

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;



Very responsive and an excellent advocate.

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

Administrative & Public

Stephen has a broad practice in public law. He advises, and appears on behalf of, both claimants and public authorities of different kinds. In August 2023, he was appointed to the Attorney General's A Panel.

Stephen is highly regarded in public law. He has been ranked by Chambers and Partners and the Legal 500 in Administrative and Public law for a number of years. He is also ranked both by Chambers and Partners in Civil Liberties and Human Rights and by Legal 500 in Local Government Law. In 2022, he was shortlisted as Government and Third Sector Junior of the Year by the Legal 500.

Stephen appears regularly in judicial review proceedings in the Supreme Court, Court of Appeal, and High Court. Additionally, he is often instructed in the Upper Tribunal. Stephen has a developed knowledge of costs in public law proceedings.

Stephen acts both for claimants and defendants in public law proceedings, as well as undertaking advisory work. Stephen has recently advised the following clients:

- Government departments.
- Local authorities.
- NHS trusts.
- Network Rail.
- Financial regulators and financial dispute resolution schemes, including the Bank of England, Serious Fraud Office, Financial Services Compensation Scheme, and Financial Ombudsman Service.
- Professional regulators, including the Health and Care Professions Council, the General Medical Council, and the Information Commissioner.
- Educational institutions.
- Private clients and representative organisations.

Stephen taught Administrative Law and Constitutional EU Law at university and has since advised frequently on EU law, the legal consequences of Brexit, and associated matters.



Stephen drills right into the detail. He is very creative, has amazing research skills and pushes the boundaries of things.

CHAMBERS & PARTNERS

R (Cobalt Data Centre 2 LLP) v Revenue and Customs Commissioners

[2024] UKSC 40, SC, NOVEMBER 20 2024, [2024] 1 WLR 5213

Buildings built within enterprise zone between 10 and 20 years after site included in zone – Whether entitlement to enterprise zone allowance.

R (Police Superintendents' Association) v Police Remuneration Review Body and Home Secretary

[2023] EWHC 1838 (ADMIN)

In which Fordham J set out ten principles governing the duty of candour in public law litigation.

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 (Farmiloe) v Gas and Electricity Markets Authority

[2024] EWHC 2584 (ADMIN) ADMIN CT, OCTOBER 11 2024 [2024] ACD 131

Ofgem not under an absolute duty to grant accreditation under the Domestic Renewable Heat Incentive Scheme simply because the application had been properly made and the plant met the eligibility criteria

Secretary of State for Work and Pensions v AT (European Union law, Universal Credit)

[2022] UKUT 330 (AAC)

Which concerned the status of the Charter of Fundamental Rights following Brexit.

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 (Get Real Marketing Company Ltd) v Culture Recovery Board

[2022] EWHC 1137 (ADMIN)

Which concerned a challenge to the refusal of loan finance by the Culture Recovery Board to the company that had created and curated the Wilderness and Lovebox festivals.

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)

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 (Police Superintendents' Association) v HM Treasury

[2021] EWHC 3389 (ADMIN)

Which concerned the decision to close legacy public service pension schemes, including the police schemes, following consultation.

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 (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 (Police Superintendents' Association) v HM Treasury

[2021] EWHC 3389 (ADMIN)

Andrew acted for the Police Superintendents' Association in a successful challenge to HM Treasury's decision on police pension reform on public sector equality duty and consultation grounds.

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 (Bridges) v Chief Constable of South Wales

[2020] EWCA CIV 1058

Which concerned the legality of the deployment of Automatic Facial Recognition technology by South Wales Police. It was the first appellate decision globally to do so.

R (oao Cobalt Data Centre 2 LLP) v Revenue and Customs Commissioners

[2020] STC 23

In which Zacaroli J considered whether two partnerships, which acquired merely rights under a Golden Contract to construct two data centres in an enterprise zone, had a legitimate expectation of receiving the benefit of enterprise zone allowances.

Kenson Contractors (Benington) Ltd v Haringey LBC

[2019] EWHC 1230 (ADMIN)

In which Waksman J refused injunctive relief preventing the award of a road improvement contract around Tottenham Hotspur FC's new stadium.

Kamoka v The Security Service

[2019] EWHC 290 (QB)

Which concerned the legality of deportation and detention orders of members or associates of the Libyan Islamic Fighting Group.

D v Lord Chancellor

[2020] EWHC 736 (ADMIN)

Which concerned the costs consequences of the participation of a tribunal in discontinued judicial review proceedings.

