

Alex Ustych

Call 2010



clerks@5essex.co.uk



+44 (0)20 7410 2000

Alex Ustych specialises in data protection / information law, inquests / inquiries, public law, police law and workplace stress claims.

He is frequently instructed in high-value and complex private and public law cases with data protection, privacy and freedom of expression dimensions. Alex is on the Attorney General's B Panel of Counsel and ranked as a leading junior in The Legal 500 for Data Protection, and Inquests and Inquiries.

Alex has a particular interest in the impact of emerging technologies (such as Artificial Intelligence) on individuals' data protection and privacy rights. He advises companies in emerging industry areas (such as Virtual Reality) as well as public bodies in respect of major digital projects, including on international data transfers. As a member of the Society for Computers and Law, he is at the cutting edge of legal developments in technology. He also delivers talks on topics such as AI alongside industry experts.

Alex is frequently instructed in high-profile and sensitive matters—current and recent cases include:

Public Law and Equality Act 2010

- Advising (instructed by Mishcon de Reya and led by Jason Beer KC) a prominent standard setting body within the medical field on the legal risks of implementing members' resolutions on a contentious issue;
- Representing (led by Anne Studd KC) the Independent Office for Police Conduct at a two-day judicial review hearing of its decision not to re-open an investigation into a fatal shooting, following an inquest jury's conclusion of 'unlawful killing' (*R (Skelton) v. IOPC and ors*);
- Representing the claimant in a judicial review challenging a Council's Penalty Notice Charge policy's compliance with the Equality Act 2010;
- *R (FDJ) v. Secretary of State for Justice* [2021] EWHC 1746 (Admin), led by Sarah Hannett KC, where the policy for the management of transgender prisoners was challenged on public law and Equality Act 2010 grounds;
- *Miller v. College of Policing and Humberside Police* [2020] EWHC 225 (Admin), a significant judicial review concerning the interaction between policing and freedom of expression on social media;
- Representing the Charity Commission in linked judicial review claims to its statutory inquiry into the leading Jehovah's Witness charity in the UK (led by Jason Beer KC);
- Instructed (for appeal only) in a successful challenge to a judgment that that a Prison had discriminated against prisoners on grounds of race in respect of mail monitoring.

Data protection and Information Law

- Representing the lead respondent in an appeal (before the President of the Information Tribunal) brought by Privacy International following a refusal of a freedom of information request about surveillance technology;
- Advising organisations on litigation and injunctions following mass data breaches such as (i) after a cyber-attack on a major insurer and (ii) after a police force's loss of biometric data;
- *X v. Ministry of Justice* – represented Defendant at trial of case, with national implications, about how the 'accuracy' duty applies to Prison intelligence systems;
- *Cheetham v. Chief Constable of South Yorkshire Police* – represented the successful defendant at High Court trial of damages claim following allegedly inaccurate disclosure to DVLA;

- Instructed by the Grenfell Tower Inquiry as its data protection specialist;
- Instructed by the Charity Commission to advise on the data protection compliance of its new national portal/database for charities and trustees

Inquests, Inquiries and Investigations

- Grenfell Tower Inquiry (Junior Counsel to the Inquiry since 2018), as the lead junior for two teams, including advocacy at the hearings;
- Advising (as lead counsel) on constitutional and legal reforms in a British Overseas Territory;
- Instructed in the Undercover Policing Inquiry (led by Jason Beer KC);
- Representing a football manager in the inquest into his daughter's death;
- Lead counsel for NHS Digital (instructed by DLA Piper) in the UK Covid-19 Inquiry, advising on Inquiry preparation and participation, prior to NHS Digital's merger with NHS England;
- Representing Senior Coroners before the Divisional Court to secure fresh inquests where Assistant Coroners made errors of law;

