
Rupert Paines

Rupert has substantial experience across a number of 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, employment law and data protection, and in Chambers and Partners in public procurement and data protection; the directories describe him as a "future star", "head and shoulders above his peers" with "excellent judgement, and a nose for a killer point."

Rupert's current and recent cases include acting for:

- British Airways in *Weaver and others v British Airways plc* (group litigation arising out of the cyber-attack on BA in autumn 2018);
- The Whittington Hospital NHS Trust in *Ryhurst Limited v Whittington Hospital NHS Trust* (TCC procurement challenge to the Trust's decision to abandon its procurement of a long-term Strategic Estates Partner at preferred bidder stage);
- Morrisons in *Various Claimants v Wm Morrison Supermarkets plc* (Supreme Court appeal in first major data protection group claim);
- Bank Mellat in *Bank Mellat v HM Treasury* (Administrative and Commercial Court claims relating to loss caused by UK sanctions on Iran);
- The Isle of Wight Council in *School Facility Management and others v Governing Body of Christ the King School and Isle of Wight Council* (defence of a Commercial Court contract claim on the basis that the contract was *ultra vires*);
- The Information Commissioner in *Facebook Ireland Ltd v Information Commissioner* (Facebook's challenge to the monetary penalty notice imposed in relation to the 'Cambridge Analytica' matter);
- HM Treasury in *R (Adiatu and Independent Workers' Union of Great Britain) v HM Treasury* (EU and ECHR discrimination challenge to the Coronavirus Job Retention Scheme brought on behalf of 'limb b' workers).

In 2013/2014, Rupert spent a year as a Judicial Assistant at the Supreme Court, assisting Lord Toulson JSC and Lord Hughes JSC. During that time Rupert was closely involved in many of the leading cases in his current areas of practice.

Specialisms

Public

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

He appeared for the solicitors' firms in the well-known Divisional Court and Court of Appeal litigation concerning the Lord Chancellor's attempted reforms of the criminal law solicitors' legal aid market, *R (LCCSA and others) v Lord Chancellor* [2016] 3 All E.R. 296, 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



Professional Summary

Called 2012 England & Wales
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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.

His recent cases include acting for Bank Mellat in various inter-related sanctions proceedings in the Administrative Court and Commercial Court in *Bank Mellat v HM Treasury*, and for DCMS in *R (EU Lotto Ltd and others) v Secretary of State for Digital, Culture, Media and Sport* [2019] 1 C.M.L.R. 41, an Article 56 TFEU challenge to the Government's decision to ban betting on non-UK Euromillions lotteries.

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

Public Procurement & State Aid

Rupert has very 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. He is an editor of 11KBW's Procurement Bulletin.

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

- *Alstom, Bombardier, and Hitachi v London Underground* (2018, TCC). 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.
- *Interoute Communications Ltd v Anglian Water* (2018, TCC). Acted for Anglian in defending a substantial UCR damages claim in the TCC. Settled on confidential terms.
- *EnergySolutions EU Ltd v NDA* [2017] 1 WLR 1373, Supreme Court. Acted successfully for the appellant 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* [2017] 171 Con. L.R. 241; [2017] EWHC 726 (TCC); [2018] EWHC 41 (TCC). 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* [2015] PTSR 1088; [2016] 1 All ER 763; [2015] 3 CMLR 47 (Supreme Court). 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.
- *R (London Criminal Courts Solicitors Association and others) v Lord Chancellor* [2015] EWCA Civ 230 (Admin); [2016] 3 All ER 296 (Court of Appeal). Acted for the Claimants/Appellants in their challenge to the Lord Chancellor's decision to cut by two-thirds the number of criminal legal aid contracts for duty provider work.
- *Jeremy Benn Associates Ltd v Doncaster East Internal Drainage Board* (2018, TCC). Acting for the Defendant (as sole counsel) in an ongoing PCR challenge concerning a contract for management services.
- *FM Conway Ltd v Camden Council* (2016, TCC). Successfully obtained an order lifting the automatic suspension in a claim against the Council arising out of a restricted procurement for highway-related works and services. Settled on confidential terms.

Commercial

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 Morrisons in *Various Claimants v WM Morrison Supermarkets plc* [2018] 3 W.L.R. 691; [2018] EWCA Civ 2339, a high-value group litigation privacy/data protection claim against Morrisons, another of The Lawyer's Top 20 Cases of 2017. The case is now on appeal to the Supreme Court.
- Acting for the Isle of Wight council in a Commercial Court claim concerning alleged liability for the construction of a sixth form school building.
- Acting for an agency services provider in a substantial High Court claim for unpaid invoices against a well-known facility services company.
- Defending an Article 56 TFEU challenge to the regulation of the gambling market.
- Acting for various companies in relation to threatened litigation following data breaches.
- Representing solicitors' firms in the *Court of Appeal in R (LCCSA and others) v Lord Chancellor*, which challenged the Lord Chancellor's decision to restructure the market for criminal legal services in the UK.

