

# Diya Sen Gupta

*“An effective and incisive advocate”*

– CHAMBERS AND PARTNERS, 2019

Year of call: 2000  
Degree: MA (Cantab), Law



Diya Sen Gupta is highly recommended by both of the independent legal directories, Chambers UK 2018 and Legal 500 2017, as a leading barrister in Employment law. She was named Employment Junior of the Year at the Chambers UK Bar Awards 2016.

Chambers UK describes her as: “Always prepared and will work tirelessly to get the best results.” “An effective and incisive advocate.” “Charming and excellent on her feet.” Legal 500 reports that Diya “is highly meticulous and strategic in her approach, and has total command of the courtroom.”

Previous descriptions of Diya in the directories have included:

- “Widely seen as one of the leading employment juniors, she counts prominent City-based law firms among her dedicated client following”
- “She is experienced at both tribunal and High Court level, and is adept at advising on all aspects of employment law”
- “Very sharp and hard-working, she is nobody’s fool. Good with clients, she’s enjoyable to work with”
- “A good all-round litigator, particularly on whistle-blowing cases”
- “calm and reassuring with clients, she is excellent on her feet”
- “she regularly acts for both respondents and claimants in complex whistle-blowing and discrimination cases”
- “a pleasure to work with”
- “impresses” and “wins favour due to her ‘meticulous preparation and diligence”
- “knows her cases inside out and gains her clients’ trust immediately”
- “Increasingly, she has been involved in injunctive relief cases and high-profile team moves”
- “calm, hard-working and responsive”
- “hard-working and tenacious”
- “understands issues quickly and is a pleasure to work with”
- “as bright as they come”
- “a bright barrister with an even brighter future”

Diya was the only employment barrister featured in an article in Legal Week as one of ten 'Future stars at the Bar', which said that 'Employment junior Diya Sen Gupta is a favourite of City firms...“pragmatic, tough, passionate and fiendishly bright”'.

## EXPERIENCE

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### Employment

Diya specialises in employment litigation in the High Court and Employment Tribunal and the appellate courts (the Employment Appeal Tribunal, Court of Appeal and Supreme Court).

Diya has extensive experience of representing individuals, teams, employers and recruiting businesses in relation to the various issues which arise in moving to a competing business, whether as a team or individually, including contractual and fiduciary duties, enforceability of restrictive covenants, garden leave, confidential information, wrongful termination, injunctive relief, damages claims and loss of profits claims.

Diya has substantial experience acting in complex and high value discrimination and whistleblowing cases before the Employment Tribunal, both for claimants and for employers and individual respondents.

Diya's clients are often in financial services (for example, traders, inter-dealer brokers, bankers, investment banks, hedge funds) and legal services (senior associates, partners, LLP members, international law firms, LLPs).

Diya's client base is still wide-ranging and has recently included an architect, a soldier, a lecturer, a Head teacher, an entrepreneur, the managing director of a football club, a sales director, a football manager, various software and technology companies, an infrastructure company, an accountancy firm, and an NHS Trust.

Diya is regularly instructed to advise clients on cases involving issues of significant reputational importance. She has successfully obtained a number of restricted reporting orders on behalf of her clients to prevent the identification of their clients.

Many of the matters in which Diya is involved are confidential and so not referred to here, or are only referred to with client names anonymised.

Current and recent work includes:

- Acting with Paul Goulding QC in a team move case.
- Representing a broker in his whistleblowing claim against his former employers.
- Acting for a bank defending claims of race discrimination, religious discrimination, and breach of contract and unlawful deduction of wages, by a former employee.
- Acting with Tom Linden QC in a stigma damages claim against a bank.
- Acting for a number of care home workers in relation to their High Court breach of contract claim for unpaid wages.
- Representing Citibank N.A (2015-2016) defending various claims by former Foreign Exchange traders arising from their dismissal for sharing client confidential information in Bloomberg Chats. These cases have been widely reported in the press.

