

Catherine Callaghan QC

“She is so bright and diligent, excellent with clients and very hands-on.”

– CHAMBERS AND PARTNERS, 2022

Year of call: **1999**
Appointed to silk: **2018**
Degree: **BA, LLB (Hons) (Victoria University of Wellington); LLM (Cambridge)**



Catherine Callaghan has been practising at the English Bar since 2000, and took silk in 2018. Catherine is recognised in the leading legal directories, Chambers UK and Legal 500, for her expertise in public and regulatory law, professional discipline, civil liberties & human rights, and employment law. She regularly acts for the UK Government and regulatory bodies, as well as individual claimants, in the Administrative Court, Court of Appeal, and Supreme Court.

Catherine is currently the Chair of the Constitutional and Administrative Law Association (ALBA). She was a member of the Attorney General’s A Panel of counsel from 2013 to 2018.

Catherine is also qualified as a barrister and solicitor in New Zealand.

EXPERIENCE

Public & Regulatory

Catherine is a leading barrister in public and regulatory law, with a practice encompassing judicial review, statutory appeals, first instance and appellate professional disciplinary and regulatory hearings. Catherine has extensive experience representing clients in the Administrative Court, Special Immigration Appeals Commission, Court of Appeal and Supreme Court. She regularly acts for Government departments and regulatory bodies such as the General Medical Council, the Institute of Chartered Accountants in England and Wales, the Human Fertilisation and Embryology Authority, and the Advertising Standards Authority. She also acts for claimants in judicial review claims and statutory appeals against public bodies. Catherine has developed an expertise in regulation of the tied pubs sector. She has advised and acted for Star Pubs & Bars Ltd (Heineken UK’s pub estate business) and Greene King on a variety of cases concerning challenges to arbitration awards, and challenges to regulatory decisions of the Pubs Code Adjudicator.

She is a trusted adviser for a wide range of bodies on policy development, discrimination and Brexit-related issues.

“She is quick to distil complex facts down to the key points and arguments.”

– CHAMBERS AND PARTNERS, 2022

Catherine is Chair of the Administrative Law Bar Association and recently coordinated ALBA's response to the government consultation on judicial review reform.

Cases

Sawati v General Medical Council

[2022] EWHC 283 (Admin)

Acted for the GMC in a significant statutory appeal brought by a doctor under s.40 of the Medical Act 1983, challenging a decision of the Medical Practitioners Tribunal to erase her from the medical register. The appeal raised two issues: (i) at what stage in the decision-making process is a Tribunal required to consider good character when deciding allegations of dishonesty? (ii) to what extent is a doctor's failure to tell the truth at a disciplinary hearing relevant when considering sanction?

Collins Rice J rejected the doctor's argument that the Tribunal's good character direction should have come earlier in its analysis than it did. In circumstances where the Tribunal received correct advice on good character, and summarised it accurately at the outset of its determination of facts, it could be inferred that the Tribunal took into account the doctor's good character even if it did not say so expressly before reaching conclusions on her credibility.

However, the Court upheld the doctor's appeal against sanction, finding that the Tribunal unfairly relied on the doctor's disbelieved defence when deciding sanction. This judgment attempts to resolve the tension in the case law between the doctor's right to a fair trial which includes the right to deny charges of dishonesty and the public interest in protecting patients from dishonest doctors who lack insight into their misconduct.

Star Pubs & Bars Ltd v Pubs Code Adjudicator

[2021] 4 WLR 90; [2021] EWHC 1291 (Admin)

Catherine is acting for Star Pubs & Bars Ltd (Heineken UK's pub estate business), leading Naina Patel, in a high profile and complex statutory appeal against a £2 million penalty imposed by the Pubs Code Adjudicator, arising out of Star's alleged breaches of the Pubs Code. This is the first appeal of its kind, brought under s.58 of the Small Business, Enterprise and Employment Act 2015.

To date, there have been two preliminary hearings before Morris J. In the first, the High Court determined the scope of a statutory appeal under s.58(3), holding that Star was entitled to challenge the grounds for imposing a penalty (including all matters relevant to the assessment of the gravity or otherwise of the breaches of the Pubs Code), but was not entitled to challenge the findings of breach themselves. In addition, Morris J granted Star's application for disclosure of anonymous evidence given against Star by its tenants, within a confidentiality ring. A link to the judgment can be found [here](#).

In a second preliminary hearing dealing with consequential matters, Morris J refused the PCA's application for one of the grounds of appeal, concerning procedural unfairness, to be determined as a preliminary issue. The Court was not satisfied that it would be determinative of the appeal as a whole or that it would save time and costs.

R (Police Superintendents' Association) v HM Treasury

[2021] EWHC 3389 (Admin)

Acted for Treasury and the Home Office (leading Raymond Hill and Imogen Proud of Monckton) in defending a judicial review challenge by the PSA to the consultation carried out by Treasury on public sector pension reform following the Court of Appeal's decision in McCloud, and the resulting decision to close legacy pension schemes and move members to reformed pension schemes from 1 April 2022. This case raises important constitutional issues regarding parliamentary privilege, given that the Treasury's decision is the subject of the Public Service Pensions and Judicial Offices Bill, currently passing through Parliament.

Solomon & Co (St Helena) plc v Attorney General of Ascension Island

(2021)

Acted for the Ascension Island Government (leading Kerenza Davis and Hugh Flanagan) in successfully striking out claims brought in the Supreme Court of St Helena for malicious falsehood, misfeasance in public office, and breach of contract.

The Claimant, which operated the sole Fuel Station on Ascension Island, had brought claims against AIG for malicious falsehood, misfeasance in public office, breach of contract, and unlawful interference with economic interests, arising out of AIG's actions in serving statutory notices on the Claimant in 2017 requiring it to address health and safety issues at the Fuel Station.

