

## NAOMI ELLENBOGEN QC

Silk: 2010 | Call: 1992



*"Highly intelligent, she is extremely responsive and unmistakably a leader in her field"*

*"Very competent, an excellent advocate and intellectually gifted"*

*"A highly effective and intelligent advocate...Very approachable. She is remarkably capable, has an eye for detail and is fiercely intelligent"*

*"Meticulous in her preparation, and tenacious and determined in her advocacy"*

*"Mature, lucid and excellent on her feet, giving opponents a run for their money time after time. Clients further report that 'she is a delight to deal with'"*

*"Very user-friendly and very approachable. Her greatest skill is being able to distil things down, focus on the issues and present things in a very clear-cut way." "She gives calm and reassuring advice to clients and has bags of experience. She is always focused on a clear strategy for the client."*

*"She has excellent knowledge and expertise, and is very highly regarded in the field."*

(Chambers & Partners UK Guide/Legal 500)

One of the leading practitioners in the fields of employment, commercial and professional negligence law, **'first class advocate'**, Naomi has won repeated plaudits from clients, judges and legal directories since she was called to the Bar in 1992. She was appointed Queen's Counsel in 2010; amongst the most junior to be appointed in that year. Naomi has appeared in all appellate Courts and Tribunals within her fields of practice, up to and including the Supreme Court. She is regarded as a clear-thinking, formidable advocate and a creative lawyer and tactician. She has a flair for putting people at their ease.

Legal directories have variously recognised Naomi's **'superb'** skill in cross-examination and her **'bright and commercial'** attitude, as well as her strong reputation as a **'punchy advocate, recognised for her ability to assimilate large quantities of information'** who **'will go that extra mile for her clients and never fails to impress'**. She **'achieves success through her successful interaction with clients'** and has **'excellent advocacy skills - great on her feet, she never concedes a point'**. Naomi is **'thoroughly prepared and tenaciously executes her advocacy without arrogance'**. **'Clients are "lost in admiration" for Naomi Ellenbogen. This "strong and tremendously courteous advocate" has many fans'**. Naomi is **'very strong'**, **'a pleasure to work with'** and **'user-friendly'**. **'She has a fantastic grasp of detail and is a**

*tenacious advocate.'*

In commercial law, Naomi comes *'highly recommended'*, *'singled out by major firms'*. She is *'seen by top firms as an approachable and able commercial practitioner'* and counts blue-chip financial institutions and insurers amongst her clients. Over many years, she has been cited as an expert in this field in the Legal Experts guide. She has been identified as a *'prominent practitioner'* in the field of professional negligence.

Naomi is an accredited mediator, experienced in mediating complex and high value disputes in all her areas of practice. Legal 500 notes that she is *'an excellent mediator who has an excellent grip of the law, but can cut through it to identify how the parties can resolve conflict. Ellenbogen is particularly noted for high-value, complex employment and commercial litigation.'* Recent feedback includes, *'Thank you very much for your role yesterday, which you performed breathtakingly well. I am absolutely convinced we would have drawn up stumps before lunchtime without you.'* and, *'Reaching settlement was undoubtedly down to your excellent mediation skills... [Solicitors and Counsel] were very impressed with how you managed the whole situation, and I don't think we would have ever settled this case without you (we had been trying for over 6 months!). Thank you again, we are truly grateful.'*

Naomi is the General Editor of *Butterworths Employment Law: Practice, Procedure & Precedents, Fifth Edition*.

Naomi is Vice-Chairman of the Bar Standards Board. Between 2011 and 2015 she held the position of Barrister Vice-Chairman of the Professional Conduct Committee of the Bar Standards Board. She sits as a Deputy High Court Judge, is a Recorder of the Crown Court and a Bencher of Gray's Inn. Naomi was Joint Head of Littleton Chambers from 2014 to 2018.

Naomi's practice sees her undertake work across a wide variety of business sectors. She has particular experience within the financial services, insurance, legal and property sectors. Naomi regularly acts for and advises firms of solicitors, accountants and other professionals, together with professional and regulatory bodies, in internal disputes and litigation to which they themselves are parties. Naomi also works extensively with clients in the healthcare, local government and education sectors.

Naomi attended King David High School in Liverpool, before gaining an MA in Jurisprudence from the University of Oxford (New College).

## Sectors

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## Education

Having attended King David High School in Liverpool, Naomi gained an MA in Jurisprudence from the University of Oxford (New College). She was called to the Bar by Gray's Inn in 1992.

