



Joshua Cainer

Year of Call: 2019

Direct Access: No

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Joshua has a broad civil practice which covers **pensions, commercial and chancery, public, regulatory and human rights law, employment and discrimination and private international law**. He is currently instructed as junior counsel to Module 1 of the UK Covid-19 Inquiry examining the preparedness and resilience of the UK for the Covid-19 pandemic across the different governmental and administrative arrangements for England, Wales, Scotland and Northern Ireland. He is also a member of the Attorney General's Junior Junior Scheme.

Education and Previous Experience

Joshua completed a BA (Hons) in Law (2013-2016), in which he received a Double First, and an LLM (2016-17), in which he obtained a First, at Downing College, University of Cambridge. During the course of his studies, Joshua pursued his interests in public law and human rights law as a research intern at the Bingham Centre for the Rule of Law in 2016. He was also a research assistant to Shaheed Fatima KC in 2017 for the final report of the Inquiry on Protecting Children in Conflict.

Following his legal studies, Joshua worked at the Court of Appeal as the Judicial Assistant to Sir Terence Etherton, Master of the Rolls from 2017 to 2018. Whilst at the Court of Appeal, Joshua worked on a wide variety of cases involving, among other things, commercial law, professional discipline law, public law, human rights law, personal injury law and civil procedure. He also helped prepare research for lectures on a range of legal topics.

Joshua was awarded the Lord Denning Scholarship and Hardwicke Entrance Scholarship from Lincoln's Inn and an Excellence Award from BPP University to study the BPTC (2018-19), where he received an Outstanding. He was called to the Bar by Lincoln's Inn in 2019.

Whilst completing the BPTC, Joshua also supervised undergraduate students in Administrative Law at Newnham College, University of Cambridge for the 2018/19 academic year.

Areas of Expertise

Pensions

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Joshua is developing a broad pensions practice covering public sector and private occupational pension schemes, including complaints to the Pensions Ombudsman and Part 8 pension claims. His complementary employment practice also enables him to advise on difficult issues which cross-over between employment and pensions law, including claims for pensions losses and pensions issues arising in discrimination claims and TUPE transfers.

Joshua also has particular experience in related areas of public and regulatory law which cross-over with the pensions law elements of his practice. He spent four months on secondment to the Pensions Regulator (TPR), during which he assisted on work relating to Defined Benefit Superfunds and gained significant practical experience in the field of pensions regulation.

Joshua has delivered talks with other members of chambers on TPR's moral hazard powers and the criminal offences introduced by the Pension Schemes Act 2021, is a contributor to the 2023 update of *Atkins Court Forms, Volume 31(1) on Pensions* and is a member of the APL Future Leaders in Pensions (FLIP) Sub-Committee.

Examples of Joshua's work includes the following:

- Advising in a pensions case raising complex historical validity and rectification issues (assisting **Andrew Spink KC**, **David E Grant KC**, **Saul Margo** and **Stephen Doherty**).
- Advising a scheme member about making IDRPs complaints and a Pensions Ombudsman complaint regarding the revocation of survivors benefits under the Local Government Pension Scheme.
- Assisting a member of chambers with advising on the pensions consequences following a TUPE transfer from a public sector employer to a private sector employer.
- Assisting a member of chambers with advising on a *Bradstock* compromise of a s.75 debt.
- Instructions from a leading solicitors firm to review the governing documentation of several occupational pension schemes.
- Assisting a member of chambers in drafting submissions to the Pensions Ombudsman in a complaint relating to a transfer of accrued pension entitlements between two public sector pension schemes.

Joshua also gained significant experience in pensions disputes during pupillage when he was supervised by both **Naomi Ling** and **David E Grant KC**. The following are representative examples:

- Assisting **Naomi Ling** (as a pupil) in the **2019 Rail Franchising Litigation [2020] EWHC 1568 (TCC)** (concerning public procurement law challenges to Stagecoach's disqualification from the tender process for three rail franchises, on the basis of its bidding approach to pensions issues with the Railways Pension Scheme which arose out of intervention by the Pensions Regulator).
- Assisting **David E Grant KC** (as a pupil) in ***Chambers v Thomas Miller Wealth Management Limited (2020)*** (concerning pensions liberation, resulting trusts and equitable tracing).
- Assisted a member of chambers (as a pupil) in drafting a complaint to the Pensions Ombudsman in a case concerning *Beckmann* entitlements under TUPE.
- Assisting a member of chambers (as a pupil) in a case concerning a member's request for a cash-equivalent transfer value from an occupational pension scheme.

Commercial & Chancery

Joshua has a varied **commercial and chancery** and has a particular interest in cases which engage questions of private international law. Joshua also spent six months on secondment to the Bank of England, during which he gained significant

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practical experience advising on a regulatory investigation into whether an insurer had breached its regulatory requirements and should be issued with a warning notice.