R (Farmiloe) v Secretary of State for Business, Energy and Industrial Strategy

[2019] EWHC 2981 (ADMIN)

In which Lang J held that Ofgem had the power to require a homeowner to provide a second energy performance certificate when applying for accreditation under the Domestic Renewable Heat Incentive Scheme.

Kenson Contractors (Benington) Ltd v Haringey LBC

In which Waksman J refused injunctive relief preventing the award of a road improvement contract around Tottenham Hotspur FC's new stadium.

Kamoka v The Security Service

In which Jay J considered the legality of deportation and detention orders of members or associates of the Libyan Islamic Fighting Group. Various public international law issues concerning 'extraordinary rendition' were in dispute.

**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.

**Kimathi and others v Foreign and
Commonwealth Office**

[2018] EWCA CIV 2213

In which the FCO successfully defended an application for permission to appeal a final judgment in the first of 25 test cases arising from the acts of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising.

**Kimathi and others v Foreign and
Commonwealth Office**

In which the Foreign and Commonwealth Office successfully defended an application for permission to appeal a final judgment in the first of 25 test cases arising from the acts of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising.

**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.

**Kimathi and others v Foreign and
Commonwealth Office**[2018] EWHC 3144 (QB), [2018] EWHC 2066 (QB),
[2018] EWHC 853 (QB), [2018] EWHC 605 (QB), [2017]
EWHC 2703 (QB), [2017] EWHC 2145 (QB), [2017]
EWHC 938 (QB), [2017] EWHC 203 (QB)

In which he successfully defended approximately 40,000 claims for damages arising from the alleged actions of the British colonial administration in Kenya during the State of Emergency.

**Kimathi and others v Foreign and
Commonwealth Office**

in which Stewart J dismissed claims for damages arising from the alleged actions of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising. The public international law issues concerned interpretation (regarding the United Nations Convention Against Torture 1984), pleading and proving customary international law, and the extent to which public international law confers rights or causes of action in domestic law, including by reason of the European Convention on Human Rights.

R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 3)

[2018] UKSC 3, [2018] 1 WLR 973

In which the Supreme Court considered the admissibility of Wikileaks cables, the operation of the Vienna Convention on Diplomatic Relations, and the standard of the 'makes no difference' test in judicial review proceedings.

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 (Tesfay) v SSHD

[2016] 1 WLR 4853

In which the Court of Appeal considered the allocation of costs upon the compromise of public law proceedings, explaining R (M) V Croydon London Borough Council [2012] 1 WLR 2607.

Health and Care Professions Council v Waring

[2016] EWHC 696 (ADMIN)

Concerning an interim suspension order of a registered social worker.

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.

Cox v Ministry of Justice

[2016] AC 660

In which the Supreme Court restated the first stage of the vicarious liability test in the context of prisoners undertaking work in prison.

R (Lovett) v Health and Care Professions Council

[2016] EWHC 2193 (ADMIN)

Before Cheema-Grubb J, concerning whether the decision to continue a disciplinary hearing after a lengthy delay breached Article 6 ECHR and the requirement to conduct proceedings in a reasonable time under the relevant statutory scheme.

R (Chancery (UK) LLP) v Financial Ombudsman Service

[2015] EWHC 407 (ADMIN) BEFORE OUSELEY J

Concerning whether a complaint concerning a tax avoidance scheme fell within the jurisdiction of the Financial Ombudsman.

R (on the application of Hanuman) v University of East Anglia

[2014] EWHC 3299 (ADMIN)

In which Stephen successfully obtained civil restraint orders, so bringing a dispute lasting around twenty years to a satisfactory The case is cited in the White Book.

Procurement

Stephen specialises in procurement disputes. He has been ranked by both Chambers and Partners and the Legal 500 in Procurement Law for a number of years. In 2022, he was a shortlisted as Government and Third Sector Junior of the Year by the Legal 500.

As well as being instructed regularly in procurement litigation, Stephen also advises on procurement processes and challenges. He acts for claimants, public authorities, and affected bidders.

Stephen has recently advised on:

- The abandonment of procurement exercises.
- Re-procurements.
- Modifications of procured contracts during their terms.
- Sequential and related procurement exercises.
- The proper interpretation of terms of procurement documentation.
- The process of evaluating tenders, including normalisation.
- Abnormally low tenders.
- The relationship of the laws of state aid and procurement.
- Issues arising from *Faraday Development Ltd v West Berkshire Council* [2019] PTSR 1346.
- During the Coronavirus pandemic, Stephen was instructed to advise on the interpretation of tendered contracts, including their force majeure clauses and the doctrine of frustration. Stephen has also advised on the effect of various Coronavirus Regulations.



