

DOUGLAS LEACH

CALL: 2003

"IN ADVOCACY HE IS CLEAR, PRECISE AND MEASURED - HE DOESN'T MISS A TRICK, AND IS GOOD WITH CLIENTS TOO."

Legal 500 2021

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Douglas is a specialist employment and discrimination barrister. He has a well-rounded practice which encompasses all areas of employment, discrimination and collective labour law, including County/High Court matters and injunctive relief and sports-related disputes. He further deals with discrimination issues arising outside the employment context (eg in the provision of services, in education and in partnership settings). Douglas has extensive experience in conducting appellate work in the EAT and Court of Appeal, as well as complex multi-week trials.

PRACTICE AREAS

- Employment & Discrimination
- Business Protection & Injunctions
- Sports Law
- Investigations & Discipline
- Publications

EMPLOYMENT & DISCRIMINATION

Douglas is an experienced employment and discrimination specialist, dealing predominantly with substantial and higher value matters in both the Employment Tribunal and the High Court/County Court across the full range of employment, discrimination and commercial employment issues, including collective labour law. He has been recommended consistently in both Chambers UK Bar and the Legal 500 over many years, and most recently in Who's Who Legal UK Bar 2021.

Highly regarded for his technical expertise, attention to detail and measured advocacy, Douglas is particularly sought after in complex TUPE, whistleblowing and discrimination matters, as well as employee competition cases involving breach of confidence, restrictive covenants and injunctive relief. He regularly conducts long-running trials and appeals to the EAT, and has appeared in several significant cases in the Court of Appeal in recent years, usually unled (including against silks).

He acts for both claimants and respondents/defendants, and firmly believes in maintaining this balance. He is regularly instructed on behalf of individuals and/or unions, as well as NHS Trusts and Welsh Local Health Boards, schools and universities, Local Authorities, PLCs and a range of SMEs. He also acted for government departments during five years on the Attorney-General's Regional Panel of counsel. He enjoys working as part of a wider legal team and finding creative and pragmatic solutions to problems.

Douglas welcomes electronic instructions, having adopted paperless working practices, and is fully conversant with the full range of secure platforms commonly used for video hearings and conferences. He is well placed to handle matters arising out of the effects of the current pandemic, and has spoken at well-received webinars examining many of the legal issues arising out of it.

He provides advice and representation in all areas of employment and collective labour law, including:

- Unfair and wrongful dismissal
- All forms of discrimination and equal pay
- Related human rights issues
- Whistle-blowing
- Redundancy, reorganisation and insolvency
- Matters relating to TUPE transfers
- Contractual disputes, wages and holiday pay
- Breach of confidence, database rights, restrictive covenants and injunctive relief
- Industrial action and trade union recognition
- Territorial jurisdiction and private international law
- Sports-related employment disputes
- Investigations

WRITING

Prior to qualifying at the Bar, Douglas was Editor of *Industrial Relations Law Bulletin* (LexisNexis Butterworths IRS), going on to combine practice with a role as Senior Employment Law Writer/Editor for *IDS Brief* (IDS Thomson Sweet & Maxwell) and its related Handbooks and Supplements. He remains a regular contributor to various publications, including *Tolley's Employment Law Service* and *ELA Briefing*. He sits on *ELA Briefing's* Editorial Committee.

LECTURING

Douglas speaks regularly at seminars and webinars run by Chambers, the ELA, CLT and MBL Seminars. Requests for bespoke in-house training are welcomed. Recent subjects have included:

- COVID-19 and the return to work: problems, practice and pitfalls (Guildhall Chambers webinar)
- COVID-19, furlough and potential claims (Guildhall Chambers webinar)
- Business protection: what's new? (Guildhall Chambers)
- Shared Parental Leave pay and sex discrimination (ELA)
- Indirect discrimination (Guildhall Chambers)
- Atypical workers (Guildhall Chambers)
- Disability and attendance management (Guildhall Chambers, CLT, MBL Seminars)
- TUPE and insolvency (Guildhall Chambers)
- Dealing with employees who speak out (Bespoke in house training)
- Employment law in the civil courts (ELA)
- TUPE update (Guildhall Chambers)
- Breach of confidence (Guildhall Chambers)
- Remedies (ELA)
- PCPs (bespoke in house training)

APPELLATE CASES

Amdocs Systems Group Ltd v Langton (EAT pending) - Successful high value unlawful deductions claim in respect of the failure to apply 5% annual increases to the payments due under a contractual income protection scheme, together with an order for costs of £20,000. Respondent's appeal due to be heard in early 2021.