Examples of Joshua's instructions include the following:

- Advising a foreign state regulator on legislative and regulatory matters relating to cryptoassets and smart contracts. Assigned lead responsibility for advising on the comparative treatment of these issues in England and Wales, Australia and New Zealand (with **Andrew Spink KC**, **Justina Stewart**, Chloë Bell, **Henry Reid** and **Anson Cheung**).
- Advising a bloodstock agent in relation to a racehorse purchased at auction on behalf of a client who defaulted on payment.
- Representing an insurance broker in a claim concerning a contractual entitlement to claw back commission payments from an insurance agent in respect of cancelled insurance policies.
- Advising and representing a telecommunications company in a number of strike out and summary judgment applications in cases concerning claims for breach of data protection legislation, misuse of private information and breach of contract.
- Drafting a defence and counterclaim in a claim for breach of contract arising out of a construction dispute.
- Assisting a member of chambers in advising on a financial services claim involving *Braganza* and *Socimer*
- Assisting a member of chambers in an application to enforce a foreign judgment, raising issues of private and public international law, including state immunity.
- Assisting a member of chambers in a number of civil contempt proceedings arising out of commercial disputes.
- Assisting a member of chambers (as a pupil) in a case concerning claims for breach of contract and civil fraud arising out of an insurance indemnity paid out in an international sale of goods context.
- Assisting a member of chambers (as a pupil) in drafting an advice and particulars of claim for applications to remove executors under s.50 of the Administration of Justice Act 1985 and for court directions on the administration of an estate under CPR Pt 64.

As a judicial assistant, Joshua assisted the Court of Appeal with a variety of appellate cases relating to commercial law, including:

- ***Property Alliance Group Ltd v Royal Bank of Scotland* [2018] EWCA Civ 355** (various claims seeking rescission and damages in relation to a number of interest rate swap agreements).
- ***Salekipour v Parmar* [2017] EWCA Civ 2141** (county court's jurisdiction to set aside one of its previous final judgments for fraud or perjury).
- ***Welsh Ministers v Price* [2017] EWCA Civ 1768** (joinder of third parties to an application to restore a company to the Register of Companies under s.1029 of the Companies Act 2006).

Employment & Discrimination

Joshua acts for both claimants and respondents and has a varied practice covering all aspects of **employment and discrimination law**, as well as related areas of commercial law. He has previous experience in matters involving: unfair dismissal claims; whistleblowing claims; discrimination law; claims involving human rights law; TUPE claims; restrictive covenants; and internal investigations.

Joshua also has significant experience in alternative dispute resolution in the employment field. He has advised on settlement agreements for a range of employees, including senior executives, and also has had experience in securing successful outcomes for clients at a number of judicial mediations in the employment tribunal.

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His complementary pensions practice also enables him to advise on difficult issues which cross-over between employment and pensions law, including claims for pensions losses and pensions issues arising in discrimination claims and TUPE transfers.

Examples of Joshua's instructions include the following:

- Successfully representing the respondent in resisting a claimant's Rule 21 appeal in the EAT against the Registrar's refusal to extend the time limit for filing her appeal against an unless order made in the Employment Tribunal (currently awaiting determination of the claimant's application for permission to appeal to the Court of Appeal).
- Successfully representing an airline in pay claims arising out of deductions made to reimburse overpaid wages, raising issues of contractual variation, whether a COT3 agreement was vitiated by economic duress and the availability of an unjust enrichment claim by means of equitable set-off in the Employment Tribunal.
- Representing a claimant in a discrimination case raising national security issues and the potential for Rule 94 measures before securing a favourable settlement.
- Representing a practice nurse in an unfair dismissal claim arising out of multiple misconduct allegations relating to clinical practice.
- Advising on the application of the Contracts (Rights of Third Parties) Act 1999 to an NDA clause contained within an employment settlement agreement.
- Successfully representing a public authority in a one-day preliminary hearing to determine whether the claimant's menopause and back pain qualified as disabilities.
- Advising a group of individuals working for a media company about whether they qualified for employee or worker status.
- Advising an employer on liability for inducing breach of contract in respect of a new employee's post-termination restrictive covenants arising from his previous employment.
- Advising on an employee's contractual obligations to disclose to his employer an external interest in a new start-up company.

As a pupil, Joshua was supervised by both **Naomi Ling** and **David E Grant KC**, gaining experience in a wide range of employment law work, including a discrimination claim concerning service complaints under the Armed Forces Act 2006 and a disclosure of confidential information case being litigated in parallel arbitration and employment tribunal proceedings.

