



# Joseph England

**Year of Call:** 2011

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## Overview

Joseph England specialises in Employment Law and Business & Commercial Law. His two areas complement each other and often overlap, enabling him to provide advice and representation from a practical and holistic perspective. He is very experienced in both fields and is often trusted with important and complex cases by those instructing. Further detail and examples of previous cases can be found in his specialist pages.

Joseph can be instructed directly through the Direct Access Scheme and is happy to discuss potential cases with clients without obligation. He regularly provides training and articles that consider contemporary legal issues and as well as publishing a book, he has been published on Westlaw and in the ELA Briefing. He provides legal updates and news on Twitter [@JEnglandCounsel](https://twitter.com/JEnglandCounsel).

Joseph is committed to protecting and respecting privacy. Please contact 3PB's Operations Director or any clerk using the details on this website for a copy of Joseph's privacy policy, which sets out the basis upon which any personal data he may collect about you, or that is provided to him, will be processed. A copy of this policy will be provided to you within 5 working days of your request.

## Recommendations

Joseph England has a wealth of experience in complex employment disputes, including before the Employment Appeal Tribunal and the Court of Appeal. He specialises in whistle-blowing matters alongside a wide range of claims for discrimination and unfair dismissal.

Strengths: "He impresses with his authority over the documents and evidence in a case."

"He exerts confidence and has a very good knowledge of the background of the claims he assists on."

### **Chambers UK 2024**/Employment/Western Bar

Strengths: "Joseph has a good manner in court and is well liked."

### **Chambers UK 2023**/Employment/Western Bar

"Our client emailed me about the court hearing and her opponent's performance to say you " made mincemeat of her without even breaking a sweat."

"I would like to mention that I found Barrister Joe England extremely meticulous and organised. I've rarely witnessed such a presence-of-mind, alertness, intuition and effective communication. He was in complete grip of the case throughout. The claimant was clever and tried his best to manipulate all possible loose ends but Joe did not let go a single one."

"Joseph England is a gifted barrister with a fantastic work ethic and attention to detail, which were invaluable in preparing

and conducting my case. We were successful because he left no stone unturned and held important complex facts and issues at his fingertips. Joseph's passion and commitment to justice is matched by his warmth and friendly approach. His unmistakable ability to readily grasp intricate details, compose a compelling argument, and instinctive compassion, make Joseph a most reliable, very likeable and great advocate."

"I would just to say that Joseph England is brilliant and it has been a real pleasure setting next to him for 4 days grilling the other witnesses."

"As an aside, I had a call from [client] earlier about the conference. He was really happy with all the advice that you gave him and he told me that last night was the first night he had slept properly since all this began."

"I was so impressed with the professional way he acted in every aspect, including his attention to detail and the standard of preparation. His respect and politeness to the judge and the wing members was excellent, and I noticed on many occasions the judge acknowledged his manner. On meeting Joseph for the first time on the first day of the tribunal, from the outset he treated me with care and consideration. Although I had been very nervous about the up-coming tribunal, Joseph's calmness and his explanation of how the tribunal works helped me greatly. My wife was with me the whole time, giving her continuing support, and Joseph was just as charming and considerate to her questions...although at this time I am not sure whether my case will be successful or not, I just want to say I felt honoured and privileged and so lucky that Joseph was my barrister."

"One moment I particularly liked, Joseph had made a point, which the Judge wanted to pass over, so he complied, but at an appropriate moment, he made sure he explained why he'd wanted to go in "that" direction, and made sure he was heard. I was delighted with this, and I think the Judge will have been impressed, too! He was clearly so well prepared, there was nothing that wasn't vital to the whole situation."

"That is a huge shame that you are not able to act for us again. I had felt quite confident in your hands."

### **Witness Handling**

Reflecting the scholarships and achievements gained prior to the Bar, Joseph is a very effective trial advocate and is particularly adept at witness handling in long, complex trials through an ability to identify and organise the important facts. The following are examples of tribunals' assessments of witnesses exposed under Joseph's cross-examination in such trials:

"Mrs X's account was disjointed and lacking in detail. We were also influenced in our judgment by our general view that her evidence overall was unreliable...Mrs X's evidence was generally unclear and confused...we found this evidence extremely unsatisfactory and came to the conclusion that it was totally unreliable" – concerning the dismissing officer in a complex 3 day trial involving protected disclosures and unfair dismissal.

