



Scott Allen

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Profile



Recognised for being "*completely on top of absolutely everything*", "*very bright, sensible and accessible*" (Chambers & Partners, 2016), Scott "*acts for claimants and defendants, and is known for the strength of his solicitors' and surveyors' negligence practice.*" "*He is a talented advocate who has a nice, concise way of expressing himself in clear and understandable language.*" "*Very approachable and absolutely sound on all aspects*" (Chambers and Partners, 2015). "*Personable, easy to engage with, perceptive and very bright*" who "*delivers quick response times, is very measured and gives clear advice that clients can easily digest*" (Legal 500, 2015). His "*sharp intellect and well thought-through opinions' have made him a junior of choice on a range of professional negligence claims*" (Chambers and Partners, 2013). Scott is a recommended junior in the Legal 500 and Chambers and Partners for professional liability claims. He is committed to providing practical, commercial advice and advocacy of the highest quality, complemented by an approachable and client-friendly service. Scott is instructed regularly in professional liability work involving solicitors, barristers, accountants/auditors, surveyors/valuers (including rights to light surveyors), insurance brokers, independent financial advisers, and administrative receivers, acting for claimants as well as defendants. The litigation from the last recession saw Scott develop a particular specialism in claims involving administrative receivers (e.g. *Bell v Long & PKF* [2008] EWHC 1273 Ch, [2008] 2 BCLC 706), as well as claims brought by lenders against solicitors and surveyors. He has also been involved in much of the litigation in respect of unsuccessful tax avoidance structures, including film finance, conditional share award, and BPR schemes. In recent years, much of his time has been spent defending solicitors and accountants in proceedings before the SDT and FRC Disciplinary Tribunal respectively.

Recent cases of note include *Herring v Shorts Financial Services LLP* [2016] W.T.L.R. 1203 (in which Scott successfully resisted the extension of *White v Jones* liability to financial advisors assisting with a Will), and appearances in the Court of Appeal for solicitors in *Clydesdale Bank Plc v Workman* [2016] P.N.L.R. 18 (with Roger Stewart QC) and *Newcastle International Airport v Eversheds LLP* [2014] 1 WLR 3073 (with Ben Patten QC).

He appeared with Roger Stewart QC in the Supreme Court in *BPE Solicitors v Hughes-Holland* [2017] UKSC 21, in which the Supreme Court provided clarification of the extent to which the SAAMCO principle is to be applied to solicitors and other professionals. The court restated and provided further explanation of the SAAMCO principle, including distinction between the provision of "information" and "advice". It overruled a series of cases which had been the source of much confusion about how the principle was to be applied to cases involving solicitors. [Click here](#) to read an article looking at the implications of the case's decision, written by Roger Stewart QC and Scott Allen.

In addition to his professional indemnity work, in which he is often instructed for insurers, Scott is also instructed in subrogated recovery actions and specialist insurance disputes including policy wording/coverage issues and allegedly fraudulent insurance claims.

In addition to his disciplinary work in the Solicitors Disciplinary Tribunal and FRC Disciplinary Tribunal, he has also advised or appeared in proceedings involving the Council of Licensed Conveyancers Disciplinary Committee and the Chartered Institute of Public Finance and Accountancy. Scott has also been able to combine his work with his love of all things involving sport, and to represent the Motor Sports Association

successfully in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK.

Scott advises and appears in construction disputes (including Party Wall Act proceedings), appearing frequently in the Technology and Construction Court in construction litigation (see *Bromley LBC v Heckel* [2015] EWHC 3606 (TCC) for a recent case), as well as advising and appearing in arbitration and adjudication of construction disputes.

Scott also has a considerable Chancery-based practice involving partnership disputes, international trust disputes (Cayman Islands), declarations of beneficial interest in property, general banking and mortgage work, and applications under the Trusts of Land and Appointment of Trustees Act 1996.

