

Caoilfhionn Gallagher QC



Call: 2001

Silk: 2017

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Profile

She has acted in many of the leading human rights cases in the UK in recent years, including acting for bereaved families and survivors of the *7/7 London bombings* and the *Hillsborough disaster*, and acting in a series of cases which have established that the UK Government's welfare changes are discriminatory. Caoilfhionn undertakes many 'test cases' which secure results for her clients but also achieve wider change in the law. For example, her recent cases include acting in a number of successful challenges to the Department of Work and Pensions' benefit changes, *R (Hurley and others) v Secretary of State for Work and Pensions* [2016] PTSR 636 (benefit cap unlawfully discriminates against the severely disabled), *R (A and Rutherford) v Secretary of State for Work and Pensions* [2016] HLR 8 (social sector size criteria, 'bedroom tax,' unlawfully discriminate against women) and *R (MA) v Secretary of State for Work and Pensions* [2013] PTSR 1521 (Regulations required to correct discriminatory impact of the bedroom tax on severely disabled children).

Caoilfhionn has particular expertise in freedom of expression and open justice. She regularly advises and acts for newspapers and broadcasters in the UK concerning journalistic access to the courts and public interest reporting. She has acted, for example, for media

organisations in the inquests into the deaths of *Alexander Litvinenko* and *Gareth Williams* (the GCHQ employee found dead in a holdall), ensuring that these hearings were open to public scrutiny and could be freely reported. She worked with the Media Lawyers' Association and the Chief Coroner in the development of new guidelines on open justice in the coroners' courts. She also regularly acts for journalists worldwide who are imprisoned, prosecuted, sued or subjected to travel bans due to their journalism; her current and recent case load includes work for journalists, bloggers, cartoonists, peaceful protestors and human rights defenders in Egypt, Turkey and Equatorial Guinea. She leads the international legal team for the family of *Daphne Caruana Galizia*, the award-winning journalist assassinated in Malta in 2017, and she is leading counsel to 152 BBC Persian journalists persecuted by Iran due to their work. She is a member of the UK Advisory Board to Reporters Without Borders (RSF) and regularly works with Index on Censorship and other NGOs specialising in freedom of expression.

Women's rights is another area of particular interest for Caoilfhionn. Much of her work in relation to austerity and welfare cuts concerns the disproportionate impact of those cuts upon women, particularly BAME women and victims and survivors of domestic violence. She has also acted in a series of cases concerning the almost total ban on abortion in Northern Ireland, including *R (A and B) v Secretary of State for Health* [2017] UKSC 41 and *Re Northern Ireland Human Rights Commission* [2018] UKSC 27.

Caoilfhionn also has expertise in children's rights and she has acted in many of the leading cases in this field, including *HH v Italy* [2013] 1 AC 338 (right of children to be heard in extradition proceedings concerning their parents) and *R (HC) v SSHD* [2014] 1 WLR 1234 (acted for Hughes Chang in this test case on treatment of 17-year-olds in police custody as adults rather than children; it has resulted in a change to the law, affecting 70,000 17-year-olds in custody every year). Internationally, she acts in many cases concerning children's rights, particularly in Strasbourg and before the UN Special Procedures, and she has provided consultancy services to the UN on child soldiers and Boko Haram.

Caoilfhionn is a graduate of UCD, the King's Inns and the University of Cambridge (Gonville and Caius). In 2017 she received UCD's alumni award for outstanding achievements by a UCD law graduate, and in the same year she was made a Fellow of the Royal Society of Arts for her contribution to the protection of human rights. In 2016 she was named by the Irish Times as one of the 100 most influential Irishwomen living outside Ireland.

She is one of the three joint founders of the 'Act for the Act' campaign (with Martha Spurrier and Fiona Bawdon), a crowdfunded mass advertising campaign to tell positive stories about the Human Rights Act 1998.

