

## Melanie Tether

CALL: 1995

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### Overview

Melanie Tether is a highly experienced employment lawyer and a tenacious advocate. Her practice spans all areas of employment law, both individual and collective. She is regularly instructed in high value claims and has appeared in many test cases, including several references to the Court of Justice of the European Union.

Melanie is ranked for employment law by *Chambers & Partners* and *The Legal 500*, which have praised her for her **"courtroom style and masterful handling of witnesses"**, her **"lethal cross-examination skills"**, her **"superb understanding of discrimination and TUPE issues"** and her **"mastery of tricky briefs"**.

Before transferring to the Bar in 1995, Melanie was a partner at Norton Rose. Her extensive experience as a solicitor in private practice makes her acutely aware of the commercial and practical needs of lay clients.

She is a former Chair and current Vice President of the Industrial Law Society.

Melanie accepts instructions under the Bar's Public Access Scheme.

Melanie's practice embraces all aspects of employment and discrimination law. She has acted for employers and employees in every sector of activity, including the health, education, local government, manufacturing and financial sectors. She has had 29 appearances in the IRLR.

### Employment & Discrimination

Melanie's practice embraces all aspects of employment and discrimination law. She has acted for employers and employees in every sector of activity, including the health, education, local government, manufacturing and financial sectors. She has had 29 appearances in the IRLR.

#### Discrimination

Melanie has appeared in cases involving virtually every strand of discrimination law. Leading cases include:

- *Griffiths v Secretary of State for Work and Pensions* EWCA 1265, in which the Court of Appeal held that the duty to make reasonable adjustments for a disabled employee may require an employer to make adjustments to an attendance management policy;
- *Ministry of Defence v Holloway and others* UKEAT/0396/14 28: whether the employment tribunal has jurisdiction to entertain complaints of discrimination by the spouses of members of the armed forces who are employed in the Sovereign Base Areas in Cyprus;
- *British Airways plc v Mak and others* ICR 735 CA, in which it was held that the age and race discrimination legislation applied to cabin crew who were based in Hong Kong but worked on flights between Hong Kong and the UK;
- *Sunderland City Council v Brennan and others* ICR 1183: employment tribunal has no jurisdiction to determine claims for contribution under the Civil Liability (Contribution) Act 1978;
- *Webley v DWP* ICR 577 CA: failure to renew fixed-term contract cannot constitute less favourable treatment under Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002;
- *Chief Constable of West Yorkshire v Khan* ICR 1065 HL: meaning of victimisation;

### Expertise

- Administrative & Public Law
- Education & Safeguarding
- Employment & Discrimination
- Finance
- Health & Safety & Environmental Law
- HR Professional Support
- Insurance
- Investigations
- Media and Entertainment
- Professional Regulatory & Discipline
- Public Law
- Retail and Consumer
- Sport

### Recommendations

"Melanie is exceptional. Not only is she wonderful to work with but she's brilliant with clients too. Her legal knowledge knows no bounds, she is great on her feet and she grapples with complex issues quickly. She really is brilliant." *Chambers & Partners* 2024

"Melanie is silk quality in the guise of a junior." *The Legal 500* 2024

"Her ability to review voluminous documents quickly and get to the detail is extremely impressive, while her cross-examination is gentle yet deadly. Melanie is truly an excellent barrister and her skills are a great addition to any team." *The Legal 500* 2023

"Melanie brings extraordinarily skilled advocacy and a real command of the brief." "She is very helpful and supportive to deal with and provides excellent, practical, tactical and strategic advice." *Chambers & Partners* 2023

### Key contacts

#### Olivia Moliterno

**Team Leader**

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**Email:** moliterno@oldsquare.co.uk

#### Manisha Agheda

**Junior Team Leader Assistant**

**Phone:** 020 7269 0300

- *Jones v Post Office* ICR 805 CA: justification under the DDA.

