



Simon Gurney

Call to the Bar: 2006

Simon is recognised as a leading Junior in both of the leading legal directories: the Legal 500 and Chambers & Partners.

Chambers & Partners (2019 Edition) recognises Simon as “a legend when it comes to professional disciplinary work” who “has a fantastic success rate.”

The editors describe him as “an advocate with strong expertise in representing police officers and healthcare professionals before their regulatory bodies... experienced in everything from fitness to practise hearings to High Court and Court of Appeal advocacy.” Referees describe him as “calm, considered and methodical in his approach.”

The previous edition (2018) commented on his strengths: “That he is an exceptionally good advocate” whose “legal knowledge is amazing.” He is described as “very professional and very knowledgeable, with a very clear analytic mind to deal with the matters in hand.”

The Legal 500 (2019 Edition) identifies Simon as a leading Junior in regulatory, health and safety and licensing. The editors say that he is “extremely bright and a master of strategy.”

Previous editions have commented that he is “intelligent, persuasive and diligent” (2018); “he shows excellent analysis of the evidence, and delivers relevant, well-presented closing speeches” (2017); “he is confident on his feet and a strong cross-examiner” (2016) and that “his grasp of the detail is outstanding” (2015).

Simon is a specialist in regulatory law, with a particular focus on professional discipline.

In the field of professional discipline, Simon has extensive experience representing medical practitioners, dentists, nurses and midwives, pharmacists, healthcare and social workers, solicitors, police officers and other professionals facing investigations into their fitness to practise by their respective regulators. He is acutely aware of the particular significance to professional clients of allegations of serious wrongdoing.

He has an impressive record when appearing before interim orders panels and in substantive fitness to practise hearings, but also in persuading regulators through written representations to terminate investigations before any hearing is convened.

Simon is often retained to advise practitioners at the early stages of such investigations and, if unable to bring the investigation to a swift end, he provides representation throughout the proceedings, not only before the tribunal but also in appellate proceedings.

He has significant experience in the High Court and Court of Appeal, in both appeals against findings of fitness to practise panels and opposing applications by regulators to extend interim orders. Simon’s additional expertise in criminal law allows him to provide a comprehensive service to professionals whose allegations of misconduct cross over into the criminal jurisdiction.

Simon also advises practitioners on regulatory matters relating to licensing and registration and regulatory requirements imposed by the regulator, the NHS and the Care Quality Commission, such as a refusal by a regulator to register a practitioner with a licence to practise or a decision to revoke a licence because of problems over revalidation.

Simon is regularly instructed to represent police officers of the Greater Manchester, Lancashire, Merseyside and North Wales Constabularies. Simon has successfully represented officers appearing before the Crown Court accused of offences across the spectrum, including dangerous driving, assault, data protection offences and possession of extreme pornography. He has a strong track record representing officers before misconduct hearings and also has experience conducting appellate proceedings before the Police Appeals Tribunal.

In the wider regulatory sphere, Simon represents clients accused of breaches of regulations relating to health and safety at work, fire safety, environmental law and trading standards legislation. He is instructed to represent companies and individuals accused of such offences.

He is often instructed pre-charge to advise on strategy and negotiation with the prosecution agency, in the hope of avoiding the commencement of proceedings.

He is also instructed to represent those charged with regulatory offences in both the Crown Court and Magistrates’ Court.

Simon is appointed to List B of the Specialist List of Regulatory Advocates, the list of advocates retained by public agencies responsible for prosecuting alleged regulatory offences.



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Simon also has a growing practice appearing on behalf of companies appealing to the First Tier Tribunal (Tax Chamber) against decisions of the Commissioners for HM Revenue and Customs.

Building on his experience defending in criminal proceedings concerning alleged fraudulent trading, specifically MTIC fraud, Simon is a popular choice for Solicitors with clients who have been the subject of adverse VAT decisions arising from allegations that they have been involved in fraudulent or contrived trading.

Simon has recently been instructed in three substantial cases in which his clients have been refused repayment of input tax by HMRC on the basis of the test set out by the European Court of Justice in Kittel, namely that their transactions were connected with the fraudulent evasion of VAT and they either knew or should have known of that connection. Simon has experience appearing in interlocutory applications and final hearings in the First Tier Tribunal and conducting appeals to the Upper Tribunal and Court of Appeal.

He also has experience in the field of public and administrative law: cases in which an individual seeks to challenge a decision of a public body by way of an action for judicial review. He advises on the powers of public authorities and the rights of vulnerable people whose lives have been affected by the decisions of such authorities.

Simon can provide representation before the Administrative Court in Manchester, London or any other regional centre. Simon's practical experience of the criminal justice and professional discipline systems gives him an informed perspective on challenges to decisions made in those areas. He receives instructions in judicial review proceedings and appeals by way of case stated, arising across the broad spectrum of the criminal justice system, e.g. the issue and execution of search warrants; and any challenges to the decisions of the CPS, Magistrates' Courts and the Crown Court, the Parole Board and the Ministry of Justice.

Because of his knowledge of the criminal justice system, Simon is also regularly instructed to advise clients who have been mistreated by officers of the State, usually by the Police, as to whether they can pursue a civil claim for damages.

