

## Maya Sikand



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### Profile

Maya is ranked in Tier 1 for Civil Liberties in the Legal 500 and ranked in Band 1 for Police Law in Chambers & Partners. She was shortlisted for Civil Liberties and Human Rights Junior of the Year by Legal 500 UK Awards 2020, and Public Law Junior of the Year by Legal 500 UK Awards 2018.

She is an editor of the leading criminal textbook Archbold (see publications below). She was appointed as a Recorder (in Crime) in April 2018.

### Background

She began her working life as an advocate for women and girls fleeing domestic violence, sexual abuse, forced marriages and other exploitation in the NGO sector. She started her legal career employed as a paralegal by a leading firm of criminal solicitors before embarking on crime and human rights pupillages at Two Garden Court and Doughty Street Chambers. She was instructed on behalf of the Commission for Racial Equality in the Stephen Lawrence Inquiry when still a pupil. She spent 23 years practising at Garden Court before returning to Doughty Street Chambers. She has remained committed to providing a voice to the marginalised throughout her career and brings an intersectional approach to her work.

## **What the Directories say**

*"She gets into all the detail and pre-empts everything, even the tricky points. She is knowledgeable and brings a wealth of experience to any case. She is also direct, realistic and empathetic with clients." "She gives pragmatic, straightforward advice and is extremely sound strategically." - CHAMBERS UK, 2021*

*"An extremely persuasive advocate." "Her written advocacy is absolutely superb and she has fantastic knowledge of the area." "She's easy to work with, gives clear practical advice and produces very good pleadings." - CHAMBERS UK, 2021*

*"Formidable advocate. She is very articulate and persuasive, forcefully putting her client's case, whilst at the same time getting the judge on her side." - LEGAL 500, 2021*

## **Education**

BA (Hons) (Oxon)

MSc (London)

CPE

## **Languages**

French

Hindi

## **Related practice areas**

Administrative & Public Law

Actions Against the Police and Public Authorities

Inquests and Public Inquiries

Criminal Law and Appeals

Children's Rights Group

## Administrative and Public Law

Maya is an experienced public lawyer particularly in the context of criminal justice related judicial review, including challenges to statutory compensation refusals for miscarriages of justice, compensation refusals by the Criminal Injuries Compensation Authority (CICA) and challenges to the Independent Office for Police Conduct (IOPC).

Maya has a number of reported cases in this area, some of which are listed below.

## Private Law Claims Against the Police and Public Authorities

Maya is ranked in Band 1 in Chambers UK for Police Law (Mainly Claimant).

With over a decade of experience of criminal jury advocacy and an in-depth knowledge of the criminal justice system, Maya is well suited to appearing in contested trials in this area. She regularly advises and appears in relation to civil damages claims against the police and public authorities, such as the Home Office and the prison service/Ministry of Justice (as well as G4S, Serco, Sodexo and other third party contractors), in relation to all torts, as well as HRA 1998 claims.

In the context of miscarriages of justice, she has advised on a number of civil claims against HMRC for misfeasance and breach of Article 6 ECHR following successful CCRC referrals, as well as statutory compensation claims via the Miscarriage of Justice Application Scheme (MOJAS). Maya has real expertise in the complex area of negligence claims against public bodies, including post-*CN v Poole* “failure to remove” cases, as well as in post-*DSD* HRA claims for failures to investigate. She has a particular interest in how the HRA can fill the gap where public authority negligence fails to provide a remedy.

She also brings damages claims on behalf of victims of trafficking (VoTs) for breaches of the Articles 3 and 4 ECHR investigative obligations as well as statutory compensation claims under the CICA scheme and/or via the MOJAS. She successfully brought the first such MOJAS claim for a VoT under the amended miscarriage of justice definition.

## Inquests and Inquiries

Maya's first involvement in a public inquiry was as junior counsel for the Commission for Racial Equality (CRE) in the 1998 Macpherson Inquiry (the landmark inquiry into the racist

murder of Stephen Lawrence). In particular, she wrote the closing submissions on the issue of institutional racism.

Maya has appeared on behalf of bereaved families in a number of death-in-custody/Article 2/jury inquests, in particular in relation to self-inflicted deaths in prison and following admission to acute mental health wards.

She is currently acting for **Peter Francis**, the whistle-blower and former undercover police officer who exposed activities of the Special Demonstration Squad (including in relation to the Lawrence family) in the **Undercover Policing Inquiry**. The inquiry will be scrutinising the actions of undercover police officers that permeated hundreds of political groups during the past five decades. Further details: **Undercover Policing Inquiry**.

