

Year called 2017

gethin.thomas@39essex.com



Gethin Thomas has a broad practice across all areas of Chambers' specialisms, with a particular interest in public law & human rights, environment & planning, commercial, energy and construction law.

He appears frequently in court, and regularly undertakes pleading and advisory work. Reflecting the breadth of his practice, Gethin has acted as sole or junior counsel in proceedings in the Court of Appeal, and in the High Court (in the Administrative Court, Commercial Court, Queen's Bench Division, and Technology & Construction Court). Gethin is ranked as one of the 'Highest Rated Planning Juniors Under 35' by Planning Magazine (2020).

Gethin is a member of the Welsh Government's B Panel of Junior Counsel.

Gethin graduated from the University of Oxford with a First Class law degree. Before joining the bar, Gethin worked as a research assistant at the Law Commission for two years. As a member of the public law team, he worked on a range of law reform projects in areas such as electoral law, misconduct in public office and wildlife law. He also worked on a project that proposed a new system of codification for the law applicable to Wales.

Latterly, Gethin interned at the human rights charity JUSTICE. He worked in the administrative justice team.

Gethin is a contributing editor to the Environmental Law Bulletin (published by Sweet & Maxwell), and he has also contributed to the latest editions of Wilmot-Smith on Construction, and Shackleton on the Law and Practice of Meetings.

PRACTICE AREAS

- Administrative & Public
- Environmental & Planning
- Commercial, Construction & International Arbitration
- Financial Services, Banking & Pensions
- Regulatory & Disciplinary
- EU Law
- Civil Liability

PRACTICE AREAS

ADMINISTRATIVE & PUBLIC

Gethin has a keen interest in all areas of public law, including civil liberties and human rights, healthcare law, electoral law, education law, immigration and asylum, housing, public procurement, EU law, inquiries and social security. He also has a particular interest in data protection and information law.

Gethin is currently instructed to assist the Independent Human Rights Act Review Panel, chaired by Sir Peter Gross.

Gethin is also instructed as junior counsel to Charlie Corey-Wright QC by NHSBT, a core participant in the Infected Blood Inquiry.

Gethin is a member of the Welsh Government's B Panel of Junior Counsel, and a member of the Government Legal Department's 'Junior Junior' scheme. He is vetted, and holds security clearance.

Gethin's broad public law practise spans planning, environment and energy cases, as well as commercial judicial review, procurement and matters concerning the regulation of financial services & pensions. He has particular experience of claims involving Article 1 of the First Protocol to the ECHR (A1/P1).

Gethin regularly acts in judicial review proceedings, as both sole and junior counsel, and on behalf of both claimants and defendants. He has drafted grounds, and appeared in the Administrative Court.

Gethin's current, and recent, instructions in respect of judicial review claims include:

- As sole counsel, successfully defending judicial review proceedings on behalf of two NHS Trusts concerning alleged data protection breaches, in the Administrative Court (*R (on the application of AB) v Northumbria Healthcare NHS Foundation Trust* [2020] EWHC 2287 (Admin)).
- As junior counsel, led by Katherine Apps and Oliver Segal QC, in *R (on the application of Unite the Union) v North Yorkshire Police Constable & anr*, acting on behalf of the claimant in a judicial review challenge to the impact of the Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020 on lawful picketing within section 220 and 220A of the Trade Union and Labour Relations Consolidation Act 1992. For more information, please see here: <https://www.39essex.com/update-on-lockdown-picketing-judicial-review-challenge/>
- As junior counsel, led by Parishil Patel QC, in a proposed challenge the lack of a national framework for treatment prioritisation, if demand for life-sustaining treatment outstrips supply during the COVID-19 pandemic (instructed by Bindmans LLP). For more information, please see here: <https://www.39essex.com/disabled-people-challenge-lack-of-national-framework-for-treatment-prioritisation-during-covid-19-pandemic/>.
- As junior counsel, led by Vikram Sachdeva QC, in respect of a proposed human rights claim in respect of the Government's delay in instigating a lockdown in response to the Covid-19 pandemic. For more information, please see here: <https://www.39essex.com/legal-action-against-covid-19-lockdown-delay/>
- As junior counsel, led by James Eadie QC, Daniel Stilitz QC, Simon Murray and Joanne Clement, in a series of judicial review challenges to the Public Sector Exit Regulations 2020, which include A1/P1

grounds.

