



Steve Broach

Call 2008

Education

MA (First Class) History (Edinburgh) MRes Government, Policy and Politics (London)

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Steve is a public lawyer who advises and represents individuals, charities, companies and public authorities. He has particular interest and expertise in health, education and social care, with a focus on disability and children's rights cases. Steve has successfully challenged a number of funding cuts to public services in recent cases involving West Berkshire (short breaks for disabled children), Bristol (special educational needs provision) and Northamptonshire (libraries).

Steve is a discrimination specialist with particular expertise in using discrimination arguments in public law challenges. For example in the recent case involving Mr and Mrs C he persuaded the Upper Tribunal that the application of the 'tendency to physical abuse' exemption from the protection of the Equality Act 2010 breached Article 14 ECHR. He also acted for the National Children's Bureau (NCB) in its intervention in *Re an application by Siobhan Mclaughlin for Judicial Review (NI)* [2018] UKSC 48, where the Supreme Court held that the scheme governing payment of a key bereavement benefit unlawfully discriminated against unmarried parents, Lady Hale describing NCB's intervention as 'helpful'.

Steve also has a regulatory practice involving challenges to decisions of regulatory bodies and the police, in particular disclosure and barring decisions. Steve is instructed in the High Court and above in applications for judicial review, in the Court of Protection for cases involving the

Mental Capacity Act 2005 and in the First-tier Tribunal and Upper Tribunal in education and other appeals. He also has significant expertise in advising clients on safeguarding issues in relation to both children and adults.

In Chambers 2018 Steve is said to be a *“real go-getter... passionate, bright and committed to every client”*. In Chambers UK 2017 he was said to be a *“notable public law junior”* who *“knows the law inside out”* and *“offers swift, practical advice in complex areas of law which are constantly evolving”*. In the 2016 edition he was described as *“extremely approachable, innovative, highly committed to clients and conscientious”*. In the 2015 edition he was said to be *“exceptionally bright and reliable”, “very easy to work with”* and *“first choice for the most complex cases”*. In each of the past years he was one of a handful of barristers ranked by Chambers and Partners in Band 1 for Community Care and in the 2017 edition he was described as *“a go-to barrister for community care work”*. Steve has appeared in a large number of reported cases, including many of the Supreme Court cases on disability issues, either acting alone or as junior counsel. Steve was awarded Young Barrister of the Year at the Legal Aid Lawyer of the Year Awards 2011

Steve is co-author of *Disabled Children: A Legal Handbook* (Legal Action Group, Second Edition, 2016) and *Children in Need: Local Authority Support for Children and Families* (Legal Action Group, Second Edition, 2013). He wrote the chapter on the Independent Safeguarding Authority (now Disclosure and Barring Service) in *Professional Discipline and Healthcare Regulators: A Legal Handbook* (Legal Action Group, 2012). Steve is an editor of the *Community Care Law Reports*, published by Legal Action Group.

Background

Before coming to the Bar in 2008, Steve worked extensively in the voluntary sector on behalf of disabled children and disabled adults.

From 2006 to 2008, Steve was Campaign Manager for the Every Disabled Child Matters campaign (EDCM).

From 2004-2006, Steve was Head of Public Affairs at TreeHouse, the national charity for autism education. Prior to this, Steve established the policy and campaigns team at the National Autistic Society, where he was Head of Policy and Campaigns.

Administrative & Public Law

“A real go-getter. He’s passionate, bright and committed to every client.” “His written work is of an excellent quality and he is able to make strategic decisions on cases.” –

Chambers UK, 2018

“Knows the law inside out; he offers swift, practical advice in complex areas of law which are constantly evolving” –

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“He really knows his stuff, and is extremely approachable, innovative, highly committed to clients and conscientious” –

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“He’s exceptionally bright and reliable.” “Highly intelligent and has an excellent understanding of policy and the law.” –

Chambers UK, 2015

The latest edition of Chambers and Partners recognises Steve’s ‘considerable experience of bringing challenges against local and central government decisions. Steve is instructed on a wide range public law challenges and routinely advises and represents claimants in judicial review proceedings. He also undertakes advisory work for companies, charities and public authorities. Alongside acting for individual claimants he provides advice and representation to a range of commercial organisations, particularly those operating in the health, education and social care sectors.

Steve has a detailed understanding of the law, guidance and policy affecting children and disabled people. In addition to his judicial review practice Steve appears in complex cases in the Court of Protection, involving best interests determinations of issues of central importance to his disabled clients and their families. Steve has been instructed by the Law Society in the cases dealing with the fallout from the Supreme Court’s judgment in *Cheshire West* as to the procedure to be adopted in cases where authorisations for deprivations of liberty are sought from the court. Steve frequently advises and represents parents and disabled young people in appeals to the First-tier Tribunal and Upper Tribunal in relation to education matters. He has particular expertise in using the new schemes introduced by Part 3 of the Children and Families Act 2014 and the Care Act 2014.

