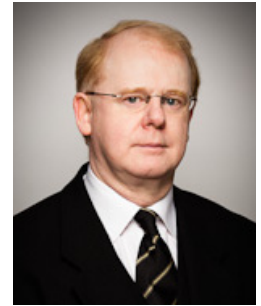


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## MICHAEL DUGGAN

Call: 1984



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### What the directories say

“turns into a Rottweiler in court. He is well known for his writing on unfair dismissal issues.”

“endorsed for the clarity of his advice.”

“combines his commercial and employment based practice with construction law. He is an excellent adviser who will readily go to town on the right case.”

### Education

BA, BCL, LLM (First Class, Sidney Sussex College, Cambridge University).

Holt Scholar of Gray's Inn, Gray's Inn.

Evan Lewis Thomas Student, Sidney Sussex College, Cambridge.

Constitutional Law Scholar Gray's Inn.

Lee Essay Prizeman, Gray's Inn.

### Professional Associations

Member of Management Committee, Employment Lawyers Association 2004 –9. London and South East Representative 2007-8.

Member Gray's Inn Barristers' Committee.

COMBAR and ELBA Member.

### General Profile

The primary area of practice is employment law. Michael also has substantial experience of commercial law and expertise in building and construction law as well as experience of employment law issues in the construction industry.

Michael has particular experience of large-scale wrongful dismissal cases, unfair dismissal and dismissals/variation of employment contracts arising out of re-organisations, whistleblowing cases and discrimination cases, including disability discrimination and sexual and race harassment cases. collective trade union issues including labour disputes, He was instructed on the unfair dismissal cases during the channel tunnel project. In conjunction with Human Resources he developed the redundancies procedures and successfully defended over thirty applications to the Employment Tribunal. He has since been instructed on many multi-party Employment Tribunal claims. Michael's employment law experience in specific areas is further particularized below.

He regularly appears in Employment Tribunals and the Employment Appeal Tribunal. He has acted in hundreds of Tribunal cases over the years, involving unfair dismissal and discrimination claims for a wide range of reasons. He also has considerable experience in restrictive covenant cases having appeared in a number of the reported cases.

Recent clients have included/include financial institutions (Bank of England; Cantor Fitzgerald); Local Authorities (Kent, Swale, Leeds, Leicestershire, Bradford); Universities (Cambridge, Trinity Hall, UKC, Leicester, Lincoln); Police Constabularies (Kent, Nottingham, Barnsley, Leeds, Sheffield, East Lindsey, Lancashire, R.A.R.T.) Michael acts for both employer and employee.

In the commercial sphere he has experience of a wide range of commercial work including sale of goods, retention of title clauses and professional negligence, especially relating to architects, surveyors and solicitors negligence and specialises in interlocutory work involving freezing and search orders (formerly Marevas and Anton Pillers). Has also acted in receivership

disputes and for building societies in cases involving professional negligence. Michael also has substantial experience of Commercial Agency Contract cases under the 1993 Regulations and was involved in the large scale Enron dispute concerning electricity and gas utilities in which he achieved a substantial settlement for his clients by obtaining a concession that they were commercial agents. He has dealt with many Technology and Construction Court cases, including multi-million pound disputes relating to construction defects, extensions of time and disputes under JCT and ICE contracts, Architect and surveyor disputes as well as appearing in arbitrations and, allied to the construction side, has dealt with many health and safety cases (both Civil relating to Prohibition Notices and Criminal prosecutions because of defective plant).

## **Employment Law: Specific Areas**

### **Age Discrimination**

Prior to the implementation of the Employment Equality (Age Regulations) 2006, Michael acted for the successful employee in *Wall v British Compressed Air Society* [2004] IRLR 147 CA in which the Court of Appeal held that a single employee could have a contractual normal retiring age. He has advised widely on the impact of the Regulations in relation to unfair dismissal, discrimination and, in particular, the provision of service benefits and pensions. He has acted in a number of Employment Tribunals in which age discrimination has been claimed and in 2009 successfully represented Claimants in securing large settlements against a major newspaper group based upon contractual redundancy schemes and age discrimination. He has also, in 2010, acted for a Police Authority in varying protected terms and conditions due to equal pay and age discrimination issues.

He has drafted and advised upon the public sector duty statements required under section 71 of the Race Relations Act 1976 and upon procedures required by such institutions.

