

Arbitrators

AT 24 LINCOLN'S INN FIELDS



Stephen Donnelly

Stephen accepts arbitral appointments in disputes ranging across the breadth of commercial and shipping law, international investment law, and public international law with experience arbitrating under among others the ICC, LCIA, ICSID, UNCITRAL, and LMAA Rules. Stephen is on the DIAC Arbitration Court List and is a member of the LCIA Users' Council, Young ICSID, and the ICC Young Arbitration and ADR Forum. He is also a visiting lecturer in international investment arbitration at King's College London and a member of the board of the Young Public International Law Group

He has been described in recent directory editions as 'an exceptional junior', 'wise beyond his years and an intellectual powerhouse', 'first rate and very hard working', with 'remarkable research and drafting skills' and 'the ability to fit in and get on with a wide spread of individuals', who 'inspires confidence as a safe pair of hands'.

Before beginning his arbitration practice, Stephen studied law at Glasgow, Oxford, and Yale (as a Fulbright Scholar), was judicial assistant to Lord Kerr in the Supreme Court of the UK, and served as assistant to the Tribunal (Sir Frank Berman KCMG KC, Judge Schwebel, and Judge Simma) in *Merck v Ecuador* PCA Case No. 2012-12.

He is also qualified at the bar in Scotland, a mixed common–civil law jurisdiction, and able to draw on that experience in arbitrations under civilian legal systems.

Stephen is fluent in French and has a working knowledge of several other languages, including Spanish and Arabic (Levantine).

Arbitration (including arbitration-related court applications)

- **ICSID arbitration** for an Italian investor (led by Sam Wordsworth KC and Hussein Haeri, instructed by Withers)
- **LCIA arbitration** under a series of finance agreements (led by David Davies KC, instructed by J Miles Arbitration)
- **LCIA arbitration** in a high-value claim for sellers of coal under shipments not performed by buyers (led by Nigel Eaton KC, instructed by Wikborg Rein)
- **LCIA arbitration** concerning a shareholder dispute between members of a well-known retail company, arbitrated under the UNCITRAL Rules (led by David Davies KC, instructed by Hogan Lovells)
- **ICC arbitration** arising out of alleged breaches of contracts for the supply of oil (sole counsel, instructed by Withers LLP)
- **LCIA arbitration** under a \$300m facility agreement (led by Vernon Flynn KC, instructed by Boies Schiller Flexner)

Related court applications

- **RSM v Gaz du Cameroun [2023] EWHC 2820 (Comm)**: claim for an interim and final mandatory anti-suit injunction under an optional arbitration agreement consolidating disputes under a related series of agreements with different dispute-resolution provisions (led by Iain Quirk KC, instructed by Baker Botts)
- Advising a State on set-aside of registration of an **ICSID Award**, raising issues about the application of State immunity from enforcement in light of the ECJ's decision in *Achmea* (led by Huw Davies KC, instructed by Simmons & Simmons)
- **VTB v Mejlumyan [2021] EWHC 1386 (Comm)**: claim for an anti-suit injunction arising out of a pledge agreement in support of a facility agreement between VTB and a mining company (led by Vernon Flynn KC, instructed by King & Spalding)
- **Soletanche Bachy v Aqaba Container Terminal [2019] 1 Lloyd's Rep 423**: challenges under sections 67 and 68 of the Arbitration Act to an award in an ICC arbitration (led by David Foxtan KC and Iain Quirk KC, instructed by Bryan Cave Leighton Paisner)
- **Erdenet Mining Corp. v ICBC Standard Bank [2017] 2 Lloyd's Rep 25**: LCIA arbitration and Commercial Court proceedings under a guarantee and an indemnity, arising out of a banking fraud and giving rise to the first successful application under section 70(7) of the Arbitration Act 1996 for

security for the amount payable under an arbitral award (led by David Joseph KC and Edward Brown KC, instructed by Clifford Chance LLP)

Investment Treaty Disputes

In addition to his work in practice, Stephen is a visiting lecturer in international investment arbitration at King's College London and his research on the subject has been published in the *International and Comparative Law Quarterly*. Some of his recent contentious and advisory work includes the following:

- **ICSID arbitration** for an Italian investor (led by Sam Wordsworth KC and Hussein Haeri, instructed by Withers)
- Advising a UK department and Minister on the investment-treaty risks of a widely publicized policy (as sole counsel)
- Advising a national regulator on investment-law issues arising from proposed **regulation of natural resource extraction** (led by Lucas Bastin KC)
- Advising a State on set-aside of registration of an **ICSID Award**, raising issues about the application of State immunity from enforcement in light of the ECJ's decision in *Achmea* (led by Huw Davies KC, instructed by Simmons & Simmons)
- **Merck Sharpe & Dohme v Ecuador** PCA Case No 2012-10: assistant to the tribunal (Sir Frank Berman KCMG KC, Judge Stephen Schwebel, and Judge Bruno Simma) in an investor–state arbitration under the UNCITRAL rules at the Permanent Court of Arbitration (settled)

