

James Tunley



James's practice and experience spans a range of civil and commercial work including employment, professional negligence, professional disciplinary, personal injury, clinical negligence and inquests.

He advises and represents both claimants and defendants/respondents at all stages of the court and tribunal process with particular strengths in employer's liability, discrimination, and unfair dismissal, to name but a few. James has several notable cases, which include: Revenue and Customs Commissioners v Ant Marketing Ltd [2020] IRLR 744; Fahy v (1) PCS Union & (2) Thompsons Solicitors [2015] EWHC 3515 (QB); Commissioners for HM Revenue and Customs v Lorne Stewart plc [2015] ICR 708; Ministry of Defence v Hensman UKEAT/0067/14/DM; Embassy of Brazil v DA de Castro Cerqueira [2014] 1 WLR 3718.

Between March 2012 and September 2018 James was appointed to the Attorney General's C Panel of Junior Counsel to the Crown.

James also accepts appropriate work under the Direct Public Access Scheme.

Further information

Seminars and training

James has delivered lectures and training on a range of topics including bringing employment claims in the County Court, enforcement of judgments, negligent misstatement, the National Minimum Wage Act 1998 and clinical negligence.

In 2020 and 2021 James recorded a series of podcasts with Get Legally Speaking. James spoke with host Hatti Suvari and answered questions about employment law issues arising out of the COVID-19 pandemic, the Coronavirus Job Retention Scheme, furlough, redundancies, pay and the vaccine.

Qualifications

- LLB (Hons) University of Leicester – First (2004)
- Bar Vocational Course – Very Competent (2005)

Memberships

- Employment Lawyers Association



Year of Call: 2005

Contact Practice Manager

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- Industrial Law Society
- Personal Injury Bar Association



Insolvency

James has experience in advising and acting for both debtors and creditors in the context of personal and corporate insolvency, ranging from bankruptcy/winding up petitions and applications to set aside statutory demands to directors' duties and financial liabilities.

With expertise in employment law, James is well-placed to act where employment-related claim or issues arise in the insolvency context, particularly with regard to matters under the Transfer of Undertakings (Protection of Employment) Regulations 2006. He has also advised on, and been instructed in, cases against insolvent employers where redundancy and other payments are sought from the Secretary of State and the Insolvency Service.

Examples of recent insolvency work

- Represented a small business in winding up proceedings, including a successful application for a validation order.
- Instructed by creditors in a number of bankruptcy petitions and applications to set aside statutory demands.
- Acted for an employee in the claim concerning the insolvency of the employer and the application of Regulation 8(7) of the Transfer of Undertakings (Protection of Employment) Regulations 2006

Seminars/Training

James has delivered, along with other members of Chambers, seminars on bankruptcy practice and procedure and has also given training sessions on winding up and bankruptcy order as a means of enforcing judgment debts.

Employment

James has a substantial employment law practice advising and representing both claimants and respondents in the Employment Tribunal and the Employment Appeal Tribunal in range of areas, including unfair dismissal, discrimination, TUPE, redundancy,



breach of contract, unlawful deductions from wages.

Over the last few years James has advised on, and acted in, several appeals under the National Minimum Wage Act 1998 on behalf of employers and HMRC on the interpretation and application of the National Minimum Wage Regulations 2015 and the permissible deductions from pay.

James also advises on settlement agreements and negotiations concerning termination packages and post-termination restrictive covenants.

In 2020 and 2021 James recorded a series of podcasts with Get Legally Speaking. James spoke with host Hatti Suvari and answered questions about employment law issues arising out of the COVID-19 pandemic, the Coronavirus Job Retention Scheme, furlough, redundancies, pay and the vaccine.

