

Benjamin Gray

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Benjamin is an employment, public and commercial law practitioner.

He acts for both Claimants and Respondents across the full spectrum of employment litigation, in the Employment Tribunals, Employment Appeal Tribunal and the High Court. His clients range from individuals, through campaign groups, to SMEs, plcs and Government Departments. He is instructed in complex and challenging cases, including interim relief, injunctions and short notice duty advocacy schemes such as ELIPS and ELAAS. His experience includes complex discrimination claims, whistleblowing litigation, misuse of confidential information and complex misconduct allegations, including with a criminal crossover element.

Benjamin's public law practice is primarily but not exclusively for Government clients, and includes immigration, unlawful detention and human rights claims.

He also undertakes the full range of commercial and insolvency work.

His approach combines forensic and analytical rigour with the ability to step back and see the bigger picture in a case. He is equally comfortable handling both complex document-heavy matters and cases that turn on little more than witness credibility. He is able to give clear advice, focussed on practical, commercial solutions. He is experienced in dealing with cases involving elements of political and other reputational sensitivity.

Benjamin is a thorough and diligent advocate, committed to the successful resolution of cases and willing to go the extra mile for clients.

Benjamin was appointed to the Attorney General's London B Panel of Junior Counsel to the Crown in September 2021, having previously been on the C Panel. He is a member of the ELA Pro Bono Committee and the ALBA Equality and Diversity Committee.

He graduated from King's College London with a First in War Studies, obtained a Distinction on the Graduate Diploma in Law, and received a Major Scholarship from Inner Temple. Benjamin is a Recorder and a Deputy District Judge.

RECOMMENDATIONS

"His strengths include his meticulous attention to detail. He is extremely thorough and prepares for all eventualities that may emerge in the course of litigation, and his level of preparedness is reassuring for clients and instructing solicitors."

Legal 500 2022

AREAS OF LAW

Commercial

Benjamin's commercial practice includes commercial litigation, fraud, misrepresentation, unjust enrichment, insolvency, banking and arbitration. Experience includes:

- Multi-million dollar commodities arbitration;
- Obtaining interim injunctive relief in the Chancery Division as sole counsel;
- Acting for a shareholder in a fraud claim against a company director;
- A dispute over foreign exchange traders' bonuses;
- Construction of banking contracts;
- Breach of confidence claims;
- A contractual dispute between television companies;
- Advice in claims for breach of contract, misrepresentation and fraud; and
- Advocacy at all stages, including summary judgment, interim applications and trials.

Benjamin is instructed in commercial disputes in both the County Court and High Court, including breach of contract, fraud, unjust enrichment and enforcement proceedings. He also has experience of international arbitration, and is a Member of the Chartered Institute of Arbitrators.

Insolvency

Benjamin is an experienced insolvency barrister with a particular focus on fraud and asset tracing. He acts for debtors, creditors and office holders in both personal and corporate insolvencies and across the range of insolvency procedures, including administrations, liquidations and bankruptcies. He is familiar with enforcement proceedings, both in the insolvency and enforcement contexts.

Relevant experience includes:

- ***Simmonds v Pearce*** [2017] EWHC 35 (QB) the leading case on the correct procedure to use to commit a bankrupt to prison for contempt of court for breaches of the Insolvency Act 1986. The case also deals with the cross-admissibility of statements made under compulsion in Public Examinations in subsequent proceedings. Benjamin acted unled for the Trustee in Bankruptcy and obtained an order for committal to prison of the bankrupt for 12 months for an "extremely serious" case of persistent failures to comply with, and attempts to frustrate, the Trustee's inquiries. Benjamin was also involved in the underlying bankruptcy proceedings, including identifying and setting aside a chain of transactions defrauding creditors.
- Obtaining Proprietary Injunctions in the Chancery Division unled to restrain disposal of disputed assets.
- Appearing on behalf of HMRC in the winding up list.
- Validation orders, administrations, and enforcement proceedings.

Employment and Discrimination

Benjamin has a comprehensive employment practice, appearing for both employers and employees at all stages and in all venues, including the EAT and High Court. He has extensive experience across the full spectrum of employment law.

His practice includes the crossover between employment, commercial and insolvency law, with experience including High Court employment claims, overlapping fraud cases, and the interaction between TUPE and insolvency. He has experience dealing with claims regarding Restrictive Covenants and misuse of confidential information, including as sole counsel.

His discrimination law practice extends beyond employment disputes and into claims against education providers and other

institutions.