## Professional Posts and Affiliations

Naomi is Vice-Chairman of the Bar Standards Board. From 2011 to 2015, she was Barrister Vice-Chairman of the Professional Conduct Committee of the Bar Standards Board. She is a Bencher of Gray's Inn. Between 2006 and 2015, she was a case reviewer for the Bar Pro Bono Unit. Naomi is a member of the ELAAS scheme and has undertaken several cases for the Bar Pro Bono Unit.

Naomi served as a member of the Training and Accreditation Committee of the Advocacy Training Council and is Vice-Chairman (Civil) of the Gray's Inn Advocacy & CPD Committee. From 1999 to 2013, she served as an elected member of the Gray's Inn Barristers' Committee. She is also a member of COMBAR, the Employment Law Bar Association, the Professional Negligence Bar Association; the Technology and Construction Bar Association and the South Eastern Circuit.

Naomi sits as a Deputy High Court Judge and is a Recorder of the Crown Court.

## Outside Interests

As a musician herself, Naomi has a keen interest in music (in particular, opera, classical and jazz). She enjoys sailing, travel, theatre and cinema.

## Employment & Business Protection

Naomi undertakes a wide range of employment litigation in courts, tribunals and mediation. She regularly appears in appellate courts and tribunals. She is the General Editor of a leading practitioner text.

- Principal areas of **High Court work** include high value claims concerning breaches of contract and fiduciary duty, misuse of confidential information, restrictive covenants and restraint of trade, garden leave and bonus entitlements.
- Experienced in making and resisting applications for **injunctive relief** and the **speedy trials** which frequently follow. Successes include acting for the Claimants in **LC Services Ltd & Others v Brown & Kinesis Solutions Ltd** [2003] EWHC 3024 (QBD), in which Naomi obtained injunctive relief and indemnity costs for her clients, and **ESL Fuels Ltd v Fletcher & Another** [2013] EWHC 3726 (Ch.D), in which she successfully resisted an application for injunctive relief arising from the alleged misuse of a trade secret. Naomi appeared for the Appellant in **Dyson Technology Ltd v Pellerey** [2016] IRLR 355, CA, [2016] EWCA Civ 87, which establishes the correct approach to the grant of injunctive relief in restrictive covenant cases.
- Naomi recently advised a London Borough in connection with contemplated injunctive relief against employees and third parties arising from the leak of sensitive, confidential information.
- Naomi acted for the successful Defendants in **Macaulay v Newham London Borough Council & The Governing Body of Newham School** [2012] EWHC 4371 (QBD). In this unusual case, the High Court was asked to grant interim mandatory injunctive relief compelling the lifting of suspensions imposed on certain teaching staff pending an investigation into allegations of falsification of attendance registers. The case raised novel jurisdictional and highly sensitive factual issues. The Court refused to grant the injunctive relief sought, accepting all of Naomi's submissions on behalf of both Defendants.

- **Tribunal work** (for claimants and respondents) includes all forms of discrimination, high value unfair and wrongful dismissal, TUPE, whistleblowing and redundancy claims and complex jurisdictional issues. Naomi is experienced in acting in litigation in which issues of national security arise and is considered to be particularly skilful in conducting cases involving publicity-sensitive issues.
- Naomi has acted for a number of NHS Trusts in test cases brought by junior doctors challenging their pay banding and pay supplements under nationally applicable terms and conditions of service for medical and dental staff. She has been successful in all cases.

## High Value Wrongful Dismissals and Bonus Disputes

Naomi has represented companies and individuals in high value wrongful dismissal and bonus claims including those resulting in seven figure settlement sums. She is a skilful and creative tactician, tailoring her approach to achieve the best result for her clients. Naomi advises individuals contemplating a move from one highly remunerative form of employment to another (frequently with a competitor) and is experienced in considering and advising upon the rules of bonus and share option schemes in this connection. Contractual and discretionary bonus schemes are features of high value employment contracts with which she is very familiar.

