



FENELLA MORRIS KC

Year called 1990

Silk 2012

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“She is an absolutely superb practitioner, who is fearless, knowledgeable and a brilliant advocate. She is extremely articulate and judges like her.” Chambers and Partners

Fenella Morris KC is a versatile advocate with a wide-ranging practice that encompasses public law, professional discipline and regulation, healthcare and education, pensions and financial services, local government, and procurement and state aid. She is consistently ranked highly in the legal directories.

Her clients include regulators (from the Professional Standards Authority for Health and Social Care to the Pensions Regulator and Civil Aviation Authority) and those whom they regulate, from the largest private health and social care providers, to nomads on the AIM. She acts for a huge range of NHS bodies, universities, local authorities, trade unions, sporting organisations and non-governmental organisations (NGOs).

She appears in many landmark cases and has a wealth of experience as an advocate up to the Supreme Court and European Court of Human Rights. She is skilled at leading large multi-disciplinary teams in high-value, high-controversy litigation, and understands the issues that arise for high-profile institutions and individuals.

Fenella mediates and arbitrates diverse disputes and is a member of the Sport Resolutions' Panel of Arbitrators and Mediators. She carries out sensitive investigations, most recently into UKAD's Operation Blackout, was counsel to the Independent Medicines and Medical Devices Safety Review and is instructed in the Covid Inquiry.

Fenella was awarded 'Professional Discipline Silk of the Year' at the Chambers UK Bar Awards 2021, and was The Times' Lawyer of the Week, 16 July 2020. She is joint head of chambers' Public Law team.



PRACTICE AREAS

- Administrative and Public
- Regulatory and Disciplinary
- Court of Protection
- Human Rights and Civil Liberties
- Procurement
- Alternative Dispute Resolution

SECTORS

- Healthcare
- Education
- Local Government
- Consultation
- Sport

PRACTICE AREAS

ADMINISTRATIVE AND PUBLIC

"She's extremely sharp on the analysis and provides very clear answers. There's no beating about the bush." "She has excellent rapport with the court." Chambers and Partners 2022

Fenella is known for her advocacy in high-profile administrative and public law cases, appearing most recently for the Tavistock Clinic in the case about treatment of trans teens. She has particular expertise in cases concerning health care, including reconfiguration, access to experimental treatments, procurement and Care Quality Commission (CQC) challenges, and declarations as to the law concerning the detention of patients in the context of Covid-19. She is also well-regarded for her involvement in novel public law challenges in the area of finance and pensions, having brought two cases concerning doctors' pensions for the British Medical Association (BMA), appearing for the Pensions Regulator and regularly advising those in the financial sector.

CASES OF NOTE:

Bell v Tavistock and Portman NHS Foundation Trust [2021] EWCA Civ 1363, upheld by the Supreme Court [2022] – Tavistock's practice of referral for specialist treatment held to be lawful.

R (Advinia Health Care Ltd) v CQC [2022] EWHC 965 (Admin) – CQC's market oversight guidance held to be unlawful.

R (Khurana) v North Central London CCG [2022] EWHC 384 (Admin) – Transfer of contract to US provider lawful.

R (Trinity College (CSP) Ltd) v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1355 (Admin) – Cambridge College’s innovation grant application refused.

R (Dawson) v United Lincolnshire Hospitals NHS Trust [2021] EWHC 928 (Admin) – Covid-related health service reorganisation insufficiently consulted upon.

Basma v Manchester University Hospitals NHS Foundation Trust [2021] EWCA Civ 278 – Decision on use of experimental treatment for child set aside.

Devon Partnership NHS Trust v Secretary of State for Health and Social Care [2021] EWHC 101(Admin) – Part 8 claim concerning interpretation of Mental Health Act 1983 during Covid-19 pandemic.

R (BMA) v Secretary of State for Health and Social Care [2020] EWHC 64 (Admin) – Protocol 1 Article 1 (A1P1) of the Human Rights Act 1998 challenge to changes in doctors’ pensions scheme.

R (Barking and Dagenham College) v Office for Students [2019] EWHC 2667 (Admin) – Higher education institution’s challenge to regulator’s algorithm-based decision.

