Jonathan Auburn KC

Silk: 2021 Call: 1999

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Jonathan is a KC practicing in the fields of public law / judicial review, local government, education law, community care, healthcare law, mental capacity, and disciplinary law. He also regularly undertakes investigations on behalf of public sector clients. Throughout his practice he has been recommended by the legal directories as a leading practitioner in five categories: administrative and public law, local government law, community care education law, and mental capacity / Court of Protection.

Jonathan is co-author of OUP's highly-rated text on public law, 'Judicial Review: Principles and Procedure (2nd ed 2026), as well as writing for the White Book, Phipson on Evidence, and the LexisNexis Education Law Handbook. Jonathan is a former member of the Attorney General's A-panel of advocates.

Jonathan is originally from Australia, where he graduated with first class honours, before completing a BCL and D.Phil at Magdalen College, Oxford. Prior to coming to the bar he worked in Australia as a solicitor and as a judicial assistant in Australia's highest court, the High Court of Australia, and in the UK as judicial assistant to Lord Woolf MR.

> ***He covers all the bases, and if he raises a point, you need to look into it***
>
> CHAMBERS AND PARTNERS

Expertise

Public

Jonathan is a KC in the field of public / administrative law and local government law. He is highly ranked in legal directories across five areas of public law and local government work.

Jonathan regularly represents a number of central government departments, as well as local government, health bodies and individuals. His current work includes:

- representing the Ministry of Defence in the Covid Inquiry;
- advising a large number of local authorities, and the Local Government Association, in the implementation of the new "Fair Cost of Care" guidance and setting care home fee rates;
- defending two separate challenges to decisions to decline to hold public inquiries into allegations of historic abuse;
- defending a University that cancelled a pro-Palestinian art exhibition; the challenge alleging breach of Article 10 free speech rights and discrimination;
- defending a challenge alleging that substantial cuts to a service's budget was decided unlawfully;
- defending a claim that a local authority discriminated against committed Christians in declining to further their application to become foster parents;
- a dispute as to the circumstances in which a public officials could be sanctioned for tweets on issues of political and social debate (transgender rights); and
- defending a consultation and equalities challenge to a regional service reorganisation.

> ***Extensive knowledge of local government matters***
>
> CHAMBERS & PARTNERS

Jonathan also provides representative associations, including the Local Government Association, ADASS and the Bar Standards Board with strategic advice on national policy issues, particularly on policy reform, human rights and free speech issues in his areas of expertise.

Inter-agency Disputes
Jonathan has extensive experience of responsibility and finding disputes between governmental bodies, including disputes between central and local government, between different local authorities, and disputes between local authorities and ICBs. These include both judicial review claims, and restitution claims brought as Part 7 claims. Recent cases include –

- a three-way dispute between two local authorities and an ICB as to who is responsible, and who pays, for an individual's s.117 mental health aftercare package;
- a dispute between a local authority and an ICB as to eligibility for continuing healthcare (CHC) funding, including both a restitution claim for past care provided by the local authority, and a challenge to the latest eligibility decision by the ICB;
- bringing a £1m restitution claim by a local authority against an ICB for the ICB's failure to fund care, leaving the local authority to fund that care for many years;
- a claim by a local authority that another local authority should compensate it for the cost of past social care provided to a person who moved between local authority areas; and
- a three-way dispute as to who should pay for care provided to a disabled student living in student accommodation away from his parents' home area.

Governance

Jonathan is currently acting on a number of local authority governance matters, including:

- advising a monitoring officer in relation to an elected member's non-disclosure of pecuniary interests, as well as regarding the effect on the resulting decision;
- a complaint against an elected member concerning standards; and
- acting as independent investigator, investigating allegations that a Councillor's use of social media breached Council policies and the Nolan Principles.

Local Government Finance

Jonathan has extensive experience in advising on local authority finance and budgetary matters, and in bringing and defending claims relating to local authority finances and budgets, including

- acting in a challenge to a decision by central government to reduce in year grant allocations for a particular service;
- defending a judicial review challenge to funding decisions made within a budget; and
- advising a number of local authorities on legal compliance when restructuring services and reducing spending and service delivery.

