

Jack Mitchell

called 1994

Contract of Employment

Sport

Medical and Regulatory

Discrimination and Equality

Restrictive Covenants

Whistleblowing

OLD SQUARE
CHAMBERS
Investigation

Client testimonials

"Thank you most sincerely, for the work that you carried out for us in the recent Tribunal. Without doubt, your meticulous attention to detail, vast wealth of knowledge and experience secured the outcome. We are truly grateful for your support, guidance and care of us throughout."

Head teacher 2020

"On meeting Jack Mitchell I instantly noted his immense ability to identify and focus on key features that would be paramount in determination of my complex and prolonged 13-year case. He collated the relevant intricate facts with ease and assimilated them into a most accomplished argument with natural instinct. His rapid grasp of difficult key issues was epitomised in his brilliant cross examination of medical and clinical directors on hospital standardised mortality ratios after just one conversation and perusal of relevant charts and documents shortly beforehand. His tremendous abilities and readiness to go beyond 110% in my best interests led me to greatly admire Jack and his commitment to justice. I also like him very much owing to his friendly, caring approach, and ability to put me at ease through his sensitive and compassionate nature. I succeeded because I had Jack beside me. Jack is an exceptional advocate and amongst the best barristers I have encountered during my long case." Consultant

"I wanted to personally thank you for your assistance as it was your success at the PHR that has led to us being able to 'negotiate' a reasonable resolution (including [their] shares) ... It is my view that the critical factor in our success was the 'delivery' and 'tone' of the information presented." CEO

Directories

Chambers and Partners 2018

“An excellent barrister who has superb attention to detail. He is great with clients and immediately instils confidence. He is also a very impressive advocate.”

“His arguments are clear, concise, well presented and easily understood.”

Chambers and Partners, London:

“A name synonymous in the market with high-profile whistle-blowing claims, and someone who has a well established reputation for High Court advocacy and restrictive covenant issues. His meticulous preparation is highlighted as a major strength.” 2017

Strengths: “He works very hard for his clients, and has good expertise in dealing with NHS whistle-blowing claims.” “A very thorough barrister who shows great attention to detail.” 2017

Legal 500, Leading Junior, London:

“Extremely user friendly and possesses an encyclopaedic knowledge of whistleblowing law.” 2018

“He is really personable and approachable, and excellent on his feet.” 2017

Chambers and Partners, Western:

“Has a strong record of handling high-profile matters and is adept at shielding clients from public exposure. He demonstrates expertise in cases of whistle-blowing, and advises on Public Interest Disclosure Act claims in the commercial sector.” 2017

Strengths: “A good all-rounder with a specialism in whistle-blowing.”
Recent work: “Achieved success at the Court of Appeal in the case of **Agbenowossi-Koffi v Donvand Limited (t/a Gullivers Travel Associates)**, which concerned the criteria for a finding of unjust harassment”. 2017

Chambers and Partners

A very thorough barrister who shows great attention to detail"
“A good all-rounder with a specialism in whistle-blowing.” 2016

Legal 500

“He has a sharp, analytical mind, and is quick to grasp complex facts”
“... incredibly experienced and has the ability to put every technical point across with marvelous enthusiasm.” 2015

Publications

Whistleblowing: Law and Practice

First (2007), Second (2012) and Third Edition (2017)
with John Bowers QC, Martin Fodder, Jeremy Lewis and Jack Mitchell.
Published by Oxford University Press.

Whistleblowing: The Disclosure of Wrongdoing (with John Bowers QC and Jeremy Lewis) published by Sweet & Maxwell 1999.

Articles

‘Whistleblowing in Sport’ (2017) *World Sport Advocate*

Is Whistleblowing in Sport fit for purpose?

Part 1 (see the article [here](#)) and
Part 2 (see the article [here](#)).

For Lexis PSL, Jack has recently contributed:

“The doctrine of res judicata - overview”; “The doctrine of res judicata”; “Key requirements to establish a res judicata”; “Cause of action estoppel”; “Issue estoppel”; “Res judicata and Henderson abuse”; “The doctrine of merger in judgment” and “Res judicata and foreign judgments”.

