



Sarah Clarke

Year of Call: 2005

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Employment and discrimination

Sarah is an employment law specialist. She appears for both claimants and respondents in the Employment Tribunal and the Employment Appeal Tribunal. She has experience of the following types of claims:

- Unfair and wrongful dismissal
- Sex discrimination
- Race discrimination
- Disability discrimination including failure to make reasonable adjustments claims, discrimination arising from disability and direct discrimination
- Sexual orientation discrimination
- Maternity discrimination
- 'Whistleblowing' claims
- Unlawful deduction from wages/ holiday pay claims
- Claims under the National Minimum Wage Regulations 2015
- Illegal contracts of employment
- TUPE
- Equal pay

Recent cases:

- *Tykocki v Royal Bournemouth and Christchurch Hospitals NHS Trust* UKEAT/0081/16/JOJ. Sarah successfully appealed a decision that a dismissal was fair. It was argued that the decision was perverse as the judge failed to take into account relevant factors
- *Anderson and others v First Wessex* UKEAT /0132/17/RN. Sarah acts for the Respondent in this matter. She succeeded at first instance, and the matter is currently listed for a preliminary hearing in the EAT. Over 100 claims were brought for detriment on the grounds of trade union membership
- *Elliott v Plymouth Hospitals NHS Trust* UKEATPA/0826/14/LA. Sarah appeared for the Appellant in relation to a claim for discrimination arising from disability
- *Lynch v Stockley Academy* UKEATPA/0097/17/BA. Sarah successfully represented the Respondent at first instance in a 10-day trial in a claim for unfair dismissal and whistleblowing. The matter is currently listed for a preliminary hearing in the EAT
- *Fathers v Pets at Home Ltd* UKEAT/0424/13/DM. An appeal under the Equality Act 2010, Sarah successfully argued that the tribunal had erred because they had not addressed the 'deduced effects' and 'likelihood of recurrence' provisions in

determining whether or not the Claimant was disabled

- Acting for the Claimant in a claim against a well-known airline in respect of a claim that the overtime policy constitutes indirect sex discrimination and less favourable treatment on the ground of part-time worker status
- Sarah secured an extremely favourable settlement for the claimant (on day 1 of a 4-day trial) in a claim for unfair dismissal and disability discrimination against a premier league football club
- Sarah acted for the 2nd Respondent in the Remploy litigation. Claims were brought by over 1,000 employees arising out of the closure of several Remploy factories across the country as a result of a decision by the DWP to reduce funding
- Sarah successfully acted for the claimant in a 9-day trial against a major finance house in a claim for disability discrimination
- Successfully acted for the Respondent, an employment advice centre, in a 5-day unfair dismissal and discrimination on the grounds of sexual orientation claim (involving applications to the EAT)
- Acted for the Claimant, a midwife, in a 4-day trial in a claim for unfair dismissal arising out of allegations of gross negligence in respect of two births
- Acted for the Respondent in a 4-day trial in a claim for disability discrimination and unfair dismissal. The Claimant, a registered nurse in a care home for the elderly, was dismissed on the basis of gross negligence and putting residents at risk
- Acted for the Claimant in an application for a restricted reporting order in a claim against an Academy and the Principal regarding allegations of sexual harassment. Unusually it was the Respondent who sought the order, and this was successfully opposed by the Claimant. The matter was widely reported in the press.

Sarah also has substantial experience in relation to interim injunction applications in the High Court to enforce restrictive covenants. For more information on this area please see her Business and Commercial Profile.

Sarah has been appointed to the barrister panel of ELAAS (the Employment Lawyers Appeals Advice Scheme). ELAAS is a service offering pro bono employment law advice to appellant and respondents where there is a preliminary hearing in the EAT with no previous legal representation on record. She therefore has vast experience of rule 3(10) permission hearings.

Publications

3PB barristers Craig Ludlow and Sarah Clarke analyse the latest employment law cases, covering March, April and May 2019:

- Time limits and the correct approach to the reasonable practicability of lodging ET claims when the previous fees regime was in place – Mr G Wray v Jewish Care (UKEAT/0193/18/JOJ)
- s.26 Harassment: The correct approach – Mr F Ahmed v The Cardinal Hume Academies (UKEAT/0196/18/RN)
- Criminal & Employer Investigations, Interim Injunctions & Mutual Trust and Confidence – North West Anglia NHS Foundation Trust v Andrew Gregg [2019] EWCA Civ 387
- S.15 Disability Discrimination based on mistaken belief – IForce Ltd v E Wood (UKEAT/0167/18/DA)
- Discrimination arising from disability/knowledge of dismissing officer and appeal officer – Baldeh v Churches Housing Association of Dudley & District Limited UKEAT/0290/18/JOJ
- Employee Suspension: Necessity or Reasonable and Proper cause? – The Mayor & Burgesses of the London Borough of Lambeth v Agoreyo [2019] EWCA Civ 322
- Compensatory rest break need not be an uninterrupted 20-minute period, even if such a break was in fact possible to provide – Network Rail Infrastructure Ltd v Crawford [2019] EWCA Civ 269
- TUPE transfer/sole or principal reason for dismissal/proximity of transfer – Hare Wines Ltd v Kaur [2019] EWCA Civ 216

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3PB barrister Sarah Clarke analyses the latest employment law cases, covering:

- What constitutes ‘information’ in the context of making a protected disclosure? Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436
- When determining the amount of one’s holiday pay, should regular voluntary overtime be included? In the context of the NHS, should non-guaranteed and voluntary overtime be included? Yes to both, says the EAT: Flowers v East of England

Ambulance Trust UKEAT/0235/17/JOJ

- Can a dismissal for a first offence of serious (not gross) misconduct ever be fair? Yes, says the EAT: Quintiles Commercial UK Ltd v Barongo UKEAT/0255/17/JOJ
- Supreme Court has upheld previous decisions that an ostensibly 'self-employed' plumber was in fact a 'worker': Pimlico Plumbers Ltd v Smith [2018] UKSC 29

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3PB Employment barristers Sarah Clarke and Simon Tibbitts analyse the latest employment law cases, covering:

1. Guidance of whose motivation will be taken into account in determining the "Employer's" reason for dismissal: Royal Mail Limited v Kamaljeet Jhuti [2017] EWCA Civ 1632
2. EAT find that relying on previous instances of misconduct, for which no sanction had been applied, does not render a dismissal unfair: NHS 24 v Pillar UKEATS/0005/16/JW
3. Subjecting men and women to the same detriment can be 'less favourable treatment': HM Chief Inspector of Education, Children's Services and Skills v The Interim Executive Board of Al-Hijrah school [2017] EWCA Civ 1426
4. The Advocate General has ruled that employees may qualify for protection from pregnancy discrimination before informing employer about their pregnancy: Guisado v Bankia SA (Case C-102/16)

Please click below to read the case law update.

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3PB Employment barrister Sarah Clarke provides a case law update covering the past month. Sarah's update includes:

Dismissal connected to absence because of cancer treatment was not discrimination arising from disability: Charlesworth v Dransfields Engineering Services Ltd; If an employee working night shifts is required to 'sleep in' at the premises, are they entitled to NMW for this time? It depends, says the EAT in 3 conjoined appeals: Focus Care Agency Ltd v Roberts UKEAT/0143/16/DM; Frudd v The Partington Group Ltd UKEAT/0244/16/DM; and Royal Mencap Society v Tomlinson-Blake UKEAT/0290/16/DM; Where an employee works in more than one EU state, the employment contracts fall within the jurisdiction of the country where, or from which, the employee principally carries out their obligations: Nogueira and others v Crewlink Ltd C-168/16; Moreno Osacar v Ryanair, formerly Ryanair Ltd C-169/16.

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Recommendations

Experienced in a range of employment matters including discrimination claims, whistle-blowing, unfair dismissal and TUPE work. She also has experience acting in cases involving restrictive covenants and bonus payments, and acts for both claimants and respondents.

Strengths: "She is a very effective advocate who can put her case strongly and convincingly."

Recent work: Instructed by the respondent in the five-day hearing of a claim for unfair dismissal relating to a protected disclosure.

Chambers UK 2020/Employment - Western - Band 3

'A fierce opponent who fights her clients' corner to the bitter end.'

Legal 500 2020/Employment/Leading juniors - Tier 1

Her crossover into commercial and personal injury matters lends itself well to her work in employment mandates.

"A brilliant cross-examiner who is able to present her case in an exceptionally convincing manner." "It's one thing to prepare and turn up with a script, but what really impresses me is her ability to handle situations when things go wrong and the witness bowls a googly: she makes it look like it was planned all along while subtly adjusting her approach."

Chambers UK 2019/Employment - Western

"I have recently instructed Sarah Clarke in a restraint of trade matter for a client who had issues with a departing partner soliciting clients of the partnership, I was very impressed with Sarah's extensive knowledge in this complex area and her ability to explain these matters and offer solutions for our client to protect their business. Sarah is personable and is able to

build a good rapport and trust with clients quickly and I cannot recommend her highly enough." - Instructing solicitor, July 2017

"Thank you for all your hard work and effort. You were brilliant and I can never thank you enough for all your support" - lay client

"Thank you so much for fighting so hard and well on my behalf. You honestly came out of the gate fighting and gave them no inch to move (as my mother put it "a lioness") when we were at the tribunal and for that I can't thank you enough." - lay client

"Thank you so much for all your help and advice on the case. You achieved a fantastic result for the client. We couldn't have done it without you" - Instructing solicitor

"Just a quick thank you for all your work in pushing a settlement through today- it means a lot to us, and we appreciate that you will have done this with a stack of other work needing to be done too. We are extremely grateful both for your work today and all you have done before" - lay client

"Sarah delivers an excellent service and knows her stuff. She is approachable, experienced and convincing."- Instructing solicitor

"We have instructed Sarah for many years and we have always found her to be excellent. Sarah is knowledgeable and provides thorough and well-reasoned advice. Sarah is very approachable and is very good with clients. Sarah is an excellent advocate who presents her cases with determination and authority and she always gives 100%." - Instructing solicitor

Academic qualifications

- BA (Oxon) 2:1 Jurisprudence
- BVC Nottingham Law School
- Inner Temple Exhibition 2004
- Sally Ball Award 2004

Professional bodies

- Employment Law Bar Association (ELBA)

Direct Access

Sarah Clarke is qualified to accept instructions directly from members of the public and professional clients under the Direct Public Access scheme.