



Fiona Scolding QC

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Expertise

Public, Public Procurement

Overview

Fiona's practice focusses upon public law challenges in a wide variety of contexts concerning both local and central government and non governmental departmental bodies. She has particular expertise in areas concerning children and vulnerable adults, with a focus upon education, the Court of Protection, healthcare, community care, equality, human rights and discrimination, but also has experience in areas as varied as immigration, prisons, social security and general public law work.

Fiona's work for government departments has led her to develop an expertise in public procurement, and she has been involved (on behalf of the Legal Aid Agency) with many large scale challenges to procurement exercises since 2010.

Fiona has been recommended by the *Legal 500* for her work in education law since 2002, and is also recommended by them in administrative & public law and civil liberties & human rights. She is recommended by *Chambers & Partners* for her work in education law alongside the Court of Protection and local government.

Fiona has a commitment to pro bono work. She also is on the EHRC panel counsel since 2010, and has a keen appreciation and understanding of equality and rights legislation. She was a member of the Attorney General's B panel from 2013 to 2017.

Her 2017 recommendations include:

"She's very approachable and her knowledge of this area of the law is right up there. She reliably delivers what you need in a palatable way." "She is very experienced: a great tactician and a highly persuasive advocate." (Local Government, *Chambers & Partners* 2017)

Fiona is currently instructed as senior counsel to the Anglican and residential schools investigations on behalf of IICSA (the Independent Inquiry into Child Sexual Abuse).

Languages

French
Italian
Spanish

Education Law

Fiona has 20 years worth of experience in cases concerning education law. She has a broad compass of work from the FTT to the Court of Appeal on these issues, including Equality Act claims. She undertakes work across the whole spectrum of education law, including, contract and tort matters, governance, funding, vires and structure, exclusions, admissions, funding of schools, school transport, work for universities and colleges, and further education. She is particularly noted for her work on behalf of disabled children and young adults. She works both for individuals and for local authorities, schools (both state and independent) universities, further education colleges, charities and other training providers. Fiona has been noted as a leader in education law since 2002 in both the *Legal 500* and *Chambers & Partners*. She is often called upon to advise on points of principle concerning changes to the education regime. Her work on IICSA means that she has an in-depth understanding of safeguarding policies, practices and procedures. She is qualified for Direct Access and accepts instructions in this area.

Court of Protection

Fiona undertakes all aspects of health and welfare work, including medical treatment cases, and cases under the inherent jurisdiction. Fiona represent local authorities, but also the Official Solicitor, NHS Trusts/CCGs and sometimes family members. She is listed in *Chambers & Partners* for her expertise in this area. Recent instructions have included several cases of intractable familial disputes: whether or not life support should be withdrawn from someone in a PVS state; the medical care and treatment of disabled children when their parents were opposed to aspects of their care; allegations of factitious illness; several cases concerning the appropriate setting for those with challenging behaviour and autism; and cases concerning the withdrawal of a passport where there was a risk of someone going to Syria to fight against Daesh. Fiona has particular experience with young adults with learning disabilities.

Community Care Law

Most of Fiona's work in this area involves children and adults with disabilities and/or the elderly. Fiona undertakes a broad spectrum of cases from multi-million pound restitutionary claim between the NHS and local authorities concerning continuing health and social care, through to claims about Continuing NHS Care Funding, arrangements of health and social care packages, breach of the Equality Act 2010 and the Autism Act 2009 concerning local authorities policies and procedures, failure to consult on closures of social care institutions to claims for recoupment of monies by local authorities where LAs claim there has been deliberate evasion of fees by deprivation of capital.

Fiona has a sub-speciality in representing kinship carers and children who are in care, mainly to ensure that they have access to appropriate services.

Recent instructions have included: advising on recoupment of sums on behalf of a number of grandparent foster carers; bringing judicial review proceedings against a local authority concerning wholesale cuts to adult social care; bringing judicial review

proceedings concerning placement and care packages for adults with disabilities; advising on the legality of local authority policies in respect of various aspects of social care and advising on ordinary residence disputes. She is recommended in the local government section of *Chambers & Partners* for her work in this area, as well as for public & administrative law and civil liberties & human rights.

Healthcare Work

Advisory work on all aspects of public law litigation and litigation concerning the healthcare sector, for both CCGs, NHS Foundation Trusts and individuals. This has included advisory work as to the legality of individual decisions in respect of continuing healthcare; the legality of policies in respect of children with long term health conditions; the relationship between health, education and social care for children and young people; and 'rationing' of treatment. Fiona has also been involved with disputes with NHS England about funding specialist treatment packages and as to their approach to care planning, particularly in the context of children and young adults.

Fiona is recommended for her local government, administrative & public law, and civil liberties & human rights areas of law.

Public Procurement

Fiona has undertaken a significant amount of work in the area of public procurement since 2010. These cases concern a multitude of issues about procurement including delay; choice of remedy; meaning of equality of treatment under the PCR 2006; nature of mistakes within tenders; what is an effective remedy; and declarations of ineffectiveness. Fiona was junior counsel in 2015/16 defending the government's implementation of a new contract for criminal solicitors, which concerned over 115 claims run on a group litigation basis. Fiona is particularly interested in the impact of Brexit upon procurement.

Public Inquiries

In February 2017, Fiona was appointed senior counsel to the Anglican church investigation and the residential school's investigation undertaken by IICSA. Fiona is responsible for managing a team of counsel and paralegals and also working with the research team and other members of the Inquiry on a wide range of issues.

