

Niran de Silva

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Barrister

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Niran is a leading junior barrister, specialising in commercial and employment law with a particular expertise in applications for interim injunctive relief.

He was nominated for Chambers & Partners 'Employment Junior of the Year 2019'.

Having worked as an equity derivatives broker in the City, Niran has a good understanding of complex financial products and financial services regulation and is regularly instructed in disputes in the financial services sector. In particular, he has been instructed in numerous restrictive covenant and whistleblowing cases in this area.

He has a reputation for his robust advocacy and sound commercial judgment with particular expertise in disputes involving LLPs and directors' duties.

Niran regularly acts in commercial disputes between companies, including having appeared in the leading cases on the entitlement of utility companies to recover the costs of repairing negligent damage to their networks.

He is described as follows in professional guides:

"Very responsive and has an excellent, commercial approach and an engaging client manner." "Extremely thorough and always goes the extra mile to assist." **Chambers and Partners 2020**

"Extremely bright and tactical in his approach. He wins trust quickly and is brilliant to work with. He is an extremely experienced advocate in court." "Clever, committed and commercial." **Chambers and Partners 2019**

"Very personable and very approachable. He has a very good Court manner. Fantastic" **Chambers and Partners 2018**

"A commercial and employment specialist, who is praised for his acuity and understanding of the law, as well as for his presentation and advocacy before the tribunal. He is particularly adept at handling disputes in the financial services sector." "He is very articulate, very persuasive and takes a sensible approach to the evidence in a case – he doesn't take unnecessary points." "He is thorough and to the point." **Chambers and Partners 2017**

RECOMMENDATIONS

"Very responsive and has an excellent, commercial approach and an engaging client manner." "Extremely thorough and

always goes the extra mile to assist."

Chambers and Partners 2020

AREAS OF LAW

Employee Competition and High Court Injunctions

Niran has a wealth of experience of acting in restrictive covenant and other employee competition cases, especially team moves and cases involving allegations of fraud and conspiracy. He has a particular expertise in cases where abuse of confidential information, trade secrets or database rights is alleged.

Niran has advised and appeared on behalf of numerous clients in interim injunction litigation in the Queen's Bench Division and the Chancery Division, including in following sectors: banking, insurance, recruitment, travel, PR and opinion polling, both obtaining and successfully resisting injunctive relief.

His recent cases include the following:

- In **Advetec Holdings v Shaw & Another** (2020), appeared for a claimant technology company in successful application for without notice 'doorstep delivery up' injunction against former CEO. Successfully resisted application to set aside order on return date.
- In **Hyperama v Poulis & Another** (2019), appeared for senior employee in injunction proceedings brought by leading food wholesaler following allegations of conspiracy, diversion of business opportunities to competing business and civil fraud. Case settled following mediation.
- In **Bourne Rail v Ashton** (High Court (QBD) 26 April 2018), acted for three of the defendants in 10-day expedited trial in Queen's Bench Division of claims for unlawful means conspiracy and restrictive covenant injunctions brought by rail construction company. All of the claims against them were dismissed.

Niran has particular expertise in obtaining injunctive relief under the **Protection from Harassment Act 1997**, including advising companies on protecting their employees from harassment by ex-employees and protesters.

His High Court practice also encompasses advising on claims relating to senior executive remuneration, including share options. His clients in this area include several listed companies as well as directors of these.

He provides seminars to clients on the following topics "*Obtaining and Defending Interim Relief: a Practical Guide*" and "*Protecting Your Client's Confidential Information in and out of Court*".

Employment

Niran was nominated for Chambers & Partners 'Employment Junior of the Year 2019'. He regularly represents companies and individuals in high-value discrimination and whistleblowing claims, as well as wrongful dismissal and bonus claims, in the High Court, the Employment Tribunal and the EAT.

He has a particular expertise in disputes in the financial services sector where obligations under the FCA Senior Managers and Certification Regime are engaged.

Recent discrimination cases include:

A&B v X&Y [2019] IRLR 920. Acted for respondents in claims of sexual harassment and sex discrimination brought by two employees. First reported case on Restricted Reporting Orders during the course of proceedings and interaction of Article 8 right to privacy and Article 10 right to freedom of expression

Walker v Wallem Shipmanagement [2020] IRLR 257. Leading case on territorial scope of discrimination provisions of the Equality Act 2010 applying to seafarers.

Zia v GMSA Investments. Appeared for successful respondent in multi-day race discrimination claim against brokerage firm

in the Employment Tribunal

Acted an employee dismissed by a private bank for gross misconduct in relation to appeal and discrimination proceedings. Successfully appealed the decision and client was reinstated in 2020.

Acted for a major investment bank in claim for sex discrimination and equal pay brought by senior manager. Case settled in 2020.

Acted for claimant fund manager in multi-million pound claim for sex discrimination, victimisation and equal pay against investment bank. Case settled in 2019.

Recent whistleblowing cases include:

Quarm v Commissioner of Police of the Metropolis. Acted for Commissioner in several victimisation and whistleblowing claims made by police officer (none of which succeeded), including four appeals to the Employment Appeal Tribunal (most recently in May 2019 in UKEAT/0200/18)

Several applications for interim relief (acting for both claimants and respondents) including in the following sectors: accountancy, financial services, security technology and pharmaceuticals.