Recent and notable cases

Employment Appeal Tribunal include:

- Commissioners for HM Revenue and Customs v Ant Marketing Limited [2020] IRLR 744: Acted for the Respondent in the appeal and cross-appeal in relation to deductions made for accommodation and training under the National Minimum Wage legislation.
- Commissioners for HM Revenue and Customs v Lorne Stewart plc [2015] ICR 708: Acted for the appellant in an appeal concerning the correct interpretation of the National Minimum Wage legislation.
- Johnson v UKBA UKEAT/0127/14/BA: Represented the respondent in an appeal against the Tribunal's decision to strike out the claimant's claim and award costs on day three of the hearing following unreasonable conduct.
- Ministry of Defence v Hensman [2014] Eq. L.R. 670: Represented the appellant in a successful appeal against the Tribunal's application of the law and findings of disability discrimination and unfair dismissal.
- Embassy of Brazil v DA de Castro Cerqueira [2014] 1 WLR 3718: Represented the claimant in an appeal brought by their former employer in which the EAT had to consider the validity of service of proceedings abroad under the State Immunity Act 1978.
- Balfour Beatty Rail Ltd v Mitchell UKEAT/0269/11/JOJ (2012): Represented the claimant in the respondent's appeal in respect of the correctness of the Employment Tribunal's application of the law regarding vicarious liability in a claim of sexual harassment.



Employment Tribunal cases include:

- Glenholmes v Network Rail Infrastructure Limited (2023): Represented the claimant in unfair dismissal claim.
- Graham v Swansway Garages Limited (2023): Represented the respondent during a four-day hearing of a claim of harassment related to sexual orientation.
- Maries-Darg v Thomas Startin Junr Limited (2023): Successfully defended the respondent in a constructive dismissal and harassment claim and, in respect of the latter, on the basis of the 'all reasonable steps' defence.
- Busca v Rygor Group Ltd (2021): Represented the respondent company and several individual employees during a six-day claim for constructive dismissal, discrimination and harassment.
- Ajala v Cambria Automobiles (South East) Limited (2021): Represented the Respondent in a claim for discrimination and harassment on grounds of race and religion.
- Mr D Kacprzycki v Metalcraft (Tottenham) Ltd (2020): Represented the Respondent in a claim for unfair dismissal and breach of contract.
- Kumar v Drive Motor Retail Limited (2018): Successfully defended claims of direct race discrimination and harassment.
- Powell v Secretary of State for Work and Pensions (2015): Represented the respondent in a claim of unfair dismissal and disability discrimination.
- Blake & others v T Brown & others (2012): Represented one of three claimants in a TUPE case involving five respondents.
- Blake v Pashun Care Homes Ltd [2011] EqLR 1293: Successfully represented the claimant in a four-day third-party sexual harassment claim.
- Sultana and others v Margaret Moran MP and others (2010): Successfully defended an application to strike out the Claimants' claims on grounds of claims not being actively pursued and non-compliance with Tribunal orders.
- Vetta v London Dreams Motion Pictures Ltd (2008): One of the first successful cases ruling that interns should be paid the National Minimum Wage.

Seminars/Training

James has delivered seminars and training a range of topics including bringing employment claims in the County Court, enforcement, negligent references misstatement, and the National Minimum Wage Act 1998.

Inquests



James has represented a variety of interested persons at inquests, including NHS Trust and the Ministry of Justice/Her Majesty's Prison and Probation Service.

He been instructed in several lengthy inquests arising out of deaths in custody where Article 2 of the European Convention on Human Rights is engaged but is equally adept handling a range of cases, whether that be at pre-inquest reviews, inquest hearings, or in drafting written submissions on procedure or coronial law.

Examples of recent work

- MS: Represented the Ministry of Justice. The deceased died from methadone toxicity whilst in custody and inquest examined whether there were systemic or general failings and/or neglect by healthcare and/or custodial staff that contributed to the death.
- MA: Represented an NHS Trust after a patient, who had a complex underlying medical condition, died from multiple organ failure following an infection. The inquest considered the treatment history provided in the two years prior to the death, whether earlier surgical intervention would have been appropriate and whether there was any medical mismanagement. Ultimately the Coroner concluded the death was from natural causes.
- MR: Represented the Ministry of Justice following a suicide in prison. The inquest investigated the acts, omissions and involvement of the prison and several healthcare and mental healthcare providers and considered whether there were matters of concern in the context of the prevention of future deaths.
- PG: Represented an NHS Trust. A patient died several days after undergoing surgery and being discharged from hospital. The inquest examined the surgical procedure, post-operative care, the decision to discharge the patient and the adequacy discharge procedure.

Personal Injury

James enjoys a busy personal injury practice, acting for and advising both claimants and defendants. He has experience in a wide range of cases all the way from road traffic accidents to industrial disease cases and everything in between, such as accidents at work and employer's liability claims, claims under the Occupiers' Liability Act 1957, assaults, and psychological injuries.

