

Tim Johnston

YEAR OF CALL: 2011

"An excellent junior, who brings wider public and commercial experience to the case."

Legal 500 (2017)

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Practice Overview

Tim has a thriving public law practice. His current and recent public law cases include appearing before the Divisional Court for the Treasury to resist British Telecom's challenge to a decision to index public service pensions (that may increase BT's pension liability by £600 million). BT is now appealing to the Court of Appeal. Tim has also appeared in the TfL/Uber litigation before the Court of Appeal, and in Uber's appeal against the decision to revoke its licence. In the recent past, Tim appeared in the Miller "Article 50" litigation, before the Divisional and Supreme Courts, and the Tobacco Plain Packaging judicial review (before the Court of Appeal). He also has considerable public international law experience, acting for NGOs, private parties and States in a variety of forums. He recently acted for the International Commission of Jurists and the CORE Alliance (pro bono) in the Supreme Court in *Lungowe and Others v Vedanta Resources Plc* [2019] UKSC 20. Tim is currently instructed by one of the Core Participants before the Independent Inquiry into Child Sex Abuse.

In the field of competition law, Tim is currently acting for Pfizer resisting the CMA's appeal in a case concerning whether Pfizer charged an excessive price for one of its pharmaceutical products. He is also acting for Ping before the Court of Appeal in its challenge to the finding that Ping's restriction on internet sales of its golf clubs was an abuse of dominant position. Tim is also instructed for a large Claimant group in one of the trucks follow-on damages claims and in various telecommunications appeals before the Competition Appeal Tribunal and Court of Appeal.

Tim is also in demand in cases that raise complex questions of EU law and is currently instructed in four cases before the European Courts (two unled). He has previously appeared unled before the European Court of Justice in the UK's reference concerning the Second Tobacco Products Directive. He regularly advises and acts for a range of government departments, local authorities and private contractors in the fields of public procurement and State aid.

Tim is regularly instructed in heavyweight commercial disputes. He has acted as a junior to Mark Howard QC in a multi-billion pound dispute arising out of a property development and he also is regularly instructed on his own in smaller matters. He is currently acting for two local authorities in separate, substantial contract disputes (valued at several million pounds). His recent cases include a major LCIA arbitration concerning a joint venture in the Middle East, and a dispute before the Grand Court of the Cayman Islands concerning the ownership of the Ritz Carlton Hotel.

Member of the Attorney General's C Panel of Counsel with Developed Vetting clearance.

Before coming to the Bar Tim was a fellow in Modern European History at St Peter's College Oxford. He is the

author of *Being Soviet: Identity, Rumour and Everyday Life Under Stalin 1939-53*.

Tim is a member of ALBA, COMBAR, Procurement Lawyers Association and the UK State Aid Law Association.

Select Publications:

'Notes From a Small Island: Natural Justice and the Institutional Design and Practice of Competition Authorities and Appellate Courts', in *Competition Policy International* (2014) (10.1) (with Robert O'Donoghue).

'The Snowden "Revelations": Is GCHQ breaking the law?', in *European Human Rights Law Review* (2014) (2) (with Jemima Stratford QC).

Two chapters in K. Bacon, *European Union law of State Aid* (Forthcoming, OUP).

Contributing author to the forthcoming edition of M. Brealey ed., *Competition Litigation: UK Practice and Procedure*.

Before coming to the Bar Tim was a fellow in Modern European History at St Peter's College Oxford. He is the author of *Being Soviet: Identity, Rumour and Everyday Life Under Stalin 1939-53* (selected by the Financial Times as one of their non-fiction books of the year in 2011).

Tim is an occasional consultant to the Oscar-winning film production company Cloud Eight Productions and for Fox-Searchlight Films.

Public Law

Tim carries out a wide range of public and public international law work, with a particular emphasis on cases that raise complex questions of human rights law.

He has significant expertise in the law of surveillance (including drones), counter-terrorism and information law as well as electoral law.

He is currently instructed to act for one of the Core Participants in the Independent Inquiry into Child Sex Abuse.

He is a member of the Attorney General's C Panel of Counsel with Developed Vetting Clearance and provides expert advice to the All Party Parliamentary Group on Drones.

