

## Daisy van den Berg

CALL: 2017

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### Overview

Daisy joined chambers on successful completion of her pupillage in 2021. Daisy has a busy practice and specialises in employment and discrimination, personal injury, and professional regulation. She is also experienced in advising on data protection matters in range of contexts.

Before coming to the Bar, Daisy was the Judicial Assistant to the Vice-President of the Court of Appeal, Lord Justice Underhill. During this time, she worked on prominent employment cases including *Asda Stores Ltd v Brierley* [2019] EWCA Civ 44 and *Uber BV v Aslam* [2018] EWCA Civ 2748.

Daisy has also worked as a Research Assistant in the Commercial and Common Law Team at the Law Commission. She assisted with drafting a paper on the rights of investors under contract and trusts law.

#### Academics

- LLM in Public International Law (Leiden University, 2018)
- BPTC, Very Competent (BPP University London, 2017)
- GDL, Distinction, 2<sup>nd</sup> in year (Oxford Brookes University, 2016)
- BA Hons in English Literature and Politics (The University of York, 2013)

#### Awards

- Winner of a Kalshoven Advocacy Prize and finalist in the Kalshoven International Humanitarian Law Moot (Leiden University, 2018)
- Runner-up in the national round of Telders International Law Moot Court Competition (Inner Temple, 2017)
- 2<sup>nd</sup> place in the Inner Temple Lawson Moot (2017)
- BPTC Exhibition Award and Duke of Edinburgh Entrance Award (Inner Temple, 2016)
- Academic BPTC Scholarship (BPP University, 2016)
- The School of Law Diploma Prize (Oxford Brookes University, 2016)

#### Appointments and Memberships

- Daisy is a member of the Law Reform Committee of the Bar Council.
- Daisy accepts instructions through the Attorney General's Junior Junior Scheme.
- Daisy is a trustee of Hackney Shed, an inclusive theatre company for children and young people.

### Employment & Discrimination

#### Employment & Discrimination:

Daisy regularly appears in multi-day final hearings, costs hearings, and judicial mediations. She has been successful in a range of cases, including against barristers many years her senior.

Daisy has represented claimants and respondents in a range of employment matters including TUPE, trade union dismissals, unlawful inducement, whistleblowing, discrimination, flexible working, unlawful deductions from wages, and disputes on international jurisdiction, applicable forum, and the territorial scope of legislation.

#### Recent work

### Expertise

- Clinical Negligence
- Education & Safeguarding
- Employment & Discrimination
- Personal Injury
- Professional Regulatory & Discipline

### Recommendations

"They have good coverage at all levels, meaning you can always find the right barrister for the case in question." Chambers & Partners

"Old Square are my preferred set of chambers and have been throughout my career. They will always try to accommodate needs and the set are very down to earth and approachable. We have developed very good working relationships with the team over the years." The Legal 500

### Key contacts

#### Lee Jennings

**Team Leader**

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#### Sofia Negri

**Junior Team Leader Assistant**

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#### Joe Kallas

**Team Leader**

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- Currently instructed in a discrimination/harassment claim concerning the **scope of protection afforded to transgender employees**.
- Currently instructed to defend various discrimination claims brought by **Irish Travellers against pub landlords** in the civil courts.
- Successfully represented a **claimant doctor in a five-day victimisation hearing**. The claimant had raised allegations that the respondent's pay system may disadvantage overseas-qualified doctors. The respondent argued that it had not terminated the doctor's locum contract because of the protected act, but because of the **manner in which he made the protected act**, namely that he had approached pay negotiations inappropriately.
- Successfully represented the respondent in a **two-week whistleblowing trial: Cox v Adecco**. This was a case in which the claimant had, twice, successfully appealed to the EAT on preliminary matters before the case reached a final hearing in the tribunal.
- Successfully represented a foreign government in a dispute over whether the Employment Tribunal had **international jurisdiction under post-Brexit legislation (section 15C of the Civil Jurisdiction and Judgments Act 1982) to hear a claim brought by a consultant working remotely in London**. The Tribunal determined that the claimant did not have an "individual contract of employment" with the respondent and, accordingly, the tribunal did not have international jurisdiction to hear the claim.
- Assisted Ben Cooper KC and Robert Moretto in preparation for **Ghosh v Judicial Appointments Commission**. The claimant, an applicant for the role of Deputy High Court Judge, brought a **claim against the Judicial Appointments Commission for direct and indirect race discrimination**.
- Successfully represented a **respondent GP Practice** in an **eight-day hearing**. An ex-Partner of the Practice brought a claim (with a pleaded value of over £150,000) for **sex and maternity/pregnancy discrimination and constructive expulsion under ss.44 and 46 Equality Act 2010**. The claimant alleged that the partners had unlawfully made significant financial decisions about how to run the practice during Covid without her input, and that this had forced her to resign from the partnership.
- Succeeded in a **costs application** against a claimant who had been legally represented up until the costs hearing. The **respondent was awarded 100% of its claimed costs** on the basis that the claimant had unreasonably pursued claims which had no merit.
- Successfully represented the claimant in **five-day reasonable adjustments claim**. The claimant's employer had refused (on the basis of its own HR advice) to move him to another role, despite evidence that his role was exacerbating his anxiety.
- Successfully represented the respondent in a **five-day religious discrimination hearing**. The claimant, **a social worker, made allegations that she had been instructed by her employer, a Council, to wear a rainbow-coloured lanyard at work**. She claimed she had refused to do so on the basis of her faith.
- Assisted **Nadia Motraghi KC** in drafting allegations in preparation for a **disciplinary hearing under a Trust's MHPS policy**.
- Successfully represented the claimant in a **four-day disability discrimination and unfair dismissal hearing**. This claim involved **long term sickness absence during the pandemic**. At a separate remedy hearing the claimant was awarded his full Schedule of Loss. This included **compensatory losses for a period of more than one year post-dismissal** (despite the claimant not having applied for any other jobs) on the basis that he could not reasonably be expected to look for work earlier. The tribunal also awarded the **full 25% Acas uplift** on the basis of a failure by the respondent to conduct the necessary investigations to establish the claimant's medical position.
- Successfully represented the claimant, a **minister of religion**, in a **three-day hearing to establish worker-status**, cross examining multiple witnesses with the assistance of a Punjabi translator.
- Attended a **strike injunction in the High Court** with **Rebecca Tuck KC**, acting for the union in defending the application by the employer. The matter in issue concerned whether the ballot paper complied with s.229(2D) TULR(C)A 1992: that the voting paper must indicate the period of time within which the industrial action is expected to take place.