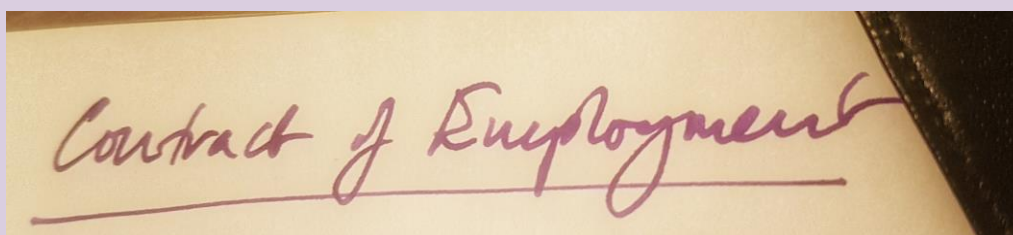
Subject matter for disclosure: Solicitors Journal SJ Vol.144(7), 176-177
25th February 2000 John Bowers QC, Jeremy Lewis and Jack Mitchell

Recent Conferences

The Employment Judges (Scotland) conference,
“Whistleblowing Update/Review” 2020

Industrial Law Society, “Whistleblowing Update” 2017

Old Square Chambers, “Whistleblowing Update” 2017



Employment Law

Jack specialises in employment law and has been attending tribunals since 1993. He advises both corporate and individual clients with some recent clients including: Babcock, Eurotunnel, Paul Smith, Royal Mail, Thomson Reuters, The Ritz, Terrence Higgins Trust and the BBC. When representing Claimants he has represented clients with successful claims against companies including: Lloyds Bank, HSBC and HP. Nominated as Employment Junior (2014), Jack attracts instructions in high profile claims including people in the media or sporting personalities, whose claims did not reach the public glare of court or a tribunal, including some market sensitive claims. As seen from the Directories and the Testimonials, Jack has received wide ranging praise for his expertise, sound practical advice and astute tactical direction.

British Airways Ltd v British Airline Pilots' Association [2019] EWHC 2302 (QB)

The High Court has turned down an application by British Airways for an injunction to prevent industrial action by the British Air Lines Pilots Association (BALPA). The case was heard on 23 July by Mrs Justice Elisabeth Laing and concerned the statutory construction of various sections of the Trade Union and Labour Relations (Consolidation) Act 1992 and the requirements placed on unions to comply with ballot notices, in particular the interpretation of s.226A. Simon Cheetham QC and Jack Mitchell, instructed by David Hunt of Farrer & Co, represented BALPA, having stepped in for Michael Ford QC and Stuart Brittenden, who had previously been acting for BALPA, but were unavailable for this hearing. The judgment is available [here](#).

A week later, Michael Ford QC, Simon Cheetham QC and Jack Mitchell, instructed by David Hunt and Alice Yandle of Farrer & Co, represented BALPA before the Court of Appeal [2019] EWCA Civ 1663. They dismissed British Airways' appeal against the judgment of Mrs Justice Elizabeth Laing. A case heard one week after the High Court judgment, on 23 July and in a judgment handed down on 31 July, the Court accepted BALPA's argument that the obligation on a union was to provide information about the general categories of employees, which – by providing pilots' ranks – they had done in this case. The judgment is available [here](#).

For further news reports on the case, see [The BBC](#), [The Guardian](#) or [The Telegraph](#).

Immigration, EAT

Jack led Rachel Owusu-Agyei in the EAT. Mr Badara was engaged by Pulse. He was a Nigerian national and husband to an EEA National. He was contractually required to prove his right to work in the UK. He supplied a work visa which expired and the employer was advised by the Home Office that to continue to employ Mr Badara would be a criminal offence. That advice was acted upon and he was suspended. The advice was wrong in law. The EAT remitted the case. A copy of the judgment is available [here](#).

