

Joshua Pemberton

YEAR OF CALL: ENGLAND AND WALES: 2021; NEW ZEALAND: 2015

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Practice Overview

Josh practices across all areas of commercial, competition and public law. Current and recent notable instructions include:

- *Coll v Google* and *Kent v Apple* : acting for class representatives on behalf of estimated classes of c. 20m claimants who have made payments to Google and Apple in the Play and App stores respectively, alleging abuses of dominance (in teams led by Mark Hoskins KC);
- SIAC arbitration: acting in a Singapore-seated shipping arbitration conducted under SIAC rules (with Fred Hobson KC);
- *AAA & Ors v SSHD* : Acting for the UNHCR, intervening in the challenge to the removal of asylum seekers to Rwanda (in the Supreme Court and Court of Appeal, in a team led by Angus McCullough KC);
- *Road Haulage Association v Man SE & Ors* : acting for the class representative in a collective proceeding relating to the trucks cartel, including in the Court of Appeal challenge to certification (in a team led by James Flynn KC);
- Advising the Premier League in relation to various aspects of its profit and sustainability rules (with, variously, Helen Davies KC, Danny Jowell KC and Richard Blakeley KC).

In addition to working as part of counsel teams in the higher courts, Josh regularly appears unled in the County Court and the Asylum Support Tribunal.

Josh qualified as a barrister and solicitor in New Zealand in 2015. Prior to coming to the English bar he worked as a judge's clerk (judicial assistant) to Justice William Young at the Supreme Court of New Zealand (2015-2016) and in strategy and human rights litigation in the New York and London offices of the Open Society Foundations, the world's largest human rights philanthropy (2017-2021).

Josh graduated with an LLB (First Class Honours) and BA (Politics, Philosophy and Economics) from the University of Otago, New Zealand in 2014, and with an LLM from Harvard Law School in 2017. Josh placed top of his year in law at Otago and was awarded multiple scholarships and top-of-class prizes at Otago and Harvard.

Competition

Josh accepts instructions across all areas of competition law. His recent experience includes:

- *Coll v Google* : acting for class representatives on behalf of estimated classes of c. 20m claimants who have made payments to Google in the Play store, alleging abuses of dominance (in a team led by Mark Hoskins KC);
- *Kent v Apple* : acting for class representatives on behalf of estimated classes of c. 20m claimants who have made payments to Apple in the App store, alleging abuses of dominance (in a team led by Mark Hoskins KC);
- *Road Haulage v Man SE & Ors* : acting for the class representative in a collective proceeding relating to the trucks cartel, including in the Court of Appeal challenge to certification (with James Flynn KC, Emma Mockford and others);
- *Euro Garages Ltd v Visa* and *Euro Garages Ltd v Mastercard* : acting for a retailer in the merchant interchange fee umbrella proceedings against Visa and Mastercard (with Jemima Stratford KC).
- *OT Computers v Micron* : acting for the defendant in damages claim arising from the DRAM cartel (with Danny Jowell KC).
- Advising a manufacturer of building and homeware products on the competition law aspects of its proposed acquisition of a competitor's assets (unled).

Josh has a particular interest in sports law and has been instructed in a number of sports-related competition law matters:

- Premier League advice: advised the Premier League in relation to various aspects of its profit and sustainability rules (with, variously, Helen Davies KC, Danny Jowell KC and Richard Blakely KC).
- Instructed by the respondent in *Poulter & Ors v PGA European Tour* , an appeal to a Sports Resolutions Appeal Panel against sanctions decisions taken by the PGAET (in a team led by Marie Demetriou KC).
- Instructed by the claimants in *CAA Base Limited & Ors v The Football Association and FIFA* , an arbitration under the FA Rules concerning the lawfulness of the FA's FIFA-mandated cap on agents' fees (in a team led by Marie Demetriou KC).