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## Cases

### **Halawi v WDFG UK Ltd (t/a World Duty Free)**

[2015] IRLR 50

Successfully represented World Duty Free before the Court of Appeal in this employment status appeal under the Equality Act 2010. Diya also drafted World Duty Free's notice of objection to Mrs Halawi's petition to the Supreme Court. Mrs Halawi's petition was dismissed.

### **Games v University of Kent**

[2015] IRLR 202

Successfully represented the appellant in this indirect age discrimination appeal in the EAT.

### **Ross v Stobart Ltd**

(2013)

Successfully represented the claimant at a rule 3(10) hearing in the EAT in this appeal concerning the burden of proof in whistleblowing cases.

### **Advice for Liberal Democrats**

(2014)

Following the highly publicised allegations of sexual harassment made against Lord Rennard, Diya was instructed by the Chief Executive of the Liberal Democrats to review the disciplinary procedures of the Liberal Democrats and to recommend any changes required. Her instruction was publicised by the then Liberal Democrat Party President, Tim Farron, on the Party's website following the conclusion of the disciplinary process against Lord Rennard.

### **Baker Tilly UK Holdings Ltd v Clough**

[2013] EWHC 3616 (QB)

Diya acted (with Paul Goulding QC) for six individuals in this team move case which involved consideration of interim relief, enforceability of non-solicitation and non-dealing covenants, and TUPE issues. The matter settled before the two week speedy trial.

### **Hawkins v Atex Group Limited**

[2012] ICR 1315

Diya successfully represented the defendant software company in defending the claimant's appeal to the EAT against the ET's strike out of her claim of marital status discrimination.

**Imam-Sadeque v BlueBay Asset Management (Services) Ltd**

[2013] IRLR 344

Diya acted with Paul Goulding QC for the asset management business in this 2-week High Court trial following a move by the claimant to a competitor. They successfully defended the claim for £1.7 million. The judgment contains helpful analysis of the scope of the duty of fidelity and the application of the penalty doctrine to the terms of a compromise agreement and deferred remuneration plans.

**Khan v Heywood & Middleton Primary Care Trust**

[2007] ICR 24, CA

Diya acted for the appellant in the EAT ([2006] ICR 543) and in the Court of Appeal in this appeal concerning the issue whether a claim which had been withdrawn but not dismissed could be revived.

**Ostendorf v Barclays Capital Services Ltd**

(2011-2016)

Diya successfully defended the Bank both in respect of the original claim but also, most recently, in relation to the reconsideration of certain aspects of the original judgment. The claim was for over £6.4 million and was brought by the former Head of Funding Structuring who alleged that his manager, Geoff Smailes, had unlawfully terminated his employment in order to take the credit for a particular trade idea. This allegation was rejected in its entirety and both the Bank and Mr Smailes were fully exonerated of all allegations made against them.

**Perry Stimpson v Citibank N.A.**

(2015)

Acted for Citibank defending this claim by a former Foreign Exchange trader arising from his dismissal for sharing client confidential information in Bloomberg Chats. Diya successfully obtained a restricted reporting order preventing Citibank's clients from being named and also successfully resisted the claimant's application for an order for reinstatement. This case has been widely reported in the press.

**R (on the application of Cordant Group Plc) v Secretary of State for Business, Innovation and Skills**

[2010] EWHC 3442 (Admin)

Diya acted (with Michael Fordham QC and Helen Mountfield QC) in this expedited judicial review challenge to proposed amendments to the National Minimum Wage Regulations. The basis for challenge included failure to comply with the general equality duty under the RRA 1976 and discrimination contrary to Article 45 of the TFEU, Regulation 1612/68 and Directive 2000/43/EC.

**R v Secretary of State for Business Innovation and Skill ex parte Age UK**

[2010] ICR 260

Diya represented the Equality and Human Rights Commission (with Lord Lester of Herne Hill QC) as intervener in the landmark "Heyday" age discrimination judicial review case which challenged the default retirement age of 65 as being unlawful under EU law.

### **“Trojan Horse plot”**

(2014)

Diya represented the Head teacher of a school who alleged that she had been forced out as part of the Trojan Horse plot.

