

Ben Mitchell

Ben specialises in public, education, public international, EU, employment and information law.

Ben is a member of the Equality and Human Rights Commission and Attorney General's panels of counsel. He is a member of the Law Library of Ireland and has rights of audience before the courts of the European Union.

Ben is ranked in the Chambers & Partners and Legal500 as a leading individual in education law and "up and coming" and a "rising star" in public law/administrative law and human rights. He has been described as "serene under pressure", "able to grasp complex matters very quickly and provide sound advice, particularly when working to tight deadlines" and "excellent with clients".

Specialisms

Public Law and Human Rights

Ben regularly appears in judicial review and wider public law proceedings, both as sole counsel and as part of larger teams. He has particular experience in cases raising environmental, equality and education issues.

Recent judgments include:

- *R (Boswell) v Secretary of State for Transport and National Highways* [2024] EWCA Civ 145; [2024] R.T.R. 14 and [2023] EWHC 1710 (Admin); [2023] ACD 98: acting for the Claimant in three related claims about the accumulation of carbon emissions from the development of the A47, with Peter Lockley and David Wolfe KC.
- *R (TW) v Essex CC* [2024] EWHC 264 (Admin): acting for the successful defendant in a claim about local authority duties under the Children Act 1989, including the provision of accommodation, led by Clive Sheldon KC.
- *R (Cillarda Group Holdings Ltd) v West Northamptonshire Council* [2023] EWHC 1675 (Admin): acting for the successful Defendant in a claim about local authority land disposal under s.123 of the Local Government Act 1972, led by James Goudie KC.
- *R (RW) v Royal Borough of Kensington and Chelsea* [2023] EWHC 1449 (Admin); [2023] All ER (D) 116 (Jun): acting for the Defendant in a claim relating to disability-related expenditure in the calculation of care charges under the Care Act 2014.
- *R (L) v Hampshire County Council* [2022] EWHC 49 (Admin); [2022] E.L.R. 314: acting for the Defendant in a challenge to its guidance for school on supporting LGBT+ students on human rights, religious freedom and political impartiality grounds, led by Andrew Sharland KC.
- *R (ZK) v Norfolk County Council* [2021] EWHC 1249 (Admin): acting for the Defendant in a claim about after-care services under the Mental Health Act 1983, led by Clive Sheldon KC.
- *R (Elliott-Smith) v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 1633 (Admin), [2021] PTSR 1795: acting for the Claimant in a judicial review of the UK's Carbon Emissions Trading Scheme on grounds relating to the Paris Agreement and the Climate Change Act 2008, led by David Wolfe KC.
- *R (C) v Secretary of State for Work and Pensions* [2020] EWHC 2817 (Admin): acting for the Defendant in a discrimination challenge relating the rates at which Carer's Allowance and Universal Credit were paid during the Covid-19 pandemic, led by Julian Milford KC and Heather Emmerson.
- *R (Adiatu) v HM Treasury* [2020] EWHC 1554 (Admin), [2020] IRLR 658: acting for the Defendant in a challenge to the furlough scheme (Coronavirus Job Retention Scheme) and statutory sick pay on the grounds of discrimination under EU law and the ECHR and compliance with the public sector



Professional Summary

Called 2017 England & Wales
Called 2019 Ireland

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equality duty, led by Julian Milford KC and Rupert Paines.

- *R (Jackson) v Secretary of State for Work and Pensions* [2020] 1 W.L.R. 1441, [2020] EWHC 183 (Admin): acting for the Defendant in a claim of discrimination contrary to Art.14 of the ECHR on the ground of marital/civil partnership status in relation to social welfare entitlements, led by Julian Milford.

Ben has particular interest in strategic litigation and public interest law in the fields of equality, education and environmental protection. This builds upon his research before coming to the Bar, which addressed the use of law and litigation by NGOs and community groups.

Education Law

Ben has a wide education law practice and regularly accepts instructions from universities, schools, parents, students and local authorities.

He has acted for a large number of universities in cases brought by students alleging discrimination and breach of academic regulations.

Ben also has significant experience of appearing in special education needs (SEN) and additional learning needs (ALN) cases before the First-tier and Upper Tribunal and exclusion cases before Independent Review Panels. Ben volunteers as a barrister mentor with the School Exclusion Project.

Ben also has a strong advisory practice, having advised a number of universities, school, local authorities and individuals on education law issues, including:

- Support and accommodation for transgender students in school
- Various academy issues, including on the provision of funding and land management
- Policies and procedures on permanent exclusion from school and on the legality of “managed moves”
- The legality of school closures
- Complaints to the Office of the Independent Adjudicator for Higher Education (OIA)
- SEN and decisions by local authorities to amend or cease to maintain Education, Health and Care Plans (EHCP)

Public International and European Union Law

Ben has a varied international law practice, encompassing public international law and EU law, arising in inter-state disputes and domestic cases.

