



Michael Potter

Year of Call: 1988

Call Clerk on 020 7827 4000

PRACTICE AREAS

Discrimination & Equality | Employment | Human Rights | Professional Discipline

OVERVIEW

Michael Potter's primary area of practice is employment, including employment law and employment-related civil litigation. He also specialises in the fields of health and social care law.

In October 2013 he was called to the Bar of England and Wales. Educated at Queen's University Belfast (QUB), he graduated in 1986, and was called to the Northern Ireland Bar in September 1988. In 1991, following post-graduate study at QUB, he graduated with an LLM by thesis in Public Law. From 1994-1996, he worked as the Employment Caseworker in the Law Centre (NI). When he returned to private practice in 1997, he specialised in employment.

Michael has represented both employers and employees in many leading and complex employment and discrimination cases. In 2005 he was appointed to the Government Legal Service Civil Panel, and has since advised and litigated for public authorities on matters relating to employment and other areas. He also has been instructed in employment and discrimination cases by trade unions and their members, as well as the Equality Commission for Northern Ireland.

His practice has included employer liability litigation, including harassment, stress at work and accidents at work. In the Chancery Division he has acted in cases relating to employment contract and industrial relation disputes.

In addition, Michael has played an influential role in the development of mental health and social care jurisprudence in Northern Ireland; having been involved in most of the jurisdiction's leading public law mental health litigation in the last fifteen years.

His current practice includes cases in the areas outlined above.

APPOINTMENTS AND MEMBERSHIPS

Secretary - the Employment Lawyers' Group, Northern Ireland.

Director - Bryson Care - leading Northern Ireland Charity providing social care in the community.

PUBLICATIONS AND TRAINING

Recent developments in Community Care Law in Northern Ireland (delivered to the Community Care Practitioners Group, Law Centre NI), November 2013.

Connecting Mental Health and Human Rights (co-authored with G Davidson and M McCallion; published by the Northern Ireland Human Rights Commission), 2005.

Chapter on 'mental health' in Law for Northern Ireland Social Workers

(published by Butterworths), 2004.

Chapter on 'mental health' in Northern Ireland Civil Liberties Handbook (published by Committee on the Administration of Justice), 2003 (new edition due 2014).

A commentary on the Government's Green Paper, entitled "Who decides? Making decisions on behalf of mentally incapacitated adults", pursuant to international human rights law." (published by the Standing Advisory Commission on Human Rights), 1998.

Guide to Employment Rights in Northern Ireland (co-authored with J O'Neill; published by Law Centre (NI)), 1994 & 1995.

QUALIFICATIONS

LL.B Hons, QUB, 1986

Institute of Professional Legal Studies, QUB, 1988

LL.M [by thesis in Public Law], QUB, 1991.

HIGHLIGHT CASES

Employment and discrimination

Simpson v Castlereagh Borough Council [25 March 2014] - represented the Claimant in constructive dismissal and victimisation claims, wherein the Tribunal found that the Claimant was constructively dismissed, but dismissed the victimisation claim, notwithstanding a factual finding that her grievance had been delayed to protect senior officers from findings of sex discrimination. The Court of Appeal remitted the matter to the Tribunal for a fresh decision, but the Tribunal again dismissed the victimisation claim for essentially the same reasons. In a second appeal the Court of Appeal considered the correct legal test for determining causation and reached a finding of victimisation.

Dr Malgozata Stadnik-Borowiec v Southern Health and Social Care Trust and others [24 February 2014] - Acting for the Respondent in an appeal challenging Deposit Orders; therein the Northern Ireland Court of Appeal provided guidance in its decision regarding both the making of such Orders and the application of the burden of proof regulations in deposit and strike out hearings.

Martin v Department of Social Development (DSD) and others [2014] Northern Ireland Fair Employment Tribunal [NIFET] - successfully defended the Respondent-Department in the first 'Orangeman' discrimination case in Northern Ireland.

Beattie v Healthcare at Home & Cheryl Vidal [2013] Northern Ireland Industrial Tribunal [NIIT] - represented the Claimant in a test case on territorial jurisdiction where the Tribunal held it could hear claims of discrimination that allegedly occurred in England.

McCracken v Northern Health and Social Care Trust [2013] Equality Law Reports 553 - represented the Respondent-employer in a complex reasonable adjustment case, balancing the rights of a nursing auxiliary with a disability against the safety of mental health patients.

Rice v McEvoy [2011] NICA 9 [2011] EqLR 771 - represented a solicitor in a discrimination claim against the principal in the Respondent-firm; the decision is authoritative on the 'burden of proof' and is cited in Harvey on Industrial Relations and Employment Law, at Part L, Paragraph 809.03.

Halliday v Royal Mail Group Ltd and others [2011] NIFET 30 March 2011- represented the Claimant, who succeeded in establishing sectarian harassment on the grounds of religious belief.

