



## Tom Kirk

Call Date: 2007

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### Areas of Practice

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- Employment
- Commercial and Chancery
- Personal Injury
- Prison, Police & Healthcare

### Profile

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#### Qualifications and Scholarships

Law (LLB) with First Class Honours, King's College London

Bachelor of Civil Law (BCL) with Distinction, Oxford University

Bar Vocational Course (BVC) Very Competent, Inns of Court School of Law

Lord Denning and Hardwicke scholar

### Experience & Expertise

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Tom's practice is divided between Employment Law, Personal Injury, Commercial Law and Inquests work.

#### Employment

Tom is predominantly an employment law specialist. He has particular expertise in disability discrimination cases and is frequently instructed by both Claimants and Respondents in difficult long-term sickness absence and reasonable 4

adjustments claims.

Tom has extensive experience in dealing with politically sensitive employment disputes for his clients in the public and charitable sectors. He is regularly instructed by government departments, such as the Ministry of Defence, Ministry of Justice and HMRC and is National Security Vetted to SC level. Tom also acts for a number of large local authorities across the South of England and has developed a niche practice in dealing with claims brought by teaching and non-teaching staff employed in schools and other educational establishments. Tom is equally at home representing commercial clients and has been praised for his ability to quickly find a solution to a dispute that embraces an employer's specific practical and business needs.

Tom has a user-friendly approach that helps his Claimant clients feel at ease when faced with the potentially daunting prospect of litigation. He has achieved a number of high value awards and settlements but is also quick to grasp the non-monetary aims pursued by Claimants such as negotiating re-engagement packages and agreeing full and fair references for dismissed employees. Tom regularly acts for trade union members and has recently represented Unite and UCATT members in multiple Tribunal claims involving trade union related dismissals, non-payment of the National Minimum Wage and holiday pay. He also has experience of representing professional employee clients in internal disciplinary appeal hearings.

An experienced trial advocate in the Tribunals and Courts across London and the South of England, Tom is regularly instructed to appear in multi-day trials and preliminary hearings. He has an extensive paperwork practice and has been acknowledged by clients for providing thorough yet concise advice and robust pleadings. He also advises employer clients on various non-contentious matters, including TUPE transfers and the review of disciplinary and grievance policies.

Tom also regularly appears in appeals before the Employment Appeals Tribunal and also has experience of restraint of trade cases in the High Court.

#### Personal Injury and Stress at Work

Building on his related specialisms in disability discrimination cases and high value claims involving psychiatric injury, Tom is developing a practice in Stress at Work and associated discrimination claims within the civil courts.

He also regularly represents both Claimants and Defendants in a wide variety of other personal injury disputes such as road traffic accidents (including those involving allegations of fraud, staged or contrived accidents and low velocity impacts), employers liability, occupier's liability, product liability and health and safety at work. He is experienced in conducting fast track and multi-track trials, case management and disposal hearings, settling pleadings and advising on liability and quantum.

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#### Commercial

Tom's commercial practice intersects with his employment work and he often advises companies on their obligations under TUPE, how to draft employment contracts and on restraint of trade issues. He has acted for companies in a number

of commercial disputes involving contracts for the sale of goods and has advised on the incorporation and construction of indemnity and warranty clauses within commercial contracts. He also has experience of advising on aspects of commercial leases and licenses.

### Prisons, Inquests & Human Rights

Tom regularly appears in Coroner's Courts at Pre-Inquest Reviews and full Inquests, representing families, government departments and companies. In particular, he acts for the Prison Service in Article 2 Inquests into deaths in custody and in civil claims brought under the Human Rights Act 1998 resulting from the same.

He advises, drafts pleadings and appears in a wide range of cases involving Prisons and Prisoners, including: claims involving alleged breaches of Convention rights, negligence, misfeasance in public office, false imprisonment, discrimination and claims for reasonable adjustments under the Equality Act 2010.

