



# Mathew Gullick KC

**Year of Call:** 2003

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## Overview

Mathew Gullick KC is an experienced High Court and appellate advocate. He has appeared in more than 30 substantive appeals in the Court of Appeal and the UK Supreme Court, most recently in the leading holiday pay case of **Harpur Trust v Brazel [2022] UKSC 21, [2022] ICR 1380**. He has also had significant involvement in highly complex and long-running matters, including Public Inquiry and Group Litigation experience.

Mathew's practice is focused on public law and employment, but he is also instructed both on costs issues and on procedural points across the entire spectrum of civil litigation. Additionally, he undertakes asset forfeiture work (including on human rights issues) and is a contributor to one of the leading practitioner textbooks in the field. As well as appearing in Courts and Tribunals, he also acts as a representative in mediations.

Prior to taking Silk in March 2021, Mathew was for 13 years a member of the Attorney-General's panels of junior Counsel to the Crown in civil matters, including five years on the London A Panel. From July 2015 to November 2018, he was part of the Counsel team instructed by the UK Government in the Kenyan Emergency Group Litigation (KEGL), in which more than 40,000 individuals unsuccessfully brought claims in the High Court arising from their experiences during the 'Mau Mau' Emergency in the 1950s. The KEGL was one of the longest-running trials in English legal history, sitting in court for 230 days between the start of the trial in May 2016 and its conclusion in November 2018. The case involved wide-ranging and complex issues including in relation to jurisdiction, limitation, constitutional law, tort (negligence, vicarious liability and common design), evidence and civil procedure.

From January to December 2020, he was instructed by Ofsted on several of the Investigations conducted by the Independent Inquiry into Child Sexual Abuse (IICSA), including those into Child Sexual Exploitation by Organised Networks and into Effective Leadership of Child Protection in which Ofsted was a Core Participant.

Mathew appears in the Court of Appeal, the Administrative Court and the Upper Tribunal on a wide range of public law matters. In the employment context, he acts for both claimants and respondents (public, private and third sector) across the field of employment law in the Employment Tribunals and the courts. More generally, he has extensive experience of advising and appearing on jurisdictional and procedural issues, including in relation to many of the more obscure provisions of procedural legislation and rules. Several of his cases are cited as precedents in the leading textbooks on civil procedure.

Mathew is also instructed on costs issues in all types of civil litigation. He has been instructed on numerous high value costs matters, including multi-million pound costs claims in group litigation. He has twice been instructed, as specialist costs Counsel, to make post-judgment written submissions on costs to the UK Supreme Court and has also conducted two multi-day detailed assessments of costs in the UK Supreme Court. Mathew's work in this field has included both King's Bench and Chancery matters as well as Tribunal proceedings. His costs practice has also, for example, seen him successfully making and opposing applications for protective costs orders in the Administrative Court, and successfully opposing applications for non-party costs orders against legal expenses insurers.

Mathew has been nominated for the Bar Pro Bono Award three times, on the second occasion receiving a special commendation from the judging panel. Outside the courtroom, he has represented the Bar of England & Wales at four Lawyers' Cricket World Cups (2007–2016).

#### **Reported Cases Include:**

**Harpur Trust v Brazel** [2022] UKSC 21, [2022] ICR 1380 – workers on permanent contracts who perform work for only part of the year (e.g. during academic terms) are entitled to the full 5.6 weeks' paid holiday under the Working Time Regulations 1998, which cannot be reduced on a pro-rata basis.

**SC (paras A398–399D: 'foreign criminal': procedure)** [2020] UKUT 187 (IAC), [2020] Imm AR 1121 – approach to human rights claim raised in response to deportation decision by foreign national whose criminal offence was committed abroad.

**R (on the application of Jalloh) v Secretary of State for the Home Department** [2020] UKSC 4, [2021] AC 262 – a requirement to abide by an overnight home curfew, enforced by electronic tagging, constituted an imprisonment of the claimant for the purpose of the tort of false imprisonment.

