

## Aswini Weeraratne KC



Call: 1986

Silk: 2015

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### Profile

She utilises her skills in a wide range of practice areas and cases, concerning public and private law issues, including actions against state bodies, for example, assault and unlawful detention claims, non-recent child abuse claims, inquests and inquiries, and international law.

She has a strong background in investigatory and regulatory work, and independent/neutral chairing. She has chaired and produced published reports for six independent inquiries into homicides by patients within mental health services. She has significant experience of public inquiries.

She drafts interventions in cases of public importance before the higher courts. Currently advising a strategic litigation project in Sri Lanka with the aim of de-institutionalising children's care and promoting access to justice, and drafting an amicus brief in a case about psychiatric detention before the Ugandan courts. She acts in appeals to Regional and international Human Rights bodies. She acts pro bono in many of these cases.

She is a qualified mediator and sits as a part time judge in the First Tier Tribunal for Mental Health, and in the Court of Protection. She has recently been appointed as deputy chair of

the appeals panel of the Institute and Faculty of Actuaries.

She has chaired the Human Rights Lawyers Association since January 2021, and is currently a Vice Chair of the Bar Human Rights Committee.

## What the Directories say

She has featured in Chambers and Partners and the Legal 500 for several years.

*"A passionate and intellectually powerful advocate who fights hard for her clients."*

*"Aswini is a very safe pair of hands. [She] is extremely knowledgeable."*

*"She is a great leader and really led the team on various aspects of the case. She liaised heavily with clients and other stakeholders and her knowledge of the evidence and the public inquiry process was hugely impressive."*

*"She has a reputation for cutting through to the heart of complex cases" and "turning around large volumes of work in short periods of time"*

*"She is well respected for her ability to engage with difficult courtroom topics in a calm and persuasive manner..... As astute as they come in Court of Protection matters. Her ability to cut through to the heart of complex and difficult cases is remarkable, as is her ability to turn around large volumes of work in very short periods of time. The safest of safe hands."*

*"She's very persuasive and is a very clear advocate."*

*"She is a thoughtful, dynamic lawyer and a formidable advocate. Her attention to the detail of a case is second to none."*

## Case examples

Various civil claims under the common law and HRA relating to assaults or unlawful detentions against public authorities, including social services, the police and immigration authorities, negligence by mental health professionals and for misuse of data. For example:

AB and others v Nugent Care Society [2006]-[2010]. Acted for claimants in a major institutional child sexual abuse group action involving three trials and two Court of Appeal hearings which developed the law post A v Hoare on limitation. Concerned the physical and sexual abuse of boys in children's homes during the 1970s and 80s by staff leading to psychiatric damage especially post-traumatic stress disorder.

- Represented two NGOs in the **Supreme Court in Poole Borough Council v GN** (through his litigation friend the OS) and CN [2019] UKSC 25, concerning the liability in

tort of local authorities for failing to protect children at risk of, or subject to, exploitation or abuse.

- **Blackstock v Stoke City Football Club and Fox:** A case about ritual bullying and sexual humiliation of an apprentice footballer aged 16 in the mid-1980s by first team players. I argued and won the limitation issue in December 2013. The case did not succeed at full trial on proof of assaults and vicarious liability.

Substantial mental health and Court of Protection and related practice. For example:

- Currently instructed on behalf of Roy and Pam Hickmott (reporting restrictions lifted) in relation to ending the long-standing detention under the MHA of their son, Tony, who has a diagnosis of autism, in contravention of the Transforming Care policy. Tony has been detained for 20 years. Press reporting of this case has recently been lifted [\[link\]](#)
- Acting in a case concerning the welfare, including sexual contact, between a married couple. This case raises issues of the lawfulness of the care plans supporting them to have sexual contact in the aftermath of the Court of Appeal's judgment in [C], and their respective mental capacity to engage in sex following the SC in JB.
- Instructed by Respond, a leading national charity providing therapeutic and support services to children, young people and adults with learning disabilities and/or autism, to intervene before the **Supreme Court in A Local Authority v JB** (by his litigation friend, the Official Solicitor) [2021] UKSC 52. This case considered the concept of mental capacity under the Mental Capacity Act 2005 when assessing whether a protected party has capacity to have sex.
- Instructed by Mind, leading national mental health charity, to intervene in the Supreme Court in the appeal in **PJ v Welsh Ministers** [2018] UKSC 66, a case concerning community treatment orders and deprivation of liberty under the Mental Health Act 1983 (as amended)
- **N v ACCG and others** [2017] AC 549 the issue for the Supreme Court concerned the jurisdictional boundary between the Court of Protection and the Administrative Court where the relevant public authority was only willing to provide one option in P's best interest. The appeal also concerned the jurisdiction of the COP faced with a determination under the HRA 1998
- **North Yorkshire v MAG** [2016] EWCOP 5, an appeal considering issues arising from Re N (an Adult) and the availability of options against the backdrop of a willing public authority, delays in the provision of suitable accommodation, the suitability of conditions

of deprivation of liberty, and the violation of article 5 ECHR.

- Health Service Executive for **Ireland v PA and others** [2015] 3 WLR 1923, a case concerning the application of schedule 3 of the Mental Capacity Act 2005 and the reciprocal obligations of states under the Hague Convention on the International Protection of Adults, including compatibility with domestic and ECHR law. Considered domestic law obligations in respect of the recognition, enforcement and implementation of protective measures imposed by a foreign court.
- **MS v UK** (2012) 55 EHRR 23. An important decision of the European Court of Human Rights that a mentally ill man was detained in a police cell for 72 hours without medical attention in violation of article 3 ECHR. The applicant received 3,000 Euros.
- **London Borough of Hillingdon v Steven Neary** (by his LF the OS) and Mark Neary [2011] EWHC 1377 (COP), 4 All ER 584: The court made declarations of unlawfulness under articles 5 and 8 and gave guidance on the approach to best interests assessments under schedule A1 of the MCA; and see the decision regarding press reporting: [2011] EWHC 413. The first COP case in which the press were permitted to be present throughout, and then to report the proceedings, naming Steven Neary.
- **AH v West London Mental Health NHS Trust and another** [2010] UKUT 264 (AAC) and [2011] UKUT 74 (AAC): a successful application for a public tribunal hearing by a patient at Broadmoor detained under sections 37/41 MHA which set guidelines for such applications, and was the first domestic case to rely on the UN Convention on the Rights of Disabled Persons.

Experience of public and independent inquiries. For example:

- Currently acting as lead counsel of a large team for British Gymnastics, the regulatory body for gymnastics in this country, in an independent review into coaching abuses (The Whyte Review). This concerns complex issues of safeguarding, data access, regulatory mechanisms and responses, evidential requirements, and submissions.
- Instructed by core participants in four complex strands of investigation before the **Independent Inquiry into Child Sexual Abuse (IICSA)** covering the protection of children outside the UK, Accountability and Reparation and Lambeth Council corruption.
- Represented the **Child Migrants Trust**, a small charity protecting the interests of British children migrated to the Colonies between the 1940s and 1970s without parental

consent and into conditions of sexual abuse and often conditions amounting to torture and slavery. Secured an acceptance of responsibility for these children, now elderly people, by the UK Government. A compensation scheme was set up following the recommendation of the Inquiry.

