



# Jane Russell

2004

## Areas of Practice

Jane practises in Employment and Discrimination law. She has a particular focus on appellate work, complex or high-value claims. She acts for both Claimants and Respondents.

She is comfortable working in a City environment, having practised as a solicitor in the city for 6 years prior to coming to the Bar, and has an interest in issues related to whistleblowing and restrictive covenants (either in employment contracts or in transaction documents). In 2009, she was led by Martin Griffiths QC in a high-value whistleblowing case (see [Driscoll v Deutsche Bank](#)) and was led by him in 2008 in a complex, high-value High Court restrictive covenant case (see [Tim Corrie](#) case below).

Jane also has an interest in the “newer” discrimination strands and in the extension of the “older” strands to new areas. In January 2010, she appeared before the EAT for an individual who complained that his line manager had unlawfully discriminated against him and harassed on the grounds of sexual orientation when she “outed” him to colleagues in a new office (see [Grant v HM Land Registry](#)). She also appeared before the EAT in November 2009 in one of the first IVF pregnancy discrimination cases (see [Sahota v Home Office](#)).

She is as interested in advising in policy-related employment matters as she is appearing in front of courts and tribunals. In December 2008, she was selected by the United Nations Development Programme to review the gender equality laws of Armenia. In October 2008, she gave a lecture to the Bulgarian Commission for the Protection against Discrimination and members of the Bulgarian Judiciary about the probative value of statistics in discrimination claims.

## Notable cases

### Whistleblowing

[Driscoll v Deutsche Bank](#) (ET Case No: 2201882/2009)

Led by Martin Griffiths QC and instructed by McKeowns, Jane acted for the claimant in a complex, high-value whistleblowing claim which raised issues of whether the disclosure was protected if it was made in the course of obtaining legal advice (S.43B(4) ERA). (Settled)

### Sexual orientation discrimination

[H M Land Registry v Grant](#) (UKEAT/0232/09/DA) per Langstaff J

## tooks chambers

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Jane was instructed by Russell, Jones & Walker acting for Mr Grant in defending an appeal brought by the Land Registry against the decision of the Birmingham Employment Tribunal that Mr Grant had been unlawfully discriminated against and harassed on the grounds of his sexual orientation. At the heart of the Land Registry's appeal was their contention that, because Mr Grant was already "out" at an office in Lytham, Mr Grant had no reasonable expectation of privacy in relation to his orientation and so it was not direct discrimination or harassment for his line manager to "out" him at a new office in Coventry. For Mr Grant, Mrs Russell argued that the nub of the unlawful conduct was the fact that the line manager took away Mr Grant's choice over how, where and when to come out and that, by doing so, she interfered with his autonomy which is a fundamental value behind the principle of Equality. In addition, she revealed his sexuality as a way of undermining him in the workplace.

Decision awaited.

Grimshaw v Griffin Signs and others (EAT/0299/2008) (Sexual Orientation Discrimination). This case asked the following question: if an intimidating, offensive working environment is created by a series of incidents of harassment, must an employee claim within three months of the last incident, or can the employee rely on the fact that no steps have been taken to change the environment in which the employee works? The Claimant argued that there was a strong case for the latter. The environment doesn't dissipate merely because there are no further incidents.

### ***IVF discrimination***

Sahota v (1) The Home Office (2) Pipkin (UKEAT/0342/09/LA) per Underhill J

Jane was instructed by Thompsons, acting for the appellant, Mrs Sahota who argued that she was directly discriminated and harassed on the grounds of pregnancy because she was undergoing IVF treatment. She relied on the ECJ decision of Mayr v Backerei und Konditorei Gerhard Flockner OHG [2008] IRLR 387 ECJ which established that a dismissal of a woman because she is at an advanced stage of IVF (between the follicular puncture and the immediate transfer of the fertilised ova into her uterus) constituted direct sex discrimination contrary to the Equal Treatment Directive.

She asserted that the IVF treatment be equated with the condition of pregnancy so that the "no comparator" test (established in Webb v EMO Air Cargo (UK) Limited), should be applied not just during the protected period but also in the period immediately prior to implantation, when she was on medication and undergoing tests. She relied on *obiter dicta* from Mayr to support her argument.

