

Frederick Wilmot-Smith

YEAR OF CALL: 2018

"Frederick is an excellent advocate. He is thoughtful of the wider picture and attentive to the granular detail, in equal measure."

Chambers & Partners, 2024

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Practice Overview

Frederick's practice is principally in commercial law. He has been described as "probably the best junior for complicated law you can get" and "a hands-on practical litigator".

Fred is currently instructed in *Republic of Mozambique v Credit Suisse International*, a claim in the Commercial Court of over US\$2 billion, and in *Azima v RAKIA and others*, a claim alleging State-sponsored hacking and which seeks to set aside judgments of the High Court and Court of Appeal as having been procured by fraud. He has acted unled in cases valued at over US\$100m.

He has substantial appellate experience, having appeared before the Court of Appeal and Supreme Court on a number of occasions, and has also appeared in the Privy Council. As well as his practice as a litigator, he provides advice and acts as an expert on all aspects of English private law.

In all his work he is able to draw on his considerable experience as an academic lawyer. He was previously an academic at the University of Oxford, where he is a Fellow of All Souls College. He has published widely on a range of subjects and taught, for example, graduate seminars in commercial remedies and restitution of unjust enrichment. His work has been cited by the United Kingdom Supreme Court, as well as the highest courts in Australia, Canada and Singapore.

Commercial

Cases in which Fred has been or is instructed include:

- *Republic of Mozambique v Credit Suisse International* : a substantial claim brought by the Republic against financial and commercial institutions. Acting for the Seventh – Tenth

Defendants, Fred is led by Duncan Matthews KC, Philip Riches KC and Ben Woolgar. The case has been to the Supreme Court already on a section 9 challenge.

- *Perry v Lopag Trust Reg No 2* [2023] UKPC 16: Fred acted for the successful respondent in an appeal to the Privy Council concerning Cayman, Israeli, Liechtenstein law, and which turned on the proper approach to appeals on facts (including facts about foreign law).
- *Patisserie Valerie v Grant Thornton* : proceedings brought by Patisserie Valerie alleging negligence by the auditors. Acting for Grant Thornton and led by Simon Salzedo KC, James Brocklebank KC and Ed Harrison.
- *Stokoe Partnership v Patrick Grayson and others*: instructed by the claimant in a case alleging breach of confidence and unlawful means conspiracy. Led by Tim Lord KC, Richard Hill KC and Gerard Rothschild, the case went to the Court of Appeal on a question of cross-examination of a *Norwich Pharmacal* deponent on their affidavit.
- *CVS v Ralph*: led by Thomas Plewman KC, Fred acts for the claimant in a case alleging deceit and breach of contract.
- *Vale v Steinmitz* : led by Stephen Houseman KC, Fred was instructed to argue before the Court of Appeal on a question concerning the scope of equitable rescission in an arbitration context.

Frederick also acts alone in a number of matters, both in the County Court and the High Court, and is happy to take advisory instructions or to act as an expert.

Public Law

Frederick acts for HMRC in various cases concerning restitution of overpaid tax. Current instructions include *Test Claimants in the Franked Investment Income Group Litigation* (where Fred appeared before the Supreme Court twice: [2020] UKSC 47, [2021] UKSC 31), *Jazztel* ([2022] EWCA Civ 232), and *British Telecom* ([2023] EWCA Civ 1412).

He has also acted *pro bono* in the First-Tier Social Security Tribunal and the Upper Tribunal in cases involving Human Rights Act 1998 and Child Tax Credits. He also acts unled in matters before the Employment Tribunal.

Other information

Education

- D.Phil, All Souls College, Oxford
- M.Phil, Balliol College, Oxford (Distinction)
- B.C.L., Balliol College, Oxford (Distinction)
- Undergraduate, Christ's College, Cambridge (Double First Class)

Professional experience

Fellow of All Souls College (2011-2018, 2019-present)

Scholarships and prizes

- Eldon Scholar (most promising Oxford graduate intending to practise at the Bar)
- Prize Fellow of All Souls College, Oxford
- Vinerian Scholar (top mark on the Bachelor of Civil Law)
- Scholar of Christ's College, Cambridge
- Various prizes in Cambridge and Oxford for performance in examinations

Selected Publications

- 'Express and Implied Terms' *Oxford Journal of Legal Studies*, (2023) 43(1), p. 54-75
- 'Justice for Foxes' *Law Quarterly Review* (2022) 138 (Oct), 588 (co-authored with Lord Sales)
- *Equal Justice: Fair Legal Systems in an Unfair World* (Harvard University Press, 2019)
- 'Termination After Breach' *Law Quarterly Review* (2018) 134 (Apr), 307-325
- 'Should the Payee Pay?' *Oxford Journal of Legal Studies*, (2017) 37(4), p. 844-861
- 'Reconsidering "Total" Failure', *Cambridge Law Journal* (2013) 72(2), 414
- 'Replacing Risk-Taking Reasoning', *Law Quarterly Review* 2011, 127, 610-630
- Co-editor of three edited collections: *Defences in Contract* (Oxford: Hart, 2017); *Defences in Unjust Enrichment* (Oxford: Hart, 2016) and *Defences in Tort* (Oxford: Hart, 2015)
- Part of the advisory group (with a number of judges, practitioners and academics) which assisted Professor Andrew Burrows in producing *A Restatement of the English Law of Contract* (OUP, 2016)

directory quotes

"He is an unbelievably clever man and wise beyond his years. He does not miss a single point and will be a total star." (Chambers & Partners 2024)

"He is probably the best junior for complicated law you can get." (Chambers & Partners 2024)

"Fred provides impeccable analysis, always adapts himself to the circumstances of the case and plays his role within the team beautifully." (Chambers & Partners 2024)

"Fred is extremely bright - he has ideas no one else will think of." (Chambers & Partners 2024)

"Fred is definitely one to watch. He is so bright and a hands-on practical litigator." (Chambers & Partners 2024)

"Frederick is an excellent advocate. He is thoughtful of the wider picture and attentive to the granular detail, in equal measure. He has the ability to take one through complex areas of fact and law quickly but carefully and sum up the heart of the matter." (Chambers & Partners 2024)

"Fred is incredibly good, academically brilliant and super nice." (Chambers & Partners 2024)

"Fred is incredibly clever, even by London commercial Bar standards. He has an academic's in-depth understanding of complex legal theories and concepts, but manages to be an extremely practical barrister nonetheless." (Legal 500 2024)