



James Williams

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## James Williams

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James practices in three core areas: product liability and group actions; the law of the workplace, including both employment and health & safety; and general commercial law.

Recent high-profile instructions include: acting for GSK in the Seroxat product liability group litigation, listed by *The Lawyer* magazine as one of its top 20 cases for 2019; being instructed throughout the *Cape v Dring* litigation concerning non-party access to documents used in court, which reached the Supreme Court in February 2019; and acting as sole counsel for the claimant in *King v Sash Window Workshop*, the landmark 2017 ECJ decision on holiday pay and workers' rights.

After qualifying as a solicitor in 2008, James spent two years as an associate in the corporate group at Slaughter and May. He is committed to giving practical advice and resolving disputes as quickly and cost-effectively as possible. James will always consider accepting pro bono instructions, particularly in employment disputes.

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## Product Liability & Group Actions

From May 2018 James was instructed on behalf of GSK in the long-running Seroxat group litigation. The claimants alleged that the SSRI prescription anti-depressant Seroxat (or paroxetine) is defective within the meaning of the Consumer Protection Act 1987. Listed for a three-month trial in the summer of 2019, the court made an early ruling on the scope of the action in GSK's favour which led the trial to be vacated. The Claimants unsuccessfully appealed to the Court of Appeal. When the case returned to the High Court in May 2020, the claims were dismissed and GSK awarded indemnity costs.

James was part of the team acting for the defendant in *Concept 70 v Cape Intermediate Holdings* in early 2017. The case concerned liabilities for historic asbestos exposure: the former employers of workers suffering from

mesothelioma sought (through their insurers) a contribution from Cape under the Civil Liability (Contribution) Act 1978 towards settlement sums paid out. The case settled after the conclusion of a six-week trial in the Queen's Bench Division in February 2017.

James was subsequently instructed throughout the ongoing *Cape v Dring* litigation concerning non-party access to documents used at the trial. This reached the Supreme Court in February 2019 and is now the leading case on the extent to which non-parties can access documents generated or used in litigation.

Also in the field of industrial disease, James was instructed as junior by the Department of Business, Energy and Industrial Strategy (as successor to the liabilities of the National Coal Board) in the British Coal Coke Oven Workers Litigation under a GLO, which reached trial in the summer of 2018. He is still instructed by DBEIS in individual legacy cases in connection with the British Coal Respiratory Disease Litigation.

James was instructed by Smith & Nephew, the medical equipment manufacturers, in the early stages of the recent metal-on-metal hip replacement litigation. He has also acted, both led and as sole counsel, on a range of inquests and/or disputes over allegedly defective goods including domestic appliances, fertilizers, perfume, cement products, cars, children's cribs and vehicle components.

Whilst a C Panellist, James was involved in several multi-claimant actions for the Ministry of Defence. He also assisted with some of the complex costs issues following the dismissal of the claims by the British Nuclear Test Veterans in the Supreme Court in 2014.

Representative recent cases include:

- *The Seroxat Litigation* in the QBD [2019] EWHC 337 (QB) and [2019] EWHC 1167 (QB); in the Court of Appeal [2019] EWCA Civ 1924; and in the QBD again [2020] EWHC 1766 (QB), [2020] Costs LR 795
- *Concept 70 v Cape Intermediate Holdings* (settled after trial in the QBD, but before judgment, in 2017)
- *Dring v Cape Intermediate Holdings Ltd* at all levels including the Court of Appeal [2018] EWCA Civ 1795, [2019] 1 WLR 479; the Supreme Court [2020] AC 629; and following remission in the QBD [2020] EWHC 1973
- *The British Coal Coke Oven Workers Litigation* [2018] EWHC 2009 (QB), [2018] All ER (D) 29 (Aug)

## Representative Cases

- *Concept 70 v Cape Intermediate Holdings*
- *Cape Intermediate Holdings Ltd v Dring (for and on behalf of the Asbestos Victims Support Groups Forum)* [2018] EWCA Civ 1795
- *The British Coal Coke Oven Workers Litigation* [2018] EWHC 2009 (QB)

- *The Metal-on-Metal Hip Litigation*

## Employment

James has wide experience of all aspects of both statutory and common law employment work including employment status, unfair dismissal, TUPE, discrimination, redundancy and whistleblowing. He appears frequently in the Employment Tribunal and EAT and advises both employers and claimants. He is also experienced in litigation and injunction applications in the civil courts involving employee competition, confidential information, wrongful dismissal and restrictive covenants.