## Restrictive Covenants and Garden Leave

Naomi advises current, prospective and future employers, and senior directors and employees, on the drafting and enforceability of restrictive covenants. She is experienced in bringing and resisting urgent applications for injunctive relief and in the speedy trials which often follow. She successfully represented the Claimants in the leading case of **L C Services Limited & Others v Brown & Kinesis Solutions Limited**, obtaining wide-ranging injunctive relief and indemnity costs, and appeared as junior counsel for the Respondent before the Court of Appeal in **Symbian Limited v Christensen** (sub nom in *The Matter of Symbian Limited*) in which the interrelationship of restrictive covenants and a garden leave clause was considered. She also appeared for the Claimant in **Camelot Group Plc. v Centaur Communications Limited**, a case concerning whistleblowing and breach of confidence which considered whether it was in the public interest for section 10 of the Contempt of Court Act 1981 to be applied to prevent disclosure of the source of leaked information concerning the Claimant's annual accounts.

Naomi recently advised a London Borough in connection with contemplated injunctive relief against employees and third parties arising from the leak of sensitive, confidential information. She appeared for the Appellant in **Dyson Technology Ltd v Pellerey** [2016] IRLR 355, CA, [2016] EWCA Civ 87, which establishes the correct approach to the grant of injunctive relief in restrictive covenant cases.

## Discrimination

A specialist in all forms of discrimination law, Naomi has been involved in a wide variety of discrimination cases and is adept at dealing pragmatically with the wider commercial concerns and sensitivities which they can generate; for example, arising from adverse publicity and press coverage.

Over many years, she has acted for numerous solicitors' practices and sets of chambers, advising and defending their interests in connection with claims of sex, race, religion and belief, disability and age discrimination. Naomi frequently acts for universities, educational institutions and NHS Trusts, defending the discrimination claims which they face. Naomi is regularly called upon to advise employers and professional bodies as to the content of

their anti-discrimination policies.

Recent examples of Naomi's work in this area include:

- representing the Home Office, before the Court of Appeal and the Supreme Court, in the landmark case of **Essop & Others v The Home Office (UK Border Agency)** [2017] 1 WLR 1343 (SC), [2015] IRLR 724 (CA), in which the Courts considered the essential requirements of an indirect discrimination claim under the Equality Act 2010.
- representing the successful NHS Trust before the Employment Appeal Tribunal in **Basildon & Thurrock NHS Foundation Trust v Weerasinghe** UKEAT/0397/14 (EAT) in an appeal which established the approach which an Employment Tribunal should take to claims of discrimination because of something arising in consequence of a disability under section 15 of the Equality Act 2010;
- acting for the CEO of a FTSE-listed company in his claim for unfair dismissal and age discrimination, achieving a settlement sum in excess of £250,000;
- acting for a senior academic in high value age discrimination and victimisation claims brought against the university which formerly employed her. A favourable settlement on terms confidential to the parties was achieved before the hearing;
- acting for eight respondents in the financial sector (including corporate entities based in Russia and the Cayman Islands) in complex claims of sex discrimination, victimisation and whistleblowing. Novel jurisdictional points arose and the losses claimed exceeded £30 million. This was the longest running claim of its type;
- acting for eight respondents in the commercial property sector in a high-profile claim for whistleblowing and associative disability discrimination. The case ultimately settled on confidential terms.

## Equal Pay

Naomi is recognised as a leading expert in all aspects of equal pay law and has contributed to the re-shaping of the law in this area.

Since 2002, Naomi has been instructed by a large number of NHS Trusts, local authorities and private sector organisations in mass equal pay litigation across the country.

Amongst other Trusts, Naomi has acted for North Cumbria University Hospitals NHS Trust (formerly, North Cumbria Acute Hospitals NHS Trust) in the largest piece of equal pay litigation in Europe (as measured by volume and value of claims). Notable cases in this area include:

- **Potter v North Cumbria Acute Hospitals NHS Trust** ("Potter No.1") [2008] ICR 910, EAT;
- **Potter v North Cumbria Acute Hospitals NHS Trust** ("Potter No. 2") [2009] IRLR 176, EAT;
- **Potter v North Cumbria Acute Hospitals NHS Trust** ("Potter No. 3") [2009] IRLR 900, EAT;
- **Hurst v Suffolk Mental Health Partnership NHS Trust** [2009] IRLR 452, CA; [2009] IRLR 12, EAT;
- **North Cumbria University Hospitals NHS Trust v Fox** ("Fox No. 1") [2010] A2/2009/0840, CA and
- **North Cumbria University Hospitals NHS Trust v Fox** ("Fox No. 2") [2010] IRLR 804, CA.

Naomi is acting for two of the 'big four' national supermarket chains in connection with equal pay claims brought against them across the country.

