

# 1GC | Family Law

## Lorraine Cavanagh KC

Year of Call: 2000 Year of Silk: 2019



## Practice Overview

Lorraine practises in all areas of children law, in the health and welfare law field of the Court of Protection and conducts judicial review and Human Rights claims with a focus on community care provision and child rights.

### Children (Public Law)

#### Care Proceedings

Lorraine has acted in complex care cases including fatal injury cases and catastrophic injuries to children, which may be inflicted. Further, Lorraine has dealt with a number of NAHI and non accidental injury cases with areas of medical complexity. Lorraine has a wealth of experience acting on all sides of these applications. Lorraine's practice in medical treatment law has caused her to become involved in end of life care cases for children with profound illness and/or disability. Including case involving the force feeding of children and their detention for the purposes of medical treatment. Lorraine acts for children directly without a Guardian and through their Guardian. Lorraine also acts, in these cases, for local authorities, Hospital Trusts and parents. Due to her experience as a noted practitioner in the Court of Protection Lorraine has acted in numerous complex care cases involving learning disabled parents and children. Including concurrent care proceedings for the child and COP proceedings for the parents. She has extensive experience of acting through the Official Solicitor for parents and children who lack the capacity to instruct directly. Lorraine has also acted in a number of High Court public law cases involving linked Human Rights Act claims and Judicial Review proceedings in which she also acted on behalf of the clients.

#### Adoption

Lorraine has been involved in complex international/foreign adoption cases. Including some of the leading cases on this issue. Lorraine has also been involved in sensitive and complex litigation involving defending post adoption contact claims by biological parents under the Human Rights Act or the Adoption and Children Act 2002 (as amended).

#### Inherent Jurisdiction/Medical Treatment

Medical treatment cases for children form a significant part of Lorraine's practice. Lorraine has acted for the Hospital/NHS Trusts in these cases and for local authorities. Lorraine has a wealth of experience acting for children/young adults and parents facing life threatening illness and treatment

dilemmas.

Lorraine has been involved in some very complex cases in the obtaining of Reporting Restriction orders primarily relating to the protection of the privacy of a child.

Lorraine has a specialist interest in Wardship and the imaginative use of the inherent jurisdiction to facilitate the right outcome for a child. The use of injunctive and declaratory relief to safeguard a child is very familiar territory for Lorraine.

## Children's Rights

Lorraine has been junior in the leading case shaping the rights of children in care. The landmark and grave case of *A & S v Lancashire County Council* was a Human Rights application by two children, represented by Lorraine, and her leader, to bring into account the local government, the national policy and legislation that had come together to permit the boy's parlous conditions and unlawful legal status to persist. Lorraine has represented multiple children before and in the aftermath of this case who seek to challenge failures of a local authority to meet their needs and statutory duties to them. The jurisdictional vehicle for such challenges lie in the inherent jurisdiction, the Human Rights Act or judicial Review, depending on the facts of the case.

## Children (Private Law)

Lorraine has experience of acting in a wide range of private Children Act cases for parents, relatives and children with party status. Lorraine acts in complex residence and contact matters including cases involving specific issues and intractable contact dispute involving emotional abuse and media issues. Lorraine has been involved in the most serious complex cases of this type.

## Court of Protection

Lorraine is a very experienced practitioner in health and welfare law. Lorraine has considerable experience of acting for the Official Solicitor, Local Authorities and families in welfare. Lorraine has a particular interest in medical treatment cases for adults and children. Lorraine has acted in a number of complex cases relating to adolescents with learning difficulties transitioning their care from child to adult services which have required transfer to the Court of Protection.

Lorraine has a specialist interest in cases that involve the marriage and sexual relations of incapacitous persons which have resulted in children (i.e. concurrent care proceedings) or which result in concurrent matrimonial litigation (i.e. petitions for nullity). Lorraine's background in child law and matrimonial law has led to her representing P in all facets of the family court litigation and the Court of Protection.

Lorraine has been instructed in a number of injunctive relief applications relating to vulnerable adults who whilst having decision making capacity are unable to exercise it through the actions/will of others. These cases present a very challenging balance between autonomy and protection.

Where public law remedies and Human Rights Act 1998 remedies are required to obtain community care services for P and/or arise from actions done to him/her then Lorraine has a wealth of experience in raising and pursuing such claims in a court of Protection, Family Division and QBD.

## Judicial Review & Administrative Law

Lorraine's practice in administrative law and public law remedies primarily relates to children and vulnerable adults. Lorraine has acted in a number of high court public law cases with linked Human Rights and Judicial Review claims in which she has continued to represent her client's interests.

Lorraine has advised on the merits of applying for Judicial Review to challenge Local Government decision making and guided the claims through Pre Action Procedure on behalf of children, the Official Solicitor and relatives of the child or patient concerned. Lorraine has been involved in JR claims relating to the removal of a child under a care order from home which was alleged to be unlawful and contrary to an Article 6 compliant process.

