

Daniella Waddoup



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Profile

The focus of Daniella's practice is criminal justice and mental health and capacity. In addition to a busy criminal trial and appellate practice, she undertakes work in related areas, including prison law, crime-related public law and mental health law.

Daniella is recognised for her commitment to representing vulnerable young defendants: in 2017 she was presented with the 'Rising Star in Youth Justice' award by the Youth Justice Legal Centre. Her pro bono work includes providing training to probation and prison staff to promote understanding of the entitlement of children and young people in custody with special educational needs to appropriate educational support and provision.

Daniella served as consultant editor for the fifth edition of *Halsbury's Laws Vol.75: Mental Health and Capacity* (2021). She is regularly called upon to provide advice and representation in criminal cases where complex issues around fitness to plead, securing transfer to secure psychiatric facilities, and mental health disposals arise.

In 2016-17, Daniella was judicial assistant to Lord Mance JSC. During that time, she was closely involved in many of the leading cases before the Supreme Court and Privy Council in her current areas of practice.

Prior to joining Chambers, Daniella was a research assistant in the Law Commission's criminal law team, where she worked primarily on reform of the insanity defence and fitness to plead procedure. She has provided research and editorial assistance for *Smith and Hogan's Criminal Law*, *Smith and Hogan's Text, Cases and Materials on Criminal Law* and, specifically in relation to youth justice, *Blackstone's Criminal Practice*. She also volunteered as a paralegal in the strategic litigation department of Just for Kids Law, as a welfare rights worker for St Mungo's Broadway and as a mentor for young people with learning disabilities taking part in restorative justice.

Education

BA, Law with Law Studies in Europe, Oxford University (First Class)

LLM, Human Rights and Criminal Justice, Cambridge University (First Class)

BPTC, Kaplan Law School (Outstanding)

Languages

German

Related practice areas

Criminal Law and Appeals

Actions Against the Police and Public Authorities

Court of Protection & Mental Health

Administrative & Public Law

Children's Rights Group

Crime

Daniella has a busy criminal practice in the Crown, youth and magistrates' courts representing clients accused with a wide range of criminal offences. Daniella has particular expertise and interest in representing young clients and clients with mental health difficulties. Recent instructions include:

- **R v PA** (led by Sarah Elliott QC) – currently instructed to represent a young defendant charged with murdering his grandmother. The central issues in the case are whether the defendant, who had not previously been diagnosed with any major mental disorder,

was psychotic at the time of the incident and, if so, whether any psychosis was drug-induced.

- **R v MA** (led by James Wood QC) – currently instructed to represent a defendant charged with murdering his girlfriend. The case raises complex issues relating to fitness to plead and potential psychiatric defences.
- **R v AH** – currently instructed on behalf of a Palestine Action protestor charged with criminal damage of a factory said to manufacture weapons deployed in the Occupied Palestinian Territory.
- **R v RD & SD** (led by Katy Thorne QC) – a young mother was accused of causing or allowing the death of her child. Her co-accused was her former partner; both blamed the other. The trial involved cross-examination of a number of expert medical witnesses, as well as legal argument.
- **R v PA & others** (led by George Hepburne Scott) – a complex and multi-handed conspiracy to supply fighter jet parts to Iran.
- **R v DW & others** (led by Isabella Forshall QC) – the 17-year-old defendant was accused, along with six others, of murdering a 16-year-old in a broad daylight attack involving the use of a knife. The prosecution accepted a plea to manslaughter after the alleged principal was convicted of murder and the jury was discharged from reaching a verdict in relation to DW. A subsequent reference by the Attorney General to the Court of Appeal on grounds of undue leniency was rejected.
- **R v JG** (led by Sarah Elliott QC) – the 23-year-old defendant killed his grandmother and attempted to decapitate her, believing her to be an evil spirit. The prosecution was persuaded to accept a plea to manslaughter on grounds of diminished responsibility on the basis that JG had a primary diagnosis of paranoid schizophrenia and that although he may have taken illicit drugs in the run-up to the killing, his abnormality of mental functioning was a significant factor in causing him to act as he did. The Recorder of Cardiff imposed a hospital order coupled with a restriction order, rejecting a ‘hybrid order’ on the basis that JG’s culpability was low notwithstanding his possible drug use.
- **R v SM & others** (led by Tim Moloney QC) – terrorism (conspiracy to murder a police officer and/or soldier by means of a drive-by shooting).
- **R v AD & others** (led by Rupert Bowers QC) – conspiracy to cheat the public revenue and transferring criminal property. On the prosecution case, AD led the seven other

defendants in establishing a multi-million pound tax evasion scheme in the construction industry. After a week of legal argument, the prosecution accepted a favourable basis of plea with a dramatically reduced agreed loss to HMRC of £169,000.

