

## JONATHAN COHEN QC

Silk: 2016 | Call: 1999



Jonathan Cohen was appointed QC in the 2016 round at just 38 years old. He is one of the preeminent barristers in his fields of practice. He is annually ranked by the Chambers & Partners directory as a leading junior in both commercial litigation and employment law and was nominated by that directory as employment junior of the year in both 2013 and 2015. In the 2014 and 2015 editions, where he is placed in band 1 (the top 10 juniors in the country), he is described as:

***"One of the leading juniors at the Bar...a great tactician and a highly skilled advocate. He is also fabulous in front of clients and oozes authority".***

and

***"Universally praised for his exceptional skill in court and...his magisterial delivery".***

He has a mixed commercial litigation and employment law practice with a particular expertise in applications for all forms of interim and injunctive relief, as well as litigation arising from fraud and breach of fiduciary duty. He was educated at Manchester Grammar School and Oxford University. He was called in 1999 and joined Littleton Chambers in 2007. He is the author of the civil fraud chapter in Serious Economic Crime, published by the Serious Fraud Office in 2011.

He has appeared in some of the highest profile litigation of recent years, including the Tullett Prebon v BGC blockbuster financial services dispute, the JSC BTA Bank v Ablyazov banking fraud and in the Supreme Court in Van-Winkelhof v Clyde & Co, establishing that LLP members enjoy a right of protection as whistleblowers.

Jonathan has been recommended as a leading junior in the leading legal directories for some years. A selection of recent comments from those directories include:

***"everything you want from a barrister; excellent on his feet, good with clients and responsive. In court he is determined, strong and gets to the point quickly"***

***"A fearless and analytical advocate, loved by clients"***

***"Described by his opponents as "knowing the law" and "extremely persuasive"***

***"a tough advocate"***

***"receiving nothing but good reports"***

***"has dogged determination and fine cross-examination skills"***

He has a reputation for combining powerful advocacy with strong legal skills and a commercial and cost sensitive approach to litigation.

## Commercial

Jonathan undertakes a full spread of general commercial work. Much of his practice has a focus on litigation arising from breaches of fiduciary duty, fraud and the theft of confidential information. He authored the civil fraud chapter in the SFO's book, *Serious Economic Crime*, published in 2011. Jonathan is also regularly instructed to advise and appear in claims involving public law issues and challenges under the Human Rights Act.

Recent cases of interest in this area include:

- ***De Pury v The Rudolf Staechelin Family Trust & Ors***. Ongoing Chancery Division claim for commission on the private sale of a painting for over \$200 million.
- ***Farrar v Miller***. Substantial Chancery Division dispute between property developers, as to the validity of an oral joint venture agreement and the effect of Section 2 of the Law of Property Act 1989. Judgment on appeal is awaited.
- ***O'Brien v Josh Wood Hair & Ors***. Shareholder dispute in respect of the ownership of a famous hair care brand sold in major High Street stores.
- ***Optaglio Ltd v Tethal & Hudson*** [2015] EWCA Civ 1002, [2015] All ER 51. Claim by leading technology company, specialising in the laser holographic etching of microchips, against two former directors for fraud and misappropriation of intellectual property. The decision of the Court of Appeal is now one of the leading authorities on disposing of factual disputes on summary judgment applications.
- ***Maitland Hudson & Anr v Dempsey (Solicitors' Regulatory Authority intervening)***. Chancery Division claim by high profile solicitors' practices in London and Paris for the return of privileged and confidential files taken by a former partner. Described on the front page of the Law Society Gazette as the "first legal action by a law firm against a self-styled in-house 'whistleblower'."
- ***Gateway Plaza v White*** [2014] EWCA Civ 555, [2014] EGLR 191. First Court of Appeal decision on the meaning of the words "exchange contracts".
- ***Valilas v Januzaj*** [2014] EWCA Civ 436, [2015] 1 All ER (Comm) 1047. Important Court of Appeal judgment on whether a deliberate decision not to make payment pursuant to a contract is necessarily repudiatory.
- ***Golden Eye International Ltd & Ors v Telefonica UK Limited (Consumer Focus Intervening)*** [2012] EWCA Civ 1740, [2013] EMLR 26. Leading Court of Appeal decision on Norwich Pharmacal applications to obtain the identities of internet pirates.
- ***Besharova v Ede & Ravenscroft***. Companies Court claim by the former wife of Boris Berezovsky that the directors of Ede & Ravenscroft, co-owners with her of a prestige commercial building in the heart of St Petersburg, which she received from Berezovsky as part of her divorce settlement, were cheating her out of many millions of pounds of rental income.
- ***JSC BTA Bank v Ablyazov, Drey Associates & ors*** [2009] EWCA Civ 1124, [2010] 1 WLR 976. Joined appeals in the Court of Appeal in a significant international fraud claim. The appeals address the important issue of whether the privilege against self incrimination applies to a risk of a money laundering charge.