"The Tribunal unanimously found the Claimant to be evasive in answering questions. She preferred to avoid direct questions...this is another example of the Claimant twisting matters...an example of the Claimant attempting to make mischief from every day circumstances." – judicial assessment of a Claimant in a complex 7 day discrimination claim

"Professor Y came across as quite arrogant...we concluded that he did not engage with the role of Case Manager properly. It was put to him in cross-examination that he had made a number of errors as Case Manager. Professor Y refused to accept that was the case, even in relation to errors which were apparent...we did not accept that he approached his role as case manager impartially or with independence...we concluded that Professor Y's approach to the [allegations] was flawed and that he failed in his responsibilities as case manager." – concerning the Professor acting as the Case Manager in the unfair dismissal of Dr Mattu (above).

### **Pro Bono**

Joseph supports various pro bono activities and recognises the benefits of gaining valuable and varied experience. His expertise in employment law has previously led him to become a researcher for Unlock, researching the employment law implications for those with criminal convictions, and he volunteered previously as a specialist Employment researcher at a busy CAB as well as gained experience with FRU.

Building on his whistleblowing expertise, he currently provides ad hoc support to Protect, the whistleblowing charity. He undertakes pro bono cases through the Bar Pro Bono Unit and is an active participant of the ELIPS and ELAAS scheme at the

EAT and Court of Appeal. Outside of law, he undertakes mentoring through organisations including the Black Lawyers Directory and Bromley Youth Partnership.

## **Academic qualifications**

- First Class, BA (Hons) English Literature, University of Warwick

## **Scholarships**

- Best Advocate Award, Kaplan Law School (highest overall grade in Civil Advocacy, Cross Examination and Examination in Chief)
- Lord Bowen Scholarship, Levitt Scholarship, Buchanan Award and Hardwicke Award from Lincoln's Inn
- BPP Law School Mooting Championship Finalist
- Warwick University Mooting Championship Finalist (whilst a non-law student)
- Essex Court Mooting Championship Finalist (researcher)
- Lincoln's Inn Debating Team, National Mace Competition

## **Professional qualifications & appointments**

- Outstanding, BPTC, Kaplan Law School
- Commendation, GDL, BPP
- First Class, BA (Hons) English Literature, University of Warwick

## **Professional bodies**

- Employment Law Association (ELA)
- Industrial Law Society (ILS)
- Employment Law Bar Association (ELBA)

# Expertise

## Employment and discrimination

Joseph is an extremely experienced practitioner and his busy practice has ensured that he has in-depth experience of a wide variety of areas and types of claim. His success and evident abilities have led clients to trust Joseph with very complex cases. Joseph's practice benefits from representing and advising both sides of employment disputes and he has been instructed in cases at the Court of Appeal, EAT and at a wide range of final and preliminary hearings in Tribunal and Court.

He has appointed as a fee paid (part-time) Employment Tribunal Judge. He sits in the London South region and therefore cannot act in cases assigned to that region (Croydon and Ashford).

Joseph can be instructed directly through the Direct Access Scheme and is happy to discuss potential cases with clients without obligation. He regularly delivers training covering areas from nuanced and niche points of law to basics of the Tribunal procedure and mock tribunals. He has been published in the ELA Briefing and provides updates through Chambers' monthly newsletter and on Twitter [@JEnglandCounsel](#).

**The below lists provide some examples of cases in which Joseph has been instructed.**

### Whistleblowing

Following involvement in various high profile and extremely significant 'whistleblowing' claims, Joseph has particular expertise and passion in this area. He is the author of [NHS Whistleblowing and the Law](#) and provides pro bono support to Protect.

#### **Mattu v Coventry and Warwickshire NHS Trust**

Acting for the successful Claimant who was awarded £1.22mil net in 2016, this case was successful in demonstrating that Dr Mattu had made protected disclosures, suffered detriments as a result, been unfairly dismissed and suffered various acts of disability discrimination, including by his dismissal as a detriment arising from his disability. The case was extremely complex and document-heavy, involving approximately 25,000 documents. Joseph was the only lawyer to have been retained through every stage from 2013-2016 and appeared as Junior to Jack Mitchell then Jane McNeill QC. [Please click here](#) for more details.