### **Collective Trade Union issues**

Ever since acting for the construction companies on the Channel Tunnel project in the eighties in obtaining injunctions to restrain unlawful industrial action, Michael has acted in many cases involving unlawful strikes or other industrial action in which injunctions have been granted to restrain action due to a defective ballot process or where the action has been unofficial. He has also advised trade unions in relation to the ballot process, recently the BAJ in relation to action involving mass redundancies.

Michael also has expertise in appearing before the CAC and in 2010 acted for a company concerning the scope of the bargaining unit. He represented the BAJ in its 2009-2010 pay claim which went to arbitration before an ACAS nominated panel and successfully obtained a 'binding in honour' order for a pay rise.

Michael is also currently acting for a number of companies in the Employment Tribunal, defending claims against alleged trade union discrimination in relation to the so called 'blacklist' which was kept by the Consulting Association. Michael was admitted to the Bar of Northern Ireland in 2008 in order to represent a company in the Court of Appeal regarding a strike at Belfast airport, in which the issue was whether shop stewards had been dismissed for 'political activities'.

He has also acted in number cases concerning collective consultation under section 188 of TULR(C)A 1992, most recently in May 2010 representing acting for the Respondent at Bedford Employment Tribunal in which a whole plant had been closed down with the issue being whether there had been over 99 redundancies in 90 days and whether there had been meaningful consultation. He was Counsel for the successful Appellant in *Shanahan Engineering v Unite the Union* [UKEAT/0411/09].

### **Commercial Agencies**

Michael has substantial experience of Commercial Agency Contract cases under the 1993 Regulations and was involved in the large scale multi million pounds Enron dispute concerning electricity and gas utilities in which he achieved a substantial settlement for his clients by obtaining a concession that they were commercial agents. He successfully acted in the first case to decide that commercial agents owe a duty of trust and confidence akin to an employment relationship to their Principal: see *Gledhill v Bentley Designs (UK) Limited* [2010] EWHC B8 (Mercantile). Michael acts for both Principals and Agents in commercial agency disputes.

### **Disability cases, including stress and mental impairment**

Michael has acted for both Claimants and Respondents, particularly, Local Authorities and financial institutions in disability claims involving allegations of discrimination on the ground of disability and issues of reasonable adjustments. Cases include

Evans v Oaklands Nursing Home Group Ltd (EAT) before Lindsay J concerning compensation for hurt feelings in which it was held that a Tribunal is obliged to indicate their reasoning for the amount of the award and Johnson v Bank of England (EAT) in which Michael acted for the bank and successfully resisted an appeal against a Tribunal decision which held that the bank had not discriminated on the grounds of disability. Michael has particular expertise in cases involving mental health and stress both in the Tribunal and the County Court.

Michael has also successfully represented schools/local authorities in education cases in the SENDIST in which allegations of discrimination and failure to carry out less favourable adjustments have been made; his latest case in 2009-2010 involved a pupil ADHD who had been excluded because of his unacceptable conduct.

Michael has also advised employers about the steps that they should take in order to comply with their duty to carry out reasonable adjustments.

## **Discrimination claims Harassment cases, including sexual and racial harassment**

Michael has acted in many dozens of cases, acting for Claimants or Respondents in cases involving all aspects of discrimination and harassment, including serious sexual harassment. In Larkin v Korean Airlines Co Ltd (EAT) he acted in a case concerning remedies, compensation and causation where the Claimant had embarked on a course of study rather than seek further employment. He drafted guidelines which were accepted and adopted by Holland J in the leading case of Driskel v Peninsula Business Services Ltd (EAT) [2000] IRLR 151. He assisted the EAT in DA'Bell v NSPCC [2010] IRLR 19 in updating the figures for injury to feelings and has successfully represented the NSPCC in a number of cases.

He has acted for Claimants in a number of cases alleging discriminatory conduct against senior professional females which have led to successful settlements against major financial institutions. He was involved in the recent case of Francis and Murphy v Nomura, Central London ET, which is on appeal to the EAT. Michael has also acted for educational institutions in claims of discrimination. He successfully defended a claim by a student against the University and Chancellor in Nadsalingham v University of Lincoln after a long trial.

