

Year called 2000

ks@39essex.com



“Provides invaluable advice. She gets the point, doesn’t mess around, is succinct and clear, and very matter of fact.”

### Chambers & Partners

Katie Scott has spent the last nineteen years advising and representing clients in all things health related, from personal injury and clinical negligence, to community care, mental health, and disputes in the Court of Protection concerned with the health and welfare of incapacitated adults. She is currently instructed as one of the junior counsel to the Infected Blood Inquiry, and appears regularly at inquests, (specialising in deaths that arise in hospitals). In addition, she has a busy costs practice as well as experience of property and affairs matters in the Court of Protection.

She is an accredited mediator. She mediates a wide range of disputes, with a special focus on disputes in respect of incapacitated adults. She is also a community mediator, with a focus on neighbourhood disputes.

Katie has many years of experience working with vulnerable clients and witnesses and has had vulnerable witness training.

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### PRACTICE AREAS

- Administrative & Public
- Clinical Negligence
- Personal Injury
- Costs & Litigation Funding
- Inquests & Inquiries
- Alternative Dispute Resolution

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## SECTORS

- Health & Pharmaceuticals

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## PRACTICE AREAS

### ADMINISTRATIVE & PUBLIC

*"She is brilliant; she is very good at picking through points of law and cases that involve tricky mental capacity issues, and her written work is very good." "A talented barrister who is sensitive when navigating cases and has a real gift for knowing how to pitch issues. She is an extremely reliable pair of hands." "She's personable, easy to work with and knows her stuff inside out. She's also very practical and reassuring." Chambers & Partners 2020. "A bit of a force of nature: she's very thorough, and her written work is very good. She's a tough advocate and is very pleasant to work with." Chambers & Partners*

Katie has extensive experience in the Court of Protection and in the High Court (when the Inherent Jurisdiction is invoked) in disputes concerned with the health, welfare, medical treatment and finances of incapacitated adults, most recently in the leading case on the application of the inherent jurisdiction of Meyers [2019] EWHC 399 (Fam). She has a particular interest in fluctuating capacity cases.

She also acts in medical treatment disputes concerning both adults and children. She appeared in the Court of Appeal in *Re A child* [2016] EWCA Civ 759, a case concerned with the withdrawal of life-sustaining treatment in respect of a child and *PW v Chelsea And Westminster Hospital NHS Foundation Trust & Others* [2018] EWCA Civ 1067a case concerning the withdrawal of life sustaining treatment in respect of an adult. She represented the BMA in the Supreme Court in the *Re Y* case [2018] UKSC 46.

Katie also has a busy investigative and inquiry practice. She is currently instructed as one of the junior counsel to the Infected Blood Inquiry, and regularly appearing in inquests (with a particular focus on deaths arising in hospital). She has undertaken an investigation on behalf of a hospital trust into whether their chief executive is a fit and proper person pursuant to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

Katie has advised and represented a variety of claimants and defendants in human rights claims, including claims for breaches of articles 2, 3, 5 and 8. She has a particular interest in human rights claims that arise in a clinical context. She is currently instructed in a number of such disputes arising from the suicide and self-harm of patients while detained in hospital.

Katie also has extensive experience of public law in the field of mental health and community care. As well as appearing at First tier tribunals and the administrative court, she has also brought and defended claims in the County Courts concerned with charges under the community care legislation. Katie is currently recently instructed by the claimant to bring a claim for restitution arising from section 117 of the Health Act 1983 – *Richards v Worcestershire County Council and another* [2017] EWCA Civ 1998).

Katie is an accredited mediator. She mediates a wide range of disputes, with a focus on disputes concerning incapacitated adults.

## CLINICAL NEGLIGENCE

Katie advises and represents both claimants and defendant in all types of clinical negligence disputes. She has a particular expertise in those cases that include a human rights claim, typically breaches of articles 2 and 3 of the European Convention on Human Rights.

In addition she represents properly interested persons at Inquests arising from deaths in hospital or as a result of medical treatment. She also practices in the related areas of personal injury and medical treatment cases in the Court of Protection

At present she is instructed in a number of cases including:

A number of claimants in claims for negligent treatment of the decline of their mental health which led to them carrying out serious assaults on either members of their family or the public.

A respondent trust in a claim for negligent assessment of the claimant's mental health by a mental health nurse and psychiatrist and for a breach of the claimant's article 2 rights arising from his subsequent suicide.

