

Nicola Newbegin

CALL: 2008

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Overview

Nicola specialises in employment, discrimination and professional discipline, as well as undertaking related work in the fields of judicial review, human rights and data protection/privacy.

In May 2021, Nicola published (jointly with [Robin White](#) of Old Square Chambers) 'A Practical Guide to Transgender Law' available to purchase [here](#).

Nicola appears regularly in the Employment Tribunals, the Employment Appeal Tribunal, the County Courts, the High Court and the Court of Appeal, as well as before the major professional regulators.

Nicola has particular expertise in:

- High Court breach of contract claims relating to doctors and dentists (eg *Smo v Hywel Dda University Health Board*, *Jain v Manchester University NHS Foundation Trust*, *McMillan v Airedale (CA)*, *Powys v Dusza & Sobhani (CA)*, *Mattu v. Coventry and Warwickshire (CA)*, *Chakrabarty v Ipswich*, *Dr A v. HTX*, *R (Puri) v. Bradford*; *Lim v. Wolverhampton*, *X v. Surrey and Sussex*)
- Appeals from healthcare regulators (eg *Sastry v GMC*, *GMC v Chandra*, *Brookman v GMC*)
- Discrimination (eg *Anderson v Turning Point Eespro*, *Gutfreund-Walmsley v Big Lottery Fund Ltd*, *Carneiro v Chelsea Football Club and Mourinho*)
- Appeals relating to tribunal practice and procedure (eg *Tarn v Hughes (EAT)*, *Secretary of State for Business, Energy and Industrial Strategy v Parry (CA)*)
- TUPE (eg *Boxall v. Innserve*, *Vaseer v Secretary of State & Ors*)
- Collective unlawful deductions from wages / enhanced redundancy payment claims (eg *CSC v McAlinden (CA)*, *Peacocks v Peregrine (EAT)*)
- Collective Redundancy Claims (eg *TSSA v. Network Rail*)
- Whistleblowing (eg *Monro v Barts Health NHS Trust*, *Dr Prasad v Hertfordshire Community NHS Trust*)
- Unfair dismissal (eg *Orphanou v. London Development Agency*, *Newcastle v Khan (EAT)*)

Previous Legal Experience

Prior to transferring to the Bar, Nicola trained as a solicitor at Linklaters qualifying into the tax department in January 2003 where she spent five years as a specialist tax litigator. Nicola was involved in bringing cases in both the Tax Tribunals and the High Court. Nicola obtained Higher Rights of Audience as a Solicitor-Advocate. Nicola has also undertaken voluntary work at two law centres as well as for FRU.

Education

Nicola read Law at Keble College, Oxford. During her time there she won the Keble College Mooting Competition, was runner-up in the Oxford University Law Society Mooting Competition and won the Oxford v Lincoln's Inn Moot.

Professional Memberships

ILS; ELBA; ELA; ARDL; ALBA

Directory Rankings

Nicola is ranked as a leading individual in both *Chambers & Partners* and *The Legal 500*

Expertise

- Administrative & Public Law
- Civil Liberties and Human Rights
- Clinical Negligence
- Data Protection & Information Law
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Health
- Personal Injury
- Professional Regulatory & Discipline
- Public Law
- Sport

Recommendations

"Nicola Newbegin has been a pleasure to work with. She is bright, hard-working and reliable. She is excellent with clients and provides timely, clear advices." "She is always well prepared, very responsive and easy to work with." "She's very reliable if you have urgent work. She always meets the deadline." Chambers & Partners 2022

"Nicola provides excellent, pragmatic advice, and is precise and effective in cross-examination. Nicola takes a client-centred approach and ensures that clients feel supported throughout. This is especially important in complex, rapidly-developing cases." The Legal 500 2022

Key contacts

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Employment & Discrimination

Nicola undertakes work for both Claimants and Respondents and covers all areas of employment law, including unfair dismissal, all areas of discrimination, whistleblowing and TUPE. She has appeared in both individual and collective disputes. She has appeared before the Court of Appeal on a number of occasions, as well as appearing regularly before the Employment Tribunals, the Employment Appeal Tribunal and in the High Court. She regularly advises individuals, trades unions and employers.

In May 2021, Nicola published (jointly with [Robin White](#) of Old Square Chambers) 'A Practical Guide to Transgender Law' available to purchase [here](#).

Nicola is ranked in both *Chambers & Partners* and *The Legal 500* for employment. Commentary in the directories includes:

"She offers superior intellectual ability and attention to detail. She's lovely to work with and good on her feet."

"Exceptionally bright barrister, who is forensic in reviewing and understanding the matter at hand."

