

## Philip McLeish

**Call:** 2003

**Specialist in:**

- Housing & Community Care
- Civil Law
- Direct Access
- Direct Access Trained



## Experience

Philip McLeish has extensive experience across a wide range of fields in public and civil law, although his practice at present revolves predominantly around housing, homelessness, community care and property law. He enjoys thinking, and relishes cases requiring complex legal analysis, or opportunities for novel or lateral solutions. He has an easy manner with everyone, and is very experienced in dealing sensitively with clients lacking capacity or suffering mental distress.

### Housing

Philip has practised for most of his career across the entire range of housing law. He has detailed knowledge of the law, procedure and tactics involved in defending possession proceedings across all tenures. He regularly conducts trials involving complaints of anti-social behaviour (including injunction and committal proceedings); public law, Article 8 and disability discrimination defences for insecure occupiers; tenancy deposit issues and claims for injunctions and damages for unlawful eviction and disrepair.

### Property and Contract

Philip has experience of defending in mortgage repossessions, in resisting applications for charging orders and in dealing with disputes under the Consumer Credit Act. He has experience of advising in conflicts over receivership and commercial mortgages and in seeking orders for sale under TOLATA 1996 and s91 LPA 1925. He advises about



commercial leases, has experience of the process of freehold enfranchisement, and deals with boundary disputes both in nuisance and under the Party Wall Act. He has experience of the law relating to adverse possession and has dealt with land registration disputes before the First Tier Tribunal (Property) Chamber.

### **Judicial Review, Homelessness, Community Care and Education**

Philip has wide experience of using the law to obtain public services for clients. He is regularly instructed in homelessness appeals and in judicial review applications to secure interim accommodation. He has experience of using the Children Act to secure housing for homeless teenagers as well as for families without recourse to public funds. He has represented clients in disputes over eligibility for NHS continuing care; NAA 1948 support for asylum seekers and s.117 MHA 1983 aftercare for discharged psychiatric patients.

He has brought judicial reviews against unlawful health service rationing and in age assessment cases for unaccompanied asylum seekers; he has fought cases over the duty to assess, the content of care plans; control of personal budgets and termination of direct payments.

Philip has conducted numerous appeals before the Special Educational Needs and Disability Tribunal and has secured special and residential school placements for children with special educational needs. He has advised in several potential educational Judicial Reviews. He has direct personal experience of the impacts of autism.

### **Mental health, Civil claims against police and public authorities, Employment**

Philip has represented patients at Mental Health Tribunals and has defended applications to displace nearest relatives in the County Court.

He has conducted trials and advised in civil claims against public authorities for abuse of their powers including false imprisonment, malicious prosecution and battery. In one such case, brought against the immigration services for using excessive violence against a child being deported, the Court of Appeal has recently granted him permission to appeal. He has conducted inquests involving death in custody and under psychiatric services. He has experience of data protection challenges relating to damaging disclosures on CRB applications and elsewhere.

He has conducted tribunals before the ET and EAT in a range of fields including sex, race and disability discrimination, whistleblowing, trade union victimization, TUPE and unfair dismissal.



### **Community and Campaigning groups**

Philip worked for a time in the legal team at Friends of the Earth's Rights and Justice Centre and is happy to provide legal assistance (pro bono where necessary) to local groups defending public space, public services, community resources or the environment. In this capacity, for instance, he has assisted in bringing a judicial review challenge over an attempt by Islington Council to sell off a building used by a parent-run disabled children's centre; advised on the scope for judicial review during one phase of the eventually successful campaign to stop the Saltend Incinerator, and helped to set up and run a legal support operation for Climate Camp between 2006-9. In 2012 he fought and succeeded at a Planning Inquiry for the Ecological Land Cooperative in their pilot project seeking to develop access to land for low-income farmers. Over the last year or so he has been providing legal support to the Yorkley Court Community Farm.

### **Background**

Philip did pupillage at Garden Court in London. He then spent several years working at Springfield Law Centre which is situated in a psychiatric hospital in South West London, during which time he cross-qualified as a solicitor. Here his casework revolved primarily around securing and retaining housing and education for young people and representing detained patients contesting their section. He is very experienced in dealing sensitively with clients in distress. Between 2011-2015 he was in practice at Garden Court North in Manchester.

### **Education**

BVC (Very Competent); MA Birmingham; BA (Hons) York (1st)

### **Memberships**

HLPA

CPBA

### **Languages**

German – Fluent; French – reasonable; Spanish- rudimentary



## Cases

### **Services for Education (S4E Ltd) v White & Anor**

**UKEAT/0024/15/DM**

The case concerned the meaning of ‘transfer’ for the purpose of the continuity provisions in the Employment Rights Act. The EAT held that, for the purposes of preserving continuity of employment, a transfer can take place over a period of time. Mr W had been employed since 1992 by the Birmingham Music Service to teach in schools under a series of contracts each running for the academic year. His latest contract expired on 31st July 2013. During the summer holidays the service was transferred to S4E, after which he was offered a zero hours contract with less favourable terms and conditions. The EAT held he could not rely on TUPE as he was not employed immediately before the transfer. However, for the purposes of bridging his continuous employment between the Council and S4E he had been employed “at the time of the transfer” for the purposes of section 218(2) of the ERA 1996.

Resources

[Read our judgement](#)

### **Leicester City Council v. Shearer**

**[2013] EWCA Civ 1467**

The Court of Appeal upheld a successful public law defence in possession proceedings where the occupier had no tenancy and was, in strict legal terms, a trespasser.

After her husband died, the local authority refused to consider letting Mrs Shearer and her children remain in the family home, notwithstanding the power which it had to do so which was inscribed in its allocations policy. In the County Court she successfully argued that a refusal to at least consider exercising this power amounted to a breach of public law. On appeal the local authority argued that because she had not properly completed a housing register application, nor provided ID, the local authority had no technical legal power to offer her a tenancy. The Court of Appeal dismissed this argument. At all times the local authority had insisted that the sole purpose of registration was for rehousing – which she did not want. Having misled her about the purpose of registration, it could not then turn around and blame her for following the advice it had given her, or rely on procedural errors which it had caused





as a justification for evicting her.

## Resources

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## **B v A**

**[2007] IRLR 576**

This case concerned acts of sexual harassment prior to the coming into force of the Employment Equality (Sex Discrimination)

Regulations 2005 SI 2005/2467. It revealed some of the problems with relying on a claim of direct discrimination to challenge acts of harassment by a male boss against a female employee – the EAT held that the reason for the dismissal was the relationship breakdown, that this was not on the ground of sex and that therefore no discrimination had taken place.

[Resources](#)

[Read our judgement](#)

