS [2017] EWHC 340

Successfully acting for RBS in a three-day County Court trial and the appeal to the High Court (Chancery Division) raising issues of contractual interpretation and certainty of a settlement agreement, as well as issues of property law and the agreement's compliance with the Law of Property (Miscellaneous Provisions) Act 1989.

Kazakhstan Kagazy Plc v Zhunus [2014] 1 CLC 451

Appearing in the Court of Appeal (led by Michael Brindle KC) successfully resisting an application to discharge a freezing injunction obtained by a group of Kazakh companies against its former director and chief executive officer who were accused of conspiring in a complex US\$150 million fraud. The case raised difficult jurisdictional, legal and factual issues, including contribution as between two co-defendants, one of whom had settled with the claimant. In a ground-breaking decision the court held that freezing order could be granted in aid of a contribution notice.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2014] EWHC 4336

Acting for Mr Pugachev (led by Francis Tregear KC) on an application to dismiss a world-wide freezing injunction obtained by a Russian bank and a Russian state organisation responsible for conducting liquidations of credit institutions. Involved complicated issues of Russian as well as English law.

Appearing (as sole counsel) on behalf of an airline in the Commercial Court application for an adjournment of determination of a multi-million dollar dispute arising out of the wet lease arrangements.

Instructed (as sole counsel) to defend proceedings brought by a water re-seller against a UK charity. The

proceedings settled following exchange of pleadings and witness evidence.

Acting (as junior counsel to Marcus Smith QC and James Cutress KC) on behalf of a lender in a professional negligence dispute against the valuers of lender's security.

Markov v Sotheby's

Acting in a dispute relating to the title of a rare Russian medal (proceedings settled).

Acting for a national hotel chain defending a claim for breach of contract.

Commercial Disputes - Conflicts of law and jurisdiction

Tetyana has particularly experience in cases involving conflicts of law and jurisdiction.

Notable Commercial Disputes - Conflicts of law and jurisdiction cases

Erdenet v Government of Kazakhstan [2016] EWHC 299 (Comm) (led by Michael Brindle KC)

Acting for one of the largest ore mining companies in Asia in a dispute with the Government of Kazakhstan regarding non-payment of a multi-million debt. The case involved the issue of when it would be appropriate to set aside service out of jurisdiction at an interlocutory stage when jurisdiction agreement was contained in an oral contract.

JSC Mezhdunarodniy Promyshlenniy Bank v Pugachev [2014] EWHC 4336 (led by Francis Tregear KC)

Acting in relation to an application to strike out all claims against Mr Pugachev in the English courts for lack of jurisdiction. The jurisdictional issues raised were complicated since different rules applied to different claims brought (including for subsidiary liability, tort and unjust enrichment under Russian law and insolvency law claims under Russian and English law). The Claimants ultimately conceded at the door of the court that all their claims in the English courts ought to be stayed.

Advising (as sole counsel) on various conflict of laws issues arising out of proceedings for non-payment of a Kenyan cheque.

As a judicial assistant in the Supreme Court, assisting Lord Collins with the appeals *in NML Capital Limited v Republic of Argentina* [2011] 2 AC 495 which raised issues of enforcement of a foreign judgment against a foreign state and interpretation of contractual waiver of immunity provisions and *Lucasfilm Limited v Ainsworth* [2012] 1 AC 208 concerning English court's jurisdiction to try a claim for infringement of foreign copyright.

Commercial Disputes - Costs

Notable Commercial Disputes - Costs cases

BPP Holdings Limited (and others) v HMRC

Acting for the HMRC in a costs dispute concerning the issue of whether a settlement agreement is void for unilateral mistake.

R (Lumsdon) v Legal Services Board [2015] EWCA Civ 421

Appearing (as sole counsel) in the Court of Appeal on the costs application for judicial review which included issues of a protective costs order and a costs cap.

Appearing in several detailed assessment costs hearings.

Company, Restructuring & Insolvency

Notable Company, Restructuring & Insolvency cases

LCIA Arbitration

Acting in a shareholder dispute between two Cypriot companies raising issues of minority shareholder rights.

Advising a company on availability of civil and regulatory actions against its director for breach of directors' duties.

Advising a director on an application for permission to act as director whilst disqualified.

IGE Energy Services (UK) Limited v Baglan Operations Limited

Acting for a company in an application for an extension of the period of registration of a charge.

Advising on various aspects of company law, including shareholder disputes, director's duties and the law of shareholders' meetings.

Enviroco v Farstad [2011] 1 WLR 921

As a judicial assistant in the Supreme Court, assisting Lord Rodger with the appeal determining the meaning of

“subsidiary” and “member” in the Companies Act 1985.

As a corporate solicitor at Slaughter and May, advising on and drafting documentation for both public and private corporate transactions.

