

Jonathan Davies

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Jonathan practises in employment and business law in so far as it overlaps with his employment law practice.

He also practises in water law.

He has a record of success in high profile, high value and legally complex cases. Specialisms include the full range of trade union law, diplomatic and state immunity, bonus, commission and equal pay claims, shared parental leave, police claims, restrictive covenants, conspiracy and the economic torts and injunctions to prevent suspension and dismissal, as well as unfair dismissal, whistleblowing and discrimination claims.

He 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 he has been instructed on two high profile appeals: in a group action by brought by the royal and ministerial bodyguards in *Prior and Fielding v the Commissioner of Police for the Metropolis* [2023] I.C.R. 508 and on behalf of the Spanish Embassy in an appeal to the Court of Appeal which should establish the ambit of diplomatic and state immunity in relation to non-domestic workers following the recent Supreme Court decisions *Spain v Lorenzo* [2023] EAT 153.

Employment Law

Employment Tribunal Litigation

Agency Workers and Employment Agencies

In 2023, Jonathan advised a leading university in relation to its apprenticeship scheme and whether it would engage the Employment Agencies and Conduct of Employment Agencies and Employment Businesses Regulations 2003. He also advised a major haulage firm in relation to transfer fees under those Regulations. In 2024, Jonathan was instructed in commission fee dispute against a major hotel chain.

Compromise and Settlement Agreements

Jonathan advises employees and employers on the settlement of disputes/exit agreements as well as advising and acting in

claims in the civil court in the event of non-compliance/breach.

Conflict of Laws/Territorial Jurisdiction

In 2023, Jonathan acted for a major budget airline successfully striking out a claim against it brought by a pilot based in a different jurisdiction. The claim engaged all the issues that arises in international legal disputes and the effect of the Brussels Regulation in employment claims post Brexit.

Contractual Issues

Jonathan is often instructed in complex contractual disputes arising out of the employment relationship. In 2023 and 2024 he has advised on whether immigration irregularities render the performance of an agency worker contract void due to illegality; whether an employee can bring a claim for misrepresentation about a bonus scheme where the employer terminated the contract to avoid paying and in 2024 he represented a major public infrastructure undertaker in a claim brought against it by an employee arguing that failing to accede to an application for voluntary termination payment constituted a breach of the implied term of trust and confidence and the *Braganza* duty. He has also given training to major nationwide law firm on share options in employment contracts (The paper can be viewed [here](#))

Discrimination and Whistleblowing at Work

Jonathan has around 21 years' experience of every conceivable form of discrimination and whistleblowing claim in the employment context.

Jonathan successfully represented Chief Constable throughout the litigation in *Hextall v the Chief Constable of Leicestershire Police* [2019] IRLR 695, CA which is the leading case whether the scheme for shared parental leave constitutes a breach of equality legislation.

Equal Pay

Jonathan has extensive experience of equal pay claims. In 2024, he had a claim against a major transport body struck out on the basis it had implemented job evaluation scheme and in 2023 he acted on behalf of a female estate agent in a claim concerning different rates of commission.

Holiday Pay and Working Time

Jonathan has recently been instructed in several claims involving potential groups claims for unrecognised historic annual leave which involve advising on the effect of Brexit on the Working Time Regulations 1998. In 2023 and 2024, he has advised the claimants in a multi-million pound potential claim against a major estate agency for payment of unrecognised annual leave and in 2024 he was instructed to defend a similar claim brought against a major regulatory body.

Maternity, Paternity and Shared Parental Leave Rights

Jonathan represented a major supermarket chain in a maternity discrimination claim brought by a senior former employee in 2022. He successfully represented the Chief Constable in the in the Court of Appeal decision of *Hextall v the Chief Constable of Leicestershire Police* [2019] IRLR 695, CA, the leading case on parental leave.