## High Court Employment Claims

Jonathan regularly appears in high value contractual claims, often for bonuses in the financial services sector. He also has a wide experience of strike breaking injunctions.

Recent cases of interest in this area include:

- ***Dauriac-Stobe v Signia Wealth Ltd***. Ongoing claim by a well known city figure in respect of her ousting from a wealth management business backed by John Caudwell. The claim has been widely featured in the press, including in a Sunday Times feature.
- ***Luck & 112 Others v British Telecommunications Plc*** [2014] EWHC 290. Multi-million pound fraudulent misrepresentation claim by 112 former employees of British Telecom for losses relating to their final salary pensions.
- ***Kearns v Glencore UK Ltd*** [2013] 1 All ER (D) 102 (Dec). High Court claim by former oil trader that he was wrongfully deprived of shares that he had been promised which were said to be worth over £8 million. The claim was extensively reported on a daily basis in the national and international press.
- ***Negus v Microsoft Limited***. High Court claim (for damages of over £10 million) by former senior executive of Microsoft, accused of sexual harassment of young female employees. The claim was settled on confidential terms in March 2012. Widely reported on front pages in the national press.
- ***Driver v Air India Limited*** [2011] IRLR 992. Appeal to the Court of Appeal by Claimant from the rejection of his claims in the High Court, attacking Air India's terms and conditions of employment for UK staff.
- ***Milford Haven Port Authority v Unite The Union*** [2010] EWCA Civ 400. Strike breaking injunction obtained against Milford Haven pilots.

## Restrictive Covenants & Confidentiality Enforcement

Jonathan has a wealth of experience in applying for and defending against injunctions for breach of covenants and infringement of fiduciary and confidentiality duties. He is regularly instructed in breach of confidence claims and is recognised to be one of the leading practitioners in these areas.

Recent cases of interest in this area include:

- ***Vanden Recycling Ltd v Kras Recycling BV*** [2015] EWHC 3616. Unusual strike out of a claim where the Claimant had settled with one joint tortfeasor without reserving the ability to proceed against others. The Claimant has appealed to the Court of Appeal.
- ***Capgemini India Private Ltd v Krishnan*** [2014] EWHC 1092. High Court decision on whether contractual undertakings should be enforced by injunctive relief even if no risk of damage can be shown.
- ***ENRC plc v Sir Paul Judge*** [2014] EWHC 3556. High Court claim by well known FTSE 100 Kazakh mining company against its own director (a former Director General of the Conservative Party) to expose his leaking of highly confidential information to the press and attempts to undermine ENRC's commercial reputation. Widely reported in the national and international press.
- ***Ariadne Capital v Serageldin*** [2013] All ER (D) 291 (Feb). High Court claim by leading private equity

fund to prevent departing employee from misusing stolen confidential information and to recover the costs of investigating and stopping the unlawful behaviour.

- **Sunseeker v Tobia** [2011] EWHC 4004 (QB). Battle between super-yacht manufacturers, Sunseeker and Princess Yachts to prevent Sunseeker's chief designer from moving to their main rival, Princess.
- **BGC Capital Markets (Switzerland) LLP v (1) Rees (2) Tullett Prebon PLC** [2011] All ER(D) 51. Round 2 of the dispute between BGC and Tullett, on this occasion a battle over a broker leaving BGC's Swiss subsidiary to join Tullett.
- **Tullett Prebon PLC & Ors v BGC Brokers LP & Ors** [2010] EWHC 484, [2010] IRLR 648. Appeared for BGC in this high profile battle between two leading city inter-dealer brokers. The application for interim relief was heard in April 2009 and the trial itself took place over four months in 2010. The judgment was appealed to the Court of Appeal, reported at [2011] IRLR 420.