Competition

Notable Competition cases

As a solicitor at Slaughter and May during secondment to the Hong Kong office (under the supervision of relevant partners), drafting a response to the Hong Kong government’s proposals to introduce competition law in Hong Kong.

Financial Services

Notable Financial Services cases

F. (International) Limited v FCA

Acting for the FCA on an application by the firm to suspend the effect of FCA’s supervisory notice.

On the application of OJSC Rosneft Oil Co v HM Treasury [2014] EWHC 4002

Appearing on behalf of the Financial Conduct Authority to resist an urgent application by Rosneft to stay the coming into force of UK secondary legislation implementing EU sanctions on companies providing certain oil exploration services in Russia. Raised the issue of interpretation of the FCA guidance concerning the interpretation of certain terms in the EU regulations imposing sanctions on Russia.

Bull v Gain Capital Holdings Inc [2014] EWHC 539

Acting for a US foreign exchange platform (led by Richard Handyside KC) in a class action brought by UK investors in a collapsed UK-based investment services company seeking restitution or damages under the Financial Services and Markets Act 2000. Raised complex legal issues of what amounts to a joint venture, when consumer remedies under FSMA become available and whether a restitutionary remedy is available to the consumers.

Cavendish Moore v FSA

Defending a firm in an FSA investigation and, thereafter, High Court proceedings concerning the firm’s participation in an allegedly unlawful collective investment scheme.

Advising the FCA (led by Richard Coleman KC) on draft proposed regulatory rules and their application.

Advising the FCA (led by Richard Coleman KC) on the case law and application of the Consumer Credit Act 1974 and Unfair Contract Terms in Consumer Contracts Directive.

Advising on various issues including regulation of collective investment schemes, money laundering and reporting obligations arising from the Proceeds of Crime Act 2002, treatment of client funds and breaches of the FCA Conduct of Business rules.

International Arbitration

Notable International Arbitration cases

ICC Arbitration

Successfully acting for one of the largest Russian banks in a mis-selling dispute brought by a high net worth individual, which involved issues of breach of contract, tort and breach of fiduciary duties.

LCIA Arbitration

Acting (as part of a team led by David Foxtton QC) in a high-profile dispute between Mr Pinchuk and Msr Bogolyubov and Kolomoisky concerning the ownership of a Ukrainian iron ore mining business. The case raised a multitude of legal issues ranging from company law to contractual interpretation, trusts and civil fraud.

LCIA Arbitration

Acting in an arbitration arising out of a shareholder dispute concerning the ownership of a Russian mine.

Union Marine Classification Services v The Government of Comoros

Acting in an ad hoc arbitration raising issues of shipping law as well as interpretation of the arbitration agreement.

LCIA Arbitration

Acting for the trustee defending a breach of contract claim on behalf of a consultant who previously worked for the trustee and bringing a counter-claim worth over €1 million.

LCIA Arbitration

Acting (as junior counsel to Ray Cox KC) in LCIA arbitration proceedings relating to interest rate swaps and currency

options under the ISDA Master Agreement, which raised issues of Indian regulatory law, misrepresentation and estoppel.

Procurement

Notable Procurement cases

Acting in a number of cases challenging the procurement of pharmaceuticals by the NHS in Scotland, England and Northern Ireland. Each claim resulted in the NHS abandoning the challenged competition and re-running the process.

Brent London Borough Council and others v Risk Management Partners Limited (Respondent) [2011] 2 AC 34

Assisting Lords Rodger and Brown, as a judicial assistant in the Supreme Court, with the first Supreme Court case concerning the application of the UK and EU public procurement rules.

As a solicitor at Slaughter and May, advising HM Treasury (under the supervision of relevant partners) on public procurement issues arising out of the bail-out of Northern Rock.

As a solicitor at Slaughter and May during secondment to the Hong Kong office (under the supervision of relevant partners), drafting a response to the Hong Kong government's proposals to introduce competition law in Hong Kong.

Professional Discipline

Notable Professional Discipline cases

SRA v Leigh Day (Case No. 11502-2016)

Successfully defending Leigh Day and the three individuals involved (led by Patricia Robertson KC and Paul Gott KC) in the record seven week-long trial in the Solicitors Disciplinary Tribunal. Tetyana's clients faced a total of 250 separate charges, all arising out of their representation of Iraqi clients alleging to have suffered personal injuries as a result of mistreatment by the British Army. Tetyana advised Leigh Day throughout all stages of the SRA's investigation and prosecution.

SRA v Barnett and Swift (Case No. 11249-2014; Barnett v SRA [2016] EWHC 1160

Acting for the SRA (led by Timothy Dutton KC) in a successful prosecution of solicitors for misconduct (including dishonesty) arising out of the collapsed Axiom Legal Financing Fund. Successfully defending the SDT decision on appeal to the High Court.

ACCA v Ryman

Successfully defending the chartered accountant member of ACCA against seven allegations of professional misconduct (including dishonesty) that were investigated by ACCA over a period of five years and arose out of the member's conduct as a receiver of a law firm.

