

# SIMON PASSFIELD KC

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Simon Passfield KC is a specialist [insolvency](#) barrister who undertakes litigation and advisory work in all aspects of corporate and personal [insolvency](#) law. He was appointed as a King's Counsel on 18 March 2024, following his success in the 2023 Silk Competition.

Simon is regularly instructed to act in high profile, high value and complex [insolvency](#) litigation and has appeared in more than 50 reported cases. For more than a decade, he was recognised as a leading junior in this field by Chambers & Partners and Legal 500. In addition, he 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.

Prior to his elevation as silk, Simon was a member of the Attorney General's Regional A Panel of Junior Counsel to the Crown and regularly acted for the Secretary of State for Business, Energy and Industrial Strategy and the Official Receiver in [Company Directors' Disqualification](#) cases.

Simon has also sat as a Deputy Insolvency and Companies Court Judge since December 2020.

## Expertise

### Insolvency

In the last year, Simon has:

- Acted for the joint administrators of Axiom Ince Limited (the entity which operated a number of law firms, including Axiom DWFM, Ince & Co and Plexus Legal) in pursuing claims to recover £64m of misappropriated client monies.
- Acted successfully for a landlord which challenged a CVA on the grounds of unfair prejudice.
- Acted for Peter Smith (the former CEO of Nasmyth Group Ltd with employment claims in the sum of approximately £8.9m) in successfully opposing the sanctioning of a restructuring plan under Part 26A of the Companies Act 2006.
- Acted successfully for the Arena Coventry group of companies (which owned and operated the

Coventry Building Society Arena, the home stadium of Coventry City FC and Wasps RFC) in obtaining approval for a pre-packaged administration sale of their business and assets to Frasers Group plc for £17m.

- Acted for the joint liquidators of Premier FX Limited (an FCA-regulated entity which collapsed in 2018 leaving 121 creditors with claims in excess of £6m).
- Acted for the joint administrators of Philips Trust Corporation Ltd (an estate planning company which acts as the corporate trustee of more than 1,000 trusts and holds trusts assets of more than £100m) in obtaining *Berkeley Applegate* orders and the approval of a distribution plan.
- Acted for the joint liquidators of Hudspiths Limited (an unregulated forex trader suspected of operating a Ponzi scheme with unsecured creditors in excess of £60m) in obtaining freezing injunctions and pursuing a multi-million pound misfeasance claim against its former directors.
- Acted for the joint liquidators of Ethos Solutions Limited (an umbrella company which operated a tax avoidance scheme involving the use of an offshore trust) in pursuing a multi-million pound claim against 63 respondents pursuant to s.423 of the Insolvency Act 1986.
- Acted successfully for the liquidator of Absolute Living Developments Limited (a property development company which collapsed in 2016 leaving creditors with claims in excess of £18m) in enforcing the terms of a settlement agreement in compromise of multi-million pound claims against its former directors.
- Acted successfully for a liquidator in resisting unfounded allegations of impropriety raised by an alleged creditor.
- Advised in relation to the proposed restructuring of a football club.

## Featured Insolvency cases

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### **McGuinness v Gee [2023] EWHC 3283 (Ch)**

Successfully resisting application by former director for an interim injunction restraining administrators from marketing and selling property on the grounds that the debenture under which they were appointed was unenforceable pursuant to s.26 of the Financial Services and Markets Act 2000 and obtaining indemnity costs order.

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### **Hitcham Homes Ltd v Goldentree Financial Services plc [2023] EWHC 1727 (Ch)**

Successfully resisting novel application by insolvent company for an injunction restraining a qualifying floating charge holder from appointing administrators and/or applying for an administration order.

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### **Re Nasmyth Group Ltd [2023] EWHC 988 (Ch)**

The court refused to sanction a restructuring plan under Part 26A of the Companies Act 2006 where it would be unfair to cram down HMRC.

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### **Re Fastfit Station Ltd [2023] EWHC 496 (Ch)**

Where an insolvent company had caused payments which were due to it to instead be paid to a new company controlled by the insolvent company's director, the payments constituted transactions at an undervalue and the director was in breach of fiduciary duty.

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**Re Ethos Solutions Ltd [2022] EWHC 3098 (Ch)**

The court refused to permit a liquidator to amend his claim under s.423 of the Insolvency Act 1986 in respect of a tax avoidance scheme implemented by the company to plead additional claims in unjust enrichment.

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**Doran v County Rentals Ltd (t/a Hunters) [2022] EWCA Civ 1376; [2023] BPIR 53**

Acted successfully for respondent company in landmark appeal to the Court of Appeal concerning the coronavirus test in Schedule 10 to the Corporate Insolvency and Governance Act 2020. Permission to appeal was subsequently refused by the Supreme Court.

