
Simon Devonshire QC

Simon was called in 1988 and took silk in 2009. He is a leading QC practicing in all areas of statutory and contractual/commercial employment law, but with a particular emphasis on (i) inter-business competition issues (including confidential information, restrictive covenants and the poaching of employees in unlawful team moves), (ii) employee/business owner fraud, (iii) the attempted diversion of business opportunities by employee fiduciaries, and (iv) whistle-blowing, discrimination and TUPE disputes. He also has considerable experience in the sports forum, in disputes between LLP members, and in the management and control of repeated/vexatious litigation.

According to recent directory recommendations, “his advocacy skills, robustness and tenacity always places the client in the strongest position”, he is “incredibly bright and hugely persuasive in court”, and he “brings his strong intellect to every detailed corner of a complex case”.

Specialisms

Employment

In the High Court, Simon regularly acts in fraud, business diversion and employee competition disputes. Recent cases have involved: the wide-scale misappropriation of confidential information and associated recruitment opportunities in an attempt to set up a global image rights business; the tracing of assets acquired by an employee who secretly diverted nearly £2.5m from his employer’s accounts; the attempted diversion by two departing employees of the opportunity to open a multi-million pound luxury car dealership in the Midlands; the control of abusive attempts to re-litigate issues already decided against the applicant; a substantial fraud action, involving the alleged miss-sale of a freight forwarding business; multiple team move disputes (in both the employment and the LLP settings); and historical music rights disputes. Other areas of expertise include actions for injunctions to restrain or control domestic disciplinary proceedings (particularly in the NHS context) and strike litigation.

Recent reported and/or important cases include **Samara –v- MBI Partners** [2016] EWHC 441 (QB) (abuse of process arising out of recidivist litigation); **Dorma UK Ltd –v- Batemen** [2015] EWHC 4142 (QB) [2016] IRLR 616 (springboard relief arising out of an alleged team move); **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch) (extended CRO against litigant repeatedly bringing misconceived claims); **Thomson Ecology –v- APEM** [2014] IRLR 184 (summary judgment and disclosure orders in team move cases); **CEF Holdings -v- Munday & Ors** [2012] FSR 35 (the limits of springboard relief and the obligations of a party moving the court without notice); **BGC –v- Rees & Tullett Prebon** [2011] EWHC 2009 (QB) (Tullett did not procure Rees to breach his contract of employment with BGC when recruiting him); **Capital for Enterprise -v- Malik & Ors** [2010] EWHC 343 (Ch) (disclosure obligations and freezing injunctions); **Bezant –v- Rausing & Ors** [2007] EWHC 1118 (QB) (it was an abuse of process for a claimant, after his claims under employment law had failed, to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses).

In the LLP context, Simon has acted in a large number of confidential arbitrations, including for a hedge fund in a multi-million pound claim against a departing member alleged to have orchestrated a team move, for a substantial solicitor’s practice in the enforcement of anti-team



Professional Summary

Called 1988
Appointed QC 2009

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move covenants agreed by the membership as a whole after serious damage to its business from a series of team moves, and for a leading London Firm on the question whether the repudiatory breach doctrine can be relied upon to terminate an LLP agreement.

On the statutory front, Simon recently acted for a major bank in defending unfair dismissal, race and disability discrimination claims by its global head of treasury. He continues to handle a large number of whistle-blowing disputes, arising particularly in the financial services sector. He also advises on contentious and non-contentious TUPE issues, particularly in respect of outsourcing and change of contractor disputes and on the TUPE implications of commercial transactions. He has acted for a number of NHS bodies following the outsourcing of care to persons with learning disabilities, and successfully defended a firm of solicitors against a claim that it had inherited TUPE liabilities for the employees of one of its competitors.

