

OLD SQUARE
CHAMBERS



Oliver Segal KC

SILK: 2011 | CALL: 1992

Email Clerk: wmeade@oldsquare.co.uk

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Overview

Oliver specialises in all fields of [employment and discrimination law](#) and in [commercial agency law](#).

Oliver is **"exceptionally knowledgeable in his field, very client-focused, ... very bright, and a great advocate."** – (*Chambers & Partners*). Oliver won 'Employment Silk of the Year' at the Chambers UK Bar Awards 2022 and The Legal 500 Bar Awards 2022.

Within employment law, he has particular specialist experience in: collective disputes (including industrial action, union recognition, TUPE and collective agreement cases); breach of contract claims (including restrictive covenants, PHI and negligent reference cases); and equal pay claims.

Oliver is the leading barrister within the field of commercial agency law; he acts for both agents and principals and has appeared in several of the most important cases, including the House of Lords case of *Lonsdale v Howard & Hallam*.

Oliver is very experienced at representing parties at mediations and arbitrations.

Appointments

- 2013: Appointed a Fee Paid Employment Judge (sitting at London Central);
- 2013: Qualified mediator; on CEDR Panel.

Employment & Discrimination

Oliver has been involved in several significant cases within employment law, including over recent years:

- *Unite the Union v Nailard* [2019] ICR 28, CA
- *R (FBU) v South Yorkshire Fire and Rescue Authority* [2018] CMLR 27; [2018] IRLR 717 (Admin Court)
- *Abrahall & Ors v Nottingham City Council & Anor* [2018] IRLR 628, CA;
- *Govia GTR Railway v ASLEF* [2017] ICR 497, CA
- *Hartley & ors v King Edward VI College* [2015] ICR 1143, Sup Ct
- *Abercrombie & ors* [2013] IRLR 953, CA
- *Anderson & ors v London Fire & Emergency Planning Authority* [2013] IRLR 459, CA
- *RMT v Serco Ltd* [2011] ICR 848, CA
- *Malone & ors v. British Airways plc* [2011] ICR 125, CA
- *Gibb v. Maidstone & Tunbridge Wells NHS Trust* [2010] IRLR 786, CA

Commercial Agents

Oliver has been involved in most of the leading cases including:

- *W Nagel (a firm) v Pluczenik Diamond Company* [2019] 1 Lloyd's Rep 36, CA
- *Software Incubator Ltd v Computer Associates Ltd* [2018] 1 Lloyd's Rep 613, CA
- *Crocs Europe BV v Anderson & anor* ([2012] EWCA Civ 1400;
- *Lonsdale (t/a Lonsdale Agencies) v Howard & Hallam Ltd* [2007] UKHL

Expertise

- Administrative & Public Law
- Commercial Law
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Health
- Health & Safety & Environmental Law
- Insurance
- Investigations
- Media and Entertainment
- Public Law
- Retail and Consumer
- Sport

Recommendations

"He is highly intelligent, he is friendly and he is able to explain complex issues in an easily digestible way." "He is very available, he comes back very quickly, he is concise, he is really good to work with and he is super bright." *Chambers & Partners* 2022

"Oliver is an intellectual giant, who has the ability to assimilate reams of information and spot the key point- and then explain it all back in a simple way – this makes him extremely popular with lay clients. He marshals his arguments and he delivers, whether we are talking about cross-examination of key witnesses, delivering arguments to the judges in the higher court systems, or producing written pleadings. His written work is clear, precise and readable." *The Legal 500* 2022

Key contacts

William Meade

Senior Clerk

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Email: wmeade@oldsquare.co.uk

Olivia Moliterno

Team Leader

Phone: 020 7269 0477

Email: moliterno@oldsquare.co.uk

- 32, [2007] ICR 1338;
- *Light & Ors v Ty Europe Ltd* [2004] Lloyds LR Vol 1 693, CA

Paul Adams

Senior Team Leader

Phone: 020 7269 0305

Email: adams@oldsquare.co.uk

Recent and current work

- *Uber v Aslam & ors* (Sup Ct hearing July 2020)
- *Dunkley & ors v Kostal UK Ltd* (Sup Ct hearing 2020)
- *Unite v McFadden* (CA hearing 2020)
- *Kelly v Musicians' Union* (CA hearing 2020)
- *Software Incubator Ltd v Computer Associates Ltd* (reference from Sup Ct to CJEU; CJEU hearing 2020)

Frederic Reynold KC

SILK: 1982 | CALL: 1960

Email Clerk:

Telephone Clerk: 020 7269 0360



Overview

Freddy Reynold has had a long and distinguished career at the Bar, appearing in several landmark cases – most notably in areas such as employment, discrimination, trade union issues; and has at various times advised institutions such as the Equal Opportunities Commission, the British Medical Association, and the Royal Institution of Chartered Surveyors. He has been a Bencher of Gray's Inn since 1991. His role is now that of an "in-house" consultant, providing advice and support to members of Old Square Chambers.

Memberships

- Master of the Bench of Gray's Inn (1991-)
- Industrial Law Society

Notable Cases

- *Polkey v Dayton Services* (HL: compensation for unfair dismissal)
- *Sally v Southern Social Services Board, N.I.* (HL: implied terms in employment contracts)
- *Rhys-Harper v Relaxion Group* (HL: liability for post-employment discrimination)
- *Lawson v Serco, Botham v Min of Defence* (HL: territorial jurisdiction of Employment Rights Act)
- *Edwards v Chesterfield Royal Hospital Trust, Min of Defence v Botham* (SC: recovery of common law damages for wrongful dismissal)
- *Bliss v S.E. Thames RHA* (CA :implied term of trust and confidence)
- *BBC v Hearn & others* (CA: meaning of "trade dispute")
- *Cheall v APEX* (HL: awards by TUC Disputes Committee)
- *Rothwell v TUC and APEX* (HL: legal status of TUC Disputes Committee's award)
- *Cable & Wireless v Muscat* (CA: contractual rights of agency workers).

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Commercial Law
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Insurance
- Media and Entertainment
- Public Law
- Retail and Consumer

Recommendations

"First port of call for employment barristers; it has excellent strength in depth from juniors to seniors." The Legal 500

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Lord (John) Hendy KC

SILK: 1987 | CALL: 1972

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Telephone Clerk: 020 7269 0360

LinkedIn: <https://www.linkedin.com/in/john-hendy-qc-18451518/>



Overview

Overview

Lord Hendy KC was called to the Bar in 1972 and after establishing and running a law centre for three years and lecturing for a year, he started practice in 1977 and took silk in 1987. He is, without a doubt, best known for his work in industrial relations and employment law, having appeared in most of the UK's leading collective labour law cases in the last 45 years.

Recent comments in the Directories say:

Chambers & Partners 2021: "He has an unrivalled knowledge of trade union laws and rights, and he has repeatedly put that knowledge to good use when defending workers and their unions." "He has the complete respect of the judiciary and it is no exaggeration to say that he is a giant at the Bar. He is the man for the hardest and most controversial cases which require tremendous courage and intellectual stamina."

Legal 500 2019: "He is a Rolls-Royce amongst the senior echelons of the Bar."

Chambers & Partners 2019: "He is just phenomenal: his cross-examinations are a joy to behold." "A go-to barrister for trade unions and one of the foremost experts in the area of industrial relations."

Legal 500 2018: he "combines exceptional powers of reasoning with compassion and humanity" and "his manner with both clients and the court is exemplary."

Who's Who Legal 2018: he is "unparalleled in all matters of collective labour law" and "a sonorous courtroom presence, which commands respect".

Career

1969 LLB (London University external degree; studied at Ealing Technical College, now part of the University of West London)

1970 Post-graduate Diploma in Law (Queen's, Belfast)

1971 LLM (Queen's, Belfast)

1972 Call to Bar (Gray's Inn)

1972-3 Pupillage

1973-6 Director (full-time), Newham Rights Centre, East London

1976-7 Lecturer (welfare law), Middlesex Polytechnic (now University)

1977 Began practice at the Bar of England and Wales

1987 Appointed Queen's Counsel

1995 Appointed Bencher of Gray's Inn

1998 Admitted to Bar of New South Wales

1999-2008 Head of Old Square Chambers

1999-2005 Visiting Professor, School of Law, Kings College, London

2019 Life peerage, the Lord Hendy KC, of Hayes and Harlington

Positions currently held

Since 2014, John has been an Honorary Professor in the Faculty of Law, University College, London and a member of its Labour Rights Institute. He is also:

A Bencher (retired) of Gray's Inn

Chair of the Institute of Employment Rights

President of the International Centre for Trade Union Rights

A Vice-President of the Campaign for Trade Union Freedom

A Vice-President of the Industrial Law Society

A Vice-President of the Haldane Society

A Fellow of the Royal Society of Medicine

A Fellow of the Society of Advanced Legal Studies

A former senior advocacy trainer, Gray's Inn

Expertise

- Civil Liberties and Human Rights
- Education & Safeguarding
- Employment & Discrimination
- Health & Safety & Environmental Law
- Industrial Relations & Employment
- Inquests & Public Inquiries
- Insurance
- Public Law

Recommendations

"He has an unrivalled knowledge of trade union laws and rights, and he has repeatedly put that knowledge to good use when defending workers and their unions." "He has the complete respect of the judiciary and it is no exaggeration to say that he is a giant at the Bar. He is the man for the hardest and most controversial cases which require tremendous courage and intellectual stamina." *Chambers & Partners 2022*

"Has the ear of the senior judges and the total respect and admiration of his peers. He is the most gifted of draftsmen, an ingenious lawyer and a compassionate and empathetic adviser. If there is a real fight to be had, you go to John." *The Legal 500 2021*

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Paul Adams

Senior Team Leader

Phone: 020 7269 0305

Email: adams@oldsquare.co.uk

Other relevant memberships

Employment Lawyers Association
Employment Law Bar Association (Chair, 2003-5)
Human Rights Lawyers' Association
Industrial Law Society
New South Wales Bar Association
South Eastern Circuit

He was an advisor to the Shadow Secretary of State for Employment Rights, Laura Pidcock MP, 2018-2019; Rachael Maskell MP, 2019-2020; Andy MacDonald MP, 2020-2021.

A writer and frequent speaker on trade union rights issues, in July 2012, John was honoured to address the Durham Miners' Gala to an audience of 80,000. He has twice addressed the Annual Conference of the Industrial Law Society and frequently spoken at their evening meetings and at meetings of the Employment Law Bar Association.

Industrial Relations & Employment

Court of Justice of the European Union

(1) **Allen v Amco** [2000] ICR 436; 1 CMLR 1; IRLR 119 (ECJ) – Transfer of undertaking

European Court of Human Rights

- (1) **UNISON v UK** [2002] IRLR 497 – right to strike – Article 11
- (2) **Wilson, Palmer etc v UK** (2002) 35 EHRR 20; [2002] IRLR 568; 13 BHRC 39 – right to trade union representation – Article 11
- (3) **ASLEF v UK** [2007] I.R.L.R. 361; (2007) 45 EHRR 34; 22 BHRC 140 – trade union freedom, expulsion of fascists – Article 11
- (4) **POA v UK** (2013) 57 E.H.R.R. SE9; Appn 59253/11, 21 May 2011 – challenge to ban on industrial action in prison service -Article 11
- (5) **Roffey v UK** (2013) 57 E.H.R.R. SE14; Appn 1278/11, 21 May 2013 – challenge to penalisation by removal of benefits from strikers – Article 11
- (6) **RMT v UK** [2014] IRLR 467; (2015) 60 EHRR 10; 37 BHRC 145 – right to strike (esp secondary action), legitimacy of restrictions on striking – Article 11
- (7) **UNITE v UK** (2016) 63 EHRR SE7; [2017] IRLR 438; Appn 65397/13, 26 May 2016 – challenge to abolition of Agricultural Wages Board on grounds of interference with right to collective bargaining – Article 11
- (8) **Brough v UK** Appn 52962/11, 30 August 2016 – absence of remedy for blacklisting prior to 2010 Regulations – Article 11
- (9) **Svenska Transportarbetareförbundet v Sweden** Appn 29999/16, 1 December 2016 – challenge to damages for striking and annulment of collective agreement where imposed to conform to EU law – Article 11
- (10) **Smith v UK** Appn 54357/15, 20 April 2017, [2017] IRLR 771, failure to protect trade union activist from blacklisting – Article 11
- (11) **IWGB v UK** Appn 18730/16, 8 June 2017 – challenge to exclusion of (representative) union from recognition machinery by reason of voluntary recognition of another (unrepresentative) union – Article 11
- (12) **LO v Norway** Appn 45487/17 10 June 2021 – challenge to the judgment of the Norwegian Supreme Court in *Holship Norge AS v Norsk Transporterforbund* (2014/2089) which subjected the right to strike and to bargain collectively to the *Viking* and *Laval* doctrine – primarily Article 11
- (13) **Straume v Latvia** – Appn 59402/14 2 June 2022, [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-217480%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-217480%22]%7D) discrimination against and dismissal of trade union official carrying out trade union activities – Article 11

Cases pending in the ECtHR

- **Mattu v UK** – failure to provide fair trial requirements in disciplinary process leading to dismissal – Article 6

European Committee on Social Rights

- **Irish Congress of Trade Unions v Ireland** 123/2016, 12 September 2018 – competition law is not a legitimate bar to collective bargaining by

House of Lords/Supreme Court/ Privy Council

- (1) **Attorney-General v Leveller Magazine Ltd; Attorney-General v National Union of Journalists; Attorney-General v Peace News Ltd** [1979] AC 440; 1 AER 745 (HL) – Contempt of Court
- (2) **Porter v National Union of Journalists** [1980] IRLR 404 (HL) – Trade union rules – discipline
- (3) **Duport Steels Ltd. v Sirs** [1980] I.C.R. 161; 1 AER 529; IRLR 112 (HL) – Trade Dispute – strike in furtherance of – Procuring breach of contract
- (4) **Express Newspapers Ltd. v McShane** [1980] AC 672; 1 AER 65; IRLR 35 (HL) – Trade Dispute – strike in furtherance of – Procuring breach of contract
- (5) **Castanho v Brown & Root (U.K.) Ltd** [1981] AC 557; 1 AER 143 (HL) – Personal injuries – Forum conveniens
- (6) **Dimbleby & Sons Ltd v National Union of Journalists** [1984] ICR 386 (HL) – Trade Dispute – strike in furtherance of – Procuring breach of contract
- (7) **Hughes v Department of Health and Social Security; Coy v Department of Health and Social Security; Jarnell v Department of the Environment** [1985] AC 776 (HL) – Unfair dismissal – Normal age of retirement
- (8) **British Coal Corp. v Cheesbrough** [1990] 2 AC 256; 1 AER 641; IRLR 148 (HL) – Redundancy – Payment calculation
- (9) **Associated Newspapers Ltd. v Wilson; Associated British Ports v Palmer** [1995] 2 AC 454; 2 AER 100; IRLR 258 (HL) – Trade union activities – Action short of dismissal
- (10) **Sadler v General Medical Council (GMC)** [2003] 1 WLR 2259; [2004] HRLR 8 (PC) – GMC appeal
- (11) **Derbyshire v St Helen's BC** [2007] ICR 841; [2007] 3 All ER 81; [2007] IRLR 540 – Victimisation in discrimination in attempt to settle equal pay claim
- (12) **Baker v Quantum** [2011] UKSC 17; [2011] 1 W.L.R. 1003; [2011] 4 All E.R. 223; [2011] I.C.R. 523; [2011] P.I.Q.R. P14; (2011) 108(17) L.S.G. 13; (2011) 155(15) S.J.L.B. 38; Times, April 14, 2011 – workers' noise induced hearing loss claim: held no liability before Noise Regs by exposure less than 90 dBA_{Lep,d} over many years.

Court of Appeal

Lord Hendy has appeared in 74 cases in the Court of Appeal with one judgment currently awaited (). Cases in the last five years are:

R (Boots) v Central Arbitration Committee, PDAU [2017] EWCA Civ 66, [2017] 2 WLUK 283, [2017] IRLR 355 – whether statutory recognition machinery compatible with Art 11 ECHR

(70) **Agarwal v Cardiff University, Tyne & Wear Passenger Transport Executive t/a Nexus v Anderson & ors** [2018] EWCA Civ 2084, [2018] 9 WLUK 350, [2019] I.C.R. 433, [2019] I.R.L.R. 657 – employment tribunal jurisdiction to construe contracts, construction of collective agreement

(71) **Royal Mail Group Ltd v Communication Workers Union** [2019] EWCA Civ 2150 – industrial action ballot irregularity

(72) **R (on the application of the Independent Workers Union of Great Britain) v Secretary of State for Business, Energy and Industrial Strategy** [2021] EWCA Civ 260, [2021] IRLR 363 – trade union recognition for collective bargaining on behalf of University of London cleaners etc.

(73) **National Union of Professional Foster Carers v Certification Officer, IWGB and ors intervening** [2021] EWCA Civ 548, [2021] IRLR 588 – definition of 'worker' for the purposes of the definition of 'trade union'

(74) **R (on the application of the Independent Workers Union of Great Britain) v Central Arbitration Committee, Roo Foods Ltd** [2021] EWCA Civ 952, [2021] IRLR 796 – trade union recognition for collective bargaining on behalf of Deliveroo riders.

High Court

Lord Hendy has appeared in 92 reported cases in the High Court. In the last five years he appeared in: **Ministry of Justice v POA** [2017] EWHC 699 (QB), [2017] IRLR 621, [2017] ICR Digest D14 – s.127 Criminal Justice and Public Order Act invoked to grant interim injunction so as to bar union from inducing prison officers to withhold voluntary services

(84) **Ministry of Justice v POA** [2017] IRLR 1121, [2017] EWHC 1839 (QB) – s.127 Criminal Justice and Public Order Act invoked to grant final injunction so as to bar union from inducing prison officers to withhold voluntary services

(85) **Merseyrail v RMT** [2017] EWHC 515 (QB) – legitimate trade dispute over introduction of driver-only-operated trains

(86) **Royal Mail Group Ltd v Communication Workers Union** [2017] EWHC 2548 (QB), 167 NJ 7766, [2017] All ER (D) 82 – procedural obligations in a legally binding collective agreement enforced so as to preclude strike action lawful under the legislation

(87) **R (Independent Workers' Union of Great Britain) v CAC and RooFoods Ltd t/a Deliveroo** [2018] EWHC 1939 (Admin); [2018] 6 WLUK 313; [2018] IRLR 911; [2018] ACD 117 – refusal of JR of CAC decision that Deliveroo riders were not 'workers' within meaning of s.296 for purposes of SchedA1 (recognition) and Article 11 ECHR

(88) **Antuzis v DJ Houghton Catching Services Ltd** [2019] EWHC 843 (QB); [2019] 4 WLUK 95; [2019] IRLR 629 – Personal liability of directors for inducing breach of contract by company; liabilities under Agricultural Wages Act

(89) **R (on the application of Independent Workers Union of Great Britain) v Central Arbitration Committee and Cordant Ltd and University of London** [2019] EWHC 728 (Admin); [2019] 3 WLUK 428 – trade union recognition, Art.11 ECHR

(90) **National Union of Professional Foster Carers v Certification Officer, IWGB and ors, intervening** Appeal UKEAT/0285/17/RN, 23 July 2019, whether foster carers were workers in UK law or pursuant to Art.11 ECHR

(91) **Royal Mail Group Ltd v Communication Workers' Union** [2019] EWHC 3200 (QB) – industrial action ballot irregularity

(92) **Tyne and Wear Passenger Transport Executive (t/a Nexus) v National Union of Rail, Maritime and Transport Workers** [2021] EWHC 1388 (Ch) – mistake in a collective agreement.

Administrative & Public Law

Most of Lord Hendy's JR work arises out of employment cases. They include:

- **R (on appn of Lin) v Sec of State for Transport** [2006] EWHC 2575 (Admin); [2006] Inqu LR 161 – Enhanced inquest sufficient to fulfil Article 2 requirement to investigate multiple deaths in railway crash (Potters Bar) – public Inquiry not therefore required;
- **R (Kashyap) v General Medical Council** [2009] EWHC 2873 (Admin) JR of FTP Panel decision;
- **R (on the application of Bakhsh) v Northumberland Tyne and Wear NHS Foundation Trust** [2012] EWHC 1445 (Admin) – permission granted to JR (on grounds of failure to provide effective remedy for breach of Art 11) public sector employer's decision to refuse to comply with ET re-engagement order for worker dismissed for trade union activity;
- **R (Mehey) v Visitors to the Inns of Court and Bar Standards Board** [2013] EWHC 3097 (Admin) – challenge to composition of disciplinary panels, time expired members, *de facto* judge doctrine, Art.6 ECHR;
- **R (Boots) v Central Arbitration Committee, PDAU** [2014] EWHC 65 (Admin), [2014] IRLR 278 – statutory recognition machinery incompatible with Art 11 ECHR.

Inquests & Public Inquiries

Lord Hendy has also appeared in many high-profile inquests and inquiries, including:^[1]

- The Southall train crash Inquiry (for the bereaved and injured) 1999
- The Ladbroke Grove train crash Inquiry (for the bereaved and injured) 2000
- The Potters' Bar train crash Inquest (for the bereaved) 2010
- The Leveson Inquiry (for the NUJ), 2011-2012 (see his cross examination of Rupert Murdoch at <http://www.youtube.com/watch?v=38X4EUajExY>)
- The Lakanal House fire Inquest (for the bereaved and injured) 2013

He currently represents the trade unions in the Inquiry into Under-Cover Policing (for various trade unions); and advises the Fire Brigades Union in the Grenfell Tower Inquiry (for the Fire Brigades Union).

