
Steven Elliott KC

Barrister

Call 2001 Silk 2018



Scope of Practice

• Arbitration • Banking and Financial Services • Civil Fraud • Contract Disputes • Company and Partnership Disputes • Injunctions and Other Interim Relief • Restitution • Trusts

Overview

Steven Elliott KC has over 20 years' experience of domestic and international commercial disputes drawn from across the business world. He is a persuasive advocate known for his ability to master and find a way through difficult and complex cases. Steven is described as "ferociously clever" and as combining a practical approach with an "encyclopedic knowledge of the law".

Steven's matters include considerable work for and against banks, asset managers, brokers and other financial institutions, such as acting in the continuing *Bilta v RBS* litigation concerning MTIC fraud on the carbon credit trading market and acting for Aberdeen in its dispute with Lloyd's Bank concerning termination of its investment management mandate. Steven has also recently acted for private equity houses seeking to restructure and improve the terms of deals relating to French and Northern Irish acquisitions; and in control disputes relating to mining ventures in Russia and in Botswana. Other cases have emerged out of the technology sector, such as a recent dispute with Meta concerning alleged scraping of Facebook data, another involving a cryptocurrency-linked payment card, and another concerning the intellectual property in e-commerce warehouse technology. He acts for corporates, entrepreneurs and wealthy families.

Steven has conducted numerous substantial trials, for example *Kolyada v Yurov* (Commercial Court), *Bilta v RBS* (Chancery Division) and *Rusnano v CRGF* (supporting a Guernsey advocate). He has also conducted substantial evidential hearings under LCIA rules, such as *Lloyd's Bank v Aberdeen*, *Hirco v Hiranandani* and *Urca v Seadrill*. Several of these cases have involved allegations of fraud, corruption or fiduciary misconduct. Alongside large-scale and long-running cases, Steven also does much work on smaller matters, such a recent warranty dispute and applications for interim relief.

A significant part of Steven's practice is offshore and he has acted in or advised on litigation in most of the English common law-based jurisdictions. He has particular experience in the BVI, where he has been a member of the Bar since 2007. He also has particular experience in the Channel Islands, where he has been involved in several of the most important cases in recent years including *Crociani v Crociani*, *Carlyle v Conway*, *Rusnano v CRGF*, *Jameel v Jameel* and *Re RN Pharma*. As this selection indicates, Steven's offshore work typically involves contentious trust disputes, attempts to penetrate or seize or defend structures, and asset recovery or defence.

Steven is well known for his expertise in the field of restitution including restitution of tax and other charges. He has appeared in several leading cases including *DMG*, *Sempra Metals*, *Littlewoods*, *ITC* and *Vodafone v Ofcom* and frequently advises in legally innovative and complex matters of this kind.

Steven is interested in the principles underpinning the law and is regularly instructed in appeals, including several appeals to apex courts, and to provide expert evidence on English law in foreign proceedings. He is the general editor of *Snell's Equity* and author of *The Law of Rescission*. His writings on commercial remedies have been referred to in decisions of the highest courts here and in the other main Commonwealth jurisdictions. Steven taught law at Oxford and served as judicial assistant to the Lord Chief Justice before coming to the Bar.

Examples of Recent Cases

Commercial Litigation and Arbitration

- Proceedings in Guernsey in which a Russian state-owned sovereign wealth fund claimed to terminate a limited liability partnership and recover the partnership assets from the general partner; the case was tried by the Royal Court in stages: *Fonds Rusano Capital v CRGF* [2021] GRC089; [2022] GRC039; [2022] GRC040; followed by a successful appeal to the Court of Appeal ([2023] GCA048); and is now proceeding before the Judicial Committee of the Privy Council
- Acting in bespoke arbitral proceedings concerning the division of a multi-billion dollar family business in Saudi Arabia and worldwide, with associated proceedings in Jersey and in Liechtenstein
- *Vodafone v Ofcom* at first instance [2020] QB 200 and on appeal [2020] 2 WLR 1108; acting for EE claiming restitution of £83 million paid for spectrum licences under invalid regulations
- Acting for Aberdeen Standard Investments in an LCIA arbitration against Lloyds Bank concerning termination of an asset management mandate
- Acting in intended proceedings in the Cayman Islands and England concerning an attempt to force a division of multi-billion dollar interests amongst members of a wealthy Middle Eastern family through a winding up petition and other steps
- Acting for a defendant to a claim for dishonest assistance arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader VAT fraud: *Bilta v RBS* [2020] EWHC 546 (Ch) and on appeal [2021] EWCA Civ 680
- Acting in proceedings in the BVI and intended LCIA arbitrations concerning enforcement of option agreements relating to shares in a Russian smartphone company