Chief Justice Charles Ekins granted AIG's strike out application, holding that the malicious falsehood claim was statute-barred and that no contract existed between the parties, so that those claims should be dismissed on a point of law under the Ascension Civil Procedure Rules. AIG also successfully argued that all of the claims should be struck out as disclosing no reasonable cause of action and as amounting to an abuse of process, in that the claims were an attempt to circumvent time limits under a statutory appeal process.

Punch Partnerships (PTL) Ltd and Star Pubs & Bars Ltd v Jonalt Ltd

[2020] EWHC 1376 (Ch)

Acted for the Claimants (Heineken UK's pub estate business), leading Peter Stevenson, in a successful claim brought under s.68(2)(a) of the Arbitration Act 1996, challenging an arbitrator's award in a dispute concerning the offer of a market rent only (MRO) lease to a tied pub tenant.

Kelyn Bacon QC, sitting as a Deputy High Court judge, upheld Punch/Star's claim that the arbitrator had (1) erred in reversing the burden of proof so as to require Punch/Star to prove that a 60% stocking requirement was reasonable, when it was for the pub tenant to prove it was unreasonable; and (2) acted outside his powers under Reg 33 of the Pubs Code by ordering Punch/Star to provide an MRO lease with a 20% stocking requirement. This was a serious irregularity under s.68(2)(b) of the 1996 Act that had caused substantial injustice to the landlord and owner.

Punch Partnerships (PTL) Ltd and Star Pubs & Bars Ltd v The Highwayman Hotel (Kidlington) Ltd

[2020] EWHC 714 (Ch); [2020] Bus LR 1051

Acted for the Claimants (Heineken UK's pub estate business), leading Peter Stevenson, in the first challenge to an arbitration award made in a statutory arbitration under the Small Business, Enterprise and Employment Act 2015 and the Pubs Code Regulations 2016. The statutory scheme regulates the relationship between tied pub tenants and pub-owning businesses.

The High Court upheld the Claimants' claim that the Deputy Pubs Code Adjudicator, in her capacity as arbitrator, exceeded her statutory powers by ordering the pub landlord/owner to offer the tenant a lease with a specified minimum length. The adjudicator did not have power to order that provisions be inserted into a revised offer. This was a serious irregularity that required the award to be set aside under s.68 of the Arbitration Act 1996.

However, the High Court rejected the Claimants' claim, relying on the principle in *Marcel v Commissioner of Police* that documents seized by a public authority in the exercise of a statutory power could only be used for the purposes contemplated by the relevant legislation, that the adjudicator had acted unlawfully and unfairly in relying on information received in her capacity as regulator.

Adviser to Law Commission & UK Government on leasehold reform & compatibility with A1P1

(2019-2021)

Provided independent written advice to the Law Commission assessing whether the Law Commission's proposed reforms to the law on leasehold enfranchisement are compatible with the Human Rights Act 1998 and in particular, the property rights protected by Article 1 of the First Protocol. Catherine's advice, together with the Law Commission's final report, were published in January 2020. The links to the report and summary can be found [here](#) and [here](#).

Subsequently advised the Ministry of Housing Communities & Local Government on the compatibility of its proposals for leasehold reform with A1P1.

R (Actegy Ltd) v Advertising Standards Authority

[2019] EWHC 2374 (Admin)

Acted for the ASA in successfully defending a judicial review challenge to the ASA's decision that an advertisement for a CE-marked medical device was misleading and that its claims for efficacy were unsupported by adequate evidence and so breached the Committee of Advertising Practice (CAP) Code. The case established that the ASA's approach to assessing substantiation evidence is proportionate and complies with the requirements of the Unfair Commercial Practices Directive.

R (CityFibre Ltd) v Advertising Standards Authority

[2019] EWHC 950 (Admin)

Acted for the ASA (leading Ravi Mehta) in successfully defending a judicial review challenge to the ASA's decision that the word "fibre" as it is currently used in the advertising of part-fibre broadband services is not likely to mislead consumers. The proceedings were brought by the largest wholesale full-fibre provider in the UK and sought to argue that it was misleading for part-fibre broadband providers to be able to advertise their broadband services using the word "fibre".

The case established that whether advertising claims are misleading is to be judged by reference to the average consumer of the goods and services to whom the advertising is targeted, not by reference to a consumer who is well-informed about particular features of the service such as its mechanism of delivery. The High Court held that the ASA was entitled to rely on a report commissioned to examine consumer understanding of broadband advertising claims. The report's research sample was representative of the average consumer, and the ASA was entitled to rely on the report's conclusions that consumers did not notice or prioritise fibre in broadband advertising and were therefore unlikely to be misled by the use of the term 'fibre' to describe part-fibre services.

R (McAtee) v Secretary of State for Justice

[2018] EWCA 2851 Civ

Catherine acted for the Defendant in the first significant case to apply the reasoning in *R (Belhaj) v Director of Public Prosecutions (No 1)* [2018] 3 WLR 435 in relation to the meaning and scope of the phrase "criminal cause or matter" in section 18 of the Senior Courts Act 1981, the outcome of which determines whether there is a right of appeal to the Court of Appeal from a judgment of the High Court. The Court of Appeal held that the McAtee proceedings (which sought a declaration that s.31A of the Crime (Sentences) Act 1997 was incompatible with the Claimant's Article 8 rights in preventing the claimant from applying to cancel his indeterminate sentence until 10 years after release) amounted to a challenge to the sentencing regime and therefore were a criminal cause or matter in respect of which the Court of Appeal had no jurisdiction to hear the appeal.

