Marcus Pilgerstorfer KC



Silk: 2020 Call: 2002

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Marcus is an enormously experienced specialist in the fields of employment and discrimination law; product liability and consumer law; and public, human rights and data privacy law. He has appeared in a number of the leading cases.

He is recognised by the directories as “a superb barrister” who is “just brilliant in court” and “handles clients extremely well and surpasses their expectations”. He has “a brain the size of a planet” and is “clearly much admired by the senior judiciary”.

Marcus is a Civil and Criminal Recorder (part-time judge), is an Advocacy Trainer at Gray’s Inn and was a member of the Attorney General’s A Panel of Counsel to the Crown.

> ***The word forensic was invented for Marcus and it applies across all of his work. His cross-examination is laser-sharp, and his submissions are compelling and always backed up with authority. Marcus also clearly has the respect of the judges and his promotion to silk was richly deserved.***
>
> **LEGAL 500**

Expertise

Employment and Discrimination

Marcus is a leading specialist in employment and discrimination law, with extensive experience across the full range of disputes and venues. He has acted for a wide mix of clients including individuals, unions, and employers from SMEs to City Banks, Airlines, Government departments and other large employers. Please see under 'recent cases' for examples of his work.

- **Individual Statutory and Contractual Disputes:** Marcus' experience spans all types of individual employment disputes. He is often instructed in complex multi-allegation whistleblowing and discrimination claims, as well as High Court contractual disputes. He has significant experience of group employment claims, including in the context of employment status disputes, discrimination and holiday pay. Marcus has extensive appellate experience and regularly appears in important test cases in this field.
- **Industrial Relations:** Marcus' work in the industrial relations field includes injunction applications in response to strikes and other industrial action, recognition claims before the CAC and complaints before the Certification Officer. He also appears in individual cases impacted by industrial relations law and is well-versed in Art 11 ECHR arguments that can arise in this context.
- **Business Protection**: Marcus is regularly instructed to advise and act in cases concerning restrictive covenants covering employee competition, non-dealing and poaching, as well as enforcing confidentiality rights.
- **Independent Adjudicator:** Marcus acts as an independent adjudicator on behalf of organisations and has conducted investigations and determined internal appeals, grievances and highly sensitive whistle-blowing complaints.
- **Mediations and Arbitrations**: Marcus has significant experience in acting for clients in mediations and arbitral proceedings.
- **Parliamentary Drafting**: Marcus has also advised on and drafted Employment Bills for Members of Parliament, including a bill which became the Gangmasters (Licensing) Act 2004.
- **Media**: Marcus has commented on employment law issues on BBC News 24, BBC Six o'clock News, the Donal MacIntyre Show and has advised BBC Radio 4's Moneybox programme.

Sargeant v London Fire Commissioner

UKEAT/137/17; [2021] ICR 1057

Construction of s61 Equality Act 2010 (non-discrimination rule for occupational pension schemes) and defence in Schedule 22 para 1(1).

Community Based Care Health Ltd v Narayan

[2019] UKEAT/0162/18 (EAT)

Employment status of 'out of hours' GP; whether the undisclosed principal doctrine applies.

Ahmed v Cardinal Hume Academies

[2019] UKEAT/0196/18 (EAT)

Correct test for harassment and direct disability discrimination under the Equality Act 2010.

Braine & Others v The National Gallery

2201625/2018 (ET)

Employment status of gallery educators; whether s188 TULRCA claims should be extended to "workers" by reference to Directive 98/59 on collective redundancies.

Seahorse Maritime Ltd v Nautilus International

[2018] EWCA CIV 2789, [2019] IRLR 286 (CA) [2017] ICR 1463, UKEAT/281/16 (EAT)

Where crews were supplied to operate ships outside the UK, whether each ship was a separate 'establishment' for the purposes of consultation, and the correct approach to territoriality in a claim for collective redundancy consultation under s188 TULRCA.

King v Sash Window Workshop

CASE C-214/16, [2018] 2 CMLR 10, [2018] ICR 693, [2017] IRLR 142 (CJEU)

Whether a payment in lieu of paid annual leave falls due at termination of a worker/employer relationship for the entirety of that relationship notwithstanding that both parties considered the claimant a worker at the material time.

Hayes & Others v Qantas Cabin Crew (UK) Ltd

3347009/2016 (ET)

Whether requirement to undertake airline standby duty shifts constituted indirect sex discrimination.

Baker v Peninsula Business Services Ltd

[2017] ICR 714, [2017] IRLR 394 (EAT)

Whether asserting a protected characteristic is enough to bring a claimant within the scope of harassment protection.

UN Judge for Staff Appeals

Advising in relation to misconduct allegations against a UN Civil Servant.

Hainsworth v MOD

(2015, SC); [2014] 3 CMLR 43 (CA); AND [2013] EQ LR 1159 (EAT)

Whether the duty to make reasonable adjustments extends to carers of disabled people.

Burrell v Micheldever Tyre Services

[2014] ICR 935 (CA)

Whether the EAT should remit or substitute following a successful appeal.

Commissioner of Police of the Metropolis v Keohane

[2014] ICR 1073 (EAT)

The causal test to be applied in cases of pregnancy discrimination.

Portnykh v Nomura Plc

[2014] IRLR 251 (EAT)

The extent of the 'without prejudice' rule and EAT costs orders in respect of appeal fees.