**Email:** agheda@oldsquare.co.uk

## Equal pay

Melanie has substantial experience of equal pay claims, having appeared in cases involving the public and private sectors, acting for both claimants and respondents. Significant cases include:

- *Drummond and others v Fife Council*: equal pay claims by more than 1400 low paid council workers in which a multi-million pound settlement was negotiated;
- *Loudon and others v North Lanarkshire Council*: a wide-ranging challenge to the council's job evaluation scheme and pay protection arrangements which resulted in a substantial settlement;
- *Armstrong and others v Newcastle Hospitals NHS Trust* (No 1) IRLR 124 CA and *Armstrong and others v Newcastle Hospitals NHS Trust* (No 2) ICR 674 EAT: the correct approach to the GMF defence in cases involving indirect discrimination in pay;
- *Preston and others v Wolverhampton Healthcare NHS Trust* (No 1) ICR 217 HL: the part-time pensions claims.

## Transfers of undertakings

Melanie is a leading expert on transfers of undertakings and service provision changes. She has recently appeared in two important TUPE appeals in the Employment Appeal Tribunal: *Mustafa and another v Trek Highway Services Ltd and others* UKEAT/0063/15 29 (an appeal concerning the effect of a suspension of operations by an outgoing subcontractor) and *Arch Initiatives v Aulton and others* UKEAT/0063/15 21 (in which the central issue was whether there can be a service provision change if a service is split into separate functional components when the contract is re-tendered).

Melanie represented the claimants in *UNISON and others v Careers South West and another*, in which an employment tribunal decided that TUPE applied when new contractors were appointed to run the National Careers Service in the south-west of England. She also appeared in *Mrazek and others v Equality and Human Rights Commission*, a case involving a challenge to the validity of changes in terms and conditions which had been agreed more than a year after a TUPE transfer.

Melanie's reported TUPE cases include:

- *De'Antiquis v Key2Law Surrey LLP* IRLR 272 EAT: application of automatic transfer principle where transferor is in administration;
- *Alamo Group (Europe) Ltd v Tucker and others* ICR 829: transfer of liability for failure to inform and consult;
- *Ralton and others v Havering College of Further Education* IRLR 738: test to be applied in deciding whether transfer is reason for dismissal and application of TUPE to fixed-term employees;
- *Kerry Foods Ltd v Creber and others* IRLR 10: nature of duty to consult where transferor is in receivership.

## Unfair dismissal, whistleblowing and other statutory rights

Melanie has extensive experience of unfair dismissal and whistleblowing claims. She has also acted in disputes concerning other statutory rights, including claims under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1999. She successfully defended the respondent in *Royal College of Nursing and others v Real Life Options*, in which the RCN and members of that union were challenging dismissals designed to bring about significant changes in terms and conditions of employment.

Melanie's reported cases concerning statutory employment rights include:

- *Ashcroft v Haberdasher's Aske's Boys School* ICR 613 EAT: time limit for presenting a complaint of unfair dismissal where employee has presented internal appeal;
- *Roberts v West Coast Trains Ltd* ICR 254 CA: dismissal expunged by successful appeal;
- *ALM Medical Services Ltd v Bladon* ICR 1444 CA: tribunal failed to consider evidence relevant to a whistleblowing claim;
- *Everson v Secretary of State for Trade and Industry* (C-198/88) ECR I-8903 ECJ: guaranteed debts in a cross-border insolvency.

## Contracts of employment and employee competition

Melanie regularly acts in and advises on disputes involving restrictive covenants, garden leave, wrongful dismissal, contractual bonuses and other contractual issues. She appeared in *Equality and Human Rights Commission v Earle* IRLR 845, in which the issue was whether employees of the EHRC had a contractual right to pay progression which could be enforced notwithstanding the government pay freeze.

## William Meade

**Senior Clerk**

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## Labour relations and industrial disputes

Melanie has wide-ranging experience of collective issues, including collective consultation and industrial action. She is currently advising a leading trade union on issues arising from the Trade Union Bill 2015. Melanie has also acted in recognition disputes, including applications to the CAC. Reported cases include:

- *Kelly and another v Hesley Group Ltd* IRLR 514, an important decision of the EAT on the scope of the duty to consult in relation to collective redundancies;
- *Cooper v Isle of Wight College* IRLR 124: deductions from pay where an employee has taken part in industrial action.