### **Current & Recent Work**

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#### Appellate cases:

- *Dunn v Secretary of State for Justice and HMIP UKEAT/0234/16*: ongoing appeal to EAT concerning, amongst other things, the test for causation in claims under section 15 of the Equality Act 2010.
- *Pugh v RT Electrics Ltd [2016] UKEAT /0177/16 /DM (Lady Wise)*: EAT appeal concerning the application of the doctrine of issue estoppel to matters of jurisdiction (time limits) and the extent of the Tribunal's power to review judgments;
- *FN and AL v Secretary of State for the Home Department [2015] EWHC 3057 (QB) (Hamblen J)*: appeal against a Master's costs decision dealing with the scope of the duty of candour in without notice applications and the extent to which it requires an applicant to disclose the content of without prejudice communications;
- *Taylor v Governing Body of Potters Gate Primary School [2015] UKEAT/0227/14 (HHJ Eady QC)*: appeal to the EAT involving the application of the *Porter v McGill* test for apparent judicial bias to the case of an Employment Judge who acted as a school governor for a school linked to the respondent governing body;
- *Bleasdale v Healthcare Locums Plc and others [2014] UKEAT/0324/13 (HHJ Peter Clark)*: appeal to the EAT, a challenge to the lawfulness of a Tribunal's findings that protected disclosures were made in bad faith and the interpretation of the guidance offered in *Street v Derbyshire Unemployment Workers Centre [2004] IRLR 687*.

#### Other recent work:

- *K v M [2016] (Central London ET)*: instructed by government department to defend claims (subsequently withdrawn) brought by a solicitor following her dismissal for gross misconduct, arising out of the loss of sensitive data relating to various high profile inquests.
- *Bozoky v Department of Health [2016] (Central London ET)*: ongoing instructions by DoH in defending this 8 day trial of claims for sexual orientation and disability discrimination and unfair dismissal brought by an adviser to the Government on dementia.
- *Inquest into the death of C [2016] (Assistant Coroner for Dorset)*: week-long Article 2 inquest into death in custody of

- inmate in Young Offender Institution.
- *Parkar v Department for International Development [2016] (Central London ET)*: represented Respondent in 3 day trial of claims of reasonable adjustments, section 15 and unfair dismissal, arising out of the long term sickness absence of an employee with work related stress following her redeployment to a new role.
- *Berman v CPS [2016] (London South ET)*: represented Respondent in 3 day unfair dismissal claim involving allegedly negligent way in which higher court advocate had conducted complex Crown Court fraud case.
- *Dunn v HM Inspectorate of Prisons and Secretary of State for Justice [2016] (Central London ET)* 7 day disability discrimination and reasonable adjustments claim involving the ill health retirement of a prisons inspector with heart condition and depression.
- *Ahmed v Chandler [2016] (Guildford County Court)* represented Respondent in 3 day multi-track trial of high value credit hire claim, involving live evidence of two engineering experts.
- *Loopdynamic Ltd v Louis Young and Open Select Recruitment Ltd [2015] (QBD) (Picken J)*: application for interim injunction by recruitment company to enforce restrictive covenants in consultant's contract, involved ambit and reasonableness of non-solicitation clauses.
- *Inquest into death of D [2015] (Coroner of the IOW)*: two-week Article 2 inquest into death in custody of inmate with mental health disorder.
- *Thacker v West Sussex Fire and Rescue Service [2015] (Havant ET)*: document heavy long-running disability and race discrimination claim with scott schedule of allegations running to 30 plus pages.
- *Foolchand v Secretary of State for Justice [2015] (Watford ET)*: 5-day trial of reasonable adjustments claim involving prison service employee with post-traumatic stress disorder.
- *Phillips, Valentine and others v J&K Recovery Limited (Bedford ET)*: multiple claims brought by Unite members. Whether roadside recovery workers were engaged in "time work" for each 24-hour period and therefore entitled to the National Minimum Wage.
- *Curtis v HMRC (London South ET)*: 5-day whistleblowing claim, brought by an ex-tax inspector who had made allegations of corruption against colleagues. Legal argument concerning issue estoppels arising out of separate Tribunal proceedings and the concepts of "reasonable belief" and "bad faith".
- *K v X County Council*: Tom was led in this long running equal pay litigation, involving over 160 claimants alleging that productivity and other historical bonuses paid to predominantly male manual workers were discriminatory. The claims settled prior to a six-week GMF hearing.

## Professional Memberships

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Employment Law Bar Association

Employment Lawyer's Association

Discrimination Law Association

### Pro Bono

Volunteer advisor, Employment Law Appeal Advice Scheme ("ELAAS")

Bar Pro Bono Unit

## Appointments

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2016: Attorney General's Junior Counsel to the Crown, B Panel;

2012: Attorney General's Junior Counsel to the Crown, Regional Panel

