

12

King's Bench Walk

Andrew Hogarth QC

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AREAS OF EXPERTISE

Industrial Disease, Personal Injury, Employment & Discrimination, Inquests, Abuse, Mediation, ECITB levy claims, Arbitration, International & Travel, Aviation

JUDICIAL APPOINTMENTS

Fee-paid employment judge 1998-2010

Andrew Hogarth QC has a strong reputation both in the field of personal injury and employment law with a particular interest in industrial disease claims. His reputation is at its strongest in cases requiring experience in both employment and personal injury law. He is recommended as a leading PI and employment silk in the current editions of the major legal directories. He was invited to write the editorial introduction to the personal injury section of the 2014 and 2015 editions of Chambers Directory.

Chambers & Partners 2015 describes Andrew as "Very clever, impressive on his feet, and good at dealing with and communicating with clients." The 2015 edition of the Legal 500 said he 'Couples his employment expertise with an esteemed reputation in personal injury'.

Previously Andrew has been described for giving "measured and reasonable advice" on personal injury, employment law and industrial disease matters" and as "a barrister capable of digesting a vast amount of information and distilling it into a few words." Instructing solicitors say that, despite his "fantastic knowledge and enterprise," Hogarth "doesn't have an inflated personality." and "knowledgeable, approachable and professional."

In 2014 he brought to a successful conclusion the long-running case of Kernohan v Attorney General of the Cayman Islands in which he acted for the dismissed Chief of Police in his claim for wrongful dismissal and misfeasance in public office against the AG and a former Governor of the Islands.

From 1997 to 2010 he was a part-time Employment Tribunal Chairman. He is a CEDR-accredited mediator and mediates in employment law and personal injury cases. Andrew Hogarth QC was head of Chambers between 2005 and 2015.

Industrial Disease

Editor of the chapter in Munkman on asbestos disease in the last three editions. One of the few barristers willing to

represent both claimants and defendants he has acted in a large number of mesothelioma claims.

Personal Injury

A leading PI practitioner ranked in Band 1 by Chambers 2016. His practice covers a number of specialized fields including stress claims, psychiatric injury and secondary victim claims, asbestos disease litigation and the recent round of cases in which the correct discount rate is for consideration.

Employment & Discrimination

One the few lawyers covering both PI and employment law his practice is on the cusp of these two practice areas with TUPE, employment status and working time cases being his forte.

International & Travel

Andrew Hogarth QC has an established personal injury and employment practice with a focus on those that have an International element.

His International practice arises from our core practice areas ranging from aviation, fatal accidents, employment, human rights, personal injury and military claims.

Andrew has represented clients in the Cayman Islands and Bermuda as well as in England and Wales and has experience in claims arising from accidents in the Middle East, Libya, Spain and Cyprus.

Experience and recent cases include:

Carter v Atlas Helicopters

Mr Carter and his son were killed when a helicopter crashed in fog attempting to land on his estate. He had been a successful entrepreneur and his widow's claim was settled for £7million.

Garcia v Les Autocars de France

Mr Garcia was a Spanish artist hit by a lorry whilst in London on holiday. His claim was settled at mediation. An expert in Spanish pensions was used.

Cherkaoui v Motorola Ltd

Mr Cherkaoui was an engineer who had been sent to Libya to advise on where his employer should place its mobile phone masts. He was given a GPS location finder and a camera to allow him to identify tall structures. He was arrested and subsequently tortured for taking a picture of a tall building which happened to be a secret police headquarters. His employers had not obtained a visa or any form of permission for him to do this work and he was treated as being an Israeli spy. He suffered psychiatric injury as a consequence., settling for £1million.

Fishback v Sheik Khalifa

Mr Fishback was the assistant of the defendant who aspired to the throne of Ras Al Khaimah. When his father died he appeared to claim the throne but was arrested. Mr F was also arrested and imprisoned. He sued his employer.

Yates v Chin

Cayman Islands Court of Appeal. An appeal in a Personal Injury action.

Eskil v Carnival Line

Arbitrator in a claim by an injured Turkish crew member of a Panamian flagged vessel against his employer.

Thomson v Colonial Insurance

Bermuda Court of Appeal. The Court of Appeal had to decide what discount rate they should adopt when assessing damages for personal injury.

Kernohan v Attorney General for the Cayman Islands. Cayman Islands Grand Court.

Acted for the Chief of Police who had been dismissed in his claim against the Governor of the Cayman Islands for misfeasance in public office. Settled for a sum which cannot be disclosed.

Bodden v Soloman. Cayman Islands Grand Court.

A Personal Injury action in the Cayman Islands which resulted in the largest award of damages for such a claim in the Islands.

