



## Ben Cooper QC



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### Profile

Ben is listed as a leading New Silk in Chambers & Partners 2018 and Legal 500 2018, having taken silk in February 2017. Legal 500 describes Ben as “**super-bright and unfazed by the opposition**”, while Chambers & Partners notes that Ben “**prepares for cases with the minimum fuss, putting witnesses at ease and creating a real team ethos. He is very robust in cross-examination and his written submissions are superb. He has searing intelligence coupled with pragmatism**” and describes Ben as an “**impressive advocate renowned for his expertise in injunctive relief issues and TUPE cases. He also has an increasingly prominent reputation for his work on discrimination matters**”.

Ben’s principal areas of practice are employment, discrimination and industrial relations. Ben acts for employers, employees and trade unions in all areas of employment, discrimination and industrial relations law. He regularly appears in the High Court, Court of Appeal, Employment Appeal Tribunal, employment tribunals and CAC.

Ben’s clients include NHS bodies and private healthcare organisations, major trade unions, education institutions, major airlines, financial and other commercial organisations and claimants with complex or high-value claims.

Ben’s other areas of practice include professional discipline, pensions, public law and human rights.

Within his principal and other areas of practice, Ben has particular expertise in:

- **Injunction proceedings** – Ben has extensive experience acting for both claimants and defendants in claims for interim or final injunctive relief to enforce rights arising from contracts of employment, including claims (especially by doctors) relating to compliance with disciplinary procedures, and restrictive covenant/breach of confidence claims.
- **Strike injunctions and industrial relations** – Ben has appeared in leading and high-profile cases in the High Court and Court of Appeal regarding strike injunctions, collective bargaining and related disputes. He also appears in recognition disputes before the CAC.
- **Complex or high value contractual disputes** – Ben has appeared in test cases concerning the construction of collective agreements and regularly acts in complex or high value contractual claims in the civil courts.
- **TUPE** – Ben appeared in the leading case on service provision change (Metropolitan Resources Ltd v Churchill Dulwich & others) and regularly acts in multiple claims concerning disputed transfers.
- **Complex or multiple discrimination claims** – Ben is frequently instructed in long or complex discrimination claims, especially those involving multiple discrimination strands.
- **Equal pay** – Ben is instructed on behalf of ASDA in the largest private sector equal pay claim of its kind, on behalf of the Claimants in a multiple claim against HMRC with an appeal pending before the EAT and in other multiple actions against public sector bodies (the Met Office and the MoD). He has appeared in a number of the leading appellate equal pay cases over the last 15 years.



- **Human rights and public law** – Ben acted for Claimants in the group blacklisting litigation concerning the construction industry blacklist. He has appeared for claimants in successful claims under the HRA and for judicial review against public sector employers for breach of workers' human rights in the employment context.

Ben is a member of ELBA, ELA and ILS.

## Recent and current work

### Current or recent cases of note

- **Brierley & others v ASDA Stores Ltd** (on-going) – Ben is instructed on behalf of ASDA in the largest private sector multiple equal pay claim of its kind.
- **McNeil & others v HMRC** [2018] IRLR 398, EAT (application for permission to appeal to CA pending) – Multiple equal pay claim concerning the test for 'particular disadvantage' in length of service cases, in particular whether the ET can have regard to evidence of differential distribution or is limited to considering differences in average total basic pay. The EAT also held that the Supreme Court's judgment in *Essop & Naeem* [2017] ICR 640, SC meant that insofar as the line of authority based on *Armstrong* [2006] IRLR 124, CA had been understood as allowing employers to rebut a finding of particular disadvantage by showing that the underlying reason for the particular disadvantage was not itself related to the protected characteristic, that could no longer be regarded as good law.
- **City of York Council v Grosset** (2018, heard by Court of Appeal on 19 April 2018, judgment awaited) – First case in the Court of Appeal to consider the correct approach to causation in claims for discrimination arising from disability under s15 of the Equality Act 2010. Will also consider the extent to which (if at all) the reasoning and views of the employer have to be taken into account when assessing justification under s15(1)(b).
- **Day v Lewisham & Greenwich NHS Trust & another** (pending) – Ben is instructed on behalf of the Trust in this major NHS whistleblowing claim, to be heard in the employment tribunal in October 2018.
- **Hartley & others v King Edward VI College** [2017] UKSC 39; [2017] ICR 774, SC – Test case concerning the application of the Apportionment Act 1870 to the collective agreement governing sixth-form teachers' terms and conditions to determine correct deduction for participation in strike action.
- **Argos Ltd v Unite the Union** [2017] EWHC 1959 (QB) – First case to consider the nature and extent of the information required to satisfy the new requirement for a summary of the trade dispute to be included on the ballot paper for industrial action. This case also upheld the union's right to strike in support of measures sought from a transferor with a view to protecting the position of employees post-transfer, distinguishing *UCLH v Unison* [1999] ICR 204, CA. An earlier hearing ([2017] EWHC 2046 (QB)) also emphasised the importance of giving 3 clear days' notice of an application unless there are exceptional circumstances – particularly in light of the increased notice of industrial action which employers now receive under changes introduced by the Trade Union Act 2016.
- **British Airline Pilots' Association v Jet2.com Ltd** [2017] ICR 475, CA – Case concerning the scope of statutory collective bargaining in respect of 'pay, hours and holiday' pursuant to Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- **Adeshina v St George's Healthcare NHS Trust & others** [2017] EWCA Civ 257; [2015] IRLR 704, EAT – significance of disciplinary 'charges' within overall context of management case; scope for disciplinary appeal to 'fix' factual findings; extent of findings/reasons ET is required to give to support rejection of wrongful dismissal claim against context of detailed findings on unfair dismissal; whether unreasonable conduct and minority protected characteristic are sufficient to shift burden of proof in direct discrimination claim; and (in the EAT, with the point not being appealed to the CA), the correct test for bias in appeal panel for purposes of unfair dismissal.
- **The Construction Industry Vetting Information Group Litigation** (Blacklisting group litigation: High Court, settled 2016) – Claims for conspiracy, misuse of private information, breach of the Data Protection Act 1998 and defamation arising from the operation of the construction industry blacklist from the 1970s to 2009. Ben acted for around 250 Claimants who were former members of Unite the Union, who together shared compensation of approximately £10.4 million.