

# ROBERT CUMMING

Call 2010

## Get in touch

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+44 (0)20 7822 1200



*"A very good advocate";  
"personable and reassuring"*  
(Chambers UK)

## Practice Overview

Robert has a specialist practice in two core areas: commercial and employment litigation; and clinical negligence and personal injury litigation. He frequently represents clients in trial before the High Court and has appeared in appellate courts (as sole counsel) on numerous occasions. He has particular experience in private international law group actions brought in the English courts by foreign claimants against multinational corporations (often based in Africa).

Robert is recommended by Legal 500 (2021) which ranks him for clinical negligence and personal injury. *"A brilliant lawyer and a formidable cross-examiner. A strong advocate who gets results"* *"An impressive advocate who is innovative and forward-thinking"* and by Chambers and Partners (2020) which ranks him for clinical negligence. Having long been recognised as being *"really thorough, intelligent and very sharp"* and *"very good on his feet,"* Robert is said, in latest edition, to be a *"very impressive advocate"* and *"really helpful, efficient and quick."* He combines excellent academic credentials with a rigorously practical approach. This, along with his reputation as a determined and tenacious advocate, results in him being instructed on complex and high value matters and often against opponents who are many years his senior.

Before coming to the Bar, Robert graduated from Girton College, Cambridge as the Sir Francis Goldsmid Law Scholar. He subsequently taught undergraduate law at Cambridge, before working for one of the leading offshore law firms in its Guernsey litigation team, where he was involved in a range of commercial disputes with an international flavour. His international practice has continued at the Bar and he is experienced in disputes before the Guernsey and Jersey Courts, Isle of Man Courts, BVI Courts, the Supreme Court of Gibraltar and the Dubai International Financial Centre.

## Practice areas

Clinical Negligence  
Employment  
Personal Injury  
Private International Law & Travel

## Memberships

PIBA  
Guernsey International Lawyers Association

## Qualifications

MA (Cantab)  
BVC (Certificate of Honour)

## Education

Cambridge University



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Highlights of his recent and current work include:

- ***Kadie Kalma & ors v African Minerals Ltd*** [2020] EWCA Civ 144: Robert, led by Neil Moody QC, successfully represented (both at the original trial and before the Court of Appeal) the defendant mine in Sierra Leone in respect of a claim by 142 residents arising out of the mine's alleged collusion with the local police who acted with unjustified violence during two public order incidents. This landmark case attracted significant international press attention and is understood to be the first time that the English High Court conducted part of a hearing outside of the jurisdiction (2 weeks of the trial were held in Sierra Leone, during which time Robert cross-examined various witnesses), and involved the unprecedented creation of a confidentiality club and various anonymity orders in respect of witnesses on the basis of subjective fears alone. The Court of Appeal decision is a leading judgment in respect of the principles of intention in common design, and the duty of care for acts of third parties in negligence.
- ***Collyer v Mid Essex Hospital Services NHS Trust*** [2019] EWHC 3577 (QB): Robert successfully represented the defendant NHS Trust in a claim arising out of a bilateral hypoglossal nerve injury during the course of a laryngectomy (causing an inability to speak or swallow). The judgment involves important considerations of the *Popi M* principle, burdens of proof and *res ipsa loquitur* in a clinical negligence context.
- ***Suetta v (1) Auld (2) MIB*** (ongoing): Robert, led by Howard Palmer QC, acts for the claimant in a multi-million pound personal injury claim proceeding before the Supreme Court of Gibraltar (Robert having been called to the Bar of Gibraltar as a result of this matter). This landmark case is understood to be the first time that such a significant injury is to be dealt with by the Courts of Gibraltar.
- ***CP v V Ltd*** (ongoing): Robert acts for the claimant in the Jersey courts in a landmark case considering the definition of disability in the newly introduced local disability discrimination legislation.
- ***Vaginal Mesh litigation*** (ongoing): Robert acts for a number of defendant NHS Trusts in claims arising out of the high-profile vaginal mesh litigation.
- ***Optical Express litigation*** (ongoing): Robert is currently retained by Optical Express in dozens of linked claims arising out of ophthalmic treatment provided by it.

