

## Ulele Burnham



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### Profile

Ulele Burnham is the joint leader of the Court of Protection and Mental Health Team. She is a very experienced advocate in proceedings before the Court of Protection and associated and appellate jurisdictions. She also has significant experience in Equality and Anti-discrimination law.

She is ranked as a Band 1 expert Court of Protection: Health & Welfare practitioner by Chambers and Partners 2024 and Tier 2 by Legal 500 2024. She is described as "*clear, articulate, confident and strong advocate with an excellent court style.*", "*standout counsel in the Court of Protection...trusted by practitioners and judges alike*". Of her written advocacy, commentators say that her "*drafting skills are excellent*" and that her "*written work is incredible*" and "*second to none*".

She was co-author, (with Aswini Weeraratne KC and Alison Gerry) of one of the first practitioner texts on the Mental Capacity Act 2005 ("*Butterworth's New Law Guide to the Mental Capacity Act 2005*", Lexis Nexis, 2008) and therefore has a longitudinal sense of the development of the court's jurisprudence.

### Education

BA (Sussex) (2.1)

MPhil (Cantab)

Dip Law (Commendation) (Sussex)

### **Related practice areas**

Court of Protection & Mental Health

Actions Against the Police and Public Authorities

Discrimination

Anti-Trafficking

### **Publications**

- Chapter in Wadham, Robinson, Ruebain and Uppal, OUP, 2012, The Equality Act 2010, "The Public Sector Equality Duty and the Socio-Economic Duty".
- Article, "The summer of discontent: what's inequality got to do with it?", Briefings, Nov. 2011.
- Weeraratne, Hadfield, Burnham and Gerry, Butterworths New law Guides, Lexis Nexis 2008, The Mental Capacity Act 2005: Personal Welfare Decisions.
- Article, "The Equality Act (Sexual Orientation) Regulations 2007", Briefings, Vol. 31, June 2007.
- Article, "Equality and Human Rights", Equal Opportunities Review (2006), 152.
- Book Review of "Partnership Rights, Free Movement and EU Law", Briefings, Vol. 26, October 2005.
- Editorial: co authored w Henrietta Hill, "Big, black and dangerous?: race discrimination in mental health care and treatment", Briefings, Vol. 25, June 2005.
- Public Law Update on "The interpretive obligation under s.3 of HRA 1998 in Ghaidan and SS for Work and Pensions v M", New Law Journal, Vol. 154, No. 7154, pp.1783-1785.
- Case note; "Bellinger v Bellinger : When Compliance is Incompatible", European Human Rights Law Review, Special issue of Privacy, 2003.
- Article: "Negligent False Imprisonment - Scope for Re-Emergence?", Modern Law Review, 1998, Vol. 61, pp.573-579.

## **Equality and Discrimination**

In the early years at the Bar, employment tribunal work, and in particular discrimination-related work, was the mainstay of Ulele's practice. Latterly her focus has shifted to mental

capacity and related areas of law. She continues, however, to maintain a keen interest in equality and human rights law but now mainly in the context of public and/or private law claims in relation to the provision of services and public functions. She has a comprehensive breadth of knowledge in relation to the operation of the public-sector equality duty, having written extensively on its development and impact. She was junior counsel in **JM v United Kingdom** (2011) 53 EHRR 6 (UK government was found to have breached rights of a lesbian mother under articles 8, 14 and 1P1 of the Convention by failing to afford her the same rights as a heterosexual parent under domestic child support legislation) and also in respect of the ECHR compensation claims made on behalf of the "Belmarsh Detainees" (**A & ors v United Kingdom**: detainees subject to detention without trial pursuant to the provisions of Part 4 of the Anti-Terrorism Crime and Security Act 2001, alleged violations of their rights and the UK Government's obligations under articles 3, 5(1), 5(4), 5(5), 6, 13 and 14 ECHR). A small aspect of her practice still includes discrimination-based claims against the police and other detaining authorities.

Prior to the establishment of the Equality and Human Rights Commission (EHRC), she regularly provided advice to the Commission for Racial Equality (CRE) on broad policy issues (counsel instructed to advise and represent the CRE as a claimant in litigation re discriminatory advertisements contrary to s.29/31 RRA) and has acted as counsel for the CRE as an intervenor in strategic litigation (**R(Tasmanian Aboriginal Centre) & anor v The Trustees of the Natural History Museum**, CO/1143/2007, sole counsel: whether the NHM was in breach of its public duty to promote good race relations in approach adopted to the return of aboriginal remains in its custody; **R(BSL/SAL) v Secretary of State for Constitutional Affairs & Lord Chancellor & anor**, CO/3335/2007, junior counsel: whether, in failing to take proper account of the disparate impact upon black and ethnic minority firms and practitioners, the proposal to reform legal aid provision in criminal cases contravened the race equality duties of the relevant public authorities). She is also on the EHRC's panel of approved counsel.

Ulele's recent advisory work has addressed two major rights issues: trans-rights and reparations. With Donnchadh Greene, she provided advice to the Good Law Project on the legality of the Equality and Human Rights Commission's single-sex services guidance. She is also, led by Edward Fitzgerald KC, providing advice to a number of Caribbean state parties on obtaining reparations from the UK government for colonial era chattel slavery and native genocide.

## Court of Protection and Mental Health

Approximately 80% of Ulele's practice involves litigation in the Court of Protection and associated jurisdictions. Her practice spans all aspects of the Court of Protection's health and welfare jurisdiction. Serious medical treatment is an area of significant interest and developing expertise. She was counsel in **A London NHS Trust v CD** (by her litigation friend, the Official Solicitor), **EF, AB** [2021] EWCOP 23 (parental dispute vis withdrawal of treatment following hypoxic brain injury) and **Lancashire and South Cumbria NHS Foundation Trust v Q & Ors** [2022] EWCOP 6 (life-threatening valid advance decision to refuse medical treatment for a hypokalaemic condition caused by bulimia) and has been instructed in amputation and dental treatment cases, and others in respect of children or where there have been questions as to the appropriateness of detention under the MHA 1983. She was also counsel in the important case of **PB & TB** [2014] EWCOP 14 (finding of lack of capacity possible even where impairment of intellectual functioning is not the sole cause of inability to make decisions).

She has significant experience of the litigation in relation to the exercise of powers under the Mental Health Act 1983 : **R(Taylor) v Dr. Hayden Smith & Ors** [2005 [EWHC 1668 Admin) (challenge to forced medication decisions post-Wilkinson); **DL-H v Partnerships in Care and anor** [2013 [UKUT 500 (AAC) (inquiry about whether s. 72 MHA treatment therapeutically beneficial remains relevant to detention criteria notwithstanding replacement of "treatability" test); **(R(B) v Ashworth HA and anor** [2005] UKHL 20 (treatment of detained patients for non-classified mental disorders permissible under MHA). She was also junior counsel in **Johnson v UK** [1999] EHRR 296 (ECtHR found prolonged delay in giving effect to conditional discharge breached Art 5).

She has advised on Human Rights Act 1998 damages claims in respect of deprivations of liberty. She regularly appears on behalf of local authorities, Health Bodies (including ICB's and other commissioners such as the NHSEI) and is on the Official Solicitor's list of approved counsel.