

12

King's Bench Walk

Carolyn D'Souza

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AREAS OF EXPERTISE

Employment & Discrimination, Mediation

Carolyn has a specialist employment practice and is Head of the 12KBW Employment and Discrimination Team.

Carolyn handles all aspects of employment law in both the employment tribunal and at appellate levels. Carolyn has a particular strength in the field of whistleblowing, and has handled cases across multiple sectors, including financial services, healthcare, education, retail and union sectors.

She also deals with the interface between employment law and regulatory/disciplinary matters and information rights/data protection law.

Carolyn represents both employers and employees: from SMEs and blue chips to local authorities; from trade unions to senior executives. She has been recommended by the legal directories over a number of years, most recently by the Legal 500 (2020) who noted that "her knowledge of whistleblowing law is vast". In previous editions, Carolyn has been commended for having "exceptional client skills", "a dextrous touch", "fights a good fight when it comes to advocacy" and comes "particularly recommended for discrimination matters".

Whoever she represents, Carolyn can be trusted to provide effective, prompt, and commercially sound advice, and she works highly collaboratively with her solicitors and clients to ensure the best service.

Carolyn is an accredited mediator, both in the UK (accredited by the Bar Council) and in New York (accredited by New York Peace Institute). The focus of her mediation practice is employment and workplace disputes.

Carolyn was a Fulbright Scholar to Harvard Law School in 1995, and Treasury Counsel from 1999-2005.

After a 6 year career break, Carolyn returned to full-time practice in 2016.

Employment & Discrimination

WHISTLEBLOWING

Carolyn has significant experience in cases involving dismissal or detriment for having made protected disclosures. Examples of Carolyn's recent work in this area include –

(2018) Representing a high profile financial services whistleblower, Sally Masterton, in a second settlement process with

Lloyds Banking Group. Please click [here](#) for the joint press statement released by the parties.

(2018) Successfully representing a senior FX trader in his s.103A ERA claim against his former employer, relating to disclosures of a box ticking culture and other regulatory concerns. This case has been widely reported in the press, including in *The Times* and the *Financial Times*, both at first instance and on appeal.

(2017) representing a senior investment banker in a regulatory malpractice claim

(2017) representing a head teacher dismissed in circumstances where she had alleged breach of the regulations relating to the Teachers' Pension Scheme

(2017) Representing a Company Secretary in the luxury retail sector in his interim relief application to restrain dismissal in light of his protected disclosures relating to non-compliance with the Companies Act and reporting obligations

(2017) Achieving settlement in a case pending at the EAT involving disclosures relating to endemic bullying within a university

(2016) Representing a consultant obstetrician in his whistleblowing claim against an NHS Trust

(2016) successfully representing an estate agent in his claim for whistleblowing detriment against his former employer, linked to allegations of misrepresentation of market share on online platforms to enhance bonus entitlement.

(2016) *Reuby v. Unite the Union* – representing the claimant (a union education tutor) in this high profile whistleblowing and trade union activities case, relating to the Union's alleged use of zero hours contracts for its tutors. The case settled during the hearing. For press coverage of the case, see *The Times*, *The Evening Standard*, *The Daily Mail*.

(2015) *Reuby v. Unite the Union* – representing the Claimant at a publicised preliminary hearing on employment status. For press coverage of the case, see *Evening Standard*; *The Sun*; *The Daily Mail*; *The Express*).

(2009) *X v. Y* – Carolyn represented the Claimant in this very high value sex/maternity discrimination, equal pay and whistleblowing claim. The Claimant was Director of Equity Capital Markets for a large investment bank. She was made redundant following her return from maternity leave.

DISCRIMINATION

Carolyn has handled countless discrimination cases over the years, and she appears both at the Tribunal and appellate levels. She has litigated all types of protected characteristic, and is also experienced in the sphere of equal pay/equality of terms. She is an approachable and empathetic lawyer, who earns the trust of her clients and enjoys working collaboratively with them.

Examples of her cases include –

(2019) Sex discrimination case involving positive action in relation to promotion of women within a financial services institution

(2018) Equal pay case for a female service manager assigned to a public sector contract to which the Two Tier Workforce Code applied, which was the subject of a job evaluation study. Material factors of TUPE and market forces probed for indirect and direct sex taint.