- Represented the British Council in the investigation into the sexual abuse overseas of children by British nationals, or 'sex tourism'. The **Inquiry's report** was published on 6 January 2020. This concerned the laws available to prevent sex tourism, and of the debarring and vetting schemes available to employers overseas to detect applications for employment with children of people with a history of sexual and other offending.
- In the **accountability and reparation** strand represented an individual who had endured years within a group action, 3 High Court trials, and two Court of Appeal outings, was believed by two High Court judges and still received no compensation. This strand is looking at reform of limitation laws and redress schemes for survivors of child sexual abuse in institutions. Sought to introduce ideas of restorative justice to broaden the options for a flexible redress scheme for this special category of vulnerable claimant.
- In the **Lambeth Council** strand acted for a whistle-blower who made strenuous efforts to secure a contemporary investigation into the sexual abuse of children within children's homes related to corruption in the Council, and the police, and also for an individual who was sexually abused in a Lambeth run children's home.
- Chair of six independent inquiries commissioned by various health authorities into homicides committed by patients within specialist mental health services and authored six published reports into the same between 1997 and 2006. Department of Health guidance HSG(94)27.
- Junior counsel for Ashworth Special Hospital in the public inquiry into the personality disorder unit in 1999.
- Acted for families in many inquests relating to responses by psychiatric services and the police.
- **R (on the application of Mousa) v Secretary of State for Defence** [2011] EWCA civ 1334: I drafted an intervention on behalf of the REDRESS Trust in this application for an independent public inquiry into the torture of Iraqi detainees imprisoned in Iraq by the British military. The intervention focused on international obligations and inquiry independence. I also considered the requirements of the Istanbul protocol in relation to interviewing victims of torture which I consider to be relevant to interviewing and participation of victims of abuse in an inquiry.

## **Publications**

- **Insight articles on Covid-19 regulations in 2020.**
- Contributing author to Lewis & Buchan: '*Clinical Negligence: a Practical Guide*', published by Bloomsbury in 2019. Chapters on medical treatment of adults and children without capacity, and the Court of Protection.
- Consultant editor, Halsbury's Laws of England, '*Mental Health and Capacity*'. Volumes published in 2013 and 2004.
- Limitation in historic child abuse cases post Hoare: the cart before the horse, PI Focus, December 2010, APIL
- Safeguards for informal patients: Journal of Mental Health Law, 20 (2010) 71. Special issue on A model law fusing incapacity and mental health legislation is it viable; is it advisable?
- Chapter on mental health in '*Crime and Human Rights*'. Published by OUP in December 2009
- Lead author of Butterworths '*New Law Guide to the Mental Capacity Act 2005*' published in April 2008 by Lexisnexis.
- Contributor to: '*International Criminal Court's Trust Fund for Victims. Analysis and options for the development of further criteria for the operation of the trust fund for victims.*' A discussion document. Published by Redress, Dec. 2003.
- Author of six reports published following independent inquiries into homicides by patients within mental health services.

## **Education**

Ursuline High School, Wimbledon

BSc in Experimental Psychology, Sussex University in 1984

Diploma in Law, City University in 1985

Council of Legal Education, Bar vocational course in 1986

Called to the Bar at Gray's Inn in July 1986

LLM in International Human Rights Law (with distinction), SOAS, London University in 2004

## Related practice areas

Court of Protection & Mental Health

Inquests and Public Inquiries

International Law

International Human Rights Law

Mediation

Children's Rights Group

Administrative & Public Law

Clinical Negligence, Personal Injury & Product Liability

Discrimination

Immigration Detention Group

Anti-Trafficking

Investigations

## Mental Health and Court of Protection

She has a longstanding and acknowledged expertise in mental health and mental capacity law. Her cases are all complex cases of their kind:

- Claims for damages under the common law and the Human Rights Act 1998
- Jurisdictional issues
- Human rights issues: articles 3, 5, 6, 8 and 10 of the ECHR
- Advisory work on legislative changes,
- Claims relating to the care of people with autism

For example:

- Instructed by Mind, leading national mental health charity, to intervene in the Supreme Court in the appeal in *PJ v Welsh Ministers* [2018] UKSC 66, a case concerning community treatment orders and deprivation of liberty under the Mental Health Act 1983 (as amended).
- **N v ACCG and others** [2017] AC 549 the issue for the Supreme Court concerned the jurisdictional boundary between the Court of Protection and the Administrative Court where the relevant public authority was only willing to provide one option in P's best interest. The appeal also concerned the jurisdiction of the COP faced with a

determination under the HRA 1998.

