

## Andrew Clarke QC

Silk: 1997 | Call: 1980

### International Arbitrator

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Email: [aclarke@littletonchambers.co.uk](mailto:aclarke@littletonchambers.co.uk)

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Email Clerk:

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Telephone Clerk: 020 7797 8600

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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.

### RECOMMENDATIONS

### AREAS OF LAW

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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.

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### **Discrimination, Equal Pay, Part Time & Agency Workers**

Andrew Clarke 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 importance 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.

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.

Andrew is expert in all kinds of discrimination. Of recent date he has advised extensively on the impact of the developing law on **age discrimination** and on the rights of **part time** and **agency workers**. He has particular expertise in the law relating to employment agencies, including the 2010 Regulations

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. He is leading counsel for North Cumbria Acute Trust (the **Potter** cases), for several other NHS Trusts and for various local authorities.

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### **Employment - strike injunctions, wrongful dismissal, bonuses etc**

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.

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**. In each case the claims ran into many tens of millions of pounds.

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).

Within the last 12 months he has appeared in cases concerning **pension scheme** rule changes, **age discrimination**, the correct interpretation of **collective agreements**, **disability discrimination**, terms employed by **custom and practice**, the

correct approach to **interim relief applications**, 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.

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## **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.

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## **Sport Law, Internal Enquiries & ADR**

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.

He has appeared before sporting and other **internal bodies**. He has conducted **internal enquiries** for (eg) Birmingham Airport and Slough BC.

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'.

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