

Aswini Weeraratne QC



Call: 1986

Silk: 2015

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Profile

Aswini Weeraratne has built a diverse practice in challenging areas. Her expertise focuses on the protection of the most vulnerable people, children and adults, in society, usually because of mental disability, or abuse and exploitation, through litigation and advisory work with an emphasis on human rights. She utilises her skills in a wide range of practice areas and cases concerning public and private law issues, welfare and medical treatment cases in the Court of Protection, actions against state bodies, for example, assault and unlawful detention claims, non-recent child abuse claims, inquests and inquiries, reporting restrictions and international law.

Aswini also has extensive experience of investigatory procedures, in public inquiries, inquests, and as independent chair of inquiries, tribunals and professional regulatory bodies. She has chaired six independent homicide inquiries. She appears in courts and tribunals at all levels, including the Supreme Court.

"A highly recommended silk" (Legal 500 2019) "She is excellent; very measured and thorough." "A very effective barrister". (Chambers and Partners 2019)

"[She is] second to none, she's phenomenal. Considering how busy she is, that's just fantastic." "She's very measured, very technically precise and her advocacy is very elegant."

(Chambers and Partners 2018)

“...cutting through to the heart of complex cases”...”[turning round] large volumes of work in short periods of time.” (Chambers and Partners 2016)

Aswini acts for NGOs, government bodies, such as the British Council, and individuals, sometimes through a litigation friend, for example, the Official Solicitor. She is conversant with applications and interventions to international human rights bodies, and before higher courts. She undertakes advisory work including on legislative reform and policy. She has advised lobby groups and parliamentarians on legislation and policy, for example, on FGM. She chaired the mental health and capacity overlap topic group for the Independent Mental Health Act Review chaired by Professor Sir Simon Wessely. She is invited regularly to speak at conferences and events at home and abroad.

She was deputy chair and chair of the Investigating Committee of the General Pharmaceutical Council from 2014 to 2020, and has been a part-time judge of the first-tier Tribunal (Health Education and Social Care Chamber) since 2001, where she is committed to promoting effective participation and access to justice. She is a qualified mediator and is an enthusiastic advocate of alternative dispute resolution and redress mechanisms.

Aswini is able to accept instructions under the Direct Access scheme.

In her 'spare' time she bakes delicious bread and walks her two adoring mutts.

Education

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 & Arbitration

Mediation

Data Protection and Information Law

Publications

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, Halsburys Laws of England, Mental Health and Capacity. New volume published in 2013 and 2014.

"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 Butterworth's New Law Guide to the Mental Capacity Act 2005 published in April 2008 by Lexisnexis.

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."* A discussion document. Published by Redress, Dec. 2003.

Author of six reports published following independent inquiries into homicides by patients within mental health services.

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 (Baillii), 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.