

## Jonathan Davies

Call 2003

Telephone [020 7831 0222](tel:02078310222)

Email [clerks@42br.com](mailto:clerks@42br.com)



### Introduction

Jonathan practises in employment and business law. He has a record of success in very high profile and high value cases. Specialisms include shared parental leave, doctors' regulatory work, police pay claims and discrimination work, restrictive covenants, conspiracy and the economic torts, negligent reference claims, bonus and pay claims and injunctions to prevent dismissal.

He recently successfully represented the Chief Constable in the well-publicised appeal case dealing with shared parental leave *Hextall v the Chief Constable of Leicestershire Police* [2019] IRLR 695, CA and most recently he has been instructed on two high profile appeals: an appeal from the High Court group action by royal and ministerial bodyguards in *Prior and Fielding v the Metropolitan Police* [2021] EWHC 2672 (QB) and on behalf of the Spanish Embassy in an appeal to the EAT which should establish the ambit of diplomatic and state immunity in relation to non-domestic workers following the recent Supreme Court decisions in *Benkharbouche*, *Reyes v Al Maliki* and *Basfar v Wong*.

### Business Law

#### Breach of Confidence/Privacy/Data Protection

Jonathan has extensive experience of dealing with claims involving allegations of breach of confidence, privacy rights and GDPR in the commercial context.

He has acted and in numerous applications for interim relief in the High Court in which there was allegations of breach of confidentiality in relation to confidential commercial information.

He is currently commissioned to carry out an investigation into major GDPR and breach of confidentiality breaches where the employee in question relies on his rights as a whistle-blower and statutory exemptions contained in the data protection legislation. In the past he has acted for senior employee of a major football club in relation to threatened proceedings for injunctive relief for delivery of confidential and private information in his possession about its players.

### **Business Protection/Restrictive Covenants**

Jonathan acts for both parties in business protection disputes. He has often appeared in proceedings for injunctive relief to protect confidential information, prevent the use of customer lists and other sensitive information and to enforce non-solicitation and non-dealing covenants.

Clients over the last two years include a several cases for a major landscaping company; advising a major high street provider of cosmetic and aesthetic treatments, an employment and temping agency and a multi-million pound dispute involving a major haulage company.

### **Conspiracy and the Economic Torts**

Jonathan has additional and complimentary expertise in the economic torts and in particular claims of inducement of breach of contract and conspiracy following his successful representation of the Claimant in the conspiracy case of Croesus v the Bradshaws [2013] EWHC 3685 QB. In 2021, Jonathan was instructed to defend a multi-million pound conspiracy claim.

### **Commercial Agents**

Jonathan has extensive experience of advising and litigating for both agents and principals under the Commercial Agents Regulations in relation to claims upon termination of the agency.

### **Compromise and Settlement Agreements**

Jonathan has often been instructed in claims seeking to enforce in the civil courts compromise agreements or seeking damages for their breach.

### **Conflict of Laws/Territorial Jurisdiction**

Jonathan has advised and lectured on, and has a particular interest in, jurisdictional issues arising in the context of contractual disputes with an international element. He is currently instructed in an important appeal by the Spanish Embassy in a dispute in which pleas of diplomatic and state immunity are involved.

### **Consumer Rights**

Jonathan advises and has acted in claims involving consumer rights legislation. Recently, he has acted on behalf of a claimant in a dispute alleging unfair terms in the carriage contract of a national airline.

### **Discrimination in the provision of goods and services**

Jonathan is often instructed to act in proceedings before the county court where it is alleged that business have in the provision of goods and services to be public acted in breach of goods and services provisions of the Equality Act 2010.

He has advised restaurants and bars, GP and dental practices in relation to reasonable adjustments for disabled persons and even acted for a national airline of a Gulf state in a claim brought by the Royal Family of that state in relation to a dispute arising from the refusal to permit members of the royal family to board a flight where it was alleged the reason was their nationality. He has advised online traders on the Equality Act 2010 and the ramifications of it for companies offering services online.

## **Employment Agencies and Conduct of Employment Agencies and Employment Businesses Regulations 2003**

Jonathan has advised and acted in disputes relating to transfer fees arising from the engagement of temporary workers and agency staff to which these complex regulations apply.

### **Indemnities**

Jonathan recently advised a senior consultant in a dispute relating to effect of indemnity which appeared in her contract rendering her liable losses caused by her and other members of staff under her control.