British Caymanian Insurance v Bell and Another. Cayman Islands Grand Court.

The various statutory provisions regarding motor insurance in the UK do not apply in the Cayman Islands. This was a dispute as to whether the insurers were entitled to repudiate the contract of insurance at common law.

Bell v Ministry of Defence

A claim brought by a serving soldier against the MOD for injuries sustained when he was the Sovereign Base Area in Cyprus and was beaten up by other soldiers. Settled at mediation.

Winter-Myers v British World Airways

A claim on behalf of the posthumous child of a pilot who was killed when his transport aircraft crashed in poor weather.

Lucas v Ministry of Defence. UK Employment Appeal Tribunal.

Dispute over the applicability of UK discrimination legislation to acts of harassment suffered by a serving soldier mainly outside Great Britain.

Jefferson v Royal Ordnance. High Court.

Claim in the UK by a mine disposal expert hired by the Defendant to render safe munitions in Kuwait who was injured as a result of the failure by his employer to provide the appropriate protective equipment. Settled on the third day of the trial.

X v Y

Advice to the guardians of a very badly injured crew member of a Cayman flagged ship on the relative merits of bringing his claim in the UK or the Cayman Islands.

Gate Gourmet v TGWU and others. Reading ET.

A claim by 500 employees of GG who were dismissed for taking unofficial industrial action which led to a widespread strike at Heathrow.

Azavedo v Port Authority Cayman Islands and Ebanks v Fosters Foods

Two cases in the Cayman Islands concerning the discount rate to be used in calculating the award of damages and whether the award of general damages should be raised following the recent fall in the value of sterling.

Inquests

Undertakes inquests when they arise in connection with civil proceedings.

Abuse

Has represented the victim in many sexual abuse claims against public bodies, schools and other institutions. His knowledge of the law relating to vicarious liability derived from his employment law and PI practice is especially useful in some cases.

Mediation

A CEDR accredited mediator.

ECITB levy claims

Has defended many levy claims brought by the ECITB.

Aviation

Andrew Hogarth has a strong reputation both domestic and internationally, in cases arising from personal injury and employment law.

His aviation practice compliments these areas and recent cases include.

Carter v Atlas Helicopters. UK High Court.

A successful entrepreneur and his son were killed when their helicopter crashed in fog attempting to land on his estate. His business had failed after his death for reasons unconnected with his absence. His widow's claim was settled for £7million.

Winter-Myers v British World Airways. UK High Court.

Whilst attempting to fly through a blizzard a small transport plane suffered engine failure and crashed short of the diversion airport to which it was heading. The air accident investigation report was critical of the pilots and the airline. The claim on behalf of the posthumous son of the pilot who was killed was settled and approved by the Court.

Numerous employees and TGWU v Gate Gourmet. Reading ET and EAT.

500+ employees of GG who were dismissed for taking unofficial industrial action which led to a widespread strike at Heathrow. They brought claims for unfair dismissal and breach of various statutory obligations against their former employers.

British Airways v Noble and Forde, (Court of Appeal), and numerous other holiday pay, rest break and working time claims for and against airlines and airline service companies.

Qualifications

M.A.Trinity College, Cambridge.

Appointments

Fee-paid employment judge 1998-2010

Head of Chambers 2005-15

Directories

Chambers 2019: "He is always impressive, with a prompt turnaround and great knowledge of the most complicated areas of personal injury practice." "He has both old-school charisma and a modern-day savviness."

Legal 500 2018: "He is very thorough and has a keen mind that is goal driven."

Legal 500 2018: "Precision and clarity of paperwork and calculation of losses are particular strengths."

Chambers 2016: "Highly recommended for his far-reaching knowledge of occupational stress and severe injury claims. His substantial background in employment law is a particular asset on claims that fall under employer's liability."

Strengths: "He is very clear and straightforward in his advice." "He is an authority on stress at work cases and he is extraordinary to work with."

Legal 500: "He brings gravitas to the table, and judges warm to his persona."

Publications

Contributor *Asbestos: Law & Litigation*, Sweet & Maxwell, 2019 (Chapter; Causation)

Contributor of chapter on industrial disease in the last three editions of Munkman's *Employers' Liability*.

Author *Asbestos Disease litigation*. Butterworths personal injury litigation.

Cases

Thomson v Thomson (Bermuda Court of Appeal 2016). Acted on behalf of the defendants in a personal injury action in which the court decided to use a negative discount rate.

Woodward v Secretary of State for Energy and Climate Change [2015] EWHC 3604 (QB). Another low exposure asbestos claim.

Sheppard v CW Duke and Sons Ltd [2015] EWHC 1043 (QB). For the winning defendant in a low exposure asbestos claim.

