Marcia Duncan-Brown

Year of Call: 2000

Practice Summary

Marcia is a specialist employment lawyer and dual-qualified as a solicitor and barrister, enhanced by an HR background early in her career. She also has Direct Access accreditation. Her experience places her in a good position to advise on tactics and strategy when preparing cases. She has worked for a variety of organisations such as the Police Federation and in private firms from SME's to PLC's and is authorised to conduct litigation. She previously practiced criminal law which entailed daily appearances in court, an asset to undertaking tribunal advocacy.

As in-house counsel Marcia has advised on a range of matters and regularly on redundancies (including collective redundancies) and TUPE transfers. Other non-contentious work has related to advising on consultancy contracts, settlement/Cot3 agreements and pleadings such as ET3's and drafting grounds of resistance on a range of employment claims involving multi type claims (including discrimination) and class claims.

Immediately prior to re-joining the Bar Marcia worked as the lead employment lawyer for a global company which had a presence in 44 markets and carried a significant caseload at national level, including providing TUPE advice to companies abroad. Cases covered complex multi-discrimination matters including whistleblowing, discrimination and TUPE. For example, Marcia dealt with a case which involved whistleblowing, automatic unfair dismissal, disability and race discrimination representing one of the two PLC Respondent companies. The list of issues covered seven pages and entailed four preliminary hearings, at one of which Marcia successfully opposed further amendments to the Claimant's claims.

Marcia has similarly prepared for other multiple day hearings covering similar issues where there have been multiple preliminary hearings. One such matter involved drafting a 57-page witness statement for a key witness and 37 pages for another witness out of a total of seven witnesses. The issues consisted of 16 pages with circa 50 detriments. The Claimant brought 5 separate claims which she joined with another Claimant's case. They were later disjoined and her claims later consolidated. Another case dealt with involved a series of 5 claims brought by a Claimant at different times who then attempted to relitigate after one of his cases failed but was successfully dismissed under the res judicata doctrine. For the same Claimant an unfair dismissal claim was dismissed due to being one day out of time. One of the claims was a reported case in respect of whistleblowing. These cases provide good grounding for advising on and the handling of complex matters.

Another case involved preparing for a complex TUPE case with 15 Claimants and three Respondents, one of which changed during the proceedings. The issue was establishing liability concerning outsourced work to a sub-contractor. Marcia's took over the case from another case holder preparing for a Preliminary Hearing and had heavy involvement in negotiating settlement which she was instrumental in initiating discussions involving significant sums of money.

Marcia has experience of Dispute Resolution Appointments and Judicial Mediation. Marcia successfully obtained £48,000 for a Claimant where it was suggested in the process that realistic settlement was circa £25,000.

Marcia by way of example regarding shorter preliminary hearings she has been successful in time limit extension discrimination cases for both Respondent and Claimant, for instance opposing extension of a claim in a case involving disability discrimination: S Keating v Kigass Aero Components Ltd (2020) and for a Claimant seeking to extend time in a pregnancy and maternity discrimination case:

S Swierzbinska v Ravello Coffee Limited (2022).

Marcia has appeared in the Appellate courts successfully defending an appeal from sentence and more recently at the EAT.

Marcia has conducted multi-day trials and more recently since returning to the Bar has covered a range of hearings of between typically two to five days and sometimes longer, including a successful application before the President of the EAT.

Employment Law

Examples of some recent final hearings:

Ifeyinwa Eneli v Midshires Care Ltd t/a Helping Hands Home Care (March 2025) – EAT

This was a Rule 3(10) application in the Employment Appeal Tribunal following a tribunal's refusal to extend time in a racial discrimination case where Marcia successfully argued two grounds out of three successfully the judge commenting that the argument on the ground that had

failed had been skillfully argued. Marcia represented the Appellant.

Audrey Noden v Step U/p Children and Family Services Ltd (February 2025) - ET

This was a race and age discrimination final hearing involving direct discrimination and victimisation and unfair dismissal, constructive dismissal in the alternative. Initially, set for an 11-day trial but reduced to nine days following further case management and involved 10 witnesses. There were 15 factual issues to be determined for each of the claims amounting to 34 factual issues covering all the claims, (excluding the legal issues such and time limits involving continuing acts/omissions).

Amendment applications were considered on the first day of the hearing from both sides. Marcia successfully argued amendment to change the reason for dismissal from misconduct (which could not stand) to SOSR based on irretrievable breakdown of the employer/employee relationship. This was a strategy which contributed to minimising compensation to a little over £8,500 for unfair

dismissal in a case where only the parties to the issue to be decided about whether there had been a dismissal were present. All other discrimination and victimisation claims succeeded. Marcia represented the Respondent.

Darren Halls v Polypipe Building Products Ltd ET (November 2024)

This was a hearing where Marcia represented the Claimant against a company floated on the stock market and said to be one of Europe's biggest manufacturers of plastic.

A former employee had brought a case argued on the same/similar facts successfully against the same employer and it was the counsel in that case who opposed Marcia. The case was a 'fire and rehire' case resulting in a reduction of hours from 55 hours per week to 50 hours per week affecting around 78 employees and the Respondent budgeted for approximately 129 employees.

Marcia successfully argued that the reason for dismissal was in fact redundancy and not a dismissal for SOSR and consequently the dismissal was unfair because the process did not follow the appropriate consultation process inter alia.

Judgment was therefore that the reason for dismissal was for redundancy, and it was unfair. The Claimant received the sums sought with no reductions.

D. Morgan v Mitie Ltd (December 2024)

This was a 3-day hearing involving claims of direct race discrimination and harassment relating to implementation of a flexible working policy and a claim for unauthorised deductions from pay. Marcia obtained a unanimous judgment from the Tribunal.

D. Forster v Mitie Ltd (December 2024)

This was a two-day hearing which in reality was easily a four-day hearing judgment resulting in a reserved decision. Additionally, there were five witnesses with long witness statements. The case involved a duty manager not properly managing a safety issue. The substantive case involved unfair dismissal found not to amount to gross misconduct or procedurally unfair but nonetheless deemed to fall within the band of reasonable responses where Marcia's argument of gross negligence was accepted to be an alternative arguable point by the judge.

Practice areas:

Discrimination – all forms

Unfair dismissal including constructive dismissal

Wrongful dismissal

Redundancy and reorganisations/restructure

Unlawful deduction from wages

TUPE

Whistleblowing

Settlement Agreements/Cot3’s.

Contracts

Pleadings

Dispute Resolution

Employment law advice

Civil

Marcia is available for Civil work having conducting landlord and tenant work early in her career involving a two-week trial on unlawful eviction and possession in the County Court also dealing with multiple hearings in the lead up to the case. She was successful in defending the first Respondent landlord. Marcia also has civil work experience.

Qualifications

- Dual qualified Barrister and Solicitor practising as a barrister
- Direct Access Accredited
- MA in Industrial Relations (Keele University)
- MCIPD (former Member of the Chartered Institute of Personnel & Development
- Qualified to conduct litigation

Memberships & Advisory

- Employment Law Bar Association
- Employment Lawyers Association

Areas of Expertise

- Employment