Lorraine has advised Local Authorities in respect of their duties and the potential liability arising from JR claims against them; including advising on practises to mitigate the potential liability in respect of groups of unaccompanied asylum children and in respect of individual Looked After Children. Commonly these claims involve the failure to initiate care proceedings, tension between the Local Authority's duties under Section 20 and Section 17 of the Children Act, pathway planning and LAC duties generally.

Lorraine has advised and acted for children and relatives in both concurrent Human Rights Act claims with Judicial Review and in freestanding claims under Section 7(1) (a) HRA 1998 at all court levels including the early stages of a petition to the House of Lords and an application to the European Court of Human Rights.

Lorraine also advises Local Authorities in respect of such claims.

## **Notable Cases**

### **Children (Public and Private)**

*N (A Child), Re (Care Order: Welfare Evaluation)* [2024] EWCA Civ 938

*LA v M & Ors* [2024] EWHC 1336

*C v M (A Child) (Abduction: Representation of Child Party)* [2023] EWCA Civ 1449

*Derbyshire County Council v Shannon Marsden & Ors* [2023] EWHC 1892 - Lorraine represented the third and fourth respondent carers for Child A in this High Court case involving an application by three media organisations for the release of various documents relating to highly publicised care proceedings under the Children Act 1989 ("CA"). The judgment discussed issues of transparency and reporting restrictions.

*Re H (Parents with Learning Difficulties: Risk of Harm)* [2023] EWCA Civ 59 - Lorraine represented the appellants in this appeal relating to care and placement orders made in respect of a child, aged 22-months. The child's parents both have cognitive difficulties. The appeal was allowed.

*F and G (Children) (Sexual Abuse Allegations)* [2022] EWCA Civ 1002

Led Stephen Brown for the appellant in the Court of Appeal against findings of fact that the appellant sexually abused a small child. The appeal against the recorder's findings was dismissed whilst the lower court's reasons were delivered with economy, they were sufficient as to substance.

*D (A Child: Placement Order) [2022] EWCA Civ 896*

Led Jonathan Taylor for the respondent local authority in the Court of Appeal against a placement order. Lord Justice Peter Jackson applied the Supreme Court's decision in *Re H-W* to an adoption case – "Adoption can only be approved where it is in the child's lifelong best interests and where the severe interference with the right to respect for family life is necessary and proportionate. The court must therefore evaluate the family placement and assess the nature and likelihood of the harm that the child would be likely to suffer in it, the consequences of the harm arising, and the possibilities for reducing the risk of harm or for mitigating its effects. It must then compare the advantages and disadvantages for the child of that placement with the advantages and disadvantages of adoption and of any other realistic placement outcomes short of adoption." The appeal against the placement order was allowed.

*W (A Child) Re [2021] EWHC 2844* - Represented one of the parents in an important case for care and CoP practitioners.

*MBC v AM & Ors (DOL Orders for Children Under 16) [2021] EWHC 2472* - representation of three of the four local authorities in cases selected to test the point as to whether the High Court's inherent jurisdiction could continue to authorise a Deprivation of Liberty of a child under the age of 16 in an unregistered children's home after the introduction of Regulation 27A into the Care Planning, Placement and Review (England) Regulations 2010. MacDonald J concluded that the jurisdiction survives.

*In the Matter of T (a child) (Appellant) [2021] UKSC 35* - The Supreme Court recently handed down guidance in cases of Deprivation of Liberty regarding children authorised under the inherent jurisdiction. Lorraine Cavanagh QC with **Deirdre Fottrell QC**, Siobhan Kelly and **Sharon Segal** acted for the Association of Lawyers for Children.

*YW (A Child) (Adequacy of Reasons) [2021] EWCA Civ 1174* - in the Court of Appeal for a local authority opposing two appeals against findings of fact of non accidental facial injuries to a toddler. The appeals were allowed. The CoA concluded amongst other things "It was in my judgment wrong of the judge as she went through the evidence of each witness to provide a running commentary on its credibility. She ought to have set out the accounts and only reached her conclusions once she had considered the totality of the evidence."

*H v An Adoption Agency (No.2) (Declaration of Parentage and Public Policy) [2021] EWHC 1943* - This follows MacDonald J's previous decision *H v An Adoption Agency [2020] EWHC 74*. The novel issue in this case was whether it was manifestly contrary to public policy to grant a declaration of parentage after the child has been adopted; the court concluded that it was. The Attorney-General intervened. The judgment contains an important distillation of the central public policy principles underpinning adoption in this jurisdiction and the intended inviolability of adoptive placements.

