



## 'A very strong forensic brain allied to a lot of experience'

Legal 500 2018

Simon Edwards has vast experience of all aspects of costs and litigation funding. He appears frequently in high level cases in the SCCO and advises on knotty retainer issues helping with the drafting and the problems that arise with changes in solicitors' practices (conversion to LLP status, takeovers etc). Simon is also a member of the Court of Protection team, dealing with property and affairs matters. He appears in the Court of Protection, Chancery Division and County Courts dealing with issues relating to the property and affairs of those who lack mental capacity. He is the principal property and affairs editor of 39 Essex Chambers' Mental Capacity Report. Simon's property work ranges from contentious 1954 Act matters to issues of principle, including the boundaries of the right to relief from forfeiture which he has recently successfully argued, at first instance, in the Court of Appeal and the Supreme Court for the extension of the right to relief from forfeiture to licences of land.

Simon is recommended by Chambers & Partners and The Legal 500 for Costs Litigation.

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### PRACTICE AREAS

- Costs & Litigation Funding
- Court of Protection (Property & Affairs)
- Property

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### PRACTICE AREAS

#### COSTS & LITIGATION FUNDING

*"He is extremely knowledgeable, and provides secure and pragmatic advice on costs matters"* Chambers & Partners 2019

*"He is a very bright chap." "In a detailed assessment hearing, he proved very helpful and practical."* Chambers & Partners 2017

*"He has a very professional attitude and shows very good attention to the technical issues of a case." "He's very experienced and knowledgeable, and is an empathetic barrister whose sensitivity is appreciated by lawyers and clients."* Chambers & Partners 2016

*"A key name in this area."* Legal 500 2015

Simon is a member of the costs team, having advised and spoken extensively on conditional fee and other costs issues. He appears frequently at the SCCO. He has assisted in the drafting of conditional fee agreements both individual (bespoke) and group (standard terms), including those for 39 Essex St. His extensive experience of litigation in many different fields equips him with an understanding of the varied occasions in which costs are actually incurred, ranging from common law through commercial and property to family. When acting for insolvency practitioners he has advised on the specialist costs considerations that arise in that field.

## COURT OF PROTECTION (PROPERTY & AFFAIRS)

Simon works extensively in the Court of Protection, Chancery Division and the County Court in matters relating to the property and affairs of those who lack capacity. His recent cases have included matters concerning statutory wills, the running of a personal injury trust, the occupation of a property bought with a patient's damages award, the recovery of overcharges made by a professional attorney, the recovery of sums taken without authorisation from a patient's account, what to do when an executor loses capacity, nursing and care home fees, the appointment of deputies where there is a foreign element. He is also the principal editor for property and affairs for the 39 Essex Chambers Mental Capacity Report.

## PROPERTY

Simon's property work ranges from contentious 1954 Act matters, through the interpretation of clauses in leases, restrictive covenants, rights of way and general property dispute resolution.

Most recently, he has successfully argued at first instance, in the Court of Appeal and the Supreme Court for the extension of the right to relief from forfeiture to licences of land.

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## CASES

### PROPERTY

**MANCHESTER SHIP CANAL CO LTD v VAUXHALL MOTORS LTD (Formerly GENERAL MOTORS UK LTD) [2019] 2 W.L.R 852**

The Supreme Court extended the jurisdiction of the court to grant relief from forfeiture to licences of land where the licence granted to the licensee possessory rights over the land. In so doing, the court rejected arguments that this would create uncertainty in relation to transactions concerning land rather holding that there was no principled objection to treating rights to possession of land differently to rights to possession of chattels.

**MANCHESTER SHIP CANAL CO LTD v VAUXHALL MOTORS LTD (Formerly GENERAL MOTORS UK LTD) (2018) [2018] 2 P & CR 18 : [2018] 5 WLUK 339 : [2019] 2 WLR 330**

A judge had been entitled to find that a manufacturer with a factory next to the Manchester Ship Canal, which held a licence in perpetuity to discharge surface water and trade effluent into the canal, had possessory rights over the drainage infrastructure and therefore could claim relief from forfeiture of the licence after it defaulted on payment. He had also been entitled when granting relief to take into account the windfall that would accrue to the canal company if relief was refused and the manufacturer was made to pay the current value of a discharge right.

