

DUNCAN McCOMBE

CALL: 2012



OVERVIEW

Duncan specialises in commercial litigation and arbitration, particularly in the areas of Commercial Law, Civil Fraud, Company, Partnership and Insolvency. Duncan also has extensive experience in trusts litigation. He has been described in the directories as *“a brilliant rising junior, who brings boundless energy and enthusiasm to every case. He is someone you would want on your team in any difficult situation.”*

Duncan’s cases often involve jurisdiction disputes and applications for urgent interim relief. He has appeared in tribunals at all levels, including the Supreme Court. Matters on which Duncan is instructed often involve international parties and, having read Chinese at Cambridge, he has extremely rare expertise in relation to China-related disputes and is able to work with untranslated Chinese documents. Duncan has represented and advised a number of extremely high-profile clients including Chelsea FC, the BBC and the Spice Girls, the latter two as sole Counsel.

Duncan’s clients come from diverse industry sectors including: financial services (including funds), media and entertainment, real estate, natural resources, shipping and technology.

Duncan is equally comfortable working as part of a wider team or providing advice and advocacy as sole Counsel. His advocacy has been described as “clear and forceful” by a Judge of the Commercial Court. Duncan has been instructed as the trial advocate for numerous High Court trials, including two multi-day trials against Silks, his client being successful in both actions. Duncan was Chair of the Young Bar of England and Wales in 2017.

Education

Duncan read Chinese at St John's College, Cambridge. His studies included a year abroad in Beijing studying at China's most prestigious university for the study of the arts, Peking University, as well as two months at Taiwan Normal University in Taipei on a scholarship from the Taiwanese government.

After graduating from Cambridge, Duncan studied for the Graduate Diploma in Law at City University in London gaining the grade of distinction after coming third in the year overall and top of the year in equity and trusts. During that year he also won the Lincoln's Inn mooted competition. He obtained a number of scholarships for his legal studies including Lord Haldane, Hardwicke and Lord Denning scholarships from Lincoln's Inn and the McMahan Law Studentship from St John's College, Cambridge.

EXPERTISE

COMMERCIAL LITIGATION & ARBITRATION

Duncan has been ranked in the Legal 500 for Commercial Litigation since 2022. He has considerable experience in a wide range of commercial matters including contract disputes, joint venture disputes, civil fraud and asset tracing and banking and financial services. Duncan's clients come from diverse industry sectors including: financial services (including funds), media and entertainment, real estate, natural resources, shipping and technology. Duncan also has expertise in proceedings involving states or state entities, having advised and represented nation states, state-owned bodies and those seeking to make claims against states. Most recently, this has involved advising a state on the possibility of a party being able to enforce against it in the English courts a foreign judgment in excess of £1 billion.

Duncan has experience of conducting arbitrations under various procedural rules as well as on an *ad hoc* basis. He has appeared in Court applications to enforce arbitration awards and also to set aside arbitration awards. He also has experience of investment treaty arbitration. Duncan taught at a course on International Arbitration organised by the Bar Council and CIETAC at Renmin University in Beijing.

Duncan's experience in Commercial Litigation and Arbitration is highlighted throughout his cases below.