Public Law, Regulatory & Human Rights

Joshua has significant experience in public law, regulatory and human rights matters, having previously taught undergraduate students in Administrative Law as well as having worked on a wide range of appellate cases relating to public law and human rights whilst a judicial assistant to Sir Terence Etherton, Master of the Rolls.

He also has particular experience in areas of public and regulatory law which cross-over with the commercial and pensions law elements of his practice. He spent four months on secondment to the Pensions Regulator, during which he assisted on work relating to defined benefit superfunds and gained significant practical experience in the field of pensions regulation. He also spent six months on secondment to the Bank of England, during which he assisted on a regulatory investigation into whether an insurer had breached its regulatory requirements and should be issued with a warning notice.

Examples of Joshua's instructions include the following:

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- Advising a public body on potential public law challenges arising out of decision-making undertaken in a commercial context (led by **John McKendrick KC**).
- Instructed in relation to certain interim matters in two linked 'failure to remove' cases involving children who are claiming damages for common law negligence and Human Rights Act damages for breach of their rights under Articles 3, 6 and 8 of the ECHR.
- Successfully obtained a grant of immigration bail for a vulnerable adult where there was no realistic prospect of the Secretary of State effecting deportation within a reasonable period.
- Assisting a member of chambers with advising on and pleading judicial review proceedings in a children's social care matter.

During pupillage, Joshua assisted members of Chambers in a range of public law matters, including the following matters:

- Assisting **Naomi Ling** (as a pupil) in the **2019 Rail Franchising Litigation [2020] EWHC 1568 (TCC)** (concerning public procurement law challenges to Stagecoach's disqualification from the tender process for three rail franchises, on the basis of its bidding approach to pensions issues with the Railways Pension Scheme which arose out of intervention by the Pensions Regulator).
- Assisting a member of chambers (as a pupil) in drafting an advice on collaterally challenging the legal basis for bringing a regulatory prosecution as unlawful under public law.
- Assisting a member of chambers (as a pupil) in drafting an advice concerning transport regulation, local government law and public procurement law.

As a judicial assistant, Joshua assisted the Court of Appeal with a variety of appellate cases relating to public law and human rights:

- **Stunt v Associated Newspapers Ltd [2018] EWCA Civ 1780** (compatibility of s.32(4) of the Data Protection Act 1998 with EU law, the EU Charter of Fundamental Rights and Article 10 ECHR).
- **R (Conway) v Secretary of State for Justice [2018] EWCA Civ 1431** (compatibility of s.2(1) of the Suicide Act 1981 with Article 8 ECHR).
- **R (Gray) v Chief Constable of Nottinghamshire [2018] EWCA Civ 34** (cause of action estoppel and abuse of process in police disciplinary proceedings).
- **R (Bowen and Stanton) v Secretary of State for Justice [2017] EWCA Civ 2181** (lawfulness of detention in prison whilst waiting for places at Approved Premises to become available).
- **M (Children) (Contact: Ultra-Orthodox Judaism: Transgender Parent) [2017] EWCA Civ 2164** (application for direct contact raising issues under Articles 8, 9 and 14 ECHR and the Equality Act 2010).
- **Smith v Lancashire Teaching Hospitals NHS Foundation Trust [2017] EWCA Civ 1916** (compatibility of s.1A of the Fatal Accidents Act 1976 with Articles 8 and 14 ECHR).

Inquiries and Investigations

Joshua is currently instructed as Junior Counsel to the **UK Covid-19 Inquiry**, chaired by Baroness Hallett. He is working on Module 1 which is examining the preparedness and resilience of the UK for the Covid-19 pandemic across the different governmental and administrative arrangements for England, Wales, Scotland and Northern Ireland (led by Hugo Keith KC and Kate Blackwell KC). In particular, Joshua has led on the evidence streams relating to the Cabinet Office and the Government Office for Science.

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Joshua's responsibilities on Module 1 have included: advising on applications for Core Participant status; drafting Rule 9 requests for witness statements and evidential disclosure; reviewing relevant factual evidence from thousands of documents and expert evidence across a range of disciplines; legal research; and assisting with hearing preparation and drafting submissions and witness question plans for three preliminary hearings and a 6-week public hearing.

He also assisted with hearing preparation for some of the witnesses in Module 2 which is examining the core UK decision-making and political governance in responding to the Covid-19 pandemic (led by Hugo Keith KC and Andrew O'Connor KC).

Examples of Joshua's other experience in this area include the following:

- Secondment to the Pensions Regulator, assisting on work relating to defined benefit superfunds and regulatory pensions investigations.
- Secondment to the Bank of England, assisting on a regulatory investigation into whether an insurer had breached its regulatory requirements and should be issued with a warning notice.
- Represented the family of the deceased in an Article 2 inquest into a death occurring during hospital admission. The coroner gave a narrative conclusion which included findings of systemic and individual failings amounting to neglect by the NHS Trust.