Teachers: failure to consult, ET

Jack is acting for 12 former staff, instructed by 3 unions, presenting claims against a former partnership running a school. Jack successfully argued to have each partner personally liable for the protected award and persuaded the Tribunal that the Respondent school had failed to establish a fair dismissal and that each former member of staff was entitled to damages for unfair dismissal.

Re: A member of the House of Lords, ET

Jack represented a member of the House of Lords in successfully defending and avoiding claims, including obtaining restricted reporting orders.

Thomas and Others v Quinn and Liberty, ET

Instructed for 48 of the Claimants in this group litigation, this case addressed numerous issues including status under the WTR, ERA, holiday pay, terms and the conditions of employment. The case was the subject of Presidential Direction Order number 109.

Abuse of a customer, not a fair dismissal, ET

Jack represented the Claimant who was dismissed for allegedly physically and verbally abusing a member of the public. Despite video footage existing, Jack succeeded in obtaining an unfair dismissal judgment against the Claimant's employer. After succeeding, the employer settled the case before the remedy decision.

Working Time Regulations

Jack represented the Respondent defending a claim of working time regulation breach based on an analysis of over a year's tracking information, raising issues of what is working time, rest periods and rest breaks including daily rest periods, and weekly rest periods.

An unnamed bank, ET

Jack acted for a trader who provided key information to UK and USA regulators and also then became a key witness for the Department of Justice (US). This case was settled in the UK.

Thurlbeck, Weatherup, Edmunson v Newsgroup Newspapers Limited, ET

Jack was instructed to represent Mr Thurlbeck (former News Editor of News of the World) in his claims against that paper arising from the phone hacking scandal. Jack was successful at PHR before the London Regional Employment Judge.

Transfer of Undertakings

Jack has many years' experience in managing TUPE claims with recent work exploring the interesting question as to whether there was a transfer when the facts of the case throw up the issue as to whether there is a "significant difference" between the pre and post transfer service. A copy of the judgment is available [here](#).

Agbenowossi-Kofi v Donvand Limited (t/a Gullivers Travel Associates) [2014] EWCA Civ 855

In June 2014 leading Harriet Fear Davies (Devereaux Chambers), Jack succeeded in the Court of Appeal before the Master of the Rolls, Lord Justice Sullivan and Lady Justice Sharp. The case is an important practical application of the **Henderson v Henderson** abuse of process principle, and what is required for a finding of unjust harassment. Jack represented the Respondent both before the ET and then the EAT. He

initially succeeded by striking out the Claimant's first claim for being out of time before the then Regional Employment Judge. When the Claimant issued a second claim, which repeated the allegations from the first claim together with new allegations, Jack made a successful application to strike out this second claim relying on the above principles. Having successfully responded to an Appeal to the EAT, Jack appeared before the Court of Appeal with his junior and succeeded in establishing that the Tribunal Judge applied the above principles correctly. A copy of the judgment is available [here](#).



Whistleblowing

Jack is a recognised specialist in whistleblowing and a co-author of seminal books on the subject. Working in this area since 1993, first at Public Concern at Work (now Protect) where he was part of the team who advised and persuaded MPs to provide protection, through to the introduction of the Public Interest Disclosure Act 1998. Jack has advised Governments and contributed to international papers in this area. With this practical and academic insight, he has been involved in many cases for both Claimants and Respondents. His understanding of what is understood to be one of the most complex areas of employment law has resulted in many successful cases for his clients with awards for Claimants ranging up to 7 figures. Jack has more recently started to assist with multinational claims, including those under the False Claims Act and SEC protection in the US. Under all the headings below there is a frequent theme in that Jack is regularly instructed in whistleblowing cases.

Appeal Work, CA and Supreme Court

Led by Simon Gorton QC, Jack joined the legal team in the ground breaking case of **Royal Mail Group Ltd v Jhuti**. First before the Court of Appeal, then before the Supreme Court, then back to the ET and then up to the EAT. This case is still continuing.