- Acting in an LCIA arbitration, heard in 2017, involving a claim to enforce an introducing agent's commission arising against the backdrop of the Lava Jato corruption investigations in Brazil
- Acting for an investment fund in Isle of Man proceedings concerning a £350 million claim against the promoters and former directors of the company alleging fraudulent mis-selling of their assets to the company (*Hirco v Hiranandani*); also acting in an associated LCIA Singapore arbitration, which was heard in 2015
- Acting for WestLB (as was) defending a Commercial Court claim brought by ICAP in respect of an unsettled trade in Venezuelan oil warrants
- Acting in a Commercial Court dispute, tried in 2014, between the chairman and a former shareholder of a private Russian bank concerning a sale of shares in the bank said to have been procured by breach of trust: *Kolyada v Yurov* [2014] EWHC 2575 (Comm)
- Acting and advising in disputes between the promoters of, and the investors in, a number of troubled tax minimisation schemes, including film finance schemes in England and a whisky scheme in Australia
- Acting in an LCIA arbitration for an investment fund in a dispute with the fund's former manager involving allegations of fraud and breach of fiduciary duty, and advising in relation to related proceedings brought by a co-investor in Mauritius
- Acting for the claimant in a landmark case concerning the measurement of damages: *Parabola v MF Global* [2009] 2 All ER (Comm) 589 and [2011] QB 477 (CA)
- Acting for the claimant in *Sempra Metals v IRC* [2008] 1 AC 561, in which the House of Lords held that the English courts have a power to award compound interest in private law claims, overruling several of the House's own decisions; described by the Court of Appeal as "historic"
- Acting for a group of hedge funds and investment houses suing an investment bank in relation to misrepresentations in a private placing memorandum

Civil Fraud

Civil fraud is a mainstay of Steven Elliott KC's practice. He has tried some of the largest and most hard-fought fraud cases of recent years.

- Acting for a defendant to a claim for dishonest assistance arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader VAT fraud: *Bilta v RBS* [2020] EWHC 546 (Ch) and on appeal [2021] EWCA Civ 680
- Acting in bespoke arbitral proceedings concerning the division of a multi-billion dollar family business in Saudi Arabia and worldwide, with associated proceedings in Jersey and in Liechtenstein
- Proceedings in Guernsey in which a Russian state-owned sovereign wealth fund claimed to terminate a limited liability partnership on grounds of fraud and recover the partnership assets from the general partner; the case was tried by the Royal Court in stages: *Fonds Rusano Capital v CRGF* [2021] GRC089; [2022] GRC039; [2022] GRC040; followed by a successful appeal to the Court of Appeal ([2023] GCA048); and is now proceeding before the Judicial Committee of the Privy Council
- Acting in the appeal to the Judicial Committee of the Privy Council from the Guernsey Court of Appeal in *Carlyle Capital Corporation v Conway*, involving a claim that a judgment should be set aside for a fraud alleged to

have been perpetrated by trial counsel

- Acting on behalf of the applicant husband in proceedings before the Family Court to set aside a financial remedies order for alleged fraud: *AB v CD* [2022] EWFC 116
- Acting in an LCIA arbitration, heard in 2017, involving a claim to enforce an introducing agent's commission arising against the backdrop of the Lava Jato corruption investigations in Brazil
- Acting for an investment fund in Isle of Man proceedings concerning a £350 million claim against the promoters and former directors of the company alleging fraudulent mis-selling of their assets to the company (*Hirco v Hiranandani*); also acting in an associated LCIA Singapore arbitration, which was heard in 2015
- Acting in a Commercial Court dispute, tried in 2014, between the chairman and a former shareholder of a private Russian bank concerning a sale of shares in the bank said to have been procured by breach of trust: *Kolyada v Yurov* [2014] EWHC 2575 (Comm)
- Acting in an LCIA arbitration for an AIM listed investment fund in a dispute with the fund's former manager involving allegations of fraud and breach of fiduciary duty, and advising in relation to related proceedings brought by a co-investor in Mauritius
- Acting for the claimant in a landmark claim against a broker concerning the measurement of damages in fraud: *Parabola v MF Global* [2009] 2 All ER (Comm) 589 and [2011] QB 477 (CA)
- Acting in proceedings in the British Virgin Islands concerning the ownership and control of two investment funds, both sides alleging fraud.
- Acting for JP Morgan Chase enforcing a letter of credit said to have been procured by an accounting/securities fraud relating to commodity finance arrangements with Enron Corp: *Mahonia v WestLB* [2003] 2 Lloyd's Rep 911 and [2004] EWHC 1938 (Comm) (described by Chambers and Partners as a "tremendous win")