Recent reported and/or important cases include: **Allsop –v- Christiani & Nielsen Ltd** (in Administration) [2012] UKEAT/0241/11/JOJ (limitation and jurisdiction in Wages Act claims); **Royal Cornwall Hospital Trust –v- Watkinson** [2011] Med LR 636 (whistleblowing in an NHS trust); **Ward Hadaway –v- Love & Ors** [2010] UKEAT/0471/09/SM (the winning of a contract to provide legal services to the NMC did not constitute a service provision change within the meaning of TUPE 2006, and the successful tenderer did not assume liability for the dedicated team of lawyers retained by his predecessor); **New ISG –v- Vernon & Ors** [2008] ICR 319 (a purposive construction should be given to reg 4(7) of TUPE 2006, so as to accord with the fundamental freedom of the employee to choose who he works for, and to permit and recognise the effectiveness of a post transfer objection where the employee does not know of the identity of the transferee or of his right to object pre transfer. In consequence, the transferee could not enforce post termination restrictive covenants against ‘objecting’ employees); **Croke –v- Hydro** [2007] ICR 1303 (an individual providing services through his own limited company to an end user via an employment agency was a worker for the purposes of the whistle-blowing provisions); **Perkin –v- St George’s NHS Trust** [2006] ICR 617 (awkward personality as the justification for the dismissal of a self-proclaimed whistleblower).

Commercial

Simon has a busy High Court practice in the fields of commercial and business law, typically (though not exclusively) arising out of commercial disputes with an employment twist. Simon’s practice encompasses: (i) civil fraud and associated injunctive, monetary and proprietary remedies; (ii) the construction and interpretation of commercial contracts; (iii) partnership and LLP disputes; and (iv) business protection, including the enforcement of post termination restrictive covenants, the enforcement of obligations of confidence, fiduciary obligations, data recovery, and associated injunctive and springboard relief. He also has particular experience in cases involving judicial control of vexatious and abusive litigation.

Civil Fraud

In the fraud context, Simon is currently acting for an employer seeking to trace some £2.5M of stolen money into substitute assets. He acted for the successful employer in a case involving the attempted diversion by two departing employees of the opportunity to open a multi-million pound luxury car dealership in the Midlands. He acted for the claimant in a £50M fraud action arising out of the alleged mis-sale of a freight forwarding business. He acted for three venture capital funds in **Capital for Enterprise -v- Malik & Ors** [2010] EWHC 343 (Ch), in successfully resisting claims by multiple defendants to set aside freezing injunctions obtained on the basis of an alleged fraud/conspiracy in running a ‘Ponzi Scheme’ bridging loan business.

Commercial Contract

Simon is frequently called upon to advise on the meaning, effect, enforcement and proper construction of commercial contracts, including post termination restrictions, indemnities and repayment clauses, Romalpa or retention of title clauses, and commercial TUPE provisions. He has been noted in the Directories for “taking a commercial, practical approach to problems ... [and] his ability to boil things down and explain them concisely”.

Partnership

In the LLP context, Simon has acted in a large number of confidential arbitrations, including for a hedge fund in a multi-million pound claim against a departing member alleged to have orchestrated a team move, for a substantial solicitor's practice in the enforcement of anti-team move covenants agreed by the membership as a whole after serious damage to its business from a series of team moves, and for a leading London Firm on the question whether the repudiatory breach doctrine can be relied upon to terminate an LLP agreement.

Business Protection

Simon regularly acts in business protection cases, in cases involving the misuse of confidential information, breaches of fiduciary obligation, pre-termination employee competition and post termination restrictive covenants. Simon has been noted in the directories for his excellence on "restrictive covenants, team move and breach of fiduciary duty cases ... He's outstanding – his depth of knowledge and his ability to consolidate serious issues and make sense of it all is superb". In addition to the fraud and LLP work already described, Simon is currently acting for the claimants in a case involving the wide-scale misappropriation of confidential information and associated recruitment opportunities in an attempt to set up a global image rights business. He acted for the claimants in a substantial claim for breach of fiduciary duty and intellectual property infringement by an employee who set up a friends reunite style website in Russia, in competition with his former employer (a case which settled on the first day of a 5 week trial). Recent reported and/or important cases include **Dorma UK Ltd –v- Batemen** [2015] EWHC 4142 (QB) [2016] IRLR 616 (springboard relief arising out of an alleged team move); **Thomson Ecology –v- APEM** [2014] IRLR 184 (summary judgment and disclosure orders in team move cases); **CEF Holdings -v- Munday & Ors** [2012] FSR 35 (the limits of springboard relief and the obligations of a party moving the court without notice); **BGC –v- Rees & Tullett Prebon** [2011] EWHC 2009 (QB) (Tullett did not procure Rees to breach his contract of employment with BGC when recruiting him); **New ISG –v- Vernon** [2008] ICR 319 (the enforcement of restrictive covenants against an employee who had opted out of TUPE); and **Allan Janes –v- Johal** [2006] ICR 742 (the enforceability of a restrictive covenant in a solicitor's contract).