^[1] Also: the Street Markets inquiry for LB Tower Hamlets (chaired), 1991; the Woolf inquiry into the Strangeways Prison Riot (for the POA), 1990; the Kings Cross Fire disaster (for the Association of London Local Authorities) 1986.

Recent and current work

- Lord Hendy has currently 5 ongoing ECtHR cases, one for Unite the Union, one for the Irish Congress of Trade Unions (both raising Article 11 issues), and three for individuals (in employment matters raising Articles 6, 8 and 11 issues).
- He represents the Prison Officers' Association and the ICTU in separate matters before the International Labour Organisation and the European Committee on Social Rights.
- He is currently leading for Unite the Union in the group litigation arising from the construction workers' blacklisting scandal. He is leading in a series of personal injury claims for civilians detained during the Iraq intervention.
- He represents the widow of a soldier killed by friendly fire in Iraq.
- He has an on going doctor's disciplinary case and a barrister's disciplinary case.
- On a daily basis, he advises a variety of unions on rule book and industrial action matters.

Notable Cases

- [RMT v. UK](#)

In RMT v. United Kingdom the European Court of Human Rights held that the ban on secondary action in the United Kingdom was a justified interference with the right to...

- [Wilson and Palmer v. United Kingdom](#)

Treating an employee who signs an individual employment contract more favourably than one who refuses to do so does not contravene the Employment Protection (Consolidation) Act 1978....

- [Associated Society of Locomotive Engineers & Firemen \(ASLEF\) v. UK](#)

- [R \(on the application of Boots Management Services Ltd\) v. Central Arbitration Committee](#)

The Central Arbitration Committee had been wrong to read words into the Trade Union and Labour Relations (Consolidation) Act 1992 Sch.A1 Pt I para.35 so that it only precluded a...

- [ASLEF/RMT v. London Midland and Serco Docklands](#)

Members of Old Square Chambers have succeeded in a groundbreaking case on industrial action in the Court of Appeal. John Hendy KC leading [Oliver Segal](#) (since elevated to silk)...

- [Lakanal House Fires](#)

John Hendy KC and [Christopher Edwards](#) represented the families of the deceased in these Inquests following the Lakanal House fire, a major fire at one of the London Borough of...

Paul Rose KC

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Telephone Clerk: 020 7269 0360



Overview

Overview

Paul Rose has split his practice between employment law and personal injury in claims. In recent years, he has focused primarily on the latter. He is instructed in high value traumatic brain injury and spinal cord injury claims by specialist firms of solicitors across the country. A sample of his recent work is provided below. Until 2019 he sat as a fee paid employment judge. He is a Deputy Head of Chambers and a member of the Board of Management.

Paul Rose KC is ranked as a Leading Silk in Personal Injury Law in *Chambers & Partners* and *The Legal 500*.

Personal Injury

Paul Rose KC has many years of experience in personal injury litigation, stretching back to acting on behalf of the claimants in both the Open and the Benzodiazepine litigation in the 1980's and 90's. Shortly thereafter he acted on behalf of the family and dependants of victims of the Chinook Mull of Kintyre helicopter crash and the Kegworth M1 British Midland Air crash.

In 1994 he acted on behalf of the claimants in the Camelford water pollution claim. More recently, he acted for the servicemen injured in the Kajaki Dam mine strike in 2006. He has acted in a number of other high profile claims for Service Personnel against the Ministry of Defence. He has extensive experience acting for claimants who have suffered catastrophic injuries.

He has acted for the claimant in the following notable cases:

- *Gul v McDonagh* [2022] RTR 9 – Court of Appeal – apportionment of contributory negligence – RTA – 13 year old boy.
- *Mehmetemin v Farrell* [2017] EWHC 103 (QB) – Severe lower limb orthopaedic injury. Court awarded £967,000;
- *JH & SH v SL* [2017] – Contested interim payment application on behalf of two children to purchase new accommodation. Judge awarded: £750,000. Judge also ruled on admissibility of Calderbank offers in interim payment applications;
- *Brown v Mujabi* [2017] – In a claim for damages for personal injury, a defendant was able to rely on CPR r.33.4(1) to cross-examine the claimant on comments made about the effects of her injuries despite her not having served a witness statement;
- *Lightfoot v Go-ahead Group Plc* (2011) RTR 27– contributory negligence of a pedestrian;
- *IB v CB* [2010] EWHC 3815 (QB)– a decision in respect of terms of standard PPO Order;
- *McKinlay v (1) Richard Lambe (2) AIG UK Ltd LTL 12/10/2009 RTA* concerning motorcycles;
- *Sowerby v Charlton* [2006] 1 WLR 568 –a decision of the Court of Appeal concerning whether Admissions made pre action may be withdrawn under the CPR;
- *Bici v Ministry of Defence* [2004] EWHC 786 (QB)– a decision by Elias J on the issue of combat immunity invoked as a defence by the defendant to a claim for assault and negligence in relation to the shooting and killing and wounding of civilians in Kosovo during peacekeeping operations;

Expertise

- Employment & Discrimination
- Environment
- Finance
- Health & Safety & Environmental Law
- Industrial Relations & Employment
- Insurance
- Personal Injury
- Public Law

Recommendations

"He has superb attention to detail and takes a tactical approach to cases. He is very approachable and has exceptional negotiation and advocacy skills. He fights to achieve best possible outcomes for his clients." "He is a real craftsman and has a fabulous eye for detail." *Chambers & Partners 2022*

"A superb, classy operator. A very steely negotiator, not afraid of a fight, opponents respect him and clients love him for it." *The Legal 500 2022*

Key contacts

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Joe Kallas

Team Leader

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- *Mattis v Pollock* [2003] 1 WLR 2158 – a decision of the Court of Appeal concerning a night club owner’s vicarious liability for the assault by his doorman on a visitor leading to paraplegia;
- *Forey v London Buses* [1991] 1 WLR 327 – Court of Appeal – quantum and costs;
- *Pearson v British Midland Airways* [1988] C.L.Y 1503 – Claim for PTSD arising from Kegworth Air Disaster.

Employment & Discrimination

Paul Rose KC has appeared in approximately 25 reported cases covering all aspects of discrimination law, TUPE and general employment disputes. He has sat as a fee paid employment judge for 16 years until 2019.

Paul Rose KC appeared in the following cases concerned with employment status:

- *James v Redcats (Brands) Ltd* [2007] IRLR 296. A decision of Elias P on the word “worker”;
- *Franks v Reuters* [2003] IRLR 423 a decision of the Court of Appeal on the meaning of “employee”.

He has also appeared in the following recent decisions in the field of discrimination:

- *Chief Constable of Lincolnshire v Natasha Caston* [2009] EWCA Civ 1298 Court of Appeal deprecates tribunal’s reference to commentary on extension of time;
- *Okunu v G4S* [2008] ICR 598 burden of proof in discrimination case;
- *Scott v The Commissioners of the Inland Revenue* [2004] IRLR 713 a decision of the Court of Appeal on the assessment of compensation in discrimination claims and costs;
- *Croft v Royal Mail Group plc* [2003] IRLR 592 a decision of the Court of Appeal on discrimination on the grounds of gender reassignment and also on the statutory defence;
- *Liversidge v The Chief Constable of Bedford Police* [2002] IRLR 651 a decision of the Court of Appeal on the liability of the Chief Constable for alleged acts of discrimination by police officers;
- *Leicester University v A* [1999] ICR 701 – Restricted reporting orders;
- *London Borough of Lambeth v The Commission for Racial Equality* [1990] IRLR 231 a decision of the Court of Appeal on “genuine occupational qualification”;
- *London Borough of Tower Hamlets v Rabin* (1989) ICR 693;
- *Meer v London Borough of Tower Hamlets* [1988] IRLR 299 court of appeal decision on indirect race discrimination;
- *Balgobin v London Borough of Tower Hamlets* [1987] ICR 829 decision on statutory defence.

He has also acted in a number of TUPE cases most notably:

- *Johnson Controls v (1) Campbell (2) UKAEA* [2012] All ER (D) 220 EAT decision in service provision change;
- *Law Society of England & Wales v Secretary of State for Justice* [2010] IRLR 407 decision of Queen’s Bench Division on whether a transfer of an undertaking;
- *Kerry Foods v Creber* [2000] IRLR 10 a wide-ranging decision on TUPE by Morison P;
- *Whent v Cartledge Ltd* [1997] IRLR 153 a decision of the EAT concerning the impact of TUPE on collective agreements.

Unfair Dismissal

- *Kerry Foods v Lynch* [2005] IRLR 680
- *Crossville v Tracey* [1998] AC 167 House of Lords: Employment Tribunal’s jurisdiction to consider reduction of Compensation in unfair dismissal selective re-engagement for contributory fault.
- *Isleworth Studios Ltd v Rickard* [1988] 2 WLR 1059 EAT appeal on compensation

Other Employment Cases

- *R v West Yorkshire Fire and Civil Defence Authority ex parte McCalman* [2001] OPLR 85
- *Wiluszynski v London Borough of Tower Hamlets* [1989] ICR 493 – Court of Appeal – breach of contract – limited industrial action.

Recent and current work

- *BEA v FJD & MIB 2022* – severe brain injury. Claimant aged 20 at date of settlement. Lump sum award £7.6 m Periodical Payment £440,000 p.a. for life. Approved by High Court in July 2022.
- *AV v AB* – Severe Traumatic Brain Injury. Settled at JSM in June

- 2020 for lump sum of £9.75m awaiting approval by Court;
- *XYZ v FGL* – Severe head injury with complicated issues over compliance with rehabilitation programme, settled at JSM in May 2020 for Lump sum of £2.4m and periodical payments for care and case management of £125,000 p.a;
- *HPS v PC* – Severe Traumatic Brain Injury: Liability settled at JSM 87.5/22.5 in the claimant's favour approved by Court in March 2020;
- *SM v TB*– Severe Traumatic Brain Injury settled at JSM for a 8 figure Lump sum award, approved by the Court in January 2020;
- *HP v ETM Contractors* –Severe Traumatic Brain Injury settled at JSM Lump sum £3m and periodical payments for care and case management £65,641 approved by the Court in December 2019;
- *MNL v TRW* –Severe Traumatic Brain Injury settled at JSM for 8 figure lump sum approved by the Court November 2019;
- *JXS v SXP*– Complex brain injury case where the claimant, a young man, refused to engage with the MDT rehabilitation team, settled at JSM lump sum £3.2m approved by the Court in September 2020;
- *HH v JB*– Moderate traumatic brain injury settled at mediation March 2019 Lump sum £1.4m;
- *AB V Smith's Gloucester Ltd* – Traumatic Brain Injury settled at JSM Lump sum £4.2m approved by the Court January 2019.

Mark Sutton KC

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Overview

Mark Sutton KC's practice spans employment disputes, professional regulatory cases and hearings before disciplinary panels. He appears as a leading silk in *Chambers & Partners* in both employment and professional discipline categories, where he is described as **"one of the few excellent lawyers to have equal footing in employment law and regulatory law. He is profoundly knowledgeable and the sort of person who would inspire confidence in any judge."**

He is recommended as a leading silk by *The Legal 500* directory who report that he is **"the first choice for disciplinary cases involving doctors"**. Mark was also nominated as **Professional Discipline Silk of the Year** in the 2015 *Chambers & Partners* Bar Awards.

A significant proportion of Mark's recent cases are related to the healthcare sector. He routinely appears before civil courts, employment tribunals, professional disciplinary panels and internal hearings and inquiries. Mark has successfully represented doctors in a number of substantial fitness to practise hearings before the MPTS, as well as other regulatory bodies. He routinely undertakes judicial review applications, as well as appeals from regulatory tribunals.

Mark has acted as leading counsel in two successful Supreme Court appeals determining the scope of financial and pre-emptive remedies in connection with professional disciplinary proceedings, and has appeared in most of the recent cases before the High Court and appellate courts which have developed the law in this area.

Aside from his healthcare practice, Mark has extensive experience of all aspects of employment law. He advises clients, both corporate and individual, in all categories of dispute including healthcare, financial services, education, local authorities and the police. Mark has appeared before the higher appellate courts in several landmark employment cases. He is widely recognised for his skilled advocacy and pragmatic advice in high-profile and complex cases.

Appointments

- Mark was Head of Chambers at Old Square Chambers between 2015 and 2019.
- He sits as a part-time employment judge.
- Mark is regularly appointed to chair disciplinary and grievance panels.
- Mark has extensive experience of undertaking investigations on behalf of employment organisations, public bodies and professional institutions.
- He is an elected Bencher of the Middle Temple.

Employment & Discrimination

Mark Sutton KC has extensive experience of the full range contentious employment proceedings.

In recent years, he has represented both claimants and employers in high-value tribunal proceedings in connection with City bonus claims and share option entitlements. Mark was instructed on behalf of a major financial services institution in the successful defence of a multi-million pound race discrimination claim arising out of the dismissal of a senior employee.

Expertise

- Administrative & Public Law
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Health & Safety & Environmental Law
- Insurance
- Investigations
- Media and Entertainment
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer

Recommendations

"He is very approachable, he very sharp in his understanding of the issues and he is very good at putting the client at ease." "He is our first choice advocate for doctors' disciplinary matters and complex appeals." "He reads the tribunal extremely well, and he is responsive and pragmatic in the advice that he gives." *Chambers & Partners 2022*

"Mark is clear, concise and carries immense gravitas. He explains the process and legal issues in precise terms, and always inspires confidence. He is calm and measured, giving extremely persuasive submissions." *The Legal 500 2022*

Key contacts

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Mark has a particular interest in whistleblowing claims and employment disputes involving professional employees.

Alongside his appearances in the employment tribunal and appeal tribunal, Mark has significant experience of High Court employment practice. He is routinely instructed to advise on the availability of interim remedies and has successfully represented both claimants and defendants in a number of significant reported cases:

- *Smo v Hywel DDA University Health Board* [2020] EWHC 727 (QB) High Court considers procedures for addressing conduct and capability proceedings under policy: Upholding Professional Standards in Wales. Mark Sutton KC leading [Betsan Criddle KC](#) for successful claimant;
- *Royal Mencap Society v Tomlinson-Blake; Shannon v Rampersad t/a Clifton House Residential Care Home* [2019] I.C.R. 241. Court of Appeal consider entitlement of carers to receive national minimum during sleeping-in shifts. Mark Sutton KC for successful respondent in the conjoined appeal of Shannon;
- *Agarwal v Cardiff University* [2019] I.C.R. 433. Court of Appeal considers whether an ET can construe the employment contract when deciding what amount of wages was properly payable in a Wages Act claim brought under Part II of the Employment Rights Act 1996. Mark Sutton KC, leading [Eleena Misra](#), appeared for the successful appellant in the lead appeal;
- *North West Anglia NHS Foundation Trust v Gregg* [2019] EWCA Civ 387. Court of Appeal hands down important guidance on the conduct of concurrent employment based and criminal investigation processes; the power to dismiss for failure to maintain professional registration during a period of MPTS interim suspension and the right to withhold pay during such periods. Mark Sutton KC, leading [Nadia Motraghi](#), appeared for the successful appellant;
- *Jain v Manchester University NHS Foundation Trust* [2018] EWHC 3016 (QB). High Court refuses to grant injunction restraining Trust from proceeding with internal process addressing breakdown in working relationships. Swift J. provides important guidance on the proper application of MHPS to complaints of this character and the extent to which reference can be made to the output of an internal mediation process. Mark Sutton KC, leading [Louise Chudleigh](#), appeared for the successful Trust;
- *Dahou v Serco Ltd* [2016] EWCA Civ 832. Court of Appeal. Mark Sutton KC successfully challenges finding of the ET in relation to (1) detriment for a reason relating to Trade Union membership activities or services contrary to section 146(1) of the Trade Union & Labour Relations (Consolidation) Act 1992; and (2) automatically unfair dismissal on the footing that the principal reason for the dismissal was the appellant's trade union activities: section 152 of the 1992 Act;
- *West London Mental Health Trust v Chhabra (Supreme Court)* [2014] ICR 194. Availability of an injunction to restrain the categorisation of disciplinary complaints as "gross misconduct". Guidance on the proper interpretation of MHPS procedures;
- *Langford v Department of Health* [2014] Employment Tribunal (London Central). Mark Sutton KC for the Secretary of State, leading [Christopher Edwards](#). Successfully defended remedy proceedings brought by former Chief executive officer following a dismissal for alleged mismanagement of the Trust's finances and other breaches of his duties as accountable officer. Nil compensation ordered;
- *Dahou v Serco Limited* [2013] Employment Tribunal London Central. Mark Sutton KC for Serco. Multi-day hearing into complaint of alleged victimisation and detrimental treatment on grounds of trade union activity. Permission granted for appeal to the Employment Appeal Tribunal (for hearing in 2014);
- *Matthews v Buckinghamshire Healthcare NHS Foundation Trust* [2013] EWHC 753 (QB) Globe J. Whether a breach of contract for disciplinary panel to take account of a "spent" disciplinary warning in the determination of sanction in conduct proceedings against a consultant surgeon. Mark Sutton KC for the successful Trust;
- *Palmer v East and North Hertfordshire NHS Trust* [2012] Age discrimination: Mark Sutton KC successfully representing consultant surgeon in complaint of unlawful age discrimination. Substantial compensation awarded;
- *Kerslake v North West London Hospitals NHS Trust* [2012] Med LR 568. Whether Trust could proceed to a dismissal hearing on the grounds of an irretrievable breakdown in working relationships: whether SOSR dismissal hearing can be pursued outside disciplinary procedures. (Mark Sutton KC for the successful Trust leading [Betsan Criddle KC](#));
- *Lim v Royal Wolverhampton NHS Trust (High Court)* (2011) 122 BMLR 43, [2011] EWHC 2178 (QB) Mark Sutton KC (leading [Betsan Criddle KC](#)) represented the claimant in a successful application for declaratory and injunctive relief requiring an NHS Trust to refer a clinician's case to the National Clinical Assessment Service as a condition precedent to proceeding with an internal capability hearing;
- *Hussain v Surrey and Sussex Healthcare NHS Trust* [2011] EWHC 1670

- (QB) Mark Sutton KC (leading [Ben Cooper KC](#)) representing NHS Trust. Trust successful in resisting an application for injunctive relief preventing it from proceeding with a conduct hearing, in circumstances where a clinician's practice was also the subject of capability concerns;
- *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2012] 2 WLR 55 Supreme Court. Mark Sutton KC representing the successful Trust in a landmark appeal before a seven Justices Court, overturning the unanimous ruling of the Court of Appeal. Judgment addresses the extent to which damages (beyond contractual notice) are claimable for breach of a contractually incorporated disciplinary procedure;
 - *McGregor v Abertawe Bro Morgannwg University Local Health Board* [2011] High Court. Mark Sutton KC successfully representing claimant professor of plastic surgery. Case concerned the proper construction of contractual leave entitlements provided for under nationally negotiated terms of employment for medical staff in Wales;
 - *Puri v Bradford Teaching Hospitals NHS Foundation Trust* [2011] IRLR 582 [2011] Administrative Court. Mark Sutton KC representing the successful defendant Trust (with John Bowers KC) in a judicial review application in which the claimant sought an injunction restraining the Trust from proceeding with a disciplinary hearing on the ground of non-compliance with Human Rights Convention requirements;
 - *Speight v County Durham & Darlington NHS Trust* [2010] Employment Tribunal Newcastle. Reported: EqLR 403 ET. Mark Sutton KC representing Trust in successful defence of an age discrimination complaint brought by hospital consultant in connection with refusal of post-retirement employment;
 - *Chagger v Abbey National* [2009] ICR 624 (Court of Appeal). Mark Sutton KC representing Abbey National (with Christopher Jeans KC) Guidance on the availability of stigma damages and calculation of future loss of earnings in race discrimination complaints;
 - *Chauhan v General Medical Council* [2009] High Court (leading Andrea Chute). Six-day appeal before the High Court, overturning key findings of a Fitness to Practise Panel. Case remitted to the GMC for rehearing. Important guidance on the approach to be adopted by a disciplinary panel in determining the proper scope of allegations of dishonesty in regulatory proceedings. Mark Sutton KC representing successful doctor;
 - *Qasim v The Central Manchester Hospitals NHS Foundation Trust* [2009] [High Court]. Mark Sutton KC successfully representing the defendant Trust in resisting application for mandatory injunction requiring it to lift the claimant clinician's exclusion from work. Reported: 2009 AllER (D) 39/ 2009 53 Sol Jo. (No.34);
 - *Annis v Eclipse Energy Company Limited* [High Court: June 2007]. Mark Sutton KC successfully representing defendant company in resisting a claim for wrongful dismissal and establishing breach of fiduciary duties on the part of a finance director of an oil and gas exploration company;
 - *Ahmed and others v Secretary of State for Health* [2005]. Multi-week hearing concerning allegations of nationality discrimination in relation to the government's scheme for the higher specialist medical training of overseas doctors. Mark Sutton KC (leading G. Mahmood) for the doctors;
 - *Kircher v Hillingdon PCT* [medical law report] injunction restraining dismissal. Post termination injunction granted by the High Court, restraining the employer from acting on a purported dismissal pending compliance with a contractually incorporated disciplinary procedure. Mark Sutton KC (with [John Hendy KC](#)) representing doctor claimant;
 - *Darnton v University of Surrey* [2003] IRLR 133 EAT. Mark Sutton KC representing university in successfully resisting claimant's appeal to the Employment Appeal Tribunal. Important guidance provided on the requirement of "reasonable belief" in whistleblowing claims brought under Part IVA of the Employment Rights Act 1996.