Reported cases include:

*Devonport v Gateshead Health NHS Foundation Trust* [2016] EWHC 1729 (QB)

*Henderson v Dorset Healthcare University NHS Foundation Trust* [2018] EWCA Civ 1841

## PERSONAL INJURY INSURANCE WORK

Katie has extensive experience in the field of personal injury, having represented both claimants and defendants in a wide range of cases, from trippers and slippers to industrial disease.

Katie has extensive experience of large scale litigation, having been instructed in the Probo Koala toxic waste incident in the Cote d'Ivoire as well as the Accident Group Litigation (which settled in 2008) and the Composite Legal Expenses Scheme litigation, a professional negligence claim brought against hundreds of firms of solicitors running housing disrepair claims, industrial disease claims, and general personal injury claims.

She has a busy practice in personal injury claims with an international element and is one of the contributors to the Sweet and Maxwell publication 'Accidents Abroad'.

Katharine also acts in inquests.

## COSTS & LITIGATION FUNDING

*"Produces absolutely excellent written work"* Legal 500 2020

*"She's very clever and confident in what she does." "She's thorough, alive to issues and robust."* Chambers & Partners

*"Thorough, committed and someone with excellent judgement."* Chambers & Partners

Katie advises and represents both Claimants and Defendants in a variety of costs issues before the courts and in arbitrations.

She has advised on the enforceability of CFAs and CCFAs, the recoverability of success fees and insurance premiums, and on solicitor and own client disputes. She has been instructed by the Legal Services Commission in cases involving a variety of issues and has represented applicant solicitors at all stages of their disputes with the

LSC, including appeals to the Contract Review Body and in judicial Review proceedings.

She has extensive experience of the new costs management regime and has appeared at a number of costs management hearings for both claimants and defendants.

She was instructed as junior counsel in the leading case on misconduct in detailed assessment proceedings – *Gempride v Bamrah* [2018] EWCA Civ 1367

## INQUESTS & INQUIRIES

Katie represents a wide range of properly interested persons at Inquests. She has a particular expertise in deaths of psychiatric patients and deaths arising from medical treatment. She also practices in the related areas of clinical negligence, personal injury and medical treatment cases in the Court of Protection.

She also undertakes other investigatory work, including an investigation on behalf of a hospital trust into their chief executive.

Katie has been instructed as junior counsel to the Contaminated Blood inquiry being chaired by Sir Brian Lanstaff.

## ALTERNATIVE DISPUTE RESOLUTION

Katie is an accredited mediator. She mediates a wide range of dispute, with a real focus on mediating disputes concerning incapacitated adults.

She is also a community mediator and mediates neighbour disputes.

She is currently on a working group designing a mediation scheme for the Court of Protection.

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## SECTORS

### HEALTH & PHARMACEUTICALS

Katie advises both individuals and health bodies in a range of disputes ranging from contractual disputes (she has been involved at all levels of the dispute resolution process in cases concerning both dentists and doctors), regulatory proceedings (most recently before the NMC, but also the GDC and other regulators), judicial reviews, references to the Secretary of State for determinations pursuant to section 117 of the Mental Health Act, and welfare and medical treatment disputes before the Court of Protection and the High Court pursuant to the Inherent Jurisdiction.

In addition she has a busy clinical negligence and personal injury practice and has a particular interest in cases where there is both a common law negligence claim as well as one brought pursuant to human rights legislation. She also represents a variety of Properly Interested Persons at Inquests.

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## CASES

### MEDICAL TREATMENT DISPUTES

*Re Y case* [2018] UKSC 46

The case which established there was no obligation to bring cases concerned with the withdrawal of life sustaining treatment for those with a prolonged disorder of consciousness before the Court in the event of agreement that withdrawal is in the P's best interests.

*PW v Chelsea And Westminster Hospital NHS Foundation Trust & Others* [2018] EWCA Civ 1067

A case concerning the withdrawal of life-sustaining treatment to an adult with end stage dementia.

*An NHS Trust v CX, C NHS Trust, D NHS Trust, CX (through his Children's Guardian)* [2019] EWHC 3033 (Fam)

A case in which the Court considered the provision of medical treatment to a Gillick competent child.

