Tom Smith KC

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Tom specialises in commercial litigation and arbitration, banking and finance, corporate insolvency and restructuring and company law including investment funds (hedge funds and private equity) and civil fraud and asset recovery.

Tom is an experienced advocate in both court litigation and arbitrations. He has extensive experience of major commercial trials. He has also been involved in many of the major restructuring and insolvency cases in recent years, including significant Supreme Court and Privy Council decisions in the fields of banking, insolvency and restructuring and investment funds. Tom frequently appears as an advocate both in England and in other jurisdictions including the Cayman Islands, the British Virgin Islands, Dubai, Bermuda, Trinidad and Tobago and Gibraltar.

Tom is described as being very bright, quick-witted and very approachable. He is named by Chambers and Partners as a leading silk in seven areas (banking & finance, chancery: commercial, commercial dispute resolution, company, fraud: civil, restructuring/insolvency and offshore) and as a star individual in restructuring and insolvency.

Tom is Head of Chambers at South Square. He is also a member of the Financial Markets Law Committee and sits as a Deputy High Court Judge in the High Court of England and Wales and as a Deputy High Court Judge in the High Court of Hong Kong.

Insolvency and Restructuring

Major recent cases include:

- ***Kington SARL v Thames Water Utilities Holdings Ltd*** [2025] EWCA Civ 475, leading Court of Appeal authority on the Thames Water restructuring plan and Part 26A plans generally
- ***Re AGPS Bondco plc*** [2024] EWCA Civ 24, [2024] BCC 302, leading Court of Appeal authority on Part 26A restructuring plans
- ***Shetty v NMC Healthcare*** [2024] ADGMCA 001, ADGM Court of Appeal, scope of powers to reverse unfair preferences
- ***Carton-Kelly v Darty Holdings SAS*** [2023] EWCA Civ 1135, [2024] BCC 119, leading Court of Appeal decision on preference claims under section 239 of the Insolvency Act
- ***Avanti Communications Ltd*** [2023] 2 BCLC 355, distinction between fixed and floating charges
- ***Minor Hotel Group MEA DMCC v Dymott*** [2022] BCC 710, operation of the new moratorium regime under Part A1 of the Insolvency Act
- ***Re Nero Holdings Ltd*** [2022] BPIR 189, defence of the challenge to the Caffe Nero CVA
- ***Lazari Properties 2 Ltd v New Look Retailers Ltd*** [2022] 1 BCLC 557, leading case on the use of CVAs for landlord restructurings
- ***Re Debenhams Retail Ltd*** [2020] 1 BCLC 747, adoption of employment contracts in

administration and effect of the Coronavirus Job Retention Scheme

- ***Lehman Brothers Australia v Lomas*** [2021] Ch 1, test for rule in *ex parte James* and unfair harm under para 74 of Schedule B1
- ***Discovery (Northampton) Ltd v Debenhams Retail Ltd*** [2020] BCC 9, successfully acting for Debenhams on the challenge to its CVA, the first decision on the validity of retail CVAs
- ***UBS AG v Fairfield Sentry*** [2019] 2 BCLC 1, power of foreign courts to apply insolvency transaction avoidance provisions and grant of anti-suit injunctions
- ***BZST v Heis*** [2020] 1 BCLC 649, power of court to stay proof of debt appeal proceedings
- ***Zinc Hotels v Beveridge*** [2018] BCC 968, power of court to appoint interim administrators and duties of administrators
- ***Davey v Money*** [2018] Bus LR 1903, duties of administrators as to realization of secured property and alleged intermeddling by secured creditor
- ***Shlosberg v Avonwick Holdings*** [2017] Ch 210 (CA), rights of a trustee in bankruptcy to access and use documents including privileged material belonging to the bankrupt
- ***Re Nortel GmbH; Bloom v The Pensions Regulator*** [2014] AC 209 (SC), administration expenses and provable debts
- ***Rubin v Eurofinance*** [2013] 1 AC 236 (SC), recognition of foreign judgments in insolvency proceedings
- ***Vietnam Shipbuilding Industry Group v Bluecrest*** [2013] EWHC 1146 (Comm), stay of proceedings in support of proposed scheme of arrangement
- ***Re Oilexco Northsea*** [2010] Ch 187 (CA), grant of anti-suit injunctions in support of insolvency proceedings
- ***Re HIH Casualty and General Insurance*** [2008] 1 WLR 852 (HL), power of an English liquidator to remit assets to foreign office-holders