### ***National Security***

AB v Ministry of Defence (EA 0101/09) (per Underhill J)

Instructed by Imran Khan and leading Jude Bunting, Jane represented the Appellant, AB, in a case which involved a serving member of the Royal Air Force who claimed he was subjected to racial discrimination and physical and verbal racial abuse from colleagues while serving in Afghanistan in 2007. He took action against his employers - the MoD - by making a formal complaint to an Employment Tribunal.

The MoD, however, responded by making a successful application for the case to be heard in private, due to issues of national security. The claimant challenged this decision on the grounds that it disproportionately interfered with his right to a fair hearing, under Article

6 of the European Convention of Human Rights and the Human Rights Act 1998.

The Employment Appeal Tribunal held part of the hearing will be held in public and part will be held in private. Mr Justice Underhill said that it was “expedient” that any part of the hearing dealing with the issues in Afghanistan be heard in private as there was “a real risk to operations carried out”. However, that part of the complaint dealing with the matters in the UK “if it can be practically dealt with in public should be” on the basis that how the armed forces handles complaints of discrimination should be in public. Underhill J noted that any party seeking to justify a closed hearing bears a “heavy burden” to justify any restriction and that “tribunals should not abdicate their responsibilities as soon as national security is invoked”.

### ***Sex discrimination***

Queen Victoria Seaman's Rest v Ward (UKEATPA/0778/08/MAA (Justice Cox)

Jane was instructed by Webster Dixon and successfully represented the Respondent, Denise Ward, in the Employment Appeal Tribunal following a finding of unlawful sex discrimination from an employment tribunal.

Mrs Ward commenced employment with QVSR on 4 January 2004 as Assistant Operations Manager. On 1 January 2006 DW discovered she was pregnant. The Tribunal found that she had been discriminated against on the ground of pregnancy and she had been automatically unfairly dismissed because she was pregnant. QVSR appealed.

The EAT held that the tribunal had made the right decision and, approving the analysis in English v Thomas Sanderson Blinds LTD [2009] IRLR 206 per Sedley LJ, considered that the correct approach was to ask themselves “the reason why”.

### ***Race Discrimination***

Famy v Hilton UK Hotels Limited (EAT/0639/2005) (Race Discrimination – Failure to Promote)

### ***Disability Discrimination***

Reynolds v Starwatch Limited (ET 1401129/2008 & 1401939/2008) Successful Disability Discrimination. Claimant suffered from cancer and underwent chemotherapy. Claimant won on Disability-Related Discrimination post the decision in London Borough of Lewisham v Malcolm [2007] EWCA Civ 763. Claimant also won her Reasonable Adjustments claim.

Wynn v Multipulse Electronics Limited (ET 2301416/2007) Instructed by Russell, Jones & Walker, Jane successfully appeared for a claimant who was hearing impaired in his claim for Disability Discrimination – Direct, Disability-related and Reasonable Adjustments.

Kelly v Football Association (EAT 0015/2005) Jane appeared for the appellant, who was a football coach, in his disability discrimination case against the Football Association. The point of law which arose was whether the Football Association, as an “other body” had discriminated against him.

### ***Court of Appeal work***

Afolayan v MRCS Ltd and anor, Court of Appeal, (Case No. A2/2008/2155) (Mummery LJ)

Jane was instructed by Webster Dixon and acted for the Respondent, MRCS Ltd before the Court of Appeal in relation to an appeal against the decision of the Employment Appeal Tribunal regarding costs.

Peters v Sat Katar Co Ltd CA [2003] IRLR 574 (Successful claim regarding the rules of procedure – institution of appeal – time limits)

Jane has also acted for publishers, Thames & Hudson, in defending defamation proceedings brought by the family of a former partner of the artist Francis Bacon concerning alleged defamatory passages in a book written about the artist (successful).

### ***High Court work***

Tim Corrie and Duncan Hayes v Peters, Fraser & Dunlop (HC Claim No: HQ08X01394 and HQ08X01257) (Restrictive Covenants) Jane acted for the Claimants in this action against talent agency, PFD. She was led by Martin Griffiths QC. The Claimants contended that restrictive covenants in their employment contracts and in a sale and purchase agreement were unreasonable because they were in restraint of trade. Of interest in this case was that the restrictions were unusual in that they operated as a drag or disincentive because they required the payment of commission. The matter settled.