Steve’s notable public law cases include:

ECtHR

- *McDonald v UK*, 20 May 2014 – first decision of the European Court of Human Rights to find breach of human rights in withdrawal of care services.

Supreme Court

- *Re an application by Siobhan Mclaughlin for Judicial Review (NI)* [2018] UKSC 48 – acting alone for National Children’s Bureau, whose intervention in this successful Article 14 ECHR challenge to a key bereavement benefit was described by Lady Hale as ‘helpful’.
- *Mathieson v Secretary of State for Work and Pensions* [2015] UKSC 47 – rule suspending payment of benefits to disabled children in hospital held to breach Article 14 ECHR (prohibition on discrimination).
- *Cheshire West and Chester Council v P and Others* [2014] UKSC 19 – junior counsel for the National Autistic Society (NAS) and Mind as interveners – case established equal right to liberty for disabled and non-disabled people and radically increased protection for disabled people in institutional settings.
- *Aintree University Hospitals NHS Foundation Trust v James* [2013] UKSC 67; [2014] AC 591 – challenge to declarations that it was not in Mr James’ best interests to receive life sustaining treatment– leading case on best interests decision making under the Mental Capacity Act 2005.
- *R (KM) v Cambridgeshire CC* [2012] UKSC 23 – leading case on application of ‘Resource Allocation Schemes’ in which seven-member Supreme Court clarified (i) the absolute nature of the duty to meet eligible community care needs, (ii) the need for sufficient reasons to be given to justify resource allocation decisions and (iii) the requirement of intense scrutiny by the Court in important community care decisions.
- *R (McDonald) v Kensington and Chelsea* [2011] UKSC 33 – appeal concerning whether a decision to terminate night-time carer support for a disabled woman by reliance on the provision of incontinence pads was compatible with the authority’s obligations in domestic community care and disability discrimination law and under Article 8 ECHR (see *McDonald v UK* above).
- *A v Essex* [2010] UKSC 33 – junior counsel for the National Autistic Society as Intervener – case concerned the nature and scope of the right to education under Article 2 of Protocol 1 ECHR in relation to disabled children.

Court of Appeal

- *Re X (Court of Protection Practice)* [2015] EWCA Civ 599 – acted for the Law Society in

appeal concerning disabled people's rights in cases where deprivation of their liberty is being authorised by the court.

- *R (JC) v Central Criminal Court* [2014] EWCA Civ 1777 – junior counsel for Just for Kids Law intervening in an appeal concerning anonymity for child defendants in criminal proceedings.
- *R (Children's Rights Alliance for England) v Secretary of State for Justice* [2013] EWCA Civ 34 challenge to refusal to inform former trainees in Secure Training Centre that their rights had been violated by unlawful restraint.
- *Disclosure and Barring Service (formerly Independent Safeguarding Authority) v SB 9RCN intervening* [2012] EWCA Civ 997; [2013] 1 WLR 308, and *Disclosure and Barring Service v Harvey* [2013] EWCA Civ 180. Leading cases on the requirement of proportionality in barring decisions by the Disclosure and Barring Services.
- *R (O) v Hammersmith and Fulham LBC* [2011] EWCA Civ 925 – junior counsel in appeal in relation to placement of child with severe autism.
- *R (O) v Barking and Dagenham LBC* [2010] EWCA Civ 1101 – junior counsel for The Children's Society in successful intervention establishing primacy of leaving care duties over asylum support scheme.

High Court

- *R (WX) v Northamptonshire CC* [2018] EWHC 2178 (Admin) – successful challenge to decision to close majority of county council's libraries. Acted as leading junior.
- *R (KE and others) v Bristol CC* [2018] EWHC (Admin) 2103 – successful challenge to decision to cut budget for special educational needs and disability ('SEND') provision by roughly £5m. Acted alone initially, led for final hearing.
- *R (SB) v NHS England* [2017] EWHC 2000 (Admin) – successful challenge to refusal of funding for medication to treat physical health needs of child with autism. Acted alone initially, led for final hearing.
- *R (DAT and BNM) v West Berkshire Council* [2016] EWHC 1876 (Admin) – successful challenge to decision to cut funding to short breaks for families with disabled children provided by voluntary sector organisations. Acted alone against Leading Counsel.
- *R (Woolfe) v LB Islington* [2016] EWHC 1907 (Admin) – challenge to operation of housing allocation scheme. Successful in part, challenge to council's interpretation of 'New Generation' element of scheme allowed.
- *R (S) v NHS England* [2016] EWHC 1395 (Admin) – successful challenge to decision to

