

## Martin Westgate QC



Call: 1985

Silk: 2010

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### **Profile**

Martin Westgate has a consistent track record of advice and representation in a wide range of subject areas although he concentrates on public and administrative law, housing and social care. Much of his work is in, and on appeal from, the Administrative Court and he is experienced in professional negligence and costs litigation, particularly in cases related to his main practice areas. His broad based practice makes him an ideal choice for cases that have a multidisciplinary aspect or that are difficult to categorise.

### **Education**

BA (Hons) Jurisprudence First Class

University College Open Scholar

Middle Temple Astbury Scholar

### **Related practice areas**

Administrative & Public Law  
Employment, Discrimination and Equality Law  
Housing, Social Welfare and Property  
Community Care and Health  
Mediation  
Anti-Trafficking  
Data Protection and Information Law  
Children's Rights Group  
Discrimination  
Immigration Detention Group

### What the Directories say

Martin is ranked in the 2015 edition of Chambers in the fields of Administrative and Public Law, Civil Liberties and Human Rights, Local Government and Social Housing and in the Legal 500 for Administrative and Public Law Civil Liberties and Social Housing.

Commentators note that he *"has taken well to silk"* and is *"a clever man who translates his thoughtfulness into creative and effective legal arguments"*. He is described as a *"very skilful and formidable advocate"* whose wider experience of public law issues enables him to *"think out of the box on more challenging cases"*.

He is leader of the public law and housing and social welfare teams within chambers and vice chair of the Administrative Law Bar Association.

His record since taking silk in 2010 continues to demonstrate his range and versatility. He has appeared in a number of leading cases (see below) at all levels up to and including the Supreme Court.

Martin is qualified to undertake direct access work. He has been trained as a mediator with CEDR and undertakes and represents in mediations.

### Administrative and Public Law

This is a core part of Martin's practice. Many of his recent cases overlap with specific substantive areas and are considered below. Others include:

- R (Attfield) v Barnet LBC [2013] P.T.S.R. 1559 (Admin) – Local authority not entitled to set parking charges as a means of raising revenue.
- KM (Jamaica) and WL (Congo) v Secretary of State for the Home Department [2012] 1 AC 245. Landmark case on administrative detention decided by a 9 judge Supreme

Court establishing that a public law error that bears on the decision to detain renders it unlawful. Martin acted for KM and undertook the argument on behalf of the Appellants in relation to damages.

- R (Castle and others) v Metropolitan Police Commissioner [2011] EWHC 2317 (Admin), [2012] 1 All E.R. 953 - establishing that the chief officer of police owes a duty under the Children Act 2004 to ensure that due regard is given to the welfare of children.
- R (BP) v SSHD [2011] EWCA Civ 276; [2011] 1 W.L.R. 3187 – power of the Administrative Court to deal with a case without a hearing.

## Employment Law and Industrial Relations

Martin acts in a wide employment and related disputes, particularly in the public sector where is often instructed in employment disputes with a public law element. He also acts for and advises unions on their internal rules and election procedures and in relation to collective action. He has particular specialism in police and civil service terms and conditions including pensions.

His recent cases include:

- R (CC Dorset) v Police Appeals Tribunal [2012] EWCA Civ 982 – circumstances in which dismissal is an appropriate sanction in a case of operational dishonesty.
- CC Hampshire v Police Appeals Tribunal [2012] EWHC 746 (Admin) – concerning the circumstances in which oral evidence must be called in a Police Appeal Tribunal.
- R (Staff Side of the Police Negotiating Board) v Secretary of State for Work and Pensions [2013] 1 W.L.R 444 – challenge to the decision to uprate public sector pension benefits by CPI and not RPI.
- R (Rennie) v Home Secretary [2009] EWHC 488 (Admin); successful challenge to the failure of the Home Secretary to uprate police pensions in accordance with actuarial tables.
- Staff Side of the Police Negotiating Board v Secretary of State for the Home Department [2008] EWHC 1173 (Admin); challenge to the decision of the Home Secretary not to accept a Police Negotiating Board recommendation regarding police pay.
- R (Hodgson) v Chief Constable of South Wales Police [2008] EWHC 1183 amenability to judicial review – compulsory retirement of police officers.

Police pensions cases:

- R (Pollard) v PMAB [2009] EWHC 403 (Admin)
- Merseyside Police Authority v PMAB [2009] EWHC 88 (Admin)
- R (Ashton) v PMAB [2008] EWHC 1833 (Admin) [2009 I.C.R. 51]

## Housing and Social Welfare

Martin has a long track record in all aspects of housing and social welfare law. His recent cases include:

- R (Jakimaviciute) v LB Hammersmith and Fulham [2014] EWCA Civ 1438 – Allocation scheme declared unlawful for failure to give a reasonable preference to people accepted as homeless but in suitable temporary accommodation.
- Telchadder v Wickland Holdings Limited [2014] UKSC 57 – requirements for and validity of a notice to terminate a Mobile Homes Act 1983 agreement.
- NJ v Wandsworth LBC [2013] EWCA Civ 1373, [2014] P.T.S.R. 497 – local connection acquired through residence in a refuge; decision that intervening events meant that the original decision was deficient so as to require a minded to find notice under Reg 8 of the Allocation of Housing and Homelessness (Review Procedure) Regulations 2009.
- R (MA) v Secretary of State for Work and Pensions [2014] EWCA Civ 13, [2014] P.T.S.R. 584. Challenge the “bedroom tax” as indirectly discriminating against disabled people.
- Superstrike Ltd v Rodrigues [2013] 1 WLR 3848 CA – Appeal establishing that the tenancy deposit regime applies to statutory periodic tenancies arising after the provisions came into force even where the original tenancy was granted beforehand.
- R (CPAG) v Secretary of State for Work and Pensions [2011] Eq. L.R. 1233 – a challenge to the decision of the Secretary of State to introduce national caps on the amounts of housing benefit payable. Martin acted pro bono for the CPAG.
- Crown Estates Commissioners v Governors of the Peabody Trust [2011] EWHC 1467 (Ch), [2011] L. & T.R. 23 – whether protected crown tenants become secure or assured on transfer of the landlords interest to a private body. Martin was instructed on behalf of the tenants.
- Martin acted for the protester Brian Haw in his successful appeal against the Mayor of London’s action for possession against him of Parliament Square Gardens [2010] EWCA Civ 817, [2011] 1 W.L.R. 504. He also acted on the remitted hearing [2011] EWHC 585.

- Dixon v Rochdale MBC [2012] P.T.S.R. 1336 CA – judgment pending – Power of a local authority to seek possession for non-payment of water rates.

## Community Care and Health

Martin has an active community care practice. He acted for the father baby RB in his opposition to the application by the NHS Trust to withdraw life sustaining treatment [2009] EWHC 3269 (Fam), [2010] 1 FLR 946. Other recent cases include:

- R (Jump) v Secretary of State for Communities and Local Government [2014] – challenge to changes to funding of local welfare provision. The claim was compromised when the Defendant agreed to re-consider.
- R (Sumpter) v SSWP [2014] EWHC 2602 (Admin) – Challenge to the 20m threshold for enhanced rate personal independence payment on the basis of inadequate consultation.
- R (MK) v Secretary of State for the Home Department [2012] EWHC 1896 Admin – determining that the Secretary of State’s policy requiring fresh asylum claims to be considered before their applications for support was unlawful because it created an unacceptable risk of a breach of Art. 3 ECHR.
- In G v E [2010] EWCA Civ 822 he acted for the appellants in a case defining the relationship between deprivation of liberty under the best interests jurisdiction in the Mental Capacity Act 2005 and Article 5 ECHR.
- R (K) v SSHD [2010] EWHC 1002 (Admin); [2011] EWCA Civ 671 - scope of the powers of the Secretary of state to provide support to failed asylum seekers when they are in a mixed household with a person who is not an asylum seeker and so entitled to mainstream benefits.

## Human Rights

Human Rights arguments feature across the whole spectrum of Martin’s work. His recent cases have dealt with issues as diverse as the right to life (RB and AP), right to home and family life (see e.g. K, Peabody), private life (Wood), freedom from arbitrary detention (e.g. WL, G v E), rights to protest and free speech (Haw, Castle) rights to property and possessions. His recent cases under this head not already highlighted above include:

- Ismail v Secretary of State for Defence [2013] EWHC 3032 (Admin), [2014] ACD

34 –whether detainees in Afghanistan could be transferred to the Afghan authorities before they had received legal advice.

- R (Catt) v ACPO [2013] 1 WLR 3305 – Martin acted for Liberty as intervener in this case concerning the retention of data in respect of an elderly protester.
- R (AP) V HM Coroner for Worcestershire [2011] EWHC 1453 (Admin), [2011] Med LR 397 – investigative duty where a vulnerable young man was attacked and killed after having complained about his attacker to the police.

## International Law

Martin advises and represents in a range of issues concerning the law of other jurisdictions – principally those with a right of appeal to the Privy Council. His work in this field has included advice on the powers of the Governor of Gibraltar to dispose of land, the application of state immunity in Gibraltar, compulsory purchase in Antigua (HMB Holdings v Antigua [2007] UKPC 37), environmental law in (Belize Alliance of Conservation NGOs v Department of the Environment of Belize [2004] UPKC 6; [2004] Env LR 38) and advice on whether forced evictions in Zimbabwe were a crime against humanity. **Read More.**

## Costs

Most of Martin's costs work arises from his substantive practice areas but he is not confined to this. He acted for one of the successful Appellants in Matthews/Roach v The Home Office [2009] EWHC 312 (QB); [2010] QC 256 establishing that costs incurred in the course of an inquest were recoverable in subsequent civil proceedings. He has represented a number of claimants in cases concerning the costs of incidental proceedings (e.g. Wilton v YJB [2010] EWHC 90188 (Costs)). He has advised on a range of costs issues including the validity of conditional fee arrangements, recovery of insurance premiums and referral arrangements and disputes relating to legal aid and contracting. He acted for the claimants in R (CMX) & ors v (1) Legal Services Commission (2) Home Secretary [2010] EWHC 1896 (Admin) - a challenge to the decision of the LSC to withdraw a legal services contract from Refugee Migrant Justice after it went into receivership and has also been instructed in several cases resisting re-payment to the LSC of sums paid on account. He is a member of the Bar Council Civil Legal aid sub-committee.