

Year called 2009

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“Multi-talented commercial and public law barrister”

Chambers UK 2018

Benjamin Tankel practises in commercial law, administrative & public law and regulatory & disciplinary law. He has been involved in some of the major public law cases of recent times, including the Charlie Gard case, the junior doctors’ contract case, and two cases on the legalisation of assisted dying. He regularly appears in all levels of court and tribunal, including six appearances in the Supreme Court.

With his mixed commercial and public law background, Ben is particularly well-placed to advise and act in commercial judicial review matters, and has extensive experience in financial services, procurement, and public finance.

Ben graduated with a double first in History from Sidney Sussex College at Cambridge University, where he came top of his year in a number of papers and won several prizes and scholarships.

PRACTICE AREAS

- Commercial Law
- Public Law and Human Rights
- Regulatory & Disciplinary
- Banking & Finance

SECTORS

- Education
- Central Government

- Health & Pharmaceuticals
 - Local Government
-

PRACTICE AREAS

COMMERCIAL LAW

Ben regularly advises on, drafts pleadings in, and appears in all types of commercial dispute. He appears frequently in the High Court and County Courts as sole and as junior counsel, in the full range of interlocutory applications and trial.

Ben's clients have included banks, large and small companies, government departments, HMRC, and City regulators. He has particular experience of:

- Financial services (see further under the separate heading below).
- Letters of credit and bank guarantees.
- Construction.
- Procurement.
- Public body funding, including in the healthcare, local government, and education sectors.
- Employment (see further under the separate heading below).
- Pensions.
- Shareholder's disputes.
- Professional negligence.
- Claims based on A1P1.

Ben co-wrote the chapter on bribery in the third edition of *Wilmot-Smith on Construction*.

PUBLIC LAW AND HUMAN RIGHTS

Ben has appeared in some of the biggest public law cases of recent times, including *Charlie Gard's* case (*Great Ormond Street Hospital v Gard*), the junior doctors' contract case (*R(Justice for Health Ltd) v Secretary of State for Health*), two right to die cases (*R(Conway) v Secretary of State for Justice* and *R(Omid) v Secretary of State for Justice*), the challenge to a coroner who declined to prioritise those requiring early burials on religious grounds (*R(Agudath Israel) v HM Coroner for Inner North London*) and the "Yorkshire Ripper's" challenge to his move to prison after more than 30 years at Broadmoor (*Coonan v West London Mental Health Trust*). He regularly appears in all levels of court and tribunal, including six appearances in the Supreme Court.

Ben has a wide public law practice covering healthcare, community care (including ordinary residence disputes), freedom of information, education and higher education, immigration, mental health and mental capacity, medical treatment, housing, and human rights. He also frequently appears in commercial judicial review matters, including in financial services, high-level funding disputes, regulatory matters, and public procurement. Ben is on the Attorney General's C-Panel of Counsel. He is "Developed" vetted, the highest level of government security clearance

Ben acts for both claimants and defendants. On the defendant side, his clients include local authorities, NHS bodies, regulators, and central government departments. For claimants, he has acted for aggrieved individuals, commercial entities, and public bodies.

Notable cases:

R(Conway) v Secretary of State for Justice; R(Omid) v Secretary of State for Justice: Representing the Secretary of State for Justice in these claims about whether physician assisted dying should be legalised in the UK, in the Divisional Court, Court of Appeal, and Supreme Court. Led by James Eadie QC and James Strachan QC.

R(Agudath Israel) v HM Coroner for Inner North London: Representing a Jewish burial society in its successful challenge to the coroner's policy of treating all deaths the same, irrespective of whether they had a need for speedy burial on religious or other grounds.

Great Ormond Street Hospital v Gard: Representing the Children's Guardian, via CAFCASS in this case concerning whether Charlie Gard should be transferred to the USA for experimental treatment. The case received international attention, including from the White House and the Pope. Led by Victoria Butler-Cole.

R(Forge Care Homes) v Cardiff and Vale University Health Board and others [2017] UKSC 56: Represented all seven local health boards in Wales in this Supreme Court case about the social care / healthcare funding divide, estimated to be worth around £250 million per year nationally. Led by Fenella Morris QC.

R (Justice for Health) vs Secretary of State for Health [2016] EWHC 2338 (Admin): Represented junior doctors in their challenge to the Secretary of State's decision to impose a new contract on them. Led by Jenni Richards QC.

Peter Coonan v West London Mental Health Trust: Represented the Secretary of State for Justice, an interested party, in a challenge by Peter Coonan (aka Peter Sutcliffe, or the "Yorkshire Ripper") in his challenge in the Mental Health Review Tribunal to the decision to transfer him to prison after more than 30 years at Broadmoor.

Re NRA [2015] EWCOP 59: Acted (with Sir Robert Francis QC) for the Official Solicitor in ten joined cases concerning the procedural requirements of s.21A deprivation of liberty challenges.

Re X (Deprivation of Liberty) [2015] EWCA Civ 599: Acted (with Alex Ruck Keene and Richard Gordon QC) for the Official Solicitor in litigation in the Court of Protection and Court of Appeal about the Court's attempt to create a streamlined procedure for managing applications to the court to deprive mentally incapacitated adults of their liberty.

