



Andrew Burns QC

Year of Call: 1993 Silk: 2015



Andrew specialises in complex commercial, employment and industrial disputes, particularly injunctions. He has featured in some of the leading appellate cases in employment law and trade disputes in recent years including *Malone & Ors v British Airways Plc* (the BA cabin crew litigation), *ASLEF v London Midland*, *RMT v Serco* (the key authority on strike injunctions), and *Prophet plc v Huggett* (restrictive covenant injunctions).

He is also a leading silk in insurance and reinsurance disputes appearing in the Supreme Court in *Durham v BAI (Run Off) Ltd (the Employers' Liability Policy Trigger Litigation)*, in asbestos insurance cases such as *Redman v Zurich* and acted in litigation relating to 9/11 reinsurance disputes (*Simmonds v Gammell* and *Allianz v Tonicstar*).

He acted for Royal Mail in its injunction to prevent the national postal strike (*Royal Mail Group v CWU*), in a number of recent airline and airport disputes and appeared for Birmingham City Council in the recent bin workers' strike (*Birmingham City Council v Unite the Union*).

Two of Andrew's cases were included in Personnel Today's 'Six employment law decisions that will shape 2019': *Kostal v Dunkley* (on changing employment contracts outside of collective bargaining) and *Ali v Capita* (on discrimination between payments for shared parental leave and maternity leave).

In addition to acting for British Airways Andrew has acted for London bus companies, BT, Post Office, Fujitsu, South West Trains and Citylink in industrial disputes, including wildcat action, picketing and transport blockades and in contract actions for the Co-operative Group, Network Rail and Turning Point. He has recently appeared in recognition and EWC claims in the CAC (and in both of the first two EWC appeals to be heard by the EAT – *Lean v ManpowerGroup* and *Hinrichs v Oracle Corp*), in insurance disputes in the Commercial Court and Court of Appeal and contract actions in the DIFC Court of Appeal.

Andrew is a co-author of the *Law of Reinsurance* with Colin Edelman QC (3rd Ed. 2021) and *Bean on Injunctions* (14th Ed. 2021). He is also co-general editor of *Discrimination Law* (Bloomsbury Professional).

Prominent recent cases include:

- whether it is discrimination for shared parental leave to be paid at less than maternity pay - *Capita v Ali* and *Hextall v Chief Constable* [2019] EWCA Civ and [2018] IRLR 586, EAT;
- qualification of arbitrators for reinsurance disputes – *Allianz Insurance Plc v Tonicstar Ltd* [2018] 1 Lloyd's Rep 389;
- restrictions on contractual changes in relation to collective bargaining (the s.145B issue) – *Kostal v Dunkley* [2019] EWCA Civ 1009 and [2018] ICR 768;
- compensatory rest breaks for transport workers – *Crawford v Network Rail* [2019] EWCA Civ 269 and [2018] IRLR 714, EAT;
- *Ahir v British Airways* [2017] EWCA Civ 1392 - fixed term workers and striking out;
- *Pinaud v British Airways* [2019] ICR 487, CA - part-time workers pay;

- a committal for contempt of court arising from breach of undertakings in a confidentiality and restrictive covenant injunction – *Plant Health Care v Holohan* [2017] EWHC 1119 (QB);
- *Redman v Zurich Insurance* [2017] EWHC 1919 (QB) on the effect of the Third Parties (Rights Against Insurers) Act 2010;
- a reinsurance aggregation dispute relating to losses arising from one event- *Simmonds v Gammell* [2016] EWHC 2515 (Comm);
- high profile executive whistleblowing claims – *Walker v Co-operative Group*, *Harmeston v The Co-operative Group*, *Wilkinson v Bournemouth BC*, *Bennett v Ladbrokes*, *P v X Bank* (2018);
- insurance and reinsurance issues arising out of complex underlying injury claims.

Recommendations

Advises clients on a broad range of employment law matters, with a focus on industrial disputes and notable experience of whistle-blowing and discrimination issues. He often acts for major private sector employers.