R (AL) v Serious Fraud Office

[2018] EWHC 856 (Admin); [2018] 1 WLR 4557

Acted for an interested party (a defendant in criminal proceedings) in a judicial review challenge to the SFO's refusal to compel a company to disclose 'first account material' in compliance with a requirement to cooperate with the SFO under a Deferred Prosecution Agreement. The Divisional Court held that the Crown Court was the appropriate forum to resolve disputes about disclosure in criminal proceedings, but strongly criticised the SFO's approach to disclosure.

R (Migrants' Rights Network) v Secretary of State for Home Department & Ors

(2018)

Acted for NHS Digital in a judicial review challenge to the legality of a Memorandum of Understanding between the Home Office, Department of Health and NHS Digital under which non-clinical information about migrants on the NHS database was shared with the Home Office for immigration enforcement purposes. The case settled after the defendants agreed to amend the Memorandum of Understanding.

R (Good Law Project and Molly Scott Cato MEP) v Secretary of State for Exiting the European Union and Her Majesty's Treasury

(2018)

Acted for the Defendants in a judicial review challenge to a refusal to disclose so-called Brexit 'impact analyses' under common law disclosure powers and Article 10 ECHR. The Defendants argued that requests for such information should be addressed under the Freedom of Information Act 2000.

Michalak v General Medical Council

[2017] UKSC 71; [2017] 1 WLR 4193

Acted for the Solicitors Regulation Authority (SRA), intervening in an appeal to the Supreme Court on the issue whether the Employment Tribunal's jurisdiction to hear discrimination claims against professional regulatory bodies is ousted by the availability of judicial review proceedings. This turned on the issue of whether judicial review proceedings are proceedings 'in the nature of an appeal' which arise 'by virtue of an enactment' under s.120(7) of the Equality Act 2010.

R (Oriaku) v Nursing and Midwifery Council

[2017] EWHC 235 (Admin)

Acted for the NMC successfully defending a judicial review challenge to the NMC's decision not to refer for investigation an allegation that certain nurses' entries to the register had been fraudulently procured.

Bethal v Council of the Inns of Court

[2017] EWHC 3072 (Admin)

Acted for the Council of the Inns of Court and the Bar Tribunal and Adjudication Service successfully defending an application for an injunction to prevent COIC & BTAS from implementing the decision of a disciplinary tribunal to disbar a barrister found guilty of dishonest conduct.

R (Andargachew) v Secretary of State for Foreign & Commonwealth Affairs

(2016)

Acted for the Secretary of State (leading Christopher Staker) in successfully defending a judicial review challenge to the lawfulness of the UK Government's conduct of its foreign relations with Ethiopia, in relation to a British citizen detained in Ethiopia. The family of the detainee sought to challenge the FCO's decision not to request his release from prison or treat his case as a kidnapping case.

Alam v Secretary of State for Education

(2016-2017)

Acted for the Secretary of State (led by Martin Chamberlain QC) in the First-tier Tribunal successfully resisting a challenge to a direction issued under s.128 of the Education and Skills Act 2008, which prohibited the appellant from participating in the management of independent schools on the ground that he had engaged in conduct which undermined fundamental British values. This was the first time a prohibition order of this kind has been made against a school governor.

R (British American Tobacco Ltd & Others) v Secretary of State for Health

[2016] EWCA Civ 1182

Acted for the Secretary of State (led by James Eadie QC) in the High Court and Court of Appeal, successfully defending judicial review challenges brought by all major UK tobacco manufacturers against Parliament's decision to adopt the Standardised Packaging of Tobacco Products Regulations 2015, which require standardised packaging for cigarettes and rolling tobacco. The tobacco manufacturers argued that the UK regulations were unlawful under international law, EU law (particularly human rights, trade mark and competition law) and domestic law. Catherine was the most senior junior in a counsel team comprising three silks and four juniors.

R (Mr and Mrs M) v Human Fertilisation and Embryology Authority

[2016] EWCA Civ 611

Acted for the HFEA (the regulator of UK fertility clinics) in the High Court and Court of Appeal, defending a high profile judicial review challenge to the regulator's refusal to authorise export of the Claimant's deceased daughter's frozen eggs to enable the Claimant to receive fertility treatment in the United States. The Claimant alleged that the HFEA's refusal amounted to a violation of her Article 8 rights to become a parent using her daughter's gametes.

R (Adam) v General Medical Council

[2015] EWHC 3378 (Admin)

Acted for the GMC (the regulator of doctors) in successfully defending a judicial review challenge to the Registrar's decision to close a complaint brought against the Medical Director of the NHS, Professor Sir Bruce Keogh. Concerned the proper scope of the GMC's disciplinary powers in relation to doctors in administrative positions, following the cases of Remedy UK Ltd and Roylance.

R (Reilly & Wilson) v Secretary of State for Work and Pensions

[2014] AC 453

Acted for the Secretary of State (led by James Eadie QC) in an appeal to the Supreme Court concerning the lawfulness of the Government's schemes imposing mandatory work requirements on recipients of jobseeker's allowance.

Professional Discipline

Catherine has a particular interest in professional disciplinary regulation in the fields of healthcare, accountancy, law, and education.

She regularly acts for the General Medical Council in judicial review proceedings and statutory appeals to the High Court from disciplinary decisions of Fitness to Practise Panels. She advises the GMC on policy development and guidance, and represented the GMC (with Robert Englehart QC) in the Public Inquiry into Mid-Staffordshire NHS Foundation Trust.

“Very robust, sensible and persuasive.”

– CHAMBERS AND PARTNERS, 2022

In the field of accountancy, she regularly acts for the Institute of Chartered Accountants in England and Wales (ICAEW) in internal disciplinary hearings, appeals and judicial reviews. She also acts for the Chartered Institute of Management Accountants (CIMA) and the Institute of Actuaries.

