



# Colin McDevitt

**Year of Call:** 1995

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## Employment and discrimination

Colin is recognised as a senior junior in employment, equality and related claims. He has considerable experience at all stages of litigation from pre-action advice and guidance right through to representation at the final hearing in the Tribunal, Employment Appeal Tribunal and High Court.

He is consistently ranked in the Legal 500 for his determination, success and ability to get to the heart of the matter. He works for employers and employees in claims such as restrictive covenants, all types of discrimination, unfair dismissal, PIDA, TUPE and breach of contract.

Colin has a national practice, appearing in tribunals and courts up and down the land including Preston, Leeds, Manchester, Liverpool, Nottingham, Leicester, Birmingham, London (Watford, Stratford, Croydon, Aldwych), Ashford, Bury St Edmunds, Bedford, Reading, Southampton, Bristol, Taunton and Exeter.

He receives regular instructions from Local Authorities, large transport companies and national organisations in complex and high value claims. He also represents employees, including Senior Management Teams and managers of high street retailers, universities, schools, banks and councils.

Colin is equally well regarded in his complementary practice in personal injury, clinical negligence and professional negligence. He worked in the pharmaceutical industry before training as a barrister, which gives him commercial insight. He is very strong on Schedules of Loss and Counterschedules.

Colin is:

- A strong team member who gives clear and practical advice and guidance on all legal issues, including tactical positions
- A talented and well-prepared advocate for procedural hearings as well as trial
- Experienced at settlement meetings and mediations
- Consistently regarded as a leading practitioner in the field of employment law by the Legal 500 and by his instructing solicitors

### Cases - Unfair Dismissal:

- *Bosworth v Northampton Borough Council* [2016]: A successful multi-day claim on behalf of the claimant who had effectively been forced to take 2 pay cuts over the course of a few years. When the latest proposal for a reduction in pay resulted in the respondent conducting a dismissal and immediate re-engagement policy, the claimant attempted to comply with the draconian requirements but was dismissed. The respondent claimed that the claimant had resigned but Colin McDevitt successfully persuaded the Tribunal that the claimant had been unfairly dismissed. Colin McDevitt cross-examined the Councils' senior executives. The claim also involved TUPE-related issues.
- *Spencer v Centrewest*: Colin McDevitt represented the respondent which had dismissed the claimant for suspected theft

of a colleague's rucksack. The claimant complained that the dismissal was unfair, a view originally upheld by the Tribunal after a multi-day claim. However, the Tribunal had gone off on a folly of its own and had misapplied the law of theft. Colin McDevitt prepared the appeal documentation and represented the respondent in the Employment Appeal Tribunal in its successful appeal (UKEAT/0481/12/DM).

- **Aird v BOFA:** The claimant was dismissed from the respondent's accounts department after the discovery that he had previously been convicted of 2 offences of cheque fraud. The claimant had been a book-keeper for 2 previous employers and his fraud amounted to over £170,000. He had been sentenced to 2 years' imprisonment. The claimant claimed unfair dismissal. Colin McDevitt advised and represented the respondent, initially by drafting the Defence and then by successfully applying to the Tribunal for the claim to be struck out.
- **Morgan v CdMR:** A very satisfying conclusion to lengthy and hard-fought litigation. Colin McDevitt advised the claimant from the pre-claim stage throughout in proceedings that involved a successful week-long claim, a successful claimant's review (on issues of taxation), a successful opposition of the respondent's appeal in the Employment Appeal Tribunal and the securing of an award of costs for the claimant against the respondent in the EAT before HHJ
- **McMullen (UKEATPA/1952/11/ZT).** The claimant had been dismissed for redundancy but it was shown that the respondent's process was flawed.
- **Ford v Abbycars:** Colin McDevitt represented the claimant in this constructive unfair dismissal claim. The matter was appealed and Colin McDevitt represented the claimant in the Employment Appeal Tribunal (UKEAT/0472/07/DA). In the appeal, Elias P made observations about the nature of the causal connection necessary to link the resignation and the repudiatory breach when a constructive dismissal is claimed.
- **Gooljary-Wright v C.K. Solicitors:** Colin McDevitt represented the respondent firm of solicitors in its successful defence of a claim by a former employee solicitor.
- **King v Lymington Citizens' Advice Bureau:** Colin McDevitt represented the claimant in her successful claim of unfair dismissal against her employer CAB. The claimant had telephoned The Samaritans when she was concerned about the suicide risk of a person whom she was helping with her debts. The claim was reported on local TV news and in The Evening Standard.