Claims against the police, stress at work claims and Charity Law

- Claims and applications related to transgender issues, such as *Hayden v Associated Newspapers Ltd* [2022] EWHC 2693 (KB);
- Representing the Charity Commission in an appeal against its refusal to register an organisation challenging vaccination and COVID response;
- Advising and representing the Ministry of Justice in all novel claims of psychiatric injury due to secondary exposure to Psychoactive Substances;
- Representing HMRC (led by Alan Payne KC) in a multi-million-pound misfeasance claim brought by companies in the craft beer industry.
- Alex's clients include leading international healthcare companies, major charities and schools/academies. He has extensive expertise in dealing with very high-value data protection, privacy and defamation claims in the High Court involving complex psychiatric injury and lifelong losses. This work draws on Alex's extensive experience of stress at work/psychiatric injury litigation, often claims in excess of £1 million.
- Alex has significant experience of appeals, having appeared (unled) at the Court of Appeal in three substantive appeals so far.
- Alex is Public Access accredited and is frequently instructed by individuals and companies directly. He is a CMC trained and PDSL accredited mediator. He also undertakes cases on behalf of Advocate/Bar Pro Bono Unit. He is fluent in Ukrainian and speaks Russian.

Alex's clients include leading international healthcare companies, major charities and schools/academies. He has extensive expertise in dealing with very high-value data protection, privacy and defamation claims in the High Court involving complex psychiatric injury and lifelong losses. This work draws on Alex's extensive experience of stress at work/psychiatric injury litigation, often claims in excess of £1 million.

Alex has significant experience of appeals, having appeared (unled) at the Court of Appeal in three substantive appeals so far. Alex is Public Access accredited and is frequently instructed by individuals and companies directly. He is a CMC trained mediator.

Expertise

Information Law

Alex is ranked as a leading junior in the Data Protection category of The Legal 500. He is a 'go to' barrister in this area and is regularly instructed by charities, educational institutions, healthcare organisations, government departments, police forces, companies and private individuals in both contentious and non-contentious data protection matters.

Alex is regularly instructed in high-value and complex private and public law cases with data protection, privacy and freedom of expression dimensions. He has a particular interest in the impact of emerging technologies (such as Artificial Intelligence) on individuals' data protection and privacy rights.

He frequently appears before the Information Tribunal in Freedom of Information Act cases and has appeared in the Upper Tribunal. In *Privacy International v. (1) Information Commissioner and (2) Police and Crime Commissioner for Warwickshire* (EA/2018/0170), Alex represented the successful 2nd Respondent in an appeal (before the President of the Information Tribunal) following a refusal of a freedom of information request about surveillance technology. Alex's recent FOIA appeal work includes cases about the testing of hydrogen weapons and the proposal to build a 'National Flagship'.

Alex's current and recent contentious work in this area includes:

- *X v. Ministry of Justice* – represented Defendant at trial of key case about how the 'accuracy' duty applies to Prison intelligence systems (judgment awaited);
- *D v. X* – represented a public body at two-day trial of claim arising from disclosure of allegedly inaccurate data to another body;
- *C v. Chief Constable of South Yorkshire Police* – represented Defendant at High Court trial of damages claim following allegedly inaccurate disclosure to DVLA;
- Representing (unled) a defendant in what is likely to be one of the most complex data protection trials to date (involving 14 witnesses, a misfeasance claim,

Claimants represented by KC/junior);

- Representing a defendant police force in a group claim following loss of biometric data;
- Advised the National Crime Agency, an Interested Party, in a judicial review claim challenging the Information Commissioner's decision on a complaint (*Delo v. Information Commissioner*);
- Advising an insurance company on pursuing a 'persons unknown' injunction following a cyber-attack;
- Representing an international healthcare company in a claim by a member of staff about misuse of their medical data;
- Representing a former employee facing an injunction application and breach of confidence claim after removing a drive from work;
- Instructed by DLA Piper to represent an organisation facing a data protection/privacy claim of disclosing an employee's transgender status.

