



# Sally Robertson

Year of Call: 1995

Call Clerk on 020 7827 4000

## PRACTICE AREAS

Arbitration & Mediation | Discrimination & Equality | Employment | Professional Discipline

## HIGHLIGHTS

Co-edited "Discrimination in Employment: a claims handbook", published by the Legal Action Group in 2013.

## OVERVIEW

Sally Robertson specialises in the full range of discrimination and employment law, both substantive and procedural: from interim relief to re-engagement, from time limits to costs and open justice issues. She also covers related regulatory and public law, including human rights, judicial review, equality

duties and social security.

She has developed her core practice into work on investigations, mediation and most recently advising a local authority sub-committee constituted under the statutory Chief Officer Disciplinary Procedure.

She has undertaken investigations into grievances raised in legal, banking and university settings. She has advised and represented both claimants and respondents from most employment sectors, including engineering and 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. This helps give her a wider perspective, useful when undertaking independent investigations and addressing disciplinary or grievance issues.

Her local authority practice ranges from advising 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 trade union detriment 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.

She has acted as legal adviser to an Appointments (Investigation and Disciplinary) Sub-Committee considering the threshold test under the JNC Model Disciplinary Procedure.

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. Recently, she contributed to the Cloisters submission to the Women and Equalities Committee on menopause in the workplace.

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.

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.

On procedural issues, she has experience of both claimant and respondent perspectives, as well as defending representatives against wasted costs orders.

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, 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.

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. She has acted as a mediator in such cases.

## APPOINTMENTS AND MEMBERSHIPS

### Memberships

ALBA

ELBA

ELA

DLA

ILS

Sally has been a member of several ELA sub-committees, including its Covid sub-committee, its Employment Law Oversight Committee, its Family Rights working party and the sub-committee responding to the consultation on the simplification of tax and national insurance treatment of termination payments.

## PUBLICATIONS AND TRAINING

### Publications

Co-editor with Nathaniel Caiden of Cloisters Toolkit: Returning to work in the time of Coronavirus (10th edition) since its 6th edition in June 2020

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

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

Contributed chapters to Family Rights at Work: a Guide to Employment Law

(Jordans, 2012)

Westlaw UK Insight, from 2013 to date - articles on Pregnancy and Maternity Discrimination; Maternity Leave, Maternity Pay and Parental Leave

Independent Insight and its predecessors - aimed at Independent Schools, articles since 2014 have covered shared parental leave pregnancy discrimination, the Fit For Work Service, good diversity practice, dress codes, constructive knowledge of disability, whistleblowing and suspension.

Discrimination Law Association - contributes regularly to the Bulletin

## QUALIFICATIONS

BA Hons Philosophy & Politics (Reading)

MSc Logic & Scientific Method (London School of Economics)

## HIGHLIGHT CASES

Santander UK plc v Bharaj [2021] ICR 580, UKEAT/75/20 - specific disclosure - not open to an ET to order disclosure of documents that would not be disclosable in accordance with CPR rule 31.6, so documents had to be likely to support or adversely affect the case of a party, be necessary for the fair disposal of the issues between the parties, and not be privileged. ET had erred in making no determination about the relevance of the documents sought, instead requiring the respondents to reconsider the matter.

Ijegede v Signature Senior Lifestyle Operations Ltd UKEAT/0068/21 (EA-2020-000047-AS) - tribunal procedure - ET erred in revisiting an agreed list of issues, thereby excluding part of claimant's case - that part remitted to a fresh tribunal.

Home Secretary v Parr [2020] IRLR 422, UKEAT/0046/20 - open justice; successful in an application to the full ET to have a part privacy order revoked

and in defending that decision on the Home Secretary's appeal to the EAT. The earlier order had been expressly subject to review by the full Tribunal. There was also a material change of circumstances, including that at the earlier PH, the claimant had been unrepresented and the EJ had been given authorities on one side of the question only. On the merits, the full ET found that if the information sought to be protected was excluded from public view “the public will be simply unable to understand the central argument and basis for the tribunal's decision either way. The principle of open justice will be completely defeated.”

Grange v Abellio Working Time [2019] ICR D2 - rest breaks; represented C on second appeal; jurisdiction, time point taken for first time at remitted hearing after first appeal; whether ET exceeded the scope of remission from EAT. Successfully resisted cross appeal on ET's entitlement to award damages in the absence of expert medical evidence.

Patel & Metcalf v Surrey County Council [2018] All ER (D) 77 (Mar) - represented P on appeal; whistleblowing in context of occupational health and fire fighters; fundamental errors by ET resulted in remission of whole claim.

Talbot v Costain Oil, Gas & Process Ltd [2017] ICR D11, 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) EAT - 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).