***Stephen Kosmin is
outstanding and
user-friendly.***

CHAMBERS & PARTNERS

James Waste Management LLP v Essex County Council

In which Waksman J considered Regulation 72 of the Public Contracts Regulations 2015 governing modifications to procured contracts.

R (Good Law Project) v Prime Minister and Secretary of State for Health and Social Care

Concerning a challenge to the Government's decision to purchase lateral flow tests for population-wide Covid-19 testing at the height of the pandemic.

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.

Altiatech Ltd v Birmingham City Council

In which Waksman J analysed the relationship of the Civil Procedure Rules and the limitation provisions of the Public Contracts Regulations 2015.

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.

Bank Mellat v HM Treasury

[2015] EWHC 1258 (COMM), [2015] EWCA Civ 1052, [2016] EWCA Civ 452

Instructed in both the application to set aside financial restriction decisions and the \$4bn civil damages claim resulting from the earlier proceedings.

Bank Mellat v HM Treasury

2008 EWHC 1583 (QB)

Requests under Council Regulation (EC) 1206 (to a German Bank) and CPR Part 34.13 (to a Malaysian Bank).

Kenson Contractors (Benington) Ltd v Haringey LBC

[2019] EWHC 1230 (ADMIN)

In which Waksman J refused injunctive relief preventing the award of a road improvement contract around Tottenham Hotspur FC's new stadium.

Kenson Contractors (Benington) Ltd v Haringey LBC

In which Waksman J refused injunctive relief preventing the award of a road improvement contract around Tottenham Hotspur FC's new stadium.

Marston Holdings Ltd v Oxfordshire County Council

Concerning the proper order for costs upon adjournment of an application to lift an automatic suspension.

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.



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

CHAMBERS & PARTNERS

- 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.

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 (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 (Madden) v Financial Ombudsman Service and Coutts

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

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 (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)

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 (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.

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).

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.

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.

CHAMBERS & PARTNERS

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.

Information and Data Protection

Stephen is an experienced practitioner in information and data protection work. He has a particular specialism in data privacy and misuse of private information claims. He is ranked by both Chambers and Partners and the Legal 500 for his information law and data protection work.

Stephen is regularly instructed by central government departments, other public authorities, and the Information Commissioner in appeals under the Freedom of Information Act and Environmental Information Regulations. Stephen also frequently acts for and advises private individuals, companies, and charities in information law and data protection disputes.



Stephen is meticulous and thorough. He is a very calm and methodical advocate.

CHAMBERS & PARTNERS

Examples of Stephen's recent work in information law and data protection include:

- Acting for the representative claimant in **Prismall v Google and DeepMind**, in which Heather Williams J considered an application to strike out a representative action regarding the transfer of the medical information of around 1.6 million patients of the Royal Free NHS Trust to Google and DeepMind. It is the first case to test the scope of the Supreme Court judgment in **Lloyd v Google** in the context of the tort of misuse of private information.
- Acting for the Surveillance Camera Commissioner in **R (Bridges) v Chief Constable of South Wales**, which concerned the legality of the deployment of Automatic Facial Recognition technology by South Wales Police.
- Acting for the Information Commissioner in **Ticketmaster UK Ltd v Information Commissioner**, which concerned the proper case management of parallel proceedings before the First-tier Tribunal and the High Court arising from a mass data breach affecting millions of consumers' payment information.
- Acting for the Home Office in **Maurizi v Home Office and ICO**, which established that the Freedom of Information Act 2000 and Environmental Information Regulations have extra-territorial application.
- Acting for the General Medical Council in **Myhill v ICO and GMC**, in which the Upper Tribunal considered the proper application of the personal data exemption under the Freedom of Information Act.
- Acting for Ofqual in **Ofqual v ICO**, in which the Upper Tribunal considered an appeal concerning a request for specific information regarding the difference between calculated grades and centre-assessed grades in Summer 2020.
- Acting for the Cabinet Office in **Sheppard v ICO and Cabinet Office**, in which the Upper Tribunal will consider an appeal concerning an information request for internal polling information relating to policies bearing on the constitutional arrangements between the Scottish Parliament and Westminster.
- Acting for the appellant in **Scottish Power v ICO and Ofgem**, in an appeal concerning a request for information concerning Ofgem's decision to commence enforcement action on a selective basis.
- Acting for the Ministry of Defence in **Cole v ICO and MOD**, in an appeal concerning a request for information regarding the use of drones by the military.
- Acting for the appellant in **Chagos Refugees Group v Information Commissioner**, in an appeal concerning whether information was "held" by the FCO, and the scope of the Environmental Information Regulations' exception for internal communications of a public authority.
- Advising an NHS Trust on the disclosure of reports of an internal regulatory investigation into medical malpractice in the context of anticipated multi-party proceedings.