Professional Regulatory & Discipline

Mark Sutton KC has a substantial practice in the field of professional disciplinary proceedings, particularly in connection with the medical profession. He acts for NHS employers and medical practitioners appearing before regulatory panels and tribunals.

Mark has particular experience in cases which encompass the areas of professional regulation and discipline together with disputed employment rights.

Mark is routinely instructed to appear before professional disciplinary panels, including the MPTS and other healthcare regulatory bodies as well as internal disciplinary tribunals. He has represented doctors in proceedings for removal from the Performers List.

He has successfully undertaken a number of multi-week inquiries involving disputes over professional capability.

In addition, Mark has experience of hearings before the Administrative Court on appeal from the MPTS Interim Orders and FTP Panels as well as from disciplinary

panels of the Nursing and Midwifery Council.

Mark conducts seminars with medical protection organisations on disciplinary and employment topics affecting doctors. For several years, Mark acted as a legal assessor on the NMC's Fitness to Practise Panels.

In addition to disciplinary cases arising out of the healthcare sector, Mark has extensive experience as a panel chair of university grievance and disciplinary tribunals.

NOTABLE CASES:

- *Smo v Hywel DDA University Health Board [2020] EWHC 727 (QB)* Application for a mandatory injunction and declaratory relief. High Court considers procedures for addressing conduct and capability proceedings under Upholding Professional Standards in Wales. Mark Sutton KC leading [Betsan Criddle KC](#) for successful claimant;
- *Sait v General Medical Council [2018] EWHC 3160 (Admin)*. The appellant submitted that it had been procedurally unfair not to have sufficiently put to him in cross-examination, or in the tribunal's questions, that his alleged acts had been sexually motivated, and that there was no evidential basis for finding a pattern of sexually motivated behaviour. Mark Sutton KC appeared for successful appellant;
- *R (Dr X) v General Medical Council [2019] EWHC493 (Admin)*. Judicial review: High Court upholds doctor's challenge, founded on threatened breach of Article 2 ECHR rights, to the publication of the determination of the Medical Practitioners Tribunal's proceedings in the published records of the GMC and the MPTS. GMC's appeal against sanction rejected. Mark Sutton KC, leading David Morris, appeared for successful applicant;
- *North West Anglia NHS Foundation Trust v Gregg [2019] EWCA Civ 387*. Court of Appeal hands down important guidance on the conduct of concurrent employment based on criminal investigation processes; the power to dismiss for failure to maintain professional registration during a period of interim suspension and the right to withhold pay during such periods. Mark Sutton KC, leading [Nadia Motraghi](#), appeared for the successful appellant;
- *Jain v Manchester University NHS Foundation Trust [2018] EWHC 3016 (QB)*. High Court refuses to grant injunction restraining Trust from proceeding with internal process addressing breakdown in working relationships. Swift J. provides important guidance on the proper interpretation of MHPS and the extent to which reference can be made to the output of an internal mediation process. Mark Sutton KC, leading [Louise Chudleigh](#), appeared for the successful Trust;
- *Chakrabarty v Ipswich Hospital NHS Trust and NCAS [2014] EWHC 2735 (QB)*;
- Mark Sutton KC (leading [Ben Cooper KC](#)) for NCAS. High Court provides important guidance on the capability procedures under MHPS, and the requirement for referral to NCAS for the undertaking of a performance assessment;
- *GMC v Dr X [2013] MPTS* fitness to practise hearing. Whether trainee doctor's fitness to practise impaired by dyslexia following prescribing errors. Finding of no impairment by reason of adverse physical or mental health. Mark Sutton KC for the doctor;
- *GMC v Taher Sharaf [2013]*. MPTS fitness to practise hearing. Allegations of dishonesty in connection with the alleged alteration of patient records and other matters. No misconduct found. Mark Sutton KC for the doctor;
- *GMC v Dr Michael Lim [2012]*. MPTS Fitness to Practise Panel. Consultant anaesthetist. Inquiry into multiple allegations relating to pre- and perioperative treatment. Mark Sutton KC for the doctor;
- *GMC v Professor Al-Shihabi [2012] GMC*. Fitness to Practise hearing. Allegations of misconduct including dishonesty brought against a consultant audiologist. Mark Sutton KC for doctor;
- *Rauniar v General Medical Council [2011] [2011] All ER (D) 30*. Administrative Court. Statutory High Court appeal brought against the decision of a review panel of the General Medical Council. Guidance provided on the function of the post-graduate deanery in the provision of remedial support to doctors who are the subject of GMC conditions of practice orders;
- *Lim v Royal Wolverhampton NHS Trust [2011]* High Court. Mark Sutton KC (leading [Betsan Criddle KC](#)) represented the claimant in a successful application for declaratory and injunctive relief requiring an NHS Trust to refer a clinician's case to the National Clinical Assessment Service before proceeding with an internal capability hearing;
- *Hussain v Surrey and Sussex Healthcare NHS Trust [2011]* High Court. Mark Sutton KC (leading [Ben Cooper KC](#)) representing NHS Trust. Trust successful in resisting an application for injunctive relief preventing it from proceeding with a conduct hearing, in circumstances where a clinician's practice was also the subject of capability concerns;
- *Puri v Bradford Teaching Hospitals NHS Foundation Trust [2011] IRLR 582* Administrative Court. Mark Sutton KC representing the successful defendant Trust (with John Bowers KC) in a judicial review application in

which the claimant sought an injunction restraining the Trust from proceeding with a disciplinary hearing on the ground of non-compliance with Article 6 ECHR requirements;

- *Balamoody v Nursing and Midwifery Council [2010]* Administrative Court. Mark Sutton KC representing the Nursing Council. Statutory appeal brought by registrant against the determination of an NMC restoration panel;
- *East Lancashire Primary Care Trust v Pawar [2009]* Administrative Court. Mark Sutton KC successfully representing the respondent general practitioner in resisting an appeal brought by the Primary Care Trust against a determination of the Family Health Service Appeal Authority;
- *Aftab v North Lincolnshire NHS Trust [Administrative Court] [2010]*. Mark Sutton KC (leading Marcus Pilgerstorfer) representing Trust in an application for judicial review. Issue as to the amenability of an internal disciplinary process to judicial review and the applicability of Human Rights Act protections;
- *Chauhan v General Medical Council [2009] EWHC 2093 (Admin)* High Court. Mark Sutton KC (leading Andrea Chute) representing doctor in successful six day appeal before the High Court, overturning key findings of a Fitness to Practise Panel of the General Medical Council. Case remitted to the GMC for rehearing.

Investigations & HR Support

Mark Sutton KC has significant experience of undertaking internal investigations and of chairing inquiry panels in the context of disciplinary proceedings, grievances and other employment-related processes. He has substantial experience of working with healthcare bodies, universities, police forces and a wide spectrum of public authorities and commercial undertakings. He is strongly praised by clients for his efficient and user-friendly approach, as well as the clarity, balance and thoroughness of his reporting and decision-making.

Public Law/Judicial Review

- *R (Cummings & Or) v Betsi Cadwaladr University Health Board [Administrative Court]* – Judicial Review challenging the failure of BCUHB to undertake a statutorily compliant consultation process and to observe Public Sector Equality Duty prior to closure of consultant led maternity services in North Wales. Mark Sutton KC, leading [Nadia Motraghi](#), for the successful claimants;
- *R (Aditya Agrawal) v East Lancashire Hospitals NHS Trust [High Court]* – Judicial Review brought by NHS consultant, challenging internal inquiry into breakdown in departmental working relationships. Availability of public law remedies in an employment dispute. MSQC for the successful Trust;
- *R ex pte British Medical Association v General Medical Council [Administrative Court]* – Application for judicial review. Challenge to the decision of the GMC to provide advice to doctors on the professional ramifications of engagement in threatened industrial action. MSQC, leading [David Cunnington](#), for the applicant;
- *Aftab v North Lincolnshire NHS Trust [Administrative Court]* – Mark Sutton KC (leading Marcus Pilgerstorfer) representing doctor claimant in an application for judicial review. Issue as to the amenability of an internal disciplinary process to judicial review and the applicability of Human Rights Act protections.

Simon Gorton KC

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Overview

Simon Gorton KC has many reported cases in the IRLR from 1996 to 2019, from the House of Lords to the Supreme Court. Simon is a seasoned, erudite and persuasive silk, used in complex employment claims from professional services, banking including most recently a LIBOR related action for a former trader who faced a £1 billion counterclaim, Universities and NHS Trusts. His work spans from hard fought cases before tribunals, with substantial experience across the entire appellate landscape, complimented with a proven track record in the civil courts where he regularly appears in employment related commercial disputes.

Appeal work

Simon is also regularly sought by juniors to lead in Appellate cases, being regularly praised for his ability to work integrally as part of the legal team. With over 30 appellate cases in IRLR spanning three decades including cases before the House of Lords and the Supreme Court, Simon's ability to pick through complex judgments and enhance arguments on key legal issues, ensures he is a well-regarded and popular silk with juniors, clients and a highly respected advocate before the judiciary

Simon is **Direct Access** qualified and is happy to undertake cases on a **CFA**.

Recent cases include

Regina (Taggart) v Royal College of Surgeons of England [2022] ICR 235
Burn v Alder Hey Children's NHS Foundation Trust [2022] ICR 492
Liverpool Heart and Chest Hospital NHS Foundation Trust v Poullis [2022] ICR 785
Kamath v Blackpool Teaching Hospitals NHS Foundation Trust [2021] EWHC 2811 (QB)
Jesudason v Alder Hey Children's NHS Foundation Trust (CA) [2020] IRLR 374
Royal Mail Group Ltd v Jhuti [2019] UKSC 55
Efobi v. Royal Mail Group (CA) [2019] IRLR 352
Kocur v. Angard Staffing Solutions Ltd and ors [2019] IRLR 933, [2020] ICR 170
Shekholeslami v. University of Edinburgh [2018] IRLR 1090

Employment & Discrimination

Examples of Simon's extensive experience include:

Direct Discrimination

Efobi v. Royal Mail Group (CA) [2019] IRLR 352

Race (direct) and victimisation

Greater Manchester Police v Bailey (CA) [2017] EWCA Civ 425 (14 June 2017)

National Probation Service for England and Wales (Cumbria Area) v Kirby [2006] I.R.L.R. 508 on what conduct is covered by anti-victimisation legislation.

Sex Discrimination

Shelkholeslami v Edinburgh University [2018] IRLR 1090

Expertise

- Clinical Negligence
- Commercial Law
- Education & Safeguarding
- Employment & Discrimination
- Environment
- Finance
- Health & Safety & Environmental Law
- Insurance
- Media and Entertainment
- Personal Injury
- Public Law
- Retail and Consumer
- Sport

Recommendations

Simon Gorton, who divides his time between Atlantic Chambers in Liverpool and Old Square Chambers in London, is "outstanding at building a case and excellent at cross-examination." Chambers & Partners

"The impressive Simon Gorton QC is another vastly experienced employment specialist at the set and a real force to be reckoned with." Chambers & Partners

His "tactical approach to proceedings" and "formidable" advocacy style give him an edge. one commentator noted: "His polite cross-examination technique is deadly." Chambers & Partners

Key contacts

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Paul Adams

[St Helens MBC v Derbyshire & Ors](#) [2005] IRLR 801, [2006] ICR 9, 29 July 2005

[Ind Coope v Alboni](#) [1998] IRLR 131

Disability discrimination

Reasonable adjustments: [Sheikholeslami v The University of Edinburgh](#) [2018] UKEAT 0014/17/0510, 5 October 2018.

[Stages v. Jackson & Canter \(A Firm\)](#) [2008] UKEAT 0600/07/3103, 31 March 2008.

[Compensation: Aramark Ltd v Graham](#) [2013] UKEAT 0164/12/0306, 3 June 2013.

[McLauchlan v Chubb Electronic Security Systems Ltd](#) [2012] UKEAT 0235/12/0512, 05 December 2012.

Worker status

[Hospital Medical Group Ltd v Westwood](#) [2012] IRLR 834

Equal Pay

[St Helens Metropolitan Borough Council v. Arnold & ors](#) [2014] UKEAT 0108/13/1010, 10 October 2014.

[Fox Cross & Ors V Glasgow City Council & Others](#) [2013] Eq LR 460, [2013] ICR 954, 25 January 2013. He has been in two high-profile reported decisions for both employers and claimants

[Derbyshire v St Helens](#) House of Lords dealing with the legitimate boundaries of an employer's ability to persuade equal pay litigants to compromise their claims. This is now *the* definitive authority on victimisation in discrimination law.

[Kells v Pilkington Plc](#) [2002] IRLR 693 EAT in connection with identification of proper comparators in equal pay cases.

Medical and Regulatory

[Kamath v Blackpool Teaching Hospitals NHS Foundation Trust](#) [2021] EWHC 2811 (QB)

[Jesudason v Alder Hey Children's NHS Foundation Trust](#) [2020] EWCA Civ 73, 31st January 2020

[Arch Initiatives v Greater Manchester West Mental Health NHS Foundation Trust](#) [2016] IRLR 406, 21 January 2016

[Hospital Medical Group Ltd v Westwood](#) (CA) [2013] ICR 415

[Jesudason v Alder Hey Children's NHS Foundation Trust](#) QBD, 25 July 2012

[Dr A v HTX](#) [2012] EWHC 857, (QB)

Restrictive covenants and linked commercial work / Injunctive Relief

Simon is experienced with the full range of interim remedies available through the High Court, including not just interim injunctive relief but search and seizure orders. Simon is involved in both advisory and orchestrates the court-based practice for claimants and defendants in connection with breach of employment obligations including actions concerning breach of confidence and restrictive covenants. Ongoing cases include High Court springboard injunction proceedings for various large companies including 2 PLCs.

Simon regularly advises on issues relating to bonuses.

- He recently successfully mediated a bonus case on behalf of a Claimant involving dismissal prior to the accrual of a substantial bonus.
- He successfully represented former employee sued for conspiracy to defraud in the High Court and successfully pursued claim in the Employment Tribunal resulting in an award of damages and costs against the employer.
- Simon was involved in football litigation and recently involved in High Court and Employment Tribunal proceedings against Chelsea Village

Injunctions formed part of the following cases:

[Regina \(Taggart\) v Royal College of Surgeons of England](#) [2022] ICR 235

[Burn v Alder Hey Children's NHS Foundation Trust](#) [2022] ICR 492

[Dr A v HTX](#) [2012] EWHC 857, (QB)

[Sheikholeslami v. University of Edinburgh](#) [2018] IRLR 1090

[Jesudason v Alder Hey Children's NHS Foundation Trust](#) [2020] EWCA Civ 73, 31 January 2020

Senior Team Leader

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Transfer of Undertakings

Simon's involvement at every (appellate level) in the seminal case of *Wilson v. St Helen's Borough Council and others* [1998] IRLR 706, HL.

Simon has also appeared in:

[*Arch Initiatives v. Greater Manchester West Mental Health NHS Foundation Trust*](#) [2016] IRLR 406, EAT

[*Housing Maintenance Solutions Ltd v JF McAteer & Ors*](#) [2014] UKEAT 0440/13/0108.

[*CSC Computer Sciences Ltd v McAlinden & Ors*](#) [2013] EWCA Civ 1435, CA.

[*Park Cakes Ltd v. Shumba and others*](#) [2013] IRLR 800, CA.

[*St Helens Borough Council v. Derbyshire & Ors*](#) [2007] ICR 1693, [2007] ICR 841, [2007] IRLR 540, [2007], [2007] UKHL 16, 25 April 2007.

[*Hardman & Co v Urmston & Ors*](#) [2006] UKEAT 0620/05/1407, 14 July 2006.

[*Belcher & Ors v Great Bear Distribution Ltd*](#) [2005] UKEAT 0453/05/1912, 19 December 2005.

[*Astle others v. Cheshire County Council and another*](#) [2005] IRLR 12.

[*P&O Tans European Ltd v. Initial Transport Services Ltd*](#) [2003] IRLR 128

[*RCO Support Services and Aintree Hospital Trust v. Unison and others*](#) [2000] IRLR 624

Medical and Regulatory

[*Kamath v Blackpool Teaching Hospitals NHS Foundation Trust*](#) [2021] EWHC 2811 (QB)

[*Jesudason v Alder Hey Children's NHS Foundation Trust*](#) [2020] EWCA Civ 73, 31st January 2020

[*Arch Initiatives v Greater Manchester West Mental Health NHS Foundation Trust*](#) [2016] IRLR 406, 21 January 2016

[*Hospital Medical Group Ltd v Westwood \(CA\)*](#) [2013] ICR 415

[*Jesudason v Alder Hey Children's NHS Foundation Trust*](#) QBD, 25 July 2012

[*Dr A v HTX*](#) [2012] EWHC 857, (QB)

Whistleblowing

Simon has considerable expertise in this area, evidenced with his representation of The Royal Mail Group, before the EAT, Court of Appeal and then the Supreme Court in the case of *Jhuti* which resulted in a judgment that introduced seismic changes to employment law with the reassessment of how a Tribunal determines the 'reason' for dismissal, with the judicial enquiry reaching beyond the deputed decision maker.

[*Chief Constable of Greater Manchester v Aston*](#) Appeal No. UKEAT/0304/19/RN, 4 June 2021

[*Jesudason v Alder Hey Children's NHS Foundation Trust*](#) [2020] EWCA Civ 73, 31 January 2020

[*Royal Mail Group Ltd v Jhuti*](#) [2019] UKSC 55, 27 November 2019

[*Royal Mail Ltd v Jhuti*](#) [2017] [2018] ICR 982, [2018] IRLR 251, 20 October 2017

[*Kaltz Ltd v Hamer*](#) [2012] UKEAT 0198/11/2402, 24 February 2012

General Employment Law

Simon is expert in all types of employment disputes.

Agency Workers

Agency Workers Regulations 2010

[*Kocur v Angard Staffing Solutions Ltd & anor*](#) [2018] UKEAT 0181_17_2302 (23 February 2018)

Unfair dismissal

[Hamer v Kaltz Ltd](#) [2014] UKEAT 0502/13/0408, 04 August 2014.

[Clarence High School and Nugent Care Society v Boardman](#) [2013] ICR 927, 15 March 2013 (CA).

[Handshake Ltd v Summers](#) [2012] UKEAT 0216/12/2210, 22 October 2012.

[Boardman v Nugent Care Society & Anor](#) [2012] UKEAT 0071/12/1007, 10 July 2012.

[Greater Merseyside Connexions Partnership v Hilton](#) [2009] UKEAT 0228/09/1410, 14 October 2009.

[Bates v Liverpool City Council](#) [2007] UKEAT 0309/06/2501, 25 January 2007.

Court of Appeal case of [Whitbread Plc v Hall](#) on the band of reasonable responses.

Court of Appeal case of [Ind Coope v Alboni](#) on determining the reason for dismissal.

Remedies

Contributory fault – [Kaltz Ltd v Hamer](#) [2011] UKEAT 1853/10/1509, 15 September 2011

[Constantine v McGregor Cory](#) on reinstatement and remedy

Strike out / deposit orders

[Javed v Blackpool Teaching Hospitals NHS Foundation Trust](#) [2017] UKEAT 0135_17_0112 (1 December 2017)

Working Time Regulations

On call work – [City of Edinburgh Council v Lauder & Ors](#) [2012] UKEAT 0048/11/2003, 20 March 2012.

[MPG Contracts Ltd v A England](#) (Junior) & Anor [2009] UKEAT 0488/08/0805 (8 May 2009)

Wrongful dismissal

[Clarence High School and Nugent Care Society v Boardman](#) [2013] ICR 927, 15 March 2013.

Definition of employee

[Consistent Group Ltd v Kalwak & Ors](#) [2007] IRLR 560, 18 May 2007.

Some other substantial reason

[Nunn v Royal Mail Group Ltd](#) [2011] ICR 162, 27 October 2010.

[Driving Edge Ltd v Gietowski](#) [2008] UKEAT 0444/07/0802, 8 February 2008.

Status of Claimant (worker/employee/neither)

[MPG Contracts Ltd v A England](#) (Junior) & Anor [2009] UKEAT 0488/08/0805 (8 May 2009)

Minimum wage

[South Manchester Abbeyfield Society Ltd v Hopkins & Anor](#) [2011] ICR 254, [2011] IRLR 300, 30 November 2010.

Claim in time / EDT

[Nageh v David Game College Ltd & Anor](#) [2011] UKEAT 0112/11/2207, 22 July 2011. Examples include:

Judicial Review

Simon undertakes Judicial Review proceedings, for example he recently acted for the RCS in [Regina \(Taggart\) v Royal College of Surgeons of England](#) [2022] ICR 235.

Trade Union

TULCRA s. 152

[University of Bolton v Corrigan](#) [2015] UKEAT 0408/14/2112, 21 December 2015

Strike (interim injunction)

Personal Injury

Simon has extensive experience of all aspects of personal injury work including brain, spine and complex psychiatric cases.

Simon's employment work also overlaps with his personal injury work in cases particularly relating to the Protection from Harassment Act and stress claims.

Simon represented a claimant in a tetraplegia case instructed by Thompsons Solicitors. This case was contested on liability and quantum. The claimant was successful on all counts and received a multi-million pound settlement as well as a periodical payments order in respect of the claimant's ongoing care well in excess of £200,000 annually.