A major part of Scott's practice is general commercial litigation, with a particular focus on telecommunications and information technology disputes. Scott frequently appears for telecommunications providers, and previous cases include a multi-million pound recovery action involving a wavelength capacity agreement and indefeasible rights of use. Scott has undertaken some energy work, and appeared successfully in a major commercial court trial (*Dalkia v Cetech* [2006] 1 Lloyd's Rep 599) involving a complex contractual dispute in relation to an electricity generating turbine.

Scott's commercial work has seen him advise on pre-action and third-party disclosure applications, and successfully obtain orders pursuant to the *NorwichPharmaceutical* jurisdiction against third parties.

Professional Liability

Scott is instructed in all areas of professional liability work. He has a wealth of experience in claims against solicitors, barristers, auditors, accountants, valuers, surveyors, architects, construction professionals, recruitment professionals, insurance brokers, independent financial advisors and administrative receivers. He is recommended by the Legal 500 and Chambers and Partners in the sphere of professional liability work.

Scott has extensive experience in claims involving tax avoidance structures, including numerous pieces of litigation involving film finance schemes, as well as other schemes such as conditional share award structures and corresponding deficiency relief on life assurance policies. Scott has acted for claimant investors, as well as defendant IFAs, solicitors, accountants and tax advisers, in what is a particularly strong and well-developed area of his practice.

Scott successfully defended administrative receivers in the case of *Bell v Long & PKF* [2008] EWHC 1273 Ch, [2008] 2 BCLC 706, [2008] BPIR 1211; [2008] 25 EG 172 (C.S.), in which an important and widely reported judgment was given by Patten J. about the duties of receivers and the timing and method of sale of property portfolios. He is routinely instructed in respect of cases involving the appointment of LPA and administrative receivers.

Scott successfully defended financial advisers in *Herring v Shorts Financial Services LLP* [2016] W.T.L.R. 1203 (resisting the extension of *White v Jones* liability to financial advisors assisting with a Will), and solicitors in *Newcastle International Airport v Eversheds LLP* [2014] 1 WLR 3073 (with Ben Patten QC). He appeared with Roger Stewart QC in the Court of Appeal for solicitors in *Clydesdale Bank Plc v Workman* [2016] P.N.L.R. 18.

He also appeared with Roger Stewart QC in the Supreme Court in *BPE Solicitors v Hughes-Holland* [2017] UKSC 21. In this case the Supreme Court provided clarification of the extent to which the SAAMCO principle is to be applied to solicitors and other professionals. The court restated and provided further explanation of the SAAMCO principle, including distinction between the provision of "information" and "advice". It overruled a series of cases which had been the source of much confusion about how the principle was to be applied to cases involving solicitors. [Click here](#) to read an article looking at the implications of the case's decision, written by Roger Stewart QC and Scott Allen.

The recent economic recession saw a proliferation of lender claims against solicitors and surveyors, and Scott was heavily involved in this litigation, acting on behalf of lenders but more usually for the solicitors or the surveyors, often in cases in which multi-million pound damages claims were pursued. Such claims can also involve a breach of undertaking claim against solicitors, and Scott has extensive appearance in advising on the interpretation and method of enforcement of solicitors' undertakings.

The representation of accountants and auditors constitutes a large part of Scott's practice, and (in addition to his disciplinary practice) he has recently defended a big four firm of accountants in respect of advice provided in tax litigation, has been instructed in numerous cases involving negligent tax advice (including various tax avoidance schemes, and domicile advice), and is presently defending a case in which it is alleged that payments to an Employee Benefit Trust should not have been recognised in a company's accounts. Scott has advised auditors about the scope of their liability in a number of large cases, and is one of the 'go to' counsel for any litigation involving allegations against accountants.

A developing part of Scott's practice is the representation of professionals involved in the provision of information technology services. Scott is an assistant editor of the current edition of Jackson & Powell on Professional Negligence and was for many years the co-author of the chapter on IT Professionals; in the 8th edition of the book he is the author of the chapter on Patent Attorneys and Trade Mark Attorneys, which is another area of interest to Scott and in which he practices.