## Trade union rights

Melanie has substantial experience of claims involving trade union rights. For example she:

- appeared in *Mihaj v Sodexho Ltd* ICR D25, in which the EAT explained the approach that an employment tribunal should take when considering an application for interim relief by a trade unionist alleging dismissal for taking part in trade union activities;
- represented the claimant in *Kelly v Equality and Human Rights Commission*, a complaint of trade union victimisation which resulted in the highest ever award of compensation for injury to feelings in respect of victimisation on trade union grounds;
- successfully defended the respondent in *Grant v UNITE*, a complaint by a union member that he had been subjected to unjustifiable discipline.

Melanie frequently deals with employment disputes that raise questions of public law. She acted for UNISON when Plymouth City Council attempted to withdraw recognition from the union, a dispute which involved very sensitive industrial relations considerations and issues of public law. She also has extensive experience of the legislation governing universities and institutions of further and higher education. (During her career as a solicitor, Melanie was, for a number of years, legal adviser to the Polytechnics and Colleges Employers' Forum and to the Association of Colleges).

Melanie is often instructed in employment cases with a pensions element, including claims for enhanced redundancy pay. Notable cases include:

- *Martin v South Bank University* (C-4/01) ECR I-12859 ECJ: claims relating to early retirement benefits;
- *Smith v South Wales Fire Rescue Service Appeal* no CF136/, an appeal to the High Court from a decision of the Pensions Ombudsman on whether certain allowances paid to regular firefighters were pensionable;
- *Stevens v Chief Constable of West Yorkshire Police*, Leeds County Court: entitlement to sick pay under the Police Regulations 2003.

Melanie has represented and advised employers and employees in relation to internal disciplinary proceedings. She recently acted for a well-known university in internal grievance and disciplinary proceedings involving a very senior member of its academic staff.

Melanie has appeared for professional employees in proceedings before professional regulatory bodies, including the Specialist Training Authority and the GMC. She has also dealt with applications for injunctive relief to enforce contractual disciplinary procedures and/or the Department of Health Framework "Maintaining High Professional Standards in the Modern NHS".

## Judicial Review & Public Law

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### Recent cases include:

- *Stevens v Chief Constable of West Yorkshire Police*, Leeds County Court: entitlement to sick pay under the Police Regulations 2003.

## Pensions

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Melanie frequently appears in employment cases with a pensions element, including claims for enhanced redundancy pay.

### Notable cases include:

- *Martin v South Bank University* (C-4/01) ECR I-12859 ECJ: claims relating to early retirement benefits;
- *Smith v South Wales Fire Rescue Service Appeal* no CF136/, an appeal to the High Court from a decision of the Pensions Ombudsman on whether certain allowances paid to regular firefighters are pensionable.

## Professional Regulatory & Discipline

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Melanie has represented and advised employers and employees in relation to internal disciplinary proceedings. She has also appeared for professional employees in proceedings before professional regulatory bodies, including the Specialist Training Authority and the GMC.

She recently acted for a leading university in internal grievance and disciplinary proceedings involving a senior member of its academic staff.

## HR Professional Support

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Melanie is a highly experienced employment lawyer with substantial experience of disciplinary and grievance processes in both the public and private sectors. Melanie has been involved in all stages of such processes: as an investigator, an advocate, an adviser to internal panels and a decision-maker. She recently acted for a well-known university in relation to extremely complex grievance and disciplinary proceedings concerning a senior member of its academic staff. This required her to present the employer's case to various internal panels, call evidence from the university's senior managers to advise the HR team on its strategic approach to the process.

Melanie accepts instructions under the Bar's Public Access Scheme.