Injury at work

Merseyside Fire and Civil Defence Authority v Bassie [2005] EWCA Civ 1474, 01 November 2005.

Common Law / General Civil Litigation

A day's pay - per diem or calendar?

MM Packaging (UK) Ltd v. Philip Potter & ors (CA) [2017] EWCA Civ 1471, 31 July 2017.

Practice - compromise

St Helens Metropolitan Borough Council v. Arnold & ors [2014] UKEAT 0108/13/1010, 10 October 2014

Terms of contract - custom and practice

Park Cakes Ltd v. Shumba and others [2013] IRLR 800, CA. This is the leading case in its field.

Terms of contract - implied terms / variation / commission / bonus

CSC Computer Sciences Ltd v McAlinden & Ors [2013] EWCA Civ 1435, CA.

Injury at work

Merseyside Fire and Civil Defence Authority v Bassie [2005] EWCA Civ 1474, 01 November 2005.

Negligence, missing Tribunal deadline, liability of union and or solicitors

Brunsdon v Pattinson and Brewer (a firm) & Ors [2006] EWHC 1562 (QB), 29 June 2006.

Recent and current work

- Simon is heavily involved in English Scottish Equal Pay litigation both at an ET and an appellate level including the Highland Council litigation. Appeared successfully against Edinburgh City Council in lead case on the meaning of establishment under the Equal Pay Act;
- Has been advising trade unions and employers on all aspects of equal pay litigation;
- Currently representing UNITE in industrial action litigation in connection with strike action on London buses in the summer of 2008. One matter progressing to the Court of Appeal;
- Advising North West of England Councils on TUPE and other related employment aspects in connection with local government reorganisation;
- Heavy advisory based practice in restrictive covenants and restraint of trade work. Appeared several times in the High Court in respect of Springboard applications; applications to enforce express restrictions; full trials in respect of enforcing restrictive covenants.

Notable Cases

Simon regularly appears for and advises diverse clients such as banks, police forces, PLC's, trade unions, hospital trusts, universities, individual claimants and direct access clients.

- Equal Pay and discrimination – **Derbyshire v St Helens MBC, Fox Cross Claimants v Glasgow City Council**,
- Leading authority in respect of contractual rights conferred by custom and practice – **Shumba v Park Cakes Ltd**
- TUPE – **Wilson v St Helens MBC, Housing Maintenance Solutions v McAteer, Arch Initiatives v Greater Manchester West Mental Health NHS Foundation Trust**
- Whistleblowing – **Jhutti v Royal Mail Group**
- Worker status – **Hospital Medical Group Ltd v Woodward**
- The legality of strike ballots – **Metrobus v Unite the Union**
- Working time – **South Manchester Abbeyfield Society v Hopkin**
- Unfair dismissal and wrongful dismissal – **Nugent Care Society v Boardman** and **Nunn v Royal Mail Group**

Professor Sandra Fredman KC

SILK: 2012 | CALL: 2002

Email Clerk: wmeade@oldsquare.co.uk

Telephone Clerk: 020 7269 0360



Overview

Sandra Fredman KC (Honoris Causa) joined Chambers as an academic tenant in 2004. She is Professor of Law at Oxford University as well as a Fellow of the British Academy and a Fellow of Gray's Inn. She began her legal career as a trainee solicitor at Lawford and Co, where she was involved in several prominent trade union cases, foremost amongst them the CCSU case, in which Lawfords, acting on behalf of the Council of Civil Service Unions, challenged the banning of national trade unions at GCHQ. Subsequently, she embarked on an academic career, before being called to the Bar in 2002.

She is an expert on discrimination law, having published widely in the area. She has written one of the leading monographs on discrimination law in the prestigious Clarendon series (*Discrimination Law* (OUP, 2002)). She has also written *Women and the Law* (OUP, 1997) as well as numerous articles on the subject, particularly on equal pay law and flexible working. She has particular expertise in EU discrimination law: she has been a scientific director of the EU Network of Legal Experts in the Non-Discrimination Field and teaches a graduate course in EU Employment and Equality Law in Oxford. She is a co-editor of the forthcoming OUP looseleaf on discrimination law, to which several Old Square members are contributing. This is planned as the leading authority for practitioners on discrimination law and in particular on the new Equality Bill.

Her practice has included advising the government on the compatibility with EU law of parental leave proposals (with Jenny Eady KC), as well as advising the Equal Opportunities Commission on aspects of the Equality Bill. Most recently, she was instructed by the South African government to provide expert advice on the compatibility of affirmative action policies with bilateral investment treaties. In 2001, she ran a large project on age discrimination, jointly with Sarah Spencer and the Institute of Public Policy Research, culminating in one of the first books in the UK on age discrimination (S Fredman and S Spencer (eds) *Age as an Equality Issue* (Hart, 2001).

She also specialises in human rights law, particularly in their application to collective labour law. Her practice has included a successful challenge of Jersey employment law on behalf of the TGWU before the ILO, as a breach of the rights to freedom of association and collective bargaining (with [John Hendy KC](#)). Also with [John Hendy KC](#), she has acted for the Prison Officers Association, in an application to the ILO challenging the ban on industrial action and the inadequacy of alternative procedures. She has also written widely on the Human Rights Act 1998, and on social rights more generally, culminating in her book *Human Rights Transformed* (OUP, 2008). She is also an expert in labour law more generally, particularly in the public sector, having written *The State as Employer* (Mansell, 1988) with Gillian Morris; and *Labour Law and Industrial Relations in Great Britain* (2nd ed, Kluwer, 1992) with Sir Bob Hepple KC.

She has been active in policy-making. She acted as an expert adviser to the Equality Review, chaired by Trevor Philips and was one of three experts advising on Single Equality legislation in Northern Ireland. She also contributed to the Arthurs Commission on reform of labour legislation in Canada. She has been asked to give evidence on a number of occasions to the Joint Committee on Human Rights, and was commissioned by the EOC to write *'The Future of Equality in Great Britain'*.

She is South African and worked as a journalist covering labour and political issues under the apartheid regime. Since coming to Britain, she has been active in trade union and equality issues. She has been active for many years in the Institute of Employment Rights. In Oxford, she has helped establish and run the

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Employment & Discrimination

Recommendations

"First port of call for employment barristers; it has excellent strength in depth from juniors to seniors." Legal 500

Key contacts

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Employment & Discrimination

As well as her academic work, she has been active in the field of policy-making. She made a major contribution to the Independent Review of Enforcement of Anti-Discrimination Law chaired by Bob Hepple and Mary Coussey. She has been asked on several occasions to contribute to the work of the Northern Ireland Equality Commission, and has evidence on the European Charter of Fundamental Rights to the House of Lords Committee on the European Union. She has contributed to the debate on the establishment of a Human Rights Commission, giving a paper at a seminar run by the Joint Committee on Human Rights. In addition, she has worked with JUSTICE on the campaign for the ratification of Protocol 12.

She has recently been very active in the process of drawing up new equality legislation on age, sexual orientation and religion. In 2001, she ran a large project on age discrimination, jointly with the Institute of Public Policy Research. The results of the project are incorporated into policy document, co-authored with Sarah Spencer of IPPR, and an edited book.

She was commissioned by the Equal Opportunities Commission to prepare a report entitled the *'Future of Equality in Great Britain'* as a direct contribution to the debate about the proper implementation of new anti-discrimination law covering sexual orientation, religion and age. She was invited by the Norwegian equivalent of the Commission for the Racial Equality to present a key-note speech in Norway in October as part of the development of new discrimination law in Norway. She also participated in the expert committee advising the CEDAW Committee on the updating of the affirmative action provisions in CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)).

She has close links with the Gender and Race Equality Unit at the University of Cape Town, and the Centre for Applied Legal Studies at the University of the Witwatersrand, both of which have been active in the rapidly developing discrimination and human rights law in South Africa. She also has links with members of the judiciary and the human rights bar in South Africa. She has also worked closely with academics in other jurisdictions, and has extensive knowledge of comparative law in the equality and human rights field.

Notable Cases

- [Prison Officers Association and others v. United Kingdom](#)

[John Hendy KC](#) & Sandy Fredman KC for the Applicants. Section 127 of the Criminal Justice and Public Order Act 1994 makes it an offence to induce prison officers to...

Michael Ford KC

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Overview

Michael's principal area of practice is labour law, both individual and collective, including areas such as equal pay, industrial action, working time and trade union law. His work also includes judicial review, human rights, data protection, health and safety and public inquiries. He specialises in appellate cases, mainly acting for claimants and unions, and has appeared five times in the European Court of Justice, as well as in the European Court of Human Rights, the House of Lords, the Supreme Court and public inquiries. He has over 60 reported cases.

Michael became a silk in 2013. He was awarded **Employment Silk of the Year** at the Chambers Bar Awards in 2015 and he was **Employment Junior of the Year** at the Chambers Bar Awards in 2012. He has been listed in all the main directories, such as *The Legal 500* and *Chambers & Partners*, for many years. He is on the Equality and Human Rights Commission's 'A' panel of counsel, acting for them in *R(UNISON) v Lord Chancellor* on tribunal fees.

Michael is currently a Professor at the University of Bristol, a Deputy High Court judge and a fee-paid Employment Tribunal Judge. He was formerly the editor of *Redgrave's Health and Safety* and has many publications on employment law and human rights law. Before starting at the Bar, he was a solicitor with Slaughter and May. He has acted as special adviser to Parliamentary Committees in relation to employment-related matters (e.g. the inquiry into practices at Sports Direct).

He was once a member of the Great Britain road cycling squad (1982-3), and raced in Belgium, France, Holland, Germany and Poland (e.g. 5th Ronde de L'Oise; 1st Tour of Surrey, 1st Jock Wadley Memorial). He has First Class degrees in Law (1983-86) and Biology (2007-2010) and is a fluent French and good Spanish speaker. For nine years he was a trustee of the Bats Conservation Trust, assisting it with issues on wildlife law.

He now spends his spare time cycling, learning Spanish and trying to deal with his two boys.

Employment & Discrimination

Michael's practice covers virtually all aspects of employment law, both individual and collective, and trade union internal matters. For many years he has been listed in employment law in the leading directories, including *Chambers & Partners*, the *Legal 500* and *Legal Experts*. He is a fee-paid Employment Tribunal Judge.

Michael has over 60 reported cases in the sphere of labour law, across almost all subject areas. He has particular expertise in EU labour law and human rights and employment law. His areas of practice include the following:

Working time

Michael acted for the successful claimants in *Stringer v HM Revenue and Customs* in the ECJ and the House of Lords, establishing that sick workers are entitled to annual leave under the Working Time Regulations and to bring claims for holiday pay as a claim for unlawful deduction from wages. Subsequently, he was instructed in the leading authority on interpretation of WTR to comply with the Working Time Directive, *NHS Leeds v Larner*, CA. He acted for 1000s of pilots in the Supreme Court and ECJ in *British Airways v Williams*. Since then he has been involved in claims for tens of thousands of workers about the level of their holiday pay, some of which are now going to the EAT (e.g. *Neal v Freightliner*). He appeared in European Court of Justice and Court of Appeal in *Lock v British Gas*,

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Health & Safety & Environmental Law
- Inquests & Public Inquiries
- Insurance
- Media and Entertainment
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer

Recommendations

"Michael is phenomenally bright and has a huge knowledge of anything industrial relations-related. He is a fantastic advocate, with his submissions always being clear, concise and extremely persuasive. He is also well liked by clients and has a good sense of humour." "The biggest brain in employment law." *The Legal 500* 2022

"I call him a mini-computer. He just remembers so much important stuff; he is the barrister you need for really big cases to change a judge's opinion or if you need to change the law." "He is razor-sharp, gets to the issues amazingly quickly and he is very easy to work with." *Chambers & Partners* 2022

Key contacts

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Paul Adams

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on whether commission payments must be included in payment for annual leave. He recently acted for in the leading cases of *Bear Scotland v Fulton* (whether overtime counts towards annual leave), *Dudley v Willets* (voluntary overtime) and *Brazel v Harper* (CA), on term-time workers and annual leave.

Industrial action

Michael is frequently instructed by unions in injunction applications (see e.g. *Balfour Beatty v Unite*; *Metroline Travel v Unite*). Cases in which he successfully resisted injunctions on behalf of unions include *British Airways v BALPA* in the Court of Appeal and *ISS v Mediclean* in the High Court. He has also acted in cases in which the whole workforce has been dismissed for taking strike action, including *Davies v Friction Dynamics* in which hundreds of dismissed workers succeeded before the ET, and *Balfour Kilpatrick v. Acheson*. He was instructed by the RMT in *RMT v United Kingdom*, in which the European Court of Human Rights held that the ban on secondary action did not infringe Article 11.

Equal pay

Michael has acted in several large public sector equal pay claims, including part-time pensions test cases, both in the employment tribunal and on appeal (see e.g. *DEFRA v. Robertson*, *Abendshine v Sunderland CC*, *Allen v Unison*). He acted in one of the first “bonus” cases against a local authority (*Paterson v Islington*), was instructed in the equal pay litigation against all Welsh local authorities for bonus payments (which settled), and acted for 1500 claimants in the prison service who were awarded £4 million in compensation. He represented Mrs Grundy in her successful claim against British Airways, a leading authority on establishing and justifying indirect discrimination in pay (*Grundy v British Airways*). He appeared in the leading authority on the demarcation line between equal pay and sex discrimination claims: *Hosso v European Credit, CA*.

Judicial review

Unusually for an employment practitioner, Michael is frequently instructed on judicial review applications brought by public sector workers, including the police. He acted for the EHRC as intervener in the challenge to the introduction of tribunal fees which succeeded in the Supreme Court (*R (Unison) v Lord Chancellor*). He has represented police officers in judicial review applications in the context of police discipline and pensions (e.g. *Salter v Chief Constable of Dorset*; *R (Chief Constable of Avon) v Police Appeals Tribunal*; *Clinch v Dorset Police Authority*; *R (Stunt) v Mallett*). He represented the NHS Trust in *Gibb v Maidstone and Tunbridge Wells NHS Trust, CA*, on whether termination payments were unlawful. His judicial review work also includes matters such as collective decisions in the public sector (e.g. he recently acted for the PCS in relation to whether benefits under the Civil Service Pension Scheme were payable to fixed-term employees).

Trade unions

Michael has a particular expertise in relation to trade union law. As well as often advising unions on internal matters, he has acted in High Court challenges based on the rule book, in complaints to the Certification Officer and in hearings before the Central Arbitration Committee.

Discrimination

Michael acted for the EHRC in *Chandhok v Tirkey*, holding that discrimination owing to caste was potentially race discrimination; he acted in the important case on reasonable adjustments and disability discrimination, *Griffiths v Secretary of State for Work and Pensions*; and he represented Jessica Starmer, a BA pilot who succeeded in her complaint that a requirement to work full-time amounted to indirect sex discrimination, in the highly-publicised case of *British Airways v Starmer*. He appeared in *Ahsan v The Labour Party*, in which the House of Lords resolved that complaints of race discrimination against political parties cannot be brought before the employment tribunal under s.12 of the Race Relations Act 1976.

Pensions and TUPE

Michael acted for Ms Beckmann who succeeded in her claim before the ECJ that early retirement pension, payable in the event of redundancy, transferred under the Acquired Rights Directive and hence TUPE (*Beckmann v Dynamco Whicheloe, ECJ*). Since then he has successfully represented many claimants in High Court claims based on the Beckmann decision. He also regularly advises on pension issues and public sector TUPE points. He acted for the successful claimants in the ECJ in *Allen v Amalgamated Construction*.

Human rights and employment

Michael often advises on the implication of the European Convention of Human Rights in relation to employment law. He was instructed in *RMT v United Kingdom* (on the right to strike) and *Unite v United Kingdom* (on abolition of the Agricultural Wages Board). He provided submissions for Liberty in a recent

blacklisting case pending before the Court, *Smith v UK*. He acted for ASLEF, who succeeded before the European Court of Human Rights in challenging domestic legislation which prevented unions expelling trade union members (*ASLEF v United Kingdom*), and which led to the government amending s.174 of TULRCA 1992. He appeared in an early case on freedom of protest, *Steel v UK*. He has written widely on human rights at work, especially on the right to privacy.

Data protection

Michael was involved in the process of drafting the Information Commissioner's Employment Practices Data Protection Code, giving guidance on the application of the Data Protection Act 1998 to employment. He is the author of *Surveillance and Privacy at Work* (Institute for Employment Rights).

Other

Michael acts in just about all areas of employment, especially in the context of appeal cases, or claims brought by the whole workforce. Recent appellate cases include *Allen v TRW* (contractual redundancy payments), *Dutton v. Jones* (calculation of redundancy pay when on short-time working), *Singh v Bristol Sikh Temple* (whether Sikh priest was a worker). Other work includes settling infringement proceedings before the ECJ, drafting an application to the ILO, and advising on appeals concerned with the Agency Worker Regulations and on contractual issues relating to medical professionals.

Publications

Michael's publications include:

- *"The Fissured Worker: Persona Service Companies and Employment Rights"* (2019) 49 ILJ 35
- *"Employment Tribunal Fees and the Rule of Law: R(UNISON) in the Supreme Court 47"* (2018) ILJ 1
- *"Criminalisation of Health and Safety at Work" in Bogg et al, Criminality at Work* (OUP: 2020)
- *"Legislating for Conflict: The Trade Union Act 2016"* (2016) 45 ILJ 277
- *"Two Conceptions of Worker Privacy"* (2002) 31 Industrial Law Journal 135
- *"Re-thinking the Notice Rule"* (1998) 27 Industrial Law Journal 220
- *"Privacy and Surveillance at Work"* (IER: 1998)
- *"Citizenship and Democracy in Industrial Relations"* (1992) 55 Modern Law Review 241

Michael is a member of the Institute of Employment Rights, of the Industrial Law Society and of the Employment Lawyers' Association, and has given lectures and talks for all of these organisations as well as to many others.

Administrative & Public Law

Michael is frequently instructed in judicial review applications, especially on behalf of public sector workers and the police (including police pensions and police disciplinary matters). He has drafted applications to and appeared in the European Court of Human Rights. His notable cases in this area include:

- Instructed by Commission for Equalities and Human Rights in *R (UNISON) v Lord Chancellor*, the successful challenge to the introduction of fees in the employment tribunal, which went to the Supreme Court;
- Instructed by PCS in case challenging non-payment of benefits under Civil Service Compensation Scheme to civil servants on fixed term contracts (case ultimately succeeded after DWP agreed to proceed in employment tribunal);
- *Salter v Chief Constable of Dorset [2012] EWCA Civ 1047 (CA) and [2011] EWHC 3366* (High Court): judicial review challenging reinstatement of police officer by Police Appeals Tribunal;
- *Gibb v Maidstone and Tunbridge Wells NHS Trust [2010] IRLR 786*: instructed in CA on leading authority on legality of termination payments to public sector employees;
- *Austin v Chief Constable of Surrey Police [2010] EWHC 266* (Admin): decision to dispense with services of probationary constable held to be unlawful because decision should have been taken by Chief Constable;
- *R (Chief Constable of Avon and Somerset Constabulary) v Police Appeals Tribunal (2004)* The Times 11 February, Admin Court: the Court accepted the argument that the Home Office Guidance as to the scope of an appeal to the Police Appeals Tribunal was incorrect;
- *R (South Wales Police Authority) v Morgan [2003] Pens. LR 355*;
- *Clinch v Dorset Police Authority [2003] Pens. LR 5*: injury awards and police pensions;
- *R (Stunt) v Mallet [2001] ICR 989, CA*: the leading authority on the meaning of execution of duty for the purpose of the Police Pensions Regulations;
- *ASLEF v United Kingdom [2007] IRLR 361*, European Court of Human

Rights: the Court held that UK law, prohibiting ASLEF from expelling BNP members, was in breach of Article 11 of the Convention. As a result of the judgment, the government is to amend s.174 of TULRCA 1992;

- *Steel, Lush and others v United Kingdom (1999) 28 EHRR 603*, European Court of Human Rights: the Court held that breach of the peace was not compatible with the Convention in the context of peaceful protests. Michael was instructed by Liberty.

Publications

Michael's publications in this area include:

- Chapter entitled 'Disciplinary Proceedings' (with Keir Starmer KC) in Mulcahy (ed) *Human Rights and Civil Practice* (Sweet and Maxwell: 2001) Chapter entitled 'Article 8 and the Right to Privacy in the Workplace' in Ewing (ed) *Human Rights at Work* (Institute for Employment Rights: 2001)
- *Local Authorities and Article 6 ECHR* (with Justice).
- On behalf of Justice, he lectured government departments on the *impact of the Human Rights Act 1998*.

Health & Safety

For over a decade Michael was the editor (with [Jonathan Clarke](#)) of *Redgrave's Health and Safety* (Butterworths), the leading text on the regulation of health and safety of workers. He was formerly the co-author (with [John Hendy KC](#)) of *Munkman on Employer's Liability* (Butterworths).

He has been listed as a leading junior in health and safety in *Chambers & Partners*.

Inquests & Public Inquiries

Michael was instructed as junior counsel for the bereaved and injured in two major railway public inquiries – *the Southall Rail Inquiry*, chaired by John Uff KC, and the *Ladbroke Grove Rail Inquiry* (Parts 1 and 2), chaired by Lord Cullen.

Environment

Michael has a particular expertise in wildlife law, both domestic and European. For nine years he was a trustee of the Bat Conservation Trust and frequently advised it in relation to wildlife conservation law, including on issues such as the implementation of the Habitats Directive and the effect of domestic legislation. His cases in this area include:

- *Department of Transport v Williams (1993) The Times 7 December*: Twyfords Down injunction, in which Michael acted for the protestors;
- *Chambers and Edwards v DPP [1995] Crim LR 896*: Public Order Act and application to M11 protestors.

