

## Gemma Hobcraft



Call: 2006

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### Profile

#### What the directories say

Gemma has been listed as a leading junior by Chambers and Partners in professional discipline since 2015 (and before this was listed as a leading junior in extradition in Chambers and Partners) and is also listed in Legal 500 in the category of professional discipline and regulatory law. Gemma is also listed as a Leading Junior in 2024 Legal 500 in the court of protection and community care category for her Court of Protection work.

Legal 500 2024 says 'A super bright junior. She is practical and realistic in her approach which tribunals and clients appreciate and warm to.'

Chambers & Partners 2023 says: *"Her approachable nature and her professionalism have been key factors instilling in me a strong confidence that she is acting in the best interests of my client, with a keen awareness of their needs."*

Sources have described her as an *"absolutely fantastic barrister who has encyclopaedic knowledge of the area"*. A "standout barrister who has practiced at the core of the area of a long time and is the author of a book that many people use" and is "a clear-headed and

compassionate person when it comes to dealing with regulated persons” who “provides *top-level, practical advice. If it’s a tricky case containing particularly complex issues, she’s the go-to counsel as she’s able to cut through the issues and think of an innovative way forward*” and she’s “particularly good at advising on technical issues.” Sources also mention that “[s]he has great analytical skills, is pragmatic, practical and always gets fantastic results“. She is also described as “calm, professional and persuasive.”

She has also been described as “incredibly thorough and leaves no stone unturned” and that she is “[g]ood with clients and has a total grasp of the brief.” Gemma is described as “[v]ery dedicated and very good on her feet. She’s full of practical and pragmatic solutions” and that “she has a very creative and helpful approach, as well as good clarity of thought. She is good on her feet.”

In Legal 500 she has been described as “very knowledgeable on GMC disciplinary cases” and “very thorough and dedicated to her clients, she utilizes her experience to push new points of law.”

## **Overview**

Gemma is an experienced Barrister practising in regulatory law with a particular focus on health care and human rights.

Gemma also has experience in academia – having taught and researched in the field of medical law and ethics, with a focus on biometrics, data, human rights, reproduction and regulation.

Gemma was a lay member of the Human Fertilisation and Embryology Authority between 2008 – 2015. Her roles during this time included a term as Deputy Chair and being Chair of the Ethics and Standards Committee.

Gemma’s practice is focused on legal issues relating to health and regulation, this includes health care regulatory and fitness to practice cases (from referral through to review and appeal) as well as work in allied areas of health-related law including court of protection work. Gemma has wide ranging experience- including in disclosure and barring matters (particularly challenging enhanced DBS checks), judicial review mental health and education law.

Gemma has a particular interest and expertise in medical law and ethics – with an emphasis on issues relating to future proofing regulation relating to AI, data (including biometrics), direct to consumer genetic testing and human rights. She spent three years in academia teaching medical law and ethics – including capacity related issues (as well as criminal law, criminal justice, and international criminal law).

In academia her research focus was on medical law and ethics, particularly looking at regulating future health technologies. A key focus of her practice and research relates to Article 8 and the right to privacy.

Gemma is on the editorial board of the Journal for Law, Technology and Trust and is an Associate for the PHG Foundation – a think tank and charity ‘with a focus on how genomics and related technologies can make healthcare better’.

## **Background**

Prior to coming to the Bar, Gemma gained extensive experience in sexual and reproductive health and rights working at the international level. From September 2008 until March 2015, Gemma was appointed by the Department of Health as a lay member of the Human Fertilisation and Embryology Authority (HFEA). She was Deputy Chair of the Authority between 2012 and 2015 and also chaired the Ethics and Standards Committee amongst other roles. Gemma was previously a trustee of Brook (sexual health for young people) and an elected member of the Executive Committee of the Human Rights Lawyers Association (and its Bursary Officer) from 2006-2012.

## **Recent Seminars/Training**

Gemma has organised and delivered bespoke trainings to unions and solicitors firms (and other interested individuals) on law relating to professional discipline. Trainings have included the following: a seminar on public law aspects of professional discipline work; on race and disciplinary proceedings, a seminar on challenging disclosure and barring decisions for professionals and an all-day training on interim orders. Gemma has filmed ‘Masterclasses’ for legalPD and has delivered all day training on Professional Discipline for MBL Seminars.

