

# Laura Davidson

Call: 1996

"Well regarded in the market, and noted for her academic excellence in human rights and mental health law. She is adept at handling serious medical treatment cases and disputes around the withdrawal of life-sustaining treatments. She's a doughty fighter."

Chambers UK 2017

Laura Davidson is an experienced barrister and specialises in the areas of Court of Protection, International and Public Law.

## Expertise

### Court of Protection

Previously instructed in cases under the court's inherent jurisdiction, she is now a frequent advocate in the Court of Protection. Laura appears regularly for the Official Solicitor, Trusts, local authorities and families in applications for declarations of incapacity and best interests, particularly in relation to health and welfare decisions. An indication of her expertise in the area of medical treatment can be seen from the following cases.

Laura is a Visiting Academic Fellow of the University of Cape Town, South Africa.

Laura has appeared for:

- A Trust seeking urgent court authority to give a blood transfusion to a child Jehovah's Witness involved in a road traffic accident
- The Official Solicitor in respect of a prisoner on hunger strike
- The Trust in two applications for the withdrawal of artificial nutrition and hydration from PVS patients
- The family, opposing an application by a Trust for a catatonic woman's pregnancy termination (subsequently withdrawn)
- The Official Solicitor where permission was sought to insert a PEG feeding tube for a non-consenting woman with secondary progressive multiple sclerosis
- A local authority in a case involving a schizophrenic patient with grade three ovarian cancer whose family would not accept her condition and wished to remove her from the jurisdiction in order to arrange her marriage
- The patient's brother and LPA in a case upon whether it was in the best interests of a sporadic Creutzfeldt-Jakob disease sufferer to continue with experimental treatment
- A Trust seeking an urgent interim order by way of a four hour out-of-hours telephone hearing to permit the insertion of a naso-gastric tube for the provision of artificial nutrition and hydration with respect to a brain injured woman. This was granted

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notwithstanding the fact that she had pulled out other invasive lines repeatedly, her strongly held beliefs and written and oral statements made when she had capacity that she did not wish to receive life-sustaining invasive treatments, as well as the family's objections

- A non-profit making public interest group seeking to intervene in a case brought by the family of a woman in a minimally conscious state who sought declarations that it was lawful and in her best interests to withdraw artificial nutrition and hydration.

Laura is happy to advise on all aspects of the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards which came into force in April 2009 to plug the 'Bournewood gap'. She receives regular instructions in relation to Deputy appointment and decisions about where those lacking capacity should reside. She has also advised as special Counsel to the OPG.

Laura provided training for Best Interests Assessors at the London Metropolitan University in anticipation of the DOLS, and was instructed on behalf of a local authority in one of the first challenges to a DOLS authorisation before the Court of Protection. Laura was Counsel for the Official Solicitor in the key case on deprivation of liberty transfers (DCC v KH and Others, Court of Protection, 11th September 2009). She also appeared for the Appellant in one of the first Court of Protection appeals – the significant case of In the matter of KS, 17th May 2010, LTL 1/11/2010 – in which an employed carer Applicant appealed against the usual costs order.

As well as publishing frequent articles, Laura regularly lectures in this field, both through Chambers and more widely. She was an expert panelist on the DOLS at the recent Butterworths Mental Health Law and Practice Conference 2010 and spoke at the CLT Court of Protection conference on the subject of problem applications in December 2010. In February 2011 she was a speaker on the subject of the developing law relating to best interests at the Butterworths Court of Protection Conference. She is happy to provide tailor-made seminars to solicitors' firms.

Having written a public law thesis on international mutual cooperation as part of her LLM at the University of Cambridge, Laura subsequently co-authored a book on the topic. She now advises regularly on international mutual assistance in civil matters, particularly in the realm of forced marriages and the anticipated removal of vulnerable adults from the jurisdiction. Where incapacitated adults have already been removed from the jurisdiction, she advises on the complex network of legislation, treaties, Conventions and international cooperation necessary to secure their return home, including the potential use of worldwide asset freezing orders. Given her expertise in this area, Laura is one of the Commonwealth Secretariat's legal experts on its roster for the Commonwealth Fund for Technical Co-operation. She is a Consultant for the government of Rwanda, and in 2013 spent seven months drafting the country's first mental health law.