Accountants, Auditors & Actuaries

Claims against accountants and auditors forms a fundamental part of Scott's professional indemnity practice. His many disciplinary cases involving the profession have enabled him to have a deep-rooted understanding of the issues faced by accountants in their working lives, and he brings this expertise to the wealth of litigated cases in which he has been instructed, involving issues including:

- advice given in relation to Capital Gains Tax,
- advice given on inheritance planning,
- advice given and representations made in respect of tax avoidance schemes (including film finance schemes),
- advice given on the taking of income as dividends rather than salary,
- the recognition in a company's accounts of a payments into an Employee Benefit Trust;
- advice given in respect of an offer by HMRC to settle a tax investigation,
- the failure to give advice in respect of non-UK domicile status,
- the scope of the duty (if any) owed to third parties where accounts are audited and the company is later purchased, and
- advice given in relation to figures to be included in the warranties within a Sale and Purchase Agreement.

Scott has recently been instructed by a big four accountancy firm to defend a claim involving advice given in film finance tax litigation, and has an intimate knowledge of a number of the film finance schemes, having defended various professionals involved in the establishment and promotion of such schemes. He also successfully obtained an order in the High Court that a case against accountants be summarily dismissed, in the case of *Murfin v Ford Campbell* [2011] EWHC 1475 (Ch).

Scott enjoys the technical challenge of familiarising himself with the relevant accounting standards, and arguing with his brother (who is a chartered accountant) about their interpretation and application.

Construction Professionals

Scott has been instructed in many cases involving construction professionals, bringing claims against (and defending) architects, contract administrators, mechanical and electrical engineers, structural engineers and numerous skilled sub-contractors.

He appears regularly in the Technology and Construction Court (most recently in *Bromley LBC v Heckel* [2015] EWHC 3606 (TCC), in which a claim against a project manager was successfully struck out) , and has a healthy following amongst solicitors specialising in construction work, both in London and in the regional centres. Scott's ability to digest the technical aspects of heavy construction claims is valued highly by those who instruct him, and his practice in this area continues to grow.

Recent cases include claims against architects in relation to numerous defects in a West End refurbishment project, insufficient design/monitoring of piling works (structural engineers), a defective specification and testing regime for a passive cooling system (M&E engineers), defective advice about the electrical requirements of a commercial development (M&E engineers), defective design of an executive property (structural engineers), and the construction of a commercial extension over a high pressure water main (architects).

Financial Services Professionals

Scott has been instructed in a number of cases involving the advice provided by financial services professionals. These have involved a range of investments and issues, including:

- equity-release mortgages,
- foreign exchange mortgage products,
- investment advice for charities and pension funds, and
- inadequate investment advice for private individuals in relation to global, higher risk funds.

His most recent trial in this area involved the successful defence of an IFA who provided information to a client which was used, incorrectly, by a solicitor, when drafting the client's Will. Scott resisted the extension of *White v Jones* liability to IFA's in this situation, and the claim was dismissed - *Herring v Shorts Financial Services LLP* [2016] W.T.L.R. 1203.

Insurance Brokers & Agents

Scott receives regular instructions to represent insurance brokers, and was involved in a recent trial involving the apportionment of liability between successive brokers where cover was not obtained in relation to burglary of a commercial premises.

Scott has also advised upon a number of cases involving defective fire damage cover, each with their own non-disclosure issues.

Claims against insurance brokers are often linked to or arise from Scott's practice in relation to coverage advice, and he is a respected port of call whenever a claim against an insurance broker is contemplated.

Lawyers

Scott has a wealth of experience in claims against solicitors and barristers, covering the vast range of work (both litigious and non-litigious) which lawyers undertake. Claims in which Scott has been instructed, involving claims against solicitors, include:

- the construction of and claims upon solicitors undertakings,
- negligent advice on and drafting of Share Purchase Agreements,
- negligent advice on VAT election in the sale of commercial property,
- negligent conveyancing (including breach of duty to lenders, breach of trust, failure to conduct drainage search, failure to advise upon covenants and easements, failure to advise upon adverse ground conditions),
- negligent advice on and drafting of: commercial leases, share purchase agreements, employee remuneration agreements,
- negligent advice/representation in matrimonial proceedings (including drafting of consent orders and advice on pension sharing orders),
- negligent advice/representation in employment proceedings (drafting of consent orders, advice as to merits), and
- negligent advice/representation in commercial proceedings (advice as to merits, acting without authority, drafting of consent orders) .

