

Stephen Kosmin

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Stephen Kosmin specialises in administrative and public law, procurement law, financial services, and information and data protection law. He is ranked by both Chambers and Partners and the Legal 500 in each of those areas of practice. Stephen is additionally ranked by the Legal 500 in local government law and by Chambers and Partners in civil liberties and human rights. In August 2023, Stephen was appointed to the Attorney General's A Panel.

Stephen has wide-ranging trial and appellate court experience, particularly in high-value and multi-party disputes. Recently, Stephen has appeared:

- in the Supreme Court in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 3)*, acting for the appellant; in *Cox v Ministry of Justice*, acting for the respondent; and in *Independent Workers Union of Great Britain v Central Arbitration Committee and Rooffoods Ltd (t/a Deliveroo)*, acting for the intervener;



He is very diligent and will read every word of every document in order to identify every possible issue in the case.

CHAMBERS AND PARTNERS

- in the Court of Appeal in *Secretary of State for Work and Pensions v AT (European Union law, Universal Credit)*, acting for the Secretary of State; in *Cobalt Data Centre 2 LLP v HMRC*, acting for HMRC; in *R (Bridges) v Chief Constable of South Wales*, acting for the Surveillance Camera Commissioner; in *Kimathi v Foreign and Commonwealth Office*, acting for the Foreign and Commonwealth Office; and in *R (Tesfay) v Secretary of State for the Home Department*, acting for the Home Secretary;
- in the Administrative Court in public law cases, including *R (Charles Street Securities Europe LLP) v Financial Ombudsman Service*; *R (Get Real Marketing Company Ltd) v Culture Recovery Board*; *R (Police Superintendents' Association) v HM Treasury*; and *R (Enterprise Managed Service Ltd) v Secretary of State for Housing, Communities and Local Government*;
- in the Technology and Construction Court in procurement claims, including *James Waste Management LLP v Essex County Council*; *Alstom Transport UK Ltd v Network Rail Infrastructure Ltd*; *R (Good Law Project) v Prime Minister*; *Altiatech Ltd v Birmingham City Council*; and *Kenson Contractors (Benington) Ltd v Haringey Ltd*;
- in the King's Bench Division in *Prismall v Google UK Ltd*; *Seadrill Ghana Operations v Tullow Ghana Ltd*; and *Berkeley Burke Sipp Administration v Financial Ombudsman Service*;
- in the Upper Tribunal and First-tier Tribunal in tax disputes and information law cases, including *Ticketmaster UK Ltd v Information Commissioner*; *Ofqual v Information Commissioner*; *Maurizi v Information Commissioner*; and *Myhill v General Medical Council*.

Stephen also has considerable experience and expertise of public international law, arbitral proceedings, and negotiations.

Expertise

Financial Services

Stephen is very experienced in financial regulation and financial services law. He specialises in disputes concerning the jurisdiction and decision-making of financial regulators and dispute resolution schemes. In particular, he regularly advises on the liability of SIPP operators and appointed representatives, tax avoidance schemes, collective investment schemes, and the mis-selling of financial products.

Stephen has advised the following clients:

- The Financial Services Compensation Scheme, including in relation to jurisdiction, quantum, and issues relating to judicial review.
- The Financial Ombudsman Service, including in relation to judicial review proceedings, European law, and jurisdiction.
- HM Treasury, including on pension scheme transfers.
- HMRC, including in respect of sophisticated tax avoidance schemes.
- The Bank of England, including by assisting with a large-scale investigation of corporate malpractice and judicial review proceedings.
- Both the Serious Fraud Office and separately a party under investigation by the Serious Fraud Office.
- A group of individual claimants in respect of negligent tax avoidance advice, reaching a settlement on favourable terms with the financial advisor.
- A number of individual claimants on the operation of the Payment Services Regulations 2009, enabling them to recover significant sums from banks. Stephen has also advised on issues concerning consent and authorisation of payment transactions under the Payment Services Regulations 2017.
- Legal persons affected by anti-money laundering compliance obligations.
- Individual consumers challenging decisions of the Pensions Ombudsman.