Public International Law

Before international courts and tribunals

- A **dispute under the Trade and Cooperation Agreement** between the United Kingdom and the European Union (instructed by the FCDO)
- **Conquer v United Kingdom**: an application concerning an alleged breach of Article 6 ECHR as a result of the length of domestic civil proceedings (as sole counsel, instructed by the FCDO)
- An **interstate boundary dispute** (led by Vaughan Lowe KC and Mathias Forteau)

- **Wightman v Secretary of State for Exiting the European Union** [2019] QB 199: preliminary reference before the Full Court of the CJEU determining the circumstances in which the United Kingdom could withdraw its notification of intention to leave the European Union (led by Gerry Facenna KC, Morag Ross KC, and Anneli Howard, instructed by Bindmans and Harper Macleod)

Before domestic courts

- **Shehabi v Bahrain**: Court of Appeal concerning the relationship between the State Immunity Act 1978 and the European and UN Conventions on State Immunity, the scope of the tort exception to State immunity, and that scope's compatibility with the European Convention on Human Rights (led by Professor Dan Sarooshi KC and Robert Volterra, instructed by Volterra Fietta)
- **R (Elliot-Smith) v Secretary of State for Business, Energy and Industrial Strategy [2022] Env LR 5**: judicial review of the legality of the UK's emissions-trading scheme, raising issues as to the effect of the Paris Agreement in domestic law (led by Tom de la Mare KC, instructed by the Government Legal Department)
- **Heathrow Airport Ltd v HM Treasury** [2021] EWCA Civ 783: judicial review of the withdrawal of VAT-free schemes, alleging breaches of WTO law (one of *The Lawyer's* 'Top 20 cases of 2021', led by Eleni Mitrophanous KC, Naina Patel, and Raj Desai, instructed by HMRC)
- **Crane Bank Ltd v DFCU Bank Ltd**: for British International Investment plc, the UK's development finance institution, in an ongoing claim by a Ugandan bank alleging breach of trust and fiduciary duty by the Bank of Uganda and a conspiracy between it and the defendants, raising issues of foreign act of state (led by Ricky Diwan KC, instructed by Addleshaw Goddard)

Advisory

- Advising a State on set-aside of registration of an **ICSID Award**, raising issues about the application of State immunity from enforcement in light of the ECJ's decision in *Achmea* (led by Huw Davies KC, instructed by Simmons & Simmons)
- Advising a UK government department on investment treaty issues arising from proposed regulation of a sector of infrastructure (as sole counsel).

- Advice on questions of public international law arising in the enforcement of an arbitral award (led by Malcolm Shaw KC)
- Advice concerning issues of state succession (led by Sir Frank Berman KCMG KC)

Shipping & Admiralty

- **LMAA arbitration** for charterers under a contract of affreightment (led by Neil Hart KC, instructed by HFW)
- **Admiralty Court claim** for damages for collision with a jetty, involving contested issues of applicable law and alleged overriding provisions of the law of the place of the collision (as sole counsel, instructed by E. G. Arghyakis & Co.)
- **LMAA arbitration** for damages for breach of a MYBA-form charterparty of a luxury yacht (as sole counsel, instructed by Haynes Boone)
- **LCIA arbitration** in a high-value claim for sellers of coal under shipments not performed by buyers (led by Nigel Eaton KC, instructed by Wikborg Rein)
- Pair of **LMAA arbitrations** for breach of various provisions of charterparties on redelivery of passenger ferries (led by Christopher Smith KC, instructed by Studio Legale Lauro)
- **Salvage arbitration**, instructed for salvors, in a claim concerning alleged defects in repair works (led by Christopher Smith KC, instructed by HFW)
- **Urincha v Libra**: Commercial Court claim alleging breaches of derivative contracts for the financing of container ships and related unlawful-means conspiracy (led by Philippa Hopkins KC, instructed by RPC and subsequently Fried Frank)
- **LMAA arbitration** for owners whose crew were detained after being rescued by the coastal state's navy, who wrongly believed them to be pirates (sole counsel, instructed by Tatham & Co.)
- **Arauco Navigation Ltd v China Navigation Company Pte Ltd ('CCNI Arauco')**: multi-party Commercial Court charterparty dispute arising from an explosion and fire on board a container vessel (settled shortly before trial in the Commercial Court) (led Christopher Smith KC, instructed by Reed Smith LLP)