Tom has advised and appeared on many of the restructuring plans under Part 26A of the Companies Act: *Deep Ocean* [2021] BCC 483, *Virgin Active* [2022] 1 All ER (Comm) 1023, *Hurricane Energy* [2021] BCC 989, *NCP* [2021] EWHC 1653 (Ch), *ED&F Man Holdings* [2022] EWHC 433 (Ch), *Smile Telecoms* [2022] BCC 808, *Hong Kong Airlines* [2023] BCC 477, *Lifeways (Listrac Midco)* [2023] Bus LR 920, *Adler (AGPS Bondco)* [2024] BCC 302, *Fitness First* [2023] EWHC 1699 (Ch), *Prezzo* [2023] EWHC 1679 (Ch), *SGB-Smit* [2023] EWHC 2551 (Ch), *Atento* [2023] EWHC 2754 (Ch), *Project Lietzenburger Strasse Holdco* [2023] EWHC 2849 (Ch), *Superdry (C-Retail Ltd)* [2024] EWHC 1333(Ch), *Consort Healthcare* [2025] BCC 46, *Revolution Bars* [2024] EWHC 2949 (Ch), *Cineworld* [2024] EWHC 2475 (Ch), *Sino-Ocean* [2025] EWHC 205 (Ch), *Thames Water Utilities Holdings* [2025] EWCA Civ 475, *Independent Builders Merchants Group (Chandlers Building Supplies)* [2025] EWHC 2678 (Ch), *Poundland Ltd* [2025] EWHC 2755 (Ch), *Poundstretcher Ltd* [2026] EWHC 1438 (Ch), *TG Jones High Street Ltd* [2026] EWHC 2079 (Ch).

Tom has advised and appeared on numerous schemes of arrangement including *Sea Containers, Crest Nicholson, TI Automotive, Rodenstock*, *Fitness First, Travelodge, CEVA, Vietnam Shipbuilding Group* [2014] 1 BCLC 400, *Hibu/Yellow Pages* [2014] EWHC 370 (Ch), [2014] EWHC 1074 (Ch), *Stemcor* [2014] 2 BCLC 373, *Global Resources Lancashire*, *Endeka Ceramics*, *DTEK Finance BV* [2015] EWHC 1164 (Ch), *Torm A/S, Stemcor 2* [2016] BCC 194, *Avantgardco,* [2015] EWHC 4119 (Ch), *Privatbank* [2015] EWHC 3299 (Ch), *DTEK Finance plc* [2016] EWHC 1083 (Ch), *EnQuest* [2016] EWHC 3734 (Ch), *Bibby Offshore* [2017] EWHC 3402 (Ch), *Agrokor*, [2019] EWHC 2269 (Ch), *Interserve*, *Thomas Cook Group* [2019] EWHC 2441 (Ch), *Instant Cash Loans* [2019] EWHC 2759 (Ch), *Premier Oil* [2020] CSOH 39, *Hema* [2020] EWHC 2219 (Ch), *Codere* [2020] EWHC 2441 (Ch),

Petra Diamonds [2020] EWHC 3565 (Ch), *Hertz UK* [2020] 12 WLUK 194, *PGS ASA* [2020] EWHC 3622 (Ch), *Steinhoff International* [2021] EWHC 184 (Ch), *MAB Leasing* [2021] EWHC 379 (Ch), *Port Finance* [2022] 1 BCLC 619, *Provident Financial* [2021] EWHC 1341 (Ch), *Amigo Loans* [2021] EWHC 1401 (Ch), *DTEK Energy BV* [2022] 1 BCLC 260, *Jain Trading, Lowenplay/Re Safari Verwaltungs* [2022] EWHC 1156 (Ch), *China Fortune* [2022] EWHC 3496 (Ch), *Everyday Lending* [2023] EWHC 2097 (Ch), *Link Fund Solutions* [2023] EWHC 2641 (Ch), *Lecta Paper* [2023] EWHC 2908 (Ch), *TeleColumbus* [2024] BCC 428, *Arvos* [2024] EWHC 1016 (Ch), *SGS*, *OQ Chemicals* [2024] EWHC 2036 (Ch), *Light SA* [2024] EWHC 2733 (Ch), *Mega Newco* [2024] EWHC 3323 (Ch), *Deutsche Glasfaser* [2026] EWHC 1563 (Ch), *Herens UK Bidco*.