Recent and current work

To view a list of Michael's reported cases, please [click here](#).

Ben Collins KC

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Overview

Ben Collins KC has an exceptionally diverse practice, appearing in landmark litigation, and recognised as a leading silk, in no fewer than five fields of practice: employment, professional discipline, clinical negligence, personal injury and administrative and public law. In 2020 he was named **Pro Bono KC of the Year** at the *Bar Pro Bono Awards*, and was shortlisted at *The Lawyer Awards* as **Barrister of the Year**.

The legal directories describe Ben as **“an exceptional barrister... incredibly bright and a pleasure to work with.”** Ben has a high-profile practice in both private and public law, with particular expertise in employment, healthcare and regulatory work, although his practice spans public law and human rights, clinical negligence, medical law, personal injury, inquests and inquiries, sports disputes and professional negligence.

Ben has vast experience in employment and discrimination claims, with particular expertise in disability discrimination and other health-related issues (including mixed employment, regulatory, discrimination and personal injury claims). He has considerable experience of high-profile and high-value whistleblowing claims; and of public sector work in general. He appears very regularly in [disputes involving doctors](#).

His disciplinary practice involves representing practitioners and professional bodies in professional conduct proceedings before regulatory bodies such as the GMC, GDC and ARB, as well as in judicial review challenges in the Administrative Court. He has appeared in [university](#) and police disciplinary proceedings, and has experience of major financial services regulatory work, including internationally (he appeared in the first contested hearing before the Financial Markets Tribunal in Dubai).

He is regularly instructed by both claimants and defendants in complex and high-value clinical negligence and personal injury claims. He has enormous experience in addressing medical issues and an in-depth understanding of the work of clinical professionals, as well as in meeting the needs of severely disabled claimants and their families.

Ben must be considered one of the leading experts in the law of criminal injuries compensation at the bar, having appeared in almost every major appeal in the field in the past decade, including *A* (SC, exclusion of criminal convictions), *JT* (CA, same roof rule), *CP* (CA, fetal alcohol syndrome), *Jones* (SC, crime of violence) and *Y* (CA, status of unborn child). He is consulting editor to Miers on *Criminal Injuries Compensation* (OUP).

His public law practice involves review of decisions in the fields of equality, medical law, professional regulation, industrial relations, mental health, coroners, prisons and immigration. He advised the Lord Chancellor on changes to the discount rate for personal injury damages, and defended APIL's judicial review of the rate. His work frequently encompasses human rights challenges.

He appears at inquests and public inquiries, most recently the Infected Blood Inquiry.

Publications

- Consulting editor to Miers on *Criminal Injuries Compensation* (OUP).
- Contributing editor to *Professional Negligence and Liability* (LLP), dealing with clinical practitioners.
- Ben has contributed articles to JPIL, NLJ, ELA Review, Occupational

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Clinical Negligence
- Commercial Law
- Education & Safeguarding
- Employment & Discrimination
- Environment
- Finance
- Health & Safety & Environmental Law
- HR Professional Support
- Inquests & Public Inquiries
- Insurance
- Media and Entertainment
- Personal Injury
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer
- Sport
- Travel

Recommendations

“a truly excellent advocate, whether on the law in appellate cases or as a cross-examiner of lay and expert witnesses” *The Legal 500*

“Ben is an unflappable silk. He is calm, considered and excellent with clients. His work is top-drawer.” *The Legal 500*

Key contacts

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Olivia Moliterno

Team Leader

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Paul Adams

Medicine, Judicial Review and Legal and Medical. He lectures regularly on a range of topics including employment and discrimination law, clinical negligence, human rights, medical law, professional discipline and civil procedure. He has led sessions at the ELA annual conference.

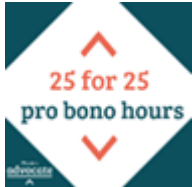
Senior Team Leader

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Appointments

- Deputy Head of Chambers
- Recorder (2018)
- Queen's Counsel (2016)
- Called to the Bar of Northern Ireland (2016)
- Special Advocate
- Member, International Paralympic Committee anti-doping appeal panel
- Attorney General's A Panel of Counsel (before taking silk)
- Former Member, Bar Standards Board Qualifications Committee
- Bar Pro Bono Unit, Reviewer Member
- ELA Pro Bono Committee
- Member of: ELA, ELBA, ARDL, PNBA, PIBA, Justice



Employment & Discrimination

Ben is recognised by both *Chambers & Partners UK* and *The Legal 500* as a leading employment law silk. He has extensive experience of a range of employment law claims. He represents large commercial and industrial respondents; public authorities (in particular [central and local government](#)); [health service bodies and practitioners](#); [higher education institutions](#); and claimants with high-value or complex claims.

He is frequently instructed in complex and high-value discrimination claims and has particular expertise in cases concerning disability and health issues. His human rights practice gives him a broad understanding of equality issues both within and beyond the employment sphere. He is often asked to advise public bodies on their equality obligations (flowing from the public sector equality duty, ECHR and discrimination legislation), as well as dealing with allegations of systematic and individual discrimination brought against them. He is experienced in claims relating to service provision discrimination.

Ben also appears regularly in claims concerning whistleblowing, TUPE, restraint of trade and all kinds of dismissals. He has wide experience of cases concerning the international jurisdiction of the employment tribunal.

Ben has an in-depth understanding of the workings of the health service and clinical professionals. He represents practitioners and trusts in internal disciplinary proceedings, High Court disputes and tribunal claims. His experience in professional regulation (in particular of the clinical professions), public law and clinical negligence contribute to his ability to represent parties to health-sector disputes with real effectiveness; not least given his long experience of working with medical experts.

Prior to taking silk, Ben was a member of the Attorney General's A Panel of counsel (and was a panellist in total for 13 years). He has appeared in some of the most significant and high-profile litigation brought against the government. He is a Special Advocate, has developed vetting security clearance and appears in employment and related disputes where national security is in issue.

Ben also has experience of representing professional footballers and managers in disputes with their present or former employers. He also has experience of claims involving rugby clubs.

Finally, Ben's experience of high-value personal injury and clinical negligence claims affords him particular expertise in dealing with complex issues on remedy, not least where psychiatric injury is alleged; or where long-term claims for loss of earnings arise. Ben has advised the Lord Chancellor on the current review of the discount rate and is skilled in dealing with large claims for future losses.

Ben is a member of ELA, ELBA and ILS, as well as Justice and Liberty.

Discrimination

- *IWGB v Mayor of London* [2021] 3 All ER 334; [2020] 4 WLR 112 (CA) – Race discrimination challenge to Mayor's decision to remove Congestion Charge exemption from minicab drivers.

- *Wright-Turner v LBHF* (ET, 2021) – Successful dismissal and disability discrimination claim brought by senior council executive with psychiatric injury following Grenfell disaster.
- *Khan v Home Secretary and Cummings* (ET, 2020) – Represented Prime Minister's Chief of Staff in discrimination claim brought by Special Adviser.
- *F&G v Met Police* (ET, 2018): Special advocate for police officers denied security clearance on grounds of nationality.
- *Wastenev v E London NHS Foundation Trust* [2016] ICR 643. Leading case on direct religious discrimination in the workplace.
- *Quigley v CICA* (2015-6). Discrimination and human rights challenge by victim of acid attack to rules on criminal convictions in *Criminal Injuries Compensation Scheme* 2012.
- *Child Soldiers International v Secretary of State for Defence* [2016] 1 W.L.R. 1062. Age discrimination challenge to Army recruitment rules.
- *McCloud v Lord Chancellor* (ET, 2016 – one of The Lawyer's Top 20 Cases of 2016). Age discrimination claims brought by around 200 judges following government reform of the judicial pension scheme.
- *Holloway v MOD* [2015] UKEAT/0396/14. Territorial jurisdiction of tribunal in case arising from employment in British Overseas Territory.
- *Deangate v Hatley* [2015] ICR 890. Employment tribunal fee remission regime for claims filed online.
- *Tozer v Barts NHS Trust* (ET, 2015). Sex discrimination claim by high-profile fertility consultant suspected of dishonesty.
- *Storey v GCHQ* [2015] UKEAT/0269/14. Special advocate in disability and religious discrimination claim arising out of security vetting.
- *Saad v Health Education England* [2014] UKEAT. Whether the UK approach to disability discrimination accords with EU law post-Ring.

Whistleblowing

- *FCO v Bamieh* [2020] ICR 465 (CA) Territorial jurisdiction for whistleblowing claims against co-workers.
- *University Hospitals Birmingham NHS Foundation Trust v Reuser* [2020] Med LR 370 (EAT) whistleblowing claim brought by surgeon following dismissal by NHS Trust.
- *Gilham v Ministry of Justice* [2019] ICR 1655 (SC) Worker status of judges.

Other

- *National Union of Professional Foster Carers v Certification Officer* [2021] ICR 1397 – Worker status, and trade union rights, of foster carers.
- *Kowal v TDL* (ET, 2018) – Worker status of NHS blood couriers.
- *Secretary of State for Justice v Betts* [2017] ICR 1130 – Illegality in civil service appointments.
- *Holloway and others v MOD* (EAT, 2015) – Territorial jurisdiction of ET in claims arising from employment in British Overseas Territory.
- *Rogers v Deputy Commander* [2013] All ER (D) 308 (Mar). International jurisdiction dispute raising question of UK treaty obligations.
- *Grocott v MOD* (2012). Unfair dismissal and discrimination claim raising questions of international jurisdiction of the employment tribunal.
- *Jones v Mid-Cheshire Hospitals NHS Trust* (2008). Dismissal of hospital consultant for alleged involvement in fraudulent signing of death certificates.
- *David Platt v Football Association* (2005). Represented David Platt in contractual dispute on termination of employment.

Public Law

Ben has directory recognition as a leading public law silk, and has appeared in some of the most significant and high-profile litigation brought against the government, having appeared in a range of high-profile judicial reviews and appeals, including three Supreme Court cases in 2019-20. Prior to taking silk he was on the Attorney General's A Panel of Counsel, and was a panellist in total for 13 years. Ben also appears for individuals and regulatory bodies in judicial reviews of professional regulatory decisions.

Because Ben has a strong common law practice alongside his public law work, he has particular expertise in claims where claims for common law damages are made together with claims for public law and/or human rights remedies.

Ben has particular expertise in equality issues, by reference to the Public Sector Equality Duty, ECHR and discrimination law. He has advised on equality matters in relation to the new Criminal Injuries Compensation Scheme, the setting of the Discount Rate, Free Schools and the operation of public sector cuts.

Ben is a Special Advocate and has Developed Vetting security clearance. He appears in a range of disputes where national security is in issue, in both England and Northern Ireland.

Criminal Injuries Compensation

- *A v CICA [2021] 1 WLR 3746 (SC)*. Availability of compensation for victims of trafficking with criminal convictions.
- *CICA v FTT (SEC) [2022] UKUT 103 (AAC)* – whether online grooming and abuse offences are crimes of violence under the Scheme.
- *Jones v FTT [2019] 1 WLR 1391*. Re-opening decisions in changed circumstances.
- *JT v FTT [2019] 1 WLR 1313*. Lawfulness of the “same roof rule” for historic abuse claims.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) and Y [2017] 4 WLR 60*. Whether child born disabled as a result of incestuous rape can claim compensation for injury sustained as a victim of a crime of violence.
- *R (McNiece and others) v CICA [2017] EWHC 2*. Whether barring compensation on grounds of previous criminal convictions is ultra vires or in breach of the HRA.
- *R (A&B) v CICA [2017] EWHC 2*. Victims of trafficking denied compensation on grounds of previous criminal convictions. Whether 2012 Scheme is in breach of HRA or EU law.
- *R (CICA) v FTT and MB [2016] EWHC 2745 (Admin); [2016] A.C.D. 136*. Reviving compensation claim after 19 years.
- *Clifford v FTT [2016] EWCA Civ 1329*. Proper approach to rules on compensation for minor multiple injuries.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) (CP) [2014] EWCA Civ 1554; [2015] 2 W.L.R. 463*. Whether women who harm their unborn children by drinking to excess are criminally liable.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) (TS) [2014] EWCA Civ 65; [2014] P.I.Q.R. P10*. Whether offence under Dangerous Dogs Act is crime of violence.
- *R. (Colefax) v First-Tier Tribunal (Social Entitlement Chamber) [2014] EWCA Civ 945; [2015] 1 W.L.R. 35*. Right to claim compensation where two injuries sustained, one latent and one patent.
- *RS v CICA [2013] EWCA Civ 1040; [2014] 1 W.L.R. 1313*. Limitations on secondary victims and meaning of “immediate aftermath”.
- *Jones v FTT [2013] UKSC 19; [2013] 2 AC 48*. Meaning of “crime of violence” for the purposes of the Criminal Injuries Compensation Scheme.
- *SDM v CICA* (Upper Tribunal, 2012). Defending Criminal Injuries Compensation Scheme from challenge to its compatibility with ECHR in the context of honour killings.
- *R (Levenes) v CICA [2012] EWHC*. Challenge to CICA payments policy.
- *Rust-Andrews v FTT [2011] EWCA Civ 1148; [2012] PIQR P7*. How to value loss of chance in criminal injuries cases.

Prisons and Parole

- *R (Gourlay) v Parole Board [2020] 1 WLR 5344 (SC)*. Whether Parole Board should be treated as a court for costs purposes. Whether the rule that courts will not ordinarily pay costs in JR proceedings is still good law.
- *R (DSD & NBV) v Parole Board and others [2019] QB 285*: Judicial Review of the decision to release “black cab rapist” John Worboys.
- *R (Hussain) v Parole Board [2016] 1 WLR 4996*. Challenge to Parole Board’s backlog of hearings.
- *R (Haney) v SSJ [2013] EWHC 803 Admin; [2013] ACD 78*. Challenge to failure to transfer prisoners to open prisons.
- *R (McGetrick) v Parole Board [2013] 1 WLR 2064*. Interlocutory powers of Parole Board.
- *R (Hindawi) v Parole Board [2012] EWHC 3894 (Admin)*. Challenge to refusal of parole to convicted terrorist (attempted plane bomber) deportee.
- *R (Bourgass) v SSJ [2012] EWHC*. Judicial review of decision to keep convicted terrorist (who murdered police officer subsequent to the “ricin plot”) in maximum security conditions.
- *R (YG) v SSHD [2008] EWHC 1735 (Admin)*. Release of foreign national (stateless) prisoner.
- *R (A) v Huntercombe Young Offenders Institute and Another [2006] EWHC 2544 (Admin)*. Dispute as to the proper interpretation of sentencing provisions for young offenders.

Health

- *R (Brennan) v SLAM NHS Trust and others* (CA, 2016). Article 2 challenge to the lack of a system of mandatory independent investigations for deaths in hospitals (challenging *Antoniou v Central and North West London NHS Foundation Trust* [2015] 1 WLR 459).
- *R (AG) v NHS Redbridge [2012] UKHC*. Complex social care dispute involving partnership between local authority and PCT.
- *R (Care Principles Ltd) v Mental Health Review Tribunal and others [2006] EWHC 3194 (Admin); (2007) BMLR 145*. JR proceedings for

emergency stay to detain mental health patient in hospital.

- *Stone v South East Coast Strategic Health Authority and Others* [2006] EWHC 1668 (Admin); (2007) UKHRR 137 Successfully resisted convicted murderer Michael Stone's attempt to restrain publication of inquiry report.

Immigration

- *SSHD v Christy* [2019] 1 WLR 2017. Work permit rights for non-EU nationals.
- *R (Detention Action) v Lord Chancellor* [2015] EWHC (Admin). Whether fast track appeal system is lawful.
- *Oboh v SSHD* [2014] 1 W.L.R. 1680; [2014] Imm. A.R. 521. Right of relatives of EU nationals to reside in UK.
- *R (AB) v SSHD* [2013] EWHC 3453 (Admin); [2014] 2 C.M.L.R. 22. Alleged corruption by state officials in torture claim.
- *Aladeselu v SSHD* [2013] EWCA Civ 144. Rights of extended family members to consideration for residence permits.
- *AA (Nigeria) v Secretary of State for the Home Department* [2010] EWCA Civ 773; [2011] 1 WLR 564. Meaning of "false representations" in Immigration Rules.
- *GM (Eritrea) v SSHD* (and conjoined appeals) [2008] EWCA (Civ) 833. Guidance on the application of the burden of proof to asylum claimants from Eritrea.
- *AS (Pakistan) v SSHD* [2008] EWCA Civ 1118. Return of foreign national prisoner with British wife and child.
- *HC (Jamaica) v SSHD* [2008] EWCA Civ 37. Immigration and family life.
- *SF (Iran) v SSHD* [2007] EWCA Civ 227. Advising and representing Secretary of State in appeal to Court of Appeal on return of asylum seeker to Iran.

Tax

- *Earthshine* [2014] UKUT 271 (TCC); [2014] B.V.C. 522; [2014] S.T.I. 2290. Proper approach to considering allegations of MTIC fraud.
- *R (oao Glenn & Co (Essex) Ltd) v HMRC* [2010] EWHC 1469 (Admin); [2010] 4 All ER 998. Meaning of "document" in a range of statutory contexts.
- *Carousel (MTIC) fraud* (2006-2010) Advising on and coordinating HM Revenue and Customs' response to some 900 appeals and associated judicial reviews arising out of suspected carousel fraud; and appearing before tribunal as lead counsel.
- *CRC v Church of Scientology Religious Education College Inc* [2007] EWHC 1329 (Ch) Representing Commissioners for Revenue and Customs in multi-million pound appeal from VAT and Duties Tribunal.

Other

- *R (Adiatu) v HM Treasury* [2021] 2 All ER 484 – Challenge to exclusions from furlough scheme.
- *R (IWGB) v Mayor of London* [2020] 4 WLR 112. Whether removal of congestion charge exemption for minicab drivers is discriminatory.
- *Child Soldiers International v MOD* [2015] EWHC 2183 (Admin); [2016] 1 W.L.R. 1062. Age discrimination challenge to Army recruitment rules.
- *Woodman-Smith v Architects Registration Board* [2014] EWHC 3639 (Admin). Sanctions regime for architects.
- *Al Jeddah v SSHD* [2014] AC 253. Special advocate in SIAC proceedings following decision of Supreme Court. Home Secretary seeking to deprive appellant of citizenship.
- *Dowland v Architect's Registration* [2013] EWHC 893 (Admin); [2013] B.P.I.R. 566; (2013) 163(7558) NLJ 16. Power of ARB to deny re-entry on the register.
- *R (APIL) v Lord Chancellor* (2012). Challenge to Discount Rate.

Professional Regulatory & Discipline

Ben has directory recognition as a leading silk in this field. He has worked on cases concerning the healthcare sector throughout his career (as well as professional discipline, he works in the related fields of clinical negligence and medical employment disputes). He has vast knowledge of the work of clinical professionals and healthcare providers, having appeared in cases involving doctors, dentists, nurses, opticians, paramedics and other healthcare professions.

He is also instructed to deal with disciplinary disputes in non-health contexts, for example, in relation to the regulation of architects, actuaries, athletes, financial services, the police and universities.

He appears at internal disciplinary proceedings; hearings before regulatory bodies such as the MPTS, GDC and NMC; hearings in the FTT; and High Court challenges to the decisions of employers and regulators. He is one of the few UK practitioners to have appeared in the Financial Markets Tribunal of the DIFC (Dubai).

Notable Cases

- *GDC v TA* – Proper approach to non-cooperation in a case involving multiple registrants.
- *BW v APM (2018)*: Successful defence of public law challenge to operation of regulator.
- *RT v IFA (2018)*: Successful defence of claim alleging flaws in regulatory examination process.
- *X v DFSA (2018)*. Financial services regulatory appeal in Dubai International Finance Centre.
- *R (Mandic-Bozic) v British Association for Counselling and Psychotherapy (2017)* 154 BMLR 159. Advising regulatory body on proper approach to disciplinary case brought by two different regulators.
- *IPC v Pereira (2016)*. Paralympic anti-doping appeal.
- *Khastgir v ABM ULHB [2015] EWHC*. Injunction proceedings in disciplinary dispute.
- *Woodman-Smith v Architects Registration Board [2014] EWHC 3639 (Admin)*. Sanctions regime for architects.
- *Wilson v University Hospital Birmingham NHS Trust [2014] EWHC*. Injunction proceedings in disciplinary dispute.
- *Dowland v Architect's Registration [2013] EWHC 893 (Admin)*; [2013] B.P.I.R. 566; (2013) 163(7558) NLJ 16. Power of ARB to deny re-entry on the register.

Clinical Negligence

Ben has directory recognition as a leading clinical negligence silk and leads the clinical negligence team at Old Square Chambers. He has worked on cases concerning the healthcare sector throughout his career and has huge knowledge of the work of clinical professionals and healthcare providers. Having earlier in his career practised for over 15 years at 1 Crown Office Row, clinical negligence has always been an important part of his work. He has appeared for both claimants and defendants in the widest range of claims, including appearing as lead counsel in many claims relating to catastrophic injuries.

He has particular experience of claims involving: cerebral palsy; and other obstetric and neonatal injuries; catastrophic brain injury; neurosurgery (including spinal surgery, cauda equina and the treatment of Chiari malformation); bariatric surgery and malnutrition; GP failures, including delayed diagnosis of meningitis; orthopaedic, vascular and cardiothoracic surgery; and gynaecology. The list is far from exhaustive – over the course of his career, Ben has worked on cases concerning a vast range of aspects of clinical care.