**GENERAL MOTORS UK LTD v MANCHESTER SHIP CANAL CO LTD (2016)** [2016] EWHC 2960 (Ch)

The court had jurisdiction to consider a claim for relief from forfeiture in relation to the termination of a licence to discharge surface water into the Manchester ship canal. It exercised its discretion to grant relief,

**ARCEO v PALL MALL INVESTMENTS 3 LTD (2016)** LTL 19/5/2016

A leaseholder carrying out rebuilding work was granted an interim injunction to require the freeholder to allow access to the building site with vehicles including a crane so long as that did not interfere with others' access rights.

**Kettell v Bloomfold** [2012] EWHC 1422 [2012] 2 P & CR DG16 : [2012] L & TR 30

Dispute between long leaseholders and freeholder over whether the freeholder could build a new block of flats on a car parking area.

**Mansur Rahnema v (1) Shala Rahbari (2) Panthea Ansari; Panthea Ansari v (1) Dean & Dean Solicitors (a firm) (2) Mansur Rahnema (Ch D)** 20 March 2008 Lawtel 2 April 2008 [2008] 2 P & CR DG5

Where a property was held on trust in equal shares for two parties.

**New v Munshi Investments** 2008 EWHC 2807

A landlord was not liable in trespass for the actions of the purchaser of its land when it allowed the purchaser onto the land before completion and where the purchaser demolished a building on the land belonging to a tenant. The landlord had not authorised the demolition, nor could it have foreseen what the purchaser was going to do.

**Sheen Lalani v Crump Holdings Ltd (Ch D)** 22 January 2007 [2007] EWHC 47 (Ch)

The claimant, who for over nine years had occupied a flat bought by her father, had not made out her case that she was the true beneficial owner of the flat.

**Crow v Waters** 1 January 2006 HC [2007] 2 P & CR DG14

Lease/licence of agricultural land.

## **COSTS & LITIGATION FUNDING**

**ERIC CHRISTOPHER DUNBAR v VIRGO CONSULTANCY SERVICES LTD (2019)** LTL 1/3/2019 : [2019] 2 WLUK 463

A solicitor should not, on an assessment, recover costs that had been unreasonably incurred as a result of a failure to provide adequate costs advice. In the instant case, the solicitors' charges would be reduced by over 75% as a result of their failure to provide adequate costs advice to the client.

**MAIDEN LONDON LTD v RUDDICK & ANOR (2018)** [2018] EWHC 3684 (QB)

In making an order awarding costs for three planning appeals, the Secretary of State for Communities and Local Government might have intended that duplicated costs would be paid once rather than three times, but the order stated that common costs incurred in the three appeals should be excluded. A costs judge could not go behind the words of the order and a deputy master had been wrong to assess costs as what the order should have been rather than what it was. The order should have been challenged by way of judicial review.

**SPARTAFIELD LTD v (1) PENTEN GROUP LTD (2) RANJITH RATNASINGHAM (2017)** [2017] EWHC 1121 (TCC)  
[2017] 3 Costs LR 467

The court did not exercise its discretion under the Senior Courts Act 1981 s.51 to make a director of the defendant company pay the costs of the proceedings. The director had funded approximately 25% of the proceedings and wanted the company to recover money held by the court, but not for his personal benefit; he had wanted to pay off the company's creditors.

**BOLT BURDON SOLICITORS v (1) AIJAZ TARIQ (2) AZEEM TARIQ (3) AMEES TARIQ (2016)** [2016] EWHC 811 (QB)  
[2016] 2 Costs LR 359

Where a client objected to a non-contentious business agreement as being unfair or unreasonable, pursuant to the Solicitors Act 1974 s.57(5), the court had to consider the issues of fairness and reasonableness separately. Fairness related principally to the manner in which the agreement came to be made, whereas reasonableness related principally to the terms of the agreement.