Elections

Jonathan advises and represents in local government election disputes and litigation. He has recently advised on an allegation of misleading statements in electoral material, the practical application of the Purdah convention, and advising a Monitoring Officer as to the appropriate approach where the propriety of the notice of a meeting was contested, and that meeting changed the balance of the Council.

R (Gardner & Anor) v Secretary of State for Health & Social Care, NHS England and Public Health England (now UK Health Security Agency)

[2022] EWHC 967 (ADMIN), [2022] 4 ALL ER 896
[2022] PTSR 1338, DIVISIONAL COURT

Challenge to the Government's initial response to the covid crisis, in which it instituted a policy of urgent discharges from hospitals into care homes, to free hospital bed space for the then anticipated wave of hospital admissions. Jonathan appeared for the Secretary of State for Health & Social Care and also for Public Health England.

R (Miller) v College of Policing

[2022] 1 WLR 4987, [2022] HRLR 6, COURT OF APPEAL

Challenge to police guidance on the recording of non-criminal hate incidents, turning on issues of free speech and Article 10.

R (HPSPC Ltd and National Education Union) v Secretary of State for Education

[2022] EWHC 3159 (ADMIN)

Challenge brought by the National Education Union to the Secretary of State for Education's decision on the future of Holland Park School; a well-known school in West London. Jonathan appeared for the Secretary of State for Education.

R (Shashikanth) v NHS Litigation Authority and NHS England

[2022] EWHC 2526 (ADMIN), [2023] ACD 2.

Whether GPs are obliged under NHS contracting arrangements to disclose patient data to local GP networks, under the new regime for primary care (Primary Care Networks); also whether a challenge to a decision on NHS termination of a GP's contract can be subject to judicial review. Jonathan appeared for NHS England.

R (Hertfordshire County Council) v Secretary of State for Housing, Communities and Local Government (No. 1)

[2021] 1 WLR 3714, [2021] EWHC 1093 (ADMIN)

Whether it was lawful for local authorities to hold full council meetings remotely. Jonathan appeared for the Local Government Association.

Devon Partnership NHS Trust v Secretary of State for Health and Social Care

[2021] 1 WLR 2945, (2021) 24 CCL REP 41, [2021] MHLR 248, DIVISIONAL COURT

Where doctors are minded to "section" (i.e. compulsorily detain) patients under the Mental Health Act, whether they can they do so by assessing the patient by means of video (e.g. Zoom or Skype etc), or whether they have to be physically in the same room as the patient during such assessments.

Investigations, Public Inquiries, Inquests

Jonathan has experience of representing public bodies in major national public inquiries. Most recent public inquiries worked on are –

- the Covid Inquiry (leading counsel for a Central Government Department); and
- the Infected Blood Inquiry.

Jonathan has undertaken a number of complex investigations on behalf of public bodies, including local authority independent person investigations. He recently conducted the following investigations:

- investigation carried out on behalf of Waltham Forest Council into allegations in the Evening Standard against local councillors;
- investigation into alleged serious financial wrongdoing by the senior leaders of a large social services authority;
- investigation into complaints of race and sex discrimination against the Chief Executive and other senior leader of a local authority, the complaints brought by two senior officers;
- investigation into complaints of race and sex discrimination and bullying against the CEO of a high-profile national charity.

He has represented a range of public bodies in inquests. Recent inquest work includes

- inquest into death of a man discharged from section 3 MHA detention with family unaware of discharge; and

- acted for a local social services authority in a three-week jury inquest into the death of a man with significant learning disabilities and subject to DOLS, which led to a rider of neglect against the health trust.

Health & Community Care

Jonathan is a leading KC in this field, listed in the directories in the top tier of counsel for community care law.

Jonathan is currently acting in the following areas:

- advising a large number of local authorities, and the Local Government Association, in the implementation of the new "Fair Cost of Care" guidance and the setting of care home fee rates;
- defending a consultation and equalities challenge to a service closure decision;
- a three-way dispute between two local authorities and an ICB as to who is responsible, and pays for, an individual's s.117 mental health aftercare package;
- a dispute between a local authority and an ICB as to whether a person should be recognised as eligible for continuing healthcare (CHC) funding;
- bringing a £1m restitution claim by a local authority against an ICB for the ICB's failure to fund care, leaving the local authority to fund that care for many years;
- acting in a challenge to the termination of a GP's contracts; and
- acting in a dispute between a local authority and an ICB as to which body should fund specific public health functions.

