

Mary O'Rourke QC

1981 Gray's Inn
2009 Queens Counsel
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Professional Associations

Professional Negligence Bar Association
Association of Regulatory and Disciplinary Lawyer
Bar Pro Bono Unit Panel Member and Supporter
Member of Justice
Member of Amnesty International Legal Section
Member of Amicus (anti death penalty organisation)
Bar European Group
Fabian Society and Fabian Women
British Irish Rights Watch Supporter
GB Executive Member Co-operation Ireland (cross-community charitable organisation)

Education

University of London, King's College - LL.B - 1st Class Honours
Inns of Court School of Law [Bar Finals] Upper Second Class Honours - 7th place and top mark for a female candidate
College of Europe, Bruges, Belgium - Certificate de Hautes Etudes Europeenes (Law) (MA) - Grade A
University of London, King's College Postgraduate Certificate in Sports Law

Appointments

2008 - Winner of Chambers & Partners Bar Awards Professional Discipline Junior of the Year
2009/2010 - Appointed to Northern Ireland Directorate of Legal Services Medical negligence and General Litigation Panel of Senior Counsel

Areas of Specialism

Professional Regulation and Healthcare
General Medical Council (Defence)
Professional Discipline
Employment Law
Sports Law
Inquests
Regulatory
Common Law
Clinical Negligence

Profile

Specialist in professional discipline and related employment issues principally on behalf of healthcare professionals.

Medical law practitioner with experience of every type of clinical negligence claim, predominantly but not exclusively representing healthcare professionals and NHS Trusts and considerable experience of medical Inquests. Public law work (extensive Judicial Review experience) relating to the NHS and healthcare professional regulators and Coroners. Special interest in sports medicine issues. Extensive employment law experience in Tribunals and internal disciplinary appeals.

Mary O'Rourke QC also practices from Old Square Chambers, London and accepts nationwide instructions at Deans Court Chambers.

Notable Cases

LTA v An individual [2017]

Mary O'Rourke QC leads Daniel Glover in Lawn Tennis Club Appeal

Acting for an individual on Appeal to an Independent Appeals Committee.

The case concerned allegations of historic sexual abuse and issues concerning notification within the remit of the LTA Disciplinary Code for the purposes of an Appeals Process.

Employment

Hakim v Imperial College NHS Trust

I acted for one of the UK's leading renal and pancreatic transplant surgeons who successfully claimed unfair dismissal after 20 years of employment as a Consultant Surgeon arising out of an alleged incident where he was operating on 2 patients in the private sector when the Trust said he endangered an NHS patient whose transplant was delayed due to his non-availability. Significant issues about doctor's duties to all their patients. We sought and obtained a very rare reinstatement order against an NHS Trust

Case concluded with finding of unfair dismissal and reinstatement of the client

Professional Discipline

Kataya v GMC

Lebanese doctor struck off 7 years previously for false claims on an application form and CV and forging a false reference. Applied for restoration to medical register with uphill task to prove had remorse for previous dishonesty (when he had disputed it) and also despite 7 years off the register had kept medical skills and knowledge up to date.

Case concluded with Doctor successfully restored to the register 7 years after erasure for serious dishonesty

Clinical Negligence

Lewis v Professor McClure & Ulster Independent Clinic

38 year old mother of 2 died during what should have been a routine gynecological operation to remove fibroids from her uterus. I represented the consultant obstetrician (a Professor of Obstetrics) who undertook operation privately at a private clinic at the Inquest and all 3 Defendants for the quantum only Fatal Accident claim trial. Allegations were death due to fluid overload during the operation caused by surgeon or anesthetist or nurses at Clinic. Liability was admitted but many novel quantum points in issue due to nature of loss.

Case settled at the door of the Court in May 2016

Clinical Negligence

Weekes v Fylde Coast Medical Services Ltd

Important case on vicarious liability of a private medical facility (my client) for the negligence of an independent contractor nurse who was negligent in advising a pregnant diabetic woman who developed ketoacidosis and her baby

was stillborn. Part 20 Contribution Claims between Defendants as well as by mother against medical facility and the nurse. Quantum small but costs huge and principle significant.

