



Joshua Cainer

Year of call
2019

Email
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Joshua joined Chambers in 2020 following the successful completion of his pupillage. He is happy to accept instructions across all of Chambers' areas of practice and 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 QC 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.

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Publications

- J. Cainer, 'Horseplay, affray and going astray – vicarious liability for intentional wrongdoing in the workplace' (2021) (forthcoming in the Journal of Professional Negligence)
- 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) (Outer Temple Chambers Article)
- J. Counsell QC and J. Cainer, 'Historical sexual abuse claims – limitation risks in out of time claims' ([Part One](#)) and ([Part Two](#)) (2021) (Outer Temple Chambers Article)
- C. Bell and J. Cainer, '[Cryptocurrencies: Identifying the Proper Jurisdiction and Applicable Law](#)' (2020) (Tech Disputes Network 'Need to Know Basis' Podcast)
- C. Bell and J. Cainer, '[Decrypting the Situs: Conflicts of Laws Challenges in Cryptoasset Litigation](#)' (2020) (Outer Temple Chambers Article)
- J. Counsell QC and J. Cainer, '[Historical Sexual Abuse Claims – Is Vicarious Liability 'On The Move' Again?](#)' [2020] 4 JPIL 225-232
- J. Cainer, '[The Supreme Court on vicarious liability – where next for sexual abuse claims?](#)' (2020) (Outer Temple Chambers Blog)
- Contributor to Daniel Barnett's Employment Law Bulletin

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Employment & Discrimination

Joshua is developing 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; group action equal pay claims; TUPE claims; restrictive covenants; and internal investigations. The following examples are representative of Joshua's recent instructions:

- 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 a suspended local authority employee on the merits of claims for failure to make reasonable adjustments, direct and indirect race discrimination, victimisation and harassment.
- Successfully representing the claimant in a one-day preliminary hearing to determine whether his mental and physical medical conditions amounted to a disability for the purposes of disability discrimination and reasonable adjustment claims.
- Drafting amended details of claim for claims in health and safety detriment, automatically unfair health and safety dismissal, and ordinary unfair dismissal.
- Advising on the merits of a constructive unfair dismissal claim by a former employee of a local authority.
- 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, gaining experience in a wide range of employment law work, including work on the following matters:

- Assisted Naomi Ling (as a pupil) in a discrimination claim concerning armed forces service complaints under the Armed Forces Act 2006.
- Assisted David E Grant (as a pupil) in a case concerning an employee's dismissal for disclosure of confidential information being litigated in parallel arbitration and employment tribunal proceedings.

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Pensions & Trusts

Joshua gained experience in a variety of matters relating to pensions law and trusts law as a pupil, under the supervision of both Naomi Ling and David E Grant, including: *Beckmann* claims under TUPE; complaints to the Pensions Ombudsman; regulatory intervention by the Pensions Regulator; and Pension Protection Fund compensation. The following examples are representative of Joshua's experience:

- Assisted 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).
- Assisted David E Grant (as a pupil) in ***Chambers v Thomas Miller Wealth Management Limited (2020)*** (concerning pensions liberation, resulting trusts and equitable tracing).
- Assisted Oliver Powell (as a pupil) in a case concerning a member's request for a cash-equivalent transfer value from an occupational pension scheme.

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Commercial & Chancery

Joshua assisted members of Chambers in a range of commercial and chancery matters during pupillage and is keen to develop his practice in this area. The following are a selection of representative examples of Joshua's experience in this area:

- Represented a telecommunications company in a successful strike out and summary judgment application against a customer's claim for breach of contract.
- Drafted a defence and counterclaim in a claim for breach of contract arising out of a construction dispute.
- Assisted in an application to enforce a foreign judgment, raising issues of private and public international law, including state immunity.
- Assisted Oliver Powell (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. Drafted letter before claim, application for pre-action disclosure and an application to serve out of the jurisdiction.
- Assisted David E Grant (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.

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Personal Injury, Clinical Negligence and Travel Law

Joshua is developing a broad practice in the field of personal injury and clinical negligence, with a particular emphasis on claims in the travel law sphere which engage issues of private international law. He also has experience representing interested parties in inquests and in civil claims arising out of abuse, about which he has written a number of recent articles and blogs. Examples of his recent instructions, as both sole and junior counsel, include:

- **FS Cairo (Nile Plaza) LLC v Brownlie (2021)** – led by Sarah Crowther QC and Daniel Clarke for the claimant in the defendant’s appeal to the Supreme Court, concerning the scope of the tort gateway for service outside the jurisdiction at common law and the operation of the common law default rule of similarity between foreign law and English law (awaiting judgment).
- **AA and BB v C County Council** – 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.
- **Inquest touching on the death of AB** – represented the family of the deceased in a two-day 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.

