

HEATHER ROGERS

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Registered name on the Bar Standards Board Register: Heather Rogers

Vat Number: 494654405

Call: 1983

Silk: 2006

SPECIALISATION

- Defamation and malicious falsehood
- Privacy and breach of confidence
- Media injunctions
- Freedom of Information
- Data Protection
- Contempt of Court
- Reporting restrictions
- Harassment
- Media-related human rights law

Heather specialises in media law, having been involved in many key cases from the "Spycatcher" litigation [1990] 1 AC 109 HL (breach of confidence in relation to information about the security services), through the *Esther Rantzen* and *Elton John* appeals [1994] QB 674 and [1997] QB 586 CA (limiting jury awards of damages in defamation cases) to the landmark decision on the scope of the public interest ("Reynolds") defence in libel, *Flood v Times Newspapers* in the Supreme Court [2012] 2 AC 273.

She has a broad practice in the field of media and information law. She represents claimants and defendants, including press and broadcast media. She has appeared in numerous libel trials including *Cruddas v Calvert (and others)*, *Harry Kewell v Gary Lineker*, *Neil Hamilton MP v Mohammed Al Fayed* and *David Irving v Penguin Books Ltd* (for the defendants) and *George Galloway MP v Telegraph Group* and *Roman Polanski v Condé Nast* (for the claimant). Privacy cases include the appeals in *Hutcheson (formerly KGM) v News Group Newspapers*, *Ntuli v Donald*, *Michael Napier & Irwin Mitchell v Pressdram Limited* and *BKM Limited v BBC*. She represented Andrew Gilligan in the Hutton Inquiry.

Heather was instructed by Article 19, the intervener, in *R (Guardian News & Media) v City of Westminster Magistrates Court*, which established the importance of media access to documents used in open court. She appeared for the media in challenging a novel Crown Court reporting restriction in *Re ITN*. She has experience of criminal law from a different perspective, as a Crown Court Recorder since 2010.

Heather is a director of the Campaign for Freedom of Information. She was a trustee of Article 19, the freedom of expression NGO, from 2004 to 2012. She works with the Media Legal Defence Initiative on free speech issues, including on "amicus" briefs in *Axel Springer v Germany (No 2)* (restrictions on political speech in the ECtHR) and *Raynor v Richardson* (criminal defamation in Bermuda).

30/03/2017

RECOMMENDATIONS

Chambers and Partners 2017 - Superb media silk who maintains a busy libel and data protection and privacy practice. She is considered a go-to for defamation claims and film-related litigation.

Strengths: "She is a leader; a really thoughtful and talented practitioner." "She has formidable forensic skills, gives cogent advice and is a pleasure to work with."

The Legal 500 2016 - She provides formidable forensic skills and cogent advice, and is a pleasure to work with.

Chambers and Partners 2016 – Defamation/Privacy

Prominent silk for defamation and privacy matters who advises both claimants and defendants.

Strengths: "She has formidable forensic skills, provides cogent advice and is a pleasure to work with." "She is a really awesome intellect." "She is very thorough, very knowledgeable and very bright."

The Legal 500 (2015) – Defamation and Privacy:

'Tremendously supportive and pragmatic.'

The Legal 500 (2015) – Media and Entertainment:

'She is wonderfully down to earth, and works with her instructing solicitors as a real collaborative team.'

Chambers and Partners (2015) – Defamation and Privacy:

"Lauded by clients and solicitors for her detailed knowledge of the field and her affable and professional approach to client service. She continues to appear in some of the most contentious and high-profile cases of the day.

Strengths: "She has great tactical nous and is a strong lateral thinker." "Intellectual acumen personified, she is a barrister with superb legal ability." "She has formidable forensic skills, and provides cogent advice.""

Legal 500 – Defamation and Privacy (2014)

Heather is '*seriously knowledgeable, supremely practical and terrifically hardworking.*'

Heather has been recommended in this field for many years by both Chambers and Partners and the Legal 500.

REPRESENTATIVE CASES OF INTEREST

Defamation

- *Cruddas v Calvert & Others* (2013-2015). For defendants in libel/malicious falsehood claim against The Sunday Times and two of its journalists brought by former Treasurer of the Conservative Party. Series of interim rulings, including successful appeal on meaning [2014] EMLR 5 and concluding with Court of Appeal decision following trial [2015] EWCA Civ 171.
- *Flood v Times Newspapers Limited* [2012] UKSC 11; [2012] 2 AC 273. For defendant in the Supreme Court on the landmark decision in relation to the scope of the *Reynolds* defence (reporting on matter of public interest).