## Recent and current work

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- Successfully represented the appellants in *Mustafa and another v Trek Highway Services Ltd and others* UKEAT/0063/15 29, a complex appeal concerning the application of TUPE in circumstances where there is a temporary cessation of activity between service contracts;
- Currently advising a leading trade union on issues arising from the Trade Union Bill 2015;
- Represented the appellant (led by [Michael Ford KC](#)) in *Griffiths v Secretary of State for Work and Pensions* 10 December 2015, in which the Court of Appeal held that the duty to make reasonable adjustments for a disabled employee may require an employer to make adjustments to its attendance management policy;
- Appeared for the UNISON claimants in *Arch Initiatives v Aulton and others* UKEAT/0063/15 21, in which Simler P held that the fact that a service is split into separate functional components when the contract is re-tendered does not prevent there being a service provision change;
- Representing the claimants in *Ministry of Defence v Holloway and others* UKEAT/0396/14, in which the spouses of members of the armed forces posted to Cyprus are complaining that the Ministry of Defence has discriminated against them by employing them on less favourable terms and conditions than those on which it employs Cypriot nationals;
- Acted for the claimant in *Equality and Human Rights Commission v Earle* IRLR 845, an appeal turning on the construction of a contractual provision relating to salary progression;
- Appeared for the appellant in *Mihaj v Sodexho Ltd* ICR D25, in which the EAT considered the approach that an employment tribunal should take when considering an application for interim relief by a trade unionist alleging dismissal for taking part in trade union activities;
- Acted for 1400 UNISON claimants in a major challenge to Fife Council's job evaluation scheme, which concluded with a multi-million pound settlement;
- Appeared for the respondent in *Royal College of Nursing and others v Real Life Options*, in which the RCN and members of that union were challenging dismissals designed to bring about significant changes in terms and conditions of employment;
- Represented the claimants in *UNISON and others v (1) Careers South West and (2) Prospects*, in which it was held that TUPE applied when

new contractors were appointed to run the National Careers Service in the south-west of England;

- Acted for the claimants in *Mrazek and others v Equality and Human Rights Commission*, claims concerning the validity of changes in terms and conditions agreed more than a year after a TUPE transfer;
- Represented a well-known University in relation to internal grievance and disciplinary proceedings involving a senior member of the academic staff.

## Professional Recommendations

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"Melanie is an exceptional and incredibly hard-working barrister. Melanie's eye for detail is breathtaking."

### Chambers & Partners 2024

"Melanie is exceptional. Not only is she wonderful to work with but she's brilliant with clients too. Her legal knowledge knows no bounds, she is great on her feet and she grapples with complex issues quickly. She really is brilliant."

### Chambers & Partners 2024

"Melanie is excellent with clients and strong on the law. She is a good tactician and easy to deal with."

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"Melanie is silk quality in the guise of a junior."

### The Legal 500 2024

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"She is very helpful and supportive to deal with and provides excellent, practical, tactical and strategic advice."

### Chambers & Partners 2023

"Melanie is an expert on complex trade union issues and has an incredible ability to give clear advice in a short period of time. She gets to the bottom of very difficult issues quickly."

### Chambers & Partners 2023

"Her ability to review voluminous documents quickly and get to the detail is extremely impressive, while her cross-examination is gentle yet deadly. Melanie is truly an excellent barrister and her skills are a great addition to any team."

### The Legal 500 2023

"Melanie has a fantastic legal mind – her written arguments were absolutely first class." "She has a Rolls-Royce legal mind."

### The Legal 500 2022

"She is academically gifted, she is delightful to deal with and her written work is outstanding." "Melanie is a walking encyclopaedia of employment law; she is a real team player; she is cool, calm and collected at all times, even in dealing with the most complex of cases."

### Chambers & Partners 2022

"She is fantastic: very hard-working and has great TUPE knowledge." "She has an incredible grasp of detail."

**Chambers & Partners 2021**

"Able to digest complex facts into pleadings and related documents of the highest quality." "Extremely clever! She works extremely hard and is able to digest complex facts, over significant periods of time, into pleadings and related documents of the highest quality."

**The Legal 500 2021**

"Her intellectual superiority allows her to wipe the floor with the other side; she's a highly skilled and technically able barrister." "A very thorough advocate who has strong attention to detail."

**Chambers & Partners 2020**

"Her knowledge of collective complaints such as TUPE, protective awards and redundancies, is excellent."

**The Legal 500 2020**

"An all-round high performer with great attention to detail."

**Chambers & Partners 2019**

"She has forensic cross-examination technique and an incredible grasp of the details."

**The Legal 500 2018**