"He is super smart, he is utterly charming, he is persuasive and the clients love having him in their corner." "He is easy to work with, he is responsive, he knows the field inside out and he can read the court very well." "He is an expert in trade union issues and he makes complex things understandable to clients." - *Employment, Chambers UK Bar 2022.*

A respected commercial silk who maintains an insurance and reinsurance practice that includes a strong focus on litigation arising out of employer liability and professional negligence. He also has experience in D&O cases, coverage disputes and insurance claims related to personal injury. **"Andrew is very knowledgeable and very detailed." "He is a class act."** - *Insurance, Chambers UK Bar 2022.*

"Highly intelligent, very sharp but also client friendly and commercial. Gains the confidence of clients quickly. Also responsive, and turns work around quickly when required." - *Employment, Legal 500 2022.*

"Highly intelligent, client friendly, commercial and responsive." - *Insurance and Reinsurance, Legal 500 2022*

"He is go-to for industrial relations issues; he is very client-friendly and forensic in his analysis." He often acts for major private sector employers. **"He is pragmatic, technically excellent and easy to work with."** - *Employment, Chambers UK Bar 2021.*

"He is a very calm, sensible and systematic advocate. He doesn't get lost in things and presents very clearly and effectively." He also has experience in D&O cases, coverage disputes and insurance claims related to personal injury. **"He's great on his feet and gets the ear of the court."** - *Insurance, Chambers UK Bar 2021.*

"Very client focused and highly commercial." - *Insurance and Reinsurance, Legal 500 2021*

"Very pleasant to deal with, responsive and a go-to person for industrial relations work." - *Employment, Legal 500 2021*

"Combines huge intellect with a commercial and strategic approach." - *Employment, Legal 500 2020*

"He is a very talented advocate." - *Insurance and Reinsurance, Legal 500 2020*

"Exceptional counsel: very, very smart, a terrific advocate and a great all-rounder." "A very bright, pragmatic and able lawyer with great attention to detail." - *Employment, Chambers UK Bar 2020*

"A very formidable opponent." "A strong advocate." - Insurance, Chambers UK Bar 2020

"First class; he is cogent, succinct and has real presence in court." - Insurance and Reinsurance, Legal 500 2019

"He commands respect and is a firm advocate when on his feet." - Employment, Legal 500 2019

"Bright, commercial and good with clients." "Energetic, knowledgeable, and a good advocate." Insurance, Chambers UK Bar 2019

"Very bright, pragmatic and able. He has great attention to detail and inspires confidence." "Good with clients and approachable... He is able to cut through complex cases to distil the key issues." - Employment, Chambers UK Bar 2019

'He has experience in DIFC employment law matters.' - Commercial, Legal 500 United Arab Emirates (English Bar) 2019

Past Editions of Legal 500, Chambers UK, Who's Who Legal and Legal Experts:

"A very bright, pragmatic and able lawyer with great attention to detail, inspiring confidence and very good client-handling skills." "He is the complete package. Clever, articulate, a great drafter and a devastating cross-examiner." - Employment, Chambers UK 2018

"Very hands-on, very good with clients and someone who understands the perspective that insurers have. He is very astute in ensuring the advice he provides is pitched in the way clients need it to be provided, and he has a very deft touch in cross-examination." - Insurance, Chambers UK 2018

"He is very committed and proactive". "He is knowledgeable, clever and a good advocate." "He's easy to work with and a safe pair of hands."

"He is very bright, has got great attention to detail and has a good manner in tribunal and cross-examinations." "He is very good, but he is particularly good on strike injunctions and industrial action."

"His expertise and knowledge in this practice area are second to none"

"He provides unfussy, concise advice and always gives a firm opinion in a no-nonsense manner. He is an absolute pleasure to deal with, as he does not stand on ceremony and is highly personable."

"He is always quick to get to the central commercial issues; he marshals the arguments well - An incredible eye for detail"

"He's very clever and at the same time great with clients. He's the go-to person for industrial relations advice. Thorough but always prepared to consider a different point of view."

"A measured and intelligent advocate. Possesses the ability to cut away the smoke and mirrors... in a precise and methodical fashion."

Commercial Litigation and Disputes

Andrew appeared in the Court of Appeal in *Allianz Insurance Plc v Tonicstar Ltd* [2018] EWCA Civ 434 concerning the qualification of arbitrators for reinsurance disputes. Andrew has wide experience in commercial litigation in the High Court and County Court as well as internationally - principally in the DIFC Courts - and arbitration. His main

expertise arises out of insurance and insurance related litigation, but he has also advised in telecommunications and energy claims, as well as business disputes and commercial contract claims. He is advising on the construction of a substantial financial agency agreement and on the insurance and reinsurance issues arising from major injury claims under a PL policy.