## International

Laura practices the following areas:

### International Human Rights

Much of Laura's work involves human rights, which was the focus of her doctoral studies at Cambridge. Questions relating to Article 8 governing the right to privacy, autonomy and bodily integrity frequently arise in her cases, and (more rarely) Article 3 which protects against torture, inhuman and degrading punishment or treatment. For example, she brought a successful damages claim on behalf of an informal patient subjected to unlawful restraint and forcible injection whilst he visited friends on a hospital ward. Matters relating to Article 2 governing the right to life may also arise in the medical treatment cases and health-related inquest work which Laura undertakes. For example, she successfully challenged the failure of a London Trust to fund cancer treatment for an elderly patient, resulting in a U-turn and the provision of treatment.

A large part of Laura's practice involves breaches of Article 5 of the European Convention on Human Rights. She receives regular instructions in habeas corpus applications, largely arising out of defects in detention procedure contrary to the requirements of the

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Mental Health Act 1983. She also has expertise in cases resisting the disclosure of medical records and Data Protection Act cases. Her Court of Protection practice frequently involves questions relating to Article 5 in relation to the Deprivation of Liberty Safeguards ('DOLS') under the Mental Capacity Act 2005.

Having written a public law thesis on international mutual cooperation as part of her LLM at the University of Cambridge, Laura subsequently co-authored a book on the topic (Jones on Extradition and Mutual Assistance (London: Sweet and Maxwell), Alun Jones (ed.) (2001) (Part C, chapters 18 and 19). She now advises regularly on international mutual assistance in civil matters, particularly in the realm of forced marriages and the anticipated removal of vulnerable adults from the jurisdiction. Where incapacitated adults have already been removed from the jurisdiction, she advises on the complex network of legislation, treaties, Conventions and international cooperation necessary to secure their return home, including the potential use of worldwide asset freezing orders. Given her expertise in this area, Laura is one of the Commonwealth Secretariat's legal experts on its roster for the Commonwealth Fund for Technical Co-operation. She is a Consultant for the government of Rwanda, and in 2013 spent seven months drafting the country's first mental health law.

Laura is a regular Visiting Academic Fellow at the University of Cape Town, South Africa. She is also an international development consultant for the UN, advising on justice and the rule of law, health and disability, gender equality, and rights-based approaches more generally. For example, she has advised UNICEF on disability law and policy in Zimbabwe, reviewed gender equality legislation in Uganda, and provided a report for the UN on women and girls with disabilities in East Timor. Laura also has legislative drafting experience, having been hired as a consultant by the government of Rwanda in 2013 to draft the country's first mental health law. In addition, she has conducted empirical qualitative research on trauma in northern Uganda.

## Public Law

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Laura practices the following areas:

### Healthcare law

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Laura is instructed in many judicial review applications in healthcare law, particularly in the mental health arena. Her academic background means she is particularly good at untangling the interrelationship between the many statutes in this complex area of law. She represents hospital Trusts, local authorities, the Official Solicitor and patients, giving her an excellent overall view of all parties' positions – often very useful tactically.

### Mental health cases

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Laura appears before First-tier Tribunals (Mental Health) (usually in complex cases involving restricted patients), and is regularly involved in appeals to the Upper Tribunal. She was instructed for the successful nearest relative Applicant in one of the first ever appeals to the Upper Tribunal. She also appeared for the Appellant in the very first appeal to the Court of Appeal from the Upper Tribunal Administrative Appeals Chamber in a mental health matter.

Laura's other mental health work includes nearest relative displacement applications, in which she has substantial experience. She carries out inquest work involving psychiatric patients and vulnerable adults involving failed care. For example, she represented the family of a young learning disabled soldier at an inquest into his death in a week-long jury inquest against the Ministry of Defence.