In the legal field, Catherine is a trusted adviser to the Solicitors Regulation Authority (SRA). She also advises law firms and individual solicitors on issues concerning solicitors' professional conduct and SRA reporting obligations. Catherine has been instructed as an independent investigator by a number of UK and overseas law firms to investigate misconduct by solicitors.

Cases

Sawati v General Medical Council

[2022] EWHC 283 (Admin)

Acted for the GMC in a significant statutory appeal brought by a doctor under s.40 of the Medical Act 1983, challenging a decision of the Medical Practitioners Tribunal to erase her from the medical register. The appeal raised two issues: (i) at what stage in the decision-making process is a Tribunal required to consider good character when deciding allegations of dishonesty? (ii) to what extent is a doctor's failure to tell the truth at a disciplinary hearing relevant when considering sanction?

Collins Rice J rejected the doctor's argument that the Tribunal's good character direction should have come earlier in its analysis than it did. In circumstances where the Tribunal received correct advice on good character, and summarised it accurately at the outset of its determination of facts, it could be inferred that the Tribunal took into account the doctor's good character even if it did not say so expressly before reaching conclusions on her credibility.

However, the Court upheld the doctor's appeal against sanction, finding that the Tribunal unfairly relied on the doctor's disbelieved defence when deciding sanction. This judgment attempts to resolve the tension in the case law between the doctor's right to a fair trial which includes the right to deny charges of dishonesty and the public interest in protecting patients from dishonest doctors who lack insight into their misconduct.

Institute of Chartered Accountants in England and Wales v Deloitte and others

(2015-2020)

Catherine acted for the insolvency regulator, ICAEW (together with Monica Carss-Frisk QC) in a long-running professional disciplinary investigation into, and latterly, proceedings against Deloitte and three Deloitte partners (Neville Kahn, Christopher Farrington and Nicholas Edwards), arising out of their conduct as Joint Administrators and then Joint Liquidators of the high-street retail chain, Comet, which went into administration in late 2012.

The disciplinary proceedings were settled in early 2020, with Deloitte, Mr Kahn and Mr Farrington accepting liability to disciplinary action under the Institute's Disciplinary Bye-laws, together with reprimands, and a total fine of £1 million (a record fine for the Institute). Deloitte also agreed to pay the entirety of the Institute's legal costs.

Michalak v General Medical Council

[2017] UKSC 71; [2017] 1 WLR 4193

Acted for the Solicitors Regulation Authority (SRA), intervening in an appeal to the Supreme Court on the issue whether the Employment Tribunal's jurisdiction to hear discrimination claims against professional regulatory bodies is ousted by the availability of judicial review proceedings. This turned on the issue of whether judicial review proceedings are proceedings 'in the nature of an appeal' which arise 'by virtue of an enactment' under s.120(7) of the Equality Act 2010.

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[2017] EWHC 235 (Admin)

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Bethal v Council of the Inns of Court

[2017] EWHC 3072 (Admin)

Acted for the Council of the Inns of Court and the Bar Tribunal and Adjudication Service successfully defending an application for an injunction to prevent COIC & BTAS from implementing the decision of a disciplinary tribunal to disbar a barrister found guilty of dishonest conduct.

R (Banerjee) v General Medical Council

[2017] EWCA Civ 78

Acted for the GMC in the High Court and Court of Appeal, successfully defending a judicial review challenge to a refusal to restore the doctor to the medical register following voluntary erasure of her name from the register. The case concerned whether the hearing was unfair by virtue of panel members' questioning and treatment of the doctor.

Institute of Chartered Accountants in England and Wales v Bell

(2016)

Acted for the ICAEW in disciplinary proceedings brought against an insolvency practitioner arising out of his conduct as a trustee in bankruptcy in authorising the sale of the bankrupt's family home when he should have known that any shortfall in the property could be funded without the sale. The Disciplinary Tribunal found the charge proved and withdrew his insolvency licence for two years.

Institute and Faculty of Actuaries v Lockett

(2016)

Acted for the Institute in disciplinary proceedings against an actuary for misconduct. The case raised the issue whether the Disciplinary Tribunal had jurisdiction to consider a charge of misconduct against a former member in respect of conduct occurring after his membership had ceased.

R (Adam) v General Medical Council

[2015] EWHC 3378 (Admin)

Acted for the GMC (the regulator of doctors) in successfully defending a judicial review challenge to the Registrar's decision to close a complaint brought against the Medical Director of the NHS, Professor Sir Bruce Keogh. Concerned the proper scope of the GMC's disciplinary powers in relation to doctors in administrative positions, following the cases of Remedy UK Ltd and Roylance.

R (Chaudhuri) v General Medical Council

[2015] EWHC 6621 (Admin)

Acted for the GMC in a judicial review claim concerning the proper construction of the GMC's "five year rule" and the GMC's power to reconsider a decision under that rule. The Court held that regulators have the power to review their own decisions where they are based on a fundamental mistake of fact.

R (Fonseka) v Chartered Institute of Management Accountants

(2015)

Acted for CIMA in successfully resisting a judicial review challenge to a finding that an accountant was guilty of misconduct and should receive a severe reprimand and fine for making false statements in accounts that companies were exempt from statutory audit requirements.

R (DM) v British Psychoanalytic Council

(2014)

Acted for the claimant psychotherapist in a successful judicial review challenge to the decision of the BPC to impose conditions on his registration. Settled prior to hearing.