When the Equality Act 2010 comes into force it is anticipated that there will be an increase in discrimination claims on the prohibited grounds set out in the legislation to increased public awareness. Michael is well placed to advise on all areas of discrimination as well as act in contentious cases.

## **Equal Pay**

Michael has appeared regularly in the Employment Tribunal, both in large scale equal pay claims and for Respondents in which individuals equal pay claims have been brought. He is acting for a number of Local Authorities in the collective equal pay cases that are presently going through the Tribunals. He was successful Counsel for the Appellant in North Tyneside Primary Care Trust v Aynsley [UKEAT/0489/09] in which Underhill P in allowing an appeal against a strike out of a large number of equal pay claims, considered the application and scope of Unless Orders in the Employment Tribunal.

Michael acted for First Assist in successfully resisting an equal pay claim by a male advocate who compared himself with female advocates who had been provided with cars. He recently acted for a charitable school which successfully resisted an equal pay claim by a female Head of Department who compared herself to other Heads in other schools which were part of the charity in Chubb v The Bedford School.

Michael has written the leading text on equal pay, Equal Pay (2009) Jordans which considers the recent cases as well as setting out practical steps to carry out an equal pay audit. Michael is well placed to advise and assist employers on non-contentious matters, such as equal pay audits as well as representing parties in the Tribunals.

## **Procedure**

Michael has acted in a number of important procedural cases, including North Tyneside Primary Care Trust v Aynsley [UKEAT/0489/09] (see above) and Abegaze v Shrewsbury College of Arts and Technology [2010] IRLR 238, Court of Appeal, which has been described as the 'most important case now on strike out'. In the latter case Michael successfully argued that a lesser sanction such as an unless order should be applied to a party in default before a case was struck out.

## Restrictive covenants

Restraint of trade and restrictive covenants is one of the central areas of Michael's practice. He appears regularly in applications for interim relief both on a without notice and contested basis. He is also an expert in drafting and advising in this field. He has particular expertise in relation to recruitment agency injunctions, financial institutions and injunctions involving computer imaging. His cases include:

- Taylor Stuart & Co v Timothy Croft (ChDiv) 07.05.97 - Restrictive covenant -penalty clauses. Acted for successful Defendant in arguing that a clause was a penalty clause. Stanley Burnton QC (sitting as a Deputy High Court Judge).
- Turner v Commonwealth & British Minerals Ltd (CA) [2000] IRLR 114 Restrictive covenants (payment to accept covenant) & termination of employment.
- Wincanton Ltd v Cranny & anr (CA - Civil Division) [2000] IRLR 716 ; Simon Brown LJ, Sedley LJ. - Twelve months post-termination - Whether covenants enforceable - Whether interlocutory injunctive relief should be granted. Represented the successful Appellant.
- Brake Brother v Ungless [2004] EWHC 2799. Obtained injunction in first instance which was upheld at trial.
- Intercall Conferencing Services Ltd v Steer [2007] EWHC 519 (QB)
- 15 March 2007. Approach to non-competition clauses in interim applications in which Michael successfully got injunction for Claimant.
- EE & Brian Smith v Hodson & Ors [2007] EWCA Civ 1210. Delay on the part of the Judge in giving judgment for an interim injunction led to the Court of Appeal emphasising the need for expedition.

Michael acted for the successful Claimant in *Kynixa Ltd v Hynes & Ors* [2008] EWHC 1495 (QB) (30 June 2008) in which the three Defendants were found to be liable, after a nineteen day trial, for breach of fiduciary duty and duties of fidelity as well as various covenants. The Claimant obtained costs approaching £1 million after being awarded £350,000 on a successful 'on account' application; See the costs judgment of 15th July 2008. The case has been referred to at length in the leading textbooks as containing important points on the extent of liability for breach of the duty of fidelity.

In 2009/2010, Michael successfully acted in a number of injunction applications, including obtaining injunction for, amongst other clients, a major mobile telephone provider, a large scale recruitment agency and a property company. Michael has also recently acted for Defendants in a case involving a team move, which was successfully settled following exchange of evidence and pleadings.

Michael also regularly advises on the scope and enforceability of covenants as well as drafting appropriate covenants for clients.

