



## Tim Johnston

Year of Call 2011

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### EXPERTISE

- Commercial
- EU/Competition
- Public Law

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

- **Legal 500 (2018)**

*"He combines intelligence and sensitivity with an incredible work ethic. A proactive lawyer who has an excellent sense of humour.... a team player who will work all hours to get the job done."*

- **Chambers and Partners (2017)**

*"A lawyer with a growing reputation... who has a wide-ranging practice that also covers competition, administrative law and commercial litigation."*

- **Chambers and Partners (2016)**

*"Very responsive and clear in his views."*

- **Legal 500 (2016)**

## OVERVIEW

Tim's practice spans administrative, public international, competition and commercial law. The directories pay particular attention to Tim's breadth of experience, describing him as someone *"with a growing reputation, who has a wide-ranging practice that... covers competition, administrative law and commercial litigation."* Tim has appeared unled before the High Court and Court of Justice of the European Union. He has also been instructed as junior counsel before the LCIA, GAFTA, the Court of Appeal, Supreme Court and European Court of Human Rights.

His current and recent public law cases include the TfL/Uber litigation before the Court of Appeal, and Uber's appeal against the decision to revoke its licence. Tim is also instructed by the Treasury to resist British Telecom's challenge to a decision to index public service pensions that may increase BT's pension liabilities by £600 million. 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. 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 Ping in its challenge against the CMA's decision that Ping's restriction on internet sales of its golf clubs is unlawful. He recently appeared for Pfizer before the Competition Appeal Tribunal in their appeal against the CMA's decision to impose the largest fine ever imposed on a single undertaking for breaches of UK competition law. He is also acting in the air cargo follow-on damages litigation and various telecommunications appeals before the Competition Appeal Tribunal and Court of Appeal.

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Tim is also in demand in cases that raise complex questions of EU law and 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. He is currently instructed to appear for the UK Government before the General Court in a State aid action concerning the Hinkley Point C nuclear reactor.

Tim is regularly instructed in heavyweight commercial disputes. He is currently instructed to advise on a multi-billion pound dispute arising out of a property development (led by Mark Howard QC), as well as acting for two Government departments in separate, substantial contract disputes. 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. He also appears alone in the High Court in smaller commercial disputes and has acted for the Indian Government, as well as a wide range of private parties.

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*.

## ABOUT

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.

## PRACTICE AREAS

### COMMERCIAL

Tim has a busy commercial litigation and advisory practice.

He is currently instructed to advise on a multi-billion pound dispute arising out of a property development (as a junior to Mark Howard QC), as well as acting for a Government department in a substantial contract dispute (unled).

He is frequently instructed on behalf of Indian clients and the Indian Government in UK litigation or international arbitrations. As a result, he is familiar with the business practices and needs of the Indian market.

**His notable instructions include:**

Commercial litigation:

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- 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 is instructed to appear before the Supreme Court in a forthcoming hearing to determine the consequences of a reference to the Court of Justice of the European Union, as a junior to Philip Kolvin QC (Cornerstone Chambers) and Victoria Wakefield. The case raises complex and important points of law concerning unjust enrichment.
- Acting alone for a Government department in a substantial contract dispute concerning the proper construction of a services contract.
- 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.
- Instructed to appear alone at the High Court trial in *Rebeka Begum v Subrina Hossain and Sunam Tandoori Limited* (Claim No. 18088 of 2009).
- Instructed as junior in a substantial (USD 500 million) commercial claim in the British Virgin Islands.
- Instructed alone in a substantial claim concerning an alleged breach of the exclusivity provisions of a long-term contract.
- Instructed to appear alone at trial in various County Court disputes.

### International 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:

- *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).

### 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.

### Insurance/Financial Services:

- 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.

## EU/COMPETITION

Tim has a thriving EU and competition law practice. He is recognised in Legal 500 2015 as a leading junior (Band 2) in public procurement

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law with "associated strengths in public and competition law."

Chambers and Partners (2015) describe Tim as "A lawyer with a growing reputation in procurement law, who has a wide-ranging practice that also covers competition, administrative law and commercial litigation. He acts for both claimants and defendants...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."

Tim regularly advises alone on complex questions of State aid and procurement law, and appears on a regular basis before the Competition Appeal Tribunal (both led and unled). He is currently instructed in separate matters by the two recipients of the largest single fines in UK competition law history: Pfizer and Allergan.

### His notable instructions include:

#### European:

- *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 T-356/15 Austria v Commission* instructed to act on behalf of the Department for Energy and Climate Change 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).
- *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.
- *Tann UK Limited and others v Secretary of State for Health*, a significant case concerning the lawfulness of the UK 'Plain Packaging' Regulations.

