



# Emma Gilsenan

Call to the Bar: 2008

Emma is a versatile practitioner with a practice that combines criminal litigation, professional disciplinary and regulatory proceedings, inquest law, prison law and public law. Her areas of expertise complement one another, enabling her to offer a comprehensive service to organisations, professional and lay clients seeking advice and representation.

Prior to joining Chambers, Emma completed an appointment as Assistant Public Solicitor in the British Overseas Territories of St Helena and Ascension Island (in the South Atlantic). During this appointment, Emma was admitted as an Advocate of the Supreme Court of St Helena, Ascension Island and Tristan Da Cunha. Emma was asked to return to the Island in this role, following her appointment pre-pupillage, to advise on a specific high profile cross jurisdictional case. In addition to having conduct of a series of high profile and politically sensitive cases, Emma conducted general criminal, civil, medical regulatory and professional disciplinary matters. Emma recently returned to the islands to assist the Public Solicitor's Office in various professional capacities in 2017 and 2018.

Emma is described by referees as "an excellent advocate". She has appeared in the Supreme Court of St Helena and was commented upon in reported cases, to have advanced arguments capably. Emma is further noted by the former Public Solicitor for St Helena and Ascension Island to have "worked exceptionally hard and was an asset to the Public Solicitor's Office".

As a practitioner, Emma is commended by instructing solicitors for her "impressive professional conduct advocacy, and hard work". She prioritises client care and good working relationships with those instructing her. Emma has demonstrated her ability to build relationships in her roles in a number of different jurisdictions and cultures, dealing with some very sensitive issues.

In 2017, Emma undertook a 12-month secondment with the General Medical Council (GMC) where she broadened her knowledge base and practical experience of the medical regulatory framework. Emma regularly advised on Rule 12 review requests, having regard to complaints raising new information and/or alleged material flaws in the GMC decision making process. In the course of this work, Emma frequently considered and advised on the impact of Inquest documents including Coroner Reports/Verdicts, Trust Investigation Reports, Independent medical investigation reports and medical records.

Emma is on the GMC approved list of advocates for presenting, and regularly appears in respect of, Fitness to Practise proceedings arising from allegations of misconduct, deficient professional performance, conviction, adverse physical or mental health, English speaking, and determinations by other regulatory bodies. In addition, Emma is experienced, and approved by the GMC, in providing advice and representation in respect of Interim Order, Review and Non-Compliance hearings.

## Professional Discipline/Regulatory Proceedings

Emma has experience in representing professional bodies and individuals, including medical practitioners, in professional disciplinary and regulatory proceedings. She understands, and is sensitive to, the issues that can arise in the career of professional clients following allegations of misconduct and impaired fitness to practise.

Emma accepts instructions to appear before Misconduct Hearings / Fitness to Practise Tribunals and Panels where allegations of impairment have been made.

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In addition, Emma frequently advised on applications in respect of whether the public interest criteria had been met to investigate matters outside of the five year limitation period in accordance with Rule 4(5).

As part of her secondment with the GMC, Emma worked within the legal team and liaised with, and assisted in the provision of legal advice, Investigation Officers, Assistant Registrars and Principal Legal Advisers in the course of their roles.

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## PRACTICE AREAS

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## EDUCATION

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## Notable Cases

**GMC v Dr A** – Acted for the GMC in a FtP hearing involving impaired fitness to practise of a specialty doctor in Obstetrics and Gynaecology who asked inappropriate questions about sexual positions, the use of sex toys, whether the patient 'liked licking', ownership of pornography, all of which were not clinically indicated. Further concerns were considered by the Tribunal in respect of the circumstances of intimate examinations, absence of a chaperone during intimate examinations and practices in respect of the examinations, a significant proportion of which were found proved and to be sexually motivated. The facts underpinned a finding of impairment and ultimate sanction of erasure.

**GMC v Dr D** – Acted for the GMC in a FtP hearing involving impaired fitness to practise of Dr D who was found to have dishonestly forged signatures on timesheets, submitting them for payment, and failed to inform prospective employers of ongoing investigations and conditions.

**GMC v Dr M** – Acted for the GMC in a FtP hearing involving impaired fitness to practise of a staff grade doctor in Obstetrics and Gynaecology. The issues arose following unacceptable clinical management and failing to address issues raised in respect of assessments and record keeping. The facts underpinned a finding of impairment and ultimate sanction of conditions.

**GMC v Dr H** – Acted for the GMC in a review hearing involving issues of adverse physical and mental health.

**GMC v Dr B** – Acted for the GMC in non-compliance proceedings involving issues of misconduct in respect of GP practice management, incorrect prescribing, patient complaints and insufficient funds to pay staff at the practice.