- As junior counsel, led by Stephen Broach, in a judicial review of a local authority's funding of its short breaks service for disabled children. For more information, please see here:
<https://www.39essex.com/councils-funding-for-disabled-childrens-short-breaks-challenged/>
- As junior counsel, acting on behalf of Welsh Government, in relation to a judicial review brought by the Medical Defence Union, challenging its decision not to introduce an existing liabilities indemnity scheme for NHS GP's, which include A1/P1 grounds (*Medical Defence Union v Welsh Government & ors*, led by Rhodri Williams QC and Jo Clement).
- As junior counsel to Steve Broach, in a judicial review claim, intimated by Family Rights Group, challenging the discriminatory impact of the lockdown restrictions on kinship carers. The claim was conceded by the Secretary of State, and changes were consequently made to the relevant regulations. For more information, please see here:
<https://www.39essex.com/family-rights-group-secures-significant-amendment-to-covid-regulations/>.
- As sole counsel, advising as to a judicial review claim challenging a single multi-disciplinary care assessment.
- As junior counsel to Steve Broach, in advising as to the prospects of successfully challenging a Welsh local authority's SEND school transport policy.
- As a junior junior, acting on behalf of the Ministry of Justice, assisting in response to proposed judicial review challenges in respect of HM Prison Service's response to the Covid-19 pandemic, led by Catherine Dobson.
- Assisted Steve Broach in respect of a proposed judicial review claim challenging the Secretary of State for Health and Social Care and NHS England's failure to test suspected cases of COVID-19 in care homes on discrimination grounds.
- Acting as a junior junior, instructed by the Government Legal Department, in the judicial review challenge to the Heathrow third runway (*R (on the application of Spurrier) v Secretary of State for Transport* [2019] EWHC 1070 (Admin)).
- As sole counsel, successfully defending a judicial review claim, on behalf of the Financial Ombudsman Service, in the Administrative Court.
- Assisting Kelly Stricklin-Coutinho, in relation to a judicial review claim challenging the outcome of a competition for funding for an energy project.
- As sole counsel, drafting the summary grounds of resistance on behalf of the Financial Ombudsman Service in relation to a judicial review claim.
- As junior counsel to Steve Broach, advising as to prospects of bringing a judicial review challenge in respect of proposals to close a rural primary school.
- Acting as junior counsel to Paul Stinchcombe QC and Richard Wald QC in a judicial review challenging the grant of a development consent order re-opening Manston Airport (*R (on the application of Jennifer Dawes) v SST and Anor*), on climate change grounds.
- Acting as junior counsel in a judicial review challenging the Road Investment Strategy 2, in respect to the renewal of the application for permission on air quality and SEA grounds before the Administrative Court and Court of Appeal (*R (Transport Action Network Ltd) v SST and Anor* [2020] EWHC 3235

(Admin), led by David Wolfe QC and Peter Lockley).

Gethin is also regularly instructed to advise on a broad range of public law issues. Recent instructions include:

- Advising the Windrush Lessons Learned Review.
- Advising the Sovereign Borders Programme.
- Advising the FCDO on proposed sanctions designations.
- Assisting Katherine Apps, in advising as to the implications of *R (on the application of Palestine Solidarity Campaign Ltd and another) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16, in respect of pensions regulation.
- As junior counsel to Katherine Apps, assisting to advise in respect of a matter arising out of Brexit.
- Advising a local authority on electoral and information law issues, concerning data held pursuant to the electoral register.
- Advising a local authority as to the lawfulness of a delegation of power.
- Advising in respect of a complaint to the Information Commissioner's Office.
- Advising the Office for Students, as consultant counsel.
- Advising the Financial Ombudsman Service, as consultant counsel.