Commissioner of the City of London Police v Geldart [2020] ICR 920 (EAT) - Successful resistance of the Commissioner's appeal against a finding of direct sex discrimination in respect of the reduction and cessation of a police officer's "London Allowance" because she was on maternity leave. London Allowance is separate and distinct from "London Weighting" and officers are entitled to continue receiving it in full except where the Police Regulations 2003 provide otherwise. Commissioner's appeal to the Court of Appeal listed for January 2021.

Hextall v Chief Constable of Leicestershire Police [2018] IRLR 605 (EAT); [2019] IRLR 695 (CA) - Instructed for H. Successful appeal to EAT against a tribunal's conclusion that the Force's Shared Parental Leave policy did not discriminate indirectly against men, in only providing the statutory minimum level of pay for Shared Parental Leave. Overturned by CA, primarily on jurisdictional grounds that the claim was in truth an equal pay claim.

Martin v University of Exeter (30.8.18, UKEAT/0092/18/LA) - Instructed by the University. Successful resistance of an appeal against an Employment Judge's conclusion that the Claimant was only disabled from a point in time which meant that most of his discrimination claims could not succeed. Where it is asserted that a condition's effects are "long term" because they are "likely" to last at least 12 months, the test is predictive, and expert evidence will usually be required.

Secretary of State for Business, Enterprise and Regulatory Reform v Parry and anor [2016] ICR 1140 (EAT); [2018] ICR 1807 (CA) - Instructed by the School trustees in the EAT and Court of Appeal. The procedure in Rule 12(2A) of the 2013 ET Rules of Procedure – whereby an Employment Judge is required to reject a claim form that "cannot sensibly be responded to" – is not *ultra vires*. However, on the facts, a claim form which mistakenly attached particulars for an entirely unrelated case, could sensibly be responded to because the box for "unfair dismissal" had been ticked.

NHS Business Services Authority v Young [2017] ICR 599 (CA) -Success in an unusual statutory appeal to the Chancery Division from a decision of the Pensions Ombudsman, concerning the correct construction of the NHS Injury Benefit Regulations 1995 in relation to the test of causation of loss of earning ability (an element of the entitlement to Permanent Injury Benefit). Successfully resisted NHS BSA's appeal to the Court of Appeal.

Griffiths v Secretary of State for Work and Pensions [2017] ICR 160 (CA)- Instructed for DWP. Successful resistance of a second appeal against the dismissal of a reasonable adjustments claim in relation to disciplinary action taken pursuant to the DWP attendance management policy. While the duty to make adjustments had arisen, it had not been breached. It will rarely be reasonable to have to make adjustments in respect of the wholly subjective disadvantage of "stress".

Coles v Ministry of Defence [2016] ICR 55 (EAT)- Instructed for C. Temporary agency workers have a right to be informed of permanent vacancies on an equal footing with permanent employees, but do not have a right to apply for those vacancies. Application for a reference to the ECJ on the meaning of the Temporary Agency Workers Directive refused. The tribunal had erred however, in finding that the chosen comparator was not a "comparable worker".

Personnel Hygiene Services Ltd & ors v Rentokil Initial UK Ltd & anor [2014] EWCA Civ 29- Successful substantial High Court (Bristol Mercantile Court) breach of confidence claim for final injunctions restraining use of customer information, including a springboard injunction, and successful resistance of an appeal (led by Hugh Sims QC in the Mercantile Court and Court of Appeal).

