Simon Devonshire KC



Silk: 2009 Call: 1988

E: Simon.Devonshire@11kbw.com
T: +44 (0)20 7632 8500

Simon was called in 1988 and took silk in 2009. He is a leading KC 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, in the management and control of repeated/vexatious litigation, and in the conduct of internal investigations.

> ***...he has a quiet, confident, comfortable style***
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Expertise

Recent cases

Red Bull –v- Fallows
[2021] EWHC 3502 (QB)
Appropriate disclosure to test a claim that the enforcement of a garden leave clause was an unlawful restraint of trade.

Ferguson -v- Astrea
[2020] IRLR 577
Enhanced terms agreed by employee-directors shortly before a TUPE transfer void under the domestic Regulations and on the application of the EU abuse of rights principle.

Sattar –v- Citibank
[2019] EWCA Civ 2000; [2020] IRLR 104
Bank acted fairly in determining the employment of its Head of Treasury, notwithstanding his disability and criticisms that could be made of the procedure adopted.

Capita –v- Darch
[2017] EWHC 1248 (Ch) & 1401 (Ch); [2017] IRLR 718 (QB)
Application for extensive suite of injunctive relief dismissed with costs in the absence of proper evidence of threatened breaches.

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- Mundey & 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*.

Achievements

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

Magdelen 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.

> ***... a go-to silk for non-compete disputes ... provides excellent client service – he is very responsive and happy to roll up his sleeves in a case.***
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> CHAMBERS & PARTNERS

> ***An extremely hands-on barrister who gives excellent service.***
>
> 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

... works incredibly hard on his preparation ... particularly strong in structuring his arguments in a way that finds favour with the Employment Tribunal, and in making persuasive submissions. A safe bet on every occasion.'

LEGAL 500

...is incredibly bright and hugely persuasive in court

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