



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.

Prior to coming to the Bar, Joseph gained employment as a Court Clerk in a busy London County Court. He clerked for all levels of the judiciary, ranging from High Court Judges to Deputy District Judges and this provided a unique insight into the workings of the court and the reasons behind Judges' decisions. His strong abilities as an advocate are reflected in his academic and other achievements.

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.

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

"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.

He currently undertakes pro bono cases through the Bar Pro Bono Unit and is an active participant of the ELAAS scheme at the EAT and Court of Appeal. He is also particularly interested in projects involving education and is the regional co-ordinator for the Inner London round of the Citizenship Foundation Bar Mock Trial Competition and as an Advocacy Coach has led a school to the national final. He further provides mentoring through various schemes, 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
- Working Party, Citizenship Foundation Bar Mock Trial Competition

Professional bodies

- Employment Law Association (ELA)
- Employment Law Bar Association (ELBA)
- London Common Law and Commercial Bar Association (LCLCBA)
- Commercial Bar Association

Direct Access

Joseph England is qualified to accept instructions directly from members of the public and professional clients under the Direct Public Access scheme.

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 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 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](#).

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, examining the scope of protection under the extended definition of worker. Representing the forensic nurse, the appeal successfully expanded the definition of worker. 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. She claims to have suffered detriments caused by the Trust but the Trust had tried to claim that she was not protected by the legislation. [Please click here](#) for more details.

B v D NHS Trust

Instructed by the Trust, this ongoing case considers whether a Claimant was dismissed from his position as a bank worker at the Trust because of PIDs he made whilst undertaking a student placement at the Hospital.

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, and claimed that his dismissal was caused as a result of these PIDs. 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.

W v Ashcourt Rowan Asset Management

Joseph represented the Claimant, who was employed as the Head of Intermediary Sales for the Respondent, a large financial services provider. 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 the production of 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 external regulator, the FCA.

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 School

Representing the Claimant who had raised concerns about paedophilic interest shown by a fellow teacher to students in a highly prestigious private school. The case was settled upon confidential terms.

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.

Discrimination

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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.

Restrictive Covenants and Employee Competition

Joseph has appeared and advised in a number of cases in this area, often leading to settlement. Earlier this year, he defended an application for damages brought by an employer against their ex-employee following the use of confidential company information used to poach clients.

Unfair Dismissal

Pennine Care NHS Foundation Trust v Mundangepufpu ([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)

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AI 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

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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.

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.

C v P

Representing a national warehouse operative in a judicial mediation, this claim involved extremely stark examples of race discrimination, including swastikas and death threats. Settlement was achieved, including confidentiality.

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.

Publications

Joseph England analyses whistleblowing case *Dray Simpson v Cantor Fitzgerald*.

[View Publication](#)

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.

[View Publication](#)

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.

[View Publication](#)

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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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 TUPE transfers or County and High Court claims for matters arising out of employment. Examples include:

- Claims to enforce restrictive covenants and/or claim damages following a breach
- 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:

- 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 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.
- 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, appeals and setting aside summary judgments.

Publications

'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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