



Sally Robertson

Year of Call: 1995

Call Clerk on 020 7827 4000

PRACTICE AREAS

Discrimination & Equality | Employment | Regulatory

HIGHLIGHTS

Co-edited "Discrimination in Employment: a claims handbook", published by the Legal Action Group in 2013. Member of ELA's Employment Law Oversight Committee

OVERVIEW

Sally Robertson specialises in the full range of discrimination and employment law, both substantive and procedural, as well as related regulatory and public law including human rights, judicial review, equality duties and social security. She has advised and represented both claimants and respondents from most

employment sectors, including the offshore oil industry, but with particular experience of not-for-profit, local authority, education, housing and health settings. Sally brings to her practice experience of working within and managing organisations in the not-for-profit sector.

Her local authority practice ranges from all types of discrimination (often in the context of restructuring) to TUPE (including multi-generation and back-in-house transfers, service provision changes and the impact of trade disputes) and large-scale deductions from wages cases. Her discrimination work includes services, goods and facilities cases, predominately disability-related, as well as those involving procurement and wider public law matters. Governance issues also feature.

Her discrimination practice covers all strands under the Equality Act 2010 but recently has predominately addressed disability, sex, and pregnancy and maternity discrimination, along with related part-time workers discrimination and working time issues and the European and international dimension. Non-employment discrimination includes exploring the limits of judicial immunity. She is interested in the effect of biological norms in expanding the scope of no-comparator and criterion-based discrimination beyond the traditional. Her practice has been in settings ranging from a gurdwara and an abbatoir, to COMAH sites, financial institutions and large multi-national organizations.

Her whistleblowing practice has often concerned governance, including compliance with regulatory and funding requirements, as well as a range of health and safety issues. For example, in hard-fought litigation described as 'truculent' by the Employment Judge, she defended successfully a housing association against damaging allegations made by two former senior executives that it had acted unlawfully and in breach of regulatory requirements (ultimately, costs were agreed by the claimants). On costs, she has recent experience of both claimant and respondent perspectives, as well as defending representatives against wasted costs orders.

She is accustomed to dealing with the sensitive area of safeguarding, whether of vulnerable adults or children, including children in schools. As well as dealing with employment, whistleblowing and discrimination issues in the context of safeguarding, she has experience of the related regulatory issues and has represented registrants in the Health and Care Professions Council's

Conduct and Competence Committee.

Ulterior motive, potentially career-threatening and constructive dismissals are also a feature of her practice. Pro-bono work includes migrant domestic worker cases.

Sally also has an active practice in social security law, which includes helping train Free Representation Unit volunteers. In *Wade v N Yorkshire Police Authority*, she was successful in establishing that the law on statutory maternity pay does give women on other types of leave the right to choose when their SMP commences, giving them a longer time overall on paid leave.

Her practice includes industrial injuries benefits and housing benefit, where her experience as a specialist goes back to her work as a researcher, trainer and paralegal from the mid-1970s when she worked for the Welsh Consumer Council, Newham Rights Centre (an East London law centre) and Disability Alliance (the national campaigning organization, now part of the merged Disability Rights UK) where she wrote thirteen editions of the Disability Rights Handbook.

More recently, Sally has contributed chapters to and is one of the four co-editors of the Legal Action Group's *Discrimination in Employment: a claims handbook* (April 2013).

Crossover cases involving mental health / human rights / disability discrimination / social security issues, are also a feature of her work, including cases on goods and services. She particularly welcomes disability discrimination cases raising mental health issues as these draw on her specialist background.

APPOINTMENTS AND MEMBERSHIPS

ELBA, ELA, DLA, ILS

Sally is a member of ELA's Employment Law Oversight Committee and on its Family Rights working party. She was part of the ELA sub-committee responding to the consultation on the simplification of tax and national

insurance treatment of termination payments.

Volunteers for ELAAS, FRU and the Bar Pro Bono Unit

PUBLICATIONS AND TRAINING

Disability Rights Handbook from 6th to 18th editions

Co-author Recent Developments in Social Security Law, since 1995, a six-monthly series for Legal Action

Her notes for an ELA course on Whistleblowing Law and Practice (December 2011) are available [here](#).