**GMC v Dr B** – Acted for the GMC in a FtP hearing in a case involving impaired fitness to practise by not having the necessary knowledge of English. The facts underpinned a finding of impairment and ultimate sanction of suspension of 12 months.

**GMC v Dr O** – Acted for the GMC in a FtP hearing involving a course of dishonest conduct where Dr O, a prison doctor, practised without a certificate. The facts underpinned a finding of impairment and ultimate sanction of suspension of 12 months.

**GMC v Dr L** – Acted for the GMC in non-compliance proceedings involving issues of deficient professional performance in respect of widespread concerns regarding Dr L's capability as a CT3 trainee.

**GMC v Dr O** – Acted for the GMC in a review hearing involving issues of misconduct following findings of fact and impairment where Dr M had been assisting a consultant in surgery, despite not having a licence to practise.

**GMC v Dr M** – Acted for the GMC in a conviction case following Dr M's conviction for Causing Serious Injury by Dangerous Driving.

**GMC v Dr D** – Acted for the GMC in non-compliance proceedings involving issues of deficient professional performance in respect of a locum anaesthetist.

**GMC v Dr A** – Acted for the GMC in a review hearing involving issues of adverse physical and mental health.

**GMC v Dr E** – Acted for the GMC in a review hearing involving issues of misconduct following findings of fact that Dr E had been inappropriately prescribing 'Botox'.

**GMC v Dr M** – Acted for the GMC in a review hearing involving issues of health issues arising from the consumption of alcohol.

**GMC v Dr G** – Acted for the GMC in a review hearing involving issues of health and a protracted history of varied compliance with directions to undergo health assessments.

**GMC v Dr M** – Acted for the GMC in non-compliance proceedings involving issues of misconduct and deficient professional performance in respect of concerns raised during a CT2 psychiatry post. The concerns included repeated clinical mistakes, poor prescribing, poor record keeping, lack of familiarity with clinical procedures and guidelines and failure to work effectively and collaboratively with colleagues.

**Greater Manchester Police v JP** – Legal Assessor, advising a Panel at a police gross misconduct hearing in relation to allegations of dishonesty against a Detective Inspector. The allegations were numerous and covered aspects of finance, dishonest and false representations, as well as making false declarations and statements on internal Force Vetting Forms.

**St Helena Government v Healthcare professional** – Advised and made representations in respect of disciplinary proceedings regarding alleged breaches of professional conduct.

**St Helena Government v Healthcare professional** – Advised and made representations in disciplinary proceedings in respect of alleged breaches of procedural compliance.



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## Inquests

Emma's experience in providing advice and representation in medical regulatory proceedings has substantial overlap with Inquest and Coronial law.

In recent years, most notably in the course of her secondment with the GMC, Emma frequently considered and advised on the impact of Inquest documents and Coroner Reports/Verdicts, Trust Investigation Reports, independent medical investigation reports and medical records.

Emma is adept at utilising her knowledge, litigation experience and understanding and analysing of medical evidence to obtain results for professional and lay clients whilst also being mindful of the ramifications of evidence in one forum, such as a Coroner's Court, being relied upon in other forums.

Emma accepts instructions in all areas of Inquest and Coronial law.

## Criminal Law

Emma has substantial experience dealing with criminal matters in the UK and abroad; her practice encompasses all areas of criminal litigation.

She accepts prosecution and defence instructions, as well as conducting litigation in respect of private prosecutions for trademark and licensing matters.

Emma is listed on the CPS panel of approved advocates.

Her appearances encompass a wide range of criminal cases and hearings for a wide range of offences spanning drugs, violence and sexual offences.

Emma is experienced in representing a wide range of clients; professional, corporate, lay, young and vulnerable. In addition, her experience encompasses making oral and written submissions in respect of fitness to plead, capacity and effective participation.