James has a particular interest in working time and acted as sole counsel for the claimant throughout one of the most significant cases on holiday pay to reach the ECJ in recent years: *King v Sash Window Workshop Ltd* C-214/16. The case is particularly relevant to the growing number of cases where the worker (like Mr King) is miscategorised during the employment relationship as self-employed and thus not paid any holiday pay. The case was described as a “bombshell judgment” and is of fundamental importance to workers’ rights in the gig economy. The matter settled in November 2018 shortly before it was due to return to the Court of Appeal.

As at the autumn of 2020 James was acting for two claimants in a major discrimination, whistleblowing and equal pay claim against a leading national mortgage broker; for the respondents in the long-running *Akhigbe* case which has so far involved four separate Employment Tribunal claims and two full appeals in the EAT; and a number of ongoing cases in the ET, with a particular focus on holiday pay and employment status.

Helped by his experience in group actions involving personal injury and industrial disease, James is also familiar with the law of employer’s liability, health and safety and workplace injury claims. His commercial background means he is also happy to advise in employment disputes with a commercial dimension such as unfair prejudice claims.

Representative cases in the EAT and above include:

- *Hospital Medical Group v Westwood* [2012] EWCA Civ 1005, [2013] ICR 415, CA (as junior to Patrick Green QC) – worker status
- *Bal v Parallel Realisations 1 Ltd* (in admin) (2012) UKEAT/0215/12, [2013] All ER (D) 34 (Jan) – ET procedure (review of decision following fresh evidence) and TUPE
- *Pan v Portigon AG London Branch* (2013) UKEAT/0116/12, [2013] All ER (D) 53 (Sep) (as junior to Patrick Green QC) – race discrimination, constructive unfair dismissal and ET procedure
- *Sash Window Workshop v King* [2015] IRLR 348 (EAT), and in the ECJ *King v SWWL* [2018] 2 CMLR 223, [2018] IRLR 142, [2018] ICR 693, (2017) Times, 26 December, [2017] All ER (D) 213 (Nov) – working time, payments in lieu and damages in discrimination claims
- *T-Systems Ltd v Lewis* (2015) UKEAT/0042/15 – disability discrimination under s.15 of the Equality Act 2010 and the duty to make reasonable adjustments
- *Akhigbe v Berkeley Homes (Urban Renaissance) Ltd* (2019) UKEAT/0005/18 – striking out and whistleblowing
- *Akhigbe v St Edward Homes Ltd* (2019) UKEAT/0110/18, [2019] ICR D6 – abuse of process and early conciliation procedures

## Representative Cases

- *Sash Window Workshop v King* [2015] IRLR 348 and in the ECJ *King v SWWL* [2018] 2 CMLR 223, [2018] ICR 693  
The case returns to the Court of Appeal in November 2018. James has acted for Mr King (as sole counsel at every stage) in an important case concerning working time and the entitlement to a payment in lieu on termination for accrued but untaken holiday. The case also considered whether the 10% uplift in PI damages mandated by *Simmons v Castle* applies in the Employment Tribunal.
- *Vaughan v Ministry of Defence* [2015] EWHC 1404 (QB)  
James appeared as junior to Malcolm Sheehan QC for the MoD, the successful defendant, in *Vaughan v Ministry of Defence* [2015] EWHC 1404 (QB), [2015] All ER (D) 207 (May), a decision concerning the limits of an employer's liability for personal injury in the context of off-duty service personnel.
- *T-Systems Ltd v Lewis* (2015) UKEAT/0042/15  
Acted as sole counsel on behalf of the appellant employer in a case concerning the proper approach to the phrase "something arising in consequence of [her] disability" in s.15 of the Equality Act 2010 and its relationship with the duty to make reasonable adjustments.
- *Pan v Portigon AG London Branch* (2013) UKEAT/0116/12/LA, [2013] All ER (D) 53 (Sep)  
Appeared (as junior to Patrick Green QC) in the EAT on behalf of the appellant in a race discrimination and constructive unfair dismissal case. The appeal was mainly concerned with the "Burns – Barke process" and related points of ET procedure.
- *Hospital Medical Group v Westwood* [2012] EWCA Civ 1005, [2013] ICR 415  
Appeared (as junior to Patrick Green QC) in the Court of Appeal on behalf of the appellant. The decision was for a while the leading case on the meaning of "worker" for the purposes of s.230 of the ERA 1996 and reg 2 of the WTR 1998.
- *Bal v Parallel Realisations 1 Ltd (in admin)* (2012) UKEAT/0215/12/DM, [2013] All ER (D) 34 (Jan)  
Appeared as sole counsel on behalf of the successful appellant against the ET's refusal to allow a review of its original decision on remedy (on the basis of relevant evidence of a TUPE transfer coming to light after the original hearing).

