

Thomas Fletcher

Call 2009

tfletcher@maitlandchambers.com



Thomas's practice covers the whole range of commercial and chancery work with a particular emphasis on high-value trusts and estates matters both in England and other jurisdictions, including heavy commercial disputes involving trusts elements. Thomas is equally at home in contractual and business disputes, including fraud claims, insolvency, company and partnership work, and professional negligence.

Thomas enjoys acting as sole Counsel or as part of a larger team and his practice has taken him to every level of the court hierarchy, including the Supreme Court and the Privy Council.

Trusts and offshore

Thomas is frequently involved in high-value, complex trusts matters. The vast majority of his work in this area is contentious and often concerns wider commercial disputes involving trusts elements, including banking and contractual claims, civil fraud and unjust enrichment. However, Thomas also has extensive experience in pure trusts matters. He contributed to the 19th edition of *Lewin on Trusts* (plus each Supplement) and he regularly advises on matters such as directions applications, trust administration and breach of trust disputes. Thomas's work invariably has an international dimension and he has particular experience litigating in the Channel Islands and several Caribbean jurisdictions.

Thomas's practice also comprises non-contentious matters. He has experience of drafting a range of trusts instruments, wills and associated documents. He is also regularly instructed in respect of proposed trust restructurings.

His work includes:

- Advising trustees and beneficiaries on claims for breach of trust, in particular arising from the exercise of powers of investment and actions of financial advisers.
- Advising trustees on extensive trust and corporate restructurings worth hundreds of millions of pounds and spanning multiple jurisdictions, including drafting trust documentation and shareholders agreements.
- Advising trustees on potential enforcement action against trust assets, in particular where judgments have been obtained against beneficiaries.
- Advising on directions applications, including applications to approve the sale of substantial trust assets (with or without the consent of the beneficiaries).
- Advising on applications to remove trustees, including issues relating to the provision of indemnities to outgoing trustees (often against the backdrop of a claim for breach of trust)

Recent notable cases include:

- *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd & ors* (2012 – Ongoing) (“the Tchenguiz Litigation”) Acting for a subsidiary of a multi-national bank (Investec Trust (Guernsey)) who were the former trustees of the Tchenguiz family trusts. Two sets of proceedings were brought in Guernsey concerning loans totalling c.£180 million and claims for breach of trust for c. £400 million. These generated 12 judgments from the Guernsey Court of Appeal, including 2 very significant reported decisions on the personal liability of trustees under Article 32 of the Trusts (Jersey) Law 1984 (see (2015-2016) 18 ITELR 1 and (2015) 18 ITELR 30). 8 appeals to the Privy Council were heard across 4 days with judgment being handed down in April 2018 in favour of Thomas’s clients and which attracted extensive media coverage (see [2018] 2 WLR 1465). Several other proceedings are before the courts in Guernsey and other jurisdictions.
- *Campbell v Campbell [2017] JRC 018*
Instructed for trial in respect of a long-running dispute arising out of a family partnership concerning the beneficial ownership of shares in a Jersey company. Judgment was handed down in favour of Thomas’s client, which held for the first time in Jersey that the principles of common intention constructive trusts could apply outside a real property context and also included some of the first discussion of claims in unjust enrichment in Jersey.
- *Re Barclays Private Bank & Trust (Isle of Man) Ltd* (CHP/56/2014)
Instructed to provide written advice to be presented before the High Court of Justice of the Isle of Man (and which was accepted by the Court) in respect of the Manx equivalent of section 63 of the Trustee Act 1925 on payment of monies into court.
- Acting for trustees and protectors in relation to the restructuring of a substantial number of high-value trusts across several Caribbean and onshore jurisdictions, which raises complex issues of company law, tax law and matrimonial law.
- Acting for beneficiaries on the provision and drafting of indemnities to trustees in respect of very substantial distributions from trusts.
- Acting for a class of beneficiaries responding to a directions application in respect of the distribution of shares in a high-profile company.
- Providing opinions for court in support of *Beddoe* applications concerning the commencement and defence of litigation involving trustees.

Estates and succession

Thomas’s practice in the field of succession includes contentious probate disputes, claims under the Inheritance Act 1975, applications on the administration of estates, and professional negligence in this context. He is one of the editors of *Theobald on Wills* and one of the contributors to *Williams, Mortimer & Sunnucks: Executors, Administrators and Probate*. His work includes:

- Advising on potential claims for devastavit in the administration of the estate.
- Advising and appearing on claims under the 1975 Act, including high-value estates with substantial numbers of beneficiaries.
- Advising on applications under the Variation of Trusts Act 1958 to vary the dispositions under the will and the statutory trust on intestacy, including liaising with HMRC.
- Advising on issues relating to the proper construction of the will.
- Advising on estates issues with a cross-border element, including issues relating to the conflict of laws. Thomas is the editor of those chapters in *Theobald on Wills* and *Williams, Mortimer & Sunnucks* concerning conflict of laws and cross-border administration respectively.
- Drafting wills and other testamentary documents.