Stephen is a frequent contributor to leading journals on financial services law and practice, including the Journal of International Banking and Finance Law and the Journal of Money Laundering Control.



He does an excellent job distilling details and has a real understanding of regulators.

CHAMBERS & PARTNERS

R (Linear Investments) v Financial Ombudsman Service

[2024] EWHC 1428 (ADMIN)

In which Stacey J considered a challenge to a decision of an ombudsman that the classification by an investment firm of a Professor at the London School of Economics as an elective professional customer was defective.

R (Charles Street Securities Europe LLP) v Financial Ombudsman Service

[2022] EWHC 2401 (KB)

In which Murray J considered a jurisdictional challenge to an ombudsman's classification of a client of the claimant as a consumer, rather than as an elective professional client.

R (Cobalt Data Centre) v Revenue and Customs Commissioners

[2022] EWCA CIV 1422 CA; [2022] STC 2041

In which the Court of Appeal considered the availability of enterprise zone allowances in the context of two partnerships having acquired merely rights under a Golden Contract to construct industrial buildings in an enterprise zone.

R (Madden) v Financial Ombudsman Service and Coutts

Concerning the approach of an ombudsman to questions of bad faith and dishonesty.

R (Charles Street Securities Europe LLP) v Financial Ombudsman Service

[2023] EWHC 448 (ADMIN)

In which Heather Williams J considered the extent to which reasons had to be provided by an ombudsman when departing from the common law.

R (Charles Street Securities Europe LLP) v Financial Ombudsman Service

[2022] EWHC 2401 (KB)

Which concerned a challenge to the jurisdiction of the Ombudsman to consider a complaint concerning high risk investments.

R (Cobalt Data Centre) v Revenue and Customs Commissioners

[2022] EWCA CIV 1422 CA; [2022] STC 2041

In which the Court of Appeal's judgment analysed the fundamental question in contract law of when a purported variation of a contract between two parties creates a new contract as a matter of law.

R (Portal Financial Services LLP) v Financial Ombudsman Service

[2022] EWHC 710 (ADMIN)

Which concerned the extent to which an Ombudsman was obliged to apply common law principles.

R (Portal Financial Services LLP) v Financial Ombudsman Service

[2022] EWHC 710 (ADMIN)

In which Sweeting J considered a challenge to 27 decisions of an ombudsman regarding the scope of the due diligence obligations arising under the FCA's Principles.

R (Portal Financial Services LLP) v Financial Ombudsman Service

[2022] EWHC 710 (ADMIN)

Led by Stephen Kosmin for the Defendant, successfully resisting a renewed application for permission to judicially review 27 decisions, which had found the Claimant liable for 100% of losses caused by their lack of due diligence into the investments to be held within a SIPP wrapper.

R (Enterprise Managed Service Ltd) v Secretary of State for Housing, Communities and Local Government

[2021] EWHC 1436 (ADMIN)

Which concerned the lawfulness of provisions of the Local Government Pension Scheme (Amendment) Regulations 2020 with retrospective effect.

R (oao Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service Ltd

[2019] BUS LR 437

In which Jacobs J determined the lawfulness of an ombudsman's decision concerning the inadequacy of due diligence undertaken by a SIPP operator engaged on execution-only terms.

R (Portal Financial Services LLP) v Financial Ombudsman Service

[2022] EWHC 710 (ADMIN)

Led by Stephen Kosmin for the Defendant, successfully resisting a renewed application for permission to judicially review 27 decisions, which had found the Claimant liable for 100% of losses caused by their lack of due diligence into the investments to be held within a SIPP wrapper.

R (Enterprise Managed Service Ltd) v Secretary of State for Housing, Communities and Local Government

[2021] EWHC 1436 (ADMIN)

Which concerned the lawfulness of provisions of the Local Government Pension Scheme (Amendment) Regulations 2020 with retrospective effect.

R (oao Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service Ltd

[2019] BUS LR 437

In which Jacobs J determined the lawfulness of an ombudsman's decision concerning the inadequacy of due diligence undertaken by a SIPP operator engaged on execution-only terms.

