

ALEC McCLUSKEY

CALL: 2005



OVERVIEW

Alec's practice spans the whole range of commercial and chancery work, with a particular emphasis on litigation and arbitration. He has particular expertise in banking and financial services disputes, heavy contractual and business disputes (including fraud claims and cases with international elements), insolvency, company and partnership work, professional negligence, trusts and property matters.

Alec read Greats at Merton College, Oxford, gaining a Double First, before converting to law at City University. He was a Chapman Scholar of the Inner Temple, and at Bar School was placed top in his year, winning the Scarman Scholarship and the Stephen Seabrooke Memorial Prize.

EXPERTISE

COMMERCIAL LITIGATION & ARBITRATION

Alec acts both as sole counsel and as part of a team in wide ranging and often high value and complex Commercial Chancery litigation and arbitration.

Cases:

- ***Winslet v Gisel*** [2021] 4 WLUK 241. Successfully resisting a challenge to the jurisdiction of the Commercial Court, establishing a precedent on the operation of Regulation (EU) 1215/2012 art.7(1)(b) to contracts of loan.
- ***Bains v Arunvill Capital Ltd*** [2020] EWCA Civ 545 and [2019] EWHC 1749 (Ch). Acting for the successful defendants at trial and in successive appeals in what is now a leading case on the operation of

contractual material breach clauses.

- Acting in a complex arbitration concerning a cross border merger and the interplay of the company laws of a number of different jurisdictions.
- Acting for the claimant in a substantial arbitration arising out of the supply of materials for oil and gas installations.
- Acting for the defendant in relation to a multi-million pound claim arising out of the sale of a business, raising complex questions of choice of law, jurisdiction clauses and anti-suit injunctions.
- **Joseph v LEBC Group Limited** [2018] EWHC 876 (Comm) Acting for the defendant to a claim seeking to challenge the valuation of a business pursuant to an expert determination clause.
- **Tech 21 (UK) Ltd v Design Blue Ltd** [2017] EWHC 2288 (Ch) and [2017] EWHC 2722 (Pat) Acting for the claimant in a complex claim raising a combination of commercial and intellectual property issues.
- **JD Wetherspoon Plc v Harris and others** [2013] EWHC 1088 (Ch) Acting (with Catherine Newman QC) on behalf of JD Wetherspoon plc in their successful action raising allegations of fraud against their former property finders.
- **Hutchinson & Anor v Neale & Anor** [2012] EWCA Civ 345. Acting for the respondents on this appeal which raised important questions of principle concerning the costs consequences where an otherwise successful party to litigation has acted dishonestly in connection with the proceedings (by tampering with a document) and given perjured evidence at trial.
- **Angela Scotcher v Kirklees Borough Metropolitan Council** LTL 22/7/2008. Acting for Kirklees Council on their successful application to strike out proceedings raising issues of public policy and the imposition of duties of care, and the proper scope of claims based on economic torts.
- **Stewart Dunn v Glass Systems (UK) Ltd** [2007] Adj LR 07/11. Acting (with Tom Grant) on behalf of successful defendant to claim by barrister suing for fees under a public access agreement, believed to be the first case of its kind.

CIVIL FRAUD

Alec has extensive experience in high value and complex civil fraud and asset recovery litigation, often with a cross border and urgent element to it. He has experience of dealing with cases involving freezing injunctions, disclosure orders, receiverships and related relief, including where orders are required under foreign laws in support of English proceedings.

Cases:

- Acting for a consultant accused of fraudulently accepting bribes in connection with an alleged £20m+ conspiracy.
- Acting for a defendant to a long running conspiracy claim for c.£175m arising out of the transfer of a package of security rights by a lender.
- Assisting with obtaining disclosure and asset preservation orders against offshore fiduciaries in connection with a substantial property fraud.
- Advising on insolvency issues and proprietary rights in a large fraud claim brought by a private family office against a fraudulent fiduciary.
- Obtaining freezing and proprietary injunctions against parties who obtained substantial asset backed loans

by deceit. Thereafter obtaining orders (including receivership orders) by way of tracing and enforcement against the proceeds of the frauds.