#### **McTigue v University Hospital Bristol NHS Foundation Trust ([2016] IRLR 742)**

A successful appeal, leading to the expansion of protection under the extended definition of worker and the range of people able to rely on whistleblowing protection. The Claimant was employed as a nurse in a Sexual Assault Referral Centre and her employer was a third party that placed her in the NHS Trust, who denied that she was protected by the legislation.

Please [click here](#) for more details.

#### **Gilbert v X College**

The Claimant was a learning support assistant in the home economics department and brought claims that she had made PIDs relating to health and safety (unsafe cooking facilities) and breaches of legal obligations (theft of cooking materials). Representing the Respondent, Joseph demonstrated that although PIDs had been made and detriments suffered, these were not because of any PID but because of her wider behaviour and the manner in which she raised her complaints.

#### **T v James Paget University Hospital NHS FT**

This case involved a surgeon dismissed for alleged capability issues. The Claimant brought various claims, including that he had made various PIDs relating to health and safety, particularly around the competency of his colleagues. Joseph was instructed on behalf of the Claimant in the drafting and advisory stages and appeared at a PH. The case had very dense and complicated facts and was consequently listed for an 8 week trial. Joseph produced an 82 page advice dealing with the various claims and the case subsequently settled.

#### **B v D NHS Trust**

Instructed by the Trust, this case considered whether a Claimant was dismissed because of whistleblowing whilst undertaking a student placement at the Hospital. Jurisdiction and the parameters of 'employment' were key issues.

### **W v Ashcourt Rowan Asset Management**

Joseph represented the Claimant, who was employed as the Head of Intermediary Sales. The Claimant claimed he had been dismissed as a result of PIDs concerning the way his previous employer had obtained their credit rating, including through allegedly false documentation. The case provided an interesting analysis of to whom a PID could be made and in this case the potential for PIDs to be made to the new employer about an old employer and to the FCA.

### **S v Z Haulage Contractors**

Representing a national firm of haulage contractors in a claim in which an employee claims to have been dismissed due to raising allegations of a failure to comply with regulations of the Road Haulage Association.

### **X v British Transport Police**

Representing the Claimant in this lengthy trial, Joseph demonstrated that PIDs had been made despite being contained within extremely dense documentation. The whistleblowing concerned alleged fraudulent overtime claims and health and safety concerns.

## **Discrimination**

### **Mattu v Coventry and Warwickshire NHS Trust**

Acting for the Claimant who was awarded £1.22mil net, this case successfully demonstrated that Dr Mattu had made protected disclosures, suffered detriments as a result, been unfairly dismissed and suffered disability discrimination. The case was extremely complex and document-heavy, involving approximately 25,000 documents. Joseph was the only lawyer to have been retained through every stage over the 4 year tribunal history, appearing as Junior to Jack Mitchell then Jane McNeill QC . Please [click here](#) for more details.

### **Lazarevic v [technology company] 2016**

Acting for a multi-million pound I.T. company, Joseph was able to secure a rare 100% Polkey reduction for financial losses arising from a discriminatory dismissal.

### **V v Hertfordshire County Council and Another ([2015] All ER (D) 260)**

Successfully represented a school caretaker dismissed for allegations loosely based on 'crossing professional boundaries' in relation to his interactions with children. The dismissal was exposed by Joseph as involving an investigation that was "seriously flawed", by the appeal stage "the process was so badly flawed, it was irredeemable" and an act of sex discrimination. At the remedy hearing, the tribunal nevertheless awarded a nearly 100% Polkey reduction to the Claimant's compensation. However, Joseph successfully appealed and compensation was increased from £1135 to over £60,000, in addition to an award of over £20,000 for injury to feelings. Please [click here](#) for more details.

### **Dawes v X County Council**

Representing a County Council in a complex claim of disability discrimination arising out of difficult issues involving the long term sickness absence of a carer dismissed for his absence, successfully defending claims of direct, indirect, 'reasonable adjustments' and 'related' discrimination.

