

## SIMON PASSFIELD

CALL: 2009

"Technically very strong, good on his feet and very user-friendly." "Simon is remarkably commercial and no problem seems too complicated."

*Chambers UK 2020*

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Simon is a specialist insolvency barrister who undertakes litigation and advisory work in all aspects of corporate and personal insolvency law. He has been consistently recognised as a leading junior in this field by Chambers and Partners and Legal 500 and has appeared in more than 30 reported insolvency cases. He is regularly instructed to act in high value and complex insolvency litigation and against leading counsel.

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## PRACTICE AREAS

- Insolvency
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## INSOLVENCY

In the last year, Simon has:

- acted for the joint liquidators of Officeserve Technologies Limited in pursuing a multi-million pound misfeasance claim against its former director (*Officeserve Technologies Limited v Anthony-Mike* [2017] EWHC 1920 (Ch); [2017] BCC 574) and restitution claims against third party recipients of substantial post-petition dispositions (*Officeserve Technologies Ltd & Anor v Annabel's (Berkeley Square) Ltd* [2018] EWHC 2168 (Ch); [2019] Ch 103);
- acted for the liquidator of Absolute Living Developments Limited in pursuing a multi-million pound claim against 13 defendants for breach of trust, dishonest assistance and knowing receipt (*Absolute Living Developments Ltd v DS7 Ltd* [2018] EWHC 1432 & 1717);
- represented a group of Malaysian investors who had contracted to purchase flats "off plan" in a failed multi-million-pound development in resisting an administration application and obtaining a winding up order (*Re Baltic House Developments Ltd* [2018] EWHC 1525 (Ch); [2018] Bus LR 1531);
- acted for the former directors of a company incorporated in St Vincent and Grenadines and beneficially owned by a Russian oligarch in defending a multi-million pound misfeasance claim against them (*Webinvest Limited v Millington & Ors*);
- represented a creditor which challenged the rejection by a liquidator of its £10m claim (*GE Oil & Gas UK Ltd v Hotham and Rowe (as Joint Liquidators of Universal Engineering Limited)*);
- acted for a trustee in bankruptcy in response to various complex applications made by a bankrupt who sought to challenge the validity of a judgment which he alleged had been obtained against him as a result of fraud and/or collusion (*Henry v Quick Draw LP*);
- acted for an individual who had obtained judgment against an Irish Bank in the sum of £113m and sought to set aside a statutory demand served on him by the joint special liquidators of the bank for payment of a costs order in the sum of £83,000 (*Bhandal v Wallace and Richardson (Joint Special Liquidators of Irish Bank Resolution Corp Ltd)* [2017] 5 WLUK 321).

His practice encompasses all aspects of corporate and personal insolvency law.

In addition, Simon has a broad experience of company law and general commercial matters arising in an insolvency context, including contractual and corporate disputes, agency matters and guarantees.