### **Discrimination**

Colin McDevitt is highly experienced with discrimination claims. He was part of the 3PB team which lectured extensively on the Equality Act 2010 shortly before its introduction.

### **Disability Discrimination**

Colin has great experience with disability claims. His personal injury expertise instils great confidence when medical issues arise. Examples of the disabilities litigated are cancer, MS, overweight, the effects of stroke, diabetes, depression, PTSD, dyslexia, dyscalculia and narcolepsy.

All causes of action have also been advised upon and litigated, for example direct discrimination (s.13), indirect discrimination (s.19) failure to make reasonable adjustments (ss. 20 and 21) and discrimination arising from disability (s.15). Colin McDevitt has advised on whether or not to concede disability, knowledge of disability and the effects of disability. He has defended a County Court claim on behalf of a hotel in a complaint regarding disabled access.

### **Cases:**

- **Hitschmann v OCDP:** A successful claim representing the claimant in her claim of constructive unfair dismissal and disability discrimination in relation to Multiple Sclerosis. The respondent was a charity which championed the needs of people with disabilities but, after cross-examination of a senior manager by Colin, was found to have discriminated against the claimant.
- **Despard v Transalis:** Colin McDevitt represented the respondent in this claim for unfair dismissal and disability discrimination arising from the claimant suffering a heart attack and a series of strokes. Decision awaited.
- **Edwards v Co-Op:** A successful defence representing the Co-Op in a multi-day claim arising out of the claimant's difficulty with numbers. Colin McDevitt conducted a successful Preliminary Hearing concerning multiple disability-related issues. After the trial, Colin secured an Order that the claimant pay costs to the respondent.

### **Race Discrimination**

- **Mruke v Khan:** A highly complex, modern-day slavery case involving a migrant domestic worker in which Colin McDevitt represented the respondent. The 2 week trial involved detailed cross-examination by Colin McDevitt of the Tanzanian claimant, a Detective Constable and a barrister. The claimant appealed to the Employment Appeal Tribunal and, at the Preliminary Hearing in front of HHJ Peter Clark (UKEAT/0240/13/DM), Colin McDevitt successfully opposed the claimant's appeal on the race discrimination claim for reasons that were later upheld in the Supreme Court case of *Taiwo v Olaigbe* [2016] UKSC 31.
- **Ajgarni v Vodafone:** Colin McDevitt represented the respondent in this successful defence against a multi-day claim of race discrimination in circumstances where the claimant had been dismissed before he accrued enough service to allow him to bring a claim of unfair dismissal. The claimant's claim failed in its entirety when his claim of race discrimination was dismissed.
- **Kassa v Nurture Day Nursery:** A multi-day claim acting for the successful respondent which terminated the claimant's employment for personality reasons very shortly after she started work. The claimant claimed that she had been discriminated against on grounds of race but a detailed analysis of the evidence, skilful cross-examination and forceful submissions from Colin resulted in the claim being dismissed.