Ajayi and anor v Aitch Care Homes (London) Ltd 03.02.12, EATPA/0262/11; Harvey Bulletin 406 (May 2012)- For a dismissal to be automatically unfair for the principal reason of the employee refusing (or proposing to refuse) to forego a rest-break under s.101A ERA 1996, that refusal must be explicit: implicitly purporting to refuse by sleeping was not enough.

Fulcrum Pharma (Europe) Ltd v Bonassera and anor 22.10.10, EAT/0198/10; Harvey Bulletin 389 (Dec 2010)- Instructed at appeal stage. Successfully resisted appeal against finding of unfairness in "pool of one" unfair redundancy dismissal claim. Assumption that occupant of redundant post had to be dismissed was unfair.

Chief Constable of Gloucestershire Constabulary v Peters 14.07.10, EAT/0322; [2010] All ER (D) 192 (Nov)- No indefinite stay of tribunal proceedings pending outcome of potential criminal trial.

FIRST INSTANCE HIGHLIGHTS

- Acting for a trainee nurse in Multi-Track County Court disability discrimination proceedings over her removal from her nursing degree, culminating in a favourable settlement;
- Acting in Multi-Track County Court proceedings on behalf of three Welsh LHBs, defending claims by doctors moving from England to Wales and returning to training at the same time, concerning the correct construction of their contracts in relation to pay supplements;
- Successfully resisting a £300,000 reasonable adjustments claim against a local authority;
- Success for a Police Officer in disability discrimination and victimisation claims following a 3-week trial (remedy settled at mediation in a six figure sum);
- Successfully resisting a £250,000 claim of sex and disability discrimination against a Chief Constable after a 12-day hearing;
- Achieving a finding of 100% contributory fault for a Local Health Board in Wales in an unfair dismissal claim, which involved establishing in cross-examination that the claimant had deliberately falsified clinical records;
- Successfully acting for a minister of religion in a Multi-Track County Court claim against an unincorporated association in respect of a failure to pay the National Minimum Wage over a substantial period and wrongful dismissal from a three year fixed term contract. Judgment obtained for £62,500 and interim costs of £20,000 (*Chandra v Mayor*);
- Successfully defending a leading public school against whistle-blowing and constructive dismissal claims in a case which made national front page headlines;
- Advising in relation to High Court injunction applications concerning two team moves, and instructions for a defendant employee who counter-claimed in respect of the loss of new employment caused by negligent misstatements by his former employer as to his post-termination restrictions;
- Instructions from a government agency to defend whistle-blowing claims (including successful resistance of an application for interim relief);
- Successful defence of several reasonable adjustments and s.15 claims in relation to discipline/dismissal pursuant to absence management policies;
- Acting for the Department of Health in a number of cases arising out of the abolition of Primary Care Trusts and Strategic Health Authorities pursuant to the Health and Social Care Act 2012;
- Success in an unfair "pool of one" redundancy dismissal claim on behalf of a senior executive;
- Instructions from a claimant in age discrimination and unfair dismissal claims against a University (settled on favourable terms);
- Advising a German merchant seaman as to the tribunal's jurisdiction to hear his claim;
- Acting for a merged law firm in relation to a solicitor's claim of unfair dismissal and reliance on TUPE (settled on a commercial basis);
- Advising a firm of solicitors on TUPE issues arising out of acquisition of another firm;
- Advising a Local Health Board on the effect of TUPE on two separate re-organisations of clinical education provision;
- Acting as second junior in a multi-million pound *Hagen v ICI* negligent misstatement claim in the High Court on behalf of 225 claimants.

BUSINESS PROTECTION & INJUNCTIONS

"He is also well versed in competition-related cases involving confidence breaches, restrictive covenants and injunction relief".
- Chambers UK Bar 2019; 2020; 2021

"Has a well-rounded practice which encompasses all areas of employment, discrimination and collective labour law. He is frequently instructed in long and technically complex TUPE and disability discrimination matters. He also acts in employee competition cases involving breach of confidence and restrictive covenants." - Chambers UK Bar 2018

"His practice includes collective labour law." - Legal 500 2017

"Recommended for employee competition cases, involving breaches of confidence and injunctive relief" - Legal 500 2015

Douglas acts for both claimant/applicant employers and defendant/respondent employees alike in matters concerning alleged breaches of post-termination restrictive covenants and other contractual or fiduciary duties; breach of confidence; infringements of the database right; and associated issues concerning garden leave and economic torts.