## **Publications**

- Professional Discipline and Health Care Regulators: A Legal Handbook, Jon Whitfield QC and Gemma Hobcraft, LAG, 2018
- Medical Treatment: Decisions and the Law – Christopher Johnston (Ed), contributing author – chapter on human fertilisation – 2016
- Contributed a case commentary to Medical Law Reports (2016)
- Contributing author to Halsbury’s on Rights and Freedoms
- Professional Discipline and Health Care Regulators: A Legal Handbook, Christopher Sallon QC, Jon Whitfield QC and Gemma Hobcraft, LAG, 2012

- Human Rights in Criminal Investigations. J.Cooper and M.Colvin (Eds) OUP 2009 - contributing author - chapter on human rights and sentencing
- G.Hobcraft 'Roma Children and Education in the Czech Republic, DH and Others v The Czech Republic: Opening the door to indirect discrimination findings in Strasbourg?' EHRLR 2 (2008) 245
- J.Cooper and G.Hobcraft 'The IMPACT of human rights', Impact 13 HIV and the Law, Policy Bulletin 13, National AIDS Trust, July 2007
- G.Hobcraft and T.Baker, 'Special needs of adolescent and young women in accessing reproductive health: Promoting partnerships between young people and health care providers' International Journal of Gynecology and Obstetrics (2006) 94 350
- G.Hobcraft (Contributing Editor) 'Navigating International Meetings: A Pocketbook Guide to Effective Youth Participation' United Nations Association of Canada, 2002

## Directory Comments

Gemma was recommended in Chambers and Partners 2018 in the area of professional discipline, commentators note “She has a very creative and helpful approach, as well as good clarity of thought. She’s good on her feet.

The 2017 edition described Gemma as follows:

*“She provides top-level, practical advice. If it’s a tricky case containing particularly complex issues, she’s the go-to counsel as she’s able to cut through the issues and think of an innovative way forward” and “She’s particularly good at advising on technical issues.”*

The 2016 edition described Gemma as follows:

“Has a practice focussed on professional discipline, regulatory work and public law actions. She frequently advises on judicial reviews and statutory appeals related to professional disciplinary matters.

Strengths: “She has great analytical skills, is pragmatic, practical and always gets fantastic results”; “She is calm, professional and persuasive.”

2015 Entry: "Regularly appears on behalf of medical practitioners before a breadth of healthcare regulators. She is particularly knowledgeable in the area and is a published author on health law."

Strengths: "She is a clear-headed and compassionate person when it comes to dealing with regulated persons." "She is incredibly thorough and leaves no stone unturned."

## **Related practice areas**

Professional Discipline and Regulation

Education

Data Protection and Information Law

Clinical Negligence, Personal Injury & Product Liability

Court of Protection & Mental Health

## **Professional Discipline and Regulation**

### **Professional Discipline - First instance**

Gemma represents and advises registrants facing fitness to practise proceedings before their regulators - including doctors before the General Medical Council's Medical Practitioners Tribunal Service (MPTS), nurses, health visitors and midwives before the Nursing and Midwifery Council (NMC) and registrants before the Health and Care Professions Council (HCPC) and pharmacists before the General Pharmaceutical Council).

She has co-edited and contributed to the book: Professional Discipline and Health Care Regulators: a legal handbook (now in its second edition) and provides training on health care regulation.

Gemma has been instructed in a wide range of cases concerning health, conduct and competence. Gemma advises and acts at all stages of a case from pre-referral to appeal, including at interim order hearings and full hearings. Gemma has strong witness handling skills, the ability (given her background) to understand and unpick complex medical issues and terminology, and is well versed in challenging the drafting of charges, preliminary legal arguments - including exclusion of evidence and abuse of process, arguing half time submissions and presenting a coherent and strong case for her clients. Gemma has represented doctors, nurses, midwives, health visitors, physiotherapists, paramedics, psychologists, ODPs and bio-medical scientists. Gemma has also sat as a legal assessor/advisor in regulatory proceedings.