Ben is experienced in and knowledgeable about the particular demands of military claims, appearing both for service personnel and MOD.

Ben regularly represents clinicians, healthcare providers and families at inquests where questions of clinical care are in issue. His human rights practice is particularly valuable in this context, especially if detention (either under mental health law or in prison) is in issue.

Ben was instructed by the Trust in the Alder Hey Inquiry into the retention of organs. He is currently instructed in a number of claims arising out of the Infected Blood Inquiry.

Ben is member of the PNBA. He is a contributing editor to *Professional Negligence and Liability*, dealing with the liability of clinical professionals. He chaired the 2017 and 2019 AvMA Cerebral Palsy and Brain Injury Conferences.

Notable Cases

- *Hughes v Rattan [2022] 1 LWR 1680 (CA)* – Direct non-delegable duty and vicarious liability in the context of dental practices.
- *Williams v Favretti and others [2022] EWHC (QB)* – Complex bariatric surgery claim against overseas defendant.
- *Pawley v Whitecross Dental Care Ltd [2022] 1 WLR 2577 (CA)* – Permissibility of joinder of a defendant against the wishes of a claimant.
- *King v Royal United Hospitals Bath NHS Foundation Trust [2021] PIQR P20* – Secondary victim claim arising from neonatal death.
- *Bass v MOD [2021] ICR 162*. Lead case in claims alleging failures to protect soldiers in Afghanistan from infectious disease.
- *Douse v Western Sussex NHS Trust [2019] EWHC 2294 (QB)*. Success at liability trial for claimant in contested cerebral palsy claim.
- *Eaglesham v MOD (2019)*. High-profile claim arising from Q fever chronic fatigue syndrome.
- *M v GOSH (2018)*. Wrongful birth claim, very high value.
- *HXM v MOD (HC, 2019)*. Liability for and consequences of neonatal stroke.
- *HD v CW (HC, 2018)*. Negligent bariatric surgery and malnutrition in patient with multiple sclerosis.
- *Asante v Guy's and St Thomas NHS Trust [2018] EWHC 2570 (QB)*:

Failure to treat osteomyelitis in patient with sickle cell disease.

- *Larner v Royal Brompton and Harefield NHS Trust* [2017] EWHC. Very high value claim arising from allegations of medical and surgical mismanagement of cardiological complications of Kawasaki disease.
- *Barlow v MOD* (HC, 2016). Complex claim considering whether claimant suffers from cerebral palsy or dyspraxia.
- *Morrison v MOD* (HC, 2016). Very high-value of claim arising from neonatal stroke following misdiagnosis of heart condition.
- *Adicott v Heart of England NHS Trust* (HC, 2015). Successful claim for DDH in claim brought over 35 years out of time.
- *Hill v North Bristol NHS Trust* (HC, 2015). Failure to diagnose breast cancer; formed part of major inquiry.
- *Scott v Frimley Park Hospital NHS Trust and others* [2015] EWHC. High value military claim arising from long-term management of compartment.
- *AE v ULH NHS Trust* (2013). Cerebral palsy claim settled for over £10 million.
- *Scott v MOD and others* (2013). High value military claim arising from diagnosis and treatment of compartment syndrome.
- *Bowden v Homerton University Hospital NHS Foundation Trust* [2012] EWCA Civ 1548. Successful appeal for claimant against interlocutory decision in relation to claim for negligence leading to liver transplant.
- *PW v N NHS Trust* (High Court, 2012-13). Defending claim in respect of misdiagnosis of leukaemia leading to bone marrow transplant, graft v host disease and avascular necrosis.
- *Grisko v Newham PCT* (High Court, 2012). High value settlement achieved for claimant who lost a foot due to negligent management of a diabetic foot.
- *CG v N NHS Trust* (High Court, 2012). Defending cerebral palsy claim.
- *Cassidy v Homerton University Hospitals NHS Trust* (High Court, 2012). Substantial compensation for alleged negligent joint replacement in young woman with arthritis.
- *ER v G PCT and others* (High Court, 2011). High value claim relating to delayed diagnosis of meningitis.
- *Inquest into the death of Onyi Chando* (2009). Represented family in inquest into death of infant under constant watch in hospital.
- *Inquest into the death of Joanne Lockham* (2009). Represented anaesthetist at high-profile inquest into death in childbirth due to failed intubation.
- *Inquest into the death of Tommy Payne* (2008). Represented Police Forensic Medical Examiner in inquest into death of police officer who committed suicide after being charged with corruption offences.
- *Royal Liverpool Children's Inquiry* (2000) Instructed by Trust for inquiry.
- *Re N* [1999] EWCA Civ 1452; (1999) Lloyd's Rep Med 257. Duty of care owed by Police Forensic Medical Examiner to rape victim.

Personal Injury

Ben is recognised as a leading personal injury silk and has long experience of dealing with personal injury claims. He appears as leading counsel in claims arising out of some of the most serious injuries, including when brain injury (both subtle and severe) is in issue.

Ben's extensive experience of clinical negligence claims (see separate entry) and his intimate knowledge of the healthcare sector provide him with great expertise in dealing with contested quantum issues. He has vast experience of working with medical experts and a detailed understanding of the interrelationship of medical expertise, care and occupational assistance and rehabilitation.

Ben has expertise in both employment and discrimination law and accordingly has notable expertise in dealing with mixed employment and personal injury cases arising out of stress, harassment and/or discrimination in the workplace.

Ben is experienced in and knowledgeable about the particular demands of military claims, appearing both for service personnel and MOD.

Ben has experience of large-scale mediation and of group actions, having been instructed by the MOD in the Kenyan Training Area claims group litigation and a range of claims arising out of the development of Q fever among service personnel in Afghanistan. He is currently instructed in a number of claims arising out of the Infected Blood Inquiry.

Ben must be considered one of the leading experts in the law of criminal injuries compensation at the bar, having appeared in almost every major appeal in the field in the past decade, including *A* (SC, exclusion of criminal convictions), *JT* (CA, same roof rule), *CP* (CA, fetal alcohol syndrome), *Jones* (SC, crime of violence) and *Y* (CA, status of unborn child). He is consulting editor to Miers on *Criminal Injuries Compensation* (OUP).

Ben is a member of PIBA and has written for JPIL.

Notable Cases

- *Bass v MOD* [2021] ICR 162. Test case arising out of development of Q fever among service personnel in Afghanistan.
- *AM v Mechantech Ltd and anor* (HC, 2022) – Very high value brain injury claim against defendants both in UK and overseas.
- *LS v South Yorks Fire and Rescue Service* (HC, 2020) – Very high value brain injury claim.
- *Momonakaya v MOD* (HC, 2018): Claim for psychiatric injury brought by Fijian soldier alleging racist bullying.
- *CF v X Football Club* (2018): Claimant by professional footballer against Championship club alleging negligent management of injury.
- *Douglas v UK Athletics* (2016). Claim by international triple jumper in respect of training accident overseas.
- *Scott v Frimley Park Hospital NHS Trust and others* [2015] EWHC. High-value military claim arising from long-term management of compartment syndrome.

CICA

- *A v CICA* [2021] 1 WLR 3746 (SC). Availability of compensation for victims of trafficking with criminal convictions.
- *CICA v FTT (SEC)* [2022] UKUT 103 (AAC) – Whether online grooming and abuse offences are crimes of violence under the Scheme.
- *Jones v FTT* [2019] 1 WLR 1391. *Re-opening decisions in changed circumstances*.
- *JT v FTT* [2019] 1 WLR 1313. Lawfulness of the “same roof rule” for historic abuse claims.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) and Y* [2017] 4 WLR 60. Whether child born disabled as a result of incestuous rape can claim compensation for injury sustained as a victim of a crime of violence.
- *R (McNiece and others) v CICA* [2017] EWHC 2. Whether barring compensation on grounds of previous criminal convictions is ultra vires or in breach of the HRA.
- *R (A&B) v CICA* [2017] EWHC 2. Victims of trafficking denied compensation on grounds of previous criminal convictions. Whether 2012 Scheme is in breach of HRA or EU law.
- *R (CICA) v FTT and MB* [2016] EWHC 2745 (Admin); [2016] A.C.D. 136. Reviving compensation claim after 19 years.
- *Clifford v FTT* [2016] EWCA Civ 1329. Proper approach to rules on compensation for minor multiple injuries.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) (CP)* [2014] EWCA Civ 1554; [2015] 2 W.L.R. 463. Whether women who harm their unborn children by drinking to excess are criminally liable.
- *Criminal Injuries Compensation Authority v First-Tier Tribunal (Social Entitlement Chamber) (TS)* [2014] EWCA Civ 65; [2014] P.I.Q.R. P10. Whether offence under Dangerous Dogs Act is crime of violence.
- *R. (Colefax) v First-Tier Tribunal (Social Entitlement Chamber)* [2014] EWCA Civ 945; [2015] 1 W.L.R. 35. Right to claim compensation where two injuries sustained, one latent and one patent.
- *RS v. CICA* [2013] EWCA Civ 1040; [2014] 1 W.L.R. 1313. Limitations on secondary victims and meaning of “immediate aftermath”.
- *Jones v. FTT* [2013] UKSC 19; [2013] 2 AC 48. Meaning of “crime of violence” for the purposes of the Criminal Injuries Compensation Scheme.
- *SDM v. CICA* (Upper Tribunal, 2012). Defending Criminal Injuries Compensation Scheme from challenge to its compatibility with ECHR in the context of honour killings.
- *R (Levenes) v. CICA* [2012] EWHC. Challenge to CICA payments policy.
- *Rust-Andrews v. FTT* [2011] EWCA Civ 1148; [2012] PIQR P7. How to value loss of chance in criminal injuries cases.

Sport

Ben has appeared in complex and high-profile litigation involving sports professionals for many years, in particular in cases brought by footballers, rugby players, and Olympic and Paralympic athletes.

He sits as an appeal panel member in International Paralympic Committee anti-doping appeals.

Ben appears in employment disputes involving sports professionals, for example representing an England U21 football manager in a post-termination contractual dispute with the FA.

He has experience of representing professional footballers in claims for personal injury and clinical negligence. These high-value claims draw on Ben’s strong PI and clinical negligence practice, together with an understanding of the professional career development and wage structure of elite sports professionals.

Outside the law, Ben is an RFU accredited rugby coach and a season ticket holder at Brighton & Hove Albion.

Inquests & Public Inquiries

Ben regularly represents clinicians, healthcare providers and families at inquests where questions of clinical care are in issue. His human rights practice is particularly valuable in this context, particularly if detention (either under mental health law or in prison) is in issue.

He also has substantial expertise in judicial review of coroners and coronial law, as well as in claims made under Article 2 ECHR.

Ben is currently instructed in a number of claims arising out of the Infected Blood Inquiry, having been instructed earlier in his career in the Alder Hey Public Inquiry.

HR Professional Support

Ben has practised in the fields of employment and disciplinary law for the last 20 years. He has represented both management and employees in a range of disciplinary and appeal hearings, and has advised managers, HR practitioners and boards as to the handling of employment and disciplinary issues. Ben has particular expertise in the public and health care sectors, but has worked with major private sector employers and regulators throughout his career. His practice has taken him from the Employment Tribunal to the Supreme Court, with a range of courts and tribunals along the way. He has been recognised by the legal directories as a leading silk in five different areas of practice.

Before taking silk, Ben was a member of the Attorney General's A Panel of Counsel. He is a Special Advocate and has extensive experience in dealing with issues of the greatest sensitivity. He sits as a panellist hearing anti-doping appeals for the International Paralympic Committee, and as a Recorder, hearing criminal cases in the Crown Court.

Notable Cases

Ben has appeared in over 50 reported cases – too many to list here. A small selection of significant recent work includes:

- *Hughes v Rattan* [2022] 1 WLR 1680 – Key decision on direct non-delegable duties of care and vicarious liability in dental settings.
- *R (Adiatu) v HM Treasury* [2020] 4 WLR 112. Challenge to exclusion of workers from furlough scheme.
- *Bass v MOD* [2020] 3 All ER 1054. Group litigation arising from infections contracted by military personnel in Afghanistan.
- *FCO v Bamieh* [2020] ICR 465. International jurisdiction in whistle blowing claim.
- *Gilham v SSJ* [2019] ICR 1655 (SC). Whistle blowing claim examining worker status of judges.
- *R (DSD & NBV) v Parole Board and others* [2019] QB 285: Judicial Review of the decision to release “black cab rapist” John Worboys.
- *Douse v Western Sussex NHS Trust* [2019] EWHC 2294 (QB). Successful claim for injury caused by Caesarean section.
- *JT v FTT* [2019] 1 WLR 1313. Lawfulness of the “same roof rule” for historic abuse claims.
- *HXM v MOD* (HC, 2019). Liability for and consequences of neonatal stroke.
- *X v DFSA* (2018). Financial services regulatory appeal in Dubai.
- *R (Gourlay) v Parole Board* [2017] 1 WLR 4107 (SC). Whether courts should pay costs in JR proceedings.

Ben Cooper KC

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Overview

Ben Cooper KC is listed as a **leading Silk** in *Chambers & Partners* and *The Legal 500*. *The Legal 500* describes Ben as **"a superlative technical lawyer, who can cut through difficult legal issues and really get to the heart of something complex quickly. He is also excellent with clients and approachable to lawyers of all levels within the team"**, while *Chambers & Partners* notes that Ben is a **"Formidable opponent and he has the judges eating out of the palm of his hand"**. Ben is described as an **"exceptional advocate"** who is **"very pleasant to deal with and... is able to weave together complex UK, human rights and domestic law"**. Ben is **"renowned for his expertise in injunctive relief issues and TUPE cases"** with **"an increasingly prominent reputation for his work on discrimination matters"**.

Ben's principal areas of practice are employment, discrimination and industrial relations. Ben acts for employers, employees and trade unions in all areas of employment, discrimination and industrial relations law. He regularly appears in the High Court, Court of Appeal, Employment Appeal Tribunal, employment tribunals and CAC.

Ben's clients include NHS bodies and private healthcare organisations, major trade unions, education institutions, major airlines, financial and other commercial organisations, central and local government, and claimants with complex or high-value claims.

Ben's other areas of practice include professional discipline, pensions, public law and human rights.

Within his principal and other areas of practice, Ben has particular expertise in:

- **Equal pay** – Ben is instructed on behalf of ASDA in the largest private sector equal pay claim of its kind, and acted for Claimants in multiple claims against HMRC, the Met Office and the MOD. He has appeared in a number of the leading appellate equal pay cases over the last 15 years.
- **Discrimination** – Ben has appeared in a number of significant appeals in discrimination claims, with a particular expertise in belief discrimination, and is frequently instructed in long or complex discrimination claims, especially those involving multiple discrimination strands.
- **Injunction proceedings** – Ben has extensive experience acting for both claimants and defendants in claims for interim and final injunctive relief to enforce rights arising from contracts of employment, including claims (especially by doctors) relating to compliance with disciplinary procedures, and restrictive covenant/breach of confidence claims.
- **Strike injunctions and industrial relations** – Ben has appeared in leading and high-profile cases in the High Court and Court of Appeal regarding strike injunctions, collective bargaining and related disputes. He also appears in recognition disputes before the CAC.
- **TUPE** – Ben appeared in the leading case on service provision change (*Metropolitan Resources Ltd v Churchill Dulwich & others*) and regularly acts in multiple claims concerning disputed transfers.
- **Human rights and public law** – Ben acted for Claimants in the group blacklisting litigation concerning the construction industry blacklist. He has appeared for claimants in successful claims under the HRA and for judicial review against public sector employers for breach of workers' human rights in the employment context.

Ben is a member of ELBA, ELA and ILS.

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Education & Safeguarding
- Employment & Discrimination
- Environment
- Finance
- Health & Safety & Environmental Law
- Inquests & Public Inquiries
- Insurance
- Media and Entertainment
- Product Liability
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer
- Sport

Recommendations

"He is a very approachable but formidable opponent and he has the judges eating out of the palm of his hand; he is an exceptional advocate, he is very pleasant to deal with and he is able to weave together complex EU law, human rights law and domestic law." "He is really on the ball and he is exceptional in his work." *Chambers & Partners 2022*

"He is a superlative technical lawyer, who can cut through difficult legal issues and really get to the heart of something complex quickly. He is also excellent with clients and approachable to lawyers of all levels within the team." *The Legal 500 2022*

Key contacts

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Employment & Discrimination

Ben is ranked as a leading silk by both *Chambers & Partners* and *The Legal 500*. Ben acts for employers, employees and trade unions across the whole range of employment, discrimination and industrial relations claims.

Ben appears regularly in employment claims in the High Court, Court of Appeal, EAT, employment tribunals and before the CAC.

As well as appearing regularly in long or complex discrimination claims in the employment tribunals, Ben has developed particular expertise, and has appeared in some of the leading cases, in the following areas:

- Equal pay;
- Belief discrimination and other complex or multiple discrimination claims and appeals;
- Employment status and associated claims for wages, holiday pay and national minimum wage claims;
- Claims for injunctive relief in relation to internal disciplinary and capability procedures;
- Industrial relations, including industrial action injunctions;
- TUPE;
- Employment claims involving breaches of human rights.

Notable cases

Equal pay

- *Brierley & others v ASDA Stores Ltd* (ongoing) – Acting for ASDA in largest private sector multiple equal pay claim of its kind. An appeal on comparability was heard by the Supreme Court in July 2020; litigation on equal value is ongoing before the ET.
- *McNeil & others v HMRC* [2020] ICR 515, CA – Acted for claimants in leading case on the test for “particular disadvantage” where disparate impact arises from length of service. At EAT stage ([2018] ICR 1529) Simler J also held that the Supreme Court’s judgment in *Essop & Naeem* [2017] ICR 640, SC, meant that insofar as the line of authority based on *Armstrong* [2006] IRLR 124, CA had been understood as allowing employers to rebut a finding of particular disadvantage by showing that the underlying reason for the particular disadvantage was not itself related to the protected characteristic, that could no longer be regarded as good law.
- *Wilson v Health & Safety Executive* [2010] IRLR 59, CA – justification where difference in pay is due to length of service.
- *Gutridge v Sodexo Ltd* [2009] IRLR 721, CA – application of TUPE to equality clause and effect of transfer on equal pay limitation period.
- *Home Office v Bailey & others* [2004] IRLR 192; [2005] 369 & 757, EAT & CA – test for disparate impact; partial justification.

Discrimination

- *Bailey v (1) Stonewall (2) Garden Court Chambers Ltd & another*, ET (July 2022); EAT (ongoing) – Acted for successful claimant, a barrister, in her high-profile claim against her chambers for discrimination because of her gender critical beliefs.
- *Forstater v CGD Europe & others*, [2022] ICR 1, EAT; and ET (June 2022) – Acted for the successful claimant in leading case on the threshold for protection of beliefs under the Equality Act 2010, establishing in the EAT that a belief that biological sex is a material reality that should not be conflated with gender or gender identity, is protected. Subsequently acted for the successful claimant at the substantive final hearing before the ET, establishing that she was unlawfully discriminated against because of her beliefs in the termination of her visiting fellowship and the failure to offer her employment.
- *City of York Council v Grosset* [2018] ICR 1492, CA – Acted for claimant in leading case on the test for discrimination arising from disability under Equality Act 2010, s15.
- *Adeshina v St George’s Healthcare NHS Trust & others* [2017] EWCA Civ 257; [2015] IRLR 704, EAT – Unreasonable conduct and minority protected characteristic insufficient to shift burden of proof in direct discrimination claim; correct test for bias in appeal panel for purposes of unfair dismissal (see EAT judgment).
- *Edie & others v HCL Insurance BPO Services Ltd* [2015] ICR 713, EAT – Indirect age discrimination claim arising from harmonisation of terms following TUPE transfer where longer-serving transferred employees lost more beneficial terms than others.
- *Okoro & another v Taylor Woodrow Construction Ltd & others* [2013] ICR 580, CA – application of limitation period to discrimination claim by agency workers in respect of a decision by the principal to ban them from its site.
- *Lisboa v Realpubs Ltd* [2011] EqLR 267, EAT – sexual orientation discrimination arising by requiring bar manager to work in environment that discriminated against gay customers.

Paul Adams

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Employment status, wages, etc

- *Harbron & others v Amazon & others* (ongoing) – Acting for claimants, who are Amazon drivers, in group action against Amazon and various delivery service providers, claiming holiday pay, national minimum wage and unauthorised deductions from wages.
- *Police Overtime Claims Litigation* (ongoing) – Acting for inspectors and sergeants who are controllers of Covert Human Intelligence Sources, and for a number of undercover officers, in this group litigation claiming for overtime pay arising from the particular requirements of their roles.
- *Aslam & others v Uber London Ltd & others* (settled, 2022) – Acted for claimants following remission to the ET by the Supreme Court to determine the extent and value of their entitlements to holiday pay and national minimum wage.