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## Habeas corpus applications

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Laura receives regular instructions in habeas corpus applications, largely arising out of defects in detention procedure contrary to the requirements of the Mental Health Act 1983. She also has expertise in cases resisting the disclosure of medical records and Data Protection Act cases.

## Human rights claims

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Much of Laura's work involves human rights, which was the focus of her doctoral studies at Cambridge. For example, she successfully challenged the failure of a London Trust to fund cancer treatment for an elderly patient, resulting in a U-turn and the provision of treatment. She also brought a successful damages claim on behalf of an informal patient subjected to unlawful restraint and forcible injection whilst he visited friends on a hospital ward.

## Research and Academia

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Laura has published extensively, and has recently edited a commissioned 500 page volume (The Routledge Handbook of International Development, Mental Health and Wellbeing (London: Routledge), in Press), to which she has also contributed 4 of her own chapters, joining almost 30 other international experts on public health. She has undertaken empirical qualitative research on trauma and justice in northern Uganda along with Clinical Psychologist Dr Helen Liebling. For several years she has been a regular Visiting Academic Research Fellow at the Faculty of Law, University of Cape Town, South Africa.

## International development consultancy work

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Laura is also an international development consultant with particular expertise in public health and disability, including mental health and mental capacity matters. She deals with all aspects of justice, the rule of law, and human rights (including child rights, women's rights and refugee rights), particularly where mental health issues are involved. In 2013 she was a consultant for the government of Rwanda, spending seven months in-country undertaking a situational analysis, advising on policy, and drafting the country's first mental health law.

## Qualifications

- Ph.D (Cantab): "An examination of the rights of the mentally disordered in English law in the context of Articles 3 and 5(1) of the European Convention on Human Rights and Fundamental Freedoms"
- M.Phil (Cantab): "An examination of the rights of the mentally disordered offender in the English criminal justice process: public protection, risk and dangerousness"
- LL.M (Cantab): International Human Rights, Environmental Law, International Commercial Litigation (papers), Public Law (Thesis): "The development of international mutual assistance in criminal matters with particular reference to the letter of request"
- Bar Vocational Course, Inns of Court School of Law
- Advanced Dip.Law (Distinction)

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## Languages

- Conversational French and Spanish

## Notable Cases

### **AM v Partnerships in Care Limited and Secretary of State for Justice [2015] UKUT 0659 (AAC)**

Appeal to the Upper Tribunal on errors of law and a tribunal's need to make findings of fact.

### **RH v South London and Maudsley NHS Foundation Trust and the Secretary of State for Justice (Court of Appeal) [2010] EWCA Civ 1273**

The first mental health appeal to the Court of Appeal from the Upper Tribunal Administrative Appeals Chamber

### **TTM (By his Litigation Friend TM) v Hackney London Borough Council and East London NHS Foundation Trust and Secretary of State for Health [2010] EWHC 1349 (Admin) QBD (Admin) (Collins J) 11/6/2010**

Laura represented the Claimant in this ground-breaking case where the Court had held that it did not follow that a patient's detention was unlawful even where their admission was unlawful due to the objection of a nearest relative which had resulted in the issue of a writ of habeas corpus. Collins J found that such a detention was not void ab initio, but only became unlawful when the court so declared.

### **AA v Cheshire and Wirral Partnership NHS Foundation Trust, ZZ and the Secretary of State for Health, Upper Tribunal Decision (2009) UKUT 195 (AAC)**

One of the first appeal cases in the Upper Tribunal (Mental Health), in which Laura acted for the successful nearest relative.

