

EDWARD KEMP

Call: 2005



Practice Overview

Ed specialises in employment and discrimination law with significant experience in cross-over work such as high value contractual claims, professional negligence and cases with an international element or flavour.

Ed has been ranked as a leading junior in the employment law field in both the Legal 500 and in Chambers & Partners for many years. He has been described in the following terms:-

"Offers cross-disciplinary expertise in employment, commercial and professional negligence matters. His practice is international, though his domestic practice has seen him in courts of all levels, up to the Supreme Court."

"Very good at drafting. He is calm, competent and deals with complicated issues with enthusiasm and diligence" (Chambers & Partners, 2017)

"He always adds value, is solutions focused and very creative in challenging situations" (Legal 500, 2016)

"Described as "one to watch" by sources who praised his "imaginative" approach to his brief..."

"He quickly masters the details of a matter and gives clear and unambiguous advice."

"He is very calm and competent, and deals with complicated issues with enthusiasm and diligence."
(Chambers & Partners, 2016)

"He has great courtroom presence, and is both reassuringly confident and persuasive" (Legal 500, 2015)

"He deals with complex and challenging cases with grace and determination" (Chambers & Partners, 2015)

"He has a remarkable ability to drill down into the fine details of a case" and "he is brilliant at analysing each of the tiny nuances of a case and does an enormous amount of research" (Chambers & Partners, 2014).

"Exceptionally talented" and "has drafting skills which were singled out for praise by sources" (Chambers & Partners, 2013).

Ed litigates complex or high value cases at every level of court and tribunal in the country. Ed is particularly sought after for challenging cases raising novel points of law and sensitive factual disputes requiring creative thinking and flexible advocacy skills. Ed has a strong practice as both a trial and appellate lawyer. In the space of just a few years he has been involved as junior counsel in two cases in which he has represented at every level of tribunal and court all the way up to the Supreme Court. Ed's second case in the Supreme Court is to be heard in 2017.

Ed is consistently recognised for his specialist expertise in equality law. In Chambers & Partners 2014, he was ***"particularly commended for his ability to handle novel discrimination cases"***. In 2015, he was again noted for his ***"standout expertise in discrimination cases"***. In addition, Ed has a depth of expertise in whistleblowing disputes (particularly those in the health care sector and those with an international dimension), contract claims

(including complex interpretation points and implication of terms) and the full breadth of statutory employment claims.

Ed also practices internationally and has recently appeared as an advocate before the Court of First Instance in the DIFC in Dubai. Ed is registered as an advocate with full rights of audience (including appeals) in that jurisdiction. At Littleton, Ed is a registered pupil supervisor and joint Equality and Diversity Officer. Ed is also an appointed member of the Employment Lawyers Association Pro Bono Committee and is responsible for NGO/Social Enterprise opportunities. Ed has recently become an advocacy trainer for Assurety.

Appellate Work

Supreme Court:-

- **P v. Commissioner of Police for the Metropolis** [2016] IRLR 301, CA – immunity from suit of Police Misconduct Panel from discrimination claims in the Employment Tribunal. Permission to appeal to the Supreme Court granted in July 2016, to be heard in May 2017 (led by Karon Monaghan QC).
- **Dr. S Verma v. Barts and the London NHS Trust** [2013] ICR 727, [2013] IRLR 567, SC (meaning of pay protection for doctors in the NHS) – appeared alone and successfully in the EAT and led by Karon Monaghan QC in the Court of Appeal and the Supreme Court, where he was personally mentioned for his “*diligence*” in the Judgment.

Recent EAT cases:-

- **Green v. SIG** UKEAT/0282/16/DA – territorial reach of UK whistleblowing laws. To be heard by the EAT in April 2017 (sole counsel).
- **Dr Lees v. Imperial College of Science and Technology** UKEAT/0288/15/RN – representing Imperial in an appeal concerning the meaning of the redundancy payment provisions in s.136 ERA (IDS Volume 9, Chapter 1.43).
- **Dr. S Verma v. Newham University Hospital NHS Trust** – representing the doctor in a further pay protection challenge to the NHS terms and conditions of service following the challenge in the Supreme Court.
- **Russell v. College of North West London** [2014] All ER (D) 200 (Sep) – represented local authority in this two day case before the EAT concerning the “*Bradford Score*” and disability discrimination (see: Equal Opportunities Review, October 2014).
- **George v. London Borough of Brent** [2014] All ER (D) 10 (Sep) and (No.2) UKEAT/0233/15/DM – represented local authority in this case about trial periods in redundancy law.
- **Igbinake v. Axis Security** [2014] All ER(D) 51 (Sep) – represented appellant pro-bono in case about inadequacy of Tribunal reasons and religious discrimination.