Unfair Dismissal, Discrimination & Whistleblowing

Her work for individual claimants and for respondents has included a significant number of multi-day discrimination cases, including sex, race, age, pregnancy and disability discrimination, as well as whistleblowing claims. She has a particular interest in transgender / gender reassignment discrimination. Together with Robin White she regularly provides training regarding transgender issues, especially with regards to the Gender Recognition Act 2004, as well as having significant experience of advising NHS Trusts and other employers with regard to this constantly developing area of the law.

Her recent cases of interest include:

- *East London NHS Foundation Trust v O'Connor* [2020] IRLR 16 – Nicola represented the Trust in this appeal concerning the relationship between "Agenda for Change" (incorporated into all NHS contracts of employment) and the statutory provisions relating to redundancy payments;
- *Anderson v Turning Point Eespro* [2019] EWCA Civ 815 | [2019] ICR 1362 [2019] IRLR 731– led by [Mary O'Rourke QC](#), Nicola successfully represented the employer in this leading case concerning what steps need to be undertaken to ensure procedural fairness before the Tribunal;
- *Gutfreund-Walmsley v Big Lottery Fund Ltd*– Nicola successfully represented the employee in her claim for victimisation for having spoken out as part of the #MeToo campaign;
- *Tarn v Hughes* [2019] ICR 76, [2018] IRLR 1021– Nicola successfully represented Dr Tarn in her appeal against the decision of an Employment Tribunal limiting the number of discrimination claims she could bring at any one hearing;
- *Dr Carneiro v Chelsea Football Club and Jose Mourinho*– Nicola was junior counsel to [Mary O'Rourke QC](#), representing Dr Eva Caneiro in her claims for unfair dismissal and sex discrimination. The claim was settled on confidential terms on day 2 of the ET hearing. ([Press coverage](#));
- *William Jones's Schools Foundation Trustees v Parry*– Nicola successfully represented Ms Parry before the EAT, where the EAT found that the provisions relied upon by Respondent were ultra vires the enabling legislation and before the Court of Appeal where the Court of Appeal accepted that the ET1 had in fact been in a form that could reasonably have been responded to meaning that the vires of the legislation no longer mattered;
- *Bhardwaj v FDA (CA)*– Nicola was junior counsel for Ms Bhardwaj (led by [Mary O'Rourke QC](#)) before the Court of Appeal in a case considering the circumstances in which there may be found to be apparent bias by the ET and the requirements for there to be a valid waiver of bias;
- *Gribble v Ministry of Justice*– Nicola represented a part-time judge in the Social Security and Child Support Tribunal who was claiming less favourable treatment on grounds of being a part-time worker;
- *Newcastle v. Ford and Khan* UKEAT/0358/13/MC (EAT) – Nicola successfully represented Mr Khan before the EAT, resisting Newcastle Council's appeal against the finding that Mr Khan had been unfairly dismissed. The EAT accepted that there had been no procedural error by the ET and that the ET had not substituted its view for that of the employer.

Collective Disputes including TUPE

Her collective work has included acting for groups of Claimants in respect of failures to consult in accordance with Section 188 TULCRA, a test case for a

group of Claimants in respect of the impact of a pre-TUPE transfer collective agreement, a multi-Claimant age discrimination case, two workforces in respect of their post TUPE transfer dismissals and numerous multi-claimant claims relating to contractual entitlements to wages and/or enhanced redundancy payments, often including TUPE-related issues. She is also involved in the holiday pay litigation.

Her recent and upcoming cases of interest include:

- *Peacock v. Peregrine & Ors UKEAT/0315/13/SM (EAT)*- Nicola successfully represented the employees before the EAT in resisting the employer's appeal against a decision that they had been entitled to enhanced redundancy payments by virtue of a term inferred by custom and practice;
- *CSC v. McAlinden & Ors [2013] EWCA Civ 1435 (CA)*- Nicola successfully represented the Claimant employees before the Employment Tribunal, the Employment Appeal Tribunal and the Court of Appeal in their claims that they had become contractually entitled to an annual pay increase in line with RPI. Nicola was sole counsel for the ET and EAT and was led by *Oliver Segal QC* in the Court of Appeal;
- *TSSA & Ors v. Network Rail*- Nicola was instructed as sole counsel in respect of TSSA's claim against Network Rail for its failure to consult in accordance of Section 188 TULRCA 1992 when undertaking a large-scale reorganisation of its information management department. She was individual claimants in respect of their individual claims for unfair dismissal arising out of the same reorganisation;
- *Boxall & Ors v. Innserve* - Nicola represented two separate workforces in respect of their claims for automatic unfair dismissal under Regulation 7 TUPE.

