



# Sarah Bowen

**Year of Call:** 2006

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## Employment and discrimination

Sarah has a particular interest in discrimination cases, with specific experience of representing clients in matters involving allegations of; sex (including pregnancy-related), race, religion/belief, age and disability. Sarah has also been instructed in actions involving claims of discrimination made by those other than employees under the provisions of the Equality Act 2010.

Prior to joining the independent Bar Sarah was employed as an in house employment advocate for a national law firm. This background gives her a unique understanding of the challenges that solicitors face and their requirements.

## TUPE

- Acting on behalf of a claimant in a 5 day PHR dealing with the issue of whether there was a 'relevant transfer' pursuant to TUPE. The matter concerned complex issues relating to assignment and fragmentation within group companies. Sarah led complex legal submissions on behalf of the claimants, including submissions relating to corporate veils, which were also adopted by the Secretary of State for Business and Enterprise.
- Managing to avert liability for her client under TUPE by persuading the Tribunal that the Claimant's employment had actually transferred to another Respondent.
- Successfully advising on who to pursue in a complex claim under TUPE in circumstances where the Respondent had attempted to conceal the same. This involved advice on specific disclosure applications so as to ascertain the true position.
- A complex case involving allegations of age and disability discrimination upon the background of a complex TUPE issue. In 2016 Sarah succeeded in an application to bring new claims against a new Respondent some 4 years post-issue (and some 2 years following an alleged TUPE transfer).
- Successfully applying to add a new respondent 18 months out of time when a TUPE issue arose in disclosure.

## Discrimination

Sarah is frequently instructed in complex discrimination cases acting on behalf of both Claimants and Respondents across all protected characteristics.

- *Lamb v The Business Academy Bexley* UKEAT/0226/15/JOJ: Sarah acted on behalf of the Respondent before Simler P. The EAT provided clear guidance within the judgment as to the duties of the Tribunal in assessing the pleading of PCPs in reasonable adjustment claims and their application to the facts of the case.
- Sarah secured a finding of direct age discrimination on behalf of the Claimant in relation to the employer's enhanced redundancy scheme which provides for a reduction in financial entitlement the closer an employee is to pensionable age.

- Sarah successfully represented the Claimant against ASDA Stores Limited in his claims of constructive dismissal, disability discrimination (s15, harassment and reasonable adjustments) and victimisation. In addition, following robust cross-examination the Tribunal concluded that the Respondent had subjected the Claimant to heavy-handed and intimidatory disciplinary and capability proceedings.
- Acting on behalf of a large employer (with 70,000 employees) to defend disability discrimination claims (on all bases under the Equality Act) arising from a shift and overtime policy. Sarah was involved preparatory elements of the claim (including how best to operate the policy moving forward) and was instructed to represent the respondent at the final merits hearing [settled].
- Successfully representing the claimant against the National Oceanography Centre, in claims of unfair dismissal and disability discrimination, when he had been dismissed for drawing what the Respondent considered to be 'sexually explicit' or 'pornographic' images in the workplace. Sarah was praised for her ability to adapt the litigation process so as to meet the needs of her client who suffered from a significant mental impairment and greatly struggled with the Tribunal process.
- Sarah acted on behalf of a large health care sector employer who faced complex claims of disability, age and sex discrimination and unlawful deduction of wages by a senior employee. Following cross-examination of the claimant (4 days), all claims were withdrawn. Following withdrawal Sarah persuaded the Tribunal to award costs in the case (and upon instructions limited this to £20,000) against the claimant. In awarding costs, Employment Judge Moore stated that following cross-examination by Sarah just 25 per cent of the claimant's original case stood up.
- Acting on behalf of the claimant against HSBC, Sarah made an application to amend to add a s15 Equality Act 2010 claim on the first day of the hearing. The application was granted and the Claimant's case subsequently succeeded on this allegation. Sarah was described by Employment Judge Russell as 'valiant' in her pursuance of the Claimant's case in her judgment.

