

Eleena Misra

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Overview

Eleena is a leading employment & equalities and professional discipline & regulation barrister acknowledged in the directories as having **“developed a strong reputation for handling employment disputes that require specialist knowledge of either the education or healthcare sector”** (*Chambers & Partners*). In addition, she spent the first fifteen years of practice undertaking Commercial Law which places her in a unique position in relation to both private and public sector employers, with a substantial expertise and strategic nous in each.

She is ranked as a leader in both of her principal practice areas, which are complementary to each other and to the high-quality public law work which Eleena also undertakes.

Eleena regularly appears in Tribunals and in the High Court including at appellate level having been described as:

“An excellent written and oral advocate” (*The Legal 500*)

“Extremely clever and robust, and extremely thorough.” (*Chambers & Partners*)

“A very logical and methodical barrister who provides excellent advice, both legal and strategic.” (*Chambers & Partners*)

Eleena was at Littleton Chambers from 2001 to 2017 during which time she founded and headed up the professional discipline & regulation group. She moved to Old Square in April 2017 and became an active member of its healthcare team in particular.

In a market crowded with barristers, clients have said, time and again, that Eleena’s strength is her nuanced understanding of how best to apply intelligent solutions to essentially human problems. This depends on careful legal analysis and a way of dealing with parties, clients and witnesses which is borne of years of experience. Clients who regularly seek her advice or advocacy skills span the full range from City banks to public sector organisations, including the NHS and universities, from Formula One media personalities to charities. Indeed, many of her high-profile cases stay out of court (and the press) altogether because of the careful and strategic advice she has given at an early stage, thereby also saving costs. Eleena has resisted being pigeon-holed as a public or private sector barrister and uses her experience of acting for both, as well as being advocate for claimants and defendants alike, to great tactical advantage.

Eleena is known for her ability to assimilate complex material swiftly and to provide strategic and commercially astute advice. Highly approachable and hands-on, Eleena is valued by solicitors for her calm approach to even the most time pressured and stressful litigation, including short-notice injunctions, as well as sensitive client handling skills. At these stressful times, the directories note that she:

“Works tirelessly, quickly grasps the key issues in a case and has a fantastic client manner.” (*The Legal 500*).

Eleena has breadth and depth of expertise in cases with a medical dimension, having acted for numerous health practitioners, the NHS and associated agencies. These cases have included CESR applications and appeals, fitness to practise concerns, injunctions, actions in the QBD and judicial review, as well as high-profile inquests.

Expertise

- Administrative & Public Law
- Commercial Law
- Employment & Discrimination
- HR Professional Support
- Inquests & Public Inquiries
- Investigations
- Professional Regulatory & Discipline

Recommendations

“Eleena is a robust advocate with a keen eye for detail, and she is a pleasant as an opponent whilst fighting her client’s corner hard.” “She has an analytic and forensic mind, and she has an amazing ability to think of arguments and think on her feet.” “She is approachable, she is user-friendly and she is incisive.” *Chambers & Partners 2022*

“Eleena is a silk in waiting. She is unflappable, a consummate professional, and yet also compassionate and engaging in submission and in cross-examination. She commands the attention and respect of the court and everyone in it.” *The Legal 500 2021*

Key contacts

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Eleena is equally at home with cases which have a commercial angle, including business information protection or team move cases, having obtained and defended a high number of applications for injunctions in this field of law for many years.

When time permits, Eleena offers lectures and training in all areas of her practice.

She is a co-author of Blackstones' *Employment Law Practice* (OUP 2020) as well as having written for and contributed to several leading texts over the years, including Atkins on Equal Opportunities and Employment.

Outside of work, Eleena can be found enjoying time with her young family, travelling, supporting and participating in the performing arts and working on projects close to her heart.

Eleena speaks French and Oriya and has a working understanding of Hindi.

Appointments & Other

- Eleena is Vice-Chair of the Law Reform Committee of the Bar Council.
- Eleena is an Advocacy Trainer for Middle Temple and Bar Mentor, as well as a qualified Pupil Supervisor.
- Over several years, Eleena has been an author of Blackstones' *Employment Law Practice* (OUP).
- Eleena founded the first female barristers' Lean-in Circle in the country and is active on numerous equality and diversity projects, including in relation to maternity rights.

Employment & Discrimination

Eleena is an employment and equalities specialist, ranked as a leader in this field in both *Chambers & Partners* and *The Legal 500*. She has wide and in-depth litigation and advisory experience in all aspects of employment law.