- **North Yorkshire v MAG** [2016] EWCOP 5, an appeal considering issues arising from Re N (an Adult)(above) and the availability of options against the backdrop of a willing public authority, delays in the provision of suitable accommodation, the suitability of conditions of deprivation of liberty, and the violation of article 5 ECHR.
- **Health Service Executive for Ireland v PA and others** [2015] 3 WLR 1923, a case concerning the application of schedule 3 of the Mental Capacity Act 2005 and the reciprocal obligations of states under the Hague Convention on the International Protection of Adults, including compatibility with domestic and ECHR law. Considered domestic law obligations in respect of the recognition, enforcement and implementation of protective measures imposed by a foreign court.
- **London Borough of Camden v JN** (by his LF the OS) and others [2015] EWCOP (Bailii), a case concerning the overlap between the Mental Health Act 1983 and Mental Capacity Act 2005 (MCA), and the validity of an advance decision purporting to refuse antipsychotic medication. There was also an issue as to whether JN lacked capacity to consent to medication due to the undue influence of his mother or an impairment within the meaning of the MCA.
- **Somerset County Council v MK** [2014] EWCOP B25, acted for MK seeking and obtaining findings of violations of articles 5 and 8 of the Convention. The judgment is highly critical of the conduct of the local authority.
- **NCC v WMA and MA** [2013] EWHC 2580 (COP). Complex welfare case concerning the best interests and article 8 private and family life of a young autistic man.
- **MS v UK** (2012) 55 EHRR 23. An important decision of the European Court of Human Rights that a mentally ill man was detained in a police cell for 72 hours without medical attention in violation of article 3 ECHR. The applicant received 3,000 Euros.
- **CM v Derbyshire Healthcare NHS Foundation Trust and another** [2011] UKUT 129 (AAC): complaint by a patient that he had been wrongly detained in hospital for his chaotic lifestyle and drug use was upheld.
- **London Borough of Hillingdon v Steven Neary (by his LF the OS) and Mark Neary** [2011] EWHC 1377 (COP), 4 All ER 584: The court made declarations of unlawfulness under articles 5 and 8 and gave guidance on the approach to best interests assessments under schedule A1 of the MCA; and see the decision regarding press reporting: [2011] EWHC 413. The first COP case in which the press were permitted to



be present throughout, and then to report the proceedings, naming Steven Neary.

- **AH v West London Mental Health NHS Trust and another** [2010] UKUT 264 (AAC) and [2011] UKUT 74 (AAC): a successful application for a public tribunal hearing by a patient at Broadmoor detained under sections 37/41 MHA which set guidelines for such applications, and was the first domestic case to rely on the UN Convention on the Rights of Disabled Persons.
- **LBE v SK and others** [2008] EWHC 636. Welfare of incapacitated adult of Afghani origin. Issues of care, residence, sexual relations and marriage.
- **E v Channel 4 and News International Limited** [2005] EWCH Fam, 2 FLR 913, EMLR 30. Acted for the defendants resisting an attempt to restrain the broadcast of a TV programme about the care and services provided for an incapacitated woman with multiple personalities.
- **R(H) v Secretary of State for the Home Department** [2004] 2 AC 25 House of Lords. Acted for restricted patient who was unable to take advantage of a decision of the First Tier Tribunal to discharge him from high secure hospital for lack of community services.

## Inquiries and Inquests

She has extensive experience of inquiries and investigatory work.

For example:

- Chair of six independent inquiries commissioned by various health authorities into homicides committed by patients within specialist mental health services and authored six published reports into the same between 1997 and 2006. Department of Health guidance HSG(94)27.
- Instructed by core participants in four strands of investigation before the Independent Inquiry into Child Sexual Abuse covering the protection of children outside the UK, Accountability and Reparation and Lambeth Council corruption.
- Represented the **Child Migrants Trust**, a small charity protecting the interests of British children migrated to the Colonies between the 1940s and 1970s without parental consent and into conditions of sexual abuse and often conditions amounting to torture and slavery. Secured an acceptance of responsibility for these children, now elderly

people, by the UK Government. A compensation scheme was set up following the recommendation of the Inquiry.