His notable instructions include:

Judicial Review/Administrative Law:

- *R (British Telecommunications Plc) v Her Majesty's Treasury* [2018] EWHC 351 (Admin). Instructed for the Treasury to resist this high profile judicial review, before the Divisional Court. BT is currently seeking permission to appeal to the Court of Appeal.
- *Uber London Limited v Transport for London*. Tim was instructed by Transport for London in this widely-reported challenge to TfL's decision to revoke Uber's London licence. Tim also acted in the later judicial review (before the Divisional Court) concerning an allegation of bias in respect of the Chief Magistrate [2019] EWHC 409 (Admin), as a junior to Martin Chamberlain QC.
- *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 (Admin). Tim was instructed to appear for the Lord Chancellor before the Divisional Court in this complex case concerning reforms to the legal aid regime.
- *R (Uber London Limited) v Transport for London* [2018] EWCA Civ 1213. Tim was instructed to act for TfL in the High Court and the Court of Appeal, as a junior to Martin Chamberlain QC. The case raised two broad issues: freedom of establishment in EU law and indirect discrimination under the Equality Act and under the Human Rights Act. The Court of Appeal allowed TfL's appeal and reversed the judgment below.

- *R (Miller) and others v Secretary of State for Exiting the European Union* [2017] UKSC 5. Appeared before the Divisional Court and the Supreme Court in the "Article 50" challenge, concerning the lawfulness of the Government's intention to trigger Article 50 without Parliamentary Authority (as junior to Helen Mountfield QC and Gerry Facenna QC).
- *British American Tobacco v Department for Health* [2016] EWCA Civ 1182. Tim appeared before the High Court and Court of Appeal in this leading case concerning the lawfulness of the 'Plain Packaging' Regulations in the United Kingdom (as a junior to Kelyn Bacon QC).
- *R (on the application of Prudential Plc.) v Special Commissioner for Income Tax* [2013] UKSC (1) appeared before a seven-member panel of the Supreme Court as sole junior to Sir Sydney Kentridge QC and Tom Adam QC in the leading case concerning the scope of legal professional privilege.

Human Rights:

- Currently instructed to appear for the UK Government at trial in *Louca v Secretary of State for Defence*, a claim alleging breaches of Articles 3, 5 and 8 and concerning an incident at an overseas British military base in Cyprus.
- Currently instructed to act for the UK Government in a complex matter concerning Article 3 (and Article 2) rights, before the European Court of Human Rights and the UK High Court.
- *Janet Alder v Kingston Upon Hull City Council and another*. A significant claim concerning the scope of Articles 8, 3 and 14 arising out of the treatment of the Claimant's brother's dead body.

Public International Law:

- *Lungowe and Others v Vedanta Resources Plc* [2019] UKSC 20. Tim acted pro bono for the International Commission of Jurists and the Corporate Responsibility Coalition in this important claim concerning the liability of a parent company for the human rights and environmental abuses of its overseas subsidiary. Tim's clients intervened in the Supreme Court to make submissions about the relevant international and comparative law standards in this area.
- Instructed to advise a high-profile NGO concerning the remedies available in domestic and international law to overseas victims of slavery wishing to bring claims against UK-listed companies complicit in their abuse (together with Professor Robert McCorquodale QC).
- Currently instructed in a complaint before the United Nations Committee on the Rights of Disabled Persons (as a junior to Martin Chamberlain QC).
- *Al Nashiri v Poland Application* no. 28761/11 advised Ben Emmerson (the UN Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism) in respect of his intervention before the European Court of Human Rights (as junior to Martin Chamberlain QC).
- Advised on questions of state immunity in a claim arising out of damage to property suffered during ethnic violence in NATO-controlled Kosovo (as a junior to Martin Chamberlain QC)

Electoral law:

- *R (Lutfur Rahman) v Local Government Election Court* (CO/3413/2015). Instructed to appear on behalf of Mr Rahman before the Divisional Court in this challenge to the decision of the Election Court stripping him of the right to stand as a candidate in forthcoming elections (as a junior to Paul Bowen QC).
- *Gilles and Saunders v Iain McNicol* (as a representative of all members of the Labour Party except the Claimants): Tim was instructed to advise (together with Richard Gordon QC) and act alone in this high-profile claim concerning the selection of the Labour party candidate for the directly elected mayoralty in the London Borough of Newham. The Defendants agreed to re-run the selection.

