



## Katherine McQuail

Call: 1989

### Barrister

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**Katherine McQuail** is recommended by the legal directories as a leading junior for private client matters, including trusts, probate and Court of Protection disputes. Katherine also deals with property and partnership cases, and professional negligence cases typically arising out of her core areas of practice. Clients appreciate her ability to turn *“advice around quickly and efficiently”* whilst being *“extremely pragmatic, a real team player”* (Court of Protection: Property & Affairs, *Chambers UK Bar 2018*).

#### COURT OF PROTECTION

Katherine has represented and advised numerous clients, including the Official Solicitor, in connection with Court of Protection property and Affairs matters.

Chambers UK Bar recommends Katherine as a leading junior for Court of Protection work and notes that she is *“a no-nonsense, sharp-witted, easy-to-deal-with junior who is a good first port of call. She has a first-class mind.”*

Much of Katherine's work in this area is confidential. However, her reported cases include an application for a statutory will in the Court of Protection: *NT v FS (by his litigation friend, the Official Solicitor) and others* [2013] EWHC 684 (COP).

The application was brought by NT, FS's deputy. FS had been a professional rugby league player and, now in his 70s, has a property portfolio worth more than £3 million. FS never made a valid will. FS lacks capacity to manage his property and affairs due to Alzheimer's Disease and dementia. The Court was asked to determine the appropriate division of FS's estate on his death between his son, who would be the sole beneficiary on an intestacy, his long-term partner, who would have a good Inheritance Act claim, his mother, his siblings and an uncle. After a two-day hearing HHJ Behrens decided upon the terms of the will.

In the case of *D v JC* (2012) MHLO 35 (COP), Katherine was instructed by an adult child, who had been adopted as a baby, who sought to be included as a beneficiary of her biological father's statutory will on an equal footing with his other biological children with none of whom he had had a good relationship. The application was refused. Senior Judge Lush concluded that the father would probably relish being remembered for having done the wrong thing in respect of his children; his own views, as far as they could be interpreted, were that no one

should have his money.

## **TRUSTS**

Katherine is recommended by *The Legal 500 UK Bar* as a leading junior for private client, trusts and probate work, and by *Chambers UK Bar* for her traditional chancery practice. Clients interviewed by the directories describe her as “*extremely experienced and technically excellent.*” (Private Client: Trusts and Probate, *The Legal 500 UK Bar 2019*). She advises settlors, trustees and beneficiaries about all aspects of trusts, and undertakes trust litigation.

Her clients include major trust corporations and she has been advising one such client about its role as Custodian Trustee of numerous clubs and associations throughout England and Wales for some years.

Recently Katherine has been instructed by a lay trustee defending claims for breach of trust brought by beneficiaries. She was successful in resisting a summary judgment claim and subsequently having significant parts of the claim struck out. Costs orders, including indemnity costs orders, were obtained against the Claimants making a global settlement of the case achievable.

## **PROFESSIONAL LIABILITY**

Professional negligence cases arise in all key substantive areas of Katherine’s practice: will drafting, administration of estates and trusts, conveyancing, property valuation.

Katherine’s work regularly features problems arising from the negligent drafting of wills. In one case the residuary estate of a wealthy widow was left to a non-existent institution. An application to Court was necessary seeking a declaration as to the general charitable intention of the residuary gift and an order that one of the identified next of kin represent those unascertained. Thereafter an application was made to the Charity Commission for a scheme. A claim for damages, being the costs incurred in making the application to Court, for negligence against the third-party firm which had drafted the will was compromised.

Interesting questions about the correct quantification of damages often arise in professional negligence cases. In the case of *Williams v Glyn Owen* [2004] PNLR 20, Katherine was instructed by the defendant’s insurers. The appeal concerned the correct measure of damage suffered by the purchaser of a farm as a consequence of his solicitor’s failure to advise about service of a notice to complete. Inconveniently for both London counsel and the claimant, who was based in North Wales, the Court of Appeal sat, very unusually, in Cardiff.

## **PROPERTY**

Advising and litigating about real property, landlord and tenant and mortgage issues form a core part of Katherine’s practice. Her significant cases include:

- *Dean v Barclays Bank plc* [2007] EWHC 1390 (Ch) – Appearing in a claim for breach of mortgagee’s duty to sell at best price
- *In Donnington Park Leisure Ltd v Wheatcroft & Sons Ltd* [2006] All ER (D)94 – Appearing as junior led by Keith Rowley QC in an application in which the court was asked to determine various issues as to the construction and the implied terms of a licence agreement concerning a car park at Donnington Park Race circuit
- *Parsons v George* [2004] 1 WLR 3264 – Acting in a Court of Appeal case concerning the construction of provisions of the CPR relating to the substitution of a party after the expiry of a limitation period, arising out of proceedings under the Landlord and Tenant Act 1954 in which Katherine was also instructed
- *Adamson v Halifax plc* [2003] 1 WLR 60 – Appearing in a case relating to the quantification of damage for sale by mortgagee at an undervalue.