Public & Private International Law

Joshua is experienced in matters which raise issues of both public and private international law and welcomes instructions in these areas. He has also written a number of recent articles and delivered a number of talks on private international law, particularly in relation to emerging technologies and digital assets. The following examples are representative of Joshua's experience in international law matters:

- ***FS Cairo (Nile Plaza) LLC v Brownlie* [2021] UKSC 45** – acting for the claimant in successfully resisting the defendant's appeal to the Supreme Court in the leading case on the scope of the tort gateway for serving proceedings out of the jurisdiction at common law and the operation of the presumption and default rule of similarity between foreign law and English law (led by Sarah Crowther QC and Daniel Clarke).
- Assisting a member of chambers in a number of regulatory and criminal matters involving international maritime law, including issues relating to the COLREGS 1972, MARPOL 73/78, UNCLOS and the SUA Convention.
- Assisting a member of chambers in an application to enforce a foreign judgment, raising issues of private and public international law, including state immunity.
- Assisting a member of chambers (as a pupil) in a case concerning claims for breach of contract and civil fraud arising out of an insurance indemnity paid out in an international sale of goods context.
- Assisting **Sarah Crowther KC** and **Daniel Clarke** (as a pupil) in a number of international travel law claims, including fault-based personal injury claims and Odenbreit claims brought against insurers under foreign law.

Appointments & Membership

- Greener Litigation Project – member of the Steering Committee and the CPR and Court Engagement Working Group (2022-present)

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- Association of Pension Lawyers (APL) – Associate Member and member of the Future Leaders in Pensions (FLIP) Sub-Committee (2023-present)
- Commercial Bar Association (COMBAR)
- Constitutional & Administrative Law Bar Association (ALBA)
- The Honourable Society of Lincoln's Inn

Publications

- Contributor to the 2023 update of *Atkins Court Forms, Volume 31(1) on Pensions*
- J. Stewart and J. Cainer, 'The Law Commission's 'Digital Assets: Consultation Paper' – Key Themes' (2022)
- J. Cainer, 'Brownlie II and pure economic loss – what next for jurisdiction in commercial cases?' (2022)
- J. Cainer, 'A Tale of Two Duties – The 'Scope of Duty' Question in Manchester Building Society v Grant Thornton UK LLP and Khan v Meadows' (2021)
- J. Cainer, 'Horseplay, affray and going astray – vicarious liability for intentional wrongdoing in the workplace' [2021] 37(2) Journal of Professional Negligence 108-113
- S. Crowther KC, D. Clarke and J. Cainer, 'Mind Your Language! Interpreting EU Law Post-Brexit Against Other Language Versions – Covea Insurance Plc v Greenaway and Rocks [2021]' (2021)
- J. Cainer, 'A Matter of Interest – Recent Developments in English Courts on the Applicable Law to Awards of Interest in Cross-Border Tort Cases' (2021)
- C. Bell and J. Cainer, 'Cryptocurrencies: Identifying the Proper Jurisdiction and Applicable Law' (2020) (Tech Disputes Network 'Need to Know Basis' Podcast, episode 10)
- C. Bell and J. Cainer, 'Decrypting the Situs: Conflicts of Laws Challenges in Cryptoasset Litigation' (2020)
- J. Counsell KC and J. Cainer, 'Historical Sexual Abuse Claims – Is Vicarious Liability 'On The Move' Again?' [2020] 4 Journal of Personal Injury Law 225-232

Awards

- Buchanan Prize (Lincoln's Inn) (2019)
- Lord Denning Scholarship (Lincoln's Inn) (2018)
- BPP Excellence Award (BPP Law School) (2017)
- Senior Harris Scholar (Downing College, University of Cambridge) (2016 and 2017)
- Kathryn Wilsey & Keith W Lerch Book Prize for Law (Downing College, University of Cambridge) (2016 and 2017)
- Foundation Scholar of Downing College (Downing College, University of Cambridge) (2016)
- Littleton Chambers Prize for Labour Law (Faculty of Law, University of Cambridge) (2016)
- Hardwicke Entrance Scholarship (Lincoln's Inn) (2016)
- Rebecca Flower Squire Scholarship (Faculty of Law, University of Cambridge) (2014, 2015 and 2016)
- Harris Book Prize (Downing College, University of Cambridge) (2015)
- Kathryn Wilsey & Keith W Lerch Scholarship for Law (Downing College, University of Cambridge) (2014 and 2015)
- Seton Cavendish Book Prize (Downing College, University of Cambridge) (2014)

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Privacy Policy

Read Joshua's [Privacy Policy](#).

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