- **R v TM** – possession with intent to supply Class A drugs. The defendant was acquitted.
- **R v RJ** – theft. The case involved evidence of identification which was challenged for breach of Code D of PACE 1984. The defendant was acquitted.
- **R v CO** – s. 20 GBH. The defendant received a suspended sentence.
- **R v BA** – benefit fraud. The defendant received a suspended sentence.
- **R v S** – sexual assault against four school girls by a defendant with schizophrenia and moderate learning disability. The defendant received a community order.
- **R v O** – sexual assault by a defendant with complex and partially undiagnosed mental disorder; subsequent application for transfer to a secure hospital.
- **R v JME** – several counts of PWITS Class A and B. A custodian basis of plea was accepted. Despite the large quantity of drugs and the fact that the offences were committed during the currency of a community order imposed for like offences, the defendant avoided custody and was sentenced to a suspended sentence.

Daniella has a particular interest in representing children and young people. She combines her experience of working in schools and other educational settings with an in-depth knowledge of the law of youth justice in order to achieve positive results and to ensure the effective participation of children and young people in proceedings against them. She is a regular contributor to the Youth Justice Legal Centre's legal guides, and delivers training to practitioners in the field. Recent instructions include:

- **R v PS** (magistrates' court) – imposition of a sexual risk order on a young person with special educational needs resisted; interim order lifted. Daniella made detailed written and oral submissions on the relevant law and guidance, including that which militates against the criminalisation of young people and demands a focus on emotional development and maturity, as well as chronological age.
- **R v MB, MB & LE** (magistrates' court) – Daniella represented three students who held a house party in breach of Covid-19 regulations. Although they were initially issued with £10,000 fixed penalty notices, the Crown accepted a plea to a lesser offence. Following

mitigation, fines of £320 were imposed.

- **R v MA** (Crown Court) – possession with intent to supply Class A drugs. The prosecution offered no evidence in the face of written submissions in support of an application for dismissal based on the inadequacy of DNA evidence.
- **R v B** (Crown Court) – s. 18. A plea to s. 20 and possession of a bladed article was accepted.
- **R v KA-B** (Crown Court) – sentence of an 18-year old for possession with intent to supply Class B drugs and possession of an offensive weapon. He had several previous convictions for similar offences and had committed the present offences during the currency of a youth referral order. The Court imposed a suspended sentence.
- **R v SB** (youth court) – a serious case in which the defendant pleaded guilty to attempted s. 18 GBH and using a knife to threaten on school premises. Following detailed submissions, the youth court retained jurisdiction for sentence. The Court found that it would be “unjust” to apply two sets of mandatory minimum sentencing provisions and sentenced the defendant to a youth referral order instead of detention.
- **R v MJUE** (youth court) – violent disorder and possession of an offensive weapon. The prosecution offered no evidence after an application for an adjournment of the trial date was successfully resisted.
- **R v IC** (youth court) – sentence of a youth for a joint enterprise robbery in which a knife was used to threaten the complainant. Despite a previous conviction for possession of an offensive weapon, the Court sentenced him to a youth referral order with a requirement of intensive supervision and surveillance.

Daniella has had considerable success in the magistrates’ court, often on the basis of legal argument:

- **R v FO** – assault PC. This was a sensitive case giving rise to issues of fitness to plead and effective participation in which the Crown eventually decided not to proceed following a successful application for an adjournment made on the day of trial.
- **R v BB** – motor vehicle interference. The defendant was acquitted after an application to exclude evidence of identification obtained in breach of PACE 1984, Code D.
- **R v GL** – common assault. The defendant was acquitted after a trial in which hearsay evidence of one of the complainants (deceased) was admitted.