Eleena was a member of Littleton Chambers from 2001 to 2017 having been a pupil there. During this time, she was led by some of the leading silks in the country and also appeared without a leader in many high value and high-profile cases in all of the employment jurisdictions. She was also sought out for appeals and cases involving confidential information or team moves and short notice injunctions in the High Court.

While Eleena is regarded in the market as a very confident, experienced and assured advocate in any type of employment dispute, she is particularly in demand for cases in the healthcare and education sectors and City sex / race discrimination litigation. In cases requiring technical expertise in disciplinary or regulatory matters, Eleena is a natural choice given her parallel and complementary knowledge and experience in that field. She is also able to accept instructions to appear as counsel in mediations.

Unsurprisingly, Eleena is perhaps best known for her work at the intersection of Employment and Professional Discipline. Clients have often called upon her to appear in internal hearings, tribunals, the Queen's Bench Division, before the relevant regulator and in the Administrative Court based on the same factual matrix. It is Eleena's calm and measured approach to even the most stressful litigation and her seasoned appearances in all of these jurisdictions that have marked her out as a go-to senior junior for many of her loyal instructing solicitors.

Eleena is regularly instructed by leading law firms in this area and has been selected to deal with high value, highly confidential and high-profile litigation or investigations, many a time against Leading Counsel.

A sample of Eleena's recent cases include the following (anonymised where necessary or appropriate):

- IWGB challenge against the Prime Minister in respect of "Brexit" on behalf of workers affected by a "no deal" scenario in 2019;
- IWGB challenge against HM Treasury in respect of the Coronavirus Act 2020 and the Job Retention Scheme;
- *Antoni Bajowski v Oxford Bus Company*: Eleena was instructed to act on behalf of the Oxford Bus Company in relation to a claim brought by a disabled passenger seeking reasonable adjustments to the seating arrangements on the entire fleet of its coaches. This case raised interesting questions as to the scope of sub-section 20(3) Equality Act 2010;
- *Rochford v WNS Global (Court of Appeal)[2017]* EWCA Civ 2205: Eleena was instructed on behalf of the Respondent employer in this appeal concerning the interplay between disability discrimination and unfair dismissal in ill-health dismissals. **Deshpal Panesar QC** was led by Suzanne McKie QC at the hearing in her stead, as Eleena had just commenced maternity leave, and was successful on appeal;

- *Abbott & Ors v Lloyds Bank plc, TSB Bank plc and IBM*: Eleena was instructed on behalf of TSB in a case in which a large number of claimants challenged the backstop in unlawful deductions' claims and asserted that Bear Scotland has been wrongly decided. The Respondents were successful after a five-day preliminary hearing listed purely to address questions of law;
- *X v Y*: In this highly sensitive matter, settled on confidential terms, Eleena acted for a claimant in the legal services industry against a well-known London law firm, on extraordinarily difficult facts and in the face very unusual attendant circumstances. The hearing did not take place in the end, but it would have been a very high-profile case with well-known individuals in the field of law;
- Junior counsel (led by [Mark Sutton QC](#)) in *Agarwal v Cardiff University & anor [2017] ICR 967* acting for the successful Appellant doctor and establishing that Employment Tribunals have jurisdiction to construe contracts in wages claim under ERA 1996;
- Acting for a large and well-known banking institution in a group action brought under the Working Time Regulations (2018);
- Instructed by a Claimant in a highly sensitive case against a law firm involving multiple respondents and alleged discrimination and harassment (2018);
- Acting for a board member in a complex race discrimination claim against a professional regulatory body – testing the boundaries of the Equality Act 2010;
- Acting for the respondent on appeal to the Court of Appeal in a case involving section 15 Equality Act 2010 and the unfair dismissal regime and an alleged refusal to obey that which was perceived to amount to discriminatory instructions (now due to be heard autumn 2017);
- Acting for an NHS trust in relation to claims of religious discrimination brought by a respected consultant paediatrician; a case involving issues that turned out to be prescient of the conflicting decisions at European level on the manifestation of religious belief;
- Acting for a consultant against an NHS trust in proceedings for injunctive relief in the QBC to restrain breaches of the MHPS framework applicable to the contract of employment;
- Obtaining an in-principle award for career-long losses for a professional claimant client in complex protected disclosure and disability discrimination claims;
- Internal investigation for a bank concerning serious allegations of sexual impropriety by a senior executive;
- Acting as junior counsel to Sberbank Rossi, Sberbank UK and others in highly publicised sex discrimination and associated claims brought by Ms Svetlana Likhova (2013 to 2016);
- Acting for a very well-known university in internal hearing against a senior academic;
- Acting for the IPCC in long running discrimination in recruitment claims (ongoing);
- Advising financial institutions and individuals on issues arising from application of bonus cap and clawbacks.

