

ZOE LEVENTHAL



MAIN AREAS OF PRACTICE:

Discrimination and Equality
Environmental Law
EU Law
Local Government Law
Public Law

Called to the Bar 2002

CONTACT:

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Zoë practises in all areas of public law and human rights and is listed as a leading junior in these areas. She has particular expertise in social security and welfare benefits law, healthcare, mental health and mental capacity, local government, equalities duties, immigration, EU law, planning and environmental law. She is a member of the Attorney General's 'A' Panel of Counsel, having previously been a member of the 'B' Panel (appointed 2013) and 'C' Panel (appointed 2007). She is described in the directories as showing "total dedication to the cases she is involved in" and being "extremely clear, concise and accurate on paper and in oral advocacy."

Zoë is consistently instructed in high profile and complex cases both on her own and as a sought after junior. She is committed to working for all sides across her areas of practice and has a diverse range of clients including central government departments, local authorities and other public bodies as well as individuals, charities & NGOs and corporate entities.

SOCIAL SECURITY / WELFARE BENEFITS

Zoë acts for individuals (often through FRU), for NGOs (such as CPAG, Z2K, PLP and Mind) and for the DWP, CSA, HMRC and DoH. She has developed considerable expertise across the full spectrum of benefits, in addition to child support as well related pensions issues. Zoë's cases frequently involve HRA and/or EU law issues. Highlights are:

- The 'benefit cap' litigation on the compatibility of the Government's welfare policy with Art 14 ECHR (*JS v SSWP* [2015] UKSC 16; [2015] 1 W.L.R. 1449, acting for CPAG with Richard Drabble QC).
- As sole counsel successfully challenging delays in the Personal Independence Payment scheme on behalf of Z2K, the intervener (*C & W v SSWP* [2015] EWHC 1607 (Admin)).
- Acting for the Appellant in her challenge to the right to reside for A8 nationals under EU law and Art 8 ECHR: *Mirga v SSWP* [2016] UKSC 1 (led by Richard Drabble QC, instructed by PLP).

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DIRECTORIES' RECOMMENDATIONS

Chambers & Partners 2017

Administrative & Public Law:

"...total dedication to the cases she is involved in. Her attention to detail and grasp of the issues is hugely impressive." She is "extremely clear, concise and accurate on paper and in oral advocacy. A very warm and engaging advocate." "A very good lawyer but she also understands the social policy, which is very important."

Civil Liberties & Human Rights:

"...routinely instructed in high-profile matters in the human rights field, she displays a particular flair for environmental, planning, immigration and social security law... "She always sees both sides of the argument, and has a really strong knowledge of the legislation." "She shows total dedication to her cases and clients."

Legal 500

Planning: "Recommended for matters with EU or human rights elements" (2016) and "highly impressive in the High Court and completely on top of her subject". (2015)

Administrative & Public Law: "an impressive opponent; thorough and approachable, with common sense" (2016) and "a very skillful advocate who can make the best of a difficult case" (2015).

- Appearing jointly with James Eadie QC for the SSWP in the post-*Reilly & Wilson* litigation regarding the legality at common law and under Art 6/A1P1 ECHR of retrospective legislation validating the quashed 'work for your benefit' JSA regulations (*Reilly & Hewstone; TJ & others v SSWP* [2016] EWCA Civ 413).
- *JK v SSHD* [2017] EWCA Civ 433 (reduction of asylum support for children and whether in accordance with Art 24 CFR and Art 3 UNCRC) (led by Stephen Knafler QC).
- As sole counsel successfully challenging various aspects of the Employment & Support Allowance scheme: under the Equality Act 2010 in *MM & DM v SSWP* litigation (advising Mind and others); the DWP's process of "scrutiny" for ESA transfers/reassessments (*SSWP - v-RD and RW* [2015] UKUT 0235 (AAC)) and reliance on physiotherapists as WCA assessors (*F & T v SSWP* [2014] UKUT 547 AAC (3 judge panel)).
- As sole counsel for the SSWP in the CA (and in the UT) defending a number of Art 14 disability discrimination challenges e.g. *Mahmoudi v SSWP* [2014] EWCA Civ 284 (housing benefit / meaning of "adaptions"), *CL v SSWP* [2015] UKUT 259 AAC (support for mortgage interest in income support) and *PL v SSWP* (forthcoming disability discrimination in JSA).
- As sole counsel in the CA for the SSWP on the correct approach to "disregarding" incomerelacement benefits for the purposes of entitlement to meanstested benefits (*Lloyd v Lewisham and SSWP* [2013] EWCA Civ 923; [2013] H.L.R. 48).
- As sole counsel in *Chandler v CSA* [2007] EWCA Civ 1211; [2008] 1 WLR 734, the leading case on the distinction between income and capital under the Child Support Act 1991.