JT v First Tier Tribunal [2018] EWCA Civ 1735 – Successful Human Rights Act (HRA) challenge to criminal injuries compensation scheme leading to change in legislation.

R (Grace Bay II Holdings Sarl and others) v Pensions Regulator [2017] EWHC 7 (Admin) – Successful defence of challenge to Pensions Regulator’s procedures.

REGULATORY AND DISCIPLINARY

“Extremely good, very authoritative. She’s very impressive.” “Always user-friendly and provides excellent advice.” Chambers and Partners 2022

Fenella’s regulation and discipline practice traverses the whole field of regulation and discipline: health and social care professionals, law, accountancy and financial services professionals, educational professionals, veterinary professionals, and health, education and financial institutions. She appears in many of the leading cases, represents individuals and regulators in the most difficult disciplinary and regulatory hearings and often advises on contentious policy and individual issues.

Fenella was awarded ‘Professional Discipline Silk of the Year’ at the Chambers UK Bar Awards 2021.

CASES OF NOTE:

Professional Standards Authority v General Optical Council and Rose [2021] EWHC 2888 (Admin) – Successful appeal against decision of committee not to erase an optometrist who failed properly to examine a child.

GMC and Professional Standards Authority v Bramhall [2021] EWHC 2109 (Admin) – Successful appeal against decision of a tribunal not to erase a surgeon who marked his patients’ livers.

Professional Standards Authority v General Pharmaceutical Council and Ali [2021] EWHC 1692 (Admin) – Successful appeal against a decision of the committee not to discipline a pharmacist who made antisemitic statements.

R (Barking and Dagenham College) v Office for Students [2019] EWHC 2667 (Admin) – Higher education institution’s challenge to regulator’s algorithm-based decision.

Bawa-Garba v GMC and others [2018] EWCA Civ 1879 – Leading case on approach to health care professionals found guilty of gross negligence manslaughter.

Wingate and another v Solicitors Regulation Authority [2018] EWCA Civ 366 – Leading case on lack of integrity and dishonesty.

R (Grace Bay II Holdings Sarl and others) v Pensions Regulator [2017] EWHC 7 (Admin) – Successful defence of challenge to Pensions Regulator’s procedures.

R (May) v Chartered Institute of Management Accountants (CIMA) [2013] EWHC 1574 (Admin) – Accountant’s challenge to disciplinary decision of CIMA Appeal Committee..

Macleod v Royal College of Veterinary Surgeons [2006] UKPC 39 – Interpretation of the Medicines Act 1968 and the Veterinary Surgeons Act 1966.

COURT OF PROTECTION

“Fenella is fantastic in court.” Chambers and Partners 2022

Fenella has practised in this area since cases were decided under the inherent jurisdiction of the Family Division and before the inception of the Court of Protection. Building on this wealth of experience, this year she has appeared in cutting-edge cases concerning deprivation of liberty, end of life, serious medical treatment, sex and marriage. Her skills are increasingly in demand in the property and affairs sphere of the Court of Protection particularly in cases concerning capacity to make financial decisions, and the powers of deputies.

CASES OF NOTE:

AB v CD [2021] EWHC 741 (Fam) – Treatment of trans teenager in light of first instance decision in *Bell v Tavistock*.

Hinduja v Hinduja [2020] EWHC 1533 (Ch) – Extensive family dispute concerning financial, residence and care matters.

LB Tower Hamlets v PB [2020] EWCOP 34 – Capacity of alcoholic to make decisions about residence and care.

CD v LB Croydon [2019] EWHC 2943 (Fam) – Ambit of court’s powers under Mental Capacity Act 2005 and inherent jurisdiction.

Re: DMM (Alzheimer’s; marriage; power of attorney) [2017] EWCOP 33 – Capacity to marry, and significance of financial consequences of marriage.

Devon County Council v Teresa Kirk [2016] EWCA Civ 1221 – Successful appeal against imprisonment for contempt of Court of Protection.

P v Cheshire West and P and Q v Surrey County Council [2014] UKSC 19 – Leading case on deprivation of liberty under Article 5 of the European Convention on Human Rights (Article 5).

Re F (Adult Patient) sub nom In re F (Adult: court’s jurisdiction) [2000] 3 WLR 1740 (CA) – Extent of inherent jurisdiction.