## Employment Tribunal Claims

Jonathan is a leading practitioner in the ET and EAT. He is instructed in the highest value claims, with particular expertise in whistle-blowing and all forms of discrimination as well as large scale group litigation, appearing for employers and employees in substantial redundancy and equal pay claims and high profile anti-strike injunctions. Further important cases in which Jonathan has appeared are listed in the next drop down box.

Recent cases of interest in this area include:

- **Richard Boath v Barclays Bank**. Ongoing Employment Tribunal claim by the former head of Barclays investment bank to recover withheld bonuses relating to an SFO investigation into the bank.
- **Hafiz and Haque Solicitors v Mullick** [2015] ICR 1085. Leading EAT decision on the test for the making of a wasted costs order against solicitors.
- **Bates Van Winkelhof v Clyde & Co** [2014] UKSC 32. Instructed by Public Concern at Work, the whistleblowing charity, to intervene in this claim in the Supreme Court to argue for the first time in England that domestic whistleblowing legislation is incompatible with Article 10 of the European Convention on Human Rights (freedom of expression) because it gives whistleblowing protection only to employees and not to partners.
- **Riley v Crown Prosecution Service** [2013] IRLR 966. Court of Appeal challenge to the decision of the Employment Tribunal to strike out the case of an ill Claimant where there was no firm medical prognosis for the date on which a trial could take place. The case is the leading authority on the application of Article 6 of the European Convention to ill health strike out decisions in the civil courts.
- **City and County of Swansea v Gayle** [2013] IRLR 768. First consideration by the Employment Appeal Tribunal of whether covert photographic surveillance of a malingering employee was a breach of privacy rights under Article 8 of the European Convention on Human Rights.
- **Salford Royal NHS Foundation Trust v Roldon** [2010] IRLR 721, [2010] 114 BMLR 152. Important Court of Appeal decision on the level of investigation required for career ending allegations.

## Employment Tribunal Claims - Further Important Cases

Further cases of interest in this area include:

- **City & County of Swansea v Honey** [2008] All ER (D) 311. Leading authority on bias and ET members.
- **James v Greenwich London Borough Council** [2008] ICR 545, [2008] IRLR 302. Leading Court of Appeal authority on the status of agency workers.
- **Klusova v The London Borough of Hounslow** [2008] ICR 396. Court of Appeal consideration of the rights of those in breach of immigration legislation.
- **Madarassy v Nomura International PLC** [2007] ICR 867, [2007] IRLR 246. City banker sex-discrimination appeal in the Court of Appeal.
- **Difolco v NTL Group Limited** [2006] EWCA Civ 1508, [2006] Sol J 150/41. Reasonable adjustments for the disabled in a redundancy exercise.

## Regulatory & Disciplinary Proceedings

Jonathan undertakes all aspects of regulatory and disciplinary work, including advice on proceedings in and appearances before the Financial Services Authority, the Solicitors Disciplinary Tribunal, the General Medical Council, the Nursing and Midwifery Council, the Health Professions Council and the General Teaching Council. He also has experience in Human Rights Act challenges and judicial review of regulatory and disciplinary decisions.

- **Vatish v Crown Prosecution Service**. Successful opposition on behalf of the CPS to an application for an injunction to force reinstatement for failure to follow a contractual disciplinary procedure.
- **Hamilton v (1) United Kingdom Central Council for Nursing, Midwifery and Health Visiting and (2) Nursing and Midwifery Council** [2003] EWCA Civ 1600, [2004] 79 BMLR 30, The Times 12/11/2003. Human Rights Act challenge to the disciplinary powers of the regulatory body for nurses.
- **Ward v Commissioner of Police for the Metropolis** [2003] EWCA Civ 1152, [2003] 74 BMLR 211. Challenge in the Court of Appeal under Human Rights Act to police powers of arrest under the Mental Health Act.
- **Taito v The Queen** [2002] UKPC 15. Successful Privy Council appeal on behalf of a group of New Zealand citizens denied procedurally fair appeals in the New Zealand Court of Appeal.
- **R v Law Society. Ex Parte Barry Pamplin** [2001] EWHC Admin 300, The Independent 9/07/2001. Judicial review of the disciplinary powers of the Law Society.