Benjamin is the General Editor of the *Employment Tribunal Remedies Handbook* and a contributor to Bloomsbury Publishing's *Termination of Employment*. He is a participant in both the ELIPS and ELAAS Schemes.

Recent work includes:

- **Cole v Elders Voice** [2021] ICR 601: Whether a COT3 agreement can be set aside on the basis of misrepresentation, and exceptions to Without Prejudice privilege. Griffiths J said '*His appearance has been in the finest traditions of the Bar, and has been of incalculable assistance in ensuring that the appeal is disposed of correctly and fairly.*'
- Advising the Board of Deputies on its [Commission on Racial Inclusivity in the Jewish Community](#).
- **X v Y plc** - a claim against a prominent plc by a former manager dismissed for insider dealing. The case considered whether insider dealing actually took place, and the advice extended to how to conduct such litigation during an ongoing criminal investigation.
- Employment Tribunal litigation involving parties who lack capacity to litigate, including consideration and application of recent appellate authority on these points.
- Acting for the Foreign, Commonwealth and Development Office in a long-running claim against it by a serving diplomat.
- A claim by a journalist against a broadcaster for dismissal due to protected beliefs.
- **The Color Company Distribution Ltd v Blake** [2018] UKEAT/0161/18: the correct approach to amendments to claims
- **Tirkey v Chandhok**: the UK's first case dealing with allegations of caste discrimination;
- **Awojobi v London Borough of Lewisham** [2017] UKEAT/0243/16: dealing with the scope of the obligation to consider redeployment in capability cases. Submissions described as "excellent" by HHJ David Richardson;
- **Khan v HGS Global Ltd** and anor [2015] UKEAT/0176/15: appeal on the law of mutually agreed termination;
- Numerous disputes between senior executives and City of London workers in respect of pay and bonuses;
- Successfully defending a complex whistleblowing claim involving Crossrail;
- Disability discrimination claims involving detailed expert and other medical evidence;
- An overlapping sexual harassment and fraud claim.

Benjamin participates in both the ELIPS and ELAAS schemes, with experience of short-notice advocacy in both the Employment Tribunal and Employment Appeal Tribunal.

Public Law, Immigration and Human Rights

Benjamin is a member of the Attorney General's London B Panel of Junior Counsel to the Crown. He acts primarily, but not exclusively, for the Government and public sector bodies in public law proceedings. His experience includes immigration litigation, unlawful detention claims, judicial review and other challenges under the Human Rights Act.

Benjamin is a member of ALBA's Equality and Diversity Committee.

Recent work includes:

- Litigation in the Upper Tribunal (Immigration and Asylum Chamber);
- Litigation involving the Human Rights Act 1998;
- Special Immigration Appeals Commission litigation; and
- Judicial Review proceedings against the Ministry of Defence.

Arbitration

Benjamin has significant experience of arbitration. He is a full member of the Chartered Institute of Arbitrators. He has acted as Tribunal Secretary in a high-value commodities dispute.

Healthcare, Disciplinary and Regulatory

Benjamin has developed a practice in healthcare and related disciplinary law out of his employment practice. He has acted both for and against NHS Trusts. Experience includes disputes over doctors' contracts, whistleblowing in a healthcare context (including both NHS Trusts and Care Homes), and allegations of negligence and misconduct against health workers.

Cases include:

- Acting for a whistleblowing doctor in a claim against an NHS Trust. He successfully argued that a Doctor provided through a Temporary Contractor Agreement fell within the extended definition of "worker" to entitle him to whistleblowing protection;
- Representing a nurse accused of negligence leading to the death of a patient in high-profile circumstances;
- Complex whistleblowing claims against care homes; and
- Construction of Doctors' contracts regarding pay, banding and allowances.

Qualifications and Memberships

- Recorder, 2022-present
 - Deputy District Judge (South Eastern Circuit), 2021-Present
 - Attorney General's B Panel of Junior Counsel to the Crown, 2021-Present
 - Attorney General's C Panel of Junior Counsel to the Crown, 2017-2021
 - General Editor, *The Employment Tribunal Remedies Handbook* (since 2016)
 - Contributor, *The Termination of Employment*
 - BA War Studies, King's College London (First Class Honours)
 - Graduate Diploma in Law, Distinction
 - Major Scholarship, Inner Temple
 - ADR Group Accredited Civil and Commercial Mediator
 - Member, CI Arb
 - Member of COMBAR, ELBA, ELA (Pro Bono Committee), ILS, ALBA (Equality and Diversity Committee)
 - Member of RUSI, IISS and Chatham House
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