### **R v East London NHS Foundation Trust and Hackney London Borough Council, ex parte M [2009] MHLR 154**

Successful habeas corpus proceedings arising out of a failure to comply with the admission process under the Mental Health Act 1983

### **R v South Region MHRT, ex parte B [2008] EWHC 2356 (Admin) (2008) ACD 91**

A judicial review of a Mental Health Review Tribunal on behalf of a patient on the basis of bias/the appearance of bias

### **R v Cygnet Healthcare and Another, ex parte BB [2008] EWHC 1259 (Admin) [2008] MHLR 106**

A successful habeas corpus application due to a breach of the Mental Health Act 1983

### **R. v Huntercombe Maidenhead Hospital and Others, ex parte SR [2005] EWHC 2361 (Admin); (2006) ACD 17**

Laura acted for the Official Solicitor in successful expedited judicial review proceedings brought on behalf of a 15 year old patient detained under s.3 of the Mental Health Act 1983

## Publications & Podcasts

### **Davidson, L. (2022), 'Cloak & Dagger in the Court of Protection?', NLJ, 172:**

9-10 – December 2022

### **'Consenting Adults?'**

NLJ, 7902: 9-13 – 18th September 2020

Article on A Local Authority v JB [2020] EWCA Civ 735, in which the Court of Appeal considered whether the test for capacity to engage in

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sexual relations included an understanding of the need for a partner's consent. An extensive table of Court of Protection cases on sexual relations tacitly or overtly overruled or endorsed by the Judgment is incorporated. Online version available at:

<https://www.newlawjournal.co.uk/content/nlj-this-week-consenting-adults>. With kind permission from the New Law Journal, see article link below:

<https://www.no5.com/media/2165/artnljconsentingadultssept20.pdf>

Book chapter on Article 12 (equal recognition before the law) and Article 14 (the right to liberty) of the CRPD commissioned for M. Stein, V. Patel, F. Mahomed and C. Sunkel (eds.), *Mental Health, Human Rights and Legal Capacity* (Cambridge: CUP) (in Press).

#### **Court of Protection Podcast – Episode 4**

6th August 2020

In Episode 4 of No.5 Chambers' Court of Protection Podcast, Laura discusses in detail *A Local Authority v JB* [2020] EWCA Civ 735, in which the Court of Appeal considered the proper test on capacity to engage in sexual relations. This led to an article commissioned by the New Law Journal.

#### **Court of Protection Podcast – Episode 2**

5th May 2020

In Episode 2 of No.5 Chambers' Court of Protection Podcast, Laura explores the important principle of least restriction, looking in particular at *BP-v-Surrey County Council* and *RP* [2020] EWCOP 20 and its sequel ([2020] EWCOP 22).

<https://www.no5.com/media/podcasts/court-of-protection-podcast-episode-2/>

#### **COVID-19 – Deprivation of Liberty Safeguards'**

NLJ (online) – 21st April 2020

Case Note and Comment on *BP, Surrey County Council and RP* [2020] EWCOP 17, which considered the ramifications of the current Coronavirus pandemic for care home residents lawfully deprived of their liberty under the DoLS, and assessed BP's best interests in terms of residence where his rights under Article 8 were being severely curtailed.

[https://www.newLawjournal.co.uk/content/covid-19-deprivation-of-liberty-safeguards](https://www.newlawjournal.co.uk/content/covid-19-deprivation-of-liberty-safeguards)

#### **'Internet and social media use: A tangled capacity web'**

NLJ, 7837: 13-14 – 26th April 2019

Article on the capacity test for the use of social media and internet use by two vulnerable adults with learning disability.

#### **'Capacity to consent to or refuse psychiatric treatment: An analysis of South African and British law'**

South African Journal of Human Rights, Vol.32, Issue 3 pp.457-489 – 11th January 2017

Article comparing UK and South African compliance with international human rights obligations in terms of the mental capacity of detained psychiatric patients.

#### **'Fact-finding hearings in the health and social context'**

S.J. Vol.160, No.7 – 23rd February 2016

Article considering the law on when fact-finding is necessary in Court of Protection proceedings and in those before a First-tier Tribunal (Mental Health) in the light of *In the Matter of AG* [2015] EWCOP 78 and *AM v Partnerships in Care Limited and Secretary of State for Justice* (2015) UKUT 659 (AAC).

#### **'Cheshire West continues to be Troublesome'**

(S.J.Vol.159) No.35 – 22nd September 2015

Case comment on the Court of Appeal's view of the Court of Protection President's controversial ruling in *Re X* (Court of Protection practice) [2015] EWCA Civ 599 on the Deprivation of Liberty Safeguards. Read it here, with kind permission from the Solicitors Journal.