She was sole junior counsel (led by Ben Emmerson QC) in the controversial inquest into the murder of Russian dissident **Alexander Litvinenko**, on behalf of his widow Marina Litvinenko and their son Anatoly, for over a year and a half, and before it was converted into a public inquiry. She is instructed on behalf of Marina Litvinenko in her claim for damages for breaches of Article 2 and 3 of the ECHR by the Russian State in the European Court of Human Rights.

She was instructed in the **Jacintha Saldanha** inquest, on behalf of Southern Cross Media Group, who own the radio station that made the now infamous "prank" call impersonating the Queen to the hospital in which the Duchess of Cambridge was a patient.

## Prisoner's Rights

Maya has a wealth of experience in the prison law context bringing judicial review challenges (often combined with HRA damages claims) to:

- recall, sentence (mis)calculation, licence conditions, prison conditions, security (re)categorisation, searches, discipline, HDC refusal, the treatment of foreign national prisoners, refusal of a place in a Mother & Baby Unit
- parole board decisions as well as other human rights and discrimination challenges.

Maya regularly advises on civil damages claims for unlawful detention arising out of sentence miscalculation or wrongful recall. She also advises on repatriation.

## Civil Orders

Maya has a specialist knowledge of (the recently abolished) ASBO regime; s.222 of the LGA 1972 injunctions and other civil (quasi-criminal) orders imposed in the criminal courts, as well as the new incarnation of the ASBO, namely the anti-social behaviour injunction. The first legal text book she authored was **ASBOS: A Practitioner's Guide to Defending Anti-Social Behaviour Orders** (LAG, September 2006).

Maya's case of **Birmingham City Council v Shafi** had far reaching consequences and resulted in reactive legislation being passed to create anti-gang injunctions ("GANGBOs") in the county court. She has since appeared in the county court in a number of youth "GANGBO" cases.

She gave expert evidence to Parliament on the proposed civil orders in the **Modern Slavery Bill** (now the Modern Slavery Act).

## Criminal Appeals

In the past, Maya had a busy and challenging Crown Court practice. She has, for example, been a junior in over 20 murder trials, as well as been sole counsel in numerous, serious and complex cases, dealing in particular with child defendants and child witnesses. She has also had a long history of representing protestors and those charged with public order offences as well as children and young people charged with serious crime.

Maya now focuses her criminal practice on appellate only crime, in particular CCRC appeals and victims of trafficking cases.

## Notable and Reported Cases

### More Recent Cases

**R v JXP** [2019] EWCA Crim 1280 - In this case, the CACD once again considered the UK's international obligations to victims of trafficking (VoTs), this time in the context of an adult Vietnamese male arrested in a cannabis factory. In quashing his conviction six years out of time, the Court accepted that the post-conviction decision of the NRM that he was a VoT was one that it would give weight to, notwithstanding the Respondent's criticism of that decision.

The CACD said “We take account of the fact that the Competent Authority is a specialist authority with particular expertise and knowledge in this area of trafficking. The Minute sets out in considerable detail the applicant’s account. It clearly analysed whether that account met the requirements of trafficking and concluded that it did. We accord weight to the decision of this specialist authority”.

**R v N** [2019] EWCA Crim 191 - In this case, the CACD again considered the UK’s international obligations to victims of trafficking (VoTs), and found that that a Vietnamese boy arrested in a cannabis farm was entitled to the protection of Article 26 of the Trafficking Convention and Article 8 of the Trafficking Directive. His conviction was quashed three years out of time.

**R v L; R. v N** [2017] EWCA Crim 2129, unreported, 23 November 2017, CA - In this case, the Vice President of the CACD considered the UK’s international obligations to victims of trafficking (VoTs) who are forced to commit crimes integral to their trafficked status and set aside the convictions of two young Vietnamese men convicted of cannabis cultivation. The particular importance of this decision is that it is the first time the question of anonymity and the position of VOTs who have been granted anonymity in concurrent immigration proceedings, has been fully considered.

**PD (by her mother and LF, ZD) v Chief Constable of Merseyside Police and Just For Kids Law & CRAE (Interveners)** [2015] EWCA Civ 114 - Although the failure to apply it on the particular facts was found not to be a breach of Article 8, Maya successfully argued that Annex A of Code C of PACE (strip searches) applies to the (forcible or otherwise) removal of clothing of suspects in police custody pursuant to s. 54 of PACE (clothes removed for own safety). The police argued that such a removal was not a strip search and thus the protections of Annex A did not apply - in this case to a 14-year-old girl in their custody with documented mental health needs. More information can be found in **this post on the UK Human Rights Blog**.