James is experienced in cases involving fraud, allegations of fundamental dishonesty, s. 57 of the Criminal Justice and Courts Act 2015 and QOCS. He also represents both claimants and defendants in credit hire litigation.



As well as appearing in court, James is regularly instructed to draft pleadings, Part 18 requests for information, Part 35 questions to experts and to advise in writing on liability, quantum, settlement and tactical issues that arise in litigation.

James also has experience in clinical negligence work and has been instructed on cases including the alleged negligent nursing treatment and defects caused during childbirth.

Examples of recent personal injury and clinical negligence work

- *Massay v London Fire Commissioner* (2023): Represented the Claimant, whose car was hit by a fire engine, which was responding to an emergency call and proceeding through a red traffic light.
- *Sadler v Hamilton* (2023): Acted for the Defendant in a claim that was found to have been false and dishonest, the Court having found that no collision took place, and successful in obtaining costs and the disapplication of QOCS.
- *Callender v London Borough of Islington* (2022): Successfully defended a manual handling claim brought by an employee, which involved the interaction between the statutory regulations, the common law duty of care and the burden of proof following the Enterprise and Regulatory Reform Act 2013.
- *Bozych v Royal & Sun Alliance plc* (2021): Acted for the Defendant in a claim for injuries following a low velocity impact road traffic accident and obtained a finding of fundamental dishonesty.
- *Hammel v Essex County Council* (2020): Represented the Claimant in a successful claim against a local authority under the Highways Act 1980.
- *Abu-Samra v Motor Insurers Bureau* (2019): Obtained a finding of fundamental dishonesty against the claimant following the discontinuance of the claim before trial.
- *Palmer and others v Mitchell and others* (2018): Represented a claimant/Part 20 defendant in a claim and counterclaim arising out of a road traffic accident. The matter involved extensive arguments as to causation of injuries and the defendant's application for a finding of fundamental dishonesty was resisted successfully.
- *Ramsey v Kelly* (2017): Acted for the Claimant in a claim arising out of a road traffic accident between a cyclist and a motor vehicle, giving rise to issues of breach of the Highways Act 1835 and contributory negligence.
- *Oldman (Executor of the Estate of Bertie Oldman) v*



DEFRA (2017): Represented the defendant in a multi-track trial of claim for personal injuries arising out of the deceased exposure to asbestos whilst working as a marine engineer.

- *Surtees v Ministry of Justice* (2017): Represented the defendant in a claim brought by a prisoner under the Occupiers' Liability Act 1957. At trial the claim was found to be fundamentally dishonest and QOCS was disapplied.
- *Fahad v Ministry of Justice* (2016): Acted for the defendant in a multi-track trial and successfully defended a claim for assault, which encompassed arguments as to the reasonable, necessary and proportionate use of force, cross-examination of medical experts and the appropriateness and quantum of potential aggravated damages.

Commercial

In addition to his specialism in employment law, James has a broad commercial practice covering contractual disputes, debt recovery, bailment, claims in respect of the sale and supply of goods and services, and claims made under the Consumer Rights Act 2015. He has experience of and – is able to assist in – advising, drafting and representing clients in a broad range of commercial litigation, including at the pre-action stage and/or post-judgment where enforcement is required.

James's practice also encompasses professional negligence and has advised and acted for both claimants and defendants.

Examples of recent commercial work

- *Vantage Resourcing Ltd v Xenith Document Service Ltd* (2021): Represented the Claimant in a claim for an unpaid invoice, which gave rise to a dispute about the construction, and the implied terms, of the contract.
- Advised a government department on the recovery of a debt from a former employee.
- Advised a holiday company in respect of a claim alleging breach of the Consumer Rights Act 2015.
- *Fahy v (1) PCS Union & (2) Thompsons Solicitors* [2015] EWHC 3515 (QB): Represented the first defendant to a claim of professional negligence and, after the claim was struck out following a case management order, went on to represent the first defendant on appeal.
- *Lipscombe v Thurgate* (2011, High Court QBD): Represented the defendant trade union representative in a High Court claim for negligence and breach of contract and was successful in application to strike out the claim on grounds that it



had no reasonable prospects of success.

Seminars/Training

James has delivered seminars and training a range of topics including enforcement of judgments and orders, negligent misstatement, and insolvency.

