ThirtyNine
ESSEX STREET

Robert Jay QC

Year called 1981
Year appointed Silk 1998
Email robert.jay@39essex.com

Practice Areas

Administrative & Public Law
Personal Injury & Clinical Negligence
Regulatory & Disciplinary Law
Commercial
Education

Recommendations

Robert is recommended as a Leading Silk in Administrative & Public Law, Personal Injury, Public Inquiries and Professional Discipline by Chambers and Partners. The Legal 500 also recommends him as a Leading Silk in Administrative & Public Law, Professional Discipline and Regulatory Law, and in Personal Injury.

Robert was named 'Barrister of the Year' at The Lawyer Awards 2012 and 'Human Rights & Public Law Silk of the Year' at The Chambers Bar Awards 2012.

Quotes

"... exhibits a 'calm confidence that works really well with judges and tribunals'"
"... delivers 'finely honed arguments.'"
"understated and highly effective"
"an effective advocate who is no stranger to the higher courts."
"extraordinarily incisive and focused, something which makes him particularly effective at giving no-nonsense advices"
"Switched-on, and good on the political issues too" Chambers & Partners 2012
"a leading practitioner in public law" Legal 500 2011
"an extremely effective advocate who practises across all areas of public law for government and public bodies. He recently achieved success for Defra in the Court of Appeal, in a challenge to the UK's pesticides policy. "He has an excellent manner with both clients and the legal team, and produces compelling written and oral arguments." "User-friendly and excellent with clients." Chambers & Partners 2011
"provides sage advice" on high-profile group actions and matters involving complex medical and scientific aspects. He recently acted for the 30,000 claimants in Motto and Others v Trafigura, a case involving the dumping

of toxic waste in Côte d'Ivoire. He has also defended the MoD on a range of cases arising from the military actions in Afghanistan and Iraq" Chambers & Partners 2011
"A leading practitioner in disciplinary matters," Chambers & Partners 2011
"Jay is calm, precise and effective and is praised as being "very good at giving it to his clients straight." He "gains the respect of officials by never overstating a case."" Chambers & Partners 2011
"produces 'compelling written and oral arguments" Legal 500 2010
"...expertise representing the GMC and solicitors charged with dishonesty" Legal 500 2010
"quickly gains the confidence of clients and judges alike" Chambers & Partners 2010

Experience & Expertise

APPOINTMENTS

1989 Junior Counsel to the Crown, Common Law
1998 Queen's Counsel
1999 Recorder of the Crown Court
2000 Chair, Administrative Law Bar Association
2007 Elected Bencher, Middle Temple
2008 Appointed Deputy High Court Judge under s.9 of the Supreme Court Act 1981
2011 Appointed joint head of chambers
2011 Appointed Leading Counsel to the Leveson Inquiry into the Culture, Practices and Ethics of the Press

LANGUAGES

French (Very Competent)
Italian (Conversational)

EDUCATION, DEGREES & ACADEMIC AWARDS

Kings College School, Wimbledon (Top Open Scholar, 1972)
Open Scholarship to New College, Oxford (1976)
1977-1980: New College, Oxford. BA, Jurisprudence, First Class (honours)

BREAKDOWN OF PRACTICE AREAS

Administrative/Public and Human Rights

Robert's experience in all areas of administrative/public and human rights law extends over twenty-five years, when he completed his pupillage with Mr Simon Brown (now Lord Brown of Eaton-Under-Heywood), the then Treasury Junior.

In the last four years, Robert's reported cases in these areas include:

The Leveson Inquiry - Appointed lead counsel to the most high profile inquiry of recent years into the Culture, Practices and Ethics of the Press.

Mutua & Ors v Foreign and Commonwealth Office [2011] EWHC 1913 (QB)

Five Kenyan nationals who allege that they were seriously mistreated in detention camps in Kenya, when it was a British colony, during the Mau Mau uprising in the 1950s, brought claims for damages for personal injuries against

the Foreign and Commonwealth Office, alleging assault and battery, and negligence.

Smith & Ors v Ministry of Defence [2011] EWHC 1676 (QB) (human rights claim brough by injured soldiers and/or their estates against the Crown arising out of operations in Iraq.)

AT (Pakistan) and JK (Pakistan) v Secretary of State for the Home Department [2010] EWCA Civ 567 (Robert successfully acted for the Home Office on a declaration of incompatibility challenge)

Nasseri v Secretary of State for the Home Dept [2009] UKHL 28 (House of Lords), [2010] 1 AC 1. The Times Law Report, 7th May 2009). (Robert successfully acted for the Home Office in resisting a claim for a declaration of incompatibility under s.4 of the HRA arising out of the third country provisions in the 2004 Act).