Case discontinued by Claimant against private facility after strong Defence and Part 20 Defences and arguments at CMC.

Employment

Bhardwaj v First Division Association

Race discrimination claim by barrister working for CPS against her Trade Union and relating to her Trade Union duties within CPS. Case lost in ET and EAT and I was then instructed for employee for EAT Review hearing on limited point of apparent bias as a result of documents which came to light following Fol and DPA searches. Permission to appeal granted by single judge of Court of Appeal in April 2015 and case heard in Court of Appeal in July 2016. Significant issues relating to ET wing members who are lawyers and not lay and role of ET Regional Chair in any EAT appeal (providing hidden comments).

Case heard in Court of Appeal in July 2016. Client in person seeking permission from Supreme Court.

Employment

Karim v Central Manchester NHS Trust

Consultant Obstetrician dismissed for gross misconduct for performing a scrape operation after a miscarriage without formal written consent because he wanted to save waking up the patient for consent and later having to do another procedure with a further anaesthetic. Unfair dismissal claim in ET – EJ found not within range of reasonable responses to dismiss given mitigation. NHS Trust appealed to the EAT arguing EJ substituted his own views for those of employer. Appeal resisted successfully and case – contribution and quantum being outstanding for ET – settled day before EAT hearing. NHS Trust employer compromised its appeal 1 day before EAT hearing and after exchange of Skeleton Arguments. I won case at ET for doctor client

Clinical Negligence

Tesheira v Gulf View Medical Centre

Fatal Accident claim by former Minister of Finance of Trinidad against private hospital (my client) where her high profile husband (former captain of Trinidad and Tobago Soccer World Cup team of 1974) died during a prostate operation. I was invited to come to Trinidad to defend the hospital as very few contested claims for clinical negligence there and little Bar expertise and on basis of my recognition as expert in field. Claim for in excess of £2m as deceased was high earner. High profile case. English law applies to all aspects - even procedural.

Case part-heard in the Court of Appeal in Trinidad from October 2016 and will resume in mid-December 2016.

Judgment stayed pending determination of appeal as enforcement would close the hospital when are 50 plus grounds of appeal against highest ever clinical negligence award made in Trinidad.

National and very extensive- in all 3 national papers in Trinidad - due to Claimant's high profile as former Minister of Finance and her husband's profile as very famous footballer.

Clinical Negligence

Spire Hospitals v Brooke

Claim by private hospital for contribution against Spinal Surgeon following clinical negligence injury claim by patient. Contribution claim brought 4 years after trial of all issues should have taken place except private hospital settled with patient 5 days before that trial where the Surgeon was also a Defendant. Preliminary issues argued as to limitation, abuse of process and estoppel as claim for £6m.

Employment

Ian Paterson v Heart of England NHS Trust

I acted for a now retired Consultant (breast) Surgeon who had his medical registration suspended whilst still employed by the Respondent. The Respondent lifted his exclusion and then ceased to pay him on the basis he could not perform his work. Claim brought in ET for unlawful deduction of wages as employment contract was maintained and not terminated. Legally very significant case on "suspensions" and whether neutral act and therefore entitled to be paid.

Lots of national press coverage concerning Claimant over last 5 years as are 500 civil clinical negligence claims against him and pending criminal proceedings

Professional Discipline

GMC v Whitehead

Educational Supervisor and taping a conversation with her over her unfair assessment. Case resulted in finding of no impairment and no warning and thus no practice restrictions – but Panel (wrongly) made finding of misconduct which resulted in threat of Judicial Review and GMC capitulated and offered quashing of that decision before and without issue of proceedings

Case now concluded after GMC conceded threatened Judicial Review and consented to quashing of finding on misconduct

Employment

Carneiro v Chelsea FC and Jose Mourinho

I was instructed on behalf of the Chelsea FC female former first team doctor in her ET claim for constructive dismissal and sex discrimination against the Club and its very high profile former manager arising out of an end of match incident following the opening game of the new Premier League season in August 2015 when the manager criticised her actions assisting an injured player in front of a TV audience of 500 million and subsequently caused her demotion and exit from her job. Case settled on day 2 of ET listing (was listed on liability only for 10 days) with confidential settlement but as reported in the national media was a very significant settlement and an outstanding result for the client.