## Unfair dismissal

- Sarah successfully represented the Claimant in his claim of constructive dismissal, persuading the Tribunal to conclude that the Respondent had subjected the Claimant to heavy-handed and intimidatory disciplinary and capability proceedings, extreme delay in dealing with his grievances and unreasonably withholding discretionary sick pay.
- Sarah successfully defended a claim of automatically unfair dismissal brought on the grounds of a flexible working request.
- Sarah successfully defended a complex constructive dismissal claim which was made against a large financial services company by a former senior manager.
- Successfully defending a claim that a failure to consider the Claimant for roles within various group companies/subsidiaries in a redundancy situation gave rise to an unfair dismissal by relying on the corporate veil and contractual arguments.

## Whistleblowing

- Sarah was instructed on behalf of two Respondent's in the aerospace industry who are defending complex allegations of automatically unfair dismissal and detriment under the whistleblowing regime.
- Sarah was instructed on behalf of the Claimant in a complex whistleblowing claim against an international leading pharmaceuticals company. Claims related to a systematic and repetitive campaign of detriments which included a demotion, bonus reduction and culminated in dismissal. Once instructed Sarah was able settle the case a significant sum and on favourable terms.
- Sarah was instructed on behalf of a Claimant who was unceremoniously removed from his employment, with immediate effect shortly after he had raised concerns about the lawfulness of his employer's financial reporting and billing to clients [settled on very favourable terms].

## Breach of Contract

- Sarah acts on behalf of employers and employees in injunctive proceedings including those relating to restrictive covenants and undertakings. Sarah regularly accepts instructions to draft such contractual clauses, injunction applications and breach of contract proceedings.
- Acting on behalf of an employer seeking to enforce restrictive covenants contained in both a contract of employment and share purchase agreement. Advice was provided on process, enforceability and alternatives to injunctive proceedings. In addition, the employer received advice on the prospect of pursuing the new employer in addition to the employee.
- Advising on the prospects of pursuing an employer for several alleged breaches of contract including notice pay, misrepresentation and other benefit entitlements.
- Acting on behalf of a Claimant pursuing a breach of contract claim for permanent health insurance.
- Advising on a proposed claim for breach of contract relating to death in service insurance.

## Procedural instructions

- Successfully applying to bring new claims against a new Respondent some 4 years post-issue (and some 2 years following an alleged TUPE transfer).
- *Levers v 170 Community Project* UKEAT/0255/14/RN: Sarah successfully acted on behalf of the Respondent before Langstaff P. in defending an appeal against the Tribunal's assessment of time limits following strike out of the Claimant's claims.
- Securing a costs order of £20,000 after successfully defending complex claims of race, age and disability discrimination and persuading the Tribunal that the Claimant was untruthful.
- Securing a wasted costs order against a Claimant's solicitors of approximately £3,000.
- Successfully resisting the Claimant's application for relief from sanction in respect of an unless order.
- Acting on behalf of a Respondent in a 3 day PHR and successfully striking out all claims on the basis that they had no reasonable prospect of success (which included discrimination).

## Direct Access

Sarah accepts instructions on behalf of Claimants and Respondents on a direct access basis whether that be for representation within legal proceedings or otherwise.

To that end, Sarah has sat as an independent investigatory, disciplinary and appeal officer on behalf of employers (dealing with cases up to director level) and also regularly works alongside HR specialists.

### Case example:

Discrimination (finding of fabricated evidence): *McCoy v Lyndon Property Maintenance Limited*, London Central ET 2016 (Direct Access) – Working in an extremely tight time frame (days) Sarah successfully guided her Respondent client so as to draft statements, make applications to the Tribunal and obtain expert forensic evidence. Sarah then persuaded the Tribunal that justice required the admission of the expert evidence on day 1 of the final hearing (in the absence of prior express permission) and she went on to win the case. In the judgment, the Employment Judge concluded that the claimant's text messages were in fact 'created' for the purposes of misleading the Tribunal and pursuing her case (thus creating ample grounds for a full costs application).

