



Mark Sutton QC



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Profile

Mark Sutton QC's practice spans employment disputes, professional regulatory cases and hearings before disciplinary panels. He appears as a leading silk in *Chambers and Partners* in both employment and professional discipline categories, where he is described as *'one of the few excellent lawyers to have equal footing in employment law and regulatory law. He is profoundly knowledgeable and the sort of person who would inspire confidence in any judge.'* □

He is recommended as a leading silk by the *Legal 500* Directory who report that he is *'the first choice for disciplinary cases involving doctors'*. Mark was also nominated as 'Professional Discipline Silk of the Year' in the 2015 Chambers and Partners Bar Awards.

A significant proportion of Mark's recent cases are related to the [healthcare sector](#). He routinely appears before civil courts, employment tribunals, professional disciplinary panels and internal hearings and inquiries. Mark has successfully represented doctors in a number of substantial *fitness to practise* hearings before the MPTS, as well as other regulatory bodies. He routinely undertakes judicial review applications, as well as appeals from regulatory tribunals.

Mark has recently acted as leading counsel in two successful Supreme Court appeals determining the scope of financial and pre-emptive remedies in connection with professional disciplinary proceedings, and has appeared in most of the recent cases before the High Court which have developed the law in this area.

Aside from his healthcare practice, Mark has extensive experience of all aspects of employment law. He advises clients, both corporate and individual, in all categories of dispute including healthcare, financial services, education, local authorities and the police. Mark has appeared before the higher appellate courts in several landmark employment cases. He is widely recognised for his skilled advocacy and pragmatic advice in high profile and complex cases.

Appointments

- Mark is head of chambers at Old Square Chambers.
- He sits as a part-time Employment Judge.
- Mark is regularly appointed to sit as the chair of university disciplinary and grievance panels.
- He is a Bencher of the Middle Temple.

Recent and current work

Mark Sutton QC has been advising the British Medical Association (with Nadia Motraghi) in relation to its formal response the GMC's consultation on proposed changes to the GMC's statutory objective and sanctions guidance. [GMC sanction changes](#)



'fraught with difficulty'

Mark Sutton QC successfully representing Trust in an injunction challenge: *Rajendran v North Lincs + Goole NHS Trust* [January 2015].

Acting on behalf of an NHS Trust in complex internal misconduct proceedings with parallel injunction claim being pursued before the High Court. [February 2015].

McMillan v Airedale NHS Foundation Trust [2014]

Appearing before the Court of Appeal (leading Ben Cooper) on behalf of an NHS Trust: whether an employee is entitled unilaterally to withdraw from a part heard appeal by way of rehearing. Whether sanction can be raised from final warning to dismissal.

Dahou v Serco

Appeal pending before the Court of Appeal [June 2015] against the decision of the EAT that the ET had erred in finding automatically unfair dismissal on grounds of trade union activity. Mark Sutton QC for Serco.

Debate at Industrial Law Society [January 2015]

Mark Sutton QC and Christopher Jeans QC: development of a contractual duty of fairness in the context of employment based disciplinary proceedings.

Employment

Hayley Dare v WLMHT [EAT 2015]

Highprofile whistleblowing complaint by consultant at Broadmoor Hospital. Mark Sutton QC leading Ian Scott instructed on behalf of Trust.

Dahou v Serco Ltd[EAT 2015]

Mark Sutton QC, instructed on behalf of Serco, in successful appeal against ET's findings of detriment and dismissal on Trade Union grounds. Appeal before the Court of Appeal scheduled for April 2016.

Stevens v University of Birmingham [High Court 2015]

Injunction proceedings. Academic staff member's right to be accompanied by medico-legal adviser at disciplinary interview. Mark Sutton QC, leading Stuart Brittenden, for the University.



[Serco Ltd v Dahou](#)

Successful appeal before the EAT (Simler J.) against a finding of automatically unfair dismissal on grounds of trade union activity. ET erred in law in misapplying the burden of proof and failing properly to evaluate the employer's explanation. Mark Sutton QC for Serco.

Appeal to the Court of Appeal pending.

[McMillan v Airedale NHS Foundation Trust](#) [2014]

Appearing before the Court of Appeal (leading Ben Cooper) on behalf of an NHS Trust: whether an employee is entitled unilaterally to withdraw from a part heard appeal by way of rehearing. Whether sanction can be raised from final warning to dismissal. Disciplinary / Regulatory

Professional Regulation & Discipline

[R \(Aditya Agrawal\) v East Lancashire Hospitals NHS Trust](#) [High Court 2015]

Judicial Review brought by NHS consultant, challenging internal inquiry into breakdown in departmental working relationships. MSQC representing the Trust in successfully resisting application.

[GMC Consultation over Rules changes](#)

Drafting advice, on behalf of the British Medical Association, in response to the GMC's consultation on amendments to the MPTS fitness to practise rules.

[Upholding High Professional Standards](#)

Advising the Welsh Government / Health Boards on draft disciplinary procedures for medical practitioners in Wales.

[Fynes v St George's Healthcare](#)

High Court injunction proceedings – whether Trust had erred in convening a misconduct hearing in the light of expert evidence pertaining to the claimant's health conditions. Requirements of MHPS procedure. MSQC for successful defendant, leading Louise Chudleigh.

[Chakrabarty v Ipswich Hospital NHS Trust](#) [2014]

Mark Sutton QC (leading Ben Cooper) for that National Clinical Assessment Service, intervener. The High Court [Simler J.] provides important guidance on the contractual requirements governing capability proceedings for NHS clinical staff, and specifically the role of NCAS in such proceedings.



Rajendran v North Lincs and Goole NHS Trust [2015]

Arnaout v Croydon Health Services NHS Trust [2014] Mitting J.

Public Law / Judicial Review

R (Cummings & Or) v Betsi Cadwaladr University Health Board [High Court 2015]

Judicial Review challenging the failure of BCUHB to undertake a statutorily compliant consultation process and to observe Public Sector Equality Duty prior to closure of consultant led maternity services in North Wales. Mark Sutton QC, leading Nadia Motraghi, for the successful claimants.

R (Aditya Agrawal) v East Lancashire Hospitals NHS Trust [High Court 2015]

Judicial Review brought by NHS consultant, challenging internal inquiry into breakdown in departmental working relationships. Availability of public law remedies in an employment dispute. MSQC for the successful Trust.

R ex pte British Medical Association v General Medical Council [High Court 2015]

Application for judicial review. Challenge to the decision of the GMC to provide advice to doctors on the professional ramifications of engagement in threatened industrial action. MSQC, leading David Cunningham, for the applicant.