Education

BCL (University College Dublin)

BL (Honorable Society of the King's Inns, Dublin)

LLM (Cambridge, Gonville & Caius College)

Languages

Irish

German

Related practice areas

Administrative & Public Law

Community Care and Health

Inquests and Public Inquiries

Actions Against the Police and Public Authorities

Anti-Trafficking

International Human Rights Law

Public International Law

International Media Defence

Media, Defamation and Freedom of Expression

Data Protection and Information Law

Children's Rights Group

Community Care and Health

Caoilfhionn is one of a small number of individuals nationwide regularly instructed for claimants in urgent community care judicial reviews: for children in or leaving prison; children whose lives or well-being are at risk due to gang warfare or trafficking; children who are street homeless or otherwise in need of support or accommodation; disabled children without appropriate care packages; vulnerable adult prisoners seeking support whilst in custody or resettlement packages; and cases involving separation of mothers from newborn babies.

She has acted in many of the leading community care cases under ss. 17 and 20 Children Act 1989, including *R (S) v Sutton* (s. 20 duty triggered prior to a child leaving custody) and *R (G) v Nottinghamshire CC & Nottingham University Hospital* (unlawful removal of newborn baby from his mother, a care leaver; Article 8, common law and Children Acts: see coverage

in the **Guardian** and **Family Law Week**. Many of her cases settle favourably at an early stage, achieving practical, speedy results for her vulnerable clients.

Caoilfhionn is currently acting in a number of novel and ground-breaking cases, instructed by the Official Solicitor to represent children of extraditees, relying on their rights under Article 8 ECHR and the UN Convention on the Rights of the Child (UNCRC). In these cases Caoilfhionn has used community care law (s. 17, Children Act 1989) to obtain evidence from social services of the likely impact of extradition upon the children, and to ensure that social services have proper contingency plans in place in the event that extradition proceeds. She has secured permission to file evidence and submissions on the children's behalf in the Administrative/ Divisional Court pursuant to CPR r. 52.12A, the first time this provision has ever been used in this context. The Supreme Court has recently given judgment in the lead cases, *HH & PH v. Deputy Prosecutor of the Italian Republic, Genoa*; *F-K v. Poland* [2012] UKSC 25 (Caoilfhionn acted for the children X, Y and Z, who face being orphaned and the permanent break-up of the family unit due to the simultaneous extradition of both their parents).

She has written (with colleagues from Doughty Street) the leading text on Part III of the Children Act 1989, the key community care provisions for children and care-leavers: *Children in Need: Local Authority Support for Children and Families* (LAG, 2011). She regularly writes on community care issues for journals such as the *New Law Journal* and provides training.

Administrative and Public Law

Caoilfhionn has a wide-ranging claimant public law practice at all levels. She regularly appears in the High Court and Court of Appeal (usually alone but occasionally led), and has also been instructed in House of Lords, Supreme Court, Privy Council and European Court of Human Rights cases.

Much of her judicial review work concerns vulnerable children, including those whose lives or physical safety are at risk from gang violence (such as former gang members fearing reprisals, and girls who have experienced gang-related sexual violence or sexual exploitation). She has acted for many anonymous clients, in conjunction with Maxwell Gillott solicitors and Kids Company, in cases involving overlapping duties under Articles 2, 3 and 8 ECHR and the Children Acts 1989 and 2004. She also acts for child trafficking victims in judicial review and related civil proceedings.

Caoilfhionn acts for claimants and third party interveners in public law cases raising human rights issues in a range of contexts. For example:

Guantanamo Bay

- Intervention for a coalition of NGOs in R (Al Rawi and Others) v Secretary of State for the FCO and Secretary of State for the Home Department: UK's obligations concerning non-national UK residents detained in Guantanamo, settled prior to hearing in the House of Lords.

Misbehaviour in Public Office

- Lawrence v. AG for Grenada [2007] UKPC 18, [2007] WLR (D) 76: constitutional definition of 'misbehaviour in public office'/ fair trial, led by Edward Fitzgerald QC.
- In Re Chief Justice of Gibraltar: inquiry regarding the Chief Justice of Gibraltar, led by Edward Fitzgerald QC.

Electoral Law

- Ali v Hacques (Re Election Petitions in the London Borough of Tower Hamlets) [2006] All ER (D) 113 (alleged impropriety in the conduct of local elections, with Gavin Millar QC).

Inquiries and Inquests

Caoilfhionn regularly acts in inquests for bereaved families whose loved ones have died in prison, or in other forms of state care. She also acts in inquests and inquiries which raise concerns about the failures of State agencies.