Offshore schemes of arrangement including *Luckin Coffee*, *Evergrande*, *China Aoyuan* and *Yuzhou*.

Tom has also advised on many cases involving CVAs particularly to restructure lease liabilities and involving combined financial/operational restructurings: *JJB Sports*, *Focus DIY*, *Blacks Leisure*, *Ten Pin*, *Bowlplex*, *Fitness First*, *Travelodge*, *Café Rouge*, *Mamas and Papas*, *Byron Burgers*, *Jamie's Italian*, *Prezzo*, *Mothercare*, *House of Fraser*, *Homebase*, *Paperchase*, *Snow and Rock*, *Carpetright*, *Debenhams*, *Arcadia*, *Travelodge 2*, *The Restaurant Group*, *Poundstretcher*, *All Saints*, *Buzz Group*, *Itsu*, *Wasabi*, *Pizza Express*, *Ann Summers*, *Moss Bros*, *Revolution Bars*, *LK Bennett*, *New Look*.

Banking and Finance

Recent cases include:

- ***FW Aviation (Holdings) 1 Ltd v Vietjet Aviation Joint Stock Co*** [2026] EWHC 2454 (Comm), appointment of receivers over assets of Vietnamese airline in aid of execution of a judgment
- ***VietJet Aviation JSC v FW Aviation (Holdings) Ltd*** [2025] EWCA Civ 783, enforcement of security under JOLCO aircraft leasing structure and meaning of "financial institution" in relation to assignment of debt
- ***Caxton International v Essity Aktiebolag*** [2025] EWHC 2020 (Ch), standing of beneficial owners of bonds held in clearing systems to apply for declaratory relief
- ***Nuoxi Capital Ltd v Peking University Founder Group*** [2025] HKCFA 6, Hong Kong Court of Final Appeal, validity of keepwell deeds and measure of damages for breach of obligation to provide liquidity
- ***NatWest Markets NV v CMIS Nederland BV*** [2025] EWHC 37 (Comm), interpretation of deeds of indemnity in relation to CMBS transactions
- ***Galapagos Bidco Sarl v Kebekus*** [2023] EWHC 1931 (Ch), interpretation of enforcement provisions of inter-creditor agreement
- ***ABT Auto Investments Ltd v AAPICO*** [2023] 2 All ER (Comm) 42, exercise of the appropriation remedy under the Financial Collateral Arrangements Regulations
- ***Bank of New York Mellon v Essar Steel*** [2018] EWHC 3177 (Ch), standing of noteholder and trustee to claim repayment of notes
- ***Re Olympia Securities*** [2017] EWHC 2807 (Ch), meaning of "financial institution" and ability to close-out under the ISDA Master Agreement where an Event of Default has occurred

- ***VR Global Partners LP v Exotix Partners LP*** [2017] EWHC 2620 (Comm), validity of exercise of unwind option under LMA debt trade
- ***African Export-Import Bank v Shebah Exploration & Production*** [2018] 1 WLR 487, validity of anti set-off clause in LMA form loan agreement and application of Unfair Contract Terms Act
- ***GSO Credit Partners v Barclays Bank*** [2017] 1 All ER (Comm) 421, construction of LMA standard terms in relation to sale of commitment under surety bonds facility
- ***Goldman Sachs International v Novo Banco*** [2016] EWCA 1092, effect of European Banking Restructuring and Resolution Directive on claims to recover lending under English loan agreements
- ***Morgan Stanley v Tael One Partners*** [2015] UKSC 12, construction of LMA standard terms for par trade transactions
- ***Grupo Hotelero Urvasco v Carey Value Added*** [2013] EWHC 1039 (Comm), alleged defaults under loan agreement including material adverse change (MAC) clauses and other default provisions
- ***Saltri III v MD Mezzanine SICAR*** [2013] 2 BCLC 217, rights and duties of security trustee and duties owed to junior lenders
- ***Assénagon Asset Management v Anglo Irish Bank*** [2013] 1 All ER 495, abuse of power in relation to consent and exchange offer for subordinated notes
- ***Mills v HSBC Trustee (CI)*** [2012] 1 AC 804 (SC), effect of the rule in Cherry v Boultbee applicable in relation to the rights of guarantors