## Transfer of Undertakings

Michael has advised and acted in various cases involving transfers, both at individual unfair dismissal level and on a collective basis. He advised and acted for Liverpool John Lennon airport in relation to the transfer of baggage handling and successfully resisted a claim in the Tribunal and EAT in *Allenby v Liverpool Airport PLC* (EAT). He also acted for several Respondents in the *Swissport* litigation concerning baggage handling at Heathrow. He has acted in a number of cases involving the insolvency provisions of Regulation 8 TUPE 2006. He is currently acting in a case involving the insolvency of *Zavvi Limited* in which the case is going to the EAT on the issue of the application of Regulation 8(7).

## Unfair dismissal & Redundancy

Michael has acted in many unfair dismissal cases over the years as a staple of his practice. He is responsible for the leading text, *Unfair Dismissal, Law, Practice and Guidance*, which is due to go into a second edition in 2010. He has dealt with all areas of dismissal, including misconduct, capability, redundancy and whistleblowing in particular. His cases in the Higher Courts include:

- Taylor v John Webster Buildings Civil Engineering (EAT) [1999] ICR 561. Unfair dismissal; compensation; redundancy selection; effect of Polkey reduction on compensation award.
- Scotts Company (UK) Limited v Budd [2003] IRLR 145 - Notice payments when employee is absent due to sickness. Represented the successful Appellant in arguing that, under the ERA 1996, notice pay does not 'rejuvenate' when an employee, who has been off sick so that that entitlement to salary has ceased, is given notice to terminate.
- Smith v Secretary of State for Trade & Industry (EAT) [2000] IRLR 6 - Represented the successful Appellant. The EAT also considered the right to fair trial; close connection between employment tribunal & executive led to possibility of partiality over redundancy claim.

- *Fitzgerald v University of Kent at Canterbury* (HHJ Peter Clark EAT) [2004] IRLR 300; ICR 737, (Court of Appeal). Retrospectively agreed effective date of termination meant appellant could not claim unfair dismissal as mutual termination defeated that right and not contrary to s 203 ERA 1996.
- In *NSPCC v Dear* [UKEAT/0553/08] Michael succeeded in appeal against a finding of unfair dismissal.

He has acted in many Tribunal cases involving redundancies and re-organisations as well as being involved in appeals at EAT level (see *Corus & Regal Hotels v Wilkinson* [UKEAT/0102/03]).

Michael acts for both Claimants and Respondents in the Tribunals. He also advises on drafting disciplinary and grievance procedures and has advised on and assisted in 'in house' disciplinary proceedings as well as redundancy procedures.

### Wrongful dismissal, large scale claims

Michael has been involved in a large number of contractual claims involving hundreds of thousands of pounds (ie *Parham v F Parham Limited* in which a claim for wrongful dismissal was successfully resisted) and has a particular expertise with regard to large discretionary bonus claims, in which he has successfully represented both employees and employers. He was Counsel in *Fulham FC v Tigana* (led in trial before Elias J) acting for Fulham. In *Greenland v GX Networks Limited*, QBD, HHJ Shaun Spencer QC; Court of Appeal, he was Counsel for the employer in a case in which the scope of bonus provisions was argued.

### Commercial disputes

Michael had acted in a wide range of commercial work including sale of goods, retention of title clauses and professional negligence, especially relating to architects, surveyors and solicitors negligence and specialises in interlocutory work involving freezing and search orders (*Marevas and Anton Pillers*).

Has also acted in receivership disputes and for building societies in cases involving professional negligence.

His cases include:

- *Thomas -v- Pensions Ombudsman* (QBD) [1996] OPLR 161 - Occupational pensions; NHS; early retirement.
- *Bristol & West Building Society -v- Ellis* (CA) [1997] 29 HLR 282 - Possession; mortgage arrears; suspended execution of warrant for possession; borrower intending to sell property within 3-5 year period to discharge debt; reasonableness of repayment period; order for immediate possession.
- *Hewitt -v- Alex Sayer Project Services* (CA) [1996] EGCS 1 - Building & engineering contracts; Architects; project abandoned; whether letter setting out architect's fees amounted to a contract.

### Construction

Has dealt with many Technology and Construction Court cases, including multi-million pound disputes relating to construction defects, extensions of time and disputes under JCT and ICE contracts, Architect and surveyor disputes as well as appearing in arbitrations and, allied to the construction side, have dealt with many health and safety cases (both Civil relating to Prohibition Notices and Criminal prosecutions because of defective plant).