Industrial relations, including industrial action injunctions

- *National Union of Professional Foster Carers v CO & others* [2021] ICR 1397, CA– Acted for CO in appeal concerning the employment status of foster carers for the purposes of trade union listing under TULR(C)A, s2.
- *Brown v UCL*, [2021] IRLR 200, EAT– Acted for successful claimant in an appeal in a trade union detriment case concerning relationship between data protection law and union use of employer's email facilities and whether using of group email distribution lists for union communications involved misconduct which was properly separable from the trade union purpose of those activities.
- *Secretary of State for Justice v POA* [2018] EWHC 2897 (QB) – Inducement to strike; health and safety and strike action. (Substantive case was subsequently settled.)
- *Hartley & others v King Edward VI College* [2017] UKSC 39; [2017] ICR 774, SC – Application of the Apportionment Act 1870 to the collective agreement governing the terms of sixth form teachers and correct method of calculating deduction from pay for a day's strike action.
- *Argos Ltd v Unite the Union* [2017] EWHC 1959 (QB) – First case to consider the nature and extent of the information required to satisfy the new requirement for a summary of the trade dispute to be included on the ballot paper for industrial action. This case also upheld the union's right to strike in support of measures sought from a transferor with a view to protecting the position of employees post-transfer, distinguishing *UCLH v Unison* [1999] ICR 204, CA. An earlier hearing ([2017] EWHC 2046 (QB)) also emphasised the importance of giving 3 clear days' notice of an application unless there are exceptional circumstances – particularly in light of the increased notice of industrial action which employers now receive under changes introduced by the Trade Union Act 2016.
- *British Airline Pilots' Association v Jet2.com Ltd* [2017] ICR 475, CA – Case concerning the scope of statutory collective bargaining in respect of "pay, hours and holiday" pursuant to Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- *Unite v Fowler Welch– Coolchain Ltd* TUR1/786/2012 (2013, CAC) – determining correct bargaining unit; method of collective bargaining
- *Ritchie v UCATT* [2011] EWHC 3613 (Ch) – derivative action; trade union election procedure.
- *Talbot v General Federation of Trade Unions* [2011] EWHC 84 (QB) – construction of trade union rules.
- *British Airways plc v Unite* [2010] IRLR 809, HC & CA – a leading strike injunction case.

Injunctive relief in respect of internal disciplinary procedures

- *Al Mishlab v Milton Keynes Hospital NHS Foundation Trust* [2015] Med LR 120, QB; (No. 2) [2015] EWHC 3096, QB – case concerning the proper exercise of the power to exclude a doctor under MHPS in circumstances where relationships between the doctor and his surgical team had broken down, and (in second claim) circumstances in which the Court will intervene to grant injunctive relief to restrain a hearing to consider dismissal on grounds of relationship breakdown.
- *Chakrabarty v Ipswich Hospital NHS Trust* [2014] Med LR 379, QB – case concerning the process to be followed under MHPS when deciding whether to dismiss a doctor on grounds of capability in circumstances where NCAS have not advised that he is irremediable.
- *McMillan v Airedale NHS Foundation Trust* [2014] IRLR 803, CA – whether employer can increase sanction on appeal; whether employee can withdraw appeal after re-hearing of facts but before sanction decision.
- *Rosenbaum v Ealing Hospital NHS Trust* (2014, QB) – claim by consultant urologist for injunction to prevent disciplinary proceedings and lift exclusion/restrictions on practice.
- *Lu v Nottingham University Hospitals NHS trust* [2014] EWHC 690 (QB) – extent of employer's power to impose requirements on doctor to disclose historic incidents when obtaining patient consent.
- *Makhdum v Norfolk and Suffolk NHS Foundation Trust* [2012] EWHC 4015 (QB) – claim by consultant psychiatrist to prevent disciplinary hearing proceeding.
- *Hussain v Surrey & Sussex Healthcare NHS Trust* [2012] Med LR 163, QB – claim by consultant paediatrician for injunction to prevent disciplinary hearing proceeding.

Whistleblowing

- *Stewart v Foreign Commonwealth and Development Office* (ET, ongoing) – Acting for FCDO in whistleblowing claim by an employee who leaked information and emails to the BBC.
- *Jahangiri v St George's University Hospitals NHS Foundation Trust & another* (ET, ongoing) – Acting for NHS Trust in high-profile whistleblowing claim by consultant surgeon.
- *Beatt v Croydon Health Services NHS Trust* (ET, October 2020) – Acted for NHS Trust in relation to remedy in high-value whistleblowing claim.
- *City of London Corp v McDonnell* [2019] ICR 1175, EAT – Acted for respondent in appeal concerning the correct structure for the tribunal's analysis and necessary findings in a whistleblowing dismissal claim.
- *Day v Lewisham & Greenwich NHS Trust & another* (ET, 2018) – Acted for Trust in high profile whistleblowing claim by a junior doctor. Following Ben's cross-examination of the Claimant, the claim was withdrawn on terms which accepted that the ET would have been likely to find that the Claimant had not been treated detrimentally on the grounds of whistleblowing.
- *Zia & others v Brighton & Sussex University Hospital NHS Trust* (ET, 2016) – Acted for NHS Trust in complex and sensitive claim (and associated appeals) arising from misuse by employees (doctors) of illicit recording of legally privileged meeting and to what extent their (mis-)use of that material constitutes protected disclosures.
- *Pennal v BL Law Ltd* (ET, 2013) – Successfully defended firm of solicitors against seven-figure whistleblowing claim by former senior litigator.

Human rights in employment and industrial relations law

- *Forstater v CGD Europe & others*, [2022] ICR 1, EAT – Acted for the successful claimant in leading case on the threshold for protection of beliefs under the Equality Act 2010, establishing in the EAT that the protected characteristic of belief must be construed so as to give effect to Article 9 rights and, in particular, that a belief that biological sex is a material reality that should not be conflated with gender or gender identity, is protected.
- *The Construction Industry Vetting Information Group Litigation* (Blacklisting group litigation: High Court, settled May 2016) – Claims for conspiracy, misuse of private information, breach of the Data Protection Act 1998 and defamation arising from the operation of the construction industry blacklist from the 1970s to 2009. Ben acted for around 250 Claimants who were former members of Unite the Union, who together shared compensation of approximately £10.4 million.
- *Oxer-Patey v Commissioner of Police for the Metropolis* [2013] EWHC 4751 (QB) – Provision in public sector pension scheme discriminating between legitimate and illegitimate children is contrary to ECHR, Art 14 and unlawful under the HRA.
- *Police Federation v Chief Constable of Cleveland Police* (2012, Admin) – JR of police force's improper use of informal employment process to take hair sample from officer for drugs testing.

TUPE

- *Argos Ltd v Unite the Union* [2017] EWHC 1959 (QB); [2017] EWHC 2046 (QB) – implications of pending/anticipated TUPE transfer for union's right to call a strike in support of changes sought from transferor to protect workers' terms post-transfer.
- *BT Managed Services Ltd v Edwards & another* [2015] IRLR 994, EAT – whether employee on long-term absence and in receipt of PHI is assigned to organised grouping of employees that transferred.
- *Metropolitan Resources Ltd v Churchill Dulwich & others* [2009] IRLR 700, EAT – leading case on service provision change.
- *Guttridge & others v Sodexo Ltd* [2009] IRLR 721, CA – application of TUPE to equality clause and effect of transfer on equal pay limitation period.

Professional Regulatory & Discipline

Ben has extensive experience of the healthcare sector and has acted for practitioners in professional regulatory proceedings as well as in related civil and employment proceedings.

Notable cases

- Advising St George's University Hospitals NHS Foundation Trust on management of difficulties in its Cardiac Surgery team and claims arising.
- *Al Mishlab v Milton Keynes Hospital NHS Foundation Trust* [2015] Med LR 120, QB; (No. 2) [2015] EWHC 3096, QB – case concerning the proper exercise of the power to exclude a doctor under MHPS in circumstances where relationships between the doctor and his surgical team had broken down, and (in second claim) circumstances in which the Court will intervene to grant injunctive relief to restrain a hearing to consider dismissal on grounds of relationship breakdown.
- *Chakrabarty v Ipswich Hospital NHS Trust* [2014] Med LR 379, QB – case concerning the process to be followed under MHPS when deciding whether to dismiss a doctor on grounds of capability in circumstances where NCAS have not

advised that he is irremediable.

- *Rosenbaum v Ealing Hospital NHS Trust* (2014, QB) – claim by consultant urologist for injunction to prevent disciplinary proceedings and lift exclusion/restrictions on practice.
- *Lu v Nottingham University Hospitals NHS Trust* [2014] EWHC 690 (QB) – extent of employer's power to impose requirements on doctor to disclose historic incidents when obtaining patient consent.
- *Makhdom v Norfolk and Suffolk NHS Foundation Trust* [2012] EWHC 4015 (QB) – claim by consultant psychiatrist to prevent disciplinary hearing proceeding
- *Hussain v Surrey & Sussex Healthcare NHS Trust* [2012] Med LR 163, QB – claim by consultant paediatrician for injunction to prevent disciplinary hearing proceeding

Recent and current work

- *Harbron & others v Amazon & others* (ongoing) – Acting for claimants, who are Amazon drivers, in group action against Amazon and various delivery service providers, claiming holiday pay, national minimum wage and unauthorised deductions from wages.
- *Brierley & others v ASDA Stores Ltd* (ongoing) – Ben is instructed on behalf of ASDA in the largest private sector multiple equal pay claim of its kind. An appeal on comparability was heard by the Supreme Court in July 2020; litigation on equal value is ongoing before the ET.
- *Police Overtime Claims Litigation* (ongoing) – Acting for inspectors and sergeants who are controllers of Covert Human Intelligence Sources, and for a number of undercover officers, in this group litigation claiming for overtime pay arising from the particular requirements of their roles.
- *Bailey v (1) Stonewall (2) Garden Court Chambers Ltd & another*, ET (July 2022); EAT (ongoing) – Acted for successful claimant, a barrister, in her high-profile claim against her chambers for discrimination because of her gender critical beliefs.
- *Forstater v CGD Europe & others*, [2022] ICR 1, EAT; and ET (June 2022) – Acted for the successful claimant in leading case on the threshold for protection of beliefs under the Equality Act 2010, establishing in the EAT that a belief that biological sex is a material reality that should not be conflated with gender or gender identity, is protected. Subsequently acted for the successful claimant at the substantive final hearing before the ET, establishing that she was unlawfully discriminated against because of her beliefs in the termination of her visiting fellowship and the failure to offer her employment.
- *National Union of Professional Foster Carers v CO & others* [2021] ICR 1397, CA – Acted for CO in appeal concerning the employment status of foster carers for the purposes of trade union listing under TULR(C)A, s2.
- *Brown v UCL* [2021] IRLR 200, EAT – Acted for claimant in an appeal in a trade union detriment case concerning relationship between data protection law and union use of employer's email facilities and whether using of group email distribution lists for union communications involved misconduct which was properly separable from the trade union purpose of those activities.
- *McNeil & others v HMRC* [2020] ICR 515, CA – Acted for claimants in leading case on the test for 'particular disadvantage' where disparate impact arises from length of service. At EAT stage ([2018] ICR 1529), Simler J also held that the Supreme Court's judgment in *Essop & Naeem* [2017] ICR 640, SC meant that insofar as the line of authority based on *Armstrong* [2006] IRLR 124, CA had been understood as allowing employers to rebut a finding of particular disadvantage by showing that the underlying reason for the particular disadvantage was not itself related to the protected characteristic, that could no longer be regarded as good law.
- *City of London Corp v McDonnell* [2019] ICR 1175 – Acted for respondent in appeal concerning the correct structure for the tribunal's analysis and necessary findings in a whistleblowing dismissal claim.
- *City of York Council v Grosset* [2018] ICR 1492, CA – Acted for claimant in leading case on the test for discrimination arising from disability under Equality Act 2010, s15.

Simon Cheetham KC

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Overview

Simon's principal areas of practice are employment, discrimination and industrial relations, but he also practises in the areas of data protection, pension law and professional regulatory and discipline. His practice covers both private and public sectors, including education, financial services and healthcare. He has been a fee-paid employment tribunal judge since 2002, is a CEDR trained mediator and undertakes investigations.

He appears regularly in the Court of Appeal, High Court, Employment Appeal Tribunal, employment tribunals and CAC. He has written and lectured extensively on employment and discrimination law and data protection and has been recognised as a leading practitioner in employment law by *Chambers & Partners*, *The Legal 500* and *Who's Who Legal* for many years.

Before coming to the Bar, he qualified and worked as a teacher.

Employment & Discrimination

Simon has been recognised by *Chambers & Partners* and *The Legal 500* as a leading practitioner in employment law for many years. He has extensive experience of employment law and has frequently been instructed in complex and high-value claims. His practice covers the full range of employment cases, including discrimination, industrial relations, TUPE, whistle-blowing and contractual disputes. He was heavily involved in holiday pay litigation for several years.

Simon represents both employers and employees and has a wide client base. He frequently acts for NHS Trusts, public authorities (including central and local government), as well as for universities, financial institutions and corporate employers of all sizes. He has been instructed by and on behalf of numerous trade unions and has represented individuals in all types of employment claims – past clients have included Sir Elton John and Selina Scott.

Reported and significant cases include:

- *Baker et al v Post Office Limited [2022]*: instructed by the CWU on behalf of sub-postmasters in a tribunal claim that considered their employment status under the Working Time Regulations.
- *Hammersmith & Fulham LBC v Keable [2022] IRLR 4*: acting for local authority in ET and EAT in claim brought by a political activist employee dismissed for voicing views about Zionism outside work.
- *Corsham v Police and Crime Commissioner for Essex [2020] ICR 268, HC*: acting for claimants, where the police authority had failed to advise retiring officers, who were about to be employed in civilian roles, about taxation of pensions.
- *BA v BALPA [2020] IRLR 43, CA*: acting for BALPA in BA's High Court application for injunction and subsequent appeal to the CA; both courts held that BALPA's description of "categories" of employees under TULR(C)A 1992 s.226A was correct.
- *Idu v East Suffolk and North Essex NHS Foundation Trust [2020] ICR 683, CA*: acting for an NHS Trust in the CA and EAT – [2019] ICR 623 – in appeals concerning the meaning of "professional misconduct" in MHPs.
- *Dronsfield v University of Reading UKEAT/0255/18*: successfully representing the University in two appeals to the EAT – the first is reported at [2016] ICR 1107 – regarding a claim brought by a lecturer,

Expertise

- Data Protection & Information Law
- Employment & Discrimination
- Investigations
- Mediation
- Pensions
- Professional Regulatory & Discipline

Recommendations

"He is particularly strong on the detail and he is good for complicated whistle-blower claims. Nervous witnesses and anxious clients are put at ease by him." "If I have ever have a sticky problem I pick up the phone to him and he is happy to talk." *Chambers & Partners 2022*

"Simon is a first-class advocate. Extremely bright and brings real skill to complex cases with a lot of detail. Particularly skilled at complex, sensitive whistleblowing cases, very responsive and works cases hard. Always impeccably prepared, Simon has phenomenal client care skills, combining an authoritative presence with an approachable and personable manner." *The Legal 500 2022*

Key contacts

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Paul Adams

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who had been dismissed for not disclosing a relationship with a student.

- *R (on the application of Boots Management Services Ltd) v CAC* [2017] IRLR 355, CA: acting for the PDAU in CA in an appeal from the High Court – [2014] IRLR 887 – arising out of a CAC decision on union recognition and “sweetheart” unions.
- *Lock v British Gas Trading Ltd* [2017] ICR 1, CA: acting for the Claimant throughout this leading case on pay in respect of annual leave, which went from the ET to the CJEU ([2014] ICR 813), which held that commission was part of a worker’s normal remuneration, then back to the ET ([2015] IRLR 438) and on appeal to the EAT ([2016] ICR 503) and CA.
- *Fulton v Bear Scotland Ltd* UKEATS/0010/16; representing the claimants in the Scottish EAT concerning the three-month rule on claims for unlawful deductions.
- *Commissioner of Police of the Metropolis v Shaw* [2012] ICR 464, EAT: acting for Commissioner in appeal; Underhill P’s judgment sets out principles to be applied by employment tribunals in the award of aggravated damages.
- *Wardle v Credit Agricole Corporate & Investment Bank* [2011] ICR 1290, CA: acting for claimant in high-value City claim for unfair dismissal and victimisation; the CA considered the principles involved in awarding an uplift on compensation and how the tribunal should approach long-term loss.
- *Orr v Milton Keynes Council* [2011] ICR 704, CA: acting for Council in unfair dismissal/race discrimination claim where CA considered what an employer “knows” for the purposes of a fair dismissal.
- *Rolls Royce v Unite the Union* [2009] IRLR 576, CA; whether use of length of service in collectively agreed redundancy exercises could be justified in age discrimination claim.
- *Fraser v HLMAD Ltd* [2006] ICR 1395, CA: choice of jurisdiction in wrongful dismissal/breach of contract claims.

Memberships

- Employment Law Bar Association
- Employment Lawyers’ Association
- Industrial Law Society

Publications & Training

- Atkins Court Forms. Co-contributor (with [Victoria Webb](#)) to 2013 edition of *Employment Law* volume
- *Equality and Discrimination – the New Law* (co-author with Brian Doyle et al, Jordans, July 2010)
- *Age Discrimination – the New Law* (Jordans, 2006)
- Articles for *New Law Journal*, ELA Briefing

Simon has many years’ experience of providing training on all aspects of employment, discrimination and industrial relations law at conferences, lectures and seminars, both in-house, for ELA and for leading training providers. He has been a speaker at the annual conference for employment judges and has been a trainer for the employment judges in London South.

Pensions

Simon advises regularly on pensions and in particular on issues arising from public sector pension schemes, including their discriminatory impact, and on pension losses in high-value employment cases. He has been acting for the BMA in its employment tribunal claims concerning the discriminatory effect of the transitional provisions in the NHS Pension Scheme.

Reported and significant cases include:

- *Sanderson v NHS Business Services Authority* [2020] ICR 905: acting for family of locum GP in High Court over death in service benefits and whether she was in “pensionable employment” at the time of her death.
- *Corsham v Police and Crime Commissioner for Essex* [2020] ICR 268, HC: acting for claimants, where the police authority had failed to advise retiring officers, who were about to be employed in civilian roles, about taxation of pensions.
- *Ellis v Cabinet Office* [2015] Pens.LR 379, CA: acting for prison officer member in an appeal concerning the right to an unreduced pension on transfer from public to private sector.
- *Oxer-Patey v Commissioner of Police of the Metropolis* [2013] EWHC 4751 (QB): acting for the Commissioner in High Court proceedings considering Police Pensions and Convention Rights.

Professional Regulatory & Discipline

Simon has advised and represented health professionals and their employers in proceedings before disciplinary panels, professional bodies and in the courts (including injunctions). He has presented the management case at a number of internal MHPS hearings for NHS Trusts. He also has extensive experience of the NHS through frequent representation in the employment tribunal. His experience of regulators includes the MPTS, GPhC and the NMC.

In addition, Simon has acted both for academics and for colleges and universities in internal disciplinary procedures. This includes acting as an investigating officer to determine whether conduct proceedings should be commenced. His recent investigations have been carried out for the Universities of Cambridge, Plymouth and Warwick. He was the chairman of the Royal Mail National Appeals Panel (2011 to 2018), which hears internal appeals brought by trade union officials who have been dismissed or disciplined.

Reported and significant cases include the following:

- *Idu v East Suffolk and North Essex NHS Foundation Trust [2019] EWCA Civ 1649*; acting for an NHS Trust in the CA and EAT – [2019] ICR 623 – in appeals concerning the meaning of “professional misconduct” in MHPS.
- *Jahangiri v St George’s University Hospitals NHS Foundation Trust [2018] Med. L.R. 625, HC*: representing the Trust in a high-profile injunction requiring the Trust to lift an exclusion.
- *Al-Obaidi v Frimley Health NHS Foundation Trust [2018] EWHC 2494 (QB)*: representing the Trust in injunction proceedings arising out of restrictions on practice.

Data Protection

Simon’s data protection practice was largely built on his extensive work on the introduction of the GDPR, which included delivering numerous lectures and seminars for ELA, ILS and in-house.

He regularly advises public bodies (both central and local government), employers and trade unions, as well as individuals, on the full range of data protection issues around processing and disclosure. Recent work includes advising an executive agency of the Government on the serious harm test, advising a trade union on data processing issues arising in elections and defending a GP surgery in a claim brought by a patient.

Cases include:

- *Damavand Media Ltd v DMA Media Ltd [2021] EWHC 3164 QB*: acted for claimants in substantial GDPR and breach of contract claims involving an Iran-focused TV channel.

Investigations

Simon has over 30 years’ experience as an employment lawyer and 20 years as an employment judge. During that time, he has carried out a range of independent investigations, ranging from allegations of discrimination, bullying and harassment to serious financial irregularities, regulatory and election procedure breaches.

As one of his practice areas is data protection, he has particular expertise in dealing with investigations that concern the use of information, as well as issues of privacy and confidentiality.

Simon is a qualified mediator and is also a judicial mediator. He spent a number of years as a teacher and lecturer before coming to the Bar, so has a particular interest in the education sector.

Examples

Higher education sector:

- A high-profile investigation into allegations of bullying and sexual harassment against the Chair of a University Board, which included allegations brought by the Vice Chancellor. The investigation involved interviewing members of the Board, staff and students.
- An investigation into serious and complex allegations of financial irregularities by the head of a university faculty, which involved third party external funding and allegations of fraud.
- Investigating allegations of bullying and favouritism within an Oxbridge department, which were brought against the head of department and a

senior colleague and involved interviewing more than 30 academics and administrative staff.

Private sector:

- Carrying out parallel investigations over a 6 month period into serious complaints brought by former senior officers of a global professional membership body.
- Conducting an investigation for a leading barristers' chambers into allegations of discrimination, bullying and harassment.
- Investigating allegations of race discrimination within an international management consultancy, which included interviewing witnesses outside the UK.