**R v Y** [2015] EWCA Crim 123 -The Court of Appeal, in setting aside her conviction many years out of time, accepted that this young woman was a trafficked victim who should have had the protection of Article 26 (non-punishment provisions) of the Council of Europe Convention Against Trafficking in Human Beings 2005. Y was assisted by the **Poppy Project**, the **Helen Bamber Foundation** and **Africans Unite Against Child Abuse** (AFRUCA). One expert wrote *“Ms Y is one of the most traumatised young women I have assessed at the Helen Bamber Foundation”*. Maya also represented Ms Y in a claim for compensation to the Miscarriage of Justice Application Service and in 2017 successfully secured the first award to a victim of trafficking under the amended Section 133 of the

Criminal Justice Act 1988 that we are aware of.

**R (on the application of WB) (2) W (A Child By His Litigation Friend the OS) v SSJ**

[2014] EWHC 1696 (Admin) - Successful judicial review of a prison's refusal of a place in a Mother and Baby Unit (MBU) to a pregnant prisoner. The baby was taken from her at birth. Her challenge was brought on three bases, the main one being that her procedural rights under Article 8 ECHR had been breached. The High Court made a declaratory order that her and W's Article 8 rights had been breached and a mandatory order that the MBU Board retake the decision. The fresh Board offered WB a place and ultimately the MOJ paid out significant HRA damages.

**R (Colefax) v the First Tier Tribunal & CICA** [2014] EWCA Civ 945 - This case involved the novel question of the circumstances in which time limits can be waived in relation to latent injuries inflicted at the same time as patent injuries, where no in-time claim was made for the patent injuries.

**White v Governor of Brixton Prison** [2015] EWHC 1886 (Admin) - A successful habeas corpus application; the Claimant was transferred to hospital from the cells despite being remanded in custody by the court; the issue was whether the remand time counted against his eventual sentence; the Sentence Calculation Policy Lead at the MOJ insisted it did not, the High Court found that this administrative transfer without legal sanction did not have the effect of taking the Claimant out of the scope of section 240ZA as interpreted by the section 242 of the CJA 2003 Act and the time did count.

**R (Hoffman) v Parole Board & SSJ** [2015] EWHC 2519 (Admin) - A successful judicial review of Parole Board's decision to refuse to recommend open conditions for a recalled, tariff expired indeterminate sentenced prisoner; the High Court found that there was a failure to carry out the correct balancing exercise; decision quashed and sent back to the Parole Board for reconsideration).

## Older Cases

- Maya began her legal career as junior counsel for the CRE in the **Stephen Lawrence Inquiry** [1998]
- **R v Horseferry Road Magistrates' Court ex p. Rugby** [2000] 1 Cr. App. R. (S.) 484, DC (successful judicial review: committal for sentence, breach of legitimate expectation)
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***Jonathan Brady v Customs & Excise*** [2001] EWHC Admin 422 7/6/01 (habeas corpus: alleged drug "swallower", legality of continued detention by C & E, compatibility with Art. 5 and Art.3 of the ECHR)

- ***Information Commissioner v Islington Borough Council*** [2002] EWHC 1036 Admin (case stated: requisite *mens rea* in the Data Protection Act) (led by Owen Davies QC)
- ***Daly v Governor HM Brixton Prison & Anor***[2003], EWHC 1838 Admin (successful habeas corpus: extradition, delay)
- ***R (B) v Balham Youth Court*** [2004] EWHC 421 Admin (judicial review; successful challenge to youth court mode of trial procedure and decision)
- ***R (W) v Brent Youth Court*** [2006] EWHC 95 (Admin) (judicial review; successful challenge to mode of trial decision)
- ***Keegan v UK (Application no. 28867/03)*** [2007] 44 EHRR 33 (Violations of Art. 8 and Art. 13 during a police search of a family home; just satisfaction awarded)
- ***R v Jones and Others*** [2006] EWCA Crim 2942 (successful appeal against 10 demonstrators' ASBOs)
- ***Rabess v The Commissioner for Police for the Metropolis*** [2007] EWHC 208 (Admin) (case stated: challenge to the terms of an ASBO imposed on a warring couple)
- ***Leeds City Council v RG*** (2007) 4 All ER 652; (2007) 1 WLR 3025; [2007] EWHC 1612(Admin) (case stated; whether the power to vary an ASBO includes the power to extend its duration)
- ***Steele v DPP*** [2008] EWHC 438 (Admin) (case stated; animal rights protestor who posted an image of a security guard on a website and later removed it; the question for the court was whether it was legitimate to prosecute him for causing intentional harassment, alarm or distress in the circumstances)
- ***R (D) v Sheffield Youth Court*** [2008] EWHC 601 (Admin) (successful judicial review of a youth court's decision to re-open the question of jurisdiction; the failure of the adult magistrates' court to consider venue before the entering of a plea did not render its subsequent decision to remit the case for summary trial in a youth court invalid; s142 of the MCA 1980 could not be used to vacate an unequivocal guilty plea)
- ***R v Altaf Hussain*** [2008] EWCA Crim 1518 (CCRC referral to the C of A in which a 1988 conviction for conspiracy to import heroin from Pakistan was quashed; this was



the first conviction obtained by the [now controversial] use by British Customs of Pakistani participating informants in the late 80's and throughout the 90's)