#### **'False Imprisonment Part 2: Are our rights stronger in Europe?'**

S.J. Vol. 159, No.27 – 14th July 2015

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Second part of article on the implications of Lee Bostridge v Oxleas NHS Foundation Trust [2015] EWCA Civ 79 for future claims for damages based on Article 5 of the ECHR.

**‘False Imprisonment Part 1: A Right to Compensation’**

S.J. Vol. 159, No.23 – 16th June 2015

Article on the implications of Lee Bostridge v Oxleas NHS Foundation Trust [2015] EWCA Civ 79 for future claims for damages flowing from Article 5 of the ECHR (Part 2 in print on 14th July 2015).

**‘Fundamental Right to Liberty’**

S.J. Vol. 159, No.22 – 9th June 2015

Case note and comment on Rochdale MBC v KW and Others [2015] EWCOP 13).

**‘Best interests: How the Supreme Court restored the law for incapacitated patients’**

S.J. – 8th January 2014

Article on Aintree University Hospitals NHS Foundation Trust v James [2013] UKSC 67 and the concepts of futility and intolerability in medical treatment cases.

**‘Deprivation of liberty: current approach leaves vulnerable clients with limited protection’**

S.J. – 20th November 2013

Article on the new concept of comparator introduced into English law by Cheshire West and Chester Council v P [2011] EWCA 1257 (Part III).

**‘Blurring the Boundaries’**

Private Client Adviser, pp.26-27 – Dec. 2012/Jan. 2013

Commissioned article on the successes and failures of the Deprivation of Liberty Safeguards.

**‘The relevance of purpose in deprivation of liberty cases’**

S.J. Vol. 156, No.29 – 25th July 2012

The significance of the emphasis on purpose in P and Q and Cheshire West and Chester Council v P [2011] EWCA 1257 (Part II).

**‘Turning back the clock’**

S.J. Vol 156, No. 22, pp.10-13 – 6th June 2012

Article on 1976 case, Engel v Netherlands, and subsequent unhelpful court interpretation of the factors to be considered when determining whether or not restrictions amount to a deprivation of liberty.

**‘Close Comfort’**

S.J. Vol. 155, No. 14, pp.14-15 – 12th April 2011

Article on the recent Court of Appeal decision in MIG and MEG which considers the relevance of a benign purpose behind restrictions on liberty.

**‘Last Resort’**

S.J. pp.23-24 (Bar Focus) – October 2009

Article on the fine line between deprivation of liberty and restraint under the Mental Capacity Act 2005 and the DOL Safeguards.

**‘The right to decide?’**

S.J. Vol.152, No.12, pp.14-15 – 25th March 2008

Article on advance decisions and their apparent inapplicability to detained patients.

**‘Mental health and mental capacity: the new overlap’**

S.J. Vol.151, No.45, pp.1520-1522 – 30th November 2007

Article on the application of Mental Capacity Act principles to detained patients.

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**'PVS Patients and Medical Welfare Applications: Wakening the Dead'**

Counsel pp.2-4 – June 2007

Article on recent developments likely to affect High Court applications for the withdrawal of treatment from PVS patients.

**'Conscious Decisions'**

S.J. Vol.151, No.13, p.424 – 30th March 2007

Article on fMRI research relating to apparent consciousness in the vegetative state.

**'Miracle Cure?'**

S.J. Vol.151, No.7, pp.217-218 – 16th February 2007

Article on new rousing medication which increases consciousness in some PVS patients.

## Further information

Laura regularly speaks at conferences and lectures on mental health and mental capacity law, both through Chambers and more widely. She also conducts training. For example, she trained Best Interests Assessors on the Deprivation of Liberty Safeguards ('DOLS') at London Metropolitan University, and provided comprehensive training days to Leicester City Council on the DOLS and the Mental Capacity Act 2005. She is happy to provide tailor-made seminars and training.

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