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## Private International Law and Travel

Robert has significant experience in defending high profile private international law group actions brought in the English Courts by foreign claimants against multinational corporations. Robert, led by Neil Moody QC, acted for the defendant mine in Sierra Leone (both at first instance and in the Court of Appeal) in the landmark case of *Kadie Kalma & ors v African Minerals Ltd* [2020] EWCA Civ 144.

His international practice goes beyond Africa and has involved disputes from the Channel Islands to the BVI, and from the Isle of Man to Dubai.

### Recent cases of note include:

- ***Kadie Kalma & ors v African Minerals Ltd*** [2020] EWCA Civ 144: Robert, led by Neil Moody QC, successfully represented (both at the original trial and before the Court of Appeal) the defendant mine in Sierra Leone in respect of a claim by 142 residents arising out of the mine's alleged collusion with the local police who acted with unjustified violence during two public order incidents. This landmark case attracted significant international press attention and is understood to be the first time that the English High Court conducted part of a hearing outside of the jurisdiction (2 weeks of the trial were held in Sierra Leone, during which time Robert cross-examined various witnesses), and involved the unprecedented creation of a confidentiality club and various anonymity orders in respect of witnesses on the basis of subjective fears alone. The Court of Appeal decision is a leading judgment in respect of the principles of intention in common design, and the duty of care for acts of third parties in negligence.
- ***Suetta v (1) Auld (2) MIB*** (ongoing): Robert, led by Howard Palmer QC, acts for the claimant in a multi-million pound personal injury claim proceeding before the Supreme Court of Gibraltar (Robert having been called to the Bar of Gibraltar as a result of this matter). This landmark case is understood to be the first time that such a significant injury is to be dealt with by the Courts of Gibraltar.
- ***Collyer v Mid Essex Hospital Services NHS Trust*** [2019] EWHC 3577 (QB): Represented the successful defendant NHS Trust at trial in a surgical claim arising out of the alleged negligent performance of a laryngectomy which caused a bilateral hypoglossal nerve injury (resulting in an inability to speak or swallow). The judgment involves important considerations of the *Popi M* principle, burden of proof and *res ipsa loquitur* in a clinical negligence context.

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- **CP v V Ltd** (ongoing): Robert acts for the claimant in this landmark Jersey case considering the definition of disability in the newly introduced local disability discrimination legislation.
- **Le Provost (deceased) v (1) Moorat (2) MIB**: Robert acted for the defendant in the matter proceeding in Guernsey concerning whether the estate of a deceased could make a "lost years" claim (there being no local equivalent of the Administration of Justice Act 1982).
- **Inquest touching upon the death of Elric Eiffert** [2018]: Robert represented the family in this inquest before a jury arising out of the death of an epileptic man with learning difficulties who drowned in the bath in a care home. Robert successfully obtained a finding of neglect.
- **Atkins v Hidden Hearing** [2017]: Robert (as sole counsel) acted for the respondent in both England and Jersey in a complex employment dispute, successfully challenging jurisdiction in England and then successfully invoking a limitation defence in Jersey.
- **Al-Khorafi v Vannin** [2016]: Robert (as sole counsel) acted for the Al-Khorafi family in proceedings in Dubai in respect of a dispute arising out of a funding agreement in relation to underlying claims in relation to the miss-selling of various loan notes.

## Clinical Negligence

Robert is a clinical negligence specialist, and ranked as such for the third consecutive year by Chambers and Partners (2020); having long been recognised as being "*really thorough, intelligent and very sharp*" and "*very good on his feet*," Robert is said, in latest edition, to be a "*very impressive advocate*" and "*really helpful, efficient and quick*." He is instructed in complex and high value matters across a vast array of medical issues and against opponents who are many years his senior. In this calendar year alone, he has successfully fought a number of trials, and recently successfully appeared in a 5 day High Court trial as sole counsel against a QC. Alongside the many surgical and birth cases which he is regularly instructed on, he has been instructed on numerous of the vaginal mesh claims that are presently being brought (and which are receiving significant publicity). He also continues to be retained by Optical Express in respect of the numerous ophthalmology claims being brought against it. Robert also has extensive experience at Inquests and regulatory and disciplinary work.

