



Jonathan Lewis

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Jonathan Lewis

"Jonathan is extremely bright and his career is developing impressively. His drafting is elegant and accurate and astonishingly rapid. He is calm under pressure."

- Legal 500 2021

Call 2007 (Solicitor: 2005)

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Jonathan has a broad practice with particular focus upon public and administrative law, public procurement, consumer law, commercial law and product liability. His public law practice encompasses a range of different judicial review claims, a variety of statutory appeals as well as claims under the Human Rights Act 1998. He is on the Attorney General's "B" Panel of counsel. He has a busy public procurement practice, acting both for contracting authorities and economic operators.

Jonathan's commercial practice primarily covers contractual disputes in a variety of different industry sectors. In terms of consumer law, he has experience in a variety of claims, including under the Consumer Rights Act 2015 (and has been instructed by the Competition and Markets Authority in respect of such claims). He also acts in matters involving an array of regulatory issues arising out of the FSMA and the Consumer Credit Act 1974. He advises on non-contentious matters and provides drafting assistance.

Jonathan is regularly instructed in product liability disputes and has been involved 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. 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, public procurement, human rights and consumer credit.

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Public Law (Judicial Review, Administrative, Human Rights & Immigration)

Jonathan has substantial experience across a broad spectrum of public law work. He has benefited from working closely for (and at) various regulators over the years (such as the FCA, HFEA, the old SOCA and the ICAEW). He has acted in a variety of statutory appeals (such as war pension appeals and various immigration appeals). Jonathan has acted in a number of claims under the Human Rights Act 1998.

Judicial Review and Administrative Law

- Advised a government department as to a potential scheme to provide relief in response to the Covid-19 pandemic.
- Instructed by the Food Standards Agency in defending a judicial review concerning a challenge to various provisions of a policy dealing with the power to suspend professionals on an interim basis.
- Instructed (led by Sir Alan Dashwood Q.C.) in defending a judicial review claim concerning the interpretation of a number of EU directives on food safety. The Supreme Court has made a reference to the CJEU.
- Defending a judicial review brought in respect of a large procurement exercise conducted by the NHS.
- Instructed (as junior counsel) by the Secretary of State for Transport and Maritime and Coastguard Agency in defending a judicial review of the making of a statutory instrument (raising issues as to the adequacy of consultation and breaches of Article I of Protocol I).
- Represented the Health and Safety Executive in the Court of Appeal in a substantial judicial review concerning the interpretation of a number of EU directives relating to vertebrate studies.
- Acted in 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).
- Instructed (as junior counsel) by a manufacturer of tumble dryers in a judicial review brought the Consumer' Association against the enforcement authority's conduct.
- 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).

Human Rights Claims

Jonathan has acted and/or advised in the following:

- A claim against a pension provider as to potentially discriminatory entitlement provisions (contrary to art. 14 ECHR).
- A claim against an immigration removal centre in respect of allegedly discriminatory medical treatment (contrary to art. 14 ECHR).
- Article 3 ECHR (torture): Conditions of detention of prisoners.
- Article 5 ECHR (liberty): immigration claims concerning unlawful detention; the legality of recall to prison.
- Article 8 ECHR (private life): in the context of immigration decisions as well as a variety of prisoner's claims.
- Article 9 ECHR (religion): including advising as to certain governmental policy's compliance.
- Article I of Protocol I ECHR (peaceful enjoyment of property): regulator's interference with property; nature of appeals.

Immigration

Jonathan advises and acting a wide variety of matters. He appears 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

- *MSI Defence Systems Ltd v The Secretary of State for Defence* [2020] EWHC 164 (TCC).
- *R (Independent Association of Meat Suppliers) v Food Standards Agency* [2019] UKSC 36.
- *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).*

Public Procurement

- Represented (as junior counsel) one of the companies who was involved in the emergency procurement of diagnostic software for Covid-19 testing in a substantial, expedited claim in 2020.
- Represented (as junior counsel) 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).
- Represented (as junior counsel) an NHS trust in defence of a claim that a contract award contained numerous manifest errors.
- Instructed by a disappointed tenderer to challenge an NHS trust's award of contract on the basis that a framework agreement had been misused.
- Advised a highways authority as to rewinding a procurement when a procedural error had been identified.
- Instructed (as junior counsel) to defend judicial review brought in respect of a large procurement exercise conducted by the NHS.
- Advising an educational provider in respect of a potential challenge to the award of a contract on a number of bases.
- Advising a County Council as to contract modification (under regulation 72 PCR 2015).
- Advising the Ministry of Defence in respect of the procurement of a substantial technology related contract.
- Instructed by an interested party (the winning bidder) in a complex claim against the Secretary of State for Justice.
- Representing (as junior counsel) the MOD in defending a claim relation to a decision to rewind a procurement (*MSI Defence Systems Ltd v The Secretary of State for Defence [2020] EWHC 164 (TCC)*).
- Advised the Department of Transport as to the application of state aid rules in respect of a proposed assistance scheme.