Recent matters raising public international law include:

- Advising a state on the application of international sanctions regimes, assisting Paul Reichler.
- Submissions to the Privy Council on behalf of a state resisting an injunction to restrain the sale of a super yacht, led by Richard Leiper KC.
- Acting for a state party in an inter-state arbitration relating to the export of agricultural products, assisting Paul Reichler.

Recent matters raising EU law include:

- Advising a group of technology companies on the implications of the Digital Markets Act (DMA).
- Acting for an environmental NGO in an application for annulment before the Court of Justice against the “EU taxonomy for sustainable activities” on grounds that it fails to meet minimum thresholds of environmental protection.
- Advising various data controllers on compliance with the EU General Data Protection Regulation (GDPR)

- Case T-575/22 *Wood and Others v Commission*: Acting for the Applicant environmental campaigners and organisations in a challenge to the 'EU Taxonomy for sustainable practices' on grounds that they fail to protect the environment by not complying with the minimum thresholds of environmental protection set out in Regulation (EU) 2020/852.
- Case T-141/19 *Sabo and Others v Parliament and Council* (The EU Biomass Case): Acting for the Applicants (individuals and environmental NGOs from across the EU and the USA) in a challenge to the EU's support for the forest biomass industry in the Renewable Energy Directive (Recast) (REDII) on the basis of the human rights and environmental protection principles in the EU Treaties.

Employment Law

Ben regularly represents employees and employers in all areas of employment law. He has particular expertise in cases of discrimination, harassment, and victimisation under the Equality Act 2010.

Ben also has experience of advising on and appearing in employment law cases, including questions of:

- Employee status
- Redundancy
- Holiday pay and annual leave
- The Employment Tribunal's territorial jurisdiction
- Whistleblowing
- Transfer of undertakings (TUPE)
- Constructive, unfair, wrongful and discriminatory dismissal
- Breach of contract, including the term of mutual trust and confidence

Relevant judgments include:

- *Werner v University of Southampton* UKEAT/0038/21/LA (26 October 2021): acting for the Respondent in the Employment Appeal Tribunal, successfully resisting an appeal on grounds of procedural unfairness and bias.
- *R (Adiatu) v HM Treasury* [2020] EWHC 1554 (Admin), [2020] IRLR 658: acting for the Defendant in a challenge to the furlough scheme (Coronavirus Job Retention Scheme) and statutory sick pay on the grounds of discrimination under EU law and the ECHR and compliance with the public sector equality duty, led by Julian Milford KC and Rupert Paines.

Data Protection, Information and Media Law

Ben has substantial experience across information law and is regularly instructed in domestic and EU law matters relating to data protection, access to information and the Digital Markets Act (DMA).

Ben is currently co-writing a book titled *A Practical Guide to Data Protection, Privacy and Information Law*, to be published by the Law Society in winter 2024.

Ben often appears for the courts and tribunals for businesses, individuals and the Information Commissioner's Office (ICO) in matters relating to:

- Claims against data controllers for data breaches or subject access requests. Ben also regularly advises on tactical steps to minimise the costs and inconvenience to businesses and organisations caused by these claims.
- Challenges to fines under Monetary Penalty Notices under PECR and the DPA/GDPR.
- Appeals against Decision Notices under the Freedom of Information Act (FOIA) and the Environmental Information Regulations (EIR).

Public Procurement and State Aid

Ben has considerable experience of the application of the procurement and state aid rules.

Ben is frequently instructed in a number of procurement matters by economic operators and contracting authorities, as part of a large counsel team and individually, including:

- *Draeger Safety UK Ltd v London Fire Commissioner* [2021] EWHC 2221 (TCC); 197 Con L.R. 151, led by Jason Coppel KC, representing the successful claimant resisting an application to lift an automatic suspension on contract-making under the Public Contracts Regulations 2015
- Acting for a defendant in a large procurement challenge under the Public Contracts Regulations 2015, led by Jason Coppel KC and Joseph Barrett
- Drafting particulars of claim, advising and assisting with pre-action correspondence for various claimants and defendants

Education

PhD in Law, Trinity College Dublin – Social Class, Poverty and the Education System: Tackling Inequality Through Constitutional Public Interest Law

BCL, University of Oxford, Balliol College – Distinction

LLB, Trinity College Dublin – First Class

Awards

Lord Mansfield Scholarship (Lincoln's Inn)

Lord Bowen Scholarship (Lincoln's Inn)

Hardwicke Entrance Exhibition (Lincoln's Inn)

Ussher PhD Fellowship (Trinity College Dublin)

Foley-Bejar Scholarship (Balliol College, Oxford)

Julian Prize for Second Place overall in LLB class (Trinity College Dublin)

Scholar of Trinity College Dublin

Entrance Exhibition (Trinity College Dublin)

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