Simon is an experienced direct access barrister and is happy to advise professionals who contact him directly regarding their cases.

Previous notable cases:

Professional Discipline

GMC v Dr Adeogba [2016] 1 WLR 3867 – Simon appeared in what is now the leading case in the field of healthcare regulation on proceeding in the absence of the practitioner. Simon was instructed on a direct access basis by his client, a cosmetic plastic surgeon, on an appeal to the High Court from the decision to erase his name from the medical register. Simon was successful on appeal, however the GMC took the case to the Court of Appeal. During the intervening 18 months between the appeal hearings Simon ensured his client was able to continue to practise by deploying a novel legal argument before the Interim Orders Panel, which resulted in no order restricting his practice. The GMC was ultimately successful in overturning the decision of the High Court.

GMC v Dr NS – Simon was instructed for a Consultant Gynaecologist (and Clinical Director of the local NHS Trust) who faced allegations of impaired fitness to practise arising from (1) a caesarean section during which she allowed the patient's husband to participate during the surgery; and (2) her provision of employment references on behalf of underperforming staff, which were alleged to be dishonest. The case involved substantial expert and factual evidence. Following a four-week hearing, all the contested allegations were found not proven and the Doctor received a warning. Simon also drafted a Rule 7 response to a second set of allegations concerning clinical misconduct, which resulted in the case being terminated without a hearing (instructed by James Cassidy of Clyde & Co Solicitors, London).

Dr Arunachalam v GMC [2018] EWHC 758 – instructed to represent a Trust Grade doctor of 20 years' experience erased from the medical register following a contested hearing before a MPT (at which he was represented by other counsel), which found proven allegations of sexually motivated conduct towards two junior female colleagues. Simon advised on appeal and drafted grounds upon which to challenge the sanction: focusing on inadequacy of reasoning, failure to evaluate mitigation; and disproportionality in sanction. Resulted in a successful appeal against sanction and led to the imposition of an order of suspension (instructed by Alison Marriott of Stephenson Solicitors, Wigan).

GMC v Dr B – instructed to represent a Consultant Ophthalmologist who faced allegations of the utmost seriousness, arising from his conduct as the Chairman of a chain of private cosmetic hospitals across the North West. When Simon was instructed, Dr B was suspended from practice and had been for nearly 2 years. Simon successfully opposed an application to extend the interim order in the High Court. Simon challenged the GMC's approach to disclosure of digital material and was successful in securing an order requiring the GMC to disclose material that Dr B and his Solicitors had been seeking for several years. Ultimately Simon represented Dr B during a 5-week hearing, during which Simon pursued an application that the Panel recuse itself because of its exposure to prejudicial material. The Panel refused the application. Simon drafted grounds for judicial review and permission was granted by the High Court, following which the Panel recused itself in the interests of justice. Following his cross-examination of one of the GMC's witnesses, the GMC withdrew a number of the allegations from the Panel. The remaining contested allegations were found not proven by the Panel at the end of the case. The Panel made no finding of impairment and even decided not to impose a warning. As a result, Dr B was exonerated after 5 years subject to investigation (instructed by Paul Grant of BSG Solicitors, London)



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HCPC v ML – instructed to represent ML, a social work team manager previously employed by Manchester City Council, who had been called before the Conduct and Competence Committee of the HCPC over allegations that she had failed adequately to safeguard children in her care. Following successful cross-examination, Simon made a submission of ‘no case to answer’ with which the Committee agreed. The case was stopped from going any further and without calling on ML to give evidence to defend her reputation. ML’s fitness to practise was confirmed by the Committee meaning she is free to return to social work without any blemish on her professional reputation (instructed by Sarah Sharpe of Slater & Gordon Lawyers).

GMC v Dr RC – instructed on a direct access basis to represent a junior doctor who had been referred for a hearing before a MPT in relation to allegations of dishonesty concerning his annual leave. He had compounded his position by proffering a dishonest explanation to his employer and to the GMC in his Rule 7 response. With sensible and sensitive advice, he was able to admit his ongoing dishonesty, which decision ultimately led to a successful outcome. At the hearing, the Tribunal was persuaded not to erase him, but rather to suspend for a period of 2 months without any review.

GMC v Dr Suntha [2014] EWHC 3534 – instructed to oppose the GMC’s application for an extension of an interim order in respect of Dr S. Simon opposed the application on the grounds that Dr S had no intention of practising as he had retired and so an order was not necessary. He relied on a very recent case from the High Court concerning interim orders made by the NMC. Simon advised and assisted in the drafting of a witness statement which persuaded the Judge that no order was necessary, so the GMC’s application was refused (instructed by Carl Johnson of Stephenson’s Solicitors).

Merseyside Constabulary v PC Kelly – instructed to represent PC Kelly, who had been dismissed after a finding of gross misconduct in relation to her conduct in the arrest of a member of the public who alleged that PC Kelly had assaulted him, without reason or provocation, by taser-ing him a number of times in the back of a police van. The original decision to dismiss PC Kelly was widely publicised at the time, in the national press and by the IPCC. Simon successfully appealed the decision to the Police Appeals Tribunal, arguing that the decision was unreasonable and a result of an unfair procedure. The Tribunal overturned the decision of the misconduct panel and ordered that PC Kelly be reinstated, which ensured that Simon’s client was able to resume her career as a police officer with her reputation restored (instructed by Alan Greenidge of Slater & Gordon Lawyers).