R(Downs) v DEFRA (Collins J) [2008] The Times Law Report 1st December 2008 (challenge to UK pesticides policy, decision successfully reversed on appeal: [2010] Env LR7).

JT (Cameroon) v Secretary of State for the Home Dept (Court of Appeal) [2009] 1 WLR 1411 (Robert successfully acted for Claimant in relation to an appeal on s.8 of the Asylum Immigration (Treatment of Claimants) Act 2004).

TB (Jamaica) v Secretary of State for the Home Dept (Court of Appeal) [2008] The Times Law Report, 9th September 2008.

R (HSMP Forum Ltd) v Secretary of State for the Home Dept [2008] EWHC 664 (Admin), The Times Law Report 29th May 2008, (challenge to the Home Office's changes to the Highly Skilled Migrants Programme).

R (Walker) v Secretary of State for the Home Dept (Court of Appeal) The Times Law Report 6th February 2008 [2008] 1 WLR 2487; (Divisional Court) The Times Law Report 11th October 2007 (Robert acted for the Home Office in relation to judicial review proceedings brought by an IPP prisoner against the lawfulness of the regime under the CJA 2003).

R (Law Society) v Legal Services Commission and Secretary of State for Justice (Court of Appeal) [2008] QB 737, The Times Law Report 3rd December 2007 (Robert acted for the LSC and the SSJ in relation to a challenge by the Law Society under the Public Contracts Act 2006 to the Unified Contract governing publicly-funded civil work).

Secretary of State for the Home Dept v S [2007] Imm AR 781 [important case on the effect of delay in immigration decisions]

Council for the Regulation of Health Care Professionals v GMC and Saluja, [2007] 1 WLR 3094, 14th December 2007 [successful appeal by the CHRP: erroneous approach by the GMC to the abuse of process jurisdiction in regulatory cases; application of articles 6 and 8 of the ECHR]

O'Connor v Wiltshire CC (Court of Appeal), The Times Law Report, 28th May 2007 [successful appeal on behalf of various residents; circumstances in which a highway is maintainable at public expense under the Highways Act 1980]

R (Safi and others) v Secretary of State for the Home Dept (Sullivan J and the Court of Appeal) The Times 4th August 2006; The Times Law Report 14/9/06, [2006] INLR 575 [Robert acted for the Home Office in relation to judicial review proceedings brought by the Afghani hijackers]

R (Kehoe) v Secretary of State for Work and Pensions (2006) 1 AC 42 [House of Lords appeal on application of article 6 to the Child Support Agency (see also the decision of the ECtHR in the same case, handed down on 17th June 2008)]

Robert is also "developed vetted" and has therefore acted in a number of National Security matters.

Personal Injury and Clinical Negligence

Robert is particularly interested in complex scientific and medical cases, and specialises in group litigation. Currently, he is instructed in a number of large and high-profile cases, including:

(i) on behalf of the DECC, instructed by Nabarro, in defending a group action brought by coal-miners in relation to various knee conditions (see *Davies v DTI* [2007] 1 WLR 3232 [joinder of parties in multi-party action]);
(ii) on behalf of 30,000 claimants, instructed by Leigh Day & Co, in the Abidjan Personal Injury Group Litigation (case now resolved);
(iii) on behalf of the MoD, instructed by the Treasury Solicitor, in relation to claims, both military and civilian, arising out of the second Iraq war and Afghanistan (see, for example, the Mediation in the Iraq Abuse case, front-page news in The Times on 11th July 2008).
(iv) on behalf of the FCO, instructed by the Treasury Solicitor, defending a claim brought by former Mau Mau insurgents.
(v) on behalf of the claimants in litigation involving allegedly defective hip replacement products.

In the past Robert successfully defended the MoD in the PTSD Group Action litigation in 2002-2003 (see for example *Hibbert v MoD* (2009) 105 BMLRI), and acted for the same Department in the Gulf War Illness litigation (which has now been discontinued).

Discipline and Regulation

Robert regularly advises financial, healthcare and professional regulators, and accepts instructions (particularly from doctors) against those bodies.

In the past year he has given numerous advices to the Council for Healthcare Regulatory Excellence.

Robert has recently concluded a lengthy case for a doctor before a fitness to practise panel of the GMC, which case received some prominence in The Sun newspaper.