Banking and Finance

Steven Elliott KC's cases often have financial and banking dimensions, and he has been noted in the directories for his expertise and excellence in this area.

- Acting for Aberdeen Standard Investments in an LCIA arbitration against Lloyds Bank Plc concerning termination of an asset management mandate
- Giving expert evidence on behalf of Citibank in Russian litigation, the evidence concerning the nature of the trust constituted by a eurobond transaction
- Giving expert evidence on behalf of Privatbank in Ukrainian litigation, the evidence concerning the claims available to holders of loan participation notes
- Acting for a defendant to a claim for dishonest assistance arising out of carbon emissions allowance trading said by the claimants to have been carried on pursuant to a €100 million missing trader VAT fraud: *Bilta v RBS* [2020] EWHC 546 (Ch) and on appeal [2021] EWCA Civ 680
- Acting for WestLB (as was) defending a claim brought by ICAP in respect of an unsettled trade in Venezuelan oil warrants
- Acting in a Commercial Court dispute, tried in 2014, between the chairman and a former shareholder of a private Russian bank concerning a sale of shares in the bank said to have been procured by breach of trust: *Kolyada v Yurov*

[2014] EWHC 2575 (Comm)

- Acting for a group of hedge funds and investment houses suing an investment bank in relation to misrepresentations in a private placing memorandum
- Numerous cases concerning securities brokers including acting for the claimant in *Parabola v MF Global* [2009] 2 All ER (Comm) 589 and [2011] QB 477 (CA)
- Acting for UBS resisting allegations of negligence in relation to an underperforming investment portfolio
- Acting for JP Morgan Chase enforcing a letter of credit said to have been procured by an accounting/securities fraud relating to commodity finance arrangements with Enron Corp: *Mahonia v WestLB* [2003] 2 Lloyd's Rep 911 and [2004] EWHC 1938 (Comm) (described by Chambers and Partners as a "tremendous win")

Restitution

Steven Elliott KC has appeared for claimants in several of the leading cases in this area:

- *Vodafone v Ofcom* at first instance [2020] QB 200 and on appeal [2020] 2 WLR 1108; acting for EE claiming restitution of £83 million paid for spectrum licences under invalid regulations; the case raises a fundamental question about the use of counterfactual reasoning in the law of restitution
- *Littlewoods Retail v HMRC* at first instance [2009] STC 22, [2010] STC 207, [2014] STC 1761; in the Court of Justice Case C-591/10 [2012] STC 1714; in the Court of Appeal [2016] Ch 373; and in the Supreme Court [2018] AC 869, a case concerning restitution of compound interest amounting to £1.3 billion, raising complex issues of domestic and EU Law
- *Investment Trust Companies v HMRC* at trial [2012] STC 1150, [2013] STC 1129; and in the Court of Appeal [2015] STC 1280, involving restitution claims by end consumers of investment management services wrongly charged to VAT
- *Sempra Metals v IRC* [2008] 1 AC 561, in which the House of Lords held that the English courts have a power to award compound interest in private law claims, overruling several of the House's own decisions; subsequently described by the Court of Appeal as "historic"
- *Deutsche Morgan Grenfell Group v IRC* [2007] 1 AC 558, in which the House of Lords held that the taxpayer had a mistake-based restitution claim with the benefit of an extended limitation period

Trusts

Steven Elliott KC has a longstanding interest in trusts law and disputes, having gained his DPhil from Oxford on a trusts topic, and his writing in this area has been influential. Current and recent matters include:

- *Crociani v Crociani* in the Judicial Committee of the Privy Council on appeal from the Jersey Court of Appeal, the appeal raising issues about equitable compensation in the context of a traditional trust with successive interests
- *Ocean Partners v Whyte*, a dispute between the interests under a security trust relating to a copper mine in Botswana
- Giving expert evidence on behalf of Citibank in Russian litigation, the evidence concerning the nature of the

trust constituted by a eurobond transaction

- Giving expert evidence on behalf of Privatbank in Ukrainian litigation, the evidence concerning the claims available to holders of loan participation notes
 - *Fonds Rusnano Capital v Molard* [2019] GRC011 and in the Guernsey Court of Appeal [2019] GCA077, which involved the question whether a sole beneficiary of a discretionary trust can call for distribution of the trust assets under *Saunders v Vauthier* where the protector has a power to add further beneficiaries
 - Acting in a Commercial Court dispute, tried in 2014, between the chairman and a former shareholder of a private Russian bank concerning a sale of shares in the bank said to have been procured by breach of trust: *Kolyada v Yurov* [2014] EWHC 2575 (Comm)
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What the Directories Say

"Steven gets deep in to the detail and offers practical advice. He is really approachable and quickly gains the trust of the client and the rest of the lawyer team." (Chambers UK Bar 2024 – Commercial Dispute Resolution)

"Steven is very responsive." (Chambers UK Bar 2024 – Commercial Dispute Resolution)

"Steven is extremely clever and experienced, and has remarkable personal qualities." (Chambers UK Bar 2024 – Commercial Dispute Resolution)

"Steven provides the intellectual heft and rolls up his sleeves when necessary." "He is down to earth, responsive and great with clients." (Chambers UK Bar 2023 – Commercial Dispute Resolution)

"Writes beautifully and is a great assistance to the whole team. He has an encyclopedic knowledge of the law, is very practical in how he approaches a case, and is someone who gains the respect of tribunals." (Chambers UK Bar 2022 - Commercial Dispute Resolution)

"Ferociously clever, incredibly forensic and very good at getting on top of complicated factual scenarios and legal issues." "He is excellent and hard-working." (Chambers Global 2021 - Commercial Dispute Resolution)

Other Qualifications and Experience

- Called to the Bar of the Eastern Caribbean (British Virgin Islands) (2007) (current practising certificate)
 - Called to the Bar of British Columbia (1997) (not current)
 - Court of Appeal for England and Wales (2000) - Judicial Assistant to the Lord Chief Justice
 - St Catherine's College, Oxford (1998-2000) - Lecturer
 - Court of Appeal for British Columbia (1995-96) - Law Clerk
 - Davis & Company, Vancouver (1994, 1996-97) - Articled Student / Litigation Associate
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Education

- Oxford, Merton College, Commonwealth Scholar (2002) - DPhil in law
 - University of Toronto, Faculty of Law (1995) - JD (Hons)
 - Queen's University, Canada (1992) - BA (Hons)
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Publications

Steven Elliott KC is well-known for his writing on commercial law and equity topics, which include the following:

- *Snell's Equity* (Sweet & Maxwell currently 34th edn 2020) (general editor)
 - *The Law of Rescission* (Oxford University Press currently 3rd edn 2023), described by one reviewer as the leading work and “a model example of doctrinal scholarship” ([2015] Conv 465), and described by the editors of *Meagher, Gummow & Lehane's Equity: Doctrines and Remedies* (5th edn 2014) as being simply “excellent”
 - *Restatement of the English Law of Unjust Enrichment* (Oxford University Press 2012) (advisory group)
 - Draft English Commercial Code (advisory committee); McMeel “A code of English commercial law” [2021] LMCLQ 233
 - *Equity Today* (Hart Publishing 2023) (editor)
 - *Restitution of Overpaid Tax* (Hart Publishing 2013) (editor)
 - Numerous articles on commercial topics, for example “Two conceptions of equitable assignment” (2015) 131 LQR 228 and “Restitution and Unjust Enrichment” in D Clarry (ed), *The UK Supreme Court Yearbook, Volume 8: 2016-2017 Legal Year* (2018)
 - *Oxford University Commonwealth Law Journal* (founding editor); *Journal of Equity* (current editorial board member)
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Awards



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