Pensions

Jonathan acts in pension disputes as they arise in the employment context including advising in disputes before the Pensions' Ombudsman. For example, in 2024, he advised a major employer on its compliance with the Auto Enrolment

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

Police Pay and Employment Law

Jonathan acted for the Royal Protection Squad Officer Claimants group action in both the High Court and Court of Appeal case of *Prior v the Commissioner of Police of the Metropolis* [2022] ICR 398 and [2023] ICR 508. The case dealt with the obligation to pay overtime and the Away from Home and Hardship allowances contained in the Police Regulations 2003. Jonathan acts for police forces in all types of employment claims including internal hearings.

Practice and Procedure

In 2024, Jonathan successfully obtained on behalf of a major social provision charity orders for strike out against a serial litigant on the basis that the volume of claims she had brought constituted vexatious behaviour. He also advised on the procedure for bringing an action where the employee is deceased.

He was counsel for the Claimant in the leading case on the duty to give reasons in the employment tribunal: *Greenwood v NWF Retail* [2011] ICR 896, EAT. The case appears on the EAT's list of frequently cited that parties do not need to bring it to a hearing.

Due to the fact he also practises in civil litigation he has extensive experience of advising on the consequences of concurrent proceedings, Res Judicata & estoppel.

State and Diplomatic Immunity

Jonathan acts for embassies in claims brought against them which are permitted following the judgment of the Supreme Court in *Benkharbouche*. He has in depth knowledge of state and diplomatic immunity and the Vienna Convention and the sensitive arises to which they give rise and when immunity may still apply. He successfully represented the Embassy of the Sultanate of Brunei in an employment tribunal claim against it early 2024. He represented the Spanish Embassy before the ET and EAT in *Spain v Lorenzo* [2023] EAT 153 and is instructed to appear in the appeal to the Court of Appeal due to take place in November 2024.

Taxation (of awards, settlements and termination packages)

Jonathan trained in a corporate tax department of big-4 accountancy firm and qualified as a member of the Chartered Institute of Taxation (ATII). He can therefore advise on all taxation aspects of the employment relationship as they arise in employment disputes, including the taxation of settlements, tribunal awards and termination packages.

TUPE, TUPE and other Consultation Rights

He has extensive experience of claims for failure to carry out redundancy and TUPE consultations under TULRCA 1992/TUPE 2006.

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 2023, he gave training to local authorities on Beckmann rights (The paper can be viewed [here](#))

He has extensive experience of claims for failure to carry out redundancy and TUPE consultations under TULRCA 1992/TUPE 2006.

Trade Unions

Jonathan practises in all areas of trade union law.

In 2023, he acted for a local authority in a dispute about the recognition of health and safety representatives and time off for those duties. He has been instructed to advise on facilities and recognition agreements.

In 2024, he has been advising on strike action, anti-strike injunctions and applications to the Central Arbitration Committee in the context of an ongoing industrial dispute over pay.

He is instructed to defend a high value group action Section 145B TULRCA inducement claim which is due to be heard in early 2025.

Unfair Dismissal

Jonathan has acted for employees and businesses from every conceivable sector of the economy (both private and public sector) in unfair dismissal claims and has a thorough grasp of this area of the law. Jonathan appeared in *Secretary of State for Justice v Lown* [2016] IRLR 22 which reconsidered the circumstances in which an employment judge is to be taken to have substituted his own view for that of the employer in unfair dismissal proceedings.

Zero Hour Contracts & Exclusivity Clauses

In 2023, Jonathan was asked to advise on the legal effect of exclusivity clauses in the standard zero hour term contracts of actors and directors. He is currently instructed in a dispute about the worker status of chairpersons of major regulatory body.

HIGH COURT & OTHER CIVIL LITIGATION

Breach of Confidence /Privacy/Data Protection

Jonathan is currently instructed in a high value claim involving allegations of stealing and using confidential lists.

In 2021, Jonathan was commissioned to carry out an investigation by a local authority into serious breaches of confidentiality where the employee relied upon provisions of GDPR as a defence to his actions.

In February 2017 Jonathan successfully defended an application for interim injunction in the High Court before William Davis J, (*S3 Sciences Ltd v Griffiths*) brought against his client by a former employer who was alleging breach of confidentiality in relation to what he claimed was a confidential list of contacts. The application was refused and client was awarded her costs on

an indemnity basis.

