



## Harriet Fear Davies

Year of Call: 2007



Harriet's main areas of specialism are General Commercial, Energy & Natural Resources, Employment, and Sport. Harriet came to the bar after a successful career as a journalist and then senior manager in the Media division of Reuters. Her experience means she is quick to grasp commercial realities and, in employment and partnership matters, understands the challenges faced in the working environment. Prior to her practice at the bar Harriet's legal career involved being employed as a Legal Adviser at Ofcom, and time in the legal department at Ofgem. Harriet was described in Chambers UK 2015 as being "exceptionally bright" and is repeatedly praised for her attention to detail.

### Recommendations

Frequently acts for both public and private sector clients. She is particularly experienced in handling matters of unfair and constructive dismissal, protected disclosure and discrimination. She has notable experience of dealing with issues within the energy sector. **"Very approachable and a calm and precise advocate in court."** **"She understands her case well and truly gets to grips with the technical side of things."** Successfully acted for BaxterStorey in response to a claim for constructive unfair dismissal and race discrimination. - *Employment, Chambers UK 2018*

Frequently acts for both public and private sector clients. She is particularly experienced in handling matters of unfair and constructive dismissal, protected disclosure and discrimination. **"Exceptionally responsive and fully appreciative of the impact on a client's business."** **"Always well prepared."** Acted for a consultant surgeon in an unfair dismissal claim against a healthcare trust. The tribunal agreed with Harriet's assessment that the respondent's failure to properly constitute the dismissing panel in accordance with the national policy meant that her client had been unfairly dismissed. - *Employment, Chambers UK 2017*

Chambers UK recommended Harriet as up and coming for employment in the 2015 and 2016 editions.

"Handles both private and public sector claims, and is often instructed in restrictive covenant matters and similar employee competition cases. "She's extremely personable and able. She's got a good perspective on how we work and she gets her hands dirty." "Harriet is very responsive and shows great attention to detail. She is thorough and communicates well." Successfully represented the claimant in *MacGregor v University Hospital Southampton NHS Foundation Trust*, a several-day Tribunal hearing concerning claims of detriment and unfair dismissal as a result of whistle-blowing." – *Employment, Western Circuit, Chambers UK 2016*

"A rising star on the Western Circuit who draws praise for her user-friendly approach. Her growing practice covers all aspects of employment law, on behalf of both public and private sector clients. "She is highly commercial, always prepared and never lets you down – she always goes the extra mile." "Often in employment there can be industry-specific jargon – she can assimilate difficult concepts quickly, and performs well on her feet. She's also exceptionally bright." Successfully represented *Brimheath Developments & Ors* in a case concerning a discrimination claim on the grounds of sex, sexual orientation and disability." - *Employment, Western Circuit, Chambers UK 2015*

### Commercial Litigation

## Commercial Litigation

Harriet accepts instructions in all areas of commercial law and is an experienced litigator appearing in the High Court and the County Court.

Harriet has particular expertise in disputes concerning the provision of utilities (gas, electricity and water) and is regularly instructed by 'Big Six' energy companies on a wide range of matters. See also her profile under the Energy & Natural Resources section below.

Examples of recent commercial work include:

- Acting as junior counsel for one of the groups of Defendants in the Cayman Islands litigation between *Ahmad Hamad Algozaibi and Brothers Company (AHAB) v Al Sanea (and others)* arising out of an alleged fraud in excess of US\$7 billion. Harriet was admitted to the Cayman Bar for the purpose of those proceedings and was in Court in Cayman for many of the 159 days of trial, in particular during cross-examination of witnesses via video-link from Saudi Arabia. Additionally Harriet was the advocate at interlocutory hearings including a successful application for additional security for costs.
- Drafting Points of Claim in relation to an arbitration under the rules of the Electricity Arbitration Association.
- Advising in relation to a potential claim to be made by an overseas distributor against a UK manufacturer of motor vehicles.
- *Fusion Radiators Ltd v (1) Office of Gas and Electricity Markets & (2) British Gas Trading Ltd*: resisting an application for Third Party disclosure in the High Court in an insolvency matter.
- *British Gas Trading Ltd v Abbey Commercial Investments Ltd*: acting in proceedings in the High Court concerning the supply of electricity to a data centre.
- Advising a GP in relation to a partnership dispute including the validity of expulsion notices.
- Drafting a defence and attending a successful mediation in a claim concerning an alleged contract for the provision of mobile phones.
- Advising an aggregate supplier in relation to its contractual obligations.
- Advising organisations on appropriate steps to be taken following breaches of the Data Protection Act 1998 (Harriet often gives talks on the DPA).

Harriet receives instructions in insolvency matters, appearing in the Companies Court and before Bankruptcy Registrars, as well as accepting instructions relating to applications to set aside statutory demands.