HEALTH (INCLUDING MENTAL HEALTH), MENTAL CAPACITY AND COMMUNITY CARE

Zoe has a strong reputation in health, mental capacity and community care work, and has been involved in some of the leading cases in recent years. She is currently writing a book on NHS law with David Lock QC and Hannah Gibbs. She acts for and against NHS bodies in contractual / pensions disputes, and in judicial reviews for and against NHS bodies and local authorities in respect of primary, secondary and social services issues (e.g. GP surgery closures, NHS continuing healthcare, consultation, health inequalities, section 17 support and asylum support). She appears regularly in the Court of Protection on medical treatment and personal welfare cases (including DoLs), and also acts for the Care Quality Commission. Recent highlights include:

- *National Aids Trust v NHS England & LGA* [2016] EWCA Civ 1100; [2017] 1 W.L.R. 1477 – acting for the successful claimant establishing that NHS England had the power under the NHS Act 2006 (as amended) to commission a "gamechanging" HIV preventative drug.
- *NHS Acute Trust v C* [2016] EWCOP 17; (2016) 152 B.M.L.R. 193 (C-section on woman with bipolar disorder).

- *M v N* [2015] EWCOP 76; (2015) 18 C.C.L. Rep. 603 – leading case on withdrawal of treatment for a person in a minimally conscious state.

IMMIGRATION, ASYLUM AND DETENTION

Zoë's work in this area encompasses asylum and immigration work for both claimants (individuals and commercial organisations) and the Home Office in the Upper Tribunal and the Courts at all levels. She also acts in unlawful detention matters for both sides. Examples include:

- *JK v SSHD* [2017] EWCA Civ 433 (whether reduction of children's asylum support rates breaches Art 24 CFR and Art 3 UNCRC, led by Stephen Knafler QC for JK).
- *Ojo v SSHD* [2015] EWCA Civ 1301 (whether a period of 5 years "continuous residence" can be aggregated at EU law, sole counsel for SSHD).
- *ZSS v SSHD* [2015] EWCA Civ 1137 (judgment pending): acting for the SSHD (led by Robin Tam QC) in two test cases regarding the correct approach to detaining agedisputed minors.
- *Diallo v SSHD* [2014] EWHC (unreported) – Guinean national released from detention at interim relief hearing following longstanding difficulties with obtaining Emergency Travel Document (acting for the claimant instructed by Deighton Pierce Glynn).
- *Asif v SSHD* [2015] EWHC 1007 (Admin) – acting for the SSHD in a case in which the Admin Court gave important guidance as to limited circumstances in which claims should remain on foot following fresh decisions (applying *Bhatti* and others) and on relief from sanctions applying *Mitchell*.

Shah [2014] EWHC 3337 (Admin) (acting for the SSHD, legacy case post-*Geraldo*).

REGULATORY, OMBUDSMEN AND EDUCATION

Zoë undertakes a range of work in this field including for the Parliamentary and Health Service Ombudsman, for the Disclosure and Barring Service (formerly the ISA/DoH) in relation to safeguarding children and vulnerable adults, for Ofsted and the Care Quality Commission, and for commercial organisations and individuals. She appears regularly in a variety of courts and tribunals in this context. Highlights include:

- *Rapp v PHSO* [2015] EWHC 1344 (Admin): acting for the Parliamentary Ombudsman successfully defending a challenge to her findings of maladministration in the regulation of NVQ qualifications by Ofqual.
- *Cruelty Free International v SSHD* [2015] EWHC 3631 (Admin): acting as sole counsel for the Claimant challenging the lawfulness of the licensing regime for animal experiments at Imperial College London.
- *Wright v Secretary of State for Education & Skills* [2009] UKHL 3 acting for the Secretary of State on the compatibility of the scheme for listing under the Care Standards Act 2000 for those working with vulnerable adults and children with Arts 6/8.

LOCAL GOVERNMENT LAW

Zoë regularly advises local authorities and individuals across a broad range of subject matters including housing, education, local government finance, standards issues, planning, highways, mental health, community care and equalities. Her planning & highways expertise is set out under the above link. Examples showing the range of her work are:

- Allotments: *Moore and others v SSCLG* [2014] EWHC 3592 (Admin) – acting for the SSCLG in respect of a local authority application for consent under the Allotments Act 1925 for a major health scheme in Watford.
- Advising London local authorities as to the legality of the Mayor's approach to viability reviews for affordable housing.
- Advising various local authorities on their new public health duties under the Health and Social Care Act 2012.
- Obtaining planning and highway injunctions for the City of London Corporation, with David Forsdick QC in 'Occupy' St Paul's: *Samede v City of London Corporation* [2012] EWCA Civ 160.
- Council tax valuation (*Domblides v Listing Officer* [2008] EWHC 3271 (Admin)), housing benefit, discretionary housing payments and local welfare schemes.