### **Chikale v Okedina [2018] All ER (D) 86 (Jan) (UKEAT/0152/17)**

Joseph appeared against leading and junior counsel in an appeal considering the scope of a defence of illegality based on the expiry of a migrant domestic worker's working visa.

### **L v G**

Representing a software company against various discrimination claims, including Equal Pay, sex and race discrimination during a trial lasting 11 days.

### **K v T NHS Foundation Trust and another**

Representing a Claimant paramedic in an ongoing claim involving harassment through text messages and appearances

outside the Claimant's home as well as victimisation for complaints then brought by the Claimant. The employer is relying upon the statutory defence and therefore the claim will consider the extent of liability if discrimination is proved.

#### **E v B School**

Representing the school against various claims of disability discrimination brought by a teacher, including relating to dismissal for disability related absence arising out of alleged depression.

## **Restrictive Covenants and Employee Competition**

Joseph has appeared and advised in a number of cases in this area, often leading to settlement. Work in this area often overlaps and is complemented with his expertise in commercial cases outside of traditional employment relationships, such as director and shareholder disputes. Cases frequently involve the finance and manufacturing sectors and involve confidential information and trade secrets. Examples of cases include defending an application for damages brought by an employer against an ex-employee for the use of confidential data used to poach clients and the drafting of an application for an injunction to prevent a football agent from poaching players.

## **Unfair Dismissal**

#### **Pennine Care NHS Foundation Trust v Mundangepfupfu ([2015] All ER (D) 265)**

At the EAT, various grounds of appeal successfully resisted concerning unfair dismissal and the balance between substitution of a tribunal's decision and the correct exercise of the 'range of reasonable responses test'. Other grounds of appeal resisted included bias and perversity. Remitted for remedy.

#### **V v Hertfordshire County Council and Another ([2015] All ER (D) 260)**

Successfully represented a school caretaker dismissed for allegations loosely based on 'crossing professional boundaries' in relation to his interactions with children. The dismissal was exposed by Joseph as involving an investigation that was "seriously flawed", by the appeal stage "the process was so badly flawed, it was irredeemable" and an act of sex discrimination. At the remedy hearing, the tribunal nevertheless awarded a nearly 100% Polkey reduction to the Claimant's compensation. However, Joseph successfully appealed and compensation was increased from £1135 to over £60,000, in addition to an award of over £20,000 for injury to feelings. Please [click here](#) for more details.

#### **Al Mustafa v Ibrahim (UKEATPA/0830/14)**

At the EAT, an appeal against a decision of a Registrar that an appeal was lodged out of time, itself an appeal against a tribunal decision that a claim form making a claim of unfair dismissal had been submitted out of time and there were no grounds to extend time under the 'not reasonably practicable' test.

#### **Boynton v West London NHS Trust**

Representing the music therapy teacher at Broadmoor psychiatric hospital, successfully demonstrating employee status despite no written contract and consequentially gaining a concession on claims of unfair and wrongful dismissal.

#### **P v Topps Tiles UK Ltd**

Successfully representing a Claimant in a conduct dismissal, demonstrating that although dismissal could have been fair, reliant on computer data of log-in times, on the facts it nevertheless was unfair.

#### **L v Lann & Hummell UK Ltd**

A claim of unfair dismissal arising out of misconduct allegations for making allegedly defamatory remarks on Facebook.

#### **J v WBTA**

Representing a Claimant whose company was purchased by the Respondent, only for the Respondent to swiftly dismiss him for alleged misconduct. The evidence of the Respondent's Director was exposed by Joseph at trial to be "extremely unsatisfactory...totally unreliable".

#### **F v Mouchel**

Representing an accountant against a global firm, bringing a claim of unfair dismissal based on a sham redundancy after a

TUPE transfer led to the Claimant being employed on a much higher salary than her comparable new colleagues.

## **Transfer of Undertakings**

Joseph's complementary practice in Business and Commercial Law enhances his Employment practice and he is often instructed in cases involving an overlap between the two, notably in matters involving TUPE transfers.

### **Samra and others v Optimax and others**

Representing a test Claimant following the purchase by Optimax of Ultralase, a 5 day PH considered whether there was a transfer of undertaking between the two companies, against junior and leading Counsel.