HUMAN RIGHTS AND CIVIL LIBERTIES

Fenella’s versatility and breadth of experience is reflected by the ambit of her human rights practice. She has brought two ground-breaking cases under A1P1, for victims of domestic abuse seeking criminal injuries

compensation and for doctors seeking fair treatment in relation to their pensions. She is at home working on A1P1, Article 6 and Article 14 of the European Convention on Human Rights issues in a commercial context, such as for the Natural England, and the Pensions Regulator, as she is working on Article 2, Article 3 and Article 5 issues in the health and social care context e.g. acting for Liberty in damages claims arising from Panorama investigations into abuse in care homes. She continues to act in cases in the European Court as well as featuring in a range of human rights cases in the domestic courts up to the Supreme Court.

CASES OF NOTE:

R (BMA) v Secretary of State for Health and Social Care [2020] EWHC 64 (Admin) – A1P1 challenge to changes in doctors' pensions scheme.

JT v First Tier Tribunal [2018] EWCA Civ 1735 – Successful HRA challenge to criminal injuries compensation scheme leading to change in legislation under A1P1 and Article 14.

P v Cheshire West and P and Q v Surrey County Council [2014] UKSC 19 – Leading case on deprivation of liberty under Article 5.

Munjaz v UK (ECtHR) 2012 – Whether seclusion in a psychiatric hospital was in breach of Articles 3, 8 and 14.

R (Garbet) v Circle 33 Housing Trust and Eastbourne Homes Limited [2009] EWHC 3153 (Admin) – Housing trust a public authority under the HRA.

Kolanis v UK ECtHR App. No. 517/02 – Damages for breach of Article 5 after detention under Mental Health Act 1983.

R (Pretty) v UK (ECtHR) [2002] 35 EHRR 1 – Leading case on assisted suicide and interpretation of Articles 3 and 8.

PROCUREMENT

Fenella's procurement practice covers health care and pharmaceuticals, local government, energy and education, and sits alongside her extensive practice in public law and discipline and regulation. Fenella has particular expertise in NHS procurement: she represented NHS England in the test cases concerning the new ICP contracts, and has acted for NHS bodies and private providers in combined procurement and judicial review proceedings for large scale contracts for health services, drugs and medical devices, and in post-contract disputes requiring resolution by expert determination. She has acted in domestic state aid litigation, including that concerning the Ricoh Arena in Coventry and changes in the auctioning of electricity supply rights. Fenella is often asked to advise on public sector regeneration projects, addressing such issues as the public body's vires. She is a mediator and arbitrator, and is appointed to resolve procurement disputes, particularly in the NHS.

CASES OF NOTE:

Braceurself v NHSE [2022] TCC – Judgment awaited.

R (Khurana) v North Central London CCG [2022] EWHC 384 (Admin) – Transfer of contract to US provider lawful.

R (Shepherd) v NHS Calderdale CCG and NHSEI [2018] EWCA Civ 2849 – Challenge to introduction of ICS.

R (Hutchinson) v Secretary of State for Health and Social Care [2018] EWHC 1698 (Admin)

R (Sky Blue Sports and Leisure Ltd) v Coventry City Council [2018] EWCA Civ 2252 – State aid challenge to making of loan to Coventry City Football Club.

ALTERNATIVE DISPUTE RESOLUTION

Fenella is a CEDR-accredited mediator and on the Sports Resolutions' Panel of Arbitrators and Mediators. She has arbitrated and mediated diverse disputes from those concerning procurement and NHS contracting, to HRA damages claims.

SECTORS

HEALTHCARE

Fenella is well known for her expertise in cases concerning every aspect of healthcare: reconfiguration, access to experimental and high-cost treatments, ethical issues at the start and end of life, procurement and NHS contracting, CQC report challenges, professional regulation, NHS pensions and declarations as to the law e.g. concerning the detention of patients in the context of Covid-19.

She was counsel to the Independent Medicines and Medical Devices Review and is instructed in the Covid Inquiry.

CASES OF NOTE:

Bell v Tavistock and Portman NHS Foundation Trust [2021] EWCA Civ 1363, upheld by the Supreme Court [2022] – Tavistock's practice of referral for specialist treatment held to be lawful.

