

## Susan Chan

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## Introduction

*"Provides calm and measured counsel, handles clients confidently, and manages tribunal hearings with authority."* Legal 500 2021



Susan practices in employment law, public law, personal injury/clinical negligence and inquests. Much of her practice is based in the higher courts such as the High Court, the Employment Appeal Tribunal (EAT) and Court of Appeal although the majority of her practice is undertaken in employment tribunals. She is a member of the charity ELAAS which represents and advises appellants in their applications for permission to appeal in the EAT.

Susan has been a Gray's Inn Advocacy Trainer since 2010, training new students and pupils in advocacy and professional conduct. She is a visiting fellow of Sheffield University. She is authorised to do public access work.



## Employment

Susan acted as sole counsel for the government defending two separate challenges brought by Unison, to the legality of the employment tribunal and EAT fees regime introduced in July 2013: *Unison v Lord Chancellor* (no 1) and (no 2). In May 2014, she acted for the Judicial Appointments Commission in its successful defence of the first judicial review challenge to be heard by a Court: *Jones v Judicial Appointments Commission* which concerned the operation of the Good Character Guidance in relation to points accrued on an applicant's driving licence. Susan has 20 years' experience in all areas of employment law with particular expertise in discrimination claims. In 2013 she successfully represented an Employment Judge in his defence of a claim that he has aided sex, race and disability discrimination against the claimant by her employer: *Sivanandan v Cole*. Complex issues that have arisen in recent cases include the territorial applicability of certain statutory claims such as unfair dismissal, the effect of ECJ case-law on the operation and calculation of holiday under the Working Time Regulations and whether a claimant is an employee, worker or contractor. She regularly acts pro bono for appellants in the Employment Appeal Tribunal under the ELAAS scheme.

### Related selected cases

- *O'Connor v Jaguar Land Rover*: 27 January 2020 Susan acted for successful Claimant who was found to have been automatically unfairly dismissed for walking off-site from the Midlands Jaguar Land Rover factory. This was due to his belief that his health was in serious danger from unextracted car exhaust fumes on the factory line: [Read the Employment Tribunal decision here](#)
- *Fahim Afzal v Domino's Pizza* [2018] ICR 1652 – Susan acted for an assistant manager with the Respondent, in successfully appealing to the EAT against the employment tribunal's finding that the employer's failure to give him an appeal did not make his dismissal unfair. He was a spouse of an EEA national who had been dismissed for failing that he had made an in-time Home Office application to extend his leave, on the day that his leave expired, even though he at all times held leave and could have proved this if given an appeal.
- *Witts v Wyre Forest School*– Susan acted for the appellant teaching assistant in his EAT appeal, which was successful because the tribunal hearing his unfair dismissal claim had failed to take account that appellant was acting in self-defence. The appellant had been dismissed for gross misconduct from school for an incident in which a special needs pupil fell to the ground after attacking the appellant.
- *Unison v Lord Chancellor and Equality and Human Rights Commission* [2014] IRLR 226 (legality of Fees Scheme introduced in Employment Tribunals and Employment Appeal Tribunal in July 2013)
- *Jones v Judicial Appointments Commission* [2014] EWHC 1680 (whether JAC's refusal to appoint an applicant to become a District Judge on character grounds, because he had 7 current points on his driving licence, was lawful)
- *Dragonfly Consultancy Ltd v Revenue and Customs Commissioners* (2008) STC 3030 (liability of IT consultant for tax and NI under intermediaries legislation)

## Inquests

She has 20 years' experience of appearing for interested parties at inquests, including inquests involving complex human rights arguments. She has acted for the MOD in inquests involving difficult issues such as defence systems on combat helicopters, the suitability of 'Snatch' Land Rovers to conduct patrols in Iraq and Afghanistan and the efficacy of night goggles. Susan also has extensive experience of representing parties at inquests into deaths in custody, including a man who had been passed through five prisons whilst suffering from depression with psychotic symptoms. She has been involved in many inquests involving deaths from brain injuries, including that of a soldier who died from a brain injury sustained during a play-fight.

