

Tom Kirk

CALL: 2007

Email Clerk:

Telephone Clerk:

LinkedIn: <https://www.linkedin.com/in/tom-kirk-7b07a584/>



Overview

Tom's practice is divided between Chambers' employment & discrimination, hr professional support, inquests and commercial teams. He is predominantly an employment law specialist with particular expertise in disability discrimination, frequently instructed by both Claimants and Respondents in difficult long-term sickness absence and reasonable adjustments claims and disputes over worker status. He is ranked as a leading individual for employment law in *The Legal 500*, which describes him as **"an academically terrific opponent, whose advocacy is both measured and incisive"** (2020 edition).

Tom has extensive experience in dealing with politically sensitive disputes for his clients in the public, educational and charitable sectors. Through his appointment to the Attorney General's B Panel, he is regularly instructed by government departments.

Memberships

- 2016: Attorney General's Junior Counsel to the Crown, B Panel
- 2012: Attorney General's Junior Counsel to the Crown, Regional Panel
- Volunteer adviser, Employment Law Appeal Advice Scheme (ELAAS)
- Employment Law Bar Association
- Employment Lawyers Association
- Discrimination Law Association

Employment & Discrimination

Tom has been appearing regularly in the Employment Tribunals for over 12 years. Tom also appears in appeals before the Employment Appeals Tribunal and Court of Appeal and also has experience of restraint of trade cases in the High Court.

He is frequently instructed to appear in multi-day trials and preliminary hearings. He has an extensive paperwork practice and has been acknowledged by clients for providing thorough yet concise advice and robust pleadings. He also advises employer clients on various non-contentious matters, including TUPE transfers and the review of disciplinary and grievance policies.

In addition to work his work in the public sector, Tom is equally at home representing commercial clients and has been praised for his ability to quickly find a solution to a dispute that embraces an employer's specific practical and business needs. His Respondent/Defendant clients have included major corporations such as GlaxoSmithKline, Sainsbury's, Homebase, LHR Airports, Bibendum Wine and Selfridges.

He has achieved a number of high-value awards and settlements but is also quick to grasp the non-monetary aims pursued by Claimants such as negotiating re-engagement packages and agreeing full and fair references for dismissed employees. Tom regularly acts for trade union members and has represented Unite and UCATT members in multiple Tribunal claims involving trade union-related dismissals, non-payment of the National Minimum Wage and holiday pay.

Tom also has experience of advising and acting for clients in non-employment discrimination litigation in the civil courts, mainly in the provision of services.

He has an unstuffy and approachable manner with clients. Solicitors often mention how his conferencing skills make both Claimant and Respondent clients feel quickly at ease when faced with the potentially daunting prospect of

Expertise

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

Recommendations

"A gifted and rounded, intelligent advocate - he invariably impresses for the quality of his written and oral advocacy, and he has a great courtroom presence." *The Legal 500 2021*

"an academically terrific opponent, whose advocacy is both measured and incisive" *The Legal 500 2020*

Key contacts

Graham Smith

Deputy Senior Clerk

Phone: 020 7269 0357

Email: gsmith@oldsquare.co.uk

Lee Jennings

Junior Team Leader

Phone: 0207 269 0303

Email: jennings@oldsquare.co.uk

Paul Adams

Senior Team Leader

Phone: 020 7269 0305

Email: adams@oldsquare.co.uk

litigation.

Reported / Noteworthy Cases:

Court of Appeal:

- *Dunn v Secretary of State for Justice [2019] IRLR 298* (Underhill LJ); one of the recent leading cases on s.15 discrimination, confirming the test for causation is the same as under s.13. Also deals with when cases should be remitted to the ET rather than substituted;
- *Department for Work and Pensions v Robinson [2019] UKEAT/0021/19 (EAT - Kerr J)*: on the application of the test for causation under section 15 of the Equality Act 2010 being more than simply but for and the burden of proof. Being heard in Court of Appeal in June 2020.

Employment Appeal Tribunal:

- *Aston v Martlet Group Ltd [2019] ICR 1417 (HHJ Auerbach)*: on disability discrimination, victimisation and whether doctrine of judicial proceedings immunity compatible with EU law;
- *Davis-Bol v Brook Street and the Secretary of State for Justice UKEAT/0681/18 (HHJ Auerbach)*: time limits for appeals and extensions of time (racial harassment claim);
- *Akhigbe v Berkeley Homes (Urban Renaissance) Limited [2019] UKEAT/0005/18 (Kerr J)*: on whistleblowing, striking out and the meaning of detriment;
- *Blakely v Onsite Recruitment [2018] UKEAT/0134/17/DA (Choudhury J)*: test case on worker status in the construction sector and intention to create legal relations;
- *Farrer v SOSJ [2018] UKEAT/0286/17 (HH) Richardson*: test case on contractual status of civil service medical inefficiency payments and contractual interpretation;
- *Pugh v RT Electrics Ltd [2017] ICR D3 (Lady Wise)*: the application of res judicata / issue estoppel to determinations on time limits (disability discrimination claim);
- *Secretary of State for Justice v Dunn [2017] UKEAT/0234(Simler J)*: discrimination arising from disability, causation and the application of the burden of proof;
- *Taylor v Governing Body of Potters Gate CE Primary School [2015] UKEAT/0227/14 (HH) Eady QC*: on apparent bias and school governors (disability discrimination);
- *Bleasdale v Healthcare Locums Plc [2014] UKEAT/0324/13 (HH) Peter Clark*: on whistleblowing, misconduct and the reason for dismissal (causation).