*United Lincolnshire Hospitals NHS Trust v CD* [2019] EWCOP 24

A case in which the Court considered the circumstances in which it could make a contingent declaration under the MCA in respect of CD who at the time of the hearing had capacity to make decisions about her obstetric care.

*NHS Trust v JP* [2019] EWHC 1672 (COP)

A case in which the Court considered the appropriate treatment plan for the delivery of JP's baby including the administration of a general anaesthetic to her in the community.

*Royal Bournemouth and Christchurch Hospital NHS Foundation Trust v SM* [2019] EWCOP 19

A case concerning the withdrawal of life sustaining treatment to an adult in circumstances where she would have wanted the treatment to continue.

*Royal Bournemouth and Christchurch Hospital NHS Foundation Trust v SMPL v Sutton CCG* [2017] EWCOP 22

A case concerned with whether life sustaining treatment should be provided to a woman with a significant cognitive impairment following a stroke.

*Re A child* [2016] EWCA Civ 759

A case concerned with the withdrawal of life-sustaining treatment in respect of a child.

#### COURT OF PROTECTION

*Avon and Wiltshire Mental Health Partnership v WA & Anor* [2020] EWCOP 37

A case concerning novel points about the best interests decision, when the Court found the patient had capacity to litigate, but not capacity to make decisions about their medical treatment.

*Southend-on-Sea Borough Council v Meyers* [2019] EWHC 399 (Fam)

A case in which the Court examined the availability of the inherent jurisdiction to protect an elderly man from the neglect of his son.

*United Lincolnshire Hospitals NHS Trust v CD* [2019] EWCOP 24

A case which established the Court's ability to make contingent declarations under the MCA in respect of CD who at the time of the hearing had capacity to make decisions about her obstetric care. Followed in numerous subsequent cases.

*Royal Borough of Greenwich v CDM* [2019] EWCOP 32

A case in which the Court considered what was encompassed within diabetic management for the purposes of assessing CDM's capacity to make decisions about her diabetic management.

*A Local Authority v PS* [2019] EWCOP 60

A case concerning a clash between past and present wishes and feelings.

*London Borough of Southwark v NP & Ors* [2019] EWCOP 48

A case in which important issues of procedure were determined.

*NHS Trust v CX* [2019] EWHC 3033 (Fam)

A case in which the Court was being asked to override the wishes of a 14 year old Jehovah's Witness who needed blood products for life saving cancer treatment.

*Royal Borough of Greenwich v CDM* [2018] EWCOP 15; [2018] 6 WLUK 651; [2018] C.O.P.L.R. 511.

A case concerning the fluctuating capacity of CDM.

*Re Y* [2018] UKSC 46

A case examining whether a court order must be obtained before every clinically assisted nutrition and hydration – which is keeping alive a person with a prolonged disorder of consciousness – can be withdrawn, or whether this can occur without court involvement in certain circumstances.

*PW v Chelsea And Westminster Hospital NHS Foundation Trust & Others* [2018] EWCA Civ 1067

A case concerning permission to appeal a “best interests” decision and transparency order concerning a patient with end stage dementia.

*Re X (deprivation of liberty)* [[2015] EWCA Civ 599

A case in which the Re X procedure for those deprived of their liberty outside the statutory scheme was designed. Katie represented the appellants in the Court of Appeal in an appeal against the President's decision that P did not have to be joined to proceedings concerned with authorising P's deprivation of liberty.

*WCGG v IA* [2014] EWCOP 990

A case in which the Court considered whether P had the capacity to make a range of decisions for himself.

*C v A Local Authority, LMP, LM, A PCT and An organisation* [2011] EWHC 1539 (Admin)

A case in which the Court considered the application of the Code of Practice to the Mental Health Act 1983 to the seclusion of incapacitated teenagers in schools.

*PH v A Local Authority, Z Ltd and R* [2011] EWHC 1704 (Fam)

A case in which the Court gave guidance on the principles to be applied when addressing the issue of capacity under the Mental Capacity Act.

*LLBC v (1) TG (2) JG (3) KR* (Fam Div) 14 November 2007 [2007] EWHC 2640 (Fam)

The task to be undertaken by the court at a without notice hearing involving vulnerable adults was to evaluate as best it could the degree of urgency, the risks of intervening by way of making an order and the risks of not intervening at that stage.