He has a related further interest in cases involving applications for injunctive relief seeking to restrain dismissal in breach of contractual disciplinary procedures, and seeking to restrain industrial action.

SIGNIFICANT CASES

- *Personnel Hygiene Services Ltd & ors v Rentokil Initial UK Ltd & anor [2014] EWCA Civ 295* Successful substantial High Court (Bristol Mercantile Court) breach of confidence claim for final injunctions restraining use of customer information, including a springboard injunction, and successful resistance of an appeal (led by Hugh Sims QC in the Mercantile Court and Court of Appeal).

HIGHLIGHTS

- Advising a Lloyd's of London broker in relation to High Court injunction applications concerning two team moves;
 - Advising a large regional law firm as to the enforceability of post-exit restrictions in its partnership agreement, in respect of a departing solicitor;
 - Obtaining undertakings to the court on behalf of an employment agency/recruitment consultancy in the education sector (Birmingham Business and Property Courts);
 - Advising the same client in respect of threatened action against it as the new employer of an employee moving from a competitor;
 - Acting for a Defendant employee who counterclaimed in respect of the loss of new employment caused by negligent misstatements made by his former employer as to the scope of his post-termination restrictions (Claimant agreed settlement after defence and counterclaim filed and served);
 - Acting for a South West wholesaler restraining former employees from misusing confidential information, soliciting the Claimant's clients and competing in breach of restrictive covenants (application settled upon Respondent giving undertakings to the Court);
 - Advising a leading electronics manufacturer on its response to a ballot amongst warehouse staff in favour of industrial action;
 - Advising a Welsh Local Health Board as to the lawfulness of a ballot in favour of industrial action concerning the banding of various clerical posts in different locations within the Agenda for Change framework
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SPORTS LAW

Drawing on his employment law expertise, Douglas is able to provide specialist advice and representation in relation to claims for damages and/or injunctions arising out of the rights and obligations of players, managers, coaches and other staff of sports clubs, teams and other entities.

SIGNIFICANT CASES

- Advising on an agent's breach of contract claim concerning complex arrangements for the transfer of a Premiership footballer (further involving issues of private international law), which was valued at €3m.
 - Advising on the contractual termination entitlements of a high profile director of a Formula One racing team.
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INVESTIGATIONS & DISCIPLINE

As a natural extension of his expertise and experience in employment law and disciplinary procedures (particularly in the health and education sectors), Douglas is able to assist with internal disciplinary and/or professional conduct matters in a variety of ways:

- Representation at internal disciplinary hearings and appeals (where legal representation is allowed).
 - Advice for employers on disciplinary investigations.
 - Conducting investigations and preparation of reports.
 - Applications for injunctions restraining suspension or dismissal in breach of contractual disciplinary procedures.
 - Advice and representation in regulatory proceedings.
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PUBLICATIONS