OTHER SIGNIFICANT PUBLIC LAW CASES

Other important general public law work in which Zoë has been involved includes:

- *R (Rights of Women) v Lord Chancellor* [2016] EWCA Civ 91; [2016] 1 W.L.R. 2543– acting for the successful claimant in its challenge to vires of the legal aid evidence requirements for victims of domestic violence in family law proceedings, with Nathalie Lieven QC instructed by the Public Law Project.
- Advising the Davies Commission throughout their review of airport expansion covering a broad range of consultation and other issues including apparent bias (e.g. *Sanders v Airports Commission* [2013] EWHC 375).
- Appearing for the Secretary of State in *Turner v SSCLG* [2015] EWCA Civ 582 (with Dan Kolinsky QC) successfully defending allegations of apparent bias in the planning system in the context of the proposed redevelopment of the Shell Centre on the Southbank.
- Appearing for Brian Haw in his challenge to the legality of the Serious Organised Crime and Police Act 2005 criminalising protests within the vicinity of Parliament Square (*Haw v SSHD* [2006] QB 780, led by Richard Drabble QC instructed by Bindmans).

EUROPEAN LAW

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Zoë's work often raises varied and complex issues under EU law. In the social security field, Zoë has undertaken a number of EU law cases raising issues under the Citizenship Directive, Regulation 1408/71, Regulation 883/2004, the EU Charter on Fundamental Rights and the TFEU itself. In relation to her environmental and planning work, Zoë advises on the EIA/SEA, Habitats and Air Quality Directives and on the Aarhus Convention on Access to Environmental Information, as well as on information rights generally. She also has experience advising on the Services Directive and on EU procurement and state aid matters. Recent domestic EU cases include:

- *Mirga v SSWP* (Aire Centre intervening) [2015] UKSC (judgment pending), acting for the Appellant in her challenge to the compatibility of the right to reside in domestic social security law for A8 nationals with EU law relying on Art 21 TFEU, Art 7 of the Citizenship Directive and the Charter (as well as Art 8 ECHR) (led by Richard Drabble QC).
- *Ojo v SSHD* [2015] EWCA (forthcoming): acting as sole counsel for the SSHD in an appeal concerning the extent to which permanent rights of residence for family members of EEA nationals accrue despite breaks in the relevant status of the family member during the 5 year continuous period of residence required under the Citizenship Directive / regulation 15 of the EEA Regulations and as to the applicability of the CJEU case *Dias* C-325/09.
- Acting for the Claimant in *Bowen-West v SSCLG* [2012] EWCA 321; [2012] Env LR 22, one of the leading cases on the meaning of indirect, secondary and cumulative effects under the EIA Directive (led by Richard Drabble QC, instructed by Richard Buxton).
- As sole counsel successfully defending a claim in the UT/CA that national insurance credits should be "exportable" to Gibraltar under Regulation 1408/71/EC under EU law: *BP v HMRC* (CPC/3150/2011) (permission to appeal to the CA refused).

PLANNING LAW

Zoë has varied experience of acting for all sides in statutory planning challenges/judicial reviews and planning inquiries including large scale housing and retail schemes. She regularly advises individuals, developers, government department and local authorities on a variety of planning, highways and related CPO issues.

In 2015, Zoë was listed as a leading planning junior in the Legal 500 ("highly impressive in the High Court and completely on top of her subject") and was ranked in the top 6 barristers for most appearances in the Planning Court in Planning Magazine's survey. She has been regularly rated as one of the top planning barristers under the age of 35 in the same survey. She was an editor of the Planning Encyclopedia from 2004-2009. She regularly provides training to local authority officers on a broad range of issues.

Examples showing the range of Zoë's planning work are:

- *Turner v SSCLG* [2015] EWCA Civ 582: acting for the Secretary of State (led by Dan Kolinsky QC) successfully defending the inspector's decision to grant planning permission at the Shell centre against allegations of apparent bias (among other issues).