Cases include:

- *British Airways Pension Trustees Ltd -v- Sir Robert McAlpine & Sons Ltd* (CA) 72 BLR 26 - Statements of claim; defective premises. Successfully had case that had been struck out (when other Chambers were acting) reinstated. Case settled on terms favourable to client.
- - 22 Con LR 1 - Application for security for costs (HHJ Fox Cheffick -v- JDM Associates Andrews QC).
- *Cheffick -v- JDM Associates* (No 2) 22 Con LR 16 - Amendments to pleading after commencement of trial. (HHJ Fox Andrews QC).
- *Cheffick -v- JDM Associates* (No 3) 22 Con LR 36 - Security for costs or strike out in mid trial (HHJ Fox Andrews QC).
- *Cheffick -v- JDM Associates* (No 4) - Considerations as to a gross award of costs (HHJ Fox Andrews QC).
- *Cheffick -v- JDM Associates* BLR 43 BLR p52 (CA).

### Mediation

Michael is an accredited Mediator with the ADR Group and can mediate on a wide range of matters. He has mediated cases as diverse as the parties falling out over the sale of a used car to a dispute between a bursar and the Fellows of the College. He has been a regular mediator in employment disputes. For further information contact his clerks.

## Publications

- The Modern Law of Strikes (with John Bowers) (Blackstones) – Described as the classic text on the subject and updated and published by Oxford University Press as set out below.
- Director's Termination Payments (Sweet & Maxwell)
- Business Reorganisations and Employment Law (Currently being updated as 'Business Reorganisations and Employment Law; Reorganisations, Redundancies and Transfers; Law, due Jordans Autumn 2010).
- Unfair Dismissal, Law Practice and Precedents New edition due 2010.
- Family Friendly Policies: A Handbook for Employers and Employees (pp 423)
- Equal Pay (Jordans 2009).
- Duggan on Contracts of Employment; Law Practice and Guidance 3rd Edition, 2010, (pp 1200) XPL Publishing with disc.
- Wrongful Dismissal and breach of contract: Law, Practice and Precedents New edition due 2010.
- The Law of Industrial Action and Trade Union Recognition (OUP) with John Bowers QC and David Reade QC. New edition 2010.
- The Equality Act (The Law Society) – in preparation.

Editor of the Civil Practice Law Reports. Reported as 'CPLR' from 1999 - widely referred to in the Supreme Court Practice and becoming the recognised law reports on Civil Procedure.

Regular contributor to law periodicals with over one hundred articles to his credit.

Past tutor on the Bar Court at the Council of Legal Education, whilst in practice, teaching Civil Procedure, Evidence, International Trade, Tort and Contracts.

## Lectures

Michael is a regular lecturer on legal topics and has lectured for years via CLT and the Employment Lawyers Association on various employment issues. He has lectured in the ELA regions for the last three years on maternity, restrictive covenants and age discrimination and gives a yearly Seminar to the North East group of local authorities in Leeds on employment updates. He was invited to Belfast ELA to speak on Equal Pay.

Current topics of interest include:

- Restrictive Covenants.
- Maternity.
- Age Discrimination.
- Equal Pay.
- TUPE: Recent Issues.
- Discrimination.
- CPR Part 36

Michael has also lectured on the following topics:

- Contracts of Employment. Michael has lectured on the Lexis Nexis Harvey Employment Seminar on Contracts of Employment and Recruitment Agencies.
- Strikes;
- Unfair Dismissal;
- Termination of employment of Executives and Directors;
- Sale of Goods;
- Commercial Law;
- Civil Procedure.

To arrange a lecture please contact Michael's clerk [alistair@littletonchambers.co.uk](mailto:alistair@littletonchambers.co.uk)

## **Bulletins**

Michael Duggan produces a regular updater index (which contains links to transcripts) and monthly bulletin on employment law which is circulated by email. Please address any queries to [mdugg@aol.com](mailto:mdugg@aol.com). The Bulletins can be accessed by the URL <http://www.littletonchambers.com/Employment-Law-Bullettins.aspx>.

## **Interests**

Interests: Music – blues - Guitar, Mandolin, Old and Middle English, WW1, his Morgan and seaside cottage in North Norfolk.

Married with three sons.

Lives in Mundesley, North Norfolk; Coton, Cambridgeshire and Gray's Inn, London.