## SIGNIFICANT CASES

- **Oyesanya v Jackson [2020] EWHC 542 (Ch)**- Successfully resisting appeal against possession and sale order made in respect of bankrupt's solely owned property.
- **Re Skeggs Beef Limited [2019] EWHC 2607 (Ch); [2020] BCC 635** -The court declared that an out-of-hours appointment of administrators by a qualifying floating charge holder was valid notwithstanding that the appointer used CE filing rather than the procedure under r.3.20 of the Insolvency (England and Wales) Rules 2016.
- **Absolute Living Developments Ltd (in Liquidation) v DS7 Ltd & Ors [2019] EWHC 550 (Ch)** -The court retrospectively dispensed with service of a claim form and other documents on a British citizen resident in Switzerland where her lawyer had refused to accept service on the basis that some of the documents had not been translated into French.
- **Officeserve Technologies Ltd & Anor v Annabel's (Berkeley Square) Ltd & Ors [2018] EWHC 2168 (Ch); [2019] Ch 103** Successful claim to recover void payments made by the applicant company to the 43 respondents after the presentation of the winding up petition.
- **Absolute Living Developments Ltd (in Liquidation) v DS7 Ltd & Ors (No 2) [2018] EWHC 1717 (Ch)** - Acted successfully for the claimant company in respect of its committal application against a defendant who was found to have committed multiple breaches of a freezing order and was sentenced to a £100,000 fine. Led by Hugh Sims QC.
- **Absolute Living Developments Ltd (in Liquidation) v DS7 Ltd & Ors (No 1) [2018] EWHC 1432 (Ch)** -Acted successfully for the claimant company in resisting the defendants' application for security for costs on the grounds that it would stifle a genuine claim in circumstances where the claimant was in compulsory liquidation, there were no available assets in its estate and the liquidator was not prepared personally to provide security for the defendants' costs of the claim. Led by Hugh Sims QC.
- **Re Baltic House Developments Ltd [2018] EWHC 1525 (Ch); [2018] Bus LR 1531** -Acted successfully for a group of investors in resisting the Company's application for an administration order and obtaining an immediate winding up order in circumstances where the purpose in para.3(1)(c) Sch.B1 could not be achieved without unnecessarily harming the interests of the creditors as a whole.
- **Stevensdrake Ltd v Hunt [2017] EWCA Civ 1173; [2017] BCC 611; [2017] BPIR 1408; [2017] 4 Costs LR 781** Solicitors acting under a CFA were estopped by convention from claiming payment from the liquidator personally where a misfeasance claim had been successful but there were no recoveries into the estate. Led by Hugh Sims QC.
- **Officeserve Technologies Ltd v Anthony-Mike [2017] EWHC 1920 (Ch); [2017] BCC 574; [2017] BPIR 1291** -Acted successfully for a liquidator in establishing that a post-petition settlement agreement did not purport to compromise a misfeasance claim against a director, that any such compromise would have been void pursuant to s.127 of the Insolvency Act 1986 and that there was no basis for making a validation order.
- **Bhandal v Wallace (Joint Special Liquidator of Irish Bank Resolution Corp Ltd [2017] 5 WLUK 321**- a debtor applied to set aside a statutory demand based on a costs order in the sum of £83,000 obtained against him by the joint special liquidators of an Irish bank in circumstances where he had a judgment against the bank in the sum of £113m.
- **Armstrong v Onyearu [2017] EWCA Civ 268; [2018] Ch 137 [2017] 3 WLR 1304; [2017] BPIR 869;Times, 9 June 2017; [2017] WLR(D) 271** -Appeal considering the application of the doctrine of equity of exoneration where a non-bankrupt spouse received an indirect benefit from a business loan taken out by her husband and secured on their home.
- **Re-Energized Ltd v EDF Energy Plc [2017] EWHC 1424 (Ch)** - Successfully resisted an application to restrain the advertisement of a winding up petition.
- **Re Officeserve Technologies Ltd [2017] EWHC 906 (Ch); [2017] BCC 363** -Acted successfully for creditors in resisting a company's administration application where there had been considerable post-petition dispositions.
- **Pettit v Bradford Bulls (Northern) Limited [2016] EWHC 3557 (Ch); [2017] BCC 50; [2017] 2 BCLC 519** -Where there were concerns about the validity of an out-of-court administration appointment, the court terminated that appointment (insofar as valid) with retrospective effect and made a retrospective administration order.
- **Horton v Henry [2016] EWCA Civ 989; [2017] 1 WLR 391; [2017] 3 All ER 735; [2016] BPIR 1426; [2016] Pens LR 311; Times, 18 January 2017, [2016] WLR (D) 506; [2016] All ER (D) 50 (Oct)** - Landmark appeal concerning whether a bankrupt can be compelled to elect to draw down or crystallise his pension in order to enable the income to be claimed for his estate by way of income payments order. Led by Stephen Davies QC.
- **Wood v Lowe [2016] EWHC 2052 (Ch)** - Application by IVA supervisor for payment by a trustee in bankruptcy of his costs of disclosure orders.
- **Re Rococo Developments Ltd; Evans v Jones [2016] EWCA Civ 660; [2017] Ch 1; [2016] 3 WLR 1480; [2017] 1 BCLC 184; [2016] BPIR 1207; [2016] All ER (D) 36 (Jul)** - Whether a company's claim for repayment of an unlawful dividend should be included in the assessment of balance sheet solvency for the purposes of a preference claim. Led by Hugh Sims QC.
- **Stevensdrake Ltd v Hunt [2016] EWHC 1111 (Ch); [2016] All ER (D) 102 (May)**- Claim by solicitors that they were entitled to all of the proceeds of a recovery into an insolvent estate notwithstanding that the monies were divided between the liquidator, solicitors and counsel. Led by Hugh Sims QC.
- **Wood v Lowe [2016] EWHC 1010 (Ch)**- Application for possession and sale of two properties of which the bankrupt's daughter claimed to be the sole beneficial owner.