Notable Cases

- ***Federal Deposit Insurance Corporation v Barclays and Others***: Duncan is instructed (along with Charles Béar KC of Fountain Court and Matthew Cook KC of One Essex Court) on behalf of the British Bankers' Association (BBA) in this long-running and high value matter, which is one of the most high-profile claims to be issued in the High Court in recent years. This claim involves a US federal agency suing the BBA and nine of the world's largest banks for intentionally, collusively and fraudulently rigging the world-leading interest rate benchmark known as LIBOR, which has been billed as "the world's most important number" because of the sheer number of contracts that use it. Duncan represents the BBA (and through it almost the entire British banking sector), which was responsible for administering LIBOR, in this claim worth hundreds of millions of pounds.
- ***Bugsby Property LLC v LGM Commercial Lending Ltd*** [2022] EWHC 2001 (Comm). In this claim, Duncan (along with Andrew Twigger KC and Thomas Munby KC) represented a property investment sponsor which was suing companies in the Legal & General Group, the UK's largest fund management group. The claim concerned the breach by L&G of an exclusivity and confidentiality agreement relating to Bugsby's proposed purchase of the famous Olympia exhibition centre in West London. Duncan's client was successful following a four-week Commercial Court trial, obtaining judgment for approximately £15m.
- ***Al Subaihi v Al Sanea*** [2022] EWCA Civ 1349. Duncan represented (along with James Aldridge KC and Richard Gillis KC) a member of the Al-Sanea family, a prominent Saudi family, in this two-week trial in the Commercial Court. The claim was for unpaid legal fees amounting to more than US\$15 million concerning litigation in Saudi Arabia arising out of the internationally reported collapse of the Saad Group. Duncan's client sought to set aside various fee agreements on the basis of breach of fiduciary duty, duress and undue influence, and was successful on appeal to the Court of Appeal. Duncan represented his client as sole Counsel at all the procedural hearings, including two half day hearings in the Commercial Court seeking unless orders and further hearings as a respondent to a freezing injunction. Duncan's submissions were described as "**clear and forceful**" by Cockerill J (Judge in charge of the Commercial Court) in her judgment on one of those applications ([2020] EWHC 3206 (Comm)).
- ***Maddox RP LLP v Grey GR Limited Partnership***: Duncan was instructed (with Craig Orr KC of One Essex Court) to represent an entity owned by one of the UK's largest pension funds. In the action, Duncan's client sued an investment originator for in excess of £100m concerning the acquisition on its behalf of high-rise buildings following the Grenfell Tower Fire.
- ***Wood v Sureterm Direct Ltd*** [2017] UKSC 24: Duncan was involved (with **Andrew Twigger KC**) in the issues arising following the Supreme Court's judgment in this case, a leading case in the Supreme Court on contractual interpretation.
- ***FHR European Ventures LLP v Cedar Capital Partners LLC*** [2014] UKSC 45: Appeal in the Supreme Court (with **Matthew Collings KC**), now the leading case on proprietary remedies and constructive trusts for bribes and secret commissions taken in breach of fiduciary duty. A webinar on the case which Duncan gave for the Society of Trusts and Estates Practitioners can be viewed by clicking **here**.
- Duncan was instructed to advise a global bank concerning clawback claims worth billions of dollars made by the liquidators of Fairfield Sentry and other feeder funds to the infamous Bernie Madoff Ponzi scheme, described by the Privy Council as the "**largest Ponzi scheme in history**".
- ***Red Kite Management Ltd v Barclays Bank PLC***: Duncan was instructed as part of the Counsel team in a £850 million claim for breach of contract, breach of confidence and breach of fiduciary duty brought by a hedge fund against Barclays Bank concerning trading on the London Metal Exchange.
- ***Exportadora de Sal SA de CV v Corretaje MaritimoSud-Americano Inc*** [2018] EWHC 224 (Comm): Duncan acted (with **Dominic Chambers KC**) for a Mexican state-owned salt mining company seeking to

challenge an arbitrator's substantive jurisdiction under s.67 Arbitration Act 1996 on the basis that his client had no capacity under Mexican law to enter into the arbitration agreement.

- Representing a Russian Bank (led by **Richard Morgan KC**) in an LCIA arbitration claiming for the repayment of loans in the value of approximately US\$30 million. Alleged defences included illegality arising as a result of US and EU sanctions against Russia.
- Advising and drafting proceedings on behalf of an investor in relation to a potential investment treaty claim with a value of over \$1 billion (led by Paul Key KC of Essex Court).
- Representing Chinese clients (with Timothy Fancourt QC, now Mr Justice Fancourt) in an *ad hoc* arbitration concerning the proposed purchase of a large residential property in London. This included successfully applying (unled) to the Commercial Court for a freezing injunction against a BVI company in aid of the arbitration and subsequently successfully seeking to enforce a favourable award against the same company in competition with a global bank which was a secured creditor.
- LCIA arbitration (with Andrew Ayres KC) concerning a shareholder dispute in relation to a joint venture established for the purposes of a real estate development in Eastern Ukraine.
- LCIA arbitration (led by **Michael Gibbon KC**) in relation to the shareholder dispute concerning the Russian social network VK.com. This not only involved an arbitration in London, but also proceedings in the BVI and New York, settling for a cash sum of \$1.47 billion.
- ***GBM Minerals Engineering Consultants Ltd v GB Minerals Holdings Ltd*** [2015] EWHC 2954 (TCC) and ***GB Minerals Holdings Ltd v Short*** [2015] EWHC 1387 (TCC): Claim (appearing with Richard Slade KC of Brick Court) in the High Court (TCC) involving allegations of breach of contract, negligence and bribery as well as the initiation of contempt proceedings.
- ***HRH Prince Mohammed Al Saud v Back Talent Ltd***: Duncan represented (as sole counsel) an English company in a shareholder dispute brought by a Saudi Prince.
- ***Trant v (1) Commerx Ltd (2) Kulhawy***: Claim in the Queen's Bench Division of the High Court concerning payments under a Share Purchase Agreement. Duncan represented the successful Claimant against Defendants represented by a Silk.
- ***Nomad International Shipping Corp v DST Shipping Group SA***: Claim (led by Andrew Ayres KC) in the Commercial Court arising out of a series of joint venture agreements concerning the ownership of a number of ships. The case involved an urgent application for interim injunctive relief with complex jurisdictional and arbitration issues.
- ***Sribaskaran v Kunapalan***: Duncan was instructed as sole counsel in this multi-day trial concerning a dispute over the sale of a business and its premises.