Professional Discipline

Edwards v Chesterfield Royal Hospital NHS Trust [2010]

case involving issue of whether damages at large consequent upon summary dismissal in breach of agreed NHS contractual disciplinary procedures where reputational damage accrued.

Judicial Review

Al Zayat v GMC [2010] EWHC (Admin) (Baby P paediatrician)

Judicial review of FTP Panel of GMC on grounds of perversity in rejecting Voluntary Erasure application of medical practitioner where agreed psychiatric evidence was that she was unable to participate in proceedings for misconduct

Professional Discipline

GMC v Wendy Chapman (2010) (Bloodgate)

GMC Fitness to Practise proceedings consequent upon Matchday doctor cutting player's lip intentionally after blood substitution in Harlequins v Leinster Heineken Cup match and then lying about it. Succeeded in obtaining a finding her fitness to practise was not impaired.

Employment

Cocloff v The Manchester College [2010]

first case considered in an appellate Tribunal relating to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 - establishing that the test for less favourable treatment involved 3 distinct elements.

Judicial Review

R v HM Senior Coroner for Northern Ireland ex parte Donaldson [2010]

judicial review of Coroner on the grounds of apparent bias where Coroner determined to use as a medical expert a Consultant who had been involved in previous defamation proceedings in respect of the same death and was unable to disclose material he had seen in those proceedings because of an asserted claim of legal professional privilege.

Professional Discipline

'Bloodgate' - ERC v Chapman (2009) - ERC Disciplinary Committee and ERC

represented (successfully) Harlequins Matchday doctor in Disciplinary proceedings relating to the "Bloodgate" scandal in the Heineken Cup Quarter Final match. Also successful representation on appeal before the Appellate Committee.

Professional Discipline

Udom v GMC [2009]

successful appeal from GMC Fitness to Practise Panel determination to impose conditions on medical practitioner's registration which in effect removed all meaning from his registration and denied him the right to practise his profession.

Inquest

Inquest into O'Neill Deaths (2009-2010)

complex and difficult Inquest into death of mother and child where mother suffocated her 9 year old daughter and then hung herself - having told medical practitioners she would commit suicide and take her daughter with her.

Judicial Review

AVMA v GMC [2009]

attempted judicial review by AVMA of decision by GMC not to pursue misconduct proceedings against a group of GPs involved in the care of a 10 year old who died of a rare endocrine condition. AVMA (a charity) unsuccessfully sought an order restricting any costs it (a charity) might be exposed to if it pursued the judicial review and lost.

Professional Discipline

NMC v Maggs and Johnson (2009-2011)

longest ever professional conduct case in the history of the NMC (or UKCC). Complaint made in 2002 concerning events in 1998-2002 at a south west London Nursing Home and hearing commenced in February 2009 and concluded in December 2011 after 86 hearing days.

Professional Discipline

GMC v Southall [2008]

successfully represented Dr Southall at the GMC in relation to clinical trials (CNEP) in the 1990s and in other proceedings relating to the Sally Clark case review.

Professional Discipline

GMC v Holton [2006]

high profile GMC case in relation to the alleged misdiagnosis of epilepsy. Despite GMC performance assessment finding that the doctor's performance was not seriously deficient the case, uniquely, went to a full GMC hearing (and statutory appeal in the Admin Court) because of a campaign by the parents.

Professional Discipline

GMC v O'Brien [2007]

professional conduct case arising out of Sunday Times "sting" in relation to the provision of "sick notes" by GPs to attractive young female reporters posing as patients.

Employment

Appleton v El Safty [2007]

quantum claim by former professional footballer in respect of loss of career damages following negligent cruciate ligament surgery.

Employment

Eastwood v Winckworth Sherwood Solicitors [2005]

important case on whether a salaried partner at a firm of solicitors is/ was an employee for the purposes of an unfair dismissal claim.