Caoilfhionn has acted for bereaved families and survivors of the 7/7 London Bombings since 2007. She acted for them in relation to their campaign for a public inquiry and full inquest,

including the now-settled judicial review of R (Rachel North and Others) v Secretary of State for the Home Department (review of government's refusal to institute an independent inquiry into intelligence failures prior to the bombings, and the adequacy of existing mechanisms of review and inquiry: see **BBC News coverage** and their submissions to the Intelligence and Security Committee. She was instructed in the inquests heard before Lady Justice Hallett at the Royal Courts of Justice (October 2010 – May 2011), which resulted in a Rule 43 report of unprecedented detail, making important recommendations for changes of practice and policy to many public agencies, including MI5/ the Home Secretary, the London Ambulance Service, Transport for London and the London Underground. She also acted for her bereaved clients in R (Home Secretary) v HM Coroner for Inner West London [2010] EWHC 3098 (Admin) (whether a coroner has the power to exclude interested persons and their legal representatives from proceedings in the interests of national security).

Caoilfhionn also acted in the Rosemary Nelson Inquiry (an independent public inquiry into the murder of a solicitor in Northern Ireland, including questions of possible RUC collusion in her death), representing an NGO, British Irish Rights Watch, seeking intervenor status (with Andrew Nicol QC); the Gareth Williams inquest (regarding the unexplained death of a GCHQ employee, found dead in a holdall in his flat), acting for national media organisations; and she has been instructed in relation to specific issues arising in the Leveson Inquiry.

Caoilfhionn's Article 2 ECHR expertise means she is well-placed to act in inquests and related judicial review and civil claims. She has acted in a series of high-profile claims concerning domestic violence/ stalking victims who died following inaction/ inadequate action by the police (led by Nicholas Bowen QC).

Prison Law and Criminal Justice

Caoilfhionn regularly undertakes prison-related judicial reviews. This includes:

- judicial reviews of adjudications and appeals to the Ministry of Justice;
- issues relating to healthcare and disability (Articles 3 and 8 ECHR, and the Equality Act 2010);
- emergency Children Act 1989 cases concerning homeless, self-harming and vulnerable young people in and leaving custody;
- Article 5 and Article 6 challenges to the Secretary of State and Parole Board;
- separation of mother and baby, and placements in Mother and Baby Units;
- challenges to sentence miscalculations;

- challenges to revocation of licences and recalls to custody;
- matters arising in privately run/ 'contracted out' prisons.

She has given expert evidence to the Parliamentary Public Accounts Committee on electronic tagging, and has particular expertise in the structural and logistical flaws in the recall procedures for individuals on licence with a 'tag'.

In addition to prison-related judicial review, Caoilfhionn regularly represents lifers, IPPs and recalled prisoners before the Parole Board. She also represents prisoners wishing to transfer jurisdiction, including many UK-based Irish prisoners who wish to serve the remainder of their sentences in Ireland

Media, Privacy and Information Law

Caoilfhionn regularly acts for media organisations, journalists and NGOs in cases concerning free speech, reporting and newsgathering. Her media law practice focuses mainly upon reporting restrictions, anonymity and open justice matters, although she also regularly advises on other issues including journalistic access to information, defamation, privacy and production orders. She regularly advises the BBC on pre-publication legal matters. She has a particular niche in relation to open justice issues in the inquest context: she regularly acts for media organisations and journalists in the Coroners' Courts, and she advises the Media Lawyers' Association on media law issues in relation to inquests. She currently acts for a number of media organisations resisting private hearings in police misconduct cases. She has acted for the media in the majority of recent Reporting Restriction Order (RRO) cases in the Family Division, including the Poppi Worthington case (she was in December 2015 named Times 'Lawyer of the Week' for her work on this case).

Caoilfhionn also has expertise in freedom of expression under the European Convention on Human Rights and international instruments. She has delivered training on Articles 10 and 11 ECHR to Turkish judges on behalf of the Council of Europe, and she is a former trustee of Global Dialogue where she worked on issues concerning free speech, freedom of association and the right to protest in Turkey. She regularly acts for interveners in the European Court of Human Rights on freedom of expression issues. She is experienced in the use of the UN's special procedures of the Human Rights Council to raise concerns for detained journalists and peaceful protestors: for example, she currently leads the international legal team for Ibrahim Halawa, an Irish man detained in Egypt, arrested aged

17 when attending a peaceful protest.