- **R v AH** – outraging public decency. The defendant RAF sergeant avoided custody after admitting to covertly filming intimate clips of a sexual nature of women over a twenty-year period.
- **R v NG** – common assault. The Crown offered no evidence after a successful application to exclude admissions made in interview.
- **R v GW** – confiscation enforcement proceedings following the defendant's conviction for importing half a tonne of cocaine into the UK.

Criminal Appeals

Daniella represents clients in appeals against conviction and sentence before the Crown Court and Court of Appeal, and has appeared on a led basis before the Supreme Court, Privy Council and European Court of Human Rights. She welcomes instructions to provide written advice on the merits of appeals, as well as in relation to applications to the Criminal Cases Review Commission (where she has particular experience, through her pupillage with Richard Thomas, in relation to convictions of victims of human trafficking and convictions of refugees for identity document offences). Daniella has a particular interest in advising on whether fresh medical evidence relating to mental disorder or disability may found a ground of appeal against conviction and/or sentence.

She is a regular contributor to Doughty Street's Criminal Appeals Bulletin.

Recent cases include:

- **Stubbs v The Queen** (led by Edward Fitzgerald QC) – Privy Council case concerning the constitutionality of detaining an offender in hospital at the Governor General's pleasure, without review, for thirty-seven years (permission to appeal has been granted).
- **Attorney General of the Turks and Caicos Islands v Misick and others** [2020] UKPC 30 (led by Edward Fitzgerald QC) – Privy Council case concerning the constitutionality of resuming a part-heard criminal trial remotely via live video link.
- **R v DW and others** (led by Isabella Forshall QC) [2018] EWCA Crim 2379 – the Court of Appeal rejected a reference by the Attorney General, holding that the sentence imposed on DW and his co-accused (youths convicted of manslaughter following a

group attack involving the use of a knife) was not unduly lenient.

- **R v Jogee; R v Ruddock** [2016] UKSC 8 (led by Francis Fitzgibbon QC and with Caoilfhionn Gallagher QC and Joanne Cecil, for the intervener Just for Kids Law) – a landmark case on the law of joint enterprise. The submissions on behalf of Just for Kids focused specifically on the impact of parasitic accessorial liability on young defendants. The Court held that the common law had taken a “wrong turn” and had been misapplied for 30 years.
- **Pitman & Hernandez v The State** [2017] UKPC 6 (led by Edward Fitzgerald QC, Paul Bowen QC and Ruth Brander) – Privy Council appeal concerning the constitutionality of sentences of death imposed on those suffering from intellectual disability.
- **Albert Edwards v The State** (2016, with Richard Thomas). Following written submissions in an appeal against a murder conviction on the basis of fresh evidence about the bad character of a prosecution witness and a misdirection on joint enterprise murder, the conviction was quashed. A conviction for manslaughter was substituted, leading to the appellant’s immediate release.
- During pupillage, Daniella assisted her supervisor Richard Thomas with **Hunte and Khan v The State** [2015] UKPC 33, a death penalty case with wide implications for the jurisdiction of the Privy Council to commute a death sentence to life imprisonment.

Daniella regularly provides advice and assistance to the Death Penalty Project in cases involving the death penalty and other forms of oppressive punishment. Recent applications to the Privy Council (in which decisions as to permission are pending) have concerned:

- the lawfulness of a 50-year sentence of imprisonment substituted by the Bahamian Court of Appeal for an offence of manslaughter; and
- the constitutionality of the mandatory sentence of death under the law of Trinidad and Tobago in the light of a recent landmark decision of the Caribbean Court of Justice in *Nervais v The Queen* [2018] CCJ 19. This case also involves an appeal against the underlying murder convictions.

Daniella has experience of making applications to the European Court of Human Rights in the context of criminal appeals and in related areas, including extradition. She is currently being led by Edward Fitzgerald QC in an Article 3 ECHR challenge to the extradition to the United States of an applicant who faces a real risk of an irreducible life sentence and conditions of detention that would amount to inhuman and degrading punishment.