Regulatory

HSE v RH and 9-5 Roofing Ltd – instructed to represent the owner of a roofing business who faced health and safety / work at height charges following the death of one of his employees who fell from a roof without adequate edge protection whilst working under the Defendant’s management. Simon negotiated a favourable basis of plea and secured a non-custodial sentence for his client (instructed by Tim Andrew of Burton Copeland Solicitors).

GMFRS v Oasis Lounge – instructed to represent one of six defendants charged with breaches of fire safety regulations arising from the operation of the Oasis Lounge shisha bar in Manchester. On the day of trial, Simon’s client pleaded guilty and gave evidence for the Crown against her co-defendants, following receipt of careful and considered advice. Ultimately, his client retained her liberty whilst those against whom she gave evidence were all sent to prison (instructed by Nasir Hafezi of Stephen Lickrish & Associates).

Oldham MBC v AS – instructed to advise the owner of a pizza restaurant who had been summoned by Oldham Council in relation to alleged breaches of health and safety regulations and failure to comply with a prohibition notice.

GMFRS v QA – instructed to advise the owner and landlord of a number of HMOs who was under investigation by the Greater Manchester Fire and Rescue Service for alleged breaches of fire safety regulations. Simon was retained to advise pre-interview as to strategy; in relation to negotiations surrounding basis of plea; and in order to mitigate sentence (instructed by Nasir Hafezi of Stephen Lickrish & Associates).

Trading Standards

R v AL / Yes Clothing – instructed to represent one of four directors of an online clothing company accused of selling substantial quantities of counterfeit items via eBay. Simon achieved a positive outcome for the client at sentence and in confiscation, following protracted negotiations with the prosecution authority (instructed by John Greenwood of Stephenson’s).

Blackpool BC v RF Ltd – instructed by a company on a direct access basis to provide advice and representation in relation to allegations that they had committed offences under the Trade Marks Act by selling counterfeit England rugby balls. Simon successfully negotiated a settlement with the local authority which resulted in a favourable outcome for the client.

Blackpool BC v ST, HT & NT – instructed to represent three co-directors of retail premises in Blackpool accused of selling counterfeit stock, that infringed the copyright held by numerous premier league football clubs. Simon negotiated a positive outcome for the defendants which frustrated the Prosecution’s ambitions in relation to confiscation.

Tax Appeals

CCA v HMRC – Simon is instructed (with James Pickup Q.C.) by Martin O’Neill of Cubism Law to represent CCA Distribution Limited, a company which was successful in its appeal to the FTT in relation to the decision of HMRC to withhold repayment of c.£10million of input tax, but found that decision overturned by the Upper Tribunal on the appeal of HMRC. Following an unsuccessful appeal to the Court of Appeal ([2018] STC 206), Simon is currently preparing to represent CCA in the re-hearing before the FTT to be heard in April 2019.



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BTS / NTS v HMRC – instructed by Simon Ellis of Freeths Solicitors (with James Pickup Q.C.) to represent two companies (BTS and NTS) which were denied repayment of over £15million of input tax by HMRC. At first instance the case was heard over five weeks between November 2013 and January 2014 ([2015] UKFTT 0137) and concluded with a finding against Simon's clients. Permission to appeal was granted by the Upper Tribunal but the appeal was refused ([2017] UKUT 159).

Fairford v HMRC – instructed by Bark & Co. Solicitors in London to represent two companies which had been denied repayment of over £13million of input tax by HMRC. The appeal was due to be heard between January and February 2015 however, owing to the ill health of the director of the Appellant companies, the appeals were withdrawn. The case did result in an interlocutory appeal to the Upper Tribunal of some importance concerning the scope of the power to strike out cases under the FTT Rules (HMRC v Fairford [2015] STC 156).

Judicial Review

R (F) v Manchester Crown Court and HMRC [2018] EWHC 1866 – instructed with Jim Pickup Q.C. to represent real and corporate claimants, who were successful in securing a declaration that warrants issued to search their premises had been granted and executed unlawfully (instructed by Simon Harrison of RH Law).

R (M) v Burnley, Pendle and Rossendale Magistrates' Court [2009] EWHC 2874; (2010) 174 J.P. 102 (Admin) – Simon was instructed to represent two children against whom ASBOs had been sought by their local authority. He successfully challenged the decision to hear the application in the children's absence (instructed by John Nuttall of NGA Solicitors).

Jones v Director of Public Prosecutions [2011] EWHC 50; (2011) 175 J.P. 129; [2012] R.T.R. 3 – Simon was instructed to represent a serving police officer charged with exceeding the speed limit on duty, driving at 90mph. Simon pursued an appeal by way of case stated against the decision of the Crown Court at Caermarfon (instructed by Slater & Gordon Solicitors in Manchester).



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