*Salford CC v W others (Religion and Declaration of Looked After Status) [2021] EWHC 61* - application for a prohibited steps order to prevent the prospective special guardians from allowing the children to receive the sacraments of the Roman Catholic faith until they were 16 years old.

*In the Matter of the Adoption of Children Act 2002 and in the Matter of C (Children) (Revocation of Placement Orders)* [2020] EWCA Civ 1598 - Lorraine acted for the local authority and the Court of Appeal took the opportunity to address the applicable principles to an application to revoke a placement order after leave has been granted.

*Re H-N and others (Children) (Domestic Abuse: Finding of Fact Hearings)* [2021] EWCA Civ 448 - Lorraine appeared in the four conjoined Domestic Abuse appeals before the Court of Appeal [Re H-N and Others] for an intervener, the Association of Lawyers for Children.

*H v An Adoption Agency (Declaration of Parentage Following Adoption)* [2020] EWFC 74 - The novel issue in the case was whether the Family Court has jurisdiction to grant a declaration of parentage in respect of a natural father where the child had been adopted years prior to the application and her ties with her natural family had been severed.

*B (A Child) (Designated Local Authority)* [2020] EWCA Civ 1673 - The successful Appeal concerned the approach to be taken when determining the 'designated local authority'. Lorraine acted for the child B and provided written submissions to the Court of Appeal.

*A Local Authority v MM* [2020] EWFC 65 - an application for an Article 15 transfer to a court in Romania the welfare stage of care proceedings. The burden is on the applicant to show that the other court provides genuine and specific added value. Mostyn J held that "the later in the progress of the case the heavier the burden will become.

*Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025 - Lorraine led Denise Gilling (now QC) for the Association of Lawyers for Children. The Court of Appeal has settled upon a broad definition of the term 'secure accommodation' within section 25 CA 1989. Concluded that the relevant criteria that must be met before an order is made includes an evaluation of the child's welfare and the proportionality of the proposed interference with Article 5 and 8. The time to assess if the criteria under section 25 are met is the date of the hearing.

*Re Z (A Child: Deprivation of Liberty: Transition Plan)* [2020] EWHC 3038 - Knowles J offering a pointer to good practice for local authorities and families seeking to move a child into a placement where restraint and restrictions on liberty are required.

*Re AA (Children) & 25 Ors* [2019] EWFC 64 - This appears to be the largest public law family case that has been litigated. There were 15 care cases heard together by Sir Mark Hedley relating to grave sexual abuse allegations in respect of children. Sir Mark Hedley decided the principle of whether there was a power for the Family Court to stop a case at half time and if so the test for it to be exercised (appendix 2). Sir Mark also considered the approach to exoneration of a person who has been the subject of an allegation that could not be proved against them.

*Re N (A Child: Female Genital Mutilation Protection Order)* [2018] 4 WLR 98 - Acted for the Local Authority in a case that concerned a female infant who was at real risk of female genital mutilation if she returned to the Sudan with her mother. Mr Justice Hayden analysed the interplay between Article 3 rights and Article 8 rights and decided that "...whilst there can be no derogation from N's Article 3 rights, the interference with her Article 8's rights, and those of her siblings and family, must be limited to that which is necessary to protect her Article 3 rights." The learned judge granted an injunctive FGMPPO to prevent the baby leaving the jurisdiction.

*Re M (Children: New Evidence)* [2018] EWCA Civ 607 - Lord Justice Peter Jackson held that court

should be slow to admit expert evidence that had been irregularly obtained. If the rules were not enforced, parties would be encouraged to ignore them, and there would be nothing to stop a litigant shopping around until they found a favourable opinion. The court gave clarification in respect of the test for admission of evidence under section 13 of the Children's and families Act 2014.

*Re L (A Child) (Withholding Life Sustaining Medical Treatment)* [2017] EWHC 3695 - Acted for the family of a little girl responding to an extremely urgent application by the Hospital Trust for declarations that it was lawful for them not to resuscitate or intubate and mechanically ventilate her. The parents wanted their child to have mechanical ventilation to live her life as it was at the time, albeit profoundly disabled. Williams J did not make blanket declarations as sought by the Trust. In a postscript he recorded that the child defied the odds and did not die as had been predicted by the clinical team: "The instinct to live clearly runs strongly in her. It illustrates in a vivid way how life defies probabilities and how the best judgments of medicine and law may be confounded by nature." This case was covered in the *British Medical Journal* and the *Daily Mail*.

*Re S (Child as parent: Adoption: Consent)* [2017] EWHC 2729 - A decision of Mr Justice Cobb setting the relevant information that a child parent must understand to be competent to consent to the adoption of her child. The test is equally applicable to adults applying the Mental capacity Act 2005 principles.