- Acting for a Cambridge University college in a complex data protection claim, for which the claimant was seeking damages of over £2 million.
- Acting for the Information Commissioner on a number of appeals under the Freedom of Information Act, in particular in respect of matters of national security, police investigations, and medical records.

Stephen also acts for the Government in national security cases of greatest sensitivity. He is experienced in closed material proceedings.

Public International

Stephen has considerable experience and expertise in public international law.

Stephen's practice regularly encompasses advising on and litigating issues of public international law in the English courts. Stephen is currently instructed by the Foreign Office in respect of a number of public international law issues.

- Stephen has advised on the incorporation and operation of the Palermo Convention against Transnational Organised Crime.
- Stephen has advised the Government on the Geneva Conventions, the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, the Bonn-Paris Conventions, and the Hague Convention Concerning the Laws and Customs of War on Land 1907.
- Stephen has advised on customary international law governing restitution and compensation, including in respect of cultural artefacts.

Stephen also acts for the Government in national security cases of greatest sensitivity.

In the course of Stephen's practice, he has worked extensively with leading academics, including Professor Robert McCorquodale (the Director of the British Institute of International and Comparative Law and Professor of International Law and Human Rights at the University of Nottingham) and the late Professor Vera Gowlland-Debbas (Honorary Professor of Public International Law at the Graduate Institute of International and Development Studies in Geneva and a Visiting Professor at University college London). He wrote "Wikileaks and International Law: Inviolability v Inadmissibility" [2017-18] 9 UK Supreme Court Yearbook 92 with Professor Robert McCorquodale.

Cole v ICO and MOD

In which the First-tier Tribunal considered an information rights appeal relating to the legality of the use of drones by the military.

Kamoka v The Security Service

In which Jay J considered the legality of deportation and detention orders of members or associates of the Libyan Islamic Fighting Group. Various public international law issues concerning 'extraordinary rendition' were in dispute.

Kimathi and others v Foreign and Commonwealth Office

[2018] EWCA CIV 2213

In which the FCO successfully defended an application for permission to appeal a final judgment in the first of 25 test cases arising from the acts of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising.

Kimathi and others v Foreign and Commonwealth Office

In which the Foreign and Commonwealth Office successfully defended an application for permission to appeal a final judgment in the first of 25 test cases arising from the acts of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising.

Kamoka v The Security Service

[2019] EWHC 290 (QB)

Which concerned the legality of deportation and detention orders of members or associates of the Libyan Islamic Fighting Group.

R (on the application of Bancoult) v Secretary of State for the Foreign and Commonwealth Office

In which the Supreme Court considered the admissibility of Wikileaks cables and the operation of the Vienna Convention on Diplomatic Relations. Stephen was instructed to address the issues of international law, including the Vienna Convention on the Law of Treaties 1969, the Vienna Convention on Diplomatic Relations 1961, and the Vienna Convention on Consular Relations 1963.

Kimathi and others v Foreign and Commonwealth Office

[2018] EWHC 3144 (QB), [2018] EWHC 2066 (QB), [2018] EWHC 853 (QB), [2018] EWHC 605 (QB), [2017] EWHC 2703 (QB), [2017] EWHC 2145 (QB), [2017] EWHC 938 (QB), [2017] EWHC 203 (QB)

In which he successfully defended approximately 40,000 claims for damages arising from the alleged actions of the British colonial administration in Kenya during the State of Emergency.

Kimathi and others v Foreign and Commonwealth Office

in which Stewart J dismissed claims for damages arising from the alleged actions of the British colonial administration in Kenya during a State of Emergency declared in 1952 to deal with the Mau Mau uprising. The public international law issues concerned interpretation (regarding the United Nations Convention Against Torture 1984), pleading and proving customary international law, and the extent to which public international law confers rights or causes of action in domestic law, including by reason of the European Convention on Human Rights.

Tesfay v Secretary of State for the Home Department

In which the Court of Appeal considered the operation of the Dublin Convention.

R (Al Saadoon) v Secretary of State for Defence

Concerning the effects of non-ratification of treaties and of ius cogens norms of public international law.

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

“

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