Mental Health and Capacity Law

Daniella's interest in mental health and capacity law spans both criminal and civil cases, as well as the area of overlap between the two. Daniella has detailed knowledge of the law and procedure governing defendants' fitness to plead and stand trial, having worked on a Law Commission law reform project on the topic. She is a consultant editor for the most recent edition of *Halsbury's Laws Vol.75: Mental Health and Capacity* and contributed, along with other members of the Doughty Street mental health team, to the **Bar Council's response to the Department of Health and Social Care's consultation paper on Reforming the Mental Health Act**

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Daniella accepts instructions in the First-tier Tribunal (Mental Health) to represent detained patients. She also provides advice and representation in the context of public law challenges in a mental health context: current instructions include a case involving the failure to accept the transfer of a patient from Broadmoor hospital to a medium secure hospital. Daniella is currently instructed in a civil claim for damages under the Human Rights Act 1998 in respect of delays in bringing about a speedy review of the lawfulness of a claimant's detention in hospital pursuant to ss. 2 and 3 of the Mental Health Act 1983.

Daniella has considerable experience in the legally and practically complex area of securing transfer from prison to secure psychiatric facilities.

Daniella is regularly instructed in Court of Protection proceedings on behalf of local authorities, private individuals and the Official Solicitor, including in respect of challenges to deprivation of liberty pursuant to s. 21A MCA 2005 and best interests decisions concerning the care, residence and treatment of individuals lacking capacity. More complex instructions have included: a challenge to the detention of P who is an alcoholic and has a diagnosis of Korsakoff's syndrome (a neuro-cognitive disorder secondary to heavy alcohol abuse); acting on behalf of the Official Solicitor in a case in which the local authority sought to prevent P from travelling abroad to marry a man she met on the internet; and a case concerning the scope of interim restrictions on a young woman's decisions in relation to relationships, consent to sexual relations and marriage.

Daniella has acted in a number of urgent and contentious cases, including, most recently, on behalf of a local authority seeking the removal of P from a shared lives placement where she had lived from a young age following the arrest of her shared lives carer in respect of criminal allegations.

Daniella has a detailed understanding of the often complex intersection between mental health and mental capacity law. She recently advised, for example, on the scope of the Court of Protection's jurisdiction to make orders in circumstances where a person who is the subject of personal welfare proceedings under s. 16 of the MCA 2005 is also the subject of a guardianship order made pursuant to s. 7 of the MHA 1983.

Daniella has provided Court of Protection training to caseworkers acting on behalf of the Official Solicitor, local authority solicitors and to advocates. These sessions have covered recent developments in s. 21A applications, enhancing the participation of P and instructing experts.

Daniella has experience of advising and acting in damages claims for breach of Article 5 ECHR, including in the Court of Protection context.

Prison and Crime-Related Public Law

Daniella regularly represents prisoners before the Parole Board and has an in-depth understanding of prison law and practice. She has a particular interest in representing mentally disordered prisoners and advising in relation to transfer to secure psychiatric settings for assessment and treatment.

Daniella combines her practical experience of crime and prison law with expertise in judicial review proceedings. She represents claimants in public law claims relating to all areas of the criminal justice system, including in the context of decisions taken by the prison service, police and Crown Prosecution Service. She regularly secures the early resolution of cases involving charging decisions and the issuing of cautions, especially where such decisions have been taken in cases involving young and vulnerable defendants and in breach of the applicable law and guidance.

Recent instructions in the area of crime-related public law include:

- A successful challenge to the decision not to hold an oral hearing when deciding whether to downgrade the claimant's prison security classification from Category A.
- A challenge to the Parole Board's decision not to hold an oral hearing to decide whether to re-release the prisoner on licence (permission granted; hearing forthcoming).
- A challenge to the decision not to allow the claimant prisoner face-to-face contact with his daughter.

- Advice on the merits of a judicial claim in relation to the decision of the police to take no further action in the case of a disabled claimant who had made allegations of a serious historic sexual assault and was not provided with appropriate adjustments during the investigative process.
- **R (DC) v CCRC** (led by Rebecca Trowler QC) – Renewed application for permission to judicially review the decision of the Criminal Cases Review Commission not to refer the applicant’s murder conviction to the Court of Appeal.
- **R & others v CCC & Commissioner of the City of London Police** (led by Rupert Bowers QC) – Challenge to the application for and execution of a search warrant where the court was not informed that the officers executing the warrant would be accompanied by a documentary film crew. The case settled in the claimants’ favour following detailed written submissions.
- **S v UK** (led by Rupert Bowers QC) – Written submissions requesting a referral of the applicant's case to the Grand Chamber of the ECtHR on the basis that the procedure for hearing applications for warrants of further detention under Sch. 8 of the Terrorism Act 2000 (which allows evidence to be given in closed session and makes no provision for special advocates) amounted to a breach of Article 5(4) ECHR.
- **R (JH and JH) v Secretary of State for Justice** [2015] EWHC 4093 (Admin) – Daniella made submissions that s. 31(2A) of the Senior Courts Act 1981 should not apply in circumstances where the defendant had breached his public sector equality duty but the claim had failed in all other respects.
- Assisting Caoilfhionn Gallagher QC in a number of judicial review challenges to the separation of mothers and babies.