- Tolley's Employment Law Service - Chapter on Temporary Workers (ongoing regular updates)
- Countless case reports and commentaries for IRLB, XpertHR's Employment Law Bulletin, IDS Brief, Occupational Health Review, ELA Briefing and Jordans' Employment Law Portal
- ["Contributory negligence in discrimination cases"](#), ELA Briefing (October 2019)
- ["The new normal? Spotlight on atypical working arrangements"](#), Jordans' Employment Law News and Comment (October 2015)
- ["Breach of confidence: A textbook case"](#), Jordans' Employment Law News and Comment (August 2014)
- ["Limited costs' orders in the Court of Appeal"](#), ELA Briefing (August 2014)
- [Employee competition: fact of breach of undertakings does not give automatic right to interim injunction](#), Jordans' Employment Law News and Comment (April 2014)
- ["First appellate decision on discrimination 'arising from' disability"](#), Jordans' Employment Law News and Comment (July 2013)
- ["Group disadvantage after Eweida"](#), Jordans' Employment Law News and Comment (January 2013)
- ["Disability, attendance management and reasonable adjustments"](#), Jordans' Employment Law News and Comment (October 2012)
- ["TUPE and early retirement benefits: no smiling pensioners allowed"](#), Jordans' Employment Law News and Comment (June 2012)
- ["TUPE, administration and minimising employee liabilities for transferees"](#), Jordans' Employment Law News and Comment (May 2012)
- ["Testing the limits of the service provision change"](#), ELA Briefing (May 2012).
- [IDS Sex Discrimination Handbook](#) (IDS Thomson Reuters, 2008). Contributed/edited chapters on discrimination in recruitment, discrimination in employment, and compensation.
- [IDS TUPE Handbook](#) (IDS Thomson Reuters, 2007). Contributed chapters on employment contracts, continuity of employment and cross-border transfers.
- ["Territorial jurisdiction: the boundaries of the Lawson test"](#), ELA Briefing (May 2008).
- ["Criminal records and recruitment: the legal issues"](#) (2008) IDS Brief 852.
- ["Employee informants" \(Parts 1 and 2\)](#) (2007) IDS Brief 837 and 838.
- ["Workplace stress and avenues in litigation"](#) (2005) 767 IRLB 4 (reviewed by Robert Spicer, (2005) 118 Occupational Health Review 21).
- ["Developments in recoverable damages for wrongful and unfair dismissal - the search for coherence"](#) (2003) 725 IRLB 3.

RECOMMENDATIONS

CHAMBERS UK 2021

Employment

Junior - Band 2

Has a well-rounded practice which encompasses all areas of employment. He has significant experience in technically complex TUPE and disability discrimination matters. He is also well versed in competition-related cases involving confidence breaches, restrictive covenants and injunction relief.

Strengths: "Able to navigate complex legal points, whilst communicating in a clear and concise manner with clients."

Recent work: Acted for the claimant in *Hextall v Chief Constable of Leicestershire Police*, where the Court of Appeal considered whether the force's shared parental leave policy was discriminatory because it only offered statutory minimum pay, whereas those on maternity leave received full pay.

LEGAL 500 2021

Employment

'In advocacy he is clear, precise and measured - he doesn't miss a trick, and is good with clients too.'

Ranked: Tier 1

CHAMBERS UK 2020

Employment

Junior - Band 2

Has a well-rounded practice which encompasses all areas of employment. He has significant experience in technically complex TUPE and disability discrimination matters. He is also well versed in competition-related cases involving confidence breaches, restrictive covenants and injunction relief.

Strengths: "He's technically adept, thinks about things in clear and concise way, and is easy to work with and clearly very bright."

Recent work: Acted for the claimant in *Hextall v Chief Constable of Leicestershire Police*, where the Court of Appeal considered whether the force's shared parental leave policy was discriminatory because it only offered statutory minimum pay, whereas those on maternity leave received full pay.

LEGAL 500 2020

Employment

"Methodical and structured in his approach."

CHAMBERS UK 2019

Employment

Junior - Band 2

Has a well-rounded practice which encompasses all areas of employment. He has significant experience in technically complex TUPE and disability discrimination matters. He is also well versed in competition-related cases involving confidence breaches, restrictive covenants and injunction relief.

Strengths: "Knows the law and is very user-friendly, approachable and responds within the timeframe".

Recent work: Acted for Exeter University in a complex disability discrimination claim brought by a claimant who alleged that they had suffered PTSD after encountering a student attempt suicide. This was a complex matter as the Employment Tribunal had to determine the point at which the claimant satisfied the definition of disability.

LEGAL 500 2019

Employment

Leading juniors

"Very analytical and a good strategist".

CHAMBERS UK 2018

Employment

Junior - Band 2

Has a well-rounded practice which encompasses all areas of employment, discrimination and collective labour law. He is frequently instructed in long and technically complex TUPE and disability discrimination matters. He also acts in employee competition cases involving breach of confidence and restrictive covenants.

Strengths: "He is confident and persuasive in his arguments, and in his application of even the most intricate aspects of employment law."