Employment Tribunal

- *X v SOSJ [2020]*: acted for Respondent in whistleblowing claim involving a high-profile interview given to BBC by TU official about prison officer assaults and understaffing;
- *Kumrai v SOSJ and ors [2019]*: acted for Respondent in claims of race discrimination brought by serving tribunal judge involving senior members of judiciary (reported in *The Times*);
- *Slater and ors v Matthew Clark Bibendum [2019]*: acted for the Respondent in these claims brought by multiple senior directors for breach of contract, unfair dismissal & under TUPE, following the break-up of Conviviality plc, the UK's largest drinks distribution business;
- *Gregory v DFT [2019]*: acted for Respondent in claims involving whether the new Sat Nav driving test, rolled out nationwide, is indirectly discriminatory on grounds of disability;
- *Dhami v Tesco Stores Ltd [2017]*: acted for Claimant in one of first cases since the landmark *Unison* Supreme Court judgment to consider unlawful tribunal fees as a reason for extending time in a disability discrimination case.

HR Professional Support

Tom frequently advises both public and private sector human resources clients on non-contentious employment issues, e.g. the reviewing and drafting of disciplinary, grievance and pay policies, advising on whether policies are indirectly discriminatory and TUPE.

He also has experience of acting as the independent legal adviser in internal disciplinary and appeals hearings and advising clients on how to conduct disciplinary and grievance investigations. Tom writes and delivers in-house training for HR clients, providing an updating service on a whole host of employment law topics and putting on mock tribunals.

Commercial

Tom's commercial practice intersects with his employment work and he often advises companies on their obligations under TUPE, how to draft employment contracts and on restraint of trade issues. He has acted for companies in a number of commercial disputes involving contracts for the sale of goods and has advised on the incorporation and construction of indemnity and warranty clauses within commercial contracts. Tom has been instructed in some high-value construction adjudications. He was recently instructed as a junior in a Technology and Construction Court claim worth almost £1.5 million, involving complex legal arguments over the jurisdiction of adjudicators.

Recent cases include:

- *Hart & PK Maintenance v Ideal Response Group Ltd [2018] EWHC 314 (TCC)*: claim for almost £1.5 million in unpaid construction adjudication awards arising out of contracts to convert the Olympic Village into residential accommodation;
- *Loopdynamic Ltd v Louis Young and Open Select Recruitment Ltd (QBD) (Picken J)*: application for interim injunction by recruitment company to enforce restrictive covenants in recruitment consultant's contract, involving ambit and reasonableness of non-solicitation clauses;
- *Z v G*: advising and drafting pleadings in commercial contract dispute over the supply of digital marketing services;
- *X v Y*: advising over the enforceability of various restrictive covenants for consultants working as international foreign exchange brokers.

Inquests

Tom regularly appears in Coroner's Courts at pre-inquest reviews and full inquests, representing families, government departments, the police, other public sector bodies and companies. He has particular expertise in inquests into deaths in custody and cases involving the police. He is frequently instructed by the Government Legal Department to act for Her Majesty's Prisons and Probation Service, through his appointment to the Attorney General's B Panel, and also regularly acts for the Metropolitan Police Service. He has extensive experience representing these parties at jury inquests engaging Article 2 of the European Convention on Human Rights and in advising clients on connected civil claims brought by families of the deceased. From conducting HMPPS inquests, he has a detailed working understanding of suicide and self-harm prevention policies and procedures and how they are to be complied with. His police work has given him a detailed insight into joint working with NHS trusts and the ambulance service, on issues such as missing and vulnerable persons, and policies and training on custody conditions and first aid, amongst other things. He is particularly experienced in drafting submissions and addressing coroners on scope, jury conclusions and the engagement of Article 2. He is also very familiar with handling vulnerable witnesses.

Investigations

Tom has a firm understanding of what constitutes a full and fair investigation through his experience of dealing with employment cases which have examined investigatory processes. Tom has experience of conducting cases in the Employment Tribunal which have examined the sufficiency and scope of investigations into whistleblowing allegations, grievances and disciplinary matters. He has acted as a legal adviser to county councillors sitting as personnel appeals committees and has provided advice to clients on how to improve the way in which their investigations are completed, on the interplay between disciplinary and grievance investigations and on the re-opening of investigations at an appeal stage. Tom has provided numerous seminar and in-house training sessions to solicitors and HR professionals, which have explained how to carry out disciplinary and grievance investigations properly and how to minimise litigation risk in doing.