

## Martin Fodder

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### Barrister

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The primary area of Martin's practice is employment but he also has considerable experience of professional liability, commercial and professional regulatory law.

Martin is listed in Employment Law in the current editions of Chambers UK Guide and Legal 500. In Chambers 2016 it is said that 'Sources particularly highlight his "unrivalled knowledge" of TUPE transfers ...."He has gravitas and is very tenacious....He is an excellent technical lawyer who is very approachable."' and in 2015 it was said of him that "He researches well and his cross-examination is devastating." In Legal 500 2015 it was reported that "He has a real eye for detail, and drills down into what the key issues are in a case" and in - 2014 that he is "A pleasure to work with; nothing is too much trouble for him."

Martin has been described in earlier editions of the directories as "free from any airs and graces and extremely easy to deal with", a "great person to have on your side in a tough case" and "Very calm and collected, he can explain things clearly to clients in a non-legalistic manner." He is "incredibly knowledgeable on whistle-blowing issues" has "many fans" and being "thorough and bright".

Most recently, Legal 500 (2022) have described him to be "**prodigiously hard-working and thorough, and he has a great manner with clients**" and Chambers & Partners 2022 praise him as "**exceptional in terms of his attention to detail, he is very easy to work with and he is very good with witnesses**".

Martin is able to accept instructions under the Bar's Public Access scheme.

Martin is an ADR Group Accredited Mediator and has acted as Mediator in over a dozen employment and professional negligence disputes through Littleton Dispute Resolution Services Limited.

### RECOMMENDATIONS

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"He is clear in demonstrating to the clients that he has a real grasp of the details and he can explain the issues in a clear and understandable way."

**Chambers & Partners**

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"He is the doyen of whistle-blowing, his drafting and attention to detail are superb, and he is also extremely good on TUPE."

**Chambers & Partners**

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"He is exceptional in terms of his attention to detail, he is very easy to work with and he is very good with witnesses."

#### **Chambers & Partners**

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"Prodigiously hard-working and thorough, and he has a great manner with clients."

#### **Legal 500**

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"He has a real eye for detail, and drills down into what the key issues are in a case"

#### **Legal 500**

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### **AREAS OF LAW**

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#### **High Court Employment Litigation**

Martin has extensive experience of High Court employment litigation. He has advised in connection with and appeared in litigation for interim relief and final remedies based on covenants and implied contractual or fiduciary duties involving (amongst others) bond dealers, insurance brokers, architects and stockbrokers. He has given many lectures on the subject. Recent work includes acting for a major energy supply company in an application for interim relief against an energy broker and ex employees of the company concerning confidential information relating to customers.

#### **Commercial**

Litigation between businesses has always formed part of Martin's practice at the Bar. His employment practice will often give rise to questions involving contracts between companies as well as those with employees whether the issue arises in the competition field or otherwise - for example in business sale agreements or agency arrangements. Acting for or against senior employee shareholders necessitates consideration of unfair prejudice remedies.

Martin has also worked in the wider commercial arena covering debt recovery insolvency claims - appearing- for example for McDonalds in McDonald's Restaurants Ltd v Urbandivide Co Ltd - where Parker J was persuaded that a winding up petition against McDonalds should be restrained.

#### **General Employment**

Martin acts for employers and employees in most areas of employment law. Although much of his work is for private sector clients Martin has very considerable experience of the public sector, local government, the NHS and educational establishments. He understands the particular difficulties and nuances of public sector work.

At appellate level his appearances include cases on jurisdiction of employment tribunals over overseas employments; Jackson v Ghost Inc [2003] IRLR 824 and Financial Times v Bishop EAT [2003]. Dan Tran v Greenwich Vietnam Community [2002] IRLR 735 CA concerned the duty of an ET to give reasons. Martin acted for the successful employer/respondent in Hepworths plc v Akers EAT [2003] on the introduction of new terms and conditions by employers and the role of the law relating to duress in those situations.

Other appellate work includes Hinton v University of East London CA [2005] IRLR 552 on compromise agreements; Governing Body of St Albans School v Neary CA [2010] IRLR 124 on ET procedure and orders for costs in the Court of Appeal; BP v Elstone [2010] IRLR 558 on the meaning of "employer" in the whistleblowing legislation; Bournemouth Borough Council v Leadbeater [2011] UKEAT on the procedure for and principles to be applied in a review of a default judgment; Howman v The Queen Elizabeth Hospital Kings Lynn [2013] EAT on costs in the ET; HCL Safety Ltd v Flaherty [2013] UKEAT 0021\_13\_1107 on the proper test for unfair dismissal and Noor v Metroline Travel Ltd [2014] UKEAT 0059\_14\_1707 on whether appeal to EAT should be kept open or dismissed where there is a potential further appeal.