Bombardier Aerospace v McConnell [2008] IRLR 51 - established that interim relief can be available in redundancy dismissals (see also the related case McConnell v Bombardier Aerospace [2009] IRLR 201*) - cited in Halsburys Laws of England, Volume 39, Paragraph 1007; and, Harvey on Industrial Relations and Employment Law, Division Q, Paragraph 161, Application for interim relief.

Sterritt and others v Stewarts Supermarkets and others [2007] NIIT & [2008]

NIIT 4208/94 - successfully represented a group of female employees in a TUPE equal pay pension case.

Faulkner & Ors v BT (Northern Ireland) & Ors [2008] NICA 39* - represented the Claimant in a test case concerning the use of comparators in discrimination claims who are employed outside the jurisdiction in the same or different organisations.

O'Hare v Queens University Belfast NIIT 31/08/2007 - successfully represented a research academic in a sex and religious discrimination claim involving the medical faculty at QUB.

JR5 v Department of Agriculture and Rural Development [2007] NICA 19* - brought a test case funded by the Equality Commission for Northern Ireland on behalf of the Claimant, wherein the Court of Appeal held that in the absence of adequate domestic legislative protection, the Equal Treatment Directive could be relied upon to protect the confidentiality of a transsexual.

Johnston v Royal Group of Hospitals and Dental Hospitals [2007] NIIT 851 - represented the Claimant, and established that the Claimant's dyslexia constituted a disability for purposes of the disability discrimination legislation.

Hand v Police Authority for Northern Ireland & Anor (Preliminary Issue: Whether Applicant Disabled) [2002] NIIT 1691/01 - successfully represented the Claimant in one of the first disfigurement cases under the Disability Discrimination Act 1995 in Northern Ireland.

Geary and Dowling v Queens University of Belfast [2002] NIIT- successfully brought an American academic's sub-conscious race discrimination claim, arguing the appointment panel favoured an English academic.

Moreland v Northern Ireland Railways Company Ltd [2000] IT/01954/98 - acted pro bono for the Claimant, and won one of the first disability discrimination cases in Northern Ireland.

Public Law (Judicial Review applications)

JMcA [12/5/14] successfully representing a challenge to the Belfast Health and

Social Care Trust's use of guardianship under the Mental Health (NI) Order 1986 to restrict and control the right of the Appellant, a person with a disability, to leave his place of residence for incidental, social or other purposes. In a short decision, the Court of Appeal: (a) acknowledged the applicability of the recent Supreme Court decision *P and other v Cheshire West and Chester Council* [2014] UKSC 19; (b) clarified the boundaries of a guardian's power under the 1986 Order; and, (c) recognised that a gap exists in Northern Ireland legislation as a result of developments in ECHR jurisprudence, thereby recommending the implementation of legislation in Northern Ireland that is similar to deprivation of liberty (or DOLs) legislation in England and Wales, as contained in the Mental Capacity Act 2005.

JR47's application [2013] NIQB 7* - represented the Applicant in a landmark case, which established an [implied] statutory duty to assess need pursuant to the Health and Personal Social Services Order (NI) 1972.

JR50 [2011] NIQB 43 - successfully represented the Applicant, arguing misuse of guardianship under mental health legislation to restrict liberty.

JR45 [2011] NIQB 17 - represented the Applicant in a seminal case on the correct legal test for compulsory detention in Northern Ireland.

Re McClean [2011] NIQB 19 - acted for the Applicant, successfully establishing the Respondent's failure to properly apply the criteria governing the assessment and provision of services for the Applicant, an elderly patient.

X Re Judicial Review [2009] NIQB 2 - successfully represented the Applicant, and established a United Kingdom-wide precedent that a Mental Health Review Tribunal could not defer a patient's discharge where it had a mandatory duty to discharge him or her.

McC's application [2008] NIQB 103 - was the Counsel for the Intervenor (the Northern Ireland Human Rights Commission), making submissions regarding the ECHR Article 2 and Article 3 rights of a young suicidal psychiatric patient.

X Judicial Review [2008] NIQB 22 - challenged the adequacy of a Mental Health Review Tribunal decision upholding a detention; the Court determined that the Tribunal's reasoning could not withstand the heightened scrutiny applicable in

human rights cases.

McBurney Application for Judicial Review [2004] NIQB 37* - brought the Northern Ireland challenge under the Human Rights Act and ECHR Article 5 to the placement of the burden of proof on patients in Mental Health Review Tribunal hearings, which precipitated the enactment of the Mental Health (Amendment) (Northern Ireland) Order 2004 that placed the burden of proof on the detaining authority.

Re O'Sullivan [2001] NIQB 16 - represented the Applicant-psychiatric patient, arguing she was unlawfully detained outside her home jurisdiction contrary to the Human Rights Act in circumstances where there was no medium secure facility for such high risk patients in Northern Ireland.

*With Senior Counsel

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