P v SSWP (Child support – property and capital transfers)

[2018] UKUT 60 (AAC) BEFORE UTJ BANO

Concerning the proper valuation of a quasi-partnership company.

Berkeley Burke SIPP Administration LLP v Charlton

[2017] EWHC 2396 (COMM)

In which Teare J considered whether the Arbitration Act 1996 applied to the Financial Ombudsman Service's statutory complaints procedure.

R (on the application of Full Circle Asset Management) v Financial Ombudsman Service

[2017] EWHC 323

In which Nicol J considered a judicial review application by a firm of financial advisers who had been the subject of a section 166 skilled person review. The case explored the key regulatory relationship between the FCA and the Financial Ombudsman Service.

R (on the application of Chancery (UK) LLP) v Financial Ombudsman Service Ltd

[2015] EWHC 407 (ADMIN)

In which Ouseley J considered a judicial review application by a firm of chartered accountants challenging a jurisdiction decision in respect of a tax avoidance scheme (a limited liability partnership to exploit commercial rights in film and television products).

R (on the application of Full Circle Asset Management) v Financial Ombudsman Service

[2017] EWHC 323

In which Nicol J considered a judicial review application by a firm of financial advisers who had been the subject of a section 166 skilled person review. The case explored the key regulatory relationship between the FCA and the Financial Ombudsman.

Wick v Secretary of State for Work and Pensions

[2016]

In which the Upper Tribunal (Administrative Appeals Chamber) considered the definition of the term "money", in the context of holdings of gold bullion and Krugerrands, and other non-traditional assets.

R (on the application of Shaw) v Financial Ombudsman Service Ltd

[2015] EWHC 1657 (ADMIN)

In which Haddon-Cave J considered the corporate knowledge of the Financial Ombudsman Service when considering complaints.

R (on the application of Fisher) v Financial Ombudsman Service

[2014] EWHC 4928 (ADMIN)

In which Clare Moulder KC, sitting as a Deputy High Court Judge, considered whether the Financial Ombudsman Service was required to seek independent legal advice when resolving a dispute and whether its remit was limited to the determination of disputes on the basis of evidence presented to it.

Commercial Dispute Resolution

Stephen has a broad commercial practice. He has extensive experience of commercial litigation, arbitral proceedings, adjudications, and negotiations. He appears regularly in the High Court both by himself and as junior counsel. Stephen was recently appointed to the League Managers Association Commercial Law Panel.

Stephen has particular expertise in relation to complex contractual claims. During and since the Coronavirus pandemic, Stephen has been instructed to advise on the interpretation of high-value and complex commercial contracts, including their force majeure clauses, the doctrine of frustration, and issues regarding wrongful termination.

- Stephen has appeared overseas as junior counsel in high-value multi-party and multijurisdictional disputes. He has experience of proceedings in Ireland, Barbados, and Saint Vincent and the Grenadines.
- Stephen is regularly instructed in interim proceedings in the High Court concerning injunctive relief, specific disclosure applications, applications for service out of jurisdiction, and enforcement proceedings (including against high net-worth individuals and companies, domestically and overseas).
- Stephen has been instructed in disputes concerning high value public sector contracts, including contracts concerning local government financing, NHS funding, PFI contracts, the operations of concessions, tendered contracts, and the provisions of services to the public sector.
- Stephen has advised on the operation of section 2 of the Law Reform (Frustrated Contracts) Act 1943 in respect of an oil drilling contract.
- Stephen has advised on an unjust enrichment claim arising in respect of facilitation agreement concerning a multi-million pound central London development.



He does an excellent job distilling details and has a real understanding of regulators.

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Stephen has extensive experience of arbitral proceedings, including:

- Stephen was instructed in a multi-million dollar arbitration concerning the defective construction of an oil rig.
- Stephen has advised on arbitral proceedings concerning an unjust enrichment claim arising from participation in a unitised oil field in Africa.
- Stephen has advised on an appeal/challenge to the jurisdiction of a LMAA arbitral award.
- Stephen has drafted pleadings for arbitral proceedings in respect of disputes arising under multi-party standard form contracts.
- Stephen has advised on the implementation and subsequent operation of the Directive for Alternative Dispute Resolution (Directive 2013/11/EU).
- Stephen has assisted in multiple arbitrations as a Secretary or Clerk to the Tribunal. The arbitral proceedings have included a nuclear technology dispute under the ICC Rules, a dispute under the LCIA Rules concerning the financing of oil exploration, and a dispute concerning agents' remuneration under Rule K of the Football Association Regulations.