R (Advinia Health Care Ltd) v CQC [2022] EWHC 965 (Admin) – CQC's market oversight guidance held to be unlawful.

R (Khurana) v NCLCCG [2022] EWHC 384 (Admin) – Transfer of contract to US provider lawful.

R (Dawson) v United Lincolnshire Hospitals NHS Trust [2021] EWHC 928 (Admin) – Covid-related health service reorganisation insufficiently consulted upon.

Basma v Manchester University Hospitals NHS Foundation Trust [2021] EWCA Civ 278 – Decision on use of experimental treatment for child set aside.

Devon Partnership NHS Trust v Secretary of State for Health and Social Care [2021] EWHC 101(Admin) – Part 8 claim concerning interpretation of Mental Health Act 1983 during Covid-19 pandemic.

SSP Health Ltd v NHSLA (Primary Care Appeals Service) [2020] EWCA Civ 1574 – Payment of interest on GP contracting claim.

R (Shepherd) v NHS Calderdale CCG and NHSEI [2018] EWCA Civ 2849 – Challenge to introduction of integrated care systems (ICS)

R (Forge Care Homes) v Cardiff and Vale University Health Board [2017] UKSC 56 – Leading case on division of responsibility between health and social services for the costs of care.

R (Tracey) v Cambridge University Hospitals NHS Foundation Trust [2014] EWCA Civ 822 Resuscitation Council guidance on 'do not attempt resuscitation' decisions held compliant with Article 8 of the European Convention on Human Rights (Article 8)

R (Munjaz) v Ashworth Hospital Authority, Mental Health Act Commission, MIND and the Secretary of State for Health [2005] UKHL 58 – Seclusion policies, the Mental Health Act 1983 Code of Guidance and Article 8.

EDUCATION

"Able to deal extremely well with complex and novel issues." The Legal 500 2022

Fenella represents and advises higher and further education bodies, local authorities, schools, students and their families, examination and funding bodies and the Office for Students. Her recent work involves a judicial review challenge to a university's decision to challenge a student and the OIA's decision to uphold it, advising Oxbridge colleges on the interpretation and application of their statutes, advising a Russell Group university on the resolution of academic misconduct issues relating to its staff, challenges to decisions to award degrees, challenges to refusals in admissions processes and claims of negligence and breach of contract in universities.

She often advises on overlapping issues of professional education and regulation, such as the approval of higher education institutions as providers of professional education, or disciplinary matters arising during professional studies. She has particular expertise in cases concerning the interrelationship between health, social services and education, and the safe-guarding and treatment of sick and disabled children and deprivation of liberty in educational settings.

CASES OF NOTE:

R (Barking and Dagenham College) v Office for Students [2019] EWHC 2667 (Admin) – Higher education institution's challenge to regulator's algorithm-based decision.

R (Trinity College (CSP) Ltd) v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1355 (Admin) – Cambridge college's innovation grant application refused.

Saha v Imperial College of Science, Technology & Medicine [2013] EWHC 2438 QB – Claim against university by PhD student for damages in excess of £1.5m arising from alleged harassment by supervisor and his research team.

LOCAL GOVERNMENT

"Great on complex, cutting-edge high-profile cases, and an excellent advocate with good leadership skills." The Legal 500 2022

Fenella advises and represents local authorities in a huge range of matters concerning education, social services, mental health and the court of protection, as well as those concerning procurement, state aid and vires. She is known for advising on innovative local government projects and has extensive experience in the resolution of disputes between health and social care bodies.

CASES OF NOTE:

Devon Partnership NHS Trust and Devon County Council v Secretary of State for Health and Social Care [2021] EWHC 101(Admin) – Part 8 claim concerning interpretation of Mental Health Act 1983 during Covid-19 pandemic.

LB Tower Hamlets v PB [2020] EWCOP 34 – Capacity of alcoholic to make decisions about residence and care.

R (L) v Buckinghamshire County Council [2019] EWHC 1817 – Challenge to changes in provision of children's centres.

R (Sky Blue Sports and Leisure Ltd) v Coventry City Council [2018] EWCA Civ 2252- State aid challenge to making of loan to Coventry City Football Club.

R (Forge Care Homes) v Cardiff and Vale University Health Board [2017] UKSC 56 – Leading case on division of responsibility between health and social services for the costs of care.