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A Mother v Derby City Council

[2021] EWCA CIV 1867

Test case on the legality of local authorities placing children in care in unregistered placements, where there is a chronic shortage across the country of beds in registered placements

Mazhar v Birmingham Community Healthcare Foundation NHS Trust

[2021] 1 WLR 1207, COURT OF APPEAL

Liability of judges / the court for errors in an urgent out-of-hours injunction depriving a disabled person of his liberty.

R (Lancashire CC) v Secretary of State for Health and Social Care

[2021] EWHC 268 (ADMIN), [2021] 2 WLUK 211

Challenge to a determination of an "ordinary residence" dispute, i.e. which local authority is responsible for a person. The case was the first test of the "Greenwich principle": the principle by which, if a local authority should have taken particular steps but failed to take them, ordinary residence and responsibility is determined on the presumed factual basis that the local authority had in fact taken those steps.

R (SH) v Norfolk County Council

[2020] EWHC 3436 (ADMIN), ADMIN CT, DECEMBER 18 2020, [2021] PTSR 969

Local authority's decision to change the basis on which it calculated the charges made to disabled people in respect of their care needs discriminated against severely disabled people

Education

Listed by both Chambers & Partners and The Legal 500 as a leading KC in the field, Jonathan represents and advises both claimants and defendants (local authorities, Academies and independent schools) in the full range of education matters.

His recent work also includes:

- a challenge to an exclusion decision concerning a child whom it was alleged had committed a serious sexual offence, case concerned reliance on anonymised evidence and the effect of flaws in the initial investigation,
- a challenge to a school's admissions policy granting preference to siblings previously refused admission,
- acting for a school in a challenge to an Ofsted finding of inadequacy,
- a dispute before the Schools Adjudicator concerning ownership of school playing field land following Academy conversion,

> ***An excellent advocate, who knows a lot about education law***
>
> LEGAL 500

Independent Schools Litigation:
Jonathan also regularly advises and represents in cases involving the independent sector. He has appeared in most of the leading cases involving independent schools, including Gray v Marlborough College (the leading case on disciplinary exclusions) and T v Hall Schools (the widely reported "pushy parents" case, concerning the ability of an independent school to terminate placements due to parental behaviour). Most recently he has acted in a number of claims arising from allegations of per on peer sexual abuse.

Jonathan is a contributor to the Education Law Handbook (LexisNexis, 2021)

Higher Education:
Jonathan is highly rated in both Chambers & Partners and The Legal 500 as a leading KC in the field of Education Law.

He has wide experience of representing universities and colleges and is currently acting in the following -:

- a challenge by a Palestinian rights group alleging breach of Article 10 free speech rights in cancelling a pro-Palestinian art exhibition on the basis that some content was said to be anti-Semitic;
- a challenge to a decision made by the Office for Students rejecting a complaint brought by a student;
- a contract and negligence claim by a student who was unable to complete his course, and later alleged substandard teaching and course organisation,
- a claim by a student for failure to protect him from racial harassment by other pupils,
- a judicial review claim against a university alleging erroneous marking of an exam, and loss of exam scripts.

R (HPSPC Ltd and National Education Union) v Secretary of State for Education

[2022] EWHC 3159 (ADMIN)

Challenge brought by the National Education Union against the Secretary of State for Education over the future of Holland Park School; a well-known school in West London.

R (CHF) v Newick CE Primary School

[2022] PTSR 756, [2022] ELR 24

Case establishing that schools could keep a child away from the school site indefinitely other than by the statutory exclusions process, as a "safeguarding separation", to safeguard the welfare of another pupil at the school.

CAGE UK v Secretary of State for Education

[2022] EWHC 2373 (ADMIN)

Political impartiality, statutory ban on indoctrination in schools. Jonathan successfully acted for the Secretary of State in resisting this challenge to the Secretary of State's policy of requiring schools to not work with any body which denies Israel's right to exist.