Civil Actions Against the Police and Other Public Authorities

In light of her overlapping experience of criminal and human rights law, Daniella is well placed to advise in relation to civil claims against the police. She has experience of providing advice, drafting and advocacy in relation to a range of claims, including for false imprisonment, assault, malicious prosecution, misfeasance in public office, breaches of the Data Protection Act 1998 and violations of the Human Rights Act 1998. Recent instructions include:

- **TT v An NHS Foundation Trust** - Claim for breach of Article 5(4) ECHR in respect of delays in bringing about a speedy review of the lawfulness of a claimant’s detention in

hospital pursuant to ss. 2 and 3 of the Mental Health Act 1983.

- **CN v Lord Chancellor** – Claim for breach of Article 5 ECHR arising from procedural failings in the committal of the claimant to prison for alleged contempt of court.
- **KN v Lord Chancellor** – Claim for breach of Article 5 ECHR arising from the court's failure, when sentencing the claimant, to give credit for time spent on a qualifying curfew.
- **AB v MoJ** – Claim for negligence and breach of Article 3 ECHR in respect of the defendant's alleged failure to treat the claimant's injuries while he was in prison.
- **FJ v CC of South Wales** – Advice as to whether the claimant's detention pursuant to s. 2, MHA 1983 following his arrest amounted to a breach of his Article 5 and 5 ECHR rights.

Inquests and Inquiries

Daniella has experience representing bereaved families in inquests. She has acted in inquests into the deaths of neonates following failures by healthcare staff during pregnancy and delivery, vulnerable adults in hospital following clinical negligence, and prisoners in custody.

During pupillage, Daniella assisted her supervisor Caoilfhionn Gallagher QC on an inquest into the death of a 17-year old in police custody. The jury concluded that his suicide was contributed to by an anomaly in the law which resulted in him being treated as an adult while in the police station, despite being recognised as a child by national and international legal standards.

Daniella assisted Adam Straw QC in a **successful application** for fresh inquests into the fire at the Stardust Disco in Artane on Valentine's Day 1981 in which 48 young people died and 214 were injured. The Attorney General accepted that there had been an insufficiency of inquiry into their deaths at the original inquests.

Education Law

Before joining Doughty Street, Daniella volunteered in schools and provided assistance in relation to the teaching of music and English as a foreign language, as well as special educational needs provision. She continues to maintain her interest in the education of children and young people by accepting instructions, including on a pro bono basis, in the First-tier Tribunal (Special Educational Needs and Disability). Daniella's pro bono work has also included delivering training to probation and prison staff on the entitlement of children and young people in custody with special educational needs to educational support and provision both during and after detention.

Daniella has acted in matters involving challenges to statements of special educational needs and, more recently, education, health and care plans ("EHC plans"). She accepts instructions to represent children and parents in school admission or exclusion appeals before the Independent Appeal Panel. She also has experience of disability discrimination claims in an education context. Daniella's experience in both criminal and education law means she is well placed to represent parents charged with failing to ensure the regular attendance of children at school. Recent instructions include:

- **GK v LB of Bromley and TB v LB of Bromley** – two separate appeals by young adults against EHC plans. In both cases, their residential placements were extended to include termly boarding. The cases raised difficult and novel issues about the distinction between educational and non-educational provision in the case of young adults under the Children and Families Act 2014 regime.
- **AK v WF Primary School** – a case alleging various forms of discrimination against a severely disabled child. The tribunal held that the child hitting out or scratching others did not amount to a tendency to physical abuse so as to exclude him from the protection of discrimination legislation.