## Related accreditations

- Strengths: *"If you're in a pickle she's really good as she's very supportive and instils confidence."*
- *"She's not fazed by anything."* – Chambers and Partners 2015
- *"Susan Chan is my first port of call on difficult employment cases. Her intellect and experience speaks for itself but for me and for my clients her main quality is her ability to keep her nerve when it seems everyone else is losing theirs"*

## Related professional memberships

- Member of PIBA
- Member of ELBA
- Member of ELAAS (Employment Law Appeal Advisory Scheme)
- Visiting Fellow of Department of Law, University of Sheffield

## Selected cases

- *Fahim Afzal v Domino's Pizza* [2018] ICR 1652 – The appellant was the husband of an EEA national, who had been dismissed for allegedly failing to make an in-time Home Office application to extend his leave, even though he had in fact made his application in-time. Susan acted for the appellant and the EAT found that the employment tribunal had erred in finding that the employer's failure to give him an appeal, did not render his dismissal unfair.
- *Fayad v Home Secretary* (2018): Court of Appeal refused to grant the appellant an extension of time for a review of a master's costs decision when the delay of 46 days was significant and the parties had agreed to the master determining the costs order on the papers.
- *Witts v Wyre Forest School* – (2017) EAT: Susan acted for the appellant teaching assistant in his EAT appeal. The appeal was allowed because the tribunal hearing his unfair dismissal claim had failed to take account that the appellant was acting in self-defence. The appellant had been dismissed for gross misconduct from school for an incident in which a special needs pupil fell after attacking the appellant;
- *Decker v Home Secretary* (2017): Court of Appeal found that deportation order was valid even though it was unknowingly signed by the Home Secretary when the EU national claimant had clandestinely left the

UK to avoid its effect. Matter remitted for Home Secretary to consider whether the claimant presented a genuine, serious threat to public safety.

- *Behary v Ullah* (2016) Guidance given by Court of Appeal on approach to children's interests and meaning of "established presence" in context of parents' Tier 4 student applications;
- *Nawaz v BG Consulting Group Ltd* (2017) EAT: Susan acted for appellant whose race discrimination claim had been dismissed in an employment tribunal judgment which copied and pasted approximately ¼ of the Respondent's written submissions. The EAT found that although the judge's copying and pasting was not ideal, it had not ultimately affected the correctness of the tribunal's decision which was made on the merits;
- *Unison v Lord Chancellor and Equality and Human Rights Commission* (2013-2015): Unison challenged legality of Fees Scheme introduced in Employment Tribunals and EAT; Susan acted as sole counsel in the 2013 and 2014 judicial reviews heard by two Divisional Courts. In 2015 she was led by David Barr QC in the Court of Appeal;
- *Jones v Judicial Appointments Commission* (2014): whether JAC's refusal to appoint an applicant to become a District Judge on character grounds, because he had 7 current points on his driving licence, was lawful;
- *AA Afghanistan v Home Secretary* [2013] UKSC 49: Supreme Court found that Home Secretary had not acted unlawfully in detaining a disputed minor whose appearance strongly suggested that they were over 18 and there was an age assessment strongly supporting that the claimant was an adult;
- *ZH Tanzania v Home Secretary* (2012) Supreme Court: Landmark decision in which Supreme Court gave guidance on approach to assessing children's best interests in the immigration context
- *Sivanandan v Cole* (2009): Susan successfully defended an employment tribunal judge during 6-week hearing who was accused of aiding sex, disability and race discrimination by the claimant's employer, a charitable legal advice centre.

## Education

- BA Hons in Law, Magdalen College, Oxford University (1993: class 2:1)
- First in Law Moderations (1991)

## Scholarships and Awards

- Appointed a Demy (Scholar) in Law of Magdalen College, Oxford (1991-1993)
- Gray's Inn Prince of Wales Scholarship (1993)

## Other information

- Was on the Attorney-General's panel of Civil Treasury counsel for 16 years between 1999 and 2015, including a 5-year appointment on 'A' panel
- Advocacy trainer teaching advocacy and ethics for Gray's Inn.
- Visiting Fellow of Sheffield University
- Licensed to accept Direct Access
- Susan is a parent governor at her children's school. She has played piano since she was aged 4 and also

enjoys singing, going to the cinema and music gigs in her spare time.