He advised about claims under the Riot (Damages) Act 1886 in respect of the 2011 riots in London and other cities, drawing on his involvement in the Court of Appeal in *Bedfordshire Police Authority v Constable (Syndicate 386)* [2009] Lloyd's Rep IR 607. He was invited to talk to senior claims managers on the topic at the Post Claims Club quarterly meeting.

Andrew acted for the successful reinsured in the recent appeal against an arbitration award concerning an aggregation dispute relating to losses arising from 9/11 dust inhalation claims - *Simmonds v Gammell* [2016] 2 Lloyd's Rep. 631. He is acting for a leading insurer in reinsurance claims arising from major injury claims. He acted in one of the lead cases in the Supreme Court in *Employers' Liability Policy Trigger Litigation* [2012] 1 WLR 867. The test cases were about the coverage of Employers' Liability insurance policies in respect of damages for mesothelioma victims. Andrew acted for the insured in a property insurance claim - *Aviva Insurance v Brown* [2012] Lloyd's Rep IR 211. Eder J examined fraudulent means or devices and the definition of dishonesty in this insurance fraud trial.

Andrew appeared with Colin Edelman QC for Zurich in *Horwood v Argos & Ors* [2010] Lloyd's Rep IR 453, the insurance coverage dispute arising out of the 'Toxic Sofas' group litigation order. He advised a large organisation on coverage of excess layer insurance policy in relation to a multi-million pound liability for accidental damage arising out of its business.

In addition to general commercial litigation in the High Court and County Court, Andrew has experience of ADR, mediation in particular, in a wide range of commercial disputes. He has acted for a range of insurers and for many commercial city solicitors. He specialises in contractual construction particularly of commercial documents, but advises on a wide range of national and international disputes, often arising out of the insurance sector or in connection with professional negligence.

Insurance & Reinsurance

Andrew acts for a range of insurers in coverage disputes and policy interpretation points. His insurance practice is strong and he acts for well-known city insurance firms. He is an editor of *The Law of Reinsurance* with Colin Edelman QC. Andrew represented successful insureds and their families in the Supreme Court in *Employers' Liability Policy Trigger Litigation* [2012] 1 WLR 867, [2012] ICR 574, [2012] Lloyd's Rep. IR 371 about the coverage of Employers' Liability insurance policies in respect of damages for mesothelioma victims. He appeared in *Redman v Zurich Insurance Plc* [2018] 1 WLR 280 concerning long-tail claims under the Third Party (Rights against Insurers) Act 2010.

Andrew also acted for the insured in an insurance fraud case which has been the subject of much comment - *Aviva Insurance v Brown* [2012] Lloyd's Rep IR 211. He is advising on the insurance and reinsurance issues arising from major injury claims under a PL policy.

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In *Horwood v Argos & Ors* [2010] Lloyd's Rep IR 453, Andrew acted for Zurich in the insurance coverage dispute arising out of the 'Toxic Sofas' group litigation order. He has acted for a UK insurer in a brokers' D&O claim and for a leading US professional indemnity insurer on a coverage claim in the Commercial Court. He advised a large organisation on coverage of excess layer insurance policy in relation to a multi-million pound liability for accidental damage arising out of its business.

Andrew appeared in *MJ Harrington v Axa Oyak Sigorta* [2007] Lloyd's Rep. IR 60 and in *Tektrol v. International Ins Co of Hanover* [2005] 2 Lloyd's Rep 701, CA an appeal on the construction of exclusion clauses in property insurance policies. He also appeared in *Countrywide v. Marshall* [2003] Lloyd's Rep IR 195 on aggregation in insurance claims and in *Jacobs v. Coster* [2000] Lloyd's Rep IR 506, CA an authority on late notification.

Andrew has experience in advising insurers and claimants about claims under the Riot (Damages) Act 1886 in respect of the 2011 riots in London and other cities, as he was in *Bedfordshire Police Authority v Constable (Syndicate 386)* [2009] Lloyd's Rep IR 607. He talked to senior claims managers on the topic at the Post Claims Club quarterly meeting.