## Company, Commercial & Insolvency

James has a broad and growing commercial practice. He was recently instructed by a Jersey-based fund in a major arbitration under LCIA Rules over its refusal to pay out to an investor associated with various alleged frauds in different European jurisdictions.

His background as a City solicitor enables James to advise on all aspects of company law. Whilst an associate at Slaughter and May he worked in the corporate / insurance group on a range of transactions, including the

creation of the Asset Protection Scheme by HM Treasury to deal with the UK banking crisis in 2009, and Prudential PLC's proposed rights issue and \$36bn bid in 2010 for the AIA insurance group. He also gained experience of commercial agreements, regulatory, outsourcing, insurance and IT issues.

Between 2014 and 2016 James undertook a part-time secondment at HSBC, assisting with the FCA-led Review of mis-sold interest-rate hedging products and the assessment of consequential loss claims by HSBC customers.

Representative recent cases and advisory work include:

- Advising an AIM-listed company about its liability for brokers' commission payments following a successful placing.
- Appearing in the Chancery Division (on behalf of a creditor with the benefit of a retention of title clause) in resisting an application by the administrators of a digital media company for an order under paragraph 72 of schedule B1 to the Insolvency Act 1986 to dispose of an asset.
- Acting for a major bus operator in a dispute with a software supplier over the performance of an IT system designed to reduce fuel consumption and emissions.
- Advising on an unfair prejudice petition (and parallel Employment Tribunal proceedings) for a co-owner of a business forced out by his fellow directors.
- Acting for the MoD in relation to a commercial claim over the condition and description of two former RFA vessels sold for scrap.
- Appearing in the TCC on behalf of the successful applicant in *AMP v Persons Unknown* [2011] EWHC 3454 (TCC), [2012] All ER (D) 178 (Jan), believed to be the first case to use an injunction to restrain file-sharing through BitTorrent technology.
- Advising an English local authority on the viability of financial derivative / swap transactions in the light of the Localism Act 2011.
- Acting for the finance company of an agricultural vehicle manufacturer over the enforcement of personal guarantees from the directors of its insolvent counterparty.
- Acting for a former CEO of a company in an AIM-listed group in his claim for unpaid wages and a 10% equity stake.

## Health & Safety and Inquests

James has considerable experience of acting for interested persons at inquests. He has undertaken several long jury inquests in relation to deaths in custody, usually acting for the Ministry of Justice or prison healthcare providers.

He also has experience of defending HSE prosecutions. He has advised on HSE investigations and proposed fines, and acts for defendants at sentencing hearings.

Recent concluded instructions include:

- Acting for the Ministry of Justice at the inquest into the suicide of a prisoner at HMP New Hall.
- Acting for Virgin Healthcare, the outsourced healthcare provider, in an inquest into the death of a prisoner at HMP Coldingley.
- Representing the Ministry of Justice in an inquest into the suicide of a prisoner at HMP Northumberland.

- Acting for a catering company defending an HSE prosecution after a sub-contractor exposed asbestos in a school canteen.
- Acting for a national cinema chain in relation to the death of a teenager from an allergic reaction after eating popcorn.

## Industrial disease and personal injury

In addition to the group actions listed above, James also acts in unitary personal injury claims, mostly for defendants. His experience in the Cape litigation, the British Coal Coke Oven Workers Litigation and the British Coal Respiratory Disease Litigation has given him particular experience in asbestos-related and other respiratory disease claims.

James has acted on a wide range of government personal injury cases ranging from prison assault claims to NIHL cases, mostly for the MoD and MoJ.

Representative recent cases (excluding those mentioned above) include:

- *Vaughan v Ministry of Defence* [2015] EWHC 1404 (QB), [2015] All ER (D) 207 (May) (as junior to Malcolm Sheehan QC) – employer’s liability to off-duty service personnel
- *Faulkner v SoS for Business, Innovation and Industrial Strategy* [2020] EWHC 296 (QB), [2020] 1 WLR 2906, [2020] Costs LR 221 – QOCS and set-off of costs orders

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## Appointments

- Qualified as a solicitor in February 2008
- Associate in Corporate group at Slaughter and May, 2008-10
- Judicial Assistant, Court of Appeal, 2010
- Junior Counsel to the Crown (C panel), 2014-19

## Memberships

- Employment Law Bar Association (ELBA)
- Employment Lawyers Association (ELA)
- The Commercial Bar Association (COMBAR)
- Personal Injuries Bar Association (PIBA)
- Health and Safety Lawyers’ Association (HSLA)

## Education

- Christ’s College, Cambridge 2000-03 (MA History, 1st class)
- BPP Law School, 2003-05 (GDL 2004; LPC 2005)