Gethin's broad experience also includes acting in private law matters, involving a public or regulatory law element. Recent instructions include:

- As sole counsel, successfully resisting an application for an interim injunction, both at first instance, and on appeal in the High Court (*Avsar v Wilson James Ltd* [2020] EWHC 3412 (QB)).
- As junior counsel to Sadie Crapper and Martin Westgate QC, instructed by the Police Federation, acting in respect of an overtime claim brought by undercover police officers.
- Acting on behalf of a university, in defending a claim brought against it alleging breach of contract and misrepresentation.
- Acting on behalf of the Civil Aviation Authority, in the High Court, in a successful strike out application of a claim in relation to a decision to provisionally suspend a pilot's medical certificate.

During pupillage, Gethin gained experience of a wide range of public law matters, including:

- A Supreme Court appeal concerning the operation of ouster clauses and whether the Investigatory Powers Tribunal is amenable to judicial review (*R (on the application of Privacy International) v Investigatory Powers Tribunal and others* [2019] UKSC 22)
- An Article 8 immigration case concerning the scope of private life for non-national out of country applicants;
- Drafted a statement of grounds for a precedent fact immigration judicial review;
- Researched the scope of the 'judicial function' exception under the public sector equality duty in the context of a judicial review claim;

- Cases concerning the scope of an effective appeal for the purposes of Article 8, and the application of *R (on the applications of Kiarie and Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42;
- Drafted a statement of grounds in relation to a challenge to the Secretary of State's decision to remove the Claimant from the UK under Dublin III Regulations;
- Drafted a response to a Pre-Action Protocol intimating a judicial review claim against the Secretary of State's decision to conduct a badger cull.

Prior to pupillage, Gethin worked on public law reform projects in areas such as electoral law, misconduct in public office and wildlife law. He has particular experience of those areas. Gethin also worked on a project that proposed a new system of codification for the law applicable to Wales, and has a particular interest in Welsh law.

Gethin was an administrative justice intern at JUSTICE.

As a volunteer with the Free Representation Unit, Gethin has also successfully represented claimants in social security appeals before the First-Tier Tribunal

ENVIRONMENTAL & PLANNING

Gethin has an extensive environmental and planning law practice. Gethin is regularly instructed to advise on a broad range of planning and environmental matters. He has experience of acting in inquiries. Gethin has particular experience of acting in judicial review proceedings, as both sole and junior counsel. Gethin is ranked as one of the 'Highest Rated Planning Juniors Under 35' by Planning Magazine (2020).

ENVIRONMENT

Gethin specialises in environmental law. He is a contributing editor of the Environmental Law Bulletin (published by Sweet & Maxwell). Gethin is also a member of the Environmental Law Foundation, through which he provides pro bono assistance on environmental matters. Gethin has particular experience of environmental judicial review challenges, and climate change litigation.

Recent environmental matters include:

- Acted as junior counsel to Richard Wald QC, instructed by Natural Resources Wales, in a four-week Inquiry concerning the implementation of byelaws for the conservation of salmon and sea trout stocks in Welsh rivers. For more information, please see [here](#).
- Acting as junior counsel to Paul Stinchcombe QC and Richard Wald QC in a successful judicial review challenging the grant of a development consent order re-opening Manston Airport (*R (on the application of Jennifer Dawes) v SST and Anor*), on climate change grounds. Gethin previously acted on behalf of objectors to the scheme, instructed by the Environmental Law Foundation, in respect to its climate change impacts. For more information, please see [here](https://www.39essex.com/manston-airport-dco-quashed/): <https://www.39essex.com/manston-airport-dco-quashed/>.
- Acting as junior counsel in a judicial review challenging the Road Investment Strategy 2, in respect to the renewal of the application for permission on air quality and SEA grounds before the Administrative Court and Court of Appeal (*R (Transport Action Network Ltd) v SST and Anor* [2020] EWHC 3235 (Admin), led by David Wolfe QC and Peter Lockley).
- Advising ClientEarth, as junior counsel to Stephen Tromans QC, in respect of draft clauses of the

Environment Bill.