Employment

Andrew has recently appeared in some of the highest profile cases - for the Co-op in *Harmeston v Co-operative Group*, in *Wilkinson*: a finance director whistleblowing claim, for British Airways in the cabin crew litigation, for the train operators in the leading Court of Appeal authority on strike ballot requirements - *RMT v Serco*, and for BT in preventing its first national strike in 25 years. He appeared in *Allen v TRW Systems* [2013] IRLR 699 on incorporation of a redundancy payment policy into contracts of employment in the Court of Appeal.

He is one of the 'go-to' barristers for Industrial Action litigation with cases for the London Bus companies and South West Trains over the pre-Olympic strikes, and he has advised on the threatened NHS and tanker driver strikes. Andrew has recently been involved in secondary action and unlawful picketing disputes, including preventing national strike action by the RMT at Citylink. This complements his busy injunction practice in relation to restrictive covenants and confidentiality claims, together with work on freezing injunctions and search orders.

Andrew acts and advises on team moves and post-termination restrictions, including for a leading engineering firm in the north-west and a major financial adviser. He succeeded in the Court of Appeal in *Prophet plc v Huggett* [2014] EWCA Civ 1013; [2014] IRLR 618 on the construction of restrictive covenants. Andrew is a co-author with Lord Justice Bean of *Bean on Injunctions* now in its 12th edition - one of the leading texts on the subject.

Andrew has continued to be busy for British Airways including appearing in the group race discrimination (*Russo v British Airways* [2012] EqLR 987) and pay claims (*Usher v BA*) brought by various groups of cabin crew, as well as acting in trade union detriment claims and in the claims arising from the takeover of BMI. He has also acted for other airlines and ground handling companies including collective TUPE and redundancy actions arising from Gatwick, Liverpool and Glasgow airports in claims brought by group claimants or unions.

He is instructed by a wide range of the best employment firms in London and nationally as well as having a substantial commercial practice. Andrew has long been a recognised expert on disability discrimination having appeared in the seminal case on the DDA 1995: *Jones v Post Office*. Over the last year, he has acted in TUPE consultation multiples, difficult multi-day discrimination cases for the NHS, banks and for city solicitors. He also acts for claimants - and on behalf of a solicitor claimant against a 'magic circle' firm and in the widely reported *Sitz v Oppenheimer* claim - for the successful female trader against a merchant bank. He has been recommended by both *Chambers UK* and *Legal 500* as a top employment barrister for many years.

Other reported Employment Cases include:

- *Shevlin v Lord Sainsbury of Turville & others* [2015] EAT 0278/14 - unfair dismissal - reasonableness of dismissal
- *Agbakoko v Allied Bakeries* [2015] EAT 0340/14 - disability discrimination
- *McDuff v KBH Kaanuun Ltd* CA-003-2014 (DIFC) - An appeal concerning the meaning of the reasonable employer test in Article 60 (4) of DIFC Employment Law 2005 (now Art 59A).
- *Allen v TRW Systems* [2013] IRLR 699 - enhanced redundancy payments

- *Russo v British Airways* [2012] Eq LR 987 - indirect race discrimination
- *ASLEF v London Midland and RMT v Serco Ltd* [2011] ICR 848 - strike ballots
- *Malone & Ors v British Airways Plc* [2011] ICR 125 - incorporation of collective agreements
- *EDF Energy Powerlink v RMT* [2010] IRLR 114 - strike ballot requirements
- *GMB v Amicus & Others* [2003] ICR 1396 - collective consultation
- *Wolstenholme v Post Office* [2003] ICR 546 - definition of worker
- *Bennett v L. B. of Southwark* [2002] ICR 881, IRLR 407, CA - tribunal bias test
- *Ekpe v Metropolitan Police Commissioner* [2001] IRLR 605, EAT - definition of disability
- *Jones v Post Office* [2001] IRLR 384, CA - disability justification
- *Robinson v Post Office* [2000] IRLR 804, EAT – DDA discrimination time limits
- *Post Office v Howell* [2000] IRLR 224, EAT - Jurisdiction of tribunal chairmen sitting alone
- *Wood v William Ball Ltd* [1999] IRLR 773 EAT - Equal value procedure
- *Sheehan v Post Office Counters Ltd* [1999] ICR 734, EAT - Definition of employee in the DDA.
- *Lancashire CC v Mason* [1998] ICR 907, EAT - Application of DDA to schools
- *Carter v Reiner Moritz Associates Ltd* [1997] ICR 881, EAT - Effect of settlement agreements