#### Appellate work

- Instructed in an **appeal to the EAT taking place later this year**, on behalf of a corporation. The appeal concerns the application of time limits in the tribunal.
- Successfully resisted an **appeal against a Registrar's Order in the EAT**.

## Personal Injury & Civil

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Daisy has a varied civil law practice, including a busy court practice encompassing trials and interim hearings. She is regularly instructed to draft pleadings and advices in fast-track and multi-track cases involving breach of contract, breach of statutory duty, employers' liability, public liability, and occupiers' liability.

Daisy has represented parties at inquests and advised on fatal accident claims. She has experience in advising in cases involving young people, vulnerable individuals, and claimants who lack capacity.

### Recent and current work

- Currently advising on a high value **fatal accident**
- Currently advising on an RTA which left the claimant with **chronic pain**.
- Advised on a **dependency claim** arising out of clinical negligence.
- Successfully defended a doctor in a **clinical negligence claim** brought by her patient. The complaint centred on the fact that the DVLA had revoked the claimant's driving license because the defendant had filled out a **fitness to drive** form stating the claimant persistently misused alcohol.
- Drafted a defence to a **defective premises/escape of water**
- Drafted particulars in a claim for **conversion**.
- Drafted pleadings and advised on a claim involving a **child who sustained lifelong injuries** in an RTA. Liability was admitted post-issue, and a favourable settlement was reached.
- Drafted particulars of claim and advised on a claim involving breach of occupiers' liability, **breach of contract and breach of the Consumer Rights Act 2015**.
- Successfully represented the claimant in a **food poisoning** claim brought under the Package Travel Regulations.
- Represented the family of the deceased at a one-day **inquest**.
- Successfully defended a **product liability** claim brought in the small claims court.

## Professional Discipline & Regulatory

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Daisy welcomes instructions at all stages of fitness to practise proceedings. Daisy has experience in representing professionals at interim order hearings.

### Recent work

- Succeeded before the HCPC in an (opposed) application for anonymity. The registrant was under investigation by his employer into alleged **sexual misconduct towards a colleague**. Daisy successfully argued that **no interim order** should be imposed.
- Succeeded before the HCPC in arguing that **no interim order** should be imposed in circumstances where the registrant was under **police investigation for serious sexual assault**. The panel also granted the registrant anonymity.
- Assisted [Ben Collins KC](#) in preparing for a **police disciplinary matter**.
- Assisted [Nadia Motraghi KC](#) in drafting allegations in preparation for a disciplinary hearing under an **NHS Trust's MHPS policy**.

## Data Protection

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Daisy has advised on liability and quantum in claims involving GDPR breaches, misuse of private information and breach of confidence. Daisy has advised on data breaches concerning transgender individuals and sensitive data. She has also advised employers on dealing with data subject access requests.

## Further information

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### Languages

- Dutch

### Voluntary work

While on the BPTC, Daisy was a Mentor for the Gray's Inn programme Vocalise, teaching prisoners to debate.

During the GDL, Daisy volunteered as a qualified Adviser at the Citizens Advice Bureau in Oxford.

**Articles:**

- *Flexible Working - Topic Overview* (Westlaw, 27 September 2022)
- *Who to sue? Non-delegable duties of care to patients and vicarious liability for self-employed dentists (Hughes v Rattan)* (Lexis PSL, 30 July 2021)