Surveillance, Security and Information Law:

- Tim regularly advises Government departments and agencies concerning complex questions of intelligence and information law. He provides regular and ongoing advice to the National Cyber Security Centre.

- Acted as junior counsel to David Anderson QC's Review of Investigatory Powers, commissioned by Parliament and published in May 2015.
- Instructed (as a junior to Jemima Stratford QC) by the All Party Parliamentary Group on Drones to advise on the lawfulness of the current statutory framework and current government practice concerning the interception and use of communications data.
- Instructed on behalf of the Information Commissioner's Office in *Pol Wong v Information Commissioner* EA/2014/0118 before the First Tier Tribunal.

Public Inquiries:

- Tim is currently instructed to act for one of the Core Participants before the Independent Inquiry into Child Sex Abuse.

Discrimination:

- *IWGB v Transport for London*. Tim is instructed for TfL to defend this claim alleging that a change to the London congestion charge is unlawful on the grounds that it indirectly discriminates on grounds of race.
- Instructed (as a junior to Martin Chamberlain QC) to appear in *Paulley v Firstgroup Plc* [2014] EWCA Civ. 543, the leading Court of Appeal authority on the duty to make reasonable adjustments an important case concerning the scope of the duty imposed on service providers to make reasonable adjustments for wheelchair users.
- Advised on a judicial review challenge against the limits imposed by a Primary Care Trust on the provision of fertility treatment (as junior to Martin Chamberlain QC).

Sanctions:

Advised on the potential consequences, for the purposes of the sanctions regime, of a commercial joint venture agreement (as a junior to Maya Lester).

EU/Competition

Tim has a thriving EU and competition law practice. He is recognised in Legal 500 2018 as an up and coming practitioner who is "bright, quick and able to adjust to work in the way that clients require."

Legal 500 (2018) describe Tim as "Very responsive, intelligent and commercially minded, one to watch for the future." In previous years it has noted that he is "a team player who will work all hours to get the job done. He is on a fantastic upward trajectory with his public procurement practice."

Tim is currently instructed in four cases before the European Courts, two of them unled. He regularly advises alone on complex questions of EU law, freedom of establishment, State aid and public procurement.

Tim is currently acting in two leading recent cases before the Court of Appeal concerning abuse of dominant position (*Pfizer* and *Ping*). He also has extensive experience in regulatory appeals, particularly in the telecoms sector (*BT v Ofcom*).

EU law

His current notable instructions include:

- *Case T-101/18 Austria v Commission* instructed to act for the United Kingdom Government alone before the General Court in this State aid challenge concerning the construction of a nuclear plant in Hungary.

- Instructed to act alone in a challenge by the UK Government to a decision of the European Commission to claw back EU research funding provided to the Met Office.
- *Case T-101/18 Grange Backup Power v Commission* instructed to act for the UK Government, led by Gerry Facenna QC, in this challenge to the Commission's decision that it did not need to open a formal investigation into the lawfulness of the electricity capacity market in the United Kingdom.
- *Case T-356/15 Austria v Commission* instructed to act on behalf of the UK Government in an action concerning the State aid measures provided in support of the new nuclear reactor at Hinkley Point C (as a junior to Aidan Robertson QC).

His notable previous instructions include:

- *Case C-316/15 Hemming v Westminster City Council*. Appeared before the Court of Justice, as junior to Philip Kolvin QC (Cornerstone Chambers) in this reference from the United Kingdom Supreme Court.
- *Case C-547/14 R (Philip Morris Brands SARL and Philip Morris Limited) v Secretary of State for Health* (Claim No CO/2969/2014). Instructed to appear alone before the Court of Justice of the European Union in this reference from the UK High Court.