Additionally:

- Stephen marshalled in the Technology and Construction Court with Ramsey J and Edwards-Stuart
- Stephen was also a contributor to 'Wilmot-Smith on Construction Contracts' (Oxford University Press, Third Edition), having written the chapter on mistake, frustration and misrepresentation.
- Stephen has close familiarity with a number of overseas jurisdictions, in particular New York, where he is a qualified attorney (currently non-practising), and Israel, where he has been a Foreign Law Clerk in the Supreme Court.
- Stephen has been invited to speak on the role and responsibilities of an Arbitral Tribunal Secretary as part of the CI Arb Arbitral Secretaries' Course.
- Stephen has demonstrated cross-examination of underwriters and experts in the context of a reinsurance arbitration under the ARIAS Rules.
- Stephen co-authored an article on arbitration, namely: "*The Enforcement of Arbitral Awards in UAE*", (2013) Lexis PSL Arbitration.

R (Cobalt Data Centre) v Revenue and Customs Commissioners

[2022] EWCA CIV 1422 CA; [2022] STC 2041

In which the Court of Appeal considered the availability of enterprise zone allowances in the context of two partnerships having acquired merely rights under a Golden Contract to construct industrial buildings in an enterprise zone.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

[2019] EWHC 3585 (TCC)

Challenge to the award of a contract for digital train control signalling system on the East Coast Main Line.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

In which Jefford J considered the level of knowledge required for time to run against the Claimant under Regulation 107 of the Utilities Contracts Regulations.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

In which O'Farrell J considered the application of the French Blocking Statute (and the application of Bank Mellat v HM Treasury [2019] EWCA Civ 449) in the context of a specific disclosure application.

Pro-Direct Surfacing Ltd v Compass Infrastructure UK (CI UK) Ltd

In which Eyre J considered a claim arising from the repudiatory breach of a long-standing contract for road maintenance.

R (Cobalt Data Centre) v Revenue and Customs Commissioners

[2022] EWCA CIV 1422 CA; [2022] STC 2041

In which the Court of Appeal's judgment analysed the fundamental question in contract law of when a purported variation of a contract between two parties creates a new contract as a matter of law.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

In which O'Farrell J lifted an automatic suspension on the award of a contract worth approximately £1.8billion for the delivery of digital signalling on the East Coast Mainline.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

In which Jefford J considered the test for breach of a common law duty of confidence in the context of a specific disclosure application.

Alstom Transport UK Ltd v Network Rail Infrastructure Ltd

In which O'Farrell J lifted an automatic suspension on the award of a contract worth approximately £1.8billion for the delivery of digital signalling on the East Coast Mainline.

Seadrill Ghana Operations Ltd v Tullow Ghana Limited

[2019] 2 LLOYD'S REP 628

A month-long Commercial Court trial concerning the construction of a force majeure clause in an oil and gas contract upon a suspension of drilling in disputed waters between Ghana and Cote d'Ivoire. It is a leading decision on the interpretation of 'reasonable endeavours' clauses.

Cobalt Data Centre 2 LLP v HMRC

[2019] UKUT 342 (TCC), [2020] STC 23

A three week trial concerning the application of the contractual doctrine of rescission to contracts for the construction of data centres in the North East.

Berkeley Burke SIPP Administration v Charlton

[2018] 1 LLOYD'S REP 337

Concerning whether the Arbitration Act 1996 applied to the Financial Ombudsman Service's statutory complaints procedure. It is now the leading case on the definition of an "arbitration agreement" under the Arbitration Act 1996.