Procedural

Simon has particular experience in the judicial control of vexatious litigation. Examples include: **Samara –v- MBI Partners** [2016] EWHC 441 (QB) (abuse of process arising out of recidivist litigation); **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch) (extended CRO against litigant repeatedly bringing misconceived claims in respect of his alleged rights to exploit recordings of performances by the late Jimmi Hendrix); **Bezant –v- Rausing & Ors** [2007] EWHC 1118 (QB) (it was an abuse of process for a claimant, after his claims under employment law had failed, to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses, and such conduct justified the making of an Extended CRO); and (in the statutory employment context); and **Allsop –v- Christiani & Nielsen Ltd (in Administration)** [2012] UKEAT/0241/11/JOJ (dismissal of wages act claims brought substantially out of time by an 'employee' on long term sick leave, alleging the adoption of his contract by the administrators).

Media & Data Privacy

Simon has considerable experience of recording, publishing, copyright and management disputes in the music, media and entertainment industry. Clients have included the Musicians Union, All Saints, Echobelly, the Cradle of Filth, the Gypsy Priests, Right Said Fred, Vital Distribution, Mungo Jerry and Gordon Ramsay. Simon recently acted for various representatives of the Hendrix Estate and their advisers in resisting claims that the defendant was free to exploit recordings of live performances given by the late Jimmi Hendrix; **Miller –v- Gardiner & Ors** [2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch)

Sport

Simon specialises in contractual disputes in the sporting field. He has acted for World and European champion boxers, boxing promoters, various professional football and rugby league clubs, and a Formula One racing driver. He recently acted for Hull Football Club in their dispute with Jimmy Bullard (who was summarily dismissed for alleged misconduct at the beginning of

2011-2012 season).

Recommendations

“An extremely hands-on barrister who gives excellent service.” **Chambers & Partners**

“He’s at the top of the tree. He has a brilliant mind and when on his feet he puts others in the shade.” **Chambers & Partners**

“... His advocacy skills were very good – he made mincemeat of his opponents and he did an extremely good job” **Chambers & Partners**

“... He is extremely responsive and very good with clients – we feel that we are in safe hands” **Chambers & Partners**

“... His advocacy ... robustness and tenacity always places the client in the strongest position” **Legal 500**

“...a wonderfully pragmatic barrister who is a joy to work with” **Chambers & Partners**

“...he has a quiet, confident, comfortable style” **Chambers & Partners**

“...is incredibly bright and hugely persuasive in court” **Legal 500**

“...brings his strong intellect to every detailed corner of a complex case” **Legal 500**

“...commended for his expertise on injunction work and team moves ... attracts clients due to his smart brain and technical excellence” **Chambers & Partners**

“... known for taking a commercial, practical approach to problems. Solicitors rate his collaborative, hard working ethic as well as his “ability to boil things down and explain them concisely” **Chambers & Partners**

“... a powerful advocate who offers analytical, straightforward and very practical advice” **Chambers & Partners**

Recent Cases

Samara –v- MBI Partners

[2016] EWHC 441 (QB)

Attempt to make second application to set aside a default judgement was an abuse of the process and justified the making of a CRO.

Dorma UK –v- Bateman

[2015] EWHC 4142 (QB); [2016] IRLR 616

Employer granted springboard injunction until trial to restrain its former employees from working for a competitor or poaching customers.

Miller –v- Gardiner & Ors

[2015] EWHC 1712 (Ch) & [2015] EWHC 288 (Ch)

Extended CRO made against litigant repeatedly bringing misconceived claims asserting rights to exploit live recordings of performances by the late Jimmi Hendrix.

CEF & Ors –v- Munday & Ors

[2012] EWHC 1524 (QB); [2012] FSR 35

Simon acted for 11 of the employee defendants in setting aside orders obtained on short notice for material non-disclosure in an alleged unlawful competition case. The decision also contains important messages about the nature of the evidence necessary to support an application for interim springboard relief and the extent of the English court’s jurisdiction when tort claims are asserted against non-domicile employee defendants.