Over the past three years Robert's reported cases include:

Council for the Regulation of Health Care Professionals v GMC and Saluja, [2007] 1 WLR 3094, 14th December 2007 [successful appeal by the CHRP: erroneous approach by the GMC to the abuse of process jurisdiction in regulatory cases; application of articles 6 and 8 of the ECHR]

Council for the Regulation of Health Care Professionals v GDC and Fleischmann Times Law Reports, 8/02/05 [successful appeal by the CHRP: general guidance given by the High Court as to the correct approach in conviction cases]

Council for the Regulation of Health Care Professionals v GMC and Basiouny Times Law Reports, 7/02/05 [successful appeal by the CHRP on the ground of error of fact].

Commercial

Robert has a broad practice in this area, advising both public and private bodies on issues which tend to overlap with the rest of his practice. For example, Robert has acted for a numbers of public bodies on PFI/PPP projects.

Robert's advisory practice covers a range of contractual areas in the public and private domain, as well as insurance related work. His clients included local authorities, NHS Trusts and similar public bodies, in addition to a range of private clients.

Robert also has considerable experience in building-related disputes, particularly those involving complex expert and technical evidence, and difficult matters of contractual construction.

Robert's reported cases include:

Weston v Gribben [2006] EWCA Civ 1425, The Independent, 8th November 2006.

Education

Robert advises a wide range of HEIs and similar bodies, particularly on commercial, *vires* and disciplinary issues.

His reported cases include:
R (Varma) v University of Cranfield Times Law Reports, 22/07/04 [reviewability of University Visitor]

R (Jemchi) v Visitor of Brunel University [2003] ELR 125

R (Persaud) v Cambridge University [2001] ELR 480

Cases

Smith & Ors v Ministry of Defence [2011] EWHC 1676 (QB) (human rights claim brough by injured soldiers and/or their estates against the Crown arising out of operations in Iraq.)

AT (Pakistan) and JK (Pakistan) v Secretary of State for the Home Department [2010] EWCA Civ 567 (Robert successfully acted for the Home Office on a declaration of incompatibility challenge)

Nasseri v Secretary of State for the Home Dept [2009] UKHL 28 (House of Lords) [2010] 1 AC 1. The Times Law Report, 7th May 2009). (Robert successfully acted for the Home Office in resisting a claim for a declaration of incompatibility under s.4 of the HRA arising out of the third country provisions in the 2004 Act).

Davies v Global [2010] EWCA Civ 648

R(Downs) v DEFRA (Collins J) [2008] The Times Law Report 1st December 2008 (challenge to UK pesticides policy), successfuly revisted an appeal: [2010] Env LR7

TB (Jamaica) v Secretary of State for the Home Dept (Court of Appeal) [2008] The Times Law Report, 9th September 2008.

JT (Cameroon) v Secretary of State for the Home Dept (Court of Appeal) [2009] 1 WLR 1411 [2008] (Robert successfully acted for Claimant in relation to an appeal on s.8 of the Asylum Immigration (Treatment of Claimants) Act 2004).

LSC v Rasool (Court of Appeal) [2008] 1 WLR 2711, The Times Law Report 21st April 2008 (Robert instructed by the Legal Services Commission in relation to a claim for recovery of costs under a revoked legal aid certificate).

R (HSMP Forum Ltd) v Secretary of State for the Home Dept [2008] EWHC 664 (Admin), The Times Law Report, 29th May 2008, (challenge to the Home Office's changes to the Highly Skilled Migrants Programme).

R (Walker) v Secretary of State for the Home Dept (Court of Appeal) The Times Law Report 6th February 2008 [2008] 1 WLR 2487; (Divisional Court) The Times Law Report 11th October 2007 (Robert acted for the Home Office in relation to judicial review proceedings brought by an IPP prisoner against the lawfulness of the regime under the CJA 2003).

R (Law Society) v Legal Services Commission and Secretary of State for Justice (Court of Appeal) [2008] 2 WLR 803, The Times Law Report 3rd December 2007 (Robert acted for the LSC and the SSJ in relation to a challenge

by the Law Society under the Public Contracts Act 2006 to the Unified Contract governing publicly-funded civil work)

Secretary of State for the Home Dept v S [2007] Imm AR 781 [important case on the effect of delay in immigration decisions]

Council for the Regulation of Health Care Professionals v GMC and Saluja, [2007] 1 WLR 3094, 14th December 2007 [successful appeal by the CHRP: erroneous approach by the GMC to the abuse of process jurisdiction in regulatory cases; application of articles 6 and 8 of the ECHR]

O'Connor v Wiltshire CC (Court of Appeal), The Times Law Report, 28th May 2007 [successful appeal on behalf of various residents; circumstances in which a highway is maintainable at public expense under the Highways Act 1980]

Davies v DTI [2007] 1 WLR 3232 (joinder of parties in multi-party action]

Weston v Gribben [2006] EWCA Civ 1425, The Independent, 8th November 2006.