Alex's current and recent advisory work in this area includes:

- Instructed by the Grenfell Tower Inquiry as its data protection specialist;
- Instructed by the Charity Commission to advise on the data protection compliance of its new national portal/database for charities and trustees;
- Advising a company on its duties and potential liabilities following a cyber-attack;
- Advising on and drafting a national law firm's disclosure/redaction policy;
- Advising on and assisting companies and charities with preparing Data Protection Impact Assessments and international data transfer assessments.
- Advising a leading remote alarm company on RIPA and DPA compliance of a new technology.
- Advising a Harley Street clinic on the interaction between its contractual and data protection duties;
- Advising an agency about a Subject Access Request from a high-profile politician.

Alex has particular expertise in dealing with complex and high-value data protection claims arising in the context of employment, involving relocation due to security risks and/or involving alleged psychiatric injuries (rather than claims where 'distress' damages are claimed).

Alex regularly provides training on the DPA, FOIA and the GDPR, including for litigators in this area. As a qualified mediator, Alex can also assist with data protection disputes being dealt with via ADR. Alex is a member of the Society for Computers and Law, which keeps him at the forefront of technological developments affecting data and privacy.

Inquests

Alex is ranked as a leading junior in the Inquests and Inquiries category of The Legal 500.

About a third of Alex's trial work is accounted for by complex jury inquests. Alex is often instructed at an early stage and works closely with the client throughout the preparation process, including in respect of any organisational learning relevant to pre-empting Regulation 28 reports. His clients include police forces, government departments, local authorities, Transport for London, private firms, families and NHS bodies. Alex is accustomed to dealing with inquests attracting significant media coverage.

Alex also regularly advises on Article 2 ECHR claims following inquests (whether or not he had dealt with the preceding inquest). Alex has been instructed to provide training in relation to inquests to several police forces, including for members of their firearms units.

In addition to dozens of jury inquests concerning deaths in custody, Alex's notable work in this area includes:

- Advising and representing Senior Coroners before the Divisional Court to secure fresh inquests where Assistant Coroners made errors of law;
- Two complex inquests involving the impact of unconventional road design on pedestrian deaths, involving detailed analysis of the design process spanning several decades;
- Deaths involving Psychoactive Substances and complex medical/toxicological expert evidence;
- Acting on behalf of a police force (and one of its police officers) in a 7-day Article 2 jury inquest, involving seven Interested Parties;
- Inquests involving deaths following police pursuits;
- Inquest relating to the death of a young woman following a drugs overdose, involving issues of multi-agency cooperation and where approximately ten public authorities were interested parties;
- Acting for local authorities in inquests concerning care assessments, placement in care homes, deaths related to hoarding while living in the community etc.
- Representing a football team manager in an inquest into his daughter's death (involving police and mental health services).

Public Inquiries

Alex has extensive experience of Public Inquiries, across three of the largest recent Inquiries: the Grenfell Tower Inquiry, the UK Covid-19 Inquiry and the Undercover Policing Inquiry.

In the Grenfell Tower Inquiry, Alex has been instructed as Junior Counsel to the Inquiry since 2018. Alex led a team of three junior barristers working on some of the most technical aspects of the Inquiry's work. He was also the lead counsel on data protection issues arising from the Inquiry's work. Alex has also undertaken advocacy as part of the Inquiry's Phase 2 hearings.

Alex was instructed, as lead counsel (with a junior), by DLA Piper, to represent NHS Digital (formerly the national provider of information, data and IT systems for the NHS and social care in England) between 2021 and 2023, when NHS Digital merged with NHS England. Alex, working with NHS Digital's senior leadership, advised on Inquiry preparation and engagement, including responding to Rule 9 requests and disclosure.

Alex is also instructed in the Undercover Policing Inquiry (led by Jason Beer KC).