- Contributor to the Law Society Guide to the Equality Act
  - Co-author (with John Bowers QC, Jeremy Lewis and Jack Mitchell) of "*Whistleblowing, Law and Practice*" (now in its second, 2012, edition), cumulative updaters is available by clicking [here](#)
  - Contributor to Transfer of Undertakings, Lewis, Thomson Sweet and Maxwell, ongoing
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## Whistleblowing

Recent whistleblowing work includes:

- Employment Appeal Tribunal; BP PLC (appellant) v. ELSTONE and another (respondents) [2010] IRLR 558. Instructed by BP: allegedly protected disclosures made whilst employed by a previous employer. Issue of law as to whether worker protected in those circumstances or whether employer at the time of the disclosure has to be the same as the employer at the time of the detriment/dismissal;
- Employment Appeal Tribunal: Western Union Payment Services UK Ltd v Anastasiou [2014] UKEAT 0135\_13\_1205, instructed by worker, consideration of whether disclosure had to specify relevant failure, whether opinion could constitute information, whether person inflicting detriment had to know of protected disclosure and requirements of a reasoned decision that worker had been subjected to detriment for making a protected disclosure;
- Birmingham Employment Tribunal Successful defence of a claim that employees had been dismissed because they had made protected disclosures. Claim dismissed because disclosures were not made in good faith and in any event had not been the reason or principal reason for the dismissals;
- Acting for an NHS Trust in relation to claims by consultant surgeon that he was victimised for making protected disclosures. 6 week hearing concluded with a substantial costs award in favour of the trust;
- Acting for a solicitor employed by NHS Trust;
- Acting for the Head of Asset Management of a major international bank and for other FCA regulated employees in relation to protected disclosures made to their employers.
- Acting for a major city council in relation to a claim by an employee in its social services department that he was victimised for making protected disclosures.
- Acting for a large police force in relation to claims of detriment by a civilian worker following whistleblowing.

Martin is co-author (with John Bowers QC, Jeremy Lewis and Jack Mitchell) of "Whistleblowing, Law and Practice", a leading text which is cited in many of significant CA and EAT authorities.

The new (fourth) free supplement to Whistleblowing Law and Practice 3rd Edition can now be downloaded here <https://littletonchambers.com/publications/books-241/>

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## Discrimination

Discrimination law is a further area of expertise in which Martin has acted for and advised (amongst others):

- A major UK airline resisting an allegation of sex discrimination;
- A major financial plc resisting allegations of sex discrimination and harassment;
- A firm of solicitors in respect of a race discrimination claim brought by an ex solicitor employee;
- A social worker training quango in respect of a race discrimination claim;
- An NHS Trust resisting claims for equal pay from 5 female consultants;
- Universities resisting race discrimination and victimisation claims;
- A children's charity resisting a claim of disability discrimination;
- A non departmental government body resisting claim of failure to make reasonable adjustments in respect of a disabled applicant for employment;
- The Bar Standards Board in relation to a claim of disability discrimination against the board (Islam v BSB,[2012] All ER (D) 05 (Aug). One of the first cases on the meaning of "Competence Standard" in the Equality Act;
- A construction company resisting claims of age discrimination;
- An NHS Trust resisting claims of race discrimination and victimisation by a consultant surgeon;
- A bank resisting claims of race discrimination and victimisation by its head of risk;
- A large police force in relation to disability claims relating to stress/depression and dyslexia;
- An NHS Trust in relation to disability claims by a consultant doctor relating to stress/depression.

Joint Editor of the 2010 and 2012 editions of the Equal Opportunities volumes of Atkin: Court Forms (Butterworths) and is a

contributor to the Law Society's Guide to the Equality Act.

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## TUPE

In the area of Transfer of Undertakings Martin has again advised or acted for a wide range of clients including an airline, a major insurance company, outsourcing contractors, solicitors and local/regional government institutions. He has fought and advised on a number of cases concerning the service provider change provisions of TUPE 2006. He appeared in **Playle v Churchill Insurance** (EAT) on the issue of whether an economic entity retained its identity following a transfer. He is a Contributor to "Transfer of Undertakings", Sweet & Maxwell (ongoing) and to "Cross Border Transfers and Employee Rights" Tothill 2004 ed. Susan Mayne and has written various articles with John Bowers on this area. Recent TUPE work includes:

- **Jones v Cornwall County Council and Others:** Bristol ET: whether TUPE 3 (1) (b) applied where the Law Society changed the composition of a panel of solicitors providing advice via a national helpline. Issues of fragmentation
- Defence of claim for protective award on failure to consult on takeover of building materials supplier, when were duties of consultation engaged?
- Claim against local authority that there was a service provision transfer when housing maintenance work was brought back in house even though work was on a call down basis and had been considerably reduced in volume
- Defence of a claim that the employment of the MD of a company transferred where the principal client of the business of that company changed contractors
- Conduct of a claim that there was a transfer of undertaking when a council ceased to us services of outside contractor for housing repair
- Defence of claim of breach of the information and consultation provisions on transfer/appropriate protective award.

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## Regulatory & Disciplinary Legal Practice

Experience includes:

- Legal Adviser to the Fitness to Practise Committee of the General Optical Council;
- Acting for the Bar Standards Board (for the BSB);
- In relation to the Disciplinary committee of a political party (as counsel for the party and also as legal adviser to the Committee);
- Acting for the registrant in proceedings before the Conduct Committee of the General Social Care Council
- Acting for and advising gang masters in relation to applications to The Gangmasters Licensing Authority and appeals before Appointed Persons appointed under The Gangmasters (Appeals) Regulations 2006;
- Representation of employees regulated in the financial services sector facing regulatory proceedings.

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## Partnership & LLPs

Advice, representation and mediation in respect of disputes and issues between partners and members of LLP as to rights, liabilities and indemnities under partnership and LLP agreements including restraint of trade issues. Discrimination claims as between partners.

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