Simon Gorton KC

SILK: 2011 | CALL: 1988

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Overview

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

Appeal work

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

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

Recent cases include

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

Employment & Discrimination

Examples of Simon's extensive experience include:

Direct Discrimination

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

Race (direct) and victimisation

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

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

Sex Discrimination

Shelkholeslami v Edinburgh University [2018] IRLR 1090

Expertise

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

Recommendations

Simon Gorton is "outstanding at building a case and excellent at cross-examination." Chambers & Partners

"The impressive Simon Gorton QC is another vastly experienced employment specialist at the set and a real force to be reckoned with." His "tactical approach to proceedings" and "formidable" advocacy style give him an edge. one commentator noted: "His polite cross-examination technique is deadly." Chambers & Partners

Key contacts

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

Ind Coope v Alboni [1998] IRLR 131

Disability discrimination

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

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

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

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

Worker status

Hospital Medical Group Ltd v Westwood [2012] IRLR 834

Equal Pay

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

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

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

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

Medical and Regulatory

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

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

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

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

Jesudason v Alder Hey Children's NHS Foundation Trust QBD, 25 July 2012

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

Restrictive covenants and linked commercial work / Injunctive Relief

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

Simon regularly advises on issues relating to bonuses.

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

Injunctions formed part of the following cases:

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

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

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

Sheikoleslami v. University of Edinburgh [2018] IRLR 1090

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

Transfer of Undertakings

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

Simon has also appeared in:

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

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

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

Park Cakes Ltd v. Shumba and others [2013] IRLR 800, CA.

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

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

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

Astle others v. Cheshire County Council and another [2005] IRLR 12.

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

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

Medical and Regulatory

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

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

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

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Whistleblowing

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

Chief Constable of Greater Manchester v Aston Appeal No. UKEAT/0304/19/RN, 4 June 2021

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

Royal Mail Group Ltd v Jhuti [2019] UKSC 55, 27 November 2019

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

Kaltz Ltd v Hamer [2012] UKEAT 0198/11/2402, 24 February 2012

General Employment Law

Simon is expert in all types of employment disputes.

Agency Workers

Agency Workers Regulations 2010
Kocur v Angard Staffing Solutions Ltd & anor [2018] UKEAT 0181_17_2302 (23 February 2018)

Unfair dismissal

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

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

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

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

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

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

Court of Appeal case of *Whitbread Plc v Hall* on the band of reasonable responses.

Court of Appeal case of *Ind Coope v Alboni* on determining the reason for dismissal.

Remedies

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

Constantine v McGregor Cory on reinstatement and remedy

Strike out / deposit orders

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

Working Time Regulations

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

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

Wrongful dismissal

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

Definition of employee

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

Some other substantial reason

Nunn v Royal Mail Group Ltd [2011] ICR 162, 27 October 2010.
Driving Edge Ltd v Gietowski [2008] UKEAT 0444/07/0802, 8 February 2008.

Status of Claimant (worker/employee/neither)

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

Minimum wage

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

Claim in time / EDT

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

Judicial Review

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

Trade Union

TULCRA s. 152

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

Strike (interim injunction)

Metrobus Ltd v Unite the Union [2009] IRLR 851, [2010] ICR 173, CA 31 July 2009.

Personal Injury

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

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

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

Injury at work

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

Common Law / General Civil Litigation

A day's pay – per diem or calendar?

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

Practice – compromise

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

Terms of contract – custom and practice

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

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

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

Injury at work

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

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

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

Recent and current work

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

Notable Cases

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

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