Competition

His notable instructions include:

- *Veolia Environnement SA and others v Fiat Chrysler Automobiles NV and Others*. Tim is instructed for the Claimants in this substantial follow on damages claim arising out of the Europe-wide trucks cartel.
- *Pfizer Inc and Pfizer Limited v Competition and Markets Authority* [2018] CAT 11. Tim is currently instructed as junior to Mark Brealey QC and Robert O'Donoghue QC before the Court of Appeal. Pfizer is resisting an appeal against the CAT's conclusion that the CMA had erred in finding that Pfizer had charged an unlawful and excessive price for its product.
- *Ping Europe Ltd v Competition and Markets Authority* [2018] CAT 13. Tim is instructed as a junior to Robert O'Donoghue QC and David Scannell before the Court of Appeal. Ping is seeking to challenge the CAT's finding that its policy of refusing to allow distributors to sell online golf clubs was an abuse of dominant position.
- *BT v Ofcom* (Case 1260/3/3/16). Tim acted for Gamma Telecom Holdings, intervening in this appeal by BT (and CityFibre) challenging the decision of Ofcom to require companies in the telecommunications sector to make their infrastructure available to third parties on a "dark fibre" basis.
- *BT v Ofcom* (Case 1245/3/3/16). Tim acted for Gamma Telecom Holdings, an intervener in this appeal against a decision of Ofcom, concerning the proper method of calculating porting charges for numbers that have migrated to new communications providers (as a junior to Sarah Love).
- Tim has previously spent time in-house at the Competition and Markets Authority, working in their cartels enforcement team.

Public procurement

- Instructed to act alone for a losing tenderer to challenge a substantial (multi-million pound) roadworks contract in the United Kingdom.
- *Lancashire v Department for Communities and Local Government* (CO/1703/2015) a significant case concerning the claw back of European Regional Development Funding (as a junior to Fergus Randolph QC).
- *NP Aerospace v Ministry of Defence* [2014] EWHC 2741 (TCC). A substantial procurement challenge concerning alleged 'predatory pricing', abnormally low tenders and manifest errors of assessment.
- *Honeybeerecruitment.com Limited v The Minister for the Cabinet Office*. A leading case arising out of the new Public Contract Regulations 2015.
- *Fujitsu v DVLA* (HC-13-CO553). A very substantial public procurement challenge concerning a purported failure to retender a publicly procured contract.

State aid

- Currently instructed in three separate cases before the European Courts raising State aid issues.
- Instructed by a Government Agency to advise on the State aid implications of a General Court decision quashing the Commission's approval of a domestic State aid scheme (as a junior to Richard Gordon QC).
- Instructed to advise a private party seeking to challenge the outcome of an electricity capacity auction on State aid grounds (as a junior to Richard Gordon QC).
- Instructed alone by a Government Agency to advise on the State aid implications of a major new Government initiative to reduce pollution.
- Advised and assisted with investigation into the lease of a Premier League football ground.

Commercial Agency:

- Advised on quantum in a commercial agency case valued at over £10 million.
- Appeared alone for the Claimant at trial in a case concerning whether or not someone was an agent, for the purposes of the Commercial Agents (Council Directive) Regulations 1993;
- Advised a major European fashion label concerning whether or not their sales and marketing model will fall within the scope of the Commercial Agents (Council Directive) Regulations 1993 (as junior to Jasbir Dhillon QC).

Regulatory:

- Tim has been instructed by a number of UK regulators including the Financial Services Authority (as was), the Office of Fair Trading (as was) and the Competition and Markets Authority.
- Advised a major utility company considering a possible action against its regulator (as junior to Nick Green QC).

Commercial

Tim has a busy commercial litigation and advisory practice.

He is currently instructed to act alone for two different local authorities in substantial commercial disputes with a value of several million pounds.

He has previously advised on a multi-billion pound dispute arising out of a property development (as a junior to Mark Howard QC), appeared in an arbitration concerning a joint venture dispute arbitration in the Middle East (led

by Tim Lord QC), as well as acting for a Government department in a substantial contract dispute (unled).