(2017) Age discrimination hearing for an IT director in the retail sector

(2016) Age discrimination/part-time worker discrimination hearing for a digital officer employed by an asset manager

(2012) Representing the claimant, a senior HR officer, in a case involving territorial jurisdiction of disability discrimination legislation for an injury sustained overseas whilst on assignment, and overlapping issues of personal injury and discrimination in two jurisdictions. US attorneys and UK lawyers collaborated on the case.

Patel v. Walkers Crisps Ltd (UKEAT/0177/09) Representing Walkers Crisps Ltd, part of the Pepsico group, defending a union backed group action of indirect age discrimination.

A v Local Authority: successfully representing claimant in her claim for indirect sex discrimination and unfair dismissal against a London events centre.

C v M (2007): representing a specialist registrar in her sex discrimination claim against a hospital, arising out of non-selection for consultancy.

H v B: representing the Claimant, a Senior Vice President in a telecoms company, in her multimillion pound claim for disability discrimination and unfair dismissal.

Khudados v Salford Hope NHS Trust (2005): representing 4 of 8 Respondents in race and sex discrimination claims arising out of the Claimant's non-selection for consultancy in neurosurgery. On appeal – *Khudados v Leggate & Others* [2005] IRLR 540, [2005] ICR 1013

OTHER NOTABLE EMPLOYMENT CASES

(2017) *Cosmeceuticals Ltd v. Parkin* (UKEAT/0049/17): Successful appeal in the EAT on the question of the interrelationship between s.97 ERA (statutory definition of effective date of termination) and common law dismissal, involving consideration of *Gisda Cyf v. Barratt*, *Sandle v. Adecco* and *Hogg v. Dover College*

Strand Transport Services v. Whitworth [2009] EWCA Civ 858 – successfully resisting an appeal on questions of adequacy of reasons and Polkey

BT Plc v Hawley (EAT/0028/06): consideration of the circumstances in which an employer can withdraw an admission of disability discrimination.

Arwadi v Hapag-Lloyd (EAT/1555/06): appellate consideration of ET acceptance procedures, Rule 3(9) and the statutory grievance procedure.

Khudados v Leggate & Others [2005] IRLR 540, [2005] ICR 1013: guideline authority on applications to amend Notices of Appeal in the EAT.

TGWU v TVR Engineering Ltd (TUR1/371/[2004]), Central Arbitration Committee: representing TVR in relation to the Union's application for recognition at the Blackpool plant.

Other examples of Carolyn's notable advisory work include:

- Advising a major insurance company on the interpretation of 'disability' in the 6th edition of the Ogden Tables.
- Advising a local authority on the equal pay implications of an Arms Length Management Organisation (ALMO)
- Advising a government body on the construction of the National Minimum Wage Act, and its applicability to agricultural workers;
- Advising an asbestos manufacturer on the terms of a general scheme of compensation for former exposed employees

Mediation

Carolyn is a qualified mediator and has particular expertise in employment related cases.

Qualifications

Harvard Law School (LLM)
University of London (LLB) (First Class Hons)

Appointments & Memberships

1999-2005 Treasury Counsel 'C' Panel

Employment Law Bar Association

Employment Lawyers' Association

Directories

Over her career, the directories (Chambers & Partners and the Legal 500) have said about Carolyn:-

"Her knowledge of whistleblowing law is vast; her strengths lie in being able to quickly build a rapport with clients and her ability to work collaboratively in shaping a case."

"She has acted in a number of high profile cases for Claimants of late" and "she is particularly recommended for discrimination matters"

Carolyn has *"exceptional client skills"* and *"wins favour for being direct and not a person to blind one with legal jargon"*

Carolyn *"fights a good fight"* when it comes to advocacy and is noted for her particular strength in discrimination matters.

Carolyn is *"confident and assertive"* and *"has a dextrous touch"*.

Publications

2019 and 2010 – Contributing author of chapter on TUPE for Occupational Illness Litigation (Sweet & Maxwell)

Contributing Editor – the Employment Law volume of the Encyclopedia of Forms and Precedents (2000, Sweet & Maxwell)

Author – Bulletin on the Human Rights Act (1998, Butterworths)