P&Q v Cheshire West and Chester District Council [2014] UKSC 19: Acted (with Richard Gordon QC, Brick Court Chambers, and Fenella Morris QC) for the appellants in the Supreme Court in this case about the definition of "deprivation of liberty" in the case of mentally incapacitated adults.

R (KM) v Cambridgeshire County Council [2012] UKSC 23: Successfully represented the defendant local authority (with Jonathan Auburn and Richard McManus QC) in the leading Supreme Court case on adult social care, resource allocation, and the relevance of economic resources to assessments of need.

REGULATORY & DISCIPLINARY

Ben has extensive experience representing both the regulator and registrants before the Solicitors Disciplinary Tribunal; regulators before various healthcare professional tribunals and on appeal and in judicial reviews in the Administrative Court; and the Professional Standards Authority (which regulates the regulators) on s.29 appeals in the Administrative Court. Ben also does advisory work in each of these areas, including on individual casework

and higher level policy challenges.

Ben contributed the chapter on jurisdiction in the latest edition of *Harris on Disciplinary and Regulatory Proceedings*.

Ben is also regularly instructed by health bodies on all types of public law, Court of Protection, and clinical negligence matters, and so has an excellent understanding of the sector.

In 2014, Ben undertook two full-time secondments in financial services, one in-house at Macfarlanes and one in the general counsel's department of the Financial Conduct Authority. For more information on Ben's experience in Financial Services, please see the separate heading under "Sectors".

BANKING & FINANCE

Ben is regularly instructed by the Financial Ombudsman Service to advise in and defend judicial review challenges that include issues such as: the jurisdiction and vires of the Ombudsman, limitation, res judicata, and complaint-splitting.

In 2014, Ben undertook two full-time secondments in financial services, one in the general counsel's department of the Financial Conduct Authority and one in house with MacFarlne LLP. At the FCA, Ben worked in the general counsel's office, focusing on redress schemes, regulation of unfair contract terms, and enforcement. He also helped to redraft the FCA Handbook and to draft amendments to the Financial Services and Markets Act 2000, in order to implement the European Directive on Alternative Dispute Resolution. More recently, Ben has advised the FCA on the interaction of A1P1 with financial services regulation. At MacFarlne, Ben worked on a large class action involving the wide-scale mis-selling of interest rate hedging products.

In 2017, Ben spent several months on secondment to King & Wood Mallesons, dealing with a claim in negligence against Standard & Poor's for giving an AAA credit rating to junk derivatives.

Ben also has expertise in international trade finance, letters of credit, and standby letters of guarantee. In 2018, he appeared in the Commercial Court in London in the cases of *Yuchai Dongte v Suisse Credit Capital Limited* and *Mah el Turk v Suisse Credit Capital Limited*, both involving allegedly dishonoured letters of credit.

Ben has also acted for investors in claims against, and judicial reviews of, the Financial Services Compensation Scheme.

SECTORS

EDUCATION

Ben appears regularly in the Administrative Court on education judicial reviews, and in the First and Upper Tier Tribunals on special educational needs appeals. He was instructed (with Fenella Morris QC) to advise Universities UK as to the lawfulness of its guidance regarding gender segregation of audiences when religious speakers give lectures at universities, a matter which received very wide public and media attention at the end of 2013. He has also advised on larger questions of restructuring of education provision, and of national funding for special educational needs. He co-edited the latest edition of *Atkins Court Forms on Education* (published October 2013).

Notable cases:

R (A Local Authority) v Independent Appeal Panel of the Local Authority [2014] EWHC 3151 (Admin): Acted for the claimant local authority in this urgent judicial review of a decision of its own independent appeal panel.

Helen Rollason Cancer Charity v Anglia Ruskin University(2013): Defended (with Fenella Morris QC) Anglia Ruskin University against a £700k claim by a cancer charity regarding their joint venture cancer research laboratory. The claim included many interesting points ranging from tissue harvesting to celebrity endorsement.

SF v Hampshire County Council (2013) (Upper Tribunal): Successfully defended the local authority in an appeal to the Upper Tribunal on grounds that (i) the first tier tribunal judge was biased and (ii) the composition of the first tier tribunal was too *"local authority friendly"*.

R (DD) v Independent Appeal Panel of the London Borough of Islington [2013] EWHC 2262 (Admin): Acted (with David Wolfe QC, Matrix Chambers) for the claimants in a challenge to the approach taken by an independent appeal panel to an admissions hearing on an infant class size appeal. The challenge clarified the meaning of the recent central government guidance on school admissions appeals.

CENTRAL GOVERNMENT

Since March 2015, Ben has been a member of the Attorney General's C Panel of counsel. He appears very regularly in the High Court and Upper Tribunal, defending all types of judicial review on behalf of various central government departments.

Ben also acts for central government departments in the full range of civil litigation, including personal injury, employment, contractual disputes, and claims for damages for false imprisonment. Much of Ben's other public law work has featured central government departments as parties, either as additional defendants or as interested parties.