Allsop –v- Christiani & Nielsen Ltd (in Administration)

[2012] UKEAT/0241/11/JOJ

Dismissal of Wages Act claims brought substantially out of time by an 'employee' on long term sick leave alleging that adoption of his contract by the administrators.

BGC –v- Ress & Tullett Prebon

[2011] EWHC 2009 (QB)

A spin off from the main Tullett Prebon litigation – in which Simon had been involved as part of Tullett's pre-trial team, particularly in the settling of pleadings – this case concerned Tullett's recruitment of a broker to mitigate the effects of BGC's unlawful conspiracy/poaching raid in [2010] EWHC 484 (QB). It was alleged that this had involved Tullett in unlawful conspiracy and procurement by Rees of his obligations to BGC. Tullett successfully resisted these claims – notwithstanding that Rees was found to have acted in breach of his obligations to BGC – and satisfied the Court that even if there had been breaches, they disclosed no recoverable loss.

Watkinson –v- Royal Cornwall Hospital Trust

(2011) UKEAT/0378/10/DM [2011] Med LR 636

Simon acted for the trust in a whistleblowing claim brought by its former CEO.

Capital for Enterprise Fund ALP & Ors –v- Malik & Ors

[2010] EWHC Ch 343

Simon successfully resisted an application to set aside freezing injunctions by multiple defendants in a conspiracy/fraud case involving an alleged 'Ponzi Scheme' bridging loan business, following a protracted interlocutory battle. The injunctions were maintained over to speedy trial, and the allegations of material non-disclosure rejected.

Ward Hadaway –v- Love & Ors

[2010] UKEAT/0471/09/SM

The winning of a contract to provide legal services to the NMC did not constitute a service provision change within the meaning of TUPE 2006, and the successful tenderer did not assume liability for the dedicated team of lawyers retained by his predecessor.

New ISG –v- Vernon

[2008] ICR 319

A purposive construction should be given to reg 4(7) of TUPE 2006, so as to accord with the fundamental freedom of the employee to choose who he works for, and to permit and recognise the effectiveness of a post-transfer objection where the employee does not know of the identity of the transferee or of his right to object pre transfer. In consequence, the transferee could not enforce post termination restrictive covenants against 'objecting' employees.

Bezant –v- Rausing & Ors

[2007] EWHC 1118 (QB)

It was an abuse of process for a claimant – after his claims under employment law had failed – to seek to invoke the law of tort against directors and other professionals associated with his employment/dismissal, to seek to recover his alleged losses. Such conduct justified the making of an Extended CRO.

Croke –v- Hydro

[2007] ICR 1304

An individual providing his services through his own limited company to an end user via an employment agency was a worker for the purposes of the whistleblowing provisions.

Allan Janes –v- Johal

[2006] ICR 742

Concerning the enforceability of a restrictive covenants in a solicitor's contract.

Perkin v St. Georges NHS Trust

[2006] ICR 617

Alleged whistleblower in fact dismissed for inability to get on with colleagues; and although his

dismissal was unfair, compensation permissibly reduced to zero on the application of the contributory fault and 'Polkey Chance' principles.

Virgo Fidelis Senior School v. Boyle

[2004] ICR 1210, EAT

Assessing compensation for injury to feelings in the whistleblowing context.

Breeze Benton v Weddell

[2004] All ER (D) 225

Judicial bias and 'recusal' in employment tribunals).

P & O Trans European v Initial Transport Services and Ors

[2003] IRLR 128

TUPE transfers in asset intensive industries following the ECJ decision in *Liskojarvi*.

News, Articles & Publications

For Simon's analysis of a number of the key recent cases, see the 11KBW Employment Law Blog. Copies of his papers and slides for the annual Chambers employment law conference are on the 11KBW website.

Garden Leave Injunctions in the Sporting Arena [2004] ISLR 15

Education

Kings School, Canterbury

Magdalen College, Oxford (BA, Jurisprudence)

Other

Professional memberships:

- Employment Law Bar Association
- Employment Lawyers Association
- London Commercial Law Bar Association

Simon has owned and raced the Thames Sailing Barge Marjorie since 1993, and holds an MCA/DTI Master's ticket. He has exhibited his own paintings with the Royal Society of Marine Artists on a number of occasions.



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