Industrial Relations

Andrew has developed a prominent practice in industrial action and trade dispute litigation, appearing in some of the leading cases of the last few years and advising parties to some of the highest profile trade disputes in the UK. He has recently acted for Royal Mail in stopping the 2017 national postal strike by injunction before Supperstone J (*Royal Mail Group v CWU*). He has experience in industrial action disputes, pay disputes following strikes and legal action to combat alternative 'leverage' action. He has also advised a leading union about industrial action strategy.

Andrew advised a range of public sector employers about the 2011 day of strike action. He took part in the 2011 Laurence Stracey Debate at the V&A museum on Britain's strike laws. He is also acting for some large employers in relation to a series of collective consultation claims. He acted for BT in legal moves in response to a threatened 2010 national strike. The threat of industrial action was withdrawn on the day of the ballot result. In 2012 he acted for transport companies in legal actions against strikes called in support of an 'Olympic bonus' for transport workers, for a large utilities company facing industrial action, for two leading logistics and delivery companies facing protest and strike action, for a chain of education academies, an airport ground handling company and a major high street name.

Andrew appeared for the employers in *ASLEF v London Midland and RMT v Serco Ltd* [2011] ICR 848, one of the leading cases on industrial action law. The Court of Appeal discharged the injunctions preventing strike action and held that the minor breaches of ballot notice provisions should not stop industrial action. Elias LJ took the opportunity to review and restate the law on inaccurate ballot notices. The result of the case was reported by BBC News, the Financial Times, the London Evening Standard, the Press Association and the Daily Express.

Andrew has been counsel for British Airways in various claims arising from the high profile contractual dispute over changes to crewing levels on the airline: *Malone & Ors v British Airways Plc* [2011] ICR 125. BA succeeded in the interim injunction hearing in 2009, at the speedy trial in February 2010 and in the Court of Appeal. The outcome of

the case was reported widely including in *The Lawyer*, *The Independent*, the *Wall Street Journal*, *BBC News*, the *Press Association*, *Bloomberg* and *Reuters*.

Andrew appeared in *EDF Energy Powerlink v RMT* [2010] IRLR 114 getting an injunction from Blake J against a threatened strike on the London Underground on the basis that the RMT union had failed to give proper categories in its ballot notice.

Andrew acted for the employers in successfully defending interim relief claims by a senior union official of a rail union and an official of UNITE in *S v N* and *J v F*. Andrew has frequently appeared in the Central Arbitration Committee including *Unite v ManpowerGroup* EWC/15/2017 and *Morgan & King v Safran Group* EWC/8/2013 under the TICE Regulations and advised a major retailer about a CAC claim.

Dubai International Financial Centre (DIFC)

Andrew Burns QC has been an advocate of the DIFC Courts since 2010 when he acted on an application for immediate judgment under Part 24 of the DIFC Court Rules. He appeared for the successful claimant in *McDuff v KBH Kaanuun Ltd* CA-003-2014 in 2014. This leading Court of Appeal authority interpreted the important 'reasonable employer' test in Article 60 (4) of DIFC Employment Law 2005 (now Art 59A).

He also appeared in the DIFC Court of Appeal and, at first instance, in *Wheatley v Simmons & Company International* DIFC CA-001-2013; an appeal concerning contractual construction, particularly of minimum guaranteed bonus provisions. He has acted and advised in contractual claims involving banks and other financial institutions and has lectured in the DIFC on confidential information and restrictive covenants.

Restrictive Covenants & Injunctions

Andrew is a co-author of *Bean on Injunctions* - one of the leading books in this field.

As well as appearing for British Airways in the injunction claim up to and including the Court of Appeal in *Malone & Ors v British Airways Plc* [2011] ICR 125, Andrew has acted for a variety of leading employers in relation to restrictive covenant disputes including team moves. He appeared in *World Fuel Services v Aegean Marine Petroleum* in which Blair J granted a springboard injunction against a marine fuel company based on a breach of confidence.