*Re A & O (Children: Scotland)* [2017] EWHC 1293 - Acted for the Scottish parents of two children placed in England under a compulsory supervision order albeit with prospective adopters. They issued an adoption application in England which the parents defend. The question arose as to the ability of the Family Court and Family Division properly to perform their functions in accordance with section 1(6) and *In re B-S*, and to meet the procedural standards mandated by Articles 6 and 8 of the Convention, if their powers are limited by the lack of any ability to make an order under the Children Act 1989 should it decline to make the adoption order. The President decided that "the English court will not be hamstrung in undertaking the *In re B-S* exercise and there will be no question of proceedings in the Family Court being non-compliant with either Article 6 or Article 8." As the inherent jurisdiction permits orders to be made equivalent to CA orders to meet the children's welfare.

*Northamptonshire CC v M, F and A (A Child)* [2017] EWHC 997 - Lorraine acted for a little boy in care proceedings where he had been unlawfully placed away from his mother when 1 year old pursuant to Section 20 Children Act 1989. The child raised a Human Rights Act claim; the learned judge found that Northamptonshire were in egregious breach of its duties to the child and his parents. The court held that "at the time when A was placed with the grandmother, the threshold criteria were probably not met to any degree which comes close to being sufficient to warrant either (i) a statutory order or (ii) long-term separation of A from his mother."

*Re A & Ors (Children: Scottish Adoptions)* [2017] EWHC 35 - Acted for a child through CAFCASS in a guidance decision case about Scottish adoptions before the President of the Family Division. The President considered seven cases of Scottish children placed for adoption in England under permanence orders with permission to adopt. The President found that the parents' parental responsibility is extinguished under such an order. The President gave guidance as to whether the parents should be made parties or even given notice of the application. Lorraine was asked to write about the case for *Family Law Week*.

*Re H-C (Finding of Fact: Rehearing)* [2016] EWFC 48 - This was the rehearing of the fatal injury trial acting for a father who was accused of smothering a baby. The complexities of the medical evidence were significant. Karl and Lorraine were successful in establishing that the abusive act of smothering did not occur nor did any other act of physical abuse of the deceased child. The local

authority had failed to prove the case to the requisite standard.

*Re H-C (Children)* [2016] 4 WLR 85 - Acted for the appellant in the Court of Appeal. The Court overturned a finding of fact by a High Court judge that the father caused a child's death by smothering and went on to give guidance as to the proper approach to lies told by witnesses in family cases and the application of the Lucas direction in family cases. The Court of Appeal also considered the proper approach to appeal against judge's finding in case of suspected child abuse.

*Re L, K & J* [2016] EWFC 12 - Led by Jane Crowley QC Lorraine acted for a ten year old child, through the Official Solicitor, who was accused of causing serious brain injuries to a related baby. The child was exculpated from any role in the injuries of the baby which Ms Justice Russell found were caused by his mother shaking him.

*Re A (Children: Withdrawal of Life Support)* [2015] EWHC 2828 (Fam) [2016] 2 F.L.R. 485; [2016] 2 F.C.R. 184; (2016) 148 B.M.L.R. 186 - Mr Justice Holman permitted the withdrawal of ventilation from both genetically identical twin boys aged 14 months with a neuro-degenerative disorder. This was opposed on religious grounds by their parents. Lorraine acted for the applicant NHS Trust (Children's Hospital)

*Seddon v Oldham Council* [2015] EWHC 2609 (Fam) - Defending a Human Rights claim. Mr Justice Peter Jackson declared that family life (Article 8) between a birth mother and an adopted child is terminated upon the making of an adoption order. An application to declare section 51A (the gateway of leave) incompatible with the ECHR was dismissed. Indirect contact by way of letter box run by an adoption agency does not maintain an article 8 right of family life post adoption but the birth parent has Article 8 protection over their correspondence, which in this case was not violated by the local authority.

*Re H-C (Children)* [2016] EWCA Civ 136 - Acted for the appellants in the Court of Appeal. The Court overturned a finding of fact that a person caused a child's death and went on to give guidance as to the use of a finding of a lie in family cases.

*Re A (A Child: Brain Stem Death)* [2015] 143 BMLR 192; [2015] 2 FCR 48 - Hayden J: The court defined death as irreversible cessation of brainstem function following a challenge by the parents of a 19-month-old boy who had choked on some fruit. Lorraine acted for the Trust seeking a declaration that child A was dead and that life support may be withdrawn. The court gave guidance to the coroner that he ought not to seize jurisdiction over a ventilated body.

*Re X (A Child: Adoption) (No. 2)* [2014] EWHC 4813 - Theis J: The adoption of a 17-and-a-half year old young woman at an international boarding school and in a family with multiple homes over the world. The court found that she had had her 'home' with the prospective adopter for the purposes of section 42(3) ACA 2002.

*Re DM (Inherent Jurisdiction)* [2014] EWHC 3119 (Fam) - Hayden J: An application for anticipatory declaratory relief in respect of an unborn child. The autonomy of a woman over her body in particular to refuse medical treatment leading to the death of her unborn child was upheld.