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- Acting for the Airports Commission as ongoing legal advisors throughout their process in relation to a variety of aviation / environmental and process issues.
- Acting for the Secretary of State in a s 288 challenge concerning a major recycling and energy recovery facility in the Green belt in Hertfordshire: *Veolia v SSCLG* [2015] EWHC 91 (Admin).
- Appearing successfully for the landowner at a rare planning inquiry into an alteration order under s 102 TCPA and obtaining costs against the council for unreasonable behaviour.
- As sole counsel for the SSCLG in the Court of Appeal regarding the application of the NPPF to mobile homes in the Greenbelt: *Lloyd v SSCLG* [2014] EWCA Civ 839 [2014] J.P.L. 1247.
- Allotments: *Moore and others v SSCLG* [2014] EWHC 3592 (Admin) – sole counsel for the SSCLG in respect of a local authority application for consent under the Allotments Act 1925 for a major regeneration project at Watford General Hospital.
- Advising London local authorities as to the legality of the Mayor's approach to viability for affordable housing decisions in planning when exercising his recovered jurisdiction.
- Acting successfully for Oxford City Council defending its decision to list Oxford FC stadium as an Asset of Community Value.
- Obtaining planning and highway injunctions for the City of London Corporation, with David Forsdick QC in 'Occupy' St Paul's: *Samede v City of London Corporation* [2012] EWCA Civ 160.

CPO: Zoë also has expertise in this area, regularly appearing in the Upper Tribunal (Lands Chamber) and Court of Appeal on compensation and related valuation issues for bodies such as the DfT, Highways Agency and Environment Agency (e.g. *Moto Hospitality Ltd v Secretary of State for Transport* [2007] EWCA Civ 76; [2008] 1 WLR 2822, the leading case on compensation under s 10 CPA 1965).

Highways/rights of way: Zoë regularly advises the DfT and the Highways Agency on a broad range of issues and has experience of acting for landowners and local authorities in rights of way inquiries.

ENVIRONMENTAL LAW

Zoë's practice in this area involves appearing for and advising central government, the Environment Agency, local planning authorities, developers, individuals and NGOs in judicial reviews and statutory challenges and in related enforcement proceedings. She has expertise in relation to EIA and SEA, the Habitats Directive and on a broad range of other environmental issues such as air quality, noise, tree protection and flood risk. Examples of recent work include:

- Advising the Davies Commission on Airport Expansion for the duration of its process (with Dan Kolinsky QC) on all environmental / aviation issues arising (including successfully defending its process against allegations of apparent bias in *Sanders v Airports Commission* [2013] EWHC 3754 (Admin)).
- Acting for the claimant in *Bowen-West v SSCLG* [2012] EWCA 321; [2012] Env LR 22, one of the leading cases on the meaning of

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“indirect, secondary and cumulative effects” under the EIA Directive and the scope of a project.

- Successfully defending Oxford City Council’s EIA screening process (inter alia) in respect of major redevelopment at Oxford University (the Blavatnik School of Government): *Freud v Oxford CC* [2013] EWHC 4613 (Admin).
- Acting for the Campaign for Better Transport in respect of its successful challenge to cuts for local authority bus funding and in respect of a challenge by Porsche to the proposals for emissions related congestion charging in London
- Successfully resisting the grant of planning permission for residential development in Newington Green on environmental grounds related to a series of TPO trees.

QUALIFICATIONS

Zoë read Classics at Downing College, Cambridge and did her CPE at City University. Zoë is a member of ALBA, the HRLA, PEBA and UKELA.

Assistant editor of the Planning Encyclopedia (2005-2009).

Human Rights Practice (Simor ed), Assistant editor (2003-4), Contributor (2004-2009).

Case commentator for Education Law Journal (2003-9).

Zoë is bilingual French/English. She also speaks good Italian and basic Spanish and Portuguese.

PUBLICATIONS

Zoë regularly gives seminars to a wide range of audiences including local authorities, the Government Legal Department, solicitors’ firms and other groups such as Young ALBA. Zoë has trained lawyers and members of the judiciary on the ECHR in Albania, Turkey and Georgia on behalf of the Council of Europe and local authority officers on behalf of the British Institute of Human Rights.

7 Feb 2017: Caps, cuts and welfare reform: other recent developments

7 Feb 2017: Update on the Personal Independence Payment

12 Oct 2016: Health & Social Care: Duties to non-UK nationals

29 Sep 2016: Legislating for Brexit

22 Feb 2016: Commissioning decisions, limited resources, ECHR rights and best interests

14 Jul 2015: Challenges to screening decisions - a review of the recent case law presentation

14 Jul 2015: Challenges to screening decisions - a review of the recent case law

4 Jun 2015: Social Security and Human Rights

4 Jun 2015: Social Security and Human Rights - Slides

13 Mar 2015: EIA screening: themes from the recent case law

24 Feb 2015: Care Act 2014: Safeguarding Provisions

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10 Feb 2015: Duties of Candour

1 Apr 2014: The HS2 Hybrid Bill: Preparing evidence and presenting the case

1 Aug 2012: Plus ça change, plus c'est la meme chose? Lessons on Planning Reform from the Dobry Review of Development Control [2012] JPL 899

Zoë accepts instructions under the Bar Council Standard Contractual Terms, details of which can be found on our website under Our Service.