**R (on the applications of Nealon and Hallam) v Secretary of State for Justice** [2019] UKSC 2, [2020] AC 279 – Article 6.2 ECHR not applicable to decisions to refuse award under statutory compensation scheme for miscarriages of justice; scheme would not breach Article 6.2 even if applicable.

**Kimathi & Others v Foreign and Commonwealth Office** [2017] EWHC 3379 (QB), [2018] 4 WLR 48 – Article 9 of the Bill of Rights prevents reports of Parliamentary debates being used as evidence of the truth of the extraneous facts referred to by Members of Parliament in those debates.

**Mahmud (s.85 NIAA 2002 - 'new matters')** [2017] UKUT 488 (IAC), [2018] Imm AR 264 – a decision of the Upper Tribunal which gives guidance on the correct approach to considering a 'new matter' in statutory appeals, under s.85 of the Nationality, Immigration and Asylum Act 2002 (as amended).

**Kimathi & Others v Foreign and Commonwealth Office** [2016] EWHC 3005 (QB), [2017] 1 WLR 1081 – CPR 3.9 could not be used to validate a claim which was a nullity because the claimant was dead when the claim was brought in his name.

#### **Publications**

Contributor to "Millington and Sutherland Williams on the Proceeds of Crime" (Fourth Edition, 2013, Fifth Edition, 2018, and Sixth Edition 2023) (Oxford University Press)

"Recusal of Judges in Civil Litigation", Thomson Reuters Practical Law, February 2022

"Corner House Revisited: The Law Governing Protective Costs Orders", Judicial Review March 2009, [2009] JR 43

"Cutting Back on Custody", New Law Journal 11th February 2005, (2005) 155 NLJ 220

"The Criminal Justice Act 2003: Sentencing and Early Release of Fixed-Term Prisoners", Criminal Law Review August 2004, [2004] Crim LR 653

"Political Donations and Political Expenditure by Companies: The Authorisation and Disclosure Requirements of the Companies Act 1985", Business Law Review March 2003, (2003) 24 Bus LR 48

"Sentencing and the Home Detention Curfew Scheme", Criminal Law Review May 2002, [2002] Crim LR 391

Mathew also assisted with the Third Edition (2004), Fourth Edition (2006) and Fifth Edition (2009) of "Understanding the Law" by His Honour Geoffrey Rivlin QC (Oxford University Press)

## **Employment and discrimination**

Mathew Gullick KC advises on and appears in a wide range of employment related matters. He acts for both Claimants and

Respondents (private, public and third sector) across the range of employment areas, including unfair dismissal, constructive dismissal, wrongful dismissal, all types of discrimination, TUPE, equal pay, restrictive covenants, public interest disclosure, pensions, breach of contract and unlawful deductions from wages (including the non-payment of bonuses).

He is an experienced appellate advocate, appearing for Mrs Brazel in the UK Supreme Court in the leading holiday pay case of **Harpur Trust v Brazel [2022] UKSC 21 [2022] ICR 1380**, regarding the statutory paid holiday entitlement of "part-year" workers on permanent contracts. In addition to appearances in the Employment Appeal Tribunal, he has also appeared in the Court of Appeal in **Sanders v Newham Sixth Form College [2014] EWCA Civ 734**, in which the Court clarified the correct approach to analysing claims of discrimination by failing to make reasonable adjustments for disabled persons.

Mathew Gullick KC's employment practice also extends to advising on and appearing in High Court employment matters. He has been involved in several cases involving substantial six-figure damages claims, including for non-payment of bonuses and commission, wrongful dismissal and breach of a compromise agreement. He has also advised both employers and employees on contractual issues relating to remuneration packages, including benefits such as private health insurance.

Notable cases at first instance have included:

A direct age discrimination claim (acting for the successful Claimant) where the Tribunal found that the Respondent had made the Claimant redundant as part of a management restructure just before his 50th birthday in order to avoid paying a lump sum into the pension fund which would have been necessary in the event he had been made redundant after reaching the age of 50 (which would have enabled him to access his pension early). No consideration had been given to the case for delaying the Claimant's redundancy for a transitional period to oversee work in progress, as had been done with other employees affected by the restructure; the Tribunal found that had this been done then the Claimant would have been made redundant after his 50th birthday and so would have received his retirement pension early. It rejected the Respondent's alternative defence of justification and also found that the Claimant had been unfairly dismissed.