*Kirklees Council v RE, SE (a child) and Leeds Teaching Hospital NHS Trust*: [2015] 1 FLR 1316 - Moor J. Lorraine acted for a local authority, who had an interim care order, in respect of a baby boy who was terminally ill. The withdrawal of life sustaining medical treatment (respiratory support and ventilation) and the delivery of palliative care to a baby who was in a "no hope" situation where such measures were futile and causing distress to him. The Royal College of Paediatrician's and

Child Health Guidance in 2004 insofar as it addresses parental responsibility when held by a local authority was the subject of some concern from the learned Judge (§19-20).

*An NHS Foundation Trust v A & Ors* [2015] 1 FLR 503 - Hayden J. Lorraine acted for the NHS Trust (the Children's Hospital) who applied for declarations to place an NJ tube into the gut of 15-year-old girl against her will and feed her as she was dangerously low in weight and in multi organ failure. The use of force to deliver the treatment and nutrition. The girl was 5½ stone and had a severe and complex psycho-somatoform disorder. The child was made a ward of court and the declarations were granted despite her own and her mother's objections. This case received extensive national media coverage.

*Re MI (Care Proceedings)* [2014] 1 FLR 208; [2013] Fam Law 1248 - Peter Jackson J. Led by Anthony Hayden QC (as he then was) representing the mother. Successful challenge to the care plan and the return of a four-year-old to the care of his mother after a fatal injury to a 7 week old sibling. Father convicted of manslaughter. Clarity as to the test for 'adequate care' of a surviving child.

*A & S v Lancashire County Council (Human Rights: Costs)* [2013] 2 FLR 1221; [2013] Fam Law 952 - Peter Jackson J. Led by Anthony Hayden Q.C. (as he then was) this was a Human Rights Act claim for two boys 16 years and 14 years coupled with an application under the inherent jurisdiction to discharge their freeing orders. The boys had the most lamentable history in care and "wanted important people to listen to us" so this leading case was taken. The boys Articles 3, 6 and 8 rights were violated by LCC. The role of the Independent Reviewing Officer in the protection of children in care was the subject of criticism by the court. Their damages claims were transferred to the QBD. This leading child rights case led to a national audit and investigation into the circumstances of each freed child in the country and evidence was called about the case by Baroness Butler-Sloss in the House of Lords Select Committee on Adoption. This was a very high profile case in the media.

*A & S v Lancashire County Council (Freeing Orders: Human rights)* [2013] 2 FLR 803; [2012] 15 CCL Rep 471; [2012] Fam Law 1315 - Peter Jackson J. Led by Anthony Hayden QC (as he then was) this was the costs application against LCC for the entire costs of the welfare and HRA proceedings to be paid. The decision lays down the legal principle that the FPR costs Rules apply to a HRA claim brought in the Family Division despite its entirely civil characteristics.

*Re P (A Child) (Causation)* [2013] - (unreported in law reports though extensively reported in the media) Moylan J. Led by Anthony Hayden QC representing the local authority in a fatal injury to a 21-month-old child. Child had an organic bleeding disorder. The local authority satisfied the court that the mother was the perpetrator of the injuries. This case had a national media profile.

*Re G (A Child) (Fatal Injuries)* [2013] - (unreported) Peter Jackson J. Representing the father. A consolidated final hearing following the fatal injury to a baby and the father's conviction of manslaughter. Complex pathological evidence. Surviving child was placed for adoption. This case had a national media profile.



*LCC v (1) A, B, C, D (Minors by Their Children's Guardian) (2) K (3) S* - Theis J. Acted for a parent opposing the declaration sought that it was lawful and in the children's best interests to be given the MMR Vaccine. The mother relied on the fact that children going into care are vaccinated in accordance with government policy, which meant that, in practice, there were mandatory vaccinations for children in care. Such action was at the discretion of the child's parents in the general population and the decision had been taken, long ago, not to vaccinate these children against MMR which was being overridden by the application of a national policy. The argument failed and the declaration was made.

*Re F (A Child) (Interim Care Order)* [2011] 2 FLR 856 - CoA led by Anthony Hayden QC (as he then was) representing the father. A challenge to the requirement for proof the identity of the perpetrator of harm to the balance of probabilities in order to establish threshold on the basis of risk of future harm to a second child. If a parent has a proven finding that they were a possible perpetrator of actual harm on a previous child in their history it is not enough to found threshold on a second child.

*Re M (A Child) (Leave to Defend Adoption Order)* [2011] EWCA Civ 317 - CoA led by Sarah Singleton QC (as she then was) representing the prospective adopters. Section 47(5) Adoption Children Act 2002 appeal in which further guidance was sought in respect of the test for leave to defend adoption proceedings.