- Assisted Nigel Pleming QC in relation to a matter arising from the scope of the definition of 'public authority' pursuant to the Environmental Information Regulations 2004.
- Advising the Civil Aviation Authority, in respect of the applicability of the SEA and Habitats Directives to the preparation of an Airspace Change Masterplan.
- Advising as to the prospects of challenging the grant of a planning permission on habitats and ecology grounds by judicial review.
- Acted as a junior junior on the judicial review challenge to the Heathrow third runway, instructed by the Government Legal Department.
- Advising a local authority as to matters arising from its declaration of a climate emergency.
- Advising on Tree Protection Orders and the Hedgerows Regulations.

Gethin also has experience of nuisance claims. As a pupil, Gethin assisted in respect of a private nuisance claim for group litigants concerning odour and noise emissions, and a claim under Part 1 of the Land Compensation Act 1973 concerning noise, odour and air pollution.

Gethin has written articles, and delivered seminars and lectures on environmental matters, such as climate change, air quality, environmental impact assessments and habitats regulation.

He is also a member of LexisNexis' Q&A Expert Panel.

PLANNING

Gethin has a busy planning practice. He advises developers, consultants, local authorities, and private clients on all aspects of the planning process, including planning enforcement, and planning appeals. Examples of his recent instructions include:

- Assisted John Steel QC in advising as to a statutory blight compensation claim for HS2 safeguarded land.
- Acted as junior counsel to Brian Ash QC on behalf of the claimant in a judicial review claim against a reserved matters decision of a local authority.
- Acted as junior counsel, assisted in respect of an enforcement appeal to the High Court pursuant to section 289 of the Town and Country Planning Act 1990.
- Advising a developer as to prospects of successfully appealing a refusal of planning permission to build within the Green Belt.
- Advising a local authority as to provisions of a section 106 agreement.
- Advising a developer in relation as to an alleged material change of use.
- Advising as to permitted development rights.
- Advising as to an application for a Lawful Development Certificate for existing use.
- Advised a developer as to the prospects of appealing a refusal to grant a certificate of lawful development.
- Advised a developer in relation to issues arising from the removal of permitted development rights by

planning conditions.

- Appeared as sole counsel in committal proceedings for breach of an enforcement injunction before the High Court.
- Advised a local authority as to the prospects of being granted an enforcement injunction.
- Drafting a judicial review pre-action protocol letter in respect of an LPA's decision to decline to determine a planning application.
- Advising as to the prospects of judicially reviewing an LPA's decision to take direct action pursuant to an enforcement notice.
- Assisting Daniel Stedman-Jones in respect of an appeal against a section 215 notice.

Gethin is a contributor to the current edition of Shackleton on the Law and Practice of Meetings.

During pupillage, Gethin gained a broad range of experience of planning and environmental matters, including:

- A two week planning inquiry relating to a site in London Borough of Tower Hamlets;
- Drafted a statement of facts and grounds challenging a grant of planning permission;
- Drafted an advice on the scope of amendments to conditions that may be pursued under section 73 of the Town and Country Planning Act 1990;
- Drafted an advice relating to restrictive covenants over accommodation works.

PROPERTY

Gethin welcomes instructions in property matters. He has experience of a wide range of property disputes. His recent instructions include, for example, advising as to break and surrender clauses in a commercial lease, and acting in forfeiture proceedings. Gethin also has experience of residential property cases.

COMMERCIAL, CONSTRUCTION & INTERNATIONAL ARBITRATION

Gethin has a keen interest in general and international commercial and construction law. He has a particular interest in procurement, PFI and project financing.

Gethin has appeared as both sole and junior counsel in commercial and construction proceedings in the High Court (in the Technology & Construction Court, Commercial, and Queen's Bench Division). He also frequently appears in commercial and construction matters before the County Court. He has extensive experience of drafting pleadings, and frequently advises on a broad range of commercial and construction matters, often complex and high-value. He also has adjudication experience. Examples of recent instructions are listed below.

Gethin also has experience of international arbitration. During pupillage, Gethin assisted on a major ICC arbitration concerning payment disputes, delay and variation claims (whilst supervised by Rachael O'Hagan, being led by Alexander Nissen QC and Calum Lamont). He was involved in the matter in the lead-up to, and throughout, the trial.