Bonus and Commission Claims

In 2023 and 2024 Jonathan was regularly instructed in disputes about non-payment of bonus or commission. He has experience of acting in such claims at trial and on appeal in the Court of Appeal: *GX Networks Ltd v Greenland* [2010] IRLR 991, CA.

Business Protection/Restrictive Covenants

Jonathan acts for both parties in business protection disputes. In 2021, he acted for a major haulage firm in a claim against multiple defendants alleging a conspiracy to transfer business in breach of restrictive covenants and the transfer fee regime in Conduct of Employment Agencies and Employment Businesses Regulations 2003. He is currently instructed in a major ongoing conspiracy claim on behalf of a telecoms provider company involving breach of contractual and Directors' Duties.

He successfully represented the claimant in an unusual case of a claim for breach of restrictive covenants and conspiracy coming to full trial: *Croesus v the Bradshaws* [2013] EWHC 3685 QB.

Commercial Agents

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

Conflict of Laws/Territorial Jurisdiction

In 2023, Jonathan acted for a major airline successfully striking out a claim

against it brought by a pilot based in a different jurisdiction. The claim engaged all the issues that arises in international legal disputes and the effect of the Brussels Regulation in employment claims post Brexit.

Conspiracy and the Economic Torts

In 2021 and 2022, Jonathan acted for a defendant a business competition conspiracy claim. He is currently instructed in a major high court unlawful means conspiracy action and he has represented successful the claimants in such an action in the High Court: *Croesus v the Bradshaws* [2013] EWHC 3685 QB. In 2024, he has been advising a manufacturing firm on potential anti-strike injunctions.

Disciplinary Procedures

Jonathan has experience in injunctions to prevent suspension and to enforce disciplinary procedures: He has been involved in some of the most important disciplinary cases including *Kulkarni v Milton Keynes NHS Foundation Trust* [2009] IRLR 829, CA (right to legal representation at internal disciplinary hearings) and *Mezey v SW London & St George's Mental Health NHS Trust (No.2)* [2010] IRLR 512 CA (injunction preventing holding of disciplinary hearing).

Negligent Misstatement/Reference Claims

Jonathan acts for both employees and employers in claims arising out of inaccurate and misleading references for example: *McKie v Swindon College* *McKie v Swindon College* [2011] IRLR 575, QBD.

Strike Injunctions

In 2024, he has been advising on potential anti-strike injunctions and

extensively on the legal ramifications for an employer in the event of strike action in the context of an ongoing industrial dispute over pay.

Recovery of Overpayment of Wages recovery of Overpayment of Wages/Over claimed expenses

Jonathan has experience of county claims seeking to recover overpayments of wages from both existing and former employees.

Wrongful Dismissal

Jonathan regularly advises and acts for employees with significant notice periods and/or bonus entitlement claims as to their common law rights on termination.

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.

Reported & Interesting Cases

- *Spain v Lorenzo* [2023] EAT 153 (on appeal to Court of Appeal)
- *Prior v the Commissioner of Police of the Metropolis* [2023] ICR 508, CA
- *Prior v the Commissioner of Police of the Metropolis* [2022] ICR 398, High Court
- *Hextall v the Chief Constable of Leicestershire Police* [2019] IRLR 695, CA, shared parental leave regime does not breach the Equality Act 2010
- *Secretary of State for Justice v Lown* [2016] IRLR 22 - Circumstances in which Employment Judge substitutes his own view.

- ***Dippenaar v Bethnal Green Academy*, EAT, Langstaff J UKEAT/0064/15/JOJ Harvey on Employment Law Bulletin 448 November 2015 - Correct application of the statutory burden of proof provisions in the context of indirect discrimination claims under the Equality Act 2010.**
- ***Croesus v the Bradshaws* [2013] EWHC 3685 QB Injunctive relief in business protection case.**
- ***Greenwood v NWF Retail* [2011] ICR 896, EAT Employment Tribunal's duty to give reasons.**
- ***McKie v Swindon College* [2011] IRLR 575, QBD Negligent references.**
- ***Mezey v SW London & St George's Mental Health NHS Trust (No.2)* [2010] IRLR 512 CA Enforcement of contractual disciplinary procedures by way of injunctive relief.**
- ***GX Networks Ltd v. Greenland* [2010] IRLR 991, CA Contractual commission dispute.**
- ***Kulkarni v Milton Keynes NHS Foundation Trust* [2009] IRLR 829, CA Right to legal representation in internal disciplinary proceedings.**
- ***Rice and Thompson v. Secretary of State for Trade and Industry* [2007] ICR 1469, CA Workplace duties of care in negligence.**