- *Adelson v Anderson* [2011] EWHC 2497 (QB). For defendants in successful application to strike out defamation claim (abuse of process and delay).
- *Khader v Aziz* [2010] EWCA Civ 716; [2011] EMLR 2. For one defendant in successful application for summary judgment/strike out of defamation claim.
- *British Chiropractic Association v Singh* [2010] EWCA Civ 350; [2011] 1 WLR 133. For claimant / respondent in appeal relating to meaning and the line between "fact" and "comment".
- *Seaga v Harper* [2008] UKPC 9, [2009] 1 AC 1 (Privy Council) - for claimant in relation to appeal from Jamaica on the scope of the *Reynolds* defence.
- *Lance Armstrong v Times Newspapers Limited* – representing defendants in libel claim, including in meaning application [2006] 1 WLR 2462 CA and appeal against strike out of qualified privilege defence [2005] EMLR 33.
- *George Galloway MP v Telegraph Limited* [2006] EMLR 11 CA – represented claimant (at trial and appeal) on libel claim.
- *Gleaner v Abrahams* [2003] UKPC 55, [2004] 1 AC 628 – Privy Council appeal on the assessment of damages in a libel claim (Jamaica) (for claimant).
- *Cleese v Clark* [2004] EMLR 3 – approach to the assessment of compensation in offer to make amends procedure.
- *Irving v Penguin Books Limited* [2001] EWCA Civ 1197 – refusal of permission to appeal against trial judgment (distortion of history).
- *Branson v Bower* [2001] EWCA Civ 791, [2001] EMLR 32 – the fact/comment distinction in a libel case.
- *Hamilton v Al-Fayed* [2001] 1 AC 395 HL – Parliamentary privilege in context of libel claim.
- *Loveless v Earl* [1999] EMLR 530 CA – the subjective test for "malice" in libel cases.
- *Hinduja v Asia TV* [1998] EMLR 516 – meaning appeal in libel case.
- *John v MGN Limited* [1997] QB 586 CA – successful appeal against damages claim after jury trial of libel claim brought by Elton John (relevance of personal injury awards).
- *Bennett v Guardian Newspapers Limited* [1997] EMLR 625 – attempt to introduce public interest defence (pre-*Reynolds*).
- *Allason v Campell* (2 May 1996, Drake J) – malicious falsehood claim by Rupert Allason MP against Alastair Campbell.
- *Rantzen v Mirror Group Newspapers (1986) Limited* [1994] QB 670 – jury awards of damages in libel cases (relevance of Article 10).
- *Derbyshire County Council v Times Newspapers Limited* [1993] AC 534 – House of Lords appeal determining that local authorities cannot sue for libel.
- *Roache v News Group* [1998] EMLR 161 – for defendants in appeal from costs ordered at trial (the "Boring Ken Barlow" libel claim).
- *Jackson v MGN Limited* (1994 WL 1062683) – appeal relating to disclosure of medical records (plastic surgery) in libel case by Michael Jackson.

- *Joyce v Sengupta* [1993] 1 WLR 337 CA – junior counsel in libel/malicious falsehood claim.

Privacy/Confidence

- *Price v Powell & Ors* (2015) – for claimant in relation to grant of relief from sanctions in privacy claim.
- *Hutcheson (previously "KGM") v News Group Newspapers Ltd* [2011] EWCA Civ 808, [2012] EMLR 2 – appeared for media defendant in appeal (privacy injunction refused).
- *Ntuli v Donald* [2010] EWCA Civ 1276; [2011] 1 WLR 294 – appeared for Guardian News and Media (intervener) in appeal in relation to practice concerning privacy injunctions.
- *Napier v Pressdram Ltd* [2009] EWCA Civ 443, [2010] 1 WLR 934 – appeared for Private Eye in resisting application for injunction to prevent publication of information relating to disciplinary proceedings against solicitors.
- *BKM Limited v BBC* [2009] EWHC 3151 (Ch) – appeared for the BBC, resisting application to restrain broadcast of a documentary including secret filming inside a residential care home.
- *Harrods Limited v Times Newspapers Limited* [2006] EWCA Civ 294 & [2006] EMLR 13 – scope of disclosure from claimant when bringing claim for breach of confidence.
- *Campbell v Frisbee* [2002] EMLR 31 CA – contractual obligation in relation to confidential information (repudiation of contract) (for claimant).
- *Times Newspapers Ltd v MGN Limited* [1993] EMLR 443 – junior counsel for newspaper resisting application for interim injunction to prevent publication of material from The Thatcher Diaries.
- *Attorney-General v The Observer Ltd* [1990] 1 AC 109 – junior counsel for The Observer in the Spycatcher litigation in this jurisdiction (trial and appeals).