Jane's other high court experience involves:

- Acting for a large insurance company in injunction proceedings in relation to the enforcement of a restrictive covenant. Working as a junior to Alistair McGregor QC;
- Acting for a senior executive and Internet Service Provider, Freeserve, in defending injunctive proceedings to restrain the executive from breaching confidentiality obligations and notice period/garden leave clauses in his contract of employment (including successfully appearing before Justice Hallett in a directions hearing opposite Paul Goulding QC);
- Acting for a couture fashion retailer, in defending proceedings brought by a senior executive for breach of contract and successfully settling this matter by way of a Part 36 payment (also combined with settlement of tribunal claim);
- Acting for a large courier company in prospective injunction proceedings in relation to the enforcement of a restrictive covenant. Working with Selwyn Bloch QC;
- Acting for a film-maker in pursuing defamation proceedings against Campaign concerning an article entitled "Who's Hot and Who's Not" in which the individual was not mentioned (settled) (working with Anthony Julius);
- Acting for an international airline computer reservation systems company, in obtaining and serving freezing injunction and search order against an ex-employee who had allegedly committed a multi-million pound fraud (settled); and
- Acting for United Norwest Cooperatives Limited, a major retailer, in bringing a multi-million pound fraud action against 10

defendants including trying to trace monies into offshore trust accounts (unsuccessful).

### ***Professional Misconduct cases***

Teacher v General Teaching Council (Unacceptable Professional Misconduct concerning allegations of seriously undermining colleagues and the school. An interesting feature of this case was that the teacher was very committed to equality issues and raised the issue of institutionalised racism at a parents' evening. The school alleged that this conduct formed part of an allegation of gross misconduct and dismissed her. The Tribunal proceedings settled and the GTC imposed the lowest sanction possible.

## Speaking Events and Training, Seminars

- Jane was invited by Michael Rubenstein to contribute to the LexisNexis Labour Law 2010 Conference in March 2010. She spoke about developments in whistleblowing law.
- Jane presented a Webinar for LexisNexis on "Whistleblowing Tactics" in March 2010.
- Jane was invited by the ELA to contribute to its Whistleblowing course in December 2009

Other recent talks include:

- "The Probative Value of Statistics in Discrimination Claims" for the Bulgarian Commission for the Protection against Discrimination, Bulgaria
- "Indirect discrimination and statistics" for the European Academy in Trier, Germany
- Podcasts on sex discrimination and disability discrimination for Russell Jones & Walker Solicitors "The Law Report" educational website ([www.thelawreport.co.uk](http://www.thelawreport.co.uk))

Other topics have included:

- Burden of Proof;
- The 2004 Rules of Procedure;
- Part-time Worker Discrimination and Flexible Working;
- Use of Experts in Tribunals
- Human Rights and Employment Law
- The Working Time Regulations

## What others say

***"Captivating speaker, up'd the tempo of the afternoon!"***

***"Excellent talk, best one, most engaging with good tactical tips".***

Attendees at ELA's Whistleblowing course

***"Jane very much impressed our team with how quickly she got to grips with a complicated High Court case. She was tirelessly hard-working and great to have on board."***

Alex Mizzi and Richard Miskella - Employment department, Lewis Silkin

***"Jane is meticulous, diligent and very client friendly. I have instructed her on many complex matters and not only does she comprehensively prepare and charm our clients, she also appears to charm the Respondents and Tribunal panel into acknowledging and accepting our arguments."***

Charlotte Moore, Employment department, Thompsons

***"Jane impressed with her thoroughness of preparation. She is very pleasant to deal with and deeply committed to diversity issues."***

Samantha Mangwana, Employment department, Russell Jones & Walker

## Societies

Discrimination Law Association  
Employment Law Bar Association  
Employment Lawyers Association  
Honorary member of the American Bar Association's Young Lawyers Division

## Other relevant information

### Background

Jane previously practised as a solicitor and solicitor-advocate for 6 years. She worked in the employment departments at Linklaters and Herbert Smith and, latterly, was Deputy Head of the Employment department at Fisher Meredith.

### Television Appearances

2003 Jane appeared on the Legal Network Television programme regarding the Anti-Terrorism, Crime and Security Act 2001.

### Languages

- French
- German (basic)