

Rupert Paines

Rupert has substantial experience across Chambers' practice areas, from commercial and commercial employment litigation to public law, procurement, data protection, and EU cases.

He is ranked as a Leading Junior in the Legal 500 for administrative and public law, data protection, public procurement, and employment law, and in Chambers and Partners in employment, administrative & public, group litigation, public procurement and data protection. The directories variously describe him as *"a real star of the future"* with a *"commanding knowledge of several areas of law"*, *"well trusted by clients – with very senior clients putting him up on his own. He is excellent at acting on his own and performs above his call year"*, *"hugely impressive; he is very good on the law and strategy"* and *"totally brilliant; a very strong advocate with wide experience and insight beyond his years."*

Rupert has considerable trial experience both as sole counsel and within larger teams. He is also frequently involved in appellate litigation, appearing in the Supreme Court and Privy Council on seven occasions since 2015.

In 2013/2014, Rupert spent a year as a Judicial Assistant at the Supreme Court, assisting Lord Toulson JSC and Lord Hughes JSC.



Professional Summary

Called 2012 England & Wales
Called 2020 Northern Ireland

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Specialisms

Public Law

Rupert regularly advises and represents public bodies and commercial entities on issues concerning public law and judicial review, including in relation to matters with human rights, retained EU law, and/or commercial elements. He advises on all aspects of *vires* and public bodies' powers and obligations, and on challenges to public bodies' decisions.

Rupert is on the B Panel of counsel for central Government work.

His recent cases include acting:

- Successfully, for the claimants in the 'care homes' pandemic litigation (*R (Gardner and Harris) v Secretary of State for Health and Social Care and others*), in which the Divisional Court held that the Secretary of State's approach to the safety of care homes in the early stages of the coronavirus pandemic was irrational. The case was one of The Lawyer's 'Top 20 Cases of 2022';
- For the Good Law Project in a number of ongoing Covid-related judicial reviews and appeals challenging *inter alia* the award of substantial Government contracts without transparency or competition, and ministerial and civil servant use of private communications systems for Government business;
- For Bank Mellat in various inter-related sanctions proceedings in the Administrative Court and Commercial Court in *Bank Mellat v HM Treasury* (settled on confidential terms);
- Successfully, for the Isle of Wight Council in *School Facility Management and others v Governing Body of Christ the King School and Isle of Wight Council* [2020] EWHC 1118 (Comm); [2020] PTSR 1913 (establishing the proposition that *ultra vires* could be a defence to a multi-million pound commercial damages claim);
- Successfully, as sole counsel, for the Chartered Institute of Taxation in *R (Hannah) v Chartered Institute of Taxation* [2021] EWHC 1069 (Admin) [2021] B.T.C. 14 (establishing that the Institute, a Royal Charter body, was not subject to judicial review in respect of its disciplinary decisions);

For central Government in:

- *Flynn and Pfizer v Competition and Markets Authority* [2022] 1 WLR 2972 (Supreme Court appeal on existence of a legal rule protecting regulators' legal costs);
- *R (Adiatu and IWGB) v Her Majesty's Treasury* [2020] I.R.L.R. 658 (Coronavirus Job Retention Scheme and 'limb b' workers);
- *R (Qureshi and Greene) v Department of Health and Social Care* (disclosure of 'Project Cygnus' documentation);
- *R (Asbestos Victims Support Groups' Forum UK) v Lord Chancellor* [2020] Costs L.R. 1175 (challenge to sufficiency of QOCS for non-mesothelioma asbestos-related diseases).

He appeared for the former Prime Minister of the Turks and Caicos Islands in the constitutional appeal to the Privy Council in *Misick v The Queen* [2015] 1 W.L.R. 3215, and for central Government in the Supreme Court appeal of *R (C) v Secretary of State for Work and Pensions* [2017] 1 W.L.R. 4127, which concerned DWP's policies on the processing of historical gender identity data of transgender individuals.

Procurement & State Aid

Rupert has considerable experience in the application of the procurement and state aid rules, and has been instructed in a significant proportion of recent high-profile procurement litigation before the UK courts, including the *Edenred* and *EnergySolutions* appeals at trial and in the Court of Appeal and Supreme Court.

He has expertise in all the various procurement regulations, in direct claims under s. 2 European Communities Act 1972, and in related judicial review remedies and commercial claims.