In addition, he has particular experience in financial services, having acted as consultant counsel to the Financial Ombudsman Service. He has advised on a wide range of matters under the Financial Services and Markets Act 2000. He also regularly advises on complex agency issues.

Gethin is currently instructed as a member of the legal team from 39 Essex Chambers offering legal advice and

support to the Foskett Panel. Further information is available online here: www.foskettpanel.com.

Gethin's recent instructions include:

- As sole counsel, successfully resisting an application for an interim injunction, both at first instance, and on appeal in the High Court (*Avsar v Wilson James Ltd* [2020] EWHC 3412 (QB)).
- As junior counsel, acting in relation to a claim in the High Court for a breach of contract, involving allegations of fraud, on behalf of a multinational company.
- As junior counsel, led by Samar Abbas, defending a breach of contract claim in the High Court and Court of Appeal, in which £4.5 million had been claimed against an NHS Trust.
- As sole counsel, successfully resisting an application to enforce an adjudicator's decision, in the High Court.
- Assisting Adrian Hughes QC to advise as to issues arising pursuant a JCT contract, including the scope of design responsibility, and an extension of time.
- As sole counsel, defending a breach of contract claim to trial in the TCC.
- As sole counsel, acting on behalf of the Defendant in an alleged breach of agency claim.
- Advising as to challenging an adjudicator's jurisdiction, and prospects of resisting enforcement of the adjudicator's decision.
- As junior counsel to Duncan Sinclair, advising as to issues arising under the Renewables Obligation scheme, administered by Ofgem.
- As sole counsel, advising a local authority in respect to a breach of contract claim intimated against it.
- As sole counsel, drafting particulars of claim, contending a breach of a contract on behalf of a construction company (involving issues of delay and defective work).
- As sole counsel, advising and drafting particulars of claim in respect to a private nuisance claim.
- As sole counsel, drafting particulars of claim, on behalf of a local authority, contending breaches of a JCT Contract.
- As sole counsel, successfully resisting an application, to be added as a party to breach of contract proceedings.
- As sole counsel, to draft particulars of claim for breach of contract on behalf of a major retailer.
- As sole counsel, successfully resisting an application to re-instate a struck-out claim concerning a construction dispute.
- Acting on behalf of a university, in defending a claim brought against it alleging breach of contract and misrepresentation.
- Subsidence claims.

During pupillage, Gethin gained experience of a variety of matters, including:

- A major ICC arbitration concerning payment disputes, delay and variation claims.
- An international arbitration, concerning consequential loss and exclusion clauses.

- An advice for a corporate client on the implications of the US withdrawal from the relief of Iranian sanctions under the JCPOA. Gethin has a particular interest in international sanctions.
- An adjudication jurisdiction dispute.

Gethin is contributing to the next edition of Wilmot-Smith on Construction Contracts.

As a pupil, Gethin was a member of the winning team in the Worshipful Company of Arbitrators Mediation Skills Competition 2018.

Before commencing practice, Gethin interned with the Chief Justice of Hong Kong at the Court of Final Appeal.

FINANCIAL SERVICES, BANKING & PENSIONS

Gethin is developing a practice in financial services, banking and pensions law. Gethin has acted as consultant counsel to the Financial Ombudsman Service, where he advised on a wide range of issues under the Financial Services and Markets Act 2000. Gethin has also acted in several judicial review claims, on behalf of the Financial Ombudsman Service, as sole counsel.

Gethin is currently instructed as a member of the legal team from 39 Essex Chambers offering legal advice and support to the Foskett Panel. Further information is available online here: www.foskettpanel.com.

Recent matters include, for example:

- As junior counsel, led by James Eadie QC, Daniel Stilitz QC, Simon Murray, and Joanne Clement in the judicial review challenges to the Public Sector Exit Regulations 2020.
- Assisting Katherine Apps, in advising as to the implications of *R (on the application of Palestine Solidarity Campaign Ltd and another) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16, in respect of pensions regulation.
- Assisting to advise in respect to the Restriction of Public Sector Exit Payments Regulations 2020.
- Advising as to apparent and ostensible agency.
- Advising as to the meaning of 'credit' and the scope of 'financial accommodation'.
- Advising as to issues arising from application of *Anderson v Sense Network* [2019] EWCA Civ 1395 [2019] 7 WLUK 533.

