

Samantha Presland

Year of Call: 2001

Direct Access: Yes

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Samantha Presland specialises in the fields of **Court of Protection**, **Clinical Negligence** and **Personal Injury**. She also has an extensive Inquests practice, spanning each of the foregoing fields of specialism. Sam has a particular interest and expertise in aspects of **mental capacity** law and in psychiatric injury cases.

She appears in the Court of Appeal, High Court, County Court and Coroners Courts.

Sam acts for claimants, insured defendants and NHS Resolve alike in all of her practice areas. Within her Court of Protection practice she acts for families, the Official Solicitor, the Office of the Public Guardian, Health Trusts and Local Authorities.

She brings to each and every case the same analytical approach, attention to detail, practical solutions and client focused, open and sensitive manner.

Sam is a qualified **mediator** and a member of the Civil Mediation Council, acting as a mediator in various civil and community matters. She finds her mediation experience and skills of particular value when acting in matters where compromise and problem-solving are preferable to combative litigation, in order that best interests are met. Sam has a genuine ability to relate compassionately but constructively with distressed families, as well as to work to achieve practical solutions with professional parties.

She is extremely approachable in her communications with both professional and lay clients. At the pre-instruction stage, Sam is always happy to discuss cases informally. As to urgent applications to the Court of Protection and in inherent jurisdiction cases, she is likewise ready to be contacted directly to expedite matters.

Sam accepts instructions from solicitors, as well as from members of the public, the latter under the Bar Council's Public Access (i.e. Direct Access) scheme.

Sam sits in the County Court as Civil Recorder in all civil legal matters and in the Crown Court as a Criminal Recorder with a Serious Sexual Offences ticket.

She is happy to provide, or assist with, training across any of her areas of practice, for solicitors who may wish to meet her to see how she approaches legal issues.

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Areas of Expertise

Court of Protection

Court of Protection/Mental Capacity & Best Interests

Sam has expertise in both Health and Welfare and Property and Affairs applications to the Court of Protection. In inherent jurisdiction matters, Sam has been instructed in a wide range of cases, including those involving urgent medical treatment (most recently in the Court of Appeal in a case concerning the withdrawal of treatment). Her work encompasses injunctions, deprivation of liberty, physical and financial abuse, as well as combined Court of Protection and judicial review proceedings.

She is able to relate well to clients, both lay and professional, and is tactful in dealing with cultural, religious and individual sensitivities. She combines an awareness of these issues with an ability to read the court, in order to best influence outcomes for those involved.

Health & Welfare

As to the Health and Welfare aspects of the Court of Protection, Sam is particularly skilled in healthcare and public law cases with a medical aspect. Her background of almost 20 years in Clinical Negligence provides her with unique insight into these often challenging cases. She also has extensive experience in obtaining the best outcomes possible in cases involving complex psychological/psychiatric/behavioural difficulties.

Recently, Sam's work has included:

- A Court of Appeal end-of-life case for the family of a dementia patient wishing to maintain hydration and nutrition via a nasogastric tube ([RW v Chelsea and Westminster Hospital NHS Foundation Trust \[2018\] EWCA Civ 1067](#)).
- Several successful applications for families of young autistic adults deprived of their liberty by Local Authorities after having been taken into residential homes, initially only for brief periods of respite, but then not allowed back to the family home.
- An application by an Afro-Caribbean family wanting to care for a P at home following a severe stroke, in which they were successful after a five day contested hearing, with significant argument about the cultural importance of caring for elderly and ill relatives within the Afro-Caribbean community. The decision as first instance was appealed by the Local Authority, but the family were again successful in front of Mr Justice Baker.
- An urgent application for the Official Solicitor in relation to a P diagnosed with terminal cancer, who wished to be cared for in her last few weeks at her own home rather than at the care home she was in.
- A serious medical treatment matter, also for the Official Solicitor, concerning the administration of anti-epileptic medication to an adult lacking in capacity, when her parents objected.
- A consent to marriage and sexual relations matter for a local authority, in which there was complicated interplay between the determination that P had capacity to consent to sexual relations but not the capacity to determine his contact arrangements with other individuals.

Property & Affairs

With regard to the Property and Affairs cases in the Court of Protection, Sam frequently acts for the Office of the Public

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Guardian (“OPG”) in complex contested Power of Attorney and Deputyship matters. Examples include cases raising allegations of financial abuse, conflict of interest, competence, or questions over the validity of an appointment. She also acts for the holders of Lasting Powers of Attorney (“LPA”) in Court of Protection applications.

Sam’s recent cases include:

- Acted for the OPG in a contested sibling dispute about a property and affairs LPA for their mother, in which there were multiple allegations between the siblings of financial abuse and duress.
- A successful application by a family member to maintain a property and affairs LPA following an application by the OPG to remove them, due to questions over the donor’s mental capacity at the time of making the LPA.
- Several applications for the OPG regarding the validity of LPAs in conflict-of-interest situations, where family members reside in the family home and are financially dependent upon the donor, whilst at the same time being the financial affairs attorney.

Clinical Negligence

Sam has a broad practice in this area, and has a firm grasp of medical issues, based on more than 20 years’ experience in the field. This allows her to manage expert witnesses both in conference and in court. She is also able to act in claims with a Human Rights Act 1998 (“HRA”) element, given her mental capacity law experience.