Social Security

Over the past five years, Fiona has developed expertise in the area of social security law, appearing in a number of the leading cases about personal independence payments, but also all aspects of social security benefits, including cases with a human rights or EU element. These include child support legislation, universal credit, pensions credits, employment support allowance and other means tested and non means tested benefits. Fiona is currently involved in two cases concerning social security before the Court of Appeal - one concerning PIP and one concerning payments of carers allowance to an EU national.

Immigration Law

Fiona has undertaken work for the government concerning a variety of immigration matters, including Article 8 challenges, EEA nationals, asylum claims, deportation cases, cases concerning children and their welfare, unlawful detention, and torture. She has represented the government at the Court of Appeal and the Upper Tribunal in this area.

Other public law work

She has undertaken a variety of public law work for the Government and for individuals, charities and NGOs including cases on behalf of the DWP, the Department of Health, the Department of Education and immigration cases, to quasi commercial cases about funding. Fiona is recommended both in administrative law and in human rights in the *Legal 500* for her work in this area.

Other civil claims

Fiona has undertaken civil work concerning unlawful detention, Equality Act claims concerning goods and public services misfeasance in public office. She has also undertaken breach of contract and professional negligence claims concerning schools, local authorities and universities, and restitutionary claims against local authorities/public bodies. Fiona also has conduct of claims under the Equality Act 2010 concerning race and disability discrimination and religious and age discrimination.

Commercial Arbitration

Fiona was instructed in 2014/15 in a multi-million pound construction arbitration concerning the refurbishment of a nuclear submarine base, which involved leading a team of juniors.

Qualifications

Professional memberships/appointments

- QC 2017
- Appointed Deputy District Judge (Civil) in August 2010. Sit on the South-Eastern Circuit (East Anglia). Has Family law ticket from March 2014
- Appointed to the B Panel of Treasury Counsel March 2013 for a five-year appointment
- Appointed to the Panel of Counsel representing the Equality and Human Rights Commission (2010 - date)
- Qualified Mediator (ADR Chambers). Occasionally works as a Mediator
- Registered Pupil Supervisor
- Advocacy Trainer for Gray's Inn
- Member of ALBA, PIBA, LCLBA, HRLA, Education Law Association, Procurement Lawyer's Association
- Member of ELAS Executive Committee 2007 - 2013
- Direct Access Qualified
- Undertakes work for the Bar Pro Bono Unit and other organisations.

Education

- 1991 - 1994: BA History, Downing College Cambridge - 2:1
 - 1994 - 1995: Diploma in Law, City University - Commendation
 - 1995 - 1996: Bar Professional Training Course, ICSSL - Very Competent
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Publications

Health and social care handbook - co-author Law Society, 2006

Previous editor of the Education Law monitor

Regular contributor to specialist and general journals.

A great tactician and a highly persuasive advocate

Chambers & Partners

Cases

18 Jul 2018	Williams and another v London Borough of Hackney [2018] UKSC 37
25 Apr 2017	LB Richmond Upon Thames v AC [2017] UKUT 173
06 Mar 2017	EG v SSWP [2017] UKUT 101 (AAC)
20 Feb 2017	MR v SSWP [2017] UKUT 86
28 Nov 2016	MH v SSWP [2016] UKUT 531
28 Oct 2016	MM and B] v SSWP [2016] UKUT 490
13 Oct 2016	R (Hussain) v SSWP [2016] EWCA Civ 1428
24 Sep 2016	R (MH) v NHS Sheffield [2015] EWHC 4243, [2016] 19 CCL Rep 592
02 Sep 2016	EI v SSWP [2016] UKUT 397
27 May 2016	R (MK Law) v Lord Chancellor [2016] All ER D (161)
23 Jul 2015	R (Duncan Lewis) v Lord Chancellor [2015] EWHC 2498, [2015] All ER (D) 355
17 Apr 2015	R (London Oratory) v Schools Adjudicator [2015] All ER (D) 234
01 Jan 2015	Criminal duty tender litigation - 2015/16
08 Dec 2014	R (C) v Buckinghamshire CC [2014] EWHC 4072
07 May 2014	R (WB) v Secretary of State for Justice [2014] ALL ER (D) 80
01 Jan 2014	R (CO) v Surrey CC [2014] All ER (D) 19
18 Dec 2013	Royal Free Foundation Trust v Saker [2013] EWHC 4101
15 Nov 2013	AAR v Lord Chancellor [2013] EWHC 3461
25 Mar 2013	P v A Governing Body of a Primary School [2013] UKUT 154
15 Mar 2013	M v LB Hounslow [2013] EWHC 579
08 Mar 2013	X v LBTH [2013] EWHC 480, [2013] EWCA CIV 904
01 Jan 2013	R (UF) v West Sussex and Director of Legal Aid Casework [2013] EWHC (COP) 594

Publications

24 Jul 2020	What needs to be shown to prove or disprove a justification defence
24 Jul 2020	Indirect Discrimination - A powerful, effective but under-used tool in tackling discrimination in the UK - Webinar
23 Jul 2020	Social Care - Part 2 - Webinar
27 Apr 2020	Safeguarding In Lockdown

20 Apr 2020	Ofqual Consultation
31 Jan 2020	Community Governance
12 Mar 2019	What do I do? Answering requests from a public inquiry
30 Jan 2019	HERA and Siddiqui
25 Sep 2018	Learning lessons from NHS procurement litigation: a case study
21 Jun 2018	Strategy for Defendants: How to dig yourselves out of a hole
22 Jan 2018	Equality Act: Al Hijrah and ors

Landmark Chambers remains fully operational during the Coronavirus (COVID-19) crisis

We would like to reassure you that Landmark Chambers remains fully operational and able to support your needs. Our barristers and staff are now working remotely and we have the technology in place to continue providing our normal level of service during this unprecedented time.

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