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 (*ZeroLight Ltd v Wolff* [2016] EWHC 487 (QB), *Pendragon plc v Brearley and others*), and of contractual claims arising out of employment disputes including bonus claims.

Employment

Rupert is often instructed as sole counsel in multi-day Employment Tribunal hearings spanning the full range of employment issues, including discrimination claims and bonus issues. He also has substantial experience of High Court claims in the business protection/employee competition sphere, including for springboard and post-termination injunctive relief (*ZeroLight Ltd v Wolff* [2016] EWHC 487 (QB), *Pendragon plc v Brearley and others*).

A sample of current and recent work includes:

- Acting for an agency services provider in a substantial High Court claim for unpaid invoices against a well-known facility services company.
- Representing a former Head of Global Trading in a whistleblowing claim against his former employer, an FX trading house (settled on confidential terms).
- Representing two former employees as sole counsel in a High Court claim for breach of confidence, fiduciary duties, and fidelity obligations (settled on confidential terms).
- Defending a constructive dismissal claim arising out of alleged late payment of bonuses to a Commercial Director in the construction industry (ongoing).
- Successfully defending a 4-day disability discrimination claim against a train operating company.

Information

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.

His recent cases include:

- **Facebook v IC** (defending 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).
- **Cox v IC** [2018] UKUT 119 (AAC) (successfully defending appeal to Upper Tribunal over personal data of junior civil servants).
- **Cruelty Free International v IC** [2017] UKUT 318 (AAC) (successfully defended appeal to the Upper Tribunal on whether costs to be taken into account under s. 12 FOIA include costs of allegedly unlawful record-keeping);
- **Keane v Information Commissioner** [2016] UKUT 461 (AAC) (successfully defended an appeal to the Upper Tribunal concerning the application of the national security exemption in s. 24 FOIA to historic documents).

European Union

Rupert's EU law experience ranges across a number of areas of law, from the discrimination provisions of the Equality Act and the environmental information access provisions of the Environmental Information Regulations, to the data processing and data protection obligations of the Data Processing Directive and related European legislation. He was recently instructed in *R (EU Lotto Ltd and others) v Secretary of State for Digital, Culture, Media and Sport* [2017] 1 W.L.R. 4127 (SC), an Article 56 TFEU challenge to the Government's decision to ban betting on non-UK Euromillions lotteries.

A large part of Rupert's practice is the EU law of state aid and public procurement, and he is very familiar with all applicable principles in this area including claims under the Regulations/Directive, and direct claims for breach of Treaty principles.

Rupert is on the committee of the Bar European Group.

Human Rights

Rupert has substantial experience of human rights claims in a wide range of contexts, whether concerning their application to public, commercial, or information law. A sample of Rupert's current and recent work includes:

- *R (C) v Secretary of State for Work and Pensions* [2017] 1 W.L.R. 4127 (SC) Supreme Court appeal challenging DWP's policies on the processing of historical gender identity data of transgender individuals.
- *Bank Mellat v HM Treasury*, a high value Administrative and Commercial Court claim against the UK Government for loss caused by unlawful sanctions claimed under Article 1 Protocol 1 to the ECHR.
- *NT1/NT2 v Google LLC* [2018] 3 W.L.R. 1165, the first data privacy 'right to be forgotten' case in the High Court, involving balancing of competing fundamental rights under the EU Charter.
- *Webber v Information Commissioner and Department for Transport*, on the question whether the Grand Chamber decision in *Magyar Bizottsag v Hungary* that Article 10 ECHR provides a qualified right of access to state-held information supersedes the Supreme Court's decision in *Kennedy v Charity Commission*.

Media Law & Data Privacy

A substantial part of Rupert's law is data protection, particularly in the commercial sphere.

Rupert was instructed in perhaps the two most high-profile data protection cases of the last 12 months: *Various Claimants v WM Morrison Supermarkets plc* [2018] 3 W.L.R. 691, a high-value group litigation privacy/data protection claim against Morrisons (one of The Lawyer's Top 20 Cases of 2017) currently on appeal to the Court of Appeal, and *NT1/NT2 v Google LLC*

[2018] 3 W.L.R. 1165, the first 'right to be forgotten' case in the High Court. He is now acting on the *British Airways* data breach group litigation, and defending Facebook's appeal against the 'Cambridge Analytica' MPN in *Facebook v IC*.

Rupert is currently advising a number of large entities in relation to data breach issues, and advising high-profile individuals on a number of subject access requests. He has advised and represented private individuals, commercial entities, and public bodies on media and data protection issues, including (i) advising a corporate entity subject to a criminal investigation on data protection compliance, (ii) dealing with data protection aspects of a high-profile media injunction, (iii) representing a local authority in opposing a data protection injunction, and (iv) representing an MP subject to a DPA damages claim.

Appointments

Attorney General's C Panel

News, Articles & Publications

Proprietary remedies, fiduciary bribes, and dishonest assistants: FHR and Novoship. Read [here](#).

New SEN Regime: Education, Health and Care Plans – Special Education Law Conference. Read [here](#).

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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