High Court Litigation

Bourne Rail v Ashton (High Court (QBD) 26 April 2018). Appeared for three of the successful defendants in speedy trial of claims for alleged unlawful means conspiracy and breaches of duty of fidelity and restrictive covenants.

Thitchener v Vantage Capital (High Court (QBD) 21 June 2019) Appeared for successful defendant in High Court claim for damages brought by ex-brokers against interdealer broking firm.

Other recent reported cases include:

Royal Mencap Society v Tomlinson-Blake [2018] IRLR 932 (Court of Appeal). Landmark ruling on minimum wage affecting thousands of workers. Currently on appeal to the Supreme Court listed to be heard in February 2019.

Bear Scotland v Fulton and Baxter [2015] ICR 221 EAT. Landmark judgment on inclusion of non-guaranteed overtime in holiday pay.

Allen v Hounga [2014] 1 WLR 2889. Supreme Court determination on illegality as a defence to discrimination claims under the Equality Act 2010.

Embassy of Brazil v de Castro Cerqueira [2014] 1 WLR 3718. Important judgment on service of proceedings on foreign states Recent instructions in collective claims include:

Brennan v Sunderland & Others [2012] ICR 1183 EAT. Leading case on contribution claims under the Civil Liability (Contribution) Act 1978 between co-respondents to discrimination claim

Litigation involving claims by more than 2,000 ex-employees for protective awards following the administration of a major high street retailer

Appearing for major media company in claim for alleged contractual redundancy payments

Claims for holiday pay based on alleged "normal remuneration" rather than basic salary.

Recent non-contentious work includes advising an investment bank on its pension and absence policies and advising an investment firm on the TUPE implications of a proposed bid.

Commercial Arbitration

Niran is regularly instructed as Counsel in institutional and ad hoc arbitrations, in particular in the telecommunications and aviation sectors. Recent arbitrations include appearing in a multi-million domestic arbitration brought by a telecommunications provider for the costs of monitoring and repairing its network and advising an aviation maintenance provider on an international arbitration against an emanation of a state.

He is also experienced in court litigation supporting the arbitration process, including interim applications and anti-suit Injunctions.

In addition, he has recently acted as Tribunal Secretary in a multi-million pound ICC arbitration relating to the supply of allegedly defective equipment to a power plant and also an investment arbitration under the ICSID Convention.

He lectures to clients on International Arbitration and is available to provide a popular and highly-regarded seminar titled "Introduction to International Arbitration" which is geared toward litigators who wish to develop their expertise in arbitration and which deals with drafting clauses, the arbitration process (administered and non-administered), court supervision, enforcement of awards and 'hot topics' in arbitration

Commercial Litigation

Niran is frequently instructed in a range of commercial disputes in the High Court.

His recent cases include:

- Appearing for the government of Brazil in a Commercial Court claim arising from a government tender for purchase of aircraft parts.
- Acting for a provider of commercial AV infrastructure and equipment in unfair prejudice petition brought by shareholder director.
- Acting for a telecommunications provider in test cases affecting million of pounds worth of claims annually, arising from incidents of negligent damage to its network.
- Appearing for shareholder director in High Court claim for misrepresentation and breach of warranty against commercial provider of military vehicles.
- Advising SMEs on potential claims under the Financials Services and Markets Act 2000 against banks for misselling of fixed income swaps.
- Acting for leading polling company in High Court claim arising from misuse of confidential information by former director.
- Advising an aviation maintenance and training provider on claim for breach of contract against emanation of foreign government.
- Advising a major health club chain on threatened claim by commercial provider of fitness instructors for fees under a Licence Agreement.
- Appearing on behalf of a film distributor in High Court injunctive proceedings arising from alleged breaches of its licence.

He also appeared in the following leading cases:

- **Gwynedd Council v BT** [2004] All ER 975 CA on the recoverability of costs under the New Roads and Street Works Act 1991 and
- **BT v Geraghty & Miller** [2004] LTL 21 September, leading authority on claiming fixed overheads as part of damages in negligence.

Niran lectures on a range of topics including Contribution Claims, Commercial Arbitration and Electronic Disclosure in Commercial Litigation.

Investigations and Inquiries

Niran is Joint Head of Littleton's Disciplinary and Regulatory Group.

He regularly conducts internal investigations and hearings concerning grievances, whistleblowing allegations and disciplinary matters, in particular in the financial services sector.

Recent investigations include:

- An internal investigation into allegations of race discrimination at a major charity
 - A whistleblowing investigation following alleged health and safety breaches at a multi-national food distributor
 - An internal disciplinary investigation of harassment allegations made against regulated individuals This involved consideration of the firm and individuals' responsibilities under the FCA's Senior Managers and Certification Regime
 - Investigating and determining a whistleblower's allegations against the board of a technology company that there were breaches of regulatory obligations when the company was floated
 - Niran was also Counsel to the Metropolitan Police in the public inquiry into Professional Standards and Employment Matters in the Metropolitan Police Service (the Morris Inquiry).
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