R (Safi and others) v Secretary of State for the Home Dept (Sullivan J and the Court of Appeal) The Times, 4th August 2006; The Times Law Report 14/9/06 [2006] INLR 575 [acted for the Home Office in relation to judicial review proceedings brought by the Afghani hijackers]

R (Kehoe) v Secretary of State for Work and Pensions (2006) 1 AC 42 [House of Lords appeal on application of article 6 to the Child Support Agency]

Sheffield City Council v G (2005) 2 WLR 953 [important decision by Munby J on the "best interests" jurisdiction in relation to capacity to marry]

Council for the Regulation of Health Care Professionals v GDC and Fleischmann Times Law Reports, 8/02/05 [successful appeal by the CHRP: general guidance given by the High Court as to the correct approach in conviction cases]

Council for the Regulation of Health Care Professionals v GMC and Basiouny Times Law Reports, 7/02/05 [successful appeal by the CHRP on the ground of error of fact]

R (Kent) v FSS Times Law Reports, 6/01/05 [environmental challenge in relation to hazardous waste]

R (Varma) v University of Cranfield Times Law Reports, 22/07/04 [reviewability of University Visitor]

R (W) v Doncaster Borough Council Times Law Reports, 13/05/04 [duties of local authorities under section 117 of the MHA 1983]

R (Khan) v Oxford County Council Times Law Reports, 24/03/04 [restrictions on exercise of a local authority's powers under section 2 of the Local Government Act]

R (Williams) v Legal Services Commission [article 6 and reasons challenge to LSC's decision to withdraw public funding for the MMR litigation: report of decision currently embargoed]

R (A) v National Asylum Support Service (2004) 1 WLR 752 [nature of NASS's obligations under the Immigration and Asylum Act 1999]

R (Bloggs 61) v Secretary of State for the Home Department (2003) 1 WLR 2724 [important case on legitimate expectation and article 2]

R (Jemchi) v Visitor of Brunel University [2003] ELR 125

PTSD Group Claimants v MoD Times Law Reports, 29/05/03 [see also the article, co-authored with Jonathan Glasson, in the Journal of Personal Injury Law, (2004) JPIL Issue 2, page 120]

Zhou v Secretary of State for the Home Dept Times Law Reports, 7/02/03 [Court of Appeal: student able to work during currency of his leave to enter]

Redgrave v Metropolitan Police Commissioner (2003) 1 WLR 1136 [intervention in Court of Appeal on behalf of the Attorney General: limits of doctrine of res judicata and autrefois acquit in disciplinary proceedings]

Matthews v MoD Times Law Reports, 30/01/02 [HRA challenge to s10 of the Crown Proceedings Act 1947]

R v Governor of HMP Dartmoor, ex parte N Times Law Reports, 20/03/01 [Admin Court: spent conviction report by jail lawful]

R (Persaud) v Cambridge University [2001] ELR 480

R v Servite Homes, ex parte Goldsmith (2001) LGR 55 [whether a nursing home acting as agent for the local authority was amenable to judicial review]

Attorney General v Wheen Times Law Reports, 23/01/01 [restriction of vexatious proceedings and HRA]

Sheikh v Secretary of State for the Home Dept (2000) Imm AR 219 [CoA: availability of remedy of Habeas Corpus]

Jebson v MoD (2000) 1 WLR 2055 [CA: carriers' duty of care]

Locabail (UK) Ltd v Bayfield Properties Ltd (2000) QB 451 [Court of Appeal: landmark case on judicial bias]

R v Secretary of State for the Home Dept, ex parte Jamil Times Law Reports, 11/07/00 [CA: important decision on scope of section 21 of the Immigration Act 1971]

Broadmoor Special Authority v. Robinson (1999) QB 957 [jurisdiction to grant interlocutory injunction]

Rogers v Islington Borough Council Times Law Reports, 30/08/99 [CoA: houses of multiple occupation]

Derry v MoD Times Law Reports, 30/03/99 (Crown Immunity)

R v Customs and Excise Commissioners, Ex parte EMU Tabac S.à.r.l.(Case C-296/95) (1998) QB 971 [Court of Justice of the European Communities: excise duty on tobacco importation]