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**Absolute Living Developments Ltd (In Liquidation) v Absolute Living Developments (Orchid Point) Limited [2022] EWHC 2351 (Ch)**

Acted successfully for liquidator in obtaining declaration as to her entitlement to sell property under the terms of a settlement agreement

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**Absolute Living Developments Ltd (In Liquidation) v Absolute Living Developments (Orchid Point) Limited [2022] EWHC 988 (Ch)**

Acted successfully for liquidator in obtaining declaration as to validity of power of attorney granted in accordance with terms of settlement agreement.

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**Doran v County Rentals Ltd (t/a Hunters) [2021] EWHC 3478 (Ch); [2022] BCC 572**

Acted successfully for respondent company in resisting appeal against dismissal of winding up petition at preliminary hearing where the coronavirus test in Schedule 10 to the Corporate Insolvency and Governance Act 2020 was not met.

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**Cunningham v Absolute Living Development Ltd (In Liquidation) [2021] EWHC 2311 (Ch)**

Successfully resisting application for injunction to restrain liquidator from selling property at an alleged undervalue.

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### **Re Premier FX Limited [2021] EWHC 1321 (Ch)**

Successfully acting for liquidators in resisting trust claim. Led by Hugh Sims QC.

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### **Jackson v Ayles & Pumphrey [2021] EWHC 995 (Ch)**

Successfully acting for trustee in bankruptcy in obtaining a declaration that a first charge secured over the bankrupt's matrimonial home was unenforceable pursuant to s.26 of the Financial Services and Markets Act 2000.

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### **Re Virgin Active Holdings Ltd [2021] EWHC 814 (Ch) & [2021] EWHC 911 (Ch)**

Acting for Pure Gym Limited (leading Samuel Parsons) in raising concerns about the drafting of restructuring plans proposed by companies in the Virgin Active Group under Part 26A of the Companies Act 2006. In light of the concerns, the companies agreed to amend the plans and to pay Pure Gym's costs.

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### **Hall (Liquidator of Ethos Solutions Ltd) v Nassim [2021] EWHC 142 (Ch)**

The court struck out parts of a claim by a liquidator seeking to challenge payments made by a company to the respondents via a business benefit trust pursuant to s.423 of the Insolvency Act 1986. Led by Hugh Sims QC.

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### **Faryab v Thrings LLP [2020] EWHC 3786 (Ch)**

The court struck out a £25m claim issued by a bankrupt against the petitioning creditor as an abuse of process.

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### **Oyesanya v Jackson [2020] EWHC 542 (Ch)**

Successfully resisting appeal against possession and sale order made in respect of bankrupt's solely owned property.

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### **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.

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### **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.

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**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.

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**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.

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**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.

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**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.

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**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 stopped 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.

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**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.

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**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 judgement against the bank in the sum of £113m.

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**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.

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**Re-Energized Ltd v EDF Energy Plc [2017] EWHC 1424 (Ch)**

Successfully resisted an application to restrain the advertisement of a winding up petition.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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**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.

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## Company Directors Disqualification

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Over the past few years, Simon has developed a substantial Company Directors Disqualification practice. Since 2015, he has been a member of the Attorney General's Regional Panel of Junior Counsel to the Crown and regularly acts for the Secretary of State and the Official Receiver in pursuing claims under both s.6 and s.8 of the Company Directors Disqualification Act 1986. In 2020, Simon appeared for the Claimant in two significant reported CDDA cases in the High Court.

In addition, Simon is instructed by company directors to assist with defending disqualification claims and making applications for under s.17 CDDA. In 2020, he successfully acted for the former directors of Freshway Wholesale Foods Limited (who had been disqualified for periods of 6.5 and 5.5 years respectively) in obtaining interim and final permission to act as directors of four companies.

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### Featured Company Directors Disqualification cases

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**Re Bell Pottinger Private Ltd [2021] EWHC 672 (Ch)**

The court dismissed an application by the former members of an LLP to strike out claims against them pursuant to s.6 of the Company Directors Disqualification Act 1986. Led by Hugh Sims QC.

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**Re Focus 15 Limited; Official Receiver v Duckett [2020] EWHC 3016 (Ch)**

The court made a 10 year disqualification order against a de facto director of a company who failed to ensure that it maintained adequate accounting records and lied egregiously on oath.

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**Re Spiceroy Restaurant Limited; Secretary of State for Business, Energy and Industrial Strategy v Luthfur Rahman [2020] EWHC 2213 (Ch)**

The court dismissed a disqualification claim against an alleged de facto director of a company which had

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employed illegal workers.

## Appointments

- Deputy Insolvency and Companies Court Judge
- Attorney General's Regional A Panel of Junior Counsel to the Crown

## Education

- BVC (Outstanding), BPP Law School
- LLB Hons, University of Nottingham

## Memberships

- Fellow of the Association of Business Recovery Professionals (R3)
- Chancery Bar Association
- Insolvency Lawyers' Association
- Insolvency and Companies Court Users' Committee