- **Stevensdrake Ltd v Hunt** [2016] EWHC 342 (Ch); [2016] BCC 515; [2017] 1 BCLC 64; [2016] 2 Costs LO 187; [2016] BPIR 773; [2016] All ER (D) 258 (Feb)- Successfully defending an Insolvency Practitioner in a claim brought against him personally by his former solicitors for payment of approximately £1m owed to them under a CFA where a misfeasance claim had been successful but there were no recoveries into the estate. Led by Hugh Sims QC.
  - **Walker & Anor v National Westminster Bank Plc & Anor** [2016] EWHC 315 (Ch); [2016] BCC 355; [2017] 1 BCLC 124; [2016] All ER (D) 268 (Feb)- Claim by former administrators of a dissolved company for direct payment of redress for mis-sold IRHP.
  - **Re Premier Motor Auctions Leeds Limited** [2015] EWHC 3568 (Ch); [2016] BCC 463; [2015] All ER (D) 126 (Dec)- Application by liquidators for approval and authorisation of litigation expenses pursuant to r 4.218E of the Insolvency Rules 1986.
  - **Re Armstrong Brands Limited** [2015] EWHC 3303 (Ch); [2016] BCC 657; [2015] All ER (D) 172 (Nov)- Application to determine the validity of the appointment of administrators pursuant to paragraph 14 of Schedule B1 to the Insolvency Act 1986.
  - **Re Overfinch Bespoke Vehicles Limited; Autobrokers Ltd v Dymond** [2015] EWHC 2691 (Admin); [2017] BCC 291 - Acting successfully for the majority creditors of a company in creditors' voluntary liquidation in respect of an application for an order directing the liquidators to call a meeting to consider a resolution for their removal.
  - **Wood v Lowe** [2015] EWHC 2634 (Ch); [2015] BPIR 1537; [2015] All ER (D) 133 (Sep)- Trial to determine the ownership of various chattels (including collections of Beatles memorabilia and jukeboxes) discovered at the home of a bankrupt following the execution of a warrant pursuant to s 365 of the Insolvency Act 1986.
  - **Armstrong v Onyearu** [2015] EWHC 1937 (Ch)- Appeal considering the application of the doctrine of equity of exoneration where a non-bankrupt spouse received an indirect benefit from a business loan taken out by her husband and secured on their home.
  - **Horton v Henry** [2014] EWHC 4209 (Ch); [2015] 1 WLR 2488; [2015] BPIR 313; [2015] Pens LR 59- Landmark case considering whether the court can make an income payments order where the bankrupt has an unexercised entitlement to elect to draw a pension. The High Court declined to follow its earlier decision in *Raithatha v Williamson* [2012] EWHC 909 (Ch).
  - **Van Heeren v Cooper** [2014] EWHC 4797 (Ch); [2015] BPIR 953 - Appeal against the setting aside of a statutory demand based on New Zealand costs orders considering whether s 29(5) of the Limitation Act 1980 applied to an action on a judgment.
  - **Re X (Application for Income Payments Order)** [2014] BPIR 1081 - The court considered the scope of the decision in *Raithatha v Williamson* and whether a bankrupt should be compelled to elect to draw down a lump sum pension option to generate the short term surplus income needed to support an income payments order in circumstances where this would not be in long term interests of bankrupt.
  - **Re Stephen Leonard Hinchliffe** [2014] 2 WLUK 699 - Acted successfully for a trustee in bankruptcy in obtaining a suspended committal order against a bankrupt who failed to disclose the receipt of a lump sum payment of approximately £30,000 from a pension fund, which was paid into an undisclosed bank account (which had been opened post-bankruptcy) and then dissipated. Norris J confirmed that it is not necessary for a trustee to obtain the permission of the court to make a committal application on the basis of the bankrupt's failure to comply with his obligations under s 333 IA.
  - **LSI 2013 Ltd v The Solar Panel Company (UK) Ltd** [2014] EWHC 248 (Ch); [2014] All ER (D) 153 (Feb) Where a company contended that a debt on which a winding-up petition was based was genuinely disputed on substantial grounds, a judge had been wrong to make a winding-up order on the basis that the petitioning creditor could properly be regarded as a contingent creditor.
  - **Hinchliffe v Smith & Ors** [2013] 10 WLUK 824- Acted successfully for a trustee in bankruptcy in resisting an application by a bankrupt to vary a pre-bankruptcy freezing order to allow for the release of pension funds where the bankrupt had previously failed to disclose the receipt and dissipation of a lump sum payment from another pension fund.
  - **Amer Sports (UK) Ltd v Reynard** [2013] 5 WLUK 409- Acted successfully at first instance and on appeal to the High Court (HHJ McCahill QC) and the Court of Appeal for a petitioning creditor who had obtained a bankruptcy order having reasonably refused an offer to secure a debt of approximately £10,000 by a charge on the debtor's property, despite there being available equity in excess of £1m.
  - **JGD Construction Limited v Aaron Mills** [2013] EWHC 572 (Ch) [2013] BPIR 811- The primacy of a formal insolvency process took precedence over any application to make final an interim third party debt order once insolvency had started. It could not be said that there was no discretion to make the order final, but there would have to be highly exceptional circumstances.
  - **Re McNally; McNally v (1) Dymond (2) National Westminster Bank plc** [2013] EWHC 1685 (Ch); [2013] BPIR 604- Acted successfully at first instance for the chairman of an IVA creditors' meeting who had allowed the respondent bank which was owed £3.4m by the debtor to value its security at £350,000 and vote in respect of the remaining £2.9m to defeat the IVA. That decision was upheld on appeal (at which the chairman was not represented and did not attend).
  - **Pace Europe Ltd and Others v Dunham and Another** [2012] EWHC 852 (Ch); [2012] BPIR 836; [2012] All ER (D) 247 (Mar)- Successfully appealing decision to set aside statutory demand based on the judgment of the North Carolina Superior Court on the grounds that it infringed s 5 of the Protection of Trading Interest Act 1980 and was obtained in breach of the rules of natural justice in which HHJ Purle QC approved the obiter comments of Mann J in *Lucasfilm Ltd v Ainsworth* [2008] EWHC 1878 (Ch) and rejected the criticism of that decision in *Briggs & Rees and Dicey, Morris & Collins*.
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## RECENT CASES