Previously Jack had been instructed to Appeal the case of **Geduld v Cavendish Munro Professional Risks Management Ltd**. Jack was also brought in to lead Alex Line (Outer Temple Chambers) in an Appeal by the Terrance Higgins Trust, however the case settled.

Thain v Devon and Somerset Fire and Rescue Services, ET

From 2017 to 2020 Jack was instructed by Devon and Somerset Fire and Rescue Services in a complex claim presented by Mr Thain. The case was subject to various delays but was withdrawn at the Tribunal after Jack cross examined Mr Thain in 2020.

Junior Doctor, ET

Representing a junior doctor at first instance in 2017, in a case impacting 54,000 junior doctors and funded by the BMA, Jack ran arguments not previously run in ***Day v Lewisham and Greenwich NHS Trust*** (CA), following which the Trust conceded this junior doctor's status and the whistleblowing part of the case proceeded to trial. At the substantive hearing, the Hospital agreed to a confidential settlement with an open statement that the doctor had suffered a detriment having made a protected qualifying disclosure.

Dr Mattu, ET

Jack represented this famous cardiologist in his Tribunal claim against University Hospital of Coventry and Warwickshire NHS Trust. In what is regarded as the longest running Tribunal case, with the hearing taking place over 6 months, involving more than 26 witnesses and 54 lever arch files. The claim considered treatment endured over 13 years and resulting in a judgment of over 400 pages in length. Jack, leading another barrister, was successful in this ground breaking judgment which resulted in substantial damages being awarded, with Jane McNeil QC taking over the remedy hearings in this case. See the Independent's article on the case [here](#).

Trader, ET

Jack represented a currency trader who blew the whistle on front running at the bank (whereby traders would obtain information from prospective clients that would affect the market, then trade misusing that information). Jack secured a substantial payment to the Claimant, subject to confidentiality agreements.

An unnamed bank, ET

Jack acted for a trader who provided key information to UK and USA regulators and also then became a key witness for the Department of Justice (US).

A claim for interim damages and unfair dismissal together with responding to an injunctive remedy involving a solicitor who claimed he was instructed not to disclose documentation in High Court litigation.

Spy, ET

A claim from a member of the security services following disclosures of information which placed his and his colleagues at risk when conducting operations overseas. This case settled.



Restrictive Covenants

Jack has obtained without notice and with notice injunctions in many areas, but predominantly in relation to alleged breach of express or implied covenants by senior staff concerning information, data or materials removed or matters of strict confidentiality. Advising in this urgent area, Jack is calm, tactical and astute to the specific requirements and is a valued member of the legal team either presenting or responding to these claims. Whether you are concerned about the diversion of business opportunities, the misuse of business information, team moves, database rights and the misuse of data, Jack is experienced in these areas. Further, he understands the plethora of remedies available beyond the prohibitory, mandatory, springboard or negative injunctions through to restitutionary damages and gain based, exemplary or liquidated damages even down to the benefits arising from an account of profits or equitable damages being awarded. Jack has also been involved in cases where search orders have been obtained.

British Airways v BALPA, High Court / Court of Appeal

Jack was instructed as junior to Simon Cheetham QC for the High Court application for an injunction brought by BA to prevent a strike. Further information is available [here](#).

Team move, High Court

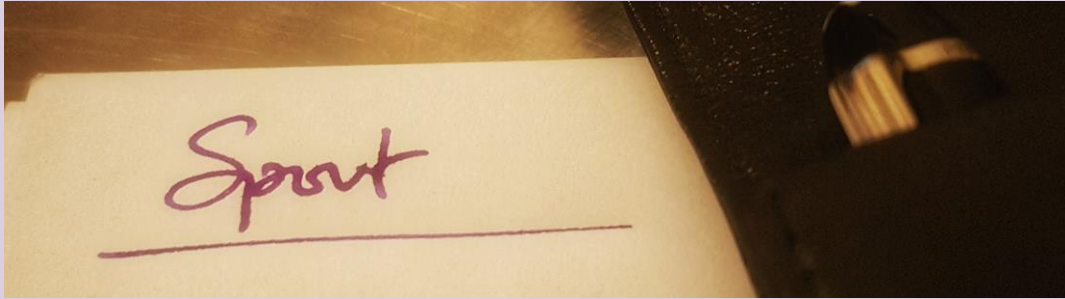
Jack was instructed as junior to Simon Gorton QC in a team move claim for the new employer of the team. The claim settled.