- HCPC v SB: Securing conditions in a case in which a never incident occurred in a blood bank.
- HCPC v MB: Securing a complete acquittal on dishonesty allegations against an ODP.
- GMC v MQ: Representing a Doctor (led by Edward Fitzgerald QC) at full hearing. Following an abuse of process argument all clinical charges were stayed. A dishonesty

finding resulted in a suspension of three months.

- GMC v NT: Successfully preventing the imposition of any form of Interim Order on a Doctor at an early stage in a GMC FTP investigation (led by Edward Fitzgerald QC).
- GMC v ET: Representing a Doctor (led by Chris Sallon QC) facing extensive dishonesty charges in relation to his CV. Despite a large number of factual particulars being found proved, no impairment was found and the matter was ended with the imposition of a warning.
- HPC v KO: Represented a physiotherapist at an 8 day hearing involving substantial documentation as a result of the wide ranging charges relating to record keeping and practise – the case was concluded with a suspension order which was later varied to conditions.
- HPC v CS: Represented a physiotherapist at a 2 day hearing, where a number of charges were contested and found proved, but no impairment was found.
- HPC v GC: Represented a junior physiotherapist at a 4 day hearing concerning competence which resulted in a conditions of practice order which was later revoked at review.
- NMC v SP: Represented a Health Visitor at a 4 day hearing concerning dishonesty charges which were found proved – the case was concluded with a suspension order.
- NMC v FL: Represented a Health Visitor over a 14 day hearing in a case with extensive documentation, charges and witness handling in relation to issues of child protection, safeguarding and record keeping. Of the extensive number of charges that remained in dispute, all were either dismissed at half time or found not proved at full time. The matter was concluded with a Caution Order.
- TA v ES: Advised a head teacher during the preliminary stages of her TA proceedings alleging, inter alia, the misappropriation of school funds.
- NMC v AS: Represented an individual alleged to have obtained admission to the register by fraudulent or other means at an interims orders hearing.
- HCPC v SG: Represented a paramedic in a case concerning capacity assessment and record keeping, following full admissions to facts and misconduct, no impairment was found.

- HCPC v D: Represented a registrant at an 8 day hearing concerning extensive conduct allegations. A number of allegations were dismissed at half time following extensive cross examination of the HCPC witnesses and of the disputed particulars that went to full time only half of one particular was found proved.
- HCPC v G: 5 day hearing concerning allegations of lack of competence/conduct against a physiotherapist, a number of charges were found not proved.
- HCPC v P: 4 day hearing concerning extensive dishonesty allegations.
- NMC v S: Representing a senior nurse at a 15 day hearing concerning extensive dishonesty allegations, a number of which, following application were stopped. The case was concluded with a conditions of practice order.
- NMC v P: 7 day hearing, representing a Health Visitor, as a result of disclosure issues by the NMC an abuse of process application was made at the outset of the hearing, the application to have a key prosecution witness statement read by the NMC was successfully resisted. At half time 7 of the 10 allegations were stopped following application. 2 of the remaining 3 allegations were found proved, but the Panel did not find those allegations found proved amounted to misconduct.
- NMC v T: 6 day hearing representing a Health Visitor, a number of charges were stopped at half time following a successful application. All other charges were the subject of admission and the matter was concluded with a caution order.
- NMC v J: 6 day hearing representing a Nurse. All clinical competence charges were stopped at half time following a successful application. Dishonesty charges were found not proved at the end of the fact stage, leaving only minor admitted factual matters, these were not found to amount to misconduct.
- NMC v G: 5 day hearing representing a Nurse on dishonesty allegations relating to a medication cover up. This was a complicated case with heavily contested facts and involved extensive and careful cross examination of all NMC witnesses. Half of the allegations were stopped at half time following a successful application. The remaining allegations were found not proved at the end of the fact finding stage.
- NMC v S: 3 day hearing representing a Nurse who made full admissions to dishonesty allegations. The matter was concluded with a Conditions of Practice Order.
- NMC v O: 5 day hearing concerning wide ranging competence and dishonesty allegations. Following various successful legal arguments only 1 of the 8 charges was

eventually found proved. The panel were persuaded this did not amount to misconduct.