## Notable Cases

*R v SP – Successful application to stay proceedings as an abuse of process in light of substantial delay, SP's significant ill-health, contradictory views of the prosecution to proceed against co-defendants together or alone and proceedings having a "continuous and detrimental effect on SP.*

*R v SG – Successful acquittal of a young adult accused of sexual assault on a person U16 by way of digital penetration. <http://www.lincolnhousechambers.com/innocent-young-adult-cleared-sexual-abuse-charge>*

*R v CM – Assisted in the defence of a man accused of sexual activity with a child under 13. Successfully represented the man for contested bail and breach of bail hearings. Assisted in preparing legal argument in relation to the complainant evidence and inapplicability of hearsay provisions. Ultimately, the prosecution offered no evidence.*

*R v PL – Assisted in the defence of a man accused of rape. Assisted in the preparation of legal arguments in respect of capacity and reliability of witnesses. Ultimately, the prosecution offered no evidence.*

*R v CL – Assisted in the defence of a man accused of multiple sexual assaults over a series of years in relation to young people.*

*R v J – Advised on the strength of evidence in relation to historic murder allegations in St Helena.*

*R v JF – Defended a man accused of multiple sexual assaults in Ascension Island.*

*R v BT – Defended a man accused of causing harassment, alarm or distress with the intention to commit a sexual offence. Represented him for legal argument in relation to fitness to plead. Presented submissions in relation to the weakness of the prosecution case in respect of limited evidence to support the relevant intention to commit a sexual offence.*

*R v DS – Secured the acquittal of a man accused of ABH in relation to his long term partner. Highlighted inconsistencies in accounts provided by prosecution witnesses.*

*R v JH – Obtained a suspended sentence for a man, heavily convicted, involved in an affray. Pro-active in obtaining*



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## Road Traffic Law

Emma has substantial experience of defending people accused of road traffic offences and making representations on the factual circumstances of the offence, the accuracy of the breath specimen and other procedural issues that may arise.

Her experience includes making submissions with a view to avoiding the possible life-changing consequences of losing a driving licence.

## Notable Cases

**R v DR** – *Causing death by careless driving. Obtained a Suspended Sentence after conviction. In passing what was recognised by the trial judge as an exceptional sentence in an unusual case, it was accepted that, following a dispute, the deceased had gone after Emma's client who had tried to get away from a situation rather than prolonging an argument. The trial judge made particular reference to the deceased not allowing Emma's client drive off, by way of holding onto the steering wheel and/or driver's side door of the vehicle. The sentencing remarks made reference to evidence elicited during cross-examination of the prosecution reconstruction expert that by clinging on to the door of the car the deceased had contributed, to an extent, to what came to pass; plainly her death.*

**R v JH** – *Successful acquittal of young vulnerable adult charged with dangerous driving and ABH. Co-defendant separately represented by QC. The trial involving contested medical and forensic collision expert evidence.*

**R v ES** – *Failing to provide a sample. Advised on procedural compliance with s7 RTA 1988, steps taken amounting to medical reasons triggering change in requiring sample of urine to blood and recent case law regarding obtaining blood samples from tattooed arms.*

**R v AW** – *Contested appeal against conviction of driving with excess alcohol, failing to stop and obstruct PC. Prosecuting counsel. Conviction upheld. Sentence increased from community penalty to immediate custody.*

**R v LS** – *Driving with excess alcohol. Defence counsel. Advised on procedural compliance with s7 RTA 1988 and impact of medication on breath samples.*

**R v JH** – *Defended a man accused of driving with excess alcohol. Successful submissions for hardship resulting in no disqualification of licence being imposed.*

**R v AA** – *Failing to provide driver details. Advised on the merits of the 'reasonable diligence' test [s172(4) RTA 1988] in the all of the circumstances.*

**R v JA** – *Successful acquittal of a young adult accused of careless driving, failing to stop and provide driver details.*

**R v CP** – *Represented a young adult in relation to charges of driving whilst under the influence of drugs. Successfully secured fine and disqualification below the guidelines.*

**R v JA** – *Secured the acquittal of a man in contested road traffic proceedings involving allegations of careless driving, failing to stop and report an accident and no insurance.*

**R v CC** – *Defended a man in contested road traffic proceedings which involved allegations of driving with no insurance and providing a false account to police.*

**R v CY** – *Obtained a suspended sentence for a man who failed to provide a sample, where there was deliberate refusal and numerous similar previous convictions.*

**R v DY** – *Defended a man accused of driving whilst over the prescribed limit where a collision had occurred.*

**R v LW** – *Defended a man accused of driving whilst over the prescribed limit which resulted in a serious accident and where the intoxiliser reading was very high.*

**R v JG** – *Defended a man accused of being drunk in charge of a vehicle. Obtained expert evidence 'back calculation' to support the defence of no likelihood of driving whilst he remained in excess of the prescribed limit.*



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## Judicial Review/Police Actions

Emma has experience in the field of public and administrative law. During her roles with a leading firm of solicitors and NGO, she prepared judicial review applications against local authorities for failures to adhere to their duties to suitably accommodate and support vulnerable young adults leaving custody. In addition, her experience includes case preparation for judicial review proceedings against other government bodies, including the Ministry of Justice and the Parole Board. Emma has been involved in successful challenges, by way of judicial review, against decisions to return prisoners back to closed conditions, delay in moving prisoners to open conditions and decisions made by the Independent Adjudicator.

