

KRITI UPADHYAY

CALL: 2011

"Kriti has an excellent strategic brain. She is extremely reliable and detail-orientated. Reassuring, calm and eloquent and able to decipher complex cases to ensure clients understand all merits and risks to their case. She delivers advice with compassion."

LEGAL 500 2022

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Kriti is a medical lawyer, specialising in clinical negligence, Court of Protection health and welfare, 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 jointly heads the Court of Protection and Public Law team in Chambers.

PRACTICE AREAS

- Clinical Negligence
- Court of Protection
- Professional Discipline
- Personal Injury
- Costs
- Seminars

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 multi-track cases, advises both in conference with experts from various disciplines and on settlement.

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

COURT OF PROTECTION

Kriti jointly heads the Court of Protection and Public Law team in Chambers. She 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 skillset 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.

Recent Court of Protection cases include:

- **Re JM (by her litigation friend the Official Solicitor) [2022]:**Kriti represented the protected party, a lady with suspected vascular dementia, and 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 needs to be carried out. The Court of Protection was asked to determine questions of capacity, and where it was in P's best interests to reside and receive care. Despite an application by the hospital trust to have P discharged to a care home in England where there was an available place, the Court of Protection was persuaded that it was in P's best interests for her 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 CS should reside and receive care in. Kriti represented CS at a number of hearings, including a 2-day final hearing.
- **Re RE (by her litigation friend the Official Solicitor) [2021]:**the local authority and hospital trust brought health and welfare proceedings in respect of P following her discharge to her own home from a period of detention in a secure hospital under the Mental Health Act 1983. P had a complex diagnosis of autistic spectrum disorder, Asperger's syndrome, emotionally unstable personality disorder and borderline learning disability. The applicants sought authorisation for periods of locking P's doors and windows for up to 28 days when she attempts to abscond from her home. Kriti was instructed to represent RSE 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 P in s21A proceedings challenging the deprivation of her liberty at a care home. P 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 P 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. P was free to return to her own home.

PROFESSIONAL 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. She also regularly advises my lay and professional clients on evidential issues, legal challenges to charges and/or admissibility of evidence, and expert evidence. Kriti 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 Nursing and Midwifery Council, 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 CICA and MIB claims.

Kriti is regularly instructed to advise on, appear in Court and to draft pleadings for multi-track cases, advise 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 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 CFA basis in appropriate cases.

COSTS

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;
 - 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.
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SEMINARS

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

- Greyson v Fuller - High Court Judgment
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RECOMMENDATIONS

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Professional disciplinary law

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Clinical Negligence

'Kriti leaves no stone unturned. She is very knowledgeable, precise, and provides advice in a timely manner.'

LEGAL 500 2021

Clinical Negligence

'A confident and articulate advocate who is persuasive and pragmatic in her application of the law.'

MEMBERSHIPS:

- Personal Injury Bar Association
 - Court of Protection Practitioners Association
 - Western Circuit
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EDUCATION:

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

- Personal Injury & Clinical Negligence Newsletter - April 2020
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