Commercial Litigation and Arbitration

Recent cases include:

- ***Mitchell v Al Jaber*** [2026] AC 758, leading Supreme Court authority on the principle of assessing equitable compensation
- ***Credit Suisse v Softbank Group*** [2025] EWHC 2631 (Ch), dismissal of claims under s423 Insolvency Act 1986 against Softbank arising from collapse of Greensill group
- ***Primeo Fund v Bank of Bermuda*** [2024] AC 727, contributory negligence to claims for breach of contract; deliberate concealment for limitation purposes; breach and causation in relation to claims against fund administrator and custodian
- ***NMC Healthcare v Noor Capital PSC*** [2022] ADGMCFI 0003, ADGM Court, grant of anti-suit injunction to restrain proceedings in breach of Deed of Company Arrangement
- ***Schofield v Smith*** [2023] 1 All ER 480, ability of former administrators as third parties to rely on settlement agreement release to strike out claims against them
- ***Primeo Fund v Bank of Bermuda*** [2022] 1 BCLC 151, Privy Council, application of reflective loss rule to claims against former fund administrator and custodian
- ***Rawbank SA v Travelex Banknotes Ltd*** [2020] 5 WLUK 104, whether proposed restructuring gives rise to risk of dissipation and whether a freezing order ought to be granted
- ***Primeo Fund v HSBC***, [2017(2) CILR 334], claims by Madoff feeder fund against its former

custodian and administrator for breach of duty and gross negligence

- ***Avonwick Holdings Ltd v Castle Investment Fund*** [2015] EWHC 3832 (Ch), claims under section 423 Insolvency Act and for unlawful means conspiracy
- ***Ipsos SA v Dentsu Aegis Ltd*** [2015] EWHC 1171 (Comm), [2015] EWHC 1726 (Comm), fraudulent misrepresentation and breach of warranty claims arising out of share purchase agreement
- ***Avonwick Holdings Ltd v Webinvest Ltd*** [2014] EWHC 3661 (Ch), acting for claimant in successful claim to recover US$200m lending in face of an alleged oral agreement
- ***Constantin Medien v Ecclestone*** [2014] EWHC 387 (Ch), acting for the second defendant in successful defence of claim concerning Formula One bribery allegations
- ***Smithton v Naggar*** [2015] 1 WLR 189 test for de facto/shadow director

Arbitrations under ICC, LCIA, UNCITRAL and HKIAC rules:

- HKIAC arbitration regarding shareholder dispute in crypto business
- HKIAC arbitration regarding redemption of preferred shares in Chinese internet business
- HKIAC arbitration regarding sale of medical business
- HKIAC arbitration regarding consultancy agreement with Chinese football club
- ICC arbitration regarding ownership of multi-billion dollar private equity fund
- ***K v P*** [2019] EWHC 589 (Comm), successful challenge to LCIA Award under section 68 of the Arbitration Act
- LCIA arbitration regarding purchase of Ukrainian agri-business
- LCIA arbitration regarding Black Sea grain terminal including application for section 66 relief
- ICC arbitration regarding arms contract with Middle Eastern state
- LCIA arbitration for defence contractor regarding MoD IT project
- LCIA arbitration for defence contractor regarding MoD armoured vehicle project
- ***Nomihold Securities v Mobile TeleSystems Finance*** [2012] 1 Lloyd's Rep 442, anti-suit injunction in relation to arbitration proceedings; [2011] EWHC 2143 (Comm), test for setting aside leave to enforce an arbitration award under section 66 of the Arbitration Act 1996
- ***Kernel Holding v Taman Invest*** [2012] EWHC 715 (Comm), section 66 injunction in support of arbitration proceedings to restrain business sale

Offshore

Tom has extensive experience of offshore work including in particular in relation to investment funds (hedge funds and private equity). Tom has acted in relation to many of the major recent cases including Primeo Fund (for the liquidators), XiO Fund (for the receivers) and Abraaj (for the liquidators). In addition to numerous first instance and Court of Appeal appearances, recent cases at Privy Council level are:

- ***Re Manhattan Coffee Investment Holding*** [2026] UKPC 21, Privy Council, rights and standing of a director of bring a derivative action on behalf of a company in liquidation
- ***Re Aquapoint LP*** [2026] 1 WLR 1755, Privy Council, just and equitable winding up, and relationship with contractual regime including entire agreement and non-reliance clauses

- ***China Shanshui Cement Group Ltd v Tianrui*** [2025] AC 709, Privy Council, shareholder has individual right of action against company for wrongful issue of shares
- ***Pearson v Primeo Fund*** [2021] BCC 1015, Privy Council, ability of liquidator of a fund to rectify the shareholder register and to distribute other than in accordance with registered shareholdings
- ***DD Growth Premium 2X Fund v RMF*** [2018] 1 BCLC 453, Privy Council, leading case on clawback claims for redemptions made when a fund is insolvent
- ***Pearson v Primeo Fund*** [2017] BCC 552, Privy Council, leading case on the ranking of claims by redeeming investors in liquidation of Cayman corporate open-ended investment fund

Financial Services

Tom has extensive experience of financial services work, particularly enforcement action on behalf of regulators in the UK and abroad

- Acting for the FSA in relation to Kaupthing Singer & Friedlander
- Acting for the FSA in relation to its intervention in respect of Landsbanki and Heritable Bank
- Acting for Northern Rock in relation to its intervention by the FSA and subsequent nationalisation
- Acting for the FSA on various enforcement matters
- Acting for various overseas regulators: Dubai Financial Services Authority (in relation to Espirito Santo Bankers Dubai), the Gibraltar Financial Services Commission, the Isle of Man Financial Services Authority (in relation to Kaupthing Isle of Man) and the Central Bank of Cyprus (in relation to Bank of Cyprus and Laiki)

Awards and Recommendations

Chambers & Partners	Ranked in seven categories: Banking and Finance, Restructuring/Insolvency, Chancery: Commercial, Commercial Dispute Resolution, Civil Fraud, Company and Offshore. Comments include: *"A supremo in major litigation, he's hugely respected by the judiciary. Very cool, calm and collected, he's incredibly good on his feet and always able to get to grips with the detail however immense the case."* *"Tom is an absolute superstar. He's good on his feet and great in terms of coming up with strategy and getting into the details."* *"He is incredibly clever and a rare advocate who is equally at home making legal representations to the Supreme Court as cross-examining witnesses in arbitration."* *"Tom is an absolute master. He absolutely demolishes the other side with such style, making it look effortless."* *"Tom is one of the best in the business and a pleasure to work with."*

Legal 500	Ranked in seven categories: Banking and Finance, Insolvency, Commercial Litigation, Civil Fraud, Company, International Arbitration and Offshore. Comments include: *"Tom is a formidable advocate and master strategist with a towering intellect. Yet, despite his status, he rolls his sleeves up and mucks in."* *"Tom is quite simply the gold-standard of restructuring and insolvency barristers. His advocacy is measured, logical, and surgical – and as a result, incredibly persuasive. This is always underpinned by excellent written work, both in terms of advice and written advocacy."* *"Excellent responsiveness and technically amazing, he has a brilliant advocacy style, reads the court well and is highly persuasive."*

Career

2026 – Appointed Deputy High Court, High Court of Hong Kong

2023 – Appointed Deputy High Court Judge, High Court of England and Wales

2020 – Called to the Bar of Bermuda

2019 – Called to the Bar of Trinidad and Tobago

2017 – Called to the Bar of Gibraltar

2017 – Called to the Bar of the British Virgin Islands

2014 – Appointed King's Counsel

2014 – Registered lawyer, Dubai International Financial Centre Courts

2012 – Called to the Bar of Northern Ireland (temporary admission)

1999 – Called to the Bar of England and Wales

Memberships

International Insolvency Institute
LCIA
Insolvency Lawyers' Association
Financial Markets Law Committee

Publications

Editor, ***EC Regulation on Insolvency Proceedings*** (OUP, 2023)

Editor, ***Company Voluntary Arrangements*** (OUP, 2022)

Contributor to ***Company Directors*** (OUP, 2024)

Contributor to ***Cross-Border Insolvency Fourth Edition*** (Sheldon, Bloomsbury, 2015)

Education and Qualifications

1998Clare College, Cambridge University, LLM, First Class
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