Sarah is able to provide bespoke advice and assistance to Respondents outside of legal proceedings such as drafting, ad-hoc advice, and training (including mock tribunals).

Sarah is able to structure redundancy and TUPE consultations/processes and guide employers so as to ensure that they comply with legal requirements.

For further information about instructing Sarah on a direct access basis please contact 3PB Barristers who will be happy to direct you to either Sarah or the 3PB Clerking team.

## Training

Sarah regularly provides training, seminars, mock tribunals and file surgeries including to national insurers, the NHS and ACAS.

## Articles

[Sarah Bowen](#) summarises the case of ***Kumar v MES Environmental Limited [2022] EAT 60***, in which the EAT determined that a party may apply for a transcript, subject to paying the applicable fee and complying with the associated established protocols.

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[Sarah Bowen](#) analyses ***Guardian News & Media Limited v (1) Dmitri Rozanov (2) EFG Private Bank Limited (Media Lawyers Association Intervening)***, a case in which the EAT applies the Open Justice Principle in granting journalists access to skeleton arguments, witness statements and documents referred to in the judgment.

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*Sarnoff v YZ [2021] EWCA Civ 26*

Specialist employment and discrimination law barrister [Sarah Bowen](#) reviews the case of *Sarnoff v YZ [2021] EWCA Civ 26*.

In this particular case, the Court of Appeal held that an employment tribunal order requiring disclosure by a third party outside of Great Britain was lawful.

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Disability Discrimination in the Employment Tribunal: lessons for education lawyers

Sarah Bowen and Naomi Webber consider two recent appellate decisions (*Khorochilova v Euro Rep Limited* UKEAT/0266/19/DA and *Robinson v DWP [2020] EWCA Civ 859*) in respect of the provisions of the Equality Act 2010 (EqA) in relation to the protected characteristic of disability. Whilst the facts of the cases relate to the employment sector, the same definition of disability applies in the context of education. Accordingly, their principles are directly relevant and applicable to disability discrimination claims in education.

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3PB's specialist employment law barrister Sarah Bowen reviews employment law issues following the ease of lockdown measures during the COVID-19 pandemic.

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COVID-19: Frustration and Contracts of Employment

Sarah Bowen explains how COVID-19 will affect Frustration and Contracts of Employment. Frustration is a common law doctrine where a contract is treated as discharged by operation of law when an event has occurred which renders continued performance impossible, illegal or radically different to that contemplated by the parties when they entered into the contract.

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COVID-19 Q&A: The Coronavirus Job Retention Scheme and potential Equality Act issues arising from it

Thank you to the 180 individuals who attended 3PB Employment & Discrimination Group's first webinar on 23rd April 2020.

We intend to provide another webinar on 2nd June 2020.

This article supplements the webinar that we provided and accordingly reproduces (albeit in more detail) the commentary provided on the day. As anticipated, the government's guidance has been revisited and supplemented on several occasions since the webinar! Therefore this article has been updated to take account of revisions up to 1st May 2020. In addition, we have included further considerations and detail on matters raised in some of your questions.

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Employment Law - Coronavirus Guidance and Resources by Sarah Bowen.

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3PB's specialist employment law barrister Sarah Bowen reviews equality and discrimination in employment during the COVID-19 Pandemic.