Re: A Solicitor, Arbitration

Jack was instructed to represent a solicitor in an arbitration regarding their alleged breach of contractual and other restrictive covenants. Jack successfully represented and negotiated a settlement during the arbitration.

Re: An LLP, High Court

Jack advised a major law firm on potential breaches of covenant by an existing and departing partner. Litigation was avoided due to Jack's advice and undertakings having been obtained.



Work in Sport

Representative work includes:

Football Jack has advised on the construction of football contracts, including: rights of termination; the contractual implications following a player's prison sentence.

At the very end of 2018 and into 2019, Jack undertook a 6-month investigation into bullying allegations made against a coach at Aston Villa. Jack was instructed by David Smellie of Farrer & Co. The investigation was made public. For newspaper reports on the matter see: [The Guardian](#), [The Independent](#), [ITV](#), [The Sun](#) or [Sky Sports](#).

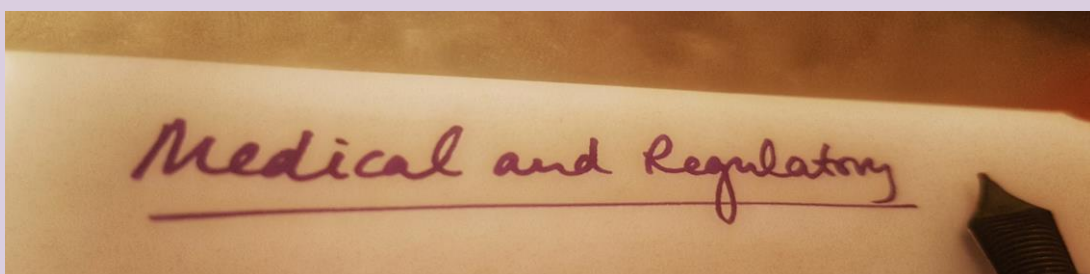
In 2018 Jack was the most senior barrister appointed to a team selected to interview staff and players within a premier league team for an internal investigation. The investigation was conducted over a 72-hour period resulting in the dismissal of a senior member of staff.

Rugby Jack is an RFU qualified referee and has coached mini rugby for over 10 years. Jack has advised an international coach / manager on their rights upon discrimination, termination of contract through to representation in successful mediation.

Gymnastics Jack was recently selected and approved to sit as an Appellate judge in a high profile BGA appeal, against a sanction imposed on a gymnast.

Jack has written articles in relation to the protections in Sport for whistleblowers with a national and international perspective.

"*Is Whistleblowing in Sport fit for purpose? Part 1*" (available [here](#)) and "Part 2", (available [here](#)) and "*Whistleblowing in Sport*", World Sport Advocate, 13th April 2017.



Medical and Regulatory

Jack has represented many medical practitioners in Tribunal or in the Courts, be they Claimants, Trusts or individual Respondents to claims. Knowledgeable about the professional and regulatory arena in which all professionals must work, Jack has represented professionals before their professional body or where those same standards are applied both internally or before a Court or Tribunal.

Jack's intimate knowledge of claims in the NHS is demonstrated by the fact that from a Daily Telegraph article on whistleblowing in the NHS (available [here](#)), Jack represented Dr Dare, Dr Mattu and Mrs Blackburn in her preliminary hearing and before the EAT, where he was led by John Bowers QC.

The following are some of Jack's other recent cases:

University Hospital, London, ET

Jack was instructed in early 2020 to cover days 13, 14 and 15 of a three-week trial when Counsel with conduct for that trial became unavailable. He was instructed 3 working days before the final days of the trial, when the Tribunal refused to adjourn the conclusion of evidence for the hearing. Fortunately, the Tribunal subsequently agreed to permit closing argument to be reserved.