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- ***Lloyd v Liverpool Women's Hospital Foundation Trust*** [2019]: Represented the successful Defendant Trust at trial in a claim concerning the allegedly negligent performance of an oophorectomy resulting in incomplete removal of an ovary.
- ***Willmott v Royal Berkshire NHS Trust*** [2019]: Robert obtained a wasted costs order against the claimant's legal representatives for pursuing a claim without the appropriate expert evidence on breach of duty.
- ***Inquest touching upon the death of Elric Eiffert*** [2018]: Robert represented the family in this inquest before a jury arising out of the death of an epileptic man with learning difficulties who drowned in the bath in a care home. Robert successfully obtained a finding of neglect.
- ***Yapp v The Royal Wolverhampton Hospital NHS Trust*** [2018]: Robert obtained a wasted costs order against the claimant's legal representatives (in a claim that was discontinued on the eve of trial); an attempted appeal was unsuccessful at a subsequent oral hearing.
- ***Watson v Alder Hey Children's Hospital NHS Foundation Trust*** [2017]: Represented the successful Defendant Trust at trial in a urology claim arising out of the alleged negligent performance of a cystoscopy and re-catheterisation of a child with spina bifida.
- ***Collins v Wirral University Teaching Hospital NHS Foundation Trust*** [2017]: Represented the successful Defendant Trust at trial in a cardiology claim arising out of the alleged negligent discharge of a patient who was admitted with heart failure.
- ***Gomari v United Lincolnshire Hospitals NHS Trust*** [2017]: Represented the successful Defendant Trust at a preliminary limitation hearing in an orthopaedic claim arising out of the performance of bunion surgery.
- ***Lopez v George Eliot Hospital NHS Trust*** [2017]: Represented the successful Defendant Trust at trial in an orthopaedic claim arising out

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of the alleged failure to identify and treat a hip CAM lesion whilst the Claimant was being treated for a fractured tibia and fibula.

- ***Hawkins v York Teaching Hospital NHS Foundation Trust*** [2017]: Represented the 26 year old Claimant (as sole counsel against a QC) in a particularly financially complex quantum claim concerning the delayed diagnosis of SLE. The case recently settled a week before trial for a lump sum of £3million and periodical payments of £59,000.
- ***Bouwmeester v Norfolk and Norwich University Hospitals NHS Foundation Trust*** [2016]: Represented the successful Defendant Trust in a nursing claim arising out of the alleged mismanagement by A&E nursing staff in respect of a patient admitted following an overdose
- ***Kownacki v Wirral University Hospital NHS Foundation Trust*** [2015] LTL 2/7/2015: Represented the successful Defendant Trust in a surgical claim concerning a damaged spleen after emergency treatment for a perforated duodenal ulcer.
- ***Bond v Norfolk and Norwich University Hospitals NHS Foundation Trust*** [2015]: Represented the successful Defendant Trust in an A&E claim arising out of an alleged negligent failure to identify that the Claimant had appendicitis on an initial attendance at A&E.

## Personal Injury

Robert has a busy personal injury practice, and he is particularly sought after for work with an international element. In the past 12 months alone, he has been instructed on the largest ever injury claim in Gibraltar, a fatal accidents case in Guernsey, and in the seminal case of *Kalma v African Minerals* before the Court of Appeal.

He is one of a limited number of Barristers retained on a specific national insurer panel to deal with suspected fraudulent insurance claims; he has on numerous occasions succeeded in establishing findings of fundamental dishonesty.

He continues to be regularly instructed by the leading defendant insurer firms in this field, and against opponents many years his senior.