Commercial

Josh accepts instructions across all areas of commercial law. His recent experience includes:

- SIAC shipping arbitration: instructed in a Singapore-seated arbitration under SIAC rules concerning a shipping dispute (with Fred Hobson KC)
- *Design Consultancy Building Services Ltd v Honeywell* : acted (unled, in a three-day trial) for the defendant to a breach of contract claim arising from the construction of AstraZeneca's new headquarters in Cambridge.
- *Barnes v Royal Institution of Chartered Surveyors* : acted in a breach of contract claim arising from a sanctions decision taken by RICS (with Malcolm Birdling).
- Instructed in *RAKIA v Azima*, a claim alleging State-sponsored hacking and seeking to set aside judgments of the High Court and Court of Appeal as having been procured by fraud.
- *The Executive Counsel to the Financial Reporting Council v KPMG* : proceedings brought by the Executive Counsel to the Financial Reporting Council relating to KPMG's audit of Carillion plc (as a pupil, assisting Fionn Pilbrow KC and Edward Harrison).
- *IBM United Kingdom Ltd v LzLabs GmbH*: claim for breach of contract relating to the alleged reverse engineering of IBM's Mainframe Software (as a pupil, assisting Nicholas Saunders KC).
- *Bonnier Books UK et al v Haysmacintyre LLP* : Commercial Court proceedings including a claim for £65 million of net sums lost in connection with the Claimants' publishing business (as a pupil, assisting Edward Harrison).
- *Confidential advisory matter*: advice regarding the recognition and enforcement of a foreign judgment in the English courts (as a pupil, assisting Fionn Pilbrow KC).

Public Law

Josh accepts instructions across all areas of public law. His recent experience includes:

- *AAA & Ors v SSHD* : acting for the UNHCR, intervening in the challenge to the removal of asylum seekers to Rwanda (in the Supreme Court and Court of Appeal, in a team led by Angus McCullough KC);
- *Lawstop v Legal Aid Agency*: acting in a judicial review concerning the circumstances in which legal aid providers can commence separate "matter starts" (with Malcolm Birdling).
- *Rooks v Legal Aid Agency* : acting in a judicial review concerning the treatment of arrears benefits payments in the legal aid regime (with Malcolm Birdling).
- *CWJ v Director of Legal Aid Casework* : acting in a judicial review concerning entitlements to legal aid at school exclusion appeals (with Malcolm Birdling);
- Instructed in *Camelot UK Lotteries Limited v The Gambling Commission* , a procurement challenge to the Gambling Commission's decision to award the Fourth Licence for the

National Lottery to Allwyn Entertainment Ltd.

- Advised an imprisoned individual in relation to a claim against the Commissioner of Police for misfeasance in public office and malicious prosecution (unled).
- *R (British Sugar) v Secretary of State for International Trade* [2022] EWHC 393 (Admin): judicial review of trade measures introduced under the post-Brexit UK General Tariff Regime on the basis of their compatibility with state aid and subsidy rules (as a pupil, assisting Marie Demetriou KC and others).
- *R (Detention Action) v Lord Chancellor* [2022] EWHC 18 (Admin): a challenge to the lawfulness of a legal aid scheme in immigration detention (as a pupil, assisting Malcolm Birdling).
- *R (Hero Renewable Ltd) v Renewable Energy Assurance Ltd* [2021] (Admin): a challenge to the lawfulness of a regulator's decision to refuse an application to join an industry code of practice (as a pupil, assisting Malcolm Birdling).
- *Assaad v Council of the European Union* : an application, in the General Court of European Union, to annul a European sanctions listing (as a pupil, assisting Malcolm Birdling).
- *R (Youssef) v Secretary of State for Foreign, Commonwealth and Development Affairs* [2021] EWHC 3188 (Admin): a challenge to the lawfulness of the domestic regime by which the assets of persons listed by the UN Sanctions Committee are frozen (as a pupil, assisting Malcolm Birdling).
- A judicial review of government intervention in the energy supply sector following the spike in wholesale gas prices (as a pupil, assisting Malcolm Birdling).
- Advice to a charity regarding the Secretary of State's refusal to grant a humanitarian licence to permit the charity to provide aid into a jurisdiction subject to UK sanctions (as a pupil, assisting Malcolm Birdling).
- Advice to a public body regarding a false imprisonment claim arising out of the operation of the Managed Quarantine Service during the COVID-19 pandemic (as a pupil, assisting Malcolm Birdling).

Prior to coming to the bar, Josh worked on human rights litigation in a range of domestic and international fora while at the Open Society Foundations, including cases in the European Court of Human Rights and the Economic Community of West African States Court of Justice, and complaints to the UN Human Rights Committee.

Josh is a member of the Asylum Support Appeals Project's Duty Scheme, and in this capacity frequently represents asylum seekers in the First Tier Tribunal (Asylum Support) on a pro bono basis.