R (Hill) v Institute of Chartered Accountants in England and Wales

[2014] 1 WLR 86 (CA)

Acted for the Institute in the High Court and Court of Appeal, successfully resisting a chartered accountant's judicial review challenge to the Institute's decision to find him guilty of misconduct and exclude him from membership. The case concerned the issue whether the temporary absence of a member of a disciplinary tribunal deprives the tribunal of jurisdiction to hear the complaint or amounts to a breach of natural justice capable of waiver. The decision contains important analysis on the difference between constitutive and adjudicative jurisdiction, the scope of the rule that 'he who decides the case must hear the case', and the legal principles concerning waiver of procedural unfairness.

R (Jackson) v General Medical Council

[2013] EWHC 2595 (Admin)

Acted for the GMC in a judicial review challenge to a Fitness to Practise Panel's decision to refuse a doctor's application for voluntary erasure from the register.

Lawrence v General Medical Council

[2012] EWHC 464 (Admin)

Acted for the GMC in a 6-day statutory appeal against the GMC's decision to erase a psychiatrist from the medical register on the basis of his inappropriate relationship with a female patient.

General Medical Council v Zia

[2012] 1 WLR 504 (CA)

Acted for the Appellant (the GMC) in a successful appeal to the Court of Appeal concerning the power of the GMC's Registrar to refer allegations about a doctor to the GMC's Fitness to Practise Panel notwithstanding that the allegations had not been considered first by case examiners. This is an important case about the purpose and scope of the GMC (Fitness to Practise) Rules 2004.

Civil Liberties & Human Rights

Catherine's civil liberties and human rights practice incorporates nationality and asylum law, national security and terrorism, and prison law. She regularly acts for the UK Government and regulatory bodies in defending decisions affecting civil liberties and human rights. Catherine also acts for police bodies, including the Metropolitan Police Service, the Metropolitan Police Authority, and Her Majesty's Inspectorate of Constabulary.

“Has an authority and poise which is impressive and she is a pleasure to work with.”

— LEGAL 500, 2019

Cases

Adviser to Law Commission & UK Government on leasehold reform & compatibility with A1P1

(2019-2021)

Provided independent written advice to the Law Commission assessing whether the Law Commission's proposed reforms to the law on leasehold enfranchisement are compatible with the Human Rights Act 1998 and in particular, the property rights protected by Article 1 of the First Protocol. Catherine's advice, together with the Law Commission's final report, were published in January 2020. The links to the report and summary can be found [here](#) and [here](#).

Subsequently advised the Ministry of Housing Communities & Local Government on the compatibility of its proposals for leasehold reform with A1P1.

R (King David High School) v Ofsted

(2019)

Advised Ofsted (with Joanne Clement of 11KBW) on a judicial review claim issued by a denominational state secondary school, challenging Ofsted's decision to downgrade the school from 'outstanding' to 'inadequate'. The claim concerned the extent to which segregation in mixed sex schools constitutes unlawful sex discrimination, and the meaning and scope of the Court of Appeal decision in *Al-Hijrah*.

R (McAtee) v Secretary of State for Justice

[2018] EWCA 2851 Civ

Catherine acted for the Defendant in the first significant case to apply the reasoning in *R (Belhaj) v Director of Public Prosecutions (No 1)* [2018] 3 WLR 435 in relation to the meaning and scope of the phrase "criminal cause or matter" in section 18 of the Senior Courts Act 1981, the outcome of which determines whether there is a right of appeal to the Court of Appeal from a judgment of the High Court. The Court of Appeal held that the McAtee proceedings (which sought a declaration that s.31A of the Crime (Sentences) Act 1997 was incompatible with the Claimant's Article 8 rights in preventing the claimant from applying to cancel his indeterminate sentence until 10 years after release) amounted to a challenge to the sentencing regime and therefore were a criminal cause or matter in respect of which the Court of Appeal had no jurisdiction to hear the appeal.

R (Migrants' Rights Network) v Secretary of State for Home Department & Ors

(2018)

Acted for NHS Digital in a judicial review challenge to the legality of a Memorandum of Understanding between the Home Office, Department of Health and NHS Digital under which non-clinical information about migrants on the NHS database was shared with the Home Office for immigration enforcement purposes. The case settled after the defendants agreed to amend the Memorandum of Understanding.

Alam v Secretary of State for Education

(2016-2017)

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R (Mr and Mrs M) v Human Fertilisation and Embryology Authority

[2016] EWCA Civ 611

Acted for the HFEA (the regulator of UK fertility clinics) in the High Court and Court of Appeal, defending a high profile judicial review challenge to the regulator's refusal to authorise export of the Claimant's deceased daughter's frozen eggs to enable the Claimant to receive fertility treatment in the United States. The Claimant alleged that the HFEA's refusal amounted to a violation of her Article 8 rights to become a parent using her daughter's gametes.

AM v Secretary of State for the Home Department

(2016)

Acted for the Secretary of State (leading Claire Palmer) in the Special Immigration Appeals Commission (SIAC), successfully defending a decision to refuse to grant the applicant British citizenship. The applicant argued that the decision infringed his rights under Articles 6 and 8 ECHR.

FM v Secretary of State for the Home Department

(2015)

Acted for the Secretary of State (led by Rory Phillips QC) in the Special Immigration Appeals Commission (SIAC), successfully defending the Secretary of State's refusal to grant the applicant British citizenship. The applicant argued that the refusal constituted race discrimination under the Race Relations Act, and violated Article 14 ECHR. This was the lead test case determining SIAC's approach to discrimination claims in naturalisation cases. Catherine was responsible for the discrimination aspects of the claim.

Tariq v Home Office

[2012] 1 AC 452

Acted for the Home Office (led by James Eadie QC) in an appeal to the Court of Appeal and Supreme Court concerning the scope of a litigant's right to a fair trial and the lawfulness of the use of closed material and special advocates in the context of a discrimination claim arising out of security vetting of civil servants. The Supreme Court upheld the Home Office's Appeal.