- refuse funding for narcolepsy medication on basis Claimant's needs were not 'exceptional'
- *R (H and others) v Ealing LBC* [2016] EWHC 841 (Admin) – successful challenge on discrimination and other grounds to the scheme which ringfenced 20% of Ealing's social housing for working households and 'model tenants'. Scheme quashed by the Court (overturned by Court of Appeal).
 - *R (Dyer) v Welsh Ministers* [2015] EWHC 3712 (Admin) – high profile challenge to lack of specialist mental health provision for women with autism and learning disabilities in Wales.
 - *R (HA) v Ealing LBC* [2015] EWHC 2375 (Admin) – successful challenge on multiple grounds to the residence criteria restricting access to the housing register in Ealing for those who have lived in the borough for at least five years.
 - *R (L and P) v Warwickshire CC* [2015] EWHC 203 (Admin) – complex judicial review of changes to education and care services to disabled children in Warwickshire in the context of the Children and Families Act 2014.
 - *R (T) v Trafford Council* [2015] EWHC 369 (Admin) – challenge to the consultation by Trafford on its proposed cuts to its adult social care budget and consequential reconfiguration of services.
 - *R (J) v Chief Constable of Devon and Cornwall* [2012] EWHC 2996 (Admin), and *R (A) v Chief Constable of Kent* [2013] EWHC 424 (Admin), and *R (L) v Chief Constable of Cumbria* [2013] EWHC 869 (Admin). Counsel for claimants (acting alone in each case) in successful challenges to police disclosure decisions in context of Enhanced Criminal Records Certificates. Breach of Article 8 ECHR established in each case and HRA damages awarded.
 - *R (D) v Worcestershire CC* [2013] EWHC 2490 (Admin) – challenge to local authority 'maximum expenditure policy' limiting funding for adult social care.
 - *R (B) v Nursing and Midwifery Council* [2012] EWHC 1264 (Admin) – counsel (acting alone) in successful challenge to decision by NMC to re-open finding of no case to answer. Decision held to have been taken ultra vires and in breach of both substantive and procedural legitimate expectations.
 - *R (Waxman) v Crown Prosecution Service* [2012] EWHC 133 (Admin) – successful challenge to decision of CPS to discontinue prosecution of a stalker. Human Rights Act damages obtained.
 - *R (VC and others) v Newcastle CC* [2011] EWHC 2673 (Admin) – Divisional Court case establishing that the Children Act 1989 takes precedence over 'hard case' support under 'section 4' for families with no immigration status.
 - *R (W) v Birmingham CC* [2011] EWHC 1147 (Admin) – successful challenge to Birmingham's decision to move to 'critical only' eligibility for adult social care. Birmingham held to have

breached the disability equality duty and to have failed to have conducted a lawful consultation.

- *R (RCN and others) v Secretary of State for Home Department* [2010] EWHC 2761 – case in which the High Court declared that provisions under the Safeguarding Vulnerable Groups Acts 2006 to place individuals on a list of people prohibited from working with vulnerable adults and children without giving them an opportunity to make representations were contrary to articles 6 and 8 ECHR. Rare ‘declaration of incompatibility’ made under the Human Rights Act 1998.

Court of Protection

- *Re JM* [2016] EWCOP 15 – instructed by the Law Society in case concerning the proper procedure to be adopted when there is no person to act as a representative in applications concerning deprivations of liberty for people who lack capacity to consent to their care arrangements.
- *Re NRA* [2015] EWCOP 59 – instructed by the Law Society in the case considering whether P always needs to be a party to proceedings concerning deprivation of liberty.
- *A Local Authority v E* [2012] EWHC 1639 (COP) – junior counsel for local authority – high profile and controversial Court of Protection application re life-sustaining treatment for a young woman with anorexia expressing a wish to be allowed to die.

Upper Tribunal

- *Mr and Mrs C v Governing Body of a School, Secretary of State for Education and National Autistic Society* [2018] UKUT 269 (AAC) – successful appeal holding that the application of the ‘tendency to physical abuse’ exclusion from the protection of the Equality Act 2010 indirectly discriminated against pupils with autism and other recognised impairments contrary to Article 14 ECHR. Acted alone throughout.
- *London Borough of Hillingdon v WW* [2016] UKUT 0253 (AAC) – successfully resisted the Local Authority’s appeal raising issues as to the appellant’s mental capacity and the Tribunal’s reasoning on the issue of school placement.

