

KRITI UPADHYAY

Call 2011

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Kriti Upadhyay is a medical lawyer, specialising in [Clinical Negligence](#), [Court of Protection](#), [Professional Discipline](#), and [Personal Injury](#).

Her expertise allows her to advise on a wide range of legal issues arising in the healthcare sector, including Civil claims, Inquests, representing medical professionals before regulatory bodies, advising on Health and Welfare cases involving vulnerable adults in the [Court of Protection](#), and advising on cases involving issues of Mental Health law. Kriti has been commended by instructing solicitors for her preparation, attention to detail, and her advocacy skills.

Kriti is recommended as a Leading Junior in the Legal 500 for clinical negligence, Court of Protection, professional discipline and personal injury.

Kriti jointly heads the [Court of Protection](#) and Public Law team in Chambers.

Seminars

- 23 July: Personal Injury & Clinical Negligence: Pre-action disclosure and the duty of candour ([Video](#) | [PP slides](#))
- 21 May: Personal Injury – Vicarious Liability: Where are we now? ([Video](#) | [PP slides](#))

Expertise

Clinical Negligence

Kriti has a busy clinical negligence practice, and advises on a wide range of cases ranging from complex obstetric and gynaecological issues, delayed cancer diagnoses and surgical errors in various disciplines. She is instructed to advise and appear in court in matters by both claimants and defendants. Kriti regularly drafts pleadings for complex and high value cases, advises both in conference with experts from various disciplines, on settlement, and in respect of procedural issues such as limitation and disclosure.

Kriti also has significant clinical negligence inquest experience, including Article 2 jury inquests, each involving a number of medical professionals giving evidence over several days. Kriti regularly represents families and medical professionals at inquests.

Recent clinical negligence instructions include cases involving:

- **Obstetrics and gynaecology:** delayed diagnosis and management of endometrioma leading to infertility; negligent placement of contraceptive implants; management of complex perineal tears; delayed diagnosis and management of ectopic pregnancy; pressure injuries sustained during labour; delayed diagnosis of complications leading to stillbirth.
- **Psychiatric injury and treatment:** pre-existing vulnerabilities; Somatic Symptom Disorder; PTSD or adjustment disorders following negligent surgical or medical treatment. Due to her academic background and other areas of practice, Kriti has a particular interest and expertise in cases involving capacity issues, issues arising from assessment and treatment under the Mental Health Act 1983, and cases that involve treatment for physical health conditions to patients detained under the MHA 1983.
- **Oncology:** delayed diagnosis of malignant melanoma; delayed diagnosis of metastatic breast cancer; urinary injury sustained following radiotherapy and brachytherapy treatment for cervical cancer.
- **Orthopaedic and spinal surgery:** delayed diagnosis and management of foot drop; management of symptoms by way of revision discectomy; delayed diagnosis and treatment of shoulder dislocation; nerve damage sustained during carpal tunnel release surgery.
- **Geriatrics:** allegations of negligent care leading to pressure damage and/or falls; delays in diagnosis or treatment of bowel obstruction.
- **Urology:** delayed diagnosis of chronic urinary retention; injury to ureter in the course of routine surgery.
- **Consent issues and unnecessary/inappropriate treatment:** Kriti has a particular interest and expertise in cases involving concerns of whether consent has been appropriately obtained in respect of medical or surgical treatment offered to the patient, Montgomery issues, and allegations of treatment being carried out where it was medically unnecessary or inappropriate.

Kriti is a contributor to the Clinical Negligence section of the **Butterworths Personal Injury Litigation Service**.

Court of Protection

Kriti has a varied Court of Protection practice, specialising in health and welfare cases, including personal welfare applications, challenges to deprivation of liberty authorisations under the Mental Capacity Act 2007, and cases involving medical treatment.

She is instructed to act on behalf of vulnerable adults through the Official Solicitor and other litigation friends, family members and local authorities in matters, including where there are complex issues of capacity and medical evidence, or infringement with human rights. She regularly advises on cases involving issues in respect of care provision, residence, contact, and medical treatment.

Having specialised in mental capacity and Mental Health law during her LLM in Medical Law and Ethics, Kriti's strong skill set in these areas gives her a particular interest in Health and Welfare cases. She has extensive experience of dealing with vulnerable clients and complex medical evidence, both in conference and when questioning medical professionals and experts in court.

Kriti also advises on cases involving issues under the Mental Health Act 1983 as part of her broader public law practice.

Featured Court of Protection cases

Re JM (by her litigation friend the Official Solicitor) (2022)

Kriti represented the protected party, a lady with suspected vascular dementia, an in-patient in hospital in England. She expressed a strong desire to move back to Scotland and into her own home, but refused to allow any proper assessment of her care to be carried out. The Court of Protection was asked to determine questions of capacity, and where it was in her best interests to reside and receive care. Despite an application by the hospital trust to have the protected party discharged to a care home in England (where there was an available place), the Court of Protection was persuaded that it was in her best interests to be moved to Scotland. Issues in the case included complex jurisdictional points of law due to the different English and Scottish regimes, Covid vaccination, and necessary sedation and restraint.

Re CS (by his litigation friend the Official Solicitor) (2021)

Kriti represented the protected party, an elderly man deprived of his liberty at a care home, with a diagnosis of dementia and a history of other health issues. The proceedings were brought due to a long-standing dispute between the local authority, CS's daughters, and his wife, as to which geographical location he should reside and receive care in. Kriti represented him at a number of hearings, including a 2-day final hearing.