Recent media law cases include:

- *BSkyB v. Commissioner of Police for the Metropolis* [2014] 2 WLR 558, [2014] EMLR 18 (Supreme Court): police not entitled to rely upon secret evidence when seeking production orders under the Police and Criminal Evidence Act 1984 against media organisations and journalists. Caoilfhionn acted for the Media Lawyers' Association, intervening.
- *F v. Cumbria County Council and others* (High Court, Family Division, Court of Appeal and Coroners' Court): Caoilfhionn acted for 9 media organisations in all media aspects of this complex and high-profile case concerning the death of a 13-month-old baby, Poppi Worthington, in suspicious circumstances. This included successfully opposing a draconian and wide-ranging RRO applied for in July 2014; acting throughout the High Court and Court of Appeal proceedings concerning reporting issues; in the media's challenge to the unlawful 7-minute inquest which took place in October 2014. The media successfully resisted multiple applications for the deceased baby, her father and a number of the responsible public bodies to be anonymous; secured an entitlement for contemporaneous, daily reporting of care proceedings, the first time this has ever been done; and secured publication of detailed fact-finding judgments of Mr Justice Peter Jackson concerning the circumstances of Poppi's death.
- *City & County of Swansea v. XZ* [2014] EWHC 212 (Fam); [2014] 2 FLR 1091 (High Court, Family Division): RRO case concerning a mother charged with murder of her baby daughter and grievous bodily harm with intent of another baby. Acted for four media organisations in resisting a wide-ranging RRO which prevented the media from reporting the story at all.
- *Surrey County Council v. ME and Others* [2014] EWHC 489 (Fam), [2014] 2 FLR 1267 (High Court, Family Division): acted for five media organisations in this RRO case concerning the killing of Neil Tulley by his stepsons, in a brutal attack which left him "almost beheaded." The media secured the lifting of the temporary RRO and successfully resisted reporting restrictions which would have prevented full coverage of the criminal trial.
- *Butkevich v. Russia* [2016] (European Court of Human Rights): acting, with Keina Yoshida, for the Media Legal Defence Initiative (MLDI), ARTICLE 19 and the Mass Media Defence Centre, intervening, in this case concerning the arrest and ill-treatment

of a Ukrainian journalist when he was covering protests taking place in St Petersburg during the G8 summit of 2006. The case raises serious concerns regarding freedom of expression, and the law enforcement's response to newsgathering, in Russia, and it raises issues about the appropriate approach for the European Court to adopt. Judgment is awaited.

Recent examples of Caoilfhionn's work for media organisations and journalists in the Coroners' Courts and criminal courts include:

- R v. Richard Huckle [2016]: acted for four media organisations (the BBC, Press Association, Times Newspapers and Associated Newspapers) in successfully opposing extensive reporting restrictions which would have severely hampered the media in reporting the conviction of paedophile Richard Huckle.
- R v. Anthony Long [2015]: Caoilfhionn acted for a number of media organisations in this case, the criminal prosecution of the armed police officer accused of the murder of Azelle Rodney. The prosecution followed a finding in the Azelle Rodney Inquiry that he had been unlawfully killed by a then anonymous officer known as E7. This work included both 'open justice' matters (resisting anonymity and special measures applications by a number of police officers and ex-police officers) and successfully resisting an application to delay the broadcast of a prime time TV programme (The Met – Policing London).
- SAS/ Brecon Beacons Inquests [2015]: inquests concerning the death of three army reservists who died of heat exhaustion whilst on an SAS selection exercise. Caoilfhionn acted for 13 media organisations on a range of open justice and transparency issues, including press access to exhibits and documents (including sensitive MOD policy documents).
- Inquest into the Death of Jordan Lee Begley [2014-2015]: Caoilfhionn acted for four media organisations (Guardian News & Media, Associated Newspapers, ITV & the Press Association) in this case concerning the death of a man who was shot with a Taser, successfully challenging applications by Greater Manchester Police and armed officers for anonymity for armed police witnesses.
- Inquest into the Death of Gareth Williams [2012]: Caoilfhionn acted for a consortium of eight media organisations in this inquest into the death of an MI6 employee who was found dead in a hold-all in his bathroom. The media secured access to materials which enabled them to report effectively on the proceedings, and resisted reporting

restrictions and other constraints on the media (including the exclusion of court artists from the courtroom).