Rupert has recently been engaged, among other matters, in:

- Acting for Atos in *Atos IT Services UK Ltd v SSBEIS and Met Office*, a very substantial damages claim arising out of the Met Office's procurement for its next generation supercomputer (settled on confidential terms);
- Acting as sole counsel for a supplier of school management computer systems in a challenge to the award of a call-off contract under a national framework;
- Acting as sole counsel for a major train operating company in a challenge to its procurement of rail replacement services;
- *Biffa Waste Services Ltd v Leicestershire County Council*: acted for Biffa in a procurement challenge to the award of a major waste contract.
- *Ryhurst Limited v Whittington Hospital NHS Trust*: acted for the Trust in successfully defending a procurement challenge to the Trust's decision to abandon its procurement of a long-term Strategic Estates Partner at preferred bidder stage.
- *School Facility Management and others v Governing Body of Christ the King School and Isle of Wight Council*: acted for the Isle of Wight Council in successfully defending a c. £8m contract / misrepresentation / unjust enrichment claim relating to a long-term contract for a modular building structure.
- *Alstom, Bombardier, and Hitachi v London Underground*: acted for London Underground in successfully lifting the automatic suspension preventing London Underground from entering into a very substantial contract for the replacement of the Piccadilly, Central, Bakerloo, Waterloo & City Line train fleets.
- *EnergySolutions EU Ltd v NDA* : acted for the successful appellant, the Nuclear Decommissioning Authority, in a landmark Supreme Court judgment establishing that damages in procurement claims are only available if any breach of duty is 'sufficiently serious' within the meaning of the EU law conditions for Member State liability.
- *Bombardier Transportation UK Limited v Merseytravel*: acted for the successful applicant, Bombardier, in substantial TCC damages litigation under the UCR. Settled on confidential terms. The interlocutory judgments in the case are now leading authorities on the approach to be adopted to confidentiality rings in these proceedings.
- *Edenred (UK Group) Ltd and others v HM Treasury*: acted for the Claimants/Appellants in their Supreme Court challenge to the Government's decision to abolish the competitive market for childcare voucher services in the UK and award a monopoly contract, license, or exclusive right to National Savings & Investments/Atos.

Commercial Law

Rupert advises and represents clients in all forms of commercial disputes, including in particular commercial employment disputes, disputes arising out of procurements, and public law (including EU/HRA) challenges to protect commercial interests. Rupert's expertise in procurement, commercial law, and public law renders him well-placed to advise and represent clients at the intersection of these areas of practice.

Current and recent cases include:

- Acting for the claimant Bank in *Bank Mellat v HM Treasury*, a Commercial Court damages claim seeking substantial damages for unlawful sanctions imposed by the UK Government (one of The Lawyer's Top 20 Cases of 2017). Settled on confidential terms.
- Acting for Citadel Securities in High Court confidential information proceedings against GSA Capital and certain of its employees.
- Acting successfully as sole counsel for an Iran-focused satellite TV channel in defending substantial High Court breach of contract and GDPR claims brought by a former contractor. The claims were dismissed in their entirety following a four-day High Court trial (*Damavand* [2021] EWHC 3164 (QB)).
- Acting for Guy Carpenter in High Court team move proceedings against Howden and certain of Guy Carpenter's employees and/or former employees.
- Acting successfully for the Isle of Wight Council in *School Facility Management and others v Governing Body of Christ the King School and Isle of Wight Council* [2021] 1 W.L.R. 6129 in defending a c. £8m Commercial Court contract / misrepresentation / unjust enrichment claim relating to a long-term contract for a modular building structure.
- Acting for Crossrail, defending a 'blacklisting' claim brought against Crossrail and a number of construction companies by a union activist and former worker on a Crossrail site.
- Acting for Morrisons in its successful appeal to the Supreme Court in *Various Claimants v WM Morrison Supermarkets plc* [2020] A.C. 989, a high-value group litigation privacy/data protection claim against Morrisons, another of The Lawyer's Top 20 Cases of 2017.

Rupert has substantial experience of claims for injunctive relief in the commercial employment sphere, both in relation to the enforcement of restrictive covenants and the protection of employer confidential information, and of contractual claims arising out of employment or quasi-employment disputes.