Humby v Barts Health NHS Trust, ET

Jack successfully represented Barts in a disability discrimination claim, involving direct discrimination, discrimination arising and reasonable adjustments. A copy of the judgment is available [here](#).

Junior Doctor, ET

Representing a junior doctor at first instance in 2017, in a case impacting 54,000 junior doctors and funded by the BMA. Jack ran arguments not previously run in Day v Lewisham and Greenwich NHS Trust (CA). The Trust conceded this junior doctor's status and subsequently on the first day of the hearing admitted he made protected disclosures and had suffered detriment on the ground of his disclosures.

Dr Mattu, ET

Jack represented this famous cardiologist in his Tribunal claim against University Hospital of Coventry and Warwickshire NHS Trust. In what is regarded as the longest running Tribunal case, with the hearing taking place over 6 months, involving more than 26 witnesses and 54 lever arch files. The claim considered treatment endured over 13 years and resulting in a judgment of over 400 pages in length. Jack, leading another barrister, was successful in this ground breaking judgment which resulted in substantial damages being awarded, with Jane McNeil QC taking over the remedy hearings in this case. See the Independent's article on the case [here](#).

Dr Dare v West London Mental Health NHS Trust, EAT

Jack was instructed to Appeal to the EAT and secured a favourable settlement for whistleblower Dr Dare, the former Clinical Lead of Women's Unit Broadmoor. The issues have been widely reported in the press, following the removal of the Chair and Chief Executive and a CQC inspection recording substantial issues.

For more information on Dr Dare, please see this [article](#).

Senasinghe v East Kent NHS Hospitals University Trust, ET

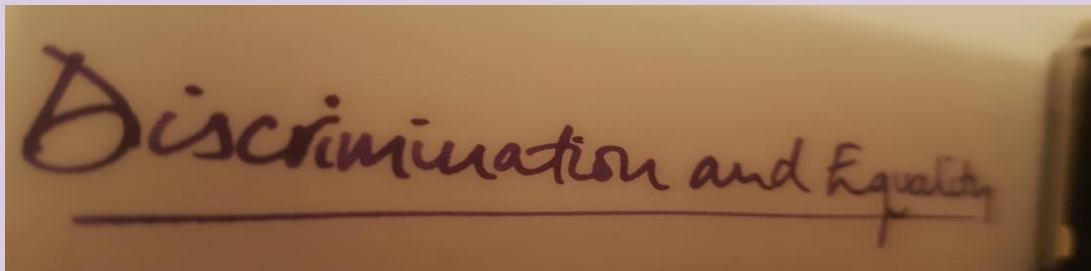
Jack was instructed by the Claimant in his complex discrimination claim including whistleblowing and unfair dismissal. Jack was specifically thanked by the Judge during this trial for his conduct when handling various novel matters that arose.

Nurse, NMC

Jack represented a mental health nurse who was accused of failing to keep accurate notes.

The Christie Hospital NHS Foundation Trust v Liakopoulou, EAT

The Claimant was an NHS whistleblower who succeeded only in her claim for unfair dismissal. Jack was instructed at the Claimant's Appeal, despite not representing the Claimant during the Tribunal Hearing. The judgment is available [here](#).



Discrimination and Equality

Jack has successfully represented Claimants and Respondents in this nuanced and highly sensitive area of law. Jack has decades of experience in this area, presenting successful claims ranging from a police officer who was sent an offensive postcard (see the [judgment](#)) through to successfully defending 2 consultants accused of discrimination in the High Court, where they also faced defamation claims (see the [judgment](#)).

In addition, Jack has specific knowledge of Equal Pay claims and has been noted by Chambers & Partners previously in this area. This year Jack successfully represented a claim against a Paulo Alto tech firm, that was settled on favourable terms.

Previously Jack has advised and orchestrated a Local Authorities managed approach to mass litigation in this area, through to successfully establishing material factor defences.