Having worked as a Legal Advisor at Ofcom Harriet is familiar with the Ofcom Broadcasting Code and is able to provide advice and prepare written submissions in relation to potential breaches of its requirements, as well as other aspects of Ofcom's licensing regimes. She has also advised in relation to television advertising, including disputes raising issues of Ofcom and ASA regulatory requirements, and gambling licensing.

## Partnership

Harriet has advised, appeared and assisted in a number of partnership disputes including between doctors, construction engineers, and a rock band.

## Banking and Financial Services

Harriet acts and advises in matters concerning financial regulatory issues, breach of contract, misrepresentation, negligence and other areas of law which are frequently engaged in financial services matters, including mortgage

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mis-selling. She has provided strategic advice to a number of mortgage mis-selling claims handling firms, as well as preparing pleadings and advice in specific claims in the County Court, and complaints to the Financial Ombudsman and FSCS. Harriet has had involvement in rare proceedings brought by the Panel on Takeovers and Mergers and in preparing for LSE/AIM disciplinary proceedings.

Other examples of work include:

- *A v Co-operative Bank plc*: representing the provider of an investment policy at an application for summary judgment and to strike out the claim on limitation grounds, where issues of secondary limitation arose.
- Advising a policy provider in the context of a critical illness claim.
- Advising a widow in relation to death in service entitlement where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) were engaged.

**Harriet also has experience of and advises and acts in insurance matters.**

## Energy & Natural Resources

Harriet's first legal experience relating to energy was gained whilst working in the legal team at Ofgem when she advised on a number of matters relating to the supply and distribution of gas and electricity. Since then, Harriet has developed a successful practice as a specialist in energy-related debt recovery and is regularly instructed by 'Big Six' energy companies. She is instructed in High Court and County Court proceedings, appearing in trials, strike out and summary judgment applications, injunction hearings, and other interlocutory matters.

Additionally Harriet has particular expertise in warrants of entry issued pursuant to the Rights of Entry (Gas and Electricity Boards) Act 1954. She has appeared in applications in Magistrates' Courts, and injunction hearings where respondents have sought to restrain the use of warrants. Her work in this respect has related to both commercial and domestic properties, including where 'freeman'-type arguments are run.

Harriet's knowledge of insolvency law means she is able to advise in matters crossing over into that area, including for example where directors have created 'phoenix' companies to avoid energy-related debt, or there have been transactions at an undervalue. She also provides advice on the statutory and licensing regimes.

Other energy-related disputes in which Harriet has been involved include those relating to contracts entered into concerning self-generated measures and the Electricity and Gas (Energy Companies Obligation) Order 2012, and the Green Deal. Also, contractual issues relating to the provision and installation of equipment for generating electricity and to benefit from feed-in tariffs, for example wind turbines and solar panels, and a high value claim concerning energy trading.

Harriet also has experience in advising in water matters and the Water Industry Act 1991.

## Employment

Employment law forms a significant part of Harriet's practice. She regularly appears on behalf of claimants and respondents in Employment Tribunals as well as receiving instructions in employment-related matters in the County and High Courts. Clients praise Harriet's attention to detail and high levels of preparation, as well as her effective cross-examination skills.

Harriet's previous experience as a manager, including handling **disciplinary and capability issues, redundancy selection** and negotiations with **trade unions**, benefits her work as a barrister, in that she is very aware of the

challenges faced by employers and employees in the workplace.

In 2014 she was led in the Court of Appeal in *Agbenowossi-Koffi v Donvand Ltd t/a Gullivers Travel Associates* [2014] EWCA Civ 855, [2014] ICR D27 successfully resisting an appeal relating to res judicata and abuse of process. She has also appeared in the tribunal in Scotland where evidence is given in chief orally rather than by witness statement.

Harriet appears and advises in cases concerning the full range of employment disputes, including **unfair & constructive dismissal, discrimination** (all protected characteristics) and **whistle blowing (protected disclosures)**.

**Other areas** and highlights include:

- *MacGregor v University Hospital Southampton NHS Foundation Trust*: representing the successful midwife claimant in a whistleblowing matter.
- *Turley v Mild Professional Homes Ltd t/a Healthcare Group and Igbokwe* [2012] EqLR 385: a high profile sexual harassment claim in which Harriet represented the Respondents. There was press coverage of the case in both The Telegraph and the Daily Mail.
- *Hamed v British Midland Airways Ltd* [2011] All ER (D) 236 (Jan) UKEAT/0292/10/RN: appearing on behalf of the claimant (and subsequently appellant) in relation to a failure to make reasonable adjustments in circumstances in which she was physically unable to do the job for which she was originally employed.
- Cases raising the question of whether employees were subject to a contract of apprenticeship, considering the principles in *Dunk v George Waller & Son Ltd* [1970] 2 QB 163, including a motor mechanic employed by a retailer of luxury vehicles.
- Holiday pay in the context of employees who have been off sick.
- Claims under the Protection from Harassment Act 1997.
- TUPE.
- Entitlement to bonus payments.
- Subject access requests under the Data Protection Act 1998.
- National Minimum Wage (NMW), and Working Time regulations (WTR).