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Third party harassment: Sarah Bowen reviews *Bessong v Pennine Care NHS Foundation Trust* UKEAT/0247/18/JOJ

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Contractual redundancy pay and the statutory cap: Sarah Bowen reviews *Ugradar v Lancashire Care NHS Foundation Trust* UKEAT/0301/18

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Lies in good faith and the burden of proof in discrimination claims: Sarah Bowen analyses *Base Childrenswear Limited v Otshudi* [2019] EWCA Civ 1648

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Discrimination – Religion and belief – removal for expressing faith-based objection to same-sex adoption. Sarah Bowen analyses *Mr Richard Page v NHS Trust Development Authority* UKEAT/0183/18/DA

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3PB barristers Lachlan Wilson and Sarah Bowen analyse the latest employment law cases, covering:

- Harassment – *Evans v Xactly Corporation Ltd* UKEATPA/0128/18LA
- Whistleblowing: *Timis & Sage v Osipov* [2018] EWCA Civ 2321
- Direct Discrimination – *Lee v Ashers Baking Company Ltd and others* [2018] UKSC 49
- Good faith/Bad faith – *Saad v Southampton University Hospitals NHS Trust* UKEAT/0276/17/JOJ
- Amendments – *Pruzhanskaya v International Trade Exhibitors (JV) Ltd* (2018) UKEAT/0046/18/LA
- Philosophical Belief – *A Gray v Mulberry Co (Design) Ltd* (2018) UKEAT/ 0040/17/DA
- Practice and Procedure – *X v Y Ltd* (2018) UKEAT/0261/17/JOJ
- Vicarious liability – *Bellman v Northampton Recruitment Ltd* [2018] EWCA Civ 2214

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In the balance: An employer's right to monitor communications versus employees Convention Rights in light of *Burbalescu v Romania* [2017] ECHR 754 (5 September 2017)

3PB Employment barrister Sarah Bowen considers whether employers can lawfully monitor employees communications following the ECHR's most recent decision in *Burbalescu v Romania* [2017] ECHR 754 (5 September 2017)

In her latest article, 3PB Employment barrister [Sarah Bowen](#) examines the ECHR's final decision in *Burbalescu v Romania* and its impact on private and public employers who chose to monitor staff communications.

Sarah provides a useful summary of the principles relevant to this complex area of law and its impact on convention rights.

To read Sarah's article, please click below.

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The Tribunal Fees Order is unlawful and discriminatory.

3PB Employment barrister Sarah Bowen reviews the Supreme Court's landmark decision in R (on the application of UNISON) v Lord Chancellor [2017] UKSC 51 that Tribunal fees are unlawful and discriminatory and considers what might happen next!

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3PB Employment barrister Sarah Bowen provides a case law update covering the past month. Sarah's update includes: Supreme Court overturns the Court of Appeal and provides clarity on Indirect Discrimination in two cases: Essop and others v Home Office (UK Border Agency) and Naeem v Secretary of State for Justice [2017] UKSC 27; EAT refuses to apply and contradicts previous EAT authority (Agarwal v Cardiff University, Cardiff and Vale University Local Health Board UKEAT/0210/16/RD (22 March 2017)) in relation to the Tribunal's jurisdiction to construe contracts of employment: Weatherilt v Cathay Pacific Airways Limited UKEAT/0333/16/RN (25 April 2017) and Multiple choice test amounts to indirect discrimination: Government Legal Service v Brookes UKEAT/0302/16/RN

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## Recommendations

Sarah Bowen is a skilled employment and discrimination law barrister who is often instructed to handle equal pay, unfair dismissal, TUPE and breach of contract claims. She regularly acts for local authorities, the NHS and education sector clients. Strengths: "Sarah will always be very well prepared, whilst being pragmatic and commercial."

### **Chambers UK 2024/**Employment/Midlands Bar

Strengths: "Sarah is very knowledgeable and up to date. She is ahead of us in knowing the shape of the case and where it is going."

"Sarah is incredibly thorough; she picks up on things most of us would miss. She is very sensible commercially, and is able to call out the legal risk, and how outcomes might affect the business and the wider sector."

### **Chambers UK 2024/**Employment/Western Bar

Sarah Bowen is a skilled employment and discrimination law barrister who is often instructed to handle equal pay, unfair dismissal, TUPE and breach of contract claims. She regularly acts for local authorities, the NHS and education sector clients. Strengths: "She provides good, clear communication and is also good with clients."