Employment Law

Rupert has substantial experience of High Court claims in the business protection/employee competition sphere, including for springboard and post-termination injunctive relief. He has been instructed in two of the largest such claims of 2021 (the Citadel and Guy Carpenter claims).

A sample of current and recent work includes:

- Acting for the former Head of Mechanical Engineering in the Mercedes F1 team in respect of garden leave issues relating to his move to Red Bull.
- Acting for Citadel Securities in High Court confidential information proceedings against GSA Capital and certain of its employees.
- Acting for Guy Carpenter in High Court team move proceedings against Howden and certain of Guy Carpenter's employees and/or former employees.
- Acting for Crossrail, defending a 'blacklisting' claim brought against Crossrail and a number of construction companies by a union activist and former worker on a Crossrail site.
- Acting for HM Treasury, successfully defending a challenge on behalf of 'gig economy' workers to the scope of the Coronavirus Job Retention Scheme and the changes to Statutory Sick Pay made because of the COVID-19 pandemic.

Information Law

Information law is a significant part of Rupert's practice. His information law experience includes substantial work for the Information Commissioner and for public bodies on FOIA/EIR appeals in the First-tier and Upper Tribunals, frequently as sole counsel against silks / senior juniors. Rupert also has

expertise in (i) the interface between information rights and privacy/data protection; and (ii) the use of information rights as an aid in wider litigation.

A sample of his statutory appeal cases include:

- *DSG Retail v IC* (FTT appeal against a Monetary Penalty Notice in respect of the Dixons 2018 data breach).
- *Facebook v IC* (defending the IC against Facebook's challenge to the monetary penalty notice imposed in relation to the 'Cambridge Analytica' matter).
- *Department of Health v IC* EA/2016/0282 (successfully upholding the Commissioner's decision to order disclosure of the ministerial diary of the Secretary of State for Health).
- *Department for Communities and Local Government v IC and Stokel-Walker* EA/2017/0211 (successfully upholding the Commissioner's decision to order disclosure of the ministerial diary of the Minister for the Northern Powerhouse).

Media Law & Data Privacy

A substantial part of Rupert's law is data protection and privacy work.

Rupert's current and recent cases include:

- Acting successfully for two interveners in the Supreme Court appeal in *Lloyd v Google LLC* [2021] 3 WLR 1268, the leading case on the availability of the 'representative action' procedure in data privacy claims, and on the availability of 'loss of control' damages.
- Acting successfully for Morrisons in the Supreme Court in *Various Claimants v WM Morrison Supermarkets plc* [2020] AC 989, a high-value group litigation privacy/data protection claim against Morrisons and now the leading authority on both direct and vicarious liability in such claims.
- Acting for BA in *Various Claimants v British Airways plc*, a high-value group litigation privacy/data protection claim. The claim settled on confidential terms; the interlocutory judgments in the proceedings however provide important guidance on the proper approach to group litigation in the data protection sphere.
- Acting successfully as sole counsel for an Iran-focused satellite TV channel in defending substantial High Court breach of contract and GDPR claims brought by a former contractor. The claims were dismissed in their entirety following a four-day High Court trial (*Damavand* [2021] EWHC 3164 (QB)).
- Acting successfully for the Information Commissioner in *NT1/NT2 v Google LLC* [2018] 3 W.L.R. 1165, the first 'right to be forgotten' case in the High Court.
- Acting for HMRC in *Webster v HMRC*, a challenge by the Claimant to automated exchange of taxpayer data treaties between the UK and USA on the grounds of alleged incompatibility with the data protection legislation.
- Acting for PwC and two of its employees in striking out defamation and malicious falsehood claims brought by a former employee (*Ameyaw v McGoldrick and ors* [2020] EWHC 3035 (QB); [2020] EWHC 3234 (QB)).

Appointments

Attorney General's B Panel

Education

University of Oxford, BCL, Distinction

University of Oxford, BA Jurisprudence with Senior Status, 1st

University of Oxford, BA Theology, 1st

Scholarships

Mould (Senior) Scholar, Gray's Inn

Prince of Wales Scholar, Gray's Inn

Various scholarships during university studies

Former lecturer in contract law at King's College London and at various colleges of the University of Oxford

Memberships

Bar European Group (committee member)

Constitutional and Administrative Law Bar Association

Procurement Lawyers' Association

UK State Aid Law Association

Employment Lawyers' Association

Employment Law Bar Association

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