High Court Medical Disciplinary Cases

Nicola's recent High Court and Court of Appeal doctor and dentist cases include:

- *Smo v Hywel Dda University Health Board [2020] EWHC 727 (QB)*- led by [Giles Powell](#), Nicola appeared for the Health Board in this case, which was the first to consider the scope and application of "Upholding Professional Standards in Wales", which impacts upon the contracts of employment of all hospital consultants in Wales;
- *Jain v Manchester University NHS Foundation Trust [2018] EWHC 3016, [2019] 165 BMLR 175*- led by Jeremy Hyam QC, Nicola appeared for the doctor in this case concerning the application of MHPS to working relationships enquiries in foundation hospitals;
- *McMillan v Airedale [2014] EWCA Civ 1031, [2014] IRLR 803 (CA)*- Nicola was junior counsel (led by [Mary O'Rourke QC](#)) for Miss McMillan before the Court of Appeal, in which Miss McMillan successfully resisted the Trust's appeal against the finding that the Trust would be acting in breach of Miss McMillan's contract of employment if it sought to increase on an internal appeal a sanction of final written warning to one of dismissal. The case is of widespread importance for all employers and employees where there is no express contractual right to increase sanction on appeal;
- *Powys Teaching Local Health Board v Dr Piotr Dusza, Dr Hako Sobhani [2015] EWCA Civ 15*- Nicola appeared in the Court of Appeal (led by [Mary O'Rourke QC](#)) for the two dentists where they successfully resisted the health board's appeal against the finding that payment should be on a work done basis. The case concerned the interpretation of the dental contract and related regulations that apply to all dentists in Wales who undertake NHS work. Similar contracts and regulations apply to dentists undertaking NHS work in England;
- *Dr Chakrabarty v Ipswich Hospital NHS Trust (with NCAS intervening) [2014] EWHC 2735; [2014] Med LR 379*- Nicola was junior counsel for the Trust (led by [Giles Powell](#)) in this case concerning the relationship between internal trust proceedings and proceedings before the GMC / Medical Practitioners Tribunal Service and also the role of NCAS in internal disciplinary proceedings under the Maintaining High Professional Standards framework agreement (MHPS);
- *Dr Mattu v University Hospitals of Coventry and Warwickshire NHS [2012] EWCA Civ 641; [2012] 4 All ER 359; [2013] ICR 270; [2012] IRLR 661*- Nicola was junior counsel for Dr Mattu (led by [John Hendy QC](#) and [Giles Powell](#)). The case concerned the ability of the Trust to proceed to a disciplinary hearing in the absence of Dr Mattu, the characterisation of the charges against Dr Mattu as involving professional or personal conduct (the former attracting greater protection under Dr Mattu's contract of employment) and the application of Article 6 ECHR to the disciplinary proceedings.
- *A v HTX [2012] EWHC 857 (QB)*- Nicola was junior counsel (led by [Giles Powell](#)) for Health Trust X in its successful resistance of an application for a final injunction by Dr A who was seeking to prevent the trust from referring her to an ill health panel.
- *R (on the application of Puri) v. Bradford Teaching Hospitals NHS Foundation Trust [2011] EWHC 970 (Admin), [2011] IRLR 582*- Nicola

was junior counsel (led by [Giles Powell](#)) for Mr Puri in his application for judicial review of the decision to dismiss him using a disciplinary panel consisting mainly of employees of the Trust and to permit his appeal panel to be similarly constituted. The case concerned the application of Article 6 ECHR to dismissals where a person's ability to practice their profession / professional reputation may be at stake. This case is currently being appealed to the Court of Appeal;

- *Dr Hussain v. Surrey and Sussex Healthcare NHS Trust [2011] EWHC 1670* - Nicola was junior counsel (led by [Giles Powell](#)) for Dr Hussain in her breach of contract and Article 6 claims. The High Court held that the Trust had been in breach of Dr Hussain's contract of employment in respect of the level of her exclusion and its initial referral to a disciplinary hearing of charges that were not purely conduct charges;
- *Dr Lim v. Royal Wolverhampton Hospitals NHS Trust [2011] EWHC 2178* - Nicola was junior counsel for the Trust (led by [Giles Powell](#)). The case concerned the Trust's duty to refer Dr Lim to NCAS before commencing capability proceedings and the ability of the Trust to consider (unrelated) conduct charges.

Non-Employment Discrimination

As well as having an extensive discrimination practice in the employment sphere, Nicola regularly provides advice representation in non-employment discrimination claims, including claims relating to the provision of healthcare and other services to the public.

