



# 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 is currently 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.

## Publications

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

[View Publication](#)

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

[View Publication](#)

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.

[View Publication](#)

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!

[View Publication](#)

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: Weatherill 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

[View Publication](#)

## Recommendations

Sarah is recommended by the **Legal 500 Bar Directory 2020** for her expertise in the London Bar.

Employment – Leading juniors – Ranked Tier 3

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

Sarah is recommended by the **Legal 500 Bar Directory 2018/19** for her expertise in the London Bar.

Employment – Leading juniors

Sarah Bowen `An excellent practitioner with outstanding advocacy.'

Sarah is recommended by the **Legal 500 Bar Directory 2017** for her expertise in the London Bar.

Employment – Leading juniors

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

Sarah is recommended by the **Legal 500 Bar Directory 2016** for her expertise in the London Bar.

Employment – Leading juniors

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

## 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 bodies

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

## Direct Access

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