



Jonathan Lewis

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Jonathan Lewis

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Jonathan Lewis has a broad commercial and public law practice. His public law practice encompasses a variety of statutory appeals, claims under the Human Rights Act 1998 and a range of different judicial review claims, including regulatory, financial and immigration. He appears regularly in the Administrative Court and Upper Tribunal. Jonathan is on the Attorney General's "B" Panel of counsel.

Jonathan's commercial practice primarily covers contractual disputes in a variety of different industry sectors. He also acts in matters involving an array of regulatory issues arising out of the Financial Services and Markets Act 2000 and the Consumer Credit Act 1974. He additionally advises on non-contentious matters and provides drafting assistance.

Jonathan is developing his product liability practice and is currently instructed in two group actions.

Jonathan qualified as a solicitor at Slaughter and May before working at the Court of Appeal for two years, where he had oversight of most public law appeals. He joined chambers in 2008 and has brought this varied professional experience to his practice at the Bar.

Jonathan has developed a broad client base. He is pro-active and believes in working closely with those instructing him throughout the course of litigation and is always available to discuss any issues that arise.

Jonathan has published widely in leading academic and practitioner journals, particularly in the area of public law and human rights and consumer credit.

Public Law (Judicial Review, Administrative, Procurement and Immigration)

Jonathan has substantial experience across a broad spectrum of public law work. Recent work has included:

Public Law – Judicial Review

- Advising and formulating a judicial review claim brought against the Secretary of State for Transport for failing to comply with the terms of an agreement to investigate various complaints.

- Advising and formulating a judicial review claim brought against a local health authority in respect of its failure to follow processes in abandoning a contract (including legitimate expectations).
- Representing the HSE in a substantial judicial review concerning the interpretation of a number of EU directives.
- Representing (led by Toby-Riley Smith Q.C.) a manufacturer of tumble dryers in a judicial review brought the Consumer' Association against the enforcement authority's conduct.
- Advising and settling pleadings in public law challenges to decisions of the Health and Safety Executive.
- Advising and acting in a variety of claims brought under the Human Rights Act 1998.
- Representing the Attorney General in the Divisional Court in applications for civil proceedings orders.
- Acting in a variety of prisoner claims in which challenges were made to application of prison rules (such as Rule 39 claims)
- Acting in a War Pensions Appeal before the Upper Tribunal.

Procurement

- Representing (led by Rhodri Williams QC) a county council against a multi-faceted challenge to an award of a complex services contract (raising issues such as abnormally low bids and manifest errors).
- Representing (led by Rhodri Williams QC) an NHS trust in a defence of a claim that a contract award contained numerous manifest errors.

Immigration

Jonathan has a busy immigration practice, advising and acting a wide variety of matters. He appears regularly in the Upper Tribunal and Administrative Court in immigration judicial review challenges, dealing with issues such as:

- Fresh claims under paragraph 353.
- Certification under s.94 (unfounded claims).
- Issues arising out the EEA Regulations 2006 & 2016
- Certification under s.94B (of human rights claims).
- Issues arising out of article 8 ECHR (outside the rules, rule 276ADE and Appendix FM)
- General issues relating to the application of the rules in respect of Tier 2 and Tier 4 visas.
- Cases dealing with *Alvi / Munir*
- Certification under s.96 (late claims).
- Issues relating to the Dublin returns.
- S. 55 of the Borders, Citizenship and Immigration Act 2009 cases.
- Challenges to automatic deportation.
- A case concerning the application of the principle of *res judicata* and the presumption against retrospective legislation

Jonathan also advises and acts in a number of unlawful detention challenges (dealing with a wide range of issues, such as the EEA Regulations 2006/2016; *Hardial Singh* issues; articles 4 & 5 ECHR).