### **Misrepresentation**

Jonathan has represented a former employee of a major retail bank in her claim for misrepresentation. The Claimant was induced to enter into a compromise agreement in which she agreed to take redundancy on the basis of inaccurate representations made to her about her pension rights.

Jonathan has advised on a claim for misrepresentation in relation to an employee who found herself out of work after accepting an offer of employment in which the financial position of the employer was misrepresented to her.

### **Negligent Misstatement/Reference Claims**

Jonathan acts for both employees and employers in claims arising out of inaccurate and misleading references.

Jonathan has advised in claims which revolved around comments made from previous employer outside the terms of an agreed reference and in breach of a mutual non- disparagement clause contained in a compromise agreement.

In *McKie v Swindon College* [2011] IRLR 575, QBD, Jonathan acted for the employer in defending this high-profile claim for negligent misstatement. This was a ground-breaking common law claim in which the duty not to make negligent misstatements about a former employee by a former employer was extended to cover communications other than references.

### **Partnership Disputes**

Jonathan has experience of advising in partnership disputes particularly health providers such as GP and dental practices. He has experience of advising GP and dental practices on their obligations in relation to the various quasi contractual arrangements they regulate how they provide their services to the public.

### **Pay, Bonus and Commission Disputes**

Jonathan has extensive experience of wrongful dismissal, pay and commission disputes involving directors, consultants and senior employee brought in the civil courts.

For example he has appeared as sole Counsel in the High Court and in the Court of Appeal in *GX Networks Ltd v Greenland* [2010] IRLR 991, CA. He has advised

He has also lectured widely on city bonus claims and commission claims in the telecoms industry and he recently acted for a banker in a multi-million pound dispute.

Jonathan is an expert on the jurisdictional issues which arise out of the limited jurisdiction of the Employment Tribunal in breach of contract and unlawful deduction of wages claims and the res judicata issues which arose from the choice of more than one forum in such claims.

## **Pensions**

Jonathan acts in pension disputes as they arise in the employment context including advising in disputes before the Pensions' Ombudsman.

He has advised a major police force on the effect advice it gave about the changes to pension scheme members of A-day.

Jonathan recently acted for a former employee of a major retail bank in her claim for failure to provide her with, or advise properly in relation to, an early retirement pension promised as part of an exit agreement.

He acted for the Claimant in his claim for failure to offer an employee the option of an early ill health pension prior to making the employee redundant.

## **Share options disputes**

Jonathan advises in disputes relating to the exercise of share options following the termination employment. He has particular expertise on the effect of good leaver/bad leaver clauses.

## **TUPE**

Jonathan has been involved in a number of TUPE claims, including failure to consult as well as claims of automatically unfair dismissal especially in the context of pre-pack administrations and service provision changes.

In addition, Jonathan gives advice in relation to the commercial considerations that should be considered in sale and purchase agreements or contracting out, re-tendering or insourcing exercises which give rise to a TUPE transfer.

He recently provided training to London local authorities on the effect of the law relating to pension rights and TUPE, including the Beckmann exception and the requirements of the Best Value Authority Staff Transfers (Pension) Direction 2007, the Fair Deal Policy, the Pension Protection Regulations 2005 and Auto-enrolment on contracting out, re-tendering or insourcing exercises carried out by public bodies.

## **Unjust Enrichment**

Jonathan has defended claims against statutory water undertakers in claims for reimbursement of the VAT.

Jonathan has extensive experience of county claims seeking to recover overpayments of wages from both existing and former employees. He has been appointed to work for a major NHS health trust in assisting it in all of its claims. He has given training on unjust enrichment/the action for money had and received on the basis of his extensive experience. He successfully defended a multi-million pound claim for set off relating

to alleged ultra vires payments in *Prior and Fielding v MPS*: [2021] EWHC 2672 (QB).

Jonathan defended the former General Secretary of a major trade union in a claim for alleged unlawfully claimed expenses by his former union.

### Reported & Interesting Cases

- *RASP v the Commissioner of Police for the Metropolis* [2021] EWHC 2672 (QB) – large group action against the Metropolitan Police by politicians ‘bodyguards’ for recovery of unpaid allowances
- *Croesus v the Bradshaws* [2013] EWHC 3685 QB Injunctive relief in business protection case.
- *McKie v Swindon College* [2011] IRLR 575, QBD Negligent references.
- *GX Networks Ltd v. Greenland* [2010] IRLR 991, CA Contractual commission dispute.