Re RE (by her litigation friend the Official Solicitor) (2021)

Here a local authority and hospital trust brought health and welfare proceedings in respect of the protected party following her discharge to her own home from a period of detention in a secure hospital under the Mental Health Act 1983. She had a complex diagnosis of autistic spectrum disorder, Asperger's syndrome, emotionally unstable personality disorder, and a borderline learning disability. The applicants sought authorisation for periods of locking her doors and windows for up to 28 days when she attempts to abscond from her home. Kriti was instructed to represent to protect her best interests and ensure that the deprivation of her liberty was the least restrictive necessary.

Re LS (2021)

Kriti was instructed to represent the protected party in s21A proceedings challenging the deprivation of her liberty at a care home. She had a diagnosis of schizoaffective disorder and other health issues. The key issues concerned the fundamental jurisdiction of the Court of Protection, and Kriti was able to persuade the respondents and the Court that the protected party had the capacity in all the disputed areas, and that accordingly the standard authorization in respect of her deprivation of liberty at the care home was unlawful and should be terminated. The protected party was free to return to her own home.

Regulatory & Discipline

Kriti appears before the Nursing and Midwifery Council's professional disciplinary panels on a range of cases, and has a rapidly growing practice in the area of Professional Regulation.

She regularly represents nurses and midwives at substantive NMC hearings lasting 5 or more days, on a range of complex allegations, including clinical concerns, misconduct and health issues, as well as at Interim Order and Substantive Order review hearings and Inquests.

Kriti also regularly advises my lay and professional clients on evidential issues, legal challenges to charges and/or admissibility of evidence, and expert evidence. She is developing a particular specialism in cases involving allegations of dishonesty, and has extensive experience of interacting sensitively with vulnerable witnesses and registrants, as well as handling expert medical evidence in cases raising issues of causation or health concerns.

Kriti also advises on cases involving Disclosure and Barring Services, and has experience of General Dental Council and Care Council For Wales proceedings.

Before her time at Guildhall Chambers, Kriti was employed by the NMC, where she gained experience of Professional Disciplinary law and procedure, including Substantive and Interim Order hearings, complex and multi-registrant cases, High Court interim order applications and appeals, as well as Judicial Review proceedings. Kriti assisted with a number of high profile cases and appeals during her time at the NMC.

Personal Injury

Kriti advises on a wide range of Personal Injury cases on behalf of both claimants and defendants. Her practice includes cases involving a range of injuries sustained in Road Traffic Accidents, Employers' Liability, Public Liability and Animals Act claims. Kriti also has experience of Criminal Injury Claims (CICA) and Motor Insurance Bureau (MIB) claims.

She is regularly instructed to advise on, appear in court and to draft pleadings for multi-track cases, advising both claimants and defendants in conference with experts from various disciplines and on settlement. She appears in court regularly on a range of hearings including Costs and Case Management Conferences (CCMCs), fast track trials, and applications.

Kriti has a growing practice in the area of fundamental dishonesty and has been instructed to act in a number of cases where this has been an issue. Kriti is happy to work on a nil-uplift Conditional Fee Agreement basis in appropriate cases.

Inquests

Kriti has extensive inquest experience, regularly representing families, medical professionals and companies such as care homes. She has acted in multiple Article 2 and jury inquests, and in inquests involving multiple expert witnesses and complex issues of clinical decision-making.

She recently represented the family at a lengthy jury inquest, which arose out of an accident at work involving a lorry mounted crane. The Coroner was persuaded to make a PFD report to the Secretary of State for Transport to increase awareness of the incident throughout the industry, and to ask for action to be taken to disseminate learning and reduce the risks present in older vehicles. Earlier this year Kriti also acted in a three-week long complex Article 2 jury inquest where she represented a healthcare professional involved in the care of the deceased prisoner.

Costs & Litigation Funding

Kriti's Costs practice covers a range of areas including personal injury and clinical negligence. She acts for both claimants and defendants at hearings including CCMCs and applications, and regularly advises on costs issues including:

- Costs following Part 36 offers
- Fixed costs provisions
- Arguments that a claim has unreasonably left the MOJ Portal
- Qualified One-Way Costs Shifting (QOCS) provisions, including in the context of fundamentally dishonest claims
- Set-off of costs in cases involving multiple defendants
- Wasted costs orders
- Costs arising from the discontinuance of a claim

Recommendations

Kriti is ranked as a Leading Junior in many areas in the Legal 500 UK Bar rankings.

Clinical Negligence – Ranked: Tier 1

– *'One key strength of hers is her attention to detail. She is confident and articulate in conference and is also very good with clients, especially in upsetting cases with tricky issues.'* **Legal 500 2024**

Professional Negligence – Ranked Tier 1

– *'Kriti is extremely professional, caring and compassionate. She is everything you need in a barrister.'* **Legal 500 2024**

Court of Protection – Ranked: Tier 1

– *'Kriti has great attention to detail and a solid understanding of the law which she applies effectively. She is a fantastic advocate in and out of court. Her interpersonal skills are second to none – she highly professional and empathetic.'* **Legal 500 2024**

Personal Injury – Ranked: Tier 3

– *'Kriti is exceptionally well prepared, enthusiastic and empathetic. Her attention to detail is apparent in her questioning of witnesses and well-considered submissions.'* **Legal 500 2024**

Education

- BPTC, Kaplan Law School, London
- LLM (Distinction), Medical Law, King's College London
- BA (Hons), Jurisprudence, Merton College, University of Oxford

Memberships

- Court of Protection Practitioners Association
- Personal Injury Bar Association
- Western Circuit
- AvMA
- Court of Protection Bar Association

Publications

Kriti is a contributing author to the clinical negligence section of the Butterworths Personal Injury Litigation Service, alongside others from the Guildhall Chambers clinical negligence team.