He also deals with the following statutory appeals:

- Appeals against the imposition of civil penalties for clandestine entrants under the Immigration and Asylum Act 1999.
- Appeals against the imposition of civil penalties for employing illegal workers under the Immigration,

Asylum and Nationality Act 2006

Representative Cases

- *Chiltern Farm Chemicals Ltd, R (on the application of) v The Health and Safety Executive* [2018] EWCA Civ 271; [2018] 1 WLR 3144
- *DP v Secretary of State for Defence (WP)* [2017] UKUT 434 (AAC)
A war pensions appeal concerning the approach to be taken by the FTT when reducing an award.
- *Attorney General v Vaidya* [2017] EWHC 2152 (Admin)
One of the first cases in which the AG has been awarded costs.
- *Alexander v Her Majesty's Attorney General (Divisional Court)* [2016] EWHC 2726 (Admin)
Civil restraint orders.
- *R (Kalu) v SSHD* [2018] EWHC 1802 (Admin) (costs issues).
- *R (Heritage) v SSHD and First-tier Tribunal* [2014] UKUT 00441 (IAC)
Article 8 challenge and Zambrano issues.
- *R (Kakar) v SSHD* [2014] EWHC 2093 (Admin)
- *R (OO) v SSHD* [2014] EWHC 1485 (Admin)
Challenge to SSHD's decision to grant only 30 months leave to children under 2009 policy.
- *R (Xu) v SSHD IJR* [2014] UKUT 00375 (IAC):
Dealing with legacy cases and the *Geraldo* case law.
- *R (Adebayo) v SSHD* [2015] EWHC 787 (Admin)
- *R(WU) v SSHD* [2016] EWHC 1163 (Admin).

Commercial

Jonathan acts in a wide variety of commercial matters, offering early practical and tactical advice, settling pleadings, assisting in the drafting of witness statements and appearing at trial. He also carries out non-contentious transactional work by assisting in the negotiation and drafting of commercial documents. Examples of his work include:

- Led by Prashant Popat Q.C. and Toby Riley Smith Q.C. in defending claims arising from terrorist attack at oil facility in Algeria (*John and ors v BP Plc & ors* (2018))
- Advising on the interpretation of contracts (for example as to whether certain terms can be implied in an insurance contract and IT licensing agreement).
- Advising in cases under the Consumer Rights Act 2015, Sale of Goods Act 1979 and Supply of Goods and Services Act 1982.

- Advising as to whether various breaches of an international supply agreement amounted to a repudiatory breach of contract.
- Advising and acting in applications for Norwich Pharmacal orders (appearing urgently in the Chancery Division to obtain such an order against a number of parties in an active fraud claim).
- Advising a claims management company as to whether a term used in a number of insurance policies was unfair.
- Drafting standard terms and conditions for a large PLC selling equipment nationally.
- Advising as to the drafting of complex financing agreements involving a security trustee.
- Acting in a trial concerning the interpretation of various telecommunications contracts.
- Applications for specific disclosure.
- Acting and advising in a variety of building disputes.
- Acting in a variety of retail disputes and assisting in the drafting of a variety of agreements between suppliers and retailers.
- Advising as to validity of guarantees in international transactions.
- Acting in a variety of misrepresentation claims.
- Instructed in a civil fraud claim involving the alleged laundering of cash through a third party (involving expert forensic accountant evidence).

Representative Cases

- *Pontearso v Greenlands Trading* (Lawtel 17/01/2019 - [2019] 1 WLUK 102)

Banking, Finance & Financial Services

Jonathan acts for both financial institutions (including the major banks and a number of finance houses) and borrowers in a variety of specialist regulated lending, retail banking and financial services matters. He has advised, settled pleadings or acted in the following matters:

- Advising on the consumer credit and regulatory aspects of a multi-billion pound purchase of credit card debt.
- Advising and acting in cases raising allegations of unfair relationships (s.140A CCA and Plevin). Acted successfully in a three day unfair relationship trial in relation to high cost short term lending (upheld on appeal by Nugee J). Jonathan also co-authors the PLC note on this topic.
- Successfully acting in a claim against a bank to achieve rectification of a person's credit rating with a credit rating agency and securing damages for consequential losses.
- Advising a company providing specialist advisory services to high net worth individuals outside the EEA as to whether its activities were regulated by the FCA.
- Claims relating to the mis-sale interest rate hedging products.
- Jonathan was instructed by a major bank in relation to the FCA's review under s.166 FSMA of interest rate swap mis-selling (assessing consequential losses claims).
- Jonathan had a brief secondment to the FSA during its transition to the FCA, where he worked on the changes to the consumer credit regime.
- Advising a PLC as to authorisation requirements during the transition between licensing under the OFT and authorisation under the FCA.
- Acting in a substantial claim brought against a major retail bank raising issues such as "antecedent

negotiations” (s.56 CCA) and the s.75 indemnity.

- Instructed by a major bank in a case concerning the interplay by ss.56 and 140A CCA and whether misrepresentations could give rise to an unfair relationship.
- The application of CONC (the Consumer Credit Sourcebook in the FCA Handbook).
- Debt recovery generally.
- Advising as to whether agreements are exempt under the CCA and RAO.
- Hire-purchase disputes (often cases involving vehicles and photocopiers).
- Secret commissions and the disclosure of commissions.
- Issues arising out the assignment of debts.
- Various issues of agency at common law and under the CCA 1974.
- Breaches of s.138D of the Financial Services and Markets Act 2000.
- Enforceability of agreements (ss. 60, 61 and 65 CCA).
- Personal loan and credit card disputes.

Regulatory

Jonathan has benefited from working closely for (and at) various regulators over the years, including the Financial Services Authority (as it then was), the Human Fertilisation and Embryology Authority (HFEA), the Serious Organised Crime Agency (as it then was) and the Institute for Chartered Accountants (ICAEW).

Jonathan has acted in a lengthy, complex appeal before the ICAEW appeal committee. He has sat regularly for a number of years as legal assessor to its Disciplinary Tribunal. Jonathan provides practical advice in assisting in drafting responses in regulatory matters.

Jonathan has a particular interest in financial regulation and was instructed for a couple of years by a large bank in relation to the FCA’s review under s.166 FSMA of interest rate swap mis-selling (consequential loss claims).

Jonathan acts in regulatory judicial reviews. For example:

- Advising and formulating a claim brought against a local health authority in respect of its failure to follow processes in abandoning a contract (including legitimate expectations).
- Representing the HSE in a substantial judicial review concerning the interpretation of a number of EU directives.
- Representing (led by Toby-Riley Smith Q.C.) a manufacturer of tumble dryers in a judicial review brought the Consumer’ Association against the enforcement authority’s conduct.

Jonathan was an active committee member of the Association of Regulatory and Disciplinary Lawyers (ARDL) for six years.

Representative Cases

- *Chiltern Farm Chemicals Ltd, R (on the application of) v The Health and Safety Executive [2018] EWCA Civ 271; [2018] 1 WLR 3144*
Successfully defended a challenge to the HSE’s classification of a study as a “vertebrate study”.

Product Liability and Group Actions

Jonathan has general experience in product liability claims. For example:

- Instructed in significant product liability claims arising out of allegedly defective tumble-dryers (led by Toby Riley-Smith Q.C.). This work included acting on an appeal against the imposition of various safety notices and involvement in related judicial review as an interest party.
- Instructed for one of the defendants in a claim arising out of an allegedly defective bicycle.
- Advised in respect of a claim relating to defective bathroom tiles.
- Currently being led by Geraint Webb Q.C. in claims relating to defects in agricultural equipment.
- Currently instructed in a potential action in relation to the alleged mis-sale of second hand vehicles (led by Toby Riley-Smith Q.C.)
- Led by Prashant Popat Q.C. and Toby Riley Smith Q.C. in defending claims arising from terrorist attack at oil facility in Algeria (*John and ors v BP Plc & ors* (2018)).
- Instructed to defend a national second hand car sales company against threatened group litigation (led by Toby Riley-Smith Q.C.)