**GARNAT TRADING & SHIPPING (SINGAPORE) PTE LTD v THOMAS COOPER (A FIRM) (2016)** [2016] EWHC 18  
(Ch)

An additional agreement made between solicitors and their client, after successful litigation but before a subsequent appeal hearing, fundamentally altered the original basis on which the firm had been entitled to charge the client and created a single, new and unenforceable contract. However, it could be severed, leaving the original retainer to cover everything except the appeal.

**Howes Percival LLP -V- Nicholas Page and Sarah Page** [2013] EWHC 4104

A challenge based on alleged breach of the Contracts Made in a Consumer's Home or Place of Work Regulations 2008.

**Harcus Sinclair (a firm) Claimant -and- (1) Buttonwood Legal Capital Limited (2) Rylatt (a firm) (3) Alternative Real Estate Fund Limited (4) Roskill Advisors (Cayman) Limited Defendants** 9 October 2013 [2013] EWHC 2974  
(Ch)

A successful party wanted to get an order for costs against the unsuccessful party's solicitors

**David Wyld & Co v Dadourian** [2011] EWHC 1517

Whether client could defend a solicitor's claim to fees on grounds that the argument was an unenforceable CFA.

**B v B** [2010] EWHC 543

Whether Official Solicitor acting as litigation friend was entitled to his costs from the patient and if so on what basis.

**AB & Others v MOD** 1 January 2009 [2009] EWHC 1421

Costs in group litigation.

**Nasser v United Bank of Kuwait (CA)** 21 December 2001 [2001] EWCA Civ 1454; Lawtel 21/12/2001 [2002] 1 WLR 1868 : [2002] 1 All ER 401

Security for costs/human rights.

## PROPERTY AND AFFAIRS

**ANTHONY JOHN DAY (Claimant/Interpleader Defendant) v (1) ROYAL COLLEGE OF MUSIC (2) TOBY HARRIS (Defendants) & (1) KATHERINE LOUISE ARNOLD (2) ROBERT MALCOLM ARNOLD (Interpleader Claimants) (2013)** [2013] EWCA Civ 191 [2013] 3 WLR 1560 [2014] Ch 211 Had Sir Malcolm Arnold's manuscripts been given away either by himself or the Royal College of Music and what did his will mean. What was the effect of the fact that Sir Malcolm suffered from bouts of incapacity, had an attorney and subsequently a receiver?

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## RECOMMENDATIONS

Simon is recommended by Chambers & Partners and Legal 500 for Costs Litigation.

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## MEMBERSHIPS

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## PUBLICATIONS

- *Regular contributions to Mental Capacity Report.*
- *"Property rights in the family home, clarity at last"* Fam Law (2004)
- *"Bankruptcy and divorce orders"* Fam Law (2004)
- *"Insolvent Defendants"* Sept 2005, April 2006 Kemp News and 2014 PIBA Conference
- *"Costs in the Court of Protection"* Elder Law Journal (Volume 5, Issue 3) 2015
- *"Testamentary freedom – where next?"* Elder Law Journal (Volume 5, Issue 4) 2015

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## QUALIFICATIONS

Inns of Court School of Law. Bar Finals: 1977-1978  
Cambridge University. MA (Law): 1974-1977

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**LONDON**

81 Chancery Lane,  
London  
WC2A 1DD  
Tel: +44 (0)20 7832 1111  
DX: London/Chancery Lane 298  
Fax: +44 (0)20 7353 3978

**MANCHESTER**

82 King Street,  
Manchester  
M2 4WQ  
Tel: +44 (0)16 1870 0333  
Fax: +44 (0)20 7353 3978

**SINGAPORE**

Maxwell Chambers,  
28 Maxwell Road,  
04-03 & 04-04, Maxwell Chamber  
Suites  
Singapore 069120  
Tel: +65 6320 9272

**KUALA LUMPUR**

#02-9, Bangunan Sulaiman,  
Jalan Sultan Hishamuddin,  
50000 Kuala Lumpur,  
Malaysia  
Tel: +60 32 271 1085

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