*RB v United Kingdom [2006] European Court of Human Rights* - Led by Anthony Hayden QC (as he then was) application on behalf of RB linked to Re A (adoption Placement Outside Jurisdiction) (above). Application refused, no violation of article 8 found.

*Re A (Adoption: Placement Outside Jurisdiction)* [2004] 2 FLR 337, [2004] 3 WLR 1207, [2004] 2 FCR 129, [2004] Fam Law 560, Times 10th June 2004, Independent 6th May 2004 - Court of Appeal led by Anthony Hayden QC (as he then was) representing the Appellant father in a case where the local authority committed an offence under the Adoption Act 1976 by illegally removing children outside of the jurisdiction for the purposes of adoption. The court defines "unlawful placement" in this decision. The Court of Appeal addressed the father's Human Rights Act challenge in this decision.

*Re E* [2014] 23.4.2014 (LTL AC0143979) - Lorraine represented the mother in a case which led to findings that a father, in private law proceedings, sought to pervert the course of justice and orchestrated a sustained campaign of emotional abuse against the child and mother (i.e. using the proceedings as a weapon to ruin the mother). The mother successfully secured a costs order for her costs of the litigation to be paid by the father.

*Re L (A Child) (Non Return)* [2011] EWHC 394 - Roderic Wood J representing the mother. The parents were Egyptian nationals and the court found a risk of abduction by the father due to his dishonesty. The dicta as to shared residence and PR is helpful as it clarifies the law where an order may grant rights of custody abroad to the parents who poses a risk of abduction. Prohibited Steps orders and protective orders to prevent removal were made.

## **Court of Protection**

*A Local Authority v TA & Ors* [2021] EWCOP 22 - before Cohen J for a local authority seeking to remove a son from his mother's home and obtain wide ranging injunctions against him, including a Civil Restraint Order for applications under the Mental Capacity Act 2005. The learned judge concluded that the 24/7 care package in P's home absent her son was in her best interests and made the orders sought.

*Michelle Davies v Wigan Council* [2020] EWCOP 60 - Lorraine appeared for the applicant before the Vice President of the Court of Protection in a challenge to the standard authorisation where a woman has been prevented from physical contact with her husband since March of 2020 by the application of policy to her situation despite both having had Covid 19 and he being her carer. In the judgment Hayden J addresses the correct approach to contact when one partner is in a care home during this pandemic. The case has received widespread national media coverage including in *The Times*, *The BBC*, and *ITV* and local coverage in the *Manchester Evening News*, *Wigan Today*, *Leigh Journal*, *Bolton News* and *Prestwich and Whitefield Guide*.

*JS v (1) KB (2) MP (Property & Affairs Deputy for DB)* [2014] COPLR 275: [2014] WTLR 991 - Cobb J – representing KB in his application for costs on the basis of the financial misconduct of JS which amounted to financial abuse of their mother. Costs award made.

*A Local Authority v B, F & G* [2014] EWCOP B18 - HHJ Cardinal. The first use of a Hadkinson order in the COP against a relative of P (18 year old girl), who was in contempt of court and was remaining outside of the jurisdiction to avoid arrest under a warrant for his arrest issued by a High Court Judge. Lorraine acted for a local authority who applied for the order to prevent the father of P advancing a positive case in respect of her welfare whilst otherwise avoiding the court's jurisdiction. This was granted.

*A Local Authority v B & Ors* [2014] EWCOP B21 - HHJ Cardinal. The welfare disposal of the proceedings referred to above. This application including the granting of injunctive relief to prevent contact between P and her father and grandmother and an order preventing an application to discharge or vary that without leave of the court for a period of four years.

*Derbyshire County Council v Danby* [2014] EWCOP B22 - HHJ Cardinal. Committal to prison of a grandmother for contacting P in breach of an injunction not to do so.

*YLA v PM & MZ* [2014] COPLR 114 - Parker J – Led by Anthony Hayden QC (as he then was) acting for PM, who was P in the COP proceedings and the mother in the care proceedings, acting by the Official Solicitor. This case was a concurrent application in the family court and the COP. The issues arose from a marriage that PM lacked the capacity to contract and her lack of capacity to consent to sexual relations (i.e. whether she could live in the community with her husband and child with this lack of capacity) the court concluded that she could not. The court gave guidance on the test for sexual relations and the issue of forced marriage in a case where the person lacks the capacity to contract the marriage.

*YA(F) v A Local Authority & Hospital Trust* [2011] 1 WLR 1505 : [2011] 1 FLR 2007 - Charles J – The seminal case establishing that parties may raise Human Rights Act 1998 claim pursuant to Section 7(1)(b) in the COP. Jurisdiction to raise in Court of Protection: Jurisdiction to raise a claim for damages under the Human Rights Act in the Court of Protection: Human Rights Act jurisdiction and the welfare jurisdiction.