## **WILLS AND ESTATES**

Katherine advises and litigates about all aspects of succession, inheritance and estate administration. Katherine is regularly instructed by major trust corporations in their role as executors of estates.

Katherine is recommended by *The Legal 500 UK Bar* as “a real asset” for private client, trusts and probate work.

Katherine has been instructed in three separate cases in which a London Borough Council was involved in the care of children one of whose parents had killed the other. Initially in each case advice was sought about the devolution of the victim’s estate and the operation of the forfeiture rule because of the unlawful killing that had taken place.

Subsequently, in one of these cases, Katherine advised the professional trustee of the deceased parent’s estate. Complications arose because one half of the matrimonial home was comprised in the estate, which passed to the couple’s child, and the other half remained in the ownership of the killer who was in prison and decidedly uncooperative. When the time eventually came to sell the property, some care was required in dealing with prospective purchasers who, it was feared, might be put off if they became aware that the deceased’s body had never been found.

Katherine was involved in another case where her client was convicted of causing both her parents’ deaths by careless driving. Her claim for relief from the forfeiture of her inheritance was made more contentious because of a lack of clarity as to the true beneficial ownership of a significant sum of money which the client and her parents had together won in the National Lottery some years before.

Some of her reported cases in this area include:

- *Martin v Williams* [2017] EWHC 491 – Representing the deceased’s long-term partner in an Inheritance Act case, in which she successfully argued that on the facts her client was a co-habitee qualified to apply for financial provision
- *Workman v Forrester* [2017] EWCA Civ 73 – Acting for a defendant, who had been convicted of his wife’s murder, in a Court of Appeal case which confirmed that an unless order may make entry of judgment for a specific sum the consequence of default, without the claimant having to prove loss
- *Jeffery v Jeffery* [2013] EWHC 1942 – Appearing in a case in which one son challenged the mother’s will which disinherited him based on her capacity, allegations of fraud, undue influence and want of knowledge and approval were rejected as she had never suffered from any mentally incapacitating complaint
- *Abbott v Richardson* LTL 12/5/2006 – Successfully representing her client in challenging the will of an elderly testatrix whose purported last will left a significant gift to her housekeeper on the grounds of lack of testamentary capacity
- *Michael v Cansick* [2004] EWHC 1684(Ch) – Appearing in a case where the son of an elderly man challenged the inter vivos transfer of the man’s house to his granddaughter in unusual circumstances shortly before he died.

## **PARTNERSHIP AND JOINT VENTURES**

Problems arise in partnerships on the death of a partner, or where relationships break down between the partners; Katherine has advised members of professional, farming and general business partnerships in such circumstances.

## **MEDIATION AND ARBITRATION**

Katherine has represented clients at many mediations: a form of dispute

resolution which she considers to be particularly suitable to family disputes about inheritance.

Katherine co-authored an article entitled "Life and Reconciliation after Death" on the subject of mediation in inheritance disputes which was published in New Law Journal.

## **RECOGNITION**

Katherine has been recognised by the directories since early in her career. Recent directory editorial comment has included the following:

- "Very experienced, pragmatic and a real safe pair of hands. She has seen everything." (Chancery: Traditional, Chambers UK Bar 2022)
- "She is very experienced and pragmatic." "She is absolutely brilliant to deal with and is a go-to barrister in this area." (Court of Protection: Property & Affairs, Chambers UK Bar 2022)
- "Katherine is extremely hard working and tenacious. She is tremendous with clients, particularly vulnerable ones, and builds rapport quickly." (Court of Protection and Community Care, Legal 500 UK Bar 2022)
- "Katherine is extremely hardworking and tenacious. She is very good to deal with, always available and willing to go the extra mile. She is tremendous with clients, particularly vulnerable ones, and builds rapport quickly. Always one to provide solid practical advice throughout the course of a dispute." (Private Client: Trusts and Probate, Legal 500 UK Bar 2022)
- "Technically excellent, she can handle incredibly complicated disputes with ease - she is diligent and brilliant" and "She is very experienced, pragmatic and a real safe pair of hands. If I have a problem and need an answer, I ring her first. She has seen everything. I'm always happy to recommend her for all sorts of matters. She's a real star." (Chancery: Traditional, Chambers HNW London Bar 2021)
- "Just brilliant and delightful to deal with." "Very clear, straight-talking, down to earth and reliable. She's very easy to work with and turns things around very quickly." (Chancery: Traditional, Chambers UK Bar 2021)
- "She is an extremely practical and straightforward barrister." "A good advocate and a sensible opponent." (Court of Protection: Property & Affairs - All Circuits, Chambers UK Bar 2021)
- "She is an extremely gifted lawyer." (Private Client: Trusts and Probate, Legal 500 UK Bar 2021)
- "She can work through complex factual and legal issues and provide clear advice and solutions. She is easy to work with and very accommodating." (Court of Protection and Community Care, Legal 500 UK Bar 2021)
- "She was just brilliant - delightful to deal with, and gave me a run for my money." (Chancery: Traditional, Chambers HNW London Bar 2020)
- "She's very clear, straight-talking, down to earth and reliable. She's very easy to work with, and turns things around very quickly." (Chancery: Traditional, Chambers HNW London Bar 2020)
- "She is approachable, deals with matters in a timely manner and her advice is always very clear." "Technically very strong and excellent when dealing with clients." "She's happy to roll up her sleeves and nothing is too much trouble for her." (Court of Protection: Property and Affairs, Chambers UK Bar 2020)
- "Very easy to deal with, and extremely pragmatic - on top of the detail, and she knows the law backwards." "A great client manner, with a relaxed style which enables her to quickly build rapport with clients." (Chancery: Traditional, Chambers UK Bar 2020)
- "Provides clear advice." (Court of Protection and Community Care, The Legal 500 UK Bar 2020)
- "Very experienced." (Private Client: Trusts and Probate, The Legal 500 UK Bar 2020)
- "She's filled with common sense and won't be aggressive and take arguments just for the sake of it. She's easy to approach and always able to reach a sensible conclusion." (Court of Protection: Property & Affairs,

Chambers UK Bar 2019)

- *“Very much a go-to person for thorny issues, she is really approachable and always knows the answer. She is very reliable and turns things around very quickly.” “A barrister who works very well with other solicitors, she is a good team player, who always gives extremely helpful advice throughout the case.”* (Chancery: Traditional, Chambers UK Bar 2019)
- *“She is extremely experienced and technically excellent.”* (Private Client: Trusts and Probate, The Legal 500 UK Bar 2019)
- *“She is great at producing opinions that help clients who can’t see the wood from the trees.”* (Court of Protection, The Legal 500 UK Bar 2019)
- *“She is extremely pragmatic, a real team player, turns advice around quickly and efficiently and will adapt her style to suit the client.”* (Court of Protection: Property & Affairs, Chambers UK Bar 2018)
- *“Very forceful in making her arguments and someone who always follows them up very diligently. She is confident in court and always fights hard for her clients.” “Her main strength is that she is extremely pragmatic and a real team player. She is very happy to get involved and turn advice around quickly and effectively.”* (Chancery: Traditional, Chambers Bar UK 2018)
- *“Not afraid to roll up her sleeves to help out: clients love her.”* (Court of Protection & Private Client, The Legal 500 UK Bar 2017)
- *“She is a very fair opponent who is courteous and friendly. If I have a case against her we can normally go a long way to narrowing the issues and coming to a fair conclusion.”* (Court of Protection: Property and Affairs, Chambers UK Bar 2017)
- *“She’s just very easy to deal with, very straightforward, and in touch all the time.”* (Chancery: Traditional, Chambers UK Bar 2017)
- *“She has a very resilient client manner and never gives up in helping to fight for access to justice.”* (Private Client: Trusts and Probate, The Legal 500 UK Bar 2016)

## **PUBLICATIONS AND SPEAKING**

Katherine is a member of Lexis PSL Private Client Consulting Editorial Board. She co-authored an article entitled “Life and Reconciliation after Death” on the subject of mediation in inheritance disputes which was published in New Law Journal. You can read it [here](#).

Katherine is very happy to speak at events and provide training to clients, recent topics include:

- Professional Negligence in Wills, Probate and Tax Planning
- Gifts, the Provision of Maintenance and Statutory Wills in the Court of Protection
- Testamentary Capacity
- Mistakes in Will Drafting.

## **QUALIFICATIONS**

BA (Oxon)

## **MEMBERSHIPS**

Chancery Bar Association; ACTAPS; Professional Negligence Bar Association; STEP.

## **POLICIES AND OTHER DETAILS**

- Read Kath’s [Privacy Notice](#), [Data Protection Policy](#) and [Disposal Policy](#).
- VAT Registration Number: 524262076
- Bar Membership Number: 24808