Eleena is a member of ELA (and was formerly on its management board from 2012-14) and ELBA.

She is a returning author of Blackstones' *Employment Law Practice* and the Employment and Equalities lead in her role as Vice Chair of the Law Reform Committee of the Bar Council of England and Wales.

Professional Regulatory & Discipline

Eleena founded and headed up the Professional Discipline & Regulation Group at Littleton Chambers where she was a tenant from pupillage until 2017. She is ranked in *The Legal 500* as a leader in this field.

Her sector focus is on healthcare and education, but she has advised at high level on other professional regulatory issues particularly in police misconduct matters.

Eleena sits as a legal adviser to the General Optical Council and has advised clients in connection with a number of healthcare regulators including (but not limited to) the GMC (and previously PMETB), NMC, HFEA, CQC, HCPC, MHRA and GPhC.

Eleena has a wealth of knowledge and experience of disciplinary and regulatory work, which has ranged from representing individuals to advising the regulators themselves. She is particularly experienced in dealing with CESR appeals in the GMC.

Example cases (anonymised where necessary or appropriate) include:

- Acting for the doctor who delivered baby Harry in the high-

profile *Richford Inquest* in 2020;

- Instructed by the Human Fertility and Embryology Authority in complex case involving consent to fertility treatment and legal parenthood including in “In the matter of the *Human Fertilisation and Embryology Act 2008 (Cases P, Q, R, S, T and U) (No 2)*” before Sir James Munby (President of the Family Division of the High Court). She is currently the Bar Council working group lead on reforming surrogacy law;
- Appeal in the Court of Appeal for a consultant concerning his application to be admitted to the GMC’s specialist register via the “CESR” route;
- Acting for the Human Fertilisation and Embryology Authority in highly confidential proceedings involving legal parenthood issues;
- Acting for the chief constable of North Yorkshire in the first gross misconduct proceedings against a chief constable in over thirty years (in the pre-public hearings regime);
- Acting for Doctor X in GMC interim order case;
- Acting for Doctor Y in NHS England Performers’ List proceedings;
- Successfully acting for Physiotherapist X accused of sexual assault, over the course of a 15 day hearing in the Health and Care Professionals Council Tribunal after the Crown Court dismissed the criminal case as an abuse of process;
- Advising a GP practice shut down by the CQC under section 31 pending a section 30 hearing;
- Investigating alleged rape in civil context;
- Advising university disciplinary panel in sexual violence case against Student X in which Student Y refused to attend to give evidence;
- Acting for management side in disciplinary hearing concerning fire-fighter;
- Obtaining injunctive relief to restrain the dismissal of Doctor X by NHS trust;
- Representing a group of midwives acting as whistle-blowers in connection with home birthing practice;
- Defending application for injunctive relief brought by agency staff in a mental health unit;
- Judicial review arising from breaches of professional standards said to have been committed by a medical undergraduate;
- Strategic advice and assistance to a pharma company concerning issues arising from a clinical trial / mistaken use of unlicensed product as a medical device in the context of potential MHRA intervention;
- Defending a special constable alleged to have put her position as a special in jeopardy whilst seeking to prevent a friend from coming to harm on an off-duty evening out;
- Representing leading medical pioneer in complex case involving whistle-blowing and discrimination and associated disciplinary matters;
- Advising a bank on its pay regulation policy by reference to CRD IV;
- Successfully overturning the decision of a well-known London NHS Trust in respect of its dismissal of a consultant alleged to have touched a student inappropriately.

Many of Eleena’s cases have been for NHS trusts and healthcare professionals, which has given her a depth of understanding in respect of internal disciplinary procedures and the developing jurisprudence concerning the court’s jurisdiction to grant injunctions to restrain employers from taking disciplinary measures or from dismissing employees.

Eleena has also been instructed on behalf of several universities to conduct sensitive work concerning sexual violence alleged to have been committed by students. She has advised panels independently and brings a rare level of experience to this line of work having been engaged by several higher education establishments in light of a zero tolerance and proactive approach to prevent sexual violence on campus.

At home with the language, science and culture of the medical world, Eleena has a sound basis understanding of medical and surgical concepts and terminology, which assists in her healthcare practice. Additionally, Eleena holds a Diploma in Forensic Medicine.

Eleena’s expertise in employment law and public law often dovetail with her disciplinary work such that clients often approach her for advice and representation if a variety of settings is envisaged e.g. injunction, judicial review, regulatory proceedings and a tribunal claim.