Bank Mellat v HM Treasury

[2012] QB 91

Acted for HM Treasury (led by James Eadie QC) in another appeal concerning the legality of closed material procedures in the context of an application by an Iranian bank to set aside an order made by HM Treasury under the Counter-Terrorism Act 2008 which directed the UK financial sector not to have any business dealings with the bank.

Employment

Catherine appears in the Employment Tribunals, the Employment Appeal Tribunal and High Court in cases involving discrimination, whistle blowing, unfair and wrongful dismissal, and redundancy. She acts for both Claimants (particularly senior managers, partners and directors) and Respondents.

Catherine is a judicial member of the Commonwealth Secretariat Arbitral Tribunal (CSAT), an international tribunal which hears contractual disputes between the Commonwealth Secretariat and its employees. She is one of 8 judicial members, chosen from around the Commonwealth, and represents the UK on the tribunal.

Catherine has been instructed as an independent investigator by a number of UK and overseas law firms to investigate potential misconduct or sexual harassment by solicitors.

Catherine co-wrote the chapter on Practice and Procedure in the textbook "Employee Competition: Covenants, Confidentiality and Garden Leave", edited by Paul Goulding QC and first published by Oxford University Press in 2007 (2nd edition published in 2011).

"Her key strength is in her ability to provide clear, technical advice with an empathetic and supportive approach."

– CHAMBERS AND PARTNERS, 2022

Cases

Millicom Services UK Limited & Others v Clifford

[2022] EAT 74

Catherine represented the successful Appellants in this appeal concerning the scope of the ET's power to prohibit the disclosure of information under Rule 50 of the ET Rules of Procedure. The Appellants, a multi-national telecommunications company and its senior employees, made an application to prohibit the disclosure of certain information in ET proceedings, relying on all three limbs of Rule 50, namely, the interests of justice, Convention rights and confidentiality. The Appellants argued that the proposed derogation from the open justice principle was necessary to protect the safety and security of non-participants in the litigation located outside the UK, in a country that was not a signatory to the ECHR. The second Appellant (the company's in-house lawyer) gave evidence that if the application was not granted, he would not be prepared to give evidence in the ET proceedings or let the company continue to defend the proceedings. The ET refused the application.

The EAT allowed the appeal. The President found that although the ET was correct to hold that it had no power under Rule 50 to protect the rights of individuals under the Convention who were located outside the jurisdiction of the signatory states, and was entitled to hold the evidence did not meet the necessary threshold to satisfy Articles 3 or 5 ECHR, the ET had failed to properly consider the evidence in respect of the common law interests of justice limb or in respect of the protections sought under Article 8 ECHR. The EAT held that the second Appellant's subjective fears regarding the safety and security of his work colleagues and evidence as to his future intentions were relevant when assessing whether the derogations sought were necessary in the interests of justice or to protect his Article 8 rights. The ET had erred in failing to carry out any balancing exercise whether at common law or under Articles 6 or 8 ECHR.

In addition, the EAT held that the ET wrongly rejected the application on confidentiality grounds. Having found that the claimant owed a contractual duty of confidence, the ET failed to weigh that in the balance. The ET should have asked itself not merely whether it was legitimate for the Appellants to seek to keep the information confidential but whether it was in the public interest for the duty of confidence to be breached.

The EAT remitted the application to a freshly constituted Tribunal.

Clifford v Millicom Services UK Ltd & Others

(2020 and continuing)

Acting for the Respondents in defending whistleblowing, unfair dismissal and disability discrimination claims in the ET. Instructed by Morgan Lewis & Bockius UK LLP.

X v Law Firm

(2020-2021)

Acted for a salaried partner in a claim for sex and race discrimination against a law firm. Instructed by Farrer & Co. Settled successfully.

Hamam v British Embassy in Cairo and Foreign & Commonwealth Office

2018-2020

Acted for the FCO and British Embassy in Cairo in a claim for race discrimination, unfair dismissal and whistleblowing, brought by a former Vice Consul of the British Embassy in Cairo. The Respondents successfully argued that the ET had no territorial jurisdiction to hear the claims because of the employee's lack of connection to Great Britain, and the claims were struck out following a two-day preliminary hearing in the ET.

The ET's preliminary decision was upheld by the EAT in January 2020. The appeal concerned the scope of the exception, identified by Lord Hoffmann in *Lawson v Serco*, for expatriate employees who work in British social or political "enclaves". It also considered the relevance of the fact that the claimant employee was a consular officer with immunity from local jurisdiction, who may not be able to pursue claims against the Defendants in the Egyptian courts because of state immunity.

Michalak v General Medical Council

[2017] UKSC 71; [2017] 1 WLR 4193

Acted for the Solicitors Regulation Authority (SRA), intervening in an appeal to the Supreme Court on the issue whether the Employment Tribunal's jurisdiction to hear discrimination claims against professional regulatory bodies is ousted by the availability of judicial review proceedings. This turned on the issue of whether judicial review proceedings are proceedings 'in the nature of an appeal' which arise 'by virtue of an enactment' under s.120(7) of the Equality Act 2010.

Boath v Barclays plc

(2016)

Acted for the Respondent Bank in a high profile unfair dismissal, whistleblowing and bonus claim brought by a former senior executive. Catherine was brought into the case specifically to deal with a 7-day contested application by the Serious Fraud Office to hear all or part of the case in private to protect the confidentiality of the Claimant's interview with the SFO and avoid undermining the SFO's ongoing investigation and any future criminal proceedings. Catherine also dealt with a preliminary application by the Bank to hear part of the case in private, to protect its legal professional privilege. The applications raised the important issue of the scope of the principle of open justice and the extent to which it is appropriate to hear cases in private.