COMPANY & PARTNERSHIP

Alec is frequently instructed in company disputes involving allegations of prejudice to minority shareholders and misconduct by directors. Alec also acts in substantial partnership disputes either on behalf of partners themselves or on behalf of creditors of partnerships faced with complex legal or factual issues of partnership law. As well as English companies and partnerships, Alec has particular experience of multi-jurisdictional disputes raising questions of foreign company or partnership law.

Cases:

- **Re X** (a company): Complex multi-strand company litigation arising out of a range of investments made by a high net worth individual in a group of companies, raising questions of the interplay of trust rights with company law.
- **Re X** (a partnership): Acting for the receivers of the assets of a multi million pound family partnership in a long running Chancery action concerning its dissolution.
- **A v B**: Substantial international commercial arbitration arising out of the proposed consolidation of an international corporate structure, involving crossclaims alleging various breaches of duty owed to a minority shareholder
- **X v Y**: A multi-jurisdictional claim for tens of millions of dollars raising issues of the interplay of Cayman Island Limited Partnership Law with English and BVI law.
- **A Bank v X**: Acting on behalf of a lender with security over assets claimed by a partnership, in litigation raising issues as to the interaction of the provision of the Partnership Act 1980 with the ability of lenders to overreach the interest of beneficiaries under

INSOLVENCY & ASSET RECOVERY

Alec frequently acts for and advises insolvency practitioners concerning what are often highly technical issues arising out of all forms of insolvency proceedings. Alec's recent work includes advising on and litigating about the new Restructuring Plans introduced by Part 26A of the Companies Act.

Cases:

- **Re Virgin Active Holdings Ltd** [2021] EWHC 814 Acting for a tribunal appointed officer in a leading case on the operation of the new restructuring plan provisions in Part 26A of the Companies Act 2006.
- **X v Y**. Advising on insolvency issues and proprietary rights in a large fraud claim brought by a private family office against a fraudulent fiduciary.
- **A v B**. Acting on a cross border dispute raising questions of the interplay of English and foreign insolvency law, including complex questions of choice of law and set off.

- *In The Matter Of Capitol Films Ltd sub nom Irish Reel Productions Ltd v Capitol Films Ltd* [2010] EWHC 180 (Ch), [2010] Bus LR 854, [2010] BCC 588. Acted for the petitioning creditor on a winding up petition which successfully sought its costs as expenses in a subsequent administration. The case raised a novel point of law, which was decided in favour of Alec's client.
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BANKING & FINANCIAL SERVICES

Alec is frequently instructed to represent and advise major financial institutions, and has particular expertise in issues relating to secured lending. His work includes:

- Advising leading financial institutions on their practices in relation to mortgage lending and litigation arising out of secured lending, including in relation to remediation of issues affecting sizeable portfolios of lending.
- Representing a wide range of lenders in often hotly contested and legally complex litigation in relating to secured lending.
- Litigation arising out of derivatives, swaps and other complex financial instruments.
- Litigation concerning allegations of misconduct by banks such as "front running".
- Litigation and references to the Financial Ombudsman arising out of financial and investment advice.

Cases:

- Acting for a defendant to a long running claim for c.£175m arising out of the transfer of a package of security rights by a lender.
- Acting for the claimants against a leading financial institution in a damages claim for hundreds of millions of pounds relating to commodities trading.
- Acting for the claimant against a high street bank in a damages claim for hundreds of millions of pounds arising out of interest rate derivatives and the actions of a "business support" unit.
- *Clydesdale Bank Plc v Gough* [2017] EWHC 2230 (Ch) Acting for the lender in a claim in which the enforceability of its security was challenged on a wide range of factual and legal grounds.
- Acting for the defendants to a multi-million pound claim under an aircraft mortgage, in which complex issues of foreign law and their interplay with English proceedings were raised.
- *Intesa Sanpaolo SpA v Regione Piemonte* [2014] EWCA 1298; [2013] EWHC 1994 (Comm) Acting (with Catherine Newman QC) for the defendant to this claim arising out of a 1.8 billion Euro bond issue and associated derivative transactions, raising significant questions of the conflict of laws and the circumstances in which declaratory judgments in default should be set aside.
- *Lombard v Dayah v London Asset Finance* (QBD, 2011). Defending a claim against a finance broker raising serious allegations of dishonesty against a hotly disputed factual background.
- *Bank of Scotland v Weisman Rovina* (ChD, 2011). Acting for the Bank of Scotland on this long running lender action, raising a number of highly technical issues concerning the enforceability of charges in law and equity.