Example cases (anonymised where necessary or appropriate):

- Acting for an NHS trust in an application for an injunction brought by a surgeon accused of serious clinical negligence and of causing or contributing to patient deaths;
- Acting for a patient suing a surgeon for negligence in performing gastric band surgery;
- Advising an NHS trust as to whether it was obliged to fund a particular type of cosmetic surgery given overall budgetary constraints;
- Acting for consultant against NHS trust for specific performance of contract of employment and obtaining injunction against the trust

regarding associated disciplinary procedural breaches / breaches of the Equality Act 2010;

- Acting for a trust against a midwife alleged to have told a woman in labour that she should have “kept her legs shut” and denying pain relief;
- Acting for doctors in a class action in Northern Ireland regarding a pay dispute.

Eleena is a member of ARDL.

Recent lectures include Handling Bias in Disciplinary Proceedings, Doctors and Injunctions (a special case?), Vicarious Liability, and Equality & Professionalism.

Administrative and Public Law

Eleena has substantial experience of high profile and complex litigation in the Administrative Court including urgent relief. Her expertise lies in the healthcare and education sectors, and in particular in regulatory appeals and challenges concerning decisions of universities and the OIA(HE).

Familiar with the particular costs’ considerations for judicial review claims and case management, Eleena is used to providing nuanced strategic advice and working under pressure in urgent cases. She has a wealth of experience in obtaining and defending injunctions.

Example cases:

- Eleena was senior junior in the *R (Calle)* challenge to the Prime Minister’s statements of intent in respect of the “Brexit/no deal” issues concerning the withdrawal from the EU in 2019;
- Challenging HM Treasury in respect of SSP and the Job Retention Scheme during the Covid-19 lockdown period in 2020 on behalf of low paid, gig economy workers (*R (Adiatu)*);
- Acting for a doctor challenging the GMC in relation to his specialist registration status including by way of an equality challenge;
- Eleena was junior in a group action for JR concerning changes to clinical excellence awards for medical practitioners in Northern Ireland;
- Advising in respect of a coronial decision as to the proper scope of an inquest (*Art.2/Jamieson*);
- OIA (now OIAHE) JR concerning termination of a medical student’s place on undergraduate course.

Eleena is currently leading the Bar Council’s response to the Lord Faulkes’ IRAL review in her role as Vice Chair of the Law Reform Committee.

Commercial Law

Eleena has spent over a decade and a half working for individuals and companies in a wide variety of contract and tortious claims including actions in negligence, claims for interim relief and economic torts.

Clients have been as varied as the subject matter of the disputes themselves, from Formula One celebrities to footballers, surgeons and bookmakers.

Eleena is particularly experienced in dealing with the following genre of commercial dispute:

- Restrictive covenants and team moves (Eleena was a member of Littleton Chambers from 2001 to 2017 and this was a regular diet of work);
- “Mezey” instructions to restrain dismissal or suspension (and associated interim relief);
- Higher educational sector clients (including high-value County and High Court litigation);
- Disputes which give rise to issues of professional discipline/regulation or public law including procurement.

Investigations

Eleena is a highly experienced, dynamic and capable senior junior who conducts, assists and advises clients on investigations across a variety of disciplines in the public and private sector. Given her expertise in employment law, professional discipline and regulation, public law and commercial law (a rare combination but one with genuine depth and breadth given her career to date), Eleena is a popular choice for those who wish to instruct a senior barrister able to hit the ground running.

She has investigated misfeasance, misconduct, harassment, discrimination,

whistleblowing, safeguarding and victimisation complaints in organisations including:

- Law firms
- Multinational banks
- Military agents
- Public sector employers (especially in healthcare and education)
- Regulators
- Charities and third sector organisations
- Arts institutions
- Schools and universities
- Small and large firms and companies in the private sector
- Celebrity / well known clients.

Known for paying careful attention to the various strands of an investigation and with an in-depth experience of operating in privileged and non-privileged investigations, Eleena's involvement usually assists clarity and focus to even unwieldy or seemingly intractable disputes. Eleena takes time to set up an investigation thoroughly in terms of data protection, confidentiality, logistics and tone, right from the outset. She is a modern barrister who is able to meet the demands of an investigation flexibly.

Eleena's legal expertise in professional discipline and regulation, employment & equalities and public law give her a solid technical understanding required to tackle a broad range of problems frequently arising in this context. Whether the Gordian knot seems to involve confidentiality issues, disclosure, data protection or privilege, or whether there are overlapping internal and external investigations, Eleena is known for careful and measured (legal) analysis, hard work and fearless integrity in investigations.