Berkeley Burke SIPP Administration LLP v Charlton

[2017] EWHC 2396 (COMM)

In which Teare J considered whether the Arbitration Act 1996 applied to the Financial Ombudsman Service's statutory complaints procedure.

Achievements

Education

2010/2011: Bar Professional Training Course, City University.

2011: Admitted as an Attorney to the New York Bar.

2009/2010: LL.M., University of Pennsylvania Law School, Distinction.

2008/2009: BCL, University of Oxford, Lincoln College.

2005/2008: BA Law Tripos, University of Cambridge, Gonville and Caius College.

Scholarships and Prizes

2010, Queen Mother's Scholarship, Middle Temple.

2009, Thouron Award to study at University of Pennsylvania.

2009, Ralph Chiles CBE Prize for the Best Performance in Human Rights Law in Oxford University.

2008, W M Tapp Scholarship for Postgraduate Studies, Gonville and Caius College.

2008, James William Squire Scholar, University of Cambridge Law Faculty.

2008, Frere-Smith Prize for Law, Gonville and Caius College.

2007, Senior Scholar, Gonville and Caius College.

2006, Sir William McNair Law Prize, Gonville and Caius College

Publications

- *"An introduction to the Business Banking Resolution Scheme"* (2021) 6 Journal of International Banking and Finance Law 411.
- *"Different approaches to SIPP operators' liability"* (2020) 8 Journal of International Banking and Finance Law 527.
- *"Wikileaks and International Law: Inviolability v Inadmissibility"*, co-authored with Professor Robert McCorquodale [2017-18] 9 UK Supreme Court Yearbook 92.
- *"Supreme Court rules Wikileaks cable document should have been admitted into evidence"*, in Lexis Nexis Butterworths News, February 2018.
- *"Ensuring anti-money laundering compliance through the senior managers regime of the Financial Services (Banking Reform) Bill: Hansard brings comfort"* (2014) 3 Journal of International Banking and Finance Law 179.
- Chapter 8 on 'Mistake, Misrepresentation and Frustration', in Wilmot-Smith on 'Construction Contracts' (Third Edition, 2014).
- *"The Enforcement of Arbitral Awards in UAE "*, (2013) Lexis PSL Arbitration.
- Assistant to Justice Dr Yoram Danziger, Justice of the Israeli Supreme Court, *"Changes in Methods of Freezing Funds of Terrorist Organisations since 9/11: A Comparative Analysis"*, (2012) 15(2) Journal of Money Laundering Control 210.
- Interviewed as an International Law expert by BBC Newshour, 2015.

Additional Information

- Appointed to the League Managers Association Commercial Law Panel.
- Marshall in the Technology and Construction Court, March 2013.
- Foreign Clerk with the Supreme Court of Israel, July to August 2011.
- Admitted as an Attorney to the New York Bar, 2011, currently non-practicing.
- Lecturer in Administrative Law at London Metropolitan University, 2011.

- Lecturer in Constitutional Law of the European Union at London Metropolitan University, 2010.
- German, advanced.

“

His advocacy style is very clear, succinct and authoritative. He's confident on his feet, gives well-structured arguments and is authoritative.

CHAMBERS AND PARTNERS

“

Stephen is a strikingly clever and very versatile lawyer who brings to bear a great deal of wisdom in his analysis.

CHAMBERS AND PARTNERS

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His attention to detail is phenomenal and he has an uncanny ability to find discrete points to nail the case. Stephen thinks commercially and engages well with clients.

CHAMBERS AND PARTNERS

“

Very responsive and an excellent advocate.

CHAMBERS AND PARTNERS

“

An excellent barrister who is very methodical in his approach.

CHAMBERS AND PARTNERS

“

Stephen Kosmin is very good at presenting complex issues in a clear way and is always a pleasure to work with.

CHAMBERS AND PARTNERS

“

Grapples with issues quickly and puts in the legwork to get the best outcome for the client.

CHAMBERS AND PARTNERS

“

He's extremely clear in his thinking and communication. Very bright and organised.

CHAMBERS AND PARTNERS

“

Stephen is diligent, ultra responsive and totally reliable.

CHAMBERS AND PARTNERS