Recent cases of interest have included:

- *R (on the application of Independent Workers' Union of Great Britain) v Mayor of London [2019] EWHC 1997 (Admin) [2019] 4 WLR 118*, led by [Ben Collins QC](#), Nicola appeared for the IWUGB in this groundbreaking challenge to the legitimacy of the Mayor of London's decision to exempt "black cabs" but not mini cabs from the congestion charge. The case involved issues of human rights and indirect discrimination;
- *X v Shrewsbury and Telford NHS Trust* - a case concerning whether a transgender patient's human rights had been breached and whether she had suffered discrimination in the way that health services had been provided to her.

Professional Regulatory & Discipline

Nicola is ranked as a leading barrister in professional discipline in both *Chambers & Partners* and *The Legal 500*.

She is described in *Chambers & Partners* as being **"Great for very detailed, complex cases. She has an eye for picking out that one crucial document. She leaves no stones unturned."** and **"Able to think outside the box, as well as having good technical skills and attention to detail."**

She is described in *The Legal 500* as having **"astute technical skills and a meticulous eye for detail."**

Nicola has particular interest in, and expertise in relation to, the regulation of healthcare professionals and of legal professionals.

Regulation of Healthcare Professionals

Nicola has been involved in proceedings before the Medical Practitioners Tribunal Service (MPTS), the General Dental Council (GDC), Health and Care Professions Council (HCPC) and the Nursing and Midwifery Council (NMC).

Nicola has significant experience of representing doctors in appeals against findings of the MPTS:

- *Standards Authority for Health and Social Care v General Dental Council and Hussain [2020] 1 WLUK 333* - represented the doctor a hearing concerning the correct order for the remitted hearing;
- *Dr Brookman v GMC (Administrative Court)* - Nicola successfully persuaded the High Court to quash the MPT's decision to erase Dr Brookman's name from the medical register;
- *Dr Chandra v GMC [2019] EWCA Civ 236* - Nicola (led by [Mary O'Rourke QC](#)) appeared for the doctor before the Court of Appeal in this important case concerning the correct legal test to be applied in restoration cases;
- *Dr Sastry v GMC [2019] EWHC 390* - Nicola (led by [Mary O'Rourke QC](#)) appeared for the doctor in this case concerning the implications of an event having taken place outside the UK and in the context of a different hospital system. The case is due to be heard the Court of Appeal shortly.

Examples of Nicola's recent and ongoing cases include:

- Successfully representing a GP before a PLDP hearing;
- Representing a nurse in a six-day FTP hearing following the death of a patient;
- Successfully representing before the HCPC a Premier League first team physiotherapist, following which the HCPC concluded that there had been no misconduct and that the physiotherapist's fitness to practise was not impaired;
- Representing a dentist at an IOC where Nicola succeeded in having only minimal conditions imposed relating to a drink-driving conviction;
- Advising and representing a dentist on an appeal to the First-Tier Tribunal in respect of conditions imposed by NHS England, in a case that may have implications for all dentists returning to work following a period away from work;
- A three-day fitness to practise hearing before the HCPC at which Nicola successfully represented an operating department practitioner (OPD) facing both dishonesty charges and misconduct charges relating to the carrying out of his professional duties. Following half-time submissions by Nicola, all of the dishonesty charges were dropped and the final determination was that there had been no conduct amounting to misconduct and as such the practitioner's fitness to practise was not impaired;
- A review of an interim order by the GDC at which Nicola represented a dentist whose practice was subject to conditions which were tantamount to a suspension. Nicola successfully persuaded the GDC Interim Orders Committee to replace the existing conditions with new conditions that allowed the dentist to return to practice.

Nicola's interest in this area is supported by her extensive experience before the High Court and Court of Appeal in respect of doctors' disciplinary claims (for example *Dr Chakrabarty v Ipswich Hospital NHS Trust (with NCAS intervening)* [2014] EWHC 2735; [2014] Med LR 379 which examined the interaction between internal trust capability proceedings and proceedings before the GMC / MPTS and *Dr Mattu v University Hospitals of Coventry and Warwickshire NHS* [2012] EWCA Civ 641; [2012] 4 All ER 359; [2013] ICR 270; [2012] IRLR 661 which considered the application of Article 6 to doctors disciplinary).

She has also been involved in a number of judicial reviews involving doctors in training.

Regulation of Legal Professionals

As a former solicitor, Nicola is has a particular interest in advising in respect of, and representing solicitors in, SRA proceedings. She is particularly interested in cases involving the crossover between employment and regulatory matters. In this regard, her expertise in employment law is of particular use, for example in cases involving allegations of sexual harassment, where she has significant employment law experience. In addition, her former career as a solicitor means that she is particularly well placed to understand the background to many cases.