Not to be overlooked when instructing counsel in investigations; is the important ability to work in sensitive and time-critical situations. Eleena is able to handle witnesses and clients in a firm but fair manner, putting nervous individuals at ease, getting to the core of an issue quickly and robustly whilst instilling confidence in all stakeholders, including senior decision makers, as to her independence and integrity.

Eleena has advised Boards, individuals and litigants in connection with investigations. She is regularly asked to lecture in this field, as well as to represent professional clients during investigations as well as chairing hearing and appeals. This gives her an exceptional bird's eye view of this area of work.

Eleena has undertaken some of the most sensitive and confidential investigations on behalf of and against well-known persons in recent years. Her integrity is the hallmark of her work.

Particular skills include:

- Extremely high level analytical skills and the ability to provide strategic insight;
- Expertise in conducting investigations involving safeguarding issues or highly confidential matters;
- The ability to work with individuals who are traumatised and need especially sensitive interviewing techniques;
- The ability to weave together differing strands of information and law and to undertake the "shape" of a case or an issue early on;
- Exceptional organisational skills (backed by excellent clerking in investigations and a dynamic SIG in chambers);
- Substantial experience in producing detailed reports and executive summaries;
- Very strong interpersonal skills and the ability to interact in an appropriate manner with a broad range of people and personalities having regard to principles of equality, diversity and inclusivity;
- Fearless independence.

Eleena is currently a non-executive director of a theatre.

Inquests & Public Inquiries

Eleena has a Diploma in Forensic Medicine (QMUL/Barts 2011) and accepts instructions to advise clients and attend inquests. She has experience of high-profile Article 2 inquests and of judicial review in this field.

Eleena is calm, measured, client-friendly and applies rigorous attention to detail. She is particularly adept at dealing with inquests which involve clinical issues, hospital deaths or the police. She is a fearless cross-examiner.

Example cases (anonymised where necessary or appropriate):

- Acting for a junior locum doctor who delivered the baby without a consultant present in the highly publicised case into a baby's death in

Kent (*Harry Richford Inquest 2020*);

- Acting for a medical professional accused of administering an unlicensed drug to an elderly patient in his care;
- Acting for the family of the deceased who died in hospital after what was described as a “catalogue of systemic errors” by nursing and medical staff prompting concern over future preventable deaths;
- Advising in connection with the deaths of two young teenagers thought to be driving too fast in order to comply with an insurance curfew;
- Acting for NHS trust in case concerning allegations of dishonest or misleading evidence given by a medical professional at an inquest;
- Advising campaign group on issues concerning systematic overcrowding of hospitals by trust/former SHA in the context of informed consent post-Montgomery;
- Advising ambulance service in connection with concerns around the activity of an individual technician;
- Representing GPs in a case concerning a patient suicide.

Recent and current work

- Instructed by the IWGB in public law challenge to the government over “Brexit” in 2019 and in relation to SSP and the Job Retention Scheme during COVID-19 pandemic 2020 (led by [Ben Collins QC](#));
- Investigations into alleged sexual misconduct, discrimination and victimisation at “A Bank”, within “A Regulator” and within “A Charity” (employment & equalities, HR support and professional discipline/regulation);
- Multiple higher-education sexual violence disciplinary cases (professional discipline/ education);
- Acting for HFEA in confidential and closed hearings (professional discipline/ health/regulation/public law);
- Acting for Claimant in case against well known “Law Firm X” and high-profile legal personalities which was settled on confidential terms, but involved extremely serious allegations of sex and disability discrimination and was linked to a whistleblowing challenge brought by another individual in the legal profession;
- Leading the working group of the Bar Council in liaison with the Law Commission on reforming Surrogacy Law (professional discipline/regulation);
- Instructed by a group of doctors in large pay dispute in Northern Ireland;
- *Agarwal v Cardiff University & Anor* (2018) Court of Appeal (led by [Mark Sutton QC](#) in a key case on ERA 1996);
- *Roche v WNS Global* (2018) Court of Appeal (led by Suzanne McKie QC, but unable to attend hearing due to maternity leave therefore colleague [Deshpal Panesar QC](#) appeared for the successful Respondent);
- *Sivanandan v IPCC and Penna* - ET, EAT, CA (2016 to 2017) (Ongoing high-profile discrimination matter in which Eleena acted for the IPCC as then was, successfully, in the ET, EAT and on appeal to the CA);
- Instructed by “Clients X,Y,Z” in relation to equality claims against well-known ballet schools.