

Emma Gilsenan

Call to Bar: 2008



Emma is an experienced and versatile barrister practising in regulatory law with a particular focus on Professional Discipline. Emma has, for the last eight years, practised almost exclusively in Professional Discipline and Regulation, representing regulators and professionals from a variety of industry sectors. She advises and acts primarily in cases arising from the healthcare industry.

Emma is on the General Medical Council (GMC) approved list of advocates and regularly appears in front of the Medical Practitioner's Tribunal Service (MPTS) in respect of disciplinary 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 on the GMC approved list of advocates and regularly appears in front of the High Court in respect of High Court Extensions and at the MPTS in respect of Interim Order hearings, Review hearings and Non-Compliance hearings.

In 2017, Emma undertook a 12-month secondment with the GMC where she broadened her knowledge base of the medical regulatory framework. Emma frequently advised on Rule 12 review requests, having regard to complaints raising new information and/or alleged material flaws in the GMC decision making process.

During the course of her GMC secondment, Emma frequently provided technical legal advice to Assistant Registrars to assist them in discharging their function to make decisions on whether the relevant criteria had been met to investigate matters outside of the five-year limitation period in accordance with Rule 4(5).

Emma has a background that combines Criminal litigation, Professional Discipline, Regulatory and Public law. Her areas of expertise complement one another, enabling her to provide a comprehensive service to organisations, as well as professional and lay clients seeking advice and representation.

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Practice areas:

Inquest & Inquiry
Professional Discipline
Regulatory
Crime

Professional appointments:

Criminal Bar Association
Association of Regulatory and Disciplinary Lawyers
Advocate of the Supreme Court of St Helena, Ascension Island and Tristan Da Cunha
Lay Advocate of the Supreme Court of St Helena and Ascension Island

Prior to joining Chambers, Emma was appointed 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 advised and represented clients in relation to general Criminal, Civil, Medical Regulatory and Professional Disciplinary matters. Emma returned to the islands to assist the Public Solicitor's Office in 2017 and 2018.

WHAT OTHERS SAY:

Judicial sources have described Emma as:

'an incisive intellect [with a] robust ability to absorb and focus on the main elements of a case'

'reliable to elicit cogent evidence from a lay or professional witness, to cross-examine intelligently and to ensure that the jury and/or Tribunal get the main points'

Having an ***'excellent grasp of issues in dispute, rules of evidence, relevant principles and authorities'***

Having a ***'robust facility to grasp the arguments and combine effective analysis of the core issues with enviable speed in preparing her responses'***

demonstrating ***'thoughtful and appropriate reflection in her handling of cases, ensures that her client's case is put robustly and professionally to achieve the required aim'***

'A Judge would trust Ms Gilsenan to act with integrity, making appropriate disclosure, speak clearly and audibly, without being aggressive to witnesses or patronising the jury and/or Tribunal.'

having ***'first-rate interpersonal skills'***

'clear, succinct and persuasive'

'engaging, clear and fluent'

'strong but fair'

having ***'an engaging, calm and personable manner.'***

'a scrupulously fair attitude, without any hint of prosecutorial zeal'

'calm and professional at all times, dealing well with issues raised'

'engaging, thoughtful but robust approach to advancing her client's case'

'appears to work collaboratively with instructing solicitors to develop effective strategies'

'Ms Gilsenan's approach is to take instructions at the appropriate stages but uses her own judgment and knowledge of the realities of the case to advance her client's case with proportionate and well measured force and effort.'

Other professionals have described Emma as:

'an excellent advocate'

'clearly a compelling advocate and has demonstrated this through consistent successful results'

'excels in her advocacy, which is evidenced by her run of good results'

'able to pick up on complicated legal disputes swiftly, exercise sound judgment and take practical and well-thought out approaches to her cases, always with the best interest of her client in mind'

'impressive under pressure, able to act quickly in urgent situations and willing to put the long hours in which are inevitable in our area of work'

'an extremely effective advocate'

'quickly picks up on issues and runs valid dismissal arguments'

'not afraid to challenge any decision she felt was unfair or irrational'

'excellent client care skills, clearly recognised by a number of her clients who return seeking her services'

'has an ability to build relationships in new and different jurisdictions and cultures dealing with some very sensitive issues'