CIVIL FRAUD

Many of Duncan's cases involve civil fraud. Duncan has extensive experience of claims involving bribery, misappropriation of corporate opportunities, deceit, conspiracy, undue influence, duress and all kinds of breach of fiduciary duty. Duncan's complimentary experience in Company Law, insolvency and trusts means that he

has the inter-disciplinary expertise required in this complex area.

Notable cases

- ***Federal Deposit Insurance Corporation v Barclays and Others***: Duncan is instructed (along with Charles Béar KC of Fountain Court and Matthew Cook KC of One Essex Court) on behalf of the British Bankers' Association (BBA) in this long-running and high value matter, which is one of the most high-profile claims to be issued in the High Court in recent years. This claim involves a US federal agency suing the BBA and nine of the world's largest banks for intentionally, collusively and fraudulently rigging the world-leading interest rate benchmark known as LIBOR, which has been billed as "the world's most important number" because of the sheer number of contracts that use it. Duncan represents the BBA (and through it almost the entire British banking sector), which was responsible for administering LIBOR, in this claim worth hundreds of millions of pounds.
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- ***Barham v Johnson***: Duncan was instructed as sole trial advocate in his client's successful application to the High Court to rectify a company's register of shareholders under s.125 Companies Act 2006. The hearing extended over a number of days involving extensive cross-examination and allegations of dishonesty.
- ***Ellis v Mussett***: Duncan represented as sole trial advocate the successful Defendant in this action concerning the sale of a property. The claim involved allegations of undue influence and conspiracy and the Claimant was represented by a Silk.

COMPANY & PARTNERSHIP

Duncan has extensive experience in disputes concerning companies, partnerships and LLPs. These disputes have involved both disputes internal to the relevant entities and disputes with external parties.

Notable cases

- ***Maddox RP LLP v Grey GR Limited Partnership***: Duncan was instructed (with Craig Orr KC of One Essex Court) to represent an entity owned by one of the UK's largest pension funds. In the action, Duncan's client sued an investment originator for in excess of £100m concerning the acquisition on its behalf of high-rise buildings following the Grenfell Tower Fire. The action involves the interpretation of an extremely complex partnership agreement and other issues of partnership law.
- ***Barham v Johnson***: Duncan was instructed as sole trial advocate in his client's successful application to rectify a company's register of shareholders under s.125 Companies Act 2006. The hearing extended over a number of days involving extensive cross-examination and allegations of dishonesty.
- ***Bammant v Bammant***: Duncan successfully appeared (as sole Counsel) in this claim concerning the dissolution of a family partnership with assets in the millions of pounds.
- Previously advised (with John McGhee KC) on a funds dispute concerning an LLP established to invest in residential property.
- While on secondment at a law firm in Jersey, Duncan assisted with a scheme of arrangement which effected a merger between Barrick and Randgold creating the world's largest gold-mining company.

INSOLVENCY & ASSET RECOVERY

Duncan has experience of acting both for and against office holders in both corporate and individual insolvency matters.

