

## ANDREW CLARKE QC QC

Silk: 1997 | Call: 1980



Andrew Clarke is one of the foremost employment lawyers at the Bar. He has a reputation for giving clear and practical advice and as a formidable advocate and a highly skilled cross examiner. Chambers & Partners 2013 describe how Andrew has **"tremendous gravitas and authority"**, **"extremely bright...comes up with clever solutions to tricky issues"** and is, according to those that instruct him, **"hard as nails."**

Called to the Bar in 1980 he has appeared in many landmark employment cases, especially in the fields of restrictive covenants, garden leave, discrimination, equal pay, industrial action and wrongful dismissal. He is well known for dealing with complex commercial cases which have an employment flavour.

Directories comment on his **"formidable intellect"**, his **"hands on approach"**, his value as an **"excellent tactical adviser"** and described him as a **"highly articulate"** advocate providing a **"Rolls Royce service"**. Particularly valued is his **"ability to convey complex legal issues"** both to courts and lay clients, and that he **"commands respect regardless of whether he is talking about the weather or the law"**. One client quoted in a recent directory referred to him as **"always innovative, but a safe pair of hands"**.

Andrew has developed an unrivalled understanding of the workings of many businesses from investment banks and broking houses, airlines and train operators to the Royal Mail, NHS Trusts, Local Authorities and football clubs.

He is a team player, keen to harness the skills of those he works with. He cares about his clients. Has a deserved reputation for guiding them to develop a clear and workable strategy and for fighting tenaciously to carry it through to a successful conclusion.

### Adviser and Advocate

Andrew Clarke is one of the leading employment lawyers at the bar. He is co-head of Littleton Chambers, one of the two leading employment law chambers. He has a reputation for giving clear and practical advice and as a formidable advocate and a highly skilled cross examiner. The latest Chambers Directory described him as **"commercial and pragmatic"**, **"always willing to roll up his sleeves and get on with the job"** and as providing a **"Rolls Royce service"**. Called to the bar in 1980 he has appeared in many landmark employment cases, especially in the fields of restrictive covenants, garden leave, discrimination, equal pay, industrial action and wrongful dismissal. He is well known for dealing with complex commercial cases which have an employment flavour.

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## Restrictive Covenants & Garden Leave

Andrew Clarke advises employers, potential future employers and employees on the drafting of and the enforceability of **restrictive covenants**. A substantial part of his practice involves urgent injunction applications in relation to alleged breaches of restrictive covenants and the speedy trials that often follow.

He has been counsel in several of the leading cases in this area. For example, the **Dawnay Day** litigation which re-shaped so much of the modern thinking on this area of law and the **Credit Suisse** case which explored the inter-relationship of TUPE and restrictive covenants, both in the Court of Appeal.

He has appeared in many, if not most, of the reported cases on **Garden Leave Injunctions**, including **William Hill v. Tucker** and **Crystal Palace v. Bruce**. He has been at the forefront of shaping the law on **springboard injunctions** with cases such as **Midas v. Opus**.

These areas of law are constantly developing and Andrew has been at the forefront of that development. Currently, one area of particular concern is that of team moves (he appeared in the **Tullett v. BGC** litigation).

He also advises on and appears in cases concerning confidential information. He is currently dealing with cases concerning the definition of confidential information, whether or not there is any concept of ‘inevitable misuse’ known to English law and the proper approach to covenants drafted and intended to operate in a foreign jurisdiction.

## Discrimination & Equal Pay

Andrew has been involved in a wide variety of **discrimination cases**. Many are high profile cases involving extensive press coverage due to the sums involved, the nature of the allegations, or the identity of the parties. He is used to operating in such an environment and aware of the need to have regard to the wider commercial impact of the case on the way it is conducted.

For example, Andrew acted for the **Premier League and the FA** in relation to allegations of racial bias in refereeing appointments. He appeared in the EAT for **Hampshire Constabulary** which was challenged in relation to the operation of its firearms policy. He acted for **BA** in relation to race discrimination claims by Sikhs who could not use certain safety equipment. He has advised firms of solicitors, accountants, architects, designers and engineers regarding allegations relating to the conduct of members and senior staff.

He has advised and appeared for a vast range of other businesses from banks, financial institutions, manufactures and retailers, to restaurants, hotels and film television companies dealing with allegations of discrimination.

In addition to advising on practical problems in this area of law and conducting first instance cases, which are often both lengthy and sensitive, Andrew is regularly brought in to deal with such cases on appeal. For example, he appeared before the Court of Appeal in the **Hardy & Hansons** case which reconsidered the nature of justification and the proper approach of a Tribunal to the evidence led in this regard.

Andrew is expert in all kinds of discrimination. Of recent date he has advised extensively on the developing law on **age discrimination**.

The conduct of large scale **equal pay** litigation calls for particular planning and organisational skills, in particular in relation to the selection and definition of preliminary issues. Andrew has many years of experience in the conduct of such claims on behalf of NHS Trust and local authority Respondents.

For example, he is leading counsel for North Cumbria Acute Trust (the **Potter** cases), for several other NHS Trusts and for various local authorities. These NHS cases are at the forefront of what is the largest piece of equal pay litigation in Europe. In the last two years **Potter** has been to the EAT three times and to the CA twice.

These cases involve consideration of all aspects of equal pay law from the appropriateness of particular comparators, through the role of independent experts and case management to GMF defences and pay protection. His involvement with these cases means that he is one of the foremost experts in this field.