## Recent cases of note include:

- ***Kadie Kalma & ors v African Minerals Ltd*** [2020] EWCA Civ 144: Robert, led by Neil Moody QC, successfully represented (both at the original

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- ***Le Provost (deceased) v (1) Moorat (2) MIB***: Robert acted for the defendant in the matter proceeding in Guernsey concerning whether the estate of a deceased could make a "lost years" claim (there being no local equivalent of the Administration of Justice Act 1982).
- ***Richard Llewelyn v Christine Harvey*** [2019]: Robert successfully represented the defendant driver at trial notwithstanding that she had collided with the rear of the claimant's van on a busy dual carriageway. Robert succeeded in establishing a finding of fundamental dishonesty on the part of the claimant for deliberately braking sharply in front of the defendant so as to induce an accident (as a result of road rage from an earlier altercation).
- ***Richard Hewitt v Anthony Ryan*** (ongoing): Robert is instructed on behalf of the defendant in a claim arising out of a road traffic accident which caused a catastrophic brain injury to the claimant. Liability remains firmly in dispute (notwithstanding that the defendant was performing a u-turn) given that the claimant was significantly over the drink drive limit, and was driving at over the double the speed limit in a residential area.
- ***Allen & Young v Red Sea Holidays*** [2019]: Robert successfully represented the claimants in a claim arising out of serious injuries they sustained whilst on holiday in Turkey. The claim involved complex

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consideration of the Package Travel Regulations and specifically for whose actions the holiday company were responsible for.

## Employment

Robert has a busy employment law practice in the full range of employment claims. He is an impressive advocate who acts for a wide range of both claimants (usually senior level executives) and respondents from public sector bodies to large international corporations. He is specialist in discrimination and whistleblowing claims and has a busy appellate practice. Robert is acutely aware that advice is often needed at short notice; he has developed a reputation for being able to deliver pragmatic advice within short timeframes and is retained by two PLCs to provide advice in relation to complex internal disciplinary and contractual matters (when a tribunal looks likely to arise).

He has extensive experience in High Court litigation arising out of the employment relationship and issues concerning restrictive covenants, team moves, breach of confidence and breach of fiduciary duty and the obtaining of injunctive relief (given his complimentary commercial litigation practice).

## Recent cases of note include:

- **CP v V** (ongoing): Robert acts for the claimant in this landmark Jersey Employment Tribunal case considering the definition of disability in the newly introduced local disability discrimination legislation.
- **PD v BL** (ongoing): Robert acts for a sales director of national holiday company dismissed for purported gross misconduct. Claim based on associative sex discrimination (alleged real reason for dismissal being his wife's pregnancy). Significant issue as to whether sections 13 and/or 18 Equality Act 2010 must be construed in line with the EU Directive to cover such a situation.
- **LBP v ECC** (ongoing): Robert acts for an employed Barrister in an age discrimination claim following on from her dismissal purportedly for reason of redundancy.
- **Re. SA** (ongoing): Robert is representing a teacher throughout highly sensitive disciplinary proceedings (who was framed by a former associate who subsequently committed suicide) and potential TRA proceedings.

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- **AB v H Ltd** (2018) – 6 day trial. Complex sex discrimination and sexual harassment case. Settled during trial.

## Recommendations

"An amazing technical negotiator and litigator." "He is a fearless advocate and is particularly impressive in mediations and round table settlement meetings."

**Chambers UK 2021**

"A brilliant lawyer and a formidable cross-examiner. A strong advocate who gets results."

**Legal 500 2021**

"An impressive advocate who is innovative and forward-thinking."

**Legal 500 2021**

"A very impressive advocate." "He's really helpful, efficient and quick."

**Chambers UK 2020**

"Really thorough, intelligent and very sharp." "Very good on his feet. A strong advocate."

**Chambers UK 2019**

"Personable and reassuring. He has a good manner with clients and witnesses. He's a very good advocate, capable of thinking on his feet."

**Chambers UK 2018**

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