- NMC v O: 5 day hearing concerning allegations of patient harm. The matter was concluded with a caution order.
- GPhC v S: 3 month suspension secured in case concerning acceptance of police caution for drug possession.
- HCPC v G: Conviction case for fraud in course of employment, the panel were persuaded that despite the criminal conviction the registrant's fitness to practise was not impaired and therefore the allegation was not made out.

## Professional Discipline – Appeal and Judicial Review Work

Gemma advises and acts in statutory appeals arising out of decisions (both pre, during and post hearing) of health care regulators. Recent examples, include:

- Dr K v GMC: 2016 - Appeal against decision to erase (representing the doctor).
- JK v NMC: 2016 - Appeal against decision to strike off a nurse (representing the nurse).
- LH v NMC: Advised on appeal against NMC decision to strike off, NMC consented to quashing of strike off and remittal back to fresh panel for sanction stage. Represented at fresh panel where conditions of practice order was imposed.
- Luthra v GMC: [2013] EWHC 240 (Admin).
- Advising on appeals against Prohibition Orders by the NCTL/Secretary of State.

Gemma also advises on potential judicial reviews of decisions impacting on health care professionals – for example including issues around Enhanced Criminal Record Certificates of health care professionals:

- R (BW) v Independent Monitor: [2015] EWHC 4095 – first effective judicial review of decision by Independent Monitor concerning information provided in an ECRC
- R (A) v Chief Constable of Kent Constabulary: [2013] EWCA 1706 Civ – Decision of police to disclose unproven allegations made against a nurse on an Enhanced Criminal Record Certificate (ECRC) was disproportionate and unlawful.



## Public & Administrative

Gemma accepts instructions in public law and other challenges in the health sector.

Gemma has been instructed in judicial reviews relating to prisoner welfare, parole board challenges, education law and health law.

Gemma has a particular interest in mental health law and has previously lectured on the Institute of Psychiatry, Forensic Psychiatry MSc programme on the issue of criminal sentencing and violent offenders.

## Court of Protection

Gemma has a developing Court of Protection practice, acting in cases concerning residence, care, and deprivations of liberty. Gemma acts for vulnerable adults through their litigation friends or others and statutory bodies.

As a result of her DBS and regulatory work, she has a good understanding of safeguarding issues. In her previous work in extradition a focus of that work was on the best interests/Article 8 considerations of separation of parent and child. Gemma has considerable experience working with vulnerable individuals, facing difficult legal processes. As a result of her regulatory law practice, she is experienced in examining health and other care records and witness handling of expert witnesses.

Gemma's experience of criminal law, public law, healthcare regulatory law and mental health law mean that she is well placed to address cross-cutting issues that arise in Court of Protection proceedings.

Gemma spent three years in academia teaching medical law and ethics (as well as criminal law which often cross cuts issues of necessity, consent, and capacity). Her research focused on examining ethical issues with a focus on health, human rights, and regulation.

Gemma was a lay member of the Human Fertilisation and Embryology Authority between 2008 – 2015. Her roles during this time included a term as Deputy Chair and being Chair of the Ethics and Standards Committee, which gave her considerable opportunity to develop and demonstrate her decision making and judgment on finely balanced ethical and medical issues.

## Clinical Negligence & Personal Injury

As a result of her regulatory law practice, Gemma is experienced in examining health and other care records and cross-examining expert witnesses. Gemma has strong witness handling skills and the ability to understand and unpick complex medical issues.

Gemma was previously instructed by Action against Medical Accidents (AvMA) in a threatened judicial review where the Secretary of State agreed to amend NHS Guidance which permitted hospitals to refuse to investigate complaints from patients harmed by poor care.

Gemma spent three years in academia teaching medical law and ethics (as well as criminal law which often cross cuts issues of necessity, consent, and capacity). Her research focused on examining ethical issues with a focus on health, human rights, and regulation.

Gemma was a lay member of the Human Fertilisation and Embryology Authority between 2008 – 2015. Her roles during this time included a term as Deputy Chair and being Chair of the Ethics and Standards Committee, which gave her considerable opportunity to develop and demonstrate her decision making and judgment on finely balanced ethical and medical issues.