### **L and others v Avon and Wiltshire Mental Health Partnership and NHS Trust and others**

Representing one of four Respondents in a claim in which numerous Claimants had claimed to be employees arising out service provision changes. Joseph's client was held not to be liable.

### **Tucker and others v Premier Security Services and others**

Representing a Claimant employed to monitor CCTV with one company, the service for which was then brought in house to the County Council, then transferred to another company. The case looked at whether there had been a service provision change at any point between 4 different respondents.

### **R v Ad Valorem Accounting and another**

Representing a Claimant bookkeeper, whose employer was purchased by another, then allegedly kept separate by a complex series of transactions and name swaps between companies.

### **F v Mouchel**

Representing an accountant against a global firm, bringing a claim of unfair dismissal based on a sham redundancy after a TUPE transfer led to the Claimant being employed on a much higher salary than her comparable new colleagues.

## **Conduct and Internal Resolution**

Joseph has been appointed to determine internal employment matters, including misconduct cases and grievances. His employment expertise ensures that he approaches such matters fully cognisant of correct and fair procedure and his appointment ensures independence within the decision making process. His experience in these matters builds upon his selection to sit on Police Misconduct Disciplinary Panels as a tribunal member, principally considering cases of misconduct considering actions against officers under the Police Conduct Regulations 2008 and Police (Conduct) Regulations 2012 .

His vast experience in particular of cases for and against the NHS has ensured that Joseph is fully aware of the unique and sometimes complex features of NHS regulations and disciplinary procedures. Other cases have involved a wide number of regulatory bodies, including the FCA, GDC and NMC.

## **Working time, holiday, sickness**

Numerous of the claims detailed elsewhere have involved additional contractual claims for remuneration across the full spectrum of claims and the following provide further specific examples:

### **Weeks and another v G National Care Homes**

Representing a chain of national care homes in what was being treated as a test case, Joseph successfully ensured the dismissal of two claims for the payment of National Minimum Wage during 'sleep-in shifts'. Please [click here](#) for more details.

### **K National Care Provider**

Following a HMRC review, this chain of national care providers sought Joseph's advice in conference on whether the National Minimum Wage was payable to staff who had lengthy breaks between visiting clients and during sleep in shifts at care homes.

### **Palmer v Sopwell House Hotels**

Representing a Claimant beauty spa therapist for various claims relating to underpayment of her wages. The Tribunal stated it had "considerable sympathy" for the Claimant's confusion over her pay slips and the reality of her payments as against her contract were considered over a 3 day trial. The case looked at issues including whether there was any bonus, whether commission included VAT and whether the Claimant should have been paid hourly or monthly.

## **Remuneration, Bonuses and Notice Pay**

Numerous of the claims detailed elsewhere have involved additional contractual claims for remuneration across the full spectrum of claims.

### **Palmer v Sopwell House Hotels**

Representing a Claimant beauty spa therapist for various claims relating to underpayment of her wages. The Tribunal stated it had "considerable sympathy" for the Claimant's confusion over her pay slips and the reality of her payments as against her contract were considered over a 3 day trial. The case looked at issues including whether there was any bonus, whether commission included VAT and whether the Claimant should have been paid hourly or monthly.

### **Smith v Wholefoods Ltd**

Representing the Respondent in a claim that considered the validity of a clause relating to overpayment of wages against a promise to pay a higher than normal bonus shortly before the Claimant's resignation, including overlap with excess salary provided in a final salary payment.

## **Jurisdiction**

### **E v Nygard International Partnership**

Conducting a hearing via video link with Canada, including cross examination, to successfully demonstrate that the employment tribunal had jurisdiction to hear a breach of contract case against a Canadian company brought by an employee based in the UK.

### **Yasim v X School and B v D NHS Trust**

Representing a NHS Trust and separately a school, in both cases Joseph successfully had the claims of discrimination struck out on the basis that the Claimants were engaged through student placement pursuant to university courses and therefore the tribunal did not have jurisdiction to hear the claims.

## **Commercial**

Joseph is an experienced practitioner in Commercial and Business Law. He provides practical and accurate solutions and is an accomplished trial advocate, developing key experience in his other complementary area of Employment. His Commercial and Business work focuses on matters of Company and Partnership Law, Insolvency and Trading and Financing, outlined below.