### **Race discrimination**

Acted for a magic circle law firm in relation to a race discrimination claim by a former banking associate (2015-2016).

### **Team move**

Acted (with Paul Goulding QC) for the former international chief executive of a well-known insurance brokerage, defending a claim for damages arising from an alleged team move and injunction to enforce post-termination covenants, and pursuing a counterclaim in relation to unlawful surveillance. The matter settled before a 5-week High Court trial (2015).

### **Non-compete**

Advised a Jersey company specialising in intellectual property services in its claims for interim injunctions to enforce non-compete covenants against two former employees who had joined a competitor (2015).

### **Constructive dismissal**

Acted for a magic circle law firm defending a claim of constructive dismissal by a former tax manager (2015).

### **Sex discrimination**

Acted for a Russian bank defending claims of sex discrimination by its former HR Director who had been made redundant (2015).

### **Whistleblowing, sexual harassment and victimisation**

Acted for a major television production company defending claims of whistleblowing, sexual harassment and victimisation by a former writer (2015-2016).

### **Allen v Morrisons Facilities Services Limited**

[2014] ICR 792

Diya successfully represented the transferee in this appeal concerning the construction of regulations 13 and 15 of TUPE, appearing against Michael Ford QC. The EAT held TUPE does not provide a transferred employee with an independent cause of action against the transferee respondent in respect of an alleged failure by the transferee to comply with its obligation to provide information to the transferor.

### **Whistleblowing**

Acted (with Paul Goulding QC) for an FX trader in respect of his whistleblowing claim against his current employer (2015).

### **Grievance process**

Advised a bank in relation to a grievance process involving an employee with mental health issues (2015).

### **Restrictive covenants**

Acted (with Lawrence Rabinowitz QC) advising a former employee of a well-known contact lens company about the enforceability of restrictive covenants contained in a share purchase agreement and the merits of his claims for wrongful and unfair dismissal (2015).

### **Disability discrimination**

Advised a bank defending claims of disability discrimination following the claimant trader's dismissal for gross misconduct (2015).

### **Bonus scheme**

Represented a bank defending claims by a group of employees in connection with changes made to the bank's bonus scheme (2015).

### **Judicial review**

Advised (with Javan Herberg QC) a soldier in relation to his dishonourable discharge from the army and a potential judicial review challenge involving human rights arguments and issues in relation to pension entitlement (2014).

### **Rao v Bank of Tokyo Mitsubishi & Others**

(2014)

Represented the Bank of Tokyo and the claimant's former managers at the trial of this complex whistleblowing and race discrimination claim which was heard over 3 weeks. The claimant was represented by Caspar Glyn QC.

### **Rosie v (1) iBetx Ltd, (2) Mirza, (3) SCP Limited and (3) Directly.me Ltd**

(2014)

Successfully represented the respondents at the 2-week trial of claims of sexual harassment and sex discrimination by a former employee. The case involved lengthy cross-examination of the claimant about sensitive allegations.

### **Confidential information**

Acted for an individual defending allegations of misuse of confidential information (2014).

### **Whistleblowing and disability discrimination**

Acted for an LLP law firm in its defence of claims made by a former member of the LLP for disability discrimination, victimisation and whistleblowing detriment (2014).

### **Employee competition**

Acted (with Robert Howe QC) for an architect who had set up a business competing with his previous employer, defending a claim for breach of contract and breach of fiduciary duty and pursuing a substantial counterclaim for bonus (2014).

### **Injunction to restrain suspension**

Represented a bank defending an application for an injunction to restrain the suspension of a current employee (2014).

### **Breach of contract**

Acted for the former managing director of a football club in his contract claim against the club (2014).

### **Halawi v WDFG UK Ltd (t/a World Duty Free)**

(2013)

Diya successfully represented World Duty Free in the EAT before Langstaff P in the first appellate decision on the meaning of "employment" in section 83(2) of the Equality Act 2010.

### **H v Royal Bank of Scotland Plc**

(2013)

Successfully represented the Bank in defending a claim by a trader on the CDO Desk for wrongful dismissal and unfair dismissal following his involvement in wash trades.

