

Step toe & Johnson

We asked Steptoe & Johnson partners Angus Rodger, Ivan Gordienko, Neil Dooley, Zoe Osborne to recount their year, their opinions on which trends and developments we should all be keeping an eye out for as 2019 gives way into a new decade. Our speakers were extremely generous in sharing their views and knowledge.

The firm, described as a 'hidden gem amongst the litigation law firms', has a remarkably focused practice, involving a pronounced international and Russian/ CIS-element, which partners Ivan Gordienko and Neil Dooley have spent the past few years tending to.

Nimble, and self-described as able to punch well above its weight, the firm has quite a few native-Russian speakers, and it is this firsthand knowledge of the cultural

idiosyncrasies and the local legal systems (things like Russian '*krisha*' for instance, which ten years ago would have perplexed English justices) - paired with the ability to effectively translate these into the English legal market, as well as their proven track record in multi-jurisdictional, complex, high value and highly publicized cases, which separates them 'from the pack'.

Cases like *PJSC National Bank Trust & Anor v Mints & Ors*, showcase this aspect of the firm's Russian practice - which our speakers say, shows no signs of tailing-off in the near future. The case was subject to an interlocutory hearing and judgement by Mr Justice Jacobs, when the defendants tried to set aside a freezing order, for the second time.

The claim itself was incredibly high-value (involving a \$700 million fraud), and complex, raising complicated issues of Russian law. The firm's high success rate seems to prove that nimbler and smaller does not necessarily mean less capable, after two consecutive wins against larger firms such as Stephenson Harwood and Simmons & Simmons.



"The trend at the moment, as we see it, is crypto-currency"

Ivan Gordienko, Partner

When asked about which trends and developments which our speakers noticed in 2019, and which they believe will continue to develop as a new decade unfurls - the first thing we are told, is that crypto-currencies are due their time in the spotlight.

According to Gordienko, the newfound spotlight on crypto-currencies and crypto-assets is due in part to the lack of regulation in the space. It is also buzzing with 'interesting' individuals, and is, he says, a massive area of disagreement - due to the lack of regulations and specific knowledge surrounding them.

This widespread lack of understanding amongst those engaging in transactions involving crypto-currencies, coupled with their unusually high-value, makes it an area increasingly vulnerable to fraud.

A lot of litigation is therefore likely to come from these type of cases, and Steptoe seem to be spearheading much of it.

Last year, Steptoe obtained one of the first freezing injunctions over a significant quantum in crypto-currencies, the application was made without notice, granted and a return date confirmed, which led to successful enforcement both in the UK and abroad.

In the same vein, Gordienko explains that the firm has another case currently going through a jurisdiction challenge, which they hope will reach trial stage later on in 2020.

On the bleeding-edge of this budding area of litigation, the case relates to a new, not-yet-issued crypto-currency known as 'The Grams' (to be issued by the secure messaging app, Telegram). The crypto-currency is currently considered something of a hot topic, as it is the subject of a Securities and Exchanges Commission (SEC) injunction.

With that said, Steptoe are not directly involved with the SEC issue; and are instead representing investors who invested into the

crypto-currency via a vehicle which has since been found to be fraudulent.

In this case the international nature of much of the firm's work is illustrated particularly well : *"none of our clients are English, they're all tech funds from Hong Kong, Dubai to Lichtenstein, Switzerland, who invested into this"*.

On the related-topic of investigations and fraud, we touch upon the question of whether civil litigation is bound to follow investigations, and an emerging trend which this relates to : competition claims.

Rodger informs us that the corresponding rise in competition claims being brought, particularly in relation to anti-competitive pricing is partially due to increased regulator focus on these areas in multiple industries. Competition law's nuances, he says, are also responsible, and clients may find themselves in breach as a result of behaviors which are seen as normal trading.

Therefore, he continues, there have been many findings being made by regulators to that effect, followed by private damage claims in the UK and other fora – the US, Germany, the Netherlands, where claimants are trying to recover compensation for damages stemming from that anti-competitive behaviour.