## Judicial Review & Administrative Law

*Bell & Anor v The Tavistock and Portman NHS Foundation Trust* [2021] EWCA Civ 1363 - Lorraine and Deirdre Fottrell QC for the intervener the ALC submitted written submissions in this appeal from a judicial review about Gillick Competence and consent by children to receiving puberty blockers. The Court of Appeal concluded that the Divisional Court fell into error when giving guidance and that parallels drawn between Gillick Competence and the Mental Capacity Act 2005 were unhelpful.

*Re Z (A Child: Deprivation of Liberty: Transition Plan)* [2020] EWHC 3038 - Knowles J offering a pointer to good practice for local authorities and families seeking to move a child into a placement where restraint and restrictions on liberty are required. Joseph O'Brien was for the local authority and Lorraine led Ben McCormack for the parents of the subject child.

*A & S v Lancashire County Council (Human Rights: Costs)* [2013] 2 FLR 1221 : [2013] Fam Law 952 - Peter Jackson J. Led by Anthony Hayden QC (as he then was) this was a Human Rights Act claim for two boys 16 years and 14 years coupled with an application under the inherent jurisdiction to discharge their freeing orders. The boys had the most lamentable history in care and "wanted important people to listen to us" so this leading case was taken. The boys Articles 3, 6 and 8 rights were violated by LCC. The role of the Independent Reviewing Officer in the protection of children in care was the subject of criticism by the court. Their damages claims were transferred to the QBD. This leading child rights case led to a national audit and investigation into the circumstances of each freed child in the country and evidence was called about the case by Baroness Butler-Sloss in the House of Lords Select Committee on Adoption.

*A & S v Lancashire County Council (Freeing Orders: Human rights)* [2013] 2 FLR 803: [2012] 15 CCL Rep 471: [2012] Fam Law 1315 - Peter Jackson J. Led by Anthony Hayden QC (as he then was) this was the costs application against LCC for the entire costs of the welfare and HRA proceedings to be paid. The decision lays down the legal principle that the FPR costs Rules apply to a HRA claim brought in the Family Division despite its entirely civil characteristics.

*YA(F) v A Local Authority & Hospital Trust* [2011] 1 WLR 1505 : [2011] 1 FLR 2007 - Charles J – The seminal case establishing that parties may raise Human Rights Act 1998 claim pursuant to Section 7(1)(b) in the COP. Jurisdiction to raise in Court of Protection: Jurisdiction to raise a claim for damages under the Human Rights Act in the Court of Protection: Human Rights Act jurisdiction and the welfare jurisdiction.

*RB v United Kingdom* [2006] European Court of Human Rights - Led by Anthony Hayden QC (as he then was) application on behalf of RB linked to *Re A* (adoption Placement Outside Jurisdiction) (above). Application refused, no violation of article 8 found.

## What the Directories Say

### Children and Family

"Has a notable public children law practice and is accustomed to handling complicated and law-

changing cases which include allegations of sexual abuse and FGM. She also advises on wardship for children with major psychological issues. She has notable expertise pertaining to adoption."Strengths: "A passionate advocate. Clients really feel that she is fighting for them." "She has an exceptional grasp of the matters and is incredibly hard-working." Chambers UK Bar 2021

"She is ferocious and will fight for clients. Whilst possessing an encyclopaedic knowledge of the law and case law she is very down to earth with clients and has a great skill in making them feel at ease and obtaining their trust." Legal 500 2021

"New silk focusing on representing clients in children law cases, and has notable expertise in cases involving fatal and serious non-accidental injuries. She also advises on wardship for children with major psychological issues. She has notable expertise pertaining to adoption."Strengths: "She is very well regarded and very well respected in complex children matters." "Lorraine is fantastic. She's a very clear advocate, and has the sort of mind that's able to digest and analyse legal problems. She's also very friendly, and really does fight for her clients." Chambers UK Bar 2020

"She has an encyclopedic knowledge of family law." Legal 500 2020

Her knowledge of the law and attention to detail is second to none. She is always extremely well prepared." Chambers & Partners 2019

"Very adept at thinking on her feet." Legal 500 2019

"She is very thorough and her attention to detail is brilliant. She is always extremely well prepared." "A standout junior for children." Chambers & Partners 2018

"Lorraine Cavanagh is a hugely experienced barrister who brings an enormous amount of technical knowledge and empathy to her child law cases". "She is bright and extremely hard-working, and has a keen eye for detail". – Chambers & Partners 2017

"She fights her client's case with passion and precision." – Legal 500 2017

"A tour de force, whose energy and commitment to every case is admirable." – Legal 500 2016