Employment

West Bromwich Albion v El Safty [2005]

successful action to strike out claim by football club employer against surgeon whose negligent surgery ended the career of the club's player employee.

Judicial Review

Chai Patel v GMC [2005]

successful judicial review of the GMC decision to allow unparticularised charges against Chief Executive of a large Nursing Home Group in respect of alleged deficiencies at one Home in the Group.

Judicial Review

Henshall v GMC [2005]

represented two paediatric consultants in the CA in this judicial review brought by parents of two children relating to the GMC's decision not to bring professional conduct allegations against the doctors concerned (2008 FTP hearing failed at half-time).

Judicial Review

Phillips v GMC [2004]

judicial review on "double jeopardy" issue of same charges being brought before GMC Fitness to Practise Panel after successful defence before jury in criminal proceedings.

Professional Discipline

Mahfouz v GMC [2004]

case which establishes right to a short adjournment in regulatory proceedings to seek judicial review of an interlocutory decision in the proceedings.

Medical Negligence

C v Dr Cairns

limitation issue being decided at trial of negligence issues 25 years after events; doctor's duty of medical confidentiality.

Judicial Review

R v GMC ex parte Toth (No 2)

judicial review of PCC of GMC referring case to Health Committee.

Employment

Matthews (t/as Anton Motors) v Smith & others [2002]

significant decision on TUPE where employees after being made redundant negotiated with ex-employer to take over the business at a new location with own tools etc and issue whether still entitled to redundancy payments or transferred to their own employment under TUPE

Employment

Saeed v Royal Wolverhampton NHS Trust [2001]

Lloyd's Rep Med 111 (CA) – interpretation of consultant contract on issue of professional or personal misconduct.

Employment

R v Sussex Police Authority ex parte Stewart [2000]

issue as to police pension entitlement of female officer fit after an accident to undertake many of the duties of a police officer but not all of them and whether in the circumstances entitled to ill health retirement.

Judicial Review

R - v - Secretary of State for Health ex parte Johnson (1990) [2001]

Lloyd's Rep Med 285 (CA) - judicial review of Secretary of State on disciplinary issues for dental practitioner.

Judicial Review

R v GMC ex parte Toth (No 1) [2001]

Lloyd's Rep Med 368 – judicial review of GMC on decision to screen out case - set test for when case should proceed to full public hearing where complaint involving issues of fact

Judicial Review

R v GMC ex parte Holmes [2001]

Lloyd's Rep Med 368 – judicial review of GMC on decision to screen out case - set test for when case should proceed to full public hearing where complaint involving issues of fact

Judicial Review

R - v - Secretary of State for Health ex parte Lai

Lloyd's Rep Med 417 (Div Court) - judicial review on natural justice and time-limits in dental disciplinary cases. Emphasised that if no jurisdiction because of fundamental procedural defect cannot be given by participation or not objecting to jurisdiction (no waiver)

Professional Discipline

Kent v London Ambulance Service [1999]

Lloyd's Rep. Med. 58 (CA on strike out) and 424 (QB) and CA [2000] Lloyd's Rep Med 109 - duty of care owed by ambulance service to a 999 caller.

Professional Discipline

Warren v Northern General Hospital NHS Trust

Lloyd's Rep Med 234 (CA) – test case on applicable discount rate.

Heil v Rankin

5 judge CA test case on PSLA damages.

Professional Discipline

Bristol Royal Infirmary Public Inquiry (1998-2000)

representing 3 Consultant Anaesthetists and 3 Consultant Cardiologists before Public Inquiry and advising in screening procedures before GMC.

Okosoglu v Kay & Oldershaw

Lloyd's Rep. Med. 129 (CA) - split trials and apportionment of costs when causation defence succeeds and reduces very large claim to a very small claim.

Employment

R v Croydon Health Authority

Lloyd's Rep. Med. 44 (CA) - scope of duty of care of prospective employer in respect of pre-employment occupational health medical assessment.