R (C, T, M and U) v LB Southwark [2016] EWCA Civ 707 – Extent of community care obligations of local authority to those not lawfully present.

CONSULTATION

Consultation is a perennial issue for public bodies, and Fenella has extensive experience of advising on the process as well as acting in challenges to the decisions made in the light of it.

CASES OF NOTE:

R (Khurana) v NCLCCG [2022] EWHC 384 (Admin) – Transfer of contract to US provider lawful

R (Dawson) v United Lincolnshire Hospitals NHS Trust [2021] EWHC 928 (Admin) – Covid-related health service reorganisation insufficiently consulted upon.

R (Glatter) v NHS Herts Valleys CCG [2021] EWHC 12 – Consultation in context of NHS reconfiguration.

R (L) v Buckinghamshire County Council [2019] EWHC 1817 – Challenge to changes in provision of children’s centres.

R (A) v South Kent Coastal CCG [2020] EWHC 372 – Consultation in context of NHS reconfiguration

R (Hinsull) v NHS Dorset CCG [2019] EWCA Civ 1412 – Consultation in context of NHS reconfiguration.

Keep the Horton General v Oxfordshire CCG [2019] EWCA Civ 646 – Consultation in context of NHS reconfiguration.

SPORT

Fenella’s sport work has developed from her discipline and regulation practice. She is a member of the Sport Resolutions’ Panel of Arbitrators and Mediators, and carried out the investigation into UKAD’s handling of Operation Blackout. She acted in the long-running litigation arising out of Coventry City Council’s handing of funding of the Ricoh arena, latterly on behalf of Wasps rugby club. Given her expertise in issues affecting trans people, she has an interest in the approach taken by sport regulatory bodies to trans and intersex athletes.

CASES OF NOTE:

UKAD, Operation Blackout investigation

R (Sky Blue Sports and Leisure Ltd) v Coventry City Council [2018] EWCA Civ 2252 – State aid challenge to making of loan to Coventry City Football Club.

RECOMMENDATIONS

Fenella is recommended by the all the major directories for Administrative and Public Law, Professional Discipline, Healthcare, Local Government, Education, Community Care and Court of Protection.

QUOTES:

“She is a very strong advocate and is lovely to work with.” “She is very easy to work with, really analytical and a great advocate.” Chambers and Partners 2022

“She’s extremely sharp on the analysis and provides very clear answers. There’s no beating about the bush.” “She

has excellent rapport with the court." Chambers and Partners 2022

"Very analytical and a great advocate. She's also down to earth and easy to work with." Chambers and Partners 2022

"An experienced public law QC who provides a fantastic service to her clients." Chambers and Partners 2022

"An effective advocate who is very popular with her instructing clients." "Fenella handled a ground-breaking case very well." Chambers and Partners 2022

"Very friendly, bright in the law and intelligent. Really impressed with the way she puts things across in court; judges seem to listen to her." "Extremely good, very authoritative. She's very impressive." "Always user-friendly and provides excellent advice." Chambers and Partners 2022

"Fenella is great for high level, complex, high profile cutting edge work. Has a good understanding of the health sector." The Legal 500 2022

"Able to deal extremely well with complex and novel issues" The Legal 500 2022

"Fenella is fantastic in court." The Legal 500 2022

"Great on complex, cutting-edge high-profile cases, and an excellent advocate with good leadership skills." The Legal 500 2022

"She is excellent on her feet, and is able read the court and advance arguments in the most persuasive manner." The Legal 500 2022

APPOINTMENTS

Bencher of Middle Temple, June 2018

MEMBERSHIPS

- ALBA
 - ARDL
 - Trustee of the Free Representation Unit
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QUALIFICATIONS

- CEDR-accredited mediator, 2002

- Pegasus Scholarship (New Zealand), 1998
- Diploma in Law, City University, London, 1989
- BA (Hons), PPE, Wadham College, Oxford, 1987

PUBLICATIONS

Fenella is the co-author of two editions of the Law Society's guide to the Mental Capacity Act. She is a contributor to the joint Law Society and BMA Guidance on the Assessment of Mental Capacity. She wrote the chapter on Health Law in the UK Supreme Court Yearbook 2016-17

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