## Strikes

Andrew is an acknowledged expert on strike and picketing injunctions. He acted for the PLA in the dock strike litigation in the High Court (as well as for the 200 days in the ET). He has advised and obtained the injunctions which ended various national strikes by transport and postal workers as well as those in numerous other industries. He has a track record of stopping strikes, by devising clear and, very often, novel strategies. He is also expert on dealing with trade union leverage campaigns. He is the leading counsel of choice for many solicitors who operate in this specialist field.

High Value Wrongful Dismissal and Bonus Claims.

He has handled some of the largest **wrongful dismissal** and **bonus disputes** to come before the UK courts. He was leading counsel for **Jupiter** when sued by **John Duffield** and for **Brad Huntington** in his claim against the **Imagine Group** of insurers and reinsurers (a case heard in the Commercial Court due to its complex commercial context). In each case the claims ran into many tens of millions of pounds.

## TUPE

He regularly advises on the application of **TUPE**. He has advised in relation to many high profile acquisitions and mergers which have involved **TUPE** and consultation issues.

He has appeared in several of the leading reported cases in this area including **Betts v. Brintell**, **CPL v. Todd**

and *Credit Suisse v. Lister* (all in the Court of Appeal) and *Beckman v. Dynamco* (in the ECJ).

## Other Employment Law Matters

There are few (if any) aspects of employment law which Andrew has not advised upon and he has fought cases dealing with most. He has appeared in many Court of Appeal cases in addition to those mentioned elsewhere in this cv. They feature a diverse range of disputes and include *GAB Robbins v. Triggs* (the ambit of the compensatory award), *Rodway v. South Central* (time off for child care) and *Gridquest v. Blackburn* (rolled up holiday pay under the WTR).

He appears regularly in the EAT dealing with a wide range of employment matters. Within the last 12 months these have included the correct interpretation of collective agreements, disability discrimination, terms employed by custom and practice and the correct approach to interim relief applications.

Most recently Andrew has been successfully resisting multi-million pound claims under TULR(C)A 1992 s.145A & B on behalf of *Sellafield* and *Tesco* and acting for *Reed* in relation to employment status issues where the claims exceed £100m.

## Injunctions

Andrew Clarke regularly appears in the High Court seeking, or resisting, injunctions on behalf of his clients. Details of his extensive experience in particular types of injunctive relief case are set out under other headings, but that experience extends to the following types of injunction:

- Restrictive Covenants
- Confidential Information
- Garden Leave
- Preservation of Employment Rights
- Strikes
- Picketing
- Preservation of Property
- Preservation of Evidence (Including Computer Imaging)
- Search and Seizure
- Freezing of Assets

## Pensions

Andrew often advises on the employment aspects of **pension** issues. He has recently advised leading solicitors on **age discrimination** problems in relation to scheme rules and on removing final salary schemes (on which he successfully fought a recent case).

## Company & Commercial

Andrew deals with substantial **business and commercial disputes** outside the field of employment law. Hence, he has reported cases in the Court of Appeal and House of Lords concerning matters as diverse as the ability to enforce foreign default judgments in England and the effect of bankruptcy on that ability, the application of the ultra vires doctrine to the payment of bribes to secure contracts, the boundaries of the economic torts and the

nature and extent of directors' fiduciary duties.

He undertakes **pure contract/commercial work**. He recently represented **Heidelberg** in a High Court trial concerned with defects in a printing press.

He has a particular interest and expertise in the **inter-relationship of employment and commercial law**. As a result, he is often instructed in cases where employment disputes have to be resolved against a background of disputes in relation to other commercial transactions such as insurance and reinsurance contracts, or in the context of other litigation such as s.459 proceedings or foreign litigation. He has also undertaken cases which deal with the **inter-relationship of tax and employment law** and is currently representing (with leading tax counsel) **Reed Employment** in a dispute with HMRC one aspect of which concerns the employment status of thousands of temporary workers.

The Commercial Court case of **Huntington v. Imagine Group** illustrates his particular expertise. The most valuable claims related to an esoteric bonus scheme, but the principle disputes of law and fact centred on insurance and reinsurance business acquisitions, the proper approach to corporate valuations, the interpretation of complex contracts and estoppels.

## Sports Law

Andrew is a well-known **sports lawyer**. He has advised sporting bodies, players and managers in a wide variety of legal disputes. He has acted for and against many football clubs (including **Newcastle United** and **Leeds United**) in connection with disputes as to the hiring, or firing, of managers. He has advised on disputes relating to driver and engineer 'poaching' in Formula 1 and rally driving. He has dealt with disputes as to the ownership of intellectual property and the sale and restructuring of sporting clubs and companies.

In this sphere of his work in particular, many of the matters he has dealt have enjoyed a high profile in the press. His role is often a discrete and confidential one. Some further details can be provided on request, but often the identity of the clients (and details from which this could be established) must remain confidential.

## Internal Enquiries

He has appeared before sporting and other **internal dispute resolution bodies**. He has dealt with matters such as the registration of players, docking of points for breaches of rules and on-field discipline.

He has conducted **internal enquiries** for (eg) Birmingham Airport (in relation to alleged employee misconduct) and Slough and Hull Councils (in relation to the conduct of elected officials and others).

## ADR and Mediation

Andrew recognises the valuable part that **alternative dispute resolution** techniques can play. He often both advises as to their use and presents the case to the arbitrator or mediator. He is aware of the particular skills required in such circumstances.

He is also a **trained mediator**. In that regard he is asked to mediate high value employment claims of particular sensitivity or complexity where the parties feel that his skills and experience in this area can help them to find an imaginative, but mutually acceptable, way forward. Recent users of his services have written to Chambers

describing him as 'absolutely excellent'.