Emma accepts instructions in relation to all aspects of judicial review proceedings.

## Notable Cases

**R (on the application of MH) v Secretary of State for Justice** – Instructed by MH, a person serving a tariff-expired indeterminate sentence. Advised and assisted in relation to the successful judicial review of the failure, and significant delay, in transferring MH to open conditions following a Parole Board recommendation to do so.

**R (on the application of DP) v Secretary of State for Justice** – Instructed by DP, advised and assisted in relation to the judicial review of a decision to transfer DP from open to closed conditions.

**R (on the application of MR) v The Parole Board** – Instructed by MR, advised and assisted in relation to a prospective judicial review of the Parole Board's refusal to re-release MR on licence following his recall. Issues raised included whether the panel was provided with adequate evidence by the probation service to enable it to carry out a meaningful review.

**R (on the application of AP) v Secretary of State for Justice** – Instructed by AP. Advised and assisted in relation to the prospective judicial review of the refusal to dismiss disciplinary proceedings arising out of an act of self-harm.

**R (on the application of RH) v London Borough of Hackney** – Assisted in the preparation of a successful judicial review of the failure to suitably accommodate and support a young adult, and former relevant child, leaving custody.

**R (on the application of JW) v Northeast Lincolnshire Local Authority** – Assisted in advising a young adult in relation to the prospects of judicially reviewing the failure of a local authority to assess a vulnerable adult, prepare a care plan and to arrange suitable accommodation on his release from custody.

**R (on the application of CB) v Stockton-on-Tees Borough Council** – Assisted in the preparation of a judicial review challenging the failure to assess and suitably accommodate a young adult, and former relevant child, leaving custody.

## Prison Law and Human Rights

Emma has extensive prison law experience representing clients at adjudication hearings, recall oral hearings, Parole Board hearings including IPP and EPP reviews. She accepts instructions in relation to proceedings engaging Article 5 ECHR. Emma is experienced in representing clients, including young and vulnerable clients, for the full range of offences including matters of a violent and sexual nature.

## Notable Cases

**The Parole Board v WG** – Successful application for release at an oral hearing for a man serving a mandatory life sentence for murder. Release was granted on life licence.

**The Parole Board v MH** – Successful application for release at an oral hearing for a post-tariff IPP sentenced prisoner.

**HMP Wandsworth v AAS** – Successful application to stay disciplinary proceedings on the grounds that AAS was not 'fit to face hearing', expert evidence on Pritchard criteria applied, or effectively participate in proceedings.

**HMP Brixton v DP** – Successful application to dismiss disciplinary charges following a prison decision to lay charges in respect of matters arising out of an attempt to commit suicide.

**HMP Highpoint v MR** – Successful application to dismiss disciplinary charges as an abuse of process having regard to breaches of procedural construction and discovery of the charges.

**HMYOI Aylesbury v EST** – Successful acquittal of a disciplinary charge for possession of a blade. Issues highlighted in respect of possession and discrepancies in evidence from officers regarding retrieval of the blade.



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**HMP Pentonville v DD** – Successful application to dismiss disciplinary charges where prison proceeded with charges that had previously been referred to police and amounted to duplicitous proceedings.

**HMYOI Isis v SK and PM** – Successful application to stay disciplinary proceedings as an abuse of process having regard to breaches of procedural laying of the charges.

**HMYOI Ashfield v JSD** – Successful application to stay disciplinary proceedings as an abuse of process having regard to breaches of procedural laying of the charges.

**HMP Pentonville v OA** – Successful application to stay disciplinary proceedings as an abuse of process having regard to breaches of procedural laying of the charges.

**HMP Belmarsh v JC** – Successful application to stay disciplinary proceedings as an abuse of process where charges had been referred to police and not proceeded with. Continuing with prison disciplinary proceedings was in breach of procedural regulations.

**The Parole Board v MH** – Successful application at an oral hearing for release on licence of IPP sentenced prisoner.

**The Parole Board v LD** – Successful application at an oral hearing for re-release following the recall of EPP sentenced prisoner.

## Personal

Emma is keen on adventures in the great outdoors. Any chance that presents itself, finds Emma horse-riding on her beloved horse. If a four legged adventure is not possible, Emma is an avid scuba diver and is content exploring the ocean, above and below.



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