### **Sex Discrimination**

- **Olayemi v Okoreaffia:** Colin became involved in this lengthy and complex piece of litigation after liability had been established but before remedy (compensation) had been decided. The claim arose from the respondent's treatment of his former business partner. Colin McDevitt represented the respondent in the Tribunal and also the Employment Appeal Tribunal before Supperstone J (UKEAT/0221/11/MC). The main issues in the EAT were the correct application of the burden of proof in sex discrimination claims and the instances of harassment that the Tribunal was to have regard to when making determinations of harassment.
- **Sardana v You At Work:** A lengthy multi-day trial in which Colin represented the successful respondent in a claim of unlawful sex, race and religious discrimination. The claimant attempted a scattergun approach to her dismissal and raised claims based upon 3 protected characteristics. Colin was involved in all stages of preparation of the case leading up to and including the final hearing, including drafting a Scott Schedule of complaints which was instrumental in demonstrating the weakness of the claimant's case. The claims were all dismissed by Tribunal and Colin then later applied for costs against the claimant and secured an Order for costs and that the claimant pay Colin's client £10,000 (the maximum at the time).
- **Kelly v IDPP:** A factually heavy and complex claim by a female recruitment consultant who claimed sex discrimination as a result of an evening out at a West End lap dancing club. Colin represented the respondent. Through robust and determined cross examination Colin demonstrated the unreliability of the claimant's evidence. The claim was dismissed. The case attracted national press coverage and featured on the front page of London's Evening Standard.
- **Dias v YMCA Training:** Colin successfully defeated a claim of sex discrimination and unfair dismissal and his cross-examination demonstrated that the claimant had lied.
- **Savings v Twang.net:** Colin represented the claimant who had been offered a job before informing the employer of her pregnancy. The employer then rescinded the job offer. Colin succeeded in the claim of pregnancy-related discrimination and compensation and secured an Order that the respondent pay the claimant's costs.

### **Religious and Sex Discrimination**

- **H v F School:** A multi-day trial representing a faith school in its defence to a claim of pregnancy and religious discrimination. There was an ongoing, but toxic, working relationship and the situation needed to be handled with great care and sensitivity. Colin managed his team of witnesses, governors, finance staff and faith leaders to achieve an excellent resolution for his client.

### **TUPE**

Colin has significant experience of TUPE claims, examples of which are below.

- **Multiple claimants v Thomson Directory:** Colin represented most of the Regional Managers in a claim arising from a restructure of Thomson Directory. The business structure of the company before and after the restructure required

detailed analysis and the claim resulted in a week-long Preliminary Hearing.

- **Gilbert v Loomis and BDI Securities:** The claimant claimed that he had been dismissed for a reason connected with a TUPE transfer. Issues in the trial included whether there had been a TUPE transfer, whether there had been a service provision change, whether there was an ETO reason entailing changes in the workforce, whether the claimant had been allocated to the undertaking immediately before the transfer, whether the dismissal was automatically unfair, whether the duties to inform and consult had been complied with, whether information had been passed from the transferor to the transferee and quantum. Colin represented the claimant in his successful claim.
- **Pack v Suffolk New College:** A claim in which Colin represented the College where there was an issue about the transfer of the football teaching and provision to students to a local football club. The matter was brought to a satisfactory conclusion at the Tribunal.
- **Rice v GM Rail and 5 others:** Colin was involved in a group claim by 43 rail workers who were engaged in an engineering project on the London Underground. The workers had been summarily dismissed 3 days before Christmas and so they mounted a group claim against 6 respondents. The claim involved a lengthy Pre Hearing Review after which directions to prepare for trial were given. The claims were successfully compromised shortly thereafter.

### **Restrictive covenants**

A common component of this type of claim is the confidentiality to which both parties attach great importance and which they seek to maintain. For this reason, case names are not stated in this section of the web page. However, in general terms, Colin has advised and represented clients (employers and employees) in the County Court and High Court and provided advice to companies and employees on the effect and enforceability of restraint clauses, e.g. geographical restriction, non-solicitation, non-compete and so on. A great number of clients obtain Colin's advice and representation through the Direct Access (Public Access) route.

## **Articles**

Colin McDevitt considers the case of *Rodgers v Leeds Laser Cutting Limited*, EAT, EA-2021-000437-VP, in which the ET and EAT concluded that the facts of the case were not consistent with the Claimant holding a reasonable belief that there were serious and imminent circumstances of danger both at work and in other places outside his home, that prevented him returning to work.

[View Article](#)

Colin McDevitt analyses *Kong v Gulf International Bank (UK) Limited* EA-2020-000357-JOJ, a case which emphasises the rare nature of the Jhuti exception when considering an invented reason for an automatically unfair dismissal following the making of a protected disclosure.

[View Article](#)

Whistleblowing: causation, guidance for complex cases and judicial proceedings immunity

Colin McDevitt examines *The Chief Constable of Greater Manchester Police V Aston & Others* UKEAT/0304/19/RN, in which we are reminded of the approach to be applied in cases where there are multiple protected disclosures spanning a significant period and allegations of multiple detriments involving multiple perpetrators and multiple victims.

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Colin McDevitt examines what *Pimlico Plumbers v Smith* tells us about Employment Status. Colin McDevitt provides a useful analysis of the *Pimlico Plumbers v Smith* case, examining when the factors in a business/client relationship might amount to employment or worker status.

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## Recommendations

'He effortlessly puts clients at ease.'

### **Legal 500 2018 – Employment – Leading juniors**

'He has a systematic approach to complex claims.'

### **Legal 500 2018 – Personal Injury and Clinical Negligence – Leading juniors**

'A great advocate, who is well liked by his clients.'

### **Legal 500 2017 – Employment – Leading juniors**

'A specialist in multiple injuries claims.'

### **Legal 500 2017 – Personal injury and clinical negligence – Leading juniors**

'Brilliant at absorbing lots of detail and cutting to the main points.'

### **Thomson Reuters Report 2017**

'Personable experienced counsel who work with me as a team for the client.'

### **Legal 500 2016 – Employment – Leading juniors**

'He gets results.'

### **Legal 500 2016 – Personal injury and clinical negligence – Leading juniors**

'thorough, and has an eye for detail'

### **Legal 500 2015**

'understands the law and the needs of the client alike'

### **Legal 500 2015**

'an astute advocate, who will always fight your corner'

### **Legal 500 2014**

'down to earth and personable'

### **Legal 500 2014**

'experience in a number of complex discrimination cases'

### **Legal 500 2014**

'excellent on his feet and on paper'

### **Legal 500 2013**

#### **What Judges Say:**

The following comments have been made by Judges of cases in which Colin has appeared:

- Mrs Justice Slade: "Mr McDevitt's points have been put succinctly and crisply in his outline written submissions. He has been instructed at short notice but that does not detract from the cogency of his arguments to us"

- HHJ Freeland QC, Central London County Court: Colin McDevitt's client has been "excellently advised by a very competent and experienced legal representative" and "the advice from [Mr McDevitt] had been first class"
- Judge Ferris: "Mr McDevitt's advocacy has been of high quality"
- Judge Heal: Mr McDevitt is "experienced counsel using sophisticated cross-examination"

#### What Clients Say:

- "The opponent accepted all elements of our offer ... The client needless to say was absolutely delighted ... I thank you for your assistance in this complicated case which has resulted in a very good outcome indeed for the client", Marek Bednarczyk, Partner of Personal Injury And Clinical Negligence, Hart Brown Solicitors
- "I did want to notify you direct and to thank you for your assistance throughout. It has undoubtedly been instrumental in enabling us to achieve such a successful and satisfactory outcome for our client", David Black, Partner at Bower & Bailey Solicitors
- "Thank you again for your brilliant work", Nick Owen, Director of William Graham Law Solicitors
- "It was a pleasure to meet you last Friday and I would like to thank you very much indeed for the way in which you conducted the conference. The understanding and sympathetic approach which you displayed enabled [my daughter] to feel very much more at ease than she might have done and you were able to put across to her, in terms that she understood, the salient issues. She certainly left your Chambers feeling that she understood what had been said, had received very good, practical advice and guidance, and found the experience rather less daunting than she expected. For myself, I have been to many conferences over the 35 years of my career as a solicitor and have never attended one better, in all aspects - which is down to you. Not all lawyers (solicitors as well as barristers!) have the ability to relate to a client in an understanding way but this you did, quite in addition to the clarity of the language used and the obvious understanding of the issues (both of which can too often be taken for granted). I have spoken to one solicitor friend recommending you. ...Very many thanks once again and very best wishes for a continuing successful career." E-mail from the father of a teenage client
- "Thank you for your Advice which contains a sound analysis." Richard Fry, Senior Partner, Griffith Smith Solicitors
- "I feel I must write to express the gratitude of both myself and my wife for Mr McDevitt's endeavours on our behalf. I am indebted to Mr McDevitt for the way he was able to put my wife at ease before she gave her evidence and would be grateful if you would pass my sincere thanks to him." Mr Moroney
- "We thank Mr McDevitt for his efforts on our client's behalf and confirm that Mr [H] was extremely pleased with the result." Pinto Potts Solicitors
- "The Client was very impressed with you." Huggins & Lewis Foskett Solicitors
- "We were delighted to receive the news yesterday that the case was judged in our favour. ...We have many things to thank [our solicitor] for [m]ost of all, we have to thank him for his inspired choice of barrister. Initially extremely apprehensive on the day of the hearing, Dr [S] and Dr [B] were given great encouragement by your style and approach. ...They were equally impressed by your closing submission which left me thinking we were home and dry. This of course did not lessen the sense of delight (and relief) around the Practice yesterday as the news broke. I would like to thank you on behalf of all the Partners for the excellent job you did for us and for the result you achieved." Doctors' Surgery on the south coast
- "I just wanted to drop you a line to say thank you for your assistance and support in this matter. I know what a pain it can be when professional clients approach you direct. You did, however, manage to keep us under control and supply all of the support and guidance that was necessary. You did guide us to a satisfactory conclusion. To have kept the Tribunal in line to obtain such a strong judgment is not just a matter of happenstance - I know that it has to be worked for and directed from an early stage." Mr C, CK Solicitors
- "Thank you for your support and hard work that you have done for me" Steve Brewer, client
- "Just a short note to express my gratitude for all your hard work on my behalf and your kindness and understanding during my ordeal. Thanks to you my faith in the human race has been restored. ... Many thanks." Mr Abercrombie, client
- "Thank you for your able assistance with this case - which was by no means straightforward! Well done!" Moorhead James Solicitors

- "I am pleased to say the court found in favour of Mr [H] in all respects and I believe Mr [H] is very pleased with the Court's decision.
- "[T]hank you for your efforts." McDonald Oates Solicitors
- "Really enjoyed working with Colin and looking forward to the next battle." Eric Robinson Solicitors
- "Ms [C] is very pleased with this result and I would like to thank you for your help in preparing this claim." Davies and Partners Solicitors
- "Mr [M] has been on the phone singing your praises. ...I said I would pass on his thanks (and mine) to you." Lyons Wilson Solicitors
- "A quick and heartfelt message to say thank you ever so much for all your hard work, excellent support and cheery manner that succeeded in bringing my case to an end. ...I am delighted with the outcome. ...With the very best of wishes to you and all of the team, including Colin who was so instrumental in getting the best outcome possible." Client's email to instructing solicitor

## **Academic qualifications**

- BSc (Hons), University of Reading, 1990
- Diploma in Law, City University, 1994

## **Professional qualifications & appointments**

- Accredited Mediation Advocate

## **Professional bodies**

- Employment Law Bar Association (ELBA)
- Personal Injury Bar Association (PIBA)
- Professional Negligence Bar Association (PNBA)