EDUCATION & QUALIFICATIONS

Professional qualifications

- Called to the bar (England and Wales), 2021

- Qualified as a solicitor (England and Wales), 2019
- Admitted as a barrister and solicitor (New Zealand), 2015

Education

- Master of Laws (LLM), Harvard Law School, 2017
- Bachelor of Laws (LLB) with First Class Honours, University of Otago, New Zealand, 2014
- Bachelor of Arts (BA) (Politics, Philosophy and Economics), University of Otago, New Zealand, 2014

Prizes and Scholarships

Josh initially enrolled to study physics and maths at the University of Otago and won the Gordan Jupp Memorial Prize as the university's top first-year physics student, before switching to study law and PPE.

Josh won top-of-class prizes in the following subjects at Otago and Harvard:

- Advanced Public Law (Otago)
- Competition Law (Otago)
- European Union Law (Otago)
- Property Law (Otago)
- Law and Society (Otago)
- Environmental Economics (Otago)
- Behavioural Economics (Otago)
- International Human Rights Law (Harvard)
- Law and Economic Development (Harvard)

Josh also won the Otago District Law Society Prize as the top graduating student in his year in law at Otago.

Josh was awarded the following scholarships:

- New Zealand Qualifications Authority Top Scholar University Scholarship
- University of Otago Leaders of Tomorrow Scholarship
- Russell McVeagh School Leavers Law Scholarship
- University of Otago Prestige Scholarship in Law
- University of Otago Scholarship in Arts
- Freemasons Undergraduate University Scholarship
- New Zealand Agricultural and Resource Economics Society Undergraduate Award
- New Zealand Law Foundation Cleary Memorial Prize.
- (As a pupil) the Bar European Group's John and Sophie Laws Scholarship

Law competitions

- First place, University of Otago junior moot competition
- First place, New Zealand junior moot competition
- First place, University of Otago legal negotiation competition
- First place, New Zealand legal negotiation competition
- Represented New Zealand at the International Negotiation Competition
- First place, Wellington Young Lawyers Moot

Josh also coached moot and legal negotiation teams at the University of Otago.

EXPERIENCE

Professional experience:

- 2017-2021: Presidential Fellow in Law (2017-2018) and Senior Strategy Analyst (2018-2021), Open Society Foundations (New York/London)
- 2015-2016: Judge's clerk (judicial assistant) to Justice William Young at the New Zealand Supreme Court.
- 2011-2012: Summer associate, litigation and public law teams. Russell McVeagh, Wellington, New Zealand.

Teaching and academic experience:

- Guest Teacher, London School of Economics and Political Science (Contract law), 2020
- Teaching Fellow, SOAS University of London (International Human Rights Law), 2019-2020
- Research affiliate, University of Otago Faculty of Law (with research project funding from the New Zealand Law Society), 2016
- Tutor, University of Otago Faculty of Law, 2011-2013 (including as the Faculty's Head Tutor in 2013)
- Tutor, courses in first-year law, physics and economics, Selwyn College, University of Otago, 2010-2012.

Select pro bono and civil society experience

- Duty Scheme representative, Asylum Support Appeals Project (2021-present)
- Free Representation Unit, voluntary representative (2019)
- Student Clinician, Harvard Law School International Human Rights Clinic (project on refugees' rights to documents proving identity and status) (2017)
- Project Officer, Justice Base, Yangon, Myanmar (led project to investigate and report on public access to Yangon's courts) (2016)

PUBLICATIONS

Socio-Economic Rights in Constitution Aotearoa New Zealand, New Zealand Universities Law Review, 2017

Recognising Nairobi's Refugees: The Challenges and Significance of Documentation Proving Identity and Status, (contributing author), Harvard International Human Rights Clinic, 2017

Myanmar's courts must be open to the public, Frontier Myanmar, 2017

Behind Closed Doors: Obstacles and Opportunities for Public Access to Myanmar's Courts, Justice Base, 2017

Cross-Border Climate Change Related Displacement: Mexico and Central America (co-author), paper presented at the Harvard Law School Climate Change Displacement conference, 2016

Informational problems in the market for graduate legal jobs, New Zealand Law Journal, 2016

First Steps: The Experiences and Retention of New Zealand's Junior Lawyers, New Zealand Law Foundation, 2016

The Judicial Approach to Privative Provisions in New Zealand, New Zealand Law Review, 2015

Value and Natural Capital: Examining the Economist's Perspective, Motu Economic and Public Policy Research, 2013