General / Common Law / Procedural Issues

Jonathan has acted in a variety of other matters, including procedural matters, including:

- The application of the amended CPR 3.9 in respect of late filing of witness statements
- The difference between an application for an extension of time and relief from sanction) and
- Setting aside of an order extending time for service under CPR 7.5 and the operation of CPR 6.9
- Advising as to the compliance of court orders with CPR 40.
- Applying in the High Court for indemnity costs under CPR 38(6) when a claim was discontinued.
- Liability under the Torts (Interference with Goods Act) 1977.
- Liability under the Occupier's Liability Act 1957 and Occupier's Liability Act 1984.

Representative Cases

- *Biffa Waste Services Ltd v Ali Dinler* [2013] EWHC 3582 (QB)
White Book 3.9.3
- *Baker v Hallam Estates Ltd* [2013] EWHC 2668 (QB)
White Book 3.9.1, and in the Court of Appeal [2014] EWCA Civ 661.
- *Hallam Estates v Baker* [2012] EWHC 1046 (QB)

Appointments

- Junior Counsel to the Crown B Panel (2018-)
- Junior Counsel to the Crown C Panel (2013-2018)
- Specialist public law lawyer to the Court of Appeal (2006 – 2007) (GLS qualified)
- Judicial Assistant to the Court of Appeal (2005-2006)
- Qualified as a solicitor at Slaughter and May (2005)

Publications

- *PLC Practice note, Introduction to UK consumer credit regime*
- *PLC Practice note, Unfair relationships under the Consumer Credit Act 1974*
- 'Equality considerations in lending' [2018] JIBFL 414.
- Contributor to forthcoming book on group actions.
- 'Section 50 of the Consumer Rights Act 2015: should lenders be worried?' [2017] JIBFL 472.
- '*Lis pendens*: the parties' choice of jurisdiction matters under Recast Regulation' [2016] 7 JIBFL 419A.
- 'The Constitutional Court of South Africa: an Evaluation' (2009) 125 L.Q.R. 440.
- 'In Re P & Others: An Exception to the "no more, certainly no less" rule' [2009] P.L. 43.
- 'Focus on Article 8' [2008] J.R. 29 (with S. Lambert and A. Lindsay-Strugo).
- 'Can Damages Buy You Happiness? Damages for Distress after *Farley v Skinner*' [2008] K.L.J. 113.
- 'Expedition of Public Law Appeals in the Court of Appeal' [2007] J.R. 204
- 'The European Ceiling of Human Rights' [2007] P.L. 720.
- Book Review: *The Court of Appeal* [2007] M.L.R. 1032.
- 'Winning the case or winning the campaign' [2007] J.R. 107
- *Court of Appeal, Asylum and Immigration Bench Book* (2005-2007).
- Assisting in the preparing the UK's contribution to the *Venice Commission Bulletin on Constitutional Case Law* (Council of Europe)
- 'Retrospective Effect: Is Article 5 any different?' (2006) 122 L.Q.R. 370.
- 'Discriminating Against A Discriminator' (2006) C.L.J. 508.
- 'Privacy: A missed opportunity' (2005) Tort Law Review (November 2005).
- 'Executive Mindedness Reinvented? (2005) South African Journal of Human Rights.
- 'Fairness in South African contract law', (2003) South African Law Journal 120(2).

Memberships

- ARDL (former committee member)
- COMBAR
- ALBA
- Justice
- Young Public Lawyers Group

Education

- M.A. (Jurisprudence) (Oxon) (2000-2002)
- Post-Graduate Degree in Philosophy (Wits) (2000)
- B.A. (Philosophy & History), University of the Witwatersrand, South Africa (1997-2000)