Ed is a member of the ELAAS scheme and appears pro-bono in the EAT in that capacity, assisting and representing litigants in person with apparently hopeless appeals. Ed has also appeared in the EAT on behalf of the Bar Probono Unit.

Discrimination and Whistleblowing

Ed acts for employers and employees in complex or high value discrimination and whistleblowing claims. Ed is consistently recommended for his discrimination expertise in recent editions of the Directories. Chambers & Partners (2016) noted that Ed “***is well known for his work on equality law***”. Ed’s recent cases in this field include:-

- instructed to represent a consultant in a complex 10 day whistleblowing claim and backdated holiday pay claim (cases settled shortly before trial and at mediation respectively).
- represented doctor in complex 11 day whistleblowing detriment and race discrimination claim.
- represented employer (led by John Bowers QC) in seven figure claim for psychiatric injury (case settled at door of tribunal).

- represented doctor (leading Marc Delehanty) in a ground breaking free movement of workers challenge to a contractual benefit (case settled on eve of hearing).
- represented embassy worker in a discrimination claim against State of Qatar raising issues of state and diplomatic immunity under the Vienna Convention with press coverage in the Evening Standard.
- representing and advising various workers and companies in territorial jurisdiction cases in territories as far and wide as: Afghanistan, Hong Kong, the USA, Tanzania, Mozambique and Saudi Arabia.
- successfully represented a household brand in a 3 day sex discrimination case with coverage in The Telegraph.
- represented a police constable in a gender reassignment discrimination case with widespread national media coverage in the Sun and the Dailymail ([2014] EqLR 184).
- represented higher education college in resisting disability discrimination challenge to “*Bradford score*” in two separate cases in Tribunal ([2013] EqLR 737) and in Tribunal and successfully on appeal ([2014] All ER (D) 200 (Sep)).
- advising senior executives on discrimination claims of various kinds (e.g. race, age, sex).

Other Employment Tribunal Claims

Ed has a broad range of experience across the full width of statutory employment claims. He represents both employers and employees in addition to providing advisory services. Ed has particular expertise in pay disputes of all kinds and work in the medical field, the police service and City disputes. Ed’s recent work in this field includes:-

- representing employment agency in complex claim under the Agency Worker Regulations (claim withdrawn after cross-examination).
- successfully represented an NHS Trust in a case concerning the meaning of the recognition of previous service provisions in the NHS Terms and Conditions of Service for Doctors.
- represented the lead Claimant in a test case on the meaning of the new pay protection provisions for doctors within the NHS.
- defending various respondents in cases involving employment status issues and illegality.
- persuaded an ET to strike out as vexatious a claim for a declaration of failure to consult under s.188 TULRCA on the basis that the “**game [wasn't] worth the candle, let alone the wick**”.
- represented a senior employment lawyer at a mediation against a QC which led to a confidential and bespoke five figure settlement.
- successfully represented a property lawyer obtaining a finding at a PHR of employment status and resisting various Polkey arguments raised in remedy following a late admission of liability.
- advising a banker on the merits of his claim for unfair dismissal arising from allegations of insider dealing.
- advising on the TUPE Regulations 1981 for the purposes of an industrial disease claim in the High Court (case settled for a high five figure sum).

International & Offshore

Ed has particular expertise in international employment cases. He is one of very few employment barristers with a practice that is international. Ed’s experience encompasses both jurisdiction and territoriality disputes in the domestic courts in addition to advisory and advocacy work on cases in forums overseas.

Ed’s recent experience in the domestic courts includes:-

- **Green v. SIG** UKEAT/0282/16/DA – territorial reach of UK whistleblowing laws. To be heard by the EAT in April 2017.
- Representing a foreign government asserting state immunity post-**Benkharbouche** [2015] EWCA Civ 33.
- Representing a senior executive in a territorial reach issue against a QC and junior with concurrent anti-suit proceedings in South Asia (case settled on terms on the eve of the hearing).
- Representing an international commuter in an issue concerning the territorial reach of the ERA to an employment / agency relationship in Tanzania / UK.

- Representing the owner of a superyacht in an issue concerning the territorial reach and the “*mariner*” provisions of the ERA in respect of the employment of its former captain residing in the Caribbean.

Ed now has full rights of audience before the DIFC Courts in Dubai. He has recently appeared in the following matters within that jurisdiction:-

- **Pierre Eric Lys v. Elseco** CFI012/2014.
- **BGC Brokers v. Abourahim** CFI027/2013 (listed as one of the top three most notable cases in the DIFC Court of First Instance in 2015 in the Court’s Annual Review 2015).
- **Gaspar v. Gavrilova & Company**, SCT 3/4/16 – settled defence and advised the successful (anonymised) defendant in this case concerning pre-conditions of an offer of employment by a law firm.

