



# Naomi Cunningham

**Year of Call:** 1994

**Direct Access:** Yes

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Naomi Cunningham has specialised in **discrimination law**, mainly but not exclusively in the employment context, throughout her career.

In recent years, Naomi has developed a particular interest in the interaction between the Equality Act and the Gender Recognition Act, gender reassignment discrimination, the single-sex exceptions in the Equality Act, and the public sector equality duty. She gave evidence to the Women and Equalities Select Committee on reform of the GRA in February 2021, to the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament in June 2022, and again to the Women and Equalities Select Committee at Westminster in January 2023.

Her public law work in the area includes Fair Play For Women's successful judicial review of ONS guidance on the sex question in the 2021 Census, a challenge to the lawfulness of the EHRC's Code of Practice in *AEA v EHRC*, FOIA appeals involving information held by the Judicial College and the Crown Prosecution Service, and several substantial pieces of advice for government and major public bodies.

Naomi was named The Times Lawyer of the Week in May 2024 for her success in *Meade v Westminster City Council and Social Work England*, in which she secured exemplary damages against the regulator, which had "allowed its processes to be subverted to punish and suppress the Claimant's lawful political speech". The following week, the Edinburgh Employment Tribunal handed down its judgment in *Adams v Edinburgh Rape Crisis Centre*, finding that Naomi's client had been subjected to a "heresy hunt" orchestrated by the Centre's CEO. Current instructions include a challenge by the makers of the film *Adult Human Female* to their trade union, UCU, over the union's support for protests that have twice prevented the showing of the film at Edinburgh University, a challenge to an NHS trust's policy of permitting a trans-identifying male employee to use women's changing rooms, and a complaint of discrimination on grounds of protected gender-critical belief against a major publishing house.

Naomi's popular and practical guide to employment tribunal proceedings, *Employment Tribunal Claims: tactics and precedents* (2nd-4th editions co-authored by Michael Reed) is still widely valued by everyone from litigants in person to judges.

Naomi also blogs regularly on the law at [www.legalfeminist.org.uk](http://www.legalfeminist.org.uk). Her blog post on **preparing a decent hearing bundle** has been described by some (who should perhaps get out more) as "life-changing".

Naomi is chair of the human rights charity **Sex Matters**. She was named by The Lawyer as one of their "Hot 100" for 2022.

## London (Main Office)

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## Areas of Expertise

### Employment & Discrimination

Naomi is an experienced and sought after barrister, instructed by claimants and respondents in individual and multiparty claims, across a broad range of employment law issues.

#### Notable Employment & Discrimination cases

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[Asda Stores Ltd v Brierley and others \[2021\] UKSC 10](#)

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[Element & ors v Tesco Stores Ltd \(C-624/19\)](#)

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[Brierley & ors v Asda; Ahmed & ors v Sainsburys & anr; Fenton & ors v Asda \[2019\] EWCA Civ 8](#)

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[Mansfield v Taran Microsystems Limited UKEAT/0307/17](#)

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[Burdis v Dorset County Council UKEAT/0084/18](#)

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[Awan v ICTS UK Limited UKEAT/0087/18/RN](#)

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[Mbubaegbu v Homerton University Hospital NHS Trust UKEAT/0218/17/JOJ](#)

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[Premachandra v HBOS PLC UKEAT/0090/15/RN](#)

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[Azam v Ofqual UKEAT/0407/14/JOJ](#)

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[Ros v Brighton & Hove City Council & others UKEAT/0176/13](#)

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[Aspire Defence Services Limited v Hutchings UKEAT/0442/12/LA](#)

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[Osoba v Chief Constable of the Hertfordshire Constabulary UKEAT/0055/13/BA](#)

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[Lipinski v Ebbsfleet Autospray Centre Limited UKEAT/0288/12/JOJ](#)

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[Governing Body of St Andrew's Catholic Primary School & ors v Blundell UKEAT/0259/12/RN](#)

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[London City Airport Limited v Chacko UKEAT/0013/13](#)

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[Birmingham City Council v Akhtar & ors EWCA Civ 585](#)

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[Dziedziak v Future Electronics Limited UKEAT/0270/11/ZT](#)

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[Segor v Goodrich Actuation Systems Limited UKEAT/0145/11](#)

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[Mckerrow v The Princess Alexandra Hospital NHS Trust UKEAT/0387/11](#)

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[Hamilton & ors v NHS Grampian UKEATS/0067/10/BI](#)

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Whether section 11 of the ERA can be used to determine the existence of an implied term; determination on a point of law without hearing evidence; costs

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[NHS Leeds v Larner UKEAT/0088/11/CEA](#)

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Whether an employee on long-term sick leave must take steps to exercise her right to annual leave in order to be entitled to holiday pay.

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[Compass Group PLC v Ayodele UKEAT/0484/10/SM](#)

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The scope of an employer's obligation to consider a request not to retire.

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[Hussain v Acorn Independent College Ltd \[2011\] I.R.L.R. 463, EAT](#)

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Temporary cessation of work; whether temporary cover provided by a teacher counted towards his continuous service.

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[St Andrew's Catholic Primary School v Blundell \[2011\] EWCA Civ 427](#)

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New evidence on appeal; application of rule in Ladd v Marshall.

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[Vickers v London Fire and Emergency Planning \[2010\] EWHC 1855 \(QB\)](#)

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Meaning of 'unable to drive for genuine reasons' in firefighters' contract.

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[Blundell v Governing Body of St Andrew's Catholic Primary School \[2007\] ICR 1451, EAT](#)

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The first appeal case on the definition of the 'job' to which a woman has the right to return following maternity leave.

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[Moyhing v Barts & the London NHS Trust \[2006\] IRLR 860, EAT](#)

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Sex discrimination against a male student nurse (funded by the EOC).

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[Network Rail Infrastructure Ltd v Griffiths-Henry \[2006\] IRLR 865, EAT](#)

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The burden of proof in discrimination cases.

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[Comfort v Department for Constitutional Affairs \(2006\) \(ET\); \(2005\) \(EAT\); \[2004\] EWCA Civ 349 \(CA\)](#)

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Constructive dismissal case remitted by the CA for re-hearing after the original ET failed to deal with allegation of perjury by a senior civil servant giving evidence for the Respondent. The second appeal to the EAT concerned disclosure of the Respondent's notes of evidence from the previous hearing.

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[Gdynia America Shipping Lines \(London\) Ltd v Chelminski \[2004\] ICR 1523, CA](#)

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Time for appealing an employment tribunal decision.

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[Kwamin v Abbey National plc \[2004\] ICR 841, EAT](#)

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Delay in promulgation of ET decisions, Article 6.

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[Addison & Addison v Ashby \[2003\] ICR 667](#)

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Whether child workers entitled under the Working Time Regulations to paid annual leave.

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## Memberships

- [Employment Law Bar Association](#)
- [Employment Lawyers' Association](#)
- [Discrimination Law Association](#)
- Trustee of the [Anti-Trafficking & Labour Exploitation Unit](#)

## Publications

- Naomi writes a popular and practical guide to employment tribunal proceedings, [Employment Tribunal Claims: tactics and precedents](#), now in its 4th edition.
- Several reviewers describe the book as essential, and a review in the [ELA Briefing](#) adds "Every employment lawyer (including the tribunal judiciary) will learn something of value from reading this book."
- Naomi also blogs at [www.legalfeminist.org.uk](http://www.legalfeminist.org.uk)

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## Recommendations



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