His notable instructions include:

Commercial litigation:

- Instructed to act for a local authority in a £4 million dispute concerning liability for third party losses.
- Instructed to advise a local authority in a complex dispute concerning contractual liabilities, redevelopment, section 106 funding linked to planning permission and the proper construction of conflicting jurisdiction clauses.
- Instructed as a junior to Mark Howard QC in a dispute concerning a multi-billion pound property transaction.
- Instructed as a junior to David Scannell to advise on a complex multi-million pound contract dispute for the UK Government.
- *R (Hemming and others) v Westminster City Council* [2015] UKSC 25. Tim appeared before the Supreme Court in this important case concerning the right to restitutionary remedies.
- Instructed as a junior to Tim Lord QC in a substantial LCIA arbitration arising out of a shareholders' dispute in the Middle East.
- *Song Mao and others v Tate and Lyle Industries and others* (Claim 2013 Folio 451). Instructed as a junior to Richard Lord QC and Samantha Knights in a commercial claim on behalf of 200 Cambodian villagers to recover the value of sugar grown on their property, from which they had been forcibly and unlawfully removed. The Defendants took delivery of that sugar in the UK giving rise to claims in unjust enrichment and conversion.
- *RC Cayman Holdings Ltd v Michael Ryan* (Cause No 98 of 2012), a substantial commercial case before the Grand Court of the Cayman Islands, as a junior to Charles Hollander QC.

Jurisdiction/Conflict of Laws:

- *Triangle Management Services v India Post* (Case no. HQ11XO4625). Appeared alone in the High Court, on behalf of the Indian Government, to successfully challenge jurisdiction.
- Advised alone on jurisdiction in an international cotton arbitration valued at \$3 million

Arbitration

- Instructed to act for a major UK entity in an LCIA arbitration raising a number of issues including rectification and jurisdiction.
- *Vitol S.A. v Bhatia International Ltd* (High Court of Bombay, Notice no. 618 of 2011). Provided an expert opinion, alone, on the prospects of successfully challenging an arbitration award made in England.
- Appeared at a GAFTA arbitration concerning a \$2.5 million contractual claim arising out of a grain futures contract (as junior to Richard Lord QC).

Shipping and commodities

- *Ocean Empress Marine Inc v Bhushan Power and Steel Limited* 2012 Folio No. 1011. Instructed alone in a High Court shipping and insurance claim concerning a general average contribution.
- Instructed to advise alone in a matter concerning a shipment of dangerous goods.
- Instructed to advise alone in a shipping agency case.
- Advised in a major shipping case valued at over £100 million (as a junior to Richard Lord QC).

Insurance and reinsurance

- Advised in a complex insurance matter arising out of the misselling of financial services products (as junior to Tom Adam QC).

- Instructed alone to advise and draft submissions for the Financial Ombudsman Service in a financial services mis-selling case valued at over £100,000.
- Instructed alone to challenge an insurer's refusal to accept liability for a substantial property damage claim.

Qualifications

2011-2012: Pupillage Brick Court Chambers.

2010-2011: Bar Professional Training Course (Outstanding).

2009-2010: Graduate Diploma in Law (Distinction).

2003-2007: DPhil Modern History, Keble College, Oxford.

2002-2003: MSt Historical Research, Keble College, Oxford (Distinction).

1998-2001: BA Hons. Modern History, Keble College, Oxford (Double First).

Scholarships and Prizes:

2010-2011: Denning Prize, Lincoln's Inn.

2009-2010: Lord Bowen Scholarship, Lincoln's Inn.

1999-2006: Undergraduate and Graduate Scholar, Keble College, Oxford.

Directory quotes

"He is bright, quick and able to adjust to work in the way that clients require." (Chambers & Partners 2019)

"Very responsive, intelligent and commercially minded, one to watch for the future." (Legal 500 2018-19)

"He is very supportive, quick to grasp facts and a barrister who provides good, practical advice." (Chambers & Partners 2018)

"An excellent junior, who brings wider public and commercial experience to the case." (Legal 500 2017)

"He combines intelligence and sensitivity with an incredible work ethic. A proactive lawyer who has an excellent sense of humour." "Tim is a team player who will work all hours to get the job done. He is on a fantastic upward trajectory with his public procurement practice." (Chambers & Partners 2017)

"Very responsive and clear in his views." (Legal 500 2016)