Advising a magic circle law firm on its investigation and reporting obligations to the SRA arising out of a high-profile judicial criticism of the firm's handling of litigation.

SRA v KA (Case No. 11176-2013)

Representing the SRA (as sole counsel) in a test case concerning the scope of SRA's territorial jurisdiction to bring disciplinary proceedings against non-SRA-regulated lawyers practicing in SRA-regulated firms. The SDT agreed with Tetyana's client that, in light of the purpose of SRA's regulatory powers, their scope existed to regulating all lawyers within an SRA-regulated entity provided such lawyers were "involved in a legal practice" of a regulated firm.

SRA v Hale

Appearing as sole counsel for the SRA in disciplinary proceedings against a solicitor resulting in a striking off for dishonesty and breach of the SRA rule.

SRA v Stott

Appearing in proceedings (led by Timothy Dutton KC) resulting in a striking off for dishonesty and breach of the SRA rules in proceedings arising out of the solicitor's conduct in accepting and misusing funds lent to his firm by the Axiom Litigation Financing Fund.

Directory Quotes

"Tetyana is a highly intelligent senior junior, with excellent analytical and drafting skills. User-friendly and good with clients."

The Legal 500

"She is one of the most intelligent barristers around, and is extremely diligent and hard-working."

Chambers & Partners

"Popular with clients, both regulators and respondents."

The Legal 500

"She has the most incredible work ethic and a phenomenal ability to absorb detail and assimilate facts." "She is an invaluable presence on any case; she is hard-working, diligent, completely on top of documentation and has an excellent grasp of the crucial details of the case."

Chambers & Partners

"Particularly adept at absorbing huge amounts of detail."

The Legal 500

"Exceptionally bright and driven." "A former solicitor who knows what it is like to be in the trenches. She also brings intellectual rigour."

Chambers & Partners

"Very clever, very capable and a very pleasant person to work with."

Chambers & Partners

"She both defends and prosecutes SDT and FRC cases."

The Legal 500

"Stunningly intelligent and very disciplined."

The Legal 500

Directory Rankings

Chambers & Partners

- Professional Discipline

The Legal 500

- Professional Disciplinary & Regulatory Law

Education

- BA (Jurisprudence) (First Class – 1st in the year), Worcester College, Oxford
- BCL (Distinction), Worcester College, Oxford
- LPC (Distinction), BPP Law School

Appointments, Memberships and Prizes

Appointments

- Attorney General's C Panel
- Member of the UK Bar Council's International Committee
- Judicial Assistant in the Supreme Court (assisted Lords Rodger, Brown and Collins) (2010-2011)
- Solicitor at Slaughter and May (corporate department; advising on all aspects of company law, financial regulation, schemes of arrangement and mergers and acquisitions) (2006-2010)
- Lecturer in Trusts at Brasenose, Worcester, Lincoln and Oriel Colleges (2011-2014)
- Lecturer in Torts at Pembroke College (2010-2011)
- Lecturer in Roman law at Worcester College (2005-2006)
- In October 2013, Tetyana read a course of lectures on English contract law (in Russian) at the M-Logos Legal Institute in Moscow. The course was directed at Russian-qualified in-house lawyers.

Memberships

- Commercial Bar Association
- London Common Law & Commercial Bar Association
- ICC Young Arbitrators Forum
- LCIA Young International Arbitration Group
- Russian & CIS Arbitration Network
- ПЛОМКА (Russian Speaking Lawyers in International Commercial Arbitration)
- RusFor (Russian Speaking Legal Professionals' Forum)
- Association of Regulatory & Disciplinary Lawyers
- Procurement Lawyers' Association

Prizes

- Gibbs Prize for the best performance in Final Honour School examinations in Tort, Contract, Land Law &

- Trusts, Oxford University (2004)
- Martin Wronker Prize (*proxime accessit*) for the best performance in Final Honour School of Law, Oxford University (2004)
- Bruce Reynolds prize for the best performance in the BCL, Worcester College, Oxford (2005)
- Henriques Prize for the best performance in the Final Honour Schools of Lit. Hum., PPE, Modern History & Law, Worcester College, Oxford (2005)
- Waverley Scholarship for international students, Oxford University (2001-2004)
- Andrew Dixon Scholarship, Worcester College, Oxford (2002-2004)
- Winner of the Oxford University Crown Office Moot competition (2004)

Publications

- *England and Russia: resolving jurisdictional disputes* (co-written with Raymond Cox KC and Dr Anton Asoskov), Law Gazette, 22 April 2013
- *The view from behind the bench: the role of judicial assistants in the UK Supreme Court*, a contribution to *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry* edited by A. Burrows, D. Johnson and R. Zimmermann
- *Anti-suit injunctions* (Westlaw Insight)

Languages

- Russian (native speaker)
- Ukrainian (native speaker)

Awards