Freedom of Information

Since 2014, Heather has been a director of the Campaign for Freedom of Information.

Bryce v Information Commissioner (Information Tribunal EA/2009/0083): representing applicant for information relating to criminal proceedings (following murder of her daughter).

Open justice / reporting restrictions

- *R (Guardian News & Media) v City of Westminster Magistrates Court* [2013] QB 618 CA: appeared for Article 19 (intervener) in the Court of Appeal case, which established the importance of media access to documents used in open court (in this case, in the context of extradition proceedings).
- *Re ITN (and others)*: appeared for media appellants, challenging a novel reporting restriction made under section 46 of the Youth Justice and Criminal Evidence Act 1999: [2013] EWCA Crim 773; [2014] 1 WLR 199.
- *Inner West London Deputy Coroner v Channel 4 Television Limited* [2007] EWHC 2513 (QB), [2008] 1 WLR 945 – appeared for Channel 4 in relation to witness summons, requiring production of documents from the programme "Diana: the witnesses in the tunnel" for the Inquest into the deaths of the late Diana, Princess of Wales and Dodi Al Fayed.

- *R (Hirst) v Secretary of State for the Home Department* [2002] 1 WLR 2929 – challenge to lawfulness of Home Office Policy restricting contact by prisoners with the media.
- *Re C (A Minor) (Wardship: Medical Treatment)* [1990] Fam 39 – junior counsel for media in relation to reporting restrictions imposed by Family Division in wardship case.
- *R v Bow Street Metropolitan Stipendiary Magistrate* [1992] 1 WLR 412 – for MGN Limited on appeal on costs, following successful challenge to reporting restriction.
- *X v Morgan Grampian Limited* [1991] 1 AC 1 – for publishing company, resisting application to identify source of confidential information.

Contractual and other claims

- *Smith v Headline Publishing Limited* [2011] EWHC 2106 (Ch) represented defendant in claims for breach of publishing contract and other associated claims in tort.
- *R (BBC) v Broadcasting Complaints Commission* [1995] EMLR 241 – judicial review in relation to complaint to broadcast regulator (standing of complainant).

Human Rights

- *R (Nicklinson) v Minister of Justice* [2014] UKSC 38; [2014] 3 WLR 200. Appeared for the British Humanist Association (intervener) in the Supreme Court in the related appeals raising important legal issues in relation to assisted dying, including Article 8 of the ECHR.
- *Axel Springer v Germany (No 2)* [2014] ECHR 745 – represented intervener (Media Legal Defence Initiative) in case involving Article 10 and restrictions on political speech.
- *Raynor v Richardson* [2011] SC (Bda) 39 Civ – provided “amicus brief” for Media Legal Defence Initiative in case concerning criminal defamation in Bermuda.

PUBLICATIONS AND SEMINARS

Co-author of Duncan & Neill on Defamation (4th ed) (LexisNexis 2015)

Contributor to “Cases that Changed Our Lives” (2010)

Contributor to Yearbook of Media and Entertainment Law (OUP) (1995-2002)

Co-Author “Changing Contempt of Court” (with Andrew Nicol) (1991)

Regular speaker at conferences (including IBC’s “Defamation and Privacy” and “Protecting the Media”) and provides in-house training seminars.

ACADEMIC AND PROFESSIONAL QUALIFICATIONS

LLB (Hons) (First) – London School of Economics and Political Science (University of London)

Inns of Court School of Law (placed first in year)

Accredited mediator (London School of Mediation)

OTHER INFORMATION

30/03/2017

Appointed Recorder (Crime) on the South Eastern Circuit in 2010.

Elected Bencher of the Honourable Society of Middle Temple (2008).

Member of the Inns' Conduct Committee (2009 -) and Interim Chair of the Inns' Conduct Committee (2014-).

Trustee of Article 19 (www.article19.org) from 2004 – 2012.

Director of Campaign for Freedom of Information (2014 and continuing).