Banking & Finance

- **LCIA arbitration** under a series of finance agreements (led by David Davies KC, instructed by J Miles Arbitration)
- **Crane Bank Ltd v DFCU Bank Ltd**: for British International Investment plc, the UK's development finance institution, in an ongoing claim by a Ugandan bank alleging breach of trust and fiduciary duty by the Bank of Uganda and a conspiracy between it and the defendants, raising issues of foreign act of state (led by Ricky Diwan KC, instructed by Addleshaw Goddard)
- **Merricks v Mastercard [2024] CAT 14**: trial of causation issues in multi-billion-pound class action described by the Tribunal as 'gargantuan', brought on behalf of c. 45 million claimants for damages in respect of UK interchange fees (led by Joe Smouha KC and Matthew Cook KC, instructed by Freshfields Bruckhaus Deringer)
- **WWRT v Zhevago [2024] EWHC 122 (Comm)**: jurisdiction challenge in a complex banking fraud case involving issues arising from the effect of the war in Ukraine on the appropriate place to bring the proceedings (led by Nathan Pillow KC, instructed by Rosling King)
- **Export Credits Guarantee Dept v BAE Systems plc**: Commercial Court claim arising out of non-repayment by BAE, following arbitral proceedings against the Iranian Ministry of Defence, of sums paid to it by the Department under various guarantee agreements (settled on the first day of trial) (led by Roderick Cordara KC, instructed by the Government Legal Department)
- **Derine v The Family Officer Ltd**: Commercial Court claim for damages for breach of an alleged investment agreement (sole counsel, instructed by Withers)
- **LCIA arbitration** under a \$300m facility agreement (led by Vernon Flynn KC, instructed by Boies Schiller Flexner)
- **Secondment to the Financial Conduct Authority**, assisting with its investigation of matters related to the failure of a major UK bank

Energy & Environmental

- **Município de Mariana v BHP**: for the claimants in a particularly large-scale and high-value group action (c. £36 billion claimed on behalf of over 700,000 claimants) for damages related to an environmental disaster caused by the

collapse of a dam (led by Daniel Oudkerk KC in relation to anti-suit relief matters, instructed by Pogust Goodhead)

- **John Paton & Sons Ltd v Glasgow City Council 2023 SLT 1288**: judicial review in Scotland of the legality of Glasgow's decision to introduce a low-emissions zone (led by Ruth Crawford KC, instructed by Harper Macleod)
- Advising a national regulator on investment-law issues arising from proposed **regulation of natural resource extraction** (led by Lucas Bastin KC)
- **R (Elliot-Smith) v Secretary of State for Business, Energy and Industrial Strategy [2022] Env LR 5**: judicial review of the legality of the UK's emissions-trading scheme, raising issues as to the effect of the Paris Agreement in domestic law (led by Tom de la Mare KC, instructed by the Government Legal Department)
- An **ICC arbitration** under an oil sale contract (as sole counsel, instructed by Withers)

Tax

- **News Corp v Revenue & Customs Comrs [2024] AC 89**: Supreme Court appeal concerning whether digital news services are 'newspapers' for VAT purposes (led by Eleni Mitrophanous KC, instructed by HMRC)
- **Tenconi v Revenue & Customs Comrs [2024] BTC 517**: Upper Tribunal appeal concerning application of capital gains tax to the disposal of the beneficial interest in company shares (as sole counsel, instructed by HMRC)
- **Spectrum v Revenue & Customs Comrs [2024] STC 1124**: Upper Tribunal appeal concerning the interaction between single/multiple-supply analysis and the scope of exemptions (led by James Henderson, instructed by HMRC)
- **R (Royal Surrey NHS Foundation Trust) v Revenue & Customs Comrs [2023] 4 WLR 82**: judicial review of HMRC's decision not to allow recovery of input tax on linear accelerators for commercial use (led by David Scorey KC, instructed by Hempsons)
- **Heathrow Airport Ltd v HM Treasury [2021] STC 1203**: Court of Appeal on a judicial review of the withdrawal of VAT-free schemes, alleging breaches of WTO law (one of *The Lawyer's* 'Top 20 cases of 2021', led by Eleni Mitrophanous KC, Naina Patel, and Raj Desai, instructed by HMRC)

Career

- 2023 Visiting lecturer in investment treaty arbitration, King's College London
- 2021 Attorney General's London 'B' Panel of Junior Counsel
- 2020 Standing Junior Counsel to the Scottish Government
- 2020 Attorney General's Public International Law 'C' Panel
- 2019 Attorney General's London 'C' Panel
- 2016 Tenant at Essex Court Chambers
- 2015 Advocate at the Scottish bar
- 2014–15 tutor in public international law, University of Edinburgh
- 2014 Juriste in public international law team, Freshfields, Paris
- 2013–14 Judicial assistant to Lord Kerr, Supreme Court of the United Kingdom and Judicial Committee of the Privy Council; tutor in public international law, King's College London

Education

- 2013 LL.M., Yale Law School
- 2012 B.C.L., Lincoln College, Oxford
- 2011 M.Sc. (philosophy), University of Edinburgh
- 2008 LL.B., University of Glasgow

What others say

- **Legal 500 UK Bar 2024, Tax: VAT and excise**
- *"He inspires confidence as a safe pair of hands."*

- **Legal 500 UK Bar 2024, Shipping**
- *"Very hard working and good on detail on paper."*

- **Legal 500 UK Bar 2023, Tax: VAT and excise**
- *"An exceptional junior, Stephen takes on difficult and time-sensitive tasks without hesitation and delivers insightful and thorough results. He has remarkable research and drafting skills, which he combines with a particularly impressive in-depth knowledge of tax law."*

- **Legal 500 UK Bar 2023, Shipping**
- *"Very hard working, clever and professionally competent."*

- **Legal 500 UK Bar 2022, Shipping**
- *"First rate and very hard working. He is also a good team player with the ability to fit in and get on with a wide spread of individuals. Incredible attention to detail, wise beyond his years and an intellectual powerhouse."*