#### Competition and Enforcement:

- *Pfizer Inc and Pfizer Limited v Competition and Markets Authority* (Case CE9742-13). Tim is currently instructed as junior to Mark Brealey QC and Robert O'Donoghue QC before the Competition Appeal Tribunal in a major 'unfair pricing' appeal. *Pfizer* faces the largest fine ever imposed on a single undertaking for a breach of UK competition law: £84.2 million.
- *BT v Ofcom* (Case 1260/3/3/16). Tim is currently acting 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 is currently instructed by the Competition and Markets Authority to work on their largest ongoing cartels enforcement action.
- *Emerald Supplies and others v British Airways and others* (HC-2008-000002). Instructed to act for Qantas Airways, a Part 20 Defendant to this substantial follow on claim for damages.
- Instructed by the largest independent credit hire company in the UK to make submissions to the Competition and Markets Authority in connection with the ongoing investigation into the private motor insurance market (as a junior to Richard Gordon QC).

#### 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.
- Instructed to advise a substantial NHS supplier in a claim raising issues concerning breach of a procured contract.
- *Fujitsu v DVLA* (HC-13-CO553). A very substantial public procurement challenge concerning a purported failure to retender a publicly procured contract.
- Advised on a public procurement challenge to a new framework in children's services (as junior to Victoria Wakefield).
- Advised on prospects and drafted Particulars of Claim arising out of a substantial public procurement procedure carried out by one of the

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UK emergency services (as junior to Margaret Gray).

### State Aid:

- Instructed alone by a Government Agency to advise on the State aid implications of a major new Government initiative to reduce pollution.
- Providing ongoing advice and assistance to a local authority responding to a substantial State aid challenge, before the European Commission, concerning a sports complex.
- Advised a large pan-European media body on the proper approach to State aid, in the context of their sector.
- Invited to provide training regarding State aid to the Department for Business Innovation and Skills and Department for Energy and Climate Change (along with Kelyn Bacon QC)
- Advised a local authority on the State aid, public procurement and privatisation issues arising out of a proposed sale of an authority-owned commercial enterprise (as a junior to David Vaughan QC CBE).
- Advised a local authority (alone) concerning the State aid and procurement issues arising from a proposed transfer of funds to a leisure centre.

### Commercial Agency:

- Advised on quantum in a commercial agency case valued at over £10 million.
- Appeared alone for the Claimant at trial in 2013 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).
- Advised on jurisdiction, quantum and merits in a major trans-national commercial agency claim (valued at over £2 million).

### 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).

## 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 (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 Uber London Limited and others) v Transport for London* [2017] EWHC 435 (Admin). Tim appeared in the High Court in this high profile judicial review challenging the lawfulness of a number of recent changes to the Private Hire licensing regime

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- introduced by TfL (as a junior to Martin Chamberlain QC). Both parties have obtained permission to appeal to the Court of Appeal.
- *R (Stockings) v Transport for London* [2017] CO/3276/2017. Tim acted alone on behalf of TfL in this challenge alleging various breaches of Article 6, bias and procedural unfairness.
  - *R (Kingston Upon Hull City Council) v Secretary of State for Business, Innovation and Skills* (CO/2113/2015). The first judicial review challenge concerning the Primary Authority Framework within local government. Tim acted for the Secretary of State before the Court of Appeal, as a junior to Martin Chamberlain QC.
  - *TfL v Uber and others* [2015] EWHC 2918 (Admin). Tim has acted on behalf of TfL in a number of High Court challenges (including this matter) concerning the lawfulness of the business model of Uber and the taxi trade in London more broadly.
  - *Lancashire County Council v Department for Communities and Local Government* (CO/1703/2015). Judicial review challenge against DCLG's decision to claw back a portion of a European Regional Development Fund grant (as junior to Fergus Randolph 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.

### Public International Law:

- 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 ultimately 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.
- 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 (as a junior to Jemima Stratford QC) by the All Party Parliamentary Group on Drones to provide supplemental advice in relation to the Home Office's Covert Surveillance Code of Practice.
- Instructed to advise the Office of Fair Trading on the scope of their obligations in response to several Subject Access Requests, brought under the Data Protection Act 1998.
- 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:

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- 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).

### Human Rights:

- 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.
- *Solomon Taiwo v Ministry of Justice and London Borough of Tower Hamlets*. Appeared at trial for the Ministry of Justice in this claim concerning the alleged unlawful detention of a child (for the purposes of Article 5 of the Convention). Permission is currently being sought by the Claimant to the Court of Appeal.
- Advised on the Article 6 issues arising in connection with a professional disciplinary procedure (accountancy). Appeared at substantive hearing on behalf of the Defendant.

### Education:

- Advised on the prospects of successfully challenging a final determination by a University Examination Board and drafted challenge documentation for filing at the Office of the Official Adjudicator.

### 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).

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

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"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)