Humby v Barts Health NHS Trust, ET

Jack successfully represented Barts in a disability discrimination claim, involving direct discrimination, discrimination arising and reasonable adjustments. A copy of the judgment is available [here](#).

Mrs Ali v New College Manchester, EAT

In December 2015, Jack represented New College in Manchester Tribunal, successfully defending claims of disability discrimination, dismissal because of whistleblowing and the failure to make reasonable adjustments. In 2016, Mrs Ali presented an Appeal to the EAT where again Jack successfully defended the Respondent before the EAT. A copy of the judgment is available [here](#).

London Borough of Hillingdon v Meso, EAT

Jack represented Mrs Meso in a complex and unusual appeal over a claim of race of discrimination. Before the President of the EAT, Jack successfully argued the application of “fresh evidence” under rule 34(3)(d) and rule 34(3)(c) (“interest of justice”) and prevented the discrimination decision from being overturned. A copy of the judgment is available [here](#).

Babcock, ET

Jack represented this Respondent, defending an unmeritorious claim for over £400,000 for race discrimination and disability discrimination.

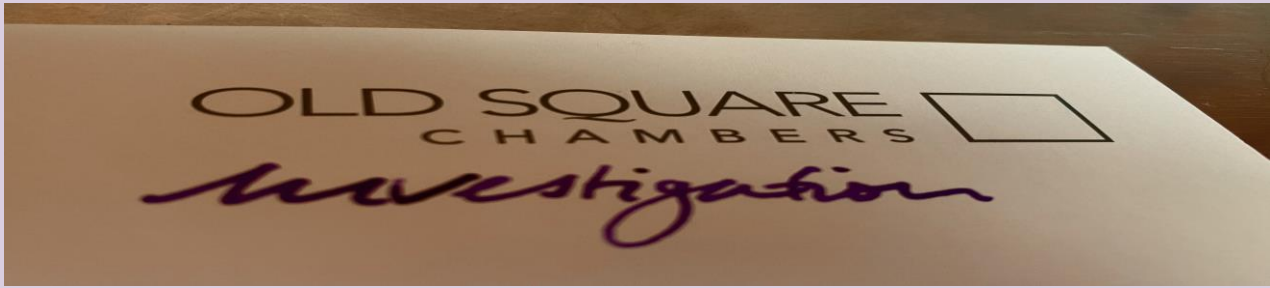
Disability discrimination

Jack has advised on numerous disability discrimination cases, including Dr Mattu whose claim succeeded on many grounds including the Trust’s failure to make reasonable adjustments.

Solicitor

Jack was involved in a case where a solicitor was dismissed on the grounds of his disability.

More recently, Jack successfully established a Claimant was not disabled at a PHR, following the cross examination of the Claimant adducing evidence which substantially undermined the medical evidence.



Investigations

Representative work includes:

In 2020, Jack has been undertaking an investigation for a City company into grievances and purported whistleblowing matters. Jack also undertook an investigation into a matter for a school.

At the end of 2018 and into 2019 Jack undertook an investigation into historical allegations of bullying at Aston Villa Football Club.

In 2018, Jack was the most senior barrister in a team appointed to investigate allegations in a premier league club, interviewing first team players, coaches and staff.

In 2017, Jack undertook an investigation into discrimination for a Mayfair firm.

Common Law

Jack undertakes common law claims in the County or High Court, particularly where they involve the actions of senior Directors or the conduct of regulated professions. Some examples of Jack's work in this area include:

Tracing, company property, High Court

A High Court claim was presented by the former employer of Z. It claimed company funds acquired in the Peoples Republic of China, paid through a Hong Kong account into the UK, were not paid to the company but used by Z for himself and his wife. Jack represented the Defendants Z and his wife in their application to strike out the claim as an abuse of process.

Re: A Solicitor, Arbitration

Jack was instructed to represent a solicitor in an arbitration regarding their alleged breach of contractual and other restrictive covenants. Jack successfully represented and negotiated a settlement during the arbitration.