- Represented the British Council in the investigation into the sexual abuse overseas of children by British nationals, or 'sex tourism'. The **Inquiry's report** was published on 6 January 2020. This concerned the laws available to prevent sex tourism, and of the debarring and vetting schemes available to employers overseas to detect applications for employment with children of people with a history of sexual and other offending.
- In the **accountability and reparation** strand represented an individual B19 who had endured years within a group action, 3 High Court trials, and two Court of Appeal outings, was believed by two High Court judges and still received no compensation. This strand is looking at reform of limitation laws and redress schemes for survivors of child sexual abuse in institutions. [see also actions for damages below]. Aswini has sought to introduce ideas of restorative justice to broaden the options for a flexible redress scheme for this special category of vulnerable claimant.
- In the Lambeth Council strand Aswini acts for a whistle-blower who made strenuous efforts to secure a contemporary investigation into the sexual abuse of children within children's homes related to corruption in the Council, and she also acts for an individual who was sexually abused in a Lambeth run children's home.
- Junior counsel for Ashworth Special Hospital in public inquiry into the personality disorder unit.
- Intervened on behalf of the REDRESS Trust in an application for an independent public inquiry into the torture of Iraqi detainees imprisoned in Iraq by the British military: R(on the application of Mousa) v Secretary of State for Defence [2011] EWCA civ 1334. The intervention drew on standards of independence set in international human rights instruments and cases.
- Acted for families in many inquests relating to responses by psychiatric services and the police, and deaths in police and prison custody.

## International Human Rights

Advises and acts in cases raising issues such as the right to life, torture and inhuman and degrading treatment, deprivation of liberty, private and family life, access to justice, removal of legal capacity.

Fully conversant with applications and interventions before regional and international human rights bodies and including UN mechanisms and procedures.

For example:

- **MS v UK** (2012) 55 EHRR 23. An important decision of the European Court of Human Rights that a mentally ill man was detained in a police cell for 72 hours without medical attention in violation of article 3 ECHR. The applicant received 3,000 Euros.
- Drafted interventions on behalf of Validity before the ECtHR on cases concerning legal capacity and the right to vote, consent and psychiatric treatment, use of least severe measures and least restriction in community settings.
- Intervened on behalf of the REDRESS Trust in an application for an independent public inquiry into the torture of Iraqi detainees imprisoned in Iraq by the British military: **R(on the application of Mousa) v Secretary of State for Defence** [2011] EWCA civ 1334. The intervention drew on standards of independence set in international human rights instruments and cases.
- **Health Service Executive for Ireland v PA and others** [2015] 3 WLR 1923, a case concerning the application of schedule 3 of the Mental Capacity Act 2005 and the reciprocal obligations of states under the Hague Convention on the International Protection of Adults, including compatibility with domestic and ECHR law. Considered domestic law obligations in respect of the recognition, enforcement and implementation of protective measures imposed by a foreign court.
- **AH v West London Mental Health NHS Trust and another** [2010] UKUT 264 (AAC) and [2011] UKUT 74 (AAC): a successful application for a public tribunal hearing by a restricted patient detained at Broadmoor under sections 37/41 MHA which set guidelines for such applications, and was the first domestic case to rely on the UN Convention on the Rights of Disabled Persons.
- Currently advising on a strategic litigation project in Sri Lanka with the aim of challenging the institutionalisation of children utilising constitutional rights and international human rights including the UN Convention on the Rights of the Child.

- Coordinated and spoke at a session on the United Nations Convention on the Rights of Persons with Disability in the Asia and Pacific Region at the Lawasia annual conference in Cambodia in November 2018.
- Contributed to *"International Criminal Court's Trust Fund for Victims. Analysis and options for the development of further criteria for the operation of the trust fund for victims."* Published by Redress, Dec. 2003.

## Actions for Damages, including Human Rights Act 1998 claims

Expertise in tort actions and Human Rights Act claims, for example, relating to assaults or unlawful detention against public authorities including social services, the police and immigration authorities, negligence by mental health professionals, and for misuse of private information.

Acts group actions for victims of historic child abuse in children's home, and also acts for individuals in such claims.

Acts in cases about the failure of local authorities to remove young children from abusive families and other care situations.

Expertise in issues of limitation and vicarious liability.