Business Law

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Jonathan acts for both parties in business protection disputes. In 2021, he acted for a major haulage firm in a claim against multiple defendants alleging a conspiracy to transfer business in breach of restrictive covenants and the transfer fee regime in *Conduct of Employment Agencies and Employment*

Businesses Regulations 2003. He is currently instructed in a major ongoing conspiracy claim on behalf of a telecoms provider company involving breach of contractual and Directors' Duties.

He successfully represented the claimant in an unusual case of a claim for breach of restrictive covenants and conspiracy coming to full trial: *Croesus v the Bradshaws* [2013] EWHC 3685 QB.

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Consumer Rights

Jonathan advises and has acted in claims involving consumer rights legislation. He has recently advised on consumer rights in the context of a domestic building dispute and he has acted on behalf of a claimant in a dispute alleging unfair terms in the carriage contract of a national airline.

Directors Duties

Jonathan acts in disputes involving breach of Directors' Duties especially where they overlap with employment disputes and unlawful post termination competition. He is currently instructed in a major ongoing conspiracy claim on behalf of a telecoms provider company involving breach of contractual and Directors' Duties.

Discrimination in the provision of goods and services, housing and public functions

In 2023, Jonathan represented the management association of a block of flats in a claim brought against it for disability and sexual orientations by one of the residents. In 2024, he acted for a local authority in a similar claim.

In 2023, he advised restaurants and bars, GP and dental practices in relation to reasonable adjustments for disabled persons.

In the past he has 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.

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

In 2023 and 2024, 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.

In 2023, Jonathan advised a leading university in relation to its apprenticeship scheme and whether it would engage the Employment Agencies and Conduct of Employment Agencies and Employment Businesses Regulations 2003.

He also advised a major haulage firm in relation to transfer fees under those Regulations. In 2024, Jonathan was instructed in commission fee dispute against a major hotel chain.

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.

Pensions

Jonathan acts in pension disputes as they arise in the employment context including advising in disputes before the Pensions' Ombudsman. For example, in 2024, he advised a major employer on its compliance with the Auto Enrolment scheme. In the past he has advised a major police force on the effect advice it gave about the changes to pension scheme members of A-day.

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 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.

In 2022 he 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 successfully defended such a counterclaim in the group action brought by the royal protection squad: *Prior v the Commissioner of Police of the Metropolis* [2022] ICR 398.

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

Water Law

Jonathan advises statutory water undertakers on all aspects of the Water Industry Act 1991.

In 2021-4 he has been instructed in several disputes arising the undertaker's delay in making a connection to the main and in 2023 was instructed to advise in relation to a major commercial dispute arising out of the failure to make a connection in the context of the Bulk Supply regime.

Reported & Interesting Cases

- *Prior v the Commissioner of Police of the Metropolis* [2022] ICR 398, High Court
- *GX Networks Ltd v. Greenland* [2010] IRLR 991, CA Contractual commission dispute.
- *Rice and Thompson v. Secretary of State for Trade and Industry* [2007] ICR 1469, CA Workplace duties of care in negligence.

Qualifications & Appointments

- MA Modern Languages (Oxford), Magdalen College, Oxford
- Post Graduate Diploma in Law (City University) (2001)
- Bar Vocational Course – Outstanding (2002)

Scholarships and Awards

- **Exhibitioner, Magdalen College, Oxford 1994-5**
- **Scholar, Magdalen College, Oxford 1995-7**
- **Lord Denning Scholarship, Lincolns Inn 2002-2003**

Memberships & Committees

- **Employment Lawyers Association**