- ***R (Smith) v Snaresbrook Crown Court*** [2008] EWHC 1282 (Admin); (2009) 1 All ER 547; (2009) 1 WLR 2024 (judicial review; challenge to the statutory interpretation of the test for the extension of "crack house" closure orders)
- ***Birmingham City Council v Shafi & Ellis*** [2008] EWCA Civ 1186; (2009) 1 WLR 1961; (2009) 3 All ER 127; (2009) HLR 25; (2009) BLGR 367 (successfully defended appeal to Court of Appeal (Civ Division) on behalf of the First Respondent Shafi, arguing that the Council should not use s 222 of the Local Government Act 1972 to obtain injunctions against alleged gang members when there was an alternative statutory route available under the ASBO legislation.
- ***R v Sultan Shah*** [2010] EWCA Crim 2326 (the last in a series of CCRC referrals involving both non-disclosure of material evidence and malpractice by British Customs Officers in their deployment of participating informants in Pakistan to infiltrate the drugs trade between Britain and Pakistan in the late 80s and early 90s - see ***R v Altaf Hussain*** above. Shah's 1994 conviction was quashed on the basis of gross prosecutorial misconduct).
- ***R (Sands) v Chief Constable of Merseyside Police*** [2010] EWHC 2698 (Admin) (judicial review; successful challenge to a police decision to prevent the Claimant working on police contracts because of alleged criminality; the Admin Court found the decision to be an unreasonable application of the police's vetting policy).
- ***R (A) v Lewisham Youth Court & DPP*** [2011] EWHC 1193 (Admin.) (successful judicial review of the Youth Court's refusal to apply the CYPA 1969, s.23 remand regime to a 15 year old charged with murder. CAJA 2009, s.115 [removal of bail hearings from the magistrates' court in murder cases] had not impliedly displaced s.23. Case/Issue held to be of general importance and of real concern to youth courts).
- ***Tabeel Lewis (Appellant) v The State (Respondent)*** [2011] UKPC 15. (The PC considered the difficult question of whether the trial judge had been wrong not to leave provocation to the jury in a capital case. In the end the Board did not interfere with that decision but went on to find that fresh psychiatric and psychological evidence should now be considered and the case has been remitted to the Court of Appeal in Trinidad & Tobago who will need to decide if there is now evidence of provocation fit for consideration by the jury - led by Owen Davies QC).

- ***R v Jamie Hope*** [2012] EWCA Crim 1350 (out of time appeal against sentence which involved the passing of unlawful sentences on two occasions by a Recorder faced with what he described as a legislative quagmire)

## Pro Bono Work

Maya spent five years in the voluntary sector working in refuges with women and children fleeing domestic violence and sexual abuse before turning to the law.

Maya was a founding board member of the innovative charity **Just for Kids Law**.

She is currently a member of the JUSTICE Working Group on 'BAME disproportionality in the Youth Justice System', chairing the sub-group on 'Biased Perceptions'.

## Publications

"Minding the Gap: Where does tortious liability for public authorities end and human rights liability begin?":

Journal of Personal Injury Law, Issue 1, 2019 pp44-50: co-written with Laura Profumo

In January 2018 Maya was appointed to the editorial comment board for **Criminal Law Week** by Thompson Reuters.

Maya has written a chapter on compensation claims for victims of trafficking in the handbook **Human Trafficking and Modern Slavery: Law and Practice** (Bloomsbury Professional, 2018).

In 2016, she was granted a part-time Research Fellowship by the **Griffins Society** (whose focus is women and girls in the criminal justice system) in conjunction with the University of Cambridge, Institute of Criminology. Her research on the accessibility of Mother and Baby Units (MBUs), **Lost Spaces: Is the current procedure for women prisoners to gain a place in a prison MBU fair and accessible?** was published in March 2017.

In 2014 Maya joined the team of editors of the seminal criminal textbook *Archbold: Criminal Pleading, Evidence & Practice* (Sweet & Maxwell) and contributes to three chapters. Prior to that and for many years she was a contributing author to *Blackstone's Criminal Practice* (OUP).

She is the General Editor of *Blackstone's Guide to the Criminal Justice and Immigration Act 2008* (OUP, 2009). She is the author of *ASBOs: A practitioner's guide to defending anti-social behaviour orders* (LAG, 2006).

She has been instructed as the UK expert to work on the reform of the Russian criminal and civil appeals system as part of a comparative law project funded by the Council of Europe/EU.