Sam often appears in inquests involving aspects of medical treatment and care. In particular, she has been instructed in several Article 2 Inquests where psychiatric patients have committed suicide whilst sectioned under the Mental Health Act 1983. As well, she has acted in Article 2 inquests involving prison deaths. Sam is able to use her experience as a criminal recorder sitting in jury trials to act as a persuasive jury advocate in Article 2 inquests.

Notable Clinical Negligence cases

Settlement for close to seven figures in a claim under the Fatal Accidents Act 1976 for the cohabiting partner and family of a 31-year-old man, following his death from a rare auto-immune condition, which the hospital failed to recognise and treat appropriately. The settlement sum included £250,000 towards the loss of services the deceased would have provided to his child, who was born after his demise. His services were quantified based on the costs of replacement by a live in carer.

Delay in the diagnosis and treatment of brain injuries, leading to extensive brain damage. Complications have arisen in one such case due to a liability dispute between hospitals and the ambulance service over responsibility for the Claimant’s care.

Psychiatric injury cases where the patients committed suicide. One case, in which the deceased was wrongfully discharged from psychiatric hospital and sadly killed himself, quantum was complicated due to his high earnings capacity before his mental health difficulties, ultimately settling in excess of £1 million.

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Cerebral palsy claims, most recently dealing with a settlement following the compromised appeal in *JR v Sheffield Teaching Hospitals NHS Foundation Trust* [2017] EWHC 1245 (QB); [2017] 1 WLR 4847.

Bacterial infections, including MRSA, in surgical/hospital settings, where catastrophic injuries are caused by a delay in the diagnosis, and/or a failure to properly treat/prevent the infection. In one case, the ultimate result was a leg amputation.

A claim related to an abdominal plastic surgery, leading to significant scarring and psychiatric injury.

Several cases against the Ministry of Defence (“MoD”) for failure to properly diagnose and treat soldiers with symptoms of PTSD, leading to long-term chronic mental health difficulties and ultimately to discharge from the Army.

Cases involving failure by the MoD to properly ensure soldiers received appropriate medical treatment and therapy whilst serving.

Several cases based on the negligent insertion of intravenous-ocular lenses to correct vision in elderly patients with glaucoma, causing loss of sight in the patient’s better eye, resulting in effective blindness.

Failure by GPs over several weeks to diagnose and treat pneumonia, leading to the death of a young woman, who was her learning-disabled husband’s carer. As such, the dependency claim is of significant value and extremely complex.

Failure to properly prevent post-surgical coagulation, leading to Deep Vein Thrombosis with significant permanent physical and psychiatric implications.

A case for the NHS related to a failure to properly manage the medical treatment regime of a patient with Parkinson’s disease.

Cases involving delay in the diagnosis of cancer, including one in which settlement was achieved within 6 weeks of issue, ensuring the Claimant was able to have funds in the last 6 months of his life.

Shoulder dystocia claims.

Personal Injury

Sam has extensive experience in high value catastrophic injury, chronic pain and complex psychological/psychiatric injury matters, which often involve difficult causation and quantum issues. Her work includes employer's liability and public liability claims for claimants and defendants. She has a particular specialism in cases brought by military personnel against the MoD.

Sam also has deep knowledge of industrial disease claims, including deafness, including a series of over 60 litigations against the same defendant by individual claimants. In this area of her practice, she now concentrates on asbestos-related cases and complex repetitive strain injury or hazardous exposure cases.

She acts authoritatively in abuse/HRA claims against care homes/healthcare providers and claims against local authorities in cases involving a failure to protect, using the experience gained in her Court of Protection/mental capacity practice. As well, she acts in historic sexual abuse claims.

Sam's personal injury work includes inquests for families and all other interested parties.

Notable Personal Injury cases

A settlement of £500,000 for a severely mentally impaired adult claimant who sustained 60% burns due to failings at the residential care home where he lived. Quantum was complicated by his high previous care needs in any event, and a requirement for the cost of a deputyship to be included for the rest of his life.

A settlement in a claim under the Fatal Accidents Act 1976 for elderly parents following the death of their daughter who had been their primary carer. The settlement included a 6-figure sum towards loss of their daughter's services as they aged, taking into account the costs of care homes, which would now have to be considered.

Sexual abuse of a resident within an in-patient setting by other residents, resulting in severe PTSD, anxiety, depression and self-harming.

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A complex suicide inquest for the family, where the deceased was suffering from bipolar disorder. The issues included alleged financial impropriety by a private mental health counselling and referral service which acted as an agent for a well-known private hospital. The case received press attention.

Stress at work and bullying claims, including under the Protection from Harassment Act 1997. Several of these were against the MoD and particularly sensitive, one involving sexual harassment against a former member of the Women's Royal Naval Service.

A psychiatric injury/human rights claim by the parents of a stillborn child, who were given incorrect information about the sex of the baby before burial.

Spinal and head injury catastrophic cases, including claims arising from uninsured or untraced drivers brought against the Motor Insurers' Bureau.

Memberships

- Civil Recorder (2018)
- Criminal Recorder (2016), Serious Sexual Offences Ticket (2018)
- APIL
- PNBA

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