**PUBLIC**

*Richards v Worcestershire County Council and another* [2017] EWCA Civ 1998

A claim in restitution brought in respect of care services paid for at a time when the claimant was assessed as requiring section 117 after-care services pursuant to the Mental Health Act 1983.

*SB v A Local Authority* October 2012 Court of Appeal (2012) EWCA Civ 1269

On the findings of fact made by a first instance Judge in a case concerning the rape of a child with a learning disability by her father

*R (on the application of W) v Croydon LBC* [2011] EWHC 696 (Admin)

A case in which the court considered the lawfulness of a decision regarding the placement of the applicant was taken after a flawed consultation in circumstances where the local authority were entitled to terminate the applicant's placement on the basis of cost.

#### REGULATION

*Professional Standards Authority v Health and Care Professional Council* [2016] EWHC 1237 (Admin)

A case concerning the provision of a dishonest reference

#### COSTS & LITIGATION FUNDING

*Gempribe v Bamrah* [2018] EWCA Civ 1367 in which the Court of Appeal considered what amounts to misconduct within detailed assessment proceedings.

*Sims v Hawkins* (CA) 14 November 2007 [2007] EWCA Civ 1175

Application for a costs order against directors of the defendant company pursuant to section 51 of the Supreme Court Act.

#### PROFESSIONAL NEGLIGENCE

*EH (A Protected Party, by her Litigation Friend the Official Solicitor) v Dorset Healthcare University NHS Foundation Trust* [2018] EWCA Civ 1841

A clinical negligence claim in which the illegality defence is being run. An application for permission to appeal to the Supreme Court has been lodged.

*Devonport v Gateshead Health NHS Foundation Trust* [2016] EWHC 1729 (QB)

A clinical negligence dispute.

*AXA Insurance Limited v Various Firms of Solicitors* (2010)

Professional negligence group litigation brought by insurers to the Composite Legal Expenses scheme (CLE), against various panel solicitors

*Winterthur Swiss Insurance Co v AG (Manchester) Ltd & ors* ('The Accident Group Litigation') (2007)

Professional negligence action on a grand scale, brought by insurers to The Accident Group (TAG), against TAG Panel Solicitors

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## RECOMMENDATIONS

Katharine is recommended for Administrative and public law and Costs in the Legal 500.

Katherine is recommended by Chambers & Partners for Court of Protection: Health & Welfare and Costs Litigation

#### Quotes

*"She is one of the most sensible advocates I've ever come across, insofar as she has a particular gift for identifying the central point in a case, and she's imaginative in trying to find solutions."* Chambers & Partners 2019

*'A practical choice for healthcare matter.'* Legal 500 2018

*"She's so good with clients; she puts them at ease, highlights their issues and isn't afraid to tell them when they're wrong, albeit in a very sensitive and understanding way."* *"She's really on the ball, incredibly authoritative and very likeable. You've got to be able to be pragmatic in this field, and she's certainly that."* Chambers & Partners 2017

*"She's very clever and confident in what she does."* *"She's thorough, alive to issues and robust."* Chambers & Partners 2017

*"An aptitude for practical solutions and a very personable approach – ideal to have on your side";* Legal 500 2016

*"She's very robust, extremely tenacious in court and she connects well with the clients."* *"She's incredibly good on her feet, completely unflappable and able to deal with tricky judges."* Chambers & Partners 2016

*"A professional and highly effective advocate."* Legal 500 2015

*"Broad experience in disputes involving incapacitate adults."* Legal 500 2015

*"Thorough, committed and someone with excellent judgement."* Chambers & Partners 2015

*"She's very intelligent and always has a practical solution for everything. She's brilliant with clients."* Chambers & Partners 2015

*"A bit of a force of nature: she's very thorough, and her written work is very good. She's a tough advocate and is very pleasant to work with."* Chambers & Partners 2015

*"A professional and highly effective advocate, who is good at managing expectations."* Legal 500 2014

*"Highly experienced"* 2014

*"She has a top-drawer client profile."* Chambers & Partners 2014

*"She is excellent with lay clients, very down to earth and always goes above and beyond."* Chambers & Partners 2014

*"Provides invaluable advice. She gets the point, doesn't mess around, is succinct and clear, and very matter of fact."* Chambers & Partners 2014

*"thoroughly conscientious"* Legal 500 2011

*"a strong choice for cases involving Conditional Fee agreements, including advisory work"* Legal 500 2008

*"excellent"* Legal 500 2007

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