Investigations

Alex's work as Counsel to the Inquiry is readily transferrable to Investigations generally. He has been instructed in investigations such as:

- a wildlife park's investigation of internal allegations about improper culling practices;
- His Majesty's Inspectorate of Constabulary and Fire & Rescue Services work on recommendations for reform within law enforcement agencies and legislation in the British Virgin Islands, following the Commission of Inquiry.

Alex is particularly interested in accepting instructions in this area, including via Public Access.

Public & Administrative

Alex represents both individuals and organisations in judicial review proceedings:

- Representing (led by Anne Studd KC) the Independent Office for Police Conduct at a two-day judicial review hearing concerning its decision not to re-open an investigation into a fatal shooting, following an inquest jury conclusion of 'unlawful killing' (*R (Skelton) v. IOPC and ors*);
- Represented the claimant at a substantive judicial review hearing challenging a Council's Penalty Notice Charge policy's compliance with the Equality Act 2010;
- Advising (instructed by Mishcon de Reya and led by Jason Beer KC) a prominent standard setting body within the medical field on the legal risks of implementing members' resolutions on a contentious issue;
- Represented the Home Office in the Court of Appeal, unled, in the key case concerning 'grace periods' in unlawful detention cases *R (AC (Algeria)) v SSHD* [2020] EWCA Civ 36;
- Represented the Charity Commission (led by Jason Beer KC) in two judicial review claims by the Watch Tower Bible & Tract Society of Britain concerning a statutory inquiry and disclosure provided within that process;
- Represented the Defendant in *R (FDJ) v. Secretary of State for Justice* [2021] EWHC 1746 (Admin), led by Sarah Hannett KC, where the policy for the management of transgender prisoners was challenged on public law and Equality Act 2010 grounds;
- Appeared in a leading case concerning freedom of expression and social media: *Miller v. College of Policing and Humberside Police* [2020] EWHC 225 (Admin);
- Advised the National Crime Agency, an Interested Party, in a judicial review claim challenging the Information Commissioner's decision on a complaint (*Delo v. Information Commissioner*);
- Successfully represented (led by Fiona Barton KC) West Midlands Police in high-profile judicial review and injunction proceedings arising from misconduct proceedings against an assistant chief constable. *R (Beale) v. Special Case Panel* [2018] EWHC 759 (Admin);
- Advised and represented a healthcare charity in respect of judicial proceedings which challenged the part-closure of a hospital.
- Alex has particular experience of and interest in providing advice in respect of proposed national policies on matters as varied as management of transgender prisoners, the impact of energy efficiency schemes, the retention of electronic data and inter-agency assistance in respect of enforcing confiscation orders. Alex spent 3 months on secondment to His Majesty's Inspectorate of Constabulary where he advised on public law issues and the interaction of various agencies within the policing landscape.

Police Law

Although Alex has experience in all areas of police claims, Alex's practice is increasingly focused on claims involving challenges to sharing and accuracy of information, human rights, Equality Act 2010 and misfeasance. He is instructed in cases involving human rights, such as in respect of the right to protest, vetting decisions and *Zenati* Article 5 claims (both by police and the CPS). Alex is instructed by law enforcement and prosecution authorities such as police forces, the National Crime Agency and the CPS. He has particular experience in Article 2 claims arising from deaths following police contact or in detention.

Alex has experience of civil jury trials. He regularly appears in the High Court, for example in relation to false imprisonment claims, Civil Restraint Orders and in claims

concerning malicious prosecution, both on behalf of law enforcement and the CPS. He has particular aptitude for dealing with vexatious litigants and has successfully obtained a number of General and Extended Civil Restraining Orders, as well as having been instructed by the Attorney General in respect of High Court proceedings for a vexatious litigant order.

His current and recent cases in this area include:

- A claim by a mental health professional concerning police input into a multi-disciplinary safeguarding process (led by Jason Beer KC);
- A misfeasance and malicious prosecution claim against HMRC, valued by the Claimants at £70 million (led by Alan Payne KC);
- A misfeasance and data protection claim involving some 15 witnesses.