Notable Cases

- Duncan is currently instructed (as sole Counsel) by the wife of a bankrupt in applications brought by her husband's trustees in bankruptcy for disclosure of documents under s.366 Insolvency Act 1986 and for orders for sale of jointly owned properties. The bankrupt was made bankrupt following judgment against him for hundreds of millions of dollars following a multi-week fraud trial. Duncan's client successfully made applications against the Trustees for disclosure of Russian law advice they had received on the basis that the Trustees had waived privilege in that advice. The judgment addresses important issues concerning waiver of privilege in the context of insolvency applications: ***Re Yurov*** [2022] EWHC 2112 (Ch).
- Duncan was instructed to appear (unled) at a number of hearings on instructions from the Official Receiver seeking the appointment of special managers over seven companies in the Carillion group, which was the subject of one of the UK's largest ever insolvencies.

- Advised a global bank concerning clawback claims worth billions of dollars made by the liquidators of Fairfield Sentry and other feeder funds to the infamous Bernie Madoff Ponzi Scheme, described by the Privy Council as the “**largest Ponzi scheme in history**”.
 - **TCG Pubs Ltd v The Master and Wardens or Governors of the Art or Mystery of the Girdlers of London** [2017] EWHC 772 (Ch): Claim (led by Christopher Pymont KC) involving the interpretation of an assignment provision in a lease. The case also involved seeking the permission of the Court to bring forfeiture proceedings against a company in administration.
 - Appeared for the petitioning creditors in the bankruptcy proceedings of Craig Whyte, the former owner of Rangers Football Club.
 - Advised (with **Matthew Collings KC**) on the potential effects of a Russian bankruptcy on the affairs of a wealthy Russian client in London.
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OFFSHORE & TRUSTS

Having completed a number of secondments at an offshore law firm, Duncan has hands-on experience in the offshore world. Duncan also has extensive experience in the field of trusts litigation both in England and offshore.

- **FHR European Ventures LLP v Cedar Capital Partners LLC** [2014] UKSC 45: Appeal in the Supreme Court (with **Matthew Collings KC**), now the leading case on proprietary remedies and constructive trusts for bribes and secret commissions taken in breach of fiduciary duty. A webinar on the case which Duncan gave for the Society of Trusts and Estates Practitioners can be viewed by clicking [here](#).
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 - Advised (with David Mumford KC) a well-known private bank’s trustee business in proceedings brought for an account by a beneficiary.
 - **Re Liu**: Duncan appeared for a Chinese client who was the beneficiary under an English will seeking to remove executors and have them replaced by an independent solicitor. Duncan’s client was successful in his application and was awarded indemnity costs.
 - **Rogers v Lampo**: Duncan was instructed by an executor to resist claims by an alleged creditor, successfully applying for summary judgment.
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BANKING & FINANCIAL SERVICES

Duncan has extensive experience of banking and financial services work. Particular highlights include acting on two of the largest and most high-profile market manipulation claims to have been brought in the English courts.

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- Representing a Russian Bank (led by **Richard Morgan KC**) in an LCIA arbitration claiming for the repayment of loans in the value of approximately US\$30 million. Alleged defences included illegality arising as a result of US and EU sanctions against Russia.

CHARITIES

Duncan has acted as sole Counsel in a number of bitter internal charities disputes.

Notable Cases

Bisrat v Kebede, In Re The Ethiopian Orthodox Tewahedo Church of Debre TSION, London: Duncan was instructed by certain trustees and members of the CIO in this long-running religious charity dispute, including successfully applying to the High Court for directions to the trustees arising from a dispute concerning the interpretation of the CIO constitution and the Court's Orders.

Choudhury v Stepney Shahjalal Mosque and Cultural Centre Ltd [2015] EWHC 743 (Ch): Appeared unled for the Respondent to a without notice injunction application in the High Court concerning the management of a charity. Duncan successfully obtained an order staying proceedings and discharging the injunction. He also successfully resisted a further application to the Court for permission to bring Charity Proceedings under s.115 Charities Act 2011.

MEMBERSHIPS

- COMBAR
- Chancery Bar Association
- Financial Services Law Association
- Inter Pacific Bar Association
- International Chamber of Commerce Young Arbitrators Forum
- Young International Arbitration Group

QUALIFICATIONS

- MA (Cantab) Oriental Studies (Chinese)
- GDL (Distinction)
- BPTC (Very Competent)

LANGUAGES

- Mandarin Chinese
- French
- German (basic)

AWARDS

Elected Chair of the Young Bar in 2017

Winner of the Lincoln's Inn mooting competition

Hardwicke, Haldane and Denning Scholarships from Lincoln's Inn

McMahon Law Studentship from St John's College Cambridge