### **Company and Partnership Law**

Joseph's knowledge of Business and Commercial Law complements his Employment practice and he is often instructed in cases involving an overlap between the two, such as matters involving Director disputes, TUPE transfers or civil claims for matters arising out of employment. Examples include:

- Claims to enforce restrictive covenants and/or claim damages following a breach. Cases frequently involve the finance and manufacturing sectors and involve confidential information and trade secrets. Examples of cases include defending an application for damages brought by an accountancy firm against an ex-employee for the use of confidential data used to poach clients and the drafting of an application for an injunction to prevent a football agent from poaching players.
- Disputes between directors and shareholders. Examples include advising an ex-director and sole shareholder as to his



rights over money paid pursuant to a 'loan note' for a company once he was no longer a director or shareholder, and advising the remaining director on methods to control a disruptive ex-director following redundancy.

- Defending an employer from claims of Harassment, Deceit and Negligence brought by their dismissed in-house Counsel.
- Defending a claim by a contractor against an outsourcing company for profits between the outsourcing company and end user, leading to successful strike out following Joseph's drafting of an application.
- Disputes over bonuses, commission, wages, pensions, references and a number of cases involving commission payments relating to agency work.

### **Insolvency and Bankruptcy**

Strengthening his experience in Company Law, Joseph has extensive knowledge of Insolvency Law, having appeared in a wide range of hearings in both the High Court and County Court, including:

- Advising Directors in numerous cases about their rights and those of employees upon the insolvency of companies, including issues such as Director's duties, TUPE obligations and the validity of late remuneration.
- Successfully obtaining High Court Injunctions to prevent the presentation of winding up certificates.
- Applications for a vesting order to enable trustees to realise the sale of a bankrupt's investment property.
- Applications to wind up companies, take carriage of winding up petitions, rescind winding up orders, make bankruptcy orders and annul bankruptcy orders.
- Making and resisting applications to set aside statutory demands.
- Charging and possession order applications, including for an extension of time to register a charge and commercial property.
- Restoring companies to the Register for the purposes of future litigation
- Cases involving an overlap with Joseph's Employment practice, for example those involving TUPE transfers and questions over the implications of employees.

### **Trading and Business Financing**

Joseph's solid grasp of contract and tort law has meant that he frequently appears in commercial trials, covering the full range from small to multi-track, at appellate level and first instance and in consumer contracts and between businesses. Joseph has a particular strength in cases of professional negligence. Examples include:

- Numerous professional negligence disputes, including cases involving legal advice (often overlapping with Joseph's Employment Law expertise), building work, surveyors, architects, tax advisers, vets and even boat repairers.
- Representing national utility companies in a variety of contractual claims, often leading to strike out following summary judgment. This work has included appearances to resist applications for warrants under the Rights of Entry Act 1954.
- Advising a national hair care company on the enforceability of a contract for a 'salon loan' of over £500,000.
- Myriad interim applications, including for summary judgment, the attachment of penal notices to aid enforcement, third party disclosure orders, security for costs, costs applications (including within the tax tribunal *Starmill UK Ltd v Revenue & Customs* [2013] UKFTT 681), appeals and setting aside summary judgments.

## **Articles**

Joseph England analyses the case of *Wicked Vision Ltd v Rice* [2024] EAT 29, in which the EAT re-confirms the Court of Appeal's decision in *Osipov* concerning a claimant's ability to claim for detriments that precede dismissal against a co-worker and against the corporate employer for its vicariously liability even if the losses that flow amount to those that flow from dismissal; and that a Claimant can claim for the detriment of dismissal against a co-worker.

The EAT however departs from the Court of Appeal in asserting that a Claimant is very unlikely to be able to claim for the detriment of dismissal against the corporate employer, having applied scrutiny to the Court's ratio in *Osipov*.

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Joseph England analyses Greasley-Adams v Royal Mail Group Limited [2023] EAT 86 and the EAT's analysis of whether the effect of conduct can amount to harassment when the Claimant is unaware of the conduct at the time.

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[Joseph England](#) analyses the Court of Appeal's analysis in Arvunescu that considers what wording is needed to settle a claim not yet issued.