Contributed chapters to Family Rights at Work: a Guide to Employment Law (Jordans, 2012)

Contributor to and one of four co-editors of Legal Action Group's Discrimination in Employment: a claims handbook (April 2013)

Legal Action, December 2012 - article on Employment Tribunals: striking out claims

Legal Action, March 2013 - article on Implications of whistleblowing reforms

Westlaw UK Insight, 2013, 2014, 2015 - articles on Pregnancy and Maternity Discrimination; Maternity Leave, Maternity Pay and Parental Leave

PLC Magazine, April 2014 - news article on Shared parental leave and pay: the simple made complex? A copy of the article is available [here](#). This article was first published in the April 2014 issue of PLC Magazine
<http://uk.practicallaw.com/resources/uk-publications/plc-magazine>

Finance for Independent Schools, FIS Magazine - 2014, 2015 - articles on Shared Parental Leave, Pregnancy Discrimination and the Fit For Work Service

Free Representation Unit - up to 3 days a year training volunteers

Discrimination Law Association Conference, October 2013 - facilitating workshops on disability discrimination

Discrimination Law Association advisers' training, April 2014, with Catherine Casserley - a practical approach to discrimination in provision of services, goods and facilities.

QUALIFICATIONS

BA Hons Philosophy & Politics (Reading)

MSc Logic & Scientific Method (London School of Economics)

HIGHLIGHT CASES

Talbot v Costain Oil, Gas & Process Ltd UKEAT/283/16 Represented female engineer on appeal; agency contract at a nuclear power station terminated after 12 weeks. EAT set aside the ET's dismissal of her claims of sex discrimination and/or harassment, remitting her whole claim for rehearing by a fresh tribunal. Useful integration of the criminal and civil non-fragmented approaches to fact-finding and inferring discrimination.

Risby v London Borough of Waltham Forest UKEAT/318/15 discrimination arising from disability; concurrent causes: temper and disability - had he not been a wheelchair user, could not have been excluded from a seminar, so would not have lost his temper

A v L represented local authority in defending a 'recruit to stay' redundancy exercise raising pregnancy and maternity discrimination and the issue of the extent to which the Maternity and Parental Leave etc Regulations implement the Pregnant Workers Directive.

K v O representing claimant in constructive unfair dismissal, age and sex

discrimination claims relating to how the employer handled claimant's menopause-related symptoms; includes argument on the admissibility of an offer of a settlement agreement because of improper behaviour.

R (Kemble Care LLP & others) v Herefordshire Council 9.7.14 domiciliary care; procurement exercise; consultation to develop a framework agreement, including a cap on hourly rates for delivering domiciliary care; compliance with public sector equality duty; resisted successfully a renewed application for permission to bring judicial review proceedings.

Thajudeen v Deeside (Guernsey) Ltd (1), Vroon Offshore Services Ltd UKEATS/0049/12 public interest disclosure; off-shore oil and gas industry; tripartite arrangement; employee of R1; review, whether R2 also an 'employer' but within s.43K ERA and for s.47B purposes only; remitted for tribunal to find facts. On remission to the same tribunal, the ET permitted an amendment claiming detriment against R2 and restored R2 to the case.

Cossington v C2C Rail Ltd [2013] All ER (D) 304 (Nov) dismissal of train driver; finding of wrongful dismissal upheld; finding of fair dismissal set aside, inadequate reasons, remitted to same ET.

Wade v North Yorkshire Police Authority & another [2011] IRLR 393 (Upper Tribunal: statutory maternity pay)

Anwar v Tower Hamlets College [2010] All ER (D) 101 (Nov) (EAT: disability status, assessment of substantial and long-term effect)

Langston v Department for Business Innovation & Skills [2010] All ER (D) 36 (Sep) (EAT: contributory fault, failure to consider whether or the extent to which conduct was culpable and blameworthy given findings on medical issues)

Saini v All Saints Haque Centre [2009] IRLR 74 (EAT: associative religious discrimination)

N v London Borough of Lewisham [2009] All ER (D) 74 (Aug) (EAT: whether the extension of a probationary period was 'relevant disciplinary action')

Asda Stores Ltd v Green [2009] All ER (D) 132 (Aug) (EAT: unfair dismissal,

reasonableness of investigation and substitution)

Alexander v London Borough of Hackney EAT/650/04, 26.10.05 (procedure, bias, cross-examination on appeal)

CH/1672/2007 Social Security Commissioner, 1.4.08: Housing benefit, meaning of income for HB purposes, whether it included the whole of a pension or the net sum after paying part under a High Court order to the pensioner's wife - held, net amount only is included.

Secretary of State for Work and Pensions v Wilson [2006] 1 WLR 2682 (CA: national insurance number requirement, whether applies to partner without recourse to public funds)

Ramsden v Secretary of State for Work and Pensions R(DLA) 2/03 (CA: disability living allowance, care component, scope of attention requirement, needs arising from faecal incontinence)

R (Anayet Begum) v Social Security Commissioners [2002] EWHC 401 (test for judicial review of refusal of leave to appeal where the grounds relied on were not before the Commissioner)