R (Khalsa Academies Trust) v Secretary of State for Education

[2022] ELR 55 , [2021] EWHC 2660 (ADMIN), ADMIN CT, OCTOBER 5 2021

Challenge by one of the only Sihk-faith academy trusts in the country, to the revocation of their management of a particular Sihk-faith academy (school) on serious safeguarding grounds. The claim alleged serious public law error, and discrimination against the academy proprietors on religious grounds.

R (QXH) v UK Research & Innovation, Administrative Court, 2021

Test case challenge to the system of funding research in UK Universities. The UK invests £2billion on scientific research annually. However, of the medical research, only 4% goes to the research pf mental health illnesses, as compared with physical health illnesses. This was a discrimination claim brought by a mental illness charity.

R (AD) v London Borough of Hackney

[2020] EWCA CIV 518, CA, APRIL 8 2020, [2020] ELR 374; (2020) 23 CCLR 253

A local authority's decision to reduce funding for special educational needs provision did not engage the substantive or consultation duties in the Children and Families Act 2014. Jonathan acted successfully for the Defendant

Professional Discipline & Regulatory

Jonathan is experienced in advocacy before a number of different disciplinary tribunals, and in acting in regulatory matters, particularly those relating to the teaching, social care, medical and dental professions.
He has contributed to Disciplinary and Regulatory Proceedings, as well as co-authoring a text on public law: 'Judicial Review: Principles and Procedure'.
Jonathan regularly prosecutes disciplinary cases for the Bar Standards Board.

Recent work includes:

- BSB v Holbrook: when barristers may be subject to disciplinary sanction for tweets debating political or social issues;
- BSB v Crosland: disbarring of Timothy Crosland for deliberate breach of Supreme Court's embargo on its judgment;
- defending a headteacher in disciplinary proceedings before the National College for Teaching and Leadership,
- representing a residential college in a challenge to an Ofsted inspection report concerning handling of issues of restraint,
- advising on a matter concerning the regulation of care homes,
- defending a challenge to disciplinary proceedings against a student nurse.

Achievements

News, Articles & Publications

Auburn, Moffett and Sharland, *'Judicial Review: Principles and Procedure'* (OUP, 1st ed 2013, 2nd ed forthcoming 2023)

Civil Procedure ("the White Book"), editor (ongoing)

Phipson on Evidence, contributor (ongoing)

Education and the Courts, contributor, 3rd edition (2012, Jordans)

Atkins Court Forms, Disclosure volume (co-author, ongoing)

Legal Professional Privilege, Law and Theory (1999, Hart)

Recommendations

"Jonathan's advice and pleadings are impressive." **Chambers and Partners**

"He is very clever." **Chambers and Partners**

"Jonathan is a considered advocate who is very personable and a pleasure to work with." **Chambers and Partners**

"Jonathan is a genuine education specialist." **Chambers and Partners**

"He has a fantastic understanding of education law and is really great at dealing with clients." **Chambers and Partners**

"He is tactically very astute, with great instincts." **Chambers and Partners**

"Jonathan has a very conciliatory approach." **Chambers and Partners**

"He gives great practical advice." **Chambers and Partners**

"He works incredibly hard...and he is easy to work with." **Chambers and Partners**

"He has a straightforward, no-nonsense approach and is excellent with clients – he guides them through the process and makes witnesses feel at ease." **Chambers and Partners**

"With his immense knowledge and advocacy skills he can demolish the arguments put forward by the other side." **Chambers and Partners**

"He is extremely hard-working, has very good judgement and is very client-friendly." **Chambers and Partners**

"Very pragmatic and extremely knowledgeable." **Chambers and Partners**

"He is fantastic and offers incisive approaches to the legal analysis of cases." **Chambers and Partners**

"Jonathan is excellent and very experienced in acting for local authorities." **Chambers and Partners**

"Jonathan is extremely knowledgeable and very pragmatic, and is effective at managing expectations as to the prospect of success." **Chambers and Partners**

"Very determined with good judgement, and easy to work with" **Legal 500**

"He works well in a team and is very commercial" **Legal 500**

"His paperwork is excellent and he has a good manner in negotiations" **Chambers and Partners**

"His knowledge of the Care Act is really incredible – he is a specialist in this area" **Chambers and Partners**