Scott has brought successful claims against barristers and has also defended successfully senior members of that profession. He ranks claims against lawyers as one of his core areas of specialism and it is an area of his practice that he particularly enjoys. Cases of note include:

- *Clydesdale Bank Plc v Workman* [2016] P.N.L.R. 18 (with Roger Stewart QC) (representing solicitors in breach of trust case against other firm of solicitors)
- *BPE Solicitors v Hughes-Holland* [2017] UKSC 21 (with Roger Stewart QC)
In this case the Supreme Court provided clarification of the extent to which the SAAMCO principle is to be applied to solicitors and other professionals. The court restated and provided further explanation of the SAAMCO principle, including distinction between the provision of "information" and "advice". It overruled a series of cases which had been the source of much confusion about how the principle was to be applied to cases involving solicitors. [Click here](#) to read an article looking at the implications of the case's decision, written by Roger Stewart QC and Scott Allen.
- *Newcastle International Airport v Eversheds LLP* [2014] 1 WLR 3073 (with Ben Patten QC) (defending solicitors in claim involving drafting of executive remuneration agreements).
- *Walsh v Needleman Treon*[2014] EWHC 2554 (Ch) (striking out claim against solicitors involving alleged loan agreement)
- *Amalgamated Metal Corporation Plc v Wragge & Co* [2011] EWHC 887 (Comm). (with Ben Hubble QC)(successful claim against solicitors who settled claim beyond the scope of their authority)

Surveyors & Valuers

Scott has very extensive experience of claims involving surveyors and valuers. He has represented surveyors in a number of cases involving multi-million pound claims and the valuation of large mixed use developments, as well as smaller residential developments and single property valuations. He has advised upon the whole range of issues in this area of law including

- the correct measure of loss (applying the SAAMCO 'cap', cost of cure v diminution in value, ancillary recoverable heads of loss, distress and inconvenience),
- the existence and scope of duties to third parties, scope of inspection duties, the application of the margin of error,
- limitation of liability clauses and UCTA,
- the effect of refinancing/further loans on a lender's claim (per *Preferred Mortgages* and *Tiuta*)
- remoteness issues and
- a wide variety of fact-specific issues on breach of duty.

Claims against surveyors and valuers form a large part of Scott's practice and the post 2008 economic climate saw this area of his core work grow significantly.

International Arbitration

Scott is instructed to advise upon and appear in commercial arbitrations, arbitrations arising from construction contracts, as well as paper arbitrations in insurance coverage disputes.

Chancery

Scott is instructed in a variety of Chancery matters, including partnership disputes, declarations of beneficial interest in property and Chancery related professional negligence matters including solicitor's conveyancing negligence cases, negligent tax advice, negligence in respect of Wills (see the recent case of *Herring v Shorts Financial Services LLP* [2016] W.T.L.R. 1203) and the undue influence allegations raised in cases such as *RBS v. Etridge (No 2)*. He was instructed to represent a multi-national bank in relation to recovery proceedings against a trustee company pursuant to the terms of a Sale and Purchase Agreement, and acted successfully for the bank at trial in *Bicester Properties Ltd v West Bromwich Commercial Ltd* (earlier successful strike out of some of the allegations reported on Westlaw). Scott is routinely instructed by banks and building societies in relation to the gamut of claims arising from mortgage lending, and has lectured several times on the issues arising from such claims. Scott has also been instructed to advise in relation to international trust disputes (Cayman Islands).