Given Harriet's **regulatory and professional disciplinary** experience, she is well placed to advise and act in cases concerning regulated professionals and the caring professions, including for example successfully defending a claim brought by a pharmacist against his employers, and successfully representing a midwife in a whistleblowing matter.

Her experience in **sports law** also makes her a good choice for employment matters concerning clubs; for example she advised five green keepers in relation to settlement terms in their claim against the golf club at which they worked.

Harriet also has, unusually, experience of **Reinstatement Committee Proceedings**, which concern the statutory duty on employers to re-engage military reservists after their return from active duty, as provided for by the Reserve Forces (Safeguard of Employment) Act 1985. She has given a talk to representatives of the Ministry of Defence on this subject.

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Another area in which Harriet has particular experience is Tribunal claims in an **education** context, having been instructed on a number of occasions in such matters, including to assist in the preparation of witness statements, visiting schools to take proofs of evidence.

Harriet frequently advises in relation to the enforceability of **restrictive covenants**. She has recently advised the following clients:

- a dentist, in the context of the sale of his business and next steps open to him a financial services adviser relating to a departing employee
- a provider of niche services concerned that departing employees were using its confidential information, and that existing employees were involved in passing such information to them on an ongoing basis.

## Telecommunications & IT

During Harriet's media career prior to the Bar much of her work concerned the commissioning and implementation of new technology, including bespoke software and the development of websites. Later, acting as a consultant, she advised a number of broadcasters, including BBC World Service, The Discovery Network and Disney, on the impact of operating in a digital, tapeless environment. As a result of her extensive experience in this respect, Harriet is ideally placed to advise and appear in disputes concerning technology, and quickly grasps complex concepts and efficiently processes detailed information.

Whilst at Ofcom Harriet assisted in the preparation of Ofcom's defence in *Vodafone & ors v Office of Communications* [2008] CAT 22, a case in the Competition Appeal Tribunal concerning the economics of technology for the porting of mobile telephone numbers. She was also involved in the early stages of the litigation concerning the 2.6 GHz award.

Harriet also provides advice on competition law matters.

## Regulatory & Professional Discipline

Harriet has a wide range of experience in regulatory and professional discipline. She successfully represented the appellants in *Lawrance v GMC* [2015] EWHC 586 (Admin), an appeal to the High Court against a decision to erase her from the Register in which there were issues of dishonesty.

Harriet has undertaken a secondment reviewing cases for the Nursing and Midwifery Council (NMC), assisted in financial regulatory cases, and accepts instructions in sports disciplinary matters. She also sits as an independent member for Thames Valley Police in police disciplinary hearings.

## Professional Negligence

Harriet accepts instructions in a range of areas of professional negligence. Examples of work include:

- Drafting Particulars of Claim in relation to a boat surveyor.
- Advising the claimant and drafting Particulars of Claim relating to advice concerning energy generating equipment.
- Acting in a number of claims against financial advisers in relation to mortgage mis-selling.

## Sports Law

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Harriet has the following experience in sports law:

- Representing a greyhound trainer in proceedings before the Disciplinary Committee of the Greyhound Board of Great Britain (GBGB).
- Advising a rugby coach in a claim for breach of contract against his former club in proceedings issued in the County Court and Employment Tribunal.
- Advising a greyhound trainer in doping proceedings before the Greyhound Board of Great Britain.
- Assisting in preparing for and attending a hearing before the Sports Dispute Resolution Panel relating to the disciplining of a show jumper.
- Drafting a pre-action response letter for a sports governing body.
- Preparing initial advice on competition law in a sports context.
- Drafting an initial defence in a case concerning fiduciary duties of football agents.
- Preparing advice in various boxing matters including relating to British Boxing Board of Control boxer/manager agreements and licences.
- Considering potential quantum of damages in a claim for professional negligence against a vet in relation to a racehorse.
- Research in advance of a hearing before the Court of Arbitration for Sport in Lausanne concerning a nationality issue.

Harriet also regularly receives instructions in equine-related disputes. She has a good understanding of the issues in this respect, and her experience includes claims relating to the sale of horses engaging the Sale of Goods Act 1982 and for misrepresentation.

## **Appointments**

Appointed to the Attorney General's Panel of Counsel (C Panel) in 2015

Called to the Bar, Cayman Islands (Limited Admission)

Independent Panel Member, Misconduct Hearings, Thames Valley Police

## **Memberships and Associations**

Bar Pro Bono Unit, ELA, PNBA.

Member of the ELAAS scheme at the Employment Appeal Tribunal

## **Education**

Graduate Diploma in Law (Distinction), College of Law, London

Bar Vocational Course, College of Law, London