"His written advocacy is clear and persuasive" **Chambers and Partners**

"He kept things really clear and concise in a very complex case" **Chambers and Partners**

"He provides clear risk assessments to clients along with a commonsensical, pragmatic view of the legal position" **Chambers and Partners**

"He is very thoughtful and his drafting is always clear. He's happy to debate the issues and is a strong team player" **Chambers and Partners**

"He does a lot around community care and always presents his arguments attractively" **Chambers and Partners**

"Very good at setting out what the law is in complicated cases" **Chambers and Partners**

"He provides a very clear risk assessment to the client, along with a pragmatic view of the legal position" **Chambers and Partners**

"Incredible attention to detail and can pick up on key nuances in the law and explain in a straightforward and simplistic manner" **Legal 500**

"Works well in a team and is very commercial" **Legal 500**

"He's extremely personable and very good with clients." **Chambers and Partners**

"The depth of knowledge and understanding in his various specialist areas of law is impressive. Jonathan fights tenaciously and fairly, and supports clients with practical and robust advice." **Chambers and Partners**

"His depth of knowledge and understanding of the law is very impressive, and he fights tenaciously and fairly. He is very supportive with clients and provides practical and robust advice." **Chambers and Partners**

"Very nice, very collaborative and really knows his stuff. He's very personable" **Chambers and Partners**

"He is very clear and strong on the law." **Chambers and Partners**

"He is bright, personable and very client-friendly." **Chambers and Partners**

"He is very experienced, very balanced and a good person to deal with in complex and upsetting cases." **Chambers and Partners**

"He has very good judgement." **Chambers and Partners**

"Very helpful, knowledgeable and accessible" **Legal 500**

“impresses” **Legal 500**

“punchy and precise” **Legal 500**

“an excellent brain” **Legal 500**

“Extremely knowledgeable and approachable, and a barrister with good client care skills and a thorough grasp of the law. He inspires confidence”, “Very efficient, he’s extremely quick with the papers and machine-like in turning things around quickly”, “He has very good knowledge of community care and is a force to be reckoned with”, “He covers all the bases, and if he raises a point, you need to look into it”, also “He has a fantastic knowledge of public law”, “Offers pragmatic, client-friendly advice”, “Very approachable and flexible in the way that he works and has a very good understanding of clients’ needs” **Chambers and Partners**

“a real star junior … excellent” **Chambers and Partners**

“He gives very good, practical advice that’s easy to understand”, “Clients like his practical attitude, his approachability and his flexibility”, “Good on his feet, he knows the field inside out, and has the extra advantage of experience acting for both claimants and local authorities”, “a model junior”, “very competent and on top of the material” **Chambers and Partners**

“a very efficient and very erudite, no-nonsense barrister. He’s very good with clients and has a real depth of knowledge”, “He is excellent on his feet … He is always available when the client wants to speak to him”, “He will push his points robustly, and will get results for his client”, “an excellent advocate and a good man to have in your corner”, “Very good at getting on top of complex cases, his key strength lies in his brilliant and assured cross-examination technique, which has achieved fantastic results” **Chambers and Partners**

“very good, handles a lot of major work”, “very analytical brain”, “Top pick” “completely committed to the cause and bursting with energy”, robust”, “a powerful advocate who demonstrates a phenomenally detailed understanding of the law”, “whatever he undertakes, he does a very fine job” “enjoys an excellent profile in the market. His understanding of the issues facing local authorities is first-rate and he perpetually offers sensible, user-friendly advice” **Chambers and Partners**

Education

LLB, University of Western Australia

BCL, Magdalen College, Oxford

D.Phil, Magdalen College, Oxford

Other

Keen follower of the Western Australian cricket team & Arsenal FC.

enjoys an excellent profile in the market. His understanding of the issues facing local authorities is first-rate and he perpetually offers sensible, user-friendly advice

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whatever he undertakes, he does a very fine job

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a powerful advocate who demonstrates a phenomenally detailed understanding of the law

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completely committed to the cause and bursting with energy

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very analytical brain

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He gives very good, practical advice that's easy to understand

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Good on his feet, he knows the field inside out, and has the extra advantage of experience acting for both claimants and local authorities

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