## TUPE

Naomi regularly advises on the application and consequences of TUPE. She appeared for the successful

Respondent in the ground-breaking case of **MITIE Managed Services Limited v French & Others** [2002] IRLR 512, EAT, in which the EAT held that, where a contractual right to performance-related pay conferred by a transferor was impossible of performance by the transferee, the transferee's obligation was to provide a benefit of substantial equivalence.

### Internal Proceedings, Disciplinary Enquiries and Judicial Review

Naomi has considerable and varied experience in this area. She is the independent reviewer of the BBC's On-Air Review; its proposed new pay framework for "on-air" roles. She is the independent Chair of a panel investigating alleged breaches of the code of conduct of a political party. Naomi has advised a number of public and private employers and educational institutions as to their disciplinary and regulatory rules and as to the conduct of internal disciplinary enquiries. Naomi has appeared as counsel for individuals before professional disciplinary bodies such as the Nursing and Midwifery Council. Naomi acts as an independent investigator and disciplinary officer in the conduct of internal grievance and disciplinary proceedings, and has conducted such proceedings in the UK, the Channel Islands and Bermuda.

Naomi recently resisted an application for judicial review of an NHS Trust's decision not to permit an employee to be legally represented in the course of an internal process. The employee in question was facing criminal proceedings arising from her (at the time) alleged part in the importation of Class A drugs and weapons; charges of which she was later convicted.

Naomi has been instructed to act as a Designated Independent Person for the purposes of complaints against a 'statutory officer', governed by the provisions of the Local Authority (Standing Orders) (England) Regulations 2001 and as an independent investigator for the purposes of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015. She acted as the independent investigator into allegations of gross misconduct by the CFO of a County Fire Authority.

As a long-serving member, and former Barrister Vice-Chairman, of the Professional Conduct Committee of the Bar Standards Board, and as Vice-Chairman of the Board itself, Naomi has considerable experience in the practical application of rules of professional conduct, the surrounding considerations and sensitivities and the wider role and responsibilities of a regulator.

### Contractual claims in the NHS and Local Government

Naomi has acted for a number of NHS Trusts in test cases brought by junior doctors in connection with the nationally applicable terms and conditions of service for medical and dental staff. The claims arise from the operation of the rota system, pay banding and the pay supplements paid to doctors. Naomi has been successful in all cases.

Naomi acted for the successful defendants in **Macaulay v Newham London Borough Council & The Governing Body of Newham School** [2012] EWHC 4371 (QBD). In this unusual case, the High Court was asked to grant interim mandatory injunctive relief, requiring the defendants to end the suspension of five senior school teachers and to provide them with alternative employment. The suspensions had been imposed pending an independent investigation into allegations of gross misconduct relating to the accuracy of school records and the falsification of certain data over a period spanning almost five years. At the time of the application, they had been in place for almost four months and were said to constitute a breach of trust and confidence. The case

raised novel jurisdictional and highly sensitive factual issues. The Court refused to grant the injunctive relief sought, accepting all of Naomi's submissions on behalf of both defendants.

## Commercial

Naomi's practice encompasses all forms of business and commercial dispute. She has particular expertise in the inter-relationship between employment and commercial law. As a result, she is frequently instructed in cases in which employment disputes have arisen against a background of disputes relating to commercial transactions.

Naomi has acted for individuals of high net worth in commercial arbitrations, as well as in the High Court, and is experienced in complex claims involving breaches of contract and fiduciary duty, frequently involving injunctive relief and expedited trials.

By way of example, Naomi:

- acted for an NHS Trust in a claim valued at £16 million concerning the construction and operation of a private finance initiative;
- advised a senior director of a large investment house as to his contractual entitlements in relation to a tax loan;
- acted for the defendant in a substantial commercial arbitration concerning an Eastern European investment vehicle in which the Claimant sought damages/equitable compensation in the sum of £1million;
- acted for one of the largest UK trade federations in connection with rights accrued by hundreds of employees under a staff pension scheme, the application of the Transfer of Employment (Pension Protection) Regulations 2005 and the regulatory implications arising from them;
- acted for the former Head of an Oil Options desk, following his move to a competitor, defending claims by and counterclaiming against a leading interdealer broker. A confidential settlement on advantageous terms was achieved at mediation shortly prior to trial;
- acted for an aircraft operator in connection with various contractual and tortious claims arising from its lease and operation of the aircraft.

