

Stuart Withers

Call: 2013



Stuart Withers specialises in public law including: prison law, civil liberties and human rights, inquests, court of protection and education law.

Expertise

Public Law

Stuart is a public law specialist. He accepts instructions in prison law, public law, inquests, actions against the police and prisons, education law and Court of Protection matters.

Stuart has a broad public law practice specialising in challenges to decisions made within the criminal justice system. His practice encompasses administrative, human rights, and equality law.

Stuart's particular area of expertise is in claims for judicial review against the Parole Board and to decisions made by the Prison Service. He also advises on challenges to decisions made by the police.

Stuart is an expert in LGBT+ law as it applies in the prison estate and has been published widely in the area. He has appeared in several recent important prison law judgments including:

- R (Bruton) v Parole Board [2022] EWHC 1692 (Admin). A challenge to a decision of the Parole Board which had refused to accept an in-time application for reconsideration.
- R (Audi Johnson) v Parole Board [2022] 1 W.L.R. 2489 The Parole Board was held to be functus when it fixed the future release date for a determinate prisoner under s.256 Criminal Justice Act 2003. The associated civil claim for false imprisonment settled.
- R (Austin) v Parole Board [2022] 1 WLR 2489 led by Jude Bunting KC. The protocol for summaries for noteworthy prisoners was declared ultra vires and procedurally unfair.
- R (Bousfield) v Parole Board [2021] EWHC 3160 (Admin) led by Ian Brownhill. The Court quashed a decision of the Parole Board on the grounds of illegality and procedural unfairness. Stuart acted for the Claimant throughout his parole proceedings. Stuart's initial arguments raised in the reconsideration application were accepted by the High Court.

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- R (FDJ) v Secretary of State for Justice [2021] 1 W.L.R. 5265. Stuart acted for the intervener, Dr Lamble, in an important claim regarding the use of the single sex exemptions under the Equality Act 2010 and the use of statistics in relation to transgender prisoners.
- R (Gifford-Hull) v Parole Board [2021] EWHC 128 (Admin). A claim concerning solicitor's duties in relation to withheld material, and the status of victim personal statements. The Court quashed the Parole Board's decision as procedurally unfair.
- R (Lawrence) v Parole Board [2020] EWHC 3774 (Admin). A successful challenge to the Parole Board's refusal to grant an oral hearing.
- R (Grinham) v Parole Board [2020] EWHC 2140 (Admin). A key decision which summarises the requirements of procedural fairness as they apply to Parole Board proceedings.
- R (Fuller) v Parole Board [2020] EWHC 62 (Admin). A successful irrationality challenge to a decision of the Parole Board which failed to refer to key evidence supporting the Claimant's application for release.

Prior to coming to the Bar Stuart gained extensive expertise in human rights, discrimination and privacy law whilst working as an Advice and Information Officer at Liberty. He gained experience of prison law whilst working as a paralegal at two leading prison law and human rights firms in London.

Cases Stuart assisted on included:

- R (The Howard League and Prisoners' Advice Service) v Lord Chancellor [2017] EWCA Civ 244. A successful systemic challenge to the legal aid cuts in prison law.
- Hutchinson v the United Kingdom (Application no. 57592/08). An intervention before the Grand Chamber on whether whole life tariffs were compatible with Article 3 of the European Convention on Human Rights.
- R (Youngsam) v Parole Board [2017] EWHC 729 (Admin). A challenge against the Parole Board concerning whether Article 5 applied to recalled determinate sentenced prisoners.
- Tara Hudson: a challenge to the Ministry of Justice's policy on allocating transgender prisoners which resulted in a wholesale change in the policy.

Prison & Police Law

Stuart is a prison law specialist. He regularly advises on all aspects of prison law. He is the author of two guides for the Prisoners' Advice Service on the rights of LGBT+ prisoners. He regularly appears before the Parole Board in complex cases concerning lifers and TACT prisoners. He has significant experience of representing recalled prisoners where an allegation of further offending has been made, often involving cross-examining police officers. He has been instructed by the Official Solicitor to represent prisoners who lack capacity to participate in their parole hearings. Due to Stuart's Court of Protection practice he can also advise on issues of treatment for prisoners who lack capacity.

Civil Liberties & Human Rights

Stuart is regularly instructed in civil claims against the police and the prison service. He is instructed to advise on claims concerning false imprisonment, assault/battery, malicious prosecution, claims under the Equality Act 2010, claims under the Human Rights Act 1998. and under the Data Protection Act 2018. He has significant expertise in civil claims against the Parole Board.

Recent successful cases include:

- A claim against the police for breach of their special diligence duty under article 5 based on Zenati.

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- Several claims against the prison service for negligence and breach of article 3 for prisoner- on-prisoner assaults.
- Securing damages for unlawfully strip-searched prisoners in both the male and female prison estate.
- Article 3 claims against the police and prison service for failing to investigate allegations of serious criminal conduct.
- Damages claims for breach of article 2 and related inquest proceedings.
- Several claims for religious discrimination and indirect discrimination relating to Muslim prisoners being not allowed to wear their Toppi.
- A claim for direct discrimination, and a failure to make reasonable adjustments for a blind prisoners.
- Several claims for damages against the Parole Board for article 5(4) delays. A claim regarding the negligent healthcare a transgender prisoner received.

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Education

Stuart frequently appears in the First-tier Tribunal (Special Educational Needs and Disability) in appeals against Educational, Health and Care Plans both for parents and local authorities. His expertise covers section B, F and I and extended appeals for health and social care provision.

Court of Protection

Stuart has a broad Court of Protection Practice encompassing both health and welfare and property and affairs. He has been instructed by the Official Solicitor, ICBs, local authorities and family members in relation to s.16 and s.21A challenges. He is instructed in damages claims arising out unlawful deprivations of liberty.

Inquests, Public Inquiries & Coronial Law

Stuart has extensive experience of acting in inquests. He regularly appears for family members and other interested parties.. He has a particular specialism of representing the families of those who have died in prison, or as the result of probation failures. He has appeared in Coroner alone inquests and multiple jury inquests.

Prior to coming to the Bar, Stuart assisted on the inquest into the death of Amy El-Keira where a jury returned a verdict of neglect due to the level of care she received at the Priory. The Priory Group were later prosecuted and received a £300,000 fine.

Accreditations

- Harmsworth Scholar of the Middle Temple

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Qualifications

- Law (LLB, hon), Queen Mary, University of London
- MA Res 'Covert surveillance of legal professional privilege', Queen Mary, University of London
- Bar Professional Training Course, Kaplan Law School

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