Ben is "Developed" vetted, the highest level of government vetting.

HEALTH & PHARMACEUTICALS

Ben is regularly instructed by health bodies in a very wide variety of cases, including:

- Judicial review
- Regulatory and disciplinary
- NHS restructuring
- Medical treatment
- Procurement
- Deprivation of liberty
- Clinical negligence
- Ordinary residence
- CHC/FNC disputes
- Court of Protection

Recent Notable cases

Great Ormond Street Hospital v Gard: Representing the Children's Guardian, via CAFCASS, in this case

concerning whether Charlie Gard should be transferred to the USA for experimental treatment. The case received international press attention. Led by Victoria Butler Cole.

R(Conway) v Secretary of State for Justice; R(Omid) v Secretary of State for Justice: Representing the Secretary of State for Justice in these claims about whether physician assisted dying should be legalised. Led by James Strachan QC.

R(Forge Care Homes) v Cardiff and Vale University Health Board and others [2017] UKSC 56: Represented all seven local health boards in Wales in this Supreme Court case about the social care / healthcare funding divide, estimated to be worth around £250 million per year nationally. Led by Fenella Morris QC.

R (Justice for Health) vs Secretary of State for Health [2016] EWHC 2338 (Admin): Representing junior doctors in their challenge to the Secretary of State's decision to impose a new contract on them. Led by Jenni Richards QC

R (Rowlands) v Betsi Cadwaladr: Instructed for the claimant in this challenge to the decommissioning of the only dementia beds on Anglesey. The case received wide media attention in Wales.

R (A child) v GOSH (Jan 2015): Represented Great Ormond Street Hospital in a habeas corpus & medical treatment case brought by a child challenging her detention on a mental health ward at Great Ormond Street.

R (British Dental Association) v NHS England (2014): Advised the British Dental Association in its successful challenge to a proposed cut in the salaries of foundation year dentists.

Community Health and EyeCare Ltd v Salford CCG (2013): Advised claimants in relation to a procurement challenge of a CCG's contracting out of ophthalmology services.

R (LB Southwark) v Department of Health (2013): Advised the local authority in relation to a prospective challenge to the NHS restructuring in April 2013.

He also has very good knowledge and experience of cross-cutting areas such as local authority community care, mental health, and mental capacity.

LOCAL GOVERNMENT

Ben is regularly instructed in a large number of public law claims, both for and against local authorities in matters including community care, education, freedom of information & data protection, housing, the public sector equality duty, consultation, children's services, Court of Protection, ordinary residence, direct payments, and funding disputes with health bodies.

Notable cases:

R(Forge Care Homes) v Cardiff and Vale University Health Board and others [2017] UKSC 56: Represented all seven local health boards in Wales in this Supreme Court case about the social care / healthcare funding divide, estimated to be worth around £250 million per year nationally. Led by Fenella Morris QC.

R (Rowlands) v Betsi Cadwaladr: Instructed for the claimant in this challenge to the decommissioning of the only dementia beds on Anglesey. The case received wide media attention in Wales.

Re NRA [2015] EWCOP 59: Acted (with Sir Robert Francis QC) for the Official Solicitor in ten joined cases concerning the procedural requirements of s.21A deprivation of liberty challenges.

Re X (Deprivation of Liberty) [2015] EWCA Civ 599: Acted (with Alex Ruck Keene and Richard Gordon QC) for the Official Solicitor in litigation in the Court of Protection and Court of Appeal about the Court's attempt to create a streamlined procedure for managing applications to the court to deprive mentally incapacitated adults of their liberty.

P&Q v Cheshire West and Chester District Council [2014] UKSC 19: Acted (with Richard Gordon QC, Brick Court Chambers, and Fenella Morris QC) for the Official Solicitor in this leading case on the definition of "*deprivation of liberty*" in the case of mentally incapacitated adults.

R (MN) v London Borough of Hackney [2013] EWHC 1205 (Admin): Acted for the claimants in a challenge under the Children Act 1989 and the Human Rights Act 1998 to a decision by the local authority to refuse to provide support and accommodation. *MN* is now widely relied upon by local authorities in similar cases.

R (KM) v Cambridgeshire County Council [2012] UKSC 23: Successfully represented the defendant local authority (with Jonathan Auburn and Richard McManus QC) in the leading Supreme Court case on adult social care, resource allocation, and the relevance of economic resources to assessments of need.

RECOMMENDATIONS

"Really presents his case well and carries himself more like a silk than a junior"

Chambers UK 2018

"very nice, very sensible, and very pragmatic"

Chambers UK 2018

QUALIFICATIONS

EDUCATION

- 2007: BA (History), Double First, Sidney Sussex College, University of Cambridge.
- 2008: Graduate Diploma in Law, City University.
- 2009: Bar Vocational Course, BPP.

PRIZES & SCHOLARSHIPS

- 2008: Astbury Scholarship (Middle Temple).
- 2007: Diplock Scholarship (Middle Temple).
- 2007: Peachey History Prize for highest first in College.
- 2006: Peachey History Prize for highest first in College.
- 2006: Parry Dutton Scholarship for North American History.

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