### **Hill v BlackBerry (formerly Research in Motion)**

(2012-2013)

Acted for the respondent in this disability discrimination claim by an employee on long-term sickness absence which was said by him to be worth almost £5 million.

### **Sud v London Borough of Ealing**

(2013)

Successfully represented the claimant at an oral permission hearing in the Court of Appeal in this appeal concerning disability discrimination principles and costs orders.

### **Disability discrimination**

Acted for a major financial services company defending a disability discrimination claim by a former investment adviser (2015).

**Astrazeneca v Miels**

(2017)

Acted

for Luke Miels, a senior employee of Astrazeneca who resigned to join GlaxoSmithKline, a rival pharmaceutical company. This high-profile case involved a claim by Astrazeneca to enforce 12 months' garden leave against Mr Miels. The proceedings were settled shortly before a speedy trial.

**ICAP v Berry & BGC**

[2017] EWHC 1321 (QB), [2017] IRLR 811

Acted

for BGC in successfully defending claim of inducement of breach of contract. The dispute arose when an employee of ICAP resigned to join BGC, a competitor. The case has been reported and is now a leading authority on garden leave and inducement of breach of contract.

**Various claims against Citigroup**

(2016-2017)

Acted for Citigroup in defending various claims brought by former fx traders.

**Wycherley v Queen's Park Rangers Football and Athletic Club Ltd**

Successfully represented QPR in defending employment claim by former Academy Football Operations Officer.

## ACHIEVEMENTS

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### Education

MA (Cantab), Law

### Publications

- Contributor to 3rd edition of Employee Competition: Covenants, Confidentiality and Garden Leave (2016)
- Contributor to 2nd edition of Tolley's Discrimination in Employment Handbook (2011)
- Contributor to 2nd edition of Employee Competition: Covenants, Confidentiality and Garden Leave (2011)
- Contributor to Jordans Employment Law
- Contributor to Butterworths Employment Law Guide (4th Edition, 2007)
- Co-Author of Tolley's Equal Pay Handbook (July 2006)

- The implications of the Court of Appeal's judgment in *Sunrise v Rodgers*, 1 December 2014
- Bonuses, breaches of fidelity and the penalty doctrine (with Fahim Rahman, Allen & Overy LLP), 1 June 2013
- Sitting in private and anonymity in the EAT (with Daniel Stilitz QC), 1 November 2012
- Privilege issues in investigations (with Jenny Steer, Berwin Leighton Paisner LLP), 1 April 2011
- The new public sector equality duty (with Helen Mountfield QC), 1 April 2010

## Appointments

- 2008 - 2010 Member of the Bar Standards Board's Complaints Committee
- 2006 - 2011 Junior Counsel to the Crown (C Panel)
- 2006 - 2007 Member of the Bar Council's Equality and Diversity Committee
- 2002 - 2003 Judicial Assistant to the Law Lords

## Memberships

- 2015-2016 - Secretary of Employment Law Bar Association
- 2013-2014 - Treasurer of Employment Law Bar Association
- 2011 - Employment Law Bar Association Committee Member
- 2009 - Member of the Employment Lawyers Association Training Committee
  
- Association of Partnership Practitioners
- Commercial Bar Association
- European Employment Lawyers Association
- Employment Lawyers Association
- Employment Law Bar Association
- Financial Services Lawyers Association
- Industrial Law Society
- London Common Law and Commercial Bar Association

## Other relevant information

Between April and June 2015 Diya completed a 9-week evening Masterclass in Financial Markets at the London Stock Exchange Group.

Diya is a member of the Blackstone Chambers Pupillage Committee, a Blackstone Chambers Equality and Diversity Officer and a Pupillage Supervisor.

Diya is a supporter of the Bar Pro Bono Unit and the COAS and ELAAS schemes and has assisted a number of individuals with their appeals in the Court of Appeal and the EAT on a pro bono basis.

Diya was a member of Devereux Chambers from 2001-2008.