Charity Law

Alex has a growing practice in Charity Law. He is frequently instructed by the Charity Commission (for contentious and advisory matters) and has advised/represented major charities in other areas of his practice. His recent work in this area includes:

- Representing the Charity Commission at the hearing of an appeal against its refusal to register a 'COVID-sceptic' organisation as a charity;
- Advising on a charity's duties in respect of retaining education and healthcare records following the charity's insolvency.

Personal Injury (workplace stress and psychiatric injury claims)

Alex has a lengthy track record of complex/high-value workplace stress and psychiatric injury claims. He recently represented a public authority in a High Court claim, for £1 million, in respect of psychiatric injuries. He is regularly instructed by organisations when claims are brought or intimidated by senior employees/ex-employees.

He is often instructed by defendants when evidence of potential fraud arises in a claim. Alex's extensive experience of psychiatric injury cases and experts in this area means that he is often instructed when new medical evidence emerges to suggest the claim will be of a very high value. As a qualified mediator, Alex achieves favourable outcomes at mediations and Joint Settlement Meetings of such claims. Alex also delivers lectures on workplace stress claims to litigators and organisations.

Employment

Alex has extensive experience of complex employment law claims, both on behalf of individuals and organisations (including government departments). He appeared at multi-day discrimination hearings (with expertise in disability, age and sex discrimination). He has experience of advising and representing individuals working within the financial services industry, including in relation to restrictive covenants/confidentiality obligations and exit negotiations. He has represented a range of individuals, from a head teacher to the ex-CEO of a publicly listed company bringing a whistleblowing claim for several million pounds. Having worked on employment matters in-house, Alex is particularly aware of commercial considerations that apply to such cases.

He has significant appellate experience both in the Employment Appeal Tribunal and the Court of Appeal (*Way v Spectrum Property Care Ltd* [2015] EWCA Civ 381). Alex co-authored a textbook on Tribunal litigation.

Public Access

Alex accepts Public Access instructions across all areas of his practice. Although many of his Public Access clients are Small and Medium Enterprises, he is also regularly instructed by individuals. Alex brings a pragmatic and empathetic approach to even the most difficult cases. The following testimonial was volunteered by the CEO/Founder of a charity who supported the disabled claimant, Alex's client, in a recent judicial review claim.

"Mr Ustych is not solely a Barrister with a wide spectrum of legal knowledge, procedural insight and strategic case management approach to handling claims. He is fundamentally a unique, down to earth people person, who takes into consideration a Client's personal circumstances, disabilities, emotional stresses and requirements to ensure, not only that he and his services provide the important details required at all stages of a claim and/or hearing, but also ensures his Client is not placed in any distress prior, during or after the claim ends. Throughout our time communicating with Mr Ustych, we felt he genuinely cared about us as people as much as succeeding in the hearing... We...highly recommend him to anyone seeking a Barrister with high legal intelligence, professional approach and primarily, an understanding towards his client's needs."

Education & Qualifications

- 2010 – Called to the Bar by Gray’s Inn – Awarded the Inn’s Bedingfield Scholarship as well as an LLM scholarship
- 2010 – Bar Vocational Course at BPP (London)
- 2010 – (BPP) LLM (distinction) – dual focus on disability discrimination under the Equality Act
- 2010 – and Coroners’ Inquests involving police/public authorities
- 2008 – Durham University, LLB (First)

Memberships

- Alex is a member of the Society for Computers and Law.

Appointments

2015 Appointed to the Attorney General’s C Panel of Counsel

Career

Before joining the Bar, Alex worked within the asylum/human rights litigation sector for several years.

Publications

Co-editor of the 5 Essex Chambers Police Law Update.

“The Employment Tribunals Handbook: Practice, Procedure and Strategies for Success” by John-Paul Waite, Alan R. Payne and Alex Ustych (2014).

Westlaw Encyclopedia entries concerning civilian police staff (issues of vicarious liability and employment law)—2013-2016.

Awards