"It is an area where, not only is there a huge growth in the number of claims being brought, but the law is developing quite quickly – in terms of procedures and in terms of substantive law."

Angus Rodger, Partner, Commercial Litigation and Arbitration

This, he says, is area where there is huge growth in the number of claims being brought, and where the legal procedures are having to develop very quickly. A few of the questions which may be posed within this context hinge on the applicable law - put simply, in a case where a breach of competition law affects markets across jurisdictions, which law applies to the competition breach in a private damages claim?

Is it English law if you sue in England, or is it the law of all the places where competition was adversely affected by the breach?

Then, within English law itself, there are questions about how the law of tort applies to these claims. These issues, he explains, focus on how strong the perimeter of tort law should be, before going on to add that this is an area "that is going forward in huge steps."

There are many claims stemming from these issues he says, and Steptoe have been involved in several of those claims.

Most interestingly, Steptoe recently represented LG (the Korean group), in a cartel case brought by Microsoft.

In this case, Microsoft sued battery manufacturers, alleging that prices had been artificially elevated during a period of 15 years. LG was one of the aforementioned battery manufacturers involved in a claim, which became astronomical in terms of the value claimed for.

Ultimately this case resulted in another success to adorn the firm's gleaming track record.

Yet another case which leaps out, is in an upcoming case, which deals with another cartel. At the moment Rodger says, they are due in court this month for the first full case management hearing, but already the complexity of legal issues abound. This case may well be one of the last binding rulings made by the Court of Justice of the European Union (CJEU) before the UK steps definitively out of the single market.

As it happens, Steptoe sent out a few legal issues, in line with preliminary ruling procedures. The issue itself was an exquisitely technical point about English law and to what extent – broadly speaking, if there was a cartel, would that be a breach of tort law.

Tort law has certain limits, and so the questions put to the CJEU were (simply put).

1. How far does tort extend? Does it only apply to things done in the UK, in the EU or in the whole world?

2. What times does it capture – does it only make illegal things which happened after the introduction of that law, or is it retrospective?

Steptoe asked the court to strike out part of the claim, to the extent that it alleged the tort was retrospective, and applied to breaches which took place outside the EU, a fitting highlight then, for a truly international firm.

Litigation Tracker Data Analysis

Over the whole of 2019, there were four cases tracked involving Steptoe & Johnson, lasting a total of eight case days.

In terms of which practice areas were involved - two of the four cases were commercial disputes, with the remaining two split between competition and anti-trust and civil frauds and investigations - all in line with what our speakers inform us are the primary focuses for the firm's disputes practice.

The firm instructed Fountain Court, Brick Court and Essex Court chambers once each.

Brick Court was instructed by the firm on behalf of NYK Europe (European regional site for the global transportation company, Nippon Yusen Kabushiki Kaisha) in *Daimler AG v MOL (Europe Africa) Ltd & Ors*. The firm called upon Marie Demetriou QC and Daniel Piccinin.

Fountain Court chambers were instructed in *Savchenko v Davletyarov*, and represented defendant Boris Davletyarov in the Commercial court last year. Fluent-Russian speaker Alexander Milner was chosen to represent Davletyarov in court.

Essex Court received instruction on the Mints family case (*PJSC National Bank Trust & Anor v Mints & Ors*). Steptoe called upon Nathan Pillow QC and Anton Dudnikov to represent the claimant in this case.

in the fourth and final case of 2019, no chambers were instructed. Angus Rodger, a partner and solicitor-advocate, represented Generali Italia SpA, AXA Corporate Solutions Assurance, and Allianz Global Corporate & Specialty Italy in *Airbus S.A.S v Generali Italia S.P.A. & Ors*; squaring off against Fountain Court's Akhil Shah QC (instructed by DLA Piper partner Kathryn Ward).

The Litigation Tracker

Year in Review 2019