- Stevensdrake Limited v Hunt [2017] EWCA Civ 1173, [2017] 4 Costs LR 781, [2017] BCC 611
  - Officeserve Technologies Ltd [2017] EWHC 906 (Ch); [2017] BCC 363
  - Officeserve Technologies Ltd v Anthony-Mike [2017] EWHC 1920 (Ch); [2017] BCC 574
  - Armstrong v Onyearu [2017] EWCA Civ 268; [2017] 3 WLR 1304
  - Stevensdrake Ltd v Hunt [2017] EWCA Civ 1173; [2017] BCC 611
  - Wood v Lowe [2016] EWHC 1010 (Ch) & [2016] EWHC 2052 (Ch)
  - Horton v Henry [2016] EWCA Civ 989; [2017] 1 WLR 391
  - Armstrong v Onyearu [2015] EWHC 1937 (Ch)
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## RECOMMENDATIONS

### LEGAL 500 2020

#### Commercial, Banking, Company & Chancery

"Robust, responsive and an able advocate."

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### CHAMBERS UK 2019

#### Restructuring / Insolvency

A highly sought-after junior who is active in all areas of corporate and personal insolvency. He wins praise from sources, who highlight not only his technical knowledge and work ethic but also the strength of his written and oral advocacy. His recent work involves claims alleging a breach of trust or fiduciary duties.

"Bright and personable with a good commercial grasp of the law." "Meticulous, encyclopaedically clever, impressive on his feet." Recent work: Led a case against the director of a company by the liquidators for misfeasance, where the director allegedly used company money to fund his lavish lifestyle.

