

## Mark Sutton KC

SILK: 2011 | CALL: 1982

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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
- Health & Safety & Environmental Law
- Insurance
- Investigations
- Media and Entertainment
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer

### Recommendations

"Mark is an immense talent and always our first-choice advocate for doctors' disciplinary matters and complex appeals. His expertise in that area is unrivalled, and his support on a challenging case is always hugely reassuring. He is a real pleasure to work with, has a deep understanding of what his clients need, and is always diligent and proactive in the service he provides." *Chambers & Partners 2024*

"A silk with great depth of knowledge." *The Legal 500 2024*

"Mark demonstrates incisive and analytical advocacy skills; and he shows breadth of knowledge of complicated issues, especially in respect of the NHS." *The Legal 500 2023*

"Mark was excellent in his understanding of the legal issues and the crux of the matter he was being asked to advise on." "He is an extremely bright barrister and knows employment law inside out." *Chambers & Partners 2023*

### Key contacts

#### William Meade

Senior Clerk

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#### Olivia Moliterno

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*

**Team Leader**

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- (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

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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

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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

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- *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 Cunningham](#), 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.

## Professional Recommendations

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“A very measured and careful advocate.”



"Just phenomenal: I am struck by his competence and he is devastatingly effective."

#### **Chambers & Partners 2024**

"Despite his keen intellect and being a leader in this field, he never makes you feel that you aren't a key member of the legal team."

#### **Chambers & Partners 2024**

"Mark is an immense talent and always our first-choice advocate for doctors' disciplinary matters and complex appeals. His expertise in that area is unrivalled, and his support on a challenging case is always hugely reassuring. He is a real pleasure to work with, has a deep understanding of what his clients need, and is always diligent and proactive in the service he provides."

#### **Chambers & Partners 2024**

"He is an excellent KC on doctor cases in the High Court and complex tribunal cases. His knowledge in this area is unrivalled and his oral arguments are extremely convincing. A real go-to barrister."

#### **Chambers & Partners 2024**

"He is a very good and experienced advocate doing high-quality work."

#### **Chambers & partners 2024**

"A silk with great depth of knowledge."

#### **The Legal 500 2024**

"He is an extremely bright barrister and knows employment law inside out."

#### **Chambers & Partners 2023**

"Mark was excellent in his understanding of the legal issues and the crux of the matter he was being asked to advise on."

#### **Chambers & Partners 2023**

"Mark demonstrates incisive and analytical advocacy skills; and he shows breadth of knowledge of complicated issues, especially in respect of the NHS."

#### **The Legal 500 2023**

"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." "Mark is clear, concise and carries immense gravitas. He is, without doubt, the leading KC on doctor injunction cases."

#### **The Legal 500 2022**

"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." "Has a great manner with clients and tribunals and is a skilful advocate with a very sharp intellect."

#### **Chambers & Partners 2022**

"He's especially well known for his regulatory work, in particular in the doctors' sphere; he's really impressive." "He is definitely one of the leading practitioners in the area of doctors' disciplinary and grievance matters, and is very easy to work with." "He is an inventive and creative advocate." "He is very thorough and very well organised."

#### **Chambers & Partners 2021**

"An erudite and clear advocate, who is a go-to counsel for complex matters." "An extremely impressive advocate with a calm and measured style. Brings his knowledge of employment law to bear on professional disciplinary matters."

#### **The Legal 500 2021**

"With a calm exterior he holds court and will sway the bench towards his submissions." "A silk with a very clear and measured advocacy style."

#### **The Legal 500 2020**

"Extremely knowledgeable and a delight to work with, he really has the ear of the Bench." "An erudite and clear advocate and a go-to counsel for complex appeals." "Hugely skilful when dealing with difficult and demanding clients. Hands-on, a team player and great to work with." "The go-to silk on the medical

discipline of doctors." "Highly experienced and a real leader in NHS trust disciplinary work."

**Chambers & Partners 2020**

"He has great gravitas and confidence and is very convincing... he is well respected by clients." "He's completely unflappable and really one of the top silks in this area."

**Chambers & Partners 2018**

"He's an exceptional cross-examiner, a fantastic barrister, and one of the best in the country in this field." "He's among the first-class advocates."

**Chambers & Partners 2017**

"The most important barrister in the area of High Court medical actions." "Very tenacious; in court, he just will not lie down and die."

**Chambers & Partners 2016**