Acting for the successful Claimant, a former Executive Director of an NHS Trust with 25 years' unblemished service who had been summarily dismissed for gross misconduct for alleged misuse of the work email system. The dismissal took effect two weeks before the expiry of an existing redundancy notice period whereupon the Claimant would have received a substantial redundancy payment. The Tribunal found that the dismissal was both unfair and wrongful, concluding that no reasonable employer would have imposed anything more than a written warning and that the Respondent had failed to establish that the Claimant was guilty of gross misconduct. It further upheld the Claimant's claim of disability discrimination arising from the Respondent's failure to postpone the disciplinary hearing at which he was dismissed.

Acting for the Respondent at a preliminary hearing in a claim concerning whether or not the provisions of the Civil Service Pension Scheme were discriminatory on the ground of disability – a deposit order was made and the claim subsequently struck out.

A three-day preliminary hearing on whether a carer funded by direct payments was an employee of the disabled persons cared for (but who did not have capacity to contract), their relatives who had day to day control of the employment relationship, the charity which administered the contracts, or the local authority with statutory responsibility for the provision of the care and which provided the funding.

Representing the defendant employer in Court proceedings brought by the employee to enforce payment under a purported compromise agreement which had been sent to the employee pre-signed but with the wrong figure for compensation inserted in error, which was three times higher than had previously been offered to the Claimant in writing. The Court found that the Defendant had orally withdrawn the offer to settle for the erroneous figure prior to the agreement being signed by the Claimant, and that in any event even if that withdrawal had not been effective then the agreement would have been void for mistake.

## Articles

Mathew Gullick KC analyses the implications of the Supreme Court's decision in the case of Agnew. In particular, in its overruling of the EAT decision in Bear Scotland, the judgment provides helpful clarity and guidance on what amounts to a "series" of deductions from wages, a question of fact to be determined in the circumstances of each particular case.

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The counsel team for Mrs Brazel in the much publicised Harpur Trust v Brazel case, [Mathew Gullick KC](#), [Lachlan Wilson](#) and [Naomi Webber](#) reflect on the recent Government consultation paper looking at holiday pay for part-year workers.

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Specialist employment law barrister [Mathew Gullick QC](#) analyses the UK Supreme Court's judgment of 19 March 2021, which completed many years of litigation over the issue of whether "sleep-in" workers were entitled to be paid the National Minimum Wage (NMW) during the whole of the periods when they were required to be at work but were permitted to be asleep.

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High Court rules employer had to pay settlement even after ex-employee breached confidentiality clause - Duchy Farm Kennels Ltd v Steels

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## Academic qualifications

- MA (Oxon)
- Dip Law (City)

## Scholarships

- Mould Senior Scholarship (Gray's Inn, 2003)
- Phillips Senior Award (Gray's Inn, 2003)
- Birkenhead Junior Award (Gray's Inn, 2002)
- The Lee Essay Prize (Gray's Inn, 2003)
- First Prize, The Graham Turnbull Memorial International Human Rights Essay Competition (Law Society, 2003)
- First Prize, The Times Law Awards (2002)
- The City University Prize for Public Law (2002)

## Professional qualifications & appointments

- Deputy High Court Judge, King's Bench Division
- Additional Judge of the Employment Appeal Tribunal and of the Upper Tribunal, Immigration and Asylum Chamber
- Deputy Judge of the Upper Tribunal, Administrative Appeals Chamber
- Recorder

## Professional bodies

- Constitutional and Administrative Law Bar Association (ALBA)
- Employment Law Bar Association (ELBA)
- Employment Lawyers Association (ELA)
- London Common Law and Commercial Bar Association (LCLCBA)

- Proceeds of Crime Lawyers Association (POCLA)