Recent Practitioner Publications

- *Lifting the automatic suspension under the Utility Regulations (Lagan Construction Ltd v Northern Ireland*

- Water) (7 December 2020)
- Summary judgment in public procurement claims (*Neology UK v Council of the City of Newcastle Upon Tyne*) (9 November 2020)
- Public works contracts and decisive Influence— when a lease is not a lease (*European Commission v Republic of Austria*) (3 November 2020)
- Meaning of ‘contracts for pecuniary interest’ (*Tax- Fin-Lex d o o v Ministrstvo za notranje zadeve*) (18 September 2020)
- Damages in public procurement claims—no bright line rules (*F P McCann v Department for Regional Development*) (13 August 2020)
- Standing to bring a public procurement challenge—key considerations (*Community R4C v Gloucestershire County Council*) (23 July 2020)
- Limiting participation in procurement procedures (*Parsec Fondazione*) (18 June 2020)
- Time limits for public procurement challenges— reminder of the distinct approaches to limitation in procurement claims and judicial review (*Riverside Truck Rental Ltd*) (11 May 2020)
- Case management issues in procurement claims (*Accessible Orthodontics v National Health Service Commissioning Board*) (30 April 2020)
- AG Opinion clarifies the boundaries of ‘horizontal’ co-operation between contracting authorities in public procurement (*Informatikgesellschaft fu¨r Software-Entwicklung mbH v Stadt Ko¨ln*) (5 February 2020)
- Lifting the automatic suspension in procurement claims (*Alstom v Network Rail*) (6 January 2020)
- Transport procurement—limited publication obligations for direct awards (*Autorita Garante v Regione Autonoma*) (25 October 2019)

Consumer

Jonathan has a multi-faceted consumer law practice. He has substantial experience in consumer claims under the Consumer Credit Act 1974, acting for both consumers and financial institutions (see *Banking, Finance & Financial Services below*). Jonathan has a practice in food law, having represented the Food Standards Agency in a number of different matters (from the First Tier Tribunal to the Supreme Court (led)). He also has extensive knowledge of key consumer legislation such as the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008.

- Instructed in 2020 (as junior counsel) to assist the Competition & Markets Authority (“CMA”) in investigating and taking enforcement action against those holiday rental companies who were refusing to provide full refunds to customers when contracts were frustrated by the Covid-19 Pandemic.
- Represented the residents of house boats in a challenge to termination provisions in their mooring agreements.
- Instructed in 2020 (as Junior counsel) by the CMA to advise as to whether contracts for purpose-built student accommodation had been frustrated by lockdown.
- Instructed in 2020 by the CMA to advise as to the effect of Covid-19 on wedding contracts and as to its public statement as to cancellation of weddings in light of the pandemic.
- Instructed in 2019 (as junior counsel) by the CMA in respect of a potential claim brought under the Enterprises Act 2002 relating to alleged unfair terms (under the Consumer Rights Act 2015) and unfair trading practices in respect of various care homes.
- Instructed in 2019 (as junior counsel) by the CMA in respect of a potential claim challenging the fairness of auto-renewal provisions in contracts.

- Advising in cases under the Consumer Rights Act 2015, Sale of Goods Act 1979 and Supply of Goods and Services Act 1982.
- Instructed by the Food Standards Agency in defending a judicial review concerning a challenge to various provisions of a policy dealing with the power to suspend professionals on an interim basis.
- Instructed (led by Sir Alan Dashwood Q.C.) in defending a judicial review claim concerning the interpretation of a number of EU directives on food safety. The Supreme Court has made a reference to the CJEU.
- Represented the Food Standard Agency in an appeal to the First Tier Tribunal which determined fundamental points of principle (such as whether a regulator can withdraw its decisions after they have been challenged in an appeal).

Representative Cases

- *Trocki v Food Standards Agency WA / 2019 / 0033* (8 January 2021).
- *Pontearso v Greenlands Trading* [2019] EWHC 278 (Ch); [2019] GCCR 17049; [2019] P.T.S.R 1443.
- *R (Independent Association of Meat Suppliers) v Food Standards Agency* [2019] UKSC 36.

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:

- Acting in a substantial dispute arising out of an IT contract (due for trial in 2021) raising issues such as mistake, misrepresentation, breach of EU law, failure of consideration.
- As a result of the Covid-19 pandemic, Jonathan has advised clients as to the doctrine of frustration and the Law Reform (Frustrated Contracts) Act 1943 upon a variety of contracts.
- 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 as to whether a director was automatically released from a personal guarantee given in respect of various business loans when arrangements had been made to release the other guarantors.
- 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 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.
- Acting in a variety of retail disputes and assisting in the drafting of a variety of agreements between suppliers and retailers.
- 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).
- Advising a wide variety of interlocutory procedural hearings concerning the scope and interpretation of various aspects of the CPR:
 - Make and defending applications for specific disclosure.
 - Regularly advising upon, drafting and appearing in applications for strike out / summary judgment.
 - The application CPR 3.9 (including, the difference between an application for an extension of time and relief from sanctions) (*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)).
 - Setting aside an order extending time for service under CPR 7.5 and the operation of CPR 6.9 (*Hallam Estates v Baker* [2012] EWHC 1046 (QB)).
 - 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.

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 was seconded to one of the major banks in respect of the FCA's review under s.166 FSMA of interest rate swap mis-selling (consequential loss claims). 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. He has experience in the more recent wave of cases in which redress has been paid in accordance with the FCA guidance in DISP APP 3 but claimants claim the remainder of the premium paid.
- 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.

Representative Cases

- • *Pontearso v Greenlands Trading* [2019] EWHC 278 (Ch); [2019] GCCR 17049; [2019] P.T.S.R 1443 (considering unfair relationships).

Product Liability and Group Actions

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

- Instructed in 2017 in respect of 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 in 2019 in respect of continuing issues arising out the allegedly defective tumble-dryers (led by Monica Carss-Frisk Q.C. and Jemima Stratford Q.C.).
- Instructed in claims in relation to allegedly defective Apple products.
- 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.
- Led by Geraint Webb Q.C. in claims relating to defects in agricultural equipment.
- Advised 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)).

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

Appointed to Lexis®PSL Public Law Lawyers in 2019. He has published numerous articles, focusing on developments in procurement law.

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.

“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)
- Procurement Lawyers Association
- 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)

Awards & Recognitions