Professional Discipline

Brady v Sunderland AFC and Boobis & England

represented professional footballer in claim against football club and 2 hospital consultants relating to failure to diagnose and properly treat a serious career ending vascular condition.

Judicial Review

R v Secretary of State for Health ex parte Manchester LMC

successful judicial review of Secretary of State's refusal to hold an Inquiry into loss of ring-fenced funds.

What the Directories say

Has a highly regarded professional discipline practice with a focus on the defence of doctors in matters before the GMC and other disciplinary bodies. She is admired for her advocacy in high-profile, complex cases, including judicial reviews and Administrative Court trials. "A standout performer. She's utterly fearless with an absolutely compendious knowledge of this area." "She has vast experience and is very good with clients."

Chambers and Partners, 2018

'A silk with drive, intellect and eloquence.'

Legal 500, 2017

Has a highly regarded professional discipline practice with a focus on the defence of doctors in matters before the GMC and other disciplinary bodies. She is also regularly instructed by dentists and nurses in regulatory matters, gaining respect in this area from interviewees for her "encyclopaedic knowledge of healthcare regulation." "She's exceptional. I think she is one of the leading silks in the country for what she does in the defence of medical practitioners." "A leading silk - formidable and very knowledgeable." "She is clearly one of the leading silks in this field. She has a wide expertise, long experience and is extremely practical and effective."

Chambers UK, 2017

"There are only 2 words needed - simply phenomenal"

Legal 500, 2016

A barrister with a formidable reputation built up over almost 30 years in the field. She is often sought out to represent healthcare professionals before regulatory tribunals. (Clinical Negligence) "A formidable practitioner who will bludgeon the tribunal into submission."

Chambers UK, 2016

Widely regarded as a leader in the field, she has a fine reputation for representing healthcare professionals before regulatory bodies. Her robust style and formidable courtroom presence are much commented upon. (Professional Discipline, London) "Clever and tenacious." "She has a formidable practice and is a formidable individual." "She's a ferocious cross-examiner."

Chambers UK, 2016

Highly regarded for her expertise in professional discipline and related employment matters. She frequently represents healthcare professionals and NHS Trusts and has substantial experience of medical inquests. (Professional Discipline, The Regions) "She is incredibly knowledgeable, a real fighter who has a terrific reputation among doctors in particular." "She has an encyclopaedic knowledge of healthcare regulation and a razor sharp brain which she uses to devastating effect."

Chambers UK, 2016

Always able to see the big picture, even in the heat of battle.' (Professional discipline and regulatory law (including police law)).

Legal 500, 2015

Her practice is complemented by associated strength in professional discipline law.' (Clinical Negligence)

Legal 500, 2015

Vastly experienced in advising healthcare professionals on employment issues.' (Employment)

Legal 500, 2015

Exclusively defends and frequently handles the most complex and high-profile healthcare professional discipline cases before the GMC. "She has an absolutely 100% recollection of details."

Chambers UK, 2015

A tough, determined counsel. (Employment)

Legal 500, 2014

tenacious and robust" advocate who "demonstrates excellent judgement and finesse when deciding the correct approach to take in a case".

Chambers UK, 2013

Has an imposing reputation and is known for taking on difficult and often very high-profile GMC defence cases, where she really fights her client's corner. "A force to be reckoned with," she "knows every inch of the law".

Chambers UK, 2011

Mary O'Rourke QC is a real fighter for her clients and "a tough advocate who goes for the jugular and gets excellent results. "She has a wealth of experience in the field".

Chambers UK, 2011

Mary O'Rourke QC is praised for her robust handling of cases. She is extremely popular among solicitors, many of whom believe that "her promotion to silk is much deserved and will be a great success.

Chambers UK, 2010

Mary O'Rourke QC is distinguished by her "astonishing intellect and ability to fight tooth and nail for every point".

Chambers UK, 2010

...commended for her 'top drawer legal knowledge'.

Legal 500 2008

Renowned for her "no-nonsense approach," she is "a real scrapper" who approaches her cases with "fervour and energy, going at it hell for leather".

Chambers UK, 2009

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