Gethin also has a particular interest in the regulation of cryptoassets.

REGULATORY & DISCIPLINARY

Gethin has a keen interest in regulatory and disciplinary law. His experience includes:

- Acting in proceedings before the Solicitors Disciplinary Tribunal, and advising solicitors on SRA regulatory issues.
- Advising the Financial Ombudsman Service as consultant counsel.
- Advising the Office for Students as consultant counsel.
- Acting on behalf of the Civil Aviation Authority, in a successful strike out application of a claim in relation to a decision to provisionally suspend a pilot's medical certificate in the High Court.

During pupillage, Gethin gained experience of a range of regulatory and disciplinary matters, including:

- Drafting a witness statement for a registrant in proceedings before the HCPC Tribunal;
- Drafting an advice in relation to proceedings before the Royal College of Veterinary Surgeons;
- Drafting summary grounds of defence in a judicial review challenge to an interim order of the General Medical Council.

Gethin has also gained experience of regulatory law whilst working in electoral law and misconduct in public office at the Law Commission.

EU LAW

Gethin has a very keen interest in EU law. His recent EU law experience includes acting as junior counsel to Katherine Apps, assisting to advise in respect of a matter arising out of Brexit.

Gethin has also recently written an article on *Canary Wharf (BP4) T1 Ltd v European Medicines Agency* [2019] EWHC 335 (Ch), published by Thompson Reuters' Practical Dispute Resolution Blog.

CIVIL LIABILITY

Gethin appears regularly in the County Court. He also has experience of various types of hearings including appeals, applications from relief from sanctions, specific disclosure, as well as costs and case management hearings. He also undertakes both drafting and advisory work.

Gethin has experience of public liability and employers' liability claims, as well as claims in which fundamental dishonesty is alleged.

During pupillage, he gained broad experience of civil liability matters including:

- A claim brought by a dependent under the Fatal Accidents Act 1976
- Research for the purposes of drafting an advice on vicarious liability, applying *Cox v Ministry of Justice* [2016] UKSC 10 and *Armes v Nottinghamshire County Council* [2017] UKSC 60;
- Drafted an advice, and a defence, in relation to clinical negligence claims brought against both the NHS and a private healthcare provider, which raised issues of non-delegable duty and vicarious liability;
- Part 20 Claim by an employer against independent contractor for indemnity or contribution;
- Drafted schedules of loss and counter schedules, including for claims concerning traumatic brain injury and chronic pain.

As noted above, during pupillage Gethin also gained experience of group litigation nuisance claims.

MEMBERSHIPS

Administrative Law Bar Association

UK Environmental Law Association

Environmental Law Foundation

Commercial Bar Association

Association of London Welsh Lawyers

QUALIFICATIONS

2017, BPTC, BPP University – Very Competent

2014, BA Jurisprudence, Harris Manchester College, University of Oxford – First Class

ADDITIONAL INFORMATION

Scholarships & Awards

2016, Lord Edmund-Davies Award, Gray's Inn

2016, Residential Scholarship, Gray's Inn

2016, Excellence Award, BPP University

Pro bono and other voluntary work

Gethin is committed to pro bono work.

Gethin has volunteered with Free Representation Unit, acting for Claimants in social security appeals. Further examples of Gethin's pro bono experience include volunteering as an adviser at Bethnal Green Legal Advice Centre, and as a researcher with Citizens Advice Bureau.

He was a human rights education trainer with Amnesty International.

Gethin has been a mentor on the Vocalise programme, where he taught debating in prisons.

Gethin has also volunteered with Big Voice, a social mobility and youth empowerment charity.

Gethin is a Trustee of the Lord Edmund-Davies Trust, which is an independent charity established in 2013 to serve young people living in Wales or having a connection with Wales who are interested in entering the legal profession.

Gethin is a member of the Environmental Law Foundation, through which he provides pro bono advice.

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