Recent notable cases include:

- *Birdseye v Roythorne & Co & ors* (2015-2016)
Junior Counsel for the executors of a substantial estate in respect of multiple claims arising out of a purported bequest of

property in a will, including a claim that property was held on express or resulting trust and claims for devastavit.

Settlement was reached shortly before commencement of a 4-week trial. An earlier interlocutory decision was reported for its discussion of privilege issues between co-executors (see [2015] WTLR 961).

- Acting for the surviving spouse in respect of the administration of a very substantial estate, including claims under the 1975 Act and devastavit.
- Acting for an executor and beneficiary in respect of multiple sets of contentious probate proceedings involving allegations of forgery.

Financial services and civil fraud

The vast majority of Thomas's work involves commercial or business disputes, including banking and civil fraud claims. He has a particular interest in disputes involving trusts elements, whether due to the involvement of trustees or the contractual framework in which the dispute has arisen. His work includes:

- *Investec Trust (Guernsey) Ltd v Glenalla Properties Ltd & ors* (2012 – Ongoing) (“the Tchenguiz Litigation”) Junior Counsel for a subsidiary of a multi-national bank (Investec Trust (Guernsey)) who were the former trustees of the Tchenguiz family trusts. Two sets of proceedings were brought in Guernsey concerning loans totalling c.£180 million and claims for breach of trust for c. £400 million. The backdrop for the litigation was the global financial crisis, in particular the collapse of the Icelandic banks. The issues involved included claims in unjust enrichment and the proper construction of contractual documentation to effect a corporate restructuring involving substantial assets.
- Instructed in relation to a summary judgment application concerning a claim by financial advisers for success fees under various engagement agreements concerning M&A transactions and IPOs.
- Instructed on an application to lift a stay on proceedings and to enforce a New York Convention arbitration award, where the stay had been granted due to allegations of fraud tainting the underlying arbitration award.
- Instructed to advise on a potential claim for wrongful termination of contract in relation to the supply of tyres to mines in East Africa worth approximately \$30 million.
- Advising on a potential group litigation claim for misrepresentation and/or negligence against financial advisers and multiple stock exchanges concerning mistaken description of shares.
- Advising a multi-national bank on potential claims against them by personal representatives arising from wrongful payments out of accounts, including potential claims under the Payment Services Regulations 2009.
- Advising franchisees on potential claims against a high-profile company acting as franchisor for fraudulent and negligent misrepresentation in relation to franchise agreements.
- Advising trustees and personal representatives in relation to potential and actual claims against financial advisers for breaches of the Financial Services and Markets Act 2000 and the FCA Handbook.
- Regularly advising trustees on exercises of their powers of investment, including making and disposing of investments in public and private equity.

Company, partnership and insolvency

Thomas has extensive experience of a range of company and insolvency work. His first case in practice was appearing as junior counsel on a three-month trial of an unfair prejudice petition involving a high-profile company. Thomas's work regularly involves company and insolvency law issues. His work includes:

- *Re GHD Group Holdings Ltd* (2011 – 2012) Junior Counsel (led by two silks) for the trial of an unfair prejudice petition (i.e. s.994 of the Companies Act 2006) concerning a very high-profile beauty company (GHD) between one of the founders of the company and members of a private equity firm, who were the majority shareholders. The claim settled after three months of trial.
- *Skelwith (Leisure) Ltd v Armstrong* (2015 – 2016) Junior Counsel for one of the partners in a partnership in respect of a claim concerning the validity of contracts for the sale

of a property. Two judgments were given by the High Court, including a reported decision ([2016] Ch 345) on important issues as to the interpretation of the Land Registration Act 2002 and mortgagees' remedies and a further decision on late amendments ([2015] EWHC 3487 (Ch)).

- *Campbell v Campbell [2017] JRC 018*

Instructed for trial in respect of a long-running dispute arising out of a family partnership concerning the beneficial ownership of shares in a Jersey company owned by the partnership. Judgment was handed down in favour of Thomas's client.

- Advising on and appearing in connection with liquidators claims, for example preference claims, transactions at an undervalue, transactions intended to defraud creditors. Have appeared in several trials for both liquidators and directors.
- Advising on and appearing in connection with applications to cross-examine company directors.
- Appearing on contested winding-up and bankruptcy petitions, setting aside winding-up orders and annulling bankruptcies.
- Advising and appearing on claims by trustees in bankruptcy for orders for sale in respect of real property, including appearing on several trials.
- Advising trustees on directors' duties in respect of trust-owned companies and the removal of directors.

Charities

Thomas has a strong interest in charities work and his trusts and estates practice regularly involves elements of charities law. His work includes advising unincorporated associations (e.g. sports and social clubs) on their trust arrangements, rules of membership and possibility of seeking charitable status. His estates work also regularly involves advising on will disputes and administration issues involving gifts to charities.

Property

Thomas has acquired a substantial amount of experience in property matters. This includes cases involving trusts of land and proprietary estoppel in addition to pure real property matters. He also has a particular interest in the administration of settled land and has given talks on the topic. Separately, Thomas has advised on, and acted in, several significant rights of way disputes, including appearing in the Supreme Court. His work includes:

- *R (on the application of Trail Riders' Fellowship) v Dorset County Council [2015] UKSC 18; [2015] 1 WLR 1406*
Junior Counsel for the successful Respondents (the TRF) in an appeal to the Supreme Court on the requirements for an application under section 53 of the Wildlife and Countryside Act 1981 to modify the definitive map and statement.
- *R (on the application of Trail Riders' Fellowship) v Devon County Council [2013] EWHC 2104 (Admin)*
Sole Counsel in judicial review proceedings challenging the imposition of a Traffic Regulation Order under the Road Traffic Regulation Act 1984.
- *Skelwith (Leisure) Ltd v Armstrong (2015 – 2016)*
Junior Counsel for one of the partners in a partnership in respect of a claim concerning the validity of contracts for the sale of a property. Two judgments were given by the High Court, including a reported decision ([2016] Ch 345) on important issues as to the interpretation of the Land Registration Act 2002 and mortgagees' remedies.
- Advising a local authority on its powers in connection with the organisation of a major national annual event.
- Advising on a local authority's failure properly to exercise its powers under the Town and Country Planning Act 1990.

Publications

Lewin on Trusts (19th edition plus 1st and 2nd Supplement) (3rd Supplement (Forthcoming))

Theobald on Wills (18th edition) (1st Supplement (Forthcoming))

Williams, Mortimer and Sunnucks: Executors, Administrators and Probate (20th edition)

Thomas has written several articles which have featured in legal journals such as the STEP Journal. He also regularly speaks at conferences in England and other jurisdictions concerning international trusts issues.

Memberships

Chancery Bar Association
COMBAR

Qualifications

MA (Cantab) First Class
LLM (Queen Mary, University of London) Distinction



Recommendations

Chambers UK

Chancery: Traditional

"Very good at dealing with difficult clients in tough contentious estate cases, he understands the solicitor's perspective when dealing with client expectations." "Incredibly diligent and very knowledgeable, he is an excellent problem-solver who has good instincts." (2019)

"I was reassured by his technical expertise and his practical approach to legal issues. He has a panoramic view of trust and probate law. He is very good dealing with difficult clients and always struck the right tone when giving advice." "He is extremely good at dealing with strategic issues and knows how to handle himself in court. He has a very clear and precise drafting style which is incredibly helpful." (2018)

"He's very keen and eager, and had a great interest in the matter and gave some very

good opinions. He knows how to hold his own, he's very diligent and it doesn't take you long to trust in his view on things." (2017)

Offshore

"He does a fantastic job in getting up to speed on all the information. His expertise and his ability to explain complicated issues are invaluable." "He's really impressive and does a great deal of research." (2019)

"Extremely hard-working and able." "He is very bright and energetic, really helpful and someone with a good strategic mind." (2018)

Trusts

"Incredibly bright and hard-working individual who shows good attention to detail." "He demonstrates sound judgement and a clear understanding of all the issues at play in the case." (2019)

"His legal knowledge is very impressive. He is incredibly hard-working and a master of detail." (2018)

Chambers High Net Worth

London (Bar) - Chancery: Traditional

"a barrister who will genuinely go very far in our industry." (2017)

"He has a panoramic view of trust and probate law. He is very good at dealing with difficult clients and always struck the right tone when giving advice." (2017)

Legal 500

Private Client: Trusts & Probate

"He is exceptionally hardworking and a serious intellect." (2018/19)

"He is very good at clear, concise drafting." (2017)

"Very able and a rising star" (2016)