During pupillage, Joshua was supervised by Daniel Clarke and experienced a wide range of matters relating to personal injury, clinical negligence, travel law and private international law, including work on the following matters:

- Assisted Sarah Crowther QC and Daniel Clarke (as a pupil) in a number of international travel law claims, including claims brought under the Package Travel Regulations 1992, as well as fault-based personal injury claims and Odenbreit claims brought against insurers under foreign law.
- Assisted Daniel Clarke (as a pupil) in an appeal to the First-tier Tribunal concerning a criminal injuries compensation claim for psychiatric injury by an infant.
- Assisted Sarah Crowther QC (as a pupil) in drafting an advice for a commercial entity concerning civil and criminal liability in the context of motor insurance and road traffic law.
- Assisted Sarah Crowther QC (as a pupil) in a personal injury claim for mesothelioma arising from asbestos exposure whilst employed by a school.
- Assisted James Counsell QC (as a pupil) in **EXE v The Governors of The Royal Naval School [2020] EWHC 596 (QB)** (an historical child sexual abuse claim against a school involving issues of

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vicarious liability and primary duties of care in negligence).

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Public Law and Human Rights

Joshua has a keen interest in public law and human rights matters, having previously taught undergraduate students in Administrative Law as well as having assisted the Court of Appeal with a wide range of appellate cases relating to public law and human rights. He is building a varied practice in this area, including in cases where public law and human rights law crosses over with other practice areas. Examples of his recent instructions include the following:

- ***Inquest touching on the death of AB*** – represented the family of the deceased in a two-day 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.
- ***AA and BB v C County Council*** – 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.
- ***EE v Secretary of State for the Home Department*** – 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.

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

- Assisted 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).
- Assisted Oliver Powell (as a pupil) in drafting an advice on collaterally challenging the legal basis for bringing a regulatory prosecution as unlawful under public law.
- Assisted Tim Nesbitt QC (as a pupil) in drafting an advice concerning transport regulation, local government law and public procurement law.

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Public and Private International Law

During pupillage, Joshua was exposed to a variety of work involving matters of both public and private international law and he is keen to develop his practice in these areas. He has also written a number of recent articles on private international law. The following examples are representative of Joshua's experience in international law matters:

- **FS Cairo (Nile Plaza) LLC v Brownlie (2021)** – led by Sarah Crowther QC and Daniel Clarke for the claimant in the defendant's appeal to the Supreme Court, concerning the scope of the tort gateway for service outside the jurisdiction at common law and the operation of the common law default rule of similarity between foreign law and English law (awaiting judgment).
- Assisted in an application to enforce a foreign judgment, raising issues of private and public international law, including state immunity.
- Assisted Oliver Powell (as a pupil) in drafting an advice on international maritime law, advising on a state's international jurisdiction at sea under UNCLOS and the SUA Convention.
- Assisted Oliver Powell (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. Drafted letter before claim, application for pre-action disclosure and an application to serve out of the jurisdiction at common law.
- Assisted Sarah Crowther QC 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, which regularly involved considering issues under the Brussels 1a Regulation and the Rome II Regulation.

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Disciplinary & Regulatory

As a pupil, under the supervision of Oliver Powell, Joshua had significant exposure to a number of different areas within the field of disciplinary and regulatory law. Joshua's experience includes issues of financial regulation, anti-corruption regulation, building control regulation and maritime law. In particular, he worked on the following matters:

- Assisted Oliver Powell (as a pupil) in drafting written submissions for defending against a prosecution for breach of building control regulations.
- Assisted Oliver Powell (as a pupil) in drafting grounds of appeal to the First-tier Tribunal (Tax Chamber) against a decision refusing to restore goods seized as liable to forfeiture under the Customs and Excise Management Act 1979.

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Appointments & Memberships

- Commercial Bar Association (COMBAR)
- Industrial Law Society (ILS)
- Personal Injury Bar Association (PIBA)
- The Honourable Society of Lincoln's Inn

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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 (2016) (Downing College, University of Cambridge)
- 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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