Commercial Dispute Resolution

Commercial contractual disputes form a major and burgeoning part of Scott's practice. Scott particularly enjoys his involvement in commercial disputes, and believes that his pragmatic approach and tactical awareness lends itself particularly well to the priorities and client sensitivities of commercial litigation. He is also instructed in commercial arbitration and sees this as a key area of his practice, especially in relation to arbitration involving foreign corporations.

Scott has been involved in disputes involving computer games, dentists' partnership agreements, recruitment agreements for large bakeries, telecommunications disputes, cost saving facilitators' agreements, an energy turbine financing and servicing agreement, fleet maintenance agreements, lost profit claims in the nightclub industry, breach of contract in the adult film and services sector, motor sport regulation, foreign currency loan accounts, the interpretation and effect of a staged contract for the provision of landfill materials; the interpretation and effect of truck drivers' franchise agreements; the interpretation and effect of 'discretionary' bonus clauses in banker's remuneration packages; and the interpretation and effect of a computer game marketing distribution and sale agreement. He is regularly instructed to appear in the Commercial Court and in commercial arbitrations, and appeared (with Ben Hubble QC) for the successful claimant in the Commercial Court case of *Amalgamated Metal Corporation Plc v Wragge & Co* [2011] EWHC 887 (Comm).

Scott was also retained (with Michael Soole QC) for the successful Defendant in the case of *Dalkia v Celtech* [2006] 1 Lloyd's Rep 599 in which virtually the gamut of English contractual law was debated. Key issues in that case involved the meaning of 'material breach' in a termination clause, the principles upon which the court could interfere with the drafting of a commercial contract to remedy an 'obvious mistake' by the parties, even where that involved substantial consequential amendment to several clauses, and the application of the rule against penalties to an accelerated payment clause upon termination of an energy services agreement.

Scott has advised in international commercial disputes and was involved in preparing a fascinating fraud trial in Belize involving a medical school.

Insurance & Reinsurance

Scott frequently advises in relation to issues arising on insurance policies, as well as in respect of insurance disputes. He was heavily involved in the subrogated recovery by insurers of payments made in relation to the Buncefield oil refinery explosion, and has advised on numerous aspects of motor insurance law, most recently on the question of how widely the compulsory insurance provisions of the Road Traffic Act 1988 are to be interpreted in light of the cases of *Dunthorne v Bentley* and *Slater v Buckinghamshire CC*.

Scott is retained at present to advise on a number of the insurance aspects arising from the Shoreham air tragedy, and had a significant involvement for a number of years in the film contingent expense insurance litigation, and remains involved in the film finance litigation which has followed it.

As with his professional liability work, whilst the majority of Scott's work is for insurers, he has been instructed by

claimants in a number of disputes where insurers have refused to pay after fire damage, flood damage, and other insured perils.

Scott has advised on the coverage effect of policy wording in relation to professional indemnity and general insurance policies, in particular in relation to the provisions which deal with when a claim is first made and which of several potential insurance policies respond to the claim in question. He has also advised in several cases on the construction of Legal Expenses Insurance policies, and successfully resisted claims against LEI insurers where policy coverage has been declined.

Scott has advised in several cases where fraud allegations have been made, as well as successfully defending a number of claims where theft losses have been wrongly inflated. He also advised upon issues arising from claims made by one co-insured against another, in partnerships as well as within companies, and the effect of fraud upon such claims.

Scott is also instructed regularly in relation to claims which are covered by Directors and Officers insurance policies, as well as claims against insurance brokers.

Disciplinary

Disciplinary work forms a major part of Scott's practice. He was instructed with Patrick Lawrence QC on the successful prosecution of complaints on behalf of the Accountants Joint Disciplinary Scheme against company auditors and in-house company accountants in the *Kidsons* case (involving improper recognition of revenue from conditional contracts), and (with Ben Hubble QC) represented *Mazars* in the prosecution brought against them in 2013 in respect of pension scheme advice. He is instructed to defend solicitors in the SDT in respect of allegations ranging from breach of Rule 14.5 of the SRA Accounts Rules 2011 (prohibition of the provision of banking facilities from a solicitor's client account), to allegations of serious dishonesty. He presently has four heavy cases ongoing in the SDT.