She recently represented a solicitor in an 11-day hearing before the Solicitors Disciplinary Tribunal in a case involving difficult and complex issues relating to the solicitors accounts rules and the proper administration of practice.

Administrative & Public Law

Nicola has advised in respect of judicial review claims both as a barrister and during her former career as a solicitor. She has a particular interest in medical-related judicial reviews and in judicial reviews relating to the public sector equality duty.

Recent judicial review cases have included:

- *R (on the application of Independent Workers' Union of Great Britain) v Mayor of London* [2019] EWHC 1997 (Admin) [2019] 4 WLR 118, led by [Ben Collins QC](#). Nicola appeared for the IWUGB in this groundbreaking challenge to the legitimacy of the Mayor of London's decision to exempt "black cabs" but not mini cabs from the congestion charge. The case involved issues of human rights and indirect discrimination;
- *R (Ekanayake) v Health Education England & Anr* - Nicola appeared for Health Education England (led by [Giles Powell](#)) resisting an application for judicial review by a trainee surgeon seeking to challenge the refusal to allow him to transfer deaneries;
- Successfully resisting on behalf of Health Education England a challenge by a trainee GP against a decision not to allow her full qualification as a GP;

Nicola was also junior counsel (led by [Giles Powell](#)) in *R (on the application of Puri) v. Bradford Teaching Hospitals NHS Foundation Trust* [2011] EWHC 970 (Admin), [2011] IRLR 582, a leading judicial review case considering the application of Article 6 to internal trust disciplinary proceedings against doctors.

Civil Liberties and Human Rights

Nicola has a keen interest in civil liberties and human rights.

She has appeared in a number of leading cases involving significant human rights issues, including *Dr Mattu v University Hospitals of Coventry and Warwickshire NHS* [2012] EWCA Civ 641; [2012] 4 All E.R. 359; [2013] IC. 270; [2012] IRL. 661, a case concerning the application of Article 6 ECHR to doctors' disciplinary proceedings. The case is currently before the European Court of Human Rights.

She also represented a leading mental health charity before the Court of Appeal (led by [Mary O'Rourke QC](#)) in a case concerning the adjustments that courts should make for litigants who have mental health issues.

Nicola has also recently advised on the impact of Article 8 on cases involving spent convictions and also on the application of Article 8 to questions of patient privacy.

Nicola has lectured on numerous occasions the subjects of discrimination and human rights and human rights at work.

Recent cases of interest included:

- *R (on the application of Independent Workers' Union of Great Britain) v Mayor of London* [2019] EWHC 1997 (Admin) [2019] 4 WLR 118, led by [Ben Collins QC](#). Nicola appeared for the IWUGB in this groundbreaking challenge to the legitimacy of the Mayor of London's decision to exempt "black cabs" but not mini cabs from the congestion charge. The case involved issues of human rights and indirect discrimination;
- *X v Shrewsbury and Telford NHS Trust* - a case concerning whether a transgender patient's human rights had been breached.

HR Professional Support

2008 Call (Former Solicitor and Solicitor-Advocate - Admitted January 2003)

Nicola practises in all areas of employment, discrimination and professional discipline law. She has a particular interest in disputes between doctors and NHS Trusts, and has appeared in a large number of the most recent High Court cases concerning MHPS, including *McMillan v Airedale* [2014] EWCA Civ 1031, [2014] IRLR 803 (CA), *Dr Chakrabarty v Ipswich Hospital NHS Trust (with NCAS intervening)* [2014] EWHC 2735; [2014] Med LR 379 and *A v HTX* [2012] EWHC 857 (QB).

She has advised both trusts and doctors in respect of internal disciplinary hearings, as well as providing representation in such hearings. She has acted as a panel adviser in police disciplinary proceedings.

She is described in the 2016 Edition of *Chambers & Partners* as **"thorough, and her legal knowledge is spot on"** as well as being **"very good in a crisis"**.

Data Protection & Information Law

Nicola has a growing practice concerning data protection and related privacy issues. She has significant experience of advising NHS Trusts in particular about their data protection obligations in respect of both employees and patients. She successfully represented the hospital trust in *A v Shrewsbury and Telford Hospital NHS Trust*, a case concerning the interaction between the Gender Recognition Act 2004 and the Data Protection Act 1998 and how both apply to the sharing of patient information within hospital settings.

She often advises public and private sector employers and trades unions about their obligations under the GDPR.

Nicola successfully represented the applicant before the Privy Council in *Singh v Public Services Commission* [2019] UKPC 18, a case concerning the operation of the Freedom of Information Act in Trinidad and Tobago.