X v H Ltd

(2015)

Advised a senior employee of a global media and communications company in relation to a claim for breach of contract and discrimination

Lumsden v CQS

(2013)

Acted for a hedge fund (led by Paul Goulding QC) in High Court litigation concerning enforceability of restrictive covenants, breach of contract, and enforceability of revocation provisions in a deferred compensation scheme.

Olotin v Sumitomo Mitsui Banking Corporation Europe Ltd

(2013)

Acted for Sumitomo in successfully striking out claims of race discrimination and victimisation.

Dr SL v Oxford University Hospitals NHS Trust

(2013)

Acted for a consultant paediatrician in an internal disciplinary hearing, and successfully defended her against a charge of dishonesty.

Phaestos Ltd and IKOS v Ho and Gover

(2012)

Acted for the Claimant hedge fund (led by Paul Goulding QC) in a High Court claim against the hedge fund's former portfolio managers for breach of contract and breach of confidence.

Education

Catherine has a strong interest in education law, particularly in the context of public law and professional disciplinary regulation. She has acted for head teachers in professional disciplinary proceedings before the General Teaching Council, and is regularly instructed by the Department for Education and Department for Business Innovation and Skills and private education providers on a wide range of high profile education cases.

“She is a hugely able and impressive barrister; incisive written work and assured advocacy”

– LEGAL 500, 2018

Cases

R (King David High School) v Ofsted

(2019)

Advised Ofsted (with Joanne Clement of 11KBW) on a judicial review claim issued by a denominational state secondary school, challenging Ofsted's decision to downgrade the school from 'outstanding' to 'inadequate'. The claim concerned the extent to which segregation in mixed sex schools constitutes unlawful sex discrimination, and the meaning and scope of the Court of Appeal decision in *Al-Hijrah*.

Alam v Secretary of State for Education

(2016-2017)

Acted for the Secretary of State (led by Martin Chamberlain QC) in the First-tier Tribunal successfully resisting a challenge to a direction issued under s.128 of the Education and Skills Act 2008, which prohibited the appellant from participating in the management of independent schools on the ground that he had engaged in conduct which undermined fundamental British values. This was the first time a prohibition order of this kind has been made against a school governor.

R (Comprehensive Future) v Secretary of State for Education

(2015)

Acted for the Secretary of State in relation to a threatened judicial review challenge to the decision to approve the expansion of the Weald of Kent Grammar School onto a satellite site in Sevenoaks. The claimant action group claimed that the proposed expansion was in fact the creation of a new grammar school, which is prohibited by legislation.

R (Governing Body of London Oratory School) v Schools Adjudicator

(2015)

Acted for the Adjudicator in an appeal to the Court of Appeal concerning the requirement on faith schools to have regard to guidance issued by religious bodies when constructing faith-based over-subscription criteria. Settled prior to hearing.

X County Council v Secretary of State for Education

(2015)

Acted for the Secretary of State in relation to a proposed judicial review challenge to the allocation of dedicated schools grant to the Council for the 2015/16 financial year, and the calculation of top-up funding to support additional post-schools places.

Data Protection, Freedom of Information & Privacy

Catherine regularly appears in the First-tier Tribunal, Upper Tribunal and High Court on cases concerning freedom of information.

Cases

R (Good Law Project and Molly Scott Cato MEP) v Secretary of State for Exiting the European Union and Her Majesty's Treasury

(2018)

Acted for the Defendants in a judicial review challenge to a refusal to disclose so-called Brexit 'impact analyses' under common law disclosure powers and Article 10 ECHR. The Defendants argued that requests for such information should be addressed under the Freedom of Information Act 2000.

R (Migrants' Rights Network) v Secretary of State for Home Department & Ors

(2018)

Acted for NHS Digital in a judicial review challenge to the legality of a Memorandum of Understanding between the Home Office, Department of Health and NHS Digital under which non-clinical information about migrants on the NHS database was shared with the Home Office for immigration enforcement purposes. The case settled after the defendants agreed to amend the Memorandum of Understanding.

Loch v Information Commissioner & Ministry of Justice

EA/2017/0223

Acted for the MoJ in seeking to uphold the Information Commissioner's decision that information concerning the decision to establish courtesy titles of 'Lord' and 'Lady' for Justices of the Supreme Court is exempt from disclosure under s.37 of the Freedom of Information Act 2000 as relating to communications with the Sovereign or the conferring of a dignity by the Crown.

Blowe v Information Commissioner, Home Office and Chief Constable of Greater Manchester Police

EA/2016/0297-0301

Acted for the Home Office in an appeal concerning whether five police forces were required to disclose information under the Freedom of Information Act about the number of referrals made to the Government's counter-terrorism programme Channel regarding anti-fracking campaigners.

Cabinet Office v Information Commissioner & Qureshi

EA/2017/0024

Acted for the Cabinet Office in a successful appeal to the First-tier Tribunal against the ICO's decision to require the Cabinet Office to disclose Cabinet minutes concerning the collapse of the Bank of Credit & Commerce International (BCCI) in 1991.

Department of Health v Information Commissioner & Sid Ryan

EA/2016/0306

Acted for the Department of Health in an appeal to the First-tier Tribunal against a decision requiring DoH to disclose diaries of two senior civil servants working on private finance initiatives. The DoH argued unsuccessfully that the request was vexatious.

Financial Services

Catherine has a particular interest in financial services regulation. She regularly acts for and advises the Financial Conduct Authority (FCA). She has previously advised the Prudential Regulation Authority and the FCA in relation to their joint review of the failure of HBOS. She has advised a UK bank in relation to complaints to the Financial Ombudsman Service about payment protection insurance (PPI) policies.