Trade unions:

- Carrying out a full investigatory review of a high-profile election for a major trade union, where there were alleged irregularities; this included making recommendations for the conduct of future elections. The report was published [here](#).

Media:

- Conducting an investigation into complaints about a lack of diversity and discrimination within the film and television industry.
- Carrying out a series of investigations into widely-reported allegations of discrimination (including sexual harassment) and serious misconduct in the newsroom of a national newspaper.

Mediation

Simon trained as a mediator at CEDR and has since acted in a range of mediations arising from workplace disputes and he is also a judicial mediator in the employment tribunal. His long experience as an employment judge is particularly valued in mediations, as he can provide a realistic assessment of how a tribunal would approach the dispute in question.

Recent Mediations

- Separate disputes involving an airline, where Simon has been retained by a leading firm of solicitors to act as mediator in high-value claims.
- A mediation involving a chief executive, where the successful outcome had to address complex pension and company law issues.
- Mediating successfully in an acrimonious dispute between members of a family who were co-directors and employees of a company.

Recent and current work

In the last year, Simon has:

- Carried out a full investigatory review of a high-profile election for a major trade union, where there were alleged irregularities; this included making recommendations for future elections.
- Represented BALPA in the High Court and Court of Appeal in a high-profile injunction application brought by BA to prevent strike action (*BA v BALPA*).
- Acted for an NHS Trust in a Court of Appeal hearing concerning the meaning of "professional conduct" in *MHPS (Idu v East Suffolk and North Essex NHS Foundation Trust)*.
- Acted for police officers in an appeal from the Pensions Ombudsman, where the police authority failed to inform retiring officers, who were about to re-employed, about taxation of pensions (*Corsham v Police & Crime Commissioner for Essex*).
- Represented the BMA in its age discrimination challenge to the public sector pension reforms.

Notable Cases

- *Corsham v Police and Crime Commissioner for Essex [2020] ICR 268*, HC: acting for claimants, where the police authority had failed to advise retiring officers, who were about to be employed in civilian roles, about taxation of pensions.
- *Sanderson v NHS Business Services Authority [2020] ICR 905*: acting for family of locum GP in High Court over death in service benefits and whether she was in "pensionable employment" at the time of her death.
- *BA v BALPA [2020] IRLR 43*, CA: acting for BALPA in BA's High Court application for injunction and subsequent appeal to the CA; both courts held that BALPA's description of "categories" of employees under

TULR(C)A 1992 s.226A was correct.

- *Idu v East Suffolk and North Essex NHS Foundation Trust* [2020] ICR 683, CA; acting for an NHS Trust in the CA and EAT – [2019] ICR 623 – in appeals concerning the meaning of “professional misconduct” in MHPS.
- *Dronsfield v University of Reading* UKEAT/0255/18: successfully representing the University in two appeals to the EAT – the first is reported at [2016] ICR 1107 – regarding a claim brought by a lecturer, who had been dismissed for not disclosing a relationship with a student.
- *Jahangiri v St George’s University Hospitals NHS Foundation Trust* [2018] Med. L.R. 625, HC: representing the Trust in a high-profile injunction requiring the Trust to lift an exclusion.
- *R (on the application of Boots Management Services Ltd) v CAC* [2017] IRLR 355, CA: acting for the PDAU in CA in an appeal from the High Court – [2014] IRLR 887 – arising out of a CAC decision on union recognition and “sweetheart” unions.
- *Lock v British Gas Trading Ltd* [2017] ICR 1, CA: acting for the Claimant throughout this leading case on pay in respect of annual leave, which went from the ET to the CJEU ([2014] ICR 813), which held that commission was part of a worker’s normal remuneration, then back to the ET ([2015] IRLR 438) and on appeal to the EAT ([2016] ICR 503) and CA.
- *Fulton v Bear Scotland Ltd* UKEATS/0010/16; representing the claimants in the Scottish EAT concerning the three-month rule on claims for unlawful deductions.
- *Ellis v Cabinet Office* [2015] Pens.LR 379, CA: acting for prison officer member in an appeal concerning the right to an unreduced pension on transfer from public to private sector.
- *Commissioner of Police of the Metropolis v Shaw* [2012] ICR 464, EAT: acting for Commissioner in appeal; Underhill P’s judgment sets out principles to be applied by employment tribunals in the award of aggravated damages.
- *Wardle v Credit Agricole Corporate & Investment Bank* [2011] ICR 1290, CA: acting for claimant in high-value City claim for unfair dismissal and victimisation; the CA considered the principles involved in awarding an uplift on compensation and also how the tribunal should approach long-term loss.
- *Orr v Milton Keynes Council* [2011] ICR 704, CA: acting for Council in unfair dismissal/race discrimination claim where CA considered what an employer “knows” for the purposes of a fair dismissal.
- *Rolls Royce v Unite the Union* [2009] IRLR 576, CA; whether use of length of service in collectively agreed redundancy exercises could be justified in age discrimination claim.
- *Fraser v HLMAD Ltd* [2006] ICR 1395, CA: choice of jurisdiction in wrongful dismissal/breach of contract claims.

Ijeoma Omambala KC

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Overview

Ijeoma Omambala KC is a highly experienced barrister who inspires enormous loyalty and confidence in her client base.

As well as providing excellent advocacy services, Ijeoma provides high-quality legal and strategic advice in connection with all aspects of the management and litigation of complex cases.

Ijeoma specialises in employment law.

She has particular expertise in difficult and/or factually complex, high-profile and high-value discrimination and whistleblowing claims and of public and private sector equal pay claims, including multi-claimant equal pay litigation.

Ijeoma's employment law practice includes experience of complex TUPE matters, High Court cases involving restrictive covenants, bonuses and executive severance.

Ijeoma also has expertise in data protection, business immigration and professional regulatory matters.

In addition, Ijeoma has continued to develop her practice as a mediator conducting a number of multi-day mediations primarily in the finance, health and local government sectors.

Ijeoma is an accredited Advocacy trainer for Gray's Inn and was elected a bencher of Gray's Inn in January 2014.

Ijeoma is a Visiting Lecturer in Public Procurement Law at the University of Nottingham.

Relevant cases include:

- A consultant bringing injunctive proceedings in the High Court to challenge an allegedly unlawful suspension;
- A doctor seeking to challenge by way of judicial review an FHSAA decision to permit an LHB to proceed with an allegation of falsification of patient records in circumstances where GMC was already considering the issue and an FTP panel had been convened;
- Acting for an NHS Trust in tribunal proceedings brought by a doctor who had been subject to an interim order and later sought to challenge the requirement on him to re-train on remedial grounds by alleging unlawful race discrimination and harassment in respect of the method by which his employer proposed to deliver that re-training;
- Advising a Post-Graduate Deanery in respect of the removal of a disabled trainee GP's national training number and placement on a GP Training Scheme;
- Appearing for the health professional in an appeal brought by the CHRE in relation to a failure to find impairment of fitness to practice by the NMC : CHRE v NMC & Grant [2011] EWHC 927 (Admin);
- Challenge to the withdrawal of a CT1 placement by a disabled doctor and consideration of the scope of section 120(7) of the Equality Act 2010.

Memberships

Justice, ELBA, ILS, DLA

Expertise

- Administrative & Public Law
- Clinical Negligence
- Data Protection & Information Law
- Education & Safeguarding
- Employment & Discrimination
- HR Professional Support
- Inquests & Public Inquiries
- Investigations
- Professional Regulatory & Discipline

Recommendations

"She is very calm, collected, reliable and really easy to deal with." "She thinks about every angle of a case and brings the whole thing together in impressive arguments and presentations." "She is personable, she is passionate about discrimination cases and she really knows her stuff." Chambers & Partners 2022

"Thoughtful, down to earth, approachable and always calm. She knows her stuff on discrimination in particular. Ijeoma is a real team player and happy to get stuck in as needed, notwithstanding her recent KC status! Ijeoma approaches complex situations with good sense and, importantly, good humour." The Legal 500 2022

"Old Square are my preferred set of chambers and have been throughout my career. They will always try to accommodate needs and the set are very down to earth and approachable. We have developed very good working relationships with the team over the years." The Legal 500 2021

Key contacts

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Ijeoma is a highly regarded and very experienced employment and discrimination law specialist. Her directory entry in *The Legal 500* 2015 states **“Simply outstanding and flawless”**. *Chambers & Partners* 2016 says **“she has a nice combination of charm and aggression.”**

Ijeoma’s employment law practice includes significant experience of complex TUPE matters, industrial action and high court litigation in relation to restrictive covenants and alleged breaches of duty.

Her discrimination expertise covers the whole range of protected characteristics. She has advised and represented Claimants, Respondents and Trade Unions in claims involving allegations direct, indirect discrimination, harassment and victimisation.

Cases include:

- Judicial review proceedings concerning a disabled student seeking reasonable adjustments to enable completion of a time-limited post-graduate course of study.
- Advising a group of students in relation to allegedly discriminatory course entry requirements.
- Advising a University in respect of capability and conduct proceedings against a senior academic.
- Advising on the terms and conditions applicable to a seconded employee.
- Advising a local authority on the potential impact of the public sector equality duty on its planned primary school provision.
- Advising an academy school in relation to its obligations to make reasonable adjustments for disabled students.

Her significant reported cases include:

- *Onyango v Berkeley t/a Solicitors* IRLR 338 EAT
- *Council for Healthcare Regulatory Excellence v (1) Nursing & Midwifery Council (2) Paula Grant* – ACD 72
- *Coventry City Council v M Nicholls & Others* – IRLR 345
- *Unison v First Secretary of State* – IRLR 926
- *H Aziz v Crown Prosecution Service* EWCA Civ 1136
- *Brooks v Commissioner of Police for the Metropolis* – UKHL 24
- *Yearwood v Commissioner of Police for the Metropolis* – ICR 1660
- *Chief Constable of Bedfordshire Police v C S Liversidge* – ICR 1135
- *Chief Constable of Lincolnshire Police v Stubbs* – ICR 547
- *Chan v London Borough of Hackney* – ICR 1014
- *Cleveland Ambulance NHS Trust v Blane* – ICR 851
- *Orlando v Didcot Power Station Sports & Social Club* – IRLR 262
- *Photostatic Copiers (Southern) Ltd v Okuda* – IRLR 11

Injunctions

Ijeoma has acted for Claimants and Defendants in both the Chancery and Queen’s Bench Divisions of the High Court. She has considerable experience of advisory work, drafting and advocacy in a wide range of claims for injunctive relief. Ijeoma regularly advises clients in claims arising from confidentiality covenants, area and non-dealing covenants, non-solicitation and non-entitlement covenants in contracts of employment and other commercial agreements.

Ijeoma has developed an interest in injunctive proceedings in doctors’ professional and personal conduct cases.

Industrial Action

Ijeoma has been instructed to advise both employer and trade union sides in potential and actual industrial action matters. Her most recent experience is within the automotive, transport and health sectors.

Financial Services

Ijeoma has acted for individual employees, groups of employees and for employers in the financial services sector. As well as the more usual employment tribunal claims, Ijeoma has advised and provided representation and support for Claimants and Defendants in equal pay claims, PHI, bonus cases, restrictive covenant, breach of contract and whistleblowing claims. She has also advised and represented individuals who find themselves the subject of interest from their regulator.

Local Government

Ijeoma has drafted and reviewed amendments to disciplinary, grievance, sickness absence, social media use, privacy, data protection and redundancy procedures to ensure compliance with relevant legislation.

She has also drafted amendments to maternity, paternity and carers leave provisions and provided advice on the proper application of these policies and procedures.

Advice that she has given and continues to give includes:

- Advice on proposed amendments to terms and conditions of employment such as varying hours of work, location of work, the withdrawal or reduction of particular allowances such as paid study leave, car user allowances, unsocial hours payments;
- Advice on the enforceability of restrictive covenants in the contracts of senior managers;
- Advice on the implementation and proper conduct of disciplinary and capability procedures in relation to senior managers in local government;
- Advice on the lawfulness and application of voluntary severance and early retirement provisions to senior management team members in local government;
- Advice on potential indirect sex and age discrimination arising from the Local Government Pension Scheme;
- Advice to local authorities on the extent of the public sector equality duties in relation to the provision of children's services, leisure facilities and advisory services;
- Advice on the employment law implications of legislation relating to voluntary aided, foundation, maintained and other schools;
- Advice in relation to the application of TUPE local authority tendering and service provision change exercises.

Ijeoma has recently compromised a constructive dismissal and disability discrimination complaint arising from alleged harassment and less favourable treatment in the assessment and allocation of performance related pay which was brought against a London Borough by a senior employee where there were significant litigation risks.

She successfully advocated and achieved compromise in a complaint of unlawful race victimisation brought against a London borough and a senior employee personally in circumstances where the original discrimination claims brought by the Claimant were unmeritorious but subsequent conduct by the employer gave rise to a persuasive complaint of victimisation. The individual Respondent was initially extremely reluctant to settle notwithstanding the very high likelihood of findings of victimisation being made against them.

In the Employment Appeal Tribunal Ijeoma overturned a finding of disability discrimination made against the governing body of a school in Bristol which had dismissed a teacher on capability grounds.

In the employment tribunal, she successfully defended a serious complaint of direct sex discrimination, harassment and victimisation brought by the human resources director of a metropolitan local authority.

She also has comprehensive experience of both single claimant and multi-claimant equal pay litigation; acting both for and against local authorities and has advised and litigated to judgment like-work, work rated as equivalent and equal value claims. She has conducted preliminary hearings on the full range of jurisdictional issues and conducted complex genuine material factor defence hearings.

Education

Ijeoma has considerable experience of advisory work and litigation in the schools, university and higher and further education sectors.

She is instructed on behalf of individuals and trade union clients as well as by schools, academies, universities and colleges in a wide range of governance and employment-related matters.

Ijeoma has provided advice and representation to prospective students on entrance requirements, reasonable adjustments, grading and academic disputes. She also regularly advises workers, employees and institutions in relation to safeguarding matters, grading and contractual disputes, redundancy, industrial action and collective disputes, complex grievance, harassment and disciplinary cases including those involving whistleblowers and/or allegations of unlawful discrimination and victimisation across the protected characteristics.

In the university and further and higher education sectors, Ijeoma has acted as adviser to the Board of Visitors. She has been instructed to undertake grievance, bullying and harassment investigations and to make appropriate recommendations. In addition, Ijeoma has been instructed by a number of universities in judicial review and injunction proceedings. She has also acted for students in judicial review and breach of contract claims.

Cases

- Judicial review proceedings concerning a disabled student seeking reasonable adjustments to enable completion of a time-limited post-graduate course of study;
- Advising a group of students in relation to allegedly discriminatory course entry requirements;
- Advising a university in respect of capability and conduct proceedings against a senior academic;
- Advising on the terms and conditions applicable to a seconded employee;
- Advising a local authority on the potential impact of the public sector equality duty on its planned primary school provision;
- Advising an academy school in relation to its obligations to make reasonable adjustments for disabled students.

Public Procurement

Her practice includes public procurement and public law work. Ijeoma advises economic operators and public authorities primarily in relation to the public contracts and utilities regimes. Recent instructions include advising on the regulation of dynamic purchasing systems, the legality of an extension to a framework agreement and on the applicability of exceptions under the Public Contracts Regulations 2015.

As well as providing training to procurement professionals and to lawyers, Ijeoma has written and lectured on public procurement matters. Recently, with colleague [Nadia Motraghi](#), she published a paper on *"The Implications of Brexit for TUPE in Public Procurement"* 1 Public Procurement Law Review. In June 2017 she co-presented a paper on *"Pursuing Social policies Post Brexit"* at the Global Revolution VIII Public Procurement Policy Conference hosted at the University of Nottingham.

Health Care Law

Ijeoma has a detailed understanding of the regulatory regime as it affects health practitioners. She is also very familiar with the contractual regime which applies to NHS staff.

In 2010 Ijeoma was appointed as a legal assessor to the HCPC and the GMC (now MPTS). In that role she provides advice on all stages of the fitness to practice process and has been the legal assessor on many sensitive and complex conduct and capability interim, review and final fitness to practice hearings.

Ijeoma has undertaken a significant number of cases involving regulatory bodies concerned with health professionals including the GMC, NMC, HCPC, and the GDC.

She provides advice and representation to health professionals, their employers and training providers in relation to status issues, contractual disputes, Performers List, disciplinary and capability matters, and in proceedings before the High Court.

She is regularly instructed by NHS Trusts and other NHS employers in discrimination, whistle-blowing and employment related cases in the employment tribunal and in the High Court where concerns about a professional's fitness to practice and/or capability are in issue.

Relevant cases include:

- A consultant bringing injunctive proceedings in the High Court to challenge an allegedly unlawful suspension;
- A doctor seeking to challenge by way of judicial review an FHSAA decision to permit an LHB to proceed with an allegation of falsification of patient records in circumstances where GMC was already considering the issue and a FTP panel had been convened;
- Acting for an NHS Trust in tribunal proceedings brought by a doctor who had been subject to an interim order and later sought to challenge the requirement on him to re-train on remedial grounds by alleging unlawful race discrimination and harassment in respect of the method by which his employer proposed to deliver that re-training;
- Advising a Post-Graduate Deanery in respect of the removal of a disabled trainee GP's national training number and placement on a GP Training Scheme;
- Appearing for the health professional in an appeal brought by the CHRE in relation to a failure to find impairment of fitness to practice by the NMC : CHRE v NMC & Grant EWHC 927 (Admin);
- A challenge to the withdrawal of a CT1 placement by a disabled doctor and consideration of the scope of section 120(7) of the Equality Act 2010;
- Representing an NHS Trust in employment and contractual claims where

overseas trained doctors challenged their work allocation, grade and pay on grounds of alleged direct and indirect race discrimination.

Professional Regulatory & Discipline

Ijeoma has a detailed understanding of the regulatory regimes which affect health practitioners. In 2010 Ijeoma was appointed as a legal assessor to the HCPC and the GMC (now MPTS). In that role she provides advice on all stages of the fitness to practice process and has been the legal assessor on many sensitive and complex conduct and capability interim, review and final fitness to practice hearings including cases involving allegations of fraud and dishonesty, sexual misconduct, FGM and clinical outcomes resulting in serious harm and/or death of patients. Recently Ijeoma was the legal adviser to the Panel on the MPTS first non-compliance hearing under rule 17Z.

In addition, Ijeoma has undertaken a significant number of cases involving regulatory bodies concerned with health and other professionals including the GMC, NMC, HCPC, BSB, SRA and the GDC.

She provides advice and representation to health professionals, their employers and training providers in relation to contractual disputes, disciplinary and capability matters and in proceedings before the High Court.

She is regularly instructed by NHS Trusts and other NHS employers in discrimination, whistle-blowing and employment related cases in the employment tribunal and in the High Court where concerns about a professional's fitness to practice and/or capability are in issue.

Cases include:

- A consultant bringing injunctive proceedings in the High Court to challenge an allegedly unlawful suspension;
- An NHS trust resisting an injunction application in the High Court in respect of a proposed internal hearing where trust and confidence was alleged to have broken down;
- A doctor seeking to challenge his removal from the Performers List in the light of allegations of dishonesty and MPTS proceedings;
- Acting for an NHS Trust in tribunal proceedings brought by a doctor who had been subject to an interim order and later sought to challenge the requirement on him to re-train on remedial grounds by alleging unlawful race discrimination and harassment in respect of the method by which his employer proposed to deliver that re-training;
- Advising a Post-Graduate Deanery in respect of the removal of a disabled trainee GP's national training number and placement on a GP Training Scheme;
- A challenge to the withdrawal of a CT1 placement by a disabled doctor and consideration of the scope of section 120(7) of the Equality Act 2010;
- Representing an NHS Trust in employment and contractual claims where overseas trained doctors challenged their work allocation, grade and pay on grounds of alleged direct and indirect race discrimination;
- Representing a dental professional facing allegations of working beyond his scope of practice and misleading and dishonest advertising.

Other Regulatory:

In addition to health profession regulation Ijeoma has experience of advising and representing clients in Financial Service Authority proceedings, Solicitors Regulatory Authority proceedings, and in British Boxing Board of Control proceedings. She was a guest speaker on *"Dishonesty in Regulatory Proceedings"* at the 2016 IBC Legal *"Disciplinary Tribunals Conference."*

Data Protection

Ijeoma has recent experience of data protection primarily in relation to employment, education and healthcare matters. She routinely provides advice on the meaning of "personal data" and the scope of the duties imposed on data controllers under the Data Protection Act 1998. She provides advice on dealing with subject access requests as well as available remedies for breaches of the Act. Recently Ijeoma has advised on the applicability and scope of a section 35 (1) exemption on a workforce data gathering exercise.

HR Professional Support

Ijeoma is a highly experienced barrister and accredited mediator. Ijeoma accepts public access instructions.

Ijeoma routinely advises on factually complex disciplinary and grievance matters across a range of sectors. Ijeoma has supported in-house investigations and conducted grievance investigations in respect of bullying, harassment, discrimination and whistle-blowing complaints. Ijeoma has acted as legal adviser to internal disciplinary and appeal panels. Ijeoma is a well-regarded trainer with particular expertise in relation to equality and diversity issues. She also acts as legal adviser to a range of statutory tribunals.

As a mediator, Ijeoma is skilled at dealing with sensitive disputes in an effective and proportionate way.

Recent and current work

- *Shuter v Ford Motor Company Ltd*
- *McKinnon v LB Redbridge*
- *Masud v Shell International Limited, Shell International and Shipping Company Limited*