

Gemma Daly



Call: 2017

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Profile

Gemma specialises in cases involving mental capacity and mental health issues. In addition to her practice in mental capacity and mental health law, Gemma practises in public law with particular expertise in social welfare matters, and acts in inquests and inquiries.

Gemma regularly appears in the Court of Protection, acting for litigation friends including the Official Solicitor, local authorities, and family members. She has experience of complex welfare matters under s.16 of the Mental Capacity Act 2005, contested deputyship applications, and regularly represents parties involved in challenges to deprivations of liberty in care homes and hospitals under section 21A, having appeared before all tiers of Court of Protection judges.

Gemma has represented patients detained under sections 2 and 3 of the Mental Health Act 1983, and advised in cases involving the complex interaction between the Mental Health Act 1983 and the Mental Capacity Act 2005. Gemma also represents parties involved in proceedings under the Mental Health Act outside of the Tribunal setting, including displacements of nearest relatives, as well as representing bereaved families at mental health-related inquests.

She has experience advising on discrimination, harassment, and victimisation under the

Equality Act 2010. Gemma is appointed to the Equality and Human Rights Commission panel of counsel.

Gemma has worked with a number of senior members of Chambers on a broad range of human rights issues, including a challenge to the prohibition of same-sex marriage in a British Overseas Territory, challenges to criminal proceedings and detention in Trinidad & Tobago, and domestic matters where discrimination issues have arisen.

Prior to being called to the Bar, Gemma provided specialist welfare benefits advice and representation at the First-tier and Upper Tribunals on behalf of Macmillan Cancer Support and Citizens Advice, and the Free Representation Unit, as well as representing clients pro bono in Employment Tribunal claims. Gemma continues to provide representation on a pro bono basis in complex benefits cases, as well as training FRU's volunteers and spent a number of years on FRU's Management Committee.

Gemma is licenced under the **Direct Access Scheme** and can accept instructions directly in appropriate cases across all aspects of her practice.

Education

LLB 1st class honours, University of Bristol with study abroad at the Università degli Studi di Siena.

LLM Distinction, SOAS, University of London.

BPTC Outstanding, BPP University

Related practice areas

Court of Protection & Mental Health

Inquests and Public Inquiries

Children's Rights Group

Discrimination

Court of Protection

Gemma practises in the Court of Protection, regularly appearing on behalf of P instructed by litigation friends including the Official Solicitor, family members, local authorities, and Clinical Commissioning Groups. She also has experience of representing in mediation during Court

of Protection proceedings, and is training as a mediator.

Gemma has worked with a number of senior members of the CoP team on complex matters, including Ulele Burnham, Sophy Miles, Oliver Lewis, and Aswini Weeraratne QC.

In collaboration with Aswini Weeraratne QC and Sophy Miles, Gemma contributed to the book chapters on the Court of Protection and issues involving capacity in *Buchan's Clinical Negligence – A Practical Guide* (2019).

Gemma writes the Court of Protection updates for LAG with Sophy Miles and Mary-Rachel McCabe, and she regularly provides training on the Mental Capacity Act and the inherent jurisdiction for vulnerable adults.

Examples of notable cases:

- Successfully persuaded the court following cross-examination of the local authority's expert that P had capacity to make decisions about her residence, care, and contact with others.
- Obtained judgment that it was in P's best interests to have a trial return home with an appropriate package of care, following a fiercely contested hearing.
- Successfully persuaded the court that P had capacity to make decisions about his residence following years in a care home against his will.
- Advocated for an independent capacity assessment on P's behalf, contested by all other parties, to which the court acceded and resulted in P being found to have capacity to make the welfare decisions in issue.
- Achieved a move to an alternative care home in P's best interests after years of family members pursuing a move.

The Court of Protection is a unique jurisdiction regularly requiring discussions between parties to work in P's best interests. As well as being experienced in witness handling and making complex legal submissions where required, Gemma is adept at chairing discussions and has represented at mediation.

Mental Health

Gemma accepts instructions in all matters arising under the Mental Health Act 1983. She

was recently instructed as junior counsel to Sophy Miles and Aswini Weeraratne QC by Mind in their intervention in the Supreme Court in *Welsh Ministers v PJ* [2018] UKSC 66. She has co-written an article on the decision for Lexis Nexis' current awareness service.

Inquests

Gemma represents bereaved families at inquests, in particular where there are issues around mental health services in the community, or the deceased was deprived of their liberty in hospital, prison, or police custody. Gemma has experience cross-examining expert witnesses, including consultant psychiatrists, social workers, and police officers.

Actions against the police, prisons & public authorities

Gemma accepts instructions on behalf of prisoners at adjudications and Parole Board hearings, as well as representing families at inquests following deaths in prison and police custody. Gemma is particularly adept at representing in cases where there are questions around mental capacity and issues under the Mental Health Act, such as s.47/48 hospital transfers.

Gemma has experience representing Defendants in Magistrates' Courts and the Crown Court, which provides a useful background for her police and prison work. She has experience of cross-examining police officers, medical experts, and other professionals.

Social Welfare

Gemma has extensive experience in the field of social welfare law, having spent five years advising clients on complex benefits claims and representing at benefit appeals in First-tier Tribunals and the Upper Tribunal. She continues to provide regular training to volunteer students and junior lawyers at the Free Representation Unit's training days.

Recent reported cases:

EG v Secretary of State for Work & Pensions (PIP) [2017] UKUT 101 (AAC)

YA & SA v Secretary of State for Work & Pensions (ESA) [2017] UKUT 60 (AAC)