Qantas Cabin Crew (UK) Ltd v Lopez

[2013] IRLR 4 (EAT)

Construction of employment contracts concerning allowances, doctrine of mistake and time in unauthorised deductions claims.

Edwards v Chesterfield

[2012] 2 AC 22 (SC), [2011] QB 339 (CA)

The application of the Johnson v Unisys principle to express contractual terms in common law breach of contract claim.

English v Thomas Sanderson Blinds

[2009] 2 CMLR 18 (CA)

Whether a straight claimant could be harassed as gay when known not to be.

Enfield Technical Services v Payne

[2008] ICR 1423 (CA)

The scope of the illegality doctrine.

Palfrey v Transco Plc

[2004] IRLR 916 (EAT)

Agreements to vary effective date of termination; per incuriam EAT decisions.

Secretary of State for Justice v The POA

(2016, HC)

Injunction to restrain industrial action by prison officers following the release of health and safety information within the prison estate.

Secretary of State for Education v The NUT

[2016] EWHC 812 (QB), [2016] IRLR 512 (HC)

On the ability of a third party to an employment relationship to obtain declaratory interim relief on lawfulness of industrial action

Advising compatibility of the Trade Union Bill 2015 with the ECHR.

RMT v UK

(2015) 60 EHRR 10 (ECTHR)

On the issue of whether the provisions of TULRECA constitute an unjustifiable interference with Art 11 ECHR (drafting of application).

BA Cabin Crew Industrial action and related litigation (2009-10, HC), including Christmas strike injunction

[2010] IRLR 423

EDF Energy Powerlink Ltd v RMT

[2010] IRLR 114 (HC)

On whether strike lawful given requirement to give notice of industrial action under s226A TULRCA.

Achievements

Appointments

- Queen's Counsel (2020)
- Adjunct Professor, City University of Hong Kong (2020, 2021)
- Recorder (Crime 2018, Civil 2019)
- Attorney General's Panel of Counsel to the Crown: A Panel (2019), B Panel (2014) C Panel (2008)
- Advocacy Trainer (Gray's Inn) (2014)
- Pupil Supervisor (2010)

News, Articles & Publications

Regular Publications

- Civil Court Practice ('the Green Book') (contributor 2016-date)
- Tolley's Employment Law Handbook (contributor 2013-date)

Book Chapters

- *Munkman on Employer's Liability,* Bennett (Ed), chapter on the liability of third parties to an injured employee *(2019)*
- *Research Handbook in EU Health Law,* Hervey & Young (Eds), chapter on EU law and policy on pharmaceuticals marketing and post-market control including product liability *(2017)*
- *Cambridge Companion to European Private Law,* Twigg-Flesner (Ed), chapter on Product Liability *(2010)*
- *Discrimination in Employment,* Tucker & George (Eds), chapter on Injury to Feelings Awards *(2007)*

Articles

- *Procurement of Covid-19 vaccines: why were legal liabilities transferred to the public sector? InDret 2.2021 p364-366 (available here)*
- *Products in a Pandemic: Liability for Medical Products and the Fight against Covid-19 (2020) European Journal of Risk Regulation, 1-39. (available here)*

- *European product liability after Boston Scientific: an assessment of the Court's judgment on defect, damage and causation (2017) 28 European Business Law Review 879*
- *The Product Liability Directive: Time to get Soft? (2013) 4 Journal of European Tort Law 1*
- *Transferred Discrimination in European Law: Case C-303/06 Coleman v Attridge Law (2008) 37 ILJ 384*
- *Direct and Indirect Discrimination: Is there something in between? (2008) 37 ILJ 347*
- *A Dog's Dinner? Reconsidering Contractual Illegality in the Employment Sphere (2008) 37 ILJ 279*
- *Taking Discrimination Personally? An Analysis of the Doctrine of Transferred Discrimination (2008) 19 Kings College Law Journal 265*
- *Expert Evidence: The Requirement of Independence [2008] JPIL 224*
- *Illegally Formed Contracts of Employment and Equal Treatment at Work (2005) 34 ILJ 158*
- *The Development Risk Defence – Knowledge, Discoverability and Creative Leaps [2004] JPIL 258*

Research

- *Common Core of European Private Law – Product Liability Project* (Joint Editor), ongoing.

Education

University of Oxford (St John's College and Universität Regensburg, Germany)
MA English Law with German Law, First Class Honours.

University of Manchester
PhD: *European Product Liability – A Comparative Study of "Development Risks" in English and German Law*

Other

Languages

- German
- French (basic)

Scholarships

- Lord Justice Holker Scholar of Gray's Inn

Memberships

- Discrimination Law Association
- Employment Lawyers Association
- Employment Law Bar Association

- Industrial Law Society
- International Bar Association
- Product Liability Forum of the British Institute of International and Comparative Law

A coming star, now extremely experienced in product liability law

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Fantastically supportive and an absolute delight to deal with.

CHAMBERS & PARTNERS

Excellent advice and clear guidance

CHAMBERS & PARTNERS

Continues to impress

LEGAL 500

Highly responsive and commercial, has made his mark in this area with his efforts on drafting employment bills intended for Parliament

CHAMBERS & PARTNERS

A rising star according to judges, and has a good presentational style

CHAMBERS & PARTNERS

He is just brilliant in court and relates well to clients

CHAMBERS & PARTNERS

One of the brightest junior counsel

LEGAL 500

A very good, analytical brain

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