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 and industrial relations for many years. He has frequently been instructed in complex and high-value employment claims, including discrimination, TUPE, whistle-blowing and contractual disputes. Acting for both trade unions and employers, he has wide experience of industrial relations, including interim applications. He was heavily involved in holiday pay litigation for several years.

Simon has a wide client base. He frequently acts for NHS Trusts and 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, Guy Chambers and Selina Scott.

He has appeared many times in the Court of Appeal and the Employment Appeal Tribunal.

Reported and significant cases include:

- *Uber Britannia Ltd v Sefton MBC [2023] EWHC 1975 (KB):* acting for interveners, who held private hire vehicle operator licences and who opposed Uber's application for a declaration that a licensed private hire vehicle operator enters as principal into a contractual obligation with the passenger.
- *Daly v IOPC [2023] EWHC 2236 (KB):* acting for the police officer claimant in a claim alleging malicious prosecution and misfeasance in public office.
- *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

Expertise

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

Recommendations

"Simon has a good, relaxed style which goes down very well with clients and instructing solicitors alike. He never panics and always instils confidence in the way that he deals with the twists and turns of tribunal litigation. His advocacy is assured - you always want him on your side." The Legal 500 2024

"Our first choice for complex tribunal cases. His ability to stay calm under pressure and to stay focused on the real issues makes him ideal for those types of cases." Chambers & Partners 2024

"A first-class advocate. Hugely bright with an astounding grip of detail, combined with brilliant client-handling skills and a warm, personable approach. Excellent in particular on complex, sensitive whistleblowing cases, and those with difficult or anxious witnesses and clients. Reads judges and panels really well, and has a high degree of emotional intelligence, so is able to respond accordingly." The Legal 500 2023

"His ability to take complex cases and distil them into straightforward arguments is outstanding." "Simon is a great KC for complex discrimination and appeal cases." Chambers & Partners 2023

Key contacts

William Meade

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Olivia Moliterno

Team Leader

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, 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 is acting for the BMA in its employment tribunal claims concerning the discriminatory impact of the changes to 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

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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 bodes 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 BSB, SRA and various health sector regulators.

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. He has carried out investigations 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:

- *Dixon v North Bristol NHS Trust [2022] EWHC 3127 (KB)*: acting for a surgeon in interim injunction proceedings that sought to prevent disclosure of documents to claimants bringing claims of clinical negligence.
- *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 more than 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.

Charities:

- Investigating serious complaints brought against the chair and company secretary of a well-known and long-established charity.

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:

- Acted for interveners, who held private hire vehicle operator licences and who opposed Uber's High Court application for a declaration that a licensed private hire vehicle operator enters as principal into a contractual obligation with the passenger (*Uber Britannia Ltd v Sefton MBC [2023] EWHC 1975 (KB)).*
- Appeared in the Upper Tribunal (Administrative Appeals Chamber) in a war pensions appeal on behalf of a doctor in the Army Reserve who had suffered PTSD in Afghanistan.
- Successfully represented an NHS Trust in interim injunction proceedings brought by a former Chief Executive.
- Acted in several high-profile cases in the employment tribunal, including a claim by a social worker involving gender critical beliefs and a claim by a barrister alleging discrimination because of his beliefs (in both cases

representing the regulators).
- Continued to act for the BMA in the discrimination claims arising from the discriminatory impact of the changes to the National Health Pension Schemes.
- Advised a European Works Council on its potential appeal to the Supreme Court.

Notable Cases

- *Uber Britannia Ltd v Sefton MBC [2023] EWHC 1975 (KB):* acting for interveners, who held private hire vehicle operator licences and who opposed Uber's application for a declaration that a licensed private hire vehicle operator enters as principal into a contractual obligation with the passenger.
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- *Fraser v HLMAD Ltd [2006] ICR 1395, CA:* choice of jurisdiction in wrongful dismissal/breach of contract claims.

Professional Recommendations





“Simon is charming, approachable, practical and very effective.”

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The Legal 500 2023

“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

“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

“He’s absolutely excellent; for anyone who has an employment issue and needs sound, sage advice, he’s your man.” “He’s hugely helpful and cuts to the heart of the issue.”

Chambers & Partners 2021

“Extremely good client service and he is prompt and responsive. He also has very high emotional intelligence and his pleasant manner disarms his opponents.”

The Legal 500 2021

“A brilliantly safe pair of hands on detailed, complex matters. He has a robust and client-friendly approach.”

Chambers & Partners 2019

“His calm and measured approach impresses judges and opponents.”

Chambers & Partners 2019

"His judgment and knowledge of employment law are first-rate and he is an excellent speaker." "A pleasure to work with. He's insightful and knows his stuff."

Chambers & Partners 2016