'works at the highest level and is invaluable'

'where cases merit fighting, she is unwavering in her tenacity to fight her client's corner under what are often hostile and difficult circumstances'

Having ***'a strong working ethic and ability'***

'a very good lawyer. She is extremely hard working and diligent with a good eye for detail'

Having ***'an excellent manner with the most challenging of clients and represented all clients to a high standard'***

'Her client care is impeccable'

'Her commitment to her clients is second to none'

'Her communication with me and members of the firm was impeccable'

'Preparation and attention to detail were second to none'

'Her client care was unquestionable'

Her ***'paperwork is first class'***

'she is passionate about her work and is thoroughly committed to it'

PROFESSIONAL DISCIPLINE

Notable cases:

GMC v Dr L – Acted for the GMC in front of an Investigation Committee (IC) hearing involving a general practitioner (GP) alleged to have posted a number of tweets online, two of which referred to people's gender, colour and sexual orientation in a manner that was inappropriate and/or offensive and/or disparaging and/or demonstrative of attitudes that were contrary to those required of doctors by *Good Medical Practice*, notably paragraph 65 and *Doctors' Use of Social Media* (2013), paragraph 5. Following detailed consideration of the issues in this case, the IC determined to issue the doctor with a written warning, as submitted to be the proportionate course by the GMC.

GMC v Dr C – Acted for the GMC in a MPT hearing involving the impaired fitness to practise of a retired Consultant Paediatrician who, whilst they did not have a licence to practise, issued prescriptions to a close family member, and themselves; a matter for which they accepted a police caution for a criminal offence namely, Fraud contrary to sections 1 and 2 of the Fraud Act 2006. The doctor was determined to be impaired by reason of their criminal caution and suspended for a period of one month to mark the seriousness of the doctor's impairment, albeit taking account of considerable personal and circumstantial mitigation.

GMC v Dr O – Acted for the GMC in a MPT hearing involving the impaired fitness to practise of a general practitioner (GP) who practised as a GP whilst not having medical indemnity insurance and submitted appraisals containing false information stating that they had medical indemnity insurance. These actions were determined to be dishonest and amounted to serious misconduct, impairment and led to a sanction of erasure being imposed.

GMC v Dr A – Acted for the GMC in a MPT 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 MPT 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 MPT 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 MPT 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 MPT 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

INQUESTS & INQUIRIES

Emma's experience in providing advice and representation in medical regulatory and Professional Disciplinary proceedings has substantial overlap within the fields of Inquest and Inquiries.

Emma frequently considers and advises on the impact of Inquest documents and Coroner Reports/Verdicts, Trust Investigation Reports, independent medical investigation reports and medical records.

Emma has a strong reputation for her ability to combine effective analysis, first-class written skills and a conscientious attention to detail. Her vast experience provides a strong base from which she is adept at reviewing, digesting and comprehending large amounts of information expeditiously. This enables her to identify core issues and present them in a clear, succinct, and persuasive way.

Covid-19 Inquiry

Emma was instructed by the Health and Safety Executive (HSE) to assist in reviewing and identifying key material for possible disclosure to the Covid-19 Inquiry. This involved the analysis of a large volume of material and the examination of issues and themes such as preparedness and pre-planning, decisions on lockdown, the role of science, governance, enforcement, spot checks, safe workplaces, communication, personal protective equipment (PPE), respiratory protective equipment (RPE), face coverings, sanitizers, and disinfections systems.

CRIMINAL LAW

Emma has substantial experience of dealing with criminal matters in the UK and abroad.

Her background is one of prosecution and defence work, where she has advised and represented clients facing allegations of death by careless driving, non-fatal offences of violence, sexual offences, substantial drugs supply and importation, counterfeit pharmaceuticals and others. She also has experience of cases of fraud, money laundering and other financial wrongdoing.

Emma is experienced in representing a wide range of clients; professional, corporate and lay (including young and vulnerable clients). 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/inncent-young-adult-clearedsexual-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.

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 reference to the deceased not allowing Emma's client to 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 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

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 also 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

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

PRISON LAW

Emma has extensive prison law experience representing clients at adjudication hearings, recall oral hearings and Parole Board hearings.

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.

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.

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.

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