## Professional Negligence

Naomi has been recognised as a prominent practitioner in the field of professional negligence, in which she has wide experience. She has a particular expertise in those cases in which the alleged negligence arises in an employment or commercial context. In the raft of litigation which followed the property crash of the 1990's, as a very young junior, Naomi undertook a large volume of work for and against lending institutions, solicitors and surveyors and gained a reputation as a 'rising star' and skilled tactician who punched above her weight.

Naomi has built upon and consolidated that reputation ever since and is instructed by financial institutions, surveyors, solicitors, barristers, insurance brokers, accountants, trades union and individuals in this area of law both in the High Court and in the Court of Appeal.

Recent instructions include those to:

- advise counsel and the Bar Mutual Indemnity Fund in proceedings for alleged negligence in the conduct of settlement negotiations in the course of tribunal proceedings;
- advise solicitors in connection with a number of allegedly negligent conveyancing transactions; and

- advise under 'the QC clause' in a professional indemnity insurance contract, where allegedly negligent solicitors disagreed with the advice received from their insurers.

## Mediation

Naomi recognises the value of alternative dispute resolution. Where appropriate, she advises clients as to the merit in ADR and is frequently instructed to present their cases to the mediator. She is familiar with and accomplished in the particular skills required in such circumstances and has been instructed in cases in which particular sensitivity and diplomacy have been called for, such as where one party was suffering from mental illness.

Naomi is an accredited mediator. She has experience of mediating high value and complex disputes in all fields in which she practises; her skills and experience in those areas enabling her to assist the parties in reaching agreement. She is creative in helping them to find solutions which would not be available through litigation. Legal 500 records that she is *'an excellent mediator who has an excellent grip of the law, but can cut through it to identify how the parties can resolve conflict. Ellenbogen is particularly noted for high-value, complex employment and commercial litigation.'* Recent feedback includes, *"Thank you very much for your role yesterday, which you performed breathtakingly well. I am absolutely convinced we would have drawn up stumps before lunchtime without you."* and, *"Reaching settlement was undoubtedly down to your excellent mediation skills... [Solicitors and Counsel] were very impressed with how you managed the whole situation, and I don't think we would have ever settled this case without you (we had been trying for over 6 months!). Thank you again, we are truly grateful."*

## Notable Cases

- ***Essop & Others v The Home Office (UK Border Agency)*** [2017] 1 WLR 1343 (SC), [2015] IRLR 724 (CA);
- Acting for eight respondents in the financial sector (including corporate entities based in Russia and the Cayman Islands) in complex claims of sex discrimination, victimisation and whistleblowing. Novel jurisdictional points arose and the losses claimed exceeded £30 million. This is the longest running claim of its type.
- Acting for eight respondents in the commercial property sector, in a high-profile claim for whistleblowing, and associative disability discrimination in the commercial property sector. The case ultimately settled on confidential terms.
- ***D v P*** [2016] EWCA Civ 87 (CA) Establishing the correct approach to the grant of injunctive relief in restrictive covenant cases.
- ***Basildon & Thurrock NHS Foundation Trust v Weerasinghe*** UKEAT/0397/14 (EAT), 14 September 2015.
- ***ESL Fuels Ltd v Fletcher & Another*** [2013] EWHC 3726 (Ch.D).
- ***Macaulay v Newham London Borough Council & The Governing Body of Newham School***[2012] EWHC 4371.
- ***North Cumbria University Hospitals NHS Trust v Fox*** ("Fox No. 1") [2010] A2/2009/0840 (CA); ***Potter v North Cumbria Acute Hospitals NHS Trust*** ("Potter No. 2") [2009] IRLR 176 (EAT).
- ***North Cumbria University Hospitals NHS Trust v Fox*** ("Fox No. 2") [2010] IRLR 804 (CA); ***Potter v North Cumbria Acute Hospitals NHS Trust*** ("Potter No. 3") [2009] IRLR 900 (EAT).
- ***Hurst v Suffolk Mental Health Partnership NHS Trust*** [2009] IRLR 452 (CA); [2009] IRLR 12 (EAT).



- ***Potter v North Cumbria Acute Hospitals NHS Trust*** ("Potter No 1") [2009] IRLR 22 (EAT).
- ***LC Services Limited & Others v Brown & Kinesis Solutions Limited*** LTL 22/12/2003 (QBD).
- ***MITIE Managed Services Limited v French & Others*** [2002] IRLR 512 (EAT).
- ***Symbian Limited v Christensen*** (sub nom In The Matter Of Symbian Limited) [2001] IRLR 77(CA)