Scott has also appeared before the Council of Licensed Conveyancers' Disciplinary committee and has been instructed to prosecute serious complaints on behalf of the Chartered Institute of Public Finance and Accountancy, involving public authority leasing arrangements, NHS trust financial management and local council financial improprieties.

In the world of sport, Scott represented the Motor Sports Association in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK. The issues in that case were the use of a non-homologated part by MMUK in the Yorkshire Rally, enabling their driver to win the national rally championship, and the evidence given by MMUK in the MSA National Court proceedings which followed. As a result of Scott's cross-examination in the Investigatory Tribunal proceedings, it was found that MMUK had for a number of years put competitive advantage above the safety of competitors and spectators, and had not taken sufficient steps to put into effect the recommendations of the National Court.

Scott is a member of the Association of Regulatory and Disciplinary Lawyers.

Construction & Engineering

Scott regularly advises and appears in construction and engineering disputes in the Technology and Construction Court, and in adjudication and arbitration proceedings. He represented the defendant in the case of *Young v Bemstone Limited* [2004] EWHC 2651, which involved the interpretation of certain sections of the Party Wall Act and the entitlement to damages of an innocent party under that Act. He successfully represented the project manager in *London Borough of Bromley v Heckel* [2015] EWHC 3606 (TCC), persuading Edwards-Stuart J to strike out the claim form issued against him. He also represented a group of successful claimants in a high profile multi-party claim involving the collapse of a hillside and a number of private residences in Yorkshire.

He enjoys the challenge of grappling with the technical issues raised in heavy TCC cases, which in his cases have included the reasons for the failure of: a swimming pool installation, a concrete screed floor, a piled underpinning system, a passive cooling system within a large office development, a complex steel roof, a steel-framed extension to a luxury domestic cliff-top property, the weather tightness of a new-build gothic-style mansion, the liability of M&E engineers for the late installation of an electricity sub-station, and the liability of an architect for an extension constructed over a high pressure water main.

Scott has been involved in construction disputes ranging from very large and well-known projects which have gone awry in well-publicised circumstances, to smaller scale domestic disputes. He has advised on the interpretation of key provisions of various JCT contracts including the provisions relating to nominated sub-contractors and materials. He regularly appears for and against construction professionals, including architects, surveyors, planning consultants and rights to light surveyors, structural engineers and project managers.

Sports Law

Scott has represented the Motor Sports Association in Motor Sports Council Investigatory Tribunal proceedings against Mitsubishi Motors UK. The issues in that case were the use of a non-homologated part by MMUK in the Yorkshire Rally, enabling their driver to win the national rally championship, and the evidence given by MMUK in the MSA National Court proceedings which followed. As a result of Scott's cross-examination in the Investigatory Tribunal proceedings, it was found that MMUK had for a number of years put competitive advantage above the safety of competitors and spectators, and had not taken sufficient steps to put into effect the recommendations of the National Court. Scott has also advised the Motor Sports Association in relation to various aspects of its insurance arrangements and terms and conditions with its members.

Scott hopes to develop his Motor Sports practice further, and to branch out into other areas of sports work – Scott is a life-long sports fan and relishes the chance to combine business with pleasure in this manner. His experience in other disciplinary work makes him an ideal candidate for sports disciplinary work, and his commercial law experience means that he would be well suited to contractual and other commercial disputes within a sporting context.

Mediation

Scott is a great believer in Alternative Dispute Resolution and always encourages his clients to give careful consideration to whatever form of dispute resolution is most appropriate to their case. Scott has appeared as advocate in many mediations, and has a very good track record of achieving settlements which are satisfactory to his clients. He believes that his measured and fair approach has contributed to the resolution of many seemingly intractable disputes. Scott will accept instructions to appear as a mediator in any kind of dispute, and enjoys the challenge of devising innovative solutions to bring parties closer to settling their differences. This is a part of his practice he intends to develop and grow in the coming years.