Cases

Financial Conduct Authority v Cathay International Holdings Limited & others (2019)

Represented the FCA before the Regulatory Decisions Committee in a case concerning a Hong Kong-based premium listed company's failure to disclose inside information concerning a downturn in its expected profits in a timely manner. The RDC held that the company and two of its directors breached the FCA's Disclosure and Transparency Rules and Premium Listing Principles. The RDC imposed a fine of £411,000 on the company, £214,300 on its CEO and £40,200 on its FD.

The Independent Review of the Prudential Supervision of The Cooperative Bank plc (2018-2019)

In March 2019, HM Treasury published the findings of the independent review of the prudential supervision of The Co-operative Bank plc between 2008 and 2013. The independent review was carried out by Mark Zelmer (a former senior official at the Bank of Canada). The report makes detailed recommendations for the Prudential Regulation Authority and Bank of England relating to supervisory policy and practice.

Catherine was engaged (with Hollie Higgins) to provide independent legal advice to the independent reviewer on all public law issues relating to the preparation of his report, including in relation to 'Maxwellisation' of persons criticised in his report.

ACHIEVEMENTS

Education

BA, LLB (Hons) (Victoria University of Wellington); LLM (Cambridge)

Publications

- "Practice and Procedure" (co-writer) in *Employee Competition: Covenants, Confidentiality and Garden Leave* (Oxford University Press, 2011, 2nd edition, ed. Paul Goulding QC)
- Chapters 5 and 6 ("Commencing a Claim" and "Acknowledgment of Service") in *Administrative Court: Practice and Procedure* (Sweet & Maxwell, 2006, ed. Beverley Lang QC)
- Co-writer of "Conflicts of Law" in *European Employment Law and the UK* (Sweet & Maxwell, 2003)
- "What is a 'Target Duty'?" [2000] *Judicial Review* 184.
- "They think it's all over: The impact of the Tobacco Advertising Directive on sports sponsorship in the United Kingdom" [2000] *Sport and the Law Journal* 91.
- "'Constitutionalisation' of Treaties by the Courts – The Treaty of Waitangi and the Treaty of Rome Compared" [1999] *New Zealand Universities Law Review* 334.
- "Manifest disadvantage in undue influence: An analysis of its role and necessity" [1995] *Victoria University of Wellington Law Review* 289.

Judicial appointments

- In 2019, Catherine was appointed a judicial member of the Commonwealth Secretariat Arbitral Tribunal (CSAT), an international tribunal which hears contractual disputes between the Commonwealth Secretariat and its employees. She is one of 8 judicial members, chosen from around the Commonwealth, and represents the UK on the tribunal.

Memberships

- Administrative Law Bar Association - Chair
- Justice

- Employment Lawyers' Association
- Employment Law Bar Association

Selected earlier reported cases

Public & Regulatory

- R (Banerjee) v General Medical Council [2015] EWHC 2263 (Admin)
- R (Chaudhuri) v General Medical Council [2015] EWHC 6621 (Admin)
- R (Jackson) v General Medical Council [2013] EWHC 2595 (Admin)
- R (Coys of Kensington) v Advertising Standards Authority [2012] EWHC 902 (Admin)
- R (Coke-Wallis) v Institute of Chartered Accountants in England and Wales [2011] 2 AC 146
- R (Child Poverty Action Group) v Secretary of State for Work and Pensions [2011] EWHC 2616 (Admin)
- The Mid Staffordshire NHS Foundation Trust Public Inquiry (2010-2012)
- R (UNISON) v Secretary of State for Health [2010] EWHC 2655 (Admin)
- R (Breckland DC) v Electoral Commission [2009] EWCA Civ 239
- R (London & South Eastern Railway Ltd) v British Transport Police Authority [2009] EWHC 460
- R (Lin) v Secretary of State for Transport [2006] EWHC 2575 (Admin)
- R (Razgar & Ors) v Secretary of State for the Home Department [2003] EWCA Civ 840

Professional Discipline

- R (Dr LI) v GMC [2013] EWHC 522 (Admin)
- R (Coke-Wallis) v Institute of Chartered Accountants of England and Wales [2011] 2 AC 146
- R (X) v General Medical Council [2011] EWHC 3271 (Admin)
- Martin v General Medical Council [2011] EWHC 3204 (Admin)
- Shamsian v General Medical Council [2011] EWHC 2885 (Admin)
- Saverymuttu v General Medical Council [2011] EWHC 1139 (Admin)
- Bhatt v General Medical Council [2011] EWHC 783 (Admin)
- Moneim v General Medical Council [2011] EWHC 327 (Admin)
- Pugsley v General Medical Council [2010] EWHC 2247 (Admin)
- Colman and Hickey v General Medical Council [2010] EWHC 1608 (QB)
- General Teaching Council v Maltbaek (2009/10)
- Cohen v General Medical Council [2008] EWHC 581 (Admin)

Previous professional experience

Catherine first qualified as a barrister and solicitor in New Zealand and worked in the commercial litigation department of the New Zealand law firm Rudd Watts & Stone (now Minter Ellison Rudd Watts). After being ranked 1st in her year in the LLM at the University of Cambridge, she worked as a solicitor in the London office of Clifford Chance from 1997 to 1999, practising in public international law.

Catherine's experience as a solicitor in two jurisdictions has given her an invaluable understanding and appreciation of working as part of an integrated team with solicitors and clients.

In 2007, Catherine taught public law and comparative human rights law at Victoria University of Wellington in New Zealand. She also spent two months working as Crown Counsel for the Crown Law Office in Wellington, where she advised the New Zealand Government on a variety of public law matters.

VAT registration number: 447008068

Barristers regulated by the Bar Standards Board