For example:

- Intervened on behalf of two NGOs in the Supreme Court in **Poole Borough Council v GN (through his litigation friend the OS) and CN** [2019] UKSC 25, concerning the liability in tort of local authorities for decisions relating to the care of young children.
- Various claims under the common law and/HRA for failure to protect children in need testing decision in Poole above.
- **London Borough of Hillingdon v Steven Neary (by his litigation friend the OS) and Mark Neary** [2011] EWHC 1377 (COP), 4 All ER 584. The court made significant findings of substantive violations of articles 5 and 8 ECHR in relation to a young man with autism and severe learning disability. Damages claim settled and approved by court for £35,000, the highest HRA damages awarded in this context.

- **Somerset County Council v MK** [2014] EWCOP B25, acted for MK by her litigation friend the OS, seeking and obtaining findings of violations of articles 5 and 8 ECHR. Ongoing claim for damages.
- Various claims arising out of findings in the Court of Protection of human rights violations.
- **AB and others v Nugent Care Society**. Institutional abuse group action involving three trial and two Court of Appeal hearings post A v Hoare on limitation. Physical and sexual abuse of boys in children's homes during the 1970s and 80s by staff leading to psychiatric damage especially post-traumatic stress disorder: [2006] EWHC 2986; [2009] EWHC 4812; [2010] PIQR P3 (CA) and [2010] EWHC 1005 (QB). Claimants won damages after trial on limitation and liability. Group settled.
- Settled claims against Father Hudson Homes for non-recent child abuse.
- Settled claims in assault and misfeasance in public office for abuse relating to a children's home and local authority.
- **Adams v Ampleforth** (2015). Claim for non-recent child abuse at a public school. Settled.
- **Trattles v St John's Ambulance** (2015) claims for non-recent child abuse. Settled.
- **Walker v Rhonda and Merthyr Tydfil County Borough Council** (2014). Claim concerning the failure to remove a young child from the neglect of his mother and grandmother. Settled.
- **Blackstock v Stoke City Football Club and Fox** (2014). Successful limitation hearing under section 33 of the Limitation Act 1980 to permit a claim for assaults committed by first team player on apprentice in the mid 1980s to proceed to full trial on liability, causation and quantum. Specific assaults not proved at trial and no vicarious liability for first team player.
- **Williams v Church in Wales** (2013). Claim for non-recent child abuse. Settled.
- **Bridge v Chief Constable of Kent** (2013) damages after trial for false imprisonment for a woman with bipolar affective disorder who was arrested at her family home.

## Reporting Restrictions and Media

Involved in a number of cases concerning publicity and reporting restrictions engaging rights under article 6, 8 and 10, and the Human Rights Act 1998.

Advised on a number of television productions, for example, Unwell, a Dispatches documentary for Channel 4 using covert filming in psychiatric hospitals.

Examples of cases:

- **London Borough of Hillingdon v Steven Neary (by his LF the OS) and Mark Neary** [2011] EWHC 413. The first COP case in which the press/media were permitted to be present throughout, and then to report the proceedings, naming P.
- **AH v West London Mental Health NHS Trust and another** [2010] UKUT 264 (AAC) and [2011] UKUT 74 (AAC): a successful application for a public tribunal hearing by a patient at Broadmoor detained under sections 37/41 MHA which set guidelines for such applications, and was the first domestic case to rely on the UN Convention on the Rights of Disabled Persons.
- **E v Channel 4 and News International Limited** [2005] EWHC 1144 Fam, 2 FLR 913, EMLR 30. Acted for the Defendant media organisations resisting an attempt to restrain the broadcast of a TV programme about the care and services provided for an incapacitated woman with multiple personalities. Interim injunction. Articles 8 and 10 ECHR.

## Clinical Negligence and Personal Injury

Expertise in tort actions and Human Rights Act claims, for example, relating to assaults or unlawful detention against public authorities including social services, the police and immigration authorities, negligence by mental health professionals, and for misuse of private information. Acts group actions for victims of historic child abuse in children's home, and also acts for individuals in such claims. Acts in cases about the failure of local authorities to remove young children from abusive families and other care situations.?