"Particularly strong in children's rights, care proceedings and Court of Protection work. Issues often relate to healthcare matters, including withholding medical treatment for children. Strengths: "She is excellent and fights really hard for her clients." "A feisty and tough advocate." – Chambers & Partners 2016

"Respected childcare practitioner whose wider expertise includes human rights and public law. She specialises in non-accidental injuries and cases with complicated medical evidence." "She works tirelessly to fight a client's corner." – Chambers & Partners 2015

"A silk in the making; she is tenacious and committed to every case." – Legal 500 2015

"She is very personable, hardworking and has great attention to detail." – Legal 500 2014

"Lorraine is just very competent and has a thorough grasp of what the case is about. She is also good in round table meetings and with the clients." – Chambers & Partners 2014

"Continues to draw praise for her commitment to family law and her robust advocacy style. Her practice is focused on children matters and Court of Protection work, and she also represents children, young people and vulnerable adults in the public law sphere." "A broad family law practice,

which encompasses both public and private law children's cases, Court of Protection and community care matters, and financial relief work. Instructing solicitors laud her for being a great negotiator and a tenacious advocate." – Chambers & Partners 2013

"Silk in the making" – Legal 500 2012

"A name to watch on this circuit. Regularly led in the High Court and Court of Appeal, she is described as having 'a wealth of knowledge and skill.' Sources aver that 'this polished and tenacious advocate will put in 110%.'" – Chambers & Partners 2012

"Attention to detail is fantastic, and her immediate grasp of any given situation, and ability to think on her feet, is awe inspiring" – Legal 500 2011

## **Court of Protection**

"Has expertise in cases concerning the marriage and sexual relations of incapacitated people, particularly involving concurrent matrimonial litigation. She is also experienced in matters relating to the transition from child to adult services." "Hugely responsive and always has the ear of the court. A very dynamic and powerful advocate, and someone you definitely want in your corner in contentious cases." "She is very tenacious and has a very impressive intellect – a very powerful advocate." "Exceptionally bright and fierce in court when needed. She is incredibly articulate and pragmatic." Chambers UK Bar 2021

"She's a real powerhouse and force of nature in her energy and commitment." "She's pragmatic, sensible, has an incredibly sharp mind and is fearless in her approach." Chambers UK Bar 2020

"She is incredibly bright and fearless in court." Legal 500 2020

"Fearless and willing to fight until the very end. She's very good on the law, especially the crossover between children and adult work." "Lorraine's encyclopaedic knowledge of the Mental Capacity Act and welfare issues is very impressive, and her ability to identify and analyse issues is second to none." Chambers & Partners 2019

"A very talented barrister who is fearless in court." Legal 500 2019

"She's impressive, thoughtful and takes a very intellectual approach." Chambers & Partners 2018

"If you're representing family members and have a really difficult case that you're trying to win, she's perfect for it as she never gives up and thinks of really strategic and different ways of getting around problems". "She's so utterly committed and tenacious in what she does. She absolutely lives the case and fights incredibly hard for her clients" – Chambers & Partners 2017

"Highly recommended for health and welfare cases." Legal 500 2017

"Seen as a rising presence in the profession and already achieving glowing praise from market sources. She has a strong background in family law with broader expertise in public and human rights law. She is frequently instructed by the Official Solicitor." "She is a big personality, who is extremely diligent and very, very well prepared. She has a very, very deep knowledge of the law. One of those who can pull cases out of her head on any point. She's going to be a big star and her practice will grow and grow." – Chambers & Partners 2016

"A tenacious and fearless advocate. She is capable of turning around the seemingly most hopeless cases and never loses sight of the client at the centre of the matter." "She is adept at mediating

between parties to achieve resolutions, but once in court her oratory skills are exceptional.” – Chambers & Partners 2015

“Lauded for her extensive knowledge of community care law.” “She is solid and well organised, and fights her corner well.” “On her feet she makes a very convincing argument.” – Chambers & Partners 2014

## **Judicial Review & Administrative Law**

“Lorraine is a real powerhouse. Dynamic, persuasive and with a laser-like focus on achieving the best outcome for the client.” Legal 500 2021

“She goes above and beyond the call of duty for her clients.” Legal 500 2019

“Highly experienced in Court of Protection and human rights matters” – Legal 500 2016

Recommended as a leading junior in Public Law. – Legal 500 2015

“Not afraid to ask difficult questions or deal with difficult people.” – Legal 500 2015

## **Education**

Manchester University, Law

Gray's Inn Birkenhead Scholar

## **Memberships & Associations**

Executive Committee of the [ALC](#)

Executive Committee of the [Court of Protection Practitioners Association](#)

Member of the regional committee of the Greater Manchester [FLBA](#)

[FLBA](#) representative on the experts subcommittee of the Greater Manchester Family Forum

[FLBA](#) representative on the Greater Manchester Family Forum Committee

Northern Administrative Law Association (NALA)