"She is very user-friendly, accessible, and gets great results."

### **Chambers UK 2023/**Employment/Western Bar

Strengths: "She is probably our go-to person, who is technically excellent with a real ability to dissect complex matters, and a really excellent advocacy style that is non confrontational but gets the point across." "She has excellent attention to detail and she really does go above and beyond."

Recent work: Successfully represented VIVID Housing in resisting an application to extend time in respect of multiple claims which were brought out of time but were subject to the generous just and equitable test.

### **Chambers UK 2022/**Employment/Western Bar

Strengths: "She is bright and enthusiastic but also friendly and down to earth."

Recent work: Successfully defended Somerset County Council in a complex unlawful deduction of wages and breach of contract claim. Successfully argued that the entire claim was out of time and it was dismissed by the tribunal.

### **Chambers UK 2021/**Employment/Western Bar

'Sarah is incisive and very personable in the court room. She has a compelling manner with judges.'

### **Legal 500 2024/**Employment/Leading Juniors/London Bar

'Sarah is very thorough in her preparation and is very good with supporting witnesses. She is quick on her feet, and her cross-examination is robust.'

**Legal 500 2024**/Employment/Leading Juniors/Midlands Circuit

Sarah Bowen, 'skillful at getting to the nub of an issue', regularly handles a wide variety of discrimination cases. 3PB 'Sarah is a superb lawyer. Frankly, she doesn't have weaknesses.'

**Legal 500 2024**/Employment/Leading Juniors/Western Circuit

'A talented barrister and a consummate professional. Sarah is very approachable and goes out of her way to explain complex matters in a language the lay person can understand.'

**Legal 500 2023**/Employment/Leading Juniors/Western Circuit

'Sarah's drafting and written opinions are a particular strength of hers. She is also a solid advocate, who is persuasive and credible.'

**Legal 500 2023**/Employment/Leading Juniors/London Bar

'Sarah is very knowledgeable, a good all-rounder, very pragmatic and commercial, and extremely helpful - she will always make herself available to assist.'

**Legal 500 2022**/Employment/Leading Juniors/London Bar

'Sarah is an approachable and confident advocate with a meticulous eye for detail.'

**Legal 500 2022**/Employment/Leading Juniors/Western circuit

'Provides pragmatic advice and is approachable to clients and solicitors alike. She takes a genuine interest in each case and carries out a thorough review of the facts to get the best results for the client through effective representation.'

**Legal 500 2021**/London Bar

'Sarah is an excellent practitioner of the highest quality. Very client focused, with care and consideration to all she comes in contact with. She is one of our favourite barristers.'

**Legal 500 2021**/Western Circuit

Sarah Bowen 'She is a fantastic advocate and is really able to pick out the strengths in complex cases with lots of allegations.'

**Legal 500 2020**/Employment/Leading Juniors/London Bar

Sarah Bowen 'An excellent practitioner with outstanding advocacy.'

**Legal 500 2018/19**/Employment/Leading Juniors/London Bar

Sarah Bowen 'Very good at dealing with complex cases.'

**Legal 500 2017**/Employment/Leading Juniors/London Bar

'Sarah Bowen - She understands the demands placed upon solicitors and the limitations they sometimes have to work within.'

**Legal 500 2016**/Employment/Leading Juniors/London Bar

## Academic qualifications

- The College of Law, London, Bar Vocational Course (VC)
- The College of Law, G. Dip. Law
- University of Leicester, BA (Hons) History, 2:1

## Professional qualifications & appointments

- part-time judge in the Special Educational Needs & Disability Tribunal (SEND)

- part-time employment tribunal judge (allocated to the South West region)

## **Professional bodies**

- Employment Law Bar Association (ELBA)
- Employment Lawyers Association
- Industrial Law Society