He succeeded in overturning the controversial Chancery Division decision in *Prophet plc v Huggett* [2014] EWCA Civ 1013. The Court of Appeal held that a strict interpretation should be given to the construction of restrictive covenants in an expedited injunction claim.

Andrew acted for the employer in a recent committal for contempt of court arising from breach of undertakings in a confidentiality and restrictive covenant injunction – *Plant Health Care v Holohan* (2017, QBD, Jay J).

Andrew continues to be busy with a number of substantial restrictive covenant injunctions in the High Court, acting both for major businesses and for individuals. He acted for leading patent attorneys in a confidentiality injunction claim and for an international engineering company restraining activity outside the UK, as well as a mortgage broker moving to a new employer. He has acted in obtaining and resisting High Court freezing injunctions involving disputes over security for costs, fortification and non-disclosure issues as well as a number of confidentiality injunctions.

He speaks regularly at seminars and conferences and writes for legal publications on the topic of employment and commercial injunctions, including *Lexis Nexis Webinars* and for the *New Law Journal*.

Equality

Andrew has a high profile equality practice and frequently writes and lectures on equality issues. Andrew has long been recognised as a leading expert in discrimination and was in some of the leading cases on the DDA 1995 including *Jones v Post Office* in the Court of Appeal and *Ekpe v Comm of Metropolitan Police*.

He acted for acted for Barclays Bank in high value discrimination claims and various NHS Trusts in a number of high profile discrimination and whistleblowing claims. He recently successfully acted for Zenith Bank in a race and religious discrimination claim which is pending in the EAT. He appeared for the claimant in *Sitz v Oppenheimer Bank*; a much publicised sex discrimination and victimisation claim against a US finance firm, and has a large religious discrimination claim against a US bank pending.

Andrew has acted in complex indirect discrimination and equal pay claims for clients such as British Airways and has successfully defended BT in a senior employee age discrimination claim. He has also recently advised upon, and represented clients in, large multiple fixed term worker claims.

Professional Negligence

Andrew acts for a range of insurers on professional negligence claims against insurance brokers, surveyors, valuers and financial advisers.

Andrew recently successfully defended a barrister in an unmeritorious, if complex, professional negligence claim concerning discrimination litigation - *Begum v Neejam LLP* (QBD, Birmingham DR, 9 December 2015) which included allegations of settlement at an undervalue and issues such as the assessment of loss of a chance in respect of discrimination compensation. He is also acting for solicitors in a claim by a high profile former executive.

He is presently acting in a High Court claim by a former Premier League chief executive against a leading firm of solicitors.

Andrew has acted for and against solicitors in solicitors' negligence claims arising out of litigation and property transactions. He has been instructed on behalf of the BMIF to act for barristers (including a claim against a QC), particularly in employment disputes. Andrew has acted for HCCI or its insureds in professional indemnity disputes arising out of claims against architects, designers and engineers.

Arbitration

Andrew has acted in London arbitrations in both commercial and employment cases, with particular experience in insurance and reinsurance arbitrations. He is available to sit as an arbitrator, drawing on his judicial experience as a Recorder.

Andrew has also acted in numerous mediations, including judicial mediations. His collaborative style has led to numerous successfully mediated conclusions to complex disputes.

Andrew also acts as a mediator in commercial and employment disputes. He recently successfully mediated a complex discrimination dispute between senior managers and a multinational company.

Feedback from the parties on recent mediations includes:

"I think he did a terrific job, with two parties who were at loggerheads. He was calm, patient but firm which is everything you would want from a mediator and yet he made clear that he has clout as an experienced advocate in this subject area and therefore gave credibility to what he was saying." (City solicitor acting for the claimant in a complex High Court employment dispute).

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Appointments

Head of Devereux Chambers

Recorder of the Crown Court

Deputy Chancellor of the Diocese of Guildford

Bencher of Middle Temple and Advocacy, Ethics and E&D Trainer

Member of the Bar Standards Board Professional Conduct Committee (2007-2013)

Head of the Chambers Pupillage Committee (2007-2012)

Chair of the Chambers Supervision Committee (2016-2021)

Memberships and Associations

BILA, COMBAR, LCLCBA, PNBA, ELA, ELBA, ELS

Academic

MA (Downing College, Cambridge)