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### LEGAL 500 2019

#### Commercial, Banking, Insolvency & Chancery

Exceptionally bright and fleet of foot.

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### CHAMBERS UK 2018

#### Restructuring / Insolvency

Leading Junior - Band 1

A highly sought-after junior who is active in all areas of corporate and personal insolvency. He wins praise from sources, who highlight not only his technical knowledge and work ethic but also the strength of his written and oral advocacy. His recent experience includes working on bankruptcy disputes involving pension rights.

Strengths: "He is very quick to turn things around and really, really bright." "He is technically very strong and also very competent on his feet." "He can make the driest points of law interesting."

Recent work: Represented the administrators of Bradford Bulls, a professional rugby league club, in the High Court on an urgent application to determine the validity of their appointment and the cross-application of the directors for a retrospective administration order.

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## LEGAL 500 2017

### Commercial, Banking, Insolvency & Chancery Law

Leading juniors

'He has great technical knowledge.'

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## CHAMBERS UK 2017

### Restructuring / Insolvency

Leading Junior - Band 1

A highly sought-after junior who is active in all areas of corporate and personal insolvency. He wins praise from sources, who highlight not only his technical knowledge and work ethic, but also the strength of his written and oral advocacy.

Strengths: "He is a very bright, perceptive individual and the quality of his analysis is first-class." "He has a very strong understanding of the technical elements of the law, and is very accomplished on his feet."

Recent work: Acted for the trustee in a high-value bankruptcy case that was complicated by allegations of professional misconduct as well as the disputed ownership of valuable chattels initially concealed by the bankrupt.

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## LEGAL 500 2016

### Commercial, Banking, Insolvency & Chancery Law

Leading juniors

'A dedicated insolvency specialist.'

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## CHAMBERS UK 2016

### Restructuring / Insolvency

Leading Junior - Band 2

Has a dedicated insolvency practice and is frequently instructed in complex cases concerning both corporate and personal insolvency.

Strengths: "He's a very commercial barrister who won't get bogged down - he understands his clients' commercial bearings."

Recent work: Represented a trustee in a bankruptcy. The trustee wanted to pursue a possession and sale of the bankrupt's home.

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## LEGAL 500 2015

### Commercial, Banking & Insolvency

Leading juniors

'He is clearly going to make it to the very top at some stage!'

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## CHAMBERS UK 2015

### Restructuring / Insolvency

Leading Junior - Band 2

Praised extensively for his intellectual strength, his work ethic and his knowledge of insolvency law. He advises and represents clients in corporate and personal insolvency situations.

Expertise: "He is unbelievably sharp; he knows the answers to the most complex questions almost immediately."

Recent work: He acted for a trustee in bankruptcy in an action alleging that several major transfers of property between a bankrupt and his wife were shams.

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## CHAMBERS UK 2014

Specialises in all areas of corporate and personal insolvency law and has developed a strong reputation in the market for both his excellent advocacy and his advisory work. Expertise: "He offers essential guidance in getting to the issue quickly and enabling a speedy resolution." Recent work: He advised a trade creditor in connection with retention of title issues arising from the administration of Jessops.

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## CHAMBERS UK 2013

Robobarrister Simon Passfield "never stops," and is "never fazed by anything." "A natural advocate," he is "someone to look out for in the years to come," say his peers.

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## MEMBERSHIPS:

- Association of Business Recovery Professionals
  - Chancery Bar Association
  - Insolvency Lawyers' Association
  - The Bankruptcy and Companies Court Users' Committee
  - Attorney General's Regional Panel of Junior Counsel to the Crown
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## EDUCATION:

- BVC, BPP Law School - Outstanding
  - LLB Hons, University of Nottingham
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## RECENT NEWS

- Members of Guildhall provided training to NHS England, Department of Health & Local Government
  - Hugh Sims QC and Simon Passfield successfully defend Stevensdrake appeal
  - Hugh Sims QC & Simon Passfield successfully defend insolvency practitioner - Feb 2016
  - Guildhall Chambers quiz night goes down a "sturm" - September 2015
  - Podcast - Pension Rights and Bankruptcy with Simon Passfield - Sept 2015
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