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In a change of law taking effect in July, nurses, occupational therapists, pharmacists (working in hospitals and GP practices) and physiotherapists will be able to provide fit notes, in addition to GPs.

[View Article](#)

*Allay (UK) Limited v Gehlen*

[Joseph England](#) reviews the case of *Allay (UK) Limited v Gehlen* in which the employer used s.109(4) Equality Act 2010 as a statutory defence.

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Joseph England, who last year authored a book on whistleblowing, provides an article examining the Court of Appeal's judgment on the case of Simpson v Cantor Fitzgerald Europe.

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Joseph England reviews the case of Ikejiaku v British Institute of Technology Ltd [2020] UKEAT 0243\_19\_0705. Joseph outlines the importance of analysing whistleblowing and other detriments in order to identify whether they are a one off act or a continuing act

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Supreme Court: A Judge, even though not a worker, can rely on whistleblowing protection in a boost for the application of EU rights to domestic law: 3PB's employment law barrister Joseph England analyses the case of Gilham v Ministry of Justice [2019] UKSC 44

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3PB's employment law barrister Joseph England analyses whistleblowing case Dray Simpson v Cantor Fitzgerald.

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Joseph England publishes new book on NHS Whistleblowing and the Law  
3PB is pleased to announce that employment barrister Joseph England has published a practitioners' handbook for whistleblowing cases, focusing on the NHS.

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Race discrimination - 'Coconut' - Joseph England considers recent analysis of comparators and striking out

In *Walters v Avanta Enterprise Limited* [2017] UKEAT 0127\_17\_2112 (December 2017), Slade J in the Employment Appeal Tribunal considered a case in which the Claimant argued that being labelled a 'coconut' (i.e. being black on the outside, white on the inside) demonstrated a racially discriminatory motivation but her claim was struck out as having no reasonable prospect of success. The case examines how to correctly construct a comparator and also repeats the trite warning against striking out cases too readily at preliminary hearings. Joseph England appeared pro bono for the Appellant at the EAT for the r.3(10) stage, successfully obtaining permission to appeal and drafting the grounds of appeal that succeeded before Slade J.

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Joe England considers the latest guidance provided by the Court of Appeal on 'unreasonableness' in relation to costs applications in the Small Claims Court, including the extent to which it could apply in Employment Tribunals. The analysis focuses on last month's case of *Dammermann v Lanyon Bowdler LLP* [2017] EWCA Civ 269.

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3PB Employment barrister Joseph England examines the decision reached by the Court of Appeal in *Day v Health Education England & Ors.* [2017] EWCA Civ 329, where the Court of Appeal held that a junior doctor can rely on 'whistleblowing' protection against Health Education England despite a separate employment relationship with an NHS Trust, bolstering protection for 54,000 junior doctors and agency workers nationwide.

To read Joseph's article, please on the link below. This article originally appeared in the ELA Briefing publication July 2017.

Joseph was Counsel for the Claimant in *McTigue v University Hospital Bristol NHS Trust* [2016] ICR 1156, a case also concerning protection for whistleblowers and on which the Court of Appeal based their judgment in *Day*. Further details about *McTigue* can be found [here](#)

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## Articles

'Unreasonableness': costs applications in the Small Claims Court by Joe England. In what circumstance should a Court determine that a Party to proceedings has behaved unreasonably, for the purpose of awarding Costs in small claims court?

Joe England analyses the important decision from The Court of Appeal in *Dammermann v Lanyon Bowdler LLP* [2017] EWCA Civ 269, which provides guidance on the meaning of 'unreasonableness', in the context of costs applications in the Small Claims Court, and more general guidance on when costs on that track should be awarded.

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Commercial update: 'Avoided loss' in the Supreme Court - *Lowick Rose v. Swynson* - an analysis by Joe England. When can a claimant ask the Court to disregard a 'collateral' benefit, when assessing his damages? If he cannot, can he claim for a loss that has been suffered by somebody else?

Joe England analyses the important Supreme Court decision in *Lowick Rose LLP (in liquidation) v. Swynson Ltd* [2017] UKSC 32, which grappled with these recurring problems in the assessment of damages.

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