Trustee Positions and Advisory Work

As well as acting for individual claimants, Steve regularly advises and represents leading charities and NGOs. This work includes speaking on legal issues at local and national events and seminars and case work. As well as interventions, Steve has:

- Advised Just for Kids Law in a successful challenge to new guidance issued on school

exclusions at the end of 2014 without prior consultation; guidance withdrawn prior to proceedings being issued.

- Advised the Royal College of Nursing on draft guidance in relation to Enhanced Criminal Records Certificates and indicative sanctions for NMC proceedings, leading to significant amendments to both guidance documents.
- Acted for CRAE (the Children's Rights Alliance for England) in successful Information Tribunal proceedings which led to the disclosure of the manual governing the use of control and restraint in Secure Training Centres.
- Advised Save the Children on the enforceability of the duties in the Child Poverty Act 2009.
- Advised the National Autistic Society on the lawfulness of the draft guidance on services for adults with autism to be issued under the Autism Act 2009, leading to significant amendments to the final guidance.
- Assisted the Council for Disabled Children (CDC) to intervene in R (*JL*) v Islington LBC [2009] EWHC 458 (Admin), a successful challenge to Islington's eligibility criteria for short break services. CDC's intervention was approved by the judge as evidence that this case highlighted a wider problem affecting many families with disabled children.

Until September 2013 Steve was Chair of AbleChild Africa, a UK-based NGO supporting NGOs working for disabled children and their families in Africa. Steve was also previously a trustee of the Campaign to End Child Poverty.

Steve is an advisor to Ambitious About Autism, the charity for children with autism which runs TreeHouse school. Steve continues to advise a wide range of charities and NGOs, in particular the Council for Disabled Children and the National Autistic Society. Steve regularly blogs on legal issues with a particular focus on the law affecting disabled children and adults at <http://www.rightsinreality.wordpress.com/>.

What The Directories Say

Civil liberties and human rights:

"Master of the law on the disabled child. Very strong specialist." – Legal 500, 2018

"A master of the law relating to disabled children." – Legal 500, 2017

Administrative and Public Law:

“Very genial and good with clients.” “Approachable and hands-on. He’s great in court and turns things around very quickly.” – **Chambers UK, 2019**

“A real go-getter. He’s passionate, bright and committed to every client.” “His written work is of an excellent quality and he is able to make strategic decisions on cases.” – **Chambers UK, 2018**

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“He really knows his stuff, and is extremely approachable, innovative, highly committed to clients and conscientious” – **Chambers UK, 2016**

“He’s exceptionally bright and reliable.” “Highly intelligent and has an excellent understanding of policy and the law.” – **Chambers UK, 2015**

Community Care:

“He is a standout in anything to do with the rights of disabled people, I don’t know anyone as committed as him – he’s brilliant.” “Very much at the forefront of this area.” – **Chambers UK, 2019**

“He is well connected to parents’ groups for disabled children and always gives 100%; he is a very committed barrister.” “He is willing to take on difficult cases, especially for disabled children, and is always strategically minded.” – **Chambers UK, 2018**

“He is a go-to barrister for community care work”, “The work he does is impressive and his track record speaks for itself.” – **Chambers UK, 2017**

“He has an encyclopaedic knowledge of the area and is committed to it” – **Chambers UK, 2016**

“Very good and also very easy to work with. He’s really impressive in terms of his skills and in terms of children’s rights, and is a first choice for the most complex cases.” “He knows the area of children’s law backwards. His drafting style is brilliant and he is really committed.” – **Chambers UK, 2015**

Education:

“He’s professional, very knowledgeable and reliable. He has a wealth of knowledge in relation to children with disabilities and adult social-care matters.” – Chambers UK, 2019

“There is nothing he doesn’t know when it comes to the legal rights of disabled children and he works tirelessly to use the law to achieve positive outcomes for children and their families.” “He gives very clear advice, is a good advocate, and is excellent at reassuring nervous clients.” – Chambers UK, 2018

“His knowledge of the law surrounding disabled children is hard to beat.” “He always pushes new ideas to do with this area of the law and his attention to detail stands out as a definite strength.” – Chambers UK, 2017

“Very active when it comes to policy challenges, he is proactive and au fait with all the law reforms and changes in this area.” – Chambers UK, 2016

“He provides clear advice and is approachable. His knowledge of community care issues proves useful.” – Chambers UK, 2015

Education

MA (First Class) History (Edinburgh)

MRes Government, Policy and Politics (London)

GDL and BVC

BPP Law School

Diplock Scholar and Queen Mother’s Scholar, Middle Temple.