In Burnett v British Telecommunications plc [2015] EWHC 3893 (QB) Minimum latency periods in mesothelioma claims.

Yates v Chin [Court of Appeal Cayman Islands.] [2014] Acted on behalf of the appellant defendants in a personal injury appeal in which the Court declined to adopt a zero percent multiplier.

Kernohan v Attorney General of the Cayman Islands and another [2014] Instructed on behalf of the dismissed Chief of Police in his claim against the AG and a former Governor of the Islands for wrongful dismissal and misfeasance in public office.

Atkinson v Secretary of State for the Department of Energy and Climate Change [2014] EWHC 3773

Wood v Ministry of Defence [2011] EWCA Civ 792. Exposure of a serviceman to paint fumes and the use of medical

literature to establish causation.

Brighton and Hove Bus & Coach Company Limited v S Brooks, M Tadrous & N Tadrous and others [2011] EWHC 2504
A claim for contempt of court made against three defendants in relation to representations and statements made in support of a personal injury claim by a member of their family.

Owens v Noble Court of Appeal (Civil Division), [2010] 1 W.L.R. 2491 [2010] P.I.Q.R. Q2. Setting aside damages awards following discovery of fresh evidence showing fraud.

Dowson v Chief Constable of Northumbria [2010] EWHC 2612 Stress at work claim by 5 police officers alleging harassment under the 1997 Act.

British Telecommunications Plc v Royal Mail Group Ltd Court of Appeal (Civil Division) [2010] EWCA Civ 974. Indemnity against asbestos disease liabilities.

Rayment v Ministry of Defence [2010] EWHC 218 (QB); [2010] I.R.L.R. Termination of employment as an act of harassment.

Drew v Whitbread Plc Court of Appeal (Civil Division) [2010] 1 W.L.R. 1725; [2010] C.P. Rep.22; [2010] 2 Costs L.R. 213; [2010] P.I.Q.R. P11. Costs – judge's discretion.

Veakins v Kier Islington Ltd Court of Appeal (Civil Division). [2010] I.R.L.R. 132. What constitutes harassment under the Protection from Harassment Act 1997..

Bodden v Solomon [2008] CILR 385 (Grand Court of Cayman Islands) Largest Personal Injury award in the Cayman Islands.

Bristol City Council v Deadman (Court of Appeal) [2007] IRLR 888, [2007] All ED (D) 434 (Jul). Breach of contract leading to a stress at work claim.

Sayers v Cambridgeshire County Council [2007] IRLR 29. Breach of statutory duty and work related stress claims.

386. *D. Robinson-Steele v R. D. Retail Services Ltd*, *Michael Jason Clarke v Frank Staddon Ltd and J. C. Caulfield and Others v Hanson Clay Products Ltd* (C-257/04). (C-131/04) [2006] IRLR 386. European Court of Justice. Lawfulness of rolled up holiday pay.

Stoke on Trent City Council v Walley (Court of Appeal) [2006] All ER (D) 483 (Jul) [2006] 4 All ER 1230. Resiling from admissions.

Burgess v Plymouth City Council [Court of Appeal] [2006] I.C.R. 579 – Health and safety – Employer's liability – Workplace obstruction

Hartman v South Essex Mental Healthcare NHS Trust [2005] ICR 782, [2005] IRLR 293 CA – Stress at work – confidentiality.

Barber v Somerset County Council [2004] ICR 457, [2004] IRLR 475 HL – Stress at work.

Cooke v United Bristol Healthcare NHS Trust and others (2004) PIQR Q10 – Assessment of damages for the cost of future care-what allowance to be made for cost rising more steeply than RPI.

Fairchild v Glenhaven & Ors [2002] 3 WLR 89 – Causation in mesothelioma claims.

Willerby Holiday Homes v UCATT (Gray J 7.11.03) Right to strike.

Hatton v Sutherland [2002] 2 All ER 1 – Stress at work.

Byrne Bros v Baird [2002] ICR 667 – Definition of workers.

Bernadone v Pall Mall Services [2000] 3 All ER 544 – Transfer of tortious liability by virtue of the TUPE Regulations.

Edwards v. Peter Black Healthcare (Southern) Ltd [Court of Appeal] [2000] I.C.R. 120. Practice. Striking out claims.

Clark v BET Plc [1997] IRLR 348 – Measure of damages in wrongful dismissal.

Page v Smith (No.1) [1996] 1 AC 155 – Leading modern case on the award of damages for psychiatric harm.

Page v Smith (No.2) [1996] 1 WLR 855 – Causation in tort in the context of Chronic Fatigue Syndrome.