Ed has a long-standing interest and expertise in comparative and conflicts of law.

Ed was educated in both English Law and French Law. He has an LLB from King’s College London and a Maîtrise en Droit from Université de Paris I (La Sorbonne). Ed then took an LLM from University College London which focused on employment, equality law and comparative law.

Ed regularly writes papers and chairs conferences both in the UK and in Dubai on the subjects of territoriality and influence of English law in the development of the common law in the emerging global litigation market.

Ed is also retained as an ad-hoc consultant in the international aid sector on the duty of care owed by NGOs to their staff in a multi-jurisdictional and high risk environment. Ed brings his knowledge of comparative law combined with the experience in his early years of practice in personal injury law to bear in this developing field.

Over a two year period culminating in publication in November 2011, Ed drafted guidance on the law of negligence for international aid agencies for a Swiss NGO (Security Management Initiative) in partnership with five magic circle international law firms from five different jurisdictions. This work has become one of the leading sources of guidance to HR professionals within the sector receiving thousands of downloads.

After publication of this work, Ed then went on to chair conferences and present workshops on the subject in the USA, Geneva and in Brussels. In October 2012, Ed researched and drafted a concept paper for a code of conduct for NGOs with a designated Arbitral Tribunal to resolve personal injury claims against international NGOs.

In March 2016, Ed co-chaired a conference for the European Interagency Security Forum at Médecins Sans Frontières in Brussels following the landmark ruling by the Oslo District Court in 2015 that an NGO had been grossly negligent in respect of the kidnapping and injury of one of its employees in the Horn of Africa. In September 2016, Ed co-authored a paper on this ruling and its repercussions within the sector.

Commercial Employment

Ed’s experience in this area includes:-

- Led by Selwyn Bloch QC in defending multi-million pound senior executive wrongful dismissal claim (appeared alone against QC in interim application)
- Defending a senior executive wrongful termination claim in the DIFC Courts in Dubai involving expert forensic accountancy evidence
- Representing a language agency in threatened injunction for theft of confidential information and database (case settled before injunction)
- Litigating concurrent proceedings in the Employment Tribunal / High Court, for example shareholder disputes with good leaver / bad leaver provisions
- Advised as part of a multi-disciplinary team of counsel on the bonus element of a partnership dispute proceeding in the Chancery Division

- Contractual interpretation – litigation on several occasions in the appellate courts including the Supreme Court
- Conflicts of law and jurisdiction
- Fiduciary duties
- Confidential information (including the Database Regulations)
- Litigating concurrent proceedings in the Employment Tribunal/High Court
- Bonus claims including complex points of contractual interpretation and the scope of implied terms.

Other High Court/County Court

Ed is recognised in the current edition of Chambers and Partners (2017) for his "***cross-disciplinary expertise in employment, commercial and professional negligence matters***". Ed is able to combine the experiences of his early years of practice in personal injury with his skill set in employment and employment-related fields when it comes to novel or complex litigation in the civil courts.

Ed is regularly instructed to litigate pay disputes and other contractual disputes in the civil courts. He has strong legal expertise in contractual interpretation issues and in the law of implied terms. He has a particular depth of experience in health care sector cases:-

- Representing almost an entire department of doctors in a pay dispute with a Trust
- Advising and representing individual doctors in breach of contract claims in the civil courts
- Representing doctors in injunctive proceedings

Ed also has a growing reputation as an equality practitioner in the goods and services field:-

- Successfully representing a company in a three day race discrimination on the multi-track
- Successfully representing a parking enforcement company in a race discrimination claim in the county court and at a mediation
- Successfully representing an estate agent in a race and sexual orientation discrimination claim in the county court
- Led by David Reade QC in drafting a defence to an Equality Act claim in the banking sector

Ed's practice in the professional negligence field continues to develop apace. Chambers and Partners (2016) notes Ed's "...***skill at handling professional negligence and employment situations***." In this sensitive and often highly confidential area, Ed has been involved in a number of High Court/County Court actions. The cases typically include allegations of negligent employment advice or failed employment litigation with complex issues of quantum. The cases sometimes involve concurrent proceedings for breach of contract against former employers.

Arbitration

Ed has a developing interest in arbitration as a forum for dispute resolution within all of his practice areas. Ed is able to combine his skills as a litigator with his knowledge of comparative legal systems and cultures.

In 2012, Ed researched and drafted a concept paper for a code of conduct for NGOs with a designated Arbitral Tribunal to resolve personal injury claims against international NGOs.