Recent work: Instructed in the Court of Appeal for the claimant in *Young v NHS Business Services Authority*, after a workplace injury caused a permanent loss of earning ability. The case was complicated by the claimant already having an underlying degenerative condition.

LEGAL 500 2017

Employment

Leading juniors

"His practice includes collective labour law".

CHAMBERS UK 2017

Employment

Junior - Band 3

Has a well-rounded practice which encompasses all areas of employment, discrimination and collective labour law. He is frequently instructed in long and technically complex TUPE and disability discrimination matters.

Strengths: "His in-depth knowledge of complex areas of employment law is second to none." "He is confident and persuasive in his arguments and extremely reliable."

Recent work: Successfully resisted an appeal in the [Court of Appeal] case of Griffiths v Secretary of State for Work and Pensions. The claim concerned the difficult issue of attendance management and disability-related absence.

LEGAL 500 2016

Employment

Leading juniors

'He picks up issues quickly and effectively puts forward complex submissions under pressure.'

CHAMBERS UK 2016

Employment

Junior - Band 3

Acts for both claimants and respondents and is often instructed on technically complex cases such as TUPE and disability discrimination matters, although his practice covers the full breadth of employment law.

Strength: "Clients are very impressed by his ability to produce evidence and really get to the bottom of things." "He's incredibly thorough in assessing a case, and he's prepared to stick to his guns and fight a case through."

Recent work: Instructed for the Department for Work and Pension in Griffiths v Secretary of State for Work and Pensions, a case regarding the impact of disability-related absences on attendance management processes.

LEGAL 500 2015

Employment

Leading juniors

'Recommended for employee competition cases, involving breaches of confidence and injunctive relief'.

CHAMBERS UK 2015

Employment

Leading Junior - Band 3

Has broad experience across a range of tribunal and appellate cases, notably in cases involving TUPE issues. He is also frequently instructed on disability discrimination matters.

Expertise: "He has an excellent analytical mind, and can floor people with academic points, which means he can't lose a case." "He is quick, efficient, focused, very knowledgeable and good with clients."

Recent work: Instructed by the Department for Work and Pensions on a complex tribunal case regarding disability-related absences.

LEGAL 500 2014

Employment

Leading juniors

'A strong all-rounder who frequently handles complex TUPE and disability discrimination cases'.

LEGAL 500 2013

"Noted for his 'excellent ability to drill down to the important and winning points'".

LEGAL 500 2012

"Covers the full spectrum of employment matters".

LEGAL 500 2011

"Douglas Leach's 'technical ability shines through on complex cases'".

APPOINTMENTS:

Junior Counsel to the Crown, Regional Panel (2010-15)

Editorial Committee, ELA Briefing

MEMBERSHIPS:

- Employment Lawyers' Association
 - Discrimination Law Association
 - Industrial Law Society
 - Employment Law Bar Association
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EDUCATION:

- BVC (Very competent), Inns of Court School of Law, London
 - LLM (Labour Law), University College London
 - LLB (European Legal Studies), University of Southampton & Université de Nantes
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RECENT NEWS

- Court of Appeal Judgment in Commissioner of City of London Police v Geldart
 - Our Employment & Discrimination Team is delighted to announce that Anna Williams has accepted an offer of tenancy at Guildhall Chambers
 - Debbie Grennan appointed as South West representative for the Employment Lawyers Association for 2020-2022
 - Employment & Discrimination Team Business Continuity and Support Arrangements – Covid-19
 - Douglas Leach successfully resists appeal in test police sex discrimination case
 - Douglas Leach successful in Shared Parental Leave pay appeal
 - Douglas Leach successfully resists appeal in NHS BSA v Young
 - Liverpool Law Society - Julian Allsop & Douglas Leach Speaking at the Employment Law Conference 2016
 - Douglas Leach appears in significant EAT judgment on Tribunal Rules of Procedure, August 2016
 - Douglas Leach successfully resists second appeal in Griffiths v Secretary of State for Work and Pensions - November 2015
 - ELA Training Cardiff - Masterclass - Employment claims in the Civil Courts
 - ELA Masterclass - Employment Claims in the Civil Courts 2015 -Jan 2015
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