REAL ESTATE

Alec's property litigation and advisory practice spans the range of Chambers' practice. His notable work includes a multi-million pound service charge dispute, advisory work on a large scale restructuring of a portfolio of leases and a dispute concerning the recovery of a million pound deposit.

PROFESSIONAL NEGLIGENCE

Alec acts for both claimants and defendants in professional negligence claims, and is regularly instructed both by leading financial institutions and professional indemnity insurers in relation to claims, particularly those arising out of secured lending and financial services. Alec frequently deals with cases involving complex questions of liability and loss where security rights have been transferred or syndicated.

ADR

Alec's practice involves international and domestic arbitrations under institutional rules as well as ad hoc arbitrations and other forms of alternative dispute resolution such as adjudication under the CEDR Rules for Commercial Adjudication.

DIRECTORY QUOTES

"A very bright, capable and responsive lawyer, whose commercial and user-friendly approach makes life easy for those that instruct him."

CHAMBERS UK Chancery: Commercial (2023)

"Alec is frighteningly clever but also absolutely great with lay clients. He is extremely well organised and takes a meticulous approach without being pedantic."

Chambers UK Commercial Client (2023)

"A sound and wise counsel, who is very user-friendly. He's good on his feet, he gets into the detail and clients like him."

Chambers UK Chancery: Commercial (2022)

"A rising star at the Bar who is extremely responsive and highly articulate." "He is great: he's very user-friendly, good on his feet and someone who gets into the detail."

Chambers UK Partnership (2022)

"Good on detail and on his feet, user friendly and explains things very clearly to clients."

Legal 500 UK Company (2022)

"A banking and finance expert with particular subject matter specialisms in retail and commercial mortgage litigation. Understands the interplay of risk and reputation management in litigation strategy. A superb advocate who is second to none in conference."

Legal 500 UK Banking and Finance (2022)

"He's a very, very classy performer." "He's hugely popular with clients and is very responsive."

Chambers UK Chancery: Commercial (2021)

"Immerses himself in the details of the case and is very easy to deal with." "He is user-friendly, very pragmatic and highly commercial."

Chambers UK Partnership (2021)

"Brilliantly clever, personable and fantastic on his feet – he is excellent with lay clients and puts them at their ease."

Legal 500 UK Banking and Finance (2021)

"Intelligent, delightful to work with and someone who has a good way with the clients."

Chambers UK Partnership (2020)

"He's amazing. If I had to choose a junior I would always choose Alec, he never lets me down. He's good on paper and good on his feet, he's the whole package."

Chambers UK Chancery: Commercial (2020)

"An excellent all-round counsel, his swift mastery of complex facts and technical points of law always adds value."

Legal 500 UK Banking and Finance (2020)

"Just extremely bright, he summarises issues well and is really clear on what the best course of action is. He is a good performer and brings a human element to his advocacy."

Chambers UK Chancery: Commercial (2019)

"Bright, responsive, clear and a pleasure to work with." "Alec's got a great ability to analyse everything and get to the bottom of what the issues are in a complicated case and explain them effectively to the layman."

Chambers UK Partnership (2019)

"Combines excellent advocacy skills with well-crafted, pragmatic written advice."

Legal 500 UK Banking and Finance (2019)

"Exceptional on paper, he's very bright and has extremely good strategic sense." "Incredibly tenacious and proactive, he's not interested in winging things."

Chambers UK Chancery: Commercial (2018)

"Very hands-on, incredibly bright and someone who sees issues straight off - including solutions to matters you'd think hopeless." "In court, he's in control and quick on his feet: his analytical ability and speed of response are the best of any junior of his call that I've seen."

Chambers UK Partnership (2018)

"Incredibly intelligent, incredibly user-friendly and liked by clients."

Chambers UK Chancery: Commercial (2017)

"Always on the top of his game and excellent at dealing with every type of client."

Legal 500 UK Banking and Finance (2017)

MEMBERSHIPS

- Chancery Bar Association
- COMBAR
- FSLA

QUALIFICATIONS

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- MA (Oxon)