



Karen Moss

Year of Call: 2002

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Employment and discrimination

Karen is an employment law specialist with 18 years of experience. She has been most recently ranked as a Tier 1 Leading Junior in the South Eastern Circuit Employment *'She is a superstar: a lawyer of the strongest calibre and an excellent advocate with strong cross-examination and client care skills'* and praised for being *'personable with all clients'* and being able to *'put witnesses at ease while keeping them focussed on their evidence'*. As a Leading Junior at the London Employment Bar, she is recognised as *'Superb at processing complex matters and cutting through to the core legal and commercial issues in play, her technical knowledge is extensive and impressive'* (Legal 500 2021).

She has been recognised in this year's Chambers and Partners UK 2021 as a *"Widely acclaimed barrister with a tremendous depth of experience handling an array of employment matters including discrimination and whistle-blowing claims... 'She's absolutely fantastic with clients and also just gets the legal issues instantly. She is my go-to barrister for everything because she can turn her hand to anything – she's absolutely incredible.'" "She routinely impresses me with opinions and her advocacy. She is very quick at cutting through the complex factual background to get to a clear legal view."*

Employment tribunal work has included both Claimant and Respondent work relating to unfair dismissal (substantive and procedural, constructive or actual), wrongful dismissal, discrimination (sex, sexual orientation, race, age, disability, religion and belief; direct and indirect), harassment, victimisation, stress at work claims, unlawful detriment claims, equal pay claims, TUPE, breach of contract, PIDA/whistleblowing claims, working time and unlawful deductions from wages. She has a particular interest in disability discrimination claims, including failure to make reasonable adjustments, and race and sex discrimination claims.

She is also regularly instructed to appear or to advise in matters of employment-related insolvency and judicial or other employment mediations. She has been instructed to draft a wide variety of employment pleadings and frequently advises parties pre- and post-action in industrial relations matters generally and tribunal and/or county court and/or High Court litigation, including post-termination restrictions and injunctive proceedings. She regularly appears in the Employment Appeal Tribunal and has appeared in the Court of Appeal on employment matters.

Karen undertakes work via Direct Access for lay clients, on Conditional Fee and Damages Based Agreements and on a pro bono basis in appropriate cases. Additionally she has represented parties in judicial and other mediations regarding employment and wider commercial disputes.

She gives lectures, seminars and produces training material on the development of employment law to solicitors, human resources and other professionals.

Reported and interesting appellate cases:

Ahmed v Cardinal Hume Academies UKEAT/0096/18 29th March 2019

Successfully defended an appeal regarding disability harassment and direct discrimination because of disability. Mr Justice

Choudhury (P) found that the tribunal had been correct to find that if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for him, then it should not be found to have done so. Additionally, the tribunal had concluded that the Appellant had been suspended because of his difficulties with handwriting. That was a finding that treatment was because of the adverse effect of an impairment or of something arising from disability; it was not a finding that the treatment was because of the disability – whether dyspraxia or some other unspecified physical or mental impairment – itself.

Baldeo v Churches Housing Association of Dudley & District Ltd UKEAT/0290/18/JOJ 11th March 2019

HHJ Shanks determined that where the original decision to dismiss was for disability-related reasons, without knowledge of the disability, but the appeal decision, upholding the dismissal was for the same reasons, with the requisite knowledge of a disability, that was actionable by an employee claiming to have been dismissed because of something arising in consequence of her disability. The ET had failed to apply the correct thresholds for liability under s.15 Equality Act 2010 and so the matter was remitted to a fresh tribunal

Philcox v CGDM Ltd TA Andrew Wilson & Co A2/2016/2804

May 2017 Representing the successful Respondent in the Court of Appeal, Lord Justice Underhill set aside the permission to appeal granted last year by Lord Justice Elias in this factually complex case involving multiple allegations of sex discrimination and unfair dismissal (EAT in February 2017 EAT/0819/16/DA).

Hampshire County Council v Wyatt UKEAT/0013/16/DA

October 2016 Represented the successful Respondent before the President of the Employment Appeal Tribunal Mrs Justice Simler DBE who gave invaluable guidance in relation to the divisibility of injuries and proportionate reduction of ITF and personal injury awards and on the use of medical evidence in employment tribunals for personal injury claims.

Pnaiser v NHS England and Coventry City Council [2016] IRLR 170

November 2015 Represented the successful Appellant in showing that a prospective employer could be liable for discrimination arising in consequence of a disability, by relying on a reference which itself was discriminatory, even if the prospective employer did not know of the link between negative reference and the disability. The decision of the Tribunal overturned and a decision upholding her claims for disability discrimination was substituted.

Scotthorne v Four Seasons Conservatories (UK) Limited UKEAT/0178/10/ZT

Whether the Tribunal was correct not to order disclosure of documented advice from "Employment Consultants" or HR professionals who were not legally qualified on the grounds of either legal advice privilege or litigation privilege and the application of *New Victoria Hospital v Ryan* [1993] IRLR 202 and *Three Rivers DC v Bank of England (No.6)* [2005] 1 AC 610.

Snows Motor Group Ltd v Palmerino UKEAT/1512/08DM

Whether the Tribunal had "slipped into the substitution mindset" following the Court of Appeal decision in *Ambulance v Small* and the applicability of the statutory disciplinary procedures where detailed evidence had not been provided until the Step 2 hearing.

Lloyd-Briden v Worthing College [2007] 3 CMLR 27, EAT

The applicability and effect of the ECJ decision in *Mangold* on the age discrimination provisions before the implementation date in the UK.

London Borough of Camden v Price-Job UKEAT/0507/06/DM [2007] All ER (D) 259 (Dec)

Question of whether the Tribunal correctly considered all relevant circumstances of Respondent to a DDA claim, and whether they considered the effect of s.3A(6) appropriately. Additionally the application of the law in relation to whether an appropriate assessment of an employee is a necessary pre-condition to reasonable adjustments.

Roberts v Valleyrose Ltd T/A Fernbank Nursing Home UKEAT/03944/06/D [2007] All ER (D) 163 (Aug)

Question of whether the Tribunal was biased against the Appellant and whether the Appellant had had a fair opportunity to refute an allegation of bad faith in a PIDA claim.

Investigations

Karen Moss has extensive experience of advising investigators in a number of different sectors, including healthcare, the legal profession, including partnership disputes, communications, manufacturing and education.

The investigations with which she has been involved have ranged from straight-forward disciplinarys and grievances, to factually and legally complex, wide-ranging high-stakes cases involving C-suite executives, whistleblowing and discrimination allegations. She has particular expertise in cases involving disabilities or suspected disabilities, especially those involving mental health.

Her skills are in distilling voluminous information into the salient points, being efficient, incisive and comprehensive. Her down-to-earth, practical nature makes her easy to work with.

Injunctions

Karen Moss is frequently instructed on High Court applications for interim injunctions concerning an employee's breach of express and implied terms during and after their employment, including breach of fiduciary duty and directors' duties, breach of confidentiality, protection of Databases and Trade Secrets, enforcement of restrictive covenants and third party liability. Successful applications have included interim and final injunctions, springboard relief, orders for delivery up and destruction, and substantial damages.

She has advised claimants and defendants, including C-suite executives, on negotiating appropriate undertakings, enforceability and severability of covenants, team moves and the use of garden leave, in addition to providing practical tactical guidance both before and after a claim is issued.

Articles

Janet Kerr v Fife Council UKEATS/0022/20/SH

Employment law barrister [Karen Moss](#) summarises the Scottish EAT's consideration of acts, omissions and conduct extending over a period, for the purposes of calculating time in the reasonable adjustments case of *Janet Kerr v Fife Council UKEATS/0022/20/SH*.

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Leeds and Yorkshire Housing Association Limited v Fothergill UKEAT/0211/20/LA

[Karen Moss](#) represented the successful Appellant before the EAT on 28th January 2021 and judgment was read out on 5th February 2021. Read [Karen's analysis of Leeds and Yorkshire Housing Association Limited v Fothergill UKEAT/0211/20/LA](#) here.

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Adedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23

Experienced employment law barrister [Karen Moss](#) reviews the case of *Adedeji v University Hospitals Birmingham NHS Trust [2021] EWCA Civ 23*.

On the 15th January 2021 Lord Justice Underhill handed down judgment in *Adedeji v University Hospitals Birmingham NHS Trust*, which confirms what employment lawyers had long suspected: it can be tricky to challenge an employment tribunal's

determination as to whether it is just and equitable to extend time or not, under s.123(1) Equality Act 2010.

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[Karen Moss](#) examines *Quilter Private Client Advisers v Falconer and Continuum (Financial Services) LLP* [2020] EWHC 3294 (QB), a case regarding the enforceability of restrictive covenants, including the public interest element and interesting findings about affirmation in a constructive wrongful dismissal claim.

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3PB's Karen Moss authors 'When is an employer deemed to have knowledge of a disability for the purpose of s.15 EqA 2010?'

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In a recent judgment in the Employment Appeal Tribunal – *Hampshire County Council v Wyatt* UKEAT/0013/16 (13 October 2016) – Mrs Justice Simler DBE gave important presidential guidance on the questions which frequently arise in discrimination remedy hearings when tribunals consider claims for non-pecuniary damages and/or where there might be competing causes of injury. Karen Moss

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Karen Moss has an article published on the impact of *Wyatt v Hampshire County Council* UKEAT/0013/16 on litigants claiming personal injury damages in the employment tribunal.

See www.pibriefupdate.com and the Personal Injury Brief Update Law Journal newsletter this month.

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Recommendations

Karen Moss is a widely acclaimed barrister with a tremendous depth of experience handling an array of employment matters including discrimination and whistle-blowing claims. She also expertly represents her clients in breach of contract and confidentiality disputes, and litigation concerning the disclosure of trade secrets.

Strengths: "Karen has a sharp mind and gets straight to the point. She is able to quickly grasp and identify the key issues in even the most complex of cases. She is excellent to work with, being amiable, accessible and clear in her advice." "Karen is great with clients and really good in cross-examination."

Recent work: Acted in *Dampier v Bovis Homes*, defending the respondent against claims of alleged constructive unfair dismissal in relation to an implied mobility clause in the claimant's contract.

Chambers UK 2022/Employment/South Eastern Bar

Strengths: "She's absolutely fantastic with clients and also just gets the legal issues instantly. She is my go-to barrister for absolutely everything because she can turn her hand to anything – she's absolutely incredible." "She routinely impresses me with opinions and her advocacy. She is very quick at cutting through the complex factual background to get to a clear legal view."

Recent work: Acted for the respondent in an appeal brought by an employee who claimed disability discrimination, where the Employment Tribunal had found that he was disabled by reason of difficulty with handwriting.

Chambers UK 2021/Employment/South Eastern Bar

'Karen possesses an extremely sharp and quick mind, and her advice is clear, direct, and to the point. She is masterful at handling the most difficult of clients, and has the rare ability to see both the wood and the trees, without losing focus of either. In court, she is a powerful and persuasive advocate.'

Legal 500 2022/Employment/Leading Juniors/South Eastern Circuit

"Very sharp but extremely user friendly and very clear. Quick turnaround and generally very impressive."

Legal 500 2022/Employment/Leading Juniors/London Bar

"Karen Moss is praised for being 'personable with all clients' and being able to 'put witnesses at ease while keeping them focussed on their evidence'."

'She is a superstar: a lawyer of the strongest calibre and an excellent advocate with strong cross-examination and client care skills.'

Legal 500 2021/Employment/South Eastern Circuit

'Superb at processing complex matters and cutting through to the core legal and commercial issues in play, her technical knowledge is extensive and impressive.'

Legal 500 2021/Employment/London Bar

'Extremely tenacious in pursuit of her client's case and their best interests.'

Legal 500 2020/Employment/South Eastern Circuit

Client testimonials

"Karen's expert advice and support helped to secure a significant settlement on my employment tribunal case. She identified the case's strengths and promptly addressed any possible weaknesses with evidence which was present but not previously included. Her approach, expertise and confidence led me to the outcome which was required and desired. I feel lucky to have had Karen on my side."

"Karen provided us with an excellent service in (a number of) cases. One case in particular involved two litigants in person and considerable documentation. The clients were extremely pleased with her handling of what was a sensitive case for them and of the successful result. Her manner with clients was good and put them at their ease. She has also performed well on cases where there was a need for greater intellectual input and skilful advocacy. Her reporting back is excellent. She is backed up by clerking at 3PB which is first class."

"Karen was outstanding over the two days and secured the very best possible outcome for us."

"I would also just like to say a massive thank you to you and to congratulate you on the excellent result yesterday, which I put entirely down to you. I am so impressed and I must say you have been a pleasure to work with throughout. I will 100% try and book you for any upcoming hearings I have in the future and cannot recommend you highly enough."

"your understanding of these matters and the manner in which you conveyed it to what appeared to be the most strict judge ever, was great. Furthermore, your cross examination of the cohort of (claimants) certainly taught them a lesson and was a pretty merry occasion for the three judges who could not contain themselves sometimes at the answers being received as well as the manner in which you had shown these (claimants) to be lying about various if not all statements they had made earlier. You had clearly shown (the first claimant) potentially what would happen to her when her case started and she was very fearful of your attendance at her hearing. Even more so, you obtained a costs hearing and costs against the claimants... Once again our heartfelt thanks and gratitude for your assistance."

"Karen's strategy, foresight in the approach and cross-examination seemed to me to be truly exceptional. I never for one moment expected that the Respondent would seek to settle part way through the hearing, and I am convinced their surprising haste to settle part-way through the hearing was completely due to Karen."

Academic qualifications

- LLB(Hons) from Sussex University
- BVC at Inns of Court School of Law

Scholarships

- Diplock scholar, Middle Temple

Professional